

Economic Crime and Corporate Transparency Bill

SECOND
MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
ON REPORT

The amendments have been marshalled in accordance with the Order of 15th June 2023, as follows –

Clauses 1 to 49	Clauses 170 to 173
Schedules 1	Schedule 7
Clauses 50 and 51	Clauses 174
Schedule 2	Schedule 8
Clauses 52 to 91	Clause 175
Schedule 3	Schedule 9
Clauses 92 to 107	Clauses 176 to 187
Schedule 4	Schedule 10
Clauses 108 to 149	Clauses 188
Schedule 5	Schedule 11
Clauses 150 to 169	Clauses 189 to 208
Schedule 6	Title

[Amendments marked ★ are new or have been altered]

**Amendment
No.**

Schedule 8

LORD SHARPE OF EPSOM

- 90 Page 263, leave out lines 24 to 26 and insert –
- “(10) The Secretary of State may not make regulations under subsection (7) unless the Secretary of State has –
- (a) consulted the Scottish Ministers and the Department of Justice, and
 - (b) given a notice containing the relevant information to the Scottish Ministers and the Department of Justice.
- (11) Consultation under subsection (10)(a) must include consultation about any effects that the Secretary of State considers the regulations may have on –
- (a) a person in Scotland or Northern Ireland (as the case may be) applying for the forfeiture of cryptoassets held in a crypto wallet that is subject to a crypto wallet freezing order, and

Schedule 8 - continued

- (b) a sheriff or court in Scotland or a court in Northern Ireland (as the case may be) considering such an application or making an order for such forfeiture.
- (12) In subsection (10)(b) “relevant information” means—
 - (a) a description of—
 - (i) the process undertaken in order to comply with subsection (10)(a) in relation to the Scottish Ministers or the Department of Justice (as the case may be), and
 - (ii) any agreement, objection or other views expressed as part of that process by the Scottish Ministers or the Department of Justice (as the case may be), and
 - (b) an explanation of whether and how such views have been taken into account in the regulations (including, in a case where the Secretary of State proposes to make the regulations despite an objection, an explanation of the reasons for doing so).”

Member’s explanatory statement

This amendment provides for certain consultation requirements to apply before regulations may be made under inserted section 303Z42(7) of the Proceeds of Crime Act 2002 (forfeiture orders).

91 [Withdrawn]

Clause 181

LORD SHARPE OF EPSOM

This amendment replaces Amendment 91

91A Page 171, line 27, leave out from “to” to end of line 28 and insert “prescribed high-risk countries.

- (3) Provision made by virtue of sub-paragraph (2) may in particular refer to a list of countries published by the Financial Action Task Force as it has effect from time to time.”

Member’s explanatory statement

This removes the power to make regulations about enhanced customer due diligence by reference to a list of high-risk countries published by the Treasury. Instead it allows regulations to refer to a list of countries published by the Financial Action Task Force (the regulations could also refer to that list subject to specified exceptions).

92 [Withdrawn]

This amendment replaces Amendment 92

92A Page 171, line 34, leave out “, omit subsections (2) and (9)” and insert “—

- (a) in subsection (2), for the first “which” substitute “made during the period of 6 months beginning with the day on which the Economic Crime and Corporate Transparency Act 2023 is passed if the instrument”;

Clause 181 - continued

- (b) in subsection (9), for the words from “if” to the end substitute “if they only make provision prescribing high-risk countries by virtue of paragraph 4(2) of Schedule 2”.

Member’s explanatory statement

This amendment means that regulations made within 6 months of royal assent are subject to the made affirmative procedure if all they do is make provision about countries in relation to which enhanced customer due diligence measures are required to be taken; regulations made after that period are subject to the draft affirmative procedure.

After Clause 181

LORD AGNEW OF OULTON

93 Insert the following new Clause—

“HMRC anti-money laundering function

After section 5 of the Commissioners of Revenue and Customs Act 2005 (Commissioners’ initial functions), insert—

“5A Commissioners’ anti-money laundering functions

- (1) The Commissioners are responsible for anti-money laundering supervision.
- (2) The Commissioners must treat the function in subsection (1) as a priority equal to the functions in section 5.””

Member’s explanatory statement

This clause requires HMRC to prioritise its anti-money laundering supervisory function and its revenue raising duties equally, removing any conflict between the two. Approximately half of corporate entities in the UK are established through Trust and Corporate Service Providers, supervised by HMRC. They pose a high risk of money laundering as creators of shell companies. HMRC has faced criticism over its supervision.

After Clause 183LORD FAULKS
LORD THOMAS OF GRESFORD

94 Insert the following new Clause—

“Strategic lawsuits against public participation

- (1) It is an offence for a person or entity without reasonable excuse to threaten civil litigation against another person or entity with intent to suppress the publication of any information likely to be relevant to the investigation of an economic crime.
- (2) A person guilty of an offence under this section is liable—
 - (a) on summary conviction in England and Wales, to a fine;
 - (b) on summary conviction in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum;
 - (c) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both).”

Member's explanatory statement

This amendment introduces a new criminal offence to deal with groundless threats in pursuance of SLAPPS in order to suppress investigations into economic crimes.

Clause 187

LORD ETHELTON
LORD VERDIRAME

- 95 Page 176, line 33, leave out paragraph (a) and insert –
“(a) constitutes the offences of fraud, false accounting, money laundering or offences under any binding sanctions regime, whether at common law or in primary or secondary legislation,”

Member's explanatory statement

This amendment provides for a shorter and more focused definition of “economic crime” than is presently to be found in Clause 187(1) and Schedule 10.

LORD SHARPE OF EPSOM

- 96 Page 176, line 34, leave out “, conspiracy or incitement” and insert “or conspiracy”

Member's explanatory statement

This amendment and my other amendments to clause 187 correct the definition of “economic crime” to include encouraging or assisting an offence under Part 2 of the Serious Crime Act, which replaced the common law offence of incitement in England and Wales and Northern Ireland.

LORD ETHELTON
LORD VERDIRAME

- 97 Page 176, line 34, leave out “a listed” and insert “such an”

Member's explanatory statement

This amendment is consequential to the amendment to the definition of “economic crime” in Clause 187(1) at page 176, line 33.

LORD SHARPE OF EPSOM

- 98 Page 176, line 35, at end insert –
“(ba) constitutes 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,”

Member's explanatory statement

See the explanatory statement to my first amendment to clause 187.

LORD ETHELTON
LORD VERDIRAME

- 99 Page 176, line 37, leave out “a listed” and insert “such an”

Member's explanatory statement

This amendment is consequential to the amendment to the definition of "economic crime" in Clause 187(1) at page 176, line 33.

- 100 Page 176, line 38, leave out from "constitute" to "if" in line 39 and insert "an offence specified in paragraphs (a) to (c)"

Member's explanatory statement

This amendment is consequential to the amendment to the definition of "economic crime" in Clause 187(1) at page 176, line 33.

LORD SHARPE OF EPSOM

- 101 Page 176, line 39, after "(b)" insert ", (ba)"

Member's explanatory statement

This amendment is consequential on my other amendments to clause 187.

After Clause 187

LORD BELLAMY

- 102 Insert the following new Clause –

"Power to strike out certain claims

Strategic litigation against public participation: requirement to make rules of court

- (1) The power to make Civil Procedure Rules must be exercised so as to secure that Civil Procedure Rules include provision for ensuring that a claim may be struck out before trial where the court determines –
 - (a) that the claim is a SLAPP claim (see section (*Meaning of "SLAPP claim"*)), and
 - (b) that the claimant has failed to show that it is more likely than not that the claim would succeed at trial.
- (2) Rules made in compliance with subsection (1) may include rules about how a determination under that subsection is to be made, including (in particular) –
 - (a) rules for determining the nature and extent of the evidence that may or must be considered;
 - (b) rules about the extent to which evidence may or must be tested;
 - (c) rules permitting or requiring the court to determine matters of fact by way of presumptions.
- (3) Rules made in compliance with subsection (1) must include rules under which the court may make a determination under that subsection of its own motion.
- (4) The power to make Civil Procedure Rules must be exercised so as to secure that Civil Procedure Rules include provision for securing that, in respect of a SLAPP claim, a court may not order a defendant to pay the claimant's costs except where, in the court's view, misconduct of the defendant in relation to the claim justifies such an order.
- (5) The Lord Chancellor may by regulations provide for subsections (1) to (4) to apply in relation to any rules of court that may be specified in the regulations as those subsections apply in relation to Civil Procedure Rules.

After Clause 187 - continued

(6) In this section—

“court” includes a tribunal;

“rules of court” means rules relating to the practice and procedure of a court or tribunal.”

Member’s explanatory statement

This new clause, new clause (Meaning of “SLAPP claim”) and my amendments at page 191, line 37, page 192 at line 33 and 192, line 38 provide for the making of rules of court with a view to preventing claimants from improperly using civil proceedings to restrain certain disclosures of information relating to economic crime.

103

Insert the following new Clause—

Meaning of “SLAPP” claim

- (1) For the purposes of section (*Strategic litigation against public participation: requirement to make rules of court*) a claim is a “SLAPP claim” if—
 - (a) the claimant’s behaviour in relation to the matters complained of in the claim has, or is intended to have, the effect of restraining the defendant’s exercise of the right to freedom of speech,
 - (b) any of the information that is or would be disclosed by the exercise of that right has to do with economic crime,
 - (c) any part of that disclosure is or would be made for a purpose related to the public interest in combating economic crime, and
 - (d) any of the behaviour of the claimant in relation to the matters complained of in the claim is intended to cause the defendant—
 - (i) harassment, alarm or distress,
 - (ii) expense, or
 - (iii) any other harm or inconvenience,
 beyond that ordinarily encountered in the course of properly conducted litigation.
- (2) For the purposes of determining whether a claim meets the condition in subsection (1)(a) or (c), any limitation prescribed by law on the exercise of the right to freedom of speech (for example in relation to the making of defamatory statements) is to be ignored.
- (3) For the purposes of this section, information mentioned in subsection (1)(b) “has to do with economic crime” if—
 - (a) it relates to behaviour or circumstances which the defendant reasonably believes (or, as the case requires, believed) to be evidence of the commission of an economic crime, or
 - (b) the defendant has (or, as the case requires, had) reason to suspect that an economic crime may have occurred and believes (or, as the case requires, believed) that the disclosure of the information would facilitate an investigation into whether such a crime has (or had) occurred.
- (4) In determining whether any behaviour of the claimant falls within subsection (1)(d), the court may, in particular, take into account—

After Clause 187 - continued

- (a) whether the behaviour is a disproportionate reaction to the matters complained of in the claim, including whether the costs incurred by the claimant are out of proportion to the remedy sought;
 - (b) whether the defendant has access to fewer resources with which to defend the claim than another person against whom the claimant could have brought (but did not bring) proceedings in relation to the matters complained of in the claim;
 - (c) any relevant failure, or anticipated failure, by the claimant to comply with a pre-action protocol, rule of court or practice direction, or to comply with or follow a rule or recommendation of a professional regulatory body.
- (5) For the purposes of subsection (4)(c) a failure, or anticipated failure, is “relevant” so far as it relates to –
- (a) the choice of jurisdiction,
 - (b) the use of dilatory strategies,
 - (c) the nature or amount of material sought on disclosure,
 - (d) the way to respond to requests for comment or clarification,
 - (e) the use of correspondence,
 - (f) making or responding to offers to settle, or
 - (g) the use of alternative dispute resolution procedures.
- (6) In this section –
- “court” has the same meaning as in section (*Strategic litigation against public participation: requirement to make rules of court*);
 - “economic crime” has the meaning given by section 187(1);
 - “the right to freedom of speech” means the right set out in Article 10 of the European Convention on Human Rights (freedom of expression) so far as it consists of a right to impart ideas, opinions or information by means of speech, writing or images (including in electronic form).
- (7) In the definition of “the right to freedom of speech” in subsection (6) “the European Convention on Human Rights” means the Convention for the Protection of Human Rights and Fundamental Freedoms agreed by the Council of Europe at Rome on 4 November 1950 as it has effect for the time being in relation to the United Kingdom.”

Member’s explanatory statement

See the explanatory statement for new clause (Strategic litigation against public participation: requirement to make rules of court).

LORD SHARPE OF EPSOM

104

Insert the following new Clause –

“Attributing criminal liability for economic crimes to certain bodies

Attributing criminal liability for economic crimes to certain bodies

After Clause 187 - continued

- (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
- (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.

105 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).

106 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.

After Clause 187 - continued

- (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).

LORD ALTON OF LIVERPOOL
LORD LEIGH OF HURLEY
LORD COAKER
LORD FOX

107

Insert the following new Clause—

“Duty to disclose funds and economic resources

After section 16 of the Sanctions and Anti-Money Laundering Act 2018, insert—

“16A Duty to disclose funds and economic resources

- (1) Any regulations made under section 1 (power to make sanctions regulations) must, for the purposes of preventing an offence under those regulations, make provision requiring designated persons—
 - (a) to report to the Treasury or another competent authority, within three months after such regulations are made or within three months from the date of designation, whichever is the latest, the funds or economic resources that—
 - (i) are currently held, owned or controlled by them within the United Kingdom, and
 - (ii) were held, owned or controlled by them within the United Kingdom six months prior to the date of designation, and
 - (b) to cooperate with the Treasury or other competent authority in any verification of such information.
- (2) A failure to comply with a requirement in subsection (1) may be considered as participation in activities the object or effect of which is (whether directly or indirectly) to circumvent such requirement.
- (3) Where a designated person has been convicted of an offence by virtue of subsection (2), a court proceeding under section 6, 92 or 156 of the Proceeds of Crime Act 2002 (confiscation orders) must consider such person as benefitting by the value of any assets concealed through such criminal conduct.
- (4) Assets concealed as a result of a failure to comply with a requirement in subsection (1) constitute recoverable property for the purposes of Part 5 of the Proceeds of Crime Act 2002 (civil recovery of the proceeds etc. of unlawful conduct).

After Clause 187 - continued

- (5) A court may only make an order for the confiscation or forfeiture of concealed assets if, or to the extent that, it would not be just and equitable to require the designated person to pay the amount recoverable under subsection (3) or to forfeit the property recoverable under subsection (4).
- (6) Regulations under subsection (1) may also be made in relation to a person who is subject to an International Criminal Court warrant for an offence that would constitute an economic crime in the United Kingdom.””

Member’s explanatory statement

This amendment says that sanctions regulations must, for the purposes of preventing an offence under those regulations, require designated persons to disclose all assets they own or control in the UK. Failure to disclose such assets is defined as a form of sanctions evasion, which is already criminalized under UK law, and which could result in asset recovery under the Proceeds of Crime Act.

Schedule 10

LORD ETHELTON
LORD VERDIRAME

108 Leave out Schedule 10

Member’s explanatory statement

In consequence of the proposed redefinition of “economic crime” in Clause 187(1) of the Bill, Schedule 10 is redundant.

After Schedule 10

LORD SHARPE OF EPSOM

109 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);
 - (b) section 17 (false accounting);
 - (c) section 19 (false statements by company directors etc);

After Schedule 10 - continued

- (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).
- 13 An offence under section 993 of the Companies Act 2006 (fraudulent trading).

After Schedule 10 - continued

- 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—

“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);

After Schedule 10 - continued

“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 GARNIER
LORD VAUX OF HARROWDEN
BARONESS BOWLES OF BERKHAMSTED
BARONESS MORGAN OF COTES

110 Page 177, line 23, leave out “which is a large organisation”

Member’s explanatory statement

This amendment, together with the amendment to leave out Clause 190, would remove the exemption for organisations that are not “large organisations” from the failure to prevent regime so that there are no exemptions, although the statutory defence will apply to all organisations.

LORD SHARPE OF EPSOM

111 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*).*

112 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.

113 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.

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

Member's explanatory statement

This amendment omits unnecessary words.

- 115** Page 178, line 2, after “subsidiary” insert “undertaking”

Member's explanatory statement

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

- 116** 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.

Schedule 11

LORD GARNIER

- 116A** Page 343, line 5, at end insert –

“*Money laundering offences*

7 An offence under the following provisions of the Proceeds of Crime Act 2002 –

- (a) section 327 (concealing etc);
- (b) section 328 (arrangements);
- (c) section 329 (acquisition, use and possession).”

Clause 190

LORD GARNIER

- 117** Page 179, leave out lines 31 to 35 and insert –

Clause 190 - continued

Turnover	More than £10 million
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Balance sheet total	More than £3 million
Number of employees	More than 25.

LORD SHARPE OF EPSOM

118 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*).*

119 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”.*

120 Page 180, line 23, at end insert –

“(6A) Before making regulations under subsection (5) or (6) the Secretary of State must consult –

- (a) the Scottish Ministers, and
- (b) the Department of Justice in Northern Ireland.”

Member’s explanatory statement

This amendment requires consultation to take place before the powers in subsections (5) and (6) are exercised.

LORD GARNIER
LORD VAUX OF HARROWDEN
BARONESS BOWLES OF BERKHAMSTED
BARONESS MORGAN OF COTES

121 Leave out Clause 190

After Clause 190

LORD SHARPE OF EPSOM

122 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 –

After Clause 190 - continued

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.

- (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” –
- except where paragraph (b) applies, have the meaning given by subsection (6) of section 466 of the Companies Act 2006;
 - 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

123

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).

124 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 194

LORD AGNEW OF OULTON
BARONESS BENNETT OF MANOR CASTLE

125 Insert the following new Clause –

“Update on the Fraud Strategy

The Government must publish, and lay before Parliament, an update by July 2024, and annually thereafter, on the progress and effectiveness of the implementation of the commitments made under Pillars 1, 2 and 3 of the Fraud Strategy published in May 2023, and the impact of the commitments, as it relates to the reduction of economic crime.”

Member’s explanatory statement

This amendment requires the Government provide an update on the impact of the Fraud Strategy of May 2023 by July 2024 and then annually thereafter.

LORD GARNIER
BARONESS BENNETT OF MANOR CASTLE

125A Insert the following new Clause –

“Failure to prevent fraud and money laundering

- (1) A relevant body is guilty of an offence if a person who is associated with the body (“the associate”) commits a fraud or money laundering offence intending to benefit (whether directly or indirectly) –
 - (a) the relevant body, or
 - (b) any person to whom, or to whose subsidiary, the associate provides services on behalf of the relevant body.
- (2) The relevant body is not guilty of an offence under subsection (1)(a) where the conduct underlying the offence was intended to cause harm to the body.
- (3) It is a defence for the relevant body to prove that, at the time the relevant offence was committed –
 - (a) the body had in place such prevention procedures as it was reasonable in all the circumstances to expect the body to have in place, or
 - (b) it was not reasonable in all the circumstances to expect the body to have any prevention procedures in place.
- (4) In subsection (3) “prevention procedures” means procedures designed to prevent persons associated with the body from committing fraud or money laundering offences as mentioned in subsection (1).
- (5) A “fraud or money laundering offence” is an act which constitutes –
 - (a) an offence listed in Schedule 11 (failure to prevent fraud: fraud offences) (a “listed offence”), or

After Clause 194 - continued

- (b) aiding, abetting, counselling or procuring the commission of a listed offence.
- (6) For the purposes of this section a person is associated with a relevant body if—
 - (a) the person is an employee, agent or subsidiary of the relevant body, or
 - (b) the person otherwise performs services for or on behalf of the body.
 - (7) Whether or not a particular person performs services for or on behalf of a relevant body is to be determined by reference to all the relevant circumstances and not merely by reference to the nature of the relationship between that person and the body.
 - (8) Where a relevant body is liable to be proceeded against for an offence under subsection (1) in a particular part of the United Kingdom, proceedings against the body for the offence may be taken in any place in the United Kingdom.
 - (9) Where by virtue of subsection (8) proceedings against a relevant body for an offence are to be taken in Scotland—
 - (a) the body may be prosecuted, tried and punished in a sheriff court district determined by the Lord Advocate, as if the offence had been committed in that district, and
 - (b) the offence is, for all purposes incidental to or consequential on the trial or punishment, deemed to have been committed in that district.
 - (10) A relevant body guilty of an offence under this section is liable—
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction in England and Wales, to a fine;
 - (c) on summary conviction in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum.
 - (11) In this section—
 - “relevant body” means—
 - (a) a body which is incorporated under the law of any part of the United Kingdom and which carries on a business (whether there or elsewhere),
 - (b) any other body corporate (wherever incorporated) which carries on a business, or part of a business, in any part of the United Kingdom,
 - (c) a partnership which is formed under the law of any part of the United Kingdom and which carries on a business (whether there or elsewhere), or
 - (d) any other partnership (wherever formed) which carries on a business, or part of a business, in any part of the United Kingdom,
 - and, for the purposes of this section, a trade or profession is a business;
 - “sheriff court district” is to be read in accordance with the Criminal Procedure (Scotland) Act 1995 (see section 307(1) of that Act).
 - (12) It is immaterial for the purposes of section (1) whether—
 - (a) any relevant conduct of a relevant body, or
 - (b) any conduct which constitutes part of a relevant fraud or money laundering offence,takes place in the United Kingdom or elsewhere.”

After Clause 194 - continued

LORD GARNIER

125B Insert the following new Clause –

“Other economic crime offences: supplementary

- (1) The Secretary of State may by regulations amend Schedule 11 (failure to prevent fraud: fraud offences) 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) An offence added under subsection (1)(b) must be –
 - (a) an offence of dishonesty,
 - (b) an offence that is otherwise of a similar character to those listed (on the passing of this Act) in Schedule 11 (failure to prevent fraud: fraud offences).
- (5) The Secretary of State may from time to time by regulations restate Schedule 11 (failure to prevent fraud: fraud offences) as amended by virtue of subsections (1) to (3) (without changing the effect of the Schedule).”

125C Insert the following new Clause –

“Offences under section (*Failure to prevent fraud and money laundering*) committed by partnerships

- (1) Proceedings for an offence under section (*Failure to prevent fraud and money laundering*) alleged to have been committed by a partnership 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));

After Clause 194 - continued

- (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 under section (*Failure to prevent fraud and money laundering*) is to be paid out of the partnership assets.”

125D Insert the following new Clause –

“Guidance about preventing fraud and money laundering offences

- (1) The Secretary of State must issue guidance about procedures that relevant bodies can put in place to prevent persons associated with them from committing fraud and money laundering offences as mentioned in section (*Failure to prevent fraud and money laundering*).
- (2) The Secretary of State must issue within this guidance specific guidance for the small and medium enterprise sector, and particularly micro-enterprises, on what prevention procedures are reasonable for them to have and about circumstances in which it would be reasonable for them to have no prevention procedures at all (as set out in Clause (*Failure to prevent fraud and money laundering*)(3)(b)).
- (3) The Secretary of State may from time to time revise the whole or any part of the guidance issued under this section.
- (4) The Secretary of State must consult on and publish –
 - (a) any guidance issued under this section within six months of the passing of this Act;
 - (b) any revision of that guidance.
- (5) Before issuing or revising guidance under this section the Secretary of State must also consult –
 - (a) the Scottish Ministers, and
 - (b) the Department of Justice in Northern Ireland.
- (6) The requirement to consult those persons may be satisfied by consultation carried out before this section comes into force.”

125E Insert the following new Clause –

“Failure to prevent fraud and money laundering: minor definitions

- (1) This section applies for the purposes of sections (*Failure to prevent fraud and money laundering*) to (*Guidance about preventing fraud and money laundering offences*).
- (2) References to a person “associated with” a relevant body are to be interpreted in accordance with section (*Failure to prevent fraud and money laundering*).
- (3) “Fraud and money laundering offence” has the meaning given by section (*Failure to prevent fraud and money laundering*).
- (4) “Modify” includes amend or repeal (and references to modifications are to be interpreted accordingly).
- (5) “Partnership” means –

After Clause 194 - continued

- (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.
- (6) “Relevant body” has the meaning given by section (*Failure to prevent fraud and money laundering*).
 - (7) “Subsidiary” has the same meaning as in section 1159 of the Companies Act 2006.
 - (8) “UK company” means a company formed and registered under the Companies Act 2006.”

125F

Insert the following new Clause—

“Failure to prevent fraud and money laundering: miscellaneous

- (1) In section 61(1) of the Serious Organised Crime and Police Act 2005 (offences to which certain investigatory powers apply), at end insert—
 - “(k) an offence under section (*Failure to prevent fraud and money laundering*) of the Economic Crime and Corporate Transparency Act 2023 (failure to prevent fraud and money laundering offences).”
- (2) In Schedule 1 to the Serious Crime Act 2007 (offences which are serious offences for purposes of serious crime prevention orders)—
 - (a) in Part 1 (serious offences in England and Wales), in paragraph 7, after sub-paragraph (2) insert—
 - “(2A) An offence under section (*Failure to prevent fraud and money laundering*) of the Economic Crime and Corporate Transparency Act 2023 (failure to prevent fraud and money laundering offences).”;
 - (b) in Part 1A (serious offences in Scotland), in paragraph 16J, after subparagraph (1) insert—
 - “(1A) An offence under section (*Failure to prevent fraud and money laundering*) of the Economic Crime and Corporate Transparency Act 2023 (failure to prevent fraud and money laundering offences).”;
 - (c) in Part 2 (serious offences in Northern Ireland), in paragraph 23, after sub-paragraph (2) insert—
 - “(2A) An offence under section (*Failure to prevent fraud and money laundering*) of the Economic Crime and Corporate Transparency Act 2023 (failure to prevent fraud and money laundering offences).”
- (3) In Part 2 of Schedule 17 to the Crime and Courts Act 2013 (offences in relation to which a deferred prosecution agreement may be entered into), after paragraph 27A insert—

After Clause 194 - continued

“27B An offence under section (*Failure to prevent fraud and money laundering*) of the Economic Crime and Corporate Transparency Act 2023 (failure to prevent fraud and money laundering offences).”

125G Insert the following new Clause—

“Failure to take reasonable steps: individual liability of senior managers

- (1) A person (“S”) commits an offence if—
 - (a) at a time when S is a senior manager or corporate officer of a relevant body, S fails to take reasonable steps to prevent a decision being taken or not being taken by or on behalf of the relevant body as to the way in which the business of the body is conducted, and
 - (b) the implementation or lack of implementation of the decision causes the relevant body to commit an offence listed in Schedule 10.
- (2) For the purposes of this section—
 - (a) an individual is a “senior manager” of a corporate body if the individual plays a significant role in—
 - (i) the making of decisions about how the entity’s relevant activities are to be managed or organised, or
 - (ii) the actual managing or organising of the entity’s relevant activities;
 - (b) “officer”, in relation to a body corporate, means—
 - (i) a director, manager, associate, secretary or other similar officer, or
 - (ii) a person purporting to act in any such capacity;
 - (c) in paragraph (b)(i) “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.
- (3) A person guilty of an offence under this section is liable—
 - (a) on summary conviction—
 - (i) in England and Wales, to imprisonment for a term not exceeding 12 months (or 6 months, if the offence was committed before the commencement of section 154(1) of the Criminal Justice Act 2003) or a fine, or both;
 - (ii) in Scotland, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum, or both;
 - (iii) in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum, or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine, or both.”

Clause 195

BARONESS STOWELL OF BEESTON

125H★ Page 182, line 39, at end insert –

“(iii) the failure is in relation to the use or threat of using litigation against another person or entity which has the intention or effect of suppressing the publication of information, or of removing information already published, likely to be relevant to the prevention or detection of economic crime, or”

Member’s explanatory statement

This amendment allows the SRA to set its own fining limit for breach of the Solicitors Act 1974 or Law Society rules relating to abuses of legal processes (SLAPPs) to suppress reporting on economic crime.

125J★ Page 182, line 43, at end insert –

“(c) for professional misconduct as referred to in subsection (1)(b), where the misconduct is in relation to the use or threat of using litigation against another person or entity with intent to suppress the publication of information, or of removing information already published, likely to be relevant to the prevention or detection of economic crime.”

Member’s explanatory statement

This amendment allows the SRA to set its own fining limit for professional misconduct relating to abuses of legal processes (SLAPPs) to suppress reporting on economic crime.

Clause 197LORD ETHERTON
LORD VERDIRAME
LORD PANNICK

LORD ANDERSON OF IPSWICH

126 Page 184, line 42, leave out paragraph (i) and insert –

“(i) subject to legal professional privilege and the professional principles, promoting the prevention and detection of legal activity which involves facilitation or collusion in economic crime.”

Member’s explanatory statement

This amendment focuses the new regulatory objective on the facilitation of, or collusion in, economic crime by the legal adviser or advocate but subject to the fundamental common law constitutional principle of legal professional privilege (which entitles the client to maintain confidentiality in certain communications with their legal representative) and the professional principles described in section 1(3) of the Legal Services Act 2007 (which, among other things, require the legal representative to act in the best interests of their client).

After Clause 199

BARONESS BOWLES OF BERKHAMSTED

127 Insert the following new Clause—

“Regulatory failure to prevent economic crime and failure to prevent facilitation of economic crime

- (1) The Secretary of State may by regulations—
 - (a) confer on any supervisory or regulatory bodies a duty to prevent economic crime and to prevent facilitation of economic crime within their supervisory or regulatory scope;
 - (b) establish an offence of—
 - (i) regulatory failure to prevent economic crime, and
 - (ii) regulatory failure to prevent the facilitation of economic crime.
- (2) Regulations must be made within 18 months of the day on which this Act is passed conferring duties under subsection (1)(a) and creating offences under subsection (1)(b) in respect of—
 - (a) OFCOM and other regulators of communication platforms including telecommunications;
 - (b) financial services regulators;
 - (c) the Financial Reporting Council in respect of auditors;
 - (d) the Solicitors Regulation Authority and other relevant regulators of legal representatives;
 - (e) the Institute of Chartered Accountants in England and Wales and other relevant regulators of accountants.
- (3) Regulations must be made in respect of any other regulator that notifies the Secretary of State that they wish to be bound by such duties, within 18 months of such notification.
- (4) Regulations under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.”

After Clause 201

LORD COAKER

128 Insert the following new Clause—

“Report on the economic crime investigation and prosecution framework

- (1) Within one year of this Act being passed, the Secretary of State must publish a report on economic crime and investigation, as outlined in subsection (2).
- (2) This report must include—
 - (a) an assessment of the current performance of the framework for investigating, prosecuting and convicting economic crime,
 - (b) an assessment of the roles and performances of the Serious Fraud Office, the National Crime Agency, the Crown Prosecution Service, police forces across the UK, including the City of London police, and other relevant Government departments and agencies that work on investigation and prosecution of economic crime,

After Clause 201 - continued

- (c) an assessment of the resourcing and staffing of departments and agencies (or units within departments and agencies) involved in economic crime investigation and prosecution,
 - (d) an assessment of the number of investigations, arrests, prosecutions, and convictions for economic crime in the UK, and
 - (e) a strategy for the use of fees charged and penalties imposed by the registrar for the purpose of tackling economic crime.
- (3) This report must be laid before each House of Parliament within one year of the passing of this Act.”

Member’s explanatory statement

This amendment requires the Secretary of State to report on the current performance of Government agencies and departments in investigating, prosecuting and convicting economic crime and to report on a strategy to use penalties and fees from the registrar to tackle economic crime.

After Clause 202

LORD AGNEW OF OULTON
LORD FAULKS
LORD FOX
LORD COAKER

129

Insert the following new Clause –

“Civil recovery: costs of proceedings

After section 313 of the Proceeds of Crime Act 2002 insert –

“313A Costs orders

- (1) This section applies to proceedings brought by an enforcement authority under Part 5 of the Proceeds of Crime Act 2002 where the property in respect of which the proceedings have been brought has been obtained through economic crime.
- (2) The court may not make an order that any costs of proceedings relating to a case to which this section applies (including appeal proceedings) are payable by an enforcement authority to a respondent or a specified responsible officer in respect of the involvement of the respondent or the officer in those proceedings, unless –
 - (a) the authority acted unreasonably in making or opposing the application to which the proceedings relate, or in supporting or opposing the making of the order to which the proceedings relate,
 - (b) the authority acted dishonestly or improperly in the course of the proceedings, or
 - (c) it would not be in the interests of justice.””

Member's explanatory statement

This extends the cost cap for civil recovery cases beyond Unexplained Wealth Orders. Part 5 of the Proceeds of Crime Act permits the recovery of criminal assets where no conviction has been possible. For example, because the individuals avoided conviction by remaining remote from the commission of the crimes but were beneficiaries of them, or having fled the country. It retains safeguards on costs for improper action taken by prosecuting authorities.

LORD GARNIER
BARONESS MORGAN OF COTES
LORD FAULKS
THE LORD BISHOP OF ST ALBANS

130

Insert the following new Clause –

“Failure to Prevent an Economic Criminal Offence (1)

- (1) A relevant body (“B”) is guilty of an offence if a person commits an economic criminal offence when acting in the capacity of a person associated with B.
- (2) For the criminal purposes of this Clause –
 - “economic criminal offence” means any of the offences listed in Schedule 10;
 - “relevant body” and “acting in the capacity of a person associated with B” have the same meaning as in section 44 of the Criminal Finances Act 2017.
- (3) It is a defence for B to prove that, when the economic criminal offence was committed –
 - (a) B had in place such prevention procedures as it was reasonable in all the circumstances to expect B to have in place, or
 - (b) it was not reasonable in all the circumstances to expect B to have any prevention procedures in place.
- (4) In subsection (3) “prevention procedures” means procedures designed to prevent persons acting in the capacity of a person associated with B from committing an economic criminal offence.
- (5) A relevant body guilty of an offence under this section is liable –
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction in England and Wales, to a fine;
 - (c) on summary conviction in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum.
- (6) It is immaterial for the purposes of this section whether –
 - (a) any relevant conduct of a relevant body, or
 - (b) any conduct which constitutes part of a listed offence,
 takes place in the United Kingdom or elsewhere.
- (7) The Chancellor of the Exchequer and the Secretary of State must prepare and publish guidance about procedures that relevant bodies can put in place to prevent persons acting in the capacity of an associated person from committing an economic criminal offence.”

Member's explanatory statement

This new Clause would create a corporate offence of failing to prevent economic crime, defined by reference to the offences listed in Schedule 10.

LORD GARNIER
BARONESS MORGAN OF COTES

131 Insert the following new Clause –

“Failure to Prevent an Economic Criminal Offence (2)

- (1) A relevant body (“B”) is guilty of an offence if a person commits an economic criminal offence when acting in the capacity of a person associated with B.
- (2) For the purposes of this Clause –
 - “economic criminal offence” means one of the following –
 - (a) a common law offence of conspiracy to defraud;
 - (b) an offence under section 1, 6 or 7 of the Fraud Act 2006;
 - (c) an offence under section 1, 17 or 20 of the Theft Act 1968 (theft, false accounting and destruction of documents);
 - (d) an offence under section 993 of the Companies Act 2006 (fraudulent trading);
 - (e) an offence under sections 346, 397 and 398 of the Financial Services and Markets Act 2000 (providing false statements to auditors, misleading statements, and misleading the FCA);
 - (f) an offence under sections 327, 328 and 329 of the Proceeds of Crime Act 2002 (concealing criminal property, facilitating acquisition, acquisition and use of criminal property).
 - “relevant body” and “acting in the capacity of a person associated with B” have the same meaning as in section 44 of the Criminal Finances Act 2017.
- (3) It is a defence for B to prove that, when the economic criminal offence was committed –
 - (a) B had in place such prevention procedures as it was reasonable in all the circumstances to expect B to have in place, or
 - (b) it was not reasonable in all the circumstances to expect B to have any prevention procedures in place.
- (4) In subsection (3) “prevention procedures” means procedures designed to prevent persons acting in the capacity of a person associated with B from committing a economic criminal offence.
- (5) A relevant body guilty of an offence under this section is liable –
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction in England and Wales, to a fine;
 - (c) on summary conviction in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum.
- (6) It is immaterial for the purposes of this section whether –
 - (a) any relevant conduct of a relevant body, or
 - (b) any conduct which constitutes part of a listed offence,
 takes place in the United Kingdom or elsewhere.
- (7) The Chancellor of the Exchequer and the Secretary of State must prepare and publish guidance about procedures that relevant bodies can put in place to prevent persons acting in the capacity of an associated person from committing an economic criminal offence.”

Member's explanatory statement

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

132

Insert the following new Clause –

“Failure to prevent criminal financial offences in the UK

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

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

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

“relevant body” has the same meaning as in section 44 of the Criminal Finances Act 2017.
- (5) A relevant body guilty of an offence under this section is liable –
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction in England, to a fine;
 - (c) on summary conviction in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum.
- (6) It is immaterial for the purposes of this section whether –
 - (a) any relevant conduct of a relevant body, or
 - (b) any conduct which constitutes part of a relevant criminal financial offence,

takes place in the United Kingdom or elsewhere.”

Member's explanatory statement

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

133

Insert the following new Clause—

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

- (1) A relevant commercial organisation (“C”) is guilty of an offence under this section where—
 - (a) a person (“A”) associated with C commits a fraud (including false accounting), sanctions evasion offence or an act of money laundering, or aids and abets a fraud, sanctions evasion offence or act of money laundering, intending—
 - (i) to confer a business advantage on C, or
 - (ii) to confer a benefit on a person to whom A provides services on behalf of C, and
 - (b) C fails to prevent the activity set out in paragraph (a).
- (2) C does not commit an offence where C can prove that the conduct detailed in subsection (1)(a) was intended to cause harm to C.
- (3) It is a defence for C to prove that, at the relevant time, C had in place procedures that were reasonable in all the circumstances and which were designed to prevent persons associated with C from undertaking the conduct detailed in subsection (1)(a).
- (4) For the purposes of this section “relevant commercial organisation” means—
 - (a) a body which is incorporated under the law of any part of the United Kingdom and which carries on a business (whether there or elsewhere),
 - (b) any other body corporate (wherever incorporated) which carries on a business, or part of a business, in any part of the United Kingdom,
 - (c) a partnership which is formed under the law of any part of the United Kingdom and which carries on a business (whether there or elsewhere), or
 - (d) any other partnership (wherever formed) which carries on a business, or part of a business, in any part of the United Kingdom, and
 - (e) for the purposes of this section, a trade or profession is a business.
- (5) The relevant offences referred to in 1(a) are—
 - (a) fraud including—
 - (i) sections 2, 3, 4 and 11 of the Fraud Act 2006;
 - (ii) section 17 of the Theft Act 1968;
 - (iii) section 993 of the Companies Act 2006;
 - (iv) section 111A of the Social Security Administration Act 1992;
 - (v) section 170 Custom and Excise Management Act 1979;
 - (vi) the common law offence of cheating the public revenue;
 - (b) money laundering including sections 327, 328, 329 and 330 of the Proceeds of Crime Act 2002;
 - (c) sanctions evasion including the offences laid out at paragraph 22 of Schedule 10.”

Member’s explanatory statement

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

134 Insert the following new Clause –

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

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

Member’s explanatory statement

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

135 Insert the following new Clause –

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

- (1) A person (“S”) commits an offence if –
 - (a) at a time when S is a senior manager or corporate officer of a corporate body (“C”), S –
 - (i) takes, or agrees to the taking of, a decision by or on behalf of the corporate body as to the way in which the business of the corporate body is conducted, and
 - (ii) fails to take any steps that S could take to prevent such a decision being taken;
 - (b) at the time of the decision, S is aware of a risk that the implementation of the decision may lead to the commission of an offence of money laundering, fraud (including false accounting), sanctions evasion, bribery or tax evasion, and
 - (c) the implementation of the decision causes C to commit such an offence.
- (2) For the purposes of this section –
 - (a) an individual is a “senior manager” of a corporate body if the individual plays a significant role in –

After Clause 202 - continued

- (i) the making of decisions about how the entity’s relevant activities are to be managed or organised, or
 - (ii) the actual managing or organising of the entity’s relevant activities,
 - (b) “officer”, in relation to a body corporate, means –
 - (i) a director, manager, associate, secretary or other similar officer, or
 - (ii) a person purporting to act in any such capacity;
 - (c) in paragraph (b)(i) “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.
- (3) A person guilty of an offence under this section is liable –
- (a) on summary conviction –
 - (i) in England and Wales, to imprisonment for a term not exceeding 12 months (or 6 months, if the offence was committed before the commencement of section 154(1) of the Criminal Justice Act 2003) or a fine, or both;
 - (ii) in Scotland, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum, or both;
 - (iii) in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum, or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 7 years or a fine, or both.”

Member’s explanatory statement

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

BARONESS KRAMER

BARONESS BENNETT OF MANOR CASTLE

136

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 –

After Clause 202 - continued

- (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 BELLAMY

137 Page 191, line 37, after “State” insert “or the Lord Chancellor”

Member’s explanatory statement

See the explanatory statement for new clause (Strategic litigation against public participation: requirement to make rules of court).

LORD SHARPE OF EPSOM

138 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.

139 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.

140 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 205

LORD BELLAMY

141 Page 192, line 33, leave out “subsection” and insert “subsections (1A) and”

Member's explanatory statement

See the explanatory statement for new clause (Strategic litigation against public participation: requirement to make rules of court).

142 Page 192, line 33, at end insert —

“(1A) Sections (Strategic litigation against public participation: requirement to make rules of court) and (Meaning of “SLAPP” claim) extend to England and Wales only.”

Member's explanatory statement

See the explanatory statement for new clause (Strategic litigation against public participation: requirement to make rules of court).

Clause 206

LORD BELLAMY

143 Page 192, line 38, after “State” insert “or the Lord Chancellor”

Member's explanatory statement

See the explanatory statement for new clause (Strategic litigation against public participation: requirement to make rules of court).

LORD SHARPE OF EPSOM

144 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.

145 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.

Economic Crime and Corporate Transparency Bill

SECOND
MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
ON REPORT

23 June 2023
