

ECONOMIC CRIME AND CORPORATE TRANSPARENCY 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 of Justice under paragraph (4)(b) of Standing Order 42A.
2. 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.
3. The Security Minister (Home Office) sought support for the relevant provisions of the Economic Crime and Corporate Transparency Bill. In requesting support for the provisions of the Bill, particularly those engaging devolved competence, it was acknowledged that it was not possible to table a formal Legislative Consent Motion (LCM) in the absence of the Executive. The relevant UK Ministers have undertaken to write to seek a formal LCM should an Executive and Assembly be formed during the passage of this Bill.
4. This memorandum is in respect of the clauses in the Economic Crime and Corporate Transparency Bill insofar as they relate to the Department of Justice, namely clauses to recover the proceeds of crime in the form of cryptoassets; provision to disapply civil liability for breaches of confidentiality for certain businesses engaged in information sharing to tackle economic crime; and amendment to enable the Serious Fraud Office to use its investigative powers at the ‘pre-investigation’ stage in any Serious Fraud Office case. It has not been possible to seek the agreement of the Assembly under Standing Order 42A for matters relating to the remit of the Department of Justice on this occasion as there is no Executive in place to seek prior agreement.

Summary of the Bill and its policy objectives

5. The Economic Crime and Corporate Transparency Bill was introduced to the House of Commons on 22 September 2022. The current version of the Bill and its Explanatory Notes can be found at: <https://bills.parliament.uk/bills/3339>
6. The principle purpose of the Bill is 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.
7. Factsheets detailing the different measures contained in the Bill can be read at this link:
<https://www.gov.uk/government/publications/economic-crime-and-corporate-transparency-bill-2022-factsheets>
8. This Bill builds on measures introduced by the Economic Crime (Transparency and Enforcement) Act 2022 which passed rapidly through Parliament in March 2022 as part of the UK Government's response to the Russian invasion of Ukraine. The Act can be accessed at this link:
<https://www.legislation.gov.uk/en/ukpga/2022/10/contents>

Provisions which deal with a Devolution Matter

9. The extension of the following provisions, which will amend the Proceeds of Crime Act 2002, fall within the remit of the Department of Justice:

Cryptoassets

- The 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 Proceeds of Crime Act 2002 to better enable the investigation, seizure and recovery of cryptoassets in both criminal confiscation and civil recovery cases.

Information Sharing

- This reform will disapply civil liability for breaches of confidentiality for certain businesses engaged in information sharing to tackle economic crime. Some of the offences likely to be covered fall within the devolved

competence of the Northern Ireland Assembly in relation to certain types of economic crime – such as fraud, whilst others – including money laundering and terrorist financing – relate to matters that are reserved.

Changes to Serious Fraud Office Investigations

- Clause 156 of the Bill will enable the Serious Fraud Office to use its investigative powers at the ‘pre-investigation’ stage in any Serious Fraud Office case; currently these powers can only be used at this stage in case of suspected international bribery and corruption.

Reasons for not seeking a legislative consent motion

10. The reason for not seeking a legislative consent motion relates to the continued absence of the Executive and NI Assembly. Ordinarily the Executive would be asked by the relevant Minister to agree to the policy content of provisions, to these provisions being carried in a Westminster Bill and to consent that Assembly approval should be sought - in the absence of an Executive, this is not possible.

Engagement with the UK Government

11. The Justice Minister has indicated her support ‘in principle’ to the extension of this legislation to enhance asset recovery and anti-money laundering capabilities to Northern Ireland, noting the current context and preference for securing the appropriate legislative consent of the Northern Ireland Assembly for the relevant provisions. In the event that the Executive is restored, engagement will continue as the Bill progresses through parliament.

Engagement with the Executive and the Committee for Justice

12. There has not yet been an opportunity for the Justice Minister to engage with Executive colleagues or the Justice Committee about the Bill.



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Conclusion

13. The Justice Minister advocates for discussion and debate on any issue that requires an LCM. In the absence of the Executive, it is not possible to seek the agreement of the Executive prior to bringing forward a legislative consent motion for the relevant provisions of the Economic Crime and Corporate Transparency Bill.



NAOMI LONG, MLA
MINISTER OF JUSTICE
27 October 2022