

Supplementary Delegated Powers Memorandum – Economic Crime and Corporate Transparency Bill

1. This memorandum, supplementary to the Delegated Powers Memorandum published on 22 September 2022, has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Economic Crime and Corporate Transparency Bill ("the Bill").
2. The Government has tabled amendments to the Bill for Commons Committee stage. These include a number of new or update delegated powers. This supplementary memorandum explains why the new powers have been taken and the reason for the procedure selected.

ANALYSIS OF DELEGATED POWERS BY CLAUSE

Application of Companies House measures to other legal entities: change of addresses of officers of overseas companies by registrar

Power conferred on: Secretary of State

Power exercisable by: regulations made by statutory instrument

Parliamentary procedure: affirmative

Context and purpose

3. The clause adds a new provision to an existing power in section 1046 of the Companies Act 2006 to make regulations setting out actions that may be taken if certain addresses supplied to the registrar for registration, do not meet statutory requirements.
4. This power may be exercised where an overseas company is required to deliver to the registrar for registration (a) a service address for an officer of the company or (b) the address of the principal office of an officer of the company.
5. Under this amended power in subsection (6A), the Secretary of State may make provisions corresponding or similar to new provisions about rectification of register relating to service addresses or principal addresses (new sections 1098B or 1097C).
6. The new provision provides that those regulations may confer on the Registrar of Companies a power to change any such address if they do not meet the statutory requirements.

Justification for taking the power

7. There may be instances where evidence suggests that the address where an officer of the company may be contacted, as provided by an overseas company is erroneous or invalid. In circumstances where no verifiable alternative information is available, the most appropriate approach may be to replace the information with a default address, where legal documents can be served, until such time as a valid address is provided.
8. Currently any registration requirements in relation to overseas companies established in the UK are provided solely under secondary legislation. Overseas Companies Regulation specifies information that must be registered with the

registrar in relation to overseas companies. The changes introduced in clause 1 provide additional powers and requirements accompanying the registration requirements established in secondary legislation. Therefore we cannot introduce them in primary legislation, because on this level they do not exist.

Justification for the procedure

9. Regulations made under the provision inserted by this clause are subject to the affirmative resolution procedure, which follows the procedure for the existing regulation making power in section 1046 of the Companies Act 2006.

Application of Companies House measures to other legal entities: overseas companies: availability of material for public inspection

Power conferred on: Secretary of State

Power exercisable by: regulations made by statutory instrument

Parliamentary procedure: affirmative

Context and purpose

10. The clause adds a new provision to an existing power in section 1046 of the Companies Act 2006 to make regulations setting out particulars required to be registered by an overseas company with an establishment in the UK. A UK establishment is a branch or place of business.
11. The new provision provides that those regulations may confer on the Registrar of Companies a discretionary power to withhold any such particulars from public inspection.

Justification for taking the power

12. There may be instances where evidence suggests that details provided by an overseas company are erroneous or invalid. In circumstances where no verifiable alternative information is available, the most appropriate approach may be to suppress the information from public view and annotate the register to the effect that there are doubts over the veracity of the information in the Registrar's possession. Through exercising the suppression powers, the registrar will act according to her new objective and minimise the risk of her records creating false or misleading impression to members of the public.

13. Currently any registration requirements in relation to overseas companies established in the UK are provided solely under secondary legislation. Overseas Companies Regulation specifies information that must be registered with the registrar in relation to overseas companies. The changes introduced in clause 2 provide additional powers and requirements accompanying the registration requirements established in secondary legislation. Therefore we cannot introduce them in primary legislation, because on this level they do not exist.

Justification for the procedure

14. Regulations made under the provision inserted by this clause are subject to the affirmative resolution procedure, which follows the procedure for the existing regulation making power in section 1046 of the Companies Act 2006.

Application of Companies House measures to other legal entities: overseas companies: registered addresses of an overseas company

Power conferred on: Secretary of State

Power exercisable by: regulations made by statutory instrument

Parliamentary procedure: negative procedure

Context and purpose

15. This clause inserts new section 1048A into the Companies Act 2006, which confers a regulation making power on the Secretary of State to require that an overseas company provides an appropriate address and an appropriate email address to the Registrar.

16. The new provision provides that the regulations can provide for the information to be held from public inspection.

Justification for taking the power

17. The Bill already contains provisions designed to improve the accuracy and reliability of the addresses (and email addresses) of UK registered companies and provides regulation making power allowing for addresses to be changed where they do not meet the statutory requirement or are inaccurate. It is appropriate that similar requirements and powers should apply in respect of the UK addresses of overseas companies which are established here. The primary

purpose is to provide a means to protect individuals whose private addresses may have been “hijacked” and used improperly in a corporate context.

Justification for the procedure

18. Regulations under this clause are subject to the negative resolution procedure.

Application of Companies House measures to other legal entities: overseas companies: identity verification of directors

Power conferred on: Secretary of State

Power exercisable by: regulations made by statutory instrument

Parliamentary procedure: negative procedure

Context and purpose

19. Regulations made under the power in this amendment allow the Secretary of State to extend identity verification requirements to directors of overseas companies established in the UK. These requirements will correspond to those imposed on directors of UK companies.

20. Regulations made under the power in this amendment may include requiring the delivery of statements or other information to the Registrar. They may also include with or without modifications, a prohibition from acting as a director unless identity verified or applying exemptions from identity verification on national security grounds.

Justification for taking the power

21. Overseas companies are incorporated outside of the UK and governed by their domestic law. If they operate within the UK, they are only within limited control of UK law. UK legislation affecting overseas companies will therefore likely need to adapt more quickly to their changing circumstances than primary legislation would allow for.

22. Furthermore, overseas companies operating in the UK are primarily regulated by secondary legislation made under the powers in Part 34 of the Companies

Act. These powers are envisaged to now be insufficient to extend to new measures introduced via this Bill. Introducing a new power via this amendment allows for the extension of new measures in the Bill to overseas companies without moving away from the current model of delivering this via secondary legislation.

Justification for the procedure

23. As regulations made under this power will correspond to regulations under section 1046 already made and debated by Parliament under the affirmative procedure, we assess that there is no further need for them to be debated again.

Application of Companies House measures to other legal entities: registration of qualifying Scottish partnerships

Power conferred on: Secretary of State

Power exercisable by: regulations made by statutory instrument

Parliamentary procedure: affirmative procedure, unless they are regulations under that section that only make provision that corresponds or is similar to provision made or capable of being made by a statutory instrument that is itself subject to annulment in pursuance of a resolution of either House of Parliament

Context and purpose

24. The purpose of this power is to replace and amend the Scottish Partnerships (Register of People with Significant Control) Regulations 2017 in respect of Scottish qualifying partnerships.

25. Under this power the Secretary of State will be permitted to make provisions: (a) requiring delivery of additional information about Scottish qualifying partnerships to the registrar, (b) allowing to require identity verification from managing officers of Scottish qualifying partnerships partners, (c) corresponding or similar to any provisions relating to companies or limited partnerships.

26. This power allows for creation of summary offences, punishable with fine in connection with new requirements covered in (a) and (b) above.

27. These regulations can cover several topics, including what information Scottish qualifying partnerships need to deliver to the Registrar, and making provision for at least one managing officer to verify their identity.

Justification for taking the power

28. Provisions about the registration of Scottish qualifying partnerships currently exists via the Scottish Partnerships (Register of People with Significant Control) Regulations 2017, made using powers under section 2(2) of the European Communities Act 1972. Now that the European Communities Act has been repealed, a new power is required in primary legislation to ensure that the 2017 regulations and further requirements placed on Scottish qualifying partnerships since then, such as identity verification can be amended in future.

29. This power allows us to preserve the registration requirements applicable to Scottish qualifying partnerships and give the Secretary of State the flexibility to align the enforcement of these requirements with the measures introduced by the Economic Crime and Corporate Transparency Bill.

Justification for the procedure

30. Regulations under this power allow to provide for new filing requirements or impose new identity verification requirements on managing officers of Scottish Qualifying Partnership partners. It is therefore appropriate for Parliament to debate any changes made to ensure they are reasonable and proportionate.

31. Clause 8 of this amendment further allows regulations under this power to be made subject to the negative procedure if they only make provision corresponding or similar to a provision made by a statutory instrument which is itself subject to the negative procedure.

Application of Companies House measures to other legal entities: amendment to clause 108: power to exempt corporate general partners of limited partnerships from identity verification

Power conferred on: Secretary of State

Power exercisable by: regulations made by statutory instrument

Parliamentary procedure: affirmative procedure

Context and purpose

32. This amends clause 108 and extends identity verification requirements to registered officers (who also have to be a managing officer in the meaning of section 3(1) of Limited Partnership Act) of corporate general partners of limited partners. It introduces an offence for general partners and their managing officers who do not comply with those duties if they are in default.
33. The power in this amendment allows the Secretary of State to make regulations setting out exemptions to the identity verification requirement.

Justification for taking the power

34. This power to exempt from the verification requirement provides for circumstances in which identity verification is not necessary for achieving Companies House's register integrity aims. For example, it would not be proportionate to require a registered officer who has undergone sufficient checks as part of their appointment process which are sufficient to meet the register integrity standards to verify their identity.
35. The Government is not yet in a position to exhaustively stipulate further circumstances where a general partner's identity can be reliably confirmed without identity verification. We expect examples of where a general partner's registered officer's identity can be reliably confirmed without identity verification to become more apparent once the Companies House identity verification is operational and the Registrar has gained experience of the identity verification process in practice. This power enables the Government to future proof legislation and quickly respond to new circumstances as they arise.
36. This power to set out exemptions to identity verification is limited to the context of registering the registered officer's appointment. The power is, therefore, specific in its application.

Justification for the procedure

37. The affirmative procedure is required to ensure that exemptions to directors being obligated to verify their identity undergo sufficient scrutiny to satisfy

Parliament that the exemptions do not undermine the core purpose of the verification policy, specifically improving the integrity of the Companies Register.

Application of Companies House measures to other legal entities: power to require additional statements where a corporate general partner of a limited partnership is exempt from identity verification

Power conferred on: Secretary of State

Power exercisable by: regulations made by statutory instrument

Parliamentary procedure: affirmative procedure

Context and purpose

38. This inserts clause 10D (additional statements about exemption from identity verification) into the Limited Partnerships Act 1907.
39. Where a person is exempt from verification requirements through regulations made under new section 8K(1)(a)(ii) of the Limited Partnerships Act 1907 (clause 108), the Registrar may require additional statements to evidence the exemption. The Secretary of State may, by regulations, require that these statements are delivered to the Registrar.
40. The additional statements and information would be delivered to the Registrar alongside a 'relevant statement'. A 'relevant statement' refers to a statement by which an individual confirms that a registered officer of a general partner falls within an identity verification exemption. These statements provide details of the exemption however, the Registrar may require more information in connection the exemption.

Justification for taking the power

41. These requirements will need to be set out and adapted when the exemptions are created by regulations under new section 8K(1)(a)(ii). The power is needed so that the Registrar can confirm the validity of an exemption from IDV requirements. The relevant statements may not provide all the information needed to confirm an exemption's validity and more information could be required to do so.

Justification for the procedure

42. It will require parliamentary scrutiny to ensure that the supplementary information that will be required from individuals exempt from verification requirements is both sufficient to evidence the exemption, and proportionate.

Power to require businesses to report discrepancies: Discrepancy Reporting

Power conferred on: Secretary of State

Power exercisable by: regulations made by statutory instrument

Parliamentary procedure: affirmative procedure

Context and purpose

43. The government committed to expanding discrepancy reporting requirements on regulated professionals, such as banks, lawyers and accountants in the 2022 Corporate Transparency and Register Reform White Paper.
44. This power allows the Secretary of State to make regulations which impose obligations on 'relevant persons' to report discrepancies between the information which they receive from their customer against the material which the Registrar of companies makes available for public inspection.

Justification for taking the power

45. Aspects of a discrepancy reporting system are likely to change over time, such as who should be under the obligations, what information they are obliged to check and what information the reporter must provide about themselves. As technology develops or different information is required to be sent to the Registrar, discrepancy reporting obligations should be able to adapt accordingly. The Secretary of State should have the power to make these adaptations and other changes to improve the discrepancy reporting system without being required to make amendments by primary legislation.

Justification for the procedure

46. Regulations made under this power will be subject to the affirmative procedure. The new regulations will have an impact on the duties of certain businesses and therefore should be subject to appropriate parliamentary scrutiny.

Moving service addresses to default addresses

Power conferred on: Secretary of State

Power exercisable by: regulations made by statutory instrument

Parliamentary procedure: affirmative

Context and purpose

47. Section 1097A of the Companies Act 2006 as amended by Clause 29 of the Bill gives the Secretary of State the power to make regulations pursuant to which Registrar of companies will, either by her own motion or upon successful application by a third party, be required to change the address of the registered office of a company, where the Registrar is satisfied that the company is not authorised to use its current address. Parliament has already acceded to the unamended power, through which the Companies (Address of Registered Office) Regulations 2016 was made.

48. This amendment creates similar powers which concern different kinds of address which are required in filings to the Registrar. There are in total four delegated powers. They are as follows:

- (i) Section 8PA Limited Partnerships Act 1907 (amendment 3): Regulations about change of registered officers' addresses by registrar
- (ii) Section 8V Limited Partnerships Act 1907 (amendment 4): Regulations about change of general partner's addresses by registrar
- (iii) Section 1097B Companies Act 2006 (amendment 15): Rectification of register: service addresses, and
- (iv) Section 1097C Companies Act 2006 (amendment 16): Rectification of register: principal office addresses

49. Section 8PA, inserted by amendment 3, provides that the Secretary of State may make regulations to authorise or require the Registrar to change the service address and or principal office address of the registered officer of a

general partner in a limited partnership where they do not meet Companies Act 2006 requirements as a service address.

50. Section 8V, inserted by amendment 4, provides that the Secretary of State may make regulations to authorise or require the Registrar to change the service address and or principal office address of a general partner in a limited partnership where they do not meet Companies Act 2006 requirements as a service address.

51. Section 1097B, inserted by amendment 15, provides that the Secretary of State may make regulations to authorise or require the Registrar to change the service address of a director, of a secretary or joint secretary or of a registrable person or registrable relevant legal entity in relation to a UK company where it does not meet Companies Act 2006 requirements as a service address.

52. Section 1097C, inserted by amendment 16, provides that the Secretary of State may make regulations to authorise or require the Registrar to change the principal office address of a registrable person or registrable relevant legal entity in relation to a company where the Registrar is satisfied that it is not in fact their principal office address.

53. All four of the above powers can make consequential amendments in primary legislation, as they import the scope to replicate elements of the regulations introduced by the exercise of powers under s.1097A of the Companies Act 2006 as amended by Clause 29 of the Bill.

Justification for taking the powers

54. This is effectively an extension of existing powers (strengthened by this Bill) to ensure that, as broadly as possible, address information on the public registers is accurate and reliable. The Government envisages that new regulations will define how the Registrar will exercise a new unilateral ability to rectify erroneous address details on the register alongside the existing arrangements whereby she can do so only upon the application of a third party. The power and the associated regulations will streamline the process and be of benefit to those who fall prey to identity theft. The technical and administrative details of how rectification of the register will operate and are more suited to secondary than primary legislation.

55. It may be necessary to suspend filing obligations during a dispute, or alter them in some way. As the procedure will be set out in secondary, and therefore the details of exactly how obligations arising in primary legislation cannot be settled until the procedure is set, it is necessary to take a Henry VIII consequential

amendment making power. It would not be possible for secondary legislation to suspend primary legislation obligations, otherwise.

56. Procedure for applications and the Registrar acting under her own volition will be detailed, with appeal rights and procedures also being conferred. The Secretary of State considers these details to be most appropriately left to secondary legislation.

Justification for the procedure

57. The power is affirmative as extensions to (and any modifications to) the existing principles of the Companies Act 2006 should be debated particularly where, as in this case, they involve the exercise of Henry VIII powers. This will ensure that address rectification requirements remain proportionate to the overall aims of the policy and support register integrity.

Material unavailable for public inspection: verification information - power to add to the list of material unavailable for public inspection relating to the verification information

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: negative resolution

Context and purpose

58. This amendment relates to the register of overseas entities, introduced by virtue of Part 1 of the Economic Crime (Transparency and Enforcement) Act 2022.
59. The amendment does not create a new power, rather it amends the existing power in section 16 of the Economic Crime (Transparency and Enforcement) Act 2022 (“the ECTE Act”). All of the details of the verification process are set out in regulations made under s16 of the ECTE Act. It is therefore appropriate that the provision to require the registrar to make certain information delivered under those regulations unavailable for public inspection is also detailed in the regulations made under that power.

Justification for taking the power

60. This level of detail is more appropriate to be contained in secondary legislation. This will also allow flexibility in the event of changing circumstances, such as if the regulations later require more personal information to be provided about verifiers, which it would not be appropriate to make available for public inspection.

Justification for the procedure

61. Regulations made under this section are subject to the negative resolution procedure. Additional parliamentary scrutiny is not considered necessary since the core framework is set out in primary legislation.

Power to expand the meaning of “registrable beneficial owner” when there is a corporate trustee involved

Power conferred on: Secretary of State

Power exercisable by: Statutory Instrument

Parliamentary procedure: affirmative resolution

Context and purpose

62. This power relates to the register of overseas entities, which was introduced by Part 1 of the Economic Crime (Transparency and Enforcement) Act 2022. When a registrable beneficial owner of an overseas entity is acting as a trustee, the overseas entity must provide information to the registrar of companies about the trust.

63. We have amended that Act to ensure that whenever there is a trustee in the chain of ownership of an overseas entity, it would fall under the definition of registrable beneficial owner.

64. This power allows the secretary of state to expand the description of persons who are registrable beneficial owners further, where the overseas entity is part of a chain of entities that includes a trustee.

Justification for taking the power

65. It is appropriate to have a power to expand the description to ensure the maximum amount of transparency where a legal entity trustee is involved in a chain of ownership. There may be complex arrangements which attempt to circumvent the requirements, which cannot be anticipated at this time.
66. This would allow the Government to act swiftly to close any loopholes, for example if intelligence from law enforcement partners or HMRC suggests there is a problem.

Justification for the procedure

67. Regulations made under this power will be subject to the affirmative procedure. Given the new regulations would only be needed if complex avoidance arrangements have been identified, any regulations should be subject to appropriate parliamentary scrutiny.

Powers to amend disqualification legislation in relation to relevant entities: GB and NI

Powers conferred on: Secretary of State

Powers exercisable by: regulations made by statutory instrument

Parliamentary procedure: affirmative resolution

Context and purpose:

68. Under current provisions in the Bill, general partners will be under a legal duty to take any steps that are necessary to ensure that any general partner in the limited partnership who is disqualified under the directors disqualification legislation ceases to be a general partner.
69. Individuals can be disqualified under the Company Directors Disqualification Act 1986, which extends to, and applies in, Great Britain, or the Company Directors Disqualification (Northern Ireland) Order 2022.
70. However, this legislation does not currently provide for the disqualification of people from acting as general partners of limited partnerships based on how they conduct themselves in the affairs of a limited partnership. Nor is it currently a criminal offence for a disqualified person to act in the management

71. To ensure that general partners can be held accountable for their actions when engaged in conduct as general partners, and to ensure they commit an offence if they act in the management of a limited partnership, the directors disqualification legislation needs to be amended so that it can be applied in relation to limited partnerships.
72. These Government amendments to the Bill comprise two powers: one inserted into the Company Directors Disqualification Act 1986 and a mirror-image one inserted into the Company Directors Disqualification (Northern Ireland) Order 2002. Both powers enable the Secretary of State to make regulations amending the legislation for the purpose of applying, or modifying the application of, any of its provisions in relation to limited partnerships.
73. This includes extending the company disqualification conditions to include corresponding conditions relating to a limited partnership; modifying which company disqualification conditions can, in combination with each other, result in a person being disqualified; providing for any of the company disqualification conditions to result in or contribute to a person being disqualified from acting in a role or doing something in relation to a limited partnership; and limiting the company disqualification conditions to remove conditions relating to limited partnerships .
74. The two powers go beyond applying the 1986 Act and 2002 Order to limited partnerships, however. The powers permit the application of the disqualification legislation to “relevant entities”, which, in addition to limited partnerships, comprises limited liability partnerships and qualifying Scottish partnerships (the latter are partnerships constituted under the law of Scotland all of whose members are (a) a limited company, or (b) an unlimited company, or a Scottish partnership, each of whose members is a limited company).
75. In relation to limited partnerships, although the disqualification legislation has already been extended to these under secondary legislation (regulation 4 of the Limited Liability Partnerships Regulations 2001), the new powers need to cover LLPs to make sure that the applications of disqualification legislation to LLPs and LPs work consistently when that legislation is applied to both.
76. In relation to qualifying Scottish partnerships, there is currently a gap in the law: the disqualification legislation does not apply to this category of partnership at all. The policy rationale for applying disqualification legislation to the general partners of limited partnerships applies equally to the application of that legislation to the partners of qualifying Scottish partnerships.

Justification for taking the powers

77. There will be several provisions within the disqualification legislation that need to be applied with or without modifications in order to bring about the coherent application of disqualification legislation to forms of partnership that are not

currently covered, and to ensure those applications of the legislation operate consistently with the scheme for LLPs. Therefore, the level of detail is more suitably relegated to secondary legislation than it is to primary legislation. The principles about the circumstances in which it is suitable to disqualify a person have been set down in the 1986 Act and the 2002 Order, and these two new powers would simply provide the mechanism to extend those principles, without substantively altering them, so they work in the different contexts of LPs, LLPs and QSPs.

78. Furthermore, if the company disqualification legislation ever changes in the future, having these powers will mean that its application to LPs, LLPs and QSPs can be changed to make parallel provision if that is appropriate.

Justification for the procedure

39. The affirmative procedure has been selected to ensure that there is sufficient parliamentary debate as the power to amend the 1986 Act is a Henry VIII power and these regulations will have an impact on the consequences for the actions of general partners in a limited partnership. Similarly, amendments to the 2002 Order will have significant impacts for the general partners of Northern Irish limited partnerships. It is appropriate for the both powers to be subject to the affirmative procedure.

Application of ECCT Bill provisions to corresponding provisions in ECTE 2022: Power to make regulations protecting material

Power conferred on: Secretary of State

Power exercisable by: regulations made by statutory instrument

Parliamentary procedure: affirmative procedure

Context and purpose

79. This power replaces an existing power in section 25 of the Economic Crime (Transparency and Enforcement) Act 2022, which provides for regulations to be made to protect information from public inspection. The existing power corresponds to a power contained within section 790ZG of the Companies Act 2006.

80. The power is being replaced with one that aligns with the power inserted into the Companies Act 2006 by clause 87 of the Bill, which allows for regulations to

be made to protect information held in the company register. The replacement of section 25 of the 2022 Act is in order that the Register of Overseas Entities operates as closely as possible with the Companies Act 2006.

81. Regulations may make provision as to who may make an application, the grounds on which an application may be made, the information to be included in and documents to accompany an application, how an application is to be determined, the duration of restrictions granted and procedures for their revocation.
82. The registrar may be given discretion in how she determines an application and in setting out the duration of restrictions and procedures for their revocation. She may refer applications to another person to assist with determining whether an application should be accepted.
83. Regulations may also set out the circumstances in which the registrar may disclose information that has been made unavailable for public inspection. They may also impose a duty on the registrar to publish information about the number of applications that have been made and how many of them have been allowed, as well as any other details about applications that may be specified in the regulations.
84. This power is necessary as there may be circumstances in which all of a person's personal information should be suppressed from the public register, e.g. where a person is at serious risk of violence or intimidation as a result of being of the overseas entities register.
85. Consistency between the two regimes – the companies regime and the register of overseas entities regime - both facilitates smooth running of them, and ensures that overseas entities are subject, as far as is possible, to the same requirements as UK companies.

Justification for taking the power

86. The power is being replaced so that it continues to correspond with similar provisions in the Companies Act 2006, as amended by this Bill. The detailed operation of the "protection regime" is more suitably set out in regulations, which also enable flexibility should there be a need to make changes to the processes and procedures set out in them.

Justification for the procedure

87. Regulations made under this power are subject to the affirmative procedure. It is appropriate that Parliament has the opportunity to scrutinise the application

procedure, the circumstances in which applications may be made, and how they will be determined. The corresponding Companies Act 2006 power in clause 87 of this Bill is also subject to the affirmative procedure.

Application of ECCT Bill provisions to corresponding provisions in ECTE 2022: Power to limit the registrar’s ability to remove material from the register of overseas entities

Power conferred on: Secretary of State

Power exercisable by: regulations made by statutory instrument

Parliamentary procedure: negative procedure

Context and purpose

88. This power will maintain consistency between the Companies Act 2006 and the Economic Crime (Transparency and Enforcement) Act 2022. New section 28(1) sets out the categories of material that may be removed from the register of overseas entities. This power may be exercised either by the Registrar’s own motion or upon application by another person. New section 28(3) provides the Secretary of State with the ability to make regulations to determine limitations on what can be removed from the register on application by a person other than the Registrar.

89. New section 28 replicates for the register of overseas entities the power set out in clause 82 of this bill relating to the register of companies.

Justification for taking the power

90. As the new section 28 provides the Registrar with expanded powers to administratively remove material from the register of overseas entities, it is appropriate to provide a measure of scope to modify this aspect in future in light of operational experience.

Justification for the procedure

91. Given the level of assurance already provided in the primary clauses, the procedure for the making of regulations will be negative as these measures are non-controversial and will be debated in Parliament as part of the passage of this Bill. The power can only be exercised in a way that reduces the breadth of the Registrar's power.

Application of ECCT Bill provisions to corresponding provisions in ECTE 2022: Further provision about removal of material from the register

Power conferred on: Secretary of State

Power exercisable by: regulations made by statutory instrument

Parliamentary procedure: negative procedure

Context and purpose

92. New section 28 of the Economic Crime (Transparency and Enforcement) Act 2022 sets out what categories of material may be removed from the register of overseas entities either by the Registrar's own motion or upon application by another person.

93. New section 28A(1) obliges the Secretary of State to make regulations setting out the notice requirement to be given in instances where material has been removed upon the Registrar's own motion. The Secretary of State must also make regulations regarding how applications for the removal of material may be made and determined.

94. Because new section 28 provides new removal powers for the Registrar, sections 29 and 29A of the Act are repealed by the new section 28A. Sections 29 and 29A relate to rectification of the register and are not required in light of new section 28. The powers within these sections (a regulation making power in section 29 and a power of removal for the Registrar in section 29A) have therefore also been repealed and are replaced by new section 28.

95. The powers contained in this amendment replicate a power inserted into this Bill via clause 82 relating to the removal of material from the register of companies, and will maintain consistency between the Act and the Companies Act 2006.

Justification for taking the power

96. The detail of the process for giving notice of removal of material, and the processes around making and determination of such applications is more suitably established in secondary legislation. The flexibility to amend the process through secondary legislation will allow scope potentially to both strengthen and/or streamline it in future.

Justification for the procedure

97. Given the level of assurance already provided in the primary clauses, the procedure will be negative as these measures are non-controversial and will be debated in Parliament during the passage of this Bill.

New paragraph 10Z7A of Schedule 1 to the Anti-Terrorism, Crime and Security Act (ATCSA) 2001: Power to amend the definitions of “cryptoasset” and “crypto wallet” in new civil recovery powers

Power conferred on: Secretary of State

Power exercised by: regulations made by statutory instrument

Parliamentary Procedure: affirmative procedure

Context and Purpose

98. New paragraph 10Z7A of Schedule 1 to ATCSA defines a “cryptoasset” and a “crypto wallet” for the purposes of the new civil recovery powers in Part 4BA of Schedule 1 to ATCSA. Sub-paragraph (2) of that paragraph enables the Secretary of State to amend those definitions.

Justification for taking the power

99. Cryptoassets are a form of property that can typically be used to store or transfer value by secure means. The ability to move property quickly, across borders, without the need for standard banking services, and often to hold it anonymously, make these assets increasingly attractive to those engaged in economic crime and terrorist activity. The technology associated with cryptoassets is rapidly evolving. It is vital that terrorists do not evade the powers conferred by this Bill by using technology modified so that it falls outside the definition in the legislation.
100. The United Kingdom is committed to the international standards set by the Financial Action Task Force (“FATF”). In 2015, FATF introduced new recommendations for tackling the money laundering and terrorist financing risks associated with cryptoassets or “virtual assets”. Whilst those recommendations do not directly include civil recovery measures, they are implemented in the UK through other legislation which uses very similar concepts and terminology to those in this Bill. The FATF standards are regularly revised. The UK needs to be able to change its legal framework quickly to meet those standards without different aspects of it unnecessarily diverging.

Justification for the procedure

101. Regulations under this power are subject to the affirmative resolution procedure. This will allow both Houses of Parliament to debate and vote on any changes and is consistent with related legislation. In particular, it is in line with the current procedure for amending the definitions (considered in more detail below) of “cryptoasset exchange provider” and “custodian wallet provider” (each containing a definition of “cryptoasset” that is mirrored on the face of this Bill) in the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (the “MLRs”).
102. Should technology, risks or international standards change in future so that the definitions need updating in the same way across several closely related pieces of legislation (the new civil recovery provisions introduced by this Bill, the MLRs, POCA, ATCSA and the Terrorism Act 2000), the power will therefore allow the Secretary of State to do so via one draft affirmative instrument. Therefore, they could be updated – and scrutinised by Parliament – as part of a single set of regulations.
103. Furthermore, this procedure mirrors the powers to amend the relevant, cryptoasset-related, definitions in other Parts of Schedule 1 to ATCSA and in

the Terrorism Act 2000 (“TACT”). Again, this means that they could be updated – and scrutinised by Parliament – as part of a single set of regulations.

New paragraph 10Z7B of Schedule 1 to ATCSA: Power to amend the definition of “cryptoasset service provider”

Power conferred on: Secretary of State

Power exercised by: regulations made by statutory instrument

Parliamentary Procedure: affirmative procedure

Context and Purpose

104. New paragraph 10Z7B of Schedule 1 to ATCSA defines a “cryptoasset service provider” for the purposes of the new civil recovery powers in Part 4BB of ATCSA which are modelled on the bank account freezing and forfeiture powers in Part 4B. A “cryptoasset service provider” includes a “custodian wallet provider” or a “cryptoasset exchange provider”. Either can be subject to the new wallet freezing and forfeiture powers designed to target cryptoassets that are hosted by a third party. Subsection (3) enables the Secretary of State by regulations to amend those definitions in the future.

Justification for taking the power

105. The justifications largely follow the justifications above (in relation to new paragraph 10Z7A of Schedule 1 to ACTSA), concerning the definition of “cryptoasset”. The means by which cryptoassets can be held on behalf of a customer may well develop in future, just as new types of banking services have emerged in recent years. Equally, it is important that Parliament should debate and vote on the extension of these powers to any additional firms. The means by which cryptoassets can be held on behalf of a customer may well develop in future, just as new types of banking services have emerged in recent years. Equally, it is important that Parliament should debate and vote on the extension of these powers to any additional firms.

106. The definitions in the Bill of “cryptoasset exchange provider” and “custodian wallet provider” are the same as those in the MLRs, POCA, and Schedule 3A to the Terrorism Act 2000. Those definitions can be amended already through

secondary legislation – specifically, by regulations under section 49 of the Sanctions and Anti-Money Laundering Act 2018, subject to the draft affirmative procedure (see section 55(5)) and amendments consequential on those regulations (section 54(2)).

Justification for the procedure

107. As with the definition of “cryptoasset” considered in more detail above in relation to new paragraph 10Z7A of Schedule 1 to ATCSA, the draft affirmative procedure gives an effective level of control to both Houses of Parliament over the use of this power which is a Henry VIII power. It will also enable the Secretary of State to amend a definition in Parts 1-4BD of Schedule 1 to ACTSA while making parallel amendments to linked anti-money laundering and proceeds of crime legislation in the same regulations if needed.

108. Furthermore, this procedure mirrors the powers to amend the relevant, cryptoasset-related, definitions in other Parts of Schedule 1 to ATCSA and in TACT. Again, this means that they could be updated – and scrutinised by Parliament – as part of a single set of regulations.

New paragraph 10Z7CB (7) to (10) of Schedule 1 to ATCSA: Power to amend section 10Z7C, and make consequential amendments, in relation to means of forfeiture of cryptoassets held in a crypto wallet

Power conferred on: Secretary of State

Power exercised by: regulations made by statutory instrument

Parliamentary Procedure: affirmative procedure

Context and Purpose

109. New paragraph 10Z7C in Part 4BC of Schedule 1 to ATCSA makes provision about the forfeiture of cryptoassets. Where a cryptoasset service provider administers a crypto wallet on behalf of a customer, and that wallet contains cryptoassets subject to a forfeiture order by a court, the provider is required by this new section to transfer those cryptoassets into a law enforcement nominated wallet. The power is a Henry VIII power which would allow the Secretary of State to amend aspects of this section which are relevant to such third-party crypto wallets, in order to provide for a different means of forfeiture.

Justification for taking the power

110. The power would provide a contingency to enable the mechanism of forfeiture to be altered, should that become necessary in order to overcome technical barriers around the forfeiture of cryptoassets administered by a third party. It is necessary for such provision to appear on the face of the Act (hence the Henry VIII power) to give the greatest possible transparency as to the process of forfeiture.
111. Compared to mainstream banking providers, there is more variety and less transparency in the business models of cryptoasset service providers so a backstop is felt to be sensible to prevent commercial entities being in contempt of court by no fault of their own. By way of example, this could conceivably be an issue if the cryptoassets in question were locked into a smart contract: a self-executing contract defined by computer code, most recognisable in the form of applications built on platforms such as the Ethereum blockchain. Smart contracts are immutable, meaning an asset holder could lock criminal assets into a smart contract so that they could only be released upon certain conditions being met. Even in the case of a forfeiture order, if those conditions were not met, it may be impossible for the cryptoasset service provider to release the cryptoassets.
112. Developers are exploring the depth of capabilities offered by the smart contracts and anecdotal evidence indicates that the uses for this technology are growing. The Home Office is not (yet) aware of any asset recovery investigations involving cryptoassets where those assets have been locked into smart contracts. In any case, smart contracts are one example; cryptoasset technology is evolving rapidly and is likely to continue to do so in ways that we cannot anticipate.
113. The power is limited in scope and would not be capable of amending the entirety of paragraph 10Z7CB or making substantive changes to any of the wider provisions governing (for example) the right to appeal or the need for a court order, nor to the procedure for forfeiting detained cryptoassets (those already under law enforcement control). The power is intended to be used simply for the purpose of making provision for the forfeiture of cryptoassets held in a frozen crypto wallet.

114. However, it is not feasible to confine the power solely to amendment of the particular sub-paragraph which requires the transfer of cryptoassets. For example, other sub-paragraphs that cross-refer to that sub-paragraph might need to be adjusted in consequence. It is also possible that regulations would – for instance – need to provide for payment of interest accrued in the event that they were to require the payment of money into a bank account rather than a transfer of cryptoassets. In that case the amendments would need to specify that an equivalent amount of money must be paid into an interest-bearing account, and that interest accruing on that amount is to be added to it on its forfeiture (by virtue of this paragraph) or release.

Justification for the procedure

115. Regulations under this power would amend the text of the paragraph, and therefore the draft affirmative procedure is appropriate. It would also enable regulations to be included, if necessary, in the same instrument as regulations to amend the definition of “cryptoasset”, “cryptoasset service provider” or “crypto wallet”, should there be connected reasons for making the changes.

Amendments to Schedule 6 to TACT “Financial Information”

Power conferred on: Secretary of State

Power exercised by: regulations made by statutory instrument

Parliamentary Procedure: affirmative procedure

Context and purpose

116. The new provision in Schedule 6 to TACT makes provision to update the list of ‘financial institutions’ which will, as a result of these amendments, include a definition of a “cryptoasset service provider” for the purposes of the current powers to obtain financial information under Schedule 6. A “cryptoasset service provider” includes a “custodian wallet provider” or a “cryptoasset exchange provider”. New sub-paragraph (1AF) enables the Secretary of State by regulations to amend those definitions in the future.

Justification for taking the power

117. The justifications largely mirror the justifications above (in relation to the new definitions inserted into Schedule 1 to ATCSA), concerning the same definition of “cryptoasset service provider”. As new banking systems and services emerge, it is important that Parliament should debate and vote on the extension

of these powers to any additional firms.

118. The definitions in the Bill of “cryptoasset exchange provider” and “custodian wallet provider” are the same as those in the MLRs, POCA, and Schedule 3A to TACT. Those definitions can be amended already through secondary legislation – specifically, by regulations under section 49 of the Sanctions and Anti-Money Laundering Act 2018, subject to the draft affirmative procedure.

Justification for the procedure

119. As with the definition of “cryptoasset” considered above in relation to the new paragraph 10Z7A of Schedule 1 to ATCSA, the draft affirmative procedure gives an effective level of control by both Houses of Parliament over the use of this power, which is a Henry VIII power. It will also enable the Secretary of State to amend the definition in other regulations – including ATCSA, TACT, and the MLRs – if needed. This means that they could be updated and scrutinised by Parliament as part of a single set of regulations.