

LEGISLATIVE CONSENT MEMORANDUM

(MEMORANDUM NO.5)

ONLINE SAFETY BILL

1. This legislative consent memorandum is laid under Standing Order (“SO”) 29.2. SO 29 prescribes that a legislative consent memorandum (LCM) must be laid, and a legislative consent motion may be tabled, before Senedd Cymru if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of the Senedd.
2. The Online Safety Bill (“the Bill”) was introduced in the House of Commons on 17 March 2022.
3. The Bill completed its passage through the House of Commons on 17 January and moved to the House of Lords for its first reading on 18 January. The Bill is currently at Committee stage in the House of Lords.
4. Unless otherwise stated, clause references in this LCM correspond with the latest version of the Bill as brought from the Commons and published on 18 January, which can be found at: [newbook.book \(parliament.uk\)](http://newbook.book.parliament.uk)
5. I am laying this LCM in relation to an amendment to the Bill, tabled on 18 May, to introduce in England and Wales an offence of sending a communication that encourages self-harm. Further detail is set out in paragraphs 14 to 21 below.

Policy Objective(s)

6. The key policy objectives have been provided in the previous LCMs laid on the Bill and remain accurate.

Summary of the Bill

7. A summary of the Bill has been provided in the previous LCMs laid on the Bill and remains accurate.

Update on position on Legislative Consent Memoranda

8. The Deputy Minister for Climate Change laid an LCM on 30 March 2022, in respect of clause 175(5) of, and paragraph 10 and Part 2 of Schedule 1, to the Bill as introduced in so far as these provisions relate to Wales.
9. On 28 September I laid a supplementary LCM (Memorandum No.2) in relation to clauses 151 – 154 and 156 (clauses 150-153 and 155 as

introduced) of Part 10 of the Bill as amended in Public Bill Committee (Communications Offences).

10. On 8 November I laid a supplementary LCM (Memorandum No.3) in relation to tabled Amendments NC41(Offences of sending or showing flashing images electronically: England and Wales) and NC13 (Exemptions from offences under sections 150 and 151 as introduced).
11. On 12 December I laid a supplementary LCM (Memorandum No.4) in relation to Clause 165 which introduces Schedule 14, which were contained in the Bill as introduced but were not however included in LCM Memorandum No.2. The supplementary LCM also noted that consent was no longer required for *clause 151: harmful communications offence*, as it has been removed from the Bill.
12. The Bill completed its passage through the House of Commons on 17 January and had its first reading in the House of Lords on 18 January. The Bill is currently at Committee stage in the House of Lords.
13. The new offence relating to sending a communication that encourages self-harm, tabled as an amendment on 18 May at Committee stage in the House of Lords, requires the consent of the Senedd. I consider this supplementary LCM is required to be laid before the Senedd for the reasons set out in paragraphs 18 and 19 below.

Provisions in the Bill for which consent is required

Offence of encouraging or assisting serious self-harm

14. This new offence is to be included after clause 164. The amendment creates a new offence of encouraging or assisting the serious self-harm of another person and intending to do so, by means of the following specified communication –

(a) communicates in person,

(b) sends, transmits or publishes a communication by electronic

means,

(c) shows a person such a communication,

(d) publishes material by any means other than electronic means,

(e) sends, gives, shows or makes available to a person—

(i) material published as mentioned in paragraph (d), or

(ii) any form of correspondence, or

(f) sends, gives or makes available to a person an item on which data

is stored electronically

15. “Serious self-harm” means self-harm amounting to, in England and Wales and Northern Ireland, grievous bodily harm within the meaning of the Offences Against the Person Act 1861 and includes successive acts of self-harm which cumulatively reach that threshold. The offence is committed whether or not serious self-harm occurs. Subsection (6) extends the offence to apply to a person who arranges for another person to commit the offence.
16. A person who commits the offence is liable on summary conviction in England and Wales, to imprisonment for a term not exceeding the general limit in a magistrates’ court or a fine (or both); or on conviction on indictment to imprisonment for a term not exceeding 5 years or a fine (or both).
17. Clause 166, which is about the liability of corporate officers for offences, is amended to apply to the new offence of encouraging or assisting serious self-harm.
18. Whilst internet services, postal services, and telecommunications are reserved, the Senedd has competence in relation to other forms of communications outside those contexts, which fall within the scope of the offence (for example, communication in person, showing of a communication to a person, and published material by any means other than electronic means). Therefore, consent is required for these provisions.
19. Schedule 14 is amended to make consequential amendments in relation to the new offence. To the extent that those consequential amendments relate to the offence by means of communications within the Senedd’s competence, consent is also required.

Reasons for making these provisions for Wales in the Online Safety Bill

20. The provisions within the Bill, which impose duties on internet service providers in relation to online safety and confer powers and impose duties on OFCOM, relate to the reserved matter of “internet services.”
21. The safety and wellbeing of people is a shared responsibility and a duty that falls to both the UK Government and the Welsh Government. We acknowledge that a UK-wide Bill is the most effective and proportionate legislative vehicle to deliver consistent regulation of internet providers that will protect the people of Wales.

UK Government view on the need for consent

22. The UK Government agree that the provisions within this supplementary LCM (Memorandum No.5) engage the LCM process.

Financial implications

23. There are no financial implications for Wales in relation to the Bill.

Conclusion

24. It is my view that it is appropriate to lay a supplementary LCM, in respect of adding the offence of encouraging or assisting serious self-harm to the Bill, for the reasons provided in paragraphs 20 and 21 above.

25. Therefore, I recommend the Senedd supports the proposal and gives its consent.

Vaughan Gething MS
Minister for Economy
1 June 2023