

## **Economic Crime and Corporate Transparency Bill Day 2 - (Lords) Report Stage Amendments**

In the wake of Russia's full-scale invasion of Ukraine, the Economic Crime and Corporate Transparency Bill is a crucial contribution to improving the UK's armoury for tackling dirty money. However, key gaps remain in the Bill. The following amendments, listed in the order of expected proceedings for the second day of Report Stage in the House of Lords (27<sup>th</sup> June), are supported by our working group.

The full text of the amendments can be found in an Annex at the end of this document.

### **Report Stage (Day 2) – Tuesday 27<sup>th</sup> June**

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#### **1) 'Failure to Prevent' offences / AFTER CLAUSE 194 / LORD GARNIER**

**Alongside the government's new identification doctrine amendment which we strongly welcome, this amendment tightens and enhances the government's new "failure to prevent" fraud offence, by:**

**Including a failure to prevent money laundering offence.** This in effect brings forward the power to create this offence which is already in the current government amendment, and puts it in primary rather than secondary legislation. Including this offence would help bring the UK in line with emerging best practice and allay concerns expressed by international bodies that the UK's prosecution of high-end money laundering is not commensurate with its risk profile. For further details, see Spotlight on Corruption's briefing.<sup>1</sup>

**Removing the exemption for SMEs.** The amendment creates instead a provision for the Secretary of State to issue specific guidance for SMEs, particularly for micro-enterprises, on what prevention procedures are reasonable for them to have to avoid disproportionate burden on the sector. For more details on the serious problems posed by the SME carve out, please see the joint briefing from Spotlight on Corruption and Cifas.<sup>2</sup>

**Ensuring individual liability for senior managers if they fail to take reasonable steps to prevent fraud or money laundering.** UK senior executives face very little prospect of criminal or civil penalties when companies they oversee and manage engage in economic crime. However, ensuring individuals in senior management are held to account where there is corporate wrongdoing has long and widely been regarded as critical to preventing corporate crime. For more details, see Spotlight on Corruption's briefing.<sup>3</sup>

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<sup>1</sup> <https://www.spotlightcorruption.org/wp-content/uploads/2023/04/Spotlight-on-Corruption-briefing-on-Corporate-Liability-Reform-for-economic-crime.pdf>

<sup>2</sup> <https://www.spotlightcorruption.org/wp-content/uploads/2023/05/QA-on-FTP-for-fraud.pdf>

<sup>3</sup> <https://www.spotlightcorruption.org/wp-content/uploads/2023/04/Spotlight-on-Corruption-briefing-on-Corporate-Liability-Reform-for-economic-crime.pdf>

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## 2) Cost-capping / AFTER CLAUSE 202 / LORD AGNEW OF OULTON

**This amendment extends cost-caps beyond Unexplained Wealth Orders to all civil recovery cases involving economic crime, while retaining robust safeguards for improper action taken by authorities.**

The high costs law enforcement agencies can face when trying to recover assets from deep-pocketed criminals and kleptocrats creates a chilling effect on their appetite to take on difficult and high-value cases.

The extension of a new costs regime to all of Part 5 in POCA in cases of economic crime would encourage law enforcement bodies to act ambitiously but also reasonably and in the interests of justice when bringing civil recovery cases.

This measure has the potential to ensure significantly more stolen assets and proceeds of fraud and corruption are recovered in line with government commitments made in the new Economic Crime Plan 2023-26. For more details on this amendment, please see Spotlight on Corruption's briefing.<sup>4</sup>

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### Annex: Full text of Amendments

#### 1) Failure to Prevent fraud and money laundering<sup>5</sup>

Schedule 11

Page 343, line 5, at end insert—

*“Money laundering offences*

- 7 An offence under the following provisions of the Proceeds of Crime Act 2002—
- (a) section 327 (concealing etc);
  - (b) section 328 (arrangements);
  - (c) section 329 (acquisition, use and possession).”

After Clause 194

Insert the following new Clause—

#### **“Failure to prevent fraud and money laundering**

(1) A relevant body is guilty of an offence if a person who is associated with the body (“the associate”) commits a fraud or money laundering offence intending to benefit (whether directly or indirectly)—

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<sup>4</sup> <https://www.spotlightcorruption.org/wp-content/uploads/2023/04/Enhancing-law-enforcement-efforts-on-asset-recovery.pdf>

<sup>5</sup> <https://bills.parliament.uk/publications/51799/documents/3651>

(a) the relevant body, or

(b) any person to whom, or to whose subsidiary, the associate provides services on behalf of the relevant body.

(2) The relevant body is not guilty of an offence under subsection (1)(a) where the conduct underlying the offence was intended to cause harm to the body.

(3) It is a defence for the relevant body to prove that, at the time the relevant offence was committed—

(a) the body had in place such prevention procedures as it was reasonable in all the circumstances to expect the body to have in place, or

(b) it was not reasonable in all the circumstances to expect the body to have any prevention procedures in place.

(4) In subsection (3) “prevention procedures” means procedures designed to prevent persons associated with the body from committing fraud or money laundering offences as mentioned in subsection (1).

(5) A “fraud or money laundering offence” is an act which constitutes—

(a) an offence listed in Schedule 11 (failure to prevent fraud: fraud offences) (a “listed offence”), or

(b) aiding, abetting, counselling or procuring the commission of a listed offence.

(6) For the purposes of this section a person is associated with a relevant body if—

(a) the person is an employee, agent or subsidiary of the relevant body, or

(b) the person otherwise performs services for or on behalf of the body.

(7) Whether or not a particular person performs services for or on behalf of a relevant body is to be determined by reference to all the relevant circumstances and not merely by reference to the nature of the relationship between that person and the body.

(8) Where a relevant body is liable to be proceeded against for an offence under subsection (1) in a particular part of the United Kingdom, proceedings against the body for the offence may be taken in any place in the United Kingdom.

(9) Where by virtue of subsection (8) proceedings against a relevant body for an offence are to be taken in Scotland—

(a) the body may be prosecuted, tried and punished in a sheriff court district determined by the Lord Advocate, as if the offence had been committed in that district, and

(b) the offence is, for all purposes incidental to or consequential on the trial or punishment, deemed to have been committed in that district.

(10) A relevant body guilty of an offence under this section is liable—

(a) on conviction on indictment, to a fine;

(b) on summary conviction in England and Wales, to a fine;

(c) on summary conviction in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum.

(11) In this section—

“relevant body” means—

- (a) a body which is incorporated under the law of any part of the United Kingdom and which carries on a business (whether there or elsewhere),
- (b) any other body corporate (wherever incorporated) which carries on a business, or part of a business, in any part of the United Kingdom,
- (c) a partnership which is formed under the law of any part of the United Kingdom and which carries on a business (whether there or elsewhere), or
- (d) any other partnership (wherever formed) which carries on a business, or part of a business, in any part of the United Kingdom,

and, for the purposes of this section, a trade or profession is a business;

“sheriff court district” is to be read in accordance with the Criminal Procedure (Scotland) Act 1995 (see section 307(1) of that Act)

(12) It is immaterial for the purposes of section (1) whether—

- (a) any relevant conduct of a relevant body, or
- (b) any conduct which constitutes part of a relevant fraud or money laundering offence,

takes place in the United Kingdom or elsewhere.” insert the following new Clause—

#### **“Other economic crime offences: supplementary**

(1) The Secretary of State may by regulations amend Schedule 11 (failure to prevent fraud: fraud offences) by—

- (a) removing an offence from the list in the Schedule, or
- (b) adding an offence to that list.

(2) The power in subsection (1) is exercisable by the Scottish Ministers (and not by the Secretary of State) so far as it may be used to make provision that would be within the legislative competence of the Scottish Parliament if contained in an Act of that Parliament.

(3) The power in subsection (1) is exercisable by the Department of Justice in Northern Ireland (and not by the Secretary of State) so far as it may be used to make provision that—

- (a) would be within the legislative competence of the Northern Ireland Assembly if contained in an Act of that Assembly, and
- (b) would not, if contained in a Bill for an Act of the Northern Ireland Assembly, result in the Bill requiring the consent of the Secretary of State.

(4) An offence added under subsection (1)(b) must be—

- (a) an offence of dishonesty,

(b) an offence that is otherwise of a similar character to those listed (on the passing of this Act) in Schedule 11 (failure to prevent fraud: fraud offences).

(5) The Secretary of State may from time to time by regulations restate Schedule 11 (failure to prevent fraud: fraud offences) as amended by virtue of subsections (1) to (3) (without changing the effect of the Schedule).”

Insert the following new Clause—

**“Offences under section (*Failure to prevent fraud and money laundering*) committed by partnerships**

(1) Proceedings for an offence under section (*Failure to prevent fraud and money laundering*) alleged to have been committed by a partnership must be brought in the name of the partnership (and not in that of any of the partners).

(2) For the purposes of such proceedings—

(a) rules of court relating to the service of documents have effect as if the partnership were a body corporate, and

(b) the following provisions apply as they apply in relation to a body corporate—

(i) section 33 of the Criminal Justice Act 1925 and Schedule 3 to the Magistrates’ Courts Act 1980;

(ii) section 18 of the Criminal Justice Act (Northern Ireland) 1945 (c.15 (N.I.)) and Schedule 4 to the Magistrates’ Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26));

(iii) sections 34(2), 66(6AA) and 72D(2) of the Criminal Procedure (Scotland) Act 1995.

(3) A fine imposed on the partnership on its conviction for an offence under section (*Failure to prevent fraud and money laundering*) is to be paid out of the partnership assets.”

Insert the following new Clause—

**“Guidance about preventing fraud and money laundering offences**

(1) The Secretary of State must issue guidance about procedures that relevant bodies can put in place to prevent persons associated with them from committing fraud and money laundering offences as mentioned in section (*Failure to prevent fraud and money laundering*).

(2) The Secretary of State must issue within this guidance specific guidance for the small and medium enterprise sector, and particularly micro-enterprises, on what prevention procedures are reasonable for them to have and about circumstances in which it would be reasonable for them to have no prevention procedures at all (as set out in Clause (*Failure to prevent fraud and money laundering*)(3)(b)).

(3) The Secretary of State may from time to time revise the whole or any part of the guidance issued under this section.

(4) The Secretary of State must consult on and publish—

- (a) any guidance issued under this section within six months of the passing of this Act;
  - (b) any revision of that guidance.
- (5) Before issuing or revising guidance under this section the Secretary of State must also consult—
- (a) the Scottish Ministers, and
  - (b) the Department of Justice in Northern Ireland.
- (6) The requirement to consult those persons may be satisfied by consultation carried out before this section comes into force.”

Insert the following new Clause—

**“Failure to prevent fraud and money laundering: minor definitions**

- (1) This section applies for the purposes of sections (*Failure to prevent fraud and money laundering*) to (*Guidance about preventing fraud and money laundering offences*).
- (2) References to a person “associated with” a relevant body are to be interpreted in accordance with section (*Failure to prevent fraud and money laundering*).
- (3) “Fraud and money laundering offence” has the meaning given by section (*Failure to prevent fraud and money laundering*).
- (4) “Modify” includes amend or repeal (and references to modifications are to be interpreted accordingly).
- (5) “Partnership” means—
- (a) a partnership within the meaning of the Partnership Act 1890;
  - (b) a limited partnership registered under the Limited Partnerships Act 1907;
  - (c) a firm or other entity of a similar character to one within paragraph (a) or (b) formed under the law of a country or territory outside the United Kingdom.
- (6) “Relevant body” has the meaning given by section (*Failure to prevent fraud and money laundering*).
- (7) “Subsidiary” has the same meaning as in section 1159 of the Companies Act 2006.
- (8) “UK company” means a company formed and registered under the Companies Act 2006.”

Insert the following new Clause—

**“Failure to prevent fraud and money laundering: miscellaneous**

- (1) In section 61(1) of the Serious Organised Crime and Police Act 2005 (offences to which certain investigatory powers apply), at end insert—
- “(k) an offence under section (*Failure to prevent fraud and money laundering*) of the Economic Crime and Corporate Transparency Act 2023 (failure to prevent fraud and money laundering offences).”

(2) In Schedule 1 to the Serious Crime Act 2007 (offences which are serious offences for purposes of serious crime prevention orders)—

(a) in Part 1 (serious offences in England and Wales), in paragraph 7, after sub-paragraph (2) insert—

“(2A) An offence under section (*Failure to prevent fraud and money laundering*) of the Economic Crime and Corporate Transparency Act 2023 (failure to prevent fraud and money laundering offences).”;

(b) in Part 1A (serious offences in Scotland), in paragraph 16J, after subparagraph (1) insert—

“(1A) An offence under section (*Failure to prevent fraud and money laundering*) of the Economic Crime and Corporate Transparency Act 2023 (failure to prevent fraud and money laundering offences).”;

(c) in Part 2 (serious offences in Northern Ireland), in paragraph 23, after sub-paragraph (2) insert—

“(2A) An offence under section (*Failure to prevent fraud and money laundering*) of the Economic Crime and Corporate Transparency Act 2023 (failure to prevent fraud and money laundering offences).”

(3) In Part 2 of Schedule 17 to the Crime and Courts Act 2013 (offences in relation to which a deferred prosecution agreement may be entered into), after paragraph 27A insert—

“27B An offence under section (*Failure to prevent fraud and money laundering*) of the Economic Crime and Corporate Transparency Act 2023 (failure to prevent fraud and money laundering offences).”

Insert the following new Clause—

**“Failure to take reasonable steps: individual liability of senior managers**

(1) A person (“S”) commits an offence if—

(a) at a time when S is a senior manager or corporate officer of a relevant body, S fails to take reasonable steps to prevent a decision being taken or not being taken by or on behalf of the relevant body as to the way in which the business of the body is conducted, and

(b) the implementation or lack of implementation of the decision causes the relevant body to commit an offence listed in Schedule 10.

(2) For the purposes of this section—

(a) an individual is a “senior manager” of a corporate body if the individual plays a significant role in—

(i) the making of decisions about how the entity’s relevant activities are to be managed or organised, or

(ii) the actual managing or organising of the entity’s relevant activities;

(b) “officer”, in relation to a body corporate, means—

(i) a director, manager, associate, secretary or other similar officer, or

(ii) a person purporting to act in any such capacity;

(c) in paragraph (b)(i) “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

(3) A person guilty of an offence under this section is liable—

(a) on summary conviction—

(i) in England and Wales, to imprisonment for a term not exceeding 12 months (or 6 months, if the offence was committed before the commencement of section 154(1) of the Criminal Justice Act 2003) or a fine, or both;

(ii) in Scotland, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum, or both;

(iii) in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum, or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine, or both.”

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## 2) Cost-Capping

After section 313 of the Proceeds of Crime Act 2002 insert—

### “313A Costs orders

(1) This section applies to proceedings brought by an enforcement authority under Part 5 of the Proceeds of Crime Act 2002 where the property in respect of which the proceedings have been brought has been obtained through economic crime.

(2) The court may not make an order that any costs of proceedings relating to a case to which this section applies (including appeal proceedings) are payable by an enforcement authority to a respondent or a specified responsible officer in respect of the involvement of the respondent or the officer in those proceedings, unless—

(a) the authority acted unreasonably in making or opposing the application to which the proceedings relate, or in supporting or opposing the making of the order to which the proceedings relate,

(b) the authority acted dishonestly or improperly in the course of the proceedings, or

(c) it would not be in the interests of justice.””