

SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM (MEMORANDUM NUMBER 2)

Economic Crime and Corporate Transparency Bill

1. This supplementary legislative consent memorandum (LCM) is laid under Standing Order (“SO”) 29.2. SO29 prescribes that a legislative consent memorandum must be laid, and a legislative consent motion may be tabled, before Senedd Cymru if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of the Senedd. Account is also taken of whether any provisions have regard to devolved matters.
2. The Economic Crime and Corporate Transparency Bill (“the Bill”) was introduced into the UK Parliament, the House of Commons, on 22 September 2022. The Bill can be found at: <https://bills.parliament.uk/bills/3339>.
3. An LCM was laid on 29 November. On the same day I wrote to the Llywydd explaining that this LCM had been laid outside the normal two-week SO29 deadline, initially due to the size and complexity of the Bill and to enable completion of our devolution analysis of the Bill as introduced, and later as it was subject to discussions between Welsh Government and Senedd officials on technical Standing Order matters.
4. This delay has consequently impacted on the timetable for laying this supplementary LCM which has therefore also been laid outside the normal two-week SO29 deadline.
5. A number of technical and substantive amendments to the Bill were tabled at Committee Stage between 25 October and 29 November 2022. Some of these amendments require the consent of the Senedd. This supplementary LCM (Memorandum No 2) sets out the Welsh Government’s position on these clauses.

Policy Objectives

6. The UK Government’s stated policy objectives are to prevent organised criminals, fraudsters, kleptocrats and terrorists from using companies and other corporate entities to abuse the UK’s open economy. The Bill will reform the powers of the Registrar of Companies and the legal framework for limited partnerships in order to safeguard businesses, consumers and the UK’s national security.
7. The Bill aims to strengthen the UK’s broader response to economic crime, in particular by giving law enforcement new powers to seize crypto assets and enabling businesses in the financial sector to share information more effectively to prevent and detect economic crime.

8. The Bill aims to support enterprise by enabling Companies House to deliver a better service for over four million UK companies and improving the reliability of its data to inform business transactions and lending decisions across the economy.

Summary of the Bill

9. The Bill is sponsored by the Home Office.
10. The key provisions of the Bill are listed in the original LCM.

Amendments for which consent is required

11. The amendments for which consent of the Senedd is required are set out below.

Clause 142 – Cryptoassets: civil recovery

Original provision

12. Clause 142 provides that Schedule 7 of the Bill amends POCA to make provision for a civil recovery regime in relation to cryptoassets.
13. Consent is required – Schedule 7 has regard to devolved matters because it contains provision which modifies the executive competence of the Welsh Ministers. Further, the provisions in Schedule 7 are designed to improve the state of the economy in the UK (including in Wales) by fighting economic crime by making provision for a civil recovery regime in relation to cryptoassets. The economy is a devolved matter and therefore the Bill makes ‘relevant provision’ in relation to Wales for a purpose within the legislative competence of the Senedd and therefore consent is required in accordance with Standing Order 29. As clause 142 is the clause of the Bill which incorporates Schedule 7, it follows that consent is required.

Amendments to clause 142

14. Amendment 121 provides for Schedule 7 to the Bill to contain related amendments. These further amendments include those set out below in relation to Schedule 7 to the Bill.
15. Consent required - the proposed amendments do not impact the competence advice set out above for the original clause and, as the original clause is ‘relevant provision’ and within the scope of SO 29, consent is required for these amendments.

Schedule 7 – Cryptoassets: civil recovery

Chapter 3E – Forfeiture of Cryptoassets following detention or freezing order

Original provision

16. *Chapter 3E – Forfeiture of Cryptoassets following detention or freezing order* - New Chapter 3E, provides that a judicial authority may order the forfeiture of some or all of the cryptoassets detained in pursuance of an order under Chapter 3C, or frozen in a wallet under an order made under Chapter 3D, if satisfied that the cryptoassets are recoverable property or intended for use in unlawful conduct. It also makes provision for the realisation or destruction of cryptoassets. The proceedings and resulting orders require the involvement of an ‘enforcement officer’ and/or a ‘senior officer’ (see paragraph 15 above).
17. Consent is required - When the Welsh Ministers exercise their executive competence to describe a category of persons as an enforcement officer or a senior officer by order under section 453 POCA for the purposes of this Chapter, the effect of these new provisions will be that that designation will be for more purposes (i.e. the involvement with orders for the forfeiture, realisation and destruction of cryptoassets) than the designation currently covers and therefore, the Welsh Ministers’ executive competence is modified and consent is required. Further, these provisions are designed to improve the state of the economy in the UK (including in Wales) by fighting economic crime. The economy is a devolved matter and therefore the Bill makes ‘relevant provision’ in relation to Wales for a purpose within the legislative competence of the Senedd and therefore consent is required in accordance with Standing Order 29.

Amendments to Schedule 7, Chapter 3E

18. Amendment 51 makes a minor technical correction to inserted section 303Z42 of the Proceeds of Crime Act 2002, which relates to the procedure for applying for the forfeiture of cryptoassets.
19. Amendments 52 and 53 further amend inserted section 303Z42 of the Proceeds of Crime Act 2002 to provide that a crypto wallet freezing order continues to have effect until the end of any forfeiture proceedings started in respect of cryptoassets held in a crypto wallet that is subject to such a freezing order.
20. Amendment 54, 55 and 56 provide that an application under inserted section 303Z46 of the Proceeds of Crime Act 2002 (continuation of crypto wallet freezing order pending appeal) may be made in circumstances where a forfeiture application under section 303Z41 of that Act is transferred in accordance with section 303Z45 of that Act to be heard by the High Court or the Court of Session.
21. Amendment 58 amends inserted section 303Z48 of the Proceeds of Crime Act 2002 to provide that an enforcement officer may destroy forfeited cryptoassets only if the officer is a senior officer or is authorised to do so by a senior officer.

22. Amendments 59, 60 and 62 amend inserted section 303Z51 of the Proceeds of Crime Act 2002 to provide that cryptoassets may not be released under that section while forfeiture proceedings are ongoing in respect of those cryptoassets.
23. Amendment 60 makes a minor technical correction to the release condition in inserted section 303Z51(7) of the Proceeds of Crime Act 2002.

Consent required for amendments to Schedule 7, Chapter 3E

24. Consent required - the proposed amendments do not impact the competence advice set out above for the original provision and, as the original provision is 'relevant provision' and within the scope of SO29, consent is required for these amendments.

Chapter 3F – Conversion of cryptoassets

Original provision

25. *Chapter 3F – Conversion of cryptoassets* - New Chapter 3F, provides for detained cryptoassets to be converted into money, on application to a relevant court. Provision is made for two distinct applicants: an enforcement officer; or the person from whom the assets were seized.
26. Consent is required - When the Welsh Ministers exercise their executive competence to describe a category of persons as an enforcement officer or a senior officer by order under section 453 POCA for the purposes of this Chapter, the effect of these new provisions will be that that designation will be for more purposes (i.e. to make an application for detained cryptoassets to be converted into money) than the designation currently covers and therefore, the Welsh Ministers' executive competence is modified and consent is required. Further, these provisions are designed to improve the state of the economy in the UK (including in Wales) by fighting economic crime. The economy is a devolved matter and therefore the Bill makes 'relevant provision' in relation to Wales for a purpose within the legislative competence of the Senedd and therefore consent is required in accordance with Standing Order 29.

Amendments to Schedule 7, Chapter 3F

27. Amendment 63 amends inserted section 303Z63 of the Proceeds of Crime Act 2002 (converted cryptoassets: victims and other owners) to provide that the condition in subsection (5)(a) of that section is met where the applicant was deprived of cryptoassets or of property which those cryptoassets represent.
28. Amendment 64 amends the release condition in inserted section 303Z63(8) of the Proceeds of Crime Act 2002 (converted cryptoassets: victims and other owners) to provide that the release condition is met

where the court is satisfied that the conditions in Chapter 3F of Part 5 of that Act for detention of the converted cryptoassets are no longer met.

Consent required for amendments to Chapter 3F

29. Consent required - the proposed amendments do not impact the competence advice set out above for the original provision and, as the original provision is 'relevant provision' and within the scope of SO 29, consent is required for these amendments.

Part 2 of Schedule 7 - Consequential and other amendments of the Proceeds of Crime Act 2002

Original provision

30. Part 2 – this part of Schedule 7 makes consequential and other amendments to POCA to reflect the insertion of new Chapters 3C to 3F into POCA as are summarised above.
31. Consent is required - due to the inherent link with Chapters 3C to 3F (see analysis above) these clauses have regard to devolved matters because they modify the executive competence of the Welsh Ministers and consent is required. Further, these provisions are designed to improve the state of the economy in the UK (including in Wales) by fighting economic crime. The economy is a devolved matter and therefore the Bill makes 'relevant provision' in relation to Wales for a purpose within the legislative competence of the Senedd and therefore consent is required in accordance with Standing Order 29.

Amendments to Part 2 of Schedule 7

32. Amendments 65, 66 and 67 amend inserted section 303Z17A of the Proceeds of Crime Act 2002 to provide that money may not be released under that section while forfeiture proceedings are ongoing in respect of the money, requires the registrar to allocate a director a unique identification number on receipt of notification of a person becoming a director, and places a limit on the number of directorships held.
33. Amendment 156 inserts a number of consequential amendments to Parts 1 to 4 of the Proceeds of Crime Act 2002 in relation to the civil recovery of cryptoassets as are necessitated by the other amendments made to the Bill. The amendments are technical in nature.
34. Amendment 157 contains a consequential amendment to section 278 of the Proceeds of Crime Act 2002 in relation to forfeited cryptoassets.
35. Amendments 158-161 add further consequential amendments to Part 8 of POCA to reflect the insertion of new Chapter 3C to 3F into POCA.

Consent required to amendments to Part 2 of Schedule 7

36. Consent required - the proposed amendments do not impact the competence advice set out above for the original provision and, as the original provision is 'relevant provision' and within the scope of SO 29, consent is required for these amendments.

UK Government view on the need for consent

37. UK Government has stated that the measures in the original version of the Bill which engage the process for seeking the legislative consent of the Senedd are the cryptoasset provisions in Part 4 of the Bill. Part 4 of the Bill relates to clauses 141 and 142 of the Bill (and, therefore, Schedules 6 and 7 of the Bill). UK Government hold the view that these amendments to POCA will engage the legislative consent motion process because they affect a function of the Welsh Ministers to specify a description of accredited financial investigator who can exercise some of these new powers. This is in alignment with original LCM.
38. UK Government have stated in correspondence that they 'do not believe these amendments engage the Legislative Consent process in the Senedd'. UK Government have not provided details of their analysis and so it is not clear how this conclusion was reached. The proposed amendments do not impact the competence advice for the original version of the Bill (on which, as per paragraph 36 above, UK Government's analysis aligns with the original LCM). It is right to conclude, therefore, that consent is required for amendments to parts of the Bill which were deemed 'relevant provision' and within the scope of SO 29 for the purposes of the original LCM.

Reasons for making these provisions for Wales in the Economic Crime and Corporate Transparency Bill

39. 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.
40. 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.
41. 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.

42. 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.
43. 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.

Financial implications

44. The Bill will encourage more stringent management of company registration and related processes as well as increased regulation in the areas of Cryptoassets, (previously unregulated) and Money Laundering.
45. No financial implications have been identified at this stage. This will be monitored moving forwards with any financial implications being brought to the attention of the Senedd, as appropriate.

Conclusion

46. In our view it is appropriate to deal with these provisions in the Bill. The Bill builds on existing measures by the UK Government, supported by the Welsh Government, in support of Ukraine and the Ukrainian people. We 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.
47. Therefore, we recommend the Senedd supports the proposals and gives its consent.

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Minister for the Economy

Mick Antoniw MS
Counsel General and Minister for Constitution

3 January 2023