

Economic Crime and Corporate Transparency Bill

AMENDMENT
TO BE MOVED
IN GRAND COMMITTEE

After Clause 187

BARONESS MORGAN OF COTES
LORD VAUX OF HARROWDEN
BARONESS BOWLES OF BERKHAMSTED

Insert the following new Clause—

“Failure to prevent facilitation of fraud

- (1) A relevant body (B) is guilty of an offence if a person (P) uses a service provided by B to commit, or to attempt to commit, fraud as defined in the Fraud Act 2006.
- (2) B is guilty of an offence whether or not B benefited or would have benefited from the fraud committed or attempted by P.
- (3) It is a defence for B to prove that when the fraud was committed or attempted by P, B had in place such procedures it was reasonable to expect to detect and prevent the use of its services for the purposes of committing fraud, or that it could not reasonably have known that its services were being used for such purposes.
- (4) For the purposes of this section “relevant body” means—
 - (a) a body which is incorporated under the law of any part of the United Kingdom and which carries on a business (whether there or elsewhere),
 - (b) any other body corporate (wherever incorporated) which carries on a business, or part of a business, in any part of the United Kingdom,
 - (c) a partnership which is formed under the law of any part of the United Kingdom and which carries on a business (whether there or elsewhere),
or
 - (d) any other partnership (wherever formed) which carries on a business, or part of a business, in any part of the United Kingdom.
- (5) For the purposes of this section, a trade or profession is a business.
- (6) If an offence is committed by a relevant body and it is proved that the offence—
 - (a) has been committed with the consent or connivance of an officer of the relevant body, or

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(b) is attributable to any neglect on the part of an officer of the relevant body,

the officer (as well as the relevant body) commits the offence and is liable to be proceeded against and punished accordingly.

- (7) In relation to a relevant body which is a body corporate, “officer” means –
- (a) a director, manager, associate, secretary or other similar officer, or
 - (b) a person purporting to act in any such capacity.

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

- (8) In relation to a partnership which is not regarded as a body corporate under the law under which it is formed, “officer” means –
- (a) a partner, or
 - (b) a person purporting to act as a partner.
- (9) A relevant body guilty of an offence under this section is liable –
- (a) on conviction on indictment, to a fine;
 - (b) on summary conviction in England and Wales, to a fine;
 - (c) on summary conviction in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum.”

Member’s explanatory statement

This amendment is intended to fulfil the recommendation of the House of Lords Committee into the Fraud Act 2006 and Digital Fraud to introduce a new corporate criminal offence of “failure to prevent fraud” across all sectors that are used by fraudsters.

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14 March 2023
