ECONOMIC CRIME AND CORPORATE TRANSPARENCY BILL

Memorandum from the Home Office and the Department for Business, Energy and Industrial Strategy to the Delegated Powers and Regulatory Reform Committee

A. INTRODUCTION

1. This memorandum 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"). The Bill was introduced in the House of Lords on 27 January, following its passage through the House of Commons.

2. This memorandum identifies the provisions of the Bill that confer powers to make delegated legislation. It explains in each case why the power has been taken and explains the nature of, and the reason for, the procedure selected.

B. PURPOSE AND EFFECT OF THE BILL

3. Building on the recently enacted Economic Crime (Transparency and Enforcement) Act 2022, the Bill will bear down further on the kleptocrats, criminals and terrorists who abuse the UK's financial system, strengthening the country's reputation as a place where legitimate business can thrive while driving dirty money out of the UK.

4. The Bill delivers on three key objectives:

    a. Prevent organised criminals, fraudsters, kleptocrats and terrorists from using opaque companies and other corporate forms to abuse the UK's open economy. This Bill will reform the powers of the Registrar of Companies and the legal framework for limited partnerships in order to safeguard businesses, consumers and our national security.

    b. Strengthen the UK's broader response to economic crime, in particular by giving law enforcement new powers to seize cryptoassets and enabling businesses in the financial sector to share information more effectively to prevent and detect economic crime.

    c. Support enterprise in the UK by enabling Companies House to deliver a better service for over four million UK companies and improving the reliability of its data to inform business transactions and lending decisions across the economy.

5. The main elements of the Bill are:

    a. Broadening the Registrar's powers so that the Registrar becomes a more active gatekeeper over company creation and custodian of more reliable data concerning companies and other UK registered entities such as limited liability partnerships and limited partnerships – including new powers to check, remove or decline information submitted to, or already on, the Company Register.

    b. Introducing identity verification requirements for all new and existing directors, beneficial owners and those who file information with Companies House. This will improve the reliability of Companies House data, to support business decisions and law enforcement investigations.

    c. Providing Companies House with more effective investigation and enforcement powers and introducing better cross-checking of data with other public and private sector bodies.

    d. Tackling the abuse of limited partnerships (including Scottish Limited Partnerships), by strengthening transparency requirements and enabling them to be deregistered.

    e. Amending the Register of Overseas Entities to maintain consistency with change to the Companies Act 2006.

    f. Creating powers in the Proceeds of Crime Act 2002 ("POCA") for law

enforcement officers to more quickly and easily seize and recover cryptoassets, which are the principal medium used for ransomware. The creation of a civil forfeiture power is to mitigate the risk posed by those who cannot be criminally prosecuted but use their funds to further their criminality or terrorism.

g. Creating new exemptions from the principal money laundering offences to reduce unnecessary reporting by businesses carrying out transactions on behalf of their customers and giving new powers for law enforcement to obtain information to tackle money laundering and terrorist financing.

h. Removing the need for a statutory instrument to be laid in order to update the UK's high risk third country (HRTC) list.

i. Enabling businesses in certain sectors to share information more effectively to prevent and detect economic crime.

j. The removal of the cap on the Solicitors Regulation Authority's (SRA) fining powers and the removal of the Scottish Solicitors' Disciplinary Tribunal's (SSDT) financial penalty limit.

k. Adding a regulatory objective to the Legal Services Act 2007 to affirm the duties of regulators and the regulated communities to uphold the economic crime agenda.

l. A new proactive information request power for the Solicitors Regulation Authority (SRA), in respect to economic crime.

m. Allowing the Serious Fraud Office ("SFO") to use its powers under section 2 of the Criminal Justice Act 1987 at the 'pre-investigation' stage in any SFO case.

6. To support the objectives of the Bill, the legislation includes provisions to create 105 delegated powers or amend existing powers. The key functions of the delegated powers are:

a. To widen the Registrar's powers to change or remove information from the register.

b. To widen powers to remove personal and sensitive information from appearing on the public register.

c. To determine the technical details of the procedure for identity verification and the events that can trigger the requirement to reverify identity.

d. To determine the technical details of the procedure for authorised corporate service providers (ACSP), as well as future-proof against emerging international trade agreements and amendments to anti-money laundering regulations which would affect the ACSP measures being introduced by the Bill.

e. To support enforcement agencies by enabling changes to the

information required to be entered in a company's register of members and to be required for an ACSP.

f. To enable the Registrar to mandate the electronic delivery of documents and documents to be delivered together.

g. To allow for future activities to come into scope of an annual fee payable to the Registrar.

h. To allow the Registrar to impose a financial penalty on a person if they have, beyond a reasonable doubt, engaged in conduct amounting to a relevant offence under this Act.

i. To enable analysis of when a limited partnership has added to or changed its business activities in line with the requirements for UK companies.

j. To place requirements on businesses to report discrepancies between the customer information they hold and that which is on the register

k. To ensure the value of sums which cryptoasset service providers which do not comply with certain enforcement orders can be ordered to pay can be updated in line with changes to the value of money.

l. To allow definitions connected with new powers to seize "cryptoassets" to be updated and to confer other delegated powers that correspond to those already available in relation to cash and bank accounts.

m. To allow definitions associated with the cryptoasset civil recovery regime to be updated and remain in line with international standards.

n. To bring into force a code of practice in relation to search powers relating to "cryptoasset-related items".

o. To provide for alternative means by which cryptoassets can be forfeited (transferred to law enforcement) when held on behalf of a customer by a third party cryptoasset business.

p. To allow the Secretary of State or Welsh Ministers to amend the description of "accredited financial investigator", "enforcement officer", and "senior officer" for the purposes of the seizure of cryptoassets and cryptoasset-related items.

q. To amend aspects of provisions regarding the forfeiture of cryptoassets which are relevant to such third-party crypto wallets, in order to provide for a different means of forfeiture.

r. To replicate existing arrangements in POCA in relation to the source of compensation relating to cryptoassets and converted cryptoassets.

s. To allow the Secretary of State to exclude specified sectors from new exemptions from the money laundering offences.

t. To allow the maximum threshold for the exemption of transactions

from the principal money laundering offences in POCA to be varied.

u. To make codes of practice in relation to the way in which the National Crime Agency ("NCA") exercises new Information Order powers in order to assist with the conduct of analysis of information related to money laundering and terrorist financing.

v. To remove the requirement for regulations to be made and laid to update the High Risk Third Countries ("HRTC") list.

w. To enable the Secretary of State to amend the description of which sectors are covered by the measures regarding direct and indirect disclosures of information.

x. To allow offences to be added to or removed from the definition of "economic crime" in the new disclosure measures that enable businesses to share information more effectively.

y. To allow the Lord Chancellor to expand the number of legal services regulators the information request power is provided to.

7. The Bill will contain a significant number of delegated powers, but it is considered that these are all justified and proportionate. Specifically, the Bill contains 105 amended or new delegated powers, of which 29 are Henry VIII powers.

8. Broadly speaking, these powers cover a range of aspects for the technical and operational delivery of the measures in the Bill, and/or are necessary for the Government and law enforcement to keep pace with future changes in technology, the threats posed, and tactics used by criminals and terrorists, practice in the financial sector and trends in the wider economy. Some clauses will enhance existing delegated powers in other legislation rather than create new powers; and, where possible and appropriate, are based on existing precedents.

9. A number of the delegated powers in the Home Office measures relating to cryptoassets are replicated in different sections due to the arrangement of separate confiscation measures for England and Wales, Scotland, and Northern Ireland and the separate civil recovery procedure for dealing with frozen or detained cryptoassets that have been converted into cash. This increases the total number of delegated powers being taken but in essence many of them are the same provisions reproduced in different places. Some of these powers have also been mirrored into counter-terrorism legislation. The Companies Act is already the longest on the statute book and it will assist users of the legislation, and facilitate scrutiny by Parliament, to keep detailed procedural regulations in secondary legislation.

10. It is likely that some of the statutory instruments ("SIs") made under these powers can be packaged together when put before Parliament to minimise the burden on the Parliamentary calendar while still providing the required level of scrutiny. There are a large number of SIs which will be of a

considerable technical and detailed nature which therefore require the necessary time to develop in collaboration with key stakeholders to ensure effective implementation.

11. The Bill will include 29 Henry VIII powers. These are set out below and cover:

    a. A power in Clause 47 which enables the Secretary of State to amend section 113 of Companies Act 2006. This will allow for changes to be made to the information required to be entered in a company's register of members.

    b. A power in Clause 65 which enables the Secretary of State to amend the required information that an applicant for authorisation as an authorised service corporate provider (ACSP) needs to provide to the registrar and a power to repeal a provision which provides that where an applicant is a peer or an individual usually known by a title, any requirement to provide the individual's name may be satisfied by providing their title instead of their forename and surname.

    c. A power in Clause 65 to provide for overseas persons to apply to become an ACSPs in future. These regulations may amend certain ACSP provisions in the Companies Act 2006, insert new sections into the Act, as well as make consequential amendments to, and repeals of, provisions within the Act as necessary.

    d. A power in Clause 91 to enable the Secretary of State to amend a reference that will be contained in the Companies Act 2006 to the functions carried out by the Insolvency Service and/or the Insolvency Service in Northern Ireland, in relation to the investigation and prosecution of offences which may be funded by Companies House fees.

    e. A power in Clause 124 to allow the Secretary of State to amend provisions in section 10D about the matters which must be confirmed in a limited partnership's confirmation statement and to provide exceptions from the duty to deliver confirmation statements.

    f. A power in Clause 140 to amend the list of filings that a limited partnership is obliged to make via an authorised corporate service provider.

    g. A power in Clause 144 which enables the Secretary of State to amend or repeal provisions made by the Limited Partnerships Act 1907, the Partnerships Act 1890 and the Companies Act 2006 to ensure that limited partnerships are subject to similar measures as those under company law.

    h. Five powers in schedule 2 allowing obligations to provide required information to be amended, for directors, including corporate directors, company secretaries, and people with significant control. These

replace or complement existing powers to amend information requirements. Setting what information is required is integral to ensuring company transparency. Information received by the Registrar may then be used to facilitate the detection and prevention of crime.

i. A power in Clause 166 to make amendments to the Economic Crime (Transparency and Enforcement) Act 2022 corresponding to any amendments made by the Bill to the provision in the Companies Act 2006, where provision made by the 2022 Act corresponds to provision made by the 2006 Act.

j. A power in Clauses 37(9) and 39(7) relating to the director disqualification provisions made by the Bill. Under the Bill, amendments are made to the Company Directors Disqualification Act 1986 so that a director who is subject to an asset freeze under the Sanctions and Anti-Money Laundering Act 2018 on or after Clause 36(2) of this Bill comes into force is automatically disqualified, so it becomes an offence for such a director to be a director of a company, act as receiver of a company's property or in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of a company unless (in each case) he or she has the leave of the court. The 1986 Act also extends to non-company entities such as building societies and NHS foundation trusts. The focus of the Bill, however, is on company directors. So Clauses 37(9) and 39(7) of the Bill ensure that, if for example, an officer of an NHS foundation trust is subject to asset freeze sanction they will not be disqualified from this function. However, the power in Clauses 37(9) and 39(7) allows the Secretary of State to make regulations which lift that constraint, so that in future the sanctioning of an individual can lead to disqualification of officers of all the sorts of entity covered by the 1986 Act.

k. Powers in Clauses 149 and 150 to amend the Company Directors Disqualification Act 1986 and the Company Directors Disqualification (Northern Ireland) Order 2002 so that they apply to limited partnerships, limited liability partnerships and Scottish qualifying partnerships. Where these amendments are made, provisions may also be made by virtue to amend other Acts or Northern Ireland legislation

l. Power to expand the description of ‘registrable beneficial owner’ when there is a legal entity (i.e. corporate) trustee involved in the ownership structure of an overseas entity.

m. A power in Clause 188 to make provisions in regulations that are consequential to this Bill. This includes power to amend, repeal and revoke primary legislation.

n. Provisions in Schedules 6, 7, and 8 allowing amendments to the definitions of “cryptoasset” and related terms in the new confiscation and civil forfeiture measures, so as to align these with future changes in technology, international standards and other connected legislation (especially in the areas of money laundering and terrorist financing).

o. Powers in Schedule 6 to update the maximum financial penalties available to the magistrates’ courts when a cryptoasset service provider breaches an enforcement order.

p. Provisions in Schedule 7 and 8 to provide for alternative means by which cryptoassets can be forfeited when held on behalf of a customer by a third-party cryptoasset business.

q. Powers in Schedule 7 to amend the source of any compensation payable, in exceptional circumstances, in connection with the detention or freezing of cryptoassets by certain officers and authorities.

r. A power in Schedule 8, making provision to update the list of 'financial institutions' which will include a definition of a "cryptoasset service provider" for the purposes of the current powers to obtain financial information under Schedule 6 of TACT.

s. A power in Clause 170 to amend the "threshold amount" below which certain transactions can be carried out by businesses for their customers without seeking consent or committing a money laundering offence.

t. An ability conferred in Clause 180 for the Secretary of State to add or remove offences to or from the list in Schedule 9 defining "economic crime", for the purposes of measures making it easier for certain businesses to share information in order to tackle such crimes.

12. The Bill has been drafted intentionally to include Henry VIII powers only where there is a strong requirement and proportionate justification for doing so. This is typically linked to the need to make clear on the face of the legislation what it is doing; maintain consistency with existing linked primary legislation that is capable of being amended by secondary legislation; and respond to changes in criminal approach and technology.

Registrar's function and powers

13. Clause 103 will expand the scope of an existing delegated power in section 1097A of the Companies Act 2006 to make regulations which enable the Registrar to change the address of the registered office of a company, where the Registrar is satisfied that it is not at an "appropriate address" (as defined in new section 86, inserted by Clause 29). Parliament has already acceded to the exercise of that power in The Companies (Address of Registered Office) Regulations 2016. The Government envisages that new regulations under the expanded power will additionally afford the Registrar a new unilateral ability to move inappropriate addresses, including by setting a company's registered office address at Companies House's own address, the "default" address, alongside the existing arrangements under which she can only act following an application by a third party.

14. A further delegated power in Clause 83 is required to make regulations setting out the notice requirements attendant upon instances where material has been removed upon the motion of the Registrar, as well as a range of requirements

around removal applications and the determination process in respect of such applications. The primary clauses already establish in some detail the parameters within which the administrative removal process will operate in future. Further granularity of its operation is more suitably established in secondary legislation, which will also assist in future-proofing.

15. A Henry VIII regulation-making power in Clause 166 is also required to enable the Secretary of State to make amendments to the Economic Crime (Transparency and Enforcement) Act 2022 which correspond to amendments made by the Bill to the Companies Act 2006. This power is needed to ensure that changes made by the Bill in the 2006 Act can be mirrored in the corresponding provisions in the 2022 Act to maintain consistency between the two Acts.

16. A power has been included in Clause 92 to enable the Secretary of State to expand the data sharing gateway by specifying which additional persons, and for what purposes, the registrar can share data with. This is to ensure that should there be a reason to share data that falls outside of 1110F(1)(a) and (b), this can be enabled.

Discrepancy Reporting

17. The Government committed to expanding discrepancy reporting requirements on businesses which the power in Clause 85 enables. Once regulations are enacted, more businesses will be required to compare the information they receive from certain customers against what information about them is made public by the Registrar. Should there be a need to amend who the reporting obligations act on, how it should be done and what information should be considered in evaluating discrepancies, the power will allow for changes to be made according to these needs.

Privacy and transparency of ownership

18. The Government is introducing measures in the Bill, and through regulations, to improve transparency requirements to increase the usefulness of the information held on the shareholders, subscribers and guarantors of UK companies. Section 113 of the Companies Act 2006 requires companies to keep a register of its members (who in most cases, are their shareholders), which must include their names and other details such as the number of shares they own. Companies deliver certain information to Companies House that is entered into their register of members in general annually, through the confirmation statement, and this information is then displayed on the public companies register. The Bill will make amendments to require the provision

of a *full* name for members, i.e. their forename and surname, to be entered into a company's register of members, to increase the transparency of ownership of companies. A delegated power in Clause 47 will be taken to allow the Secretary of State to amend the information companies are required to enter into their register of members. There are equivalent powers relating to the directors and people with significant control of companies. This power will help support enforcement agencies who may in future identify additional or alternate pieces of information which would better enable them to consider information held by the Registrar against other sources of information.

19. The Government is also introducing measures to prevent abuse of personal information held on the Companies House register. Further delegated powers are required to widen existing powers in the Companies Act 2006, e.g., new Sections 1088 and 790ZG, which allow the Registrar to remove personal information from the public register. The powers provide that the Secretary of State may by regulations require the Registrar, on application, to make personal and sensitive address information (e.g. an address used as a women's refuge) unavailable for public inspection, and to require the Registrar and the company to refrain from disclosing that information or to refrain from doing so except in specified circumstances.

Identity verification

20. The Bill will introduce mandatory identity verification requirements for directors, persons with significant control (PSCs) and those filing documents with Companies House (referred to as 'presenters'). They will have to provide statements to confirm that they have verified their identity.
21. Delegated powers in Clause 64 are required to set out the technical details of the procedure for verifying or reverifying an individual's identity and the events that can trigger the requirement to reverify identity, such as a change of name. These are technical details unsuitable for the face of the Bill and will require updating in line with industry best practice and technological developments.
22. Delegated powers in Clause 70 allow for the creation of exemptions in regulations. This may be required where it is deemed that an individual's identity can be reliably confirmed without identity verification and, therefore, identity verification would not add proportionate value to the integrity of the register. These exemptions are not suitable for the face of the Bill because we expect more examples of where an individual's identity can be reliably confirmed without identity verification to become apparent once Companies House identity verification is operational. A further delegated power is required where the Registrar may require additional statements to evidence

the exemption, and this will need to be adaptive to emerging exemptions.

Authorised Corporate Service Providers

23. The Bill will introduce new controls over who and which bodies can make filings on behalf of companies and other entities with Companies House. These bodies will be known as Authorised Corporate Service Providers (ACSPs). The Bill defines an ACSP, outlines a stringent application process to become an ACSP and sets out the duties of an ACSP. This will ensure that they are not being used in money laundering schemes but can carry on delivering their services.
24. Delegated powers in Clause 65 are required to make amendments to the list of information required when applying for to become an ACSP. This will provide flexibility so that new, or different, information can be requested if it is found to be of use over time. For example, additional information might help enforcement agencies to detect and interrogate suspected cases of criminal activity more effectively so the legislation needs to be able to evolve alongside this demand.
25. As well as this, further delegated powers in Clause 65 are required to make amendments to the criteria and procedure for applying to become an ACSP, the conditions for ceasing to be an ACSP, and ACSP suspension. These give the Secretary of State flexibility to set out additional criteria that may be helpful in determining who should be permitted to register as an ACSP. This is important because ACSPs will need to act to a high standard and be properly supervised for anti-money laundering purposes, so it may be that the criteria and procedure for being an ACSP needs to adapt if it is learnt that tighter regulation is needed, or, for example, if the supervisory regime changes and this needs to be reflected in the Companies Act.

Document delivery

26. The Registrar of Companies is given authority to make rules governing the filing of documents at Companies House. These rules are made under section 1117 of the Companies Act 2006 and must be complied with whenever a document is delivered to Companies House. The Bill will delegate power in Clause 76 to the Registrar to mandate that the Registrar's Rules may require that documents are delivered together.
27. This supports the digitalization of Companies House processes and functions. Delegating power to the Registrar Clause 73 also allows them to exempt documents from needing to be delivered electronically or together, in the rare occasions where it is deemed unsuitable. These decisions are best

made by the Registrar, supported by Companies House, and are a level of detail not appropriate for primary legislation.

Fees

28. The delegated power in Clause 91 here is required to enable further amendment of the existing fee raising power contained within the Companies Act 2006, to reflect any rebranding or Machinery of Government changes to the named agency (i.e., the Insolvency Service and/or the Insolvency Service in Northern Ireland). The scope of the power will be limited so that it will only be possible to fund activities of a similar nature to those for which the fee is already charged.

Financial penalties

29. Clause 102 will introduce new section 1132A to give the Secretary of State the power to confer power on the Registrar to impose a financial penalty on a person if she is satisfied beyond reasonable doubt that the person has engaged in conduct amounting to a relevant offence under this Act. This will allow for the technical detail, unsuitable for the face of the Bill, to be set out in regulations.

Limited partnerships

30. The Bill will reform the Limited Partnerships Act 1907 to modernise the legislation and crack down on abuse of limited partnerships as a business entity. This includes tightening registration requirements, requiring limited partnerships to demonstrate a firmer connection to the UK, increasing transparency requirements, and enabling the Registrar to deregister limited partnerships in certain situations. As part of this, some delegated powers in clauses such as Clause 134 and Clause 140 will be needed to ensure flexibility and allow the legislation to be updated in the future.
31. Delegated powers in clauses such as Clause 110 are required to ensure that the Registrar can obtain relevant information about a limited partnership's business purpose. This power is intended to determine a standard system of classification for a limited partnership's business, which may change over time if an alternative classification system is deemed more appropriate. If this becomes necessary, the power will ensure that it continues to be easy to analyse how limited partnerships are being used by allowing another classification system to be introduced.

32. The Bill will require the partners of limited partnerships to supply their names, dates of birth, nationality and address. It will also require limited partnerships to give an appropriate registered office address which must be in the original jurisdiction of registration and can be used by the Registrar (and other bodies) to communicate effectively with limited partnerships and show that the limited partnership has a firm connection to the UK. Alongside this, a power is included in Clause 111 that will authorise or require the Registrar to change the address of a limited partnership through secondary legislation if she is not satisfied that it is an appropriate address. This aligns with existing powers in the Companies Act 2006 which allow the Registrar to change the address of a company if she is not satisfied that the company is authorised to use it.

33. A power in Clause 126 is also needed so that HMRC can request and access accounting information from limited partnerships, particularly those abroad who do not have a link to the UK tax regime, which will enable requests from law enforcement agencies to be met more easily. There is currently no established international accounting requirement or standard for overseas limited partnerships, so the level of detail needed to explain what accounting information is needed and the process for providing this is more applicable to secondary legislation.

34. A Henry VIII power in Clause 144 is also required to ensure that the Limited Partnerships Act 1907 can be more readily amended which will help to align the limited partnerships regime with that applying to companies and other corporate entities. This is important as the Act has barely been updated since it was introduced over a century ago, which has led to instances of significant misalignment with company law and subsequently left limited partnerships open to abuse.

35. A power has been inserted into Clause 149 and 150 so that the Secretary of State can amend relevant company disqualification legislation so that general partners cannot act if disqualified under this legislation. This is to ensure that only legitimate limited partnerships remain in operation and on the register and so their activity within the partnership is subject to these laws. We have also given the Secretary of State, Scottish Ministers and Department for the Economy powers to wind up limited partnerships in Clauses 129 and 130.

Cryptoassets: confiscation

36. A delegated power is required to ensure that the upper level of sums which a magistrates' court can order cryptoasset businesses to pay if it fails to comply with an enforcement order can be amended to reflect changes in the value of money. Two new sections in POCA will allow magistrates' courts to order cryptoasset businesses which fail to take required steps to satisfy a

confiscation order against their customer can be ordered to pay a sum of £5,000. The delegated powers allow the Secretary of State (in England and Wales) and the Department of Justice (in Northern Ireland) to amend the maximum sum a court can impose for non-compliance.

Cryptoassets: civil recovery

37. A delegated power is required to bring into force a code of practice in relation to search powers conferred by new section 303Z21 of POCA. These search powers are potentially intrusive, and therefore further detailed guidance is required to ensure they are used proportionately and effectively. This is in line with the approach taken elsewhere in POCA.
38. A power is required to allow the Secretary of State to amend aspects of new section 303Z42 of POCA, and to make consequential amendments, in order to provide for an alternative means by which cryptoassets can be forfeited when held on behalf of a customer by a third party cryptoasset business. The power would provide a contingency to overcome future technical barriers around the forfeiture of cryptoassets administered by a third party.
39. Delegated powers are required to replicate existing arrangements in POCA in relation to the source of compensation relating to cryptoassets and converted cryptoassets. They allow the Secretary of State to ensure consistency across cash, listed asset, bank account, and cryptoasset forfeiture schemes.

Cryptoassets: terrorism

40. A delegated power is required to make provision about the forfeiture of cryptoassets under new paragraph 10Z7C. This Henry VIII power allows the Secretary of State to amend aspects of this section relevant to third-party crypto wallets in order to provide for a different means of forfeiture. It is necessary for this provision to appear on the face of the Act to give the greatest possible transparency as to the process of forfeiture.
41. A delegated power is required to allow the Secretary of State to amend the definitions for “cryptoasset service provider”, “custodian wallet provider”, and “cryptoasset exchange provider”. These definitions are in relation to the list of ‘financial institutions’ which will, as a result of the amendments to TACT in this Bill, now include a definition of “cryptoasset service provider” for the purposes of the current powers to obtain financial information under Schedule 6 of TACT.

Cryptoassets: confiscation, civil recovery, and terrorism

42. Some powers are replicated across all three cryptoasset schedules, to ensure consistency in approach.

43. In Schedules 6 and 7, delegated powers are required to allow the Secretary of State or Welsh Ministers to amend the description of "accredited financial investigator", "enforcement officer", and "senior officer" for the purposes of the seizure of cryptoassets and cryptoasset-related items, and for connected purposes. The ability to stipulate in regulations the descriptions of those who can use these new powers will ensure that the appropriate organisations have officers with powers relevant to their needs as enforcement authorities.

44. In Schedules 6, 7, and 8, delegated powers are required to allow the Secretary of State to amend definitions associated with the cryptoasset confiscation, civil recovery, and counter-terrorism regimes. This will ensure definitions of key terms can be amended in align as advances in cryptoasset technology , these definitions can be aligned with those found in international standards, and remain consistent across all three Schedules in this Bill.

Money Laundering exemptions

45. A delegated power is required to allow the Secretary of State to exclude specified sectors or categories of business from new exemptions from the money laundering offences. These provisions exempt certain transactions from the principal money laundering offences in POCA when carried out by certain firms on their clients' behalf, without the need to report and seek NCA consent in advance. This power will allow a rapid response from Government in the event that new areas of money laundering risk or potential abuse become apparent in certain sectors. It will also help ensure that the UK continues to adhere to international standards and obligations set by the Financial Action Task Force ("FATF") to prevent money laundering.

46. A delegated power is required to allow the maximum threshold for the exemption of transactions from the principal money laundering offences in POCA to be varied. This mirrors existing powers in POCA and allows the maximum threshold to be amended to take account of changes in the value of money. This power will be exercised only in a way that maintains the UK's compliance with international obligations.

Information Orders

47. Codes of practice will provide guidance to NCA officers within the UK Financial Intelligence Unit in relation to the exercise of their new powers to seek information orders from the courts. Two delegated powers are needed to require the Secretary of State to make a Code of Practice in relation to both certain information orders under POCA and certain information orders

under the Terrorism Act 2000. Two further delegated powers are needed to enable the Secretary of State to bring each of those codes of practice into force.

Enhanced due diligence

48. Clause 174 removes the requirement for HM Treasury ("HMT") to update the High Risk Third Countries ("HRTC") list by SI. Currently, HMT must make regulations under section 55 of and Schedule 2 to the Sanctions and Anti-Money Laundering Act 2018 to update the HRTC list. The UK updates its list in line with changes made by FATF. Removing the requirement for the HRTC list to amended through the made affirmative procedure will allow the list to be updated more rapidly in line with international standards and provide greater clarity to businesses.

Disclosures to prevent or detect economic crime

49. A Henry VIII power is required to enable the list of offences constituting an "economic crime" (found in Schedule 9) to be revised. This provides certainty as to which types of offence are covered by certain measures in the Bill. It also allows new offences to be added to the list as new methods of economic crime emerge. This approach is in line with that found elsewhere in legislation.
50. Delegated powers are required to allow the Secretary of State to amend the description of businesses that fall within the scope of the new disclosure measures: both the "direct" disclosures measure and the "indirect" disclosures measure. Given the rapid nature of evolution in the economic crime space, the Government believes it is important to be able to respond to these changes quickly while still giving Parliament a say on the scope of the provisions. These powers will deliver this.

Solicitors Regulation Authority: Information request power

51. A delegated power is required to give the Lord Chancellor the ability to enable other legal services regulators, in addition to the SRA, to exercise the information request power found in Clause 184. This is necessary to ensure the appropriate regulators have the power to oversee compliance with the economic crime regime, for example, if regulatory responsibilities change in the future.

General

52. A general consequential amendment power (Clause 188) is required to allow

the Secretary of State to make consequential provisions in connection with this Bill. Consequential provisions may amend, repeal or revoke primary legislation passed before this Bill or later in the same legislative session as the Bill. This is to ensure that other provisions on the statute book properly reflect and refer to the provisions in this Bill once it is enacted.

53. A power to make regulations under any provision of this Act includes power to make consequential, supplementary, incidental, transitional or saving provision, or a different provision for different purposes.

54. Commencement regulations may appoint different commencement dates for different purposes. A power is also needed to make transitional or saving provision in connection with the commencement of any provision of the Bill. This is a standard clause for commencing the provisions of an Act, and making saving and transitional provisions related to commencement, by regulations.

C. DELEGATED POWERS

Clause 37: New subsection 9: Power to repeal provisions on application to other bodies – England & Wales and Scotland

Power conferred on: Secretary of State

Power exercised by: regulations made by statutory instrument, a Henry VIII power

Parliamentary Procedure: affirmative procedure

Context and Purpose

55. This power relates to the director disqualification provisions made by the Bill. Under the Bill, amendments are made to the Company Directors Disqualification Act 1986, which extends to England and Wales and Scotland, so that a director who is sanctioned for asset freezes under the Sanctions and Anti-Money Laundering Act 2018 is automatically disqualified. It therefore becomes an offence for such a director to act as a director of a company, or directly or indirectly be concerned or take part in the promotion, formation or management of a company without the leave of the court. The 1986 Act also extends to other entities such as building societies and NHS foundation trusts.

56. The focus of these measures in the Bill is on company directors, so the Bill contains provision ensuring that, for example, the sanctioning of an officer of an NHS foundation trust does not trigger that officer's disqualification. However, the Secretary of State has power to make regulations which lift that constraint, by repealing the exemption before it comes into force, so that in future the sanctioning of an individual can lead to disqualification of officers of all the sorts of entity covered by the 1986 Act.

Justification for taking the power

57. Taking a power allows the Secretary of State to only apply these measures to company directors in line with the policy focus of these measures in this Bill without it unnecessarily applying to other entities which are currently not in scope. The power also enables the Secretary of State to add such other entities back into scope at pace if required and deemed proportionate in certain circumstances, upon further consideration.

Justification for taking the procedure

58. Repealing the above subsections is something which we assess Parliament would wish to discuss to ensure the Regulation's application is not too narrow in scope.

Clause 39: New subsection 7: Power to repeal provisions on application to other bodies – Northern Ireland

Power conferred on: Secretary of State

Power exercised by: regulations made by statutory instrument, a Henry VIII power

Parliamentary Procedure: affirmative procedure

Context and Purpose

59. This is a mirror provision for Northern Ireland to the provision in Clause 37, which is limited in application to Great Britain.

60. This power relates to the director disqualification provisions made by the Bill. Under the Bill, amendments are made to the Company Directors Disqualification (Northern Ireland) Order 2002 so that a director who is sanctioned for asset freezes under the Sanctions and Anti-Money Laundering Act 2018 is automatically disqualified. It therefore becomes an offence for such a director to act as a director of a company, or directly or indirectly, be concerned or take part in the promotion, formation or management of a company without leave of the court. The 2002 Order also extends to other entities such as building societies and NHS foundation trusts.

61. The focus of these measures in the Bill is on company directors, so the Bill contains provision ensuring that, for example, the sanctioning of an officer of an NHS foundation trust does not trigger that officer's disqualification. However, the Secretary of State has power to make regulations which lift that constraint, by repealing the exemption before it comes into force, so that in future the sanctioning of an individual can lead to disqualification of officers of all the sorts of entity covered by the 1986 Act.

Justification for taking the power

62. Taking a power allows the Secretary of State to only apply these measures to company directors in line with the policy focus of these measures in this Bill without it unnecessarily applying to other entities which are currently not in scope. The power also enables the Secretary of State to add other entities back into scope at pace if required and deemed proportionate in certain circumstances, upon further consideration.

Justification for taking the procedure

63. Repealing the above subsections is something which we assess Parliament would wish to discuss to ensure the Regulation's application is not too narrow in scope.

Clause 47: New section 113A Companies Act 2006: Register of members - power to amend required information

Power conferred on: Secretary of State

Power exercised by: regulations made by statutory instrument, including a Henry VIII power

Parliamentary Procedure: affirmative procedure

Context and Purpose

64. Clause 47 inserts section 113A into the Companies Act 2006. This is delegated power taken to amend the particulars of information which companies are required to enter into their register of members, that list being contained in section 113 of the Companies Act 2006.

Justification for taking the power

65. This power would leave open the possibility of enhancing the transparency of company ownership by requiring more information about members. As reforms are implemented to Companies House and the companies register, it is possible that further opportunities to improve information on shareholdings will be identified, which the Government would want to act swiftly to address. For example, law enforcement agencies may identify additional or alternate types

of information the Registrar could require the collection of, which would help them in the prevention and detection of crime.

66. While this is a Henry VIII power, there are equivalent powers already in effect for directors (section 166 of the Companies Act 2006) and people with significant control (section 790L of the Companies Act 2006), so this would bring parity for member information.

67. The power is tightly drafted so that it cannot be used more widely to make other changes beyond a narrow set of changes.

Justification for the procedure

68. These regulations would be made under the affirmative resolution procedure. This will ensure Parliament can debate changes which may add or remove burdens on companies or otherwise impact members. It is also appropriate given the power will be used to amend primary legislation.

Clause 49: New section 120A Companies Act 2006: Power to make regulations protecting material relating to members

Power conferred on: Secretary of State

Power exercised by: regulations made by statutory instrument

Parliamentary Procedure: affirmative procedure

Context and Purpose

69. Clause 49 inserts new section 120A into the Companies Act 2006. This power is similar to the powers in section 1088 and section 790ZG of the Companies Act 2006 which requires companies to refrain from using or disclosing particulars about People with Significant Control (PSCs), or to refrain from doing so except in circumstances specified in the regulations.

70. Regulations made under section 120A will allow members to apply to the Registrar to protect their information, so that it is not publicly available. This power allows for regulations to be made to confer power on the Registrar to make an order requiring a company to refrain from using or disclosing

individual member information, except in circumstances specified in the regulations.

71. This power allows for similar provisions to be made as are made under the power in the existing section 1088 and section 790ZG.

72. Regulations may make provision as to: who may make an application; the grounds on which an application may be made; the information to be included in and documents to accompany an application; how an application is to be determined; the duration of and procedures for revoking restrictions on use and disclosure.

Justification for taking the powers

73. The Regulations will include technical, procedural and administrative details of how companies are notified of requirements to not use or disclose relevant PSC particulars, unless in circumstances specified in the regulations.

74. This level of detail is more appropriate to be contained within secondary legislation. The provisions in subsections (3) - (6) of new section 120A are based on those in subsections (3) - (6) of existing section 790ZG of the Companies Act 2006, which Parliament was content to be detailed in secondary legislation.

75. Setting requirements out in secondary legislation will also help to future-proof the legislation, for example if further circumstances are identified where it would not be appropriate for a company to use or disclose relevant PSC particulars.

Justification for the procedure

76. Regulations made under the sections inserted by these clauses are subject to the affirmative resolution procedure. This is the same procedure followed for the similar existing powers referred to above and will allow full Parliamentary scrutiny. Failure to comply with the operation of substituted section 790ZG will also now result in a new offence being committed, as a result of the insertion of new section 790ZH into the Companies Act 2006.

Clause 64: New section 1110A(4) and (5) Companies Act 2006: Power to set out when an individual's identity ceases to be verified

Power conferred on: Secretary of State

Power exercised by: regulations made by statutory instrument

Parliamentary Procedure: affirmative procedure

Context and Purpose

77. The Secretary of State may, by regulations, set out circumstances when the verified status of an individual's identity ceases to be valid. This will mean the person needs to re-verify their identity within a specified period if they wish to continue being registered with the Registrar of Companies, to continue filing documents and to continue acting as a director. The regulations may give discretion to the Registrar to decide when a person needs to re-verify their identity.

Justification for taking the power

78. The maximum amount of time for which verification subsists (is 'valid') will depend on the standard of verification. Therefore, the amount of time for verification 'validity' will also need to be set in a statutory instrument and will need to be amended as verification standards evolve.

79. The regulations will also set out events that can trigger the requirement to reverify identity, such as a change of name. Further circumstances in which the Registrar requires individuals to verify their identity will only be identified once the new regime has been operating for some time and the Registrar has the necessary experience to determine them. We therefore expect regulations under this power to be made some time into the regime's operation. The power to amend the reverification circumstances will ensure the identity verification regime can swiftly be amended and remain effective in order to maintain the integrity of the register. Reverification can be undertaken by an authorised corporate service provider as well as by the Registrar.

Justification for the procedure

80. This is a technical detail not suitable for inclusion in primary legislation. It does not change the requirement of verification, but rather provides flexibility to update the verification standard as this industry and Registrar's requirements evolve. The verification process will also need to adapt to developments in technology to ensure that the Registrar is fully up to date.

Clause 64: New section 1110B(1) and (2) Companies Act 2006: Power to set out the procedure for verification of identity

Power conferred on: Secretary of State

Power exercised by: regulations made by statutory instrument

Parliamentary Procedure: affirmative procedure

Context and Purpose

81. The Secretary of State may in regulations specify the procedure for verifying or reverifying an individual's identity whether by the Registrar or an authorised corporate service provider (ACSP), including the evidence required. This could include specifying different methods of identity verification in line with industry best practice, such as digital, over the phone, by post, by email, face to face methods.

82. The regulations can also make provision about the records a person who is or has been an ACSP has to keep in connection with verifying or reverifying an individual's identity and allows offences to be created for failing to keep these records. This will ensure that there is sufficient evidence of the identity checks carried out by ACSPs so that, if for example it is required, it can be made available to the Registrar for compliance checks.

83. Provisions under these regulations also include conferring a discretion on the Registrar to impose requirements by Registrar's rules.

84. The power allows the Secretary of State to create offences for failure to comply with obligations made by regulations under section 1110B(2)(b). The level of sanctions, that may be provided in regulations made under section 1110B must be provided within the limits under section 1110B(4). On conviction on indictment it is imprisonment for a term not exceeding two years or a fine (or both). On summary conviction, the penalty is (i) in England and Wales imprisonment for a term not exceeding the general limit in a magistrates' court 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, and for a continued contravention a daily default fine; (iii) in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine a fine not exceeding the statutory maximum (or both), and for continued contravention a daily default fine. This penalty aligns with similar provisions on record-keeping that are required

under regulation 40 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 with the associated offence in regulation 86. It is imperative that all ACSPs are operating to the required standard and have sufficient evidence of their identity checks.

Justification for taking the power

85. These are technical and administrative details of how verification will work and are too detailed for primary legislation. Setting this out in secondary legislation will also help to future-proof the legislation, as the identity verification industry's standards evolve. Defining the procedure and evidence requirements in primary legislation risks the Registrar being bound by inferior and out of date identity verification procedures. This would undermine the purpose of identity verification and would put the register's integrity at risk.

86. The Registrar is given authority to make rules governing the filing of the documents at Companies House. These rules are made under section 1117 of the Companies Act 2006 and must be complied with whenever a document is delivered to Companies House. The rules can outline the form, manner of delivery and method of authentication for documents delivered to Companies House in electronic or paper format.

87. Penalties for any offence created by these regulations are set out on the face of the Bill and cannot be changed without a subsequent Act of Parliament, with the attendant scrutiny an Act provides. The public will therefore have certainty over the legal risk of breaching regulations, whilst the technical detail which could lead to a breach may change.

Justification for the procedure

88. New offences can be created. It is therefore right that Parliament be offered the greatest opportunity possible to scrutinise legislation made under this power.

Clause 65: New subsections 1098B(1)(c) and (4)(c) Companies Act 2006: Power to require additional requirements where a person applies to become an Authorised Corporate Services Provider (ACSP)

Power conferred on: Secretary of State

Power exercised by: regulations made by statutory instrument

Parliamentary Procedure: affirmative procedure

Context and Purpose

89. Section 1098B, inserted into the Companies Act 2006 by this clause, specifies the conditions under which a person can apply to become an Authorised Corporate Services Provider (ACSP) and the process that this application should take. The current application criteria is that the person is a relevant person, as defined in the Money Laundering Regulations, and has had their identity verified. Subsections 1098B(1)(c) and (4)(c) give the Secretary of State the power to make regulations to impose other requirements that a person must meet to apply to the Registrar to become an ACSP.

90. Subsection 1098B(5) allows the Secretary of State to give the Registrar discretion with respect to approving or rejecting an application to become an ACSP.

Justification for taking the power

91. The level of detail required for this provision is more appropriate for secondary legislation. It will allow the imposition of additional criteria that must be met before an application to become an authorised corporate service provider can be made or approved. These conditions may include a level of evaluative judgement by the Registrar, which this power will allow (see subsection (5)).

92. These powers futureproof the legislation by allowing application criteria to be changed if there is a reason to do so.

93. The power also links with the wider clause; for instance, the power could be used to amend application requirements with regards to ACSPs that are de-authorised and want to re-apply. It may be that in a situation such as this, additional conditions need to be imposed to prevent ACSPs from making multiple applications for re-authorisation after losing authorised status e.g., where de-authorisation is due to misconduct. Elsewhere in this clause there are powers to make regulations relating to de-authorisation, amongst other things These powers are therefore consequently important as they will allow amendments to be made to the authorisation process, if needed, to ensure the framework works as a whole and does not permit illegitimate businesses to become ACSPs.

Justification for the procedure

94. Regulations made under this section will alter the application requirements for ACSPs so could have an impact on all ACSPs wanting to do business. This would in turn have an impact on the clients that ACSPs file on behalf of, particularly limited partnerships who will be required to use an ACSP for most of their filings under the reforms.

95. Therefore, it is appropriate for Parliament to debate any changes made to ensure that they are reasonable and proportionate, whilst maintaining a stringent application process that designs out the possibility that ACSPs which partake in illicit activity, or which are otherwise not entitled to act as an ACSP, can nevertheless be registered.

Clause 65: New section 1098C(5) Companies Act 2006: Power to amend the required information about an applicant

Power conferred on: Secretary of State

Power exercised by: regulations made by statutory instrument, a Henry VIII power

Parliamentary Procedure: affirmative procedure

Context and Purpose

96. Subsection 1098C(1) lists the required information that an applicant must provide the Registrar when applying to become an authorised corporate service provider (ACSP). The information differs slightly for those that are individuals and those that are firms, but in both cases it ensures that there is a contactable person linked to the application.

97. Subsection (5) contains a power to amend that required information listed in subsection (1) and also to repeal a provision in subsection (4) which provides that where an applicant is a peer or an individual usually known by a title, any requirement imposed by the Companies Act 2006 to provide the individual's name because it forms part of the required information may be satisfied by providing that title instead of the individual's forename and surname.

Justification for taking the power

98. This power is consistent with wider legislation on company law and assists with future proofing. There are similar provisions elsewhere in the Companies Act 2006, for example there are equivalent powers for people with significant control in section 790L of the Companies Act 2006. This power is useful because it means that more, or different, information can be collected in the future in relation to ACSPs which will allow alignment of information across the Registrar.

99. While this is a Henry VIII power, there are equivalent powers already in effect for directors (section 166 of the Companies Act 2006) and people with significant control (section 790L of the Companies Act 2006), so this would bring parity for ACSPs.

100. The power is tightly drafted so that it cannot be used more widely to make other changes beyond the narrow set of changes specified.

Justification for the procedure

101. It is appropriate for Parliament to debate any changes made to ensure that they are reasonable and proportionate, whilst maintaining a stringent application process that designs out the possibility that ACSPs which partake in illicit activity, or which are otherwise not entitled to act as an ACSP, can nevertheless be registered as such.

Clause 65: New section 1098F(2) Companies Act 2006: Power to provide for other circumstances where a person ceases to be an Authorised Corporate Services Provider

Power conferred on: Secretary of State

Power exercised by: regulations made by statutory instrument

Parliamentary Procedure: affirmative procedure

Context and Purpose

102. Section 1098F requires that a person ceases to be an authorised corporate service provider (ACSP) if they are no longer a relevant person as defined by regulation 8(1) of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017. This is currently the only activity that would lead to cessation, however subsection 1098F(2) provides the Secretary of State with a power to make regulations to provide other circumstances that would result in cessation.

Justification for taking the power

103. The power futureproofs the underlying provision. For example, if the requirements for applying or becoming authorised as an ACSP in section 1098B were to change, this would have an impact on when de-authorisation is necessary. Furthermore, as the definition and role of an ACSP is a new concept that is being introduced by the Bill, it is important that there is flexibility to use learnings from implementation and respond to these by way of secondary legislation if needed. There may be unforeseen issues that arise in terms of the rollout of the ACSP framework, this power will allow for any such issues to be addressed in a timely manner which is imperative in ensuring that only legitimate businesses are allowed to operate as ACSPs.

Justification for the procedure

104. Given that regulations made under this power could result in some ACSPs having to cease business, there should be an appropriate level of scrutiny of the exercise of this power, which is why it is subject to the affirmative resolution procedure.

Clause 65: New section 1098G Companies Act 2006: Power to suspend a person's status as an Authorised Corporate Services Provider

Power conferred on: Secretary of State

Power exercised by: regulations made by statutory instrument

Parliamentary Procedure: affirmative procedure

Context and Purpose

105. Section 1098G takes a power to make regulations providing for the suspension of an authorised corporate service provider (ACSP) authorised status and links closely with 1098F. For example, if an ACSP is under investigation (whether that be by the Registrar, a money laundering supervisor, or another applicable body), the Registrar may want to suspend the ACSP from delivering documents. Suspension would allow for immediate action to be taken, rather than having to wait until the conclusion of an investigation before the ACSP could be de-authorised and will allow the Registrar to prevent the ACSP from making further filings until the underlying situation is rectified.

106. The power also extends to including provision conferring a discretion on the Register in relation to the suspension process. This is thought to be necessary as it is the Registrar who will be best placed to assess a corporate service provider's suitability for ongoing authorisation. The power as drafted would be able to provide flexibility in exercise of the suspension process at the Registrars discretion; the level of detail of which is more applicable for secondary legislation.

Justification for taking the power

107. The ACSP framework is newly introduced by this Bill and so the power to provide for a system of suspension of authorisation is necessary in order to enable processes to be adapted as learnings are taken from experience once the framework is operational.

108. The power has been drafted in such a way so as to ensure that it has a focused scope. Section 1098G(2) clearly lays out what can be covered under the regulations, namely; the procedure for suspension, the period suspension is to last and the revocation of a suspension.

Justification for the procedure

109. Regulations made under this power could see ACSPs face suspension, which will impact on their ability to carry out their business. It is appropriate that Parliament debates such regulations, and this power is therefore subject to the affirmative resolution procedure.

Clause 65: New subsection 1098H Companies Act 2006: Power to impose duties to require information where a person ceases to be an authorised corporate service provider

Power conferred on: Secretary of State

Power exercised by: regulations made by statutory instrument

Parliamentary Procedure: affirmative procedure

Context and Purpose

110. Where a person ceases to be an authorised corporate service provider (ACSP), this power permits the Secretary of State to make regulations that require the person to notify the Registrar if they have ceased to become an ACSP and for what reason. The regulations may contain an offence to ensure enforcement, otherwise there is a risk that the Registrar is not notified and ACSPs continue acting when they should have ceased to exist.

111. The Secretary of State may also by regulations require an ACSP to provide any information to the register on request in accordance with the regulations. This may be as a result of a particular event or on a regular occurrence.

Justification for taking the power

112. Flexibility is needed given that this power will link closely with the power taken in section 1098F(2) (ceasing to be an ACSP). It will be necessary to update the information that must be provided to the registrar if the grounds for ceasing to be authorised change, so the registrar can be made aware of such events.

113. Furthermore, as the ACSP framework is being newly introduced by this Bill, it might become apparent during the course of implementation and operationalisation that the Registrar needs more information from ACSPs; this power will allow for such information to be collected. The drafting of the power is specific and the offence for failing to comply with any requirements to provide information is limited to what is listed in section 1098H(5) to ensure that the power can only be used in future for the intended purpose set out here.

Justification for the procedure

114. Regulations under this power could result in a new offence affecting businesses operating as company service providers. As such it is appropriate Parliament debates whether any proposed offence is necessary and proportionate.

Clause 65: New section 1098I Companies Act 2006: Power to enable authorisation of foreign corporate service providers

Power conferred on: Secretary of State

Power exercised by: regulations made by statutory instrument, a Henry VIII power

Parliamentary Procedure: affirmative procedure

Context and Purpose

115. The clause currently only allows a person to become an Authorised Corporate Services Provider (ACSP) if they are supervised under the UK's anti-money laundering regulations. This means that there cannot be an overseas ACSP on the register unless they are supervised by a UK body and have a UK branch or office.

116. The power in section 1098I is to provide for overseas persons to apply to be an ACSP. Those regulations may amend specified other ACSP provisions in the Companies Act 2006, insert new sections, and make consequential amendments to, and repeals of, other provisions of the Act as necessary.

117. This is a discretionary power which will allow the Secretary of State to forgo the requirement for an ACSP to be subject to the UK Money Laundering Regulations (MLR) where that overseas agent is subject to an anti-money laundering supervision scheme that is equivalent to the UK's.

118. The policy is to require ACSPs to be subject to anti money laundering supervision in the UK, but this might change if, for example, the UK becomes party to an agreement that allows overseas equivalents.

Justification for taking the power

119. There is potential that the UK will need to make adjustments to these arrangements in order to ensure its continuing effectiveness and coherence in future. For example, were the UK to enter into international trade agreements that will require the UK to accept a different anti-money laundering regime, or finds an equivalent supervision scheme to expand who can become an ACSP. Since these agreements do not yet exist and there is no current established standard for equivalent anti-money laundering supervision, a power is needed.

120. While this is a Henry VIII power, it is necessary to allow for the scenario where the UK becomes party to an agreement that allows recognition of overseas equivalents.

Justification for the procedure

121. A high level of scrutiny will be needed to determine what is an equivalent anti-money laundering regime to ensure that there are no loopholes that could enable criminal activity by overseas ACSPs. Offences may also be created using this power (see section 1098H(4)). It is therefore right that Parliament has the highest level of scrutiny available.

Clause 67: Amendment of section 1082 Companies Act 2006: Allocation of unique identifiers

Power conferred on: Secretary of State

Power exercised by: regulations made by statutory instrument

Parliamentary Procedure: affirmative procedure

Context and Purpose

122. This power expands the Secretary of State's existing power in section 1082 Companies Act 2006 to make provision for the use and allocation of unique identifiers to certain persons. A unique identifier is a unique number that may be allocated by the registrar to certain individuals in connection with the register.

123. The current power only allows the Secretary of State to make provision for the allocation of unique identifiers to limited categories of individuals (mainly directors and company secretaries) set out in section 1082(1). This is being expanded to allow the registrar to use and allocate unique identifiers to authorised corporate service providers and individuals whose identity is verified. The unique identifiers will be allocated not only in connection with the register, but also wider dealings with the registrar.

Justification for taking the power

124. The expansion of this existing power is needed to ensure that individuals subject to new identity verification requirements and the Authorised Corporate Service Providers are properly identified and linked within Companies House systems, for example to ensure that all appointments / roles a particular individual has across multiple companies are properly linked. There is likely to be significant operational details to set out in legislation to underpin this, which is why it is more appropriate for secondary regulations.

Justification for the procedure

125. The affirmative procedure will ensure that the provisions on use and allocation of unique identifiers undergo sufficient scrutiny to satisfy the Parliament that this process will allow for achieving the objectives of the identity verification policy and improve the integrity of the register.

Clause 70: New subsections 1067A(1)(b), (2)(d) and (4A) Companies Act 2006: Power to exempt individuals from verification requirements for the purposes of filing documents with the Registrar

Power conferred on: Secretary of State

Power exercised by: regulations made by statutory instrument

Parliamentary Procedure: affirmative procedure

Context and Purpose

126. Individuals filing documents with the Registrar on their own behalf will be required to undergo identity verification. Documents may not be delivered to the Registrar unless the individual's identity is verified (as per new section 1067A(1)(a)). Individuals filing documents will need to deliver a statement under section 1067A(3) that their identity is verified when filing these documents.

127. Documents will only be allowed to be delivered to the Registrar on behalf of another person if the individuals filing documents with the Registrar have an authority to deliver such document and either (i) undergo identity verification, (ii) are an authorised corporate service provider, or (iii) are an employee of an ACSP (new section 1067A(2)(a)-(c)). Individuals filing

documents on behalf of another will have to make statements that they are authorised to do so under section 1067A(4).

128. This is to further ensure the integrity of the register by preventing anonymous filing. Secretary of State may by regulations under the new section 1067A(1)(b) and (2)(d) set out exceptions to the requirement for verification for individuals filing documents with the Registrar respectively on their own behalf and on behalf of another.

129. Where an exemption set out in regulations under subsections 1067A(1)(b) and (2)(d) applies, this person will be required to make a statement confirming it to the Registrar (subsections 1067A(3)(b) and 1067(4)(d). The Secretary of State may, by regulations, require delivery of additional evidence to the Registrar proving that the exemption indeed applies (section 1067A(4A)).

Justification for taking the power

130. The powers under section 1067A(1)(b) and 1067A(2)(d) allow for the Secretary of State to create exemptions that would allow a person who has not verified their identity to deliver documents to the Registrar on their own behalf or on behalf of another person. Whilst we intend for this exemption to be used rarely, there are cases where requiring identity verification could be disproportionate. This includes filings from corporations sole, government departments, local authorities and international organisations, where the identity and accountability of the organisation delivering the information carries little risk. This could also include filings made by an administrator or a company in administration.

131. Corporate transparency is an area that is subject to constant change as new forms of company are established and regulation adapts alongside them. These powers are needed for the identity verification to quickly adapt to future changes in company law, so that identity verification remains a thorough yet proportionate process.

132. Where an exemption is granted, the Registrar may require additional statements to evidence the exemption. Requirements for these additional statements will need to be set out and adapted as the exemption regulations under subsections 1067A(1)(b) and (2)(d) are made. This power is needed so that the Registrar can confirm the validity of an exemption from IDV requirements. The statements under sections 1067A(1)(b) and (2)(d) may not provide all the information needed to confirm an exemption's validity and more information could be required to do so.

Justification for the procedure

133. The affirmative procedure will ensure that exemptions to the requirement that individuals filing with the Registrar verify their identity undergo sufficient scrutiny to satisfy the Parliament that exemptions do not undermine the core purpose of the verification policy of improving the integrity of the companies register.

134. There should also be Parliamentary scrutiny around supplementary information provided to the Registrar about the exemption so it is sufficient and the integrity of the identity verification regime is maintained.

Clause 73: New section 1068(4A) Companies Act 2006: Facilitating delivery of documents by electronic means

Power conferred on: The Registrar

Power exercised by: Registrar's rules

Parliamentary Procedure: N/A

Context and Purpose

135. This is not strictly a delegated power but has been included for reference.

136. Under the Companies Act 2006, subsection 1068(6) currently prevents the Registrar from mandating documents to be delivered by electronic means, and section 1069 sets procedural requirements for requiring electronic delivery. The Bill will omit subsection 1068(6) and section 1069 and require that any requirements set out in sections 1068(4)(b) to (d) be imposed via Registrar's rules (under section 1117 of Companies Act 2006, the Registrar is given authority to make rules governing the filing of documents at Companies House). These changes give the Registrar complete discretion to determine the form in which documents are to be delivered to the Registrar. The expectation is that e-form will be specified in most cases, because of the potential for fraud that arises with hard copies.

Justification for taking the power

137. This change is essential to help Companies House meet its strategic aim of becoming a fully digital organisation and combat against fraud which can be more easily obscured through the filing of hard copy documents. It is much more onerous for Companies House to receive hard copies and the

intention of electronic delivery is to improve efficiency and ease of interrogation into information.

138. Giving the Registrar complete discretion over the form in which documents are delivered to them will enable her to mandate the electronic delivery of documents, allowing for rare exceptions.

Justification for the procedure

139. Given that the delivery of documents is an administrative matter relating to the register, Registrar's rules are deemed the most appropriate vehicle for specifying how documents are to be delivered. The procedural aspects attached to regulations made by statutory instrument are not seen as necessary as the requirements to be set out in the Registrar's rules are mere administrative provisions.

140. The Government expects the requirement for documents to be delivered electronically to be set by the Registrar's rules and for the Registrar to request a hard copy only in rare circumstances. for the Registrar to request a hard copy only in rare circumstances.

Clause 76: New section 1068A(1) Companies Act 2006: Registrar's rules requiring documents to be delivered together

Power conferred on: The Registrar

Power exercised by: Registrar's rules

Parliamentary Procedure: N/A

Context and Purpose

141. This is not strictly a delegated power but has been included for reference.

142. Through the addition of a new section 1068A to the Companies Act 2006, the Bill will introduce a power to enable Registrar's rules to require that multiple documents must be filed together.

143. The Bill delegates this power to Registrar's rules. This enables the Registrar to determine the best option for the filing of documents, and to provide flexibility to allow for exceptions where Companies House would not want documents to be delivered together. An example is the change of name

package filing: although the majority of companies change their name by special resolution and submit it with the form to give Notice (NM01), they are not obliged to deliver these documents together and there is no reason to change this requirement.

Justification for taking the power

144. It is the Government's intention to make the filing of accounts by a digital means mandatory. The systems to be used will only work if the various component parts of financial statements are filed together. It is therefore essential that sections 444 to 447 of the Companies Act 2006 require the component parts to be filed together as a single package of electronic documentation. This will prevent any unintended consequences should companies attempt to file parts of the accounts separately.

145. This power will also ensure that the component parts of the accounts are filed simultaneously, which is important to allow the Registrar to check that the company has adopted the correct filing approach (e.g. that the company is eligible to file accounts under the micro or small company rules).

Justification for the procedure

146. The Registrar is best placed to determine the details of the requirement to file documents together, including appropriate exceptions, through Registrar's rules. The Government believes the Bill offers Parliament sufficient opportunity to scrutinise the principle that documents to be delivered together under most filing requirements.

Clause 83: New section 1094(4) Companies Act 2006: Power to limit the registrar's power to remove material from the register

Power conferred on: Secretary of State

Power exercised by: regulations made by statutory instrument

Parliamentary Procedure: negative procedure

Context and Purpose

147. New section 1094(1) of the Companies Act 2006 sets out the categories of material which may be removed from the register either by the Registrar's own motion or upon application by another person. New section 1094(4) provides the Secretary of State with the ability to make regulations to

determine limitations on what can be removed within those categories where they are the subject of an application by a person other than the Registrar.

Justification for taking the power

148. The Registrar with a new suite of broad administrative removal powers. It is appropriate to provide power to constrain the types of information a person can apply to the registrar to remove in future in light of operational experience. This is to ensure the correct balance is struck between allowing unnecessary or harmful information to be removed from the register on the one hand and important information remaining visible on the register on the other.

Justification for the procedure

149. Given the level of assurance already provided in the primary clauses, the procedure will be negative as these measures are non-controversial and will be debated in Parliament as part of the passage of this Bill. The power can only be exercised in a way that reduces the breadth of the Registrar's removal power.

Clause 83: New section 1094A(1) Companies Act 2006: Further provision about removal of material from register

Power conferred on: Secretary of State

Power exercised by: regulations made by statutory instrument

Parliamentary Procedure: negative procedure

Context and Purpose

150. New section 1094 of the Companies Act 2006, inserted by Clause 83, sets out the categories of material which may be removed from the register either by the Registrar's own motion or upon application by another person. By inserting new section 1094A(1), Clause 83 of this Bill obliges the Secretary of State to make regulations setting out the notice requirements attendant upon instances where material has been removed upon the motion of the Registrar.

Justification for taking the power

151. The detail of the process for giving notice of removal of material is more suitably established in secondary legislation. The flexibility to amend the process through secondary legislation will allow scope potentially to both strengthen and/or streamline it in future.

Justification for the procedure

152. Given the level of assurance already provided in the primary clauses, the procedure will be negative as these measures are non-controversial and will be debated in Parliament during the passage of this Bill.

Clause 83: New section 1094A(2) Companies Act 2006: Further provision about removal of material from register

Power conferred on: Secretary of State

Power exercised by: regulations made by statutory instrument

Parliamentary Procedure: negative procedure

Context and Purpose

153. New section 1094 of the Companies Act 2006, as inserted by Clause 83, sets out the categories of material which may be removed from the register either by the Registrar's own motion or upon application by another person. By inserting new section 1094A(2), Clause 83 of this Bill confers the power for the Secretary of State to make regulations establishing a range of requirements around removal applications and the determination process in respect of such applications.

Justification for taking the power

154. The primary provisions already indicate in some detail the parameters within which the administrative removal process will operate in future, envisaging, for example, that it will be established who is permitted to make an application and how that application will be determined. The granularity of how the process will operate is more suitably established in secondary legislation. The flexibility to amend the process through secondary legislation will allow scope potentially to both strengthen and/or streamline it in future.

Justification for the procedure

155. Given the level of assurance already provided in the primary clauses, the procedure will be negative as these measures are non-controversial and will be debated in Parliament as part of the passage of this Bill.

Clause 85: Power to require businesses to report discrepancies: Discrepancy Reporting

Power conferred on: Secretary of State

Power exercisable by: regulations made by statutory instrument

Parliamentary procedure: affirmative procedure

Context and purpose

156. The government committed to expanding discrepancy reporting requirements on regulated professionals, such as banks, lawyers and accountants in the 2022 Corporate Transparency and Register Reform White Paper.

157. This clause would insert a power into the Companies Act 2006 which allows the Secretary of State to make regulations which impose obligations on 'relevant persons' to report discrepancies between the information which they receive from their customer against the material which the Registrar of companies makes available for public inspection.

Justification for taking the power

158. Aspects of a discrepancy reporting system are likely to change over time, such as who should be under the obligations, what information they are obliged to check and what information the reporter must provide about themselves. As technology develops or different information is required to be sent to the Registrar, discrepancy reporting obligations should be able to adapt accordingly. For example, the way in which businesses spot and report discrepancies may evolve, the Secretary of State should have the power to make these adaptations and other changes to improve the discrepancy reporting system without being required to make amendments by primary legislation, so as to not take valuable parliamentary time with another public Bill, making amendments which are minor in nature. The Secretary of State needs the legislative agility to vary the reporting requirements according to shifting business practices.

Justification for the procedure

159. Regulations made under this power will be subject to the affirmative procedure. The new regulations will have an impact on the duties of certain businesses and therefore should be subject to appropriate parliamentary scrutiny.

Clause 89: Amendment of section 1088 Companies Act 2006: Protecting information on the register

Power conferred on: Secretary of State

Power exercised by: regulations made by statutory instrument

Parliamentary Procedure: affirmative procedure

Context and Purpose

160. This power widens existing powers in Section 1088 and Section 790ZG of the Companies Act 2006, which allows the Registrar to remove personal information from the public register. The power provides that the Secretary of State may require the Registrar, on application, to make personal or sensitive address information (for example, an address used as a women's refuge) unavailable for public inspection, and to refrain from disclosing that information, or to refrain from doing so except in specified circumstances. This power allows for similar provisions to be made as are made under the power in Section 1088 and Section 790ZG.

161. In some cases, this power will allow for more types of personal information to be suppressed than can be currently, such as signatures and business occupations. In other cases, these powers will extend the circumstances where personal information can be suppressed, such as where the day of date of birth was contained in a historic filing, or where a residential address was used as a registered office address.

162. This power will also extend the circumstances in which personal information can be protected where an individual is at serious risk of violence or intimidation. This builds upon section 790ZG of the Companies Act 2006, which allows People with Significant Control to protect all their required particulars if they are at serious risk of violence or intimidation due to the activities of a specific entity (such as if the entity is involved in animal testing). These powers will allow applications to protect a name, or all required particulars, where an individual is at serious risk for other reasons (for example, in cases of domestic abuse) or where there is sensitive address information (such as where the address of a domestic abuse refuge is used as a registered office address).

163. Regulations may make provision as to: who may make an application; the grounds on which an application may be made; the information to be included in and documents to accompany an application; how an application is to be determined; the duration of restrictions granted; and procedures for their revocation.

Justification for taking the power

164. This level of detail is more appropriate to be contained within secondary legislation. As above, there are Companies Act 2006 precedents, as well as a precedent for this approach in section 25 of the Economic Crime (Transparency and Enforcement) Act 2022.

165. The Government requires the provision of personal information under legislation and keeps under regular review what it is necessary and proportionate for Companies House to collect and make available publicly. Where it is decided it is no longer necessary to require the provision of such personal information (e.g., signatures and business occupations) it is right that individuals can apply to suppress this as soon as possible. Having this personal information displayed publicly can lead to fraud and other harms. The Government may decide it is no longer necessary and proportionate to display other types of personal information once other reforms are implemented. Taking this power will provide the flexibility required to implement such changes swiftly without causing unnecessary delay – and in some cases personal risk – to individuals.

Justification for the procedure

166. Regulations made under this clause are subject to the affirmative resolution procedure. This is the same procedure followed for the similar existing powers referred to above and will allow full Parliamentary scrutiny.

Clause 91: New subsection 1063(3A) Companies Act 2006: Power to set fees and the costs that may be taken into account

Power conferred on: Secretary of State

Power exercised by: regulations made by statutory instrument

Parliamentary Procedure: negative procedure

Context and Purpose

167. This clause extends the potential range of activities in respect of which fees may be charged by the registrar (for example the fees charged on the incorporation of a company or in connection with filings).

168. It will enable the Secretary of State to include the costs associated with active maintenance of the integrity of the register. This will include the costs of

investigation and enforcement activities that may result in civil or criminal sanction.

Justification for taking the power

169. The power for the Secretary of State to set fees via regulations already exists within section 1063 of the Companies Act 2006. However, at present, fees can only be used to fund “functions of the Registrar” and certain other matters.

170. Enforcement activity is not a function of the Registrar. Instead, it is undertaken by officials (within Companies House and/or the Insolvency Service) on behalf of the Secretary of State. In Northern Ireland, such activities are undertaken by the Northern Ireland Insolvency Service on behalf of the Department for the Economy. As such, the current fee-raising power is insufficient to be relied upon to enable fees to be used to cover these costs.

171. The Government intends to use the additional funding to unlock a sustainable revenue stream to enable investigation and enforcement activity already undertaken by both agencies, as well as unlocking the potential for more work in order to maintain the integrity of the register and to tackle economic crime. By placing the burden on those who benefit from incorporated status, this can be achieved without increasing general taxation.

Justification for the procedure

172. Fees are currently set via a negative resolution SI, and are determined by the costs incurred by Companies House in its day to day running, operating on the principle of full-cost recovery (i.e. it endeavours not to make a profit or a loss).

173. The extension of the power will introduce additional components to the calculation which is used to set fees. These components will be based on the cost of activities that are undertaken to fulfil certain functions of the Secretary of State.

174. It is generally accepted practice that arms-length bodies are accountable to Ministers, who are in turn accountable to Parliament. The Secretary of State will set Companies House various performance targets, including expectations of the amount of activity undertaken in pursuit of these functions. The cost of carrying out these activities will be included in the fee.

175. As the fees will continue to be determined by the costs incurred by the agencies carrying out the directions of the Secretary of State, a negative resolution SI therefore remains the most appropriate method of setting the fee.

Clause 91: New subsection 1063(6A) Companies Act 2006: Power to include further activities when determining payable fees

Power conferred on: Secretary of State

Power exercised by: regulations made by statutory instrument, a Henry VIII power

Parliamentary Procedure: affirmative procedure

Context and Purpose

176. Following on from the previous section, Clause 91(4) allows for the making of regulations to amend subsection (3A)(e) to change the reference to functions carried out by the Insolvency Service on behalf of the Secretary of State, with the limitation that the functions referred to must be functions of the Secretary of State that are of a similar nature. It also allows for the making of regulations to amend subsection (3A)(f) to change the reference to functions carried out by the Insolvency Service in Northern Ireland on behalf of a Northern Ireland department, with a similar limitation that the functions referred to must be functions of a Northern Ireland department that are of a similar nature.

Justification for taking the power

177. The power will provide the Secretary of State with the ability to amend the legislation so that the funding of the activities that are enabled by this clause can continue to be funded by fees, even if the agency responsible for performing these functions is changed (e.g. in the event of the Insolvency Service being renamed or merged with another agency).

Justification for the procedure

178. This is a Henry VIII power. It can only amend section 1063(3A)(e) and (3A)(f), and is very narrow in terms of the substance of what amendments can be made. As a result of Clause 91, section 1063 of the Companies Act 2006 will now explicitly name the Insolvency Service, and also name the Insolvency Service in Northern Ireland. The purpose of this power is to enable the legislation to reflect any Machinery of Government changes which result in a different agency becoming responsible for the functions set out in this section.

179. Affirmative resolution will provide the appropriate level of scrutiny to prevent any expansion of the fee-raising power to fund functions which are not of a similar nature as those provided for in the primary legislation. The actual level of fee will continue to be set by negative resolution.

Clause 92: Registrar data sharing with persons not performing public functions

Power conferred on: Secretary of State

Power exercised by: regulations

Parliamentary procedure: affirmative resolution

Context and Purpose

180. Currently, 1110F in Clause 92 in the bill only permits the registrar to share data for purposes connected to the registrar's functions, or with a public authority for purposes connected with their public functions.

181. The power in this amendment allows the Secretary of State to make regulation that specifies a person the registrar can share information with and for what specific purpose. This means that if there is ever a body that the registrar wishes to share with for reasons outside of 1110F (1)(a) and (b), the Secretary of State has the power to permit this.

Justification for taking the power

182. There may be instances where it would be beneficial for the Registrar to share information with an organisation that is not covered under the current gateway in 1110F (1)(a) and (b). The context is the ever-changing threat from economic crime, and the determination of the Government to put in place a more flexible and future-proofed legislative framework to enable the UK to respond to the evolving threat. Many public and private sector organisations are involved in responding to the threat, and there is likely to be a need in future for these information sharing powers to evolve. This regulation making power will allow secondary legislation to be made to permit this sharing without requiring new primary legislation, which is inflexible and cannot be amended at the pace required to respond to changes in criminal behaviour.

183. The power is therefore necessary to ensure that if any gaps are found in the data sharing gateway, these can be filled to respond swiftly and dynamically to changes in the threat posed from those perpetrating economic crimes without the inflexibility of needing new primary legislation. The flexibility

gained from having a list in secondary legislation also means that it can be amended to remove persons, or reasons for sharing, from the list should they ever be deemed to be redundant.

Justification for the procedure

184. Regulations made under this provision will allow the registrar to share information it holds about any entity or individual with another person or body. It is therefore important that the regulations receive sufficient parliamentary scrutiny to ensure information is shared appropriately, which is why they are subject to the affirmative procedure.

Clause 94: New subsection 790ZG(1) Companies Act 2006: Use or disclosure of PSC information by companies

Power conferred on: Secretary of State

Power exercised by: regulations made by statutory instrument

Parliamentary Procedure: affirmative procedure

Context and Purpose

185. This clause inserts a power which substitutes an existing power in section 790ZG of the Companies Act 2006. The power amends the process by which companies are notified of the requirements on them to refrain from using relevant PSC particulars, except in circumstances specified in the regulations, or to refrain from disclosing relevant PSC particulars, except in circumstances specified in the regulations. The current section 790ZG of the Companies Act 2006 (power to make regulations protecting material) states the Secretary of State may by regulations make provision requiring the Registrar *and* the company to refrain from using or disclosing PSC particulars of a prescribed kind. The substituted section 790ZG confers a power on the Secretary of State to legislate for the Registrar to make an order requiring a company to refrain from using or disclosing the PSC's protection information. Clause 87 restricts the disclosure of such information by the Registrar.

Justification for taking the power

186. These are technical, procedural and administrative details of how companies are notified of requirements to not use or disclose relevant PSC particulars, unless in circumstances specified in the regulations.

187. This level of detail is more appropriate to be contained within secondary legislation. The provisions in subsections 790ZG(3) - (7) are based on those in subsections (2) - (6) of existing section 790ZG of the Companies Act 2006, which Parliament was content to be detailed in secondary legislation.

188. Setting requirements out in secondary legislation will also help to future-proof the legislation, for example if further circumstances are identified where it would not be appropriate for a company to use or disclose relevant PSC particulars.

Justification for the procedure

189. The existing section 790ZG of the Companies Act 2006 follows the affirmative procedure, which was approved by Parliament and is similar to this substituted section. The substituted section's operation introduces a new offence for non-compliance. It is therefore appropriate to apply the same procedure followed for the similar existing powers referred to above, which will allow full Parliamentary scrutiny

Clause 96: New subsection 1046(6A): Application of Companies House measures to other legal entities: change of addresses of officers of overseas companies by registrar

Power conferred on: Secretary of State

Power exercisable by: regulations made by statutory instrument

*Parliamentary procedure: a*ffirmative

Context and purpose

190. The clause adds a new provision to an existing power in section 1046 of the Companies Act 2006 to make regulations setting out actions that may be taken if certain addresses supplied to the registrar for registration, do not meet statutory requirements.

191. This power may be exercised where an overseas company is required to deliver to the registrar for registration (a) a service address for an officer of the company or (b) the address of the principal office of an officer of the company.

192. Under this amended power in subsection (6A), the Secretary of State may make provisions corresponding or similar to new provisions about rectification of register relating to service addresses or principal addresses (new sections 1098B or 1097C).

193. The new provision provides that those regulations may confer on the Registrar of Companies a power to change any such address if they do not meet the statutory requirements.

Justification for taking the power

194. There may be instances where evidence suggests that the address where an officer of the company may be contacted, as provided by an overseas company is erroneous or invalid. In circumstances where no verifiable alternative information is available, the most appropriate approach may be to replace the information with a default address, where legal documents can be served, until such time as a valid address is provided.

195. Currently any registration requirements in relation to overseas companies established in the UK are provided solely under secondary legislation. Overseas Companies Regulations specify information that must be registered with the registrar in relation to overseas companies. The changes introduced in this clause provide additional powers and requirements accompanying the registration requirements established in secondary legislation. We cannot, therefore, introduce them in primary legislation, because they do not exist in that context.

Justification for the procedure

196. Regulations made under the provision inserted by this clause are subject to the affirmative resolution procedure, which follows the procedure for the existing regulation making power in section 1046 of the Companies Act 2006.

Clause 97: New subsections 1046(6B)-(6C) Companies Act 2006: Application of Companies House measures to other legal entities: overseas companies: availability of material for public inspection

Power conferred on: Secretary of State

Power exercisable by: regulations made by statutory instrument

Parliamentary procedure: affirmative

Context and purpose

197. The clause adds a new provision to an existing power in section 1046 of the Companies Act 2006 to make regulations setting out particulars required to be registered by an overseas company with an establishment in the UK. A UK establishment is a branch or place of business.

198. The new provision provides that those regulations may confer on the Registrar of Companies a discretionary power to withhold any such particulars from public inspection.

Justification for taking the power

199. There may be instances where evidence suggests that details provided by an overseas company are erroneous or invalid. In circumstances where no verifiable alternative information is available, the most appropriate approach may be to suppress the information from public view and annotate the register to the effect that there are doubts over the veracity of the information in the Registrar's possession. Through exercising the suppression powers, the registrar will act according to her new objective and minimise the risk of her records creating false or misleading impression to members of the public.

200. Currently any registration requirements in relation to overseas companies established in the UK are provided solely under secondary legislation. Overseas Companies Regulations specify information that must be registered with the registrar in relation to overseas companies. The changes introduced in this clause provide additional powers and requirements accompanying the registration requirements established in secondary legislation. We cannot, therefore, introduce them in primary legislation, because they do not exist in that context.

Justification for the procedure

201. Regulations made under the provision inserted by this clause are subject to the affirmative resolution procedure, which follows the procedure for the existing regulation making power in section 1046 of the Companies Act 2006.

Clause 98: New section 1048A Companies Act 2006: Application of Companies House measures to other legal entities: overseas companies: registered addresses of an overseas company

Power conferred on: Secretary of State

Power exercisable by: regulations made by statutory instrument

Parliamentary procedure: negative procedure

Context and purpose

202. This clause inserts new section 1048A into the Companies Act 2006, which confers a regulation making power on the Secretary of State to require

that an overseas company provides an appropriate address and an appropriate email address to the Registrar.

203. The new provision provides that the regulations can provide for the information to be held from public inspection.

Justification for taking the power

204. The Bill already contains provisions designed to improve the accuracy and reliability of the addresses (and email addresses) of UK registered companies and provides regulation making power allowing for addresses to be changed where they do not meet the statutory requirement or are inaccurate. It is appropriate that similar requirements and powers should apply in respect of the UK addresses of overseas companies which are established here. The primary purpose is to provide a means to protect individuals whose private addresses may have been "hijacked" and used improperly in a corporate context.

Justification for the procedure

205. Regulations under this clause are subject to the negative resolution procedure.

Clause 99: New section 1048B Companies Act 2006: Application of Companies House measures to other legal entities: overseas companies: identity verification of directors

Power conferred on: Secretary of State

Power exercisable by: regulations made by statutory instrument

Parliamentary procedure: negative procedure

Context and purpose

206. Regulations made under the power in this amendment allow the Secretary of State to extend identity verification requirements to directors of overseas companies established in the UK. These requirements will correspond to those imposed on directors of UK companies.

207. Regulations made under the power in this amendment may include requiring the delivery of statements or other information to the Registrar. They may also include with or without modifications, a prohibition from acting as a director unless identity verified or applying exemptions from identity verification on national security grounds.

Justification for taking the power

208. Overseas companies are incorporated outside of the UK and governed by their domestic law. If they operate within the UK, they are only within limited control of UK law. UK legislation affecting overseas companies will therefore likely need to adapt more quickly to their changing circumstances than primary legislation would allow for.

209. Furthermore, overseas companies operating in the UK are primarily regulated by secondary legislation made under the powers in Part 34 of the Companies Act. These powers are envisaged to now be insufficient to extend to new measures introduced via this Bill. Introducing a new power via this amendment allows for the extension of new measures in the Bill to overseas companies without moving away from the current model of delivering this via secondary legislation.

Justification for the procedure

210. As regulations made under this power will correspond to regulations under section 1046 already made and debated by Parliament under the affirmative procedure, we assess that there is no further need for them to be debated again.

Clause 102: New section 1132A Companies Act 2006: Power to make provision for financial penalties

Power conferred on: Secretary of State

Power exercised by: regulations made by statutory instrument

Parliamentary Procedure: affirmative procedure

Context and Purpose

211. New section 1132A gives the Secretary of State the power to confer power on the Registrar to impose a financial penalty on a person if satisfied beyond reasonable doubt that they have engaged in conduct amounting to a relevant offence under this Act.

212. Subsection 1132A(3) sets out that the regulations may include provision about the procedure to be followed in imposing penalties, the amount of penalties, the imposition of interest or additional late payment, conferring rights of appeal against penalties and the enforcement of penalties.

213. Restrictions on the power are set out on the face of the Bill, such as the maximum financial penalty possible and on imposing a penalty where a person has been convicted for the same offence.

Justification for taking the power

214. The approach taken in new section 1132A replicates that taken in section 39 of the Economic Crime (Transparency and Enforcement) Act 2022 ("the ECTE Act") so that there is consistency between the two pieces of legislation.

215. To best support enforcement agencies in their fight against economic crime, there may be instances where it is appropriate for the Government to review and refine these procedures and processes. Similarly, there may be reason to review the appropriate financial penalty amount and interest or late payment amounts to deter misconduct on the register as effectively as possible.

216. Legal certainty is provided in the scope of the maximum financial penalty and number of applicable offences; they are intentionally limited so that Parliament has greater assurance over the approach the Government will take in future.

Justification for the procedure

217. An affirmative procedure will provide the appropriate amount of scrutiny as the design of procedures and amounts associated with financial penalties will influence how effective the Registrar can be in deterring misconduct on the Registrar and how effective an enforcement regime is in the instance of misconduct. As this is in effect a regime that substitutes criminal prosecution, it is right that Parliament should have the greatest measure of scrutiny over regulations made under this power. As noted above, the same approach was taken in section 39 of the ECTE Act.

Clause 103: Amended section 1097A Companies Act 2006: Provision authorising or requiring the registrar to change the address of a company's registered office

Power conferred on: Secretary of State

Power exercised by: regulations made by statutory instrument

Parliamentary Procedure: affirmative procedure

Context and Purpose

218. Existing section 1097A of the Companies Act 2006 gives the Secretary of State the power to make regulations under which, following a successful application, the Registrar of companies will be required to change the address of the registered office of a company, where the Registrar is satisfied that the company is not authorised to use its current address. Parliament has already acceded to the exercise of that power in The Companies (Address of Registered Office) Regulations 2016.

219. This provision amends section 1097A, so the regulation making power allows a company address to be changed on the Registrar's own motion as well as on application by another person. It also replaces the concept of an "authorised" address with that of an "appropriate" address. An "appropriate address" is one at which a company can be expected to receive physical documents and to prove acknowledgment of that delivery (see new section 86, of the 2006 Act, inserted by Clause 29).

Justification for taking the power

220. This is an extension of an existing regulation-making power (already exercised). The Government envisages that new regulations will additionally define how the Registrar will exercise a new unilateral ability to rectify erroneous address details on the register alongside the existing arrangements whereby she can do so only upon the application of a third party. The power and the associated regulations will streamline the process and be of benefit to those, for example, who fall prey to identity theft and have their residential addresses "hijacked" by fraudsters who register those addresses as that of companies' registered offices. The technical and administrative details of how rectification of the register will operate and are more suited to secondary than primary legislation.

221. Procedure for applications and the Registrar acting under her own volition will be detailed, with appeal rights and procedures also being conferred. The Secretary of State considers these details to be most appropriately left to secondary legislation.

Justification for the procedure

222. The power is affirmative as extensions to (and any modifications to) the existing process should be debated, given the potential consequences for a company whose registered office is the subject of these regulations. This will ensure that rectification requirements remain proportionate to the overall aims of the policy and support register integrity.

Clauses 104, 105, 117, 120 Moving service addresses to default addresses

Power conferred on: Secretary of State

Power exercisable by: regulations made by statutory instrument

Parliamentary procedure: affirmative

Context and purpose

223. These amendments to the Companies Act 2006 and Limited Partnerships Act 1907 create similar powers which concern different kinds of address which are required in filings to the Registrar. There are in total four delegated powers. They are as follows:

i. Section 8Q Limited Partnerships Act 1907 (Clause 117): Regulations about change of registered officers' addresses by registrar
ii. Section 8X Limited Partnerships Act 1907 (Clause 120): Regulations about change of general partner's addresses by registrar
iii. Section 1097B Companies Act 2006 (Clause 104): Rectification of register: service addresses, and
iv. Section 1097C Companies Act 2006 (Clause 105): Rectification of register: principal office addresses

224. Section 8Q, inserted by Clause 117, provides that the Secretary of State may make regulations to authorise or require the Registrar to change the service address and or principal office address of the registered officer of a general partner in a limited partnership where they do not meet Companies Act 2006 requirements as a service address.

225. Section 8X, inserted by Clause 120, provides that the Secretary of State may make regulations to authorise or require the Registrar to change the service address and or principal office address of a general partner in a limited partnership where they do not meet Companies Act 2006 requirements as a service address.

226. Section 1097A of the Companies Act 2006 as amended by Clause 103 of the Bill gives the Secretary of State the power to make regulations pursuant to which Registrar of companies will, either by her own motion or upon

successful application by a third party, be required to change the address of the registered office of a company, where the Registrar is satisfied that the company is not authorised to use its current address. Parliament has already acceded to the unamended power, through which the Companies (Address of Registered Office) Regulations 2016 was made.

227. Section 1097B, inserted by Clause 104, provides that the Secretary of State may make regulations to authorise or require the Registrar to change the service address of a director, of a secretary or joint secretary or of a registrable person or registrable relevant legal entity in relation to a UK company where it does not meet Companies Act 2006 requirements as a service address.

228. Section 1097C, inserted by Clause 105, provides that the Secretary of State may make regulations to authorise or require the Registrar to change the principal office address of a registrable person or registrable relevant legal entity in relation to a company where the Registrar is satisfied that it is not in fact their principal office address.

229. All four of the above powers can make consequential amendments in primary legislation, as they import the scope to replicate elements of the regulations introduced by the exercise of powers under section 1097A of the Companies Act 2006 as amended by Clause 103 of the Bill.

Justification for taking the powers

230. This is effectively an extension of existing powers (strengthened by this Bill) to ensure that, as broadly as possible, address information on the public registers is accurate and reliable. The Government envisages that new regulations will define how the Registrar will exercise a new unilateral ability to rectify erroneous address details on the register alongside the existing arrangements whereby she can do so only upon the application of a third party. The power and the associated regulations will streamline the process and be of benefit to those who fall prey to identity theft. The technical and administrative details of how rectification of the register will operate and are more suited to secondary than primary legislation.

231. It may be necessary to suspend filing obligations during a dispute, or alter them in some way. As the procedure will be set out in secondary, and therefore the details of exactly how obligations arising in primary legislation cannot be settled until the procedure is set, it is necessary to take a Henry VIII consequential amendment making power. It would not be possible for secondary legislation to suspend primary legislation obligations, otherwise.

232. Procedure for applications and the Registrar acting under her own volition will be detailed, with appeal rights and procedures also being conferred. The Secretary of State considers these details to be most appropriately left to secondary legislation.

Justification for the procedure

The power is affirmative as extensions to (and any modifications to) the existing principles of the Companies Act 2006 should be debated particularly where, as in this case, they involve the exercise of Henry VIII powers. This will ensure that address rectification requirements remain proportionate to the overall aims of the policy and support register integrity.

Clause 110: New subsection 8A(2A) Limited Partnerships Act 1907: Required information about general nature of partnership business

Power conferred on: Secretary of State

Power exercised by: regulations made by statutory instrument

Parliamentary Procedure: negative procedure

Context and Purpose

233. Limited partnerships are currently required by the Limited Partnership Act 1907 to state the general nature of the partnership business. While applications for registrations of limited partnerships are already made public – including the general nature of the partnership business – it is written in free text and is therefore difficult to sort, categorise and analyse.

234. In the future, the information that Companies House holds on limited partnerships will be digital, rather than relying on scanned (and often handwritten) documents. We intend for Companies House to be able to gather information about how limited partnerships are being used in a way that makes it easier to search for, categorise and analyse data about the business activities of limited partnerships, in line with the requirements for UK companies. Applications for incorporation of UK companies currently require applicants to submit up to four trade classification codes to describe the principal activity or activities of the prospective company, with the option for describing the business activity in free text if a code cannot be determined.

235. The current system used to classify companies is the Standard Industrial Classification of economic activities (“SIC”) list. There are more than 600 individual SIC codes in the UK. The codes are broken down in industry

sections to a 4 digit class level. For certain classes in the UK the taxonomy is further broken down to a 5 digit level, to reflect changes in technology. The power will allow for the same classification system to be used for limited partnerships.

236. It is also possible that a limited partnership might wish to add to, or otherwise change, its business activities. For example, because it has diversified its business offer or decided to use a fund for an entirely different purpose.

237. This power will allow the Secretary of State to make regulations which prescribes the system which may be used by limited partnerships to describe their business activities and any subsequent changes that it wishes to make. This means that if the current system of classification changes or is updated, the information required of Limited Partnerships can be changed so that it can remain current.

Justification for taking the power

238. The current system of classification has been revised and updated a number of times since it was first introduced in 1948. The most recent 2007 codes fall in line with the European Union industrial classification system (NACE) and the United National International Standard Industrial Classifications (ISIC).

239. It is important, therefore, that government is able to respond to further changes as the current system continues to evolve and change over time. This will ensure that the present format does not become obsolete. As such, setting the classification system in primary legislation is undesirable. The Secretary of State should retain the ability to prescribe in secondary legislation the classification system that should be used.

Justification for the procedure

240. The negative resolution procedure is appropriate as this is a highly technical measure. The regulations will only name the classification system that should be used, rather than any substantial or controversial change. The negative procedure will ensure the appropriate level of parliamentary oversight.

Clause 111: New section 8G Limited Partnerships Act 1907: Regulations about change of address of limited partnership's registered office

Power conferred on: Secretary of State

Power exercised by: regulations made by statutory instrument

Parliamentary Procedure: affirmative procedure

Context and Purpose

241. Subsection 8G(1) will allow the Secretary of State to make provisions that authorise or require the Registrar to change the registered office address of a limited partnership if the Registrar is satisfied that it is not an 'appropriate address', as defined in section 8E(2). An address is appropriate if, in the ordinary course of events, the limited partnership may be expected to receive documents delivered by hand or by post that are addressed to the limited partnership, and that the delivery of documents is capable of being recorded by obtaining an acknowledgement of delivery.

242. Limited partnerships are currently required to have a principal place of business but not a registered office. A limited partnership's principal place of business may move, including overseas. This characteristic is a critical feature of the entity and makes it attractive to legitimate investors. However, this also means that a limited partnership does not need to maintain an ongoing connection to the United Kingdom.

243. In addition, where the limited partnership fails to meet its obligation to update the Registrar if the principal place of business changes, the Registrar has no way of contacting the limited partnership in question. The Registrar is also currently unable to question the validity of the address that the limited partnership has provided. to the Bill remedies these gaps by requiring all limited partnerships to have a registered office in the jurisdiction of the United Kingdom where the limited partnership is registered.

244. The registered office will also be required to be in the original jurisdiction of registration and must also be one of:

a. The principal place of business
b. The usual residential address or registered office address of a general partner
c. An address provided by a body that is supervised for anti-money laundering purposes.

245. It is essential that addresses that limited partnerships are using for purposes that are not legitimate, can be changed by the Registrar. For example, if a limited partnership fraudulently lists the usual residential address of a general partner as an address belonging to an entirely unconnected person without their consent.

246. It is also essential that the Registrar and law enforcement bodies can contact the limited partnership at an appropriate address in order that official papers can be served and investigations conducted. For example, for the Registrar to be able to fulfil her new duty in Clause 136 to send a warning notice to the general partner(s) of a limited partnership to inform them that she has reasonable cause to believe that the limited partnership to be dissolved, she must be satisfied that the address is an appropriate one.

247. The proposed power would bring her powers for limited partnership into line with her existing powers under the Companies Act 2006 in relation to addresses for companies and allow her to apply any future provisions concerning appropriate addresses consistently.

Justification for taking the power

248. This power brings the limited partnerships regime in line with section 1097A of the Companies Act 2006, which gives the Secretary of State the power to make regulations requiring the registrar to change a company's registered office address on application. This power allows the registrar to change a registered office address if it is not appropriate, while giving sufficient flexibility to prescribe circumstances if they change over time. This need for flexibility means that this level of detail is more appropriate for secondary legislation.

Justification for the procedure

249. The policy represents a significant change from the status quo. The consequences that follow for a limited partnership if the Registrar is unable to communicate with it could be significant. For example, the Registrar might consider that a limited partnership is no longer operating because post has been returned to her, and therefore moves to dissolve, and subsequently deregister, the limited partnership.

250. The level of scrutiny provided by the affirmative resolution procedure is therefore appropriate.

Clause 124: New section 10E Limited Partnerships Act 1907: Power to amend matters to be confirmed in confirmation statement

Power conferred on: Secretary of State

Power exercised by: regulations made by statutory instrument, including a Henry VIII power

Parliamentary Procedure: affirmative procedure

Context and Purpose

251. This clause inserts a number of new provisions into the Limited Partnerships Act 1907 in relation to the delivery of confirmation statements to the Registrar. New section 10E creates a power for the Secretary of State to make further provisions about the matters that must be confirmed in those confirmation statements, and that power includes the ability to amend or repeal the provisions of new section 10D, as well as to provide exceptions to its requirements.

Justification for taking the power

252. Limited partnerships will be required to deliver confirmation statements under new section 10D, and the matters that must be confirmed in those statements is also set out in that section. A power is needed so that it can be updated as necessary in future without needing to amend primary legislation.

253. The confirmation statements that limited partnerships deliver will confirm that the information held by the Registrar about them under section 10D is correct. However, this list may change in the future if new requirements concerning the information that limited partnerships must deliver are added, or if it becomes clear that the information required in 10D becomes unnecessary.

Justification for the procedure

254. Parliamentary scrutiny and debate via the affirmative resolution procedure in relation to the exercise of this power is appropriate given the fact that, as a Henry VIII power, regulations made under this power may amend section 10D.

Clause 126: New subsections 10G(1)(a), 10G(1)(b)(i) and 10G(1)(b)(ii) Limited Partnerships Act 1907: Power for HMRC to obtain accounts

Power conferred on: Secretary of State

Power exercised by: regulations made by statutory instrument

Parliamentary Procedure: affirmative procedure

Context and Purpose

255. The Government cannot always trace where the partners of a limited partnership pay tax, because HMRC is limited in the accounting information that it can gather. This hinders law enforcement investigations into economic crime, including fraud and tax evasion. This is particularly an issue when the general partners (whether individuals or legal entities) are not present in the UK and so are not paying tax to HMRC. The measures in the Bill therefore provide for a mechanism that would allow HMRC to gather financial information from partners of limited partnerships and share with relevant law enforcement agencies for investigation and enforcement purposes.

256. HMRC already gathers information about individuals who pay tax in the UK through their National Insurance Number and through their Unique Tax Reference Number, and companies through their corporation tax codes. However, this is not the case for overseas partners of UK limited partnerships and although there is guidance from the Global Forum Standard, there is currently no international standard regarding what information should be provided by overseas limited partners.

257. Powers are needed so that HMRC can request and access the accounting information that it requires, particularly from those abroad who do not have a link to the UK tax regime, to share with law enforcement agencies.

258. The powers in this clause would be used to specify the type of tax or accounting information that should be collected and submitted by general partners to HMRC when requested, as well as the form of delivery.

Justification for taking the power

259. There is currently no established international accounting requirement or standard for overseas limited partnerships, so secondary legislation is required to prescribe the technical detail around the type of required accounting information and the process for providing the information to HMRC. Setting out these requirements in regulations also allows the legislation to be adapted over time to align with changes in accounting standards and good practice.

Justification for the procedure

260. Limited partnerships are tax transparent (meaning they do not pay tax

as an entity – tax is owed by the partners individually) and only submit accounting information to the Registrar if they are Qualifying Partnerships (broadly, where all general partners are corporate entities or a Scottish Partnership or Scottish Limited Partnership, each of whose members is a corporate entity). Given the novelty of the requirement and its application to general partners that do not pay tax in the UK, we expect Parliament to have a high level of interest in scrutinising and debating the substantive contents of regulations made under this power. Therefore, it is appropriate that these regulations are made through the affirmative resolution procedure.

Clause 134: New subsections 16C(4) and (5) Limited Partnerships Act 1907: Power to amend disclosure requirements of information about partners

Power conferred on: Secretary of State

Power exercised by: regulations made by statutory instrument

Parliamentary Procedure: negative procedure

Context and Purpose

261. The powers in new section 16C(4) and (5) allow the Secretary of State to make provision by regulation to specify conditions which would (i) allow date of birth or residential information to be disclosed and (ii) prevent disclosure of this information to credit reference agencies. These regulations may make provision of the kind set out in section 243(5) and (6) of the Companies Act. This will allow for regulations similar to those in section 243 of the Companies Act to be made for limited partnerships, with modifications as appropriate.

Justification for taking the power

262. The power reduces the potential for duplication and streamlines the approach for limited partnerships and companies so that they can be aligned where possible. The approach for companies may, in time, change. It is therefore essential that the approach for limited partnerships can be modified to reflect these changes without changes to primary legislation. It is limited in its application and the detail of the specific conditions under which disclosure will and will not be permitted is more appropriate for secondary legislation.

Justification for the procedure

263. Regulations made under this section are subject to the negative resolution procedure. They will reflect updates and changes that will be agreed for companies and are highly unlikely to be contentious or require intense scrutiny.

Clause 140: New section 30 Limited Partnerships Act 1907: Documents relating to limited partnerships

Power conferred on: Secretary of State

Power exercised by: regulations made by statutory instrument, including a Henry VIII power

Parliamentary Procedure: affirmative procedure

Context and Purpose

264. This clause inserts new section 30 into the Limited Partnerships Act 1907 which lists certain notifications and documents that a limited partnership is obliged to deliver to the Registrar via an authorised corporate service provider (ACSP). New section 30(5) allows the Secretary of State to make regulations which amend the list of provisions in subsection (4).

265. The Bill currently provides for limited partnerships to be required to submit applications for registration, changes to the limited partnership (such as a change in general partner or registered office) and confirmation statements to the Registrar via an ACSP, in addition to any changes to the limited partnership. However, this list may need to be amended in the future.

266. Currently a limited partnership does not have to submit any filings via an ACSP.

Justification for taking the power

267. Limited partnerships will be required to file via an ACSP so that customer due diligence is carried out on the limited partnership and an extra layer of checking is undertaken by the ACSP who will be supervised for anti-money laundering purposes and therefore required to make these checks.

268. As the requirement to file documents via a ACSP is new for limited partnerships, over time it may be prudent to amend the list of provisions to

respond to regulatory changes, including adding more documents that are required to be submitted by an ACSP and need to be checked more thoroughly. Having the ability to amend this list through regulations provides this flexibility without needing to amend primary legislation.

269. While this is a Henry VIII power, the new provision has been tightly drafted so that it cannot be used more widely to make other changes beyond the narrow scope set out above.

Justification for the procedure

270. Taking this power will alter what documents relating to a limited partnership can or cannot deliver to the Registrar and will put a greater reliance on ACSPs.

271. Parliamentary debate scrutiny and debate via the affirmative resolution procedure in relation to the exercise of this power is appropriate given the fact that, as a Henry VIII power, regulations made under this power may amend section 30(4).

Clause 144: New section 7A Limited Partnerships Act 1907: Application of company law

Power conferred on: Secretary of State

Power exercised by: regulations made by statutory instrument, including a Henry VIII power

Parliamentary Procedure: affirmative procedure

Context and Purpose

272. The Limited Partnerships Act 1907 was introduced over a century ago and has rarely been amended since, which has led to the legal framework governing limited partnerships to become misaligned with the evolution of company law. In some instances there is no good reason for such misalignment. For example, the general partners of a limited partnership do not have to provide as much information about themselves as directors in companies, and there are very few rules on what a limited partnership can be named.

273. As companies legislation is amended over time, it is appropriate that

aspects of it should be applied to limited partnerships where relevant. To keep the legislative regimes from becoming out of step, it is desirable to import the provisions of companies legislation by regulations into the Limited Partnerships Act 1907, instead of relying on a patchwork of provisions within the amended legislation which may or may not apply to limited partnerships.

274. This clause inserts a new section 7A into the Limited Partnerships Act 1907 which contains a power in subsection (1) for the Secretary of State to make regulations which: (i) make provision in relation to limited partnerships that corresponds or is similar to any provision relating to companies or other corporations made by or under, or capable of being made under, any Act; and (ii) provide for any such provision which would otherwise have effect in relation to limited partnerships not to apply to them or to apply to them with such modifications as appear appropriate.

275. Section 7A(3) provides that the power can be used to amend any Act, whenever passed or made.

276. This power is similar to the existing power to adapt company law for limited liability partnerships, contained in section 15 of the Limited Liability Partnerships Act 2000.

Justification for taking the power

277. Introducing this power will future proof the Limited Partnerships Act 1907 and other relevant legislation so that it can be more readily amended and aligned with changes to legislation applying companies and other corporations.

278. It is important for clarity and ease of doing business that the legislative framework for companies and limited partnerships align where it is sensible for them to do so. This measure will allow the Limited Partnerships Act 1907 to be amended to mirror that of companies without the need to pass primary legislation every time a change is warranted. For example, it is intended that this power will be utilised to apply to limited partnerships the rules on what a company can be named, and so allows the naming conventions for different forms of business entity to be consistent.

Justification for the procedure

279. Whether the procedure is affirmative or negative will depend on the regulation that is being made.

280. If the provisions being introduced to the Limited Partnerships Act 1907 only make provision that corresponds or is similar to provisions made elsewhere in other Acts that are subject to negative procedure, then the procedure will be negative (see section 7A(4)).

281. Any other regulation made will be subject to affirmative procedure so that there is a correct level of parliamentary scrutiny (see section 7A(5)).

Clause 146: New section 34 Limited Partnerships Act 1907: Regulations

Power conferred on: N/A

Power exercised by: regulations made by statutory instrument

Parliamentary Procedure: N/A

Context and Purpose

282. This clause provides that any power to make regulations under the Limited Partnership 1907 includes powers to make consequential, supplementary, incidental, transitional or saving provisions, as well as different provisions for different purposes. It is therefore applicable to all the powers taken under the Act. This is not a delegated power but has been included for reference.

283. The clause is of particular relevance to Clause 144. As company law (which may go beyond the Companies Act 2006) develops, it is appropriate that aspects of it should be applied to limited partnerships where relevant. Where provisions in company law are by regulations imported into the Limited Partnerships Act 1907, it may be appropriate to make amendments to this Act which give effect to those regulations.

Justification for taking the power

284. This clause is needed to clarify the scope and procedure of regulation-making powers taken elsewhere in the Limited Partnerships Act 1907.

Justification for the procedure

285. There is no procedure for this clause as it is not in itself taking a

power, but rather clarifying the scope and parliamentary procedure for powers taken elsewhere in the Limited Partnerships Act 1907. Where a power requires an affirmative or negative procedure, that procedure extends to the consequential, supplementary, incidental, transitional or saving provision made under that power.

Clause 148: Application of Companies House measures to other legal entities: registration of qualifying Scottish partnerships

Power conferred on: Secretary of State

Power exercisable by: regulations made by statutory instrument

Parliamentary procedure: affirmative procedure, unless they are regulations under that section that only make provision that corresponds or is similar to provision made or capable of being made by a statutory instrument that is itself subject to annulment in pursuance of a resolution of either House of Parliament

Context and purpose

286. The purpose of this power is to allow for replacement and amendments of the Scottish Partnerships (Register of People with Significant Control) Regulations 2017 in respect of Scottish qualifying partnerships.

287. Under this power the Secretary of State will be permitted to make provisions: (a) requiring delivery of additional information about Scottish qualifying partnerships to the registrar, (b) allowing to require identity verification from managing officers of Scottish qualifying partnerships partners, (c) in relation to Scottish qualifying partnerships corresponding or similar to any provisions relating to companies or limited partnerships.

288. This power allows for creation of summary offences, punishable with fine in connection with new requirements covered in (a) and (b) above.

289. These regulations can cover several topics, including what information Scottish qualifying partnerships need to deliver to the Registrar, and making provision for at least one managing officer to verify their identity.

Justification for taking the power

290. Provisions about the registration of Scottish qualifying partnerships currently exists via the Scottish Partnerships (Register of People with Significant Control) Regulations 2017, made using powers under section 2(2) of the European Communities Act 1972. Now that the European Communities Act has been repealed, a new power is required in primary legislation to ensure that the 2017 regulations and further requirements

placed on Scottish qualifying partnerships since then, such as identity verification, can be amended in future.

291. This power allows us to preserve the registration requirements applicable to Scottish qualifying partnerships and give the Secretary of State the flexibility to align the enforcement of these requirements with the measures introduced by the Economic Crime and Corporate Transparency Bill.

Justification for the procedure

292. Regulations under this power allow to provide for new filing requirements or impose new identity verification requirements on managing officers of Scottish Qualifying Partnership partners. It is therefore appropriate for Parliament to debate any changes made to ensure they are reasonable and proportionate.

293. Clause 189(3)(c) of the Bill further allows regulations under this power to be made subject to the negative procedure if they only make provision corresponding or similar to a provision made by a statutory instrument which is itself subject to the negative procedure.

Clause 149, 150: Powers to amend disqualification legislation in relation to relevant entities: GB and NI

Powers conferred on: Secretary of State

Powers exercisable by: regulations made by statutory instrument

Parliamentary procedure: affirmative resolution

Context and purpose:

294. Under current provisions in the Bill, general partners will be under a legal duty to take any steps that are necessary to ensure that any general partner in the limited partnership who is disqualified under the directors disqualification legislation ceases to be a general partner.

295. Individuals can be disqualified under the Company Directors Disqualification Act 1986 (which applies in England, Wales and Scotland), or the Company Directors Disqualification (Northern Ireland) Order 2002.

296. However, these pieces of legislation do not currently provide for the disqualification of people from acting as general partners of limited partnerships based on how they conduct themselves in the affairs of a limited partnership. Nor is it currently a criminal offence for a disqualified person to

act in the management of a limited partnership.

297. To ensure that general partners can be held accountable for their actions when engaged in conduct as general partners, and to ensure they commit an offence if they act in the management of a limited partnership, both pieces of directors disqualification legislation need to be amended so that it can be applied in relation to limited partnerships.

298. These Government amendments to the Bill comprise two powers: one inserting new section 22I into the Company Directors Disqualification Act 1986 and one inserting new article 25D into the Company Directors Disqualification (Northern Ireland) Order 2002. Both powers enable the Secretary of State to make regulations amending each respective piece of legislation for the purpose of applying, or modifying the application of, any of its provisions in relation to limited partnerships.

299. These powers include extending the company disqualification conditions to include corresponding conditions relating to a limited partnership; modifying which company disqualification conditions can, in combination with each other, result in a person being disqualified; providing for any of the company disqualification conditions to result in or contribute to a person being disqualified from acting in a role or doing something in relation to a limited partnership; and limiting the company disqualification conditions to remove conditions relating to limited partnerships.

300. The two powers go beyond applying the 1986 Act and 2002 Order to limited partnerships, however. The powers also allow for the application of the disqualification legislation to “relevant entities”, which, in addition to limited partnerships, comprises limited liability partnerships and qualifying Scottish partnerships (the latter are partnerships constituted under the law of Scotland all of whose members are (a) a limited company, or (b) an unlimited company, or a Scottish partnership, each of whose members is a limited company).

301. In relation to limited partnerships, although the disqualification legislation has already been extended to these under secondary legislation (regulation 4 of the Limited Liability Partnerships Regulations 2001), the new powers need to cover LLPs to make sure that the applications of disqualification legislation to LLPs and LPs work consistently when those pieces of legislation are applied to both.

302. In relation to qualifying Scottish partnerships, there is currently a gap in the law: the disqualification legislation does not apply to this category of partnership at all. The policy rationale for applying disqualification legislation to the general partners of limited partnerships applies equally to the application of that legislation to the partners of qualifying Scottish

partnerships.

Justification for taking the powers

303. There will be several provisions within the 1986 Act and the 2002 Order that need to be applied (with modifications as necessary) in order to bring about the coherent application of disqualification legislation to forms of partnership that are not currently covered, and to ensure those applications of the legislation operate consistently with the scheme for LLPs. Therefore, the level of detail is more suitably delegated to secondary legislation than it is to primary legislation. The principles about the circumstances in which it is suitable to disqualify a person have been set down in the 1986 Act and the 2002 Order, and these two new powers would simply provide the mechanism to extend those principles, without substantively altering them, so they work in the different contexts of LPs, LLPs and QSPs.

304. Furthermore, allowing the power to amend the 1986 Act and 2002 Order to be contained in regulations means changes to the disqualification legislative landscape can be applied across the UK to LPs and other relevant entities in a coherent and expedient fashion.

Justification for the procedure

305. These regulation-making powers are subject to the affirmative resolution procedure. This is to ensure that there is sufficient parliamentary debate and scrutiny over the content of the regulations as the power to amend the 1986 Act is a Henry VIII power and these regulations will have a material impact on the consequences for the actions of general partners in a limited partnership. Similarly, amendments to the 2002 Order will have significant impacts for the general partners of Northern Irish limited partnerships.

Clause 155: Power to expand the description of "registrable beneficial owner" when there is a corporate trustee involved

Power conferred on: Secretary of State

Power exercisable by: Statutory Instrument

Parliamentary procedure: affirmative resolution

Context and purpose

306. This power relates to the register of overseas entities, which was introduced by Part 1 of the Economic Crime (Transparency and

Enforcement) Act 2022. When a registrable beneficial owner of an overseas entity is acting as a trustee, the overseas entity must provide information to the Registrar of Companies about the trust.

307. We have amended that Act to ensure that whenever there is a legal entity, or corporate, trustee in the chain of ownership of an overseas entity, it would meet the description of "registrable beneficial owner".

308. This power allows the Secretary of State to expand the description of persons who are registrable beneficial owners further, where the overseas entity is part of a chain of entities that includes a trustee.

Justification for taking the power

309. It is appropriate to have a power to expand the description to ensure the maximum amount of transparency where a legal entity trustee is involved in a chain of ownership. There may be complex arrangements which attempt to circumvent the requirements, which cannot be anticipated at this time.

310. This would allow the Government to act swiftly to close any loopholes, for example if intelligence from law enforcement partners or HMRC suggests there is a problem.

Justification for the procedure

311. Regulations made under this power will be subject to the affirmative procedure. Given the new regulations would only be needed if complex avoidance arrangements have been identified, any regulations should be subject to appropriate parliamentary scrutiny.

Clause 156: Material unavailable for public inspection: verification information - power to add to the list of material unavailable for public inspection relating to the verification information

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: negative resolution

Context and purpose

312. This amendment relates to the register of overseas entities, introduced by virtue of Part 1 of the Economic Crime (Transparency and Enforcement) Act 2022.

313. The amendment does not create a new power, rather it amends the existing power in section 16 of the Economic Crime (Transparency and Enforcement) Act 2022 ("the ECTE Act"). All of the details of the verification process are set out in regulations made under section 16 of the ECTE Act. It

is therefore appropriate that the provision to require the registrar to make certain information delivered under those regulations unavailable for public inspection is also detailed in the regulations made under that power.

Justification for taking the power

314. This level of detail is more appropriate to be contained in secondary legislation. This will also allow flexibility in the event of changing circumstances, such as if the regulations later require more personal information to be provided about verifiers, which it would not be appropriate to make available for public inspection.

Justification for the procedure

315. Regulations made under this section are subject to the negative resolution procedure. Additional parliamentary scrutiny is not considered necessary since the core framework is set out in primary legislation.

Clause 158: Application of ECCT Bill provisions to corresponding provisions in ECTE 2022: Power to make regulations protecting material

Power conferred on: Secretary of State

Power exercisable by: regulations made by statutory instrument

Parliamentary procedure: affirmative procedure

Context and purpose

316. This power replaces an existing power in section 25 of the Economic Crime (Transparency and Enforcement) Act 2022, which provides for regulations to be made to protect information from public inspection. The existing power corresponds to a power contained within section 790ZG of the Companies Act 2006.

317. The power is being replaced with one that aligns with the power inserted into the Companies Act 2006 by clause 89 of the Bill, which allows for regulations to be made to protect information held in the company register. The replacement of section 25 of the 2022 Act is in order that the Register of Overseas Entities operates as closely as possible with the Companies Act 2006.

318. Regulations may make provision as to who may make an application, the grounds on which an application may be made, the information to be included in and documents to accompany an application, how an application is to be determined, the duration of restrictions on making information available and procedures for their revocation.

319. The registrar may be given discretion in how she determines an application and in setting out the duration of restrictions and procedures for their revocation. She may refer applications to another person to assist with determining whether an application should be accepted.

320. Regulations may also set out the circumstances in which the registrar may disclose information that has been made unavailable for public inspection. They may also impose a duty on the registrar to publish information about the number of applications that have been made and how many of them have been allowed, as well as any other details about applications that may be specified in the regulations.

321. This power is necessary as there may be circumstances in which all of a person's personal information should be suppressed from the public register, e.g. where a person is at serious risk of violence or intimidation due to their association with the overseas entity.

322. Consistency between the two regimes – the UK companies regime and the register of overseas entities regime - both facilitates smooth running of them, and ensures that overseas entities are subject, as far as is possible, to the same requirements as UK companies.

Justification for taking the power

323. The power is being replaced so that it continues to correspond with similar provisions in the Companies Act 2006, as amended by this Bill. The detailed operation of the "protection regime" is more suitably set out in regulations, which also enables flexibility should there be a need to make changes to the processes and procedures set out in them.

Justification for the procedure

324. Regulations made under this power are subject to the affirmative procedure. It is appropriate that Parliament has the opportunity to scrutinise the application procedure, the circumstances in which applications may be made, and how they will be determined. The corresponding Companies Act 2006 power in clause 89 of this Bill is also subject to the affirmative procedure.

Clause 160: Application of ECCT Bill provisions to corresponding provisions in ECTE 2022: Power to limit the registrar's ability to remove material from the register of overseas entities

Power conferred on: Secretary of State

Power exercisable by: regulations made by statutory instrument

Parliamentary procedure: negative procedure

Context and purpose

325. This power will maintain consistency between the Companies Act 2006 and the Economic Crime (Transparency and Enforcement) Act 2022. New section 28(1) sets out the categories of material that may be removed from the register of overseas entities. This power may be exercised either by

the Registrar's own motion or upon application by another person. New section 28(3) provides the Secretary of State with the ability to make regulations to determine limitations on what can be removed from the register on application by a person other than the Registrar.

326. New section 28 replicates for the register of overseas entities the power set out in clause 83 of this bill relating to the register of companies and maintains consistency between the requirements for UK companies and those imposed by the register of overseas entities.

Justification for taking the power

327. As the new section 28 provides the Registrar with expanded powers to administratively remove material from the register of overseas entities, it is appropriate to provide a measure of scope to modify this aspect in future in light of operational experience.

Justification for the procedure

328. Given the level of assurance already provided in the primary clauses, the procedure for the making of regulations will be negative as these measures are non-controversial and will be debated in Parliament as part of the passage of this Bill. The power can only be exercised in a way that reduces the breadth of the Registrar's power.

Clause 160: Application of ECCT Bill provisions to corresponding provisions in ECTE 2022: Further provision about removal of material from the register

Power conferred on: Secretary of State

Power exercisable by: regulations made by statutory instrument

Parliamentary procedure: negative procedure

Context and purpose

329. New section 28 of the Economic Crime (Transparency and Enforcement) Act 2022 sets out what categories of material may be removed from the register of overseas entities either by the Registrar's own motion or upon application by another person.

330. New section 28A(1) obliges the Secretary of State to make regulations setting out the notice requirement to be given in instances where material has been removed upon the Registrar's own motion. The Secretary of State must also make regulations regarding how applications for the removal of material may be made and determined.

331. Because new section 28 provides new removal powers for the Registrar, sections 29 and 29A of the Act are repealed by the new section 28A. Sections 29 and 29A relate to rectification of the register and are not

required in light of new section 28. The powers within these sections (a regulation making power in section 29 and a power of removal for the Registrar in section 29A) have therefore also been repealed and are replaced by new section 28.

332. The powers contained in this amendment replicate a power inserted into this Bill via clause 83 relating to the removal of material from the register of companies, and will maintain consistency between the Act and the Companies Act 2006.

Justification for taking the power

333. The detail of the process for giving notice of removal of material, and the processes around making and determination of such applications is more suitably established in secondary legislation. The flexibility to amend the process through secondary legislation will allow scope potentially to both strengthen and/or streamline it in future.

Justification for the procedure

334. Given the level of assurance already provided in the primary clauses, the procedure will be negative as these measures are non-controversial and will be debated in Parliament during the passage of this Bill.

Clause 166: Power to apply Part 1 amendments to register of overseas entities

Power conferred on: Secretary of State

Power exercised by: regulations made by statutory instrument, a Henry VIII power

Parliamentary Procedure: affirmative procedure

Context and Purpose

335. This power has been made available so that where provision made by the Economic Crime (Transparency and Enforcement) Act 2022 corresponds to provision made by the Companies Act 2006, the Secretary of State may by regulations make amendments to the 2022 Act corresponding to any amendments made by the Bill to the corresponding provision in the 2006 Act.

Justification for taking the power

336. This power is needed to ensure that changes made by the Bill to the 2006 Act can be mirrored in the corresponding provisions in the 2022 Act to maintain consistency between the two Acts. For example, the 2022 Act mirrors the Companies Act 2006 at section 20 (annotation of the register;

corresponding provision in the Companies Act 2006 is section 1081), and at sections 27-31, which relate to correction or removal of material from the register of overseas entities, corresponding to the Companies Act 2006 sections 1093, 1094, 1095, 1096, and 1097.

337. This Bill will change some of these provisions within the Companies Act 2006, and in order to ensure consistency of approach and application by the Registrar, changes will be needed to the 2022 Act. The aim of making these changes is to improve the powers available to the Registrar to, as far as is possible, maintain the accuracy and completeness of the register of overseas entities.

Justification for taking the procedure

338. Regulations made under this section are subject to the draft affirmative procedure, which is appropriate given the fact that regulations made under this power will amend the 2022 Act and therefore this is a Henry VIII power.

Clause 170: Money laundering: exiting and paying away exemptions: new subsections 327(2E), 328(7) and 329(2E) of POCA

Power conferred on: Secretary of State

Power exercised by: regulations made by statutory instrument

Parliamentary Procedure: affirmative procedure

Context and Purpose

339. The new provisions will exempt certain transactions from the principal money laundering offences in POCA when carried out by certain firms on their clients' behalf, without the need to report and seek NCA consent in advance. (This is known as submitting a "defence against anti-money laundering" report or DAML.) The new exemption will apply when a business relationship ends and money or other property is returned to the customer ("exit and pay away") below a certain value, without first submitting a DAML. The relevant firms are those in the "regulated sector" as defined in Schedule 9 to POCA.

340. The new subsections mentioned confer a power on the Secretary of State to exclude specified sectors or categories of business from the scope of this measure. Such exclusions could also be revised or revoked by further regulations.

Justification for taking the power

341. This power will allow a rapid response from the Government in the event that new areas of money laundering risk or potential abuse become apparent in certain sectors (although none are currently anticipated) and will then allow the risks to be reviewed properly and mitigated. This could be crucial for addressing any concerns that might be raised in any assessment of both the UK's adherence to FATF standards and its international obligations to prohibit money laundering.

342. It might also be the case that new categories of business are added in future to the definition of "business in the regulated sector" (see Schedule 9 to POCA), by secondary legislation, and that it is not suitable for them to rely on the new exemption.

Justification for the procedure

343. Regulations made under this section are subject to the draft affirmative procedure, which will allow both Houses to debate and vote on any changes. It is the same procedure as applies to variations to the threshold amount, considered below. Parliament has agreed in the past that this level of control over exemptions from money laundering reporting requirements is appropriate, especially where they are focused on businesses in the regulated sector.

Clause 170: Money laundering: exiting and paying away exemptions: amendment to section 339A(7) of POCA

Power conferred on: Secretary of State

Power exercised by: order made by statutory instrument

Parliamentary Procedure: affirmative procedure

Context and Purpose

344. This clause will include a maximum threshold of £1,000 for the exemption described above, on the face of POCA. This will sit alongside the existing threshold in section 339A of POCA in relation to operating a bank (or similar) account. The power will enable the new threshold amount to be varied by order, in the same way as can the current threshold amount in section 339A(2) for operating an account.

Justification for taking the power

345. This power mirrors the current power in section 339A of POCA to vary the amount specified in section 339A(2) for acts carried out in operating an account for a customer. It will initially be set at £1,000 but may be revised, as is the case with the exemption for operating an account. This will allow the two figures to be kept in line in future, as appropriate. For example, it will ensure that both amounts can be revised to take account of changes in the value of money, or changes in the assessment of money laundering risks involving businesses in the regulated sector. The power will be exercised only in a way that maintains the UK's compliance with international obligations, such as the United Nations Convention against Transnational and Organised Crime, which require the UK to criminalise specified acts of money laundering (subject to certain limited exceptions). The two threshold exemptions together (operating an account, and "exit and pay away") will balance the need to combat money laundering with the need to protect customers from disproportionate interference with the right to use to their own property.

Justification for the procedure

346. An order under this section will be subject to the draft affirmative procedure, which is appropriate given that the threshold amount appears on the face of the primary legislation and means that the threshold amount can be varied in future for both the existing exemption (operating an account) and the new one (exit and pay away) using the same instrument.

Clauses 172 and 173: codes of practice for information orders

Powers conferred on: Secretary of State

Powers exercised by: code of practice

Parliamentary Procedure: laying of draft codes before Parliament

Context and Purpose

347. Clauses 172and 173 amend what are currently called "further information orders" in POCA and the Terrorism Act 2000 ("TACT"). The renamed "information orders" will be able to be exercised for wider purposes than the current powers. Specifically, a relevant court will be able to order a person within the regulated sector to produce to the NCA specified information in order to assist the NCA to conduct analysis relevant to money

laundering or terrorist financing. The existing further information order powers can only be used where the information sought relates to a matter arising from a statutory disclosure made under POCA and TACT.

348. These clauses confer a power on the Secretary of State which must be exercised to make a code of practice in relation to each of the information order powers – one in POCA and the other in TACT. The codes of practice must provide guidance to NCA officers in connection with making applications for the wider use of the powers (or in connection with requesting a procurator fiscal in Scotland to make such applications).

349. The purpose of this measure is to provide wider ranging and more detailed guidance than is suitable to be set out on the face of the Act. The Home Office anticipates that such guidance will cover matters including: the background context of the power, namely Recommendation 29 of the FATF recommendations; as well as factors that officers should consider before making an application (or a request for an application) that may be relevant to the proportionate use of the power.

Justification for taking these powers

350. The Home Office considers that the type of information anticipated to make up the codes of practice to be more appropriately contained in a guidance document rather than on the face of the statute. For example, guidance on potentially relevant factors for officers to consider before making applications (or requests for applications to be made), especially in relation to the rights of those whose information may be the subject of such orders, will need to cover a range of practical details. The factors to consider will heavily depend on the circumstances of a particular application (or request for an application to be made). For these reasons, such guidance is better suited to statutory guidance, rather than statutory provisions.

Justification for the procedure:

351. New sections 339L(3) POCA and 22F(3) TACT require the Secretary of State to lay a draft of the codes of practice before Parliament. Such draft codes cannot however be brought into force unless and until affirmative procedure regulations are made doing so. Those regulations are discussed below. The Home Office notes that this procedure follows various precedents used for codes of practice in relation to information-gathering powers, for example in relation to the investigatory powers contained in Part 8 of POCA, which are covered by statutory guidance issued under section 377 and 377A POCA.

Clauses 172 and 173: bringing into force of information orders codes of practice

Powers conferred on: Secretary of State

Powers exercised by: regulations made by statutory instrument

Parliamentary Procedure: affirmative procedure

Context and Purpose

352. Under new sections 339ZL(4) POCA and 22F(4) TACT, the Secretary of State may bring into force codes of practice by regulations which provide guidance in relation to the exercise by NCA officers of new information order powers. The codes of practice are discussed in further detail above.

Justification for taking these powers

353. The justification for taking these powers is to ensure parliamentary oversight and scrutiny of guidance about powers which, when exercised, may interfere with the rights of persons to whom the information relates.

Justification for the procedure

354. The affirmative procedure mirrors that required to bring other codes of practice made under POCA and TACT into force (for example that made under section 377 POCA). The Home Office considers this procedure to be appropriate to ensure parliamentary oversight and scrutiny of guidance about powers which, when exercised, may interfere with the rights of persons to whom the information relates.

Clause 174: Enhanced due diligence: designation of high-risk countries

Power conferred on: HM Treasury

Power exercised by: HM Treasury Minister

Parliamentary Procedure: none

Context and Purpose:

355. Schedule 3ZA to the Money Laundering Regulations ("MLRs") sets out the UK's "High-Risk Third Countries" list, triggering enhanced due diligence

obligations set out in regulation 33 of the MLRs. Schedule 2 to and section 55 of the Sanctions and Anti-Money Laundering Act 2018 ("SAMLA") require the list to be updated via the made affirmative procedure. The UK's list is updated each time the Financial Action Task Force updates its lists of countries identified as having strategic deficiencies in their Anti-Money Laundering, Counter Terrorism Financing and Counter Proliferation Financial (AML/CTF/CPF) systems.

356. Clause 174 removes this requirement for the High-Risk Third Countries List to be amended through made affirmative procedure. New paragraphs in Schedule 2 to SAMLA confer powers on the Treasury to publish and amend the list of high-risk countries. The provision will enable a relevant HM Treasury Minister to publish an administrative list of High-Risk Third Countries on gov.uk

Justification for removing this power:

357. This clause will allow for the UK's High-Risk Third Countries list to be updated more rapidly, in accordance with the lists of countries the FATF identifies as having strategic deficiencies in their AML/CTF/CPF systems.

358. The current administrative and parliamentary process for amending the list via secondary legislation can prolong the time taken for necessary updates and delay the implementation of requirements for the regulated sector to apply enhanced due diligence relating to high-risk third countries.

359. With more rapid updates, the government can provide greater clarity to businesses on which jurisdictions are deemed to be high risk at the speed necessary, allowing businesses to protect themselves and their customers more effectively from money laundering and terrorism financing exposures.

360. The government has also been asked by Parliament to consider a more streamlined process to update the high-risk third country list, given the various pressures on parliamentary time. This provision will reduce this pressure, removing the need for up to six parliamentary debates per annum.

Justification for the procedure:

361. The change being made via this clause will by design mean that there will be no parliamentary procedure for the publication of, and updates to, the list.

362. These changes will streamline the process and allow the Government to meet existing policy commitments in a more efficient way. When the UK's high-risk third countries list was introduced in March 2021, the government committed to updating its list to mirror the FATF's periodic updates and intends to align the UK's list with the set of countries identified by the FATF as having strategic AML/CTF/CPF deficiencies. As a result of the robust, technical methodology and the high level of scrutiny of the multilateral process that underpins FATF's decisions to identify countries with poor AML controls, additional parliamentary scrutiny is not considered essential.

363. In the usual way, a Treasury minister will continue to deposit a copy of the outcomes of each FATF plenary, which inform changes to the list, in the libraries of both Houses.

Clause 175: direct disclosures of information

Power conferred on: Secretary of State

Power exercised by: regulations made by statutory instrument

Parliamentary Procedure: affirmative procedure

Context and Purpose

364. Clauses 175 and 176 provide for the disapplication of confidentiality duties and for protection from other forms of civil liability, for certain businesses where one shares information about customers with another for the purposes of investigating, preventing, or detecting economic crime. Clause 175 applies to direct sharing of information by and to any business in the "regulated sector" as defined in Schedule 9 to POCA, and any other business in circumstances prescribed in relation to the business by regulations made by the Secretary of State.

Justification for taking the power

365. Economic crime can take place across a wide range of business sectors, including beyond the regulated sector: for example, social media and telecoms.

366. The Government may determine, based on the nature of the economic crime risks involved and the safeguards for customers in different sectors – and the effectiveness of information sharing between businesses in the regulated sector – that the direct information sharing provision needs to apply

to additional types of business. The clause will continue to be limited by the purposes set out on the face of the Bill and by the "relevant actions" listed in the clause. Such an extension would not therefore fundamentally change the nature of the provisions but would enable them to be used by different sectors.

367. However, finding the right balance between the benefits in terms of economic crime prevention, and customer privacy is a delicate balance that involves careful consideration of the risks associated with each sector. We believe that the current scope of the clauses represents the most appropriate balance between the two. However, this balance may shift as economic crime evolves, sectors mature in their standards and procedures for protecting customer data and the use of the clauses becomes embedded in day-to-day business practice. Given the rapid nature of evolution in the economic crime space, the Government believes it is important to be able to respond to these changes quickly while still giving Parliament a say on the scope of the provisions.

Justification for the procedure

368. The draft affirmative procedure will give Parliament a substantial opportunity to scrutinise and debate any extension of the information sharing measures to other sectors. It is recognised that Parliament will want to debate such a measure, and reasons behind it, and to scrutinise the balance it strikes between the factors outlined above: the need to protect the public from the consequences of economic crime, and the need to respect customers' privacy.

Clause 176: indirect disclosures of information

Power conferred on: Secretary of State

Power exercised by: regulations made by statutory instrument

Parliamentary Procedure: affirmative procedure

Context and Purpose

369. Clauses 175 and 176 provide for the disapplication of confidentiality duties and for protection from other forms of civil liability, for certain businesses where one shares information about customers with another for the purposes of investigating, preventing or detecting economic crime. Clause 176 applies to indirect sharing of information (via a third party, typically a platform such as that operated by CIFAS) by or to a deposit-taking

body, electronic money institution, payment institution, cryptoasset exchange provider, custodian wallet provider, large legal or accountancy business, insolvency practitioners, and tax advisors.

370. The first three of these specified sectors align with the types of firms to which the so-called threshold exemption in Part 7 of POCA (see commentary on Clause 169 above) applies: deposit-taking bodies (essentially, banks), electronic money institutions and payment institutions. That effectively covers firms offering accounts to customers to hold and manage their money. Cryptoasset exchange providers and custodian wallet providers cover the equivalent types of firms that deal with cryptoassets, and which are supervised by the Financial Conduct Authority for anti-money laundering purposes. The last sectors covered are large legal and accountancy businesses, insolvency practitioners, and tax advisors, defined with reference to Schedule 9 to POCA and sections 55 to 57 of the Finance Act 2022 (calculation of UK revenue for the economic crime (anti-money laundering) levy).

371. Clause 176 also applies to any other business in circumstances prescribed in relation to the business by regulations made by the Secretary of State.

Justification for taking the power

372. There are two reasons for taking this power. The first is that the definition of “deposit-taking body” in Part 7 of POCA is capable of being amended under powers in POCA: see section 340(14) and (14A). It might not be appropriate for a use of that power, extending the scope of the threshold exemption provisions in POCA, to result automatically in an extension to the scope of the information sharing clauses, without additional Parliamentary scrutiny, as they have different purposes. Therefore, “deposit-taking body” is not simply defined cross-referring to section 340 of POCA. At the same time, new types of financial institution, relying on new types of new technology, might emerge in the same way that electronic money institutions have in recent years, and be carrying out the same types of business and managing the same risks as those specified in Clause 180, making it appropriate for those institutions to share the same sorts of information.

373. Secondly, as above, the Government may determine, based on the nature of the economic crime risks involved and the safeguards for customers in different sectors – and the effectiveness of information sharing between financial and cryptoasset businesses – that the indirect information sharing provision needs to apply to additional types of business. The clause

will continue to be limited by the purposes set out on the face of the Bill and by the "relevant actions" listed in the clause. Such an extension would not therefore fundamentally change the nature of the provisions but would enable them to be used by different sectors.

374. Again, finding the right balance between the benefits in terms of economic crime prevention, and customer privacy is a delicate balance that involves careful consideration of the risks associated with each sector. We believe that the current scope of the clauses represents the most appropriate balance between the two. However, this balance may shift as economic crime evolves, sectors mature in their standards and procedures for protecting customer data and the use of the clauses becomes embedded in day-to-day business practice. Given the rapid nature of evolution in the economic crime space, the Government believes it is important to be able to respond to these changes quickly while still giving Parliament a say on the scope of the provisions.

Justification for the procedure

375. As explained above in relation to the direct sharing clause, the draft affirmative procedure will give Parliament a suitable level of scrutiny over the scope of this new measure. It is also the same procedure that applies to amendments to the definition of "deposit-taking body" in POCA, as set out above and, if necessary, could be used to make a single set of regulations where the implications for both these definitions could be debated together.

Clause 180: meaning of "economic crime"

Power conferred on: Secretary of State

Power exercised by: regulations made by statutory instrument

Parliamentary Procedure: affirmative procedure

Context and Purpose

376. Clauses 175 and 176 (the information sharing clauses) provide for confidentiality duties on certain businesses to be disapplied where one shares information about customers with another for the purposes of investigating, preventing or detecting economic crime. Clause 180 defines "economic crime" by reference to Schedule 9 which lists the offences that are relevant to these provisions.

Justification for taking the power

377. This power enables the list in Schedule 9 to be revised to add or remove offences to or from the list of types of "economic crime". It is important for certainty and proportionality that it is clear which types of offence are covered by these measures. Equally, new offences may be established or an offence may become more significant in terms of new methods of committing and tackling economic crime. For instance, the crime of theft would once have been most associated with the stealing tangible property and not the type of crime a financial firm might easily realise a client is involved in; but could now also be relevant to the appropriation of cryptoassets without the owner's consent (which is conduct that a regulated business might be in a position to help prevent or detect).

Justification for the procedure

378. Regulations made under this section are subject to the draft affirmative procedure, which is appropriate given the fact that the definition appears on the face of the primary legislation and therefore that this is a Henry VIII power. Schedule 17 to the Crime and Courts Act 2013 contains a similar power for the Secretary of State to amend Part 2 of that Schedule by removing an offence or adding an offence of financial or economic crime. That power is subject to the draft affirmative procedure (section 58(4)(h)) and is considered to be a relevant precedent.

Clause 184: Power to extend the information request power of the SRA to other regulators

Power conferred on: Lord Chancellor

Power exercised by: order made by statutory instrument

Parliamentary Procedure: affirmative procedure

Context and Purpose

379. The delegated power gives the Lord Chancellor the ability to enable other legal services regulators, in addition to the Solicitors Regulation Authority (SRA), to exercise the information power provided to that Authority by Clause 184 where this is considered necessary, such as due to changes in regulatory responsibilities of Regulators under the Legal Services Act 2007. This would be done via statutory instrument.

Justification for taking the power

380. The power would be exercisable by the Lord Chancellor making an order by statutory instrument. The power would be exercised upon the Legal Services Board making a recommendation to the Lord Chancellor that the order to designate other regulators is necessary to ensure that they have appropriate powers to oversee compliance with the economic crime regime in respect of the individuals and entities that they regulate. This power would be necessary, for example, where regulatory responsibilities change between the regulators of reserved legal activities under provisions of the Legal Services Act 2007.

Justification for taking the procedure

381. The affirmative procedure is required to ensure that there is sufficient scrutiny for this power. This is to ensure that the power to provide the information request power to another regulator undergoes sufficient scrutiny by Parliament.

Clause 186: Power to make consequential provision

Power conferred on: Secretary of State

Power exercised by: regulations made by Statutory Instrument, including a Henry VIII power

Parliamentary Procedure: negative procedure if amending secondary legislation, affirmative procedure if amending primary legislation

Context and Purpose

382. Clause 186 enables the Secretary of State by regulations to make consequential provision in connection with this Bill. Consequential provisions may amend, repeal or revoke primary legislation passed before this Bill or later in the same legislative session as the Bill.

Justification for taking the power

383. The power to make consequential provision is necessary to ensure that other provisions on the statute book properly reflect and refer to the provisions in this Bill once it is enacted. For example, one of the new money laundering exemptions may require a change to the MLRs which refer to a need for consent that will no longer apply. The Departments accept that the power to make consequential provision is, on the face of it, wide. However,

any consequential amendment made under this power must be genuinely consequential on the provisions in the Bill. As far as possible, the Government will make necessary amendments to primary legislation on the face of the Bill; it is more usual for consequential amendments to secondary legislation to be made by statutory instrument.

384. The Departments consider it appropriate to enable true consequential amendments to be made by regulations in order to ensure that the changes effected by this Bill can be effectively delivered.

Justification for the procedure

385. If regulations under this clause do not amend primary legislation, they will be subject to the negative resolution procedure (by virtue of clause 189(4)). If regulations under this clause do amend primary legislation, or certain identified regulations, they will be subject to the affirmative resolution procedure (by virtue of clause 189(3). It is considered that this provides the appropriate level of parliamentary scrutiny for the powers conferred by this clause.

Clause 189: Regulations

Power conferred on: N/A

Power exercised by: statutory instrument

Parliamentary Procedure: N/A

Context and Purpose

386. This clause states that a power to make regulations under any provision of this Act includes power to make consequential, supplementary, incidental, transitional or saving provision, or different provision for different purposes. This is not a delegated power but has been included for reference.

387. This clause does not apply to commencement regulations under clause 191.

Justification for taking the power

388. This is a standard provision for enabling regulations to give the intended effect to the measures in the Bill.

Justification for the procedure

389. This provision specifies the procedure applying to delegated powers in other provisions of the Bill, which are explained further in the relevant sections of this memorandum.

Clause 191: Commencement

Power conferred on: Secretary of State

Power exercised by: regulations made by statutory instrument

Parliamentary Procedure: none

Context and Purpose

390. Clause 191 of the Bill confers on the Secretary of State a regulation-making power to bring into the force the provisions of this Bill. As specified in subsection (1), Part 6 of the Bill comes into force when the Bill receives Royal Assent. Subsections (3) and (4) allow commencement regulations to appoint different commencement dates for different purposes. Subsection (5) gives the power to make transitional or saving provision in connection with the commencement of any provision of the Bill.

Justification for taking the power

391. This is a standard clause for commencing the provisions of an Act, and making saving and transitional provisions related to commencement, by regulations. Leaving a subset of provisions in the Bill, other than those for which the Bill itself provides the commencement date (see above), to be brought into force by regulations will afford the necessary flexibility to commence the provisions of the Bill at the appropriate time, having regard to the need to make any necessary secondary legislation, issue guidance, undertake appropriate training and put the necessary systems and procedures in place, as the case may be. For example, a statutory requirement to issue a code may need to be brought into force before the new powers to which the code relates.

Justification for the procedure

392. It is standard practice for the power to bring into force the provisions of an Act on a specified day not to require any further Parliamentary procedure.

Schedule 2, paragraph 3: New section 167J(5) Companies Act 2006: Power to amend required information about a director: individuals

Power conferred on: Secretary of State

Power exercised by: regulations made by statutory instrument, including a Henry VIII power

Parliamentary Procedure: affirmative procedure

Context and Purpose

393. Clause 52 and Schedule 2 of the Bill abolish certain local registers which, unless a company elects otherwise, must be maintained and kept available for inspection at its registered office (or an alternative specified place). New sections 167G – 167L introduce, into Part 10 of the Companies Act 2006, the requirements for a new regime whereby one such register - that for company directors - will in future be held centrally by the Registrar rather than by the company.

394. New section 167J prescribes the required information that a director or proposed director who is an individual must provide the Registrar. Subsection (5) contains a regulation-making power to amend the list of required information and repeal a provision in subsection (4) which provides that where a director (or proposed director) is a peer or an individual usually known by a title, any requirement imposed by the Companies Act 2006 to provide the individual's name because it forms part of the required information may be satisfied by providing that title instead of the individual's forename and surname.

Justification for taking the power

395. As wider reforms are implemented to Companies House and the register, it is possible that further improvements to (or defects with) information requirement relating to directors will be identified, which the Government would need to act swiftly to address.

396. For example, this power would be useful for enforcement agencies who may identify additional or alternate types of information the Registrar could usefully require to be filed to better enable them to consider information held by the Registrar against other sources of information to help them in the prevention and detection of crime.

397. While this is a Henry VIII power, it effectively replaces an equivalent power which exists at present at section 166 of the Companies Act 2006 applying to the current regime where the obligation is on a company to maintain its own register of directors. The new provision has been tightly drafted so that it cannot be used more widely to make other changes beyond the narrow scope set out above.

398. The ability to vary the information requirements for centrally held registers through secondary legislation will help future-proof the legislation.

Justification for the procedure

399. The power is affirmative as changes to the information requirements should be debated. This will ensure that any changes remain proportionate to the overall aims of the policy and support register integrity.

Schedule 2, paragraph 3: New section 167K(2) Companies Act 2006: Power to amend information about a director: corporate directors and firms

Power conferred on: Secretary of State

Power exercised by: regulations made by statutory instrument, including a Henry VIII power

Parliamentary Procedure: affirmative procedure

Context and Purpose

400. Clause 52 and Schedule 2 of the Bill abolish certain local registers which must be maintained and kept available for inspection at its registered office (or an alternative specified place). ‘Elections’ whereby companies keep certain registers exclusively with the Registrar will also be abolished.

401. New sections 167G - 167L introduce, into Part 10 of the Companies Act 2006, the requirements for a new regime whereby one such register - that for company directors - will in future be held centrally by the Registrar rather than by the company.

402. New section 167K which prescribes the required information that a corporate director or proposed director must provide the Registrar. Subsection (2) contains a regulation-making power to amend the list of required information.

Justification for taking the power

403. As wider reforms are implemented to Companies House and the register, it is possible that further improvements to (or defects with) information requirement relating to directors will be identified, which the Government would need to act swiftly to address.

404. For example, this power would be useful for enforcement agencies who may identify additional or alternate types of information the Registrar could usefully require to be filed to better enable them to consider information held by the Registrar against other sources of information to help them in the prevention and detection of crime.

405. While this is a Henry VIII power, it effectively replaces an equivalent power which exists at present at section 166 of the Companies Act 2006 applying to the current regime where the obligation is on a company to maintain its own register of directors. The new provision has been tightly drafted so that it cannot be used more widely to make other changes beyond the narrow scope set out above.

406. The ability to vary the information requirements for centrally held registers through secondary legislation will help future-proof the legislation.

Justification for the procedure

407. This is a Henry VIII power. The procedure is affirmative as changes to the information requirements should be debated. This will ensure that any changes remain proportionate to the overall aims of the policy and support register integrity.

Schedule 2, paragraph 6: New section 279J(5) Companies Act 2006: Power to amend required information about a secretary where an individual

Power conferred on: Secretary of State

Power exercised by: regulations made by statutory instrument, including a Henry VIII power

Parliamentary Procedure: affirmative procedure

Context and Purpose

408. Clause 52 and Schedule 2 of the Bill abolish certain local registers which at present, unless a company elects otherwise, must be maintained and kept available for inspection at a company's registered office (or an alternative specified place). The addition via clause 52 of new Section 279G - 279M will introduce to Part 12 of the Companies Act 2006, the requirements for a new regime whereby the information on one such register - that for company secretaries - will in future be held centrally by the Registrar rather than by the company.

409. New section 279J prescribes the required information that a secretary or proposed secretary who is an individual must provide to the Registrar. Subsection 5 contains a regulation-making power to amend the list of required information and to repeal a provision contained in subsection 4which provides that where a secretary (or proposed secretary) is a peer or an individual usually known by a title, any requirement imposed by the Companies Act 2006 to provide the individual's name because it forms part of the required information may be satisfied by providing that title instead of the individual's forename and surname.

Justification for taking the power

410. As reforms are implemented to Companies House and the register, it is possible that further improvements to (or defects with) information requirement relating to company secretaries will be identified, which the Government would need to act swiftly to address.

411. For example, this power would be useful for enforcement agencies who may identify additional or alternate types of information the Registrar could usefully require to be filed to help them in the prevention and detection of crime.

412. While this is a Henry VIII power, there are equivalent powers for directors (section 166 of the Companies Act 2006) and people with significant control (section 790L of the Companies Act 2006), so this would bring parity for secretary information. It has also been tightly drafted so that it cannot be used more widely to make other changes beyond the narrow-intended scope set out above.

413. The ability to vary the information requirements for centrally held registers through secondary legislation will help future-proof the legislation.

Justification for the procedure

414. This is a Henry VIII power, the procedure is correspondingly affirmative, as changes to the information requirements set out in statute should be debated. This will ensure that any changes remain proportionate to the overall aims of the policy and support register integrity.

Schedule 2, paragraph 6: New section 279K(2) Companies Act 2006: Required information about a secretary etc: corporate secretaries and firms

Power conferred on: Secretary of State

Power exercised by: regulations made by statutory instrument, including a Henry VIII power

Parliamentary Procedure: affirmative procedure

Context and Purpose

415. Clause 52 and Schedule 2 of the Bill abolish certain local registers which, unless a company elects otherwise, must be maintained and kept available for inspection at its registered office (or an alternative specified place). The addition of new section 279G - 279M into Part 12 Of the Companies Act 2006 will introduce the requirements for a new regime whereby one such register - that for company secretaries - will in future be held centrally by the Registrar rather than by the company.

416. New section 279K(2) prescribes the required information that a corporate secretary or proposed corporate secretary must provide the

Registrar. Subsection (2) contains a regulation-making power to amend the list of required information.

Justification for taking the power

417. As wider reforms are implemented to Companies House and the register, it is possible that further improvements to (or defects with) information requirement relating to company secretaries will be identified, which the Government would need to act swiftly to address.

418. For example, this power would be useful for enforcement agencies who may identify additional or alternate types of information the Registrar could usefully require to be filed to better enable them to consider information held by the Registrar against other sources of information to help them in the prevention and detection of crime.

419. While this is a Henry VIII power, there are equivalent powers for directors (section 166 of the Companies Act 2006) and people with significant control (section 790L of the Companies Act 2006), so this would bring parity for secretary information. It has also been tightly drafted so that it cannot be used more widely to make other changes beyond the narrow scope set out above.

420. The ability to vary the information requirements for centrally held registers through secondary legislation will help future-proof the legislation.

Justification for the procedure

421. This is a Henry VIII power the procedure is affirmative as changes to the information requirements set out in statute should be debated. This will ensure that any changes remain proportionate to the overall aims of the policy and support register integrity.

Schedule 2, paragraph 15: Amended section 790L Companies Act 2006: Required particulars: power to amend particulars

Power conferred on: Secretary of State

Power exercised by: regulations made by statutory instrument, including a Henry VIII power

Parliamentary Procedure: affirmative procedure

Context and Purpose

422. Clause 52 and Schedule 2 of the Bill abolish certain local registers which, unless a company elects otherwise, must be maintained and kept available for inspection at its registered office (or an alternative specified place).

423. This amendment expands an existing Henry VIII power in section 790L of the Companies Act 2006. The existing section contains power to amend the list of required particulars of a "registrable person" (i.e. persons with significant control over a company). Schedule 2 substitutes a new section 790L that contains wider power to amend the particulars of registrable persons and registrable relevant legal entities, as well as power to repeal a provision contained in subsection (4A) which provides that where an individual is a peer or an individual usually known by a title, any requirement imposed by the Companies Act 2006 to provide the individual's name because it forms part of the required information may be satisfied by providing that title instead of the individual's forename and surname.

Justification for taking the power

424. As wider reforms are implemented to Companies House and the companies register, it is possible that further improvements to (or defects with) information requirement relating to people with significant control will be identified, which the Government would need to act swiftly to address.

425. For example, this power would be useful for enforcement agencies who may identify additional or alternate types of information the Registrar could usefully require to be filed to better enable them to consider information held by the Registrar against other sources of information to help them in the prevention and detection of crime.

426. While this is a Henry VIII power, it replaces an equivalent power which exists at present at section 790L of the Companies Act 2006 applying to the current regime where the obligation is on a company to maintain its own register of people with significant control. The new provision has been tightly drafted so that it cannot be used more widely to make other changes beyond the narrow scope set out above.

427. The ability to vary the information requirements for centrally held registers through secondary legislation will help future-proof the legislation.

Justification for the procedure

428. The power is affirmative as changes to the information requirements should be debated. This will ensure that any changes remain proportionate to the overall aims of the policy and support register integrity. This is also a minor change to an existing power, and so it is appropriate to continue using the existing procedure.

Schedule 2, paragraph 16: New section 790LE(1) Companies Act 2006: Power to create further duties to notify information

Power conferred on: Secretary of State

Power exercised by: regulations made by statutory instrument

Parliamentary Procedure: affirmative procedure

Context and Purpose

429. Clause 52 of the Bill abolishes certain local registers which must be maintained and kept available for inspection at its registered office (or an alternative specified place). Schedule 2 introduces a range of amendments to Part 21A of the Companies Act 2006 to cater for the abolition of one such register, the register of people with significant control (also known as the PSC Register). Amongst other things, these changes specify the duties that a company has to notify information to the Registrar about registrable persons and relevant legal entities. New section 790LE gives the Secretary of State the ability to make regulations to impose additional reporting duties.

Justification for taking the power

430. As wider reforms are implemented to Companies House and the register, it is possible that further improvements to (or defects with) information notification requirements relating to beneficial owners will be identified, which the Government would need to act swiftly to address.

431. For example, this power would be useful for enforcement agencies who may identify additional or alternate types of information the Registrar could usefully require to be notified to better enable them to consider information held by the Registrar against other sources of information to help them in the prevention and detection of crime.

432. The provision has been tightly drafted so that it cannot be used more widely to make other changes beyond the narrow scope set out above.

Justification for the procedure

433. The procedure for it is affirmative, as changes to the information requirements which are set out in statute should be debated. This will ensure that any changes remain proportionate to the overall aims of the policy and support register integrity.

Schedule 6: New section 67ZA(7) of the Proceeds of Crime Act 2002 ("POCA"): Power to substitute another sum for maximum sum payable for failure to comply in England and Wales

Power conferred on: Secretary of State

Power exercised by: order made by statutory instrument

Parliamentary Procedure: negative procedure

Context and Purpose

434. Existing section 67 of POCA enables a magistrates' court in England and Wales to order a bank or building society to pay a sum over to the court on account of money which is payable by a defendant under a confiscation order. This power is relevant where the court is enforcing an unpaid confiscation order debt.

435. Where a bank or building society fails to comply with the order, the magistrates' court can order it to pay a fine of up to £5,000 under section 67(6)(a). The Secretary of State may by order amend that amount under section 67(7) in order to take account of changes in the value of money.

436. New section 67ZA of POCA will make similar provision in respect of businesses that administer so-called "crypto wallets", which provide access to "cryptoassets" (a type of digital asset described in more detail below) for their customers. It will enable a magistrates' court to order businesses to realise cryptoassets and pay the resulting sum over to the court.

437. New section 67ZA will contain equivalent provision to the existing Henry VIII power in section 67 to enable the magistrates' court to order non-

complying businesses a sum of up to £5,000, and for the Secretary of State to amend that sum by order in order to take account of changes in the value of money.

Justification for taking the power

438. It is important that the same level of sum can apply to cryptoasset businesses as applies to banks and similar firms who fail to comply with a requirement to transfer money held in an account. If an order under section 67(7) of POCA updates the maximum penalty for banks and similar firms who deal with money that is subject to a confiscation order, then the Government is very likely to want to extend the change to cryptoassets at the same time.

Justification for the procedure

439. The negative procedure is the procedure that applies to orders under the existing section 67(7) of POCA, concerning the maximum sum payable for breaching a requirement to transfer money from bank (or similar) accounts. Using a different procedure for new section 67ZA would mean that any uprating of both sums will require two different orders and could take longer to implement. In addition, the scope of the power is tightly restricted to altering the £5,000 figure – not any other aspect of the sum or the wider process – and only for the purpose of reflecting changes in the value of money (in other words, to take account of inflation).

Schedule 6: New section 67ZB(5) of POCA: Power to amend the definition of "cryptoasset service provider" for the purposes of the confiscation regime in England and Wales

Power conferred on: Secretary of State

Power exercised by: regulations made by statutory instrument

Parliamentary Procedure: affirmative procedure

Context and Purpose

440. New section 67ZB(3) of POCA will define a "cryptoasset service provider". It will do so for the purposes of enabling a magistrates' court in England and Wales to order cryptoasset businesses falling within those definitions to realise cryptoassets when enforcing a confiscation order. As explained above, an equivalent enforcement power in POCA already exists in section 67 for money in bank and building society accounts.

441. Existing section 67(7A) allows the Secretary of State by order to apply the enforcement power to financial institutions other than banks and building societies. Likewise, new section 67ZB(5) will enable the Secretary of State by order to amend the definitions relevant to the section 67ZA(3) power.

Justification for taking the power

442. The technology associated with cryptoassets is rapidly evolving. It is vital that criminals do not evade the powers conferred by this Bill by using modified technology so that it falls outside the definition in the legislation.

443. In addition, the United Kingdom is committed to the international standards set by the Financial Action Task Force ("FATF"). In 2015, FATF introduced new recommendations for tackling the money laundering and terrorist financing risks associated with cryptoassets or "virtual assets". Whilst those recommendations do not directly include these measures, they are implemented in the UK through other legislation which uses very similar concepts and terminology to those in this Bill. The FATF standards are regularly revised. The UK needs to be able to change its legal framework quickly to meet those standards without different aspects of it unnecessarily diverging.

444. It is the Government's intention to keep these definitions aligned across POCA. However, they are set out separately in each Part because Part 5 applies to all of the United Kingdom and POCA tends to have discrete interpretation provisions for each regime.

Justification for the procedure

445. The affirmative procedure here is the most suitable procedure as this is a Henry VIII power. The ability of the Secretary of State to amend the face of the primary legislation to modify the scope of the asset classes and categories of persons to which powers apply, is already used in a number of places in POCA: for example, section 67(7A) section 303B(2). It is considered more appropriate to have such definitions on the face of the statute rather than set out in a separate instrument.

446. Furthermore, this procedure mirrors the powers to amend the relevant definitions in other Parts of POCA. This means that they could be updated – and scrutinised by Parliament – as part of a single set of regulations.

Schedule 6: New section 84A(5) of POCA: Power to amend the definitions of "cryptoasset" and "crypto wallet" for the purposes of the confiscation regime in England and Wales

Power conferred on: Secretary of State

Power exercised by: regulations made by statutory instrument

Parliamentary Procedure: affirmative procedure

Context and Purpose

447. New section 84A of POCA defines a "cryptoasset" and "crypto wallet" for the purposes of the new confiscation powers exercisable as part of the confiscation regime in England and Wales. Subsection (5) enables the Secretary of State to amend those definitions.

Justification for taking the power

448. The technology associated with cryptoassets is rapidly evolving. It is vital that criminals do not evade the powers conferred by this Bill by using technology modified so that it falls outside the definition in the legislation.

449. As mentioned above, in relation to new section 67ZB(5) of POCA, the United Kingdom is committed to the international standards set by FATF. A few years ago, FATF introduced new recommendations for tackling the money laundering and terrorist financing risks associated with cryptoassets or "virtual assets". Whilst those recommendations do not directly include these measures, they are implemented in the UK through other legislation which uses very similar concepts and terminology to those in this Bill. The FATF standards are regularly revised. The UK needs to be able to change its legal framework quickly to meet those standards without different aspects of it unnecessarily diverging.

450. It is the Government's intention to keep these definitions aligned across POCA. However, they are set out separately in each Part because Part 5 applies to all of the United Kingdom and POCA tends to have discrete interpretation provisions for each regime.

Justification for the procedure

451. The affirmative procedure here is the most suitable procedure as this

is a Henry VIII power. The ability of the Secretary of State to amend the face of the primary legislation to modify the scope of the asset classes and categories of persons to which powers apply, is already used in a number of places in POCA: for example, section 67(7A) section 303B(2). It is considered more appropriate to have such definitions on the face of the statute rather than set out in a separate instrument.

452. Furthermore, this procedure mirrors the powers to amend the relevant, cryptoasset-related definitions in other Parts of POCA. This means that they could be updated – and scrutinised by Parliament – as part of a single set of regulations.

Schedule 6: New section 131ZC(3) of POCA: Power to amend the definition of "cryptoasset service provider" for the purposes of the confiscation regime in Scotland

Power conferred on: Secretary of State

Power exercised by: regulations made by statutory instrument

Parliamentary Procedure: affirmative procedure

Context and Purpose

453. New section 131ZC(3) of POCA will define a "cryptoasset service provider". It will do so for the purposes of enabling a sheriff in Scotland to order cryptoasset businesses falling within those definitions to realise cryptoassets when enforcing a confiscation order. An equivalent enforcement power in POCA already exists in section 131ZA for money in bank and building society accounts.

454. This power is equivalent to the power in new section 67ZA in England and Wales but will require the Secretary of State to consult the Scottish Ministers before amending either of the definitions.

Justification for taking the power

455. The technology associated with cryptoassets is rapidly evolving. It is vital that criminals do not evade the powers conferred by this Bill by using technology modified so that it falls outside the definition in the legislation.

456. As set out above, in relation to new section 67ZB(5) of POCA, the

United Kingdom is committed to the international standards set by FATF. In 2015, FATF introduced new recommendations for tackling the money laundering and terrorist financing risks associated with cryptoassets or "virtual assets". Whilst those recommendations do not directly include these measures, they are implemented in the UK through other legislation which uses very similar concepts and terminology to those in this Bill. The FATF standards are regularly revised. The UK needs to be able to change its legal framework quickly to meet those standards without different aspects of it unnecessarily diverging.

457. It is the Government's intention to keep these definitions aligned across POCA. However, they are set out separately in each Part because Part 5 applies to all of the United Kingdom and POCA tends to have discrete interpretation provisions for each regime.

Justification for the procedure

458. The affirmative procedure here is the most suitable procedure as this is a Henry VIII power. The ability of the Secretary of State to amend the face of the primary legislation to modify the scope of the asset classes and categories of persons to which powers apply, is already used in a number of places in POCA: for example, section 67(7A) section 303B(2). It is considered more appropriate to have such definitions on the face of the statute rather than set out in a separate instrument.

459. Furthermore, this procedure mirrors the powers to amend the relevant, cryptoasset-related definitions in other Parts of POCA. This means that they could be updated – and scrutinised by Parliament – as part of a single set of regulations.

Schedule 6: New section 150A(5) of POCA: Power to amend the definitions of "cryptoasset" and "crypto wallet" for the purposes of the confiscation regime in Scotland

Power conferred on: Secretary of State

Power exercised by: regulations made by statutory instrument

Parliamentary Procedure: affirmative procedure

Context and Purpose

460. New section 150A of POCA defines a “cryptoasset” and “crypto wallet” for the purposes of the new confiscation powers exercisable as part of the confiscation regime in Scotland. Subsection (5) enables the Secretary of State to amend those definitions.

461. This power is equivalent to the power in new section 84A in England and Wales, but will require the Secretary of State to consult the Scottish Ministers before amending either of the definitions.

Justification for taking the power

462. The technology associated with cryptoassets is rapidly evolving. It is vital that criminals do not evade the powers conferred by this Bill by using technology modified so that it falls outside the definition in the legislation.

463. As set out above, in relation to new section 67ZB(5) of POCA, the United Kingdom is committed to the international standards set by FATF. In 2015, FATF introduced new recommendations for tackling the money laundering and terrorist financing risks associated with cryptoassets or “virtual assets”. Whilst those recommendations do not directly include these measures, they are implemented in the UK through other legislation which uses very similar concepts and terminology to those in this Bill. The FATF standards are regularly revised. The UK needs to be able to change its legal framework quickly to meet those standards without different aspects of it unnecessarily diverging.

464. It is the Government’s intention to keep these definitions aligned across POCA. However, they are set out separately in each Part because Part 5 applies to all of the United Kingdom and POCA tends to have discrete interpretation provisions for each regime.

Justification for the procedure

465. The affirmative procedure here is the most suitable procedure as this is a Henry VIII power. The ability of the Secretary of State to amend the face of the primary legislation to modify the scope of the asset classes and categories of persons to which powers apply, is already used in a number of places in POCA: for example, section 67(7A) section 303B(2). It is considered more appropriate to have such definitions on the face of the statute rather than set out in a separate instrument.

466. Furthermore, this procedure mirrors the powers to amend the relevant, cryptoasset-related, definitions in other Parts of POCA. This means that they could be updated – and scrutinised by Parliament – as part of a single set of

regulations.

Schedule 6: New section 215ZA(8) of POCA: Power to substitute another sum for maximum sum payable for failure to comply in Northern Ireland

Power conferred on: Department of Justice in Northern Ireland

Power exercised by: order made by statutory instrument

Parliamentary Procedure: negative procedure

Context and Purpose

467. Existing section 215 POCA enables a magistrates' court in Northern Ireland to order a bank or building society to pay a sum over to the court on account of money which is payable by a defendant under a confiscation order. This power is relevant where the court is enforcing an unpaid confiscation order debt.

468. Where a bank or building society fails to comply with the order, the magistrates' court can order it to pay a fine of up to £5,000 under section 215(6)(a). The Department of Justice may by order amend that amount under section 215(7) in order to take account of changes in the value of money.

469. New section 215ZA of POCA will make similar provision in respect of businesses that administer so-called "crypto wallets", which provide access to "cryptoassets" (a type of digital asset described in more detail below) for their customers. It will enable a magistrates' court to order businesses to realise cryptoassets and pay the resulting sum over to the court.

470. New section 215ZA will contain equivalent provision to the existing Henry VIII power in section 215 to enable the magistrates' court to order non-complying businesses to pay a sum up to £5,000, and for the Department of Justice to amend that sum by order in order to take account of changes in the value of money.

Justification for taking the power

471. It is important that the same level of sum payable can apply to cryptoasset businesses as applies to banks and similar firms who fail to comply with a requirement to transfer money held in an account. If an order under section 215(7) of POCA updates the maximum sum for banks and

similar firms who deal with money that is subject to a confiscation order, then the NI Department of Justice is very likely to want to extend the change to cryptoassets at the same time.

Justification for the procedure

472. The negative procedure is the procedure that applies to orders under the existing section 215(7) of POCA, concerning the maximum sum payable for breaching a requirement to transfer money from bank (or similar) accounts. Using a different procedure for new section 215ZA would mean that any uprating of both sums will require two different orders and could take longer to implement. In addition, the scope of the power is tightly restricted to altering the £5,000 figure – not any other aspect of the sum or the wider process – and only for the purpose of reflecting changes in the value of money (in other words, to take account of inflation).

Schedule 6: New section 215ZB(5) of POCA: Power to amend the definition of "cryptoasset service provider" for the purposes of the confiscation regime in Northern Ireland

Power conferred on: Secretary of State

Power exercised by: regulations made by statutory instrument

Parliamentary Procedure: affirmative procedure

Context and Purpose

473. New section 215ZB(3) of POCA will define a "cryptoasset service provider". It will do so for the purposes of enabling a magistrates' court in Northern Ireland to order cryptoasset businesses falling within those definitions to realise cryptoassets when enforcing a confiscation order. An equivalent enforcement power in POCA already exists in section 215 for money in bank and building society accounts.

474. This power is equivalent to the power in new section 67ZB in England and Wales but will require the Secretary of State to consult the Department of Justice in Northern Ireland before amending either of the definitions.

Justification for taking the power

475. The technology associated with cryptoassets is rapidly evolving. It is

vital that criminals do not evade the powers conferred by this Bill by using technology modified so that it falls outside the definition in the legislation.

476. As set out above, in relation to new 67ZB(5) of POCA, the United Kingdom is committed to the international standards set by FATF. In 2015, FATF introduced new recommendations for tackling the money laundering and terrorist financing risks associated with cryptoassets or "virtual assets". Whilst those recommendations do not directly include these measures, they are implemented in the UK through other legislation which uses very similar concepts and terminology to those in this Bill. The FATF standards are regularly revised. The UK needs to be able to change its legal framework quickly to meet those standards without different aspects of it unnecessarily diverging.

477. It is the Government's intention to keep these definitions aligned across POCA. However, they are set out separately in each Part because Part 5 applies to all of the United Kingdom and POCA tends to have discrete interpretation provisions for each regime.

Justification for the procedure

478. The affirmative procedure here is the most suitable procedure as this is a Henry VIII power. The ability of the Secretary of State to amend the face of the primary legislation to modify the scope of the asset classes, and categories of persons to which powers apply, is already used in a number of places in POCA: see, for example, section 303B(2) (power to amend the definition of "listed asset" in Part 5 of POCA) and section 67(7A) (power to specify type of financial institution to which orders may be addressed requiring payment of money in accounts subject to a confiscation order). Both are subject to the affirmative procedure.

479. Furthermore, this procedure mirrors the powers to amend the relevant, cryptoasset-related, definitions in other Parts of POCA. This means that they could be updated – and scrutinised by Parliament – as part of a single set of regulations.

Schedule 6: New section 232A(5): Power to amend the definitions of "cryptoasset" and "crypto wallet" for the purposes of the confiscation regime in Northern Ireland

Power conferred on: Secretary of State

Power exercised by: regulations made by statutory instrument

Parliamentary Procedure: affirmative procedure

Context and Purpose

480. New section 232A of POCA defines a “cryptoasset” and “crypto wallet” for the purposes of the new confiscation powers exercisable as part of the confiscation regime in Northern Ireland. Subsection (5) enables the Secretary of State to amend those definitions.

481. This power is equivalent to the power in new section 84A in England and Wales but will require the Secretary of State to consult the Department of Justice in Northern Ireland before amending either of the definitions.

Justification for taking the power

482. The technology associated with cryptoassets is rapidly evolving. It is vital that criminals do not evade the powers conferred by this Bill by using technology modified so that it falls outside the definition in the legislation.

483. As set out above, in relation to new section 67ZB(5) of POCA, the United Kingdom is committed to the international standards set by FATF. In 2015, FATF introduced new recommendations for tackling the money laundering and terrorist financing risks associated with cryptoassets or “virtual assets”. Whilst those recommendations do not directly include these measures, they are implemented in the UK through other legislation which uses very similar concepts and terminology to those in this Bill. The FATF standards are regularly revised. The UK needs to be able to change its legal framework quickly to meet those standards without different aspects of it unnecessarily diverging.

484. It is the Government’s intention to keep these definitions aligned across POCA. However, they are set out separately in each Part because Part 5 applies to all of the United Kingdom and POCA tends to have discrete interpretation provisions for each regime.

Justification for the procedure

485. The affirmative procedure here is the most suitable procedure as this is a Henry VIII power. The ability of the Secretary of State to amend the face of the primary legislation to modify the scope of the asset classes, and categories of persons to which powers apply, is already used in a number of

places in POCA: see, for example, section 303B(2) (power to amend the definition of "listed asset" in Part 5 of POCA) and section 67(7A) (power to specify type of financial institution to which orders may be addressed requiring payment of money in accounts subject to a confiscation order). Both are subject to the affirmative procedure.

486. Furthermore, this procedure mirrors the powers to amend the relevant, cryptoasset-related, definitions in other Parts of POCA. This means that they could be updated – and scrutinised by Parliament – as part of a single set of regulations.

The following 11 delegated powers have been grouped together for the purposes of this memorandum:

Schedule 6: Section 47G(3) of POCA – power to specify a description of an accredited financial investigator for the purposes of determining a "senior officer" in new subsection (8) of existing section 47R in Part 2 of POCA (confiscation: England and Wales)

Schedule 6: Section 195G(3) of POCA – power to specify a description of an accredited financial investigator for the purposes of determining a "senior officer" in new subsection (8) of existing section 195R in Part 4 of POCA (confiscation: Northern Ireland)

Schedule 7: New section 303Z20(4)(a)(iv) of POCA – power to specify a description of an accredited financial investigator for the purposes of determining an "enforcement officer" in new Chapter 3C in Part 5 of POCA (civil recovery), and in new Chapter 3D (by new section 303Z36(8)), and in new Chapter 3F (by new section 303Z66(1))

Schedule 7: New section 303Z20(4)(b)(v) of POCA – power to specify a description of an accredited financial investigator for the purposes of determining a "senior officer" in new Chapter 3C in Part 5 of POCA (civil recovery), and in new Chapter 3D (by new section 303Z36(8))

Schedule 7: New section 303Z28(5)(a)(iv) of POCA – power to specify a description of an accredited financial investigator for the purposes of applying to the court for the further detention of seized cryptoasset-related items

Schedule 7: New section 303Z32(5)(a)(iv) of POCA – power to specify a description of an accredited financial investigator for the purposes of applying to the court for the further detention of seized cryptoassets

Schedule 7: New section 303Z41(3)(d) of POCA – power to specify a description of an accredited financial investigator for the purposes of applying to the court for the forfeiture of cryptoassets

Schedule 7: New section 303Z57(7)(a)(vi) of POCA – power to specify a description of an accredited financial investigator for the purposes of detention of converted proceeds of detained cryptoassets

Schedule 7: New section 303Z58(6)(a)(iv) of POCA – power to specify a description of an accredited financial investigator for the purposes of the detention of proceeds of frozen cryptoassets

Schedule 7: New section 303Z60(3)(d) of POCA – power to specify a description of an accredited financial investigator for the purposes of applying to the court for the forfeiture of cryptoassets

Schedule 7: New subsections (3G) and (3H) of section 378 of POCA – power to specify a description of an accredited financial investigator for the purposes of the definition of "appropriate officer" and "senior officer" in Part 8 of POCA

Power conferred on: Secretary of State, Welsh Ministers

Power exercised by: order made by statutory instrument

Parliamentary Procedure: negative procedure

Context and Purpose

487. Accredited financial investigators ("AFIs") are currently provided for by section 3 of POCA as financial investigators who have been trained and accredited by the NCA to undertake certain investigation, restraint, search and seizure functions, and related functions, in England and Wales and Northern Ireland. AFIs have access to many of the existing investigative and enforcement powers in POCA, and the exact nature of which investigators can use which particular power is already set out in regulations. Under section 453 of POCA, the Secretary of State or the Welsh Ministers may by order provide that a specified reference in POCA to an accredited financial investigator is a reference to such an investigator who falls within a specified description. Such order might provide, for example, that accredited financial investigators employed as civilian members of a police force or those in the employment of a local authority can exercise a particular power. Such orders are also used to define the term "senior officer" in its application to an AFI.

488. Under existing sections 47R and 195R, where the conditions for detaining property seized under Part 2 (England and Wales) or Part 4 (Northern Ireland) of POCA are no longer met, that property must be released. This will also be the case for so-called “cryptoasset-related items”, which are being introduced as a new class of seizable property under Part 2 and Part 4. However new subsection (6) of section 47R (in England and Wales) and of section 195R (in Northern Ireland) will allow an officer to retain, dispose of or destroy cryptoasset-related items that are not collected within a year of their release. An officer may only exercise the subsection (6) power on the authority of a “senior officer”. The Secretary of State and the Welsh Ministers already have the power, by order, to specify a description of accredited financial investigators as senior officers for other purposes related to seizure and detention of property under section 47G(3)(c). New subsection (8) will provide that a description of an accredited financial investigator senior officer for those other purposes will apply in relation to the approval needed to authorise an officer to retain, dispose of or destroy cryptoasset-related items.

489. New Chapter 3C of Part 5 of POCA makes provision for the seizure, detention and forfeiture of cryptoassets and the seizure and detention of cryptoasset-related items. It confers on “enforcement officers” powers to: search premises, vehicles and people for cryptoasset-related items (under section 303Z21); seize cryptoasset-related items (under section 303Z26); detain seized cryptoasset-related items for an initial period of 48 hours (under section 303Z27); retain, dispose of or destroy released cryptoasset-related items which are not claimed; seize cryptoassets (under section 303Z29); detain seized cryptoassets for an initial period of 48 hours (under section 303Z31); realise or destroy forfeited cryptoassets (section 303Z48). The exercise of some of these powers requires prior approval, in some cases by a “senior officer”.

490. An “enforcement officer” is defined by new section 303Z20(4)(a) for the purposes of new Chapter 3C as meaning: an officer of Revenue and Customs; a constable; an SFO officer; or an accredited financial investigator who falls within a description specified in an order made for the purposes of the Chapter by the Secretary of State or the Welsh Ministers under section 453. Accredited financial investigators and SFO officers do not operate in Scotland.

491. A “senior officer” is defined for the purposes of Chapter 3C by section 303Z20(4)(b) essentially as an officer of specified higher rank than other enforcement officers. Such senior officers include accredited financial investigators who fall within a description specified in an order made for the

relevant purposes by the Secretary of State of the Welsh Ministers under section 453.

492. New section 303Z28 of POCA gives the relevant court a power to make an order for further detention of a cryptoasset-related item which has been seized under new section 303Z26. New section 303Z28(5) sets out which officers may apply for this order; in the context of accredited financial investigators, new section 303Z26(5)(a)(iv) provides that this must be an accredited financial investigator who falls within a description specified in an order made by the Secretary of State or the Welsh Ministers under section 453 POCA.

493. New section 303Z32 gives the relevant court a power to make an order for further detention of a cryptoasset which has been seized under new section 303Z29. New section 303Z32(5) sets out which officers may apply for this order; in the context of accredited financial investigators, new section 303Z32(5)(a)(iv) provides that this must be an accredited financial investigator who falls within a description specified in an order made by the Secretary of State or the Welsh Ministers under section 453 POCA.

494. New Chapter 3D in Part 5 of POCA makes provision for the freezing of crypto wallets and the forfeiture of cryptoassets from frozen crypto wallets. It confers on “enforcement officers” the power to apply to the relevant court for an order freezing a crypto wallet under section 303Z36 and for the varying or setting aside of such an order under section 303Z38, with both subject to authorisation from a “senior officer”. An “enforcement officer” and “senior officer” are defined for the purposes of Chapter 3D under section 303Z36(8) as meaning the same as in Chapter 3C.

495. New section 303Z41 of POCA gives the relevant court a power to make an order for the forfeiture of cryptoassets detained in pursuance of an order under section 303Z32 or while a crypto wallet freezing order made under section 303Z37 has effect. New section 303Z41(3) sets out which officers may apply for this order; in the context of accredited financial investigators, new section 303Z41(3)(d) provides that this must be an accredited financial investigator who falls within a description specified in an order made by the Secretary of State or the Welsh Ministers under section 453 POCA.

496. New Chapter 3F makes provision for the conversion of detained cryptoassets. This includes provision for “enforcement officers” wich means the same as it does in section Chapter 3C (section 303Z66(1)) – and includes accredited financial investigators. New sections 303Z57 and 303Z58

make provision for the detention of the proceeds of converted detained, and frozen, cryptoassets respectively. An application for such detention can be made by those persons listed at subsections (7) and (6) of those sections, respectively. Those persons include an accredited financial investigator who falls within a description specified in an order made for the purposes of the Chapter by the Secretary of State or the Welsh Ministers under section 453.

497. New section 303Z60 in Chapter 3F gives the relevant court a power to make an order for forfeiture of cryptoassets detained in pursuance of an order under either section 303Z57 or 303Z58. Subsection (3) sets out the persons who can apply to the court for such orders, which includes at paragraph (d) accredited financial investigators.

498. Part 8 of POCA confers a range of investigatory powers to assist with the exercise of officers' confiscation and civil recovery functions under POCA. A "cryptoasset investigation" is added as new type of Part 8 investigation. The current section 378 specifies the types of officer deemed to be "appropriate officers" and "senior appropriate officers" under that Part. Paragraph 3of the Schedule inserts provision for appropriate officers (new subsection (3G)) and senior appropriate officers (new subsection (3H)) into section 378 for cryptoasset investigations. Those both include an accredited financial investigator who falls within a description specified in an order made for the purposes of this paragraph by the Secretary of State or the Welsh Ministers under section 453.

Justification for taking the powers

499. The exercise of the existing section 453 power in respect of the additional POCA powers conferred upon accredited financial investigators (in respect of cryptoassets) is appropriate, as it corresponds to the existing approach for regulating the use of accredited financial investigators in other provisions in POCA.

500. The ability to stipulate the description of accredited financial investigators who can use these new powers by regulations ensures that changes can be made to reflect the operational needs of the organisations with an interest in pursuing civil recovery. This helps to ensure the effectiveness of the provisions.

Justification for the procedure

501. Regulations made under section 453 of POCA are subject to the negative procedure. These are technical provisions and the Government

does not consider that the extension of this regulation-making power warrants a change in the existing level of parliamentary scrutiny.

Schedule 7: New section 303Z20 of POCA: Power to amend the definitions of "cryptoasset" and "crypto wallet" in new civil recovery powers

Power conferred on: Secretary of State

Power exercised by: regulations made by statutory instrument

Parliamentary Procedure: affirmative procedure

Context and Purpose

502. New section 303Z20 of POCA defines a "cryptoasset" and a "crypto wallet" for the purposes of the new civil recovery powers in Part 5 of POCA. Subsection (2) of that section enables the Secretary of State to amend those definitions.

Justification for taking the power

503. Cryptoassets are a form of property that can typically be used to store or transfer value by secure means. The ability to move property quickly, across borders, without the need for standard banking services, and often to hold it anonymously, make these assets increasingly attractive to those engaged in economic crime and to terrorists. The technology associated with cryptoassets is rapidly evolving. It is vital that criminals do not evade the powers conferred by this Bill by using technology modified so that it falls outside the definition in the legislation.

504. As set out above in relation to Schedule 6, the United Kingdom is committed to the international standards set by FATF. In 2015, FATF introduced new recommendations for tackling the money laundering and terrorist financing risks associated with cryptoassets or "virtual assets". Whilst those recommendations do not directly include civil recovery measures, they are implemented in the UK through other legislation which uses very similar concepts and terminology to those in this Bill. The FATF standards are regularly revised. The UK needs to be able to change its legal framework quickly to meet those standards without different aspects of it unnecessarily diverging.

Justification for the procedure

505. Regulations under this power are subject to the affirmative resolution procedure. This will allow both Houses of Parliament to debate and vote on any changes and is consistent with related legislation. In particular, it is in line with the current procedure for amending the definitions (considered in more detail below) of "cryptoasset exchange provider" and "custodian wallet provider" (each containing a definition of "cryptoasset" that is mirrored on the face of this Bill) in the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (the "MLRs").

506. Should technology, risks or international standards change in future so that the definitions need updating in the same way across several closely related pieces of legislation (the new civil recovery provisions introduced by this Bill, the MLRs, POCA and the Terrorism Act 2000), the power will therefore allow the Secretary of State to do so via one draft affirmative instrument. Therefore, they could be updated – and scrutinised by Parliament – as part of a single set of regulations.

507. Furthermore, this procedure mirrors the powers to amend the relevant, cryptoasset-related, definitions in other Parts of POCA. Again, this means that they could be updated – and scrutinised by Parliament – as part of a single set of regulations.

Schedule 7: New section 303Z25 of POCA: Power to make regulations bringing into force a code of practice in relation to search powers conferred by new section 303Z21

Power conferred on: Secretary of State, Scottish Ministers, Department of Justice

Power exercised by: regulations made by statutory instrument

Parliamentary Procedure: affirmative procedure

Context and Purpose

508. New section 303Z21 of POCA confers a power for law enforcement officers to search a premises, vehicle or person for a cryptoasset-related item. This mirrors very closely existing powers in POCA that relate to cash and "listed assets". A law enforcement officer may only conduct such a search where he or she has reasonable grounds for suspecting that a cryptoasset-related item is on the premises, in the vehicle or being carried by the person. A "cryptoasset-related item" means any item of property that falls within the scope of the powers (as set out in new section 303Z21(2)). New section 303Z25 provides that the requirements to make codes of practice set

out in sections 303G, 303H and 303I (in connection with the power to search for seizable listed assets in section 303C) apply in relation to the powers conferred by new section 303Z21 as they apply in relation to the powers conferred by the existing section 303C.

Justification for taking the power

509. As with existing similar powers under POCA, this search power is potentially intrusive, and raises the need for further detailed guidance to ensure that it is used proportionately and effectively. It is appropriate to set this out in a code of practice due to the level of detail required. Similar search powers exist in POCA already in respect of cash at section 289 and, as mentioned above, seizable listed assets at section 303C. Codes of practice are made for different parts of the UK under sections 292 to 293A and 303G to 303I in respect of the use of those powers.

Justification for the procedure

510. The draft affirmative procedure is appropriate for the use of this power, given the sensitive nature of these powers and that the code will clarify the use of the powers against the public. The draft affirmative procedure allows the UK Parliament, the Scottish Parliament and the Northern Ireland Assembly respectively to give the codes sufficient scrutiny. It is worth noting that existing sections 292 to 293A and 303G to 303I are also exercised in this way.

511. A number of provisions confer powers upon accredited financial investigators which will necessitate the exercise of the power in section 453 of POCA. For ease of reference these are grouped together below.

Schedule 7: New section 303Z35 of POCA: Power to amend the definition of "cryptoasset service provider"

Power conferred on: Secretary of State

Power exercised by: regulations made by statutory instrument

Parliamentary Procedure: affirmative procedure

Context and Purpose

512. New section 303Z35 of POCA defines a "cryptoasset service provider" for the purposes of the new civil recovery powers in Part 5 of POCA which are modelled on the bank account freezing and forfeiture powers in Chapter 3B. A "cryptoasset service provider" includes a "custodian wallet provider" or

a “cryptoasset exchange provider”. Either can be subject to the new wallet freezing and forfeiture powers designed to target cryptoassets that are hosted by a third party. Subsection (4) enables the Secretary of State by regulations to amend those definitions in the future.

Justification for taking the power

513. The justifications largely follow the justifications above (in relation to new section 303Z20 of POCA), concerning the definition of “cryptoasset”. The means by which cryptoassets can be held on behalf of a customer may well develop in future, just as new types of banking services have emerged in recent years. Equally, it is important that Parliament should debate and vote on the extension of these powers to any additional firms. The means by which cryptoassets can be held on behalf of a customer may well develop in future, just as new types of banking services have emerged in recent years. Equally, it is important that Parliament should debate and vote on the extension of these powers to any additional firms.

514. The definitions in the Bill of “cryptoasset exchange provider” and “custodian wallet provider” are the same as those in the MLRs, POCA and the Terrorism Act 2000. Those definitions can be amended already through secondary legislation – specifically, by regulations under section 49 of the Sanctions and Anti-Money Laundering Act 2018, subject to the draft affirmative procedure (see section 55(5)) and amendments consequential on those regulations (section 54(2)).

Justification for the procedure

515. As with the definition of “cryptoasset” considered in more detail above in relation to new section 303Z20 of POCA, the draft affirmative procedure gives an effective level of control to both Houses of Parliament over the use of this power which is a Henry VIII power. It will also enable the Secretary of State to amend a definition in Part 5 of POCA while making parallel amendments to linked anti-money laundering and terrorist financing legislation in the same regulations if needed.

516. Furthermore, this procedure mirrors the powers to amend the relevant, cryptoasset-related, definitions in other Parts of POCA. Again, this means that they could be updated – and scrutinised by Parliament – as part of a single set of regulations.

Schedule 7: New section 303Z42 (7) to (9) of POCA: Power to amend section 303Z42, and make consequential amendments, in relation to means of forfeiture of cryptoassets held in a crypto wallet

Power conferred on: Secretary of State

Power exercised by: regulations made by statutory instrument

Parliamentary Procedure: affirmative procedure

Context and Purpose

517. New section 303Z42 in Part 5 of POCA makes provision about forfeiture of cryptoassets. Where a cryptoasset service provider administers a crypto wallet on behalf of a customer, and that wallet contains cryptoassets subject to a forfeiture order by a court, the provider is required by this new section to transfer those cryptoassets into a law enforcement nominated wallet. The power is a Henry VIII power which would allow the Secretary of State to amend aspects of this section which are relevant to such third-party crypto wallets, in order to provide for a different means of forfeiture.

Justification for taking the power

518. The power would provide a contingency to enable the mechanism of forfeiture to be altered, should that become necessary in order to overcome technical barriers around the forfeiture of cryptoassets administered by a third party. It is necessary for such provision to appear on the face of the Act (hence the Henry VIII power) to give the greatest possible transparency as to the process of forfeiture.

519. Compared to mainstream banking providers, there is more variety and less transparency in the business models of cryptoasset service providers so a backstop is felt to be sensible to prevent commercial entities being in contempt of court by no fault of their own. By way of example, this could conceivably be an issue if the cryptoassets in question were locked into a smart contract: a self-executing contract defined by computer code, most recognisable in the form of applications built on platforms such as the Ethereum blockchain. Smart contracts are immutable, meaning an asset holder could lock criminal assets into a smart contract so that they could only be released upon certain conditions being met. Even in the case of a forfeiture order, if those conditions were not met, it may be impossible for the cryptoasset service provider to release the cryptoassets.

520. Developers are exploring the depth of capabilities offered by the smart

contracts and anecdotal evidence indicates that the uses for this technology are growing. The Home Office is not (yet) aware of any asset recovery investigations involving cryptoassets where those assets have been locked into smart contracts. In any case, smart contracts are one example; cryptoasset technology is evolving rapidly and is likely to continue to do so in ways that we cannot anticipate.

521. The power is limited in scope and would not be capable of amending the entirety of section 303Z42 or making substantive changes to any of the wider provisions governing (for example) the right to appeal or the need for a court order, nor to the procedure for forfeiting detained cryptoassets (those already under law enforcement control. The power is intended to be used simply for the purpose of making provision for the forfeiture of cryptoassets held in a frozen crypto wallet.

522. However, it is not feasible to confine the power solely to amendment of the particular paragraph of the subsection which requires the transfer of cryptoassets. For example, other subsections that cross-refer to that subsection might need to be adjusted in consequence. It is also possible that regulations would – for instance – need to provide for payment of interest accrued in the event that they were to require the payment of money into a bank account rather than a transfer of cryptoassets. In that case the amendments would need to specify that an equivalent amount of money must be paid into an interest-bearing account, and that interest accruing on that amount is to be added to it on its forfeiture (by virtue of this section) or release.

Justification for the procedure

523. Regulations under this power would amend the text of the section, and therefore the draft affirmative procedure is appropriate. It would also enable regulations to be included, if necessary, in the same instrument as regulations to amend the definition of “cryptoasset”, “cryptoasset service provider” or “crypto wallet”, should there be connected reasons for making the changes.

Schedule 7: New section 303Z52(10) of POCA: Power to amend subsection (9) in relation to source of compensation relating to cryptoassets

Power conferred on: Secretary of State

Power exercised by: regulations made by statutory instrument

Parliamentary Procedure: affirmative procedure

Context and Purpose

524. New section 303Z52 of POCA makes provision about compensation for loss, in exceptional circumstances, relating to the detention of cryptoassets or the making of a crypto wallet freezing order. Subsection (9) specifies the source of the compensation in relation to different officers or authorities.

Justification for taking the power

525. The power replicates existing arrangements in POCA that apply to cash, listed assets and bank accounts. It would enable the Secretary of State to ensure consistency across the cash, listed asset, bank account and cryptoasset forfeiture regimes in the event that changes in the structures or funding for the bodies responsible mean that any compensation has to be paid from a different source.

Justification for the procedure

526. Regulations under this power would amend the text of the section, albeit only in relation to the source of the compensation. The affirmative procedure is therefore the most appropriate procedure and follows the existing precedents in POCA sections 302(7B) (cash), 303W(10) (listed assets) and 303Z18(10) (money in bank accounts).

Schedule 7: New section 303Z64(10) of POCA: Power to amend subsection (9) in relation to source of compensation relating to converted cryptoassets

Power conferred on: Secretary of State

Power exercised by: regulations made by statutory instrument

Parliamentary Procedure: affirmative procedure

Context and Purpose

527. New section 303Z64 of POCA makes provision about compensation for loss, in exceptional circumstances, relating to the proceeds of detained or frozen cryptoassets which are subsequently converted. Subsection (9) specifies the source of the compensation in relation to different officers or authorities.

Justification for taking the power

528. The power would enable the Secretary of State to ensure consistency across the cash, listed asset, bank account and cryptoasset forfeiture regimes in the event that changes in the structures or funding for the bodies responsible mean that any compensation has to be paid from a different source.

Justification for the procedure

529. Regulations under this power would amend the text of the section, albeit only in relation to the source of the compensation. The affirmative procedure is therefore the most appropriate procedure and follows the existing precedents in POCA sections 302(7B) (cash), 303W(10) (listed assets) and 303Z18(10) (money in bank accounts).

Schedule 8: New paragraph 10Z7A of Schedule 1 to the Anti-Terrorism, Crime and Security Act (ATCSA) 2001: Power to amend the definitions of "cryptoasset" and "crypto wallet" in new civil recovery powers

Power conferred on: Secretary of State

Power exercised by: regulations made by statutory instrument

Parliamentary Procedure: affirmative procedure

Context and Purpose

530. New paragraph 10Z7A of Schedule 1 to ATCSA defines a "cryptoasset" and a "crypto wallet" for the purposes of the new civil recovery powers in Part 4BA of Schedule 1 to ATCSA. Sub-paragraph (2) of that paragraph enables the Secretary of State to amend those definitions.

Justification for taking the power

531. Cryptoassets are a form of property that can typically be used to store or transfer value by secure means. The ability to move property quickly, across borders, without the need for standard banking services, and often to hold it anonymously, make these assets increasingly attractive to those engaged in economic crime and terrorist activity. The technology associated with cryptoassets is rapidly evolving. It is vital that terrorists do not evade the powers conferred by this Bill by using technology modified so that it falls outside the definition in the legislation.

532. The United Kingdom is committed to the international standards set by the Financial Action Task Force ("FATF"). In 2015, FATF introduced new recommendations for tackling the money laundering and terrorist financing risks associated with cryptoassets or "virtual assets". Whilst those recommendations do not directly include civil recovery measures, they are implemented in the UK through other legislation which uses very similar concepts and terminology to those in this Bill. The FATF standards are regularly revised. The UK needs to be able to change its legal framework quickly to meet those standards without different aspects of it unnecessarily diverging.

Justification for the procedure

533. Regulations under this power are subject to the affirmative resolution procedure. This will allow both Houses of Parliament to debate and vote on any changes and is consistent with related legislation. In particular, it is in line with the current procedure for amending the definitions (considered in more detail below) of "cryptoasset exchange provider" and "custodian wallet provider" (each containing a definition of "cryptoasset" that is mirrored on the face of this Bill) in the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (the "MLRs").

534. Should technology, risks or international standards change in future so that the definitions need updating in the same way across several closely related pieces of legislation (the new civil recovery provisions introduced by this Bill, the MLRs, POCA, ATCSA and the Terrorism Act 2000), the power will therefore allow the Secretary of State to do so via one draft affirmative instrument. Therefore, they could be updated – and scrutinised by Parliament – as part of a single set of regulations.

535. Furthermore, this procedure mirrors the powers to amend the relevant, cryptoasset-related, definitions in other Parts of Schedule 1 to ATCSA and in the Terrorism Act 2000 ("TACT"). Again, this means that they could be updated – and scrutinised by Parliament – as part of a single set of regulations.

Schedule 8: New paragraph 10Z7B of Schedule 1 to ATCSA: Power to amend the definition of "cryptoasset service provider"

Power conferred on: Secretary of State

Power exercised by: regulations made by statutory instrument

Parliamentary Procedure: affirmative procedure

Context and Purpose

536. New paragraph 10Z7B of Schedule 1 to ATCSA defines a "cryptoasset service provider" for the purposes of the new civil recovery powers in Part 4BB of ATCSA which are modelled on the bank account freezing and forfeiture powers in Part 4B. A "cryptoasset service provider" includes a "custodian wallet provider" or a "cryptoasset exchange provider". Either can be subject to the new wallet freezing and forfeiture powers designed to target cryptoassets that are hosted by a third party. Subsection (3) enables the Secretary of State by regulations to amend those definitions in the future.

Justification for taking the power

537. The justifications largely follow the justifications above (in relation to new paragraph 10Z7A of Schedule 1 to ACTSA), concerning the definition of "cryptoasset". The means by which cryptoassets can be held on behalf of a customer may well develop in future, just as new types of banking services have emerged in recent years. Equally, it is important that Parliament should debate and vote on the extension of these powers to any additional firms. The means by which cryptoassets can be held on behalf of a customer may well develop in future, just as new types of banking services have emerged in recent years. Equally, it is important that Parliament should debate and vote on the extension of these powers to any additional firms.

538. The definitions in the Bill of "cryptoasset exchange provider" and "custodian wallet provider" are the same as those in the MLRs, POCA, and Schedule 3A to the Terrorism Act 2000. Those definitions can be amended already through secondary legislation – specifically, by regulations under section 49 of the Sanctions and Anti-Money Laundering Act 2018, subject to the draft affirmative procedure (see section 55(5)) and amendments consequential on those regulations (section 54(2)).

Justification for the procedure

539. As with the definition of "cryptoasset" considered in more detail above in relation to new paragraph 10Z7A of Schedule 1 to ATCSA, the draft affirmative procedure gives an effective level of control to both Houses of Parliament over the use of this power which is a Henry VIII power. It will also enable the Secretary of State to amend a definition in Parts 1-4BD of Schedule 1 to ACTSA while making parallel amendments to linked anti-money laundering and proceeds of crime legislation in the same regulations if needed.

540. Furthermore, this procedure mirrors the powers to amend the relevant, cryptoasset-related, definitions in other Parts of Schedule 1 to ATCSA and in TACT. Again, this means that they could be updated – and scrutinised by Parliament – as part of a single set of regulations.

Schedule 8: New paragraph 10Z7CB (7) to (10) of Schedule 1 to ATCSA: Power to amend section 10Z7C, and make consequential amendments, in relation to means of forfeiture of cryptoassets held in a crypto wallet

Power conferred on: Secretary of State

Power exercised by: regulations made by statutory instrument

Parliamentary Procedure: affirmative procedure

Context and Purpose

541. New paragraph 10Z7C in Part 4BC of Schedule 1 to ATCSA makes provision about the forfeiture of cryptoassets. Where a cryptoasset service provider administers a crypto wallet on behalf of a customer, and that wallet contains cryptoassets subject to a forfeiture order by a court, the provider is required by this new section to transfer those cryptoassets into a law enforcement nominated wallet. The power is a Henry VIII power which would allow the Secretary of State to amend aspects of this section which are relevant to such third-party crypto wallets, in order to provide for a different means of forfeiture.

Justification for taking the power

542. The power would provide a contingency to enable the mechanism of forfeiture to be altered, should that become necessary in order to overcome technical barriers around the forfeiture of cryptoassets administered by a third party. It is necessary for such provision to appear on the face of the Act (hence the Henry VIII power) to give the greatest possible transparency as to the process of forfeiture.

543. Compared to mainstream banking providers, there is more variety and less transparency in the business models of cryptoasset service providers so a backstop is felt to be sensible to prevent commercial entities being in contempt of court by no fault of their own. By way of example, this could conceivably be an issue if the cryptoassets in question were locked into a smart contract: a self-executing contract defined by computer code, most recognisable in the form of applications built on platforms such as the Ethereum blockchain. Smart contracts are immutable, meaning an asset holder could lock criminal assets into a smart contract so that they could only be released upon certain conditions being met. Even in the case of a

forfeiture order, if those conditions were not met, it may be impossible for the cryptoasset service provider to release the cryptoassets.

544. Developers are exploring the depth of capabilities offered by the smart contracts and anecdotal evidence indicates that the uses for this technology are growing. The Home Office is not (yet) aware of any asset recovery investigations involving cryptoassets where those assets have been locked into smart contracts. In any case, smart contracts are one example; cryptoasset technology is evolving rapidly and is likely to continue to do so in ways that we cannot anticipate.

545. The power is limited in scope and would not be capable of amending the entirety of paragraph 10Z7CB or making substantive changes to any of the wider provisions governing (for example) the right to appeal or the need for a court order, nor to the procedure for forfeiting detained cryptoassets (those already under law enforcement control). The power is intended to be used simply for the purpose of making provision for the forfeiture of cryptoassets held in a frozen crypto wallet.

546. However, it is not feasible to confine the power solely to amendment of the particular sub-paragraph which requires the transfer of cryptoassets. For example, other sub-paragraphs that cross-refer to that sub-paragraph might need to be adjusted in consequence. It is also possible that regulations would – for instance – need to provide for payment of interest accrued in the event that they were to require the payment of money into a bank account rather than a transfer of cryptoassets. In that case the amendments would need to specify that an equivalent amount of money must be paid into an interest-bearing account, and that interest accruing on that amount is to be added to it on its forfeiture (by virtue of this paragraph) or release.

Justification for the procedure

547. Regulations under this power would amend the text of the paragraph, and therefore the draft affirmative procedure is appropriate. It would also enable regulations to be included, if necessary, in the same instrument as regulations to amend the definition of “cryptoasset”, “cryptoasset service provider” or “crypto wallet”, should there be connected reasons for making the changes.

Schedule 8: Amendments to Schedule 6 to TACT “Financial Information”

Power conferred on: Secretary of State

Power exercised by: regulations made by statutory instrument

Parliamentary Procedure: affirmative procedure

Context and purpose

548. The new provision in Schedule 6 to TACT makes provision to update the list of 'financial institutions' which will, as a result of these amendments, include a definition of a "cryptoasset service provider" for the purposes of the current powers to obtain financial information under Schedule 6 of TACT. A "cryptoasset service provider" includes a "custodian wallet provider" or a "cryptoasset exchange provider". New sub-paragraph (1AF) enables the Secretary of State by regulations to amend those definitions in the future.

Justification for taking the power

549. The justifications largely mirror the justifications above (in relation to the new definitions inserted into Schedule 1 to ATCSA), concerning the same definition of "cryptoasset service provider". As new banking systems and services emerge, it is important that Parliament should debate and vote on the extension of these powers to any additional firms.

550. The definitions in the Bill of "cryptoasset exchange provider" and "custodian wallet provider" are the same as those in the MLRs, POCA, and Schedule 3A to TACT. Those definitions can be amended already through secondary legislation – specifically, by regulations under section 49 of the Sanctions and Anti-Money Laundering Act 2018, subject to the draft affirmative procedure.

Justification for the procedure

551. As with the definition of "cryptoasset" considered above in relation to the new paragraph 10Z7A of Schedule 1 to ATCSA, the draft affirmative procedure gives an effective level of control by both Houses of Parliament over the use of this power, which is a Henry VIII power. It will also enable the Secretary of State to amend the definition in other regulations – including ATCSA, TACT, and the MLRs – if needed. This means that they could be updated and scrutinised by Parliament as part of a single set of regulations.

Home Office, Department for Business, Energy & Industrial Strategy, Ministry of Justice, and HM Treasury

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