Supplementary ECHR Memorandum

Amendments made to Parts 1-3 of the Economic Crime and Corporate Transparency Bill during Commons Consideration (BEIS measures)

A. Summary of the amendments made to Parts 1-3 of the Bill since introduction

Part 1 – Companies etc

1. The following substantive changes were made:

a) On introduction, the Bill provided that a person who became a designated person as defined in section 9(2) of the Sanctions and Anti-Money Laundering Act 2018 - i.e. someone who was made subject to any form of sanction - was prohibited from acting as a director of a company. This was amended so that only a person who becomes subject to sanction in the form of an asset freeze is prohibited from acting as a director;

b) The scope of the regulation-making power in section 1063 of the Companies Act 2006 ("CA06") to set the level of fees payable to the registrar was expanded, so the costs or likely costs of certain matters in Northern Ireland could be factored into the fee-setting decision;

c) The establishment of new requirements for companies, corporate secretaries and corporate persons with significant control ("**PSC**") to provide the registrar with service addresses;

d) The inclusion of new regulation-making powers to make provision concerning overseas companies (including: to empower the registrar to change the service or principal office addresses of directors or secretaries where they fail the requirements or are inaccurate; to require the overseas company to maintain an appropriate address and appropriate email address; and to impose identity verification requirements on their directors);

e) The inclusion of new regulation-making powers to enable the registrar to change a company director, secretary or PSC's registered service address or principal office address;

f) The inclusion of a new regulation-making power to require businesses to obtain information and carry out checks for the purposes of identifying discrepancies between that information and information made publicly available by registrar;

g) Amendments to various powers in the CA06 for the Secretary of State to direct a company to change its name, to allow the registrar to omit from the material that is available for public inspection references to the company's name once it has been given a direction;

h) The removal of regulation-making powers that would have provided for the possibility of company directors being exempted from requirements to verify their identities.

Part 2 – limited partnerships etc

2. The following substantive changes were made:

a) A new obligation on general partners which are legal entities to have registered officers who are individuals who have had their identities verified;

b) The inclusion of new regulation-making powers to enable the registrar to change the registered service address of a registered officer of a general partner and the registered service address or principal office address of a general partner itself;

c) A new power for the Secretary of State to exempt a person from certain statement-giving obligations where that is in the interests of national security for the purposes of preventing or detecting serious crime;

d) The introduction of new regulation-making powers applying the Company Directors Disqualification Act 1986 and its Northern Ireland counterpart Order in relation to "relevant entities" (limited partnerships, limited liability partnerships and qualifying Scottish partnerships), meaning that a person's conduct in relation to relevant entities would lead to disqualification, and disqualifications in other circumstances would prohibit a person from acting in relation to relevant entities;

e) New obligations on partners to wind up dissolved limited partnerships and to notify the registrar of the dissolution;

f) New powers for the Secretary of State, the Scottish Ministers and the Department for the Economy in Northern Ireland to petition the court to wind up limited partnerships in the public interest, and to apply to the court to wind up dissolved limited partnerships whose affairs are not being wound up properly, or at all, by the ex-partners;

g) Amendments to clarify that the debts or obligations for which limited partners are not liable beyond their contribution includes debts and obligations incurred after dissolution under section 38 of the Partnership Act 1890;

h) Amendments to require that the registrar: removes a limited partnership from the index of names as soon as practicable following dissolution or deregistration; places a note in the register when a limited partnership is so removed; and publishes a notice in the Gazette in certain circumstances;

i) The removal of regulation-making powers that would have provided for the possibility of registered officers of general partners which are legal entities being exempted from requirements to verify their identities;

j) The inclusion of a new regulation-making power to make provision about the registration of certain Scottish partnerships (including partnerships other than limited partnerships) and to apply law relating to companies or limited partnerships.

Part 3 – register of overseas entities

3. The following substantive changes were made:

a) Provision requiring an overseas entity, when applying for registration in the register of overseas entities established under in Part 1 of the Economic Crime (Transparency and Enforcement) Act 2022 ("**ECTEA**") or providing an update, to include the title number etc for relevant interests in land held by it;

b) Provision requiring that, where an application for registration as an overseas entity is required to provide details of a managing officer, there will be a requirement to include the name of an individual who is at least 16 years old and is willing to be contacted about the officer (unless the officer is an individual of at least that age);

c) Inclusion of a regulation-making power to expand the definition of "registrable beneficial owner" in Part 1 of ECTEA in relation to an entity one of whose beneficial owners is a trustee;

d) Expansion of the regulation-making power in section 16 ECTEA allowing the regulations concerning identity verification to provide that information provided under the regulations is protected from public inspection;

e) Amendments to replicate for the register of overseas entities a number of changes made by Part 1 of the Bill in relation to the companies register and the registrar's powers concerning the curation of information on it;

f) Amendments to ensure that a person can be disqualified as a company director for breaches of obligations under Part 1 of ECTEA.

Other

4. Aside from various minor, technical and consequential changes, the following substantive changes were made:

a) The inclusion of a new regulation-making power to add to the persons to whom the registrar is permitted to disclose information;

b) A new duty on the Secretary of State to prepare and lay before Parliament reports about the implementation and operation of Parts 1 to 3.

B. European Convention on Human Rights

5. The Government considers that the provisions of the Bill, as amended in the Commons, are compatible with the Convention rights.

(i) Key issues

6. The table below sets out those clauses where, in the Government's view, ECHR rights ("Convention rights") are engaged. Where a clause or Schedule is not mentioned it is because the Government considers that no issues arise under the Convention:

Clauses	Article 1, Protocol 1	Article 8
Fees – clause 91	X	
Wider registrar information disclosure gateway – clause 92		X
Powers to wind up limited partnerships in the public interest – clause 129	X	

Amendments removing the possibility of directors and registered officers of general partners being exempted from ID verification requirements		X

Article 1 of Protocol No.1 (A1P1)- right to peaceful enjoyment of property

Fees (clause 91)

7. On introduction, clause 91 amended the existing fees provisions in s.1063 CA06 to expand the costs which may be considered by the Secretary of State when deciding to set fees payable to the Registrar. The fees are set out in regulations subject to the negative procedure.

8. Amendments made to clause 91 during Commons Committee expanded further the range of costs that can be taken into account by the Secretary of State, to reflect the costs or likely costs of:

    a) a Northern Ireland department:
        i. in discharging functions relating to directors disqualification;
        ii. under the insolvency legislation;

    b) the Insolvency Service in Northern Ireland in connection with enforcement.

9. It is possible that, by expanding the range of costs that can be taken into account when the Secretary of State makes the s.1063 fees regulations, the level of fees may be higher than they otherwise would have been, to meet some or all of those additional costs or likely costs.

10. Fees payable to a public body are comparable to taxation which is, in principle, an interference with the right guaranteed by the first paragraph of A1P1 as it deprives the person concerned of a possession (namely the amount of money which must be paid).[1] However, the interference with A1P1 rights for taxation purposes is generally justified under paragraph two of A1P1, which expressly provides for an exception as regards the payment of taxes or other contributions.[2]

[1] *Burden v. the United Kingdom* [GC], § 59; *Špaček, s.r.o., v. the Czech Republic*, § 39.
[2] *Gasus Dosier- und Fördertechnik GmbH v. the Netherlands*, § 59; *Christian Religious Organization of Jehovah's Witnesses v. Armenia* (dec.), § 43.

11. It is the Government's view that the inclusion of these additional costs which can be taken into account by the Secretary of State when making fees regulations, strikes a fair balance between the individual's fundamental rights and the general interest of ensuring that Companies House is funded adequately and thus able to carry out its functions for the benefit of the public and wider economy. Member States are generally allowed a wide margin of appreciation under the Convention when it comes to framing and implementing policy in the area of taxation.[3] Additionally, the ECtHR's well-established position is that States may be afforded some degree of additional deference and latitude in the exercise of their fiscal functions under the lawfulness test.[4] For these reasons, the Government assesses that this provision is compliant with A1P1.

Powers to petition the court to wind up limited partnerships in the public interest

12. Clause 129 gives a power to the Secretary of State to petition court where it is in the public interest to seek an order winding up a limited partnership (wherever registered in the UK). The court may order the winding up if it is just and equitable to do so. The clause also gives concurrent powers to petition the court to the Scottish Ministers (in relation to Scottish LPs) and to the Department for the Economy in Northern Ireland (in relation to NI LPs).

13. These powers are precedented: they are modelled on powers for, in Great Britain, the Secretary of State, and in Northern Ireland, the Department for the Economy, to petition the court to wind up companies in the public interest (section 124A of the Insolvency Act 1986 and article 104A of the Insolvency (Northern Ireland) Order 1989). Those public interest winding-up provisions have been extended and applied to *insolvent* partnerships under the Insolvent Partnerships Order 1994 and the Insolvent Partnerships (Northern Ireland) Order 1995. The new powers in the Bill plug a gap, enabling *solvent* limited partnerships to be wound up by the court following public interest winding-up petitions.

14. If the court orders the winding up of a limited partnership in the public interest, that may be in respect of a partnership which, at the time of the order, was a "live", profit-seeking business. A winding-up order would not deprive the ex-partners of any of their existing possessions in the form of partnership property. Rather, the effect of the court order would be to compel the partners to wind up the firm's affairs, precipitating its dissolution. Section 39 of the Partnership Act 1890 would then be engaged, governing the application of the net partnership property after debts and liabilities had been settled.

[3] *Bulves AD v. Bulgaria,* § 63; *Gasus Dosier- und Fördertechnik GmbH v. the Netherlands*, § 60; *Stere and Others v. Romania*, § 51).
[4] *Christian Religious Organization of Jehovah's Witnesses v. Armenia* (dec.), § 50).

15. It is conceivable, however, that, at the time a court issues a winding-up order in respect of a limited partnership, *yet-to-be-received* income arising from the partnership's business activities could potentially be viewed as "possessions" within A1P1. "Possessions" can be either "existing possessions" or assets, including claims, in respect of which the applicant can argue that he or she has at least a "legitimate expectation" of obtaining effective enjoyment of a property right[5].

16. Even if the winding-up provisions of clause 129 have the potential, depending on the specific circumstances of the firm in question, to engage the A1P1 rights of the partners because of legitimate expectations of enjoying property rights at the point the court orders the winding-up of the business, the intrusions into those rights are subject to the significant safeguard of judicial involvement. In considering whether it is just and equitable to agree to the winding-up application, the court will weigh in the balance the extent of any A1P1 intrusions that flow from granting it, and as the court is a public authority, it will be restricted by the the HRA such that it can only lawfully grant the order if it is necessary and proportionate to do so. The Government assesses that this ensures the legislation is itself A1P1-compliant (as are the long-standing precedent powers on which these new powers are based).

Article 8- right to respect for private and family life

Information sharing and disclosure (clause 92)

17. Clause 92 of the Bill introduced a new information-sharing gateway (new s.1110G CA06) allowing the registrar to share information with third parties for purposes relating to any of the registrar's functions, or to public authorities for purposes relating to any of their functions. The information shared by the registrar is largely expected to be comprised of names and addresses of directors or other company officers or subscribers, which engages the Article 8 rights of the individuals.

18. At Commons Report stage, a further limb was added to s.1110G, allowing the registrar to disclose information, additionally, to a person of a description, and for a purpose, specified in regulations made by the Secretary of State. This regulation-making power was added to cater for the possibility that the registrar may have good public policy reasons for disclosing information to persons for

[5] *Pressos Compania Naviera S.A. and Others v. Belgium*, § 31; *J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd v. the United Kingdom* [GC], § 61; *Von Maltzan and Others v. Germany* (dec.) [GC], § 74 (c); *Kopecký v. Slovakia* [GC], § 35 (c)

purposes connected to their functions when those persons do not qualify at all times and in all respects as a "public authority", e.g. insolvency practitioners.

19. The Government's view is that the creation of this additional limb to the information sharing gateway does not of itself engage Article 8. However, regulations made under this power will expand the circumstances in which, and the persons to whom, the registrar may disclose information, including the personal information mentioned above. The new power therefore makes it possible for the instances in which Article 8 rights are interfered with to be increased.

20. However, Parliament will be required to agree to the Secretary of State's proposed additional information recipients, and the permitted purposes for which they may receive information from the registrar. The new power to expand the disclosure gateway is not assessed by the Government to intrude unnecessarily or disproportionately in an individual's Article 8 rights. The power is itself therefore assessed as compatible with Article 8, and when made, the regulations will themselves be Article 8 compliant.

Removal of ID verification exemption powers

21. On introduction, the Bill contained obligations on directors of companies to be identity-verified before acting as a director, unless they fell within an exemption to the ID verification requirements specified by the Secretary of State in regulations. During the Bill's passage through the commons, amendments were made to make corresponding provision in the context of limited partnerships, so the individuals who are registered officers of corporate general partners have to be ID verified unless they fall within an exemption.

22. At report stage, the Bill was amended so that there is no possibility of directors or registered officers being exempted from the requirement to ID verify. This is on the basis that the Department, having reflected further, concluded there were insufficient policy justifications for an exemption scheme: the public policy objectives of crime prevention and detection and economic well-being of the country are best secured by an absolute requirement for ID verification of directors and general partners' registered officers (secondary legislation will in due course provide that individual general partners themselves have to be ID verified too, with no possibility of exemption).

23. A legal requirement of ID verification – a person verifying to the registrar (or an authorised corporate service provider) that they are who they say they are, providing substantiating evidence to corroborate their claim – engages the person's Article 8 rights. The effect of these report stage amendments is to

remove from the legal framework around ID verification an exemption possibility which would have meant for the beneficiaries that their Article 8 rights were not engaged.

24. The Government assesses that the removal of the possibility of exemptions does not establish a legal scheme which is Article 8 non-compliant. The intrusions in Article 8 rights associated with identity verification are limited, necessary and proportionate to the legitimate ends of crime prevention/detection and in the interests of the economic well-being of the country (in that transparency about the identity of those directing and managing companies and limited partnerships is instrumental to improved commercial certainty and economic flourishing). Moreover, a person has a choice whether to be a director or registered officer, so could elect not to have their Article 8 rights intruded upon in this regard by the absolute ID verification requirement, by choosing not to be a director or registered officer.

Impact of recent CJEU ruling on beneficial ownership registers on ECHR analysis of the Bill

25. A recent ruling by the Court of Justice of the European Union Joined Cases C-37/20 and C-601/20 *WM and Sovin SA v Luxembourg Business Registers* (ECLI:EU:C:2022:912, 22 November 2022) has prompted the Government to re-evaluate from an ECHR perspective certain aspects of the Bill as it was introduced in September 2022 (and which have remained unamended during the Commons passage of the Bill).

26. Part 21A CA06 requires limited companies to maintain registers of persons with significant control over them, or otherwise elect for the registrar to maintain a central register of such details - “PSC registers”. Part 21 ECTEA requires registered overseas entities to supply the registrar with details of their registrable beneficial owners (“RBOs”) to be maintained on a central register (unlike with PSCs, there is no “local” register alternative when it comes to RBOs). The PSC register regime was introduced in 2015; the RBO regime in 2022.

27. Upon introduction of the legislation the Government assessed the PSC and RBO regimes to be ECHR compliant. The fact that personal details of PSCs and RBOs were to be supplied and made available for public inspection was acknowledged to represent an intrusion into Article 8 ECHR privacy rights. However, it was assessed that the intrusions were limited and necessary in a democratic society for the prevention and detection of crime and in for the economic well-being of the country. The intrusions were assessed as limited such that they were a proportionate interference permitted under Article 8(2).

28. In November 2022, the CJEU held in the Luxembourg Business Registers case that an EU law-mandated beneficial ownership register regime was unlawful. It held that the Fifth Anti Money-Laundering Directive's amendment to the Fourth created a beneficial ownership register regime which did not comply with Articles 7 and 8 of the EU Charter on Fundamental Rights which protect personal data and privacy rights. Article 7 is equivalent to Article 8 ECHR. The court held that the amendment, which meant that a person wishing to view the beneficial ownership data no longer had to demonstrate a "legitimate interest" in doing so, created a regime which allowed for privacy intrusions which were more than was strictly necessary to prevent and detect money laundering and terrorist financing.

29. The Bill makes no material amendments to the ROE regime but does end the "local PSC register" regime by requiring all limited companies' PSC registers to be maintained centrally by the registrar. The consequence of this reform is there is no longer a "proper purpose" precondition for an applicant to see PSC data. There remains no such proper purpose filter for accessing RBO data on the central register; the Bill does not alter that position.

30. The original basis in 2015 for including the proper purpose access condition for data on locally held PSC registers was twofold: first, compared to PSC data on the registrar's central register, more PSC data is available on local PSC registers, including day of date of birth and residential address. A safeguard on access was therefore thought to be appropriate. Second, there was a concern that companies would be faced with vexatious or repeated requests for access, so a proper purpose filter was thought desirable.

31. Part of the reason for repealing the proper purpose filter with the Bill is that the Government now considers that the deterrent effects on financial crime are likely to be increased where the filter is removed (which is why it does not feature in the more recent ROE disclosure regime).

32. The repeal of the filter is also justified because the Government considers it possible that its retention dissuades members of the public from exercising the right of access because they do not wish to disclose their reasons for seeking access, or are concerned about become involved in a legal dispute with the company about their motivations. In that way, the proper purpose filter is assessed as risking undermining transparency and thus the public interest benefits, in terms of crime prevention/detection and economic well-being of the country, that go with it.

33. There is also a concern about how workable it would be if, in the new world where PSC data is maintained on a central register, a proper purpose test would

need to be applied for accessing that data but not other sorts of centrally-curated company information.

34. Having analysed the CJEU ruling and re-evaluated the ECHR compatibility of the PSC and ROE regimes, the Government continues to assess that they are compliant with Article 8. There are good reasons in policy terms for repealing the proper purpose filter, and the loss of that safeguard is compensated for by other provisions in the Bill. Clauses 89 and 158 substitute expanded regulation-making powers into Part 21 of the CA06 and Part 1 of the ECTEA respectively which allow PSCs, RBOs and other individuals to apply to the registrar to "suppress" information from the publicly inspectable register. The regulations made under the existing regulation-making powers, which clauses 89 and 158 replace, currently require the applicant to demonstrate that they or a member of their household will be at serious risk of being subjected to violence or intimidation if information about them is disclosed. The future regulations that will be made under the successor powers will provide, at the least, the same facility for PSCs and RBOs to apply for exemption for their information. This is a significant safeguard which will ensure that the PSC and RBO disclosure regimes do not unjustifiably establish blanket intrusions into PSCs' and RBOs' Article 8 rights. The Government assesses that the PSC and RBO disclosure regimes are therefore compatible with the ECHR.

Department for Business Energy and Industrial Strategy
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