

The Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 2) on the Online Safety Bill

December 2022



1. Background

The UK Government's Online Safety Bill

1. The UK Government's Online Safety Bill¹ (the Bill) was introduced into the House of Commons and had its first reading on 17 March 2022. The Bill is sponsored by the UK Government Department for Digital, Culture, Media and Sport.
2. The Bill has completed Committee Stage in the House of Commons and at the time of writing this report the Bill was at Report Stage.

The Welsh Government's Legislative Consent Memorandum

3. 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.
4. 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 original Memorandum) in respect of the Bill.²
5. At paragraphs 13 to 17 of the original Memorandum the Deputy Minister set out the Welsh Government's assessment, at the time, of the provisions in the Bill that it considered required the consent of the Senedd, namely clause 175(5) and paragraph 10 and Part 2 of Schedule 1.
6. At paragraph 22 of the original Memorandum the Deputy Minister set out the Welsh Government's position on the Bill at the time:

"... 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."

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

² Welsh Government, [Legislative Consent Memorandum, Online Safety Bill](#), March 2022

Summary of our first report

7. We reported on the original Memorandum on 28 June 2022 (first report).³
8. Paragraphs 16 to 18 of our first report set out our consideration of the original Memorandum.
9. The Minister for Climate Change formally responded to our first report on 27 July 2022.⁴

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

10. On 28 September 2022, the Minister for Economy (the Minister) laid before the Senedd a Supplementary Legislative Consent Memorandum⁵ (Memorandum No. 2) in relation to clauses which were contained in the Bill as introduced, but were omitted from the original Memorandum.
11. The Business Committee originally agreed that the Culture, Communications, Welsh Language, Sport, and International Relations Committee and the Legislation, Justice and Constitution Committee should report on Memorandum No. 2 by 8 December 2022. This deadline was later extended to 16 February 2023.⁶

Update on the Welsh Government's position since the publication of the Memorandum

12. At paragraphs 20 to 29 of Memorandum No. 2, the Minister provides an update on the Welsh Government's position on the Bill's provisions that require the Senedd's consent since the original Memorandum was laid before the Senedd in June 2021, namely the following clauses of the Bill, as amended at Commons Committee Stage, also require the Senedd's consent:

- clause 151 (Harmful communications offence);
- clause 152 (False communications offence);

³ Legislation, Justice and Constitution Committee, [The Welsh Government's Legislative Consent Memorandum on the Online Safety Bill](#), June 2022

⁴ [Letter from the Minister for Climate Change](#), 27 July 2022

⁵ Welsh Government, [Supplementary Legislative Consent Memorandum \(Memorandum No. 2\), Online Safety Bill](#), January 2022

⁶ Senedd Cymru, [Legislative Consent: Online Safety Bill](#)

- clause 153 (Threatening communications offence);
- clause 154 (Interpretation of sections 151 to 153); and
- clause 156 (Liability of corporate officers).

13. The Minister explains in Memorandum No. 2 that since the laying of the original Memorandum, UK Government officials had informed his officials that these clauses “may require” consent, and following the Welsh Government’s “own subsequent analysis” the Minister concluded that they did require consent.⁷

14. The Minister confirms that the UK Government is also of the view that the Senedd’s consent is required for these provisions.⁸

15. The Minister provides the Welsh Government’s reasons for making provisions for Wales in the Bill at paragraphs 31 to 33 of Memorandum No. 2, and acknowledges 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”.

16. At paragraph 34 of Memorandum No. 2 the Minister states that “there are likely to be amendments tabled [to the Bill] as it continues its passage through Parliament”, and his officials “will continue to work closely with the UK Government in monitoring any proposed amendments”.

17. At paragraph 36 of Memorandum No. 2 the Minister concludes:

“It is my view that it is appropriate to lay an LCM in respect of clauses 151–154 and 156 – Communications Offences for the reasons provided in paragraphs 31 to 34 above. Therefore, I recommend the Senedd supports the proposals and gives its consent.”

⁷ Memorandum No. 2, paragraphs 18-19

⁸ Memorandum No. 2, paragraph 30

2. Committee consideration

18. We considered Memorandum No. 2 at our meeting on 21 November 2022.⁹

19. We agreed our report on 12 December 2022.¹⁰

20. This report should be read along with our first report.

Our view

21. We acknowledge the Minister's explanation for why the provisions included in Memorandum No. 2, which formed part of the Bill on its introduction, were not included in the original Memorandum.

22. We note the Minister's assessment that clauses 151 to 154 and 156 of the Bill, as amended at Commons Committee Stage, include provision which require the consent of the Senedd. However, we note that since we considered Memorandum No. 2 at our meeting on 21 November, the Bill was amended and clause 151 was omitted.¹¹

Conclusion 1. We agree with the Welsh Government's assessment that clauses 151 to 154 and 156 of the Bill, as amended at Commons Committee Stage, include provision which fall within a purpose within the legislative competence of the Senedd, as described in Standing Order 29.1(i).

23. As clause 151 has been removed from the Bill, the Senedd's consent is not required for that clause.

24. However, we believe that clause 159 and Schedule 14 of the Bill as amended at Commons Committee Stage (in relation to the amendments that are consequential on clauses 152 and 153), which are ancillary to clauses 152 and 153, also include provision within the legislative competence of the Senedd.

Recommendation 1. The Senedd's consent should also be sought for clause 159 and Schedule 14 of the Bill as amended at Commons Committee Stage (in relation to the amendments that are consequential on clauses 152 and 153).

⁹ [Legislation, Justice and Constitution Committee](#), 21 November 2022

¹⁰ [Legislation, Justice and Constitution Committee](#), 12 December 2022

¹¹ Within the Bill as amended at Commons Report Stage: clause 151 is omitted, clause 152 appears as clause 156, clause 153 as clause 158, clause 154 as clause 159, and clause 156 as clause 162. See [Hansard HL Deb. vol. 724](#), 5 December 2022, cols. 147–9
