

Supplementary Delegated Powers Memorandum – Economic Crime and Corporate Transparency Bill

1. This memorandum, supplementary to the Delegated Powers Memorandum published on 31 January 2023, 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”).
2. The Government tabled amendments to the Bill on 20 March 2023 which introduce further delegated powers and amend existing delegated powers. This memorandum explains these changes, why they are being made and the reason for the procedure being selected.

DBT Powers

New Clause 53: Strengthening Stakeholder Transparency - new section 9A (required information about the subscribers) [new power, removes two from the Companies Act 2006]

Power conferred on: Secretary of State

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

Parliamentary procedure: affirmative procedure

Context and Purpose

3. A subscriber is a person who subscribes their name to the memorandum of association in order to form a company. If the company is limited by shares, they become shareholders. If the company is limited by guarantor, they become guarantors. Collectively, shareholders and guarantors are referred to as members, and the company is required to enter their information into its register of members upon incorporation.
4. This amendment inserts new section 9A into the Companies Act 2006, which confers a power on the Secretary of State to make regulations, which may amend the section so as to change the required information about a subscriber or repeal the option for Peers or other individuals known by a title to state their title instead of their forename and surname in the application for the registration of a company.
5. This amendment also removes similar powers from sections 10(3) and 11(2) of the Companies Act 2006 – as provided for subsections 9A(4) and 9A(5) of the ECCT Bill as the power being added subsumes the functions of these two existing powers.

Justification for taking the power

6. This power replaces two existing powers which allow the Secretary of State to prescribe details which must be provided about subscribers in regulations. This power is a Henry VIII power, which will avoid requirements being split between primary and secondary legislation, aiding comprehension and ease of access. 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); this would bring parity for member information.
7. This power enables increases transparency of company ownership by requiring more information about subscribers. As reforms are implemented to Companies House and the companies register, it is possible that further opportunities to improve information on subscribers will be identified, on which

the Government would want to act swiftly to address. For example, law enforcement agencies may identify additional or alternate types of information that the Registrar could require the collection of, which would help them in the prevention and detection of crime.

8. 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

9. 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 subscribers. It is also appropriate given that the power will be used to amend primary legislation.

New Clause 53: Strengthening Stakeholder Transparency - new section 113C (power to amend the required information) [replaces a power]

Power conferred on: Secretary of State

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

Parliamentary procedure: affirmative procedure

Context and Purpose

10. This amendment inserts new section 113C (power to amend the required information) into the Companies Act 2006. This power is similar to the power in clause 47 (Register of members: power to amend required information), which will be removed from the Bill. The wording of the power is similar to the power in clause 47 (paragraphs 72-78 in the original DPM), as is the context and purpose of the power.
11. The power allows the Secretary of State to make regulations which change the required information about a member for the purposes of the Chapter. The power could be used to amend the required information about any or all individual members, corporate members and firms and joint holders of stock. The power could be used to limit any additional information requirements to companies that are not traded on any listed market, which are already subject to similar disclosure requirements, to reduce the burden on business.
12. The power also allows the Secretary of State to determine whether any additional required information must be provided to Companies House via the one-off confirmation statement, which is required by clause 51. The one-off confirmation statement will enable Companies House to display member information in a more-user friendly way.

Justification for taking the power

13. This power enables future enhancement of 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 members will be identified, on which the Government would want to act swiftly to address. For example, law enforcement agencies may identify additional or alternate types of information that the Registrar could require the collection of, which would help them in the prevention and detection of crime.
14. The Government appreciates this is a Henry VIII power, but this aligns with similar 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.
15. The power is tightly drafted so that it cannot be used more widely to make other changes beyond a narrow set of changes relevant to this Chapter of the Companies Act 2006.

Justification for procedure

16. 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.

Amendment 53: Clause 49 Register of members: protecting information (power to make regulations protecting material) [amends the power]

Power conferred on: Secretary of State

Power exercised by: regulations made by statutory instrument

Parliamentary procedure: affirmative procedure

Context and purpose

17. 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.
18. This amendment is consequential on other amendments which allow the Secretary of State to make regulations to require more information to be entered into a company's own register of members. It widens the scope of the power in clause 49 to allow the regulations to require a company to refrain

from using or disclosing membership information, whether or not a member applies for protection. Regulations could provide that if certain new personal information is required by new section 9A and/ or new section 113A, the default position is that companies are required to “protect” that information – i.e. to not use or disclose it.

19. Regulations would be made in this regard if certain personal information is later required to be entered into a company’s own register of members, which would otherwise be unavailable for public inspection. For example, if regulations later require a person’s usual residential address to be entered into a company’s own register of members, as this is not usually made available for public inspection.
20. The power is otherwise unchanged from that which was set out in the DPM previously considered by the DPRRC.
21. Regulations made under section 120A will still 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.
22. This power allows for similar provisions to be made as are made under the power in the existing section 1088 and section 790ZG.
23. 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

24. As reforms are implemented to Companies House and the companies register, it is possible that further opportunities to improve information on members will be identified, on which the Government would want to act swiftly to address. For example, law enforcement agencies may identify additional or alternate types of information that the Registrar could require the collection of, which would help them in the prevention and detection of crime.
25. Regulations would be made if certain personal information is later required to be entered into a company’s own register of members, which would otherwise be unavailable for public inspection. For example, if regulations later require a person’s usual residential address to be entered into a company’s own register of members, as this is not usually made available for public inspection.

26. 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.
27. 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.
28. 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

29. 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.

Amendment 53: Clause 89 Protecting information on the register (power to make regulations protecting material) [adds new power]

Power conferred on: Secretary of State

Power exercised by: regulations made by statutory instrument

Parliamentary procedure: affirmative procedure

Context and Purpose

30. This amendment adds an additional power to clause 89. The additional power allows the regulations to require the Registrar to refrain from making available for public inspection any information on the register relating to an individual. This allows the regulations to require the Registrar to refrain from disclosing information on the register relating to an individual except in specified circumstances.
31. Regulations would be made in this regard if new information is later required which it would not be appropriate to be made available for public inspection or disclosed, except in specified circumstances. For example, if regulations later require a person's personal email address to be provided, as this could have unintended consequences with spam mail.

32. The power is otherwise unchanged, which the DPRRC previously had no comments on in their report of 2 March 2023.

Justification for taking the power

33. This level of detail is more appropriate to be contained within secondary legislation. There are Companies Act 2006 precedents e.g. section 1088 and section 790ZG, as well as a precedent for this approach in section 25 of the Economic Crime (Transparency and Enforcement) Act 2022.

34. 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. Having this personal information displayed publicly can lead to fraud and other harms. It may later be deemed necessary to require the provision of new personal information – for example, if law enforcement identify problems remain despite our package of reforms. In some cases, it may not be appropriate for that information to be displayed publicly as set out above. Taking this power will allow the Secretary of State to implement such changes swiftly and responsively without causing unnecessary delay – and in some cases personal risk – to individuals.

Justification for the procedure

35. 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.

Amendment 53: Clause 94 Use or disclosure of People with Significant Control (PSC) information by companies (power to make regulations protecting material) [replaces a power]

Power conferred on: Secretary of State

Power exercised by: regulations made by statutory instrument

Parliamentary procedure: affirmative procedure

Context and purpose

36. Clause 94 inserts a power which substitutes an existing power in section 790ZG of the Companies Act 2006. The new extension to this power allows the Secretary of State to set in regulations information which the company must not use or disclose and it permits legislating for circumstances which may provide exceptions to this prohibition.

37. Regulations would be made under this power if new information is later required which it would not be appropriate to be made available for public inspection or disclosed, except in specified circumstances. For example, if

regulations later require a PSC's personal email address to be provided, as this could have unintended consequences with spam mail. This applies the same principle as the amendments made to clause 49 and clause 89.

38. The power is otherwise unchanged, which the DPRRC previously had no comments on in their report of 2 March 2023.

Justification for taking the power

39. The power is similar in nature to the amendment made to clause 89. As requirements for companies to collect more information are legislated for, it may be reasonable to make some information unavailable to the public by restricting its use and disclosure, such as if the Secretary of State were to legislate for the provision of the email addresses of PSCs.

Justification for the procedure

40. 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 power referred to above, which will allow full Parliamentary scrutiny.

Amendment 53 Amending clause 189 (regulations)

Power conferred on: N/A

Power exercised by: N/A

Parliamentary Procedure: N/A

Context and Purpose

41. Clause 189 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 was included in the original Delegated Powers Memorandum for reference. As this amendment amends clause 189, it has been included for reference.

42. This amendment ensures that the regulation-making power to specify an appointed day for the purposes of clause 51 is not subject to any procedural requirements.

Justification for taking the power

43. This amendment does not take a power, but the justification for the amendment is that the regulation-making power to specify an appointed day for the purposes of clause 51 is similar to a commencement power.

Justification for the procedure

44. There is no parliamentary procedure, as the regulation-making power to specify an appointed day for the purposes of clause 51 is similar to a commencement power.

New Clause [X]: Register of Overseas Entities - amends power in section 16 (verification) Economic Crime (Transparency and Enforcement) Act 2022

Power conferred on: Secretary of State

Power exercised by: regulations made by statutory instrument

Parliamentary procedure: negative procedure

Context and purpose

45. The Register of Overseas Entities (“the Register”) was legislated for by the Economic Crime (Transparency and Enforcement) Act 2022 (“the 22 Act”). The Register opened for registrations on 1 August 2022 and overseas entities had a six month transitional period to register.
46. Section 16 of the 22 Act provides that the Secretary of State may by regulations make provision requiring the verification of information before an overseas entity makes an application for registration, complies with the updating duty, or makes an application for removal. Regulations under section 16 were made prior to the Register opening and later amended to address stakeholder feedback. Without a verification mechanism to ensure that the information provided is true and correct, the information on the Register will not provide the requisite level of transparency.
47. Subsection (2) confers a power on the Secretary of State to make provision in regulations, among other things, about the information that must be verified, about the person by whom the information must be verified and requiring a statement, or evidence or other information to be delivered to the registrar.
48. This amendment widens the scope of the power, so that regulations can also make provision about how the information is to be verified (including provision about the kinds or sources of evidence to be used) and about the standard to which verification is to be carried out. This will allow regulations to be more prescriptive about how verification is to be carried out, once the level of compliance is better understood.
49. This amendment also widens the scope of the power so that regulations can also make provision about the records that must be kept in connection with verification, and about new offences in relation to any failures to do so.

Justification for taking the power

50. Now that the transitional period is over, attention has turned to analysing the level of compliance with the requirements among the overseas entities that have registered, as well as to taking enforcement action against those that haven’t yet registered. There may be instances where certain verifiers have used kinds or sources of evidence which were not appropriate to use to verify

information, so it would be useful to prescribe more details about how information is to be verified. Equally, certain verifiers may have carried out verification to a lower standard than would have been expected, so it would be useful to prescribe more details about this.

51. Regulations may create new offences in relation to the failure to keep records in connection with verification. The verification regulations currently require verifiers to retain records for five years, but there is no associated sanction for failing to do so. If the Registrar has concerns about verification carried out, she may query this with a verifier. It is important that regulations can provide for an offence for failing to retain records, so requirements on verifiers can be appropriately enforced.
52. This level of detail is more appropriate to be contained within secondary legislation. This will also allow flexibility in the event of changing circumstances.

Justification for the level of parliamentary scrutiny

53. 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. The regulations will reflect the content of the primary legislation, which will have been subject to full Parliamentary scrutiny.

FCDO Powers

New Clause 81: Power to impose director disqualification sanction

Power conferred on: an appropriate Minister, who under section 1(9) of the Sanctions and Anti-Money Laundering Act 2018 (SAMLA) is either the Secretary of State or the Treasury.

Power exercised by: regulations made by Statutory Instrument

Parliamentary procedure: negative resolution for regulations dealing with UN sanctions; made affirmative procedure for discretionary, non-UN sanctions

Context and Purpose

54. The Government is tabling an amendment at Lords' Committee stage to improve the interactions of the director disqualification measures at clauses 36 – 40 of the Bill (as introduced to the House of Lords) with the UK sanctions regime. This amendment will replace existing clauses in the Bill to create an entirely new sanctions measure under the Sanctions and Anti-Money Laundering Act 2018 (SAMLA). Instead of automatically applying director status to individuals who will be designated to asset freezes in the future, this amendment will allow Ministers to apply 'director disqualification sanctions' on a case by case basis, ensuring that the measure can be more targeted and flexible, aligning it with the existing sanctions framework, and reducing the risk of unintended consequences.

55. In particular, this clause will amend an existing power to make sanctions regulations in section 1 of SAML A. It will enable an appropriate Minister (the Secretary of State or the Treasury) to make sanctions regulations which impose 'director disqualification' sanctions under new section 3A SAML A. When imposed, this new type of sanction would give effect to specific 'director disqualification sanctions' introduced to in section 11A of the Company Directors Disqualification Act 1986 (CDDA) and Article 15A of the Company Directors Disqualification (Northern Ireland) Order 2002 (CDD(NI)O). The consequences of disqualification would apply in the future to any person designated under the new SAML A provisions for the purposes of those 'director disqualification sanctions'.

56. The amendments to the powers contained in section 15 of SAML A would empower an appropriate Minister to make sanctions regulations which create exceptions to director disqualification sanctions measures. It also empowers an appropriate Minister to make sanctions regulations which confer a power on an appropriate Minister to issue licences in respect of the director disqualification sanctions, which, by virtue of new section 15(5A) may include the provision stated in section 15(3) of SAML A. Exceptions and licences are a standard feature of sanctions regimes to help ensure that the effects of sanctions are proportionate and avoid unintended consequences. This new power would allow an appropriate Minister to apply the measure on a case by case basis to designated persons.

Justification for taking the power

57. As set out in the [Delegated Powers Memorandum](#) for SAML A¹, the Government considers that it would be inappropriate for primary legislation to contain the detail of each individual sanctions regime, since this would inhibit the Government's ability to implement sanctions quickly in response to global events and satisfy its international obligations. The Government therefore considers it necessary and appropriate to provide framework powers that enable detailed sanctions regimes to be set out in secondary legislation. This measure follows the same approach.

58. This power would enable the measure to be targeted at those designated persons who are acting or may seek to act as directors and provide the appropriate Minister with flexibility as to when to apply it, as is standard practice for UK sanctions measures. Imposing sanctions on designated persons in line with other sanctions prohibitions reduces the risk of any unintended consequences and gives the appropriate Minister the tools to deal with such cases as and when they arise.

¹ <https://publications.parliament.uk/pa/bills/lbill/2017-2019/0069/18069-DPM.pdf>

Justification for the procedure

59. The justification for this power being subject to the negative resolution procedure for regulations dealing with UN sanctions, or made affirmative procedure where UN sanctions are not dealt with, is the same as in relation to the existing powers in SAML A to make sanctions regulations. The fact that sanctions need to be implemented quickly is important in determining the right Parliamentary procedure. The Government needs to continue to be able to act swiftly to keep pace with quickly developing global events. The full explanation of and justification for these procedures was set out in the Delegated Powers Memorandum for SAML A.