

White Collar Defense and Investigations



March 28, 2025

If you have any questions regarding the matters discussed in this memorandum, please contact the attorneys listed on the last page or call your regular Skadden contact.

This memorandum is provided by Skadden, Arps, Slate, Meagher & Flom LLP and its affiliates for educational and informational purposes only and is not intended and should not be construed as legal advice. This memorandum is considered advertising under applicable state laws.

One Manhattan West
New York, NY 10001
212.735.3000

22 Bishopsgate
London EC2N 4BQ
44.20.7519.7000

UK Crime and Policing Bill: New Measures To Facilitate Prosecution of Companies and High-Net-Worth Individuals

Key Points

- If the Crime and Policing Bill (CPB) is enacted in current form, it will make it significantly easier for companies to be held liable for criminal offences committed by their senior managers. Coupled with the introduction of the new “failure to prevent fraud” offence which will take effect on 1 September 2025, the CPB is likely to result in more corporate prosecutions.
- The CPB would prevent the UK courts from making adverse costs orders against law enforcement agencies in civil recovery cases, except where the agency acts unreasonably, dishonestly or improperly in the proceedings, or if it would be just and reasonable to make such an order. We expect that this change — if enacted — would encourage UK enforcement agencies to be bolder in using their civil recovery powers.
- The CPB represents a significant shift in the UK’s approach to corporate criminal liability and financial crime enforcement. Companies should consider reviewing their risk assessments, policies, procedures and training programmes to determine whether any adjustments may be required to prepare for these changes.

On 25 February 2025, the Home Secretary introduced the CPB into the House of Commons. The Home Secretary described the CPB as a “flagship” legislative proposal that, among other items, proposes to make further significant changes to the law with respect to corporate criminal liability in the UK.

The bill would have far-reaching implications for white-collar criminal enforcement in the UK, expanding the scope for corporate criminal liability, facilitating civil recovery of criminal assets, and introducing significant reform to the UK’s criminal confiscation rules. Together with the new offence of failure to prevent fraud, the CPB underscores the government’s commitment to addressing economic crime.

The CPB passed its second reading on 10 March 2025 and, given the Labour government’s significant majority, it looks likely to be passed and come into law in the second half of this year.

Significant Expansion of Corporate Criminal Liability

Current Law

Corporate criminal liability has already been the focus of government reform in recent years. Corporate liability for most criminal offences is currently governed by the common law “identification principle”, which provides that legal entities can only

UK Crime and Policing Bill: New Measures To Facilitate Prosecution of Companies and High-Net-Worth Individuals

be prosecuted for criminal offences if it can be shown that an individual acting as the entity's "directing mind and will" had the requisite state of mind (such as intention, recklessness or dishonesty) for the given offence.

Historically, this made it challenging for UK law enforcement to successfully prosecute companies, particularly large companies with complex management structures that make it difficult to identify whether an individual meets the "directing mind and will" criteria.

To address this, in a major overhaul of UK financial crime framework, the Economic Crime and Corporate Transparency Act 2023 (ECCTA) introduced a new statutory corporate criminal attribution regime for certain economic crimes such as bribery, tax, money laundering, fraud, false accounting and sanctions violations.¹ See our 26 February 2024 client alert "[Economic Crime and Corporate Transparency Act 2023 – Key Developments](#)". Under ECCTA, organisations (companies or partnerships) can be liable for certain listed economic crime offences where the offence is committed by a "senior manager" acting within the actual or apparent scope of their authority.²

Proposed Reform

The CPB would replace the ECCTA scheme by adopting the wider statutory corporate attribution regime for *all criminal offences* (and not just certain economic crimes, as is the case now).³ One rationale put forward by the government is that the common law identification principle "disproportionately applies" to smaller businesses where "it is easier to identify a person as their 'directing mind and will'".⁴ The extension aims to "better capture and prosecute larger businesses" with more complex decision-making structures.⁵

While the government states that the measure is not meant to "replace or amend" the common law identification principle,⁶ which remains a valid mechanism for establishing corporate criminal liability, the CPB would provide an easier statutory route for the prosecution to attribute crimes to organisations.

The CPB provides that an organisation would be liable for any offence committed by a "senior manager" acting within the actual or apparent scope of their authority.⁷ The definition of "senior manager" is carried over from ECCTA, referring to an individual playing a significant role in the making of decisions about how the "whole or a substantial part of the activities" of the organisation are to be managed or organised, or managing or organising these activities.⁸ Board members and senior executives are likely to be "senior managers" under this definition, but potentially so would key individuals in departments such as compliance, HR, in-house lawyers, or regional and divisional managers.⁹

A crucial precondition of corporate criminal liability under the CPB, as under ECCTA, would be that the senior manager committed the offence when acting within the "actual or apparent scope of their authority". This captures conduct which was "of a type that the senior manager was authorised to undertake, or which would ordinarily be undertaken by a person in that position".¹⁰ For example, if a CFO commits fraud by deliberately making false statements about a company's financial position, the company may be liable for the offence since the act of making statements about the company's financial position is within the scope of the CFO's authority.¹¹

If enacted in current form, the proposal would make it significantly easier for companies to be held liable for criminal offences committed by their senior managers. Coupled with the introduction of the new failure to prevent fraud offence which will take effect on 1 September 2025, the CPB is likely to yield an increase in corporate prosecutions. See our 14 November 2024 client alert "[UK Government Publishes Guidance on the New 'Failure to Prevent Fraud' Offence](#)".

While this is a significant change, there are certain limitations. For example, an organisation will not be criminally liable under the CPB for certain criminal conduct which occurs entirely outside the UK.¹² This is meant to ensure that an organisation operating overseas would not, pursuant to the CPB, be liable for certain criminal conduct outside the UK simply because the relevant senior manager was subject to the UK's extraterritorial jurisdiction (*e.g.*, because they are a UK national).¹³ However, there are other criminal offences that *can* be prosecuted against

¹ The full list of offences to which the expanded statutory identification principle currently applies is contained in Schedule 12 to ECCTA.

² Section 196(1) of ECCTA.

³ Home Office, Ministry of Justice and Department for Environment, Food and Rural Affairs, [Crime and Policing Bill Explanatory Notes](#) (Explanatory Notes), para 1036.

⁴ Home Office and Ministry of Justice, ['Equality Impact Assessment: Crime and Policing Bill serious and economic crime'](#), p. 7.

⁵ *Id.*

⁶ Explanatory Notes, para 1030.

⁷ Clause 130(1) of the CPB.

⁸ Clause 130(3) of the CPB, and section 196(4) of ECCTA.

⁹ Explanatory Notes, para 1032.

¹⁰ Explanatory Notes, para 1033.

¹¹ Explanatory Notes, para 1033.

¹² Clause 130(2) of the CPB.

¹³ Explanatory Notes, para 1034.

UK Crime and Policing Bill: New Measures To Facilitate Prosecution of Companies and High-Net-Worth Individuals

organisations where the misconduct was undertaken by a senior officer who has a “close connection” to the UK (*e.g.*, section 12, Bribery Act 2010): the CPB does not intend to change those offences and the close connection test will continue to apply as before.

Changes to the Confiscation Regime

The Proceeds of Crime Act 2002 (POCA) sets out the criminal confiscation powers in England and Wales. These powers enable the prosecution to apply for an order requiring a defendant who was convicted of an offence to pay back an amount gained through their criminal conduct.¹⁴ The CPB includes the first major reform of the criminal confiscation regime for 20 years, aiming to simplify court processes, creating realistic and enforceable orders, and addressing unpaid confiscation orders.¹⁵

The CPB would make a number of changes to the criminal confiscation order regime, including but not limited to:

- **New principal objective.** Under the CPB, the principal aim of the confiscation powers is to deprive defendants of the benefit from criminal conduct, as far as it is within the defendants’ means. Powers under the confiscation regime will have to be exercised in a way calculated to further this objective.¹⁶
- **Amendment of the “criminal lifestyle” provisions.** Under the current law, if a court decides that the defendant has a “criminal lifestyle”,¹⁷ all property obtained or expended by the defendant during the six years prior to the start of the proceedings for the offence concerned is assumed to constitute a benefit from crime, unless the defendant can show otherwise.¹⁸ The CPB would amend the regime to make it easier for the court to determine that the defendant has a criminal lifestyle. For example, the test for when an offence constitutes conduct forming part of a course of criminal activity in criminal lifestyle cases will be reduced from a defendant having to

- be convicted of three offences to two.¹⁹ The list of offences to which criminal lifestyle provisions apply has also been expanded to include two environmental offences.²⁰

- **Simplification of the test for asset restraint.** The conditions for asset restraint orders would be put on statutory basis, including the “risk of dissipation” test currently applied by courts. A non-exhaustive list of factors for courts to consider when deciding on making a restraint order would also be provided.²¹

- **Clarification of the approach to hidden assets.** The CPB sets out the approach the courts should take to value the property hidden by or on behalf of the defendant.²² This applies where the defendant’s benefit from the conduct exceeds the total value of their property. Under the proposal, “hidden property” would be included as an available amount for a confiscation order.²³

The reforms envisaged by the CPB are unlikely to radically change the operation of the current criminal confiscation regime, but they do provide additional powers to the courts and the prosecutors, and they aim to streamline the imposition and enforcement of confiscation orders.

Adverse Cost Orders in Civil Recovery

Civil recovery refers to the powers of law enforcement to seek confiscation of property which a court is satisfied (on the civil standard of proof) is derived from criminal conduct.²⁴ This presents an alternative avenue for law enforcement to pursue confiscation, where there is uncertainty as to whether a criminal conviction could be secured.

At present, these proceedings are subject to the usual rules for recovery of litigation costs: The losing party pays the winning party’s costs. The government considered that the risk of adverse costs is a major barrier to enforcement authorities prosecuting high-end money-laundering cases, including those involving “kleptocrats” and other wealthy individuals.²⁵

The CPB would prevent courts in the UK making adverse costs orders against law enforcement agencies in civil recovery cases, except where the agency acts (i) unreasonably in the proceedings, (ii) dishonestly or improperly in the course of the proceedings, or (iii) if it would be just and reasonable to make such an order.²⁶

¹⁴ Part 2 of POCA.

¹⁵ Home Office and Ministry of Justice, “[Economic Note 1010: Policing, serious and economic crime](#)” (Economic Note 1010), para 18.

¹⁶ Clause 102 and paragraph 1(2) of Schedule 14 to the CPB; Economic Note 1010, para 20; Explanatory Notes, para 833.

¹⁷ POCA, sections 6(4) and 75. Under section 75(2) POCA, a defendant will have a criminal lifestyle if the offence concerned is: (a) listed in Schedule 2 POCA; (b) constitutes conduct forming part of a course of criminal activity; or (c) it is an offence committed over a period of at least six months and the defendant has benefitted from the conduct which constitutes the offence. Under Section 75(3) conduct forms part of a “course of criminal activity” if the defendant has benefitted from the conduct and (i) he was convicted of and benefitted from three or more offences or (ii) in the previous six years, he was convicted on at least two separate occasions of an offence constituting conduct from which he has benefitted.

¹⁸ Sections 6(4) and 10 POCA.

¹⁹ Explanatory Notes, para 836.

²⁰ Explanatory Notes, para 837.

²¹ Schedule 14, para 25 CPB; Economic Note 1010, para 20.

²² Schedule 14, para 7(3) CPB; Explanatory Notes, para 147.

²³ Schedule 14, para 7(2) CPB; Explanatory Notes, para 147.

²⁴ Part 5, Chapter 1 POCA.

²⁵ Economic Note 1010, para 103.

²⁶ Clause 103(1) CPB.

UK Crime and Policing Bill: New Measures To Facilitate Prosecution of Companies and High-Net-Worth Individuals

The aim of the measure is explicitly to “encourage the use of civil [recovery] powers”,²⁷ so that law enforcement is not hesitant to pursue cases against “kleptocrats and high-net-worth individuals and corporations”.²⁸ It should be noted that law enforcement agencies would be shielded in all civil recovery cases, not just in those against a certain profile of defendant. We, therefore, expect UK agencies to be bolder in using the civil recovery powers across the board.

These changes to the civil recovery regime mirror previous reforms involving Unexplained Wealth Orders (UWOs) introduced in 2017. UWOs require a respondent to explain the source of the identified property. After the National Crime Agency lost high-profile cases including UWOs with high costs ordered against them,²⁹ the Economic Crime (Transparency and

Enforcement) Act 2022 brought in measures to prevent adverse costs against law enforcement where they acted reasonably.³⁰ We have recently seen the UK’s Serious Fraud Office obtain its first UWO, which may suggest UK enforcement agencies other than the NCA intend to make wider use of these tools.

Conclusion

The CPB represents a significant shift in the UK’s approach to corporate criminal liability and financial crime enforcement. With the proposed expanded scope for prosecuting companies, reformed confiscation regime and enhanced civil recovery measures, organisations should assess their current risk assessments, policies and procedures, and training programmes, and consider whether any adjustments are required.

²⁷ Economic Note 1010, para 102.

²⁸ Home Office and Ministry of Justice, ‘[Crime and Policing Bill: Overarching factsheet](#)’.

²⁹ For example, in *National Crime Agency v Baker* [2020] EWHC 822 (Admin), the Administrative Court discharged three UWOs made by the National Crime Agency (NCA), finding that the NCA had failed to carry out a fair-minded evaluation of new information and that its investigation was flawed. As a result, the court imposed £1.5 million in costs on the NCA.

³⁰ Economic Crime (Transparency and Enforcement) Act 2022, s. 52.

Contacts

Andrew M. Good

Partner / London
44.20.7519.7247
andrew.good@skadden.com

Jonathan Benson

Counsel / London
44.20.7519.7218
jonathan.benson@skadden.com

Vanessa K. McGoldrick

Counsel / London
44.20.7519.7278
vanessa.mcgoldrick@skadden.com

Jason Williamson

European Counsel / London
44.20.7519.7093
jason.williamson@skadden.com

Frank Lech

Trainee Solicitor / London
44.20.7519.7077
franciszek.lech@skadden.com