

The Welsh Government's Legislative Consent Memorandum on the Online Safety Bill

June 2022



1. Background

The UK Government's Online Safety Bill

1. The Online Safety Bill¹ (the Bill) was introduced into the House of Commons on 17 March 2022. It is sponsored by the Department for Digital, Culture, Media and Sport.
2. The long title to the Bill states that it is:

"A Bill to make provision for and in connection with the regulation by OFCOM of certain internet services; for and in connection with communications offences; and for connected purposes."

3. The Bill had its second reading on 19 April 2022 and was subsequently carried over into the 2022-23 session of the UK Parliament. The Bill was re-introduced on 11 May,² and entered committee stage on 24 May.

The Welsh Government's Legislative Consent Memorandum

4. Standing Orders 29.1 and 29.2 provide that a legislative consent memorandum is required when a relevant UK Bill makes provision in relation to Wales for any purpose within the legislative competence of the Senedd or which modifies the Senedd's legislative competence.
5. On 30 March 2022, Lee Waters MS, the Deputy Minister for Climate Change (the Deputy Minister), laid before the Senedd a Legislative Consent Memorandum (the Memorandum) in respect of the Bill.³
6. The Business Committee agreed that the Legislation, Justice and Constitution Committee and the Culture, Communications, Welsh Language, Sport, and International Relations Committee should report on the Memorandum by 21 July 2022.⁴

¹ [The Online Safety Bill, as introduced](#) (Bill 285 2021-22)

² [The Online Safety Bill, as introduced](#) (Bill 4 2022-23)

³ Welsh Government, [Legislative Consent Memorandum, Online Safety Bill](#), March 2022

⁴ Business Committee, [Timetable for consideration: Legislative Consent Memorandum on the Online Safety Bill](#), March 2022

Provisions for which the Senedd's consent is required

- 7.** Paragraphs 13 to 17 of the Memorandum set out the Welsh Government's assessment of which provisions in the Bill require the consent of the Senedd, namely:
- clause 175(5) – Powers to amend Part 2 of Schedule 1 to the Bill (as introduced); and
 - paragraph 10 and Part 2 of Schedule 1 (as introduced) – Services provided by persons providing education or childcare.
- 8.** Paragraph 10 of Schedule 1 to the Bill provides for an exemption from the obligations under the Bill in relation to education and childcare providers. The Bill's Explanatory Notes state that the exemption ensures that relevant providers "are not subject to oversight by both OFCOM and the relevant oversight bodies across the United Kingdom".⁵
- 9.** Part 2 of Schedule 1 to the Bill contains a list of the descriptions of education and childcare providers that are exempt, including those relating to Wales at paragraphs 31 to 37 of that Schedule.
- 10.** Clause 175(5) confers a power on the Welsh Ministers to make regulations to amend this list where certain criteria are met, which include:
- a. amending the description of an education or childcare provider because there has been an amendment or repeal of legislation which affects the way a description has been framed in Part 2 of Schedule 1 to the Bill;
 - b. adding a new description of an education or childcare provider because enactments, statutory guidance or requirements that apply to that description of education and childcare mean that it would be appropriate for the description to be added to Part 2 of Schedule 1 to the Bill; or
 - c. removing a description of an education or childcare provider because the risk of harm to individuals using that education or childcare service warrants removal from the list.
- 11.** The Bill's Explanatory Notes confirm that these provisions require the consent of the Senedd.⁶

⁵ UK Parliament, [Online Safety Bill 2022-23: Explanatory Notes](#), paragraph 63

⁶ UK Parliament, [Online Safety Bill 2022-23: Explanatory Notes](#), paragraph 750. Although paragraph 750 refers to clause 170(3), it is evident it should instead reference clause 175(5).

The Welsh Government's position

12. At paragraph 15 of the Memorandum, the Deputy Minister states that the power conferred by clause 175(5) is "important in terms of future proofing the Bill's provisions in respect of these particular exemptions and how they apply in Wales."

13. Paragraphs 19 and 20 of the Memorandum further set out the reasons why the Deputy Minister believes it is appropriate for the Bill to contain devolved provision:

"The provisions inserted by Clause 175(5) of the Bill will ensure that education and childcare providers in Wales are exempted from the Bill to avoid and therefore not be subject to additional regulation by OFCOM further to that currently imposed by statutory and/or contractual safeguarding requirements. Currently safeguarding requirements related to online safety and protecting children from harm already form part of inspection and regulation under Estyn and Care Inspectorate Wales.

The safety and wellbeing of people is a shared responsibility and a duty that falls to both 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."

14. The Deputy Minister concludes at paragraph 22:

"...the provisions will make practical and important changes to online safety regulation across the UK whilst ensuring that the proposed regulation in the Bill does not lead to additional, unnecessary and disproportionate regulation of education and childcare providers in Wales. Therefore I recommend the Senedd supports the proposals and gives its consent."

2. Committee consideration

15. We considered the Memorandum at our meeting on 6 June 2022, and we agreed our report on 27 June 2022.⁷

Our view

16. We note the Deputy Minister's assessment of the provisions within the Bill that require the consent of the Senedd, and we agree with that assessment.

17. We also note the Deputy Minister's view that it is appropriate for the Bill to make provision for Wales.

18. We note that the regulation-making power provided to the Welsh Ministers in clause 175(5) is subject to the draft affirmative procedure. The Memorandum should have made reference to this point and in our view, it would have been helpful for an accompanying commentary justifying the use of the affirmative procedure given that it is a Henry VIII power.⁸

⁷ [Legislation, Justice and Constitution Committee, 6 June 2022](#) and [Legislation, Justice and Constitution Committee, 27 June 2022](#).

⁸ For the UK Government's justification for the type of procedure, see UK Government, [Online Safety Bill: Memorandum from the Department for Digital, Culture, Media and Sport and the Home Office to the Delegated Powers and Regulatory Reform Committee](#), March 2022, paragraphs 341–342
