

# Report on the Legislative Consent Memorandum for Economic Crime and Corporate Transparency Bill

March 2023

## Background

### The LCM

1. On 29 November 2022 The Welsh Government laid a Legislative Consent Memorandum (LCM) on the Economic Crime and Corporate Transparency Bill before the Senedd. Due to a number of amendments being made to the Bill at Committee Stage the Welsh Government followed this with a Supplementary LCM (SLCM) on 3 January 2023. Business Committee referred the LCM and SLCM to the Economy, Trade and Rural Affairs Committee and the Legislation, Justice and Constitution Committee with a reporting deadline of 9 March 2023.

### About the Bill

2. The Economic Crime and Corporate Transparency Bill (the “Bill”) was introduced in the House of Commons on 22 September 2022. The Bill is sponsored by the Home Office. The Bill had its Second Reading in the House of Lords on 8 February 2023.

3. At the Second Reading of the Bill Suella Braverman MP, Home Secretary, told the House of Commons “The Economic Crime and Corporate Transparency Bill will bear down even further on kleptocrats, criminals and terrorists, strengthening the UK’s reputation as a place where legitimate business can



thrive but economic crime cannot. Economic crime is a serious problem. It threatens our prosperity, national security and global influence. The UK has one of the world's largest and most open economies, and it is an extremely attractive place to do business. That is a good thing, but it also exposes us to economic crime, such as money laundering, corruption, the financing of organised crime and terrorism, and a growing range of state threats."

**4.** The Bill intends to deliver:

- reforms to Companies House;
- reforms to prevent the abuse of limited partnerships;
- additional powers to seize and recover suspected criminal cryptoassets;
- reforms with the aim of giving businesses more confidence to share information in order to tackle money laundering and other economic crime; and
- new intelligence gathering powers for law enforcement and removal of burdens on business.

**5.** The Bill, as introduced, comprised 162 sections and 8 Schedules. The Bill was at that time divided into six Parts:

- Part 1 (Companies etc);
- Part 2 (Limited Partnerships etc);
- Part 3 (Registration of overseas entities);
- Part 4 (Cryptoassets);
- Part 5 (Miscellaneous); and
- Part 6 (General).

**6.** Following amendment, the Bill has been extended to include 189 sections and 9 Schedules. Part 2 now relates to "Partnerships" and makes separate

provision in respect of Limited Partnerships (Chapter 1 of Part 2) and Miscellaneous provision about partnerships (Chapter 2 of Part 2).

## Cryptoassets definition

7. This report largely focuses on Bill’s provisions around cryptoassets. The UK Government’s [fact sheet on cryptoassets](#) explains “Cryptoassets are a store of value that can be transferred or exchanged digitally.” It goes on to give examples of crypto assets stating that “[Bitcoin](#), created in 2008, was the first cryptocurrency, and it remains by far the biggest, most influential and best-known cryptoasset” however cryptoassets have “expanded in recent years, with the introduction of new asset classes. For example, [Non-Fungible Tokens](#) (NFTs) are unique digital tokens that can represent a unique item such as art.”

8. The fact sheet notes that “As of June 2022, the various cryptocurrencies on offer (numbering over 20,000) were estimated to be worth a combined value of \$929.51 billion. At its peak in November 2021, the cryptoassets market cap neared \$3 trillion.”

## Provisions for which consent is sought

9. Standing Order 29 provides that the Welsh Ministers must lay an LCM where a UK Bill makes provision in relation to Wales:

- i. 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
- ii. which modifies the legislative competence of the Senedd.

10. The majority of the provisions of the Bill relate to reserved matters, and as such, are outside the Senedd’s legislative competence. In particular, Schedule 7A of GOWA reserves the following matters:

- under the heading C1 (Business associations and business names) paragraph 65 (The creation, operation, regulation and dissolution of types of business association):

- under the heading B5 (Crime public order and policing) paragraph 39 (The prevention, detection and investigation of crime):
- under the heading L1 (The legal profession, legal services and claims management services) paragraph 164 (The legal profession and legal services):

**11.** The provisions of the Bill which require the consent of the Senedd under the provisions contained in Standing Order 29 are summarised below.

#### **Part 4: Cryptoassets**

**12.** Clause 141 (now 166) introduces Schedule 6, which amends The Proceeds of Crime Act 2002 (“POCA”) to make provision in connection with cryptoassets and confiscation orders.

**13.** The provisions of Schedule 6 are designed to improve the state of the economy in the UK (including Wales) by fighting economic crime by making provision for the seizure, realisation and destruction of cryptoassets.

**14.** Part 1 (paragraphs 1-18) of Schedule 6 makes provision for England and Wales.

**15.** Paragraph 1 provides that Part 1 of Schedule 6 to the Bill amends Part 2 of the Proceeds of Crime Act 2002 (POCA) (confiscation: England and Wales).

**16.** Provision is made to support the seizure of cryptoassets by ‘appropriate officers’. An ‘appropriate officer’ may seize any free property if they have reasonable grounds to suspect that such property is a ‘cryptoasset-related item’. The definition of an ‘appropriate officer’ includes an accredited financial investigator of a description specified in an order made by the Welsh Ministers (under section 453 of POCA).

**17.** Detention and release of property - Part 1 of Schedule 6 amends the detention of property provisions in (sections 47K and 47L of) POCA to include provision for the detention of cryptoasset-related items. This provide for the further detention of cryptoasset-related items which are exempt property, pending the making or variation of a restraint order. ‘Exempt property’ is property necessary either: for the holder of the property’s employment, business,

or vocation; or for satisfying the basic domestic needs of them or their family. Further detention must be authorised by a ‘senior officer’. This includes an accredited financial investigator of a description specified in an order made by the Welsh Ministers (under section 453 of POCA).

**18.** Property held by persons subject to confiscation orders: destruction, realisation etc – provision is made about the powers of the court to enforce confiscation orders. The provisions address powers of the court to order the realisation and payment into court of (or destruction of) cryptoassets. They also make connected provision in relation to enforcement receiverships, and enforcement in respect of money held in accounts maintained with electronic money institutions and payment institutions.

**19.** Schedule 6 contains provision which modifies the executive competence of the Welsh Ministers.

**20.** Clause 142 (now 167) introduces Schedule 7, which amends POCA to make provision for a civil recovery scheme in relation to cryptoassets.

### **Schedule 7 (Cryptoassets: civil recovery)**

**21.** Part 1 of Schedule 7 inserts new Chapters 3C, 3D, 3E and 3F into Part 5 of POCA.

**22.** Chapter 3C makes provision for the seizure and recovery of cryptoassets. The powers of search and seizure are exercisable by an “enforcement officer” (acting with or without judicial authority, or the approval of a “senior officer”).

**23.** Chapter 3D makes provision for the freezing, and the forfeiture, of cryptoassets, held by a third party in cryptowallets. These powers are enforceable by an “enforcement officer”.

**24.** Chapter 3E enables a judicial authority to order forfeiture of some or all of the cryptoassets detained under Chapter 3C or frozen under Chapter 3D in certain circumstances. This Chapter also makes provision for the realisation or destruction of cryptoassets. The proceedings and order require the involvement of an “enforcement officer” and/or a “senior officer”.

25. Chapter 3F enables detained cryptoassets to be converted into money, pursuant to an application to a relevant court by an enforcement officer, of the person from whom the assets were seized.

26. Part 2 of Schedule 7 makes amendments to POCA further to the addition of new Chapters 3C-3F described above.

## Reasons for making these provisions for Wales in the Bill

27. The Welsh Government's LCM gives the following reasons why the Welsh Government consider it is appropriate for the Bill to contain devolved provision:

- “The Bill builds on the work around the initial Economic Crime (Transparency and Enforcement) Act 2022, previously supported by the Counsel General and Minister for Constitution. following Russia’s invasion of Ukraine. Proposals in Part 4 of the Bill will tackle the growing threat from cryptoassets, which are increasingly used to facilitate ransomware attacks and money laundering. The Bill will amend powers in the POCA to better enable the investigation, seizure and recovery of cryptoassets in both criminal confiscation and civil recovery cases.
- Preparatory discussions with UK Government and subsequent analysis, indicate that the devolved provisions in question are technical and non-contentious and it is therefore appropriate to use the Bill to make these provision rather than utilising a Senedd Bill.
- The devolved provisions in question relate to wider policy areas that are reserved. In terms of the Welsh Government’s consent, this primarily relates to the powers to quickly and more easily seize and recover cryptoassets, which are the principal medium used for ransomware which align with our cyber security policies.
- The making of these provisions would be advantageous for reasons of commonality, to ensure the Welsh Economy firmly supports measures

and is an unwelcome environment for money laundering, economic cybercrime and other related illegal activity.

- We have made clear our support for Companies House to receive appropriate resources to implement the changes around its increased responsibilities as a result of the implementation of the Bill.”

**28.** Similar reasoning is provided in paragraphs 39-43 of the SLCM for the Bill as amended.

## Financial implications

**29.** The LCM notes that no financial implications have been identified at this stage. In the LCM the Welsh Government commit to monitoring the progress of the bill and state that any financial implications will be brought to the attention of the Senedd, as the Welsh Government deems appropriate.

## The Welsh Government’s view

**30.** As noted in the LCM, it is the Welsh Government’s view it is appropriate to deal with these provisions in the Bill as it builds existing measures by the UK Government, supported by the Welsh Government, in support of Ukraine and the Ukrainian people. They also support the position of the Bill in responding to illegal activity around the areas of money laundering, cryptoassets and changes to Companies House regulations. As such they recommend the Senedd supports the proposals and gives its consent.

## The Committee’s view

**31.** Members agree with the Welsh Government and the UK Government that consent is required for clauses 141 (now clause 166) and 142 (now clause 167) of, and Schedules 6 and 7 to the Bill as introduced. Members also agree with the Welsh Government’s assertions noted above around this Bill being a suitable way to make these provisions for Wales.

**32.** The Committee recommends the Senedd supports the proposals and gives its consent.