



Law Society
of Scotland

Economic Crime and Corporate Transparency Bill

Law Society of Scotland – briefing for Committee
Stage

March 2023



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

We welcome the opportunity to consider and comment on the Economic Crime and Transparency Bill¹ (the Bill) ahead of the Committee Stage in the House of Lords fixed from 27 March 2023.

We have previously responded to UK Government consultations on matters covered by the Bill, namely, *Limited partnerships: reform of limited partnership law*² in July 2018, *Corporate transparency and register reform: powers of the registrar*³ in February 2021, and *Corporate transparency and register reform: implementing the ban on corporate directors*⁴ in February 2021.

We also issued a briefing on the Bill for its second reading in the House of Commons in October 2022⁵.

General remarks

The Bill seeks to complement the Economic Crime (Transparency and Enforcement) Act 2022, which received Royal Assent on 15 March 2022, and to address the use of corporate structures in the UK being used for the purposes of economic crime.

The Bill has three main objectives⁶:

- to reform the powers of the Registrar of Companies and the legal framework for limited partnerships to protect businesses, consumers, and UK's national security,
- providing law enforcement with new powers of seizure to seize cryptoassets and to enable businesses in the financial sector to share information for the prevention and detection of crime, and

¹ [newbook.book \(parliament.uk\)](#)

² [bci_reform-of-limited-partnerships_july-18.pdf \(lawscot.org.uk\)](#)

³ [21-02-03-bci-coho-powers-of-registrar.pdf \(lawscot.org.uk\)](#)

⁴ [21-02-03-bci-coho-ban-on-corp-directors.pdf \(lawscot.org.uk\)](#)

⁵ [22-10-13-economic-crime-and-corporate-transparency-bill-hoc-second-reading-briefing.pdf \(lawscot.org.uk\)](#)

⁶ See Explanatory Notes Bill 154-EN, paragraph 2, accessed at <https://publications.parliament.uk/pa/bills/cbill/58-03/0154/en/220154en.pdf>

- improving the functionalities of Companies House and the accuracy of Companies House data to inform business transactions and lending decisions.

The Bill seeks to reform a number of matters relative to Companies House and the law on limited partnerships.

Limited partnerships

Part 2 of the Bill contains a number of provisions concerning limited partnerships.

A Scottish Limited Partnership (SLP) is a partnership registered in accordance with the Limited Partnerships Act 1907. The partnership consists of at least one general partner responsible for partnership management and at least one limited partner whose liability is limited to the capital they have contributed. The SLP has a legal personality of its own, distinct from that of its partners.

Many legal firms in Scotland offer SLP creation/management. They are a popular vehicle for use in investment, primarily for operating funds or holding commercial property.

Historically they were also common in the agriculture sector as a means of operating agricultural tenancies in Scotland. Changes to legislation mean that they are no longer created for these purposes, but many limited partnerships continue to operate so any new legislation must take account of the role of existing agricultural SLPs in the rural economy.

We are keen to support the government in ensuring that limited partnerships are not open to abuse by those engaged in criminal activity.

At the same time, any changes must avoid imposing disproportionate duties on legitimate businesses or creating administrative burdens, which will serve no useful purpose. The flexibility currently offered by the SLP, combining tax transparency with separate legal personality (and therefore the ability to hold property in its own name) makes it an attractive vehicle in the global marketplace.

SLPs are used within fund structures to pool assets of individuals and business entities and facilitate investments. Money is collected from partners who may be in the UK or elsewhere and invest in projects worldwide. They therefore support the position of the UK within the global economy and can facilitate foreign direct investment (FDI) flows as well as wealth creation elsewhere, which can bring benefits to the UK economy through tax revenues.

Comments on the Bill

The Bill is divided into six parts and nine schedules. We do not seek to comment in detail on each of these.

Part 1 & Schedules, 1, 2 (Parts 1, 2, 3 & 4), 3

Part 1 of the Bill concerns Companies. Clause 1 sets out a number of objectives for the Registrar of Companies in connection with the performing of their functions.

Clauses 2 to 8 concern company formation. We note clause 2 requires that the name of each subscriber must be included in the memorandum of association, including the forename and surname or their title (clause 2(3)). We support the inclusion of the requirement to state the subscriber's full name in the memorandum of association as this improves clarity and transparency of individual subscribers.

We note clause 4 of the Bill concerning subscribers' disqualification, which amends section 9 of the Companies Act 2006 (registration of documents). This requires a statement that none of the proposed company subscribers are disqualified under the directors' disqualification legislation, and if a proposed company subscriber is disqualified, permission of a court to act is required. Furthermore, if the application does not include a statement as required under section 9(4)(e) and (f) of the Companies Act, or they are false, the Registrar will reject the application to form a company. We support this provision as it requires individuals to state if they are disqualified directors, and it improves transparency in the process of registering a company with Companies House.

Clauses 9 to 27 concern company and business names.

Clause 9 concerns 'names for criminal purposes' and inserts a new section 53A into the Companies Act 2006. The clause provides that a company must not be registered by a name if, in the Secretary of State's opinion, the registration of a company by that name is intended to facilitate (a) the commission of an offence involving dishonesty or deception, or (b) the carrying out of conduct that, if carried out in any part of the United Kingdom, would amount to such an offence. The same provisions apply to the registered name of overseas companies under clause 9(3). We consider that this may be difficult to enforce and is very subjective as it is based on opinion, rather than a requirement for evidence. We consider that this power should be used sparingly. The idea that a company 'might' be used to facilitate crime is not enough as any company or person 'might' be. Similarly, there should be some materiality to the crime.

Clause 10 concerns 'Names suggesting connection with foreign governments etc'. This inserts a new section 56A into the Companies Act 2006, which provides that a company must not be registered by a name if, in the opinion of the Secretary of State, it is likely to give the false impression that the company is connected with (a) a foreign government or an agency or authority of a foreign government, or (b) an international organisation. We support this provision.

We note clause 18 which provides the Secretary of State with the power to direct a company to change its name if it appears to the Secretary of State that the name has been used, or is intended to be used, by the company to facilitate (a) the commission of an offence involving dishonesty or deception, or (b) the carrying out of conduct that, if carried out in any part of the United Kingdom, would amount to such an offence. We support the provision for the direction of the name change where the name has been used in the commission of an offence of dishonesty or deception, and there is evidence or a conviction to support this, however we reiterate our concerns in relation to clause 9 in relation to an intention to commit an offence. We consider it appropriate that a company may apply to the court to set aside a direction by the Secretary of State, as set out in the clause.

We also note clause 26, which inserts a new section 1198A into the Companies Act 2006. This provides that where a company has been directed or ordered to change its name, the company must not carry on business in the UK under that name, unless one of the criteria in new clause 1198A(2) are met. It is an offence to use a company name which contravenes the requirements, and the Bill provides that this offence is committed by the company and each officer who is in default. We support this provision which will enable enforcement of the relevant provisions to direct or order a change of name and may act as a deterrent.

Clause 29 concerns registered office – appropriate address. We support the provisions in clause 29 which introduces a requirement for a company's registered office to be at an appropriate address. An appropriate address is outlined in the new section 86(2) of the Companies Act 2006 as an address where (a) a document addressed to the company, and delivered there by hand or by post, would be expected to come to the attention of a person acting on behalf of the company, and (b) the delivery of documents there is capable of being recorded by the obtaining of an acknowledgement of delivery. We support this provision which deals with PO Box and mailing addresses which can cause difficulties with the service of documents as officers of the company may not be able to be located.

Clauses 30 and 31 concern registered email addresses and clauses 32 to 39 set out provisions on disqualification in relation to companies. We have no comments.

Clauses 40 to 45 concern directors. We note clause 40 concerning disqualified directors which inserts sections 159A and 169A into the Companies Act 2006. Under new section 159A(1) of the Companies Act 2006, disqualified directors may not be appointed as directors of a company, and if disqualified directors are appointed, then their appointment is void. We support this provision.

Clauses 46 to 51 concern the register of members of a company. We support the provisions in clause 46 which amends section 112 and 113 of the Companies Act 2006. Under the Companies Act 2006, there is no clarity as to what must constitute a name for a member of a company, however under the new section 113 (6A) inserted by clause 46(3) of the Bill, this defines 'the name' of a member of a company to mean the individual's forename and surname. We support this as it improves the transparency of the register.

Clauses 52 to 53 concern the registration of directors, secretaries and persons with significant control and clauses 54 to 58 set out minor changes to accounting and reporting provisions. We note the provisions of the Confirmation Statements in clauses 59 to 62.

Clauses 63 to 68 concern identity verification. We have no comments to make.

Clause 69 concerns the requirements for administrative restoration of a company to the register and clauses 70 to 72 concern the delivery of documents to the registrar of companies.

Clauses 73 to 76 set out the mechanism for facilitating electronic delivery. While the ability to effect delivery by electronic means is important, we consider that mandating delivery by electronic means is not yet appropriate as not everyone has access to electronic means. If this is to be required, we consider that an alternative should be provided for those unable to undertake delivery by electronic means.

Clauses 77 to 85 concern promoting the integrity of the register and give the Registrar powers to reject documents for inconsistencies (clause 77), require additional information (clause 81), and amended powers to remove material from the register (clause 83). In our earlier consultation response, we noted that a querying power has the potential to cause companies a large compliance burden and it is therefore appropriate that it is only used sparingly. Identifying contradictions in the public register is important, and necessary for the operation of the register, and we support the provision for the registrar to reject documents for inconsistencies.

In relation to the querying powers generally, and the provisions of clauses 77 and 81 particularly, we consider that it is important that the registrar does not use the powers in a manner which results in a statutory timescale being missed (for example, for registration of charges or filing of accounts) for any inconsistency which is legally explicable. The challenge in this area is that the register is largely an *ex post* register, with some exceptions – i.e. details of the company legally change and are then notified to the registrar after the fact. The most meaningful sanction may be to delay the legal effect of any such notification until information is provided – this may provide an effective incentive for companies to process filings and help improve the structural integrity of the register.

We note clause 85 concerning the power to require businesses to report discrepancies, which amends section 1059A (scheme of Part 35) of the Companies Act 2006.

Clauses 86 to 89 set out the provisions regarding the inspection of the register and clauses 90 and 91 contain the provisions of the register's functions and fees. The provisions of information sharing, and use are set out in clauses 92 to 95. We have no comments on these provisions.

We note clause 96 concerning the change of addresses of officers of overseas companies by registrar, which amends section 1046 of the Companies Act 2006 (overseas companies:

registration of particulars), where an overseas company is required to deliver to the registrar for registration (a) a service address for an officer of the company, or (b) the address of the principal office of an officer of the company to make provision similar to the provisions in section 1097B or 1097C of the Companies Act 2006.

Clause 97 sets out the provisions on overseas companies: availability of material for public inspection etc. We note clause 98 concerning the registered addresses of an overseas company, this inserts a new section 1048A into the Companies Act 2006, that allows the Secretary of State to require an overseas company to deliver to the registrar for registration (a) a statement specifying an address in the United Kingdom that is an appropriate address for the company, (b) a statement specifying an appropriate email address for the company. We welcome this provision, as it ensures a connection to the UK on an ongoing basis and an address which can be used, for serving documentation.

Clause 99 concerns overseas companies: identity verification of directors and inserts a new section 1048B to the Companies Act 2006, and the Secretary of State can make provision to verify the identity of individual(s) who are company directors.

The general offences and enforcement provisions are set out in clauses 100 to 102. We have no comments on these provisions.

Clauses 103 to 106 concern the rectification of addresses and service of documents. Clause 103 sets out the provisions on the registered office: rectification of the register, clause 104 concerns rectification of register: service addresses and clause 105 sets out the provisions on the rectification of register: principal office addresses and clause 106 concerns the service of documents on people with significant control.

Part 2 and Schedules 4, 5

Part 2 of the Bill concerns Partnerships, with Chapter 1 concerned with Limited Partnerships.

Clause 107 sets out the meaning of a 'limited partnership'. We have no comments to make.

Clauses 108 to 110 set out the required information about limited partnerships. We have no comments to make.

Clause 111 concerns a limited partnership's registered office and inserts a new section 8E into the Limited Partnerships Act 1907, which requires the general partners in a limited partnership to ensure that its registered office is at all times at an "appropriate address,". An "appropriate address" can be (i) the address of the principal place of business of the limited partnership; (ii) the usual residential address of a general partner who is an individual; (iii) the address of the registered or principal office of a general partner that is a legal entity; or (iv) an address of an authorised corporate service provider that is acting for the limited partnership. Section 8E sets other conditions for the address.

We welcome the clarity provided by the Bill while continuing to provide a degree of flexibility. The provisions ensure a connection to the UK on an ongoing basis and an address which can be used, for example for service of official documents, but without restricting limited partnerships in terms of where they base their business. A stricter approach may seriously diminish the attractiveness of UK business vehicles for the funds industry. Funds are often managed outside the UK and the place of main operations is subject to change, for example where an investment is taken out of one jurisdiction and invested in another, it may be helpful to have management located closer to the asset or assets in question.

Generally, we note that the term 'principal place of business' is itself unclear, although there are a number of related concepts, such as "head office", "establishment" or "centres of main interest", which are clearer and have been defined in existing legislation. Ordinary interpretation of the words would lead to the conclusion that this is where most of the business of an entity goes on. In terms of modern business, particularly in terms of services, this interpretation proves problematic. It may be difficult, if not impossible, to determine where the bulk of operations takes place, either because a particular business operates across numerous locations or because staff work remotely or rotate around different offices. Similarly, members of a management team may not all be based in the same location.

Clauses 114 and 115 set out the requirements for registered email addresses. Clauses 116 to 118 concern general partners. Clause 119 concerns the removal of option to authenticate application by signature. We have no comments to make.

Provisions regarding changes in partnership are set out in clauses 120 to 125, including creating a requirement for general partners in a limited partnership to deliver a confirmation statement to the registrar. We note clause 125 regarding confirmation statements for Scottish Partnerships, which amends The Scottish Partnerships (Register of People with Significant Control) Regulations 2017 (S.I. 2017/694). Clause 125 amends regulation 37 of the 2017 Regulations, as an eligible Scottish partnership is entitled to assume that the information that has been delivered to the registrar has been properly delivered unless the registrar has notified the eligible Scottish partnership otherwise.

Clause 126 concerns accounts. We have no comments to make.

Clauses 127 to 130 deal with the dissolution and winding up of limited partnerships. Clause 127 amends the Limited Partnerships Act 1907, and provides that a limited partnership is dissolved if it ceases to have a general partner or ceases to have a limited partner (new section 6(2A)), and requires that:

- if a limited partnership is dissolved at a time when the partnership has at least one general partner, the general partners at that time must notify the registrar that the limited partnership has been dissolved, and wind up its affairs (new section 6(3A))
- and where the partnership is dissolved at a time when it does not have a general partner, the limited partners must notify the registrar that the firm has dissolved, and

the affairs of the partnership must be wound up by a person who is not a limited partner.

We consider it is positive that limited partnerships (including SLPs) are required to notify the Registrar when a limited partnership is dissolved, and have this recorded on the register, in the interests of transparency and ensuring integrity of the registry data.

Clauses 131 to 133 set out the provisions regarding the register of limited partnerships and clause 134 concerns the disclosure of information about partners. We have no comments to make.

Clauses 135 to 139 concern the registrar's role relating to dissolution, revival and deregistration. We note the contents of clause 136 concerning the registrar's power to confirm dissolution of limited partnership. In the case of a limited partnership which is dissolved, we consider that it would be preferable to mark the partnership on the register as dissolved as this gives better information to those consulting the register. We note the provisions to enable an 'administrative revival' of a limited partnership.

Clauses 140 and 141 concern the delivery of documents. Clause 141 creates two offences concerning false statements.

Clause 143 concerns service on a limited partnership, clauses 144 and 145 application of other laws, and clauses 146 and 147 concern regulations and further amendments respectively. We have no comments.

Chapter 2 of Part 2 of the Bill concerns Miscellaneous provisions about partnerships. Clause 148 concerns the registration of qualifying Scottish partnerships, where the Secretary of State can make provision (a) requiring the delivery to the registrar of information in connection with a qualifying Scottish partnership, (b) ensuring that a partner of a qualifying Scottish partnership has at least one managing officer who is an individual whose identity is verified (c) in relation to qualifying Scottish partnerships that corresponds or is similar to any provision relating to companies or limited partnerships made by or under, or capable of being made under, any Act. We welcome clause 148 as it ensures there are additional verification measures for Scottish partnerships.

Clause 149 concerns the power to amend disqualification legislation in relation to relevant entities: GB, which inserts a new section 221 in the Company Directors Disqualification Act 1986, which include (a) extending the company disqualification conditions, (b) limiting company disqualification conditions to remove conditions, (c) modifying company disqualification conditions and (d) for any of the company disqualification conditions to result in or contribute to a person being disqualified from acting in a role or doing something in relation to a relevant entity.

Clause 150 concerns Power to amend disqualification legislation in relation to relevant entities for Northern Ireland.

Part 3 – Register of Overseas Entities

Part 3 of the Bill concerns the register of overseas entities and makes a number of amendments to the Economic Crime (Transparency and Enforcement) Act 2022 which establishes the register. We have no comments to make.

Part 4 and Schedules 6, 7

Part 4 of the Bill concerns cryptoassets. We have no comments.

Part 5 and Schedules 8 & 9

Part 5 of the Bill concerns Miscellaneous provisions, including Money laundering and terrorist funding (clauses 170 to 174), Disclosures to prevent, detect or investigate economic crime etc (clauses 175 to 180)

Regulatory and investigatory powers are set out in clauses 181 to 186 and in particular we note clause 182 concerning Scottish Solicitors' Discipline Tribunal: powers to fine in cases relating to economic crime, which amends Section 53 of the Solicitors (Scotland) Act 1980 (powers of tribunal)

We also note clause 183 regarding regulators of legal services: objective relating to economic crime, which amends section 1 of the Legal Services Act 2007 (regulatory objectives), as regulators of legal services must promote the prevention and detection of economic crime ("*economic crime*" has the meaning given by section 180(1) of the Economic Crime and Corporate Transparency Act 2023").

We also note clause 184 concerning approved regulators: information powers relating to economic crime. Clause 184 amends the section 111 of the Legal Services Act 2007 and inserts Part 5A regarding The Law Society's information powers relating to economic crime (Please note this is the Law Society of England & Wales).

Whilst the extent of the provisions of the Legal Services Act 2007 are limited from a Scottish perspective (Sections 195 and 196(1) and Schedule 20 extend to Scotland only), we consider there should be a consistent approach to anti money laundering supervision in the UK, as that this may lead to different objectives and approaches to anti money laundering supervision between Scotland and England.

Part 6

Part 6 of the Bill concerns the General provisions. We have no comment to make.

For further information, please contact:

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