

Briefing: **strengthening the new failure to prevent fraud offence by ensuring it applies to all companies except micro-businesses**

What happened in the Lords on Monday 10 September?

Peers voted through amendments [151B and 151C](#) – sponsored by former Conservative Solicitor General Lord Garnier – which would **exempt only micro-businesses from the new failure to prevent fraud offence**. Micro-businesses are defined as having a turnover of less than £632,000, a balance sheet of less than £316,000, and fewer than 10 employees. This represents a **major concession** to government in light of concerns that including all SMEs in the new offence would impose burdens on small businesses.

Background

An **amendment** voted through at Lords report stage **would have entirely removed the exemption for SMEs in the new failure to prevent fraud offence**. The amendment received **strong cross-party support** in the Commons including from prominent and well-respected former Conservative law officers **Sir Robert Buckland** and **Sir Jeremy Wright**, as well as **Sir Julian Lewis**. However the government resisted this key amendment and the concessionary one passed on Monday on the grounds that they would impose “[significant and disproportionate burdens](#)” on small business.

Why MPs should support Lords amendments 151B and 151C:

As various speakers in the Commons highlighted, continuing to exempt all SMEs from the new failure to prevent fraud offence:

1. ***Ignores the fact that small businesses would face minimal burdens.*** As former Attorney General Sir Jeremy Wright [highlighted](#), the government could make clear in guidance issued for the offence what reasonable procedures would be proportionate for SMEs, and in what circumstances it would be reasonable not to have them at all.
2. ***Misses a chance to raise anti-fraud standards across the board and make the UK a more trusted place to do business.*** The government acknowledged in its [impact assessment](#) that the exclusion of SMEs from the scope of the offence “*will reduce the possible benefits and the potential for culture change,*” a point echoed by Jeremy Wright. Former Solicitor General and Secretary of State for Justice Sir Robert Buckland [argued](#) that stronger enforcement of corporate criminal liability laws overall would make the UK a more trusted place to do business.
3. ***Leaves SMEs more vulnerable to fraud.*** Anti-fraud procedures to prevent companies committing fraud are largely similar to those that prevent them being victims to fraud. Several bodies from the [Metropolitan Police](#) to [UK Finance](#) have warned that SMEs are particularly vulnerable to being victims of fraud and encouraged them to proactively put

in place anti-fraud procedures. So the failure to include SMEs in scope is a missed opportunity to help protect the SME sector from fraud more generally.

4. ***Is wrong in principle, as it introduces a criminal offence that does not apply equally to all businesses.*** As Sir Robert Buckland [noted in the Commons last week](#), there was no mention of an SME exemption in the Law Commission's recommendation for a failure to prevent fraud offence, and there is no threshold in other failure to prevent offences.
5. ***Increases risks for public procurement.*** The government has committed to increase procurement with SMEs across the board. The total value of direct public spending with SMEs has nearly [doubled](#) since 2016, from £20 billion in 2016 to £38 billion in 2021. 38% of local government direct spend is with SMEs. As a recent government review [found](#), risks of fraud and corruption in local government are significant. With the Public Sector Fraud Authority [estimating](#) that between £33.2 and £58.8 billion is lost to fraud and error annually, ensuring all businesses are subject to the offence would help embed the preventive approach to tackling fraud in public expenditure [recommended](#) by the National Audit Office in its recent report.

See our earlier [briefing](#) for more details on an earlier version of this amendment.

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