

Minister's Office Block B,
Castle Buildings
Stormont Estate
Ballymiscaw
Belfast
BT4 3SG

Christine Darrah
Clerk to the Committee for Justice
Room 242
Parliament Buildings
Ballymiscaw
Stormont
Belfast BT4 3XX

16 April 2021

Dear Christine,

UK FINANCIAL SERVICES BILL – LEGISLATIVE CONSENT FOR ELECTRONIC MONEY INSTITUTIONS CLAUSE

Thank you for your letter of 26 March 2021 following the Committee's consideration of the Justice Minister's letter of 12 March in relation to the LCM request for one provision of the Financial Services Bill to extend to Northern Ireland. The Minister shares the concerns of the Committee regarding the lack of time provided to consider legislative consent and has subsequently relayed her frustrations to the Economic Secretary to the Treasury and to the Home Secretary accordingly, asking that the processes and associated timescales of the NI Executive and Assembly are understood and considered in future cases. A memorandum was laid before the Assembly under Standing Order 42A.(4)(b) on 26 March explaining why a legislative consent motion was not sought in this case, for timing reasons. A copy of the memorandum is enclosed.

The Minister's letter of 12 March advised that potential options for the future extension of the provision was being considered, including if legislating locally would be possible. Closer consideration of the account freezing and forfeiture provisions has confirmed that the devolution position for the legislation follows the devolution position of the underlying criminality connected with the money in the account. Therefore, the associated criminality and offences could fall in the reserved, excepted, or devolved sphere. As such the preferred option to extend this provision to Northern Ireland in the future is by a UK Government Bill with a legislative consent motion (LCM), most likely one with a Home Office lead. The Minister has therefore written to the Home Secretary to ask for her support to identify an alternative legislative vehicle through which to extend the provision to Northern Ireland, subject to an LCM, as soon as practicable and to request that a period of at least eight weeks is provided to seek the legislative consent of the Assembly.

The Committee asked if there are potential consequences/implications of the provisions not being extended to NI. Departmental officials continue to assess the consequences with input from the Home Office and local law enforcement representatives. There are no immediate implications as the primary provisions, the account freezing and forfeiture powers for bank and building society accounts, are not yet available in Northern Ireland but are scheduled to be commenced under the Criminal Finances Act 2017, at the end of June. The goal will be to minimise the time between the commencement of the CFA 2017 and the extension of the provision to Northern Ireland as outlined above. While no significant implications have been identified to date this will be kept under review by the Department and work will continue to identify potential operational workarounds. Officials will keep the Committee informed if the position changes.

Crypto currency is not subject to the new provision introduced by the Financial Services Bill, or to the primary account freezing and forfeiture provisions, as crypto currency is not held in standard bank and building society or electronic money and payment institution accounts. The freezing and forfeiture powers come under POCA's civil

forfeiture regime. Crypto currencies have been made subject to criminal restraint orders by the Courts under POCA. A restraint order has the effect of freezing property that may be liable to confiscation following a trial and the making of a confiscation order. As previously advised in a letter from the DALO dated 20 January 2021 following a briefing on the draft NI Organised Crime Strategy consultation, the PPS made a successful application in 2018 on behalf of the PSNI to restrain Bitcoin funds held in a cryptocurrency wallet. The Court granted an application to have it converted to sterling and held in a UK bank account. The PSNI investigation was linked to investment fraud and the value of the restraint was approximately £1m. It was the first case of its kind in Northern Ireland (OCTF Annual Report and Threat Assessment 2018-2019 page 41: <https://www.octf.gov.uk/OCTF/files/60/60faf9f8-e37e-407b-b0a2-baf4497de104.pdf>). The Home Office has confirmed that it will take forward work to consider how crypto currency might in the future fall under the scope of the civil forfeiture regime of POCA, in addition to the criminal confiscation regime.

I trust the Committee finds this response helpful.

CLAIRE MCCORMICK DALO

FINANCIAL SERVICES BILL – MEMORANDUM LAID BEFORE THE ASSEMBLY UNDER STANDING ORDER 42A.(4)(b)

Background

1. This memorandum has been laid before the Assembly by the Minister for Justice under Standing Order 42A.(4)(b). Standing Order 42A. *Legislative Consent Motions* details the procedure for seeking the agreement of the Assembly to the United Kingdom Parliament considering provisions of a Bill which deal with a devolution matter. Paragraph (2) of Standing Order 42A prescribes that a legislative consent memorandum shall be laid in respect of any devolution matter for which a legislative consent motion is proposed. Under paragraph (4) of Standing Order 42A. the Minister whom the devolution matter concerns shall, normally not later than 10 working days after the relevant day, either—
 - (a) lay a legislative consent memorandum before the Assembly; or
 - (b) lay a memorandum before the Assembly explaining why a legislative consent motion is not sought.

2. The Economic Secretary to the Treasury wrote to the Minister of Justice asking that she consider legislative consent for a provision in the Financial Services Bill to extend the scope of the account freezing and forfeiture powers in the Proceeds of Crime Act 2002 (POCA), which currently apply to bank and building society accounts Bill, to include accounts held with Electronic Money Institutions and Payment Institutions. The provision was added by Government amendment at the Bill's Report Stage in the House of Commons. With a period of just over four weeks between the formal request for consideration of legislative consent and the deadline for legislative consent to be confirmed, it was not possible to seek the agreement of the Assembly under Standing Order 42A, for timing reasons alone. As a consequence the provision, as applied to Northern Ireland was removed from the Bill at Report Stage in the House of Lords on 24 March 2021.

Summary of the Bill and its policy objectives

3. The Financial Services Bill was introduced to the House of Commons on 21 October 2020. The relevant Electronic Money Institutions and Payment Institutions provision was added to the Bill at Report Stage. The latest version of the Bill can be found at: <https://bills.parliament.uk/bills/2792>.

4. The principle purpose of the Bill is to make provision about financial services and markets; to make provision about debt respite schemes; to make provision about Help-to-Save accounts; and for connected purposes.

Provisions which deal with a Devolution Matter

5. The extension of the scope of the account freezing and forfeiture powers in POCA to include accounts held with Electronic Money Institutions and Payment Institutions was the only provision of the Bill within the remit of the Department of Justice that engaged Assembly competence. 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 electronic money and payment institution accounts. The POCA account freezing and forfeiture powers in respect of bank and building society accounts will be commenced in Northern Ireland under the Criminal Finances Act 2017 (CFA 2017) in the coming months.

Reasons for not seeking a legislative consent motion

6. The reason for not seeking a legislative consent motion centres on time constraints. The Economic Secretary to the Treasury wrote to the Justice Minister on 8 February 2021 to initiate the consideration of legislative consent for the relevant provision in the Bill. It was subsequently confirmed that the timescales for securing an LCM, at that point, was 10 March 2021. Under standard Assembly procedures, progressing a legislative consent motion would not have been achievable in this timeframe without placing significant burden on Executive Colleagues, the Justice Committee and Assembly Business scheduling.

Engagement with the UK Government

7. In response to the request from the Economic Secretary to the Treasury, the Justice Minister conveyed her dissatisfaction at not having been afforded sufficient time to bring the matter of consent before the Assembly, indicating that without consideration of additional time to progress the standard legislative consent procedure it would not be possible to meet the deadline. On 17 March 2021 an amendment was tabled to the Bill to remove the extension of the provision to Northern Ireland and the amendment was moved and agreed to at Lords Report Stage on 24 March 2021.
8. Policy responsibility for proceeds of crime legislation lies with the Home Office. Therefore consideration of the future extension to Northern Ireland of the Electronic Money Institutions and Payment Institutions provision has passed to that Department. Home Office officials are prioritising the identification of another suitable Westminster Bill to achieve this, and once identified will formally seek to secure the consent of the Assembly. Priority will be placed on minimising the period of time from the point where the relevant account freezing and forfeiture provisions are commenced in Northern Ireland under the CFA 2017 to the enactment of the Electronic Money Institutions and Payment Institutions provision through an alternative Bill.

Engagement with the Executive and the Committee for Justice

9. The Minister wrote to Executive Colleagues and to the Justice Committee regarding the engagement with the UK Government on this matter, the insufficient time afforded to seek the consent of the Assembly, and to signal her intention to close the gap as soon as practicable.

Conclusion

10. Due to the lack of time afforded to seek legislative consent on this provision, the Minister of Justice advised the UK Government that agreement within the stated timeframe could not be secured. The provision, as it applies to Northern Ireland, has been removed from the Bill. The Minister has committed to prioritising this matter once a suitable legislative vehicle is secured.

Department of Justice
26 March 2021