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Criminal Justice Committee

Report on the Legislative Consent Memorandum for the Economic Crime and Corporate Transparency Bill (UK Parliament legislation)



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Criminal Justice Committee

To consider and report on matters relating to criminal justice falling within the responsibility of the Cabinet Secretary for Justice and Veterans, and functions of the Lord Advocate other than as head of the systems of criminal prosecution and investigation of deaths in Scotland.



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Introduction

1. At its meeting on Wednesday 24 May 2023, the Criminal Justice Committee considered a Legislative Consent Memorandum ("LCM") from the Scottish Government on Economic Crime and Corporate Transparency Bill (UK Parliament).
2. The LCM can be found [here](#).

Outline of the UK Bill

3. The [Economic Crime and Corporate Transparency Bill](#) was introduced in the House of Commons by the UK Government on 22 September 2022.
4. The UK Government has presented the Bill as having three key objectives:
 - 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 UK national security.
 - Strengthen the UK's broader response to economic crime, in particular by giving law enforcement new powers to seize cryptoassets used or obtained through unlawful conduct and enabling businesses in the financial sector to share information more effectively to prevent and detect economic crime.
 - 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.
5. The Bill as introduced contained provisions that apply to Scotland and the UK Government has requested legislative consent in relation to these. The Bill has also been amended further during its passage in the UK Parliament and some of the changes made also apply to Scotland and therefore require legislative consent.
6. The process of dialogue between the two governments on this Bill and the issue of consent has been protracted and the Scottish Government lodged a Legislative Consent Memorandum on 5 May 2023.
7. There remains one provision where the Scottish Government does not yet recommend consent, with the Scottish Government stating:

“[...] The Scottish Government's position remains that where the UK Government intends to take powers to make secondary legislation in devolved areas that must be accompanied by effective mechanisms to respect the devolution settlement and to recognise the responsibilities of Scottish Ministers and the Scottish Parliament. The Scottish Government is not therefore currently recommending consent to certain provisions where this applies”.

Consideration by the Delegated Powers and Law Reform Committee

8. The Delegated Powers and Law Reform (DPLR) Committee considered the LCM at its meetings of 16 and 23 May 2023.
9. As part of the DPLR Committee's consideration of the LCM on 16 May, it agreed to write to the Scottish Government requesting further explanation in relation to the powers that are exercisable within devolved competence. The DPLR Committee subsequently [wrote](#) to Angela Constance MSP, Cabinet Secretary for Justice and Home Affairs.
10. A [response](#) was received from the Deputy First Minister and Cabinet Secretary for Finance, Shona Robison MSP on 19 May 2023.
11. The DPLR Committee published its [report](#) on the LCM on 23 May. The report makes a series of points, mainly around the powers in the Bill which would see regulations being made by a UK Secretary of State in devolved areas with the consent of the Scottish Ministers. The DPLR Committee want to ensure that the Scottish Parliament has an opportunity to scrutinise the Scottish Ministers' consent decisions when these situations arise.

Consideration by the Committee and recommendation

12. At its meeting of [24 May](#), the Committee took evidence on the Bill from Tom Arthur MSP, Minister for Community Wealth and Public Finance ("the Minister") and his officials.
 13. In his opening statement, the Minister noted that engagement with UK Government ministers and officials on aspects of the Bill and subsequent UK Government amendments that impact on devolved areas has been constructive. The LCM recommends giving consent for the majority of the bill, but withholding it from some provisions in the meantime, in the hope that issues can be resolved through further engagement with the UK Government.
 14. George Burgess, Director of Agriculture and Rural Economy, Scottish Government, went on to advise that if agreement is reached and the UK Government brings forward further amendments to make the necessary adjustments, a supplementary Legislative Consent Memorandum will be lodged indicating agreement to the whole bill.
 15. In response to questions from members regarding the short timescale available to the Committee to consider the LCM, the Minister advised that due to the length and complexity of the Bill itself, the multilateral engagement that has taken place with the Scottish Government at both ministerial and official level and the significant number of amendments the Bill has been subject to, it was challenging to achieve clarity and to get to a position where the LCM could be lodged.
16. As noted above, the Scottish Government is recommending consent to the majority of the provisions in the Bill that impact on devolved matters. However, it is still negotiating with the UK Government on one remaining matter where consent is not yet recommended.
 17. As such, the Committee agreed, in principle, with the recommendation set out in the Scottish Government's draft motion in relation to consent. However, members noted that a supplementary legislative consent memorandum may be forthcoming and agreed to return to the issue at a later date.

