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Lord Henley
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27 January 2010

Dear Olive,

BRIBERY BILL: GOVERNMENT AMENDMENTS FOR LORDS REPORT

I am writing to let you have details of the amendments I have tabled today for Lords Report stage scheduled for 2 February.

Guidance: amendment to clause 7 and new clause (*Guidance about commercial organisations preventing bribery*)

We have reflected carefully on the points raised in Grand Committee around the provision of guidance to commercial organisations. As we indicated in response to the Joint Committee's report on the draft Bribery Bill and as I reiterated in Committee, the Government is committed to publishing guidance on the sorts of procedures commercial organisations can put in place to help prevent bribery. I acknowledge that such a commitment does not, and cannot, bind future Governments. We are therefore ready to place on the face of the Bill a duty on the Secretary of State to publish guidance of the kind described above. The new clause also confers a power on the Secretary of State to revise the guidance from time to time.

Defence for certain bribery offences: amendments to clause 12

I indicated in Committee that I would look again at the breadth of the definition of a law enforcement agency for the purposes of the defence in clause 12. In doing so we have been mindful of the concerns expressed both in Grand Committee and by the Constitution Select Committee. In the light of these concerns we have gone back to first principles and examined the operational need for the defence for law enforcement agencies. We have consulted ACPO, SOCA, HMRC, the UK Borders Agency and the Scottish Government. In the light of these further consultations we have concluded, and the law enforcement agencies agree, that on reflection, and given the concerns voiced in Parliament, the defence was not essential for them to be able to operate effectively. Accordingly we now propose to remove clause

12(1)(a) and limit the defence to persons pursuing the legitimate purposes of the Intelligence Services and armed forces.

There is also one technical amendment to the definition of a relevant bribery offence in clause 12(2). The current definition of 'relevant bribery offences' includes forms of liability such as conspiring and encouraging or assisting bribery under Part 2 of the Serious Crime Act 2007. In order to fully cover the forms of liability in Scottish law, we need to include a specific reference to aiding and abetting bribery and it is proposed to amend the definition accordingly.

I am copying this letter to Lord Thomas of Gresford, Lord Goodhart, Lord Mackay of Clashfern, Lord Mayhew of Twysden, Lord Lyell of Markyate, Lord Pannick, Viscount Colville of Culross, Lord Williamson of Horton, Baroness Whitaker and Lord Borrie. I am also placing a copy in the library of the House and on the Bill page of the Ministry of Justice website.

*Your Gr,
Wills*

WILLY BACH

Bribery Bill

AMENDMENTS TO BE MOVED ON REPORT

Clause 7

LORD BACH

- 1 Page 5, line 16, after “C” insert “and see section (*Guidance about commercial organisations preventing bribery*) for a duty on the Secretary of State to publish guidance”

After Clause 8

LORD BACH

- 2 Insert the following new Clause –

“Guidance about commercial organisations preventing bribery

- (1) The Secretary of State must publish guidance about procedures that relevant commercial organisations can put in place to prevent persons associated with them from bribing as mentioned in section 7(1).
- (2) The Secretary of State may, from time to time, publish revisions to guidance under this section or revised guidance.
- (3) The Secretary of State must consult the Scottish Ministers before publishing anything under this section.
- (4) Publication under this section is to be in such manner as the Secretary of State considers appropriate.
- (5) Expressions used in this section have the same meaning as in section 7.”

Clause 12

LORD BACH

- 3 Page 8, line 6, leave out paragraph (a)

- 4 Page 8, leave out lines 20 to 25
- 5 Page 8, leave out lines 29 to 33
- 6 Page 8, line 37, at end insert—
“(ba) an offence committed by aiding, abetting, counselling or procuring
the commission of an offence falling within paragraph (a) or (b).”
- 7 Page 8, leave out lines 44 and 45