

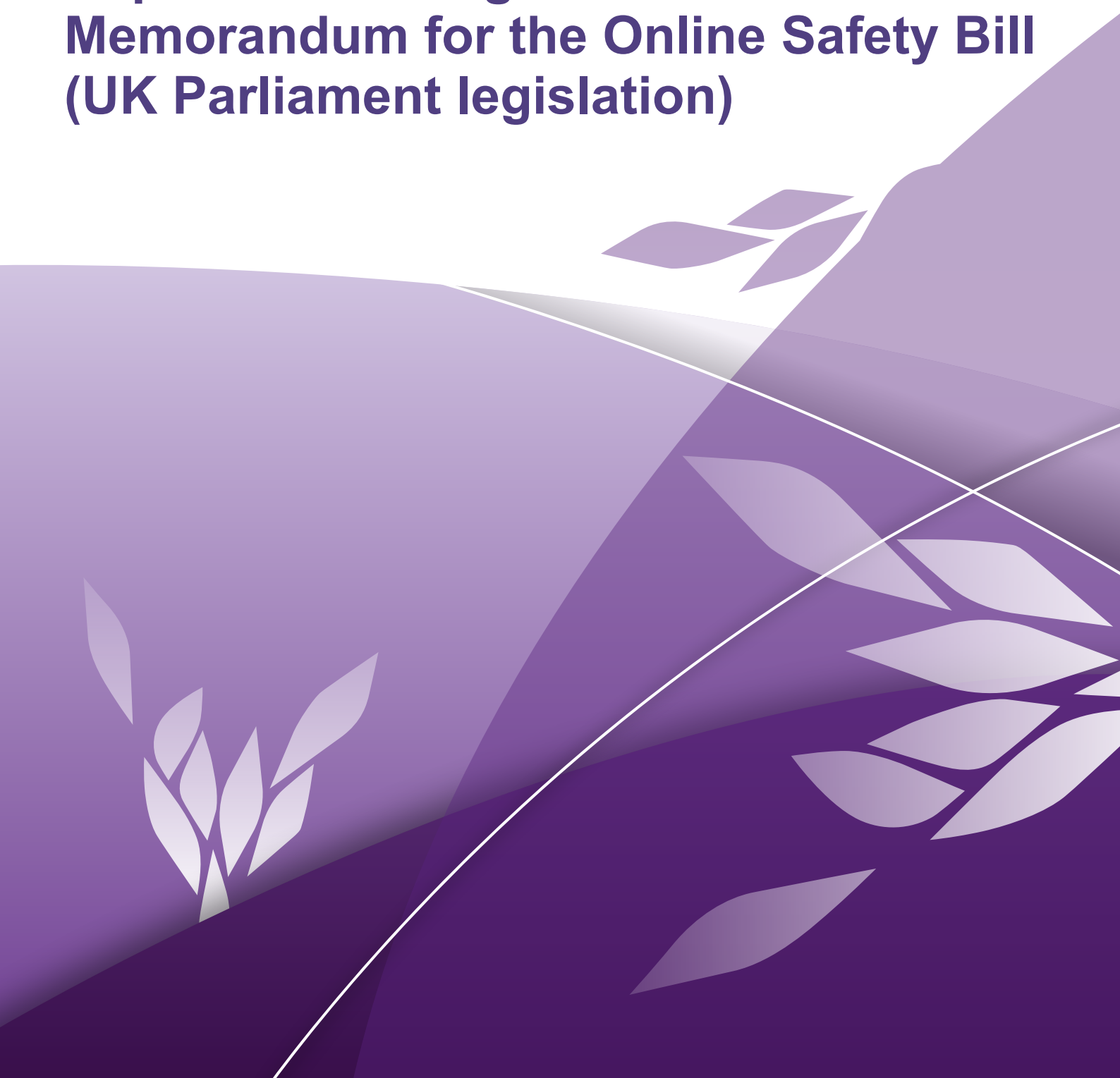


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Criminal Justice Committee

Report on the Legislative Consent Memorandum for the Online Safety Bill (UK Parliament legislation)



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Criminal Justice Committee

To consider and report on matters relating to criminal justice falling within the responsibility of the Cabinet Secretary for Justice and Veterans, and functions of the Lord Advocate other than as head of the systems of criminal prosecution and investigation of deaths in Scotland.



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Introduction

1. At its meeting on Wednesday 8 June 2022, the Criminal Justice Committee considered a Legislative Consent Memorandum ("LCM") from the Scottish Government on the Online Safety Bill (UK Parliament). The LCM can be found [here](#).

Outline of the UK Bill

2. The [Online Safety Bill](#) was introduced in the House of Commons on 17 March 2022. It is currently at the committee stage in the House of Commons.
3. The Bill aims to establish a new regulatory regime to address illegal and harmful content online. It imposes legal requirements on:
 - Providers of internet services which allow users to encounter content generated, uploaded or shared by other users (“user-to-user services”);
 - Providers of search engines which enable users to search multiple websites and databases (“search services”);
 - Providers of internet services on which provider pornographic content (pornographic content that is published by a provider and is not user generated) is published or displayed.
4. The Bill also confers new powers on the Office of Communications (Ofcom) enabling them to act as the online safety regulator. This role will include overseeing and enforcing the new regulatory regime.
5. The Bill provides for a legislative framework for the regulation of providers of user-to-user internet services (e.g. 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.
6. Two areas of the Bill alter the executive competence of the Scottish Ministers:
 - Clause 175(3) – Scottish Ministers power to amend list of descriptions of education and childcare for purpose of exemption from requirements of the Bill, and
 - Clause 176(2) – Scottish Ministers’ power to amend list of child sexual exploitation and abuse offences relevant to operation of ‘priority illegal content’ scheme.
7. The provisions for which legislative consent is sought provide the Scottish Ministers with certain powers to make adjustments to the operation of reserved regulation in relation to devolved areas. The Scottish Government considers it preferable that the Scottish Ministers and Scottish Parliament have the ability to amend these provisions to reflect changes to devolved legislation concerning child sexual exploitation and abuse, and to amend the list of descriptions of education and childcare in Scotland which are exempt from the provisions of this Bill, rather than having to rely on the UK Government to promote secondary legislation in the UK Parliament at Westminster.
8. A Legislative Consent Memorandum was lodged by Keith Brown MSP, Cabinet Secretary for Justice and Veterans, on 31 March 2022.

9. In considering whether to support the Bill the Scottish Government reached the following conclusion:

“It is the view of the Scottish Government that it is preferable in terms of good governance that the Scottish Ministers are empowered to amend by secondary legislation the child sexual exploitation and abuse offences to which this Bill applies to reflect any future reform of Scottish legislation in this area, and to amend the list of descriptions of education and childcare in Part 2 of Schedule 1 which relate to Scotland and are exempt from the requirements of this Bill, rather than relying on UK Ministers using their powers to amend the provisions via a secondary order made in the UK Parliament.”

Consideration by the Delegated Powers and Law Reform Committee

10. The Delegated Powers and Law Reform Committee ("the DPLR Committee") considered the LCM at its meeting on 24 May 2022.
11. There are two clauses in the Bill which confer delegated powers on the Scottish Ministers. The DPLR Committee determined that it did not need to draw the attention of the Parliament to these clauses.
12. The DPLR Committee was therefore content with the powers conferred on the Scottish Ministers in clauses 175(3) and 176 (2) of the Bill.

Consideration by the Committee and recommendation

13. The Committee considered the LCM at its meeting on 8 June 2022. Keith Brown MSP, Cabinet Secretary for Justice and Veterans and Patrick Down, Criminal Justice Division, Scottish Government gave oral evidence on the LCM.
14. The Committee agreed with the recommendation of the Scottish Government that the relevant provisions of the Online Safety Bill, introduced in the House of Commons on 17 March 2022, relating to the powers for Scottish Ministers to change by secondary legislation relevant child sexual exploitation and abuse offences for the regulation of priority illegal content scheme, and to change by secondary legislation the list of descriptions of education and childcare which relate to Scotland and are exempt from requirements of the Bill, in so far as these matters alter the executive competence of the Scottish Ministers, should be considered by the UK Parliament.

