

## **LEGISLATIVE CONSENT MEMORANDUM**

### **Economic Crime and Corporate Transparency Bill**

1. This legislative consent memorandum 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. On 29 November I wrote to the Llywydd explaining that this legislative consent memorandum has 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. It has also been subject to discussions between Welsh Government and Senedd officials on technical Standing Order matters. Those issues have now been resolved, therefore we have today laid this legislative consent memorandum.

#### **Policy Objectives**

4. 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.
5. The Bill aims to strengthen the UK’s broader response to economic crime, in particular by giving law enforcement new powers to seize cryptoassets and enabling businesses in the financial sector to share information more effectively to prevent and detect economic crime.
6. 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**

7. The Bill is sponsored by the Home Office.

8. The key provisions of the Bill cover:

- Broadening the Registrar's powers so that the Registrar becomes a more active gatekeeper over company creation and custodian of more reliable data concerning companies and other UK registered entities.
- Introducing identity verification requirements for all new and existing registered company directors, People with Significant Control, and those delivering documents to the Registrar.
- Tackling the abuse of limited partnerships by strengthening transparency requirements and enabling them to be deregistered.
- Amending the Register of Overseas Entities to maintain consistency with change to the Companies Act 2006.
- Creating powers to quickly and more easily seize and recover cryptoassets, which are the principal medium used for ransomware (through amendments to the Proceeds of Crime Act 2002 (POCA) to include provision in relation to the seizure, realisation and destruction of cryptoassets and to make provision for a civil recovery regime in relation to cryptoassets).
- Creating new exemptions from the principal money laundering offences to reduce unnecessary reporting by businesses carrying out transactions on behalf of their customers and giving new powers for law enforcement to obtain information to tackle money laundering and terrorist financing.
- Removing the need for a Statutory Instrument to be laid in order to update the UK's high risk third country list.
- Enabling businesses in certain sectors to share information more effectively to prevent and detect economic crime.
- Removing the statutory fining limit to allow the Solicitors Regulation Authority to set its own limits on financial penalties imposed for economic crime disciplinary matters.
- Adding a regulatory objective to the Legal Services Act 2007 to affirm the duties of regulators and the regulated communities to uphold the economic crime agenda.
- Allowing the Serious Fraud Office (SFO) to use its powers under section 2 of the Criminal Justice Act 1987 at the 'pre-investigation' stage in any SFO case.

**Provisions in the Bill for which consent is required**

9. The majority of the provisions contained in the Bill (save those referred to below) are reserved pursuant to:
- Government of Wales Act 2006 ("GoWA"); Schedule 7A, Section C1 (Business associations and business names), Paragraph 65,
  - GoWA: Schedule 7A, Section B5 Crime, public order and policing, Paragraph 39 (The prevention, detection and investigation of crime); and

- GoWA: Schedule 7A, Section L1 The legal profession, legal services and claims management services, Paragraph 164 (The legal profession and legal services)

and, as such, do not require consent. The exceptions to this are as set out in paragraphs 10 to 32 below.

#### Clause 141 – Cryptoassets: confiscation orders

10. Clause 141 provides that Schedule 6 to the Bill amends Parts 2, 3 and 4 of POCA to include provision in relation to the seizure, realisation and destruction of cryptoassets and in relation to confiscation orders.
11. Consent is required – Schedule 6 has regard to devolved matters because it contains provision which modifies the executive competence of the Welsh Ministers (please see paragraphs 12 and 13 below for further details). Further, the provisions in Schedule 6 are designed to improve the state of the economy in the UK (including in Wales) by fighting economic crime by making provision for the seizure, realisation and destruction of 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 141 is the clause of the Bill which incorporates Schedule 6, it follows that consent is required.

#### Schedule 6 – Cryptoassets: confiscation orders – Part 1 – England and Wales

12. Part 1 of Schedule 6 of the Bill makes provision in the following areas:

*Seizure of cryptoassets* - provision is made in order to support the seizure of cryptoassets by ‘appropriate officers’. The provisions allow an ‘appropriate officer’ to seize any free property if he or she has reasonable grounds to suspect that such property is a ‘cryptoasset-related item’. The definition of ‘appropriate officer’ includes an accredited financial investigator who falls within a description specified in an order made for the purposes of that provision by the Welsh Ministers under section 453 of POCA.

*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. Specifically, they 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 that which is 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 in these circumstances must be authorised by a ‘senior officer’. The definition of ‘senior officer’ for these provisions includes an accredited financial investigator who falls

within a description specified in an order made for the purposes of that provision by the Welsh Ministers under section 453 of POCA.

*Property held by persons subject to confiscation orders: destruction, realisation etc* – provision is made about the powers of the court to enforce confiscation orders. Principally, 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.

13. Consent is required – When the Welsh Ministers exercise their executive competence to describe a category of persons as a senior officer or an appropriate officer by order under section 453, the effect of these new provisions will be that that designation will be for more purposes (e.g. for authorising the retention, disposal or destruction of unclaimed property, for authorising the destruction cryptoassets and for seizure of a cryptoasset-related item etc.) than the designation currently covers and therefore it has regard to devolved matters because the Welsh Ministers' executive competence is modified and consent is required. Further, the provisions in Schedule 6 are designed to improve the state of the economy in the UK (including in Wales) by fighting economic crime by making provision for the seizure, realisation and destruction of 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.

#### Clause 142 – Cryptoassets: civil recovery

14. Clause 142 provides that Schedule 7 of the Bill amends POCA to make provision for a civil recovery regime in relation to cryptoassets.
15. Consent is required – Schedule 7 has regard to devolved matters because it contains provision which modifies the executive competence of the Welsh Ministers (please see paragraphs 14-20 for further details). 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.

#### Schedule 7 – Cryptoassets: civil recovery

16. Part 1 – this part of Schedule 7 inserts new Chapters 3C, 3D, 3E and 3F into Part 5 of POCA.

17. *Chapter 3C – Forfeiture of Cryptoassets* – New Chapter 3C makes provision for the seizure of cryptoassets (and cryptoasset-related items) and the recovery of cryptoassets where they are recoverable property or are intended for use in unlawful conduct. The powers of search and seizure are exercisable by an ‘enforcement officer’ and in some instances require the enforcement officer to have obtained judicial authority prior to the exercise of the power or, if that is not practicable, the approval of a ‘senior officer’. The definitions of ‘enforcement officer’ and ‘senior officer’ both include an accredited financial investigator who falls within a description specified in an order made for the purposes of this Chapter by the Welsh Ministers under section 453.
18. 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 search a property for a cryptoasset-related item and to seize a cryptoasset-related item) 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.
19. *Chapter 3D – Forfeiture of Cryptoassets: crypto wallets* - New Chapter 3D, makes provision for the freezing and forfeiture of cryptoassets, held by a third party, in crypto wallets, where the assets are recoverable property, or are intended for use in unlawful conduct. The powers are exercisable by an ‘enforcement officer’ (see paragraph 15 above for more details).
20. 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 seek a “crypto wallet freezing order”) 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.
21. *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).

22. 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.
23. *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.
24. 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.
25. 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.
26. 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.

### **UK Government view on the need for consent**

27. UK Government has stated that the measures in 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 paragraphs 10-26 above.

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

28. 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.
29. 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.
30. 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.
31. 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.
32. 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**

33. 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.
34. 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**

35. 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.
36. Therefore, we recommend the Senedd supports the proposals and gives its consent.

**Vaughan Gething MS**  
**Minister for the Economy**

**Mick Antoniw MS**  
**Counsel General and Minister for Constitution**

**29 November 2022**