

Economic Crime and Corporate Transparency Bill

LORDS DISAGREEMENT, AMENDMENTS IN LIEU AND NON-INSISTENCE

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

After Clause 46

LORDS AMENDMENT 23

23 Insert the following new Clause—

“Register of members: information to be included and powers to obtain it

- (1) The Companies Act 2006 is amended as follows.
- (2) In section 112 (the members of a company), at the end insert—
 - “(4) Where an individual’s name is entered in a company’s register of members but is not in the form required by section 113A, that does not affect the person becoming a member of the company by virtue of subsection (2).”
- (3) For the italic heading “General” at the beginning of Chapter 2 of Part 8 substitute “Duty to keep register”.
- (4) In section 113 (register of members)—
 - (a) for subsection (2) substitute—
 - “(2) There must be entered in the register, in respect of each person who is a member—
 - (a) the required information (see sections 113A and 113B), and
 - (b) the date on which the person was registered as a member.
 - (2A) Where a person ceases to be a member there must be entered in the register the date at which the person’s membership ceased.”;
 - (b) in subsection (3), omit “, with the names and addresses of the members,”;
 - (c) in subsection (5), after “show a single” insert “service”;

- (d) in subsection (6), omit “, with the names and addresses of the members,”;
- (e) after subsection (6) insert—
- “(6A) Where any of the information required to be entered in a company’s register of members changes and, at the time of the change, it is a non-traded company—
- (a) the fact that the information has changed does not relieve the company from the obligation to include the old information in the register if it has not already done so,
 - (b) the old information must be retained in the register until its removal is authorised by section 121 or by court order under section 125, and
 - (c) a note must be included in the register recording the date on which the information changed and the date on which the change was entered in the register.”
- (6B) Where any of the information required to be entered in a company’s register of members changes and, at the time of the change, it is a traded company, the company is not required to include or retain the old information in the register.
- (6C) The Secretary of State may by regulations—
- (a) amend subsection (6A) so as to provide for it to apply in relation to traded companies, and
 - (b) repeal subsection (6B) in consequence.
- (6D) Regulations under subsection (6C) are subject to affirmative resolution procedure.”;
- (f) in subsection (7), after “If” insert “, without reasonable excuse,”;
- (g) after subsection (8) insert—
- “(9) In this section—
- “non-traded company” means a company that is not a traded company;
- “relevant market” has the meaning given by section 853E(6);
- “traded company” means a company any of whose shares are admitted to trading on a relevant market or on any other market which is outside the United Kingdom.”
- (5) After section 113 insert—
- “113A Required information about members: individuals**
- (1) The required information about a member who is an individual is—
 - (a) name;
 - (b) a service address.
 - (2) In this section “name” means forename and surname.

- (3) Where a member is a peer or an individual usually known by a title –
- (a) any requirement imposed by section 113E or 113F, or by a notice under section 113G, to provide their name may be satisfied by providing their title instead;
 - (b) the title may be entered in the register of members instead of their forename and surname (and references in any enactment to the name of a person entered in a company's register of members are to be construed accordingly).

113B Required information about members: corporate members and firms

The required information about a member that is a body corporate, or a firm that is a legal person under the law by which it is governed, is –

- (a) corporate or firm name;
- (b) a service address.

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113C Required information about members: nominees

The required information about a member includes a statement by the individual, or where the member is a body corporate, or a firm that is a legal person under the law by which it is governed, by an officer of that body corporate or firm, as to whether or not they are holding the shares on behalf of, or subject to the direction of, another person or persons, and if they are –

- (a) where any such person is an individual, the information required by section 113A in relation to that individual;
- (b) where any such person is a body corporate or firm that is a legal person under the law by which it is governed, the information required by section 113B in relation to that body corporate or firm.”

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113D Power to amend the required information

- (1) The Secretary of State may by regulations –
 - (a) make provision changing the required information about a member for the purposes of this Chapter;
 - (b) repeal section 113A(3).
- (2) The provision that may be made in regulations under subsection (1)(a) includes provision amending this Chapter.
- (3) The consequential provision that may be made in regulations under subsection (1)(a) by virtue of section 1292(1) also includes provision amending section 51 of the Economic Crime and Corporate Transparency Act 2023.
- (4) Regulations under subsection (1) are subject to affirmative resolution procedure.

113E Duty on new members to notify required information

- (1) A person who becomes a member of a company must provide the company with the required information about the member (see sections 113A and 113B).

- (2) Subsection (1) does not apply if or to the extent that—
 - (a) the person has already provided the information to the company, or
 - (b) the person becomes a member of the company on its incorporation and the information is contained in the application for the registration of the company.
- (3) A person must comply with this section within the period of two months beginning with the date on which the person became a member.

113F Duty on member to notify changes to required information

- (1) A person who is a member of a company must give notice to the company of any change in the required information about the member (see sections 113A and 113B).
- (2) The notice must specify the date on which the change occurred.
- (3) A person must comply with this section within the period of two months beginning with the date on which the change occurred.

113G Power for company to require information from members

- (1) A company may, for the purposes of ensuring that its register of members includes the information that it is required to include, require a member or former member of the company to provide any of the required information about the member or former member (see sections 113A and 113B).
- (2) The notice must require the recipient to comply with it within the period of one month beginning with the date on which the notice is given.

113H Failure to comply with section 113E, 113F or 113G

- (1) A person who, without reasonable excuse, fails to comply with section 113E or 113F commits an offence.
- (2) A person who, without reasonable excuse, fails to comply with a notice under section 113G commits an offence.
- (3) Where an offence under subsection (1) or (2) is committed by a firm, the offence is also committed by every officer of the firm who is in default.
- (4) A person guilty of an offence under this section is liable—
 - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
 - (b) on summary conviction—
 - (i) in England and Wales, to imprisonment for a term not exceeding the general limit in a magistrates' court or a fine (or both);
 - (ii) in Scotland, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both) and, for continued contravention, a daily default fine not exceeding one-fifth of the statutory maximum;

- (iii) in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum (or both) and, for continued contravention, a daily default fine not exceeding one-fifth of the statutory maximum.

113I Basic false statement offences in connection with sections 113E to 113G

- (1) A person commits an offence if, in purported compliance with section 113E or 113F and without reasonable excuse, the person makes a statement that is misleading, false or deceptive in a material particular.
- (2) A person commits an offence if, in purported compliance with a notice under section 113G and without reasonable excuse, the person makes a statement that is misleading, false or deceptive in a material particular.
- (3) Where an offence under subsection (1) or (2) is committed by a firm, the offence is also committed by every officer of the firm who is in default.
- (4) A person guilty of an offence under this section is liable –
 - (a) on summary conviction in England and Wales, to a fine;
 - (b) on summary conviction in Scotland, to a fine not exceeding level 5 on the standard scale;
 - (c) on summary conviction in Northern Ireland, to a fine not exceeding level 5 on the standard scale.

113J Aggravated false statement offences in connection with sections 113E to 113G

- (1) A person commits an offence if, in purported compliance with section 113E or 113F, the person makes a statement that the person knows to be misleading, false or deceptive in a material particular.
- (2) A person commits an offence if, in purported compliance with a notice under section 113G, the person makes a statement that the person knows to be misleading, false or deceptive in a material particular.
- (3) Where an offence under subsection (1) or (2) is committed by a firm, the offence is also committed by every officer of the firm who is in default.
- (4) A person guilty of an offence under this section is liable –
 - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
 - (b) on summary conviction –
 - (i) in England and Wales, to imprisonment for a term not exceeding the general limit in a magistrates' court or a fine (or both);
 - (ii) in Scotland, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both) and, for continued contravention, a daily default fine not exceeding one-fifth of the statutory maximum;

- (iii) in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum (or both) and, for continued contravention, a daily default fine not exceeding one-fifth of the statutory maximum.

Duty to keep index of members”.

- (6) Section 115 (index of members) –
 - (a) is moved to after the italic heading “Duty to keep index of members” inserted by subsection (5) of this section, and
 - (b) is renumbered section 113J.
- (7) In that section as renumbered –
 - (a) in subsection (1), for “names of the members of the company” substitute “names or titles of the members of the company (to be known as “the index of members’ names”)”;
 - (b) for subsection (3) substitute –
 - “(3) The index must include the same details of a person’s name or title as are entered in the register of members.”
- (8) Before section 114 insert –

“Inspection etc of register and index of members””.

- (9) Before section 121 insert –

“Removal of entries from register of members””.

- (10) In section 123 (single member companies) –
 - (a) in subsection (1), omit “, with the name and address of the sole member,”;
 - (b) in subsection (2), omit “, with the name and address of the sole member”;
 - (c) in subsection (3), omit “, with the name and address of the person who was formerly the sole member”.
- (11) In section 771 (procedure on transfer being lodged), after subsection (1) insert –
 - “(1A) The company may not register the transfer under subsection (1)(a) unless satisfied that it has the information that it is required to enter in its register of members in relation to the transferee.”

COMMONS AMENDMENT

The Commons agree with the Lords in their Amendment 23 and propose amendment 23A as an amendment thereto –

23A Leave out lines 84 to 96

LORDS DISAGREEMENT AND AMENDMENTS IN LIEU

The Lords disagree with the Commons in their Amendment 23A and do propose Amendments 23B and 23C in lieu –

23B As an amendment to Lords Amendment 23, in the text inserted by subsection (5) of the new Clause, leave out section 113C (required information about members: nominees)

23C As an amendment to Lords Amendment 178, in the text to be inserted, after paragraph 12A insert—

“12B After section 790I insert—

“Power to impose further duties

790IA Power to impose further duties involving nominee shareholders

- (1) The Secretary of State may by regulations make further provision for the purpose of enabling a company to which this Part applies to find out about anyone who has become or ceased to be a person who is—
 - (a) a registrable person in relation to the company by virtue of shares being held by a nominee, or
 - (b) a registrable relevant legal entity in relation to the company by virtue of shares being held by a nominee.
- (2) The regulations may, in particular—
 - (a) impose obligations on a company with a view to obtaining—
 - (i) information about whether a person has become or ceased to be a nominee shareholder;
 - (ii) if they have, information about: (A) the shareholding; (B) the nominee; (C) the person for whom the nominee holds or held the shares;
 - (iii) any other information required by the regulations;
 - (b) impose obligations on others (including nominees or former nominees) with a view to providing the company with—
 - (i) information of a kind described in paragraph (a)(i) or (ii);
 - (ii) any other information required by the regulations.
- (3) The regulations may, in particular, make provision similar or corresponding to any of the preceding provisions of this Chapter.
- (4) The provision that may be made by regulations under subsection (1) includes provision amending this Chapter.
- (5) Regulations under this section are subject to affirmative resolution procedure.”

After Clause 180

LORDS AMENDMENT 151

151 Insert the following new Clause—

*“Failure to prevent fraud***Failure to prevent fraud**

- (1) A relevant body is guilty of an offence if, in a financial year of the body (“the year of the fraud offence”), a person who is associated with the body (“the associate”) commits a fraud offence intending to benefit (whether directly or indirectly) –
 - (a) the relevant body, or
 - (b) any person to whom, or to whose subsidiary undertaking, the associate provides services on behalf of the relevant body.
- (2) A relevant body is also guilty of an offence under subsection (1) if –
 - (a) an employee of the relevant body commits a fraud offence intending to benefit (whether directly or indirectly) the relevant body,
 - (b) the fraud offence is committed in a financial year of a parent undertaking of which the relevant body is a subsidiary undertaking (“the year of the fraud offence”), and
 - (c) the parent undertaking is a relevant body which is a large organisation.
- (3) But the relevant body is not guilty of an offence under subsection (1)(b) if the body itself was, or was intended to be, a victim of the fraud offence.
- (4) It is a defence for the relevant body to prove that, at the time the fraud offence was committed –
 - (a) the body had in place such prevention procedures as it was reasonable in all the circumstances to expect the body to have in place, or
 - (b) it was not reasonable in all the circumstances to expect the body to have any prevention procedures in place.
- (5) In subsection (4) “prevention procedures” means procedures designed to prevent persons associated with the body from committing fraud offences.
- (6) A “fraud offence” is an act which constitutes –
 - (a) an offence listed in Schedule (*Failure to prevent fraud: fraud offences*) (a “listed offence”), or
 - (b) aiding, abetting, counselling or procuring the commission of a listed offence.
- (7) For the purposes of this section a person is associated with a relevant body if –
 - (a) the person is an employee, agent or subsidiary undertaking of the relevant body, or
 - (b) the person otherwise performs services for or on behalf of the body.
- (8) For the purposes of this section a person is also associated with a relevant body if the person is an employee of a subsidiary undertaking of the relevant body; but for the purpose of determining whether an offence is committed by virtue of this subsection, subsection (1) has effect with the omission of paragraph (b) (and the “or” preceding it).
- (9) Whether or not a particular person performs services for or on behalf of a relevant body is to be determined by reference to all the relevant circumstances and not merely by reference to the nature of the relationship between that person and the body.

- (10) Where a relevant body is liable to be proceeded against for an offence under subsection (1) in a particular part of the United Kingdom, proceedings against the body for the offence may be taken in any place in the United Kingdom.
- (11) Where by virtue of subsection (10) proceedings against a relevant body for an offence are to be taken in Scotland –
- (a) the body may be prosecuted, tried and punished in a sheriff court district determined by the Lord Advocate, as if the offence had been committed in that district, and
 - (b) the offence is, for all purposes incidental to or consequential on the trial or punishment, deemed to have been committed in that district.
- (12) A relevant body guilty of an offence under this section is liable –
- (a) on conviction on indictment, to a fine;
 - (b) on summary conviction in England and Wales, to a fine;
 - (c) on summary conviction in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum.
- (13) In this section –
- “relevant body” means a body corporate or a partnership (wherever incorporated or formed);
- “sheriff court district” is to be read in accordance with the Criminal Procedure (Scotland) Act 1995 (see section 307(1) of that Act).
- (14) In this section “financial year” –
- (a) in relation to a UK company, has the meaning given by the Companies Act 2006 (see section 390 of that Act);
 - (b) in relation to a relevant body that is not a UK company means –
 - (i) any period in respect of which a profit and loss account of the relevant body is required to be made up (by its constitution or by the law under which it is established), whether that period is a year or not, or
 - (ii) if the body is not required by its constitution or the law under which it is established to draw up a profit and loss account, a calendar year.”

COMMONS AMENDMENT

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

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

LORDS DISAGREEMENT AND AMENDMENTS IN LIEU

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

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

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

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

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

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

- (2) For a period that is a relevant body’s financial year but not in fact a year, the figure for turnover must be proportionately adjusted.
- (3) In subsection (1) the “number of employees” means the average number of persons employed by the relevant body in year P, determined as follows –
- (a) find for each month in year P the number of persons employed under contracts of service by the relevant body in that month (whether throughout the month or not),
 - (b) add together the monthly totals, and
 - (c) divide by the number of months in year P.
- (4) In this section –
- “balance sheet total”, in relation to a relevant body and a financial year –
- (a) means the aggregate of the amounts shown as assets in its balance sheet at the end of the financial year, or
 - (b) where the body has no balance sheet for the financial year, has a corresponding meaning;
- “turnover” –
- (a) in relation to a UK company, has the same meaning as in Part 15 of the Companies Act 2006 (see section 474 of that Act);
 - (b) in relation to any other relevant body, has a corresponding meaning;
- “year of the fraud offence” is to be interpreted in accordance with section (*Failure to prevent fraud*)(1).
- (5) The Secretary of State may by regulations modify this section (other than this subsection and subsections (6) and (8)) for the purpose of altering the meaning of “non-micro organisation” in section (*Failure to prevent fraud*)(1).

- (6) The Secretary of State may (whether or not the power in subsection (5) has been exercised) by regulations—
 - (a) omit the words “which is a non-micro organisation or” in section (*Failure to prevent fraud*)(1), and
 - (b) make any modifications of this section (other than this subsection) that the Secretary of State thinks appropriate in consequence of provision made under paragraph (a).
- (7) Before making regulations under subsection (5) or (6) the Secretary of State must consult—
 - (a) the Scottish Ministers, and
 - (b) the Department of Justice in Northern Ireland.
- (8) Regulations under subsection (5) or (6) may make consequential amendments of section (*Failure to prevent fraud: minor definitions*).”

After Clause 187

LORDS AMENDMENT 161

161 Insert the following new Clause—

Civil recovery of proceeds of crime: costs of proceedings

“Civil recovery: costs of proceedings

After section 313 of the Proceeds of Crime Act 2002 insert—

“313A Costs orders

- (1) This section applies to proceedings brought by an enforcement authority under Part 5 of the Proceeds of Crime Act 2002 where the property in respect of which the proceedings have been brought has been obtained through economic crime.
- (2) The court may not make an order that any costs of proceedings relating to a case to which this section applies (including appeal proceedings) are payable by an enforcement authority to a respondent or a specified responsible officer in respect of the involvement of the respondent or the officer in those proceedings, unless—
 - (a) the authority acted unreasonably in making or opposing the application to which the proceedings relate, or in supporting or opposing the making of the order to which the proceedings relate,
 - (b) the authority acted dishonestly or improperly in the course of the proceedings, or
 - (c) it would not be in the interests of justice.”

COMMONS DISAGREEMENT AND AMENDMENT IN LIEU

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

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

“Report on costs orders for proceedings for civil recovery

Report on costs orders for proceedings for civil recovery

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

LORDS NON-INSISTENCE, DISAGREEMENT AND AMENDMENT IN LIEU

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

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

“Civil recovery of proceeds of crime: costs of proceedings

Civil recovery: costs of proceedings

After section 313 of the Proceeds of Crime Act 2002 insert—

“313A Costs orders

- (1) This section applies to proceedings brought by an enforcement authority under Part 5 of the Proceeds of Crime Act 2002 where the property in respect of which the proceedings have been brought has been obtained through economic crime.
- (2) The court should normally make an order that any costs of proceedings relating to a case to which this section applies (including appeal proceedings) are payable by an enforcement authority to a respondent or a specified responsible officer in respect of the involvement of the respondent or the officer in those proceedings, unless it would not be in the interests of justice.”

Economic Crime and Corporate Transparency Bill

LORDS DISAGREEMENT, AMENDMENTS IN LIEU AND NON-INSISTENCE

*Ordered, by The House of Commons,
to be Printed, 12th September 2023.*

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