

# ECONOMIC CRIME (TRANSPARENCY AND ENFORCEMENT) BILL

## EXPLANATORY NOTES ON LORDS AMENDMENTS

### What these notes do

- 1 These Explanatory Notes relate to the Lords Amendments to the Economic Crime (Transparency and Enforcement) Bill as brought from the House of Lords on 14 March 2022 (Bill 280).
- 2 These Explanatory Notes have been prepared by the Home Office, Department for Business, Energy and Industrial Strategy, HM Treasury and the Foreign, Commonwealth and Development Office in order to assist the reader of the Bill, and to help inform debate on the Lords amendments. They do not form part of the Bill and have not been endorsed by Parliament.
- 3 The Lords amendments refer to HL Bill 126, the Bill as first printed for the Lords.
- 4 These Explanatory Notes need to be read in conjunction with the Lords amendments and the text of the Bill. They are not, and are not meant to be, a comprehensive description of the Lords amendments.
- 5 Lords Amendments 1 to 26 and 28 to 65 were tabled in the name of the Minister.
- 6 Lords Amendment 27 was tabled by Lord Fox and Lord Coaker was accepted by the Government.
- 7 In the following Commentary, an asterisk(\*) appears in the heading of any paragraph that deals with a non-Government amendment.

## **Commentary on Lords amendments**

### **Lords Amendments to Clause 4: Application for Registration**

#### **Lords Amendments 1 and 2**

- 8 Where the registrable beneficial owner is a trustee, Lords Amendment 1 would require an application for registration as an overseas entity to include the information and statement about the trust specified in the new subsection introduced by Lords Amendment 2.
- 9 Lords Amendment 2 would specify that the overseas entity must include additional required information about the trust (which would be specified in a new paragraph inserted into Schedule 1 by Lords Amendment 15) or so much of that information as the entity has been able to obtain, and a statement as to whether the entity has any reasonable cause to believe that there is required information about the trust that it has not been able to obtain.

### **Lords Amendments to Schedule 1: Applications - Required Information**

#### **Lords Amendment 3**

- 10 Lords Amendment 3 amends Schedule 1, Part 1 and is consequential on changes to clauses 4, 7 and 9. Changes to clause 4 include information to be provided in relation to beneficial owners that are trusts.

#### **Lords Amendments 4 and 5**

- 11 Amendment 4 would mean that the required information about a registrable beneficial owner who is an individual includes information about whether the individual is a trustee. Amendment 5 would make similar provision in relation to registrable beneficial owners which are legal entities, requiring them to confirm whether they are a beneficial owner by virtue of being a trustee.

#### **Lords Amendments 6, 7 and 8**

- 12 These amendments would require overseas entities to check if any of their registrable beneficial owners are designated persons listed on the UK Sanctions List, and to provide details accordingly. It would be an offence not to do so. This information would be displayed publicly on the Register of Overseas Entities. As a consequence, this information would be subject to the verification requirements in clause 16 and the updating duty in clause 7.

#### **Lords Amendment 9**

- 13 This amendment would set out the required information about a trust for the purposes of the amendments to clauses 4, 7 and 9, including it as a new paragraph 7A of Schedule 1. Clause 4 sets out the information that must be provided in an application for registration; clause 7 the information that must be provided in relation to the required annual updates; and clause 9 the required information to be included in an application for removal.

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## [Lords Amendment 10](#)

- 14 Lords Amendment 10 would expand the power to make further provision about the information required by the Schedule 1 so that the power extends to the new paragraph 7A that would be introduced by Lords Amendment 9. Paragraph 7A would set out the required information about trusts.

## **Lords Amendments to Clause 7: Updating Duty**

### [Lords Amendment 11 and 12](#)

- 15 These amendments require overseas entities, when complying with the updating duty to include the information and statement mentioned in subsection 2A) and subsection 2(B) (information about trusts).

### [Lords Amendments 13, 14 and 15](#)

- 16 Amendment 13 would require an overseas entity, when complying with its updating duty, to provide additional information and statements about trusts, where a registrable beneficial owner of the overseas entity is a trustee. Amendments 14 and 15 are consequential on Lords Amendment 13.

## **Lords Amendments to Clause 9: Application for removal**

### [Lords Amendment 16 and 17](#)

- 17 Amendments 16 and 17 provide that overseas entities, when applying for removal from the register, provide the required information and statement about trusts which is set out in subsections 2(A) and 2(B) respectively.

### [Lords Amendment 18](#)

- 18 Lords Amendment 18, along with Lords Amendment 13, would require that when an overseas entity is complying with its updating duty and applying for removal from the register, it must provide additional information and statements about trusts, where relevant.

### [Lords Amendment 19 and 20](#)

- 19 Lords Amendments 19 and 20 are consequential on other amendments to ensure the new amendments are consistent.

### [Lords Amendment 21](#)

- 20 Lords Amendment 21 would expands the scope of circumstances where an overseas entity is registered in Scotland as the proprietor of a relevant interest in land for the purpose of clause 9 (to include, for example, Keeper-induced registration) by removing the requirement for there to have been an application for registration.

### [Lords Amendments 22, 23 and 24](#)

- 21 These amendments clarify elements of Clause 9. Lords Amendment 14 clarifies some drafting in relation to Schedule 4, to ensure consistency between Clause 9(8)(b)(iii) and the language used at paragraphs 10(1) and 11(1) of Schedule 4. Amendment 23 is consequential on the

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amendment inserting a new subsection (10) into Clause 9. Amendment 24 applies terminology used in the Land Registration etc. (Scotland) Act 2012 to Clause 9(8)(b)(i) to ensure consistency between the two legislative schemes.

## **Lords Amendments to Clause 12: Identifying registrable beneficial owners**

### **Lords Amendment 25**

- 22 Amendment 25 would require an overseas entity to take reasonable steps to obtain information about trusts, where relevant.

### **Lords Amendment 26**

- 23 Lords Amendment 26 sets out that overseas entities must, where a registrable beneficial owner is a trustee of a trust, require the trustee to confirm, correct or provide the required information about the trust.

## **Lords Amendments to Clause 18: Exemptions**

### **Lords Amendment 27**

- 24 Lords Amendment 27 would remove the ability of the Secretary of State to exempt an individual such that they did not count as a registrable beneficial owner of an overseas entity, if satisfied that to do so is necessary in the interests of the economic wellbeing of the UK.

## **Lords Amendments to Clause 22: Material unavailable for inspection**

### **Lords Amendment 28**

- 25 Lords Amendment 20 means that information about trusts will be unavailable for inspection.

### **Lords Amendment 29**

- 26 Lords Amendment 21 removes “to an individual, who, at the time the information is delivered to the registrar, is” from subsection (2)(a), such that date of birth and residential address information is protected even if it relates to a person who has ceased to be a registrable beneficial owner.

### **Lords Amendment 30**

- 27 Lords Amendment 22 would exclude information about trusts from the definition of ‘protected’ date of birth and residential address information. This is because other amendments create different provisions governing the disclosure etc. of information about trusts.

## **Lords Amendments after Clause 22: New Clause**

### **Lords Amendment 31**

- 28 This new Clause generally prevents the registrar from disclosing the required information about trusts. But it also includes a new power to disclose information to HMRC or other

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specified persons with public functions.

## **Lords Amendments to Clause 25: Data protection**

### **Lords Amendment 32**

- 29 This amendment is consequential on the new Clause about disclosure of information about trusts.

## **Lords Amendments to Clause 31: General False Statement Offence**

### **Lords Amendment 33 to 36**

- 30 These Amendments would remove the mental element for the offence of providing a document or statement to the Registrar that is false, deceptive or misleading in a material particular (i.e. fact). The amendments would make it a strict liability offence and as such lowering the threshold for prosecution and putting the burden of proof on the defendant to prove that they have a reasonable excuse for their actions, rather than the prosecution having to prove their case.
- 31 The reasonable excuse defence ensures that the offence is not imposed unfairly (for example to cater for cases where an overseas entity- reasonably relies on information provided by others which turns out to be untrue, or to prevent UK professionals assisting overseas entities with UK property transactions being prosecuted from having made an honest mistake).
- 32 Amendments 34 and 36 would further add an aggravated offence which is committed by a person who knew that the documents or statement provided is misleading, false or deceptive in a material fact. Amendment 35 sets the penalty for the non-aggravated offence; unlimited in England and Wales, and level 5 on the standard scale in Scotland and Northern Ireland.

## **Lords Amendments to Clause 32: Land Ownership and Transactions**

### **Lords Amendment 37**

- 33 Lords Amendment 37 would require that the Northern Ireland Department for Finance must be consulted before the Secretary of State makes regulations under subsection (4) to amend the Land Registration Act (Northern Ireland) 1970.

## **Lords Amendments to Schedule 3: Land Ownership and Transactions - England And Wales**

### **Lords Amendment 38, 40 and 42**

- 34 These Amendments would align the transitional period under Schedules 3 with the period in the new Clause inserted by Lords Amendment 31.

### **Lords Amendment 39**

- 35 This Amendment would require the Chief Land Registrar to act as soon as reasonably practicable, and in any event before the end of the transitional period, to enter a restriction in relation to an estate in land owned by an overseas entity since before the Bill comes into force.

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### Lords Amendment 41

- 36 Lords Amendment 41 would change the definition of “the commencement date” in Schedules 3, respectively, so that it is the same as the date from which the transition period (as amended) would run.

## Lords Amendments to Schedule 4: Land Ownership and Transactions - Scotland

### Lords Amendment 43

- 37 Lords Amendment 43 would ensure consistency with the rest of paragraph 7 of Schedule 4, which prohibits the delivery of a qualifying registrable deed in specified circumstances.

### Lords Amendment 44

- 38 Lord Amendment 44 would provide an exception that allows the Keeper to accept an application from a third party to register a lease or an assignation of lease, which necessitates the registration of the overseas entity’s title as a result of automatic plot registration.

### Lords Amendment 45 and 48

- 39 Lords Amendments 45 and 48 would clarify the point in time at which the overseas entity’s interest must have been registered in the Scottish land register in order to fall within the scope of this provision, which is “whose interest is registered, having been so registered, on or after 8 December 2014”.

### Lords Amendment 46 and 49

- 40 Lords Amendments 46 and 49 would clarify that the exceptions that allow the Keeper to accept an application for registration are made in respect of a transfer of ownership or other event that occur by operation of law.

### Lords Amendment 47

- 41 Lords Amendment 47 would provide an exception that allows the Keeper to accept an application from a third party to complete title in respect of a lease or an assignation of lease, which necessitates the registration of the overseas entity’s title as a result of automatic plot registration.

### Lords Amendment 50 and 51

- 42 Lords Amendments 50 and 51 would add to the provision about when an application to be made a provisional title holder in land must be rejected by Registers of Scotland because of the implications for who will be shown in the Land Register of Scotland as the owner of a plot of land.
- 43 These are technical amendments to ensure the register for overseas entities operates in line with the Scottish register.

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### Lords Amendment 52 and 53

- 44 These Amendments are consequential on Lords Amendment 21. Lords Amendment 52 clarifies that entries as proprietor in the proprietorship section of the title sheet for a plot of land have to have been made during the pre-commencement period for there to be a duty to register as an overseas entity.
- 45 Lords Amendment 53 clarifies that for certain provisions during the transitional period to be disapplied, the entries have to have been made during the pre-commencement period.

### Lords Amendment 54

- 46 Like Lords Amendment 42, Lords Amendment 54 would change the definition of “the commencement date” in Schedule 4, so that it is the same as the date from which the transition period (as amended) would run.

### Lords Amendment 55 and 57

- 47 Lords Amendment 57 would insert a new paragraph 12A into the current schedule 1A, applying terminology used in the Land Registration etc. (Scotland) Act 2012 to paragraphs 10(1)(a) and 11(1)(a) of new schedule 1A to ensure consistency between the two legislative schemes, the register of overseas entities and the registration of land in Scotland.
- 48 Lords Amendment 55 is consequential on Lords Amendment 57 and would remove the definition of “registered” from the ‘Interpretation’ section of the schedule.

### Lords Amendment 56 and 58

- 49 Like Lords Amendments 38, 40 and 42, these Amendments would align the transitional period under Schedules 3 and 4 with the period in the new Clause inserted by amendment 63.

### Lords Amendment 59

- 50 Lord Amendment 59 would require that the Scottish Ministers must be consulted before Secretary of State makes regulations to amend an Act of the Scottish Parliament.

## Lords Amendments after Clause 38: Financial Penalties

### Lords Amendment 60

- 51 Lords Amendment 60 would permit HMRC to disclose information under certain conditions to allow the registrar and Secretary of State to take action in connection with offences. This includes when investigating whether an offence has been committed, when prosecuting an offence, or when imposing financial penalties.

### Lords Amendment 61

- 52 Lords Amendments 61 would require all those who register as overseas entities and have sold property, and would fall scope of the registration requirements if there were no transition period, in England, Wales and Scotland between 28th February (the date the Bill was published) and date of their application to register to submit with their application a

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statement about what has been sold and the beneficial ownership details of the overseas entity at point of transfer of land title.

### **Lords Amendment 63**

- 53 Lord Amendment 63 would make it an offence for certain unregistered overseas entities, and every officer of the entity who is in default, who has not registered, or has not applied to register in the transitional period to fail to provide the same information as required by amendment 86 about any dispositions in land made on or after 28 February 2022. A person guilty of an offence is liable on summary conviction to a fine and a daily default fine of up to £2,500 a day in England and Wales. In the case of continued contravention, an offence is also committed by every officer of the overseas entity who did not commit an offence in relation to the initial contravention, but who is in default in relation to the continued contravention.

### **Lords Amendment 64**

- 54 Lord Amendment 64 would make further supplementary provisions, including a power to make regulations in connection with the new Clause inserted by Lords Amendment 62.

## **Lords Amendments to Clause 39: Interpretation**

### **Lords Amendment 65**

- 55 Lords Amendment 65 would extend the provisions of Part 1 of the Bill in relation to trusts so that they apply to arrangements of a similar character outside the UK. It also allows the Secretary of State to specify descriptions, by regulations, of arrangements outside the UK that are, or are not, to be treated as of a similar character to a trust.

## Financial Effects of Lords Amendments

- 56 The Government does not consider that any of the Lords Amendments would give rise to significant expenditure.

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