

Member's explanatory statement

This amendment means that regulations are subject to the negative procedure if all they do is change the countries to which enhanced customer due diligence measures are required to be taken.

After Clause 181

LORD AGNEW OF OULTON

This amendment replaces the amendment after Clause 181 published on daily sheet HL Bill 138(c)

Insert the following new Clause—

“HMRC anti-money laundering function

After section 5 of the Commissioners of Revenue and Customs Act 2005 (Commissioners' initial functions), insert—

“5A Commissioners' anti-money laundering functions

- (1) The Commissioners are responsible for anti-money laundering supervision.
- (2) The Commissioners must treat the function in subsection (1) as a priority equal to the functions in section 5.”

Member's explanatory statement

This clause requires HMRC to prioritise its anti-money laundering supervisory function and its revenue raising duties equally, removing any conflict between the two. Approximately half of corporate entities in the UK are established through Trust and Corporate Service Providers, supervised by HMRC. They pose a high risk of money laundering as creators of shell companies. HMRC has faced criticism over its supervision.

After Clause 183

LORD AGNEW OF OULTON

LORD FAULKES

Insert the following new Clause—

“Strategic lawsuits against public participation

- (1) It is an offence for a person or entity without reasonable excuse to threaten civil litigation against another person or entity with intent to suppress the publication of any information likely to be relevant to the investigation of an economic crime.
- (2) 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 or Northern Ireland, to a fine not exceeding the statutory maximum;
 - (c) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both).”

Member's explanatory statement

This amendment introduces a new criminal offence to deal with groundless threats in pursuance of SLAPPS in order to suppress investigations into economic crimes.

Clause 187**LORD SHARPE OF EPSOM**

Page 176, line 34, leave out “, conspiracy or incitement” and insert “or conspiracy”

Member’s explanatory statement

This amendment and my other amendments to clause 187 correct the definition of “economic crime” to include encouraging or assisting an offence under Part 2 of the Serious Crime Act, which replaced the common law offence of incitement in England and Wales and Northern Ireland.

Page 176, line 35, at end insert –

“(ba) constitutes an offence –

- (i) under Part 2 of the Serious Crime Act 2007 (England and Wales and Northern Ireland: encouraging or assisting crime) in relation to a listed offence, or
- (ii) under the law of Scotland of inciting the commission of a listed offence,”

Member’s explanatory statement

See the explanatory statement to my first amendment to clause 187.

Page 176, line 39, after “(b)” insert “, (ba)”

Member’s explanatory statement

This amendment is consequential on my other amendments to clause 187.

After Clause 187**LORD BELLAMY**

Insert the following new Clause –

“Power to strike out certain claims

Strategic litigation against public participation: requirement to make rules of court

- (1) The power to make Civil Procedure Rules must be exercised so as to secure that Civil Procedure Rules include provision for ensuring that a claim may be struck out before trial where the court determines –
 - (a) that the claim is a SLAPP claim (see section (*Meaning of “SLAPP claim”*)), and
 - (b) that the claimant has failed to show that it is more likely than not that the claim would succeed at trial.
- (2) Rules made in compliance with subsection (1) may include rules about how a determination under that subsection is to be made, including (in particular) –
 - (a) rules for determining the nature and extent of the evidence that may or must be considered;
 - (b) rules about the extent to which evidence may or must be tested;
 - (c) rules permitting or requiring the court to determine matters of fact by way of presumptions.

After Clause 187 - continued

- (3) Rules made in compliance with subsection (1) must include rules under which the court may make a determination under that subsection of its own motion.
- (4) The power to make Civil Procedure Rules must be exercised so as to secure that Civil Procedure Rules include provision for securing that, in respect of a SLAPP claim, a court may not order a defendant to pay the claimant's costs except where, in the court's view, misconduct of the defendant in relation to the claim justifies such an order.
- (5) The Lord Chancellor may by regulations provide for subsections (1) to (4) to apply in relation to any rules of court that may be specified in the regulations as those subsections apply in relation to Civil Procedure Rules.
- (6) In this section—
 - “court” includes a tribunal;
 - “rules of court” means rules relating to the practice and procedure of a court or tribunal.”

Member's explanatory statement

This new clause, new clause (Meaning of “SLAPP claim”) and my amendments at page 191, line 37, page 192 at line 33 and 192, line 38 provide for the making of rules of court with a view to preventing claimants from improperly using civil proceedings to restrain certain disclosures of information relating to economic crime.

Insert the following new Clause—

Meaning of “SLAPP” claim

- (1) For the purposes of section (*Strategic litigation against public participation: requirement to make rules of court*) a claim is a “SLAPP claim” if—
 - (a) the claimant's behaviour in relation to the matters complained of in the claim has, or is intended to have, the effect of restraining the defendant's exercise of the right to freedom of speech,
 - (b) any of the information that is or would be disclosed by the exercise of that right has to do with economic crime,
 - (c) any part of that disclosure is or would be made for a purpose related to the public interest in combating economic crime, and
 - (d) any of the behaviour of the claimant in relation to the matters complained of in the claim is intended to cause the defendant—
 - (i) harassment, alarm or distress,
 - (ii) expense, or
 - (iii) any other harm or inconvenience,
 beyond that ordinarily encountered in the course of properly conducted litigation.
- (2) For the purposes of determining whether a claim meets the condition in subsection (1)(a) or (c), any limitation prescribed by law on the exercise of the right to freedom of speech (for example in relation to the making of defamatory statements) is to be ignored.
- (3) For the purposes of this section, information mentioned in subsection (1)(b) “has to do with economic crime” if—

After Clause 187 - continued

- (a) it relates to behaviour or circumstances which the defendant reasonably believes (or, as the case requires, believed) to be evidence of the commission of an economic crime, or
 - (b) the defendant has (or, as the case requires, had) reason to suspect that an economic crime may have occurred and believes (or, as the case requires, believed) that the disclosure of the information would facilitate an investigation into whether such a crime has (or had) occurred.
- (4) In determining whether any behaviour of the claimant falls within subsection (1)(d), the court may, in particular, take into account –
 - (a) whether the behaviour is a disproportionate reaction to the matters complained of in the claim, including whether the costs incurred by the claimant are out of proportion to the remedy sought;
 - (b) whether the defendant has access to fewer resources with which to defend the claim than another person against whom the claimant could have brought (but did not bring) proceedings in relation to the matters complained of in the claim;
 - (c) any relevant failure, or anticipated failure, by the claimant to comply with a pre-action protocol, rule of court or practice direction, or to comply with or follow a rule or recommendation of a professional regulatory body.
- (5) For the purposes of subsection (4)(c) a failure, or anticipated failure, is “relevant” so far as it relates to –
 - (a) the choice of jurisdiction,
 - (b) the use of dilatory strategies,
 - (c) the nature or amount of material sought on disclosure,
 - (d) the way to respond to requests for comment or clarification,
 - (e) the use of correspondence,
 - (f) making or responding to offers to settle, or
 - (g) the use of alternative dispute resolution procedures.
- (6) In this section –
 - “court” has the same meaning as in section (Strategic litigation against public participation: requirement to make rules of court);
 - “economic crime” has the meaning given by section 187(1);
 - “the right to freedom of speech” means the right set out in Article 10 of the European Convention on Human Rights (freedom of expression) so far as it consists of a right to impart ideas, opinions or information by means of speech, writing or images (including in electronic form).
- (7) In the definition of “the right to freedom of speech” in subsection (6) “the European Convention on Human Rights” means the Convention for the Protection of Human Rights and Fundamental Freedoms agreed by the Council of Europe at Rome on 4 November 1950 as it has effect for the time being in relation to the United Kingdom.”