

# **Commercial Organisations and Public Authorities Duty (Human Rights and Environment) Bill [HL]**

## EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by Baroness Young of Hornsey, have been ordered to be published as HL Bill 17—EN.



# **Commercial Organisations and Public Authorities Duty (Human Rights and Environment) Bill [HL]**

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[AS INTRODUCED]

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[AS INTRODUCED]

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# BILL

TO

Place a duty on commercial organisations and public authorities to prevent human rights and environmental harms, including an obligation to conduct and publish human rights and environmental due diligence assessments, on their own operations, subsidiaries, and value chains; to make provision for civil liability, penalties, and a criminal offence for failures to comply with the duty; and for connected purposes.

**B**E IT ENACTED by the King’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

## 1 Definitions

(1) For the purposes of this Act, the following definitions apply—

A “commercial organisation” is any “relevant commercial organisation” within the meaning of section 7(5) of the Bribery Act 2020.

“Public authority” is any “public authority” within the meaning of section 2(2) of the Procurement Act 2023. 5

A “value chain” includes all activities undertaken by any entity during the lifecycle of a good or service upstream and downstream of the commercial organisation.

“Procurement” means the award, entry into and management of a public or private contract. 10

“Human rights harms” are any adverse impacts on a person’s ability to enjoy any of the internationally recognised human and labour rights including those recognised in the International Bill of Human Rights and the International Labour Organization Declaration on Fundamental Principles and Rights at Work, 1998. 15

“Environmental harms” are adverse impacts on the environment resulting from the violation of environmental law, including internationally established environmental principles or conventions, ecocide (meaning unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and widespread or long-term damage to the environment being caused by those acts) or as part of any contribution to climate change contrary to the pathways for limiting global warming to the internationally established goal of 1.5°C according to the best available science, or any other adverse impacts 20 25

on specific environmental categories as specified by the Secretary of State in regulations.

“Stakeholders” means individuals, groups, or communities that have rights or legitimate interests that are or may be adversely affected by human rights and environmental harm or the credible representatives of such individuals or groups, including the workers, their representatives, the trade unions, and those representing and defending human rights and environment. 5

“Informed, meaningful and safe engagement” means a dynamic and continuous engagement process with stakeholders that involves interactive and responsive communication, timely provision of relevant information, implementation of measures to address barriers to participation, especially for vulnerable or historically marginalised stakeholders along with measures to ensure the safety of stakeholders and prevent any form of retaliation or reprisals. 10 15

## **2 Duty to prevent human rights and environmental harms**

- (1) Commercial organisations and public authorities have a duty to prevent human rights and environmental harms, as defined in section 1, so far as is reasonably practicable, with respect to their own operations, products, and services, those of their subsidiaries, and throughout their value chains. 20
- (2) Without prejudice to the generality of the duty under the preceding subsection, the matters to which that duty extends include in particular the obligation to conduct human rights and environmental due diligence.

## **3 Human rights and environmental due diligence**

- (1) Reasonable human rights and environmental due diligence includes, as a minimum— 25
  - (a) integrating human rights and environmental due diligence into policies and management systems;
  - (b) identifying, assessing and addressing actual or potential human rights and environmental harms, through prevention, mitigation and remediation; 30
  - (c) establishing or participating in and maintaining effective grievance mechanisms;
  - (d) tracking, verifying, monitoring and assessing the effectiveness of measures taken and their outcomes; 35
  - (e) communicating with stakeholders and reporting publicly on findings.
- (2) Human rights and environmental due diligence must include informed, meaningful, and safe engagement with stakeholders, particularly workers, affected rightsholders, and those defending human rights and the environment, throughout the entire process. 40
- (3) Whether human rights and environmental due diligence is “reasonable” is determined by, among other things—

- (a) the size, sector, operational context, ownership, structure, country or region of operation, and the nature of the human rights or environmental harms in question;
  - (b) the severity of the human rights or environmental harms, as determined by the scale, scope, and irremediability of the harm; 5
  - (c) the extent to which the commercial organisation has exercised leverage over third parties in the value chain and made attempts to increase leverage for the purposes of this Act;
  - (d) the commercial organisation's prioritisation of human rights and environmental risks within its due diligence process and the reasonableness of such prioritisation; 10
  - (e) the extent to which due diligence was an ongoing process with continuous monitoring and improvement.
- (4) Audit reports, certification schemes, and membership in industry or multi-stakeholder initiatives for dialogue and learning are not sufficient on their own to fulfil the obligation to conduct due diligence. 15

#### 4 Responsible disengagement

In the event that a commercial organisation or public authority decides to suspend or terminate a business relationship as a result of its due diligence assessment to comply with this Act, this decision – 20

- (a) must reflect reasonable human rights and environmental due diligence, taking into account any human rights or environmental harms that might arise from the suspension or termination of the business relationship, and consider how such harms might be prevented or mitigated; and taking into account the remediation of harm that commercial organisations have failed to prevent prior to the decision of disengagement; 25
- (b) must be based upon the informed, meaningful, and safe engagement with stakeholders that are or may be affected by the disengagement decision; 30
- (c) must be taken in a timely manner –
  - (i) considering disengagement as a last resort, after failed attempts at mitigation, in contexts where the prospect of change by using or increasing leverage is possible, and
  - (ii) considering rapid disengagement in contexts where the harm is severe, including the contexts where gross and systemic harm is imposed and enforced by State policy, and the commercial organisation and public authority lack the possibility of using and increasing leverage to prevent, mitigate, or remediate the harm. 35 40

#### 5 Reporting requirements

- (1) Commercial organisations with an annual worldwide turnover of or exceeding the amount specified in regulations made by the Secretary of State must, within six months of the end of the financial year, and each year after that,

publish and submit to the registry website referred to in section 7(2)(c), a report describing a plan for the human rights and environmental due diligence procedures to be adopted in the next financial year and an assessment of the effectiveness of actions taken in the previous financial year.

- (2) The report must include – 5
- (a) information relating to human rights and environmental due diligence as outlined in section 3, any outcomes achieved and how measures will be continuously improved;
  - (b) a disclosure of the value chain enabling full traceability;
  - (c) detailed reporting on any scope 1, 2 and 3 greenhouse gas emissions; 10
  - (d) any other information required to evaluate the adequacy of the organisations’ response to actual or potential human rights and environmental harms in line with the UN Guiding Principles on Business and Human Rights, 1 January 2012.
- (3) All public departments, agencies, and bodies are required to publish a report as outlined in subsection (1). 15
- (4) Commercial organisations subject to subsection (1) are subject to a civil penalty, of an amount to be determined by the regulatory authority, if they fail to meet the requirements in subsections (1) and (2).
- (5) Upon written request, any person has the right to information from a qualifying commercial organisation or public authority under subsection (1) within one month, including general information and information relating to a specific product or service offered by the organisation. 20
- (6) A request for information may be denied if – 25
- (a) the request does not provide adequate information to identify what the request concerns;
  - (b) the request is clearly vexatious;
  - (c) the requested information concerns data relating to an individual’s personal affairs;
  - (d) the requested information concerns data regarding technical devices and procedures or other operational and business matters which for competitive reasons it is important to keep confidential. 30
- (7) The Secretary of State must make regulations establishing that a commercial organisation to whom this section applies commits an offence if it knowingly or recklessly causes its report under subsection (1) or answer to an information request under subsection (5) to include any matter that is misleading or false in a material particular including regarding the implementation of the due diligence plan. 35

## **6 Public authority procurement duties**

- (1) A public authority must not carry out procurement from a relevant supplier, unless the supplier is conducting or has a plan, within a reasonable timeframe, for conducting reasonable human rights and environmental due diligence, in accordance with sections 2(2) and 3. 40



- (2) A public authority must establish human rights and environmental due diligence requirements for suppliers at the tender stage, establish specific award criteria related to due diligence policy and practice and contract performance conditions relating to the implementation of such duties, including provisions for remediation for those affected by human rights or environmental harms. 5
- (3) Every public authority must provide a list of current suppliers, and those who have been excluded, debarred, or terminated from procurement to the regulatory authority, established under section 7, annually.

## 7 Regulatory oversight 10

- (1) The Secretary of State must, within 6 months of the commencement of this Act, appoint a regulatory authority with the duty to oversee compliance with this Act.
- (2) The regulatory authority's duties include in particular to—
  - (a) provide guidance on due diligence approaches and best practices; 15
  - (b) provide reporting requirements under section 5;
  - (c) host a publicly accessible registry website listing all organisations subject to section 5 with their respective reports;
  - (d) enforce compliance with this Act.
- (3) For the purpose of enforcing this Act, the regulatory authority has the following powers—
  - (a) to investigate the commercial organisation or public authority;
  - (b) to take the decision that this Act was infringed and issue a civil sanction as specified in section 10. 20
  - (c) to refer any criminal offences under this Act to the Crown Prosecution Service. 25
- (4) The regulatory authority acts on its own accord or after receiving complaints from any interested or affected parties or their representatives.
- (5) Any decision of the regulatory authority to or not to take action with respect to an investigation or complaint is not determinative of civil liability under section 8, nor does it suspend, delay, or substitute the ability to institute civil liability action under section 8. 30

## 8 Civil liability

- (1) A commercial organisation is liable for damages if it fails to prevent human rights or environmental harms in its own operations, products, and services, those of its subsidiaries, and throughout its value chains. 35
- (2) It is a defence for a commercial organisation to prove that it took all reasonable steps to prevent the harm from occurring, including but not limited to conducting human rights and environmental due diligence as is reasonable in all the circumstances. 40

- (3) Commercial organisations can be held jointly and severally liable for the same harm.
- (4) For the purpose of this Act, Courts of England and Wales have jurisdiction over all commercial organisations that are alleged to have breached their duties under section 2, regardless of the location of the harm or part thereof, or the physical presence, registration, or domicile of a commercial organisation more directly linked to the harm. 5
- (5) The regulatory authority or the relevant court may grant, in addition to orders for the payment of compensatory damages, other orders to remedy the harm, including— 10
- (a) preventative relief such as injunctive orders and orders to cease and desist;
  - (b) remedial orders, such as cleaning up or restitution orders;
  - (c) supervisory orders that require the parties to report back on progress and remediation after a certain period; 15
  - (d) interlocutory orders;
  - (e) other orders as necessary to effectively remedy the harm in line with international law, including rehabilitation, satisfaction, guarantees of non-repetition and other appropriate remedies.
- (6) A commercial organisation affected by an order under subsection (5) may apply to an appropriate Court in England and Wales to set the order aside or to vary it. 20

## **9 Liability of directors and persons responsible**

- (1) Persons on the board of directors (or its equivalent management body) of a commercial organisation are collectively responsible for the commercial organisation's compliance with this Act. 25
- (2) A person is responsible for the human rights and environmental due diligence of a commercial organisation if the person is—
- (a) a director (or equivalent) of the organisation if it is a body corporate other than a limited liability partnership; 30
  - (b) a member of the organisation if it is a limited liability partnership;
  - (c) a partner of the organisation if it is any other kind of partnership.
- (3) A person who is responsible for human rights and environmental due diligence commits an offence if—
- (a) the commercial organisation conducts no human rights and environmental due diligence under section 2 in a financial year; 35
  - (b) any information in the human rights and environmental due diligence reporting under section 5 is false or incomplete in a material particular, and the person either knows it is or is reckless as to whether it is.
- (4) It is a defence for a person convicted of an offence under subsection (3) to prove they— 40
- (a) took all reasonable steps to ensure that the relevant provisions were complied with, and

- (b) in the case of committing the reporting offence under subsection (3)(b), informed the regulatory authority as soon as practicable after becoming aware that the report contained information that is false or incomplete in a material particular.
- (5) A person guilty of an offence under this section is liable – 5
- (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine, or to both;
  - (b) on summary conviction in England and Wales, to imprisonment for a term not exceeding 12 months, to a fine, or both;
  - (c) on summary conviction in Scotland, to imprisonment for a term not exceeding 12 months, to a fine not exceeding the statutory maximum, or both; 10
  - (d) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months, to a fine not exceeding the statutory maximum, or both. 15
- (6) A person guilty of an offence under this section is also liable to be disqualified as a director under the Company Directors Disqualification Act 1986.

## 10 Penalties and notices

- (1) Where a commercial organisation is found to have breached its obligations under section 2 or 5, the regulatory authority may issue the following penalties or notices as it sees fit – 20
- (a) a fine amounting up to 10% of the organisation’s global turnover;
  - (b) a compliance notice requiring steps be taken within a stated period to ensure that an offence or breach does not continue or happen again;
  - (c) a restoration notice requiring specified steps within a stated period to secure restitution of the early position, as far as this is possible; 25
  - (d) exclusion from participation in procedures for the award of supply, works, or service contracts by public authorities for a period of up to five years from the date of the regulatory authority’s decision of breach of their obligations; 30
  - (e) an appropriate order of costs to cover the investigation and adjudication.
- (2) In addition to, or instead of, the penalties set out in subsection (1), the regulatory authority may also – 35
- (a) accept an enforcement undertaking from the commercial organisation to undertake corrective behaviour in line with international law; or
  - (b) accept a third-party undertaking to compensate those affected by human rights violations in line with international law, guaranteed by the commercial organisation.
- (3) Public authorities found to have breached their obligations under section 2, 5 or 6 may receive an appropriate fine or order for remediation, as specified in regulations made by the Secretary of State. 40

**11 Criminal offence**

- (1) A commercial organisation is guilty of an offence under this section if a person associated with the organisation commits an act within or outside the United Kingdom—
- (a) to obtain or retain business for the organisation, or 5
  - (b) to obtain or retain an advantage in the conduct of business for the organisation,
- and that act would, if committed in England and Wales, constitute one of the offences listed in subsection (2).
- (2) Those offences are— 10
- (a) murder, kidnap, or false imprisonment under English common law,
  - (b) an offence under section 1 of the Sexual Offences Act 2003 (rape),
  - (c) an offence under sections 1 and 2 of the Modern Slavery Act 2015 (slavery, servitude and forced or compulsory labour; human trafficking), 15
  - (d) an offence under section 1 of the Corporate Manslaughter and Corporate Homicide Act 2007,
  - (e) an offence under section 18, 23, 24, 28 or 29 of the Offences Against the Person Act 1861 (grievous bodily harm or wounding with intent; poison; explosions), 20
  - (f) an offence under section 1(2) of the Criminal Damage Act 1971 (endangering life by damaging property), or
  - (g) genocide, crimes against humanity and war crimes under section 50 of the International Criminal Court Act 2001.
- (3) A commercial organisation is guilty of the offence in subsection (1) if the person's act was carried out— 25
- (a) to obtain or retain business for the organisation, or
  - (b) to obtain or retain an advantage in the conduct of business for the organisation
- and was capable of encouraging or assisting a third party to do an act which would, if committed in England and Wales, constitute one of the offences listed in subsection (2). 30
- (4) It is a defence for a commercial organisation to prove that at the time of the person's act—
- (a) it was not reasonable in all the circumstances to expect the commercial organisation to have any due diligence procedures in place; 35
  - (b) the organisation took all reasonable steps to prevent the offences under subsection (2) from occurring including but not limited to conducting human rights and environmental due diligence in all the circumstances.
- (5) For the purposes of this section an act includes an omission. 40
- (6) A person guilty of an offence under this section is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine, or to both;

- (b) on summary conviction in England and Wales, to imprisonment for a term not exceeding 12 months, to a fine, or both;
- (c) on summary conviction in Scotland, to imprisonment for a term not exceeding 12 months, to a fine not exceeding the statutory maximum, or both; 5
- (d) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months, to a fine not exceeding the statutory maximum, or both.

## **12 Regulations**

- (1) Regulations under this Act are to be made by statutory instrument. 10
- (2) A statutory instrument containing regulations under this Act may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
- (3) The Secretary of State must lay before Parliament statutory instruments containing regulations under this Act within six months of the day on which this Act is passed. 15

## **13 Extent, commencement, and short title**

- (1) This Act extends to England and Wales, Scotland and Northern Ireland.
- (2) This Act comes into force on the day on which it is passed.
- (3) This Act may be cited as the Commercial Organisations and Public Authorities Duty (Human Rights and Environment) Act 2024. 20

# Commercial Organisations and Public Authorities Duty (Human Rights and Environment) Bill [HL]

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## B I L L

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Place a duty on commercial organisations and public authorities to prevent human rights and environmental harms, including an obligation to conduct and publish human rights and environmental due diligence assessments, on their own operations, subsidiaries, and value chains; to make provision for civil liability, penalties, and a criminal offence for failures to comply with the duty; and for connected purposes.

*Baroness Young of Hornsey*

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