

## **Supplementary Delegated Powers Memorandum – Economic Crime and Corporate Transparency Bill**

1. This memorandum, supplementary to the Delegated Powers Memorandum published on 31 January 2023 and the supplementary memoranda published on the 21 March 2023 and 19 April 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 13 June 2023 which introduce further delegated powers and amend existing delegated powers. This memorandum explains these powers, why they are being taken, and the reason for the procedure being selected.

### **Companies House reform: consistency in the Registrar's powers - power for the Secretary of State to confer discretion on the Registrar under certain regulation making powers in the Companies Act 2006 namely the following:**

Clause 83: New section 1094A(1) & (2) Companies Act 2006: Further provision about removal of material from register. This is an affirmative regulation-making power which includes provision about the processes by which people may apply to the Registrar to remove registered material.

Clause 89: Substitution of new section 1088 Companies Act 2006: Protecting information on the register. This is an affirmative regulation-making power which will be used to set out the process by which people may apply to the Registrar to protect (i.e. remove from public inspection) information about them.

Clause 92: Amendment of section 243 Companies Act 2006: Permitted use or disclosure by the Registrar. This is a negative regulation-making power which includes provision about the process by which directors may apply to the Registrar to decline to disclose their usual residential addresses to credit reference agencies.

Clause 103: Amendment of section 1097A Companies Act 2006: Registered office: rectification of register. This is an affirmative regulation-making power which includes provision about the process by which people may apply to the Registrar to secure that a company changes its registered office address.

Clause 104: New section 1097B of Companies Act 2006: Rectification of register: service addresses. This is an affirmative regulation-making power which includes provision about the process by which people may apply to the Registrar to secure that a director, secretary or person with significant control changes its service address.

Clause 105: New section 1097C of Companies Act 2006: Rectification of register: principal office addresses. This is an affirmative regulation-making power which includes provision about the process by which people may apply to the Registrar to secure that a director, secretary or person with significant control changes its principal office address.

Clause 158: Amendment of section 25 of Economic Crime (Transparency and Enforcement) Act 2022: Protection of information. This is an affirmative regulation-making power which will be used to set out the process by which people may apply to the Registrar to protect (i.e. remove from public inspection) information about them on the Register of Overseas Entities.

Clause 160: New section 28A of Economic Crime (Transparency and Enforcement) Act 2022: Administrative removal of material from register. This is an affirmative regulation-making power which includes provision about the processes by which people may apply to the Registrar to remove material on the Register of Overseas Entities.

*Power conferred on:* Secretary of State

*Power exercised by:* Statutory Instrument

*Parliamentary procedure:* The underlying powers amended here are a mixture of negative and affirmative.

#### Context and Purpose

3. Companies legislation contains a range of regulation making powers allowing the Secretary of State to delegate duties and functions to the Registrar of Companies. For the purposes of sensible operational flexibility, there are instances where it is appropriate for such powers to allow the Secretary of State to confer on the Registrar discretion as to how certain procedures and processes are undertaken, e.g. the matters of who can make various applications to the Registrar, the information that must accompany them, the way and manner in which applications are to be determined, and so on.
4. Amongst the new delegated powers to be added to the Companies Act 2006 and to the Economic Crime (Transparency and Enforcement) Act 2022 pursuant to this Bill the above provisions have been identified as involving processes where such discretion would be beneficial to efficient delivery.
5. The detailed context and purpose of each of the above powers is available to view in the relevant earlier Delegated Powers Memoranda published in

conjunction with either this Bill, the Economic Crime (Transparency and Enforcement) Act 2022 or the Companies Act 2006.

6. The common thread linking these provisions is that they determine, at a high level, the parameters within which the detail of various statutory mechanisms for application, notification or appeal shall be established through secondary legislation. While, for clarity and consistency, every effort is made to prescribe the parameters of such mechanisms as precisely as possible, operational experience shows that there are circumstances where over-prescription can hinder efficient administrative delivery.
7. The primary legislation is not consistent, in some cases allowing the Registrar discretion on some aspects of the application process, in some cases on all aspects and in others none. These amendments give the Secretary of State the ability to delegate to the Registrar consistent discretions in terms of procedural matters, such as to whom she gives notice of the use of her powers, the period allowed for objections and the material required to substantiate both applications and objections.

#### Justification for taking the power

8. As with their various purposes, justification for each of the powers the subject of these amendments has been provided in earlier Delegated Powers Memoranda.

#### Justification for the procedure

9. As with purpose and the justification for taking each power, the procedural justifications for each of the powers has been provided in earlier Delegated Powers Memoranda.

### **Companies House reform: Increasing transparency on ACSPs.**

*Power conferred on: Secretary of State*

*Power exercised by: regulations made by statutory instrument*

*Parliamentary procedure: affirmative*

#### Context and Purpose

10. This amendment inserts a regulation-making power into section 1110A Meaning of “identity is verified”. The power enables the Secretary of State to make regulations about the contents of a verification statement, which includes amending existing provisions in section 1110A.

11. A verification statement must be made by an ACSP to confirm that they have verified an individual's identity in accordance with regulations under section 1110B. The statement will also specify the supervisor or supervisors of the ACSP as per this amendment.

12. Given that verification statements will be publicly available as a result of this amendment, the contents of the statement are of greater significance as they will increase transparency of ACSPs and the information contained within them can be viewed by the public.

#### Justification for taking the power

13. The detail about what must be contained within the verification statement is more suitable for secondary legislation. This is because it may change over time, for example if there is a call for different information to be made publicly available.

14. It is also important to align where appropriate with verification statements of overseas entities which are required under section 16(2) of the Economic Crime (Transparency and Enforcement) Act 2022. As the detail of these statements is set out in secondary legislation and could therefore change, it is proportionate and consistent to take a similar approach to the statements made by ACSPs with regards to IDV checks. This is because there is a shared aim of increasing transparency.

#### Justification for the procedure

15. Given that verification statements will release information into the public domain, it is important that the contents are sufficiently scrutinised and debated which is why the use of this power is subject to the affirmative procedure.

### **Companies House reform: clarifying the Registrar's ability to request records about identity checks done by ACSPs**

*Power conferred on: Secretary of State*

*Power exercised by: regulations made by statutory instrument*

*Parliamentary procedure: affirmative*

#### Context and Purpose

16. This amendment permits the Secretary of State to make regulations requiring a person who is or has been an ACSP to provide information to the register.

17. Prior to this amendment, the power in 1098H could have been interpreted as only allowing regulations to be made that require information to be delivered where it relates to section 1098H. The amendment removes this ambiguity, ensuring that information can be required where this relates to monitoring compliance under any part of the Companies Act 2006.

18. The outcome is that the Registrar will be able to request evidence of identity checks carried out by ACSPs under section 1110B of this Act, in addition to information relating to an ACSPs registration, ongoing duties and deauthorisation.

19. The regulations may contain an offence to ensure enforcement. Otherwise, there is a risk that the Registrar does not receive information that could help her to monitor an ACSP's compliance.

#### Justification for taking the power

20. Flexibility is needed given that this power will link closely with the powers taken in sections 1110B, 1098B, 1098C, 1098E, 1098F and 1098I. These all relate to the wider framework around ACSPs, such as requirements for registration, ongoing duties to provide information, carrying out identity checks and circumstances for suspension and deauthorisation. It will be necessary to update and amend the information that must be provided to the Registrar if the wider framework changes. This is so that she can be made aware of such events that relate to the undertaking of an ACSP's duties and which could have implications on the ACSP's status. It is therefore appropriate to detail these requirements in secondary legislation.

21. The drafting of the power is specific and the offence for failing to comply with any requirements to provide information is limited to what is listed in section 1098H(5) to ensure that the power can only be used in future for the intended purpose set out here.

#### Justification for the procedure

22. Regulations under this power could result in a new offence affecting businesses operating as company service providers. As such, a Parliamentary debate is appropriate to scrutinise whether any proposed offence is necessary and proportionate.

### **Allowing use of Companies House fees to fund licensing activity under the new director disqualification sanction regime**

*Power conferred on:* Secretary of State

*Power exercised by:* regulations made by statutory instrument

*Parliamentary procedure:* negative

Context and Purpose

23. This amendment expands an existing regulation making power in section 1063(1) of the Companies Act 2006.

24. This amendment amends clause 90 of the Bill to allow the Secretary of State, when setting Companies House fees, to take into account certain additional costs incurred or likely to be incurred in relation to the new Disqualified Director Sanctions Regime being introduced by the Bill, specifically the Secretary of State's costs in connection with the licensing of exceptions to the effect of a disqualification sanction imposed on a person.

Justification for taking the power

25. The power, as updated by this amendment, will provide the Secretary of State with the ability to factor in the licensing costs when making regulations that set the levels of fees payable to the registrar to cover activities associated with the Disqualified Directors sanction, particularly if new activities are required or if the resource requirements for an activity change (e.g. in the event a large number of new individuals are designated with Disqualified Director sanctions and additional resource is required to manage increased licence requests).

Justification for the procedure

26. This simply adds an additional element into what can be included when setting fees. The fees themselves will continue to be set via the negative resolution procedure.

**Companies House reform: restrict who should be permitted to file directly with Companies House – power to create exceptions to restrictions, new section 1067A(4) and (5)**

*Power conferred on:* Secretary of State

*Power exercised by:* regulations made by statutory instrument

*Parliamentary procedure:* affirmative procedure, Henry VIII power

Context and Purpose

27. This amendment amends clause 69 of the Bill to restrict who is permitted to file directly with Companies House in order to prevent non-authorized corporate service providers from filing on behalf of firms.
28. The amendment clarifies the categories of people who may deliver documents on another's behalf. It provides that an individual can only deliver on behalf of a firm if they are an officer or employee of the firm, or an officer or employee of a corporate officer of the firm, and if their identity is verified. An individual who is an authorized corporate service provider, and an individual who is an officer or employee of an authorized corporate service provider which is a firm, can also deliver on behalf of firms.
29. The amendment also clarifies which individuals can file on behalf of other individuals. Where an individual is filing on behalf of another individual, new section 1067A(2)(b) requires that the filing individual also submits a statement to confirm they fall within the categories of individual who are able to file.
30. The reason for this amendment is to close a loophole. Existing clause 69's provision simply allows individuals filing documents to deliver on behalf of another person if the individuals filing the documents have the authority to deliver the document and either (i) undergo identity verification, (ii) are an authorized corporate service provider, or (iii) are an officer or employee of an authorized corporate service provider which is a firm.
31. Undergoing identity verification as in (i) above creates a filing gateway that could be exploited by non-authorized corporate service providers, as it allows them to file on behalf of a firm without requiring them to register as an authorized corporate service provider. This amendment closes that loophole, removing the possibility of a non-authorized corporate service provider filing on behalf of a firm.
32. New section 1067A(4) allows the Secretary of State, by regulations, to create exceptions to the restrictions on individuals who are able to file on their own behalf or on behalf of another person. The power has a Henry VIII component: to amend section 1067A for the purpose of changing the effect of the table in subsection (2) which governs who is entitled to deliver documents on behalf of whom.
33. New section 1067A(5) provides that the power in section 1067A(4)(a), to provide for exceptions to the filing restrictions, can also require further information from individuals who are relying on any exceptions, and can be used to amend the section itself (e.g. by placing the exceptions on the face of s.1067A rather than in a separate piece of secondary legislation).

#### Justification for taking the power

34. New section 1067A(4) builds on the delegated powers within existing clause 69 which provide a power for the Secretary of State to create exceptions that allow a person who has *not* verified their identity to deliver documents to the Registrar on their own behalf or on behalf of another person. As well as allowing for exceptions from identity verification, the new section also allows a person who does not fall within the categories specified in new section 1067A(2) to deliver documents.
35. These powers are necessary as there are cases where requiring identity verification will either be unnecessary or disproportionate. For instance, documents being delivered as part of the process to become identity verified, or applications by individuals to remove personal information whose registration was procured by fraud. The powers also build upon the previous exception powers to make sure that the regulations can be adapted to account for various forms of exceptions, for instance it can create exceptions for a certain type of individual or a certain type of filing.
36. Similarly, the elucidation of the subsection (4)(a) power provided for by new section 1067A(5) means the Secretary of State may use the regulation-making power in section 1067(4)(a) to require further information from individuals when they are relying on an exception. This is necessary as statements required by new section 1067 may not provide all the information needed to confirm that an individual filing is validly relying on an exception. Subsection (5)(b) makes clear that any regulations creating exemptions may amend the face of primary legislation, which provides the flexibility to “house” exemptions in the same statutory location as the restrictions to which they relate, which should result in clearer law.

#### Justification for the procedure

37. The subsection (4) power includes power to amend primary legislation so it is appropriate that the power is subject to the affirmative procedure, which will ensure that any exceptions to identity verification, or to who may file, undergo sufficient scrutiny by Parliament. The affirmative procedure will also ensure that any supplementary information required from individuals excepted from delivery requirements is both sufficient to evidence the exception and proportionate.

#### **Companies House reform: Restrict who should be able to file directly with Companies House – power to require additional statements, new section 1067A(6)**

*Power conferred on:* Secretary of State



*Power exercised by:* regulations made by statutory instrument

*Parliamentary procedure:* affirmative procedure

Context and Purpose

38. New section 1067A(6) allows the Secretary of State to make regulations to require further information, in addition to statements required under 1067A(2)(b). Please see the “Context and Purpose” explanation set out above in paragraphs 27 to 33, in relation to that amendment and new section 1067A.

Justification for taking the power

39. Statements provided under section 1067A(2)(b) may not provide all the necessary information to confirm that the individual does fall within a category of acceptable filers. The power in section 1067A(6) is therefore needed to ensure that where it is not clear, further information can be required. This will help to ensure the restrictions on delivery of documents can operate effectively.

Justification for the procedure

40. This power is affirmative. It will require parliamentary scrutiny to ensure that any supplementary information that will be required from individuals filing on behalf of another individual to prove they fall within a specified category are sufficient to evidence their status, and is proportionate.

**Companies House reform: Response to DPRRC recommendation on ACSP framework**

*Power conferred on:* Secretary of State

*Power exercised by:* regulations made by statutory instrument

*Parliamentary procedure:* affirmative

Context and Purpose

41. Section 1098F requires that a person ceases to be an authorised corporate service provider (ACSP) if they are no longer a relevant person as defined by regulation 8(1) of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017. This is currently the only activity that would lead to cessation, however subsection 1098F(2) provides

the Secretary of State with a power to make regulations to provide other circumstances that would result in cessation.

42. This amendment extends the power in 1098F(2) so that regulations can also be made regarding the suspension of an ACSP. This suspension would take place if the Registrar was deciding whether to cease the ACSP's registration. For example, if an ACSP is under investigation (whether that be by the Registrar, a money laundering supervisor, or another applicable body), the Registrar may want to suspend the ACSP from delivering documents. Suspension would allow for immediate action to be taken, rather than having to wait until the conclusion of an investigation before the ACSP could be de-authorised and will allow the Registrar to prevent the ACSP from making further filings until the underlying situation is rectified.
43. The power also extends to including provision conferring a discretion on the register in relation to the suspension process. This is thought to be necessary as it is the Registrar who will be best placed to assess a corporate service provider's suitability for ongoing authorisation. The power as drafted would be able to provide flexibility in exercise of the suspension process at the Registrar's discretion.

#### Justification for taking the power

44. The power futureproofs the underlying provision. For example, if the requirements for applying or becoming authorised as an ACSP in section 1098B were to change, this would have an impact on when de-authorisation is necessary. Furthermore, as the definition and role of an ACSP is a new concept that is being introduced by the Bill, it is important that there is flexibility to use learnings from implementation and respond to these by way of secondary legislation if needed. There may be unforeseen issues that arise in terms of the rollout of the ACSP framework, this power will allow for any such issues to be addressed in a timely manner which is imperative in ensuring that only legitimate businesses are allowed to operate as ACSPs.
45. The power has been drafted in such a way so as to ensure that it has a focused scope. For example, section 1098F(2A) clearly lays out what can be covered under the regulations, namely; the procedure for suspension, the period suspension is to last and the revocation of a suspension.

#### Justification for the procedure

46. Given that regulations made under this power could result in some ACSPs having to cease business, even if for a limited period, there should be an appropriate level of scrutiny of the exercise of this power, which is why it is subject to the affirmative resolution procedure.

## **Companies House reform: suppression of additional accounts information**

*Power conferred on:* Secretary of State

*Power exercised by:* regulations made by statutory instrument

*Parliamentary procedure:* affirmative

### Context and Purpose

47. The power is focused on micro-entities and other small companies. Within those categories of company it gives us the option to make regulations that will withhold from public view the whole, or aspects of the, profit and loss account filed with Companies House.

### Justification for taking the power

48. The new requirement for micro-entities and other small companies to provide a profit and loss account poses a potential risk to the privacy of some directors of such companies, for example by disclosing personal income. This power gives the flexibility to make regulations to specify what, if any, information included in the profit and loss account of micro-entities and other small companies (or a subset of such companies) is to be withheld from public view. Prior to exercising the power to make such regulations we intend to consult with credit lenders, the accountancy sector, enforcement agencies and others.

49. This power is needed to ensure that we can collect information from the profit and loss accounts of micro-entities and other small companies without the obligation to include the information in the publicly available register. We have confirmed that existing powers regarding company accounts are not broad enough to provide for this flexibility.

### Justification for the procedure

50. There are certain trade-offs that may have to be made between transparency and privacy. Publishing the accounts of micro-entities and other small companies benefits users of the register and in the detection of economic crime, but there are also issues that could arise from this transparency for the companies submitting accounts. Affirmative procedure is required so that political scrutiny can be applied to these trade-offs to ensure that we find the right balance between transparency and privacy.

**Alignment of financial penalties regulations: Companies Act 2006 (CA06) and Economic Crime (Transparency & Enforcement) Act 2022 (“2022 Act”) (amends existing powers)**

*Power conferred on:* Secretary of State

*Power exercised by:* regulations made by statutory instrument

*Parliamentary procedure:* affirmative

Context and Purpose

51. These amendments amend clause 101 of the Bill, which inserts new section 1132A into the CA06. Amendment Z inserts a new clause into the Bill after clause 170, which amends section 39 of the 2022 Act. Both sections allow the Secretary of State to make regulations which confer power on the Registrar to impose a financial penalty on a person if satisfied, beyond reasonable doubt, that the person has engaged in conduct amounting to an offence.
52. These amendments align the drafting with the drafting of clause 202 of this Bill, which inserts new section 17A into the Sanctions and Anti-Money Laundering Act 2018.
53. The amendments mean that regulations must provide that no financial penalty may be imposed on a person for an offence where criminal proceedings for the same offence are ongoing. At the moment, it is the other way around, so that criminal proceedings cannot be continued once a penalty is imposed. This is unhelpful, as without amendment, prosecutors’ discretion to prosecute could be infringed upon.

Justification for taking the power

54. Please see the entry in the previous delegated powers memorandum for this Bill and the 2022 Act.

Justification for the procedure

55. Please see the entry in the previous delegated powers memorandum for this Bill and the 2022 Act.

**Membership information**

*Power conferred on:* Secretary of State

*Power exercised by:* regulations made by statutory instrument

*Parliamentary procedure: affirmative*

Context and Purpose

56. Clause 46(4) of the Bill amends section 113 of the Companies Act 2006, including by inserting new subsection (6A). New subsection (6A) requires all companies to retain information about a member in their register of members where it changes, and to note the date on which the information changed and was entered into the register by the company.

57. These amendments target the scope of this requirement, so that it only applies to non-traded companies, to ensure the burdens on companies are limited in a proportionate way.

58. One of these amendments also provides a power for the Secretary of State to make regulations which allow for a full or partial reversal of this scope restriction, allowing this requirement to retain old information and note the dates of changes to also apply in relation to traded companies.

Justification for taking the power

59. The 2019 Corporate Transparency and Register Reform consultation was aimed primarily at increasing transparency of non-traded companies, but in the future it may be determined that this requirement should also apply in relation to traded companies. This Henry VIII power provides the Government with the means to change the primary legislation to secure that outcome if the policy is to do so.

Justification for the procedure

60. The affirmative procedure has been chosen, to ensure the appropriate level of Parliamentary scrutiny, given the potential burdens regulations could impose on traded companies, as well as because the power enables Ministers to amend the primary legislation.

**Register of Overseas Entities (ROE): making information on trusts submitted to the Register of Overseas Entities available on application from specified categories of people.**

*Power conferred on: Secretary of State*

*Power exercised by: regulations made by statutory instrument*

*Parliamentary procedure: affirmative*

Context and Purpose

61. Overseas entities owning land in the UK are required to register with Companies House and provide information about their beneficial owners. Where a beneficial owner has that status because they are a trustee, the overseas entity must also provide information about the trust. Currently, the only information about the related trust that is publicly available is the name of the trustee who is the registrable beneficial owner of the overseas entity.
62. The Registrar is permitted to make information about trusts available to law enforcement, HMRC, and public authorities on request.
63. There are circumstances in which there is a legitimate public interest in knowing who the beneficiaries or other persons associated with the trust are, beyond the registered trustee. For example, investigative journalists may wish to access trust information. This power will allow regulations to be made detailing the process for making applications to the Registrar of Companies to access information about specific trusts.
64. The Registrar must not make information available if they are required to refrain from doing so by regulations made under section 25 of the Economic Crime (Transparency and Enforcement) Act 2022, which is also being widened so that people associated with a trust may apply under it.
65. Information about the day of the date of birth or the usual residential address of the person must not be made available by the Registrar.
66. Regulations made under this power may include specifying who may make an application, how the application is to be made and determined, information required to accompany the application, and matters such as notice periods.
67. In order to ensure that any information disclosed by the Registrar is handled appropriately, the Registrar may impose conditions on the use and/or onward disclosure of the information provided. Regulations may create offences for a failure to comply with any conditions imposed.
68. The Secretary of State must consult with the Scottish and Northern Ireland administrations before making regulations using this power. Such consultation is appropriate because the power relates to some matters that partially engage devolved competence.

#### Justification for taking the power

69. This power is being taken because it is appropriate that details such as those described above are set out in secondary, rather than primary, legislation. It will also ensure that, should circumstances change and it becomes

Commented [R(1): @Griffiths, Jacqueline (Business Frameworks)] who, the OE or the beneficiary?

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appropriate to narrow or widen the access to the information, changes to the regulations can be made in a timely manner.

#### Justification for the procedure

70. The information that can be requested on application comprises personal information, and it is right that Parliament has the opportunity to debate regulations made under this power to be satisfied about the circumstances in which such personal information can be disclosed.

#### **Power to exclude descriptions of registrable beneficial owner within the Register of Overseas Entities.**

*Power conferred on:* Secretary of State

*Power exercised by:* regulations made by statutory instrument

*Parliamentary procedure:* negative

#### Context and Purpose

71. Overseas entities owning land in the UK are required to register with Companies House and provide information about their beneficial owners. They are further required to update this information annually. When providing an annual update, overseas entities must provide information about all in-year changes to beneficial owners, such as detailing any person that has ceased to be a beneficial owner and the date on which that occurred. This is to ensure that the requirements cannot be circumvented by a person being removed as a beneficial owner just before an annual update, then reinstated immediately after the update has been provided, thereby avoiding being registered.

72. Where information about a trust is required to be provided (where a registrable beneficial owner is a trustee), currently only a “snapshot” of the information about the trust is required to be provided. This means that, as in the previous example, it might be possible for a person to avoid having their information provided to Companies House at all.

73. The Government has therefore brought forward an amendment to close this potential gap by requiring in-year changes to trusts to be included in an overseas entity’s annual update.

74. The Secretary of State must consult with the Scottish and Northern Ireland administrations before making regulations using this power. Such consultation

is appropriate because the power relates to some matters that partially engage devolved competence.

#### Justification for taking the power

75. There are some circumstances in which it would be unduly onerous to require all in-year changes to trusts to be included in an annual update. For example, many overseas entities holding UK land are in turn owned by pension funds which are trusts. It would be disproportionate to expect large pension funds to report every change in beneficiary for the relevant period. It is therefore necessary and appropriate to have the power to exclude certain sorts of registrable beneficial owners from the new requirements. This level of detail is more appropriately held in secondary legislation.

#### Justification for the procedure

76. The negative procedure is appropriate because of the relatively narrow scope of the power and the level of detail provided in the wider amendment, which will be subject to appropriate Parliamentary scrutiny.

### **Power to exclude descriptions of registrable beneficial owners within the register of overseas entities - insertion of a consult mechanism and time-limiting the power**

*Power conferred on:* Secretary of State

*Power exercised by:* regulations made by statutory instrument

*Parliamentary procedure:* negative

#### Context and Purpose

77. At Lords Committee stage, the Government introduced a set of so-called “anti-avoidance” provisions, which included a power for the Secretary of State to make regulations to exclude descriptions of registrable beneficial owners from the requirements.

78. The amendments were made by this Bill to the Economic Crime (Transparency and Enforcement) Act 2022, to ensure that overseas entities cannot subvert their requirements. The purpose of those amendments is to provide that any changes in registrable beneficial owners of an overseas entity subject to registration on the Register of Overseas Entities (ROE) from 28 February 2022 (when the Act was first published in Parliament) to 31 January 2023 (when the transitional period for in-scope entities ended) must be reported to Companies House. The intention is to capture changes in



complex structures that include a trust in the ownership chain. The amendment introduces new information requirements imposed on such ownership.

79. Within that set of amendments, a power was included to enable the Secretary of State, by regulations, to exclude descriptions of registrable beneficial owners from the requirements. This power is being amended to provide that, before making regulations under this power, the Government must consult with the Scottish Government about the regulations.

80. This set of amendments relates to overseas entities subject to the ROE transitional period. Overseas entities owning land in Northern Ireland were not subject to the transitional period and will therefore not be subject to the “anti-avoidance” provisions. There is, therefore, no need to consult with the Northern Ireland Executive before making regulations under this power.

81. The power is being further amended by the addition of a time limit during which the power may be used. The provisions themselves are time-limited, relating to a period between 22 February 2022 and 31 January 2023, requiring a “one-off” submission to Companies House by some overseas entities, and it is therefore appropriate to ensure that the power taken specifically relating to these provisions is capable of being used only during a limited time period.

#### Justification for taking the power

82. The power is needed to ensure that the new provisions described above do not impose undue burdens on businesses. For example, many overseas entities holding UK land are in turn owned by pension funds which are trusts. It would be disproportionate to expect large pension funds to report every change in beneficiary for the relevant period. It is therefore necessary and appropriate to have the power to exclude certain sorts of registrable beneficial owners from the new requirements. This level of detail is more appropriately held in secondary legislation.

83. These amendments to the power provide that: (i) the Scottish Government must be consulted about the use of the power. Such consultation is appropriate because the power relates to some matters that partially engage devolved competence. (ii) the power may only be exercised during a specific period of time after the power comes into force, because the provisions to which it relates are themselves time-limited.

#### Justification for the procedure

84. The negative procedure is appropriate because of the narrow scope of the power and the level of detail that was in the amendments, which were subject to appropriate Parliamentary scrutiny.

## **Clause 181: Enhanced due diligence: designation of high-risk countries**

*Power conferred on:* HM Treasury

*Power exercised by:* HM Treasury Minister

*Parliamentary Procedure:* negative

### Context and Purpose:

85. Schedule 3ZA to the Money Laundering Regulations, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692) (“MLRs”) sets out the UK’s “High-Risk Third Countries” list, inclusion on which triggers enhanced due diligence obligations set out in regulation 33 of the MLRs. Schedule 2 to and section 55 of the Sanctions and Anti-Money Laundering Act 2018 (2018 c.13) (“SAMLA”) require changes to the list to be updated via the made affirmative procedure. The list is updated each time the Financial Action Task Force (“the FATF”) updates its lists of countries identified as having strategic deficiencies in their Anti-Money Laundering, Counter Terrorism Financing and Counter Proliferation Financing (AML/CTF/CPF) systems.

86. Clause 181 removes this requirement for the List to be amended through the made affirmative procedure. New paragraphs in Schedule 2 to SAMLA confer powers on HM Treasury to publish and amend an administrative list of high-risk countries to include those countries identified by the FATF for AML/CTF/CPF deficiencies. The provision will enable a relevant HM Treasury Minister to publish this administrative list of High-Risk Third Countries on the gov.uk website.

87. Clause 181 also introduces a requirement for the inclusion by the UK of any additional countries (i.e., those not listed by the FATF) to be made via the negative procedure.

### Justification for amending this power:

88. This clause will allow for routine updates to the List to be made more rapidly, in accordance with the lists of countries the FATF identifies as having strategic deficiencies in their AML/CTF/CPF systems.

89. The current administrative and parliamentary process for amending the List via secondary legislation can prolong the time taken for necessary, routine updates and delay the implementation of requirements for the regulated

sector to apply enhanced due diligence relating to high-risk third countries by several months.

90. With more rapid updates, the Government can respond more quickly to international findings and provide greater clarity to businesses on which jurisdictions are deemed to be high-risk at the speed necessary, allowing businesses to protect themselves and their customers more effectively from money laundering and terrorism financing exposures.
91. This provision will also reduce pressure on parliamentary and Ministerial time, by removing the need for up to six parliamentary debates per annum for routine updates. This provision nonetheless ensures that Parliament retains the ability to scrutinise the List in the event that the power was to be used to deviate at any point from FATF findings.

Justification for the procedure:

92. The change being made via this clause will, by design, mean that there will only be parliamentary procedure for the publication of, and updates to the List, where such updates are made other than to implement findings by the FATF
93. These changes will streamline the process and allow the Government to meet existing policy commitments in a more efficient way. When the List was introduced in March 2021, the Government committed to updating its List to mirror the FATF's periodic updates and to align the List with the set of countries identified by the FATF as having strategic AML/CTF/CPF deficiencies. The FATF's decisions to identify countries with poor AML controls are underpinned by a robust, technical methodology and the result of high levels of scrutiny during the multilateral process.
94. In the event that the UK list were to deviate from FATF findings, negative procedure is proposed to ensure Parliament can raise any concerns with the list before legislation comes into effect.
95. In the usual way, a Treasury minister will continue to deposit a copy of the outcomes of each FATF plenary, which inform changes to the list, in the libraries of both Houses.

**Failure to prevent fraud: addition of a statutory consult mechanism for Scotland in relation to the large organisations delegated power**

*Power conferred on:* Secretary of State

*Power exercised by:* regulations made by statutory instrument by the Secretary of State

*Parliamentary Procedure:* draft affirmative procedure in the UK Parliament

Context and Purpose

96. As set out in our supplementary delegated power memorandum of 19<sup>th</sup> April, Clause 190 of the Bill includes a threshold based on organisation size to determine organisations in scope of the failure to prevent offence. The threshold is set so that only “large” organisations (according to the definition in the clause which is based on provisions in the Companies Act 2006) are in scope. The power will enable the threshold to be amended by regulations. The power allows the Secretary of State to modify the clause for the purposes of altering the meaning of “large organisation” and (with or without exercising that power) to omit the requirement that the organisations in scope have to be “large organisations” and to make consequential amendments of Clause 193 (failure to prevent fraud: minor definitions). This amendment would require the Secretary of State to consult Scottish Ministers before amending the threshold.

Justification for taking the power

97. The justification remains the same as set out in our previous note to the Committee. This amendment merely provides assurance that Scottish interests will be taken into account before amending the threshold. Whilst business associations are reserved, the base fraud offences under failure to prevent fraud are devolved, meaning Scottish Ministers’ views should be considered before altering which organisations are in scope of the failure to prevent fraud offence.

Justification for the procedure

98. The amendment requires Scottish Ministers to be consulted, but does not affect the existing justification for the affirmative procedure.

**Strategic Lawsuits Against Public Participation**

*Power conferred on:* Lord Chancellor.

*Power exercised by:* regulations made by statutory instrument by the Lord Chancellor, Henry VIII

*Parliamentary procedure:* draft affirmative procedure

Context and Purpose

99. The Government considers that SLAPP claims are a misuse of the justice system to prevent discovery and prosecution of economic crimes and that to combat them and ensure there is access to justice for all parties there must be an appropriate and fair procedure in courts. Therefore, the Government considers that SLAPP claims should be defined in the manner set out in clause [XB] and that new rules should allow that them to be struck out early where the claimant has failed to show that the claim is more likely than not to succeed at trial. In addition, the Government considers that for such claims the defendant should not be required to pay the claimant's costs unless the court considers their own misconduct warrants it.

100. That definition of SLAPP claims is set out in the amendment and will be one where a number of factors are present together. Firstly, the defendant will have exercised their right to freedom of speech on a matter relating to economic crime. Secondly, the disclosure will have to be for a purpose related to the public interest in combating economic crimes. Lastly, the claimant will have misused litigation causing or intending to cause harassment, alarm, distress, expense or any harm or inconvenience.

101. Whilst in the first instance, this new procedure for SLAPPs is only required in the Civil Procedure Rules, the Government considers that there is some evidence that SLAPP claims are also brought in other courts. In addition, in light of the intentions and resources of SLAPP claimants, the Government considers they will bring such claims in other courts to circumvent the effect of these provisions.

102. To ensure SLAPP claimants cannot exploit the justice system in that way, this amendment permits the Lord Chancellor to add by regulations other powers that will have to be exercised to provide the same effect by an appropriate procedure in other courts, as and when the need arises.

103. The power to specify additional rules of court to which the SLAPP claim requirement is to apply is cast as a power to amend the Act, and so is a Henry VIII power. Doing so will ensure that all other courts to which the new procedure must apply appear clearly on the face of the Act.

104. These measures extend to England and Wales only.

#### Justification for making the power

105. Whilst the Government considers that SLAPP claims most commonly arise in civil proceedings to which the Civil Procedure Rules apply, it is apparent that there are other courts in which similar procedures may become

necessary, including as SLAPP claimants seek to exploit the justice system wherever they are able to and have the resources to do so.

106. The power to specify additional rules of court is therefore necessary to ensure all avenues for SLAPP misconduct to exploit the legal system with respect to economic crime are able to be closed.

Justification for making the procedure

107. Powers under this clause will be subject to draft affirmative procedure. This is appropriate given that procedure and definition added will change how the courts deal with cases identified to be SLAPPs, and how costs are addressed in these cases. The affirmative procedure will allow Parliament the appropriate level of scrutiny for such changes.

Department of Business and Trade, Home Office, and Ministry of Justice

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