

**SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM  
(MEMORANDUM NO 3)**

**ONLINE SAFETY BILL**

1. This legislative consent memorandum is laid under Standing Order (“SO”) 29.2(iii). SO29 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 and is currently being considered at Commons Report Stage, which commenced on 12 July. The second sitting of Commons of Report Stage is yet to be scheduled.
3. The Bill (as amended following consideration at Commons Committee stage and published on 28 June) and the relevant published amendments can be found at: <https://bills.parliament.uk/bills/3137>. All amendments tabled on 26 October and 28 October, including the UK Government amendments set out in this supplementary LCM, can be found at [onlinesafety\\_rm\\_rep\\_1026.fm\(parliament.uk\)](https://onlinesafety.rm.rep.1026.fm(parliament.uk)):

**Policy Objective(s)**

4. The UK Government’s stated policy objective is to establish a new regulatory regime to address illegal and harmful content online, with the aim of preventing harm to individuals, making the UK the safest place in the world to be online.
5. Presently, most user-to-user and search services operating in the United Kingdom are not subject to any regulation concerning user safety. The Bill imposes legal requirements on:
  - a) Providers of internet services which allow users to encounter content generated, uploaded, or shared by other users, i.e., user-generated content (“user-to-user services”).
  - b) Providers of search engines which enable users to search multiple websites and databases (“search services”).
  - c) Providers of internet services on which pornographic content is published or displayed.
6. The Bill confers new powers on the Office of Communications (OFCOM) enabling them to act as the online safety regulator.

## Summary of the Bill

7. The Bill is sponsored by the Department for Digital, Culture, Media and Sport (DCMS).
8. The Bill introduces a new regulatory regime that will impose legal requirements on providers of internet services which allow users to encounter content generated, uploaded, or shared by other users and search engines which enable users to search multiple websites and databases. Providers of regulated services will be required to:
  - a) Assess their user base and the risks of harm to those users present on the service;
  - b) Take steps to mitigate and manage the risks of harm to individuals arising from illegal content and activity, and (for services likely to be accessed by children) content and activity that is harmful to children;
  - c) Put in place systems and processes which allow users and affected persons to report specified types of content and activity to the service provider;
  - d) Establish a transparent and easy to use complaints procedure which allows for complaints of specified types to be made;
  - e) Have regard to the importance of protecting users' legal rights to freedom of expression and protecting users from a breach of a legal right to privacy when implementing safety policies and procedures;
  - f) Put in place systems and processes designed to ensure that detected but unreported child sexual exploitation and abuse (CSEA) content is reported to the National Crime Agency (NCA).
9. Additional legal requirements will be placed upon user-to-user services that meet threshold conditions specified by the Secretary of State. These include setting out in clear terms of service how legal but harmful content to adults will be treated and assessing and publishing steps taken to protect users' legal rights to freedom of expression and users' privacy.
10. Search services which meet additional threshold conditions will be under a duty to produce annual transparency reports and to put in place proportionate systems and processes to prevent the risk of users encountering fraudulent adverts.
11. OFCOM will be responsible for enforcing the legal requirements imposed on service providers. The Bill requires OFCOM to produce codes of practice for service providers, setting out the recommended steps that providers can take in order to comply with the legal requirements. New powers conferred on OFCOM include the power to give enforcement notifications and to impose financial penalties.
12. The Bill also requires providers of internet services which make pornographic material available by way of the service (as opposed to enabling users to generate or share such content) to ensure that children are not normally able to encounter that pornographic content.

13. Within the Bill, relevant existing communications offences under the Communications Act 2003 are replaced with three new communications offences: a harmful communications offence, a false communications offence, and a threatening communications offence, as well as the creation of a new flashing images offence, sometimes known as 'epilepsy trolling' which is set out in this supplementary LCM.

**Update on position since the publication of the first Legislative Consent Memorandum and the previous Supplementary Legislative Consent Memorandum (Memorandum No 2)**

14. The Deputy Minister for Climate Change laid an LCM on 30 March, based on the Bill as introduced into the UK Parliament on 17 March.

15. The LCM confirmed that the Deputy Minister for Climate Change was content to lay an LCM in respect of clause 175(5) of, and paragraph 10 and Part 2 of Schedule 1, in so far as these provisions relate to Wales.

16. On 8 August, the UK Government confirmed that following further discussions, it was now considered that provisions within Part 10 of the Bill (communications offences) may require legislative consent.

17. On 28 September I laid a supplementary LCM in relation to clauses 151-153 and 156 of Part 10 of the Bill (communications offences).

18. On 26 October, the UK Government tabled an amendment (NC41) to Part 10 of the Bill, **Offences of sending or showing flashing images electronically: England and Wales.**

19. On 28 October, the UK Government tabled an amendment (NC13) to Part 10 of the Bill **Exemptions from offences under sections 151 and 152.**

20. The amendments will be considered at the second sitting of Report Stage in the House of Commons, although this is yet to be scheduled.

21. Following legal analysis of the implications of this new offence for Wales, (Offences of sending or showing flashing images electronically), I consider this supplementary LCM is required to be laid before the Senedd, for the reasons set out in paragraphs 22 to 30 below.

**Additional provisions in the Bill for which consent is required**

22. The Senedd's consent is required for the additional provision included within the Bill:

*Amendment NC41– Offences of sending or showing flashing images electronically: England and Wales*

23. This new clause, tabled by the UK Government as an amendment on 26 October, creates a criminal offence for sending or showing, flashing images to individuals known to have epilepsy. An individual must intend the other to suffer harm with no reasonable excuse. The provision in the Bill includes both targeted attacks on individuals, and on groups such as the Epilepsy Society. The offence would capture, for example, posting flashing images to social media platforms, or sending a message directly to the recipient by, for example, WhatsApp, email, or direct message on a social media channel. The offence would also capture an individual showing a flashing image to another directly, for example by holding up a mobile phone with the intent that an individual with photosensitive epilepsy who encounters those images would suffer a seizure as a result.
24. This new provision within the Bill creates the following two offences:
- (i) The first, contained in subsection (1), creates an offence to 'send' a communication in electronic form which consists of or includes flashing images. Those are images which carry a risk that an individual with photosensitive epilepsy who viewed those images would suffer a seizure as a result; and
  - (ii) The second, contained in subsection (8), creates an offence where a person 'shows' flashing images by means of an electronic communications device.
25. Offence 2 (subsection (8)) applies to the "showing" of an electronic communication. Whilst internet services, postal services, and telecommunications are reserved, the Senedd has competence to legislate in relation to other communications. Therefore, legislative consent of the Senedd is required.

*Amendment NC13 – Exemptions from offences under sections 151 and 152*

26. This amendment, tabled on 28 October, contains exemptions from the harmful and false communications offences under clauses 151 and 152. Under amendment NC41 (subsection (5)), these exemptions will also apply to the flashing images offence referred to in paragraphs 23-26 above.
27. As these exemptions apply to forms of communication that are within competence, legislative consent of the Senedd is required.

**UK Government view on the need for consent**

28. The UK Government's view is that this new provision within the Bill engages the legislative consent motion process.

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

29. 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.”
30. 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.
31. I welcome the UK Government’s intention of the Bill to make the UK the safest place in the world to be online while also ensuring people can enjoy their right to freedom of expression. I am pleased the Bill recognises the need for enhanced protection for children and young people. I firmly believe safeguarding is a shared responsibility and welcome the duties placed upon online providers to take action and strengthen protection against activities that threaten the safety of users.

## **Financial implications**

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

## **Conclusion**

33. It is my view that it is appropriate to lay a supplementary LCM, in respect of the provisions within Part 10 of the Bill which relate to the offences of sending or showing flashing images electronically, for the reasons provided in paragraph 25 above and also the exemptions from offences under sections 151 and 152, as detailed in paragraphs 26-27 above.
34. Therefore, I recommend the Senedd supports the proposal and gives its consent.

**Vaughan Gething MS**  
**Minister for Economy**  
**8 November 2022**