

ECONOMIC CRIME (TRANSPARENCY AND ENFORCEMENT) BILL

AMENDMENT TO BE MOVED AT COMMITTEE STAGE

In clause 13, page 9, line 27

Leave out “or, in Scotland, confidentiality of communications,”

Effect

This amendment would remove the reference to confidentiality of communications in relation to Scotland in connected with disclosure of information.

Reason

Clause 13 provides for the service of an information notice requiring provision of details by an individual or legal entity.

The clause provides an exemption for “any information in respect of which a claim for legal professional privilege or, in Scotland, confidentiality of communications, could be maintained in legal proceedings” (clause 13(4)).

While this formulation of words appears in other legislation, we consider that the reference to “confidentiality of communications” is outdated and potentially confusing. What was once termed ‘confidentiality of communications’ is increasingly referred to as ‘legal professional privilege’ in practice and in other legislation, for example the Criminal Finances Act 2017, schedule 2.

The concept of legal professional privilege is well-recognised in Scots law and the Supreme Court in the case of *R (on the application of Prudential plc and another) v Special Commissioner of Income Tax and another*¹ indicated that the law of privilege in Scotland is substantially the same as in England.

In order to ensure clarity in the law and consistency of description, we consider it is appropriate to remove the reference to “confidentiality of communications”.

¹ [2013] UKSC 1