

SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM (MEMORANDUM NUMBER 3)

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. The original LCM was laid on 29 November. This can be found at: <https://senedd.wales/media/ftybcih2/lcm-ld15503-e.pdf>.
4. A number of technical and substantive amendments to the Bill were tabled at House of Commons Committee Stage between 25 October and 29 November 2022. Some of these amendments amended parts of the Bill that were considered ‘relevant provision’ and within the scope of SO29 for the purpose of the original LCM. Therefore, a supplementary LCM (Memorandum No 2) was laid on 3 January setting out the Welsh Government’s position on any amended and new clauses. This supplementary LCM (No 2) can be found at: <https://senedd.wales/media/anvngyor/slcm-ld15581-e.pdf>.
5. 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 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.
6. 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.

Policy Objectives

7. 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.
8. 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.
9. 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

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

Amendments for which consent is required

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

Schedule 7 – Cryptoassets: civil recovery

Original provision

13. *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.
14. 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.

Amendments to Schedule 7, Chapter 3C

15. Amendment 72 amends 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.
16. Consent required - the proposed amendment does 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.

Original provision

17. *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).
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. 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

19. Amendments 76 – 78 provide that 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.

20. 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.

Original provision

21. 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.
22. 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

23. Amendments 81 – 86 provide that where cryptoassets are detained under section 303Z31 of the Proceeds of Crime Act 2002 (seizure of 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.
24. Amendment 87 contains a consequential amendment to Part 5 of the Proceeds of Crime Act 2002. It inserts 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.
25. Consent is 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

26. 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.

27. 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 conclusion was reached. The proposed amendments do not impact the competence advice for the original version of the Bill (on which, as per paragraph 26 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

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

9 March 2023