

ECONOMIC CRIME AND CORPORATE TRANSPARENCY BILL

EXPLANATORY NOTES ON LORDS AMENDMENTS

What these notes do

- 1 These Explanatory Notes relate to the Lords Amendments to the Economic Crime and Corporate Transparency Bill as brought from the House of Lords on 10 July 2023 (Bill 346).
- 2 These Explanatory Notes have been prepared by the Home Office, the Department for Business and Trade, the Ministry of Justice, and HM Treasury in order to assist the reader of the Bill and the Lords amendments, 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 These Explanatory Notes, like the Lords amendments themselves, refer to HL Bill 96, 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 114, 116, 118 to 133, 166 and 173 to 205 were tabled in the name of the Minister, Lord Johnson of Lainston.
- 6 Lords Amendments 134 to 145, 148 to 158, 160, 161 to 165, 167 to 168, 171 to 172, and 206 to 229 were tabled in the name of the Minister, Lord Sharpe of Epsom.
- 7 Lords Amendments 146 to 147, 162, and 169 to 171 were tabled in the name of the Minister, Lord Bellamy.
- 8 Lords Amendments 23 and 115 were tabled by Lord Vaux of Harrowden, and were opposed by the Government.
- 9 Lords Amendments 117 and 161 were tabled by Lord Agnew of Oulton, and were opposed by the Government.
- 10 Lords Amendments 151 and 159 were tabled by Lord Garnier, and were opposed by the Government.
- 11 In the following Commentary, an asterisk(*) appears in the heading of any paragraph that deals with a non-Government amendment.

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Commentary on Lords amendments

Lords Amendments to Part 1: Companies etc

Lords Amendments to Clause 1: The registrar's objectives

Lords Amendment 1

- 12 This amendment would expand the scope of Objective 2 so that it obliges the Registrar, when performing her functions, to seek to promote the accuracy of material already on the register rather than just that which is prospectively delivered to her after the Bill becomes law, and to seek to ensure the register contains all the material it ought to contain.

Lords Amendment 2

- 13 By replacing, "... *minimise the risk of...*" with "... *ensure...*", this amendment would bring the wording of objective 3 into line with objectives 1 and 2.

Lords Amendment 3

- 14 Upon the Bill's introduction, the Registrar's fourth objective was to "...*minimise...*" the extent to which companies and others carry out or facilitate unlawful activities. This amendment would make it an objective to "prevent" companies and others from carrying out or facilitating unlawful activities.

Lords Amendment 4

- 15 This amendment would expand Objective 2's scope so that it applies not only to the register of companies but also to the other statutory registers the Registrar holds, such as the register of Persons of Significant Control and the Register of Overseas Entities.

Lords Amendment to Clause 2: Memorandum of association: names to be included

Lords Amendment 5

- 16 This amendment would remove clause 2 (Memorandum of association: names to be included), because the provisions of this clause are incorporated into a new clause (Information about subscribers) introduced by amendment 7.

Lords Amendment to Clause 4: Subscribers: disqualification

Lords Amendment 6

- 17 This amendment would remove clause 4 (Subscribers: disqualification), because the provisions of this clause are incorporated into a new clause (Information about subscribers) introduced by amendment 7.

Lords Amendment after Clause 4

Lords Amendment 7

- 18 This amendment would expand the information that an application for the formation of a company must include about its "subscribers" by amending Companies Act 2006 provisions.

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It incorporates clauses 2 (Memorandum of association: names to be included) and 4 (Subscribers: disqualification) of the Bill.

- 19 The information requirements of subscribers who are individuals and subscribers who are corporates or firms are separated, but the required information remains the same for both – name and service address.
- 20 A power is provided to amend the information requirements and two similar powers are removed from the Companies Act 2006.

Lords Amendment to Clause 5: Proposed officers: identity verification

Lords Amendment 8

- 21 This amendment would correct a cross-reference in clause 5 (Proposed officers: identity verification) of the Bill.

Lords Amendments to Clause 6: Proposed officers: disqualification

Lords Amendments 9 and 10

- 22 Amendment 9 is consequential on new clauses introduced by amendments 15 (Power to impose director disqualification sanctions), 16 (Disqualification of persons designated under sanctions legislation: GB) and 18 (Disqualification of persons designated under sanctions legislation: NI).
- 23 Amendment 10 is consequential on amendments 19, 20, and 21.

Lords Amendments to Clause 7: Persons with initial significant control: disqualification

Lords Amendments 11 and 12

- 24 Amendment 11 is consequential on new clauses introduced by amendments 15 (Power to impose director disqualification sanctions), 16 (Disqualification of persons designated under sanctions legislation: GB) and 18 (Disqualification of persons designated under sanctions legislation: NI).
- 25 Amendment 12 is consequential on amendments 19, 20, and 21.

Lords Amendment to Clause 31: Registered email addresses: transitional provision

Lords Amendment 13

- 26 This amendment would change the definition of “the registrar” so it does not refer to the Companies Acts (which is itself not defined).

Lords Amendment to Clause 36: Disqualification of persons designated under sanctions legislation: GB

Lords Amendment 14

- 27 New clauses introduced by amendments 15 (Power to impose director disqualification

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sanctions) and 16 (Disqualification of persons designated under sanctions legislation: GB) would introduce amendments to the Sanctions and Anti-Money Laundering Act 2018 (SAMLA), the Company Directors Disqualification Act 1986, creating an offence for persons subject to director disqualification sanctions under SAMLA to act as directors or take part in or be concerned in the promotion, formation or management of a company, either directly or indirectly, in GB. These would create a conflict with clause 36 and therefore, this amendment would remove it.

Lords Amendments after Clause 36

Lords Amendment 15

28 This amendment would insert a new clause to the Bill amending SAMLA. New provisions inserted by this clause allow for creation of a new type of sanctions measure by regulations under SAMLA. The new section 3A to SAMLA would allow an appropriate Minister to make regulations and designate a person as subject to “director disqualification sanctions” for the purposes of section 11A to the Company Directors Disqualification Act 1986 (CDDA) and Article 15A of the Company Directors Disqualification (Northern Ireland) Order 2002. Amendments to section 15 to SAMLA allow for creation of exceptions and issuance of licence to authorise a designated person to do anything otherwise prohibited under the director disqualification sanctions.

Lords Amendment 16

- 29 This amendment would introduce a substitute clause 36 making various changes to the CDDA.
- 30 The amendment would insert a new section 11A into the CDDA providing that any person who has been designated as being subject to director disqualification sanctions will be committing an offence if they act as a director or take part in or be concerned in the promotion, formation or management of a company, either directly or indirectly in GB, unless they have been issued with a licence or unless an exception applies. This offence will be committed in the GB by any “person who is subject to director disqualification sanctions” as defined in section 11(4) to CDDA. This includes anyone designated under SAMLA as a person subject to sanction for the purposes of section 11A to CDDA as well as Article 15A of the Company Directors Disqualification (Northern Ireland) Order 2002.
- 31 This amendment would also change section 15 to CDDA, by making a designated person as well as persons acting on their instructions personally liable for relevant company’s debts. Changes to section 15 to CDDA will also clarify, that (i) a person, who did not know they were sanctioned, or reasonably believed they were acting on instructions under a licence, as well as (ii) a person who acts on instructions that were given by a person that they did not know was subject to director disqualification sanctions, would not be responsible for relevant debts incurred in this period.
- 32 Lastly, it would also amend other provisions in the CDDA, such as for example, section 14 to CDDA by extending the criminal liability for offences committed by body corporates subject to director disqualification sanction to the officers of the body corporate and amendments to

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section 18 to CDDA by requiring the Secretary of State to publish information about the director disqualification sanction on disqualified director register.

Lords Amendment to Clause 38: Disqualification of persons designated under sanctions legislation: Northern Ireland

Lords Amendment 17

- 33 New clauses introduced by amendments 15 (Power to impose director disqualification sanctions) and 18 (Disqualification of persons designated under sanctions legislation: NI) would introduce amendments to SAMLTA, the Company Directors Disqualification (Northern Ireland) Order 2002 (CDD(NI)O), creating an offence for persons subject to director disqualification sanctions under SAMLTA to act as directors or take part in or be concerned in the promotion, formation or management of a company, either directly or indirectly. in GB. These would create a conflict with clause 38 and therefore, this amendment would remove it.

Lords Amendment after Clause 38

Lords Amendment 18

- 34 This amendment would introduce a substitute clause 38 making various changes to the Company Directors Disqualification (Northern Ireland) Order 2002 (“CDD(NI)O”).
- 35 The amendment would insert a new Article 15A into the CDD(NI)O providing that any person subject to director disqualification sanctions will be committing an offence if they act as a director or take part in or be concerned in the promotion, formation or management of a company, either directly or indirectly. in NI, unless they have been issued with a licence or unless an exception applies. This offence will be committed in NI by any “person who is subject to director disqualification sanctions” as defined in Article 15A(4) of CDD(NI)O. This includes anyone designated under SAMLTA as a person subject to sanction for the purposes of section 11A to CDDA as well as Article 15A of CDD(NI)O.
- 36 This amendment would also change section 19 to CDD(NI)O, by making a designated person as well as persons acting on their instructions personally liable for relevant company’s debts. Changes to Article 19 of CDD(NI)O will also clarify, that (i) a person, who did not know they were sanctioned, or reasonably believed they were acting on instructions under a licence, as well as (ii) a person who acts on instructions that were given by a person that they did not know was subject to director disqualification sanctions, would not be responsible for relevant debts incurred in this period.
- 37 Lastly, it would also amend other provisions in the CDD(NI)O, such as for example, Article 18 of CDD(NI)O by extending the criminal liability for offences committed by body corporates subject to director disqualification sanction to the officers of the body corporate and amendments to Article 22 of CDD(NI)O by requiring the NI Department to publish information about the director disqualification sanction on disqualified director register.

Lords Amendments to Clause 40: Disqualified directors

Lords Amendments 19, 20 and 21

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- 38 Amendment 19 is consequential on new clauses introduced by amendment 15 (Power to impose director disqualification sanctions), 16 (Disqualification of persons designated under sanctions legislation: GB) and 18 (Disqualification of persons designated under sanctions legislation: NI).
- 39 Amendment 20 is consequential on new clauses introduced by amendments 15 (Power to impose director disqualification sanctions) and 16 (Disqualification of persons designated under sanctions legislation: GB).
- 40 Amendment 21 is consequential on new clauses introduced by amendments 15 (Power to impose director disqualification sanctions) and 18 (Disqualification of persons designated under sanctions legislation: NI).
- 41 Amendments 19, 20 and 21 would ensure that the definition of “disqualified under the directors disqualification legislation” for the purpose of the Companies Act 2006 includes persons who are subject to director disqualification sanctions.

Lords Amendment to Clause 46: Register of members: name to be included

Lords Amendment 22

- 42 This amendment would remove clause 46 (Register of members: name to be included), because the substantive effect of the amendments made by clause 46 are incorporated into a new clause introduced by amendment 23 (Register of members: information to be included and powers to obtain it).

Lords Amendment after Clause 46

Lords Amendment 23(*)

- 43 This amendment would introduce a substitute clause 46 which makes various changes to Part 8 of the Companies Act 2006 (a company’s members).
- 44 The amendment would define the “required information” to be maintained by companies in their registers of members, and would include a delegated power to amend the required information.
- 45 The information requirements of members who are individuals and members who are corporates or firms would be separated, but the required information would remain the same for both – name and service address.
- 46 This amendment would also give companies powers to obtain member information and ensure it is kept up to date. Members would be given duties to provide their information and ensure it is kept up to date. Offences would be provided for companies and members failing to comply with the requirements without a reasonable excuse.
- 47 An express requirement to retain old information about a member, and the date their information changed, would be provided, which is currently implied by sections 121 and 125

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of the Companies Act 2006. But only non-traded companies would be required to keep old information about their members (for example old addresses) and to note the date of changes. However, a regulation-making power is included which would provide for the extension of the “old information” requirement to traded companies in the future.

- 48 This amendment also includes a requirement for a person or firm holding shares as a nominee to declare whether or not that is the case, and to provide the details of the person or persons on whose behalf, or under whose control the shares are held. This is intended to assist the company in identifying Persons of Significant Control, and would introduce an offence for a nominee who did not declare themselves as such.

Lords Amendment to Clause 47: Register of members: power to amend required information

Lords Amendment 24

- 49 This amendment would remove clause 47 (Register of members: power to amend required information), which confers a regulation-making power on the Secretary of State to change the information that must be included in the register of members. This power is instead incorporated into a new clause introduced by amendment 23 (Register of members: information to be included and powers to obtain it).

Lords Amendments to Clause 49: Register of members: protecting information

Lords Amendments 25 and 26

- 50 This amendment would amend the power in clause 49 (Register of members: protecting information) as a consequence of amendments 7 and 23, which would insert new sections into the Companies Act 2006.
- 51 Regulations under the new sections can require more information to be provided. The scope of the power is widened to allow regulations to require a company to refrain from using or disclosing membership information, whether or not a member applies for “protection”.
- 52 Regulations could provide that if certain new personal information is required from members, for example, a member’s date of birth, the default position is that companies are required to “protect” that information. This means companies would not be able to use or disclose it, except in specified circumstances.
- 53 The provisions of clause 47 (Register of members: power to amend required information) of the Bill are incorporated.
- 54 Amendment 26 is consequential on amendment 25 and would replace the words “this section” with “subsection (1)(b)” in clause 49 (Register of members: protecting information).

Lords Amendments to Clause 51: Membership information: one-off statement

Lords Amendments 27, 28 and 29

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55 Amendment 27 would sever the link between the operation of clause 51 (Membership information: one-off statement) and the commencement of clause 46 (Register of members: name to be included), allowing a company more time to obtain the information it has to provide to the Registrar.

56 Amendments 28 and 29 are consequential on amendment 27.

Lords Amendment after Clause 56

Lords Amendment 30

57 This amendment would insert a new clause (Use or disclosure of profit and loss accounts for certain companies).

58 It would allow the Secretary of State to make regulations requiring the Registrar not to disclose profit and loss accounts for micro entities and other small companies. The regulations might cover all such accounts or only accounts relating to certain descriptions of company (see section 1292 to the Companies Act 2006).

Lords Amendment after Clause 61

Lords Amendment 31

59 A company that is exempt from Part 21A of the Companies Act 2006 (information about persons with significant control) has to confirm that it is exempt in each confirmation statement. This new clause would require it to explain why.

Lords Amendments to Clause 63: Identity verification of persons with significant control

Lords Amendment 32

60 This amendment is consequential on amendment 178.

Lords Amendments 33 and 34

61 These amendments are consequential on amendment 187.

Lords Amendments to Clause 64: Procedure etc for verifying identity

Lords Amendment 35

62 This would have the effect that the Registrar is required to make verification statements available for public inspection. A “verification statement” is the statement that an authorised corporate service provider is required to make to confirm that it has verified an individual’s identity.

Lords Amendment 36

63 This amendment would require a verification statement to specify the authorised corporate service provider’s supervisory authority or authorities. It also confers a regulation-making power to make further provision about the contents of verification statements.

Lords Amendment 37

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64 This amendment spells out that the power conferred by new section 1110A(4) is exercisable by regulations.

Lords Amendment 38

65 This amendment is consequential on amendment 39.

Lords Amendment 39

66 This amendment would require a reverification statement to specify the authorised corporate service provider's supervisory authority or authorities and to contain anything else required by regulations.

Lords Amendment 40

67 This amendment is consequential on amendments 36 and 39.

Lords Amendments to Clause 65: Authorisation of corporate service providers

Lords Amendment 41

68 This amendment is consequential on amendment 45.

Lords Amendment 42

69 This amendment is consequential on amendment 43.

Lords Amendment 43

70 This amendment would require the Registrar to refuse an application for authorisation as a corporate service provider if it appears that the applicant is not a fit and proper person to become an authorised corporate service provider.

Lords Amendment 44

71 This amendment is consequential on amendment 56.

Lords Amendment 45

72 This amendment and amendment 46 are intended to narrow the power to make regulations for suspension of an authorised corporate service provider's status so that it is available only pending a decision as to termination of an authorised corporate service providers' status.

Lords Amendment 46

73 This would remove the power to make regulations for suspension of an authorised corporate service provider's status. Amendment 45 would introduce a narrower power to suspend.

Lords Amendment 47

74 This amendment would ensure that the Registrar can obtain information about compliance with provisions such as new section 1110B to the Companies Act 2006 (see clause 64 (Procedure etc for verifying identity)), including from former authorised corporate service providers (including suspended providers).

Lords Amendment 48

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75 This amendment is consequential on amendment 47.

Lords Amendment 49

76 This amendment is consequential on amendment 46.

Lords Amendment 50

77 This amendment is consequential on amendment 47.

Lords Amendment to Clause 67: Allocation of unique identifiers

Lords Amendment 51

78 This amendment would correct a mistake in section 1082(1) to the Companies Act 2006 by spelling out that the power conferred by that subsection is exercisable by regulations (that this was always the intention is clear from the subsequent subsections).

Lords Amendments to Clause 68: Identity verification: material unavailable for public inspection

Lords Amendments 52 and 53

79 This clause ensures that certain documents are withheld from public inspection. Amendments 52 and 53 protect similar documents delivered under regulations under section 1067A(5)(a) and (6) to the Companies Act 2006. These amendments are therefore consequential on those regulation-making powers, which were added at earlier stages.

Lords Amendment before Clause 69

Lords Amendment 54

80 This clause would amend the Companies Act 2006 to provide the Registrar with an additional power, to expedite the strike-off of a company if she has reasonable grounds to believe the application for incorporation (or administrative restoration) contained false or misleading information or was based on a false statement.

Lords Amendments to Clause 70: Delivery of documents: identity verification etc.

Lords Amendment 55

81 This is consequential on the other amendments made by clause 70 (Delivery of documents: identity verification etc.).

Lords Amendment 56

82 This would change the categories of people who may deliver documents on another's behalf. Among other things, it would mean an individual whose identity is verified can only deliver documents on behalf of a firm if they are an officer or employee of the firm or one of its corporate officers.

Lords Amendments to Clause 71: Disqualification from delivering documents

Lords Amendment 57

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83 This would allow officers as well as employees or authorised corporate service providers to deliver documents on behalf of a disqualified person.

Lords Amendment 58

84 This is consequential on amendment 56. An employee delivering a document under new section 1067B(2)(b) must be acting in the course of their employment without the need for express provision to that effect.

Lords Amendment 59

85 This amendment would remove the requirement for a statement to include certain information that will be covered by the statement that a person must make under new section 1067A to the Companies Act 2006 (inserted by clause 70 (Delivery of documents: identity verification etc.)) when delivering documents.

Lords Amendment to Clause 81: Power to require additional information

Lords Amendment 60

86 This amendment would enable the Registrar to require a person to provide information not only to determine whether a document is properly delivered but more generally to determine whether it is a document that must be registered.

Lords Amendment to Clause 83: Administrative removal of material from the register

Lords Amendment 61

87 This amendment would enable any provision made by regulations under new section 1094A to the Companies Act 2006 to confer a discretion on the Registrar as to how she fulfils certain administrative functions.

Lords Amendments to Clause 89: Protecting information on the register

Lords Amendments 62, 63, 65 and 66

88 Amendment 62 would add a power to clause 89 (Protecting information on the register), which substitutes a section in the Companies Act 2006. The substituted section would allow regulations to require the Registrar to refrain from making available for public inspection any information on the register relating to an individual. This also allows the regulations to require the Registrar to refrain from disclosing information on the register relating to an individual except in specified circumstances. This information would be protected whether or not the person applies for protection.

89 Amendments 63, 65 and 66 are consequential on amendment 62.

Lords Amendment 64

90 This amendment is consequential on amendment 67.

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Lords Amendment 67

- 91 This amendment would enable any provision made by regulations under new section 1088 to the Companies Act 2006 to confer a discretion on the Registrar as to how she fulfils certain administrative functions .

Lords Amendment to Clause 91: Fees: costs that may be taken into account

Lords Amendment 68

- 92 This would enable fees set under the Companies Act 2006 to be set at a level to cover the Secretary of State's costs in connection with licences for people who are subject to director disqualification sanctions under the Sanctions and Anti-Money Laundering Act 2018.

Lords Amendment to Clause 92: Disclosure of information

Lords Amendment 69

- 93 This amendment would enable any provision made by regulations under section 243 to the Companies Act 2006 to confer a discretion on the Registrar as to how she fulfils certain administrative functions.

Lords Amendments to Clause 94: Use or disclosure of PSC information by companies

Lords Amendments 70 and 71

- 94 Clause 94 (Use of disclosure of PSC information by companies) substitutes a section in the Companies Act 2006. This amendment would replace the power in clause 94 with a new, extended power. The substituted section inserted by clause 94 would allow the Secretary of State to set in regulations information which the company must not use or disclose and it would permit legislating for circumstances which may provide exceptions to this prohibition.
- 95 Amendment 71 is consequential on amendment 70.

Lords Amendments to Clause 102: Financial penalties

Lords Amendment 72 and 73

- 96 These amendments to clause 102 (Financial penalties) would mean that regulations must provide that no financial penalty may be imposed on a person in respect of whom criminal proceedings are ongoing; at the moment it is the other way around so that criminal proceedings cannot be continued once a penalty is imposed.

Lords Amendment to Clause 103: Registered office: rectification of register

Lords Amendment 74

- 97 This amendment would enable any provision made by regulations under section 1097A to the Companies Act 2006 to confer a discretion on the Registrar as to how she fulfils certain administrative functions.

Lords Amendment to Clause 104: Rectification of register: service

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addresses

Lords Amendment 75

- 98 This amendment would enable any provision made by regulations under section 1097B to the Companies Act 2006 to confer a discretion on the Registrar as to how she fulfils certain administrative functions.

Lords Amendment to Clause 105: Rectification of register: principle office addresses

Lords Amendment 76

- 99 This amendment would enable any provision made by regulations under section 1097C to the Companies Act 2006 to confer a discretion on the Registrar as to how she fulfils certain administrative functions.

Lords Amendments to Part 2: Partnerships

Lords Amendment to Clause 108: Required information about partners

Lords Amendment 77

100 This amendment would insert a definition of “the Companies Acts” into the Limited Partnerships Act 1907.

Lords Amendments to Clause 116: Restrictions on general partners

Lords Amendment 78

101 This amendment would remove a requirement to make a statement in circumstances that can in fact never exist. It is otherwise consequential on amendments 79 and 83.

Lords Amendment 79

102 This amendment would make it clear that only the first column of the table in section 159A to the Companies Act 2006 is relevant to determining whether a general partner is disqualified under the directors disqualification legislation. This is because a disqualified general partner cannot be given permission to act.

Lords Amendments to Clause 117: Officers of general partners

Lords Amendment 80

103 This amendment is consequential on amendment 78, which would introduce a new definition of “disqualified under the directors disqualification legislation” that applies for the purpose of section 8A to the Limited Partnerships Act 1907.

Lords Amendment 81

104 This amendment would remove a requirement to make a statement in circumstances that can in fact never exist. It is otherwise consequential on amendment 78.

Lords Amendments 82 and 83

105 Amendment 83 would make it clear that only the first column of the table in section 159A to the Companies Act 2006 is relevant to determining whether a registered officer is disqualified under the directors disqualification legislation. This is because a disqualified registered officer cannot be given permission to act.

106 Amendment 82 is consequential on amendment 83.

Lords Amendments to Clause 120: Notification of information about partners

Lords Amendments 84 and 85

107 These amendments would remove a requirement to make a statement delivered to the Registrar in circumstances that can in fact never exist. They would ensure that the meaning of “disqualified” is properly applied in respect to the general partners’ ongoing duty to take any steps necessary to ensure that a disqualified general partner is removed from the partnership.

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Lords Amendment 86

108 This amendment would remove the definition of a term that is no longer used in the section.

Lords Amendment to Clause 124: Confirmation statements

Lords Amendment 87

109 This amendment would mean that notice changing a general partner's registered officer must be delivered at the same time as a confirmation statement, if the registered officer is not ID verified.

Lords Amendments after Clause 130

Lords Amendment 88

110 This amendment would mean that the Secretary of State can make provision corresponding or similar to any provision of the Insolvency Act 1986 or the Insolvency (Northern Ireland) Order 1989 to govern the winding up of limited partnerships under new section 28 or 29 to the Limited Partnerships Act 1907.

Lords Amendment 89

111 This amendment would mean that if a petition has been presented under new section 28, or a person has made an application under new section 29, a general partner or person who made the application under new section 29 must notify the relevant court about other concurrent proceedings.

Lords Amendment 90

112 This amendment would mean that, if a limited partnership is in the course of sequestration proceedings, the petitioner, debtor or creditor must notify the sheriff court or AiB if they become aware of winding up proceedings under new section 28 or 29 to the Limited Partnerships Act 1907 in relation to the limited partnership.

Lords Amendments to Clause 132: Material not available for public inspection

Lords Amendment 91

113 This is an amendment to the clause which ensures that certain information delivered to the Registrar concerning limited partnerships is withheld from public inspection. The amendment ensures certain statements as to individuals' identity-verified statuses, in the context of the delivery of documents to Registrar concerning limited partnerships, are withheld from public inspection.

Lords Amendment 92

114 This amendment would correct a mistake. A statement under section 8R(4) is not required to confirm that an individual is an individual whose identity is verified.

Lords Amendments 93 and 94

115 These amendments are consequential on the amendments to clause 70 which introduces a new section 1067A into the Companies Act 2006 which restricts the categories of person who

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are able to deliver documents to the Registrar. Broadly speaking, the restriction is that they must be ID verified. These amendments: remove cross-references to subsections of new section 1067A because other subsections are now also relevant; and also ensure that statements, as well as documents, delivered by virtue of that section are withheld from public inspection.

Lords Amendments 93 and 94

116 These amendments are consequential on the amendments made to clause 70.

Lords Amendment to Clause 134: Disclosure of information about partners

Lords Amendment 95

117 This is consequential on amendment 69.

Lords Amendments to Clause 140: Delivery of documents relating to limited partnerships

Lords Amendment 96

118 This is consequential on amendment 59.

Lords Amendment 97

119 Certain documents under the Limited Partnerships Act 1907 can only be delivered to the Registrar by authorised corporate service providers or their employees. This amendment would add officers of authorised corporate service providers to those who are allowed to deliver those documents.

Lords Amendment 98

120 This is consequential on amendment 56. An employee delivering a document under new section 1067B(2)(b) must be acting in the course of their employment without the need for express provision to that effect.

Lords Amendment 99

121 This amendment would remove the requirement for a statement to include certain information that will be covered by the statement that a person must make under new section 1067A to the Companies Act 2006 (inserted by clause 70 (Delivery of documents: identity verification etc.) when delivering documents.

Lords Amendments to Clause 142: National security exemption from identity verification

Lords Amendments 100

122 This amendment is consequential on amendment 80.

Lords Amendment 101

123 This amendment is consequential on amendment 81.

Lords Amendment to Clause 146: Limited partnerships: regulations

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Lords Amendment 102

124 This amendment is consequential on new section 29C to the Limited Partnerships Act 1907 which is inserted by a new clause (Winding up of limited partnerships: concurrent proceedings) introduced by amendment 89.

Lords Amendments to Clause 150: Power to amend disqualification legislation in relation to relevant entities: NI

Lords Amendment 103

125 This amendment would allow the Department for the Economy to make regulations under new Article 25D of the Company Directors Disqualification (Northern Ireland) Order 2002.

Lords Amendment 104

126 This amendment would require the Secretary of State to obtain the consent of the Department for the Economy before making regulations under new Article 25D of the Company Directors Disqualification (Northern Ireland) Order 2002.

Lords Amendment 105

127 This amendment would mean that regulations made by the Department for the Economy under new Article 25D of the Company Directors Disqualification (Northern Ireland) Order 2002 cannot amend an Act of Parliament.

Lords Amendment 106

128 This amendment would mean that regulations made by the Department for the Economy under new Article 25D of the Company Directors Disqualification (Northern Ireland) Order 2002 can amend Northern Ireland legislation.

Lords Amendments 107, 108, and 109

129 These amendments are consequential on amendment 103.

Lords Amendments to Part 3: Register of Overseas Entities

Lords Amendment after Clause 153

Lords Amendment 110

130 This amendment would extend the information that must be provided in connection with the registration of overseas entities where a person is a beneficial owner by virtue of being a trustee.

Lords Amendments after Clause 155

Lords Amendment 111

131 This amendment would mean that where an overseas entity holds certain interests in land as a nominee for another person that person is treated as a registrable beneficial owner for the purposes of the register of overseas entities. It also deals with less direct relationships.

Lords Amendment 112

132 This amendment would introduce the new Schedule to which it refers (Duty to deliver information about changes in beneficiaries) (Schedule 6) and make transitional provision.

Lords Amendment 113

133 This amendment would require the Registrar to refuse an application for the deregistration of an overseas entity if it has not yet filed an update or certain other information that is due under new Schedule 6.

Lords Amendments 114

134 This amendment would make it clear that regulations about verification can make provision about how it is carried out and the standard to which it is carried out. It also allows requirements imposed about the retention of records to be enforced by the creation of a summary-only offence.

Lords Amendment 115*

135 This amendment would require that changes be notified to the Registrar within 14 days of becoming aware of such change, seeking to bring the Register of Overseas Entities into line with the rules that apply to Persons with Significant Control under the Companies Act 2006, and adds an obligation to update the register immediately prior to property transactions.

Lords Amendments to Clause 157: Material unavailable for public inspection

Lords Amendments 116, 118, 119 and 123

136 These amendments would mean that applications or other documents delivered to the Registrar under certain requirements contained in Schedule 6 (Overseas entities: further information for transitional cases) to the Economic Crime (Transparency and Enforcement) Act 2022 (inserted by Lords amendment 205) are not to be made available for public inspection as part of the register of overseas entities.

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Lords Amendments 117*, 120, 124 and 125

137 Amendments 124 and 125 allow for the disclosure by the Registrar of “protected trust information” under regulations. Amendments 117* and 120 consequentially remove protected trust information from the categories of information on the register of overseas entities that is unavailable for public inspection but add that applications to the Registrar for disclosure of such information is not to be made available for public inspection .

Lords Amendments 121 and 122

138 These amendments are connected to the amendments made to clause 70 which concerns the categories of persons who are permitted to deliver information to the Registrar. Permitted persons have to supply statements which, broadly speaking, explain which category of permitted person they fall within. The amendments to clause 157 ensure those statements are not to be made available for public inspection.

Lords Amendments to Clause 158: Protection of information

Lords Amendment 126

139 This amendment is consequential on amendment 127.

Lords Amendment 127

140 This amendment would enable any provision made by regulations under section 25 to the Economic Crime (Transparency and Enforcement) Act 2022 (as substituted by clause 158 of the Bill) to confer a discretion on the Registrar as to how she fulfils certain administrative functions.

Lords Amendment to Clause 160: Administrative removal of material from register

Lords Amendment 128

141 This amendment would enable any provision made by regulations under new section 28A to the Economic Crime (Transparency and Enforcement) Act 2022 to confer a discretion on the Registrar as to how she fulfils certain administrative functions.

Lords Amendments after Clause 163

Lords Amendment 129

142 This amendment would introduce Schedule (Overseas entities: further information for transitional cases).

Lords Amendment 130

143 This amendment would provide that regulations must provide that no financial penalty may be imposed on a person in respect of whom criminal proceedings are ongoing; at the moment it is the other way around so that criminal proceedings cannot be continued once a penalty is imposed.

Lords Amendment to Clause 164: Meaning of “service address”

Lords Amendment 131

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144 This amendment would insert a definition of “the Companies Acts” into the Economic Crime (Transparency and Enforcement) Act 2022.

Lords Amendment to Clause 165: Meaning of “registered overseas entity” in land registration legislation

Lords Amendment 132

145 This amendment would renumber a provision to avoid two subsections which were inserted into a section by different Acts at around the same time from having the same subsection number.

Lords Amendment to Clause 166: Power to apply Part 1 amendments to register of overseas entities

Lords Amendment 133

146 This amendment would require the Secretary of State to obtain consent before making regulations under clause 172 (Power to apply Part 1 amendments to register of overseas entities) that contain provision within the legislative competence of the Scottish Parliament or the Northern Ireland Assembly.

Lords Amendments to Part 5: Miscellaneous

Lords Amendment after Clause 171: Money Laundering: Offences of failing to disclose

Lords Amendment 134

147 Amendment 134 would introduce a new clause into the Bill which would create a defence for people who fail to report money laundering if their knowledge or suspicion is based on information supplied under a status or immigration check.

148 The defence applies where, but for that information, the person would not have reasonable grounds to know or suspect money laundering.

Lords Amendments to Clause 172: Money Laundering: Information Orders

Lords Amendments 135

149 Amendment 135 would amend inserted section 339ZH(6B)(b) of the Proceeds of Crime Act 2002 (information orders: foreign FIUs and money laundering) to ensure that information orders can only be granted where an authorised NCA officer reasonably believes that the foreign FIU is requesting the information for the purpose of conducting operational or strategic analysis.

Lords Amendments 136

150 Amendment 136 would remove inserted subsection (6C) of section 339ZH of the Proceeds of Crime Act 2002. That subsection would have extended the definition of “money laundering”, for the purposes of subsections (6A) and (6B) of that section, to include predicate offences in respect of money laundering.

Lords Amendments 137 and 138

151 Amendment 137 would amend inserted section 339ZL of the Proceeds of Crime Act 2002 (code of practice about certain information orders) to provide that certain preliminary steps in relation to the making of a code of practice under that section (for example, publishing a draft) may be carried out before that section comes into force.

152 Amendment 138 would correct a cross-reference.

Lords Amendments to Clause 173: Terrorist Financing: Information Orders

Lords Amendments 139

153 Amendment 139 would amend inserted section 22B(6B) of the Terrorism Act 2000 (information orders: foreign FIUs and terrorist financing) to ensure that information orders can only be granted where an authorised NCA officer reasonably believes that the foreign FIU is requesting the information for the purpose of conducting operational or strategic analysis.

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Lords Amendments 140

154 Amendment 140 would amend inserted section 22F of the Terrorism Act 2000 (code of practice about certain information orders) to provide that certain preliminary steps in relation to the making of a code of practice under that section (for example, publishing a draft) may be carried out before that section comes into force.

Lords Amendments to Clause 174: Enhanced Due Diligence: Designation of High-Risk Countries

Lords Amendment 141

155 Amendment 141 would remove the power to make regulations about enhanced customer due diligence by reference to a list of high-risk countries published by the Treasury. Instead, it allows regulations to refer to a list of countries published by the Financial Action Task Force (the regulations could also refer to that list subject to specified exceptions).

Lords Amendment 142

156 Amendment 142 would mean that regulations made within 6 months of Royal Assent are subject to the made affirmative procedure if all they do is make provision about countries in relation to which enhanced customer due diligence measures are required to be taken; regulations made after that period are subject to the draft affirmative procedure.

Lords Amendments to Clause 180: Other defined terms in sections 182 to 185

Lords Amendments 143 to 145

157 These amendments would correct the definition of “economic crime” to include the offences of encouraging or assisting an offence under Part 2 of the Serious Crime Act 2007, which replaced the common law offence of incitement in England and Wales and Northern Ireland.

Lords Amendments after Clause 180

Lords Amendment 146 – Strategic Litigation Against Public Participation: Requirement to Make Rules of Court

160 Amendment 146 would introduce a new clause to the Bill which would identify a new early dismissal test (as set out below) in Strategic Litigation Against Public Participation (SLAPP) claims, as defined in the new clause introduced by amendment 147 [Meaning of “SLAPP” claim], and costs protection for defendants in those claims. It also mandates the making of new civil procedure rules by the Civil Procedure Rule Committee (CPRC) to implement those measures and delegates to the Lord Chancellor the power by regulations to require corresponding provisions in other rules of court.

161 Subsection (1) contains the mandatory early dismissal test to be applied by courts in determining whether to strike out SLAPP claims, being whether the claimant can show they are likely to succeed at trial.

162 Subsections (2), (3) and (4) contain the duty on the CPRC to make supporting rules, including rules that provide the costs protection for the defendants.

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163 Subsection (5) contains the power by regulations to require corresponding provisions in other rules of court which, when exercised, entails amendment to the Act specifying those rules of court.

Lords Amendment 147 – Meaning of “SLAPP” Claim

164 Amendment 147 would introduce a new clause to the Bill which contains the definition of a SLAPP claim for the purposes of the new clause introduced by amendment 146 [Strategic Litigation Against Public Participation: requirement to make rules of court]. That definition, set out in subsection (1), requires that the claim is with respect to the exercise by the defendant of their right to freedom of speech on a matter related to economic crime and with the purpose of combating it and that the claimant has sought to misuse the justice system.

165 Subsection 1(d) defines the misuse of the justice system as behaviour intended to cause harassment, alarm, distress, expense, or any other harm or inconvenience, beyond that which would ordinarily be encountered in properly conducted litigation. Subsections (4) and (5) set out matters relevant to the consideration of such behaviour.

166 Subsection (2) excludes limitations of law with respect to the exercise of freedom of speech in consideration of the matters in subsections (1)(a) and (c) so as to avoid inadvertently frustrating the operation of the early dismissal procedure in amendment 146.

167 Subsection (3) defines where the defendant’s exercise of their right to freedom of speech will have to do with economic crime for the purpose of subsection (1).

168 Subsection (6) defines the meaning of economic crime for the purpose of amendment 146.

Lords Amendment 148 – Attributing criminal liability for economic crimes to certain bodies

169 Amendments 148 to 150 introduce three new clauses to the Bill, which would enable a corporate body or partnership to be held criminally liable where a senior manager commits an offence while acting within the actual or apparent authority granted by the organisation.

170 At present, for most offences, whether a corporate body will be criminally liable relies on the application of the “identification doctrine”, under which the offence must be carried out by a person representing the “directing mind and will” of the corporate body. These amendments do not replace or amend the common law identification doctrine, but provides a new statutory route to corporate liability for offences listed in the schedule introduced by amendment 228.

171 Amendment 148 introduces a new clause to the Bill.

172 Subsection (1) of this new clause provides that the corporate body or partnership will be guilty of an offence if the offence is carried out by a “senior manager”. A senior manager is an individual who plays a significant role in the making of decisions about how the whole or a substantial part of the activities of the body are to be managed or organised, or the actual managing or organising of the whole or a substantial part of those activities. This covers both

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those in the direct chain of management as well as those in, for example, strategic or regulatory compliance roles. “Substantial part of the business” relates to the importance of the activity over the operations of a business as a whole.

173 “Senior management” would normally include a company’s directors and other senior officers such as a Chief Financial Officer or Chief Operating Officer, whether or not they are members of the Board. This would include organisations such as charities where, because of restrictions on trustees receiving benefits from the charity, the organisation’s salaried chief officers are not usually members of the Board. Other individuals who have significant roles in relation to a substantial part of the organisation’s activity, such as its human resources function, would also be included. However, “senior management” is not limited to individuals who perform an executive function or are board members, it covers any person who falls within the definition irrespective of their title, remuneration, qualifications or employment status.

174 The senior manager must be acting within the actual or apparent scope of their authority. This does not mean that the senior manager must have been authorised to carry out a criminal offence. It would be enough that the act was of a type that the senior manager was authorised to undertake or which would ordinarily be undertaken by a person in that position. For instance, if a Chief Financial Officer commits fraud by deliberately making false statements about a company’s financial position, the company would be liable since the act of making statements about the company’s financial position is within the scope of that person’s authority.

175 Subsection (2) of this new clause, and the new schedule introduced by amendment 228, define which offences the new rule will apply to. An offence in Schedule 12 is a “listed offence”. The rule will also apply to attempts and conspiracies to commit a listed offence; to aiding, abetting, counselling or procuring the commission of a listed offence; in England, Wales and Northern Ireland, to offences of encouraging or assisting a listed offence; and in Scotland to inciting the commission of a listed offence.

176 Subsection (3) of this new clause ensures criminal liability will not attach to an organisation based and operating overseas for conduct carried out wholly overseas, simply because the senior manager concerned was subject to the UK’s extraterritorial jurisdiction: for instance, because that manager is a British citizen. Domestic law does not generally apply to conduct carried out wholly overseas unless the offence has some connection with the UK. This is an important matter of international legal comity. However, certain offences, regardless of where they are committed, can be prosecuted against individuals or organisations who have certain close connections to the UK. Subsection (3) makes sure that any such test will still apply to organisations when the new rule applies.

Lords Amendment 149 – Power to amend list of economic crimes

177 Amendment 149 would introduce a new clause to the Bill which would provide a power to amend the list of offences in the new schedule introduced by amendment 228. The power is

generally exercisable by the Secretary of State. Where it would be within the legislative competence of the Scottish Parliament or the Northern Ireland Assembly to make the amendment by primary legislation, the power is exercisable by the Scottish Ministers or the Northern Ireland Department of Justice (and not by the Secretary of State).

Lords Amendment 150 – Offences under section (*attributing criminal liability for economic crimes to certain bodies*) committed by partnerships

178 Amendment 150 would introduce a new clause to the Bill which would make procedural provision for prosecutions of partnerships under the new rule and applies laws applying to the prosecution of companies to such cases. It requires any fine imposed for an offence committed by the partnership to be paid from partnership assets.

*Lords Amendment 151 – Failure to Prevent Fraud

179 The new clauses introduced by amendments 151 to 158 would create a new offence of failure to prevent fraud. The offence will be committed by a large organisation when a relevant fraud offence is committed by an associated person such as an employee or agent, acting to benefit the organisation. It will also be possible to prosecute a parent company where the offence is committed by an associated person of a subsidiary, where the group headed by the parent company exceeds the thresholds for a large organisation.

180 Amendment 151 would introduce a new clause into the Bill which deals with the substantive elements of the new offence. This new clause was tabled by the Government at Lords Committee (amendment number 84A in the Marshalled List). A subsequent amendment was tabled by Lord Garnier at Lords Report (amendment number 110 in the Marshalled List) which removes the “large organisation” size threshold from subsection (1) of this clause.

181 Subsection (1) provides that an organisation is guilty of an offence where an associated person commits a relevant fraud offence with intent to benefit either the body itself, or a person to whom the associate provides services on behalf of the relevant body. Thus, the offence would be committed where, for example, an employee of a company engages in fraud with intent to benefit the company, or engages in fraud with intent to benefit a client for whom the employee provides services on behalf of the company. Benefit is not defined, but is not restricted to financial benefit.

182 The requirement for an intent to benefit the organisation, or a person to whom the associated person provides services on behalf of the organisation, is broader than the requirement in the offence of failure to prevent bribery in the Bribery Act 2010, section 7, that the associated person intends thereby to “obtain or retain business” or to “obtain or retain a business advantage” for the body.

183 It is only necessary that the associate “commits” the offence. There is no need for the associate to be prosecuted for or convicted of the offence. Where the associate has been convicted of a fraud offence, that would be proof of the fact that they had committed the offence in later proceedings against the body, unless the body could prove otherwise (Police

and Criminal Evidence Act 1984, s 75). Otherwise, the prosecution would need to be able to prove to the criminal standard that the fraud offence had been committed, and that it had been committed by an associate.

- 184 The offence must take place during a financial year of the relevant body within which the relevant body (or the groups of which it is a part) meets the definition of a large organisation.
- 185 Subsection (2) provides that a relevant body will be in scope of the offence, even if it is not itself a large organisation, if it is a subsidiary of a large organisation.
- 186 Subsection (3) provides that the relevant body is not guilty of an offence if it was an intended victim of the fraud offence. Where the relevant body is an intended victim of the offence it is unlikely that the condition in subsection (1)(a) of this new clause (that the fraud is intended to benefit the body) will be made out, so this condition is likely only to apply to prosecutions under subsection (1)(b) of this new clause, where the offence is intended to benefit a person to whom the associate provides services on behalf of a body – for instance, where an employee conspires with a client of a company to defraud their employer.
- 187 An organisation would be the intended victim of the fraud offence if it would have suffered the intended loss that the fraud offence would result in. However, the term “intended victim” is not defined. An organisation could be the intended victim if the purpose of the offence was to cause some other harm to the organisation.
- 188 Subsections (4) and (5) provide a defence where the organisation had put in place procedures to prevent associated persons from committing fraud with intent to benefit it or a client. The clause is broadly the same as in the offence of failure to prevent facilitation of tax evasion. The burden of proof is on the defendant to show that it had put in place such procedures as it was reasonable in the circumstances to have put in place, or that it was reasonable in all the circumstances not to have any prevention procedures in place. This would have to be proved on the balance of probabilities.
- 189 Subsection (5) defines a fraud offence as an offence in the Schedule introduced by amendment 229, or an offence of aiding, abetting, counselling or procuring the commission of an offence in the new schedule introduced by amendment 229. Offences of conspiring to commit an offence, and offences of encouraging or assisting crime in the Serious Crime Act 2007, sections 44-46, are not covered, since these offences can be committed even if the substantive fraud is never carried out.
- 190 However, if the associate conspires to carry out a fraud, and it is carried out, then they would be guilty of the substantive offence of fraud, whether as a primary offender or as an accessory, and therefore the condition in (1) would be made out, even if they were prosecuted for, and convicted of, conspiracy.
- 191 Likewise, if the associate encourages or assists someone to carry out a fraud offence and that

person does carry out the fraud offence, then – even if the associate were prosecuted under the Serious Crime Act 2007 – they would, in fact, have also committed a substantive offence and therefore the company could be prosecuted for failure to prevent fraud.

- 192 Subsection (7) defines who is to be considered an associated person of a relevant body, and are broadly similar in effect to those in the offences of failure to prevent bribery and facilitation of tax evasion.
- 193 Subsection (8) provides that a person is also associated with a body if they are an employee of a subsidiary of that body. This would enable proceedings to be brought against a parent company where the parent company is a large organisation and a fraud offence is committed by an employee of a subsidiary, and is intended to benefit the parent company.
- 194 Subsection (9) provides that whether a person performs services for or on behalf of a relevant body is a question to be determined by reference to all the circumstances and not merely the legal relationship between the person and the body.
- 195 Subsection (10) allows proceedings to take place in any part of the UK. This would, for instance, enable a company to be prosecuted in Scotland because that is where the company is based, even though some of the fraudulent activity took place in Northern Ireland. It is envisaged that the prosecuting authorities in the three jurisdictions will develop working arrangements as to which body should prosecute offences with a cross-border element. Subsection (11) makes provision for prosecutions in Scotland in such circumstances are not subject to the normal jurisdictional restrictions on the sheriff court where proceedings are brought.
- 196 Subsection (12) sets the maximum penalty for the offence as an unlimited fine following conviction on indictment or in summary proceedings in England and Wales; and as the statutory maximum for summary proceedings in Scotland and Northern Ireland. Subsection (12) provides for the relevant body to be fined. In England and Wales, unlimited fines are available upon summary conviction. In Scotland and Northern Ireland, a fine upon summary conviction is limited to the statutory maximum.
- 197 Subsections (13) and (14) are interpretative provisions.

Lords Amendment 152 – Fraud Offences: Supplementary

- 198 Amendment 152 would introduce a new clause into the Bill which would allow the Secretary of State to amend the list of fraud offences to which the new offence applies. The power would be exercisable by the Scottish Ministers or the Northern Ireland Department of Justice if the amendment could be made by primary legislation in the Scottish Parliament or Northern Ireland Assembly.
- 199 Subsection (4) requires that any offence added must be one of dishonesty or otherwise of a similar character to those already in the Schedule. The intention of this section is to allow cognate offences to be added if, for instance, new or replacement offences are created, or to

remedy a gap in the law.

200 Subsection (4), with subsection (7), also allows a money laundering offence under sections 327-329 of the Proceeds of Crime Act 2002 to be added.

201 Subsection (6) makes provision for situations where the fraud offence takes place over a period of time crossing more than one financial year of the body: the offence is treated as having been committed on the last day that it was committed.

Lords Amendment 153 – Section [*failure to prevent fraud*]: Large Organisations

202 Amendment 153 would introduce a new clause into the Bill which would define “large organisation”. The test is modelled on tests in Section 465 of the Companies Act, with provision for it to apply in the same way, subject to any necessary changes, to large organisations which are not subject to Section 465.

203 An organisation will be a large organisation if two of its (i) turnover, (ii) balance sheet total or (iii) employee numbers exceed the relevant threshold in this new clause. Where the body is a “parent undertaking”, the new clause introduced by amendment 154 [Large organisations: parent undertakings] applies.

Lords Amendment 154 – Large organisations: parent undertakings

204 Amendment 154 would introduce a new clause into the Bill. Under this new clause, where the organisation is a “parent undertaking” of one or more companies, the thresholds would apply to the aggregate turnover, balance sheet total or employee numbers aggregated across the group.

205 This is relevant both for the liability of the parent undertaking for fraud committed by its own associated persons (including employees of a subsidiary, under subsection (8) of the new clause introduced by amendment 151) and application of the offence under subsection (2) of the new clause introduced by amendment 151 to a subsidiary which is part of a group which passes the “large organisation” threshold.

Lords Amendment 155 – Offences under Section [*failure to prevent fraud*] Committed by Partnerships

206 Amendment 155 would introduce a new clause into the Bill which would make provision where proceedings are brought against a partnership, ensuring that the proceedings are brought against the partnership collectively, and not against individual partners; provides for rules of court applying to bodies corporate to apply in a similar way to partnerships; and provides for any fine to be imposed against partnership assets.

Lords Amendment 156 – Guidance about Preventing Fraud Offences

207 Amendment 156 would introduce a new clause into the Bill which would require the Secretary of State to publish guidance on the procedures bodies can put in place to prevent associated persons from committing relevant fraud offences. Before issuing the guidance, the Secretary of State must consult the Scottish Ministers and the Northern Ireland Department

of Justice. This section reflects similar requirement in the failure to prevent bribery and failure to prevent facilitation of tax evasion offences.

Lords Amendment 157 – Failure to Prevent Fraud: Minor Definitions

208 Amendment 157 would introduce a new clause into the Bill which would define certain terms used in the foregoing provisions.

Lords Amendment 158 – Failure to Prevent Fraud: Miscellaneous

209 Amendment 158 would introduce a new clause into the Bill which contains consequential amendments to existing legislation to include the new failure to prevent fraud offence in the groups of offence to which certain powers apply.

***Lords Amendment 159 – Failure to Prevent Fraud and Money Laundering**

210 This new clause would introduce a new offence of failure to prevent fraud and money laundering.

211 The amendment intends to make corporate bodies and partnerships liable for prosecution if an employee or other person acting for or on their behalf commits fraud or money laundering intending to benefit the organisation or those who receive services on behalf of the organisation, and the organisation did not have reasonable fraud or money laundering prevention procedures in place at the time the offence was committed

212 The offences covered in this amendment are listed in the new Schedule introduced by amendment 229 [failure to prevent fraud: fraud offences].

Lords Amendments after Clause 187

Lords Amendment 160 – Sanctions Enforcement: Monetary Penalties

213 Amendment 160 would introduce a new clause into the Bill which would make it clear that Treasury can impose monetary penalties under the Policing and Crime Act 2017 for breaches of provisions that are supplemental to financial sanctions and that regulations made under section 1 SAMLA can include provision conferring power to impose monetary penalties.

***Lords Amendment 161 – Civil Recovery: Cost of proceedings**

214 Amendment 161 would introduce a new clause to the Bill which would extend costs protection for civil recovery cases beyond Unexplained Wealth Orders. Part 5 of the Proceeds of Crime Act permits the recovery of criminal assets where no conviction has been possible.

215 This clause would mean that enforcement authorities may not be ordered to pay legal costs in unsuccessful civil recovery proceedings, unless the authority acted unreasonably or dishonestly, or it would not be in the interests of justice.

Lords Amendments to Part 6: General

Lords Amendments to Clause 189: Regulations

Lords Amendments 162

216 This amendment ensures that the requirement that regulations under the Bill must be made by statutory instrument only applies to regulations made by the Secretary of State (with respect to the new clause introduced by amendment 152) or the Lord Chancellor (with respect to the new clause introduced by amendment 146).

Lords Amendment 163

217 Amendment 163 would amend Clause 189 to make changes regarding the classification of certain instruments made by Scottish Government Ministers or the Department of Justice in Northern Ireland.

Lords Amendments 164 and 165

218 Amendment 164 and 165 would provide for regulations under the specified powers in the amendments to be subject to the affirmative procedure.

Lords Amendment 166

219 This amendment would ensure that the regulation-making power to specify an appointed day for the purposes of clause 50 [Membership information: one-off statement] is not subject to any procedural requirements.

Lords Amendment 167

220 This amendment is consequential to amendment 152 [Fraud offences: supplementary] and confers new powers to make regulations on the Scottish Government Ministers and Department of Justice in Northern Ireland.

221 This amendment would also provide for regulations under the new clause introduced by amendment 149 [Power to amend list of economic crimes] made by the Scottish Ministers or the Department for Justice in Northern Ireland to be subject to the affirmative procedure.

Lords Amendment 168

222 This amendment is consequential to amendment 168, which leaves out Clause 191 [commencement] and inserts new clauses in relation to commencement and transitional provision

Clause 190: Extent

Lords Amendments 169 and 170

223 Amendments 169 and 170 are consequential upon amendments 146 and 147 and would ensure that the new clauses introduced by these amendments extend to England and Wales only.

These Explanatory Notes relate to the Lords Amendments to the Economic Crime and Corporate Transparency Bill as brought from the House of Lords on 10 July 2023 (Bill 346)

Lords Amendment to Clause 191: Commencement

Lords Amendment 171

- 224 Amendment 171 would remove the previous Commencement clause (Clause 191) and insert a replacement commencement clause.
- 225 This replacement clause would provide for additional provisions to come into force Royal assent, for consultation requirements to apply in relation to certain cryptoasset provisions, and for the new clauses on SLAPPs (amendments 146 and 147) to come into force on a date specified in regulations made by the Lord Chancellor.
- 226 This amendment would provide for the new clauses introduced by amendments 148 [Attributing liability for economic crimes], 149 [Power to amend list of economic crimes], and 150 [Offences under section (Attributing criminal liability for economic crimes to certain bodies) committed by partnerships], and the new Schedule introduced by amendment 228 [Criminal liability of bodies: economic crimes] to come into force two months after Royal Assent.
- 227 This amendment should be considered in conjunction with amendment 172, which would insert a new transitional provision clause.

Lords Amendment after Clause 191

Lords Amendment 172 – Transitional provision

- 228 Amendment 172 would insert a new clause into the Bill, which would contain powers to make transitional provisions. These powers were previously found in Clause 191 [Commencement] which was removed by amendments 168 and 170 (see above).
- 229 This new clause would also contain additional powers for the Scottish Government Ministers and Department of Justice in Northern Ireland to make transitional provision and savings in connection with the coming into force of certain cryptoasset provisions.

Lords Amendments to Schedule 2: Abolition of certain local registers

Lords Amendments 173 and 174

230 Amendment 173 is consequential on new clauses introduced by amendments 15 (Power to impose director disqualification sanctions), 16 (Disqualification of persons designated under sanctions legislation: GB) and 18 (Disqualification of persons designated under sanctions legislation: NI). It would require that any notice to the Registrar of a person becoming a director of a company must be accompanied with a statement about a licence issued in respect to a person who would be disqualified under the director disqualification sanctions measure but for the authority of a licence.

231 Amendment 174 is consequential on the amendments to clause 40 (Disqualified directors), made by amendments 19, 20 and 21.

Lords Amendment 175

232 This amendment would correct a cross-reference in Schedule 2 to the Bill.

Lords Amendment 176

233 This amendment is consequential on amendments 177 to 192 and leaves out a definition that is no longer used.

Lords Amendment 177

234 This would define what is meant by “confirmation” for the purposes of amendments 176 and 178 to 192, which mean that a company which knows of a person with significant control and of that person’s required particulars, or any other information about the person only has to notify the Registrar if it has had confirmation of the person’s status as a person of significant control, of that person’s required particulars, or of any other information about the person, from the person.

Lords Amendment 178

235 This amendment would change provisions in Part 21A of the Companies Act 2006 that are aimed at ensuring that a company has information about persons with significant control. It is connected with the other amendments to that Part made by or proposed to be made by the Bill.

Lords Amendment 179

236 This would adjust a heading in the material inserted into the Companies Act 2006, in consequence of amendments 176 to 178 and 180 to 192.

Lords Amendment 180

237 This would mean that a company will only need to notify the Registrar of a person with significant control if the person has confirmed their status and information about them.

Lords Amendments 181 and 182

238 These amendments are consequential on amendment 180.

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Lords Amendment 183

239 This would require a company to notify the Registrar if it knows or has cause to believe that someone has become a person with significant control but that fact, or the person's required particulars, have not been confirmed.

Lords Amendment 184

240 This would add a new heading in the run of sections inserted into the Companies Act 2006, in consequence of amendments 176 to 183 and 185 to 192.

Lords Amendment 185

241 This would mean that a company only has to notify the Registrar of a change in the required particulars about a person with significant control if the person has confirmed details of the change to the company.

Lords Amendment 186

242 This is consequential on amendment 185.

Lords Amendments 187

243 This would move material currently in new section 790LD to the Companies Act 2006 and would mean that a company will only need to notify the Registrar of pre-incorporation changes in the particulars of a person with significant control if the changes have been confirmed by the person.

Lords Amendment 188

244 This would add a new heading in the run of sections inserted into the Companies Act 2006, in consequence of amendments 176 to 187 and 189 to 192.

Lords Amendment 189

245 This is consequential on amendment 180.

Lords Amendments 190, 192 and 194

246 This amendment is consequential on amendment 187 inserting a new 790LCA into the Companies Act 2006.

Lords Amendment 191

247 This would change the language of new section 790LD(1) to the Companies Act 2006 to conform with the language of the other notification duties in relation to persons significant control (as amended).

Lords Amendment 193

248 This is consequential on amendment 191.

Lords Amendment 195

249 This would impose a duty on a company to notify the Registrar if there ceases to be any persons with significant control in relation to the company.

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Lords Amendment 196

250 This would expand the regulation-making power to require a company to provide further information in relation to persons with significant control.

Lords Amendment 197

251 This would allow regulations under new section 790LE to the Companies Act 2006 (power to create further duties to notify information about persons with significant control) to amend the relevant Part of the Act and make consequential amendments to other parts of the Act. It would not alter the substance of the power.

Lords Amendment 198

252 This amendment is consequential on amendment 196 inserting section 790LBA.

Lords Amendments 199 and 201

253 These amendments are consequential on amendment 195.

Lords Amendment 200

254 This amendment is consequential on amendment 183.

Lords Amendment 202

255 This amendment would introduce a reasonable excuse defence for offences relating to a failure to comply with duties relating to persons with significant control. It would also replace the offences relating to false or misleading information with a strict liability offence (not dependent on knowledge) and an aggravated offence (where there is knowledge).

Lords Amendment 203

256 This amendment is consequential on amendments 183, 184, 187, 188 and 189.

Lords Amendments after Schedule 5

Lords Amendment 204

257 This would require an overseas entity that has a beneficial owner who is a trustee to provide information about changes in beneficiaries under the trust that take place during an update or other period (rather than just providing a snapshot of the beneficiaries at the end of the period).

Lords Amendment 205

258 This amendment would insert Schedule 5A into the Bill. Schedule 5A inserts a new Schedule 6 into the Economic Crime (Transparency and Enforcement Act) 2022 which requires overseas entities to deliver to the Registrar further information about events occurring during the period beginning on 28 February 2022 and ending with 31 January 2023.

259 Paragraph 9 of Schedule 6 includes a power to make regulations exempting certain registrable beneficial owners from the requirements of the Schedule. This power cannot be used after the end of the period of two years beginning with the day on which the Bill receives royal assent.

260 The Secretary of State must also consult the Scottish Ministers before making regulations under paragraph 9 of Schedule 6 that contain provision that would be within the legislative competence of the Scottish Parliament.

Lords Amendments to Schedule 6: Cryptoassets: Confiscation Orders

Lords Amendments 206 to 208

261 Amendments 206 and 207 would amend inserted section 131ZB of the Proceeds of Crime Act 2002 (realisation of confiscated cryptoassets) to provide that only the sheriff may make an order under that section requiring confiscated cryptoassets to be realised.

262 Amendment 207 is consequential on amendments 206 and 207.

Lords Amendments 209 to 213

263 Amendments 209 to 212 would amend inserted section 131AA of the Proceeds of Crime Act 2002 (destruction of seized cryptoassets) to provide that only the sheriff may make an order under that section.

264 Amendment 213 is consequential on amendments 209 to 211.

Lords Amendments 214 to 217

265 Amendments 214 to 217 are consequential on amendments 206 and 207.

Lords Amendments to Schedule 7: Cryptoassets: Civil Recovery

Lords Amendment 218

266 Amendment 218 would replace the title of inserted Chapter 3C of Part 5 of the Proceeds of Crime Act 2002.

Lords Amendment 219

267 Amendment 219 would replace the title of inserted Chapter 3D of Part 5 of the Proceeds of Crime Act 2002.

Lords Amendment 220

268 Amendment 220 would provide for certain consultation requirements to apply before regulations may be made under inserted section 303Z42(7) of the Proceeds of Crime Act 2002 (forfeiture orders).

Lords Amendments 221 and 222

269 Amendment 221 and 222 would clarify that references in sections 303Z51 and 303Z17A of the Proceeds of Crime Act 2002 (freezing orders) to a freezing order are to a current freezing order.

Lords Amendment 223

270 Amendment 223 would consequentially amend section 453C of the Proceeds of Crime Act 2002 (obstruction offence in relation to immigration officers) to provide that the offence in that section applies in relation to an immigration officer who is acting in exercise of certain cryptoasset-related powers in inserted Chapter 3C of Part 5 of that Act.

Lords Amendment 224

271 Amendment 224 would amend section 24 of the UK Borders Act 2007 (exercise of civil recovery powers by immigration officers) to provide that immigration officers may exercise certain cryptoasset-related powers in inserted Chapters 3C to 3F of Part 5 of the Proceeds of Crime Act 2002.

Lords Amendments to Schedule 8: Cryptoassets: Terrorism

Lords Amendment 226 and 227

272 Amendments would 226 and 227 clarify that references in paragraphs 10Z7CL and 10Z6A of Schedule 1 to the Anti-terrorism, Crime and Security Act 2001 (forfeiture of terrorist property) to a freezing order are to a current freezing order.

Lords Amendments to Schedule 9: Economic Crime Offences

Lords Amendment 227

273 Amendment 227 would add the new offence of failure to prevent fraud to the list of offences that constitute “economic crime” for the purposes of Clauses 175 to 184.

Lords Amendment after Schedule 9

Lords Amendment 228 – Criminal Liability of Bodies: Economic Crimes

274 This amendment would introduce Schedule 12 to the Bill, which sets out the list of offences in relation to which liability may be attributed to the body in accordance with the new clause introduced by amendment 147 [Attributing criminal liability for economic crimes to certain bodies].

Lords Amendment 229 – Failure to Prevent Fraud: Fraud Offences

275 Amendment 227 would introduce a new schedule, Schedule 11, to the Bill. This Schedule sets out the list of “fraud offences” for the purpose of the new clause introduced by amendment 150 [Failure to prevent fraud].

Financial Effects of Lords Amendments

- 276 Some of the Government Lords Amendments to Parts 1, 2, and 3 of the Bill will have operational consequences for Companies House, the costs of which will be covered by Companies House fees. This includes cases where the financial effects are not automatic because there is discretion for the Registrar in how she applies the law (such as amendments 1 to 4), where the Government plans to consult and formulate policy before financial effects will be known (such as amendment 30), and where there will definitely be an additional operational cost to Companies House (such as amendments 35 and 36).
- 277 Amendments 14 to 21 and 68 are expected to incur additional costs for the Foreign, Commonwealth and Development Office, Companies House, the Northern Ireland Department for the Economy and the Insolvency Service.
- 278 The FCDO may face costs associated with designating individuals or bodies under the new regulation making power inserted by amendment 15 and the enforcement of the regulations. The direct costs to the FCDO of designating individuals and the enforcement of the regulations will depend on the volume and nature of future designations which will be subject to future policy decisions. Companies House, exercising the function of the Secretary of State, may face a cost as a result of amendment 16 which will require them to maintain information about the director disqualification sanction on the disqualified director register. Similarly, the Northern Ireland Department for the Economy may face a cost as a result of amendment 18 which will require them to include information on persons subject to the new director disqualification sanction on their register of disqualification orders. The expected costs faced by Companies House and the Northern Ireland Department for the Economy will be funded by the fees paid by those using Companies House services.
- 279 The Secretary of State may incur costs as a result of taking on the licensing function created by amendment 15, which allows licences to be issued to designated persons to authorise activity otherwise prohibited by the sanction. However, as a result of amendment 68, any costs incurred by the Secretary of State in relation to this function may be funded by fees paid by those using Companies House services.
- 280 Amendment 115 would require overseas entities to file updates to their information within 14 days of becoming aware of any change. So Companies House would have to introduce an event-driven filing system. It would also require an overseas entity to file updated information or to confirm a 'no-change' no more than 14 days prior to buying or disposing of any property. It is expected that this would cause additional development costs to Companies House between £2.5m and £12.8m. Fees would also need to include ongoing operational costs.
- 281 Amendment 117 would make information about trusts submitted to the Register of Overseas Entities publicly available by removing it from the list of material that is listed as "unavailable for public inspection". It is estimated that this would incur additional

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development costs to Companies House between £0.6m and £2.8m. Fees would also need to include ongoing operational costs.

282 Any cost to the Insolvency Service of prosecuting offences created by amendments 16 and 18 is expected to be negligible.

283 No additional financial implications are expected for the remaining amendments.

284 All public expenditure mentioned is covered by the existing Commons money resolution.

ECONOMIC CRIME AND CORPORATE TRANSPARENCY BILL

EXPLANATORY NOTES ON LORDS AMENDMENTS

These Explanatory Notes relate to the Lords Amendments to the Economic Crime and Corporate Transparency Bill as brought from the House of Lords on 10 July 2023 (Bill 346)

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