

Economic Crime and Corporate Transparency Bill

AMENDMENTS
TO BE MOVED
IN GRAND COMMITTEE

After Clause 130

LORD JOHNSON OF LAINSTON

Insert the following new Clause—

“Power to make provision about winding up

After section 29 of the Limited Partnerships Act 1907 (inserted by section 130 of this Act) insert—

“29A Power to make provision about winding up

- (1) The Secretary of State may by regulations make provision in relation to the winding up of a limited partnership under section 28 or 29 that corresponds or is similar to any provision of the Insolvency Act 1986 or the Insolvency (Northern Ireland) Order 1989 (including any provision of that Act or Order that relates to the allocation of jurisdiction or distribution of business between courts in any part of the United Kingdom).
- (2) Before making regulations under subsection (1) the Secretary of State must—
 - (a) obtain the consent of the Department for the Economy in Northern Ireland, so far as the regulations relate to limited partnerships registered in Northern Ireland;
 - (b) obtain the consent of the Scottish Ministers, so far as the regulations relate to limited partnerships registered in Scotland.
- (3) The provision that may be made by regulations under subsection (1) by virtue of section 35(1) includes provision amending, repealing or revoking provision made by or under either of the following, whenever passed or made—
 - (a) an Act;
 - (b) Northern Ireland legislation.
- (4) Regulations under this section are subject to the affirmative resolution procedure.””

Member's explanatory statement

This amendment would mean that the Secretary of State can make provision corresponding or similar to any provision of the Insolvency Act 1986 or the Insolvency (Northern Ireland) Order 1989 to govern the winding up of limited partnerships under new section 28 or 29 of the Limited Partnerships Act 1907.

Insert the following new Clause –

“Winding up of limited partnerships: concurrent proceedings

- (1) The Limited Partnerships Act 1907 is amended as follows.
- (2) In section 6 (modifications of general law in case of limited partnerships), for subsection (3D) substitute –

“(3D) Subsections (3A) and (3B) have effect subject to any order of a court as to the winding up of the affairs of the partnership and any award of sequestration of the partnership’s estate under the Bankruptcy (Scotland) Act 2016.”
- (3) After section 29A (inserted by section (*Power to make provision about winding up*) of this Act) insert –

“29B Winding up of limited partnerships: concurrent proceedings

- (1) Where a petition under section 28 in respect of a limited partnership is pending, a general partner of the limited partnership who is or becomes aware of any of the circumstances mentioned in subsection (3) must notify the court to which the petition was presented.
- (2) Where an application under section 29 in respect of a limited partnership is pending –
 - (a) a general partner of the limited partnership who is or becomes aware any of the circumstances mentioned in subsection (3) must notify the court to which the application was made, and
 - (b) if the application was made by a person other than the Secretary of State, the applicant must notify the court to which the application was made if the applicant is or becomes aware of any of the circumstances mentioned in subsection (3).
- (3) The circumstances are that –
 - (a) a petition for sequestration of the limited partnership’s estate under the Bankruptcy (Scotland) Act 2016 is before a sheriff,
 - (b) an application to the Accountant in Bankruptcy for sequestration of the limited partnership’s estate under that Act is pending,
 - (c) sequestration has been awarded by virtue of any such petition or application and the limited partnership’s estate is being sequestrated,
 - (d) a trust deed in respect of the limited partnership’s estate has been sent to the Accountant in Bankruptcy for registration under that Act and the registration has not been refused,
 - (e) a protected trust deed (within the meaning of that Act) is in force in respect of the limited partnership’s estate,
 - (f) an application by the limited partnership for approval of a debt payment programme under the Debt Arrangement and Attachment (Scotland) Act 2002 is pending, or
 - (g) such a programme has been approved under that Act and has not been completed.

After Clause 130 - continued

- (4) A person is not required to notify the court of circumstances under subsection (1) or (2) if another person has notified the court of those circumstances.
- (5) If a person fails to comply with subsection (1) or (2) an offence is committed by –
 - (a) the person, and
 - (b) if the person is a legal entity, any of its managing officers who is in default.
- (6) A person guilty of an offence under this section is liable on summary conviction –
 - (a) in England and Wales, to a fine;
 - (b) in Scotland or Northern Ireland, to a fine not exceeding level 5 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 5 on the standard scale.
- (6) A managing officer is “in default” for the purposes of this section if they authorise or permit, participate in, or fail to take all reasonable steps to prevent, the contravention.
- (8) But a corporate managing officer does not commit an offence as a managing officer in default unless one of its managing officers is in default.
- (9) Where any such offence is committed by a corporate managing officer the managing officer in question also commits the offence (subject to subsection (8)).
- (10) For the purposes of this section a petition or application is “pending” if it has been presented or made and it has not fallen, been withdrawn or been determined.

29C Power to amend circumstances for notification under section 29B

- (1) The Secretary of State or the Scottish Ministers may by regulations amend the list in section 29B (3).
- (2) Before making regulations under subsection (1) the Secretary of State must obtain the consent of the Scottish Ministers.
- (3) Regulations made by the Secretary of State under subsection (1) are subject to the affirmative resolution procedure.
- (4) Regulations made by the Scottish Ministers under subsection (1) are subject to the affirmative procedure (see Part 2 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10)).”

Member’s explanatory statement

This amendment would mean that if a petition has been presented under new section 28, or a person has made an application under new section 29, a general partner or person who made the application under new section 29 must notify the relevant court about other concurrent proceedings.

Insert the following new Clause –

“Sequestration of limited partnerships: concurrent winding up proceedings

- (1) The Bankruptcy (Scotland) Act 2016 is amended as follows.
- (2) In section 17 (concurrent proceedings for sequestration or analogous remedy) –
 - (a) in subsection (2)(b), after “awarded” insert “and the debtor’s estate is being sequestrated”;
 - (b) in subsection (2)(c) –
 - (i) omit “has been made”;
 - (ii) after “estate” insert “is pending”;
 - (c) in subsection (2)(d), after “application” insert “and the debtor’s estate is being sequestrated”;
 - (d) in subsection (2)(g), after “under” insert “section 27 of the Limited Partnerships Act 1907,”;
 - (e) after subsection (2)(g) insert –
 - “(ga) such a petition has been granted,
 - (gb) an application in respect of the debtor is before a court under section 28 of the Limited Partnerships Act 1907,
 - (gc) such an application has been granted,”;
 - (f) after subsection (7) insert –
 - “(7A) For the purposes of subsection (2)(c), a debtor application is “pending” if it has been made and has not fallen, been withdrawn or been determined.”
- (3) In section 18 (powers in relation to concurrent proceedings) –
 - (a) in subsection (1), for “(g)” substitute “(gc)”;
 - (b) in subsection (2), for “or (g)” substitute “, (g), (ga), (gb) or (gc)”;
 - (c) in subsection (8), for “(g)” substitute “(gc)”.

Member’s explanatory statement

This amendment would mean that, if a limited partnership is in the course of sequestration proceedings, the petitioner, debtor or creditor must notify the sheriff court or AiB if they become aware of winding up proceedings under new section 28 or 29 LPA 1907 in relation to the limited partnership.

Clause 146

LORD JOHNSON OF LAINSTON

Page 133, line 32, after “Regulations” insert “made by the Secretary of State”

Member’s explanatory statement

This amendment is consequential on new section 29C of the Limited Partnerships Act 1907 which is inserted by new Clause (Winding up of limited partnerships: concurrent proceedings)(which is inserted after Clause 130 of the Bill).

Clause 150

LORD JOHNSON OF LAINSTON

Page 136, line 10, after “Secretary of State” insert “or the Department”

Member's explanatory statement

This amendment allows the Department for the Economy to make regulations under new Article 25D of the Company Directors Disqualification (Northern Ireland) Order 2002.

Page 136, line 23, at end insert –

“(2A) The Secretary of State must obtain the consent of the Department before making regulations under this Article.”

Member's explanatory statement

This amendment requires the Secretary of State to obtain the consent of the Department for the Economy before making regulations under new Article 25D of the Company Directors Disqualification (Northern Ireland) Order 2002.

Page 136, line 40, after “made” insert “by regulations made by the Secretary of State”

Member's explanatory statement

This amendment means that regulations made by the Department for the Economy under new Article 25D of the Company Directors Disqualification (Northern Ireland) Order 2002 cannot amend an Act of Parliament.

Page 136, line 44, at end insert –

“(6A) The provision which may be made by regulations made by the Department by virtue of paragraph (5) includes provision amending provision made by or under Northern Ireland legislation, whenever passed or made.”

Member's explanatory statement

This amendment means that regulations made by the Department for the Economy under new Article 25D of the Company Directors Disqualification (Northern Ireland) Order 2002 can amend Northern Ireland legislation.

Page 136, line 45, after “Regulations” insert “made by the Secretary of State”

Member's explanatory statement

This amendment is consequential on the amendment to page 136, line 10, which is tabled in the Minister's name.

Page 137, line 1, after “regulations” insert “made by the Secretary of State”

Member's explanatory statement

This amendment is consequential on the amendment to page 136, line 10, which is tabled in the Minister's name.

Page 137, line 3, at end insert –

“(9) Regulations made by the Department under this Article are subject to negative resolution.”

Member's explanatory statement

This amendment is consequential on the amendment to page 136, line 10, which is tabled in the Minister's name.

Clause 166

LORD JOHNSON OF LAINSTON

Page 148, line 6, at end insert –

- “(2) The Secretary of State must obtain the consent of the Scottish Ministers before making regulations under this section that contain provision that would be within the legislative competence of the Scottish Parliament if contained in an Act of that Parliament.
- (3) The Secretary of State must obtain the consent of the Department of Finance in Northern Ireland before making regulations under this section that contain provision that –
- (a) would be within the legislative competence of the Northern Ireland Assembly if contained in an Act of that Assembly, and
 - (b) would not, if contained in a Bill in the Northern Ireland Assembly, result in the Bill requiring the consent of the Secretary of State under section 8 of the Northern Ireland Act 1998.”

Member’s explanatory statement

This amendment requires the Secretary of State to obtain consent before making regulations under clause 166 that contain provision within the legislative competence of the Scottish Parliament or the Northern Ireland Assembly.

Economic Crime and Corporate Transparency Bill

AMENDMENTS
TO BE MOVED
IN GRAND COMMITTEE

12 April 2023
