

Online Safety Bill Supplementary Legislative Consent Memorandum

December 2022



1. Introduction

1. The Welsh Government laid a Legislative Consent Memorandum ("the LCM") on 30 March 2022 under Standing Order 29.2.
2. The Business Committee referred the LCM to this Committee and to the Legislation, Justice and Constitution Committee to consider, with a reporting deadline of 21 July 2022. The Committee reported on that LCM on 24 June 2022.
3. The Welsh Government laid a Supplementary Legislative Consent Memorandum ("Memorandum Number Two") on 28 September 2022. The Business Committee referred Memorandum Number Two to this Committee and to the Legislation, Justice and Constitution Committee to consider, with a reporting deadline of 8 December 2022.

2. Our approach

4. The Committee considered Memorandum Number Two on the Bill at their meeting on 17 November 2022. Given the nature of the provisions for which consent is sought, the Committee did not seek evidence in relation to Memorandum Number Two.

3. The UK Online Safety Bill and the Legislative Consent Memorandum

5. The UK Government's Online Safety Bill ("the Bill") was introduced in the House of Commons on 17 March 2022, and is sponsored by the Department for Digital, Culture, Media and Sport.
6. The long title of the Bill, as introduced, 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."
7. The Bill was debated at second reading on 19 April 2022, was carried over into Session 2022-23 and was reintroduced on 11 May 2022. Report Stage in the House of Commons commenced on 12 July 2022. Further dates for Commons Report Stage are yet to be announced. The Bill was sent to a Public Bill Committee, which will scrutinise the Bill before

reporting to the House of Commons. Proceedings on the Bill have been delayed and as at the date of this report, the timetable for the Bill has not been updated.

8. Briefly, the Bill introduces a new regulatory regime in relation to:

- 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”);
- providers of search engines which enable users to search multiple websites and databases (“search services”); and
- providers of internet services on which provider pornographic content is published or displayed.

9. Under that regulatory regime, certain providers of user-to-user services and search services with links to the UK must assess risk of harm and take steps to mitigate and manage risks, including putting in place systems, processes and a transparent and easy to use complaints procedure.

10. The Bill also creates a new “cyberflashing” offence and replaces existing communications offences with three new communications offences: a harmful communications offence, a false communications offence and a threatening communications offence.

4. Provisions for which consent is sought

11. Standing Order 29 provides that the Welsh Ministers must lay a legislative consent memorandum where a UK Bill makes provision in relation to Wales:

- a. for any purpose within the legislative competence of the Senedd (apart from incidental, consequential, transitional, transitory, supplementary or savings provisions relating to matters that are not within the legislative competence of the Senedd); or
- b. which modifies the legislative competence of the Senedd.

12. Memorandum Number Two states that the provisions of the Bill that require Senedd consent are set out in clauses 151 to 154 and 156 the Bill.

13. Clause 151 creates a criminal offence for sending of harmful communications. Any person who, intending to cause at least serious distress and without reasonable excuse, sends (or

causes to be sent) a message that presents a real and substantial risk of causing at least serious distress to those likely to encounter it, is guilty of the offence.

14. Clause 152 creates a criminal offence for the sending of false communications. A person who, without reasonable excuse, sends a message conveying information the person knows to be false, and in sending the message intends to cause psychological or physical harm that is more than trivial to those likely to encounter the message, is guilty of an offence.

15. Clause 153 creates a criminal offence for the sending of threatening communications. A person who sends a message conveying a threat¹ of serious injury, rape, assault by penetration, or serious financial loss, intending that those who encounter the message will fear the threat will be carried out (or is reckless as to that fact), is guilty of the offence.

16. Clauses 154 and 156 are ancillary to clauses 151 to 153, dealing with matters of interpretation and liability of corporate officers respectively.

17. Although the long title of the Act states that it makes “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”, the Explanatory Note makes it clear that “the offences are not limited to the internet or online environment” and the purpose of the offences is wider than internet services. The Committee agrees with the Welsh and the UK Governments that the purpose of the clauses 151 to 153 is the protection of persons from harm. Clauses 154 and 156 are ancillary to the offences under clauses 151 to 153. To the extent that the clauses create offences that are not limited to electronic communications, or are ancillary to them, the clauses are within the legislative competence of the Senedd.

18. It would appear to the Committee that consent should also be sought for clause 159 and Schedule 14 (in relation to the amendments that are consequential on clauses 151, 152 and 153). Those provisions are ancillary to clauses 151, 152 and 153, in the same way that clauses 154 and 156 are ancillary.

5. Reasons for making provisions for Wales in the Bill

19. The reasons given by the Minister for making provisions for Wales in the Bill are set out in paragraphs 31 to 34 of Memorandum Number Two. Those paragraphs include the following:

¹ Threats to kill are already criminalised under section 16 of the Offences Against the Person Act 1861.

"31.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".

32.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."

6. Committee consideration

20. The Committee considered Memorandum Number Two at its meeting on 17 November 2022.

21. The Committee agrees with the Welsh and UK Governments that consent is required.

22. However, the Committee believes that consent should also be sought for clause 159 and Schedule 14 (in relation to the amendments that are consequential on clauses 151, 152 and 153), which are ancillary to clauses 151, 152 and 153. This approach is consistent with that taken in relation to clauses 154 and 156.