

Criminal Justice Committee

19th Meeting, 2023 (Session 6), Wednesday 21
June 2023

Supplementary Legislative Consent Memorandum – the UK Government’s Online Safety Bill

Background

1. The Online Safety Bill was introduced in the House of Commons on 17 March 2022. The Bill can be found [here](#).
2. The overarching aim of the Bill is to establish a new regulatory regime to address illegal and harmful content online.
3. Amendments to the Bill as regards the creation of an offence of encouraging or assisting the serious self-harm of another person were tabled by the UK Government for consideration at Committee stage in the House of Lords on 18 May 2023. This offence will extend to Scotland and the amendments make provision for a purpose within the legislative competence of the Scottish Parliament. Consequently, the Scottish Government has lodged a [supplementary legislative consent memorandum](#) which addresses these amendments (see also **Annex**). **The Scottish Government supports consent.**

Timetable

4. This Bill is now in its final stages in the UK Parliament. As such, the views of this Committee and the Scottish Parliament on supplementary legislative consent memorandum need to be established prior to the summer recess.

LCM process

5. The process for considering consent to the relevant provisions in a UK Bill essentially commences with the publication, normally by the Scottish Government, of an LCM. This LCM relates to a Bill under consideration in the UK Parliament which contains what are known as “relevant provisions”. These provisions could:
 - change the law on a “devolved matter” (an area of policy which the UK Parliament devolved to the Scottish Parliament in the Scotland Act 1998); or

- alter the “legislative competence” of the Scottish Parliament (its powers to make laws) or the “executive competence” of Scottish Ministers (their powers to govern).
6. Under an agreement formerly known as the “Sewel Convention”, the UK Parliament will not normally pass bills that contain relevant provisions without first obtaining the consent of the Scottish Parliament. The consent itself is given through a motion (a Legislative Consent Motion) which is taken in the Chamber – but the detailed scrutiny is undertaken by a Scottish Parliament committee based on a memorandum. The motion must normally be decided on before the Bill reaches its final amending stage at the UK Parliament in the House in which it was first introduced (although this can be as late as the last amending stage in the second house). On occasion, a memorandum is lodged which invites the Parliament to note that the Scottish Government does not intend to lodge a legislative consent motion on a particular bill.
 7. The detailed procedure for scrutiny of Legislative Consent Memorandums and Motions is set out in [Chapter 9B](#) of the Parliament’s Standing Orders.

Consideration by the Delegated Powers and Law Reform Committee

8. The remit of the Delegated Powers and Law Reform (DPLR) Committee is not engaged by the amendments proposed to the Online Safety Bill and there is therefore no report to take into account.

Today’s consideration

9. At today’s meeting, Maree Todd MSP, Minister for Minister for Social Care, Mental Wellbeing and Sport will attend and give evidence to the Committee on the Scottish Government’s supplementary LCM and set out her views on the issue of consent.
10. The Scottish Government’s draft motion on legislative consent will be as follows (see Annex):

“That the Parliament agrees that the relevant provisions of the Online Safety Bill, introduced in the House of Commons on 17 March 2022 and subsequently amended to include the new offence of encouraging or assisting serious self-harm of another person, so far as these matters fall within the legislative competence of the Scottish Parliament, should be considered by the UK Parliament.”

Decisions

11. **Members are invited to discuss the supplementary LCM with the Minister at today’s meeting.**

- 12. Members will then be asked to discuss whether they agree with the draft motion on consent proposed by the Scottish Government and what recommendation they wish to make to the Scottish Parliament.**
- 13. Finally, members are asked to agree that the clerks produce a short, factual report, setting out the Committee's recommendations to the Scottish Parliament on the issue of legislative consent. The draft would be cleared by the Convener and then published.**

**Clerks to the Committee
June 2023**

Supplementary Legislative Consent Memorandum

Online Safety Bill

Background

1. This memorandum has been lodged by Michael Matheson, Cabinet Secretary for NHS Recovery, Health and Social Care, under Rule 9B.3.1(c)(ii) of the Parliament's standing orders, and is supported by Maree Todd, Minister for Social Care, Mental Wellbeing and Sport. The Online Safety Bill was introduced in the House of Commons on 17 March 2022. The Bill can be found [here](#).

Content of the Online Safety Bill

2. The overarching aim of the Bill is to establish a new regulatory regime to address illegal and harmful content online.

3. The first Legislative Consent Memorandum ("the first LCM") in respect of this Bill was lodged on 31 March 2022. It addressed provisions in the Bill as introduced and can be found [here](#): [Online Safety Bill | Scottish Parliament Website](#).

4. As described in the first LCM, the Bill provides for a legislative framework for the regulation of providers of user-to-user internet services (i.e. services like Facebook, Twitter, YouTube and Instagram which enable the publication and sharing of user-generated content) and search services which enable users to search multiple websites and databases, empowering Ofcom to act as a regulator in relation to these services. This will have effect across the whole of the UK. Further detail on the content of the Online Safety Bill is set out at paragraphs 3 – 13 of the first LCM.

5. Amendments to the Bill as regards the creation of an offence of encouraging or assisting the serious self-harm of another person were tabled by the UK Government for consideration at Committee stage in the House of Lords on 18 May 2023. This offence will extend to Scotland and the amendments make provision for a purpose within the legislative competence of the Scottish Parliament. This supplementary legislative consent memorandum addresses these amendments.

Provisions which relate to Scotland

6. The amendments concerning the new offence of encouraging or assisting the serious self-harm of another person that were tabled in the Committee Stage of the House of Lords are set out below:

Offence of encouraging or assisting serious self-harm (new clause, and amendment of clauses 165 and 166)

- The offence of encouraging or assisting the serious self-harm of another person is created by a new clause to be added after clause 164. The offence is committed if a person (D) does a “relevant act” capable of encouraging or assisting the “serious self-harm” of another person and D’s act was intended to encourage or assist the serious self-harm of another person. The offence will apply throughout the UK, with specific provision for Scotland as regards the meaning of “serious self-harm” and on sentencing. There are provisions to define what is meant by “relevant act”;
- There are amendments to clause 165 of the Bill to the effect that the new offence can be committed where a relevant act is committed outside the UK by a person who is habitually resident in the UK or by a person who is a body incorporated or constituted under UK law;
- There are amendments to clause 166 of the Bill as regards liability of corporate officers where the offence is committed by a body corporate, including partners of Scottish partnerships; and
- These amendments amend Scots criminal law and make relevant provision in the meaning of Rule 9B.1 of the Standing Orders of the Scottish Parliament because they make provision applying to Scotland for any purpose within the legislative competence of the Parliament.

Consequential amendment of other legislation: amendment of clause 169 and schedule 14

- The provisions also require consequential amendments to be made to existing legislation to give full effect to the proposed offence. Of the consequential amendments, only the amendments of the Visiting Forces Act 1952 and the Armed Forces Act 2006 to add the new offence to lists of offences in those Acts extend to Scotland; and
- While these concern the new offence of encouraging or assisting the serious self-harm of another person, these are not relevant provisions for the purposes of Standing Orders. That is because the amendments are considered to relate to the reserved matter of defence and do not make provision for a purpose within the legislative competence of the Scottish Parliament.

Reasons for seeking a legislative consent motion

7. The amendment to the Online Safety Bill creates a new criminal offence of encouraging or assisting the serious self-harm of another person. This is a communication offence but extends beyond online communication.

8. It is the Scottish Government’s view that the proposed offence should extend to Scotland for the following reasons:

- Evidence confirms that harmful online content is linked to self-harming behaviour, and we know that many people who are distressed or who use self-harm to manage their distress seek support online. The new offence therefore helps achieve our policy aims of improving the safety by safeguarding online content which could lead to serious self-harming behaviour. The Scottish Government recognises that these behaviours can also lead to suicide;
- Criminalising the act of encouraging or assisting serious self-harm will act as both a deterrent and a means of prosecuting this behaviour; in turn this will create a safer online environment for people who access the internet when in distress or considering self-harm;
- The new offence is both important and has value in signalling clear expectations through a transparent regulatory framework that will strengthen protections for people online. Without the offence in Scotland, the level of online protection would be lower here than elsewhere in the UK. It is important that the same standard of protection applies in a consistent way across the UK. Therefore it makes sense to extend this offence to Scotland, as part of a UK-wide approach; and
- In line with the proposed new offence, the Scottish Government is also taking other steps, for example encouraging and supporting responsible media reporting through our suicide prevention action plan. Adopting the offence in Scotland also aligns very well with the Scottish Government's ambitious policy approach on self-harm, which will see publication of a world-leading self-harm strategy and action plan in Autumn 2023.

Consultation

9. The UK Government has undertaken a range of stakeholder consultations and research to support the development of the Bill. The Scottish Government has also engaged with our key national suicide prevention and self harm stakeholders, as well as our National Suicide Prevention Leadership Group who submitted a response to the UK Government's white paper in July 2022. Since late 2022, Scottish Government officials have engaged extensively with stakeholders, including the Samaritans on the new offence proposed by this amendment.

10. This amendment has broad support from UK and Scottish stakeholders. This includes:

- The Samaritans, who are a leading partner supporting change to self-harm policy and practice across the UK, and have been a key collaborative partner in the early stage of our strategy design; and
- The Scottish Government's Self-Harm Strategy Design Group (which involves people with lived experience of self-harm and organisations delivering support) and leading academics who are working with the Scottish Government to develop our self-harm strategy (due for publication Autumn 2023).

11. The Scottish Government has highlighted to the UK Government the need to ensure the offence does not criminalise vulnerable people who use the internet to access support for their self-harm (in this context, users sharing information about self-harm is intended to act as a protective and supportive act). This point has also been made by a number of UK and Scottish stakeholders. The UK Government has recognised these concerns and agree that the offence should not capture individuals who may share communications for recovery purposes, or where there is no clear intention to cause such serious harm. The offence has been drafted to only apply in respect of serious self-harm and only where a person intends, by their relevant act, to encourage or assist the self-harm of another person.

Financial Implications

12. There will not be any direct costs to the Scottish Government arising from this new offence. There may be resulting prosecutions which would incur additional COPFS and judiciary resource. However, we anticipate such prosecutions will be very limited.

Conclusion

13. In conclusion, the Scottish Government recommends that this proposed new offence is extended to Scotland for the following reasons:

- Evidence confirms that harmful online content is linked to self-harming behaviour, and we know that many people who are distressed or who use self-harm to manage their distress seek support online. The new offence therefore helps achieve our policy aims of safeguarding online content which could lead to serious self-harming behaviour;
- Criminalising the act of encouraging or assisting serious self-harm will act as both a deterrent and a means of prosecuting this behaviour; in turn this will create a safer online environment for people who access the internet when in distress or considering self-harm. The new offence is both important and has value in signalling clear expectations through a transparent regulatory framework. Extending the offence to Scotland will strengthen protections for people online, in a consistent way, across the UK; and
- Adopting the offence in Scotland aligns very well with the Scottish Government's ambitious policy approach on self-harm, which will see publication of a world-leading self-harm strategy and action plan in Autumn 2023.

14. In conclusion, the Scottish Government considers that the proposed new offence adds to the suite of measures in Scotland to protect and support people who may be vulnerable to self-harm; and as such recommends that the Parliament consents to the amendments to the Online Safety Bill relating to the new offence of encouraging or assisting the serious self-harm of another person.

Draft Legislative Consent Motion

15. The draft motion, which will be lodged by the Cabinet Secretary for NHS Recovery, Health and Social Care, is:

“That the Parliament agrees that the relevant provisions of the Online Safety Bill, introduced in the House of Commons on 17 March 2022 and subsequently amended to include the new offence of encouraging or assisting serious self-harm of another person, so far as these matters fall within the legislative competence of the Scottish Parliament, should be considered by the UK Parliament.”

Scottish Government
June 2023