‘Peers Vote To Widen Business Fraud Law, Cut SME Exemption‘- House of Lords puts through two amendments tabled by Edward Garnier KC

Law 360 has published the below article following a debate on the Economic Crime and Corporate Transparency Bill in the House of Lords yesterday evening.

Members of the U.K.’s House of Lords have tabled proposals to widen a new offense that will make companies criminally liable for failing to prevent fraud by their employees to include money laundering, and remove an exemption for small to medium-sized companies, or SMEs, from the legislation.

In a vote late Tuesday, members of Parliament’s upper chamber voted 179 to 176 in favour of altering an amendment to the Economic Crime and Corporate Transparency Bill to remove the exemption for companies that are not “large organizations” from the failure to prevent regime.

Peers also voted 176 to 160 in favour of inserting a new clause for companies that fail to prevent fraud and money laundering, in a potentially significant change to economic crime legislation being considered by MPs in the House of Commons before receiving royal assent and becoming law.

The government in April published a draft new corporate criminal offense of failing to prevent fraud to make it easier for criminal prosecutions to be brought against companies. The proposals expand on similar offenses for big companies failing to prevent bribery by their employees or agents and failing to prevent tax evasion.

But critics argued the offense may not be the “game changer” heralded by prosecutors because it was limited to fraud and false accounting and contained a carve-out for SMEs.

In a significant intervention, the House of Lords put through two amendments tabled by Edward Garnier KC, a Conservative peer and former solicitor general.

Garnier said during the debate that it would be “absurd” to limit the offense to large organizations, which by the government’s own definition covers 0.5% of the corporate and partnership economy.

“That is the equivalent of us saying that every burglar over 6ft 6in is liable to be prosecuted … but every burglar under 6ft 6in gets off scot-free. If that is what the criminal law should be … well, that is a strange thing,” Garnier said.

Garnier also argued that extending the offense to include money laundering was “a very modest increase to the ambit” of the “failure to prevent” regime. He added that existing money laundering regulations failed to address Proceeds of Crime Act offenses committed by company employees.

Labor MP Margaret Hodge tweeted that the amendments were an “incredible success. … If [government] upholds these, it will revolutionize our approach to corporate crime and give law enforcement the confidence to take on deep-pocketed

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criminals," she tweeted.

The failure to prevent offense is among a series of changes to economic crime legislation designed to turn the screw on companies, including plans to make it much easier to bring corporate prosecutions by allowing companies to be held liable for the actions of senior managers.

The government outlined proposals in June to reform the identification doctrine, the requirement to prove that individuals who constitute the "directing mind and will" of the company knew about the wrongdoing. Ministers aim to make changes to allow companies to be convicted for a range of economic crimes based on the actions of their senior managers.

Lawmakers are expected to vote on the legislation later this year.

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