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Justice Committee Comataidh a' Cheartais

Supplementary Legislative Consent Memorandum on the Criminal Finances Bill



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Justice Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Justice.



<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/justice-committee.aspx>



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Background

1. The [Criminal Finances Bill](#) is a UK Government Bill which was introduced in the House of Commons on 13 October 2016. The [Explanatory Notes](#) accompanying the Bill state that the Bill seeks to make the legislative changes necessary to give law enforcement agencies, and partners, capabilities and powers to recover the proceeds of crime, tackle money laundering and corruption, and counter terrorist financing.
2. The Bill makes provision applying to Scotland for certain purposes which are within the legislative competence of the Scottish Parliament. It also makes provision which alters the executive competence of Scottish Ministers. This makes it a "relevant" Bill under [Chapter 9B](#) of the Standing Orders of the Scottish Parliament and consequently requires the consent of the Scottish Parliament. Accordingly, the Cabinet Secretary for Justice lodged a [Legislative Consent Memorandum](#) (LCM) on the Bill on 22 November 2016. The LCM identified a number of relevant provisions which related to the Proceeds of Crime Act 2002 (POCA) and the Anti-terrorism, Crime and Security Act 2001.

Justice Committee scrutiny of original LCM

3. The LCM was referred to the Justice Committee. At its meeting on [13 December 2016](#), the Committee agreed to issue a call for evidence and decide what further scrutiny, if any, to undertake in light of the submissions received. The Committee received four submissions. These submissions did not raise any significant concerns about the relevant provisions in the Bill.
4. The Committee therefore made a short report to Parliament, recommending that the Scottish Parliament agree to a legislative consent motion on the Bill. The report was published on [2 February 2017](#). That report contains further detail on the relevant provisions in the Bill considered by the Committee.
5. A legislative consent motion was lodged on [8 February 2017](#) and agreed to by the Scottish Parliament on [2 March 2017](#).

Supplementary Legislative Consent Memorandum

6. The Justice Committee was informed during its scrutiny of the original LCM that there was the possibility of amendments being tabled that would introduce further relevant provisions into the Bill, therefore requiring a supplementary LCM to be lodged. (See letters from the Cabinet Secretary for Justice to the Convener dated [20 January](#) and [24 February 2017](#)).
7. Such amendments have now been tabled, with some agreed to at Committee Stage in the House of Lords. Others are due to be considered at Report Stage in the House of Lords on 25 April 2017. A [supplementary LCM](#) was therefore lodged by the Cabinet Secretary for Justice on 30 March 2017. The supplementary LCM provides further information on the amendments which introduce new relevant provisions into the Bill. It sets out that these amendments largely build on, and make further provision in consequence of, the relevant provisions of the Bill covered by the original LCM.
8. The supplementary LCM was referred to the Justice Committee. A legislative consent motion should not normally be lodged until the lead committee has reported on the LCM. However, the tight timetable for the Bill at Westminster, exacerbated by the decision taken there to hold an early general election, meant that a motion was lodged by the Scottish Government on 24 April 2017, in advance of this report. The motion is set out at Annex A. The Committee understands that the Scottish Parliament is due to consider the motion shortly after the publication of this report, at Decision Time on 25 April 2017.

Delegated Powers and Law Reform Committee scrutiny

9. Some of the amendments tabled at Westminster confer powers to make subordinate legislation on Scottish Ministers. The Delegated Powers and Law Reform (DPLR) Committee therefore considered the supplementary LCM at its meeting on 25 April 2017 and subsequently published its [report](#). The DPLR Committee indicated that it was content with the amendments to the Bill which would delegate powers to Scottish Ministers. It did, however, consider that it was a matter of concern that the Scottish Parliament had not had a reasonable amount of time to fully scrutinise the amendments.

Justice Committee scrutiny

10. At its meeting on 25 April 2017, the Committee took evidence from the Cabinet Secretary for Justice and Scottish Government officials on the amendments to the Bill covered by the supplementary LCM.
11. The Cabinet Secretary told the Committee that the Bill had always had a tight legislative timetable, and that this had been exacerbated by the decision to call an

General Election for the 8 June 2017. He said that while this may be "unsatisfactory", the Scottish Government was keen to ensure that the provisions in the Bill applied in Scotland and therefore supported the supplementary LCM being agreed within the accelerated timescale and in advance of the dissolution of UK Parliament.

12. The Cabinet Secretary stated that the Scottish Government supported the intention of the Bill, namely to strengthen the capabilities and powers that law enforcement agencies and partners have to recover the proceeds of crime, tackle money laundering and corruption, and counter terrorist financing.
13. The Cabinet Secretary explained that the supplementary LCM sets out relevant amendments that have been tabled since his letter to the Committee on 24 February 2017. He confirmed that the "possible amendment to clause 51 (now clause 53): power to make consequential provision" referred to at paragraph 21 of the supplementary LCM had been lodged since the publication of the supplementary LCM and is due to be considered in the House of Lords on 25 April 2017. In addition, amendments to Part 10 of POCA around information sharing, which were referred to in the Cabinet Secretary's letter of 24 February, have been expanded to include information sharing about two additional aspects of civil recovery - recovery of listed assets and forfeiture of bank accounts. These amendments also make it clear that POCA-related information can be shared with HMRC and the Financial Conduct Authority.
14. The Cabinet Secretary told the Committee that these amendments would strengthen and improve the recovery of the proceeds of crime.
15. In response to a question on the "Magnitsky" amendment (which was agreed to by the House of Commons on 21 February and is now contained in clause 12 of the Bill), the Cabinet Secretary explained that this would allow for proceedings to be brought against an individual living in Scotland, or elsewhere in the UK, to pursue assets which may be associated with breaches of human rights in another country. He told the Committee that this provision did not depend on co-operation from other countries; courts would make determinations on the basis of information about assets held in Scotland or elsewhere in the UK. The Crown Office and Procurator Fiscal Service, as well as Police Scotland, would use a range of information to put together a case and it would then be for the Crown Office to decide how to proceed. Linda Hamilton, a Scottish Government official, told the Committee that the provisions of the Bill on Unexplained Wealth Orders would allow further investigation and strengthen powers if, for example, another country is not willing to share information. She confirmed that these powers were civil powers and did not require a criminal conviction. (The Committee notes that the legislative consent motion that the Scottish Parliament agreed to on 2 March 2017 is considered to include consent to legislate in this area: it is not an issue covered in the supplementary LCM).
16. One relevant amendment set out at paragraph 17 of the supplementary LCM provides for compensation to be paid if property is wrongly frozen in connection with an Unexplained Wealth Order. The Cabinet Secretary told the Committee that this was similar to existing provision in POCA. The individual would have to show the loss suffered and a serious default by the Crown Office or Scottish Ministers when applying for an interim freezing order. He was not able to confirm how much the Scottish Government typically paid in compensation. Linda Hamilton told the

Committee that the existing compensation provisions in POCA were rarely used. It was for the courts to decide whether compensation was appropriate, and the fact that legitimate property was wrongly frozen did not in itself mean that compensation would be paid.

17. In response to a question on the amendment set out at paragraph 18 of the supplementary LCM (which expands the definition of cash that can be seized and forfeited under POCA to include betting slips), the Cabinet Secretary told the Committee that individuals involved in this type of criminality would always seek to find ways to circumvent the provisions in POCA. He explained that Criminal Finances Bill already contained provision extending the definition of cash to casino chips. The former Lord Advocate had identified the use of betting slips as a way to circumvent POCA as an area of growing concern. The Scottish Government had raised this issue with the UK Government and the amendment would assist in closing this loophole.
18. On the accelerated timetable for the Bill, the Cabinet Secretary confirmed that he had been assured by the UK Government that the Bill would be completed before the dissolution of the UK Parliament. However, he told the Committee that it had been "very difficult" to deal with the Bill in light of the constrained timetable. He commented that he "would certainly not hold the process up as an example of how things should be done between the two Parliaments". Nonetheless, he encouraged the Committee to support the supplementary LCM because the provisions being taken forward that require the supplementary LCM would be "very useful" to law enforcement agencies in Scotland.

19. The Committee has previously recommended that the Scottish Parliament approve a legislative consent motion on the Criminal Finances Bill. The Committee considers that the amendments covered by the supplementary LCM largely build on, and make further provision in consequence of, the relevant provisions of the Criminal Finances Bill covered by the original LCM.
20. The Committee therefore recommends that the Scottish Parliament approves the legislative consent motion on the Criminal Finances Bill, lodged by the Scottish Government on 24 April 2017.
21. However, the Justice Committee agrees with the Delegated Powers and Law Reform Committee that it is a matter of concern that the Scottish Parliament has not had a reasonable amount of time to fully scrutinise the amendments.

Annex A - Legislative consent motion

Motion S5M-05286, in the name of Michael Matheson:

- ” That the Parliament agrees that provisions of the Criminal Finances Bill, introduced in the House of Commons on 13 October 2016, relating to Unexplained Wealth Orders, the seizure and forfeiture of cash in the form of betting receipts, discharged confiscation orders, the Civil Jurisdiction and Judgments Act 1982 and powers to make consequential provision, so far as these matters fall within the legislative competence of the Scottish Parliament or alter the executive competence of the Scottish Ministers, should be considered by the UK Parliament.

