

Economic Crime and Corporate Transparency Bill

AMENDMENTS
TO BE MOVED
IN GRAND COMMITTEE

After Clause 187

LORD GARNIER

Insert the following new Clause—

“Failure to Prevent an Economic Criminal Offence

- (1) A relevant body (B) is guilty of an offence if a person commits an economic criminal offence when acting in the capacity of a person associated with (B).
- (2) For the criminal purposes of this Clause—
 - “economic criminal offence” means any of the offences listed in Schedule 9.
 - “relevant body” and “acting in the capacity of a person associated with B” have the same meaning as in section 44 of the Criminal Finances Act 2017.
- (3) It is a defence for B to prove that, when the economic criminal offence was committed—
 - (a) B had in place such prevention procedures as it was reasonable in all the circumstances to expect B to have in place, or
 - (b) it was not reasonable in all the circumstances to expect B to have any prevention procedures in place.
- (4) In subsection (2) “prevention procedures” means procedures designed to prevent persons acting in the capacity of a person associated with B from committing an economic criminal offence.
- (5) 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.
- (6) It is immaterial for the purposes of this section whether—
 - (a) any relevant conduct of a relevant body, or
 - (b) any conduct which constitutes part of a listed offence,takes place in the United Kingdom or elsewhere.

After Clause 187 - continued

- (7) The Chancellor of the Exchequer and the Secretary of State must prepare and publish guidance about procedures that relevant bodies can put in place to prevent persons acting in the capacity of an associated person from committing an economic criminal offence.”

Member’s explanatory statement

This new Clause would create a corporate offence of failing to prevent economic crime, defined by reference to the offences listed in Schedule 9.

Insert the following new Clause –

“Failure to Prevent an Economic Criminal Offence

- (1) A relevant body (B) is guilty of an offence if a person commits an economic criminal offence when acting in the capacity of a person associated with (B).
- (2) For the purposes of this Clause –
- “economic criminal offence” means one of the following –
- (a) a common law offence of conspiracy to defraud;
 - (b) an offence under section 1, 6 or 7 of the Fraud Act 2006;
 - (c) an offence under section 1, 17 or 20 of the Theft Act 1968 (theft, false accounting and destruction of documents);
 - (d) an offence under section 993 of the Companies Act 2006 (fraudulent trading);
 - (e) an offence under sections 346, 397 and 398 of the Financial Services and Markets Act 2000 (providing false statements to auditors, misleading statements, and misleading the FCA);
 - (f) an offence under sections 327, 328 and 329 of the Proceeds of Crime Act 2002 (concealing criminal property, facilitating acquisition, acquisition and use of criminal property).
- “relevant body” and “acting in the capacity of a person associated with B” have the same meaning as in section 44 of the Criminal Finances Act 2017.
- (3) It is a defence for B to prove that, when the economic criminal offence was committed –
- (a) B had in place such prevention procedures as it was reasonable in all the circumstances to expect B to have in place, or
 - (b) it was not reasonable in all the circumstances to expect B to have any prevention procedures in place.
- (4) In subsection (3) “prevention procedures” means procedures designed to prevent persons acting in the capacity of a person associated with B from committing a economic criminal offence.
- (5) 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.
- (6) It is immaterial for the purposes of this section whether –

After Clause 187 - continued

- (a) any relevant conduct of a relevant body, or
 - (b) any conduct which constitutes part of a listed offence takes place in the United Kingdom or elsewhere.
- (7) The Chancellor of the Exchequer and the Secretary of State must prepare and publish guidance about procedures that relevant bodies can put in place to prevent persons acting in the capacity of an associated person from committing an economic criminal offence.”

Member’s explanatory statement

This new Clause would create a corporate offence of failing to prevent economic crime, defined by reference to certain offences listed in subsection (2).

Insert the following new Clause –

“Failure to prevent criminal financial offences in the UK

- (1) A relevant body (B) is guilty of an offence if a person commits a criminal financial offence when acting in the capacity of a person associated with B.
- (2) It is a defence for B to prove that, when the criminal financial offence was committed –
 - (a) B had in place such prevention procedures as it was reasonable in all the circumstances to expect B to have in place, or
 - (b) it was not reasonable in all the circumstances to expect B to have any prevention procedures in place.
- (3) In subsection (2) “prevention procedures” means procedures designed to prevent persons acting in the capacity of a person associated with B from committing criminal financial offences.
- (4) For the purposes of this Clause –

“criminal financial offence” means an offence listed in Part 2 of Schedule 17 to the Crime and Courts Act 2013 or, one of the offences listed below –

 - (a) an offence under section 1, 6 or 7 of the Fraud Act 2006;
 - (b) an offence under section 1, 17 or 20 of the Theft Act 1968;
 - (c) an offence under section 993 of the Companies Act 2006;
 - (d) an offence under section 327, 328 and 329 of the Proceeds of Crime Act 2002;
 - (e) the common law offence of conspiracy to defraud;

“relevant body” has the same meaning as in section 44 of the Criminal Finances Act 2017.
- (5) 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, to a fine;
 - (c) on summary conviction in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum.
- (6) It is immaterial for the purposes of this section whether –
 - (a) any relevant conduct of a relevant body, or

After Clause 187 - continued

- (b) any conduct which constitutes part of a relevant criminal financial offence,

takes place in the United Kingdom or elsewhere.”

Member’s explanatory statement

This New Clause would create an offence of failing to prevent any financial offence listed in Part 2 of Schedule 17 of the Crime and Courts Act 2013.

Insert the following new Clause –

“Offence of failure to prevent fraud (including false accounting), money laundering or sanctions evasion

- (1) A relevant commercial organisation (“C”) is guilty of an offence under this section where –
- (a) a person (“A”) associated with C commits a fraud (including false accounting), sanctions evasion offence or an act of money laundering, or aids and abets a fraud, sanctions evasion offence or act of money laundering, intending –
 - (i) to confer a business advantage on C, or
 - (ii) to confer a benefit on a person to whom A provides services on behalf of C, and
 - (b) fails to prevent the activity set out in paragraph (a).
- (2) C does not commit an offence where C can prove that the conduct detailed in subsection (1)(a) was intended to cause harm to C.
- (3) It is a defence for C to prove that, at the relevant time, C had in place procedures that were reasonable in all the circumstances and which were designed to prevent persons associated with C from undertaking the conduct detailed in subsection (1)(a).
- (4) For the purposes of this section “relevant commercial organisation” 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, and
 - (e) for the purposes of this section, a trade or profession is a business.
- (5) The relevant offences referred to in 1 (a) are –
- (a) Fraud including –
 - (i) sections 2, 3, 4 and 11 of the Fraud Act 2006;
 - (ii) section 17 of the Theft Act 1968;
 - (iii) section 993 of the Companies Act 2006;
 - (iv) section 111A of the Social Security Administration Act 1992;
 - (v) section 170 Custom and Excise Management Act 1979;

After Clause 187 - continued

- (vi) the common law offence of cheating the public revenue;
- (b) money laundering including sections 327, 328, 329 and 330 of the Proceeds of Crime Act 2002;
- (c) sanctions evasion including the offences laid out at paragraph 21 of Schedule 9.”

Member’s explanatory statement

This new Clause introduces a new criminal corporate offence for failure to prevent fraud (including false accounting), sanctions evasion, and money laundering, by aligning it with other corporate criminal offence.

Insert the following new Clause –

“Corporate attribution for (or amendment to identification doctrine relating to) economic crime offences

- (1) A body corporate commits an offence of fraud (including false accounting), money laundering, sanctions evasion, bribery and tax evasion where the offence is committed with the consent, or connivance of a senior manager.
- (2) An individual is a “senior manager” of an entity if the individual –
 - (a) plays a significant role in –
 - (i) the making of decisions about how the entity’s relevant activities are to be managed or organised, or
 - (ii) the managing or organising of the entity’s relevant activities, or
 - (b) is the Chief Executive or Chief Financial Officer of the body corporate.
- (3) A body corporate also commits an offence if, acting within the scope of their authority –
 - (a) one or more senior managers engage in conduct, whether by act or omission, such that, if it had been the conduct of only one representative, that representative would have been a party to the offence; and
 - (b) the senior manager who is responsible for the aspect of the organisation’s activities that is relevant to the offence – or the senior managers collectively – fail to take all reasonable steps to prevent that offence being committed.”

Member’s explanatory statement

This new Clause reforms the “identification doctrine”, so that a body corporate commits an economic crime offence where the offence is committed with the consent, connivance or neglect of a senior manager or senior managers.

Insert the following new Clause –

“Failure to prevent fraud, false accounting or money laundering: individual liability

- (1) A person (“S”) commits an offence if –
 - (a) at a time when S is a senior manager or corporate officer of a corporate body (“C”), S –

After Clause 187 - continued

- (i) takes, or agrees to the taking of, a decision by or on behalf of the corporate body as to the way in which the business of the corporate body is conducted, and
 - (ii) fails to take any steps that S could take to prevent such a decision being taken;
 - (b) at the time of the decision, S is aware of a risk that the implementation of the decision may lead to the commission of an offence of money laundering, fraud (including false accounting), sanctions evasion, bribery or tax evasion, and
 - (c) the implementation of the decision causes C to commit such an offence.
- (2) For the purposes of this section –
- (a) an individual is a “senior manager” of a corporate body if the individual plays a significant role in –
 - (i) the making of decisions about how the entity’s relevant activities are to be managed or organised, or
 - (ii) the actual managing or organising of the entity’s relevant activities,
 - (b) “officer”, in relation to a body corporate, means –
 - (i) a director, manager, associate, secretary or other similar officer, or
 - (ii) a person purporting to act in any such capacity;
 - (c) in paragraph (b)(i) “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.
- (3) A person guilty of an offence under this section is liable –
- (a) on summary conviction –
 - (i) in England and Wales, to imprisonment for a term not exceeding 12 months (or 6 months, if the offence was committed before the commencement of section 154(1) of the Criminal Justice Act 2003) 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, or both;
 - (iii) in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum, or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 7 years or a fine, or both.”

Member’s explanatory statement

This new clause introduces direct criminal liability for corporate officers who take a decision, or fail to take a decision, that knowingly results in an offence being committed.

Clause 190

LORD WALLACE OF SALTIRE

Page 174, line 2, at end insert –

- “(3) This Act extends to –
 - (a) the Channel Islands,

- (b) the Isle of Man, and
- (c) the British overseas territories.”

Economic Crime and Corporate Transparency Bill

AMENDMENTS
TO BE MOVED
IN GRAND COMMITTEE

16 March 2023
