



Law Society
of Scotland

Economic Crime and Corporate Transparency Bill

Law Society of Scotland – briefing for Second
Reading

October 2022



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 Bill's second reading in the House of Commons fixed for 13 October 2022.

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.

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 objectives⁵:

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

¹ [newbook.book \(parliament.uk\)](https://www.parliament.uk/publications/58-03/0154/en/220154en.pdf)

² [bci_reform-of-limited-partnerships_july-18.pdf \(lawscot.org.uk\)](https://www.lawscot.org.uk/publications/21-02-03-bci-coho-powers-of-registrar.pdf)

³ [21-02-03-bci-coho-powers-of-registrar.pdf \(lawscot.org.uk\)](https://www.lawscot.org.uk/publications/21-02-03-bci-coho-powers-of-registrar.pdf)

⁴ [21-02-03-bci-coho-ban-on-corp-directors.pdf \(lawscot.org.uk\)](https://www.lawscot.org.uk/publications/21-02-03-bci-coho-ban-on-corp-directors.pdf)

⁵ See Explanatory Notes Bill 154-EN, paragraph 2, accessed at <https://publications.parliament.uk/pa/bills/cbill/58-03/0154/en/220154en.pdf>

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 formed in accordance with the Limited Partnerships Act 1907. The partnership consists of at least one general partner responsible for partnership management and a number of limited partners 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. 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 eight 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 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 17 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 25, 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.

Clauses 28 and 29 concern registered offices. We support the provisions in clause 28 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) 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 35 set out provisions on disqualification in relation to companies. We have no comments.

Clauses 36 to 43 concern directors. We note clause 36 concerning disqualified directors which inserts sections 159A and 169A into the Companies Act 2006. Under section 159A(1) 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 44 to 49 concern the register of members. We support the provisions in clause 44 which amends section 112 and 113 of the Companies Act 2006. Under the Companies Act, there is no definition of a name for a member of a company, however under the new section 113 (6A) inserted by clause 44(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 50 to 51 concern the registration of directors, secretaries and persons with significant control and clauses 52 to 56 set out the accounting and reporting provisions. We note the provisions of the Confirmation Statements in clauses 57 to 60.

Clauses 61 to 67 concern identity verification. We have no comments to make at this time.

Clause 68 concerns the requirements for administrative restoration and clauses 69 to 71 concern the delivery of documents.

Clauses 72 to 75 set out the requirements of facilitating electronic delivery. While the power to mandate 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 76 to 83 concern promoting the integrity of the register and give the Registrar powers to reject documents for inconsistencies (clause 76), require additional information (clause 80), and amended powers to remove material from the register (clause 82). 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 76 and 80 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 – ie. 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.

Clauses 84 to 87 set out the provisions regarding the inspection of the register and clauses 88 and 89 contain the provisions of the register's functions and fees. The provisions of information sharing, and use are set out in clauses 90 to 93 and the general offences and enforcement provisions are set out in clauses 94 to 98. We have no comments on these provisions.

Part 2 and Schedules 4, 5

Part 2 of the Bill concerns Limited Partnerships.

Clause 99 sets out the meaning of a 'limited partnership'. We have no comments to make at this time.

Clauses 100 to 102 set out the required information about limited partnerships. We have no comments to make.

Clause 103 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 105 and 106 set out the requirements for registered email addresses. Clauses 107 to 109 concern general partners. Clause 110 concerns the removal of option to authenticate application by signature. We have no comments to make at this time.

Provisions regarding changes in partnership are set out in clauses 111 to 117, including creating a requirement for general partners in a limited partnership to deliver a confirmation statement to the registrar. We note clause 117 regarding confirmation statements for Scottish Partnerships, which amends The Scottish Partnerships (Register of People with Significant Control) Regulations 2017 (S.I. 2017/694). Clause 117(2) inserts a new power into the 2017 Regulations that allows the Secretary of State to make further provision about the matters that must be confirmed in a confirmation statement delivered by a Scottish limited partnership.

Clause 118 concerns accounts. We have no comments to make at this time.

Clauses 119 and 120 deal with the dissolution and winding up of limited partnerships. Clause 119 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 121 to 123 set out the provisions regarding the register of limited partnerships and clause 124 concerns the disclosure of information about partners. We have no comments to make.

Clauses 125 to 127 concern dissolution, revival and deregistration. We note the contents of clause 125 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 128 and 129 concern delivery of documents. Clause 129 creates two offences concerning false statements.

Clause 130 concerns service on a limited partnership, clauses 131 and 132 application of other laws, and clauses 133 and 134 concern regulations and further amendments respectively. We have no comments.

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 at this time.

Part 4 and Schedules 6, 7

Part 4 of the Bill concerns cryptoassets. We have no comments to make at this time.

Part 5 and Schedule 8

Part 5 of the Bill concerns Miscellaneous provisions, including Money laundering and terrorist funding (clauses 143 to 147), Disclosures to prevent, detect or investigate economic crime etc (clauses 148 to 153), Regulatory and investigatory powers (clauses 154 to 156) and Reports on payments to governments (clause 157). We have no comments to make at this time.

Part 6

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

For further information, please contact:

Gavin Davies

Policy Team

Law Society of Scotland

DD: 0131 370 1985

GavinDavies@lawscot.org.uk