

LEGISLATIVE CONSENT MEMORANDUM

ONLINE SAFETY BILL

1. This legislative consent memorandum is laid under Standing Order (“SO”) 29.2. SO29 prescribes that a legislative consent memorandum 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 Bill can be found at: <https://bills.parliament.uk/bills/3137>.

Policy Objective(s)

3. 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.
4. 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.
5. The Bill confers new powers on the Office of Communications (OFCOM) enabling them to act as the online safety regulator.

Summary of the Bill

6. The Bill is sponsored by the Department for Digital, Culture, Media and Sport (DCMS).
7. The Online Safety 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 CSEA content is reported to the NCA.
8. 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.
9. 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.
10. 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.
11. 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.
12. Within the Bill, existing communications offences 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 "cyberflashing" offence.

Provisions in the Bill for which consent is required

13. The Senedd's consent is required for the following provision included within the Bill:

Clause 175(5) - Powers to amend Part 2 of Schedule 1 (as introduced)

14. Clause 175(5) confers a power on Welsh Ministers to amend a list of Welsh education and childcare providers (Part 2 of Schedule 1) that will be exempt from regulation under the Bill. Paragraph 10 and Part 2 of Schedule 1 to the Bill make provision for exemptions to the Bill relating to providers of education and childcare. Paragraph 10 provides a description of the exemption for services provided by persons providing education or childcare, and Part 2 lists those exempt providers.

Clause 175(5) set outs that Welsh Ministers may by regulations made by statutory instrument amend the part of the list of exempt providers in Part 2 of Schedule 1 of the Bill which relates to Wales.

15. Consent is requested for Clause 175(5) because it makes provision with regard to devolved matters in so far as they relate to education and childcare. The purpose of the exemption for education and childcare in Wales is based on statutory safeguarding requirements already placed upon providers. These providers included in Part 2 of Schedule 1 are subject to existing regulation and inspection arrangements. Further, should there be changes in terms of education or childcare provision in Wales in the future, the Welsh Ministers will by statutory instrument have the power to amend the list of providers to be included within the exemption. This power is therefore important in terms of future proofing the Bill's provisions in respect of these particular exemptions and how they apply in Wales.

16. The UK Government has indicated in the published Explanatory Notes to the Bill that they consider Clause 175(5) to fall within the Senedd's legislative competence, and therefore are seeking a legislative consent motion in respect of this Clause.

Paragraph 10 and Part 2 of Schedule 1 (as introduced)

17. Clause 175(5) directly relates to paragraph 10 and Part 2 of Schedule 1. Those provisions make up exemptions to the Bill relating to providers of education and childcare. Paragraph 10 provides a description of the exemption for services by persons providing education or childcare, and Part 2 lists those exempt providers. Consent is requested for paragraph 10 and Part 2 of Schedule 1 in so far as those provisions relate to Wales because they are with regard to devolved matters of education and childcare.

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

18. The Online Safety Bill imposes duties on internet service providers in relation to online safety and confers powers and imposes duties on OFCOM. The provisions in the Bill relate to the reserved matter of “internet services”.
19. 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.
20. 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.

Financial implications

21. There are no financial implications for Wales in relation to the UK Government’s Online Safety Bill.

Conclusion

22. It is the view of the Welsh Government that it is appropriate to lay a Legislative Consent Memorandum in respect of Clause 175(5) of, as well as paragraph 10 and Part 2 of Schedule 1 to, the Bill in so far as these provisions relate to Wales. In taking this approach 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.

Lee Waters MS
Deputy Minister for Climate Change
30 March 2022