

The Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 5) on the Online Safety Bill

June 2023



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 was carried over into the 2022-23 session of the UK Parliament,² and entered Commons Committee stage on 24 May 2022. It was subsequently considered at Commons Report stage and received its third reading in the Commons on 17 January 2023. The Bill³ received its First Reading in the House of Lords on the next day; Lords Second Reading took place on 1 February 2023, and Committee stage began on 19 April 2023. At the time we agreed our report, Committee stage was due to continue on 22 June. A programme motion agreed by the House of Commons requires proceedings in the Public Bill Committee to be concluded by 20 July 2023.

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, Deputy Minister for Climate Change (the Deputy Minister), laid before the Senedd a Legislative Consent Memorandum (the Memorandum) in respect of the Bill.⁴

¹ ~~The Online Safety Bill, as introduced~~ (Bill 285 2021-22)

² ~~The Online Safety Bill, as introduced~~ (Bill 4 2022-23)

³ ~~The Online Safety Bill, as brought from the Commons~~ (HL Bill 87(Rev))

⁴ Welsh Government, ~~Legislative Consent Memorandum, Online Safety Bill~~, March 2022

6. We reported on the Memorandum on 28 June 2022.⁵ Within our report we noted, and agreed with, the Deputy Minister's assessment of the provisions within the Bill that require the consent of the Senedd.⁶ We also shared our view that the Memorandum should have made reference to the procedure (draft affirmative) attached to the regulation-making power provided to the Welsh Ministers in clause 175(5) (now clause 189(5) of the Bill), given it is a Henry VIII power.⁷

7. Within a letter in response to our report, Julie James MS, the Minister for Climate Change explained:

*"This power enables Welsh Ministers to amend the list of Welsh education and childcare providers (found in Part 2 of Schedule 1) who will be exempt from regulation under the Bill. The Henry VIII power enables the amendment of primary legislation using subordinate legislation, which may affect the application of provisions in the Bill relating to devolved matters. Given the nature of Henry VIII powers it is considered that they should be subject to sufficient Senedd scrutiny. Therefore, the affirmative procedure is suitable."*⁸

The Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 2)

8. On 28 September 2022, Vaughan Gething MS, the Minister for Economy (the Minister) laid a Supplementary Legislative Consent Memorandum (Memorandum No. 2) in respect of the Bill following amendments tabled for consideration at Commons Committee stage.⁹

9. We reported on Memorandum No. 2 on 19 December 2022.¹⁰ Within our report we noted, and agreed with, the Welsh Government's assessment that clauses 152–154 and 156 of the Bill (clauses 156, 158, 159 and 162 in the Bill as amended at Commons Report stage) required the Senedd's consent.¹¹ However, we recommended that the Senedd's consent should also be

⁵ Legislation, Justice and Constitution Committee, [Report on the Welsh Government's Legislative Consent Memorandum on the Online Safety Bill](#), June 2022

⁶ Report on the Welsh Government's Legislative Consent Memorandum on the Online Safety Bill, paragraph 16

⁷ Report on the Welsh Government's Legislative Consent Memorandum on the Online Safety Bill, paragraph 18

⁸ [Letter from the Minister for Climate Change](#), 27 July 2022

⁹ Welsh Government, [Supplementary Legislative Consent Memorandum \(Memorandum No. 2\), Online Safety Bill](#), November 2022

¹⁰ Legislation, Justice and Constitution Committee, [Report on the Welsh Government's Supplementary Legislative Consent Memorandum \(Memorandum No. 2\) on the Online Safety Bill](#), December 2022

¹¹ Report on the Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 2) on the Online Safety Bill, paragraph 22 and conclusion 1

sought for clause 159 and Schedule 14 of the Bill (clause 165 and Schedule 14 of the Bill as amended at Commons Report stage).¹² We also noted that clause 151, which the Welsh Government deemed to require consent, had been removed from the Bill by the time we had reported and as such it no longer required the Senedd's consent.¹³

10. On 18 January 2023 the Minister responded to our report. The Minister noted our recommendation and acknowledged that consent was indeed required for clause 159 and Schedule 14 of the Bill (clause 165 and Schedule 14 of the Bill as amended at Commons Report stage). He confirmed that a further supplementary legislative consent memorandum had been tabled in respect of those provisions (see consideration of Memorandum No. 4 below).¹⁴

The Welsh Government's Supplementary Legislative Consent Memoranda (Memoranda No. 3 and No. 4)

11. On 8 November 2022 the Minister laid a further Supplementary Legislative Consent Memorandum¹⁵ (Memorandum No. 3) in respect of amendments tabled for consideration at Commons Report stage.

12. On 21 December 2022 the Minister laid a further Supplementary Legislative Consent Memorandum¹⁶ (Memorandum No. 4) in respect of clauses which were contained in the Bill as introduced but were not included in previous memoranda.

13. We reported on Memoranda No.3 and No. 4 on 27 January 2023.¹⁷ Within our report we noted, and agreed with, the Welsh Government's assessment that clauses 157, 160, and 165, and Schedule 14 of the Bill, as amended at Commons Report stage required the Senedd's consent.¹⁸

¹² Report on the Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 2) on the Online Safety Bill, paragraph 24 and recommendation 1

¹³ Report on the Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 2) on the Online Safety Bill, paragraph 23

¹⁴ Letter from the Minister for Economy, 18 January 2023

¹⁵ Welsh Government, Supplementary Legislative Consent Memorandum (Memorandum No. 3), Online Safety Bill, November 2022

¹⁶ Welsh Government, Supplementary Legislative Consent Memorandum (Memorandum No. 4), Online Safety Bill, December 2022

¹⁷ Legislation, Justice and Constitution Committee, Report on the Welsh Government's Supplementary Legislative Consent Memoranda (Memoranda No. 3 and No. 4) on the Online Safety Bill, January 2023

¹⁸ Report on the Welsh Government's Supplementary Legislative Consent Memoranda (Memoranda No. 3 and No. 4) on the Online Safety Bill, paragraph 29 and conclusion 1

14. On 20 February 2023 the Minister responded to our report. The Minister welcomed our report and noted that we agreed with the Welsh Government's assessment regarding provisions which required the Senedd's consent.¹⁹

The Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 5)

15. On 1 June 2023 the Minister laid a further Supplementary Legislative Consent Memorandum²⁰ (Memorandum No. 5) in respect of amendments tabled for consideration at Lords' Committee stage.

16. The Business Committee agreed that the Culture, Communications, Welsh Language, Sport, and International Relations Committee and the Legislation, Justice and Constitution Committee should report on Memorandum No. 5 by 26 June 2023.²¹

Update on the position since the publication of the Memorandum and the Supplementary Legislative Consent Memoranda (Memoranda No. 2, No. 3, and No. 4)

17. At paragraphs 8 to 13 of Memorandum No. 5, the Minister provides an update on the position since the publication of the earlier legislative consent memoranda, noting that amendments to the Bill were tabled on 18 May at Committee stage in the House of Lords. The amendments add a new clause to the Bill which provides for a new offence relating to sending a communication that encourages or assists self-harm of another person, and make other consequential amendments to clause 166 and Schedule 14.²²

The Welsh Government's position on the amendments made to the Bill for which consent is required

18. Paragraphs 14 to 21 of Memorandum No. 5 set out the Welsh Government's view on the amendments made to the Bill which make provision about the new offence and for which consent is required, noting:

¹⁹ Letter from the Minister for Economy, 20 February 2023

²⁰ Welsh Government, Supplementary Legislative Consent Memorandum (Memorandum No. 5), Online Safety Bill, June 2023

²¹ Business Committee, Timetable for consideration: Supplementary Legislative Consent Memorandum (Memorandum No. 5) on the Online Safety Bill, June 2023

²² See also Memorandum No. 5, paragraphs 17 and 19

- the new clause is to be inserted after clause 164 in the Bill;
- the new clause creates a new offence of encouraging or assisting the serious self-harm of another person and intending to do so by means of certain forms of communication that are specified in the new clause;
- clause 166, which relates to the liability of corporate officers for offences, is amended to apply to the new offence;
- Schedule 14 to the Bill (Amendments consequential on offences in Part 10 of the Bill) is amended to make consequential amendments in relation to the new offence.

19. The Minister states:

*"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."*²³

20. The Minister also states:

"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".

*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."*²⁴

²³ Memorandum No. 5, paragraph 18

²⁴ Memorandum No. 5, paragraphs 20 and 21

The Welsh Government's conclusions in Memorandum No. 5

21. The Minister concludes:

"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...

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

2. Committee consideration

22. We considered Memorandum No. 5 at our meeting on 12 June 2023.²⁶

23. We agreed our report on 19 June 2023.²⁷

Our view

24. We note the Minister's assessment that the new clause providing for a new offence of encouraging or assisting the serious self-harm of another person and intending to do so by means of communication specified in the new clause, and the amendments to clause 166 of and Schedule 14 to the Bill, include provision which require the consent of the Senedd.

Conclusion 1. We agree with the Welsh Government's assessment that the new clause providing for a new offence of encouraging or assisting the serious self-harm of another person and intending to do so by means of communication specified in the new clause, and the amendments to clause 166 of and Schedule 14 to the Bill, include provision which fall within a purpose within the legislative competence of the Senedd, as described in Standing Order 29.1(i), in so far as the new provisions are not related to electronic communications.

²⁵ Memorandum No. 5, paragraphs 24 and 25

²⁶ Legislation, Justice and Constitution Committee, 12 June 2023

²⁷ Legislation, Justice and Constitution Committee, 19 June 2023