

The Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 3) on the Economic Crime and Corporate Transparency Bill

May 2023



1. Background

The UK Government's Economic Crime and Corporate Transparency Bill

1. The Economic Crime and Corporate Transparency Bill¹ (the Bill) was introduced into the House of Commons and had its first reading on 22 September 2022. It is sponsored by the Home Office.

2. The long title states that it is a Bill to:

“Make provision about economic crime and corporate transparency; to make further provision about companies, limited partnerships and other kinds of corporate entity; and to make provision about the registration of overseas entities.”

3. At the time our report was agreed, the Bill was at Committee Stage in the House of Lords.

The Welsh Government's Legislative Consent Memorandum and Supplementary Legislative Consent Memorandum (Memorandum No. 2)

4. Standing Orders 29.1 and 29.2 provide that a legislative consent memorandum is required when a relevant UK Bill makes provision in relation to Wales for any purpose within the legislative competence of the Senedd or which modifies the Senedd's legislative competence.

5. On 29 November 2022, Vaughan Gething MS, the Minister for Economy, and Mick Antoniw MS, the Counsel General and Minister for the Constitution (the Ministers), laid before the Senedd a Legislative Consent Memorandum (the Memorandum) in respect of the Bill.²

6. On 3 January 2023 the Ministers laid before the Senedd a Supplementary Legislative Consent Memorandum (Memorandum No. 2)³ as a result of

¹ [Economic Crime and Corporate Transparency Bill](#), as introduced (Bill 154)

² Welsh Government, [Legislative Consent Memorandum, Economic Crime and Corporate Transparency Bill](#), November 2022

³ Welsh Government, [Supplementary Legislative Consent Memorandum \(Memorandum Number 2\), Economic Crime and Corporate Transparency Bill](#), January, 2023

amendments tabled to the Bill during Committee Stage in the House of Commons.⁴

7. The Business Committee initially agreed that the Legislation, Justice and Constitution Committee, and the Economy, Trade and Rural Affairs Committee, should report on the Memorandum by 2 March 2023.⁵ Following the laying of Memorandum No. 2, the deadline was later extended to 9 March 2023⁶ and then 30 March 2023.⁷

8. The Committee laid a report on these Memoranda on 9 March 2023.⁸

The Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 3)

9. On 9 March 2023 the Ministers laid a further Supplementary Legislative Consent Memorandum (Memorandum No. 3)⁹ after UK Government amendments to the Bill were agreed at Report Stage in the House of Commons.¹⁰

10. The Business Committee agreed that Memorandum No. 3 should be reported on by 4 May 2023.¹¹

11. The Minister states in Memorandum No. 3:

“Further Government amendments were tabled on 18 January in advance of Report Stage. A number of other non-Government amendments to the Bill were also tabled. On 6 February we wrote to the Llywydd advising that we would be considering all Report Stage amendments together with a view to preparing a single supplementary LCM for any that required this. This would lead to a delay in laying this supplementary

⁴ Economic Crime and Corporate Transparency Bill (Committee Stage Decisions), November 2022

⁵ Business Committee, [Timetable for consideration: Legislative Consent Memorandum on the Economic Crime and Corporate Transparency Bill](#), December 2022

⁶ Business Committee, [Timetable for consideration: Supplementary Legislative Consent Memorandum \(No. 2\) on the Economic Crime and Corporate Transparency Bill](#), January 2023

⁷ Business Committee, [Revised timetable for consideration: Supplementary Legislative Consent Memorandum \(No. 2\) on the Economic Crime and Corporate Transparency Bill](#), March 2023

⁸ Legislation, Justice and Constitution Committee, [The Welsh Legislative Consent Memoranda on the Economic Crime and Corporate Transparency Bill](#), March 2023

⁹ Welsh Government, [Supplementary Legislative Consent Memorandum \(Memorandum Number 3\). Economic Crime and Corporate Transparency Bill](#), March 2023

¹⁰ [Economic Crime and Corporate Transparency Bill, As Amended \(Report Stage Decisions\)](#), January 2023

¹¹ Business Committee, [Timetable for consideration: Supplementary Legislative Consent Memorandum \(No. 3\) on the Economic Crime and Corporate Transparency Bill](#), March 2023

LCM, however, would ensure it accurately reflected the development of the Bill. Report Stage concluded on 25 January with all Government amendments having been accepted and all non-Government amendments having been rejected.

Some of the accepted amendments amend Schedule 7 to the Bill, some of the provisions of which were considered 'relevant provision' and within the scope of SO 29 for the purpose of the original LCM laid in respect of the Bill. This supplementary LCM (Memorandum No 3) sets out the Welsh Government's position on any clauses added or amended at Report Stage amounting to 'relevant provision' for the purposes of SO29."¹²

Provisions for which consent is provided

12. The Ministers identify the following amendments to Schedule 7 (Cryptoassets: civil recovery) to the Bill that were accepted at Report Stage in the House of Commons and require consent:

- Chapter 3C – Forfeiture of Cryptoassets

Amendment 72 amended inserted section 303Z25 of the *Proceeds of Crime Act 2002* (cryptoassets: codes of practice) to provide that certain preliminary steps in relation to the making of a code of practice under that section (for example, consulting on a draft code of practice) may be carried out before that section comes into force.¹³

- Chapter 3E – Forfeiture of cryptoassets following detention or freezing order

As a result of amendments 76 to 78, cryptoassets detained under any provision of Chapter 3C of Part 5 of the *Proceeds of Crime Act 2002* (forfeiture of cryptoassets) (including under section 303Z31 of that Act) are subject to forfeiture under section 303Z41 of that Act.¹⁴

- Part 2

As a result of amendments 81 to 86, where cryptoassets are detained under section 303Z31 of the *Proceeds of Crime Act 2002* (seizure of

¹² Memorandum No. 3, paragraphs 5 and 6

¹³ Memorandum No. 3, paragraph 15

¹⁴ Memorandum No. 3, paragraph 19

cryptoassets) or paragraph 10Z7AF of Schedule 1 to the *Anti-terrorism, Crime and Security Act 2001* (seizure of terrorist cryptoassets) and are subject to an application for forfeiture, those cryptoassets are not “free property” for the purposes of the *Proceeds of Crime Act 2002*.

Amendment 87 contained a consequential amendment to Part 5 of the *Proceeds of Crime Act 2002*. It inserted new section 311A, which includes provision about accredited financial investigators making certain applications or appeals in relation to Chapters 3C to 3F of that Part.¹⁵

13. For all the amendments referred to in paragraph 12, the Ministers state consent is required because the proposed amendments:

“...do not impact the competence advice ... 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.”¹⁶

The Welsh Government's position

14. The Ministers set out the following reasons for making these provisions in the Bill:

“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.

¹⁵ Memorandum No. 3, paragraphs 23 and 24

¹⁶ Memorandum No. 3, paragraphs 16, 20 and 25

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.”¹⁷

- 15.** The Ministers recommend that the Senedd supports the proposals and gives its consent.¹⁸

The UK Government's position

- 16.** The Ministers state in Memorandum No. 3:

“The UK Government has stated that the measures in the original version of the Bill which require 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 (and, therefore, Schedules 6 and 7 of the Bill). The UK Government believe these amendments to POCA require legislative consent because they affect a function of the Welsh Ministers to specify a description of an accredited financial investigator who can exercise some of these new powers. This is in alignment with original LCM.

The UK Government have stated in correspondence that they ‘do not believe [the Government] amendments [tabled on 18 January] engage the Legislative Consent process’. They have not provided details of their analysis and so it is not clear how this

¹⁷ Memorandum No. 3, paragraphs 28-32

¹⁸ Memorandum No. 3, paragraph 36. In the Bill as introduced to the House of Lords clauses 141 and 142 are clauses 167 and 168.

conclusion was reached. The proposed amendments do not impact the competence advice for the original version of the Bill (on which ... 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."¹⁹

2. Committee consideration

17. We considered Memorandum No. 3 at our meeting on 27 March 2023.²⁰ We agreed our report on 24 April 2023.²¹

Our view

18. We note the Welsh Government's assessment of amendments made to Schedule 7 to the Bill, that require the consent of the Senedd, as set out in Memorandum No. 3.

Conclusion 1. We agree with the Ministers that amended provisions within Schedule 7 to the Bill, as set out in Memorandum No. 3, fall within a purpose within the legislative competence of the Senedd as described in Standing Order 29, and therefore require the consent of the Senedd.

¹⁹ Memorandum No. 3, paragraphs 26-27

²⁰ ~~Legislation, Justice and Constitution Committee~~, 27 March 2023

²¹ ~~Legislation, Justice and Constitution Committee~~, 24 April 2023