

European Convention on Human Rights (ECHR) Memorandum

Parts 1-3 of the Economic Crime and Corporate Transparency Bill (BEIS measures)

A. Summary of the Bill

1. The Economic Crime and Corporate Transparency Bill (“the Bill”) follows the Economic Crime (Transparency and Enforcement) Act 2022 (“2022 Act”) and similarly seeks to address the threat of illicit finance whilst maintaining the ease of doing business for legitimate commerce.
2. The Bill is made up of six Parts: the first deals with amendments to the Companies Act 2006 to reform Companies House processes and furnish the Registrar with new statutory functions and objectives; the second makes reforms to bring the law applicable to limited partnerships up to date and to bring greater alignment with the law applicable to companies; the third introduces new provisions relating to the Register of Overseas Entities, which was introduced by the earlier 2022 Act; the fourth makes changes to the law relating to the seizure of cryptoassets; the fifth makes further reforms to the legal framework that makes up the anti-money laundering regime; and the sixth and last contains general provisions. This memorandum is concerned only with Parts 1 to 3 of the Bill which contain the BEIS content.
3. A summary of each of the BEIS Parts is set out below.
4. Companies House reform- these provisions reform various elements of the UK corporate framework by making amendments to the Companies Act 2006. They will:
 - a) create new objectives which will guide the exercise of the Registrar’s functions;
 - b) make provision relating to company formations such as what information must be provided to the Registrar in respect of certain officers and persons with significant control;
 - c) make provision relating to company and business names, including restricting the use of names for criminal purposes or which might be otherwise misleading, and prohibiting companies from re-registering names they have been directed to change. The Registrar will be granted additional powers in respect of changing unsuitable names;
 - d) make provision relating to registered office addresses and email addresses;
 - e) make provision relating to directors, including the new prohibitions on registers acting without identity verification, and relating to disqualification of directors (expanded on below);

- f) abolish local registers of information and create new registers such as the register of members;
 - g) make provision relating to the filing of accounts and confirmation statements;
 - h) make provision for who may deliver documents to the Registrar, as well as introduce new identity verification requirements which persons delivering documents to the Registrar must comply with;
 - i) make provision for increased use of electronic delivery of documents;
 - j) furnish the Registrar with more effective investigation and enforcement powers including e.g. a power to reject documents for inconsistency, for the informal correction of documents, for administrative removal of information from the register; and granting the Registrar a new function of information analysis for the purpose of crime prevention and detection;
 - k) create a new information sharing gateway for the purpose of the Registrar's functions; and
 - l) introduce new criminal and civil sanctions to support these amendments (see Annex A for more information on sanctions).
5. Limited Partnership reform- Part 2 of the Bill contains a major overhaul of the regulatory framework that applies to a species of partnership called a "limited partnership" (not to be confused with a limited liability partnership (LLPs)). Limited partnerships comprise at least one "general partner" which are effectively the managers of the firm, and at least one "limited partner" which are effectively silent partners who invest in the business. Limited partnerships are frequently used as vehicles in private equity deals.
6. The law governing limited partnerships dates back to 1907 and apart from some amendments made in 2015 to cater for a sub-species of "private fund limited partnerships", has not kept up with the regulatory framework that applies to companies and other forms of business association such as LLPs.
7. Part 2 of the Bill introduces the following changes to limited partnership law (many of which replicate with modifications existing company law, and amendments being made by Part 1 of the Bill to company law):
- a) new requirements about information that needs to be supplied to the Registrar about the firm's partners and nature of its business;
 - b) obligations on limited partnerships to maintain registered offices at "appropriate addresses" and to have a registered email address;
 - c) restrictions on general partners acting as such when they are disqualified, including by virtue of being subject to sanctions;
 - d) new obligations on limited partnerships to supply the Registrar with information about changes to the firm, such as changes in partners, and to supply an annual "confirmation statement" reporting that all information

required to be delivered has been delivered (or is delivered with the statement);

- e) a power for the Registrar to change the service address of individuals connected with limited partnerships when they can't be contacted at the address supplied;
 - f) a power for HMRC to require accounts from limited partnerships;
 - g) provisions to cater for how a limited partnership is to be wound up depending on whether there are any general partners left at the moment the firm dissolves;
 - h) a mechanism for the Registrar to bring about the removal from her public records of limited partnerships she reasonably believes to be dissolved, together with mechanisms for revival of partnerships that transpire not to have been dissolved;
 - i) a provision for partners to request that a limited partnership is deregistered as such, leaving it open for the partnership to persist as a general partnership;
 - j) provisions concerning the Registrar's record keeping and information publishing duties; and
 - k) a power for the Secretary of State to make regulations which apply company law with modifications to fit the circumstances of limited partnerships (mirroring an existing power in section 15 of the Limited Liability Partnership Act 2000).
8. Register of Overseas Entities- the Part 3 provisions make technical amendments to the 2022 Act such as amending the definition of a service address to match that in the Companies Act 2006 and amending the criminal offences for providing certain false statements to be consistent with other offences in the Act. Part 3 also contains a power for the Secretary of State to make regulations which amend provisions in the 2022 Act which correspond to amendments made by Part 1 of the Bill to corresponding provisions in the Companies Act 2006.

B. European Convention on Human Rights

9. The Government considers that the provisions of the Bill are compatible with the Convention rights.
- (i) Key issues
10. The table below sets out those clauses where, in the Government's view, ECHR rights ("Convention rights") are engaged. Where a clause or Schedule is not mentioned it is because the Government considers that no issues arise under the Convention:

Clauses	Article 1, Protocol 1	Article 6(1)	Article 7	Article 8
Authorised corporate service providers Clause 63/j016	X	X		
Mandatory use of authorised corporate service providers by limited partnerships Clause 128/j134	X			
Registered office: rectification of register Clause 29/j013	X			
Offence for designated persons to act as directors Clauses 32/j750 and 34/j752			X	
Registrar's fees Clause 89/j058	X			
Information sharing and use Clause 90/j002				X
Dissolution of limited partnerships Clauses 101/j124, 104/j116, 106/j123 and 112/j138	X			

Article 1 of Protocol No.1 (A1P1)- right to peaceful enjoyment of property

Authorisation of corporate service providers (clause 63/j016)

11. Clause j016 inserts new provisions relating to authorised corporate service providers into the Companies Act 2006. Authorised company service providers are firms which provide company related service to clients, including incorporating new companies and delivering documents to the Registrar on clients' behalf.
12. These firms already exist and can and do carry the described company services out on behalf of customers. However, they are not currently regulated by the 2006 Act. Clause j016 creates a new authorisation regime for these firms (to be known as 'Authorised Corporate Service Providers'). The Bill provisions contain a regulation making power which will enable the Registrar to exercise her discretion to determine, firstly, whether an applicant service provider should be authorised and later, whether it would be appropriate at any time to suspend or withdraw their authorisation. The intention is to exercise the regulation-making power to give decision making authority to the Registrar after Royal Assent.

13. A service provider's ability to carry out their business will be dependent on their authorised status. Authorisation, in this sense, is akin to a licence to run a business, which constitutes a possession the revocation of which is an interference with the right guaranteed by A1P1.¹ Therefore, any decision of the Registrar to refuse, suspend or revoke authorisation will engage A1P1.
14. The Government considers that there are very strong arguments that the A1P1 interference resulting from a decision of the Registrar to refuse, suspend or revoke authorisation is justified. A1P1 is a qualified right and paragraph (1) establishes that an interference will be justified if it is subject to conditions provided by the law ("the lawfulness condition"), in the public interest and proportionate.
15. The lawfulness condition requires that interference must have a legal basis in domestic law² and that the law itself cannot be arbitrary.³ The Government's assessment is that, following enactment of the legislation, the grounds for any deprivation will have a clear basis in domestic law. Additionally, any regulations made under the powers contained in domestic legislation will need to be compatible with Convention rights or they will be subject to judicial review and liable to being struck down by the courts.
16. As to public interest, there is no prescribed definition of "public interest". In case-law, both the ECtHR and domestic courts have confirmed that this is an area where States have a significant margin of appreciation. A line of case law indicates that where a measure is justified as a matter of socio-economic policy then the measure will only be found to be unjustified where it is "manifestly without reasonable foundation".⁴
17. The Supreme Court has endorsed a 4-part test for assessing proportionality:
 - a) whether the objective of the measure is sufficiently important to justify the limitation of a protected right;
 - b) whether the measure is rationally connected to the objective;
 - c) whether a less intrusive measure could have been used without unacceptably compromising the achievement of the objective; and
 - d) whether, balancing the severity of the measure's effects on the rights of the persons to whom it applies against the importance of the objective, to the

¹ *Megadot.com SRL v. Moldova*, §§ 62-63; *Bimer S.A. v. Moldova*, § 49; *Rosenzweig and Bonded Warehouses Ltd. v. Poland*, § 49; *Capital Bank AD v. Bulgaria*, § 130; *Tre Traktörer Aktiebolag v. Sweden*, § 53; *Vékony v. Hungary*, § 29; *Fredin v. Sweden (no. 1)*, § 40; *Malik v. the United Kingdom*, § 90).

² *Olczak v Poland* (application no.3047/96) § 72& 84.

³ *Špaček, s.r.o v the Czech Republic* (application no.26449/95).

⁴ *R (SG) v Secretary of State for Work and Pensions* [2015] UKSC 16.

extent that the measure will contribute to its achievement, the former outweighs the latter.⁵

18. The Government's assessment is that the authorised corporate service provider framework, designed as it is to prevent misuse of the companies register by ensuring that only authorised persons can deliver documents to the Registrar, falls within the scope of socio-economic policy and so is a matter of legitimate public interest.
19. With regards to proportionality, any decisions of the Registrar relating to authorisation that are made under the powers contained in the Bill will be subject to the doctrine of proportionality, and it will be possible for affected parties to challenge decisions to suspend or withdraw authorisation they consider to be disproportionate.
20. The Government considers that there are strong arguments that the measures strike a fair balance between the interests of the public and the private interests of corporate service providers who will be subject to the authorisation regime. For these reasons the Government assesses these provisions to be compliant with Article 1 of Protocol 1 to the Convention.

Limited partnership mandatory use of authorised corporate service providers (clause 128/j134)

21. The Bill will require limited partnerships to have to make certain applications and filings to the Registrar using an authorised corporate service provider (see clause 128/j134). This includes all applications to register a limited partnership and filings of confirmation statements.
22. The purpose of requiring certain filings to be made through authorised corporate service providers is to provide a greater level of confidence in the integrity of the register by ensuring that those applications are made through a service provider that is supervised for anti-money laundering purposes. The due diligence processes which are required by the UK anti-money laundering regime will provide an additional level of security to the Registrar.
23. Some of these filings, such as the need to register a limited partnership under s.8A of the Limited Partnership Act 1907, are filings which limited partnerships are already required to make and which can currently be made directly by partners. Therefore, the interference with A1P1 rights is a result of the costs that

⁵ *Bank Mellat v Her Majesty's Treasury* [2013] UKSC 39.

limited partnerships will need to incur going forwards, when making such applications.

24. It is the Government's view that the new requirements strike a fair balance between individuals' fundamental rights and the socio-economic interests of ensuring that the company register is accurate and reliable, and the economic benefits that flow from this. Member States are generally allowed a wide margin of appreciation under the Convention when it comes to implementing policies in the socio-economic interest.
25. With regards to proportionality, the applications which limited partnerships will be required to make using authorised corporate service providers are not so frequent as to place partnerships in a position of undue hardship. For example, an application for registration would only need to be made once, when the limited partnerships is being established. Confirmation statements are only required to be delivered to the Registrar on an annual basis (although they can be delivered more frequently if desired).
26. For these reasons, the Government assesses this provision to be A1P1-compliant.

Registered office: rectification of register (clause 29/j013)

27. The amendments made by clause 29/j013 will make changes to s.1097A of the Companies Act 2006, which currently enables the creation of regulations which will authorise or require the Registrar to change the address of a company's registered office if satisfied that the address is not an appropriate one (e.g. it is an old or false address). The amendments made by this Bill will additionally provide for an accompanying power to strike a company's name off the register if the company does not amend its registered office address from the default address in accordance with the regulations.
28. The regulations will contain strike-off provisions which are modelled on those contained in s.1000 of the Companies Act 2006. That section requires the Registrar to write to the company to give it the opportunity to make representations about the Registrar's intentions to strike it off. There is a two-stage process: if the first communication from the Registrar is not responded to within 14 days, a second is sent. If the second is not responded to within 14 days then the Registrar may publish a notice in the Gazette which specifies that on a date two months later the company will dissolve. But the dissolution and striking off does not occur if "cause is shown to the contrary". This process is designed to give affected persons several opportunities to persuade the Registrar that strike-off and dissolution is not necessary or proportionate, and the Government

assesses that the new s.1097A regulations' mirror image provisions will likewise amount to sufficient safeguards against disproportionate striking off by the Registrar.

29. The purpose of these provisions is to maintain the integrity of the register by ensuring that false and unused registered office addresses are removed, a proportion of which will be linked to fraudulent activity, so that members of the public interacting with a company are better able to rely on the company information address they have access to.
30. If the Registrar were to strike a company off the register this would engage A1P1 insofar as it might, for example, affect a director's future income if the company they are employed by ceases to exist, or if a third-party customer or supplier of the company has contracts in place with the company for services or payment.⁶
31. With regards to proportionality, any decisions of the Registrar, as a public office holder, will be subject to the doctrine of proportionality and it will be possible for affected parties to challenge decisions considered to be disproportionate.
32. The Department's view is that any interference with A1P1 rights cause by the dissolution of a registered company will be proportionate and justified as a matter of socio-economic policy. The aim of these measures is to help to prevent harm caused by the fraudulent use of addresses, and ensure that users of the register understand that a company that has as its registered office address the Companies House default address is in breach of requirements under the Companies Act, thereby providing more information for those seeking to make business decisions. For these reasons the Government assesses that these measures comply with Article 1 of Protocol 1 to the Convention.

Fees (clause 89/j058)

33. Clause 89/j058 amends the existing fees provisions in s.1063 of the Companies Act 2006 to expand the costs which may be considered by the Secretary of State when deciding to set fees payable to the Registrar. These additional costs are those incurred or likely to be incurred by any person for the purposes of the carrying out of: any function of the Secretary of State under or in connection with (i) the Limited Partnerships Act 1907; (ii) Part 14 of the Companies Act 1985; (iii) the Company Directors Disqualification Act 1986; (iv) the Limited Liability Partnerships Act 2000; (v) the Companies Act 2006; (vi) the Insolvency Act 1986,

⁶ Future income constitutes a "possession" only if the income has been earned or where an enforceable claim to it exists: *Ian Edgar (Liverpool) Ltd v. the United Kingdom (dec.)*; *Wendenburg and Others v. Germany (dec.)*; *Levänen and Others v. Finland (dec.)*; *Anheuser-Busch Inc. v. Portugal [GC]*, § 64; *Denisov v. Ukraine [GC]*, § 137).

so far as relating to bodies corporate or other firms; (vii) Part 1 of the Economic Crime (Transparency and Enforcement) Act 2022; or any function carried out by the Insolvency Service on behalf of the Secretary of State in connection with the detection, investigation or prosecution of offences, or the recovery of the proceeds of crime, so far as relating to bodies corporate or other firms.

34. Fees payable to a public body are comparable to taxation which is, in principle, an interference with the right guaranteed by the first paragraph of A1P1 as it deprives the person concerned of a possession (namely the amount of money which must be paid).⁷ However, the interference with A1P1 rights for taxation purposes is generally justified under paragraph two of A1P1, which expressly provides for an exception as regards the payment of taxes or other contributions.⁸
35. It is the Government's view that the inclusion of these additional costs which can be taken into account by the Secretary of State when making fees regulations, strikes a fair balance between the individual's fundamental rights and the general interest of ensuring that Companies House is funded adequately and thus able to carry out its functions for the benefit of the public and wider economy. Member States are generally allowed a wide margin of appreciation under the Convention when it comes to framing and implementing policy in the area of taxation.⁹ Additionally, the ECtHR's well-established position is that States may be afforded some degree of additional deference and latitude in the exercise of their fiscal functions under the lawfulness test.¹⁰ For these reasons, the Government assesses that this provision is compliant with A1P1.

Dissolution of limited partnerships

36. Clauses 101/j124, 104/j116, 106/j123 and 112/j138 all contain requirements for limited partnerships that exist at the time the Bill comes into force to provide statements to the registrar within a transitional period of 6 months beginning on the date the provisions are brought into force. Those statements must include the required information about general partners, registered office addresses, registered email addresses and new partners.
37. Under these provisions, failure by the general partners to provide the information is, in the absence of any evidence to the contrary, to be treated by the registrar

⁷ *Burden v. the United Kingdom* [GC], § 59; *Špaček, s.r.o., v. the Czech Republic*, § 39.

⁸ *Gasus Dosier- und Fördertechnik GmbH v. the Netherlands*, § 59; *Christian Religious Organization of Jehovah's Witnesses v. Armenia* (dec.), § 43.

⁹ *Bulves AD v. Bulgaria*, § 63; *Gasus Dosier- und Fördertechnik GmbH v. the Netherlands*, § 60; *Stere and Others v. Romania*, § 51).

¹⁰ *Christian Religious Organization of Jehovah's Witnesses v. Armenia* (dec.), § 50).

as reasonable cause to believe that the firm has been dissolved for the purpose of new section 18 of the Limited Partnership Act (inserted by clause 125/j118).

38. The consequence of this is that the registrar may issue a dissolution notice (and if she does this within 6 months of section 18 coming into force, she is not obliged to issue any warning notice of her intention to do so) and can remove the firm from the index of names of limited partnerships she maintains.
39. If the firm that she so removes is in fact still alive, then this mechanism for bringing about its dissolution engages the A1P1 rights of the partners, potentially depriving them of their property. However, the Bill contains avenues for revival of the dissolved firm, both administratively and by applying to the court. The potential for intrusion into persons' A1P1 rights by the dissolution power of the registrar is therefore subject to the safeguard of revival, the effect of which is that the limited partnership is to be treated as having continued in existence as if it had not been dissolved. Whether the firm is revived administratively by the registrar or pursuant to a court order, in either case the court may give such directions and make such provisions as seems just for placing the firm and all other persons in the same position (as nearly as may be) as if the limited partnership had not been dissolved (new sections 21 and 24 of the Limited Partnership Act 1907, inserted by clause 125/j118). This framework is one which contains sufficient safeguards to ensure that the legislation is compliant with A1P1.

Article 6- right to a fair trial

Authorisation of corporate service providers (clause 63/j016)

40. As set out above, clause 63/j016 contains powers which, when exercised, will grant the Registrar discretion when making decisions as to whether a corporate service provider should be authorised, or remain authorised.
41. Where Article 6 is engaged, it requires that a person should have access to an effective judicial remedy enabling them to assert their civil rights.¹¹ The right of access to a court is a long-standing common law right,¹² as well as one that is guaranteed by Article 6.¹³
42. The Courts have held that the right to access to a court is not absolute and may be subject to limitations.¹⁴ Such limitations are within the State's margin of

¹¹ *Cipoletta v Italy* (application no. 38259/09).

¹² *R (Unison) v Lord Chancellor* [2017] UKSC 51

¹³ *Golder v United Kingdom* (1978-1980 1 EHRR 524).

¹⁴ *Ashingdane v UK* (1985) 7 ECHR 528 §57.

appreciation. However, the right of access to a court must be “practical and effective” rather than “theoretical and illusory”. In addition, it must be shown that any limitations applied do not restrict or reduce access in such a way or to such an extent that the essence of the right is impaired. Lastly, a limitation will not be compatible with Article 6 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved.

43. The regulation making powers, when exercised, will make provision for an appeals. The Government’s assessment is that the clause, and regulations made its provisions, are compatible with Article 6.

Article 7- no punishment without law

44. Clauses 32/j750 and 34/j752 introduce into the Company Directors Disqualification Act 1986 and the Company Directors Disqualification (Northern Ireland) Order 2002 respectively, new criminal offences on persons who are “designated persons” within the meaning of section 9(2) of the Sanctions and Anti-Money Laundering Act 2018 and who act as directors of companies, or directly or indirectly take part in, or concern themselves in, the promotion, formation or management of a company without leave of the court.

45. To avoid the offences biting on directors who became designated persons prior to commencement of the offences, which would offend Article 7(1) ECHR, the Bill includes provision limiting the offence to persons who become designated persons on or after the date on which the offence is fully brought into force.

46. Furthermore, to eliminate any unfairness arising from the possibility that a person might act as a director before they are aware they have become a designated person, and thus unwittingly fall foul of the offence, the Bill provides that it is a defence for the person to prove that they did not know and could not reasonably have been expected to know that they were a designated person at the time at which they engaged in that conduct. The Government assesses that the construction of the offences, and the defences, ensure that they are Article 7 compliant.

Article 8- right to respect for private and family life

Information sharing and disclosure (clause 90/j002)

47. Clause 90/j002 of the Bill introduces a new information sharing gateway which will allow third parties to share information with the Registrar for any purpose connected with the Registrar’s functions, as well as allowing the Registrar to

share information with third parties for purposes relating to any of her functions, or to public authorities for purposes relating to any of their functions. The information shared with the Registrar is largely expected to be comprised of names and addresses of directors or other company officers or subscribers, which engages the Article 8 rights of the individuals.

48. This gateway is intended to be used by the Registrar, for example: to collect information from anti-money laundering supervisory authorities in order to help her process applications for authorisation; to share information with law enforcement agencies if it becomes apparent that a company or other registerable entity is engaged in criminal activity or if fraudulent information has been entered into the register; or it may be used by members of the public to tip the Registrar off that e.g. their address has been falsely used to register a company.
49. The scope for information to be shared is limited by statute as to grounds on which it may be shared (a purpose relating to the Registrar's functions or the functions of another public authority) and data sharing will be done on a lawful basis and for the in the performance of (or in connection with the performance of) a public function.
50. The Government's view is that the creation of this information sharing gateway, which is designed to enable the Registrar to more effectively carry out her statutory functions, is neither excessive nor disproportionate. The clause only permits disclosures to the Registrar under new s.1110E for the purposes of the Registrar's functions; and only permits disclosure by the Registrar either for the purposes of any of her own functions or, where the intended recipient is a public authority, for purposes connected with the exercise of any of the functions of that authority. These statutory limitations on the purposes for which the gateways may be exercised, coupled with s.1110G(2) which provides that the gateways do not authorise disclosure that would contravene data protection legislation, represent adequate safeguards against the powers being exercised in such a way as to intrude disproportionately in an individual's Article 8 rights. The provisions are therefore assessed as compatible with Article 8.

Department for Business Energy and Industrial Strategy

September 2022