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Meg Hillier MP
Chair, Public Accounts Committee
House of Commons
London
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13 October 2016

Dear Meg,

CRIMINAL FINANCES BILL

The Government has today introduced the Criminal Finances Bill to the House of Commons. I expect this Bill will be of interest to you and the Public Accounts Committee, and would be happy to discuss this further with you in advance of the Bill's Second Reading.

Financial profit is the driver for almost all serious and organised crime. The UK drug trade alone is estimated to generate £4bn¹ of revenue and it is estimated that the annual amount of money laundered globally amounts to \$1.6 trillion². Over the years, successive Governments have supported better co-ordination between law enforcement agencies and the private sector, to improve detection rates and to bring down serious and organised crime networks. Most recently, in April 2016, the Government published an *Action Plan for Anti-Money Laundering and Counter-Terrorist Finance*. The Criminal Finances Bill will introduce new offences and measures to allow us to go after the money, the middle men and the crime barons themselves.

I know that asset recovery and money laundering are issues of interest for the Committee. The Government will respond to your recent report on asset recovery shortly. Crucially, however, this legislation is only part of a wider package of measures aimed at strengthening HMG's response to money laundering and asset recovery – wherever possible, returning the proceeds of crime to victims. We are also improving the effectiveness of the supervisory regimes for the regulated sector; working with the sector to reform the Suspicious Activity Reports (SARs) regime; and increasing our international reach, through events like the Anti-Corruption Summit in May 2016.

¹ 'Understanding organised crime: estimating the scale and social and economic costs', Home Office, October 2013

² 'Estimated illicit financial flows resulting from drugs trafficking and other transitional organised crime', UN Office on Drugs and Crime, October 2011

The main measures contained in the Bill are:

1. Unexplained Wealth Orders. We know of many criminals who declare themselves almost penniless, yet they control and have access to millions of pounds. They may own property overseas, high-end cars or other luxury goods, yet declare to the state that they are unemployed or earn meagre wages. Law enforcement agencies often have reasonable grounds to suspect that identified assets of such persons are the proceeds of serious crime. However, they are unable to freeze or recover the assets under the current provisions in the Proceeds of Crime Act 2002 due to an inability to obtain evidence (often because they cannot rely on full cooperation from other jurisdictions to obtain evidence). The Bill will enable a court to make an Unexplained Wealth Order to require an individual or organisation who is suspected of direct involvement in or association with serious criminality to explain the origin of assets, where their income appears to be disproportionate to their known income. A failure to provide a response would give rise to a presumption that the property was recoverable, in order to assist any subsequent civil recovery action. In addition, the Bill will also allow for this power to be applied to foreign politicians or officials or those associated to them i.e. Politically Exposed Persons (“PEPs”), helping to tackle the issue of the proceeds of grand corruption overseas being laundered in the UK.

2. Improved seizure and forfeiture powers. Current legislation allows law enforcement agencies to take swift and effective action against criminal cash, but a gap in the law prevents them from being able to do so if criminals store the proceeds of crime in bank accounts or other means, such as betting tickets, precious metals and jewels. There is evidence that these moveable items are being used to move value, both domestically and across international borders. The Bill will create new civil powers, similar to the existing cash seizure and forfeiture schemes in current legislation, which would close this gap. There will be a list of items specified in the Bill, which can be amended by affirmative order as required. The power will be exercisable where there is reasonable suspicion that the property is the proceeds of crime, or that it will be used in unlawful conduct in a manner similar to cash.

3. Reform to the SARs regime. The SARs regime provides a critical intelligence resource direct to the NCA from regulated companies, allowing the NCA the opportunity to approve or refuse consent to transactions that may involve the proceeds of crime. Where the NCA refuses consent, the Bill will extend the current 31 day moratorium period granted by a court, for up to six months so as to allow investigators sufficient time to gather evidence to determine whether further action, such as restraint of the funds, should take place. It will also create a power for the NCA to request further information following receipt of a SAR; or where they have received a request from a Financial Investigation Unit in another country, enabling better quality SARs. To be clear, the latter element will not require our law enforcement agencies to act at the behest of other countries. The NCA already cooperate with international partners in many of these cases – for example, on terrorist finance investigations in relation to the growing threat in Western Europe – but are unable to compel UK companies to disclose information in these cases at present. This will enable them to improve their level of cooperation with overseas FIUs in cases where they would already choose to work with them at present.

4. Information Sharing. The Bill will also provide for a legal gateway for the sharing of information between entities within the regulated sector (e.g. banks). This has already been happening under the Joint Money Laundering Intelligence Taskforce (JMLIT) pilot, helping the banks to build the intelligence case for suspected money laundering before they submit a report to the NCA. It is delivering significant benefits, and we should put this on a firmer legal footing, with a clear set of safeguards.

5. Corporate failure to prevent tax evasion. We had a manifesto commitment to “make it a crime if companies fail to put in place measures to stop economic crime such as tax evasion.” And, as Prime Minister, David Cameron announced in April 2016 that the Government would legislate this year to deliver that commitment. At present, if an individual evades tax and this is facilitated by the advice or actions of those in a corporation, although the individual will have committed a crime and those directly facilitating it could be prosecuted, the corporate entity does not hold any liability. The Bill would create two new offences so that a corporation in this situation could be prosecuted – one to catch companies facilitating the evasion of UK taxes; another to cover evasion of foreign taxes facilitated by an entity that has some nexus with the UK (such as a UK-based office), and where there is dual criminality with the UK. There has been extensive consultation on these offences, especially with the regulated sectors and the most likely outcome of a prosecution would be a financial penalty. The implications of which should help to ensure the highest compliance standards from corporations.

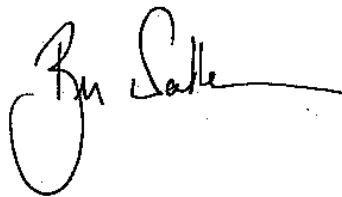
6. Disclosure Orders. The Bill would authorise a law enforcement officer by way of a Disclosure Order, to require someone who has relevant information in a money laundering investigation to answer questions and provide information or documents. Disclosure Orders are already used in confiscation investigations and by the Serious Fraud Office (SFO) in fraud investigations, and the Bill would extend their use to money laundering investigations. They are a powerful tool to gather the information required for a successful criminal investigation, although the compelled evidence may not itself be used in criminal proceedings.

7. Combatting Terrorist Finance. We will make complementary changes to the law enforcement and intelligence agency response to the threat of terrorist finance, helping to combat the raising of terrorist funds through vulnerabilities in the regulated sector. This will include mirroring many of the provisions in the Bill on SARs, Disclosure Orders, and Seizure and Confiscation powers, so that they also apply for investigations into offences under the Terrorism Act 2000 (TACT).

The Government is committed to reducing the regulatory burden on business, which can distract or make it harder for companies to focus on real risks. The measures in the Bill were developed in close partnership with both law enforcement agencies and the regulated sectors, including major financial institutions – as well as consultation with key representatives from civil society – to ensure that they deliver the changes they need in a targeted, proportionate and justified way. And I can reassure you that all these powers would only be used by law enforcement agencies where necessary and proportionate to do so. The Bill will ensure they are targeted at those who pose the greatest threat, subject to a set of stringent safeguards.

This Bill will play a crucial part in tackling the threats of organised crime and terrorism, so that we can pursue vigorously all those who abuse our financial system for criminal means. I hope you will agree that it is the public interest that this legislation is passed at the earliest opportunity with clear cross-party support.

I would be delighted to discuss the Bill further with you. If you would like to discuss, please contact my office on securityminister@homeoffice.gsi.gov.uk. I am copying this letter to the Clerk of the Public Accounts Committee.

A handwritten signature in black ink, appearing to read 'Ben Wallace', with a long horizontal stroke extending to the right.

Ben Wallace MP
Minister of State for Security