

Economic Crime and Corporate Transparency Bill

COMMONS INSISTENCE AND DISAGREEMENT

[The page and line references are to HL Bill 96, the bill as first printed for the Lords, or to the Lords amendment]

After Clause 180

LORDS AMENDMENT 151

151 Insert the following new Clause—

“Failure to prevent fraud

Failure to prevent fraud

- (1) A relevant body is guilty of an offence if, in a financial year of the body (“the year of the fraud offence”), a person who is associated with the body (“the associate”) commits a fraud offence intending to benefit (whether directly or indirectly)—
 - (a) the relevant body, or
 - (b) any person to whom, or to whose subsidiary undertaking, the associate provides services on behalf of the relevant body.
- (2) 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.
- (3) But the relevant body is not guilty of an offence under subsection (1)(b) if the body itself was, or was intended to be, a victim of the fraud offence.

- (4) It is a defence for the relevant body to prove that, at the time the fraud 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.
- (5) In subsection (4) “prevention procedures” means procedures designed to prevent persons associated with the body from committing fraud offences.
- (6) A “fraud offence” is an act which constitutes—
 - (a) an offence listed in Schedule (*Failure to prevent fraud: fraud offences*) (a “listed offence”), or
 - (b) aiding, abetting, counselling or procuring the commission of a listed offence.
- (7) For the purposes of this section a person is associated with a relevant body if—
 - (a) the person is an employee, agent or subsidiary undertaking of the relevant body, or
 - (b) the person otherwise performs services for or on behalf of the body.
- (8) 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).
- (9) 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.
- (10) 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.
- (11) Where by virtue of subsection (10) 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.
- (12) 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.
- (13) In this section—

“relevant body” means a body corporate or a partnership (wherever incorporated or formed);

“sheriff court district” is to be read in accordance with the Criminal Procedure (Scotland) Act 1995 (see section 307(1) of that Act).

- (14) In this section “financial year” –
- (a) in relation to a UK company, has the meaning given by the Companies Act 2006 (see section 390 of that Act);
 - (b) in relation to a relevant body that is not a UK company means –
 - (i) any period in respect of which a profit and loss account of the relevant body is required to be made up (by its constitution or by the law under which it is established), whether that period is a year or not, or
 - (ii) if the body is not required by its constitution or the law under which it is established to draw up a profit and loss account, a calendar year.”

COMMONS AMENDMENT

The Commons agree with the Lords in their Amendment 151 and propose amendment 151A as an amendment thereto –

- 151A** In subsection (1), after first “body” insert “which is a large organisation (see sections ((*Failure to prevent fraud*): *large organisations*) and (*Large organisations: parent undertakings*))”

LORDS DISAGREEMENT AND AMENDMENTS IN LIEU

The Lords disagree with the Commons in their Amendment 151A and propose Amendments 151B and 151C in lieu –

- 151B** As an amendment to Lords Amendment 151, in subsection (1), after first “body” insert “which is a non-micro organisation or which is a large organisation (see sections (*Section (Failure to prevent fraud): non-micro organisations*), (*Section (Failure to prevent fraud): large organisations*) and (*Large organisations: parent undertakings*))”

- 151C** After Clause 180, insert the following new Clause –

“Section (*Failure to prevent fraud*): non-micro organisations

- (1) For the purposes of section (*Failure to prevent fraud*)(1) a relevant body is a “non-micro organisation” only if the body satisfied two or more of the following conditions in the financial year of the body (“year P”) that precedes the year of the fraud offence –

Turnover	More than £632,000 and less than £36 million
Balance sheet total	More than £316,000 and less than £18 million
Number of employees	More than 10 and less than 250.

- (2) For a period that is a relevant body's financial year but not in fact a year, the figure for turnover must be proportionately adjusted.
- (3) In subsection (1) the "number of employees" means the average number of persons employed by the relevant body in year P, determined as follows –
 - (a) find for each month in year P the number of persons employed under contracts of service by the relevant body in that month (whether throughout the month or not),
 - (b) add together the monthly totals, and
 - (c) divide by the number of months in year P.
- (4) In this section –

"balance sheet total", in relation to a relevant body and a financial year –

 - (a) means the aggregate of the amounts shown as assets in its balance sheet at the end of the financial year, or
 - (b) where the body has no balance sheet for the financial year, has a corresponding meaning;

"turnover" –

 - (a) in relation to a UK company, has the same meaning as in Part 15 of the Companies Act 2006 (see section 474 of that Act);
 - (b) in relation to any other relevant body, has a corresponding meaning;

"year of the fraud offence" is to be interpreted in accordance with section (*Failure to prevent fraud*)(1).
- (5) The Secretary of State may by regulations modify this section (other than this subsection and subsections (6) and (8)) for the purpose of altering the meaning of "non-micro organisation" in section (*Failure to prevent fraud*)(1).
- (6) The Secretary of State may (whether or not the power in subsection (5) has been exercised) by regulations –
 - (a) omit the words "which is a non-micro organisation or" in section (*Failure to prevent fraud*)(1), and
 - (b) make any modifications of this section (other than this subsection) that the Secretary of State thinks appropriate in consequence of provision made under paragraph (a).
- (7) 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.
- (8) Regulations under subsection (5) or (6) may make consequential amendments of section (*Failure to prevent fraud: minor definitions*)."

COMMONS REASON AND INSISTENCE

The Commons insist on its Amendment 151A and disagree to Lords Amendments 151B and 151C for the following Reason –

151D

Because it would be disproportionate to apply the new clause inserted by Lords Amendment 151 to bodies other than large organisations.

LORDS INSISTENCE, NON-INSISTENCE AND AMENDMENTS IN LIEU

The Lords insist on their disagreement with the Commons in their Amendment 151A, do not insist on their Amendments 151B and 151C, to which the Commons have disagreed for their Reason 151D, and propose Amendments 151E and 151F in lieu –

151E As an amendment to Lords Amendment 151, in subsection (1), after first “body” insert “which is not a small organisation or which is a large organisation (see sections (*Section (Failure to prevent fraud): small organisations*), (*Section (Failure to prevent fraud): large organisations*) and (*Large organisations: parent undertakings*))”

151F After Clause 180, insert the following new Clause –

“Section (*Failure to prevent fraud*): small organisations

- (1) For the purposes of section (*Failure to prevent fraud*)(1) a relevant body is a “small organisation” only if the body satisfied two or more of the following conditions in the financial year of the body (“year P”) that precedes the year of the fraud offence –

Turnover	Not more than £10.2 million
Balance sheet total	Not more than £5.1 million
Number of employees	Not more than 50.

- (2) For a period that is a relevant body’s financial year but not in fact a year, the figure for turnover must be proportionately adjusted.
- (3) In subsection (1) the “number of employees” means the average number of persons employed by the relevant body in year P, determined as follows –
- find for each month in year P the number of persons employed under contracts of service by the relevant body in that month (whether throughout the month or not),
 - add together the monthly totals, and
 - divide by the number of months in year P.
- (4) In this section –
- “balance sheet total”, in relation to a relevant body and a financial year –
- means the aggregate of the amounts shown as assets in its balance sheet at the end of the financial year, or
 - where the body has no balance sheet for the financial year, has a corresponding meaning;
- “turnover” –
- in relation to a UK company, has the same meaning as in Part 15 of the Companies Act 2006 (see section 474 of that Act);
 - in relation to any other relevant body, has a corresponding meaning;
- “year of the fraud offence” is to be interpreted in accordance with section (*Failure to prevent fraud*)(1).

- (5) The Secretary of State may by regulations modify this section (other than this subsection and subsections (6) and (8)) for the purpose of altering the meaning of “small organisation” in section (*Failure to prevent fraud*)(1).
- (6) The Secretary of State may (whether or not the power in subsection (5) has been exercised) by regulations –
 - (a) omit the words “which is not a small organisation or” in section (*Failure to prevent fraud*)(1), and
 - (b) make any modifications of this section (other than this subsection) that the Secretary of State thinks appropriate in consequence of provision made under paragraph (a).
- (7) 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.
- (8) Regulations under subsection (5) or (6) may make consequential amendments of section (*Failure to prevent fraud: minor definitions*).”

COMMONS INSISTENCE AND DISAGREEMENT

The Commons insist on their Amendment 151A and disagree to Lords Amendments 151E and 151F.

After Clause 187

LORDS AMENDMENT 161

161 Insert the following new Clause –

Civil recovery of proceeds of crime: costs of proceedings

“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.”

COMMONS DISAGREEMENT AND AMENDMENT IN LIEU

The Commons disagree with the Lords in their Amendment 161 and propose amendment 161A as an amendment in lieu –

161A Page 172, line 44, at end insert the following new Clause –

“Report on costs orders for proceedings for civil recovery

Report on costs orders for proceedings for civil recovery

- (1) The Secretary of State must assess whether it would be appropriate to restrict the court’s power to order that the costs of proceedings under Chapter 2 of Part 5 of the Proceeds of Crime Act 2002 are payable by an enforcement authority and, if so, how.
- (2) In carrying out the assessment, the Secretary of State must consult such persons as the Secretary of State considers appropriate.
- (3) The Secretary of State must publish and lay before Parliament a report on the outcome of the assessment by the end of the period of 12 months beginning with the day on which this Act is passed.
- (4) In this section “the court” means the High Court in England and Wales.”

LORDS NON-INSISTENCE, DISAGREEMENT AND AMENDMENT IN LIEU

The Lords do not insist on their Amendment 161, do disagree with the Commons in their Amendment 161A in lieu, and do propose Amendment 161B in lieu –

161B After Clause 187, insert the following new Clause –

“Civil recovery of proceeds of crime: costs of proceedings

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 should normally 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 it would not be in the interests of justice.”

COMMONS REASON AND INSISTENCE

The Commons insist on its Amendment 161A and disagree to Lords Amendment 161B for the following Reason –

161C *Because the Lords Amendment would alter the financial arrangements made by the Commons, and the Commons do not offer any further Reason, trusting that this Reason may be deemed sufficient.*

LORDS INSISTENCE, NON-INSISTENCE AND AMENDMENT IN LIEU

The Lords insist on their disagreement with the Commons in their Amendment 161A, do not insist on their Amendment 161B, to which the Commons have disagreed for their for Reason 161C, and propose Amendment 161D in lieu –

161D

After Clause 187, insert the following new Clause –

“Civil recovery of proceeds of crime: costs of proceedings

Civil recovery: costs of proceedings

After section 316 of the Proceeds of Crime Act 2002 insert –

“316A 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) When assessing what order to make in relation to the costs of proceedings, the court should take into account –
 - (a) the merits of the case,
 - (b) whether the enforcement authority acted reasonably in bringing proceedings,
 - (c) whether costs were reasonably incurred by any party to the proceedings, and
 - (d) the impact of any order on –
 - (i) the enforcement authority, and its ability to carry out its enforcement functions, and
 - (ii) any other party to the proceedings.””

COMMONS INSISTENCE AND DISAGREEMENT

The Commons insist on their Amendment 161A and disagree to Lords Amendment 161D.

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COMMONS INSISTENCE AND DISAGREEMENT

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