

# Supplementary Delegated Powers Memorandum – Economic Crime and Corporate Transparency Bill

1. This memorandum, supplementary to the Delegated Powers Memorandum published on 31 January 2023 and the supplementary memoranda published on the 21 March 2023, 19 April 2023, and 13 June 2023 has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Economic Crime and Corporate Transparency Bill (“the Bill”).
2. The Government tabled amendments to the Bill on 20 June 2023 which introduce a further delegated power. This memorandum explains this power, why it is being taken, and the reason for the procedure being selected.

## **Identification doctrine: power to amend Schedule 10A (Criminal Liability of Bodies: Economic Crimes)**

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

*Power exercised by:* regulations made by statutory instrument by the Secretary of State, Henry VIII

*Parliamentary procedure:* draft affirmative procedure in the UK Parliament for regulations made by the Secretary of State; affirmative procedure in the Scottish Parliament for regulations made by the Scottish Ministers; statutory rule laid before and approved by the Northern Ireland Assembly in the case of regulations made by the Department of Justice in Northern Ireland.

## Context and Purpose

3. The new Schedule 10A: Criminal Liability of Corporate Bodies: Economic Crimes sets out a list of corporate liability (identification doctrine) related “base” offences to which the offence introduced by the Government amendment applies. The power will enable the list of base offences under Schedule 10A to be amended by regulations. The power has been tightly drafted with a narrow scope so that only new offences can be added that are in scope of economic crime. Economic crime has no set definition but we would expect offences to be added that are similar to the offences already contained in the schedule.

## Justification for making the power

4. Enabling the relevant list of base offences to be amended and updated using a Henry VIII power enables the identification doctrine offence (introduced by the Government amendment) to remain up to date with emerging criminal threats.

If evidence emerges that an offence that is omitted from the list that is being committed by corporate bodies to commit harm, the secondary power can introduce the offence so that the corporate can be prosecuted. On the other hand, if there is an offence on the list that lacks evidence of corporate involvement, the list can be amended to remove the offence.

5. The Secretary of State may from time to time restate Schedule (Criminal liability of bodies: economic crimes) as amended by virtue of subsections (1) to (3) (without changing the effect of the Schedule). This is in order to maintain clarity in how the schedule is read for instance, to avoid confusing numbering or ensure clarity on how amendments operate across the devolved administrations.

#### Justification for the procedure

6. Regulations under this clause will be subject to draft affirmative procedure. This is appropriate given that offences added to the schedule will change how a corporate body is liable, and criminally prosecuted, for conducting a criminal offence. The schedule only grants the power to amend the list of economic crimes. Economic crime has no set definition, but we would expect offences to be added that are similar to the offences already contained in the schedule.