

## **Explanatory Memorandum to the Online Safety Act 2023 (Exempt User-to-User and Search Services) (Amendment) Regulations 2026**

This Explanatory Memorandum has been prepared by the Education, Culture and Welsh Language Department of the Welsh Government and is laid before Senedd Cymru in conjunction with the above regulations and in accordance with Standing Order 27.1.

### **Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Online Safety Act 2023 (Exempt User-to-User and Search Services) (Amendment) Regulations 2026.

**Vikki Howells MS**  
**Minister for Further and Higher Education**  
3 February 2026

## **1. Description**

- 1.1 The Online Safety Act 2023 (Exempt User-to-User and Search Services) (Amendment) Regulations 2026 ('the Regulations') amend the Online Safety Act 2023 ("the 2023 Act").
- 1.2 The purpose of the Regulations is to remove references, in paragraph 36 of Schedule 1 to the 2023 Act, to provisions of the Learning and Skills Act 2000 ('the 2000 Act') which are repealed by paragraph 14(2) of Schedule 4 to the Tertiary Education and Research (Wales) Act 2022 ('the 2022 Act'), and to replace them with references to further education and training that will fall within the remit of the Education and Training Inspectorate for Wales (Estyn) under the provisions of section 57(1)(a) to (c) of the 2022 Act.

## **2. Matters of special interest to the Legislation, Justice and Constitution Committee**

- 2.1 None.

## **3. Legislative background**

- 3.1 Section 221(5) of the 2023 Act provides that the Welsh Ministers may amend the list of descriptions of education and childcare in relation to Wales set out in Part 2 of Schedule 1 to the 2023 Act
- 3.2 Section 221(5)(a) of the 2023 Act enables the Welsh Ministers to provide for such amendments where there has been an amendment to, or repeal of legislation, or of a provision of legislation, by reference to which a description of education or childcare is framed.
- 3.3 Section 221(5)(b) of the 2023 Act enables the Welsh Ministers to add descriptions of education and childcare in relation to Wales, if the Welsh Ministers consider that it is appropriate to do so because of the application of legislation or legislative guidance or requirements to those providing education or childcare of that description.
- 3.4 Section 225(14) of the 2023 Act provides that Regulations may not be made by the Welsh Ministers under section 221(5) unless a draft of the instrument has been laid before and approved by a resolution of Senedd Cymru.
- 3.5 Subject to their being approved by the Senedd, the Regulations will be made alongside the making of the Tertiary Education and Research (Wales) Act 2022 (Commencement No.7, Transitory, Transitional and Savings Provisions) Order 2026.
- 3.6 These Regulations come into force on the 1 April 2026.

#### **4. Purpose and intended effect of the legislation**

- 4.1 The Online Safety Act 2023 ('the 2023 Act') established a new regulatory regime to address illegal and harmful content online, imposing legal requirements on (among others) providers of:
- any internet service which allows users to upload and share user-generated content (user-to-user services), and
  - search engines which enable users to search multiple websites and databases (search services).
- 4.2 The 2023 Act also confers new powers on the Office of Communications (Ofcom) establishing it as the online safety regulator; this role includes overseeing and enforcing the new regulatory regime.
- 4.3 Part 2 of Schedule 1 to the 2023 Act sets out descriptions of education and childcare in Wales whose user-to-user services or search services are exempt from regulation by Ofcom. These exemptions have been provided for to ensure that bodies that are already subject to safeguarding duties and regulation via other means, for example inspection by Estyn or regulation by the Welsh Ministers, are not also subject to regulation by Ofcom.
- 4.4 Paragraph 36 of Schedule 1 to the 2023 Act provides for the exemption of post-16 education or training in Wales not captured by other relevant exemptions in Part 2 of Schedule 1, the facilities for which are secured under section 31(1)(a) or (b) or 32(1)(a) or (b) of the 2000 Act, and that is funded by the Welsh Ministers or a local authority in Wales.
- 4.5 Post-16 education or training of the nature described in paragraph 36 of Schedule 1 is not captured where it is being provided by a higher or further education institution in Wales or by a person who is a provider of such education or training only by reason of providing it to the person's employees. Further education provided by a further education institution in Wales is exempt by virtue of paragraph 35 of Schedule 1 to the 2023 Act.
- 4.6 Sections 31 and 32 of the 2000 Act require the Welsh Ministers to secure proper facilities for education and training for persons aged between 16 and 19 years old and reasonable facilities for education and training for persons aged 19 years old or over. Paragraph 14(2) of Schedule 4 to the 2022 Act provides for the repeal of the Welsh Ministers duties and funding functions in Part 2 of the 2000 Act.
- 4.7 The Regulations make provision for further education or training in Wales funded or otherwise secured by the Commission for Tertiary Education and Research (known as 'Medr') or by the Welsh Ministers, or funded by a local authority, to be exempt from the regulatory regime of the 2023 Act. The term "post-16 education or training in Wales" as used in paragraph 36 of Schedule 1 to the 2023 Act reflected terminology used in the 2000 Act; the Regulations reframe this as "further education or training in Wales" to reflect the definition used in the 2022 Act.

- 4.8 Part 3 of the 2022 Act makes provision in respect of the securing and funding of tertiary education and research, including provision within section 97 enabling Medr or the Welsh Ministers to fund further education and training.
- 4.9 Section 57(1) of the 2022 Act brings the provision set out in paragraph 36 of Schedule 1 to the 2023 Act, as amended by the Regulations, within the inspection remit of Estyn. The amendments to the 2023 Act as provided in the Regulations are consequential upon the repeal of the relevant provisions of the LSA 2000 and the commencement of section 57 of the 2022 Act.
- 4.10 The amendments include an extension to the scope of further education captured by this exemption, reflecting the Welsh Ministers' further education funding functions outside of those in the 2000 Act; the Welsh Ministers consider it appropriate to do so to reflect the oversight remit of Estyn as provided in the 2022 Act.

## **5. Consultation**

- 5.1 No public consultation has taken place in respect of these Regulations.
- 5.2 The amendments to the 2023 Act are technical in nature, are consequential on provisions within the 2022 Act, and do not represent any substantive policy changes. This approach is in line with standard Welsh Government practice in relation to consulting on draft subordinate legislation.

## **6. Regulatory Impact Assessment (RIA)**

- 6.1 As these Regulations make factual amendments to update subordinate legislation and the amendments do not alter the policy (or its impact) in any significant way or how it is applied in a given situation, an RIA is not required. This is in line with the policy set out in the Welsh Ministers' code of practice for carrying out regulatory impact assessments for subordinate legislation.