

FROM THE OFFICE OF THE JUSTICE
MINISTER



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Paul Givan MLA
Chair, Justice Committee
Room 242
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12 March 2021

Dear Paul,

CONSENT FOR ELECTRONIC MONEY

UK FINANCIAL SERVICES BILL – INSTITUTIONS CLAUSE

I am writing to advise that I received a request from the Economic Secretary to the Treasury on 8 February to consider legislative consent for one clause in the Financial Services Bill. The clause, in respect of accounts with electronic money and payment institutions, relates to powers to freeze and forfeit money linked to criminality held in bank and building society accounts; powers that were first introduced in England and Wales and Scotland in 2018 under the Criminal Finances Act 2017 (the CFA 2017). These primary account-freezing and forfeiture provisions will be commenced in Northern Ireland in the coming months with the other relevant CFA 2017 provisions. I advised the Executive, the Justice Committee and the NI Assembly earlier in 2020 about my request to the Home Secretary to commence the provisions as soon as possible. I wrote once again to the Home Secretary on 4 March to ask for an update on the timescales and to ask her to ensure that it continues to receive priority attention unfortunately, however, progress has been impacted by Parliamentary scheduling issues.

The relevant clause in the Financial Services Bill amends the scope of account-freezing and forfeiture powers (as introduced by the CFA 2017) under the Proceeds of Crime Act 2002 (POCA) and the Anti-terrorism, Crime and Security Act 2001 to include accounts held at electronic money and payment institutions. The purpose of the provision is to ensure that law enforcement is able to quickly and effectively freeze and forfeit the proceeds of crime and terrorist property, not only when held in bank and building society accounts but also when in e-money and payment institution accounts. I agree with the view of the UK Government that the clause engages devolved competence in respect of the proceeds of crime only. The clause does not change the policy position or the purpose of the account-freezing and forfeiture provisions; the clause will update definitions in POCA reflecting the growth of financial technology companies in the UK. The extension of the provision to the Anti-terrorism, Crime and Security Act 2001 in respect of freezing and forfeiting terrorist property does not require legislative consent and so will automatically apply to Northern Ireland on enactment.

The clause was not included in the Bill as introduced but was added by Government amendment at Commons Report stage on 13 January. The Bill documents can be read at the following link to the UK Parliament website:
<https://services.parliament.uk/bills/2019-21/financialservices.html>.

HM Treasury (HMT) advised at official level, after I received the formal request for consideration on 8 February, that a Legislative Consent Motion (LCM) would be needed by 10 March in order to meet Parliament's deadline for the final amending stage of the Bill. Officials advised that the standard LCM processes were not likely to be achievable in the time remaining and asked HMT if the Bill stages could be delayed to afford time to complete the LCM process. This was not possible due to Parliamentary scheduling. HMT was exploring if it was possible to extend the provisions later which would provide more time to secure Assembly consent. However the Economic Secretary to the Treasury confirmed in writing to me on 4 March that 16 March is the final date for securing an LCM

and that this is the only means to extend the provisions to avoid legislating for transferred matters without legislative consent from the NI Assembly. Therefore, unless an LCM is expedited, the UK Government will bring forward an amendment to the Bill on 17 March to carve Northern Ireland out of this particular clause.

Under standard Assembly procedures, progressing with an LCM was not likely to have been achievable without significant re-prioritisation of existing business. While I understand that the relevant clause was a late addition to the Bill, I have relayed to the Economic Secretary to the Treasury my dissatisfaction at receiving formal Ministerial notice of the request for legislative consent at such a late stage.

I am disappointed not to have been afforded sufficient time to consider this and to seek the views of Executive Colleagues and the Justice Committee. I am now considering how to ensure that any potential risks are identified and minimised in this jurisdiction when the relevant CFA 2017 provisions are enacted here. As I said when I advised of my decision to start the process of commencing the CFA 2017 provisions, I do not want Northern Ireland to have a weaker regime than other UK jurisdictions or to be considered as a 'safer' place to keep criminal assets. I am advised that, in the absence of access to powers to freeze money in accounts with electronic money and payment institutions, cases could potentially be referred to a GB police force where the particular account has its headquarters.

I am also considering whether legislating locally would be an option for this one provision. Given its association to the UK-wide approach under the parent legislation POCA, I am also exploring options with the Treasury and the Home Office to determine if there is another or forthcoming potential Bill that could include a clause to legislate with the consent of the NI Assembly through an LCM.



Department of
Justice

An Roinn Dlí agus Cirt

Máinnystrie O tha Laa

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In summary, I have advised the Economic Secretary to the Treasury that it is not feasible for an LCM to proceed in the time dictated by the passage of this Bill unless further consideration can be given to affording the NI Assembly more time to consider it, beyond 16 March. If this is not possible, the UK Government will table an amendment on 17 March to ensure that the provision does not extend to Northern Ireland. If this is the case, I will lay a memorandum before the Assembly explaining why an LCM is not sought for the electronic money institutions clause in the Financial Services Bill in accordance with Assembly Standing Order 42A (4)(b). I will keep the Committee updated.

Yours sincerely

NAOMI LONG MLA MINISTER OF JUSTICE