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Pàrlamaid na h-Alba

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## **Delegated Powers and Law Reform Committee**

# **Legislative Consent Memorandum: delegated powers relevant to Scotland in the Economic Crime and Corporate Transparency Bill**



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# Delegated Powers and Law Reform Committee

To consider and report on the following (and any additional matter added under Rule 6.1.5A)—

(a) any—

(i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;

(ii) [deleted]

(iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

(b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

(c) general questions relating to powers to make subordinate legislation;

(d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;

(e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act;

(f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject;

(g) any Scottish Law Commission Bill as defined in Rule 9.17A.1;

(h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule; and

(i) any Consolidation Bill as defined in Rule 9.18.1 referred to it in accordance with Rule 9.18.3.



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# Committee Membership



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**Oliver Mundell**  
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# Introduction

1. At its meetings on 16 and 23 May 2023, the Committee considered the delegated powers in the [Economic Crime and Corporate Transparency Bill](#) (“the Bill”) that are exercisable within devolved competence.
2. The Committee considered these powers under its remit as set out in Rule 9B.3 of the Parliament’s Standing Orders and the Committee’s wider remit under Rule 6.11.1(b). Paragraph 6 of Rule 9B.3 provides that where the Bill that is the subject of an LCM contains provisions conferring on the Scottish Ministers powers to make subordinate legislation, the Delegated Powers and Law Reform Committee shall consider and may report to the lead committee on those provisions. Rule 6.11.1(b) provides that the remit of the Committee includes considering and reporting on proposed powers to make subordinate legislation in particular bills “or other proposed legislation”. This definition encompasses powers to make subordinate legislation in UK bills, where exercisable within devolved competence.
3. The Bill is a UK Government Bill introduced in the House of Commons on 22 September 2022 by the Secretary of State for the Home Department Suella Braverman MP. The Bill is currently at Report Stage in the House of Lords.
4. The UK Government has set out that this UK-wide Bill is the second part of a legislative package to prevent the abuse of UK corporate structures and tackle economic crime. It follows on from the Economic Crime (Transparency and Enforcement) Act 2022, which received Royal Assent on 15 March 2022. A Legislative Consent Memorandum in respect of that Bill was lodged in the Scottish Parliament on 4 March 2022, then debated and approved unanimously on 9 March 2022.
5. The UK Government states that this Bill is to make provision or further provisions about:
  - economic crime and corporate transparency;
  - companies, limited partnerships and other kinds of corporate entity; and
  - the registration of overseas entities.

# Overview of the Bill

6. The objectives of this Bill, as presented by the UK Government, are set out in the Scottish Government's LCM as:
  - To prevent organised criminals, fraudsters, kleptocrats (governments that steal their countries' resources) and terrorists from using companies and other corporate entities to abuse the UK's economy. To enable this the Bill intends to broaden the powers of the Registrar of Companies to safeguard businesses, consumers and UK national security.
  - To strengthen the UK's broader response to economic crime, in particular, by giving law enforcement new powers (by amending the Proceeds of Crime Act 2002) to seize cryptoassets (digital assets that use public ledgers over the internet to prove ownership) used or obtained through unlawful conduct. The Bill intends to enable businesses in the financial sector to share information more effectively to prevent and detect economic crime, including money laundering and terrorism financing.
  - To support enterprise by enabling Companies House to deliver a better service for UK companies and improve the reliability of its data to inform business transactions, lending decisions and law enforcement.
7. The Scottish Government lodged a [Legislative Consent Memorandum](#) ("LCM") for this Bill on 5 May 2023. The provisions in the Bill relate to a mixture of devolved and reserved matters in Scotland, Wales and Northern Ireland.
8. The lead Committee in respect of this LCM is the Criminal Justice Committee. The Scottish Government notes in its LCM that it is currently recommending that the Parliament consents to most of the provisions of the Bill. However, it has written to the UK Government to request that amendments are made and is currently recommending that the Parliament withholds its consent in relation to two provisions of the Bill.
9. As part of the Committee's consideration of the LCM on 16 May, the Committee agreed to write to the Scottish Government requesting further explanation in relation to the powers that are exercisable within devolved competence. The Committee accordingly [wrote](#) to the Cabinet Secretary for Justice and Home Affairs, Angela Constance MSP on 16 May 2023.
10. A [response](#) was received from the Deputy First Minister and Cabinet Secretary for Finance, Shona Robison MSP on 19 May 2023. Discussion of the response from the Scottish Government has been included in the Committee's consideration of the powers in this Bill.

# Committee consideration of the Bill

## Lords amendment 73L – new section 29C to be inserted in the Limited Partnerships Act 1907

### Power conferred on: Secretary of State and Scottish Ministers

### Power exercisable by: Regulations

### Parliamentary procedure: Affirmative

#### *Provision*

11. Amendment number 73L, which has been agreed in the House of Lords, introduces a new section 29B to the Limited Partnerships Act 1907. In circumstances where a petition for winding up under section 28 of the Act (false statements: basic offence) in respect of a limited partnership is pending, 29B would require a general partner in a limited partnership who is aware or becomes aware of any of the circumstances listed in 29B(3), to notify the court to which the petition was presented.
12. The list in 29B(3) currently contains 7 circumstances and includes matters such as that a petition for sequestration of the limited partner's estate under the Bankruptcy (Scotland) Act 2016 is before a sheriff, and where a protected trust deed (within the meaning of that Act) is in force in respect of the limited partnership's estate. New section 29C provides that the Secretary of State or the Scottish Ministers may by regulations amend the list in section 29B(3).
13. If such regulations are made by the Secretary of State, the consent of the Scottish Ministers must be obtained.
14. Whether regulations are made by the Secretary of State or the Scottish Ministers, such regulations would be subject to the affirmative procedure.

#### *Committee consideration*

15. Generally, insolvency is reserved under Head C2 of schedule 5 to the Scotland Act 1998. That includes various aspects of winding up, such as the modes of and grounds for and the general legal effect of winding up as well as the persons who may initiate winding up. However, the process of winding up, including the person having responsibility for the conduct of a winding up or any part of it, the effect of winding up on diligence and avoidance and adjustment of prior transactions on winding up all fall under the exceptions to the reservation.
16. The Committee acknowledges that regulations made to amend the list in section 29B(3) would fall within the legislative competence of the Parliament. It therefore considers it appropriate that the Scottish Ministers would have such a power to amend the list in order that it remains up to date with any other legislation that may be enacted. It also considers that it is appropriate that the power is subject to the affirmative procedure since failure to comply with the section would be an offence under the Bill.
17. The Committee wrote to the Scottish Government to ask for more information about



the Secretary of State's concurrent power to make regulations under this power and the requirement to obtain the Scottish Ministers' consent before doing so. The Scottish Government confirmed that SI Protocol 2 in its current form will not apply to regulations made under this power as it does not appear to fall within an area of former EU competence. It stated that the protocol is currently under review and that the future scope of the protocol is on the agenda for that review. It also stated that it is hoped that the work being done on the review by Scottish Parliament and Scottish Government officials will make significant progress over the summer. Therefore, as it stands, although there is a requirement for the Secretary of State to obtain the consent of the Scottish Ministers before making such regulations within devolved competence, there is currently no process under SI Protocol 2 for the Parliament to scrutinise either the resulting regulations or the Scottish Ministers' decision to consent to the regulations being made by the Secretary of State.

18. **The Committee accepts the power conferred on the Scottish Ministers in principle and is content that its exercise would be subject to the affirmative procedure.**
19. **In relation to the concurrent power conferred on the Secretary of State, the Committee welcomes the consent requirement but notes that the Parliament will not have an opportunity to scrutinise the exercise of such a power within the scope of SI Protocol 2. It accepts that the power is relatively narrow but acknowledges that its exercise would affect the scope of a criminal offence in an area of devolved competence. The power is required because of the interaction the provision has with existing Scottish bankruptcy legislation which applies to Scottish limited partnerships. Its preference therefore would be that the Scottish Ministers exercise the power in order that the Parliament has an opportunity to scrutinise resulting regulations which fall within devolved competence.**
20. **The Committee welcomes the Scottish Government's commitment to reviewing the scope of SI Protocol 2 and considers that the Parliament should have an opportunity to scrutinise the Scottish Ministers' consent decision in relation to this power, should it be exercised by the Secretary of State.**

### **Lords amendment 73K – new section 29A to be inserted in the Limited Partnerships Act 1907**

**Power conferred on: Secretary of State**

**Power exercisable by: Regulations**

**Parliamentary procedure: Affirmative**

#### *Provision*

21. This amendment enables the Secretary of State to make regulations making provision about the winding up of a limited partnership under section 28 (false statements: basic offence) or section 29 (false statements: aggravated offence) of the 1907 Act that corresponds or is similar to any provision in the Insolvency Act 1986 or the Insolvency (Northern Ireland) Order 1989. Sections 28 and 29 of the

Act have been inserted by this Bill.

22. Before making regulations which relate to limited partnerships registered in Scotland, the Secretary of State must obtain the consent of the Scottish Ministers.
23. The regulation making power includes a Henry VIII power, meaning that such regulations may include provision amending, repealing or revoking provision made by or under an Act, whenever passed or made, although only to the extent of making corresponding provision as to that in the Insolvency Act 1986 or the Insolvency (Northern Ireland) Order 1989.
24. Regulations made under this power would be subject to the affirmative procedure.

*Committee consideration*

25. The Committee asked similar questions as detailed above in paragraph 17 about whether SI Protocol 2 would apply in relation to the exercise of this power. The Scottish Government stated its view that it would not. As noted above, the scope of that protocol is currently under review. The Committee considers that this power is limited in that it may only make provision which corresponds or is similar to that in legislation which currently applies across the United Kingdom in relation to the winding up of companies and is therefore content that such regulations could be made by the Secretary of State.

26. **The Committee welcomes the Scottish Government’s commitment to reviewing the scope of SI Protocol 2 and considers that the Parliament should have an opportunity to scrutinise the Scottish Ministers’ consent decision in relation to the exercise of this power.**

**Clause 166 – Power to apply Part 1 amendments to register of overseas entities with Amendment 77K**

**Power conferred on: Secretary of State**

**Power exercisable by: Regulations**

**Parliamentary procedure: Affirmative**

*Provision*

27. Clause 166 enables the Secretary of State to make amendments to the Economic Crime (Transparency and Enforcement) Act 2022 which correspond to any amendments made by the Bill to the provisions in the Companies Act 2006.
28. Amendment 77K, agreed at Lords Grand Committee, would require the Secretary of State to obtain the consent of the Scottish Ministers before making regulations that contain provision which would be within the legislative competence of the Scottish Parliament.
29. Regulations made by the Secretary of State under this power would be subject to the affirmative procedure.

*Committee consideration*

30. The UK Government states in its Delegated Powers Memorandum that the power is needed to ensure that changes made by the Bill to the 2006 Act can be mirrored in the corresponding provisions in the 2022 Act to maintain consistency between the two Acts.
31. The Scottish Government states in its LCM that such a power can be used to amend the Register of Overseas Entities provisions in the 2022 Act which place requirements on some forms of entities, the regulation of which is within devolved competence. Therefore, the Scottish Government states that this power could be used to make provision within the legislative competence of the Parliament.
32. The Committee considers that the scope of this power is very narrow, as it may only be used to replicate provision made within this Bill to ensure consistency between this Bill and the 2022 Act. It therefore considers that the Scottish Parliament has been sighted on the provisions which may form part of regulations made under this power. As noted above, SI Protocol 2 will not apply to regulations made under this power.
33. **The Committee welcomes the Scottish Government's commitment to reviewing the scope of SI Protocol 2 and considers that the Parliament should have an opportunity to scrutinise the Scottish Ministers' consent decision in relation to the exercise of this power.**

**Lords amendment 77L – new schedule 5A – Duty to deliver further information for transitional cases**

**Power conferred on: Secretary of State**

**Power exercisable by: Regulations**

**Parliamentary procedure: Negative**

*Provision*

34. Amendment 77L introduces new schedule 6 to the Economic Crime (Transparency and Enforcement) Act 2022 which will require overseas entities to deliver to the registrar further information about events occurring during the period beginning on 28 February 2022 and ending with 31 January 2023.
35. Paragraph 9(1) of new schedule 6 provides that the Secretary of State may by regulations provide that, for the purpose of any provision in the Schedule specified in the regulations, a person of a description so specified is not to be treated as a registrable beneficial owner of an overseas entity.
36. Regulations under this power would be subject to the negative procedure.

*Committee consideration*

37. The Scottish Government states in its LCM that this power could be used in relation to devolved matters. Therefore, it is requesting that an amendment is made in order that the Secretary of State must obtain the consent of the Scottish Ministers before making any such regulations which contain provision relating to devolved matters.

The LCM states that the Scottish Ministers are in discussions with the UK Government about this and that it is hoped that a resolution can be found.

38. The Scottish Government confirmed in its response that SI Protocol 2 will not apply to regulations made under this power as it does not appear to fall within an area of former EU competence. Therefore, if the Scottish Government is successful in its negotiations with the UK Government and an amendment is made to include a consent requirement, the Parliament will currently have no means under SI Protocol 2 of scrutinising the exercise of the power within devolved competence. The Committee acknowledges that the power may be exercised in relation to a mix of reserved and devolved matters and therefore considers it reasonable that the Secretary of State has a power to make uniform provision. The Committee's position, as agreed by the Committee in November 2022, in relation to powers in UK Bills is, in general terms, that:

(a) The Scottish Parliament should have the opportunity to effectively scrutinise the exercise of all legislative powers within devolved competence.

(b) Where such powers are exercised by UK Ministers in devolved areas, there is no formal means by which the Scottish Parliament can scrutinise such regulations or be notified that they had been laid before the UK Parliament.

(c) If such powers contain a requirement for the Scottish Ministers' consent when exercised within devolved competence, the Scottish Parliament can scrutinise the Scottish Ministers' consent decision.

The Committee will scrutinise powers conferred on UK Ministers not subject to a requirement for Scottish Ministers' consent, and may suggest matters for the lead committee to consider.

(d) As a minimum, powers when exercised by UK Ministers in devolved areas should be subject to the process set out in the [SI Protocol 2](#) where the power is within the scope of that protocol.

39. The Committee therefore suggests that the lead committee consider whether a consent requirement is appropriate in light of its consideration of the policy of the provision.

**40. The Committee highlights the power to the lead committee and notes that the power could be used to provide that a person of a certain description is not to be treated as a registrable beneficial owner of an overseas entity for the purpose of the requirement to provide further information. The Committee welcomes the Scottish Government's commitment to reviewing the scope of SI Protocol 2 and considers that the Parliament should have an opportunity to scrutinise the Scottish Ministers' consent decision in relation to this power, should a consent requirement be included in the final Bill.**

**Schedule 6: New section 131ZC(3) of Proceeds of Crime Act 2002 (POCA): Power to amend the definition of "cryptoasset service provider" for the purposes of the confiscation regime in Scotland**

**Power conferred on: Secretary of State**

**Power exercisable by: Regulations**

**Parliamentary procedure: Affirmative**

*Provision*

41. Paragraph 29 introduces new section 131ZC into POCA which provides definitions for “cryptoasset exchange provider” and “custodian wallet provider”.
42. Section 131ZC(5) provides that the Secretary of State may by regulations amend the definitions by regulations. The Secretary of State is required to consult with the Scottish Ministers before making such regulations.
43. Regulations made under this power will be subject to the affirmative procedure.

*Committee consideration*

44. The UK Government states in its DPM that the power is necessary as the technology associated with cryptoassets is rapidly evolving. It states that its aim is to prevent criminals from evading the powers conferred by this Bill by using technology modified so that it falls outside the definition in the legislation.
45. The Scottish Government is not seeking a consent requirement on this provision. The Parliament will not be privy under SI Protocol 2 to any consultation between the two governments and therefore will have no oversight as to how this power is exercised insofar as it relates to the forfeiture of devolved proceeds of crime. The Scottish Government stated in its response to the Committee that the Proceeds of Crime Act 2002 is largely a uniform scheme across the UK and it is desirable to ensure consistency across jurisdictions. It also states that a uniform approach across the UK ensures a swift and consistent response to changes in cryptoasset related technology. The Committee considers that the inclusion of such a power is for the purpose of ensuring such a swift and consistent response and therefore agrees that it is appropriate that this power is conferred on the Secretary of State, and that the Secretary of State is required to consult with the Scottish Ministers before exercising the power. It is content that a consent requirement does not apply in this case given that a change to the definitions of “cryptoasset exchange provider” and “custodian wallet provider” will not change the substance of the provision.

46. **The Committee considers that the power is acceptable in principle, and is content that the Secretary of State is required to consult with the Scottish Ministers before exercising such a power. It is also content that its exercise would be subject to the affirmative procedure.**

**Schedule 6: New sections 150A, 303Z20 and 303Z35 of Proceeds of Crime Act 2002 (POCA) : Power to amend the definition of “cryptoasset service provider” for the purposes of the confiscation regime in Scotland**

**Power conferred on: Secretary of State**

## **Power exercisable by: Regulations**

### **Parliamentary procedure: Affirmative**

#### *Provision*

47. Schedule 6 inserts new sections 150A, 303Z20 and 303Z35 into POCA which make similar provision as described in paragraphs 41 and 42 above in relation to the definitions of “cryptoasset” and “crypto wallet”.
48. Those provisions enable the Secretary of State to, by regulations, amend the definitions. The Secretary of State is required to consult with the Scottish Ministers before making such regulations.
49. Regulations made under this power will be subject to the affirmative procedure.

#### *Committee consideration*

50. As above, the Scottish Government is not seeking a consent requirement on these provisions. The Parliament will not be privy under SI Protocol 2 to any consultation between the two governments and therefore will have no oversight as to how this power is exercised insofar as it relates to the forfeiture of devolved proceeds of crime. The Scottish Government stated in its response to the Committee that the Proceeds of Crime Act is largely a uniform scheme across the UK and it is desirable to ensure consistency across jurisdictions. It also states that a uniform approach across the UK ensures a swift and consistent response to changes in cryptoasset related technology. As above, the Committee considers that the inclusion of such a power is for the purpose of ensuring such a swift and consistent response and therefore agrees that it is appropriate that this power is conferred on the Secretary of State, and that the Secretary of State is required to consult with the Scottish Ministers before exercising the power. It is content that a consent requirement does not apply in this case given that a change to the definitions of “cryptoasset” and “crypto wallet” will not change the substance of the provision.

51. **The Committee considers that the power is acceptable in principle and is content that the Secretary of State is required to consult with the Scottish Ministers before exercising such a power. It is also content that its exercise would be subject to the affirmative procedure.**

## **Schedule 7: New section 303Z42 of Proceeds of Crime Act 2002 (POCA)– Forfeiture order: supplementary**

### **Power conferred on: Secretary of State**

## **Power exercisable by: Regulations**

### **Parliamentary procedure: Affirmative**

#### *Provision*

52. Section 303Z42 provides that the Secretary of State may make regulations to make amendments to that section to make provision about the forfeiture of cryptoassets held in a crypto wallet that is subject to a crypto wallet freezing order. It includes the



power to make consequential amendments to the Chapter.

53. The Secretary of State is required to consult with the Scottish Ministers before making such regulations.
54. Regulations made under this power will be subject to the affirmative procedure.

*Committee consideration*

55. The UK Government states in its DPM that the power provides a contingency to enable the mechanism of forfeiture to be altered, should that become necessary in order to overcome technical barriers around the forfeiture of cryptoassets administered by a third party.
56. The Scottish Government states in its LCM that the power is potentially wide ranging and as currently drafted would allow the Secretary of State to legislate in a devolved area without the consent of the Scottish Ministers. It has therefore asked for an amendment to be made to provide for a consent mechanism. It explains in its response that the power may make provision more directly affecting the executive functions of Scottish Ministers than the other powers in this Part of the Bill, for example the realisation of cryptoassets following forfeiture, hence requesting a consent mechanism. It also states such regulations may impact on the Scottish court process.
57. As stated elsewhere in the paper, if the Scottish Government is successful in its negotiations with the UK Government and such an amendment is made, SI Protocol 2 is unlikely to apply to any such regulations made under this power. However, the Scottish Government has pointed out that it may apply in relation to proceeds of crime that are forfeited with a cross border dimension. If SI Protocol 2 does not apply, the Parliament would have no opportunity under that Protocol to scrutinise regulations making provision within its legislative competence, nor the Scottish Ministers' decision to consent to such regulations being made. The Committee acknowledges that the power may be exercised in relation to a mix of reserved and devolved matters and therefore considers it reasonable that the Secretary of State has a power to make uniform provision. The Committee reiterates its position as set out at paragraphs 38(a)-(d).
58. The Committee therefore suggests that the lead committee consider whether a consent requirement is appropriate in light of its consideration of the policy of the provision.

59. **The Committee highlights the power to the lead committee and notes that the power could be used to make alternative or supplementary provision about the forfeiture of assets subject to a crypto wallet freezing order than is currently set out in the Bill. The Committee welcomes the Scottish Government's commitment to reviewing the scope of SI Protocol 2 and considers that the Parliament should have an opportunity to scrutinise the Scottish Ministers' consent decision in relation to this power, should a consent requirement be included in the final Bill.**

**Schedule 7 – New section 303Z25 of Proceeds of Crime Act 2002 (POCA): Power to make regulations bringing into force a code of practice in relation to search powers**

## **conferred by new section 303Z21**

### **Power conferred on: Scottish Ministers**

#### **Power exercisable by: Order**

#### **Parliamentary procedure: Affirmative**

##### *Provision*

60. New section 303Z21 confers search powers on enforcement officers in relation to crypto-related items. Such powers are enforceable in relation to premises, vehicles and people. This makes similar provision in respect of crypto-related items as is currently provided for in POCA in respect of “listed assets”.
61. New section 303Z25 requires that the Scottish Ministers make a Code of Practice as to how such powers should be used proportionately and effectively.
62. The Scottish Ministers must lay a draft code of practice before the Parliament and consider any representations made about the draft. Scottish Ministers are thereafter required to bring the code of practice into force by order.
63. Such an order bringing the code of practice into force will be subject to the affirmative procedure.

##### *Committee consideration*

64. The Scottish Ministers are currently required to follow the above procedure in relation to other codes of practice required by POCA in relation to search powers. The UK Government’s DPM states that this is necessary as search powers are potentially intrusive and their use requires detailed guidance. It also states that the draft affirmative procedure is appropriate for the use of this power, given the sensitive nature of these powers and that the code will clarify the use of the powers against the public.
65. Given the conferral of new search powers by virtue of this Bill, it appears appropriate that equivalent provision is made in respect of the power to bring a code of practice about search powers in relation to crypto-related items.

66. **The Committee finds the power acceptable in principle, and that an Order made under it will be subject to the affirmative procedure.**

## **Lords amendment 84B - Fraud offences: supplementary**

### **Power conferred on: Scottish Ministers**

#### **Power exercisable by: Regulations**

#### **Parliamentary procedure: Affirmative**

##### *Provision*

67. Lords amendments 84A to 84G and 86B create a new ‘failure to prevent fraud’



offence which is committed when a 'large organisation' fails to prevent existing fraud offences from being committed by people associated with the organisation. 'Fraud offences' are defined in the provision as being listed in the schedule inserted by the amendment.

68. Amendment 86B provides a regulation making power to the Secretary of State to amend the list in the schedule by adding or removing an offence. 84B(2) provides that this power is exercisable by the Scottish Ministers, and not by the Secretary of State so far as it may be used to make provision that would be within the legislative competence of the Scottish Parliament.
69. Regulations under this power will be subject to the affirmative procedure.

#### *Committee consideration*

70. The Committee considers that it appears appropriate that the Scottish Ministers have the power to amend this list in relation to devolved fraud offences, in order that the legislation is kept consistent with any changes to the law on fraud.

71. **The Committee finds the power acceptable in principle and that its exercise will be subject to the affirmative procedure.**

#### **Lords amendment 84C - Failure to prevent fraud: large organisations**

##### **Power conferred on: Secretary of State**

##### **Power exercisable by: Regulations**

##### **Parliamentary procedure: Affirmative**

#### *Provision*

72. Lords amendment 84C provides a definition for 'large organisation', and a power for the Secretary of State to make amendments to the definition by regulations.
73. Regulations made under this power will be subject to the affirmative procedure.

#### *Committee consideration*

74. The Scottish Government notes in its LCM that it has written to the UK Government to ask that an amendment is made in order that a consent requirement is included in respect of this power, although it is not recommending withholding consent in respect of this provision.
75. The Scottish Government confirmed in its response that SI Protocol 2 will not apply to regulations made under this power as it does not appear to fall within an area of former EU competence. Therefore, if the Scottish Government is successful in its negotiations with the UK Government and an amendment is made to include a consent requirement in respect of the power, the Parliament will have no process under the protocol for scrutinising the exercise of the power within devolved competence. The Scottish Government explained in its response that it is not recommending withholding legislative consent to this provision of the Bill if such a consent requirement is not agreed to because it considers it beneficial that the new

offence will operate in Scotland, so that the benefits of protection for victims can be delivered in Scotland as well as elsewhere in the UK. The Committee acknowledges that the power may be exercised in relation to a mix of reserved and devolved matters. The Committee reiterates its position as set out at paragraphs 38(a)-(d).

76. The Committee therefore suggests that the lead committee consider whether a consent requirement is appropriate in light of its consideration of the policy of the provision.

**77. The Committee highlights the power to the lead committee and notes that the power could be used to require more organisations to apply new fraud prevention measures. The Committee welcomes the Scottish Government's commitment to reviewing the scope of SI Protocol 2 and considers that the Parliament should have an opportunity to scrutinise the Scottish Ministers' consent decision in relation to this power, should a consent requirement be included in the final Bill.**

### **Clauses 191 (Commencement) and 192 (transitional provision)**

**Power conferred on: Secretary of State, Scottish Ministers, Department of Justice in Northern Ireland**

**Power exercisable by: Regulations**

**Parliamentary procedure: No procedure**

#### *Provision*

78. Amendments have been lodged but not yet considered by the Lords regarding commencement, transitional and savings provisions. The amendments would provide a power to the Secretary of State, to bring into force the amendments to Schedules 7 and 8 of POCA (civil recovery and forfeiture of cryptoassets) on different dates in England, Scotland and Northern Ireland. The provision would also provide a power to the Scottish Ministers to commence provisions under Part 2 of Schedule 6 and Clause 167 relating to confiscation arrangements under Part 3 of POCA. Scotland has its own confiscation scheme set out under Part 3. The Scottish Ministers would be required to consult with the Secretary of State before making such regulations.

79. An amendment has also been lodged to enable the Scottish Ministers to make transitional or saving regulations in connection with the coming into force of these provisions.

80. As is usual, commencement regulations are not subject to any parliamentary procedure.

#### *Committee consideration*

81. The Civil Recovery provisions of POCA apply on a UK wide basis and therefore it is appropriate that the Secretary of State has the power described above to make regulations bringing those provisions into force across the UK and on an

appropriate date in Scotland. It also appears appropriate that the Scottish Ministers have a power to commence the provisions of the Bill which relate to the scheme that operates only in Scotland.

82. Although those amendments have not yet been considered by the Lords, it is considered likely that they will form part of the Bill.

- 83. If such amendments are agreed, the Committee find the powers appropriate in principle and is content that no parliamentary procedure will apply, as is normal for commencement regulations.**

