



## Economic Crime and Corporate Transparency Bill

### Briefing Document

#### General overview<sup>1</sup> –

##### **Introduction<sup>2</sup>:**

Fraud is the most common offence in the UK, amounting to 41% of all crime in the year ending September 2022. Transparency International UK found that 929 UK companies involved in 89 cases of corruption and money laundering between 2000 and 2019 resulted in £137 billion in economic damage, though the true figure could be much higher.

The new Bill is intended to drive a cultural change through improved fraud prevention procedures while holding organisations to account for offences through prosecutions.

##### **The Bill:**

The Bill is made up of six Parts, as set out below:

1. **Companies House reform**—Part 1 of the Bill contains a substantive package of proposals enhancing the role of Companies House and increasing the transparency of UK corporate entities.
2. **Limited partnership reform**—Part 2 of the Bill contains a major overhaul of the regulatory framework to prevent the abuse of limited partnerships.
3. **Register of Overseas Entities**—Part 3 provisions make technical amendments to EC(TE)A 2022 such as amending the definition of a service address to match that in the Companies Act 2006 (CA 2006) and amending the criminal offences for providing certain false statements to be consistent with other offences in EC(TE)A 2022.
4. **Crypto assets**—Part 4 of the Bill will provide additional powers to law enforcement, so they are able to more quickly and easily seize and recover crypto assets which are the proceeds of crime or associated with illicit activity such as money laundering, fraud and ransomware attacks. The Bill will principally amend both criminal confiscation powers in Parts 2, 3 and 4 of the Proceeds of Crime Act 2002 (POCA 2002) and civil recovery powers in POCA 2002, Pt 5 to enable enforcement agencies to more effectively tackle criminal use of crypto assets.
5. **Investigation and enforcement of economic crime**—Part 5 of the Bill contains a range of proposals seeking to strengthen anti-money laundering powers, enabling better information sharing on suspected money laundering, fraud and other economic crimes, expands the powers of the Serious Fraud Office (SFO) under section 2 of the Criminal Justice Act 1987 and creates a corporate offence of failure to prevent fraud.
6. **General and consequential provisions**—see Part 6 of the Bill.

---

<sup>1</sup> Economic Crime and Corporate Transparency Bill—strengthening the investigation and enforcement of economic crime, Lexis+, <https://plus.lexis.com/api/permalink/c8e00b22-ea28-4ea1-9cfa-319f82101d9d/?context=1001073>

<sup>2</sup> <https://www.eqs.com/en-gb/compliance-knowledge/blog/the-details-behind-uks-new-economic-crime-and-corporate-transparency-bill/>



### **Failure to prevent fraud offence<sup>3</sup> –**

#### **The offence:**

Whilst there is still time for changes to be made to the Bill, as it currently stands an organisation could be criminally liable under the failure to prevent fraud offence if:

- it is a large organisation – defined as an organisation that meets two out of three of the following criteria: more than 250 employees, more than £36 million turnover and more than £18 million in total assets;
- a specified fraud offence (listed in a schedule to the Bill) is committed by an associate, for the benefit of the organisation or of a person for whom the associate provides a service on behalf of the organisation; and
- the organisation did not have reasonable fraud prevention procedures in place.

#### **Which fraud offences are within the scope? <sup>4</sup>**

The specified fraud offences in scope are those most likely to be relevant to corporations and are listed in Schedule 11 of the Bill. The types of fraud scenarios captured will include incidents where employees:

- fraud by false representation under section 2 of the Fraud Act 2006 (FrA 2006).
- fraud by failing to disclose information under FrA 2006, s 3.
- fraud by abuse of position under FrA 2006, s 4.
- obtaining services dishonestly under FrA 2006, s 11.
- participation in a fraudulent business under FrA 2006, s 9.
- false statements by company directors under section 19 of the Theft Act 1968 (TA 1968).
- false accounting under TA 1978, s 17.
- fraudulent trading under CA 2006, s 993.
- common law offence of cheating the public revenue.

Importantly, under the government's proposal, money laundering offences are not included and will continue to be governed by the existing regulatory regime under POCA 2002 which does not currently include a 'failure to prevent' offence. This contrasts with Lord Garnier's proposed amendment which would see the offence extended to include the main money laundering offences under sections 327–329 of the Proceeds of Crime Act 2002.

This will be a strict liability offence which can only be committed by corporations—no individual director or senior manager liability is proposed. The corporation does not have to be aware of the fraud to be liable. However, for the offence to be committed the fraud must have been committed for the corporation's benefit.

---

<sup>3</sup> <https://www.rsmuk.com/insights/industry-insights/economic-crime-and-corporate-transparency-bill>

<sup>4</sup> <https://www.rsmuk.com/insights/industry-insights/economic-crime-and-corporate-transparency-bill>



**Definition of associate:**

The current definition of associate casts the net very wide and would include employees, agents, subsidiaries and anyone performing a service on behalf of the organisation.

**Which organisations does it apply to?**

“The government’s proposed new offence will apply only to large corporations and partnerships, large not-for-profit organisations such as charities, and incorporated public bodies across all sectors. In an amendment proposed by Lord Garnier, the restriction of application only to large corporations would be removed meaning that the offence would apply to organisations of all sizes”.

**Therefore, does failure to prevent fraud cover LA?**

Impact Assessment, The Home Office – “Introducing a failure to prevent fraud offence covering all large organisations”<sup>5</sup> below:

**Annex 2: Organisations covered by failure to prevent fraud offence and whether in scope of better regulation framework BRF)**

**Table A.6, Organisations covered by FTPF and whether in scope of BRF, 2022.**

Entity	Incorporated and therefore within scope of FTP Fraud?	In scope BRF
Companies limited by shares, LLPs, ordinary partnerships	Yes, CA 2006 or other	Yes
Companies limited by guarantee (CLG)	Yes, CA 2006	Yes
Community Interest Companies (CIC)	Yes, CICs are companies for community causes and are incorporated as other companies <sup>38</sup>	Yes
Registered Societies	Yes <sup>39</sup>	Yes
Industrial and Provident Societies	Yes <sup>40</sup>	Yes
Charitable Incorporated Organisation, including Scottish Charitable Incorporated Organisation	Yes, but non-CA 2006.	Yes
Local Authorities	Yes	No
Trade Unions	No, unincorporated associations of individuals <sup>41</sup> .	Yes
NHS Trusts	Yes	No
Police forces	No	No
Government departments	No	
Schools –LA maintained	Yes	No
Unincorporated business, for example . sole traders	No	Yes

<sup>5</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1149596/Impact\\_Assessment\\_for\\_Failure\\_to\\_Prevent\\_Fraud\\_\\_Home\\_Office\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1149596/Impact_Assessment_for_Failure_to_Prevent_Fraud__Home_Office_.pdf)



### Penalty:

Organisations convicted of failure to prevent fraud will be liable on conviction to unlimited fines.

### Avoiding Liability & Adequate Procedures:

The only way to avoid prosecution will be to have in place reasonable fraud prevention procedures (although if the risk is extremely low it may be reasonable not to have any such procedures in place). Under the proposals, the government will have to publish guidance on what constitutes reasonable fraud prevention procedures once the Bill has received Royal Assent (The Bill had its third reading in the House of Lords on 4 July 2023 and will go to the Commons for consideration of Lords amendments on Monday 4 September. Royal Assent may be expected shortly after this date).

Guidance is likely to be similar to the adequate procedures of UK Bribery Act 2010 – commentators have suggested it will focus on the following<sup>6</sup>:

- **Top level commitment** – management is serious about honest dealings and sets out a clear tone to prevent fraud, corruption or any form of behaviour that might deliberately mislead.
- **Risk assessment** – ensuring that the organisation evaluates its operations, considers where these risks of fraud might occur in the organisation and ensuring that suitable controls and mitigation are put in place.
- **Training and communications** – the relevant employees and third parties are trained so they understand how they are expected to behave. Correct training should help employees and other stakeholders to understand and properly implement controls. It will also be necessary to develop regular supporting communications to set the right tone.
- **Due diligence** – to make sure that in any transaction, the organisation engages with legitimate third parties and any risks of fraud in the transaction or resulting from the new relationship after the transaction (e.g., a new business partner) do not lead to fraud.
- **Proportionate procedures** – to ensure that controls are in place in the key functions of the company to prevent fraudulent behaviour by employees and other agents. Reading the aims of the Bill, these procedures should probably cover the following topics:
  - **Sales** – avoiding any risks of false claims, mis-selling, fraudulent advertising, unfair sales practices, phishing, market manipulation.
  - **Procurement** – not selecting suppliers and business partners that might act as an agent to commit fraud; using illegal or corrupt means to purchase goods and services that would not be normally obtainable or at a price that is undue; not paying suppliers for goods and services properly received.
  - **Human resources** – hiring people who have committed fraud, allowing conflicts of interest that encourage fraud, using politically connected people to obtain government deals that are undue.

---

<sup>6</sup> <https://www.goodcorporation.com/goodblog/preparing-for-the-economic-crime-and-corporate-transparency-bill/>



- **Finance** – ensuring proper books and records, correct reporting, documented and clear controls.
- **Government interactions** – clear tax policy, paying the correct taxes, false claims to government, overcharging, using deception to obtain government contracts.
- **Monitoring and compliance** – ensuring that the company has its own processes to monitor its policies and procedures to prevent fraud, including an adequate ethics/compliance function and a strong speak-up system.

### **Discussion of Public Sector (Hansard):**

#### **Lord Cromwell on Amendment 50A, Tuesday 18<sup>th</sup> April 2023:**

“It enables law enforcement or local authorities to access the information without burdening the registrar. I understand that there is currently a bottleneck causing frustrating delays. As an aside, local authorities are interested in this amendment as a means to target corporate business rates evasion and VAT fraud more effectively.”<sup>7</sup>

#### **Stephen Kinnock on Clause 36, Tuesday 15<sup>th</sup> November 2022:**

“With new clause 36 we have sought to address one of the most troubling gaps in the Bill as currently drafted: the absence of any specific measures to facilitate information sharing with local authorities. That is a serious weakness that, if left unaddressed, could pose a serious challenge to efforts to ensure a strong, unified, cross-government approach to law enforcement, in terms not only of Whitehall but the vertical relationship between national Government and local government. Many local authorities, particularly in London, are at the coalface when it comes to dealing with some of the most pernicious effects of money laundering and other forms of economic crime. It is disappointing that the Committee was not able to hear from any local government representatives during our evidence sessions. I would be grateful if the Minister could set out what steps, if any, the Government took to consult local authorities during the process of drafting the Bill.”<sup>8</sup>

#### **Alison Thewliss, Tuesday 15<sup>th</sup> November 2022:**

As a former local government councillor, I can confirm that there definitely needs to be an interface between central Government and local government and it needs to look at economic crime.<sup>9</sup>

#### **Alison Thewliss, Wednesday 25<sup>th</sup> January 2023:**

Put simply, local authorities need these powers, too. Tackling economic crime is a huge challenge for councils due to the lack of licence they have to act on their own intelligence about crime in their local areas.

---

<sup>7</sup> <https://hansard.parliament.uk/Lords/2023-04-18/debates/A2FE4B35-D85B-433C-9EF4-EE66006FD1F4/EconomicCrimeAndCorporateTransparencyBill>

<sup>8</sup> [https://hansard.parliament.uk/commons/2022-11-15/debates/3a7e990f-db8d-4eb0-a775-a55e1194f7e4/EconomicCrimeAndCorporateTransparencyBill\(EleventhSitting\)](https://hansard.parliament.uk/commons/2022-11-15/debates/3a7e990f-db8d-4eb0-a775-a55e1194f7e4/EconomicCrimeAndCorporateTransparencyBill(EleventhSitting))

<sup>9</sup> [https://hansard.parliament.uk/commons/2022-11-15/debates/3a7e990f-db8d-4eb0-a775-a55e1194f7e4/EconomicCrimeAndCorporateTransparencyBill\(EleventhSitting\)](https://hansard.parliament.uk/commons/2022-11-15/debates/3a7e990f-db8d-4eb0-a775-a55e1194f7e4/EconomicCrimeAndCorporateTransparencyBill(EleventhSitting))



Councils want to play their part in cracking down on illicit wealth as it manifests itself in their areas. For instance, I have heard at first hand from Westminster City Council how it is battling a growing number of shop fronts—so-called American candy stores—on Oxford Street in particular, that are being used to channel illicit finance, but the process for taking meaningful action against these illegal practices is simply too slow, and as a result it is a gift to the criminals. Disappointingly, following opposition from Ministers to amendments we tabled in Committee that sought to expand powers for local authorities to enforce economic crime laws, there are still no specific provisions to enhance the ability of councils to act.<sup>10</sup>

**END**

**Please note this research brief does not constitute legal advice.**

---

<sup>10</sup> <https://hansard.parliament.uk/commons/2023-01-25/debates/92C7F494-6DE0-4997-9B2C-5D48B40AA833/EconomicCrimeAndCorporateTransparencyBill>