

EXPLANATORY MEMORANDUM TO
THE ECONOMIC CRIME AND CORPORATE TRANSPARENCY ACT 2023
(FINANCIAL PENALTY) REGULATIONS 2024

2024 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Business and Trade and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 This instrument will allow the Registrar to impose a financial penalty on a person if satisfied beyond reasonable doubt that they have committed misconduct amounting to a relevant offence under the Companies Act 2006. Civil financial penalties are a quicker and cheaper alternative to criminal prosecution to deter and punish misconduct.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the whole of the United Kingdom.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the whole of the United Kingdom.

5. European Convention on Human Rights

5.1 Kevin Hollinrake, the Parliamentary Under Secretary of State, Department for Business and Trade, has made the following statement regarding Human Rights:

“In my view the provisions of the Economic Crime and Corporate Transparency Act 2023 (Financial Penalty) Regulations 2024 are compatible with the Convention rights.”

6. Legislative Context

6.1 The instrument is made under section 1132A of the Companies Act 2006, which was inserted into the Act by section 104 of the Economic Crime and Corporate Transparency Act 2023. This is the first instrument made using this power.

6.2 This instrument is part of a series of Statutory Instruments to be made following the Economic Crime and Corporate Transparency Act 2023 to implement the reforms.

6.3 The instrument also amends the Register of Overseas Entities (Penalties and Northern Ireland Dispositions) Regulations 2023 following the amendments made to the Economic Crime (Transparency and Enforcement) Act 2022 by section 175 of the Economic Crime and Corporate Transparency Act 2023.

7. Policy background

What is being done and why?

- 7.1 Following the Corporate Transparency and Register Reform White Paper published in February 2022, and building on the recently enacted Economic Crime (Transparency and Enforcement) Act 2022, the Economic Crime and Corporate Transparency Act 2023, among other things, reforms the role and powers of Companies House.
- 7.2 At the moment, obligations in the Companies Act 2006 relating to the functions of the Registrar are enforced primarily through the criminal justice system. The only civil penalty regime currently operated by Companies House is the late filing penalty regime, where a company automatically incurs a penalty for failing to file its accounts on time. This regime will remain unaffected by these regulations.
- 7.3 As part of the reforms made by the Economic Crime and Corporate Transparency Act 2023, the Government is enabling the Registrar to impose a financial penalty directly, as an alternative to pursuing criminal prosecution through the courts.
- 7.4 This instrument confers a power on the Registrar to impose a financial penalty on a person if satisfied, beyond reasonable doubt, that the person has engaged in conduct amounting to a relevant offence under the Companies Act 2006(as defined in section 1132A).
- 7.5 This instrument adds to the tools available to the Registrar to promote compliance and maintain the integrity of the UK companies register.
- 7.6 This financial penalty regime will sit alongside possible criminal sanctions, so that in all cases the Registrar will have the discretion to choose to pursue a financial penalty or pass to law enforcement to consider criminal sanction.
- 7.7 The regulations mirror the provisions contained in parts 2 to 4 of the Register of Overseas Entities (Penalties and Northern Ireland Dispositions) Regulations 2023 (<https://www.legislation.gov.uk/uksi/2023/696/contents/made>).

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union or trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 This Statutory Instrument is a standalone measure and does not amend or consolidate existing laws.

10. Consultation outcome

- 10.1 In 2019, the Government consulted on a range of options to enhance the role of Companies House and increase the transparency of companies and other legal entities. The consultation received 1,320 responses, and respondents broadly supported the proposals. A copy of the consultation and Government response can be found here: <https://www.gov.uk/government/consultations/corporate-transparency-and-register-reform>.
- 10.2 The initial consultation was followed by three further consultations. These focused on: the powers of the Registrar, improving the quality and value of financial information on the UK companies register, and implementing the ban on corporate directors.

These three consultations opened in December 2020 and closed in February 2021. Respondents were broadly supportive of all the measures proposed.

- 10.3 A copy of the latter three consultations, a summary of the responses and the Government's position on reforming Companies House as a whole can be found in the Corporate Transparency and Register Reform White Paper: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1060726/corporate-transparency-white-paper.pdf.
- 10.4 The Government has also engaged with Devolved Governments on matters which fall within areas of devolved competence. This includes the sanctions measures within the Economic Crime and Corporate Transparency Act 2023. All devolved issues have been settled. Legislative consent has been obtained from Welsh and Scottish Governments. As legislative consent from Northern Ireland cannot be obtained until an Executive is formed, the Government legislated without consent.

11. Guidance

- 11.1 Companies House will publish guidance on their approach to enforcement and imposing financial penalties before they start issuing financial penalties.
- 11.2 This guidance will be similar to guidance on the approach to enforcement of the Register of Overseas Entities: <https://www.gov.uk/government/publications/register-of-overseas-entities-approach-to-enforcement/register-of-overseas-entities-approach-to-enforcement>.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 A full Impact Assessment has not been published for this instrument. Compliant businesses who do not provide erroneous or fraudulent information should not be impacted. This was outlined in the Impact Assessment published alongside the primary legislation. See here for more information: <https://publications.parliament.uk/pa/bills/cbill/58-03/0154/1.ImpactAssessmentfromDepartmentforBusinessEnergyandIndustrialStrategy.pdf>.
- 12.4 No impact on the environment is expected as a result of this instrument.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses. No specific action is proposed to minimise the regulatory burdens on them as no regulatory burden is expected for companies that are acting legitimately.

14. Monitoring & review

- 14.1 The Department for Business and Trade and Companies House will monitor all the reforms to Companies House enabled through the 2023 Act and will periodically publish research on their impact.
- 14.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Kevin

Hollinrake, the Parliamentary Under Secretary of State, Department for Business and Trade, has made the following statement:

“A statutory review clause is not included in the instrument since the additional requirements are not extensive and are considered to meet the Government’s ‘de minimis’ regulatory impact criteria, meaning no impact assessment is required.”

15. Contact

- 15.1 Trevor Smith at the Department for Business and Trade
Telephone: 07917955883 or email: trevor.smith@businessandtrade.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Matthew Ray, Deputy Director for Company Law and Transparency at the Department for Business and Trade, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Kevin Hollinrake, Parliamentary Under Secretary of State at the Department for Business and Trade, can confirm that this Explanatory Memorandum meets the required standard.