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Delegated Powers and Law Reform Committee

Financial Services and Markets Bill (UK Parliament legislation) – delegated powers exercisable within devolved competence, with reference to LCM-S7-8 and LCM-S7-8a.

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Delegated Powers and Law Reform Committee

To consider and report on the following —
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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Introduction

1. The Scottish Government lodged a Legislative Consent Memorandum ("LCM") in relation to the Financial Services and Markets Bill on 25 June 2026 and a Supplementary Legislative Consent Memorandum ("sLCM") on 6 October 2026 because the Bill makes provision applying to Scotland for purposes within the legislative competence of the Parliament.

2. The LCM and sLCM are being considered under the terms of the Committee's wider remit under Rule 6.11.1(b) of the Standing Orders, which 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 lead committee for the LCM is the Criminal Justice Committee.

The Bill

4. The Bill was introduced on 19 May 2026 and completed its third reading in the House of Lords, where it originated, on 15 September 2026. As the Bill is still progressing through the UK Parliament, it remains subject to amendment.

5. The purpose of the Bill is to modernise how the financial services sector is regulated, supporting it to grow, lend more to businesses and support innovation, while maintaining high standards of consumer protection, regulation and oversight.

6. The Bill seeks to achieve this by modernising consumer protection and redress arrangements, consolidating and streamlining aspects of the regulatory framework, reducing unnecessary administrative burdens on firms, supporting lending and investment, strengthening the framework for tackling financial crime, protecting access to essential banking services, and updating the legislative framework relating to cryptoassets.

7. The majority of the Bill concerns the regulation of financial services and markets, which is largely a reserved matter. However it also amends the Proceeds of Crime Act 2002 ("POCA"), which relates to a complex mix of reserved and devolved matters. The LCM explains that although the proceeds of crime are generally devolved, POCA also provides for confiscation and civil recovery in relation to reserved matters such as drug trafficking and money laundering.

8. In Annexe A to the Explanatory Notes of the Bill, the UK Government set out its view that clause 49 (previously numbered clause 46) requires the legislative consent of the Scottish Parliament. The Scottish Government and the UK Government consider that clause 49 can be exercised within devolved competence as it confers a delegated power on UK Ministers or the Treasury to amend various provisions in POCA. Insofar as it makes provision in relation to the devolved aspects of POCA, this power can be exercised within devolved competence.

9. The Scottish Government supports the overall intent of the Bill's provisions. Since the LCM was lodged, the Scottish Government has engaged in further discussions with the UK Government regarding the role of the Scottish Ministers in relation to the process of making changes to cryptoasset confiscation provision in other Acts. The Scottish Government notes in the sLCM that it is satisfied with assurances given by the UK Government, as explained further below.

10. On this basis, the Scottish Government recommends that the Parliament gives its consent to the relevant provisions in the Bill.

Delegated Powers

11. The UK Government has published a Delegated Powers Memorandum ("DPM") to accompany the Bill, which identifies the provisions of the Bill that confer powers to make delegated legislation. The DPM also explains in each case why the power has been taken and explains the nature of, and the reason for, the parliamentary procedure selected.

12. As is standard practice for UK bills, the Scottish Government has not published a DPM. Its position on the relevant clauses is set out in the LCM and the sLCM.

Review of relevant powers

Clause 49(1) (previously clause 46): Power to amend provisions about cryptoassets

Power conferred on: The Treasury or the Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Affirmative procedure

Provision

13. Clause 49(1) confers a delegated power on the Treasury or the Secretary of State to amend by regulations cryptoasset confiscation, seizure and forfeiture provisions in the POCA, provisions in the Anti-terrorism, Crime & Security Act 2001 ("ATCSA") and provisions in the Terrorism Act 2000 ("TACT"). In addition, regulations made under the power may also make consequential, incidental, transitional and saving provision which may, as a result of subsection (4), amend or repeal provisions in other primary legislation, beyond POCA, ATCSA and TACT.

14. The power may be exercised to amend the relevant provisions in POCA, ATCSA and TACT so that those provisions apply to cryptoassets, or to cryptoasset service providers, to which they would otherwise not apply. The relevant provisions in POCA, ATCSA and TACT can also be amended to reflect developments in technology, the market for cryptoassets or cryptoasset service providers or the regulation of such assets or service providers.

15. Clause 49(2) contains an illustrative list of amendments which may be made under the power, including to apply the relevant provisions to cryptoassets that are transferred, stored or traded in particular ways; cryptoasset service providers that provide particular services, or provide services or control cryptoassets in particular ways; and cryptoasset service providers that have a particular connection to the United Kingdom. The power is not limited to being exercised in those ways, but the list provides an indication of the intended use of the power.

16. Under clause 49(5), before making regulations which amend Part 3 or 5 of POCA, the Treasury or the Secretary of State must consult the Scottish Ministers. There is no such requirement for consultation where regulations amend other primary legislation to make consequential, incidental, transitional or saving provision, under clause 49(3) and (4).

17. Regulations made under this power are subject to the affirmative procedure.

Committee consideration

18. The DPM notes that the power conferred under clause 49 is necessary as cryptoassets are increasingly being used to facilitate money laundering and terrorist financing. The delegated power enables definitions in the legislation that have become outdated, and which cannot currently be amended by secondary legislation, to be updated so that the seizure and forfeiture powers can be used effectively. The DPM states that the power is tightly focused on enabling updates of a technical nature and cannot be used to create any new power, offence or liability,

or otherwise make any new provision of substantive effect.

19. The DPM also explains that clause 49 is intended to provide a mechanism for updating the legislative framework relating to cryptoassets in response to future developments. In connection with this, clause 51 repeals a number of existing powers conferred on the Secretary of State to amend cryptoasset-related provisions by secondary legislation, replacing them with the broader power conferred by clause 49.

20. The Scottish Government noted in the LCM that POCA relates to a complex mix of devolved and reserved matters, and it is desirable for the proceeds of crime regime to remain consistent across the UK jurisdictions. The Scottish Government was supportive of the intent of these provisions, however, before legislative consent could be recommended, it sought to ensure that the Bill provided an appropriate role for the Scottish Ministers where regulations make changes to cryptoasset confiscation in Acts (other than POCA) applying to Scotland and relating to devolved matters.

21. The sLCM notes that further discussions have taken place and the UK Government provided assurances that the Scottish Ministers would be consulted on substantive changes provided for by this power insofar as it applies to Scotland and relates to devolved matters. The Scottish Government notes that insofar as regulations amend or repeal other Acts under clause 49(4), there is no express requirement to consult the Scottish Ministers. However, given the assurances provided by the UK Government and in light of the highly circumscribed nature of the power, it is satisfied that the devolution settlement is being suitably respected and recommends that the Parliament gives its consent.

22. The Committee considers that whilst clause 49 confers a broad power to amend primary legislation, it is similar to a number of existing powers which are to be repealed. The scope of the principal power is limited in that amendments may only be made to the specified provisions of POCA, ATCSA and TACT, and only for the purposes of enabling technical updates to the legislative framework relating to cryptoassets. Where the regulations amend other primary legislation (under clause 49(3) and (4)), the nature of the possible amendments is narrowly constrained, as they can only be ancillary to amendments to the core cryptoassets provisions. The Committee considers it reasonable for the power to be capable of amending primary legislation because the cryptoasset seizure and forfeiture regime is contained within highly complex legislation across three principal Acts which may need to be adjusted at speed to enable the authorities to respond to developments associated with serious and organised crime. The Committee also considers that the affirmative procedure is appropriate, as it will be used to amend primary legislation.

23. In relation to conferral of the power on the Secretary of State alone, the Committee notes that POCA contains a mix of reserved and devolved matters, not all of which could be legislated for by the Scottish Ministers. The requirement to consult the Scottish Ministers before amendments are made to Parts 3 or 5 of POCA provides a safeguard where the Treasury or the Secretary of State exercises the power within legislative competence. The Committee draws the scrutiny implications of the powers being exercised by the Secretary of State to the attention of the Criminal Justice Committee, to enable it to take a view on the appropriateness of regulations being made by UK statutory instrument.

24. **The Committee is content with delegation of the power in principle and with the choice of the affirmative procedure.**

25. **The Committee also draws the following to the Criminal Justice Committee's attention:**

- **Only the Treasury or the Secretary of State can exercise the power within the Scottish Parliament's legislative competence.**
- **Regulations will be laid before and scrutinised by the United Kingdom Parliament only.**
- **The Treasury or the Secretary of State must consult with the Scottish Ministers before making regulations which amend Parts 3 or 5 of the Proceeds of Crime Act 2002.**
- **The regulations will fall within the scope of the UKSI Protocol and will be notified to the Scottish Parliament only after becoming law.**

