

LEGISLATIVE CONSENT MEMORANDUM

(MEMORANDUM NO.4)

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. The UK Parliament consideration of the Bill has since completed Report Stage in the House of Commons.
3. Unless otherwise stated, clause references in this LCM correspond with the Bill as amended at Commons Second Day of Report Stage and published on 6 December, which can be found at:
<https://bills.parliament.uk/bills/3137>
4. I am laying this LCM in relation to clauses which were contained in the Bill as introduced but were not however included in LCM Memorandum No.2. Further detail is set out in paragraphs 19 to 21 below.

Policy Objective(s)

5. 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.
6. 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.

7. The Bill confers new powers on the Office of Communications (OFCOM) enabling them to act as the online safety regulator.

Summary of the Bill

8. The Bill is sponsored by the Department for Digital, Culture, Media and Sport (DCMS).
9. 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.

Update on position on Legislative Consent Memoranda

10. The Deputy Minister for Climate Change laid an LCM on 30 March, in respect of clause 189(5) (clause 175(5) as introduced) of, and paragraph 10 and Part 2 of Schedule 1, in so far as these provisions relate to Wales.
11. 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).
12. 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).
13. The Bill completed Report Stage in the House of Commons on Monday 5 December and an updated version of the Bill (as amended on Report) was published the following day.
14. Following further legal analysis of amendments made to the Bill during Report Stage, I consider this supplementary LCM is required to be laid before the Senedd, for the reasons set out in paragraph 19-21 below.

Provisions in the Bill for which consent is required

Removal of clause 151: harmful communications offence

15. Consent was sought in the LCM (Memorandum No.2) laid 28 September, in relation to clauses 151 -154 and 156 of Part 10 of the Bill as amended in Public Bill Committee (Communications Offences).
16. At second day of Report Stage, Amendment 239 removed clause 151 (harmful communications offence, clause 150 as introduced) from the Bill.

17. There are consequential amendments on the omission of clause 151 to various sections of the Bill, which omit references to that clause.
18. Following the removal of clause 151 the Senedd is asked to note that consent is therefore no longer required for that clause.

Clause 165 of the Bill as amended on Report (clause 158 as introduced) and Schedule 14

19. It is also considered that consent should be sought for clause 165 (clause 158 as introduced) and Schedule 14.
20. Clause 165 introduces Schedule 14, which make consequential amendments on the following clauses:
 - clause 156 false communications offence (clause 151 as introduced);
 - clause 158 threatening communications offence (clause 152 as introduced);
 - clause 163 sending etc photograph or film of genitals (clause 156 as introduced); and
 - clause 160 flashing images offence.
21. Whilst internet services, postal services, and telecommunications are reserved, the Senedd has competence in relation to other forms of communication for the purposes of the offences under clauses 156, 158 and 160. Therefore, to the extent that clause 165 and Schedule 14 make consequential amendments on those offences, consent is also required for these provisions.

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

22. 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.”
23. 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

24. The UK Government agree that provisions included in LCM Memorandum No.2 (Part 10, Communications Offences) engage the legislative consent motion process. The provisions within this LCM (Memorandum No.4) relate to the same provisions.

Financial implications

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

Conclusion

26. The Senedd is asked to note that consent sought within LCM (Memorandum No.2) for clause 151 (harmful communications offence) is no longer required.

27. It is my view that it is appropriate to lay a supplementary LCM, in respect of clause 165, and Part 1 of Schedule 14 to the Bill for the reasons provided in paragraph 21 above.

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

Vaughan Gething MS
Minister for Economy
21 December 2022

Annex 1: Clause Numbers

The below table sets out the Clause numbers for those clauses referenced within this LCM (No.4).

To note, LCM (No.2) referred to clause numbers from 'Bill 121 2022-23 (As Amended in Public Bill Committee on the 28 June 2022'.

Clause No. - Bill 285 2021-22 (as introduced)- 17 March 2022	Clause No. - Bill 121 2022-23 (As Amended in Public Bill Committee – 28 June 2022	Clause No. - Bill 209 2022-23 (As Amended on Report) – 6 December 2022
150 Harmful Communications Offence	151 Harmful Communications Offence	Removed
151 False Communications Offence	152 False Communications Offence	156 False communications offence: England and Wales
152 Threatening Communications Offence	153 Threatening Communications Offence	158 Threatening communications offence: England and Wales
153 Interpretation of sections 150 to 152	154 Interpretation of sections 151 to 153	159 Interpretation of sections 156 to 158
155 Liability of Corporate Officers	156 Liability of Corporate Officers	162 Liability of Corporate Officers