

The Welsh Government's Legislative Consent Memoranda on the Economic Crime and Corporate Transparency Bill

March 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. As well as preparing Explanatory Notes for the Bill,² the UK Government published a factsheet.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

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 the 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.⁴

6. The Business Committee agreed that the Legislation, Justice and Constitution Committee, and the Economy, Trade and Rural Affairs Committee

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

² [Economic Crime and Corporate Transparency Bill, Explanatory Notes](#), September 2022

³ UK Government, [Factsheet: Economic Crime and Corporate Transparency Bill overarching](#), January 2023 (updated)

⁴ Welsh Government, [Legislative Consent Memorandum, Economic Crime and Corporate Transparency Bill](#), November 2022

should report on the Memorandum by 2 March 2023.⁵ The deadline was later extended to 9 March 2023.⁶

7. The Memorandum notes that the Bill has the following policy objectives:

- to 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;
- 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;
- 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.⁷

Provision for which the Senedd's consent is required

8. In paragraph 9 of the Memorandum, the Ministers state:

"The majority of the provisions contained in the Bill ... 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)*

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 Memorandum, paragraphs 4 to 6

and, as such, do not require consent."

9. Paragraphs 10 to 26 of the Memorandum identify the provisions within the Bill that the Ministers believe require consent. The provisions in question, which collectively amend the *Proceeds of Crime Act 2002* (POCA), are:

- clause 141 – Cryptoassets: confiscation orders;
- Schedule 6 – Cryptoassets: confiscation orders (Part 1 which amends provisions of POCA that extend to England and Wales);
- clause 142 – Cryptoassets: civil recovery;
- Schedule 7 – Cryptoassets: civil recovery (Part 1, which inserts Chapters 3C (Forfeiture of cryptoassets), 3D (Forfeiture of cryptoassets: crypto wallets), 3E (Forfeiture of cryptoassets following detention or freezing order) and 3F (Conversion of cryptoassets) into Part 5 of POCA and Part 2, which makes consequential and other amendments to POCA as a result of inserting the new chapters).⁸

10. The Welsh Government considers that consent is required because the provisions:

- modify the executive competence of the Welsh Ministers;
- are designed to improve the state of the economy in the UK (including in Wales) by fighting economic crime, and the economy is a devolved matter.⁹

11. Paragraph 27 of the Memorandum states:

"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

⁸ Clause numbers have subsequently changed following the Bill's introduction to the House of Lords ([HL Bill 196](#)). Clause 141 changed to clause 167 and clause 142 changed to clause 168.

⁹ See the explanation provided in paragraphs 11, 13, 15, 18, 20, 22, 24, 26 and 31 of the Memorandum

accredited financial investigator who can exercise some of these new powers.”¹⁰

The Welsh Government's position

12. The Welsh Government's position is set out in paragraphs 28 to 32 of the Memorandum:

“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 noncontentious 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

¹⁰ Memorandum, paragraph 27. See also Economic Crime and Corporate Transparency Bill, Explanatory Notes, September 2022, Annex – Territorial extent and application in the United Kingdom

around its increased responsibilities as a result of the implementation of the Bill.”

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

13. On 3 January 2023, the Ministers laid a Supplementary Legislative Consent Memorandum (Memorandum No. 2) in respect of the Bill¹¹ following amendments made to the Bill at Committee Stage in the House of Commons.¹²

14. The Business Committee agreed that the Legislation, Justice and Constitution Committee, and the Economy, Trade and Rural Affairs Committee should report on Memorandum No 2 by 9 March 2023.¹³

15. The amendments to the Bill made at Committee Stage affect the following provisions, all of which were also subject to consideration in the Memorandum:

- clause 142 – Cryptoassets: civil recovery;
- Schedule 7 – Cryptoassets: civil recovery (Chapter 3E (Forfeiture of cryptoassets) and Chapter 3F (Conversion of cryptoassets));
- Part 2 of Schedule 7 – Consequential and other amendments to POCA.¹⁴

The Welsh Government's position on the amendments made to the Bill

16. The Welsh Government argues that the amendments made to the Bill do not impact on the original advice on competence for any of the provisions.¹⁵

17. Paragraph 38 of Memorandum No. 2 states:

“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,

¹¹ Welsh Government, [Supplementary Legislative Consent Memorandum \(Memorandum No. 2\), Economic Crime and Corporate Transparency Bill](#), January 2023

¹² [Economic Crime and Corporate Transparency Bill \(Committee Stage Decisions\)](#), November 2022

¹³ Business Committee, [Timetable for consideration: Supplementary Legislative Consent Memorandum \(No.2\) on the Economic Crime and Corporate Transparency Bill](#), January 2023

¹⁴ Memorandum No 2, paragraphs 14 to 15, 18 to 24, 27 to 29 and 32 to 36

¹⁵ Memorandum No 2, paragraphs 15, 24, 29 and 36

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."

2. Committee consideration

18. We considered the Memoranda at our meeting on 23 January 2023.¹⁶ We considered correspondence from the Solicitors Regulation Authority (SRA) on 6 February 2023.¹⁷ We agreed our report on 27 February 2023.¹⁸

Our view

19. We note the Welsh Government's assessment of the provisions within the Bill that require the consent of the Senedd, as set out in the Memorandum and Memorandum No 2. We agree with that assessment.

Conclusion 1. We agree with the Minister that clauses 141 and 142 of, and Schedules 6 and 7 to, the Bill (as introduced) 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.

20. We note that one consequence of the Bill is that it changes the executive competence of the Welsh Ministers.

21. We note the correspondence received from the SRA on the Bill and welcome its engagement with us on the issues raised by the Bill and the Memoranda.

¹⁶ [Legislation, Justice and Constitution Committee, 23 January 2023](#)

¹⁷ [Letter from the Solicitors Regulation Authority, 2 February 2023](#)

¹⁸ [Legislation, Justice and Constitution Committee, 27 February 2023](#)