

## Briefing: Cost protection for law enforcement in civil recovery cases

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### What happened in the Commons on 4 September?

An amendment voted through at Lords Report Stage would have **extended the new costs order regime** introduced for Unexplained Wealth Orders in the Economic Crime (Transparency and Enforcement) Act 2022 **to all economic crime related civil recovery cases** unless a law enforcement body has acted unreasonably, dishonestly or improperly. **The government resisted this key amendment despite strong cross-party support in the Commons.**

### What next - Consideration of Commons amendments, Monday 11 September

Lord Faulks is tabling an amendment which would address this significant issue and intends to test the opinion of the House once more when the Bill returns on Monday 11 September. **We urge Peers to support this amendment.**

### What reasons did the government give for opposing this amendment in the Commons?

The Minister gave the following explanation for the government's opposition to amendment 161:

- It would be a "[significant departure from the loser pays principle](#)".
- However, noting the "[strength of feeling](#)" and the "[potential merits of reform](#)", the government has tabled an [amendment in lieu](#) imposing a statutory requirement for the Secretary of State to review the payment of costs in civil recovery cases in England and Wales and publish a report on its findings within 12 months.

### Why the government is missing opportunity to ensure robust enforcement against dirty money by opposing this amendment:

1. ***This amendment would help avoid the Bill being another paper tiger.*** UK law enforcement is chronically [underfunded](#) and frequently outgunned against well-resourced defendants. It is essential that the government puts the resources and protections in place to ensure it can be properly enforced. Protecting law enforcement from sky-high costs when they act reasonably against deep-pocketed suspects would be an excellent way to protect scarce public resources.
2. ***The Government's concerns around reversing the loser pays principle is unjustified, given existing exceptions in other areas of law.*** The courts have far more discretion on whether or not to impose costs on public bodies, including law enforcement, that bring unsuccessful regulatory or enforcement actions. Courts in these areas are allowed to take into account the 'chilling effect' that costs may have on the ability of public bodies to make reasonable enforcement decisions made in the public interest (see our previous [blog](#) for examples).

3. ***The government's limited concession on protecting law enforcement from excessive costs in civil recovery cases is too weak to be credible.*** As Robert Buckland [argued](#), it is time government "*grasped the nettle*" and introduced this reform now rather than waiting for another report. Given the need for primary legislation, there is very little chance the findings of the report would be implemented before the next General Election.
4. ***The government amendment in lieu gives the Secretary of State huge leeway to undertake an unambitious and limited exercise,*** giving them powers to selectively "*consult such persons*" they consider "*appropriate*". Ideally, the government should ask the Law Commission to conduct a review within twelve months of how the different costs regimes are operating as [recommended](#) by a senior judge. At the very least, the government should table a new amendment ensuring the report is fully independent and as wide a range of views as possible are sought.

See our [blog](#) and earlier [briefing](#) for more details on this amendment.

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