

Supplementary Legislative Consent Memorandum

Economic Crime and Corporate Transparency Bill

Background

1. This supplementary Legislative Consent Memorandum (LCM) has been lodged by the Deputy First Minister and Cabinet Secretary for Finance, Shona Robison MSP, under Rule 9B.3.1(c) of the Parliament's Standing Orders. The Economic Crime and Corporate Transparency Bill ("the Bill") was introduced in the House of Commons on 22 September 2022. The latest version of the Bill, Explanatory Notes and other supporting documents can be found at: <https://bills.parliament.uk/bills/3339>

2. There have been two previous LCMs in relation to this Bill. The original LCM (LCM-S6-35) was lodged on 5 May 2023, and a supplementary LCM (LCM-S6-35a) was lodged on 19 June 2023. A legislative consent motion covering both was unanimously agreed by the Scottish Parliament on 28 June 2023.

3. The Bill is the second part of a legislative package to prevent the abuse of UK corporate structures and to tackle economic crime. It extends to England and Wales, Scotland and Northern Ireland. It follows on from the Economic Crime (Transparency and Enforcement) Act 2022, which received Royal Assent on 15 March 2022. That Act was subject to an expedited LCM process, with an LCM (LCM-S6-16) lodged in the Scottish Parliament on 4 March 2022, and agreed unanimously on 9 March 2022. Further detail on the objectives and provisions of the Bill can be found in the original and supplementary LCMs.

Provisions which relate to Scotland requiring an LCM

4. The areas of law covered by the Bill are largely reserved, but there are a number of areas where legislative consent is required for devolved matters. These are detailed in the original and first supplementary LCMs.

Register of Overseas Entities (ROE)

5. Since the original and first supplementary LCMs were lodged and the legislative consent motion agreed to on 28 June 2023, a further ROE provision has been added to the Bill. This provision relates to nominees of registrable beneficial owners, and was tabled by the UK Government and voted through at the Third Reading Stage on 4 July 2023 (Lords amendment number 111).

6. This ROE provision is designed to address anti-avoidance measures and means that where an overseas entity holds certain interests in land as a nominee for another person that person is treated as a beneficial owner for the purposes of ROE. It also deals with less direct relationships. This is designed to address a loophole whereby a beneficial owner could make use of a nominee to avoid the requirement to register as a beneficial owner on the ROE.

7. A number of additional ROE provisions designed to address anti-avoidance measures and loopholes, especially in relation to trusts, are already contained in the Bill and were included in the aforesaid LCMs.

Reasons for recommending legislative consent

8. As with the previous ROE provisions designed to address anti-avoidance measures and loopholes, this provision requires the consent of the Scottish Parliament as it extends to types of entity whose regulation is within the competence of the Scottish Parliament. Scottish Ministers support measures to close anti-avoidance loopholes and increase transparency and recommend consent to this provision.

9. This amendment is not relevant to the Scottish Government's policy to maintain alignment with the EU because it is provision which is not in an area formerly within the competence of the EU. The provision could not be considered to jeopardise the attainment of any of the EU's objectives.

Consultation

10. There has been no specific consultation since the aforesaid LCMs were lodged on 5 May 2023 and 19 June 2023 respectively.

Financial implications

11. There are no significant financial implications.

Conclusion

12. The Scottish Government remains supportive of the intent of the Bill and the provision made by the ROE amendment discussed above, and believes that engagement has been good overall between officials.

13. It is still possible that further amendments may be forthcoming during the final stages of "ping-pong" and shortly before Royal Assent. It is not yet certain whether those, or any further amendments will require a further supplementary legislative consent memorandum. The Register of Overseas Entities amendment is agreed to and rather than hold off for the resolution of other amendments, the Scottish Government thought best to advance this supplementary legislative consent motion now in relation to the Register of Overseas Entities amendment. This Bill has undergone a significant number of amendments since it was introduced and that remains the case in the final "ping-pong" stages.

Draft Legislative Consent Motion

14. The Scottish Government is supportive of the purpose of the Economic Crime and Corporate Transparency Bill. This is aligned to key aspects of the Scottish Government's vision for corporate transparency. The Bill is technical and the policy content uncontroversial. The Scottish Government's draft legislative consent motion is:

"That the Parliament agrees that the relevant provisions contained within the UK Economic Crime and Corporate Transparency Bill, introduced in the House of Commons on 22 September 2022, and subsequently amended in relation to the Register of Overseas Entities, in so far as these matters fall within the legislative competence of the Scottish Parliament or alters the executive competence of Scottish Ministers, should be considered by the UK Parliament".

Scottish Government
October 2023

This Supplementary Legislative Consent Memorandum relates to the Economic Crime and Corporate Transparency Bill (UK legislation) and was lodged with the Scottish Parliament on 24 October 2023

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