

Online Safety Bill Supplementary Legislative Consent Memorandum (No.3 and No.4)

February 2023



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 on 28 September 2022. The Business Committee referred the Supplementary Memorandum to this Committee and to the Legislation, Justice and Constitution Committee. The Committee reported on that Supplementary LCM on 15 December 2022.
- 4.** The Welsh Government laid Supplementary Legislative Consent Memorandum ("Memorandum No.3") on 8 November 2022. The Business Committee referred Memorandum No.3 to this Committee and to the Legislation, Justice and Constitution Committee with a reporting deadline of 16 February 2023.
- 5.** The Welsh Government laid Supplementary Legislative Consent Memorandum ("Memorandum No.4") on 21 December 2022. The Business Committee referred Memorandum No.4 to this Committee and to the Legislation, Justice and Constitution Committee with a reporting deadline of 2 March 2023.
- 6.** The Committee agreed to consider and report on Memorandum No.3 and Memorandum No.4 ("Memoranda No.3 and No.4") together.

2. Our approach

- 7.** The Committee considered Memoranda No.3 and No.4 at its meeting on 18 January 2023. Given the nature of the provisions for which consent is sought, the Committee did not seek evidence in relation to either memoranda.

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

8. 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.

9. 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."

10. 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. The Bill completed proceedings in the Public Bill Committee on re-committal on 15 December 2022, concluded report stage and third reading in the House of Commons on 17 January 2023, had its first reading in the House of Lords on 18 January 2023 and its second reading is scheduled for 1 February 2023.

11. A summary of the Bill's provisions is contained in paragraphs 8 to 13 of Memorandum No.3, which broadly repeats the summary provided in paragraphs 7 to 12 of Memorandum No.1 (and paragraphs 10 to 15 of Memorandum No.2). 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.

12. The Bill, as amended, replaces relevant existing communications offences with new communications offences: a false communications offence and a threatening communications offence. These offences were the subject of Memorandum No.2. The Bill also creates a new "cyberflashing" offence and, as introduced by way of amendment, a new offence of sending or showing flashing images electronically.

4. Provisions for which consent is sought

13. 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.

14. Memorandum No.3 states that amendments to the Bill that require Senedd consent include a new offence of sending or showing flashing images (numbered NC41) and exemptions from offences under the Bill (numbered NC13). Those provisions are summarised below.

15. Memorandum No.4 states that clause 165 and Schedule 14 require Senedd consent, and notes that clause 151, which created an offence of harmful communications and which was covered by Memorandum No.2, has been removed from the Bill.

Memorandum No.3

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

16. A new clause (now added as clause 164), tabled by the UK Government as an amendment, creates a criminal offence for sending or showing, flashing images to individuals known to have epilepsy. The offence applies to targeted attacks on individuals and on groups such as the Epilepsy Society.

17. The offence would capture, for example, posting flashing images to social media platforms, or sending a message directly to the recipient. The offence also captures 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.

18. The offence is not limited to the internet or online environment and although the offence specifically covers electronic communications, it is wide enough to capture conduct that does not take place via internet services.

19. As with the offences that were the subject of Memorandum No.2, although the policy objective references online content and the UK being the safest place in the world to be online, the purpose of the new offence is wider – the purpose of the new clause is the protection of persons from harm. To the extent that the clause creates an offence that is not limited to electronic communications the clause is within the legislative competence of the Senedd.

Amendment NC13 – Exemptions from offences under sections 151 and 152

20. This amendment (now included as clause 161) contained exemptions to the false communications offence under clause 152 (now clause 160). The exemptions ensure that holders of certain licences are exempt if they are acting as authorised by the licence and, in the case of Wireless Telegraphy Act licences, if they are providing a multiplex service. The amendment also applied to the now removed clause 151 (harmful communications offence) – this is one example of a consequential amendment referred to in paragraph 22 below.

Memorandum No.4

Removal of clause 151: harmful communications offence

21. Memorandum No.2 related to clauses 151 to 154 and 156 of Part 10 of the Bill, as amended in Public Bill Committee. At Report Stage, amendment 239 removed clause 151 (harmful communications offence, clause 150 as introduced).

22. There are consequential amendments as a result of the removal of clause 151.

23. Paragraph 18 of Memorandum No.4 asks the Senedd to note that as a result of the removal of clause 151 from the Bill, consent is no longer required for that clause.

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

24. Clause 165 (now clause 169) introduces Schedule 14, which make consequential amendments in relation to the following clauses:

- clause 156 – false communications offence (clause 151 as introduced; now clause 160);
- clause 158 – threatening communications offence (clause 152 as introduced; now clause 162);

- clause 163 – sending etc photograph or film of genitals (clause 156 as introduced; now clause 167)¹; and
- clause 160 – flashing images offence (now clause 164).

25. The Committee previously agreed that consent should be sought for clause 165 (clause 159 at the time of advice; now clause 169), as those provisions are ancillary to clauses that were within the legislative competence of the Senedd. This was noted in the Committee's previous reports and the report made by the Legislation, Justice and Constitution Committee.

5. Reasons for making provisions for Wales in the Bill

26. The reasons given by the Minister for making provisions for Wales in the Bill are set out in paragraphs 29 to 31 of Memorandum No.3. Those paragraphs include the following:

"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."

27. Paragraphs 22 and 23 of Memorandum No.4 also set out the reasons given by the Minister for making provisions for Wales in the Bill. Those paragraphs are identical to paragraphs 29 and 30 of Memorandum No.3.

6. Committee consideration

28. The Committee considered Memoranda No.3 and No.4 at its meeting on 18 January 2023.

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

¹ The Senedd's consent is required in relation to clauses 156, 158 and 160. Clauses 156 and 158 were the subject of Memorandum No. 2 and clause 160 is subject to Memorandum No. 3. Clause 163 does not require the Senedd's consent as the Senedd does not have legislative competence to create sexual offences (which are offences in a listed category for the purpose of the Government of Wales Act 2006).
