

Economic Crime and Corporate Transparency Act 2023: key changes for companies

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Background

What is the context?

01

The Economic Crime and Corporate Transparency Act 2023 (ECCTA) is the second part of a legislative package intended to prevent abuse of UK corporate structures and tackle economic crime, and follows the Economic Crime (Transparency and Enforcement) Act 2022 which created the register of overseas entities by Companies House.

02

It amends, among others, the Companies Act 2006 (CA 2006), Limited Partnerships Act 1907 (LPA 1907), Company Directors Disqualification Act 1986 (CDDA 1986). Amendments to limited liability partnerships legislation to apply the reforms will be made alongside.

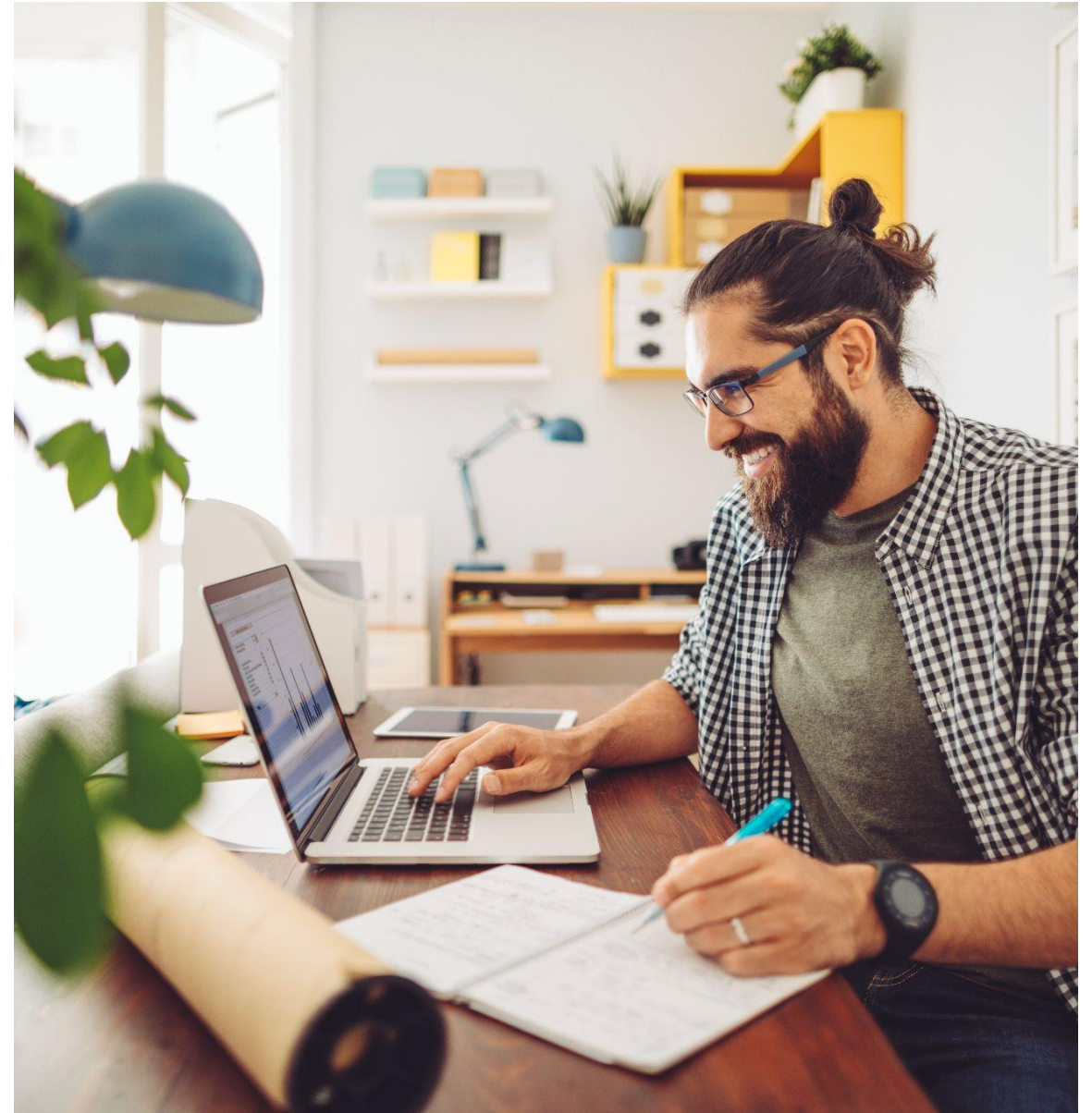
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Very significant reform of Companies House and information on the register as well as the introduction of authorised corporate service providers.

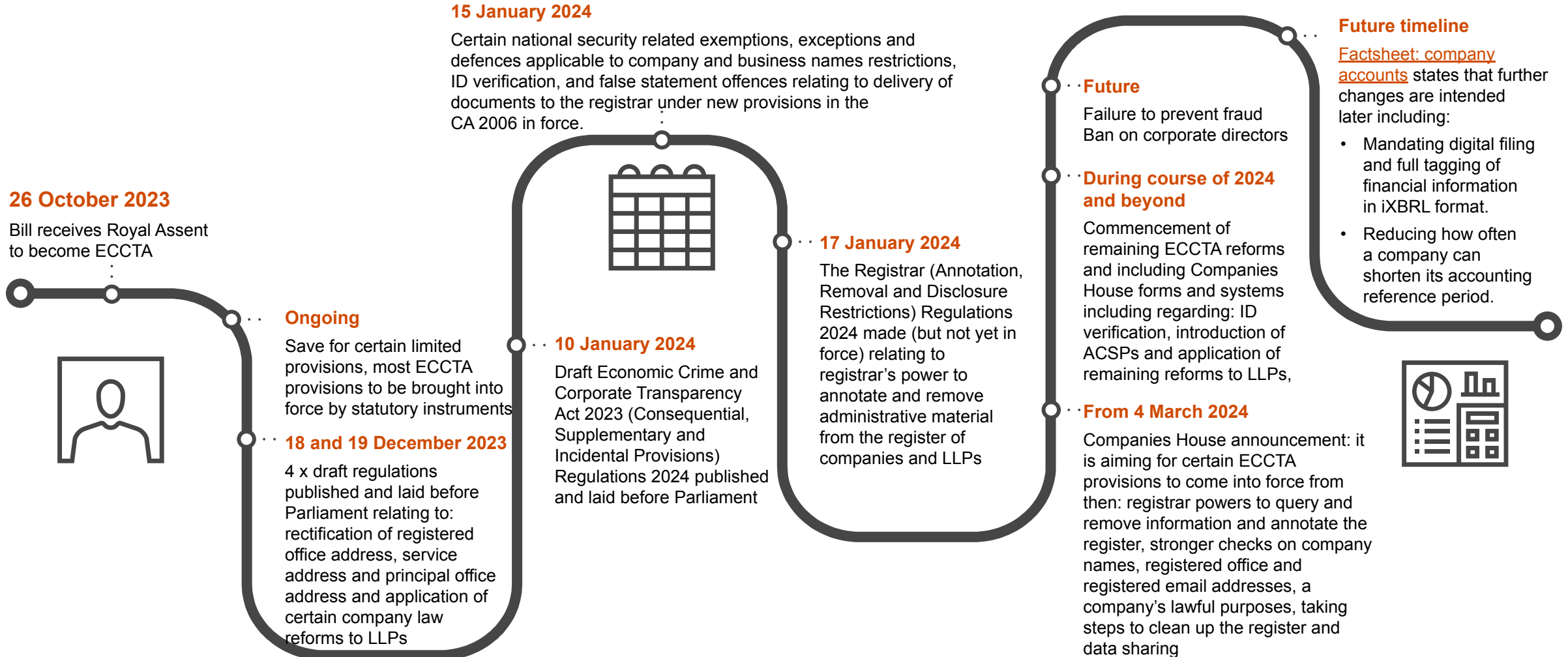
04

The majority of the reforms and changes described in these slides are **not yet in force** except where highlighted.

Key areas of change are highlighted in the slides but it is **not** a definitive list of all changes to be effected by ECCTA. We are focussing on key changes affecting **companies**.



Timeline



1. Registrar's objectives and powers



1 ECCTA introduces new objectives that the registrar must seek to promote in performing their functions through new section 1081A, CA 2006.

Objective 1

To ensure that any person who is required to deliver a document to the registrar does so (and that the requirements for proper delivery are complied with).

Objective 2

To ensure that information contained in the register is accurate and that the register contains everything it ought to contain (the reference to register in this objective includes any records kept by the registrar under any enactment).

Objective 3

To ensure that records kept by the registrar do not create a false or misleading impression to members of the public.

Objective 4

To prevent companies and others from:

- a. carrying out unlawful activities; or
- b. facilitating the carrying out by others of unlawful activities.

1. Registrar's objectives and powers (continued)



2

The then Bill's explanatory notes state that:

“

The Government would like to see Companies House have an expanded role so will change its statutory role from being a largely passive recipient of information to a much more active gatekeeper over company creation and custodian of more reliable data.”

3

ECCTA amends the CA 2006 to give the registrar enhanced and new powers.

1. Registrar's objectives and powers (continued)

KEY POWERS

Delivery of documents by electronic means

Registrar has the power by means of registrar's rules to mandate the manner of delivery of documents, removing the previous limitations on the registrar's ability to mandate electronic delivery.

Amended s1068, CA 2006.

Rejection of documents for discrepancies (new filings)

Registrar may by notice refuse to accept and register a document if it appears inconsistent with other information already held by the registrar, and given the inconsistency, the registrar has reasonable grounds to doubt if it complies with a requirement as to its contents. A document that is refused is treated as not delivered.

New s1073A, CA 2006.

Requiring additional information

Registrar may by notice require a person to provide information to determine if a person has complied with a statutory obligation to deliver a document to the registrar or if any information contained in a document received by the registrar must be registered. Failure to provide the information without reasonable excuse constitutes an offence (which includes imprisonment).

New ss1092A-C, CA 2006

Requiring inconsistencies to be resolved

Registrar's existing power has been amended to expand the scope of information that the registrar can consider when determining if to issue a notice requiring a company to resolve an inconsistency in a document delivered to the registrar with such information kept by the registrar. It will now include all information in the registrar's possession relating to its records rather than only information concerning companies.

Amended s1093, CA 2006.

1. Registrar's objectives and powers (continued)

KEY POWERS

Administrative removal of material from register

Registrar's power to remove material from the register will apply more widely to material which has been accepted although not meeting proper delivery requirements and unnecessary material (as defined). Unlike currently, this can include material the registration of which had legal consequences. The Registrar (Annotation, Removal and Disclosure Restrictions) Regulations 2024 have been made (not yet in force) which make further provision for removal of material from the register including contents of applications for removal and notices given.

Amended s1094, new ss1094A-B, CA 2006.

Power to strike off company registered on a false basis

Registrar will have power to strike a company's name off the register if reasonable cause to believe that information contained in, or statement in connection with, the company's application for registration or restoration is materially misleading, false or deceptive.

New s1002A, CA 2006.

Provision for financial penalties

Save for late filing of accounts, the registrar currently cannot impose civil penalties directly and can only enforce CA 2006 breaches through criminal prosecution through the courts. The SoS may now by regulations confer power on the registrar to impose a financial penalty up to a maximum £10,000 on a person if satisfied, beyond reasonable doubt, that they have engaged in conduct amounting to an offence under the CA 2006 (or regulations made under it), except under Part 12 (company secretaries), Part 13 (resolutions and meetings) or Part 16 (audit), CA 2006.

New s1132A, CA 2006

1. Registrar's objectives and powers (continued)

KEY POWERS

Power to change a company's registered office

SoS may by regulations authorise or require the registrar to change a company's registered office address if it is not an **“appropriate address”** under s86(2) CA 2006 now on the registrar's own motion as well as on a person's application. As currently, the regulations may provide that the company is required to provide a new address or that the registrar may nominate a default address. Among other things, the regulations may now provide for more stringent sanctions including empowering the registrar to strike off the company's name from the register if it does not change its registered office address from the default address. Draft regulations have been published.

Amended s1097A,
CA 2006.

Power to change service addresses and principal office addresses

Similar provisions exist to those regarding changing a company's registered office empowering the SoS to make regulations authorising or requiring the registrar to change a service address and a principal office address of a director, secretary or joint secretary of a company that is not an overseas company, or a registrable person or registrable relevant legal entity under the PSC regime. Draft regulations have been published.

New ss1097B-C, CA 2006.



2. Identity verification for Companies House

1

Whose identity must be verified?

Individuals who are **directors**.

Individuals who are **registrable PSCs**.

An individual who is a **relevant officer** of all **registrable relevant legal entities (RLEs)**.

An individual who is an **authorised corporate service provider (ACSP)**.

An individual **delivering documents to Companies House** either on their, or another's, behalf **unless** they are an officer or employee of an ACSP.



2. Identity verification for Companies House (continued)

1

Whose identity must be verified?

Individuals who are **members** of an LLP (legislation to apply identity verification to LLPs is expected).

In respect of a limited partnership, an individual **managing officer of a general partner which is a legal entity**.

Regulations may be made to require an individual who is a **director of an overseas company required to register a UK establishment** (secondary legislation anticipated).

National security exemption (s1110C, CA 2006 and s36, LPA 1907 in force since 15 January 2024)

The SoS may by written notice exempt a person from identity verification if satisfied it is necessary:

- in the interests of national security; or
- for the purposes of preventing/detecting serious crime.

Exemption can be applied to directors, an individual ACSP, those delivering documents to the registrar and individual registered managing officer of a GP that is a legal entity.



2. Identity verification for Companies House (continued)

2 How?

- 2 routes:

Directly with the registrar.

Indirectly via an ACSP who delivers to the registrar a verification statement by the ACSP confirming that they have verified the person's identity.

- Identity (ID) verification by either an ACSP or the registrar must be in accordance with requirements prescribed by secondary legislation not yet published.
- Regulations may also provide for when a person ceases to be verified unless reverified by the registrar or an ACSP.



3. Introduction of the ACSP

ACSPs

- ACSPs must be granted authorised status by the registrar.
- Must be a relevant person under anti-money laundering legislation, such as independent legal professionals and external accountants, required to conduct anti-money laundering checks on clients.
- If an individual ACSP, their identity must be verified.
- Application requirements for ACSP status in ECCTA are to be supplemented by secondary legislation and may include authorisation for an overseas ASCP, with an equivalent AML regime.
- ACSPs can:
 - Conduct verification checks on individuals required to be ID-verified and deliver a verification statement in respect of that individual to Companies House.
 - File documents and statements with the registrar on behalf of individuals and firms.



4. Restrictions on directors

Prohibition on director acting unless ID verified (new s167M, CA 2006)

- An individual must not act as a director unless ID-verified, otherwise, they commit an offence punishable by a fine. Therefore, a director should not take any actions on the company's behalf in their capacity as director until ID-verified.
- The company must ensure that an individual does not act as a director unless ID-verified. Failure to do so constitutes an offence by the company and every defaulting officer, including shadow directors, punishable by a fine.
- Any breach does not invalidate an individual's acts as a director.
- S1110C national security exemption can apply here to a director and the company.

Prohibition on acting unless directorship notified (new s167N, CA 2006)

- If a company has not notified the registrar of a director's appointment otherwise than on incorporation within the requisite 14 day period under new s167G, the person cannot act as a director until the company has notified the registrar, otherwise they commit an offence punishable by a fine (applies to corporate and individual directors).
- It is a defence if such person reasonably believed that notice had been given.
- Any breach does not invalidate a person's acts as a director.
- S1110C national security exemption can apply here to notice of a director's appointment.



5. Filing documents with the registrar

ECCTA introduces restrictions into the CA 2006 on who can file documents at Companies House. The S1110C national security exemption from ID verification can apply here.

Delivery of documents on a person's own behalf (new s1067A, CA 2006)

- An individual can only deliver documents to the registrar on their own behalf if:
 - They are ID-verified.
 - The document is accompanied by a statement to that effect.

Delivery of documents on another person's behalf (new s1067A, CA 2006)

- See following table for specified individuals who can deliver documents on another person's behalf.
- If an ACSP makes a filing on a client's behalf involving confirming that a person has been ID-verified (such as notifying a director's appointment), the ACSP must have conducted the verification checks first and delivered a verification statement regarding the individual to the registrar. A verification statement can be delivered at the same time as the relevant filing requiring such confirmation (new s1110A).

5. Filing documents with the registrar (continued)

Description of person on whose behalf document delivered (B)	Description of individual who may deliver document on B's behalf (A)	Statement that must accompany document
1. Firm	Individual who is: <ul style="list-style-type: none"> • Officer/employee of firm. • ID-verified. 	Statement by A that A is: <ul style="list-style-type: none"> • An officer or employee of firm. • Delivering the document on firm's behalf. • ID-verified.
2. Firm	Individual who is: <ul style="list-style-type: none"> • Officer/employee of corporate officer* of firm. • ID-verified. * See s1067A(3) if corporate officer has only corporate officers	Statement by A that A is: <ul style="list-style-type: none"> • An officer or employee of corporate officer of firm. • Delivering the document on firm's behalf. • ID-verified.
3. Firm	Individual who is an ACSP.	Statement by A that A is: <ul style="list-style-type: none"> • An ACSP. • Delivering the document on firm's behalf.
4. Firm	Individual who is an officer or employee of an ACSP.	Statement by A that A is: <ul style="list-style-type: none"> • An officer or employee of an ACSP. • Delivering the document on firm's behalf.

5. Filing documents with the registrar (continued)

Description of person on whose behalf document delivered (B)	Description of individual who may deliver document on B's behalf (A)	Statement that must accompany document
5. Individual	Individual who is ID-verified.	Statement by A that A is: <ul style="list-style-type: none">• Delivering the document on B's behalf.• ID-verified.
6. Individual	Individual who is an ACSP.	Statement by A that A is: <ul style="list-style-type: none">• An ACSP.• Delivering the document on B's behalf.
7. Individual	Individual who is an officer or employee of an ACSP.	Statement by A that A is: <ul style="list-style-type: none">• An officer or employee of ACSP.• Delivering the document on B's behalf.

Poll:

Will you be instructing an ACSP to file documents, conduct verification checks on your behalf?



Questions for discussion



1

Will you be instructing an ACSP to file documents, conduct verification checks etc on your behalf or dealing with it in-house?

2

What are some of the issues you will need to think about?



6. Registered office and email address



Registered office at appropriate address (new substituted s86, CA 2006)

- A company must ensure that its registered office is at all times an **appropriate address** i.e. one where, in the ordinary course of events:
 - A document addressed to the company, delivered by hand or post, would be expected to come to the attention of a person acting on the company's behalf.
 - Delivery of documents there is capable of being recorded by acknowledgement of delivery.

Registered email address (new s88A, CA 2006)

- A company must ensure that its registered email address is at all times an **appropriate email address** i.e. one where, in the ordinary course of events, emails sent to it by the registrar would be expected to come to the attention of a person acting on the company's behalf.
- **Transitional provisions:** Existing companies are required on the first confirmation statement after the relevant ECCTA section comes into force to deliver to the registrar a statement specifying their registered email address.

Timing: Companies House has [announced](#) that it aims to introduce the registered office addresses and registered email address requirements from 4 March 2024 (depending on when secondary legislation can be passed).

7. Lawful purposes



Lawful purposes (amended s9 and new s853BA, CA 2006)

- **Annually:** a company must deliver a statement alongside its annual confirmation statement that the intended future activities of the company are lawful.
- **Incorporation application:** a statement that subscribers wish to form the company for lawful purposes must be included.

Timing: Companies House has [announced](#) that it aims to introduce these rules from 4 March 2024 (depending on when secondary legislation can be passed).

8. Company names

Additional restrictions on company names

Key provisions further prohibit registration of a company with certain company names. A proposed name may be prohibited that:

- In the SoS's opinion is intended to facilitate commission of **an offence of dishonesty or deception** or potentially conduct outside the UK that, were it to have taken place in the UK, would amount to such offence (new s53A, CA 2006).
- In the SoS's opinion would be likely to give the false impression of a **connection with a foreign government or an international organisation** (such as the UN, NATO) (new s56A, CA 2006).
- In the SoS's opinion consists of or includes **computer code** (new s57A, CA 2006). This is because computer code embedded in an IT database can maliciously infect the systems of those who access or download data to their own systems.
- Is one that, having been **changed following a direction by the SoS or order of the company names adjudicator**, the company seeks to re-register with using the original or similar name (new s57B, CA 2006).
- Is a name (or similar name) that has been **used by another company which has been directed or ordered to change the name** and any officers or members (or former members) of that other company wish to form a new company or re-register an existing company using that name (new s57C, CA 2006).



8. Company names (continued)

Powers to change name

The existing power under s76 has been enhanced and further powers under new ss76A-D, CA 2006 granted permitting:

- The **SoS to direct a name** be changed of existing companies if, in the SoS's opinion, it gives a **misleading indication of its activities** which has now been extended such that it may pose a risk of harm to the public in the UK or elsewhere (amended s76, CA 2006).
- The **SoS to direct a name** be changed of existing companies where it appears to the SoS:
 - it has been used to facilitate the commission of an **offence involving dishonesty or deception** or conduct outside the UK that, were it to have taken place in the UK, would amount to such offence (new s76A, CA 2006); or
 - it contravenes any provision of Part 5 of the CA 2006 (on company names) (new s76B, CA 2006).
- The **registrar to change the name** of an existing company if:
 - in the registrar's opinion, it contains **computer code** (new s76C, CA 2006); and
 - it has failed to change its name **in breach of a direction** from the SoS to do so (new s76D, CA 2006).

National security related exception

- There is an exception to the various prohibitions and restrictions preventing the registration of a company by a name if the SoS is satisfied that it is necessary in the **interests of national security or to prevent or detect serious crime** (s76E, CA 2006).
- This exception came into force on **15 January 2024**. This can apply to the current company names restrictions as well as the new restrictions to be brought into force.



9. Company registers



Registers of directors, directors' residential addresses, secretaries, PSCs

Abolition of registers maintained by company

- ECCTA repeals the CA 2006 requirement for a company to maintain its own registers of directors, directors' residential addresses, secretaries and PSC register.
- Instead new CA 2006 provisions require information to be notified to the registrar about directors (new ss167H-L), secretaries (new ss279G-M) and PSCs (new ss 790LA-LH).
- Given the above, the option for private companies to elect to maintain information in the above registers on the central public register instead of their own registers has been removed.

9. Company registers (continued)



Register of members

Abolition of option for private companies to maintain information on the central register

- ECCTA repeals the option for a private company to elect to maintain members' information on the central public register instead of in their own register of members (chapter 2A, Part 8, CA 2006 repealed).

Members' duty to notify required information (new ss113E-F, CA 2006)

- **New members:** Must provide the company with required information about them as a member within 2 months from when they became a member unless they have already provided the company with the information or if on incorporation the information was in the incorporation application.
- **Existing members:** Must notify the company of changes to required information about them as a member and specify the date it changed within 2 months from when the change occurred.

9. Company registers (continued)



Power for company to require information from members (new s113G, CA 2006)

- A company can by notice require a member/former member to provide the required information about such member/former member to it within 1 month beginning with the date of notice.

Membership information: one-off statement

- Traded and non-traded companies registered under the CA 2006 before a day appointed by the SoS by regulations on the first occasion they deliver a confirmation statement after the appointed day will have to deliver certain membership information at the end of the relevant confirmation date:
 - **Non-traded companies:** each member's name and number of each class of shares held by each member.
 - **Traded companies:** name and address of each person holding at least 5% of the issued shares of any class and the number of each class of shares held.

Poll:

Will you keep internal registers although the register of directors, directors' residential addresses and PSCs will no longer be required?



Questions for discussion



1

Will you still keep internal registers although the requirement for a company to keep its own register of directors, directors' residential addresses and PSC register will be abolished?

2

What issues do you need to take into consideration?



10. Failure to prevent fraud (ss199-206, ECCTA 2023)



Who can commit the offence?

- A “**large organisation**”, being a **body corporate or partnership (wherever incorporated or formed)**, that satisfies 2 of the 3 following criteria in the year preceding the year of the fraud offence, can be guilty of the offence:
 - More than £36 million turnover;
 - More than £18 million total assets; and/or;
 - More than 250 employees.
- The offence will apply to a parent company if the group headed by it (defined as the parent and its subsidiary undertakings) satisfies in aggregate 2 of the 3 above criteria.

What is the offence?

- A large organisation will commit the offence if:
 - An associated person commits a “fraud offence” intending to benefit (directly or indirectly) such organisation or any person to whom or to whose subsidiary, such associate provides services on the organisation’s behalf.
 - An employee of the organisation commits a fraud offence intending to benefit such organisation, the fraud offence is committed in a financial year of the organisation’s parent undertaking and that parent is a “large organisation”.
- An associated person is:
 - An employee, agent or subsidiary of the organisation;
 - An employee of a subsidiary;
 - A person who otherwise performs services for or on behalf of the organisation.
- Penalties are an unlimited fine.

10. Failure to prevent fraud (ss199-206, ECCTA 2023) (continued)

What is a fraud offence?

- List of offences in Schedule 13 to ECCTA and offences can be removed or added by regulations:
 - Cheating the public revenue (common law);
 - s17 false accounting and s19 false statements by company directors under the Theft Act 1968;
 - s993 fraudulent trading under the CA 2006;
 - s1 fraud, s9 participating in fraudulent business carried on by sole trader and s11 obtaining services dishonestly of the Fraud Act 2006.
- It includes aiding, abetting, counselling or procuring the commission of a fraud offence.

Any defences?

- The organisation will not be guilty of the offence if itself was, or was intended to be, a victim of the fraud offence.
- It is a defence for the organisation to prove that, at the time the fraud offence was committed:
 - it had in place such prevention procedures (defined as procedures designed to prevent associated persons from committing fraud offences) as was reasonable in all the circumstances to have in place, or
 - it was not reasonable in all the circumstances to expect the organisation to have such procedures in place.
- **The government must issue guidance on such prevention procedures before the failure to prevent fraud offence can come into force.**



11. Key takeaways

1

Who needs to be ID verified?

Start to gather list of all those persons who will be required to be ID verified and ensure they will have identity documents available.

This may include company secretaries who intend to file on behalf of the relevant company.

2

Registrar's powers to query, annotate and remove material from the register

Are your filings up to date and do your internal records match what is filed at Companies House?

3

Supplying registered email addresses

Agree the email address to be supplied to the registrar in respect of companies and LLPs in the group.

Who will have access to and monitor the email address for communications from the registrar?

4

How will you deal with ID verification process?

Will this be dealt with internally and identities verified directly with Companies House or will you instruct an ACSP to conduct ID verification?

5

Fraud prevention procedures

Consider internal governance controls, training and assessment of risk regarding fraud.

Thank you

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