

Economic Crime and Corporate Transparency Bill

AMENDMENTS
TO BE MOVED
ON REPORT

Clause 46

LORD VAUX OF HARROWDEN

Page 36, line 14, at end insert –

“113BA Required information about members: nominees

The required information about a member includes a statement by the individual, or where the member is a body corporate, or a firm under the law by which it is governed, by an officer of that body corporate or firm, as to whether or not they are holding the shares on behalf of, or subject to the direction of, another person or persons, and if they are –

- (a) where any such person is an individual, the information required by section 113A in relation to that individual;
- (b) where any such person is a body corporate or firm that is a legal person under the law by which it is governed, the information required by this section in relation to that body corporate or firm.”

Member’s explanatory statement

This amendment would require a person or firm holding shares as a nominee to declare whether or not that is the case, and to provide the details of the person or persons on whose behalf, or under whose control the shares are held. This would assist the company in identifying Persons of Significant Control, and would introduce an offence for a nominee who did not declare themselves as such.

Page 36, line 14, at end insert –

“113BA Required information about members: shareholding threshold

If the member, or any person identified in accordance with section *(Required information about members: nominees)* (Required information about members: nominees), holds more than 5% of any class of share or more than 5% of the total voting rights, required information also includes a statement confirming that the member’s and such person’s identity has been verified (see section 1110A).”

Member's explanatory statement

This amendment would reduce the shareholding threshold that would require the identity to be verified down from 25% to 5%. It references persons identified by virtue of another amendment to Clause 46 in the name of Lord Vaux of Harrowden.

After Clause 160

LORD VAUX OF HARROWDEN

Insert the following new Clause—

“Updating the register of overseas entities

- (1) The Economic Crime (Transparency and Enforcement) Act 2002 is amended as follows.
- (2) In section 7, after subsection (8) insert—
 - “(8A) A registered overseas entity must, as soon as reasonably possible and in any event within 14 days of becoming aware of any change, deliver to the registrar details of any change to the information that has been previously provided to the registrar in accordance with section 4 or, if information has been previously delivered to the registrar under this section, any change to the latest information provided under this section, including the date such change occurred.
 - (8B) A registered overseas entity must deliver to the registrar the information required in accordance with subsection (8A), or deliver to the registrar a statement that there has been no change to the information currently held on the register, no more than 14 days prior to the acquisition or disposal of any qualifying estate in the United Kingdom, and may not acquire or dispose of a qualifying estate in the United Kingdom unless such information or statement has been delivered no more than 14 days prior to the acquisition or disposal.
 - (8C) For the purposes of this section, “qualifying estate” has the meaning given by paragraph 1 of Schedule 4A to the Land Registration Act 2002.”
- (3) In section 8, at the end of subsection (3) omit “(1).”

Member's explanatory statement

This amendment would require that changes be notified to the registrar within 14 days of becoming aware of such change, bringing the register into line with the rules that apply to Persons with Significant Control under the Companies Act 2006, and adds an obligation to update the register immediately prior to property transactions in order to protect innocent counterparties.

Insert the following new Clause—

“Persons with control over qualifying estates

- (1) Schedule 2 of the Economic Crime (Transparency and Enforcement) Act 2022 is amended as follows.
- (2) In paragraph 6 the existing text becomes sub-paragraph (1).
- (3) At the end of paragraph 6 insert—

After Clause 160 - continued

“Condition 6 is that X has the right to exercise, or actually exercises, significant influence or control over any qualifying estate held by Y.

- (2) For the purposes of this Schedule, “qualifying estate” has the meaning given by paragraph 1 of Schedule 4A to the Land Registration Act 2002.””

Member’s explanatory statement

The Economic Crime (Transparency and Enforcement) Act 2022 identifies the beneficial owners of the overseas entity, but it currently does not identify persons who have control of the property registered in the name of that entity through nominee arrangements or similar. This amendment seeks to close that loophole by extending the definition of registerable beneficial owners to include such arrangements.

After Clause 187

LORD SHARPE OF EPSOM

Insert the following new Clause—

“Attributing criminal liability for economic crimes to certain bodies

Attributing criminal liability for economic crimes to certain bodies

- (1) If a senior manager of a body corporate or partnership (“the organisation”) acting within the actual or apparent scope of their authority commits a relevant offence after this section comes into force, the organisation is also guilty of the offence.
- This is subject to subsection (3).
- (2) “Relevant offence” means an act which constitutes—
- (a) an offence listed in Schedule (*Criminal liability of bodies: economic crimes*) (“a listed offence”),
 - (b) an attempt or conspiracy to commit a listed offence,
 - (c) an offence—
 - (i) under Part 2 of the Serious Crime Act 2007 (England and Wales and Northern Ireland: encouraging or assisting crime) in relation to a listed offence, or
 - (ii) under the law of Scotland of inciting the commission of a listed offence, or
 - (d) aiding, abetting, counselling or procuring the commission of a listed offence.
- (3) Where no act or omission forming part of the relevant offence took place in the United Kingdom, the organisation is not guilty of an offence under subsection (1) unless it would be guilty of the relevant offence had it carried out the acts that constituted that offence (in the location where the acts took place).
- (4) In this section—
- “body corporate” includes a body incorporated outside the United Kingdom, but does not include—
- (a) a corporation sole, or

After Clause 187 - continued

- (b) a partnership that, whether or not a legal person, is not regarded as a body corporate under the law by which it is governed;

“partnership” means –

- (a) a partnership within the meaning of the Partnership Act 1890;
 (b) a limited partnership registered under the Limited Partnerships Act 1907;
 (c) a firm or other entity of a similar character to one within paragraph (a) or (b) formed under the law of a country or territory outside the United Kingdom;

“senior manager”, in relation to a body corporate or partnership, means an individual who plays a significant role in –

- (a) the making of decisions about how the whole or a substantial part of the activities of the body corporate or (as the case may be) partnership are to be managed or organised, or
 (b) the actual managing or organising of the whole or a substantial part of those activities.”

Member’s explanatory statement

This amendment sets out circumstances in which liability for an offence committed by a senior manager may be attributed to a body corporate or partnership.

Insert the following new Clause –

“Power to amend list of economic crimes

- (1) The Secretary of State may by regulations amend Schedule (*Criminal liability of bodies: economic crimes*) by –
- (a) removing an offence from the list in the Schedule, or
 (b) adding an offence to that list.
- (2) The power in subsection (1) is exercisable by the Scottish Ministers (and not by the Secretary of State) so far as it may be used to make provision that would be within the legislative competence of the Scottish Parliament if contained in an Act of that Parliament.
- (3) The power in subsection (1) is exercisable by the Department of Justice in Northern Ireland (and not by the Secretary of State) so far as it may be used to make 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 for an Act of the Northern Ireland Assembly, result in the Bill requiring the consent of the Secretary of State.
- (4) The Secretary of State may from time to time by regulations restate Schedule (*Criminal liability of bodies: economic crimes*) as amended by virtue of subsection (1) to (3) (without changing the effect of the Schedule).”

Member’s explanatory statement

See the explanatory statement for new Clause (Attributing criminal liability for economic crimes to certain bodies).

Insert the following new Clause—

“Offences under section (*Attributing criminal liability for economic crimes to certain bodies*) committed by partnerships

- (1) Proceedings for an offence alleged to have been committed by a partnership by virtue of section (*Attributing criminal liability for economic crimes to certain bodies*) must be brought in the name of the partnership (and not in that of any of the partners).
- (2) For the purposes of such proceedings—
 - (a) rules of court relating to the service of documents have effect as if the partnership were a body corporate, and
 - (b) the following provisions apply as they apply in relation to a body corporate—
 - (i) section 33 of the Criminal Justice Act 1925 and Schedule 3 to the Magistrates’ Courts Act 1980;
 - (ii) section 18 of the Criminal Justice Act (Northern Ireland) 1945 (c. 15 (N.I.)) and Schedule 4 to the Magistrates’ Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26));
 - (iii) sections 34(2), 66(6AA) and 72D(2) of the Criminal Procedure (Scotland) Act 1995.
- (3) A fine imposed on the partnership on its conviction for an offence committed by virtue of section (*Attributing criminal liability for economic crimes to certain bodies*) is to be paid out of the partnership assets.
- (4) In this section “partnership” has the same meaning as in section (*Attributing criminal liability for economic crimes to certain bodies*).”

Member’s explanatory statement

*This amendment makes provision in relation to offences committed by partnerships by virtue of section (*Attributing criminal liability for economic crimes of certain bodies*).*

After Schedule 10

LORD SHARPE OF EPSOM

Insert the following new Schedule—

“SCHEDULE

CRIMINAL LIABILITY OF BODIES: ECONOMIC CRIMES

Common law offences

- 1 Cheating the public revenue.
- 2 Conspiracy to defraud.
- 3 In Scotland, the following offences at common law—
 - (a) fraud;
 - (b) uttering;
 - (c) embezzlement;
 - (d) theft.

Statutory offences

- 4 An offence under any of the following provisions of the Theft Act 1968—
 - (a) section 1 (theft);

After Schedule 10 - continued

- (b) section 17 (false accounting);
 - (c) section 19 (false statements by company directors etc);
 - (d) section 20 (suppression etc of documents);
 - (e) section 24A (dishonestly retaining a wrongful credit).
- 5 An offence under any of the following provisions of the Theft Act (Northern Ireland) 1969 –
- (a) section 1 (theft);
 - (b) section 17 (false accounting);
 - (c) section 18 (false statements by company directors etc);
 - (d) section 19 (suppression etc of documents);
 - (e) section 23A (dishonestly retaining a wrongful credit).
- 6 An offence under any of the following provisions of the Customs and Excise Management Act 1979 –
- (a) section 68 (offences in relation to exportation of prohibited or restricted goods);
 - (b) section 167 (untrue declarations etc);
 - (c) section 170 (fraudulent evasion of duty).
- 7 An offence under the Forgery and Counterfeiting Act 1981 (forgery, counterfeiting and kindred offences).
- 8 An offence under section 72 of the Value Added Tax Act 1994 (fraudulent evasion of VAT).
- 9 An offence under section 46A of the Criminal Law (Consolidation) (Scotland) Act 1995 (false monetary instruments).
- 10 An offence under any of the following sections of the Financial Services and Markets Act 2000 –
- (a) section 23 (contravention of prohibition on carrying on regulated activity unless authorised or exempt);
 - (b) section 25 (contravention of restrictions on financial promotion);
 - (c) section 85 (prohibition on dealing etc in transferable securities without approved prospectus);
 - (d) section 398 (misleading the FCA or PRA).
- 11 An offence under any of the following sections of the Terrorism Act 2000 –
- (a) section 15 (fund-raising);
 - (b) section 16 (use and possession);
 - (c) section 17 (funding arrangements);
 - (d) section 18 (money laundering);
 - (e) section 63 (terrorist finance: jurisdiction).
- 12 An offence under any of the following sections of the Proceeds of Crime Act 2002 –
- (a) section 327 (concealing etc criminal property);
 - (b) section 328 (arrangements facilitating acquisition etc of criminal property);
 - (c) section 329 (acquisition, use and possession of criminal property);
 - (d) section 330 (failing to disclose knowledge or suspicion of money laundering);
 - (e) section 333A (tipping off: regulated sector).

After Schedule 10 - continued

- 13 An offence under section 993 of the Companies Act 2006 (fraudulent trading).
- 14 An offence under any of the following sections of the Fraud Act 2006—
 - (a) section 1 (fraud);
 - (b) section 6 (possession etc of articles for use in frauds);
 - (c) section 7 (making or supplying articles for use in frauds);
 - (d) section 9 (participating in fraudulent business carried on by sole trader);
 - (e) section 11 (obtaining services dishonestly).
- 15 An offence under any of the following sections of the Bribery Act 2010—
 - (a) section 1 (bribing another person);
 - (b) section 2 (being bribed);
 - (c) section 6 (bribery of foreign public officials).
- 16 An offence under section 49 of the Criminal Justice and Licensing (Scotland) Act 2010 (possession, making or supplying articles for use in frauds).
- 17 An offence under any of the following sections of the Financial Services Act 2012—
 - (a) section 89 (misleading statements);
 - (b) section 90 (misleading impressions);
 - (c) section 91 (misleading statements etc in relation to benchmarks).
- 18 An offence under regulation 86 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.
- 19 An offence under regulations made under section 49 of the Sanctions and Anti-Money Laundering Act 2018 (money laundering and terrorist financing etc).
- 20 (1) An offence under an instrument made under section 2(2) of the European Communities Act 1972 for the purpose of implementing, or otherwise in relation to, EU obligations created or arising by or under an EU financial sanctions Regulation.
 - (2) An offence under an Act or under subordinate legislation where the offence was created for the purpose of implementing a UN financial sanctions Resolution.
 - (3) An offence under paragraph 7 of Schedule 3 to the Anti-terrorism, Crime and Security Act 2001 (freezing orders).
 - (4) An offence under paragraph 30 or 30A of Schedule 7 to the Counter-Terrorism Act 2008 where the offence relates to a requirement of the kind mentioned in paragraph 13 of that Schedule.
 - (5) An offence under paragraph 31 of Schedule 7 to the Counter-Terrorism Act 2008.
 - (6) An offence under regulations made under section 1 of the Sanctions and Anti-Money Laundering Act 2018 (sanctions regulations).
 - (7) In this paragraph—

After Schedule 10 - continued

“EU financial sanctions Regulation” and “UN financial sanctions Resolution” have the same meanings as in Part 8 of the Policing and Crime Act 2017 (see section 143 of that Act);
 “subordinate legislation” has the same meaning as in the Interpretation Act 1978.”

Member’s explanatory statement

This amendment sets out the list of offences in relation to which liability may be attributed to the body in accordance with Clause (Attributing criminal liability for economic crimes to certain bodies)(1).

Clause 188

LORD SHARPE OF EPSOM

Page 177, line 23, after “organisation” insert “(see sections 190 and (Large organisations: parent undertakings))”

Member’s explanatory statement

This amendment inserts a cross-reference relating to new Clause (Large organisations: parent undertakings).

Page 177, line 28, after “subsidiary” insert “undertaking”

Member’s explanatory statement

This amendment and my amendment at page 178, line 2 substitute the term “subsidiary undertaking” for “subsidiary”, for consistency with my amendment at page 178, line 3.

Page 177, line 29, at end insert –

- “(1A) A relevant body is also guilty of an offence under subsection (1) if –
- (a) an employee of the relevant body commits a fraud offence intending to benefit (whether directly or indirectly) the relevant body,
 - (b) the fraud offence is committed in a financial year of a parent undertaking of which the relevant body is a subsidiary undertaking (“the year of the fraud offence”), and
 - (c) the parent undertaking is a relevant body which is a large organisation.”

Member’s explanatory statement

This amendment establishes that an offence of failure to prevent fraud may be committed by a subsidiary of a large organisation where an employee of the subsidiary commits a fraud offence, intending to benefit the subsidiary.

Page 177, line 39, leave out “as mentioned in subsection (1)”

Member’s explanatory statement

This amendment omits unnecessary words.

Page 178, line 2, after “subsidiary” insert “undertaking”

Member's explanatory statement

See the explanatory note for my amendment at page 177, line 28.

Page 178, line 3, at end insert –

“(6A) For the purposes of this section a person is also associated with a relevant body if the person is an employee of a subsidiary undertaking of the relevant body; but for the purpose of determining whether an offence is committed by virtue of this subsection, subsection (1) has effect with the omission of paragraph (b) (and the “or” preceding it).”

Member's explanatory statement

This amendment establishes that an offence of failure to prevent fraud may be committed where an employee of a subsidiary of a large organisation commits a fraud offence, intending to benefit the large organisation.

Clause 190

LORD SHARPE OF EPSOM

Page 179, line 35, at end insert –

“(1A) The reference in subsection (1) to a relevant body does not include a relevant body which is a parent undertaking (as to which see section (*Large organisations: parent undertakings*)).”

Member's explanatory statement

See the explanatory statement for new Clause (*Large organisations: parent undertakings*).

Page 180, line 16, after “(7)” insert “and section (*Large organisations: parent undertakings*)”

Member's explanatory statement

This amendment enables new Clause (*Large organisations: parent undertakings*) to be modified for the purpose of altering the meaning of “large organisation”.

After Clause 190

LORD SHARPE OF EPSOM

Insert the following new Clause –

“Large organisations: parent undertakings

(1) For the purposes of section 188(1) and (1A) a relevant body which is a parent undertaking is a “large organisation” only if the group headed by it satisfied two or more of the following conditions in the financial year of the body that precedes the year of the fraud offence –

Aggregate turnover	More than £36 million net (or £43.2 million gross)
Aggregate balance sheet total	More than £18 million net (or £21.6 million gross)
Aggregate number of employees	More than 250.

After Clause 190 - continued

- (2) The aggregate figures are ascertained by aggregating the relevant figures determined in accordance with section 190 for each member of the group.
- (3) In relation to the aggregate figures for turnover and balance sheet total, “net” and “gross” –
 - (a) except where paragraph (b) applies, have the meaning given by subsection (6) of section 466 of the Companies Act 2006;
 - (b) in the case of accounts that are not of a kind specified in the definition of “net” in that subsection, have a corresponding meaning.
- (4) In this section –
 - “balance sheet total” (in relation to a relevant body and a financial year) has the same meaning as in section 190;
 - “group” means a parent undertaking and its subsidiary undertakings;
 - “turnover” (in relation to a UK company or other relevant body) has the same meaning as in section 190;
 - “year of the fraud offence” is to be interpreted in accordance with section 188(1) or (1A) (as the case requires).
- (5) In this section “balance sheet total” and “turnover”, in relation to a subsidiary undertaking which is not a relevant body, have a meaning corresponding to the meaning given by subsection (4).”

Member’s explanatory statement

This amendment and my amendment at page 179, line 35, enable certain parent undertakings to qualify as a “large organisation” for the purposes of the offence of failure to prevent fraud.

Clause 193

LORD SHARPE OF EPSOM

Page 181, line 23, at end insert –

“(5A) “Parent undertaking” has the same meaning as in the Companies Acts (see section 1162 of the Companies Act 2006).”

Member’s explanatory statement

This amendment is supplementary to new Clause (Large organisations: parent undertakings).

Page 181, line 32, leave out subsection (8) and insert –

“(8) “Subsidiary undertaking” has the same meaning as in the Companies Acts (see section 1162 of the Companies Act 2006).”

Member’s explanatory statement

This amendment is supplementary to new Clause (Large organisations: parent undertakings).

After Clause 202

BARONESS KRAMER

Insert the following new Clause –

“Whistleblowing: economic crime

- (1) Whistleblowing is defined for the purposes of this section as any disclosure of information suggesting that, in the reasonable opinion of the whistleblower, an economic crime –
 - (a) has occurred,
 - (b) is occurring, or
 - (c) is likely to occur.
- (2) The Secretary of State must by regulations made by statutory instrument, within the period of 12 months beginning with the day on which this Act is passed, set up a body corporate, to be known as the Office for Whistleblowers, to receive reports of whistleblowing as defined in subsection (1).
- (3) Regulations under subsection (2) may not be made unless a draft of the statutory instrument containing them has been laid before, and approved by, each House of Parliament.
- (4) The Office for Whistleblowers must –
 - (a) protect whistleblowers from detriment resulting from their whistleblowing,
 - (b) ensure that disclosures by whistleblowers are investigated, and
 - (c) escalate information and evidence of wrongdoing outside of its remit to such other appropriate authority as the regulations may provide or otherwise as the Office may determine.
- (5) The objectives of the Office for Whistleblowers are –
 - (a) to encourage and support whistleblowers to make whistleblowing reports,
 - (b) to provide an independent, confidential and safe environment for making and receiving whistleblowing information,
 - (c) to provide information and advice on whistleblowing, and
 - (d) to act on evidence of detriment to the whistleblower according to such guidance as may be set out by the Secretary of State in the regulations.
- (6) The Office for Whistleblowers must report annually to Parliament on the exercise of its duties, objectives and functions.”

Member’s explanatory statement

This amendment would require the Secretary of State to set up an Office for Whistleblowers to receive reports of whistleblowing in relation to economic crime.

Clause 204

LORD SHARPE OF EPSOM

Page 192, line 15, at end insert –

- “(ea) regulations made by the Secretary of State under section (*Power to amend list of economic crimes*)(1);”

Member's explanatory statement

This amendment provides for regulations under new Clause (Power to amend list of economic crimes) made by the Secretary of State to be subject to the affirmative procedure.

Page 192, line 24, after “section” insert “(Power to amend list of economic crimes)(1) or”

Member's explanatory statement

This amendment provides for regulations under new Clause (Power to amend list of economic crimes) made by the Scottish Ministers to be subject to the affirmative procedure.

Page 192, line 28, after “section” insert “(Power to amend list of economic crimes)(1) or”

Member's explanatory statement

This amendment provides for regulations under new Clause (Power to amend list of economic crimes) made by the Northern Ireland Department to be subject to the affirmative procedure.

Clause 206

LORD SHARPE OF EPSOM

Page 193, line 10, leave out “Section 201 comes” and insert “The following come”

Member's explanatory statement

This amendment and my other amendment to Clause 206 provide for new Clauses (Attributing liability for economic crimes), (Power to amend list of economic crimes) and (Offences under section (Attributing criminal liability for economic crimes to certain bodies) committed by partnerships) and new Schedule (Criminal liability of bodies: economic crimes) to come into force two months after Royal Assent.

Page 193, line 11, at end insert “—

- (a) section (Attributing criminal liability for economic crimes to certain bodies) and Schedule (Criminal liability of bodies: economic crimes);
- (b) section (Power to amend list of economic crimes);
- (c) section (Offences under section (Attributing criminal liability for economic crimes to certain bodies) committed by partnerships);
- (d) section 201.”

Member's explanatory statement

See the explanatory statement for my other amendment to Clause 206.

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15 June 2023
