HOUSE OF LORDS

# Library Note

## Criminal Finances Bill (HL Bill 104 of 2016–17)

The Criminal Finances Bill completed its final stages in the House of Commons on 21 February 2017. The Bill was introduced in the House of Lords on 22 February 2017 and is scheduled to receive its second reading on 9 March 2017. The Bill would make provision to tackle money laundering and corruption, recover the proceeds of crime and counter terrorist financing. The Bill consists of four parts:

- Part 1 is divided into five chapters and would make several provisions to help the Government tackle financial crimes, such as money laundering. Chapter 1 would create Unexplained Wealth Orders that would require an individual suspected of involvement in, or association with, serious criminality to explain the origin of assets that appear to be disproportionate to their income. Chapter 1 would also allow disclosure orders—which are currently used to investigate fraud—to be used in money laundering investigations. Chapter 2 focuses on money laundering and would reform the Suspicious Activities Report regime. It also seeks to improve information sharing between entities in the 'regulated sector', for example banks, in order to combat money laundering. Chapter 3 would make provision in relation to civil recovery. It seeks to improve seizure and forfeiture powers, to allow the seizure of money stored in bank accounts and items of personal property, such as precious metals and jewels. The Bill would also provide for the civil recovery of assets belonging to those involved in or profiting from gross human rights violations. Chapters 4 and 5 relate to enforcement powers and a number of miscellaneous provisions.

- Part 2 would extend the measures in part 1—such as disclosure orders—to apply to terrorism investigations. It would also extend powers under the Terrorism Act 2000 and the Anti-terrorism, Crime and Security Act 2001 to civilian Counter Terrorism Financial Investigators employed by the police.

- Part 3 would create an offence of corporate failure to prevent tax evasion. If a person acting on behalf of a company criminally facilitates a tax evasion offence by another person, that company would be guilty of the offence, unless they could show reasonable measures were in place to prevent such activity.

- Part 4 would make a number of new minor and consequential amendments; financial provisions; and set out the territorial extent and commencement arrangements of the Bill's provisions.

This briefing provides a summary of the provisions in the Bill as introduced in the House of Lords. It also summarises the debates held on the Bill as it progressed through the House of Commons.

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# 1. Overview and Summary of Provisions

The Bill, as introduced in the House of Lords, consists of four parts, the intention of which, the Government has explained, is to:

> [M]ake the legislative changes necessary to give law enforcement agencies, and partners, capabilities and powers to recover the proceeds of crime, tackle money laundering and corruption, and counter terrorist financing.
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> The measures in the Bill aim to: improve cooperation between public and private sectors; enhance the UK law enforcement response; improve our capability to recover the proceeds of crime, including international corruption; and combat the financing of terrorism.[1]

This briefing does not provide a comprehensive examination of every part of the Bill, and does not provide a commentary on every amendment made. The House of Commons Library has provided analysis of the policy background to the Bill in its briefing *Criminal Finances Bill (Bill 75 of 2016–17)* and a summary of the Bill's committee stage in the House of Commons in its briefing *Criminal Finances Bill: Committee Stage Report*.[2]

## 1.1 Part 1: Proceeds of Crime

Part 1 of the Bill is divided into five chapters: investigations; money laundering; civil recovery; enforcement powers and related offences; and miscellaneous.

### Unexplained Wealth Orders

Chapter 1 would create Unexplained Wealth Orders (UWOs) in England, Wales and Northern Ireland. It would also insert new sections 362A to 362H into the Proceeds of Crime Act 2002 (POCA). UWOs would require a person who is suspected of involvement in or association with serious criminality to explain the origin of assets that appear disproportionate to their own income.[3] Under the provisions of the Bill, an enforcement authority—such as the National Crime Agency (NCA) or Serious Fraud Office (SFO)—would make an application for an UWO to the High Court. Clause 1 would insert section 362B into POCA and sets out several requirements for making an UWO, which include that:

> (2) The High Court must be satisfied that—
>
> (a) the respondent holds the property, and
> (b) the value of the property is greater than £100,000.
>
> (3) The High Court must be satisfied that there are reasonable grounds for suspecting that the known sources of the respondent's lawfully obtained income would have been insufficient for the purposes of enabling the respondent to obtain the property.

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[1] Explanatory Notes, p 4.
[2] House of Commons Library, *Criminal Finances Bill (Bill 75 of 2016–17)*, 21 October 2016; and *Criminal Finances Bill: Committee Stage Report*, 16 February 2017.
[3] Explanatory Notes, p 5.

> (4) The High Court must be satisfied that—
>
> (a) the respondent is a politically exposed person, or
> (b) there are reasonable grounds for suspecting that—
>
> (i) the respondent is, or has been, involved in serious crime (whether in a part of the United Kingdom or elsewhere), or
> (ii) a person connected with the respondent is, or has been, so involved.

Clause 1 would also insert section 362A into POCA. It states that a person must respond to an UWO within the time period the High Court specifies. If the respondent did not respond to the UWO within that time period then the property would be presumed 'recoverable property', which is defined as "property obtained through unlawful conduct".[4] If the High Court received a response, it would have 60 days to determine whether any further action was required.

The Bill would allow an UWO to be made against a foreign Politically Exposed Person (PEP). The Bill defines a PEP as:

> (a) an individual who is, or has been, entrusted with prominent public functions by an international organisation or by a State other than the United Kingdom or another EEA State,
> (b) a family member of a person within paragraph (a), or
> (c) known to be a close associate of a person within that paragraph.[5]

The Explanatory Notes observe that an "UWO made in relation to an overseas PEP does not also require suspicion of serious criminality".[6] It adds that:

> This measure reflects the concern about those involved in corruption overseas laundering the proceeds of crime in the UK; and the fact that it may be difficult for law enforcement agencies to satisfy any evidential standard at the outset of such an investigation given that all relevant information may be outside of the jurisdiction.[7]

Clauses 4 to 6 would make similar provisions to create UWOs in Scotland.

### Disclosure Orders

Clause 7 would amend chapter 2 part 8 of the POCA to extend the use of disclosure orders to money laundering investigations, which are defined as follows:

> [An] order authorising a law enforcement officer to require anyone that they think has relevant information to an investigation, to answer questions, provide information or to produce documents. They are used to gather the information required for a successful criminal investigation, although statements made in response to an order may not—subject to certain exceptions—be used in criminal proceedings against the person who

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[4] Explanatory Notes, p 13.
[5] Criminal Finances Bill 2016–17, clause 1.
[6] Explanatory Notes, p 5.
[7] ibid.

> gave the information. A person subject to an order is not required to provide privileged or excluded material.[8]

The Bill would also amend the application authorisation process in England, Wales and Northern Ireland for making a disclosure order by transferring this function from a prosecutor to a senior officer in the investigator's own organisation (this arrangement would not apply in Scotland).[9] Clause 8 would make similar provisions for Scotland.

### Suspicious Activity Reports

Clause 9 seeks to reform the Suspicious Activity Reports (SARs) regime. As defined by the NCA, a SAR is a piece of information which alerts law enforcement agencies that certain client/customer activity is "in some way suspicious" and might indicate money laundering or terrorist financing.[10] The Government considers SARs a "critical intelligence resource".[11] Under the Money Laundering Regulations 2007, a regulated company—such as a bank or estate agent—must inform the NCA if it suspects a transaction relates to money laundering. A failure to submit such a report is an offence under section 330 of the POCA.

On receipt of a SAR, the NCA then has the opportunity to give or refuse consent for the suspicious transaction to go ahead. If the NCA refuses consent, the transaction cannot go ahead for 31 days. This is known as the 'moratorium period' and is designed to allow investigators time to gather evidence and to decide whether to take further action.[12] Clause 9 would amend sections 335 and 336 of the POCA so that the moratorium procedure can be extended by 31 days by a court order. It would also allow subsequent extensions to be made, up to a maximum of 186 days (beginning with the day after the end of the initial 31 day period).[13] The Government has explained the need to extend the moratorium period because at present it "does not allow sufficient time to develop the evidence, particularly where it must be sought from overseas through mutual legal assistance".[14]

### Information Sharing

Clause 10 would insert provisions into the POCA to allow entities within the regulated sector—such as banks—to voluntarily share information on suspected money laundering. Before sharing information, they must inform the NCA. In addition, the Bill would allow the NCA to request a person in the regulated sector to provide information on suspected money laundering.[15] The Explanatory Notes explain:

> The private sector holds data on financial transactions and related personal data; the law enforcement agencies hold details of criminals, and intelligence on crime. When this data has been shared, such as under the Joint Money Laundering Intelligence Taskforce (JMLIT) pilot, there have been positive outcomes for both sectors. Although existing data protection legislation allows for the sharing of information for the prevention and detection of crime, regulated companies are concerned that there should be express

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[8] Explanatory Notes, p 5.
[9] ibid.
[10] National Crime Agency, *Introduction to Suspicious Activity Reports*, April 2015.
[11] Explanatory Notes, p 5.
[12] ibid, p 6.
[13] ibid, p 15.
[14] ibid, p 6.
[15] ibid.

> legal cover that is directly related to the anti-money laundering regime, in order to reduce the risk of civil litigation for breach of confidentiality.[16]

It is the Government's intention that allowing entities to share information would allow so-called 'super SARs' to be submitted to the NCA, which would draw on multiple sources of information on suspected money laundering.[17]

### Civil Recovery of the Proceeds of Gross Human Rights Abuses or Violations

Clause 12 would allow the civil recovery of the proceeds of gross human rights abuses or violations (amending part 5 of the POCA). Currently, POCA contains provisions that allow the recovery of assets that have been obtained through unlawful conduct. A court must determine, on a balance of probabilities, whether unlawful conduct had occurred or whether a person intended to use cash for unlawful conduct.[18] Clause 12 would expand the existing civil recovery powers in the POCA so that they can be used on assets held by public officials that have committed, or are connected with, gross human rights abuses or violations against a person because they have whistleblown or sought to protect human rights.[19] The Explanatory Notes explain that:

> Sub-sections (1) and (2) expand the definition of unlawful conduct within Part 5 of POCA to include 'gross human rights abuses or violations'. Sub-section (2) specifies that the conduct can take place either in the UK or overseas. For conduct occurring outside the UK to qualify it need not be a criminal offence in the place where it occurred, but it must constitute an offence triable either way or on indictment had it occurred in the UK.[20]

### Seizure and Forfeiture Powers

Clauses 13, 14 and 15 would introduce several new powers related to the seizure and forfeiture of assets. The Explanatory Notes provide an overview of these powers:

> The Bill would create new civil powers, similar to the existing cash seizure and forfeiture scheme in chapter 3, part 5 of POCA, to enable the forfeiture of monies stored in bank accounts and items of personal property, like precious metals and jewels. There is evidence that these items are being used to move value, both domestically and across international borders. 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.[21]

### Enforcement Powers and Related Offences

Clause 16 would confer certain powers (contained in schedule 1) under the POCA on members of staff at the Serious Fraud Office (SFO). Specifically, it would allow SFO officers to

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[16] Explanatory Notes, p 6.
[17] ibid.
[18] Proceeds of Crime Act 2002, Part 5.
[19] Explanatory Notes, p 18
[20] ibid.
[21] ibid, p 7.

directly access to the asset preservation powers and civil recovery powers contained in the POCA.[22]

Clause 17 would remove restrictions on HM Revenue and Customs (HMRC) in relation to crimes relating to HMRC's functions. These functions include functions previously held by the Inland Revenue, and for offences related to prohibitions and restrictions on the movement of goods in Scotland, for example.[23] The clause would allow HMRC to use its existing criminal powers—such as the power of arrest—in these circumstances.

Clause 18 would amend section 316 of POCA to grant HMRC powers to bring forward civil proceedings against assets or any person who it thinks holds assets that may have been obtained through unlawful conduct.[24] It would also amend POCA to allow HMRC staff to apply for orders and warrants to build a civil recovery case.[25] Similarly, clause 19 would amend section 316 of POCA to grant the Financial Conduct Authority (FCA) powers to bring forward civil proceedings and grant FCA staff the powers to apply for orders and warrants.

Clause 21 would make it an offence for a person to obstruct or assault law enforcement officers—such those from the Crown Prosecution Service (CPS), SFO or Immigration Enforcement, for example. The Explanatory Notes provide the reasoning behind this proposal:

> Currently, there are criminal offences of obstruction or assault which apply in respect of some officers who are carrying out duties under POCA, but not all officers are captured. The Bill would ensure that all officers are afforded the same degree of protection, while exercising powers under POCA. This will bring consistency of approach and ensure that all users of POCA powers are protected.[26]

## 1.2 Part 2: Terrorist Property

Part 2 would extend a number of powers provided for in part 1 so that they would also apply to investigations in relation to terrorist assets and to terrorist financing. These include:

- The powers to enhance the SARs regime.
- Information sharing.
- Seizure and forfeiture powers—for bank accounts and mobile stores of value.
- Disclosure orders.[27]

Clause 33 would make amendments to the Terrorism Act 2000 (TACT), so that disclosure orders could be used in connection with terrorist financing investigations.

Clause 34 would add new sections to TACT which would allow information sharing between entities in the regulated sector in connection with a suspicion that a person is involved in the commission of a terrorist finance offence, or the identification of terrorist property or of its movement or use.

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[22] Explanatory Notes, p 23.
[23] ibid, pp 23–4.
[24] ibid, p 24.
[25] ibid.
[26] ibid, p 8.
[27] ibid, p 9

Clauses 36, 37 and 38 would amend the Anti-terrorism, Crime and Security Act 2001 (ATCSA) to provide for the forfeiture of terrorist cash; for the seizure and recovery of list types of personal or moveable property, such as precious metals or stones; and for the forfeiture of money held in bank and building society accounts where it is intended for use in terrorism.[28]

Part 2 would also make a number provisions in relation to counter-terrorism financial investigators. The Explanatory Notes summarise these provisions:

> The Bill would also extend a number of powers under TACT and the Anti-terrorism, Crime and Security Act 2001 (ATCSA), which are currently only available to constables, to civilian Counter Terrorism Financial Investigators (CTFIs) employed by the police. Counter-terrorism policing indicate that the extension of these powers to CTFIs will increase the capacity of the police to apply for the orders in question by over 50 percent. Accredited Financial Investigators (AFIs) are currently used frequently in proceeds of crime investigations.[29]

## 1.3 Part 3: Corporate Offences of Failure to Prevent Facilitation of Tax Evasion

Currently, there are range of statutory offences relating to tax evasion and the common law offence of cheating the public revenue.[30] However, a company is not guilty of an offence even if staff acting on its behalf facilitate a tax evasion offence. The Explanatory Notes explain that:

> At present, where a banker or accountant criminally facilitates a customer to commit a tax evasion offence, the taxpayer and the banker or accountant commit criminal offences but the company employing the banker or accountant does not. Even in cases where the company tacitly encourages its staff to maximise the company's profits by assisting customers to evade tax, the company remains safely beyond the reach of the criminal law.[31]

Part 3 would create new offences of corporate failure to prevent tax evasion. The Explanatory Notes provide information on how this would work:

> [W]here a person acting for or on behalf of a relevant body, acting in that capacity, criminally facilitates a tax evasion offence by another person, the relevant body would be guilty of the corporate failure to prevent the facilitation of tax evasion offence, unless the relevant body can show that it had in place reasonable prevention procedures (or that it was not reasonable to expect such procedures).[32]

It adds that the new offences would not make companies responsible for the crimes of their customers and sets out the situations in which the new offences would not be committed:

> (a) Where the taxpayer engages in aggressive avoidance falling short of fraudulent evasion or is otherwise non-compliant.

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[28] Explanatory Notes, p 32
[29] ibid, p 9.
[30] ibid.
[31] ibid, p 10.
[32] ibid.

> (b) Where the person acting for or on behalf of the relevant body inadvertently or negligently facilitates the taxpayer's fraudulent evasion of tax.
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> (c) Where the taxpayer's fraudulent evasion is facilitated by a person who is not acting for or on behalf of the relevant body at the time of doing the facilitating act (for example if an employee, in their private life, criminally facilitates his or her partner's fraudulent evasion of their tax; or where a sub-contractor criminally facilitates tax fraud when working for an entirely different contractor during work unconnected to the relevant body). The new offences are only about ensuring that relevant bodies have reasonable procedures to prevent those acting for or on their behalf from criminally facilitating the fraudulent evasion of tax, when acting in that capacity.
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> (d) Every time somebody acting for or on behalf of the relevant body criminally facilitates another's tax crime (only reasonable procedures, not fail proof procedures, are required: a risk based, rather than zero tolerance, approach is adopted).
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> (e) Where tax evasion offences are currently being committed by those acting for or on behalf of a company, the new offences will require nothing more than for that company to have reasonable procedures in place to prevent such offences being committed by those acting for or on its behalf.[33]

**Failure to Prevent Facilitation of Foreign Tax Evasion Offences**

Clause 43 would create an offence of corporate failure to prevent the facilitation of foreign tax evasion offences. The Explanatory Notes observe that "this offence is broadly similar to the offence created in clause 42 in relation to UK taxes", but is "slightly narrower in scope, in that only certain relevant bodies can commit the foreign revenue offence.[34] Subsection 5 outlines what foreign tax evasion facilitation offences means. This would give effect to the requirement that there be "dual criminality".[35] The Government adds that:

> A foreign tax evasion offence is defined as conduct that is criminal under the foreign law in question and would also be regarded by the UK courts as amounting to an offence of being knowingly concerned in, or taking steps with a view to, the fraudulent evasion of the tax. Thus the clause 43 offence cannot be committed where the acts of the associated person would not be criminal if committed in the UK, regardless of what the foreign criminal law may be.[36]

Similarly, subsection 6:

> […] confirms the requirement of "dual criminality" in relation to the associated person's act of facilitation. Even where the foreign criminal law renders inadvertent or negligent facilitation of a crime criminal, the new offence will not be committed as the requirement for "dual criminality" will not be met as UK law renders criminal only deliberate acts of facilitation.[37]

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[33] Explanatory Notes, pp 10–11.
[34] ibid, p 40.
[35] ibid.
[36] ibid.
[37] ibid.

Clause 44, would require the Chancellor of the Exchequer to publish guidance about preventing the facilitation of tax evasion offences. Subsection 7 would allow these to be created by others and approved by the Chancellor.[38]

Clause 45 concerns extra-territorial application and jurisdiction and means that it would not matter where the offences contained in clauses 42 and 43 take place:

> Clause 45 confirms that (except in relation to scope for the foreign revenue offence—see subsection (1)) it does not matter where any act or omission takes place. It does not matter whether the relevant body is formulated under the law of another country, or that the associated person does their criminal act of facilitation overseas, the new offences will be committed.[39]

Under clause 46, the Director of Public Prosecutions (DPP) in England and Wales; the Director of the Serious Fraud Office; or the Director of Public Prosecutions in Northern Ireland would be required to give consent for any prosecution brought for the foreign revenue offence. The Government suggests that "such a prosecution may raise complex issues around the public interest and the relationship of the United Kingdom with other countries necessitating this safeguard".[40]

### 1.4 Part 4: General

Part 4 of the Criminal Finances Bill contains minor and consequential amendments; powers to make consequential provisions; and financial provisions, extent and commencement.

## 2. Consideration of the Bill in the House of Commons

### 2.1 Second Reading

The Bill's second reading in the House of Commons took place on 25 October 2016. There was broad agreement with the contents of the Bill.[41] Introducing the Bill, the Minister for Security, Ben Wallace, set out the threat to the UK in the form of terrorism and organised crime. He told MPs:

> Both terrorism and serious and organised crime pose a real and present threat to the UK. Those involved in terrorist activities endanger our domestic security and overseas interests. Terrorism may be the greatest threat we face, but serious criminality arguably causes the greatest harm, costing the UK at least £24 billion annually, causing loss of life, and depriving people of their security and prosperity. Right hon. and hon. Members must not doubt the scale of this problem, as it damages our economy and our communities.[42]

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[38] Explanatory Notes, p 40.
[39] ibid, p 41.
[40] ibid.
[41] House of Commons Library, *Criminal Finances Bill: Committee Stage Report*, 16 February 2017, p 4.
[42] HC *Hansard*, 25 October 2016, col 194.

He suggested that MPs should be proud of the UK's status as a global financial sector, but noted that it made the country vulnerable to financial crimes such as money laundering. He added:

> That is why this Government are taking action—to combat money laundering, terrorist finance and corruption—here and overseas. We are sending a clear message that we will not stand for money laundering or the funding of terrorism through the UK.[43]

The Shadow Home Secretary, Diane Abbott, welcomed the Bill, but suggested that it did not go far enough in some respects. Ms Abbott noted that the Bill did not consider tax evasion in regards to the British Overseas Territories and Crown Dependences, suggesting it was a "startling oversight". She explained:

> There are three Crown dependencies, Jersey, Guernsey and the Isle of Man, and it is frequently argued that the British Overseas Territories and the Crown Dependencies are the largest tax evasion network in the world, so the failure to mention them in a Bill which purports to deal with issues surrounding tax evasion is a major omission. We will be seeking amendments as the Bill goes through Committee. It is frequently asserted that it is not possible to legislate for the British Overseas Territories and the Crown Dependencies, but the Ministry of Justice seems to think differently. This is an issue that we will explore.[44]

The former Solicitor General, Sir Edward Garnier (Conservative MP for Harborough), approved of the provisions concerning corporate failure to prevent the facilitation of tax evasion.[45] However, he argued that the Government should expand the failure to prevent provisions to cover economic and financial crime.[46]

A number of MPs also raised the issue of whether organisations such as the NCA had sufficient resources. Robert Jenrick (Conservative MP for Newark) asked Mr Wallace if he agreed that there was "no point in legislating if the agencies tasked with enforcing the legislation simply do not have the resources to do so?".[47] Similarly, Keith Vaz (Labour MP for Leicester East) asked when the NCA would receive new computer systems to assist with processing SARs.[48]

## 2.2 Committee Stage

The Bill was considered during six sittings of a public bill committee. Most of the amendments made at committee stage were technical and uncontroversial.[49] These amendments included expanding the definition of cash in the Proceeds of Crime Act 2002 (POCA) and Anti-terrorism, Crime and Security Act 2001 (ATCSA) to include gaming vouchers and casino tokens; expanding the new freezing, seizure and forfeiture powers to immigration officers; and the creation of an accreditation regime for counter-terrorism financial investigators.[50]

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[43] HC Hansard, 25 October 2016, col 195.
[44] ibid, col 205.
[45] ibid, col 209.
[46] ibid.
[47] ibid, col 200.
[48] ibid, col 203.
[49] House of Commons Library, *Criminal Finances Bill: Committee Stage Report*, 16 February 2017, p 3.
[50] ibid.

Dr Rupa Huq, Shadow Crime and Prevention Minister, tabled two amendments (new clauses 3 and 20) at committee stage that were rejected at division. New clause 3 sought to require a relevant authority under POCA to publish an annual report on the adequacy of resources available from Parliament. New clause 20 sought to insert provisions into POCA so that if a court issued a recovery order the property would be repatriated back to its country of origin within a year of having been recovered.[51] In addition, new clause 11 was introduced by the then Labour MP for Stoke-on-Trent Central, Tristram Hunt, which sought to require that the Secretary of State make an annual report to Parliament on the number of UWOs applied for by enforcement agencies.

## 2.3 Report Stage

### 'Magnitsky Amendment' and the Government's New Clause 7

At report stage, a cross-party group of backbench MPs introduced a clause which would have allowed the High Court to make an order to freeze the UK assets of individuals implicated in gross human rights abuses. New clause 1 would allow the Government, individuals or entities—such as non-governmental organisations—to make an application to the High Court for such an order.[52]

New clause 1 was tabled by Dominic Raab (Conservative MP for Esher and Walton), a former justice minister. It was backed by MPs from a number of political parties, including Dame Margaret Hodge (Labour MP for Barking); Tom Brake (Liberal Democrat MP for Carshalton and Wallington); Douglas Carswell (UKIP MP for Clacton), Ian Blackford (SNP MP for Ross, Skye and Lochaber); and Caroline Lucas (Green Party MP for Brighton Pavilion). The amendment was referred to as the 'Magnitsky Amendment', after the Russian lawyer Sergei Magnitsky who was beaten to death in a Moscow jail in 2009. He had uncovered an alleged $230 million (US dollar) theft from the state budget by Russian tax officials.[53] Following his death, US-born fund manager Bill Browder, who employed Mr Magnitsky, led a campaign to publicise his case.[54] In 2012, the US Congress passed the 'Magnitsky Act' which allowed the US Government to impose visa bans and asset freezes on individuals connected with the case. The US Congress expanded the scope of the legislation to cover human rights abusers in any country in December 2016.[55]

Mr Raab outlined the reasoning behind new clause 1:

> No one wants Britain to be a competitive global hub that attracts investment and is open to international talent more than I do, but I also want us to be known the world over for our integrity, our commitment to the rule of law and our adherence to the most basic of moral principles. We therefore have to stop turning a blind eye to the blood money of butchers and despots that, frankly, flows all too freely through some UK businesses, banks and property. New clause 1 is designed to address the weaknesses in the current UK asset-freezing regime.[56]

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[51] House of Commons, *All Proceedings up to 22 November 2016 at Public Bill Committee Stage*, 23 November 2016.
[52] *Financial Times* (£), 'MPs to Vote on Magnitsky Human Rights Amendment', 4 December 2016.
[53] ibid.
[54] *Financial Times* (£), 'The Magnitsky Law', 27 July 2012.
[55] *Financial Times* (£), 'UK MPs Vote for Power to Freeze Assets of Human Rights Abusers', 21 February 2017; and Reuters. 'US Congress Votes to Apply Magnitsky Human Rights Act Globally', 8 December 2016.
[56] HC *Hansard*, 21 February 2017, col 884.

The Government tabled a similar amendment.[57] However, unlike new clause 1, the Government's new clause 7 did not contain provisions to allow an individual or an entity, to apply to the High Court for an order to seize a person's assets. New clause 1 would have imposed a duty on the Secretary of State to apply for an order if there was sufficient evidence of human rights abuses and a public interest for doing so and would have established a public register of those subject to the order.

New clause 7 and new clause 1 were considered together at report stage. The Minister of State for Security, Ben Wallace, introduced new clause 7. He observed that the "amendments have been prompted by the harrowing case of Sergei Magnitsky".[58] Noting that the United States had already passed legislation of this sort, Mr Wallace argued that as the UK had a different legal system to the US, a different approach was required, especially given that most of the UK's sanctions regimes were "under the European Union umbrella".[59]

Mr Raab thanked the Government for engaging with the issue and tabling new clause 7. He said the Government's amendment would introduce powers to freeze the assets of individuals implicated with human rights abuses. This would:

> [M]ark a significant step forward, principally because it would provide specific statutory grounds for an asset-freezing order based on gross human rights abuses and would target individuals responsible for, or profiting from, such crimes against whistleblowers and defenders of human rights abroad.[60]

However, Mr Raab argued that his amendment went further than the Government's proposal:

> My view is that new clause 7 is not as robust as new clause 1, mainly because it does not impose a duty on UK law enforcement agencies to act subject to the flexibility I described, and it omits the third-party application procedure and removes the public register.[61]

Mr Raab also expressed concern about whether the new powers proposed by the Government would be used and asked the Minister if the Government would commit to collecting data on the exercise of the new clause, to which the Minister agreed.[62]

Labour's Shadow Crime and Policing Minister, Dr Rupa Huq said that the Opposition would not oppose either new clause 7 or new clause 1 if either was moved. Dr Huq stated that she welcomed the measures, and that they would bolster the Bill's aim to tackle the growing concern about money laundering, terrorist financing and corruption. Dr Huq also said with specific regard to new clause 1:

> Under new clause 1, the names of individuals who have been involved in or profited from human rights abuses would be published, and Ministers would be obliged to apply for a freezing order of up to two years if they are presented with compelling evidence of abuse and it is in the public interest to do so. That would make dictators and despots think twice about using the UK as a safe place to stash their dirty cash. By creating

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[57] HC *Hansard*, 21 February 2017, col 882.
[58] ibid, col 877.
[59] ibid, col 878.
[60] ibid.
[61] ibid, col 885.
[62] ibid.

> personal costs for the perpetrators of human rights abuses, we can protect whistleblowers around the world, which would be a fitting tribute to the legacy of Sergei Magnitsky.[63]

Commenting on the Government's new clause 7, former Justice Minister, Jonathan Djanogly (Conservative MP for Huntingdon) suggested that it "falls way short of the US Magnitsky Act, which has a specific list of undesirables attached".[64] He added that:

> The Government clearly wish to keep for themselves the choice of whom to prosecute and asset-seize. I am minded to go along with that, given that many, if not most, seizures would have political implications, and I doubt such things should be left to non-governmental organisations, for instance, to prosecute. However, I would be happy with the proposed powers only if I were given comfort that the Government intend actually to use them once the Bill is passed.[65]

Mr Djanogly argued that "one of the strongest aspects of the US Magnitsky list is that hundreds of thousands of people have seen exactly who is blamed and for what".[66]

The Labour MP for Rhondda, Chris Bryant, observed that the Government's amendments did not contain a duty to act unlike new clause 1, and that there was no provision for third parties to bring a case.[67] Mr Bryant also criticised the absence of a public register in new clause 7 and observed that there were no mechanisms in the Government's amendment to prevent people from moving their assets before recovery proceedings could start.[68]

For the Government, Ben Wallace explained that there were some problems with new clause 1 and that the Government could not support it:

> […] we think it would be non-compliant with our domestic human rights law, because it contains no derogations. It would freeze all the assets of a designated individual, so they would not have any funds for living expenses or medical treatment, or to pay for legal representation. The reversal of the burden of proof, so that it would be assumed that all assets owned by designated individuals were the proceeds of their unlawful conduct, would also be an unprecedented step. That is incongruous with the existing civil recovery regime and could be judged by the courts to be disproportionate.
>
> However, we recognise the strength of feeling on this matter, and understand the deterrent effect that such an amendment would have on those who seek to profit from the gross abuse or violation of human rights overseas.[69]

However, Mr Wallace said that Mr Raab's new clause 1 remained problematic because:

> […] it would allow non-governmental organisations and individuals—it does not define whether those NGOs or individuals are foreign or from the UK—to go to the court,

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[63] HC *Hansard*, 21 February 2017, cols 886–7.
[64] ibid, col 889.
[65] ibid.
[66] ibid.
[67] ibid, cols 879–80.
[68] ibid, col 893.
[69] ibid, col 878.

> with limited liability, to force the Government to take action, without a high threshold at all.[70]

In reply to Mr Bryant's point, Mr Wallace argued that there were several criminal offences that did not impose a duty for the Government to act and suggested that "we leave it to the interpretation and freedom of our law enforcement agencies to act".[71] In his concluding remarks Mr Wallace argued that the Government wanted to send a message with its amendment:

> The main aim [of which] is to ensure that we say loud and clear that we do not want money launderers in this country. We do not want organised criminals. We do not want those who abuse people through torture and inhumane treatment.[72]

He congratulated Mr Raab for tabling his amendment and said that he hoped that MPs would support the Government's new clause 7. He concluded:

> It was important that we have this debate. He is a formidable campaigner and has successfully articulated the case and imbued the Bill with the spirit of his new clause. I hope that the House will support Government new clause 7.[73]

New Clause 7 was agreed to without a division and new clause 1 was not called.

### Failure to Prevent an Economic Offence

Sir Edward Garnier (Conservative) raised the issue of corporate criminal liability. He tabled two amendments, new clause 2 and new clause 3. These sought to make a company guilty of an offence if a person committed an economic crime when acting in the capacity of a person associated with the company. Mr Garnier argued that the current law made it difficult to "fix liability on a company suspected of criminal activity, as a matter of criminal law".[74] He added that:

> Under current English law, however, fixing criminal liability on a corporation involves resorting to what is called the identification principle. This involves finding someone of sufficient seniority within a corporation who can act as or be described as the directing mind of the company. Through that identified person, we can then move on to fix criminal liability on the corporation. That was fine in the Victorian era, when most companies had one or two directors.[75]

He argued that the "Victorian identification principle is no longer apt to deal with international corporations.[76] He explained that the two clauses would implement a failure to prevent regime, which would make a company liable if it failed to prevent somebody committing an offence.[77]

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[70] HC *Hansard*, 21 February 2017, col 880.
[71] ibid, col 879.
[72] ibid, col 897.
[73] ibid, col 901.
[74] ibid, col 920.
[75] ibid.
[76] ibid, col, 921.
[77] ibid, col, 922.

In response, Ben Wallace, Minister of State for Security, observed that the Government had already launched a call for evidence on the issue of corporate criminal liability for economic crime".[78] New clause 2 was withdrawn without division and new clause 3 was not called.

### Beneficial Ownership

The issue of beneficial ownership was also debated at report stage. The Financial Action Task Force (FATF) is an inter-governmental body that sets standards and promotes measures to combat money laundering, terrorist financing and threats to the international system.[79] It defines a beneficial owner as:

> The natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement.[80]

New clause 17, tabled by Dr Rupa Huq, the Shadow Crime and Prevention Minister, sought to create a register of beneficial ownership of companies registered in Crown Dependences. In her speech, Dr Huq spoke to this amendment alongside Labour's new clause 6, which would have created public registers of beneficial ownership in the British Overseas Territories, and new clause 16, which would require the Government to review the operational efficacy of close beneficial ownership platforms created by the Crown Dependences or British Overseas Territories.[81]

In her remarks, Dr Huq observed that "tax evasion was big news in 2016 following the publication of the Panama papers, which threw light on certain opaque offshore companies".[82] While broadly welcoming the provisions within the Bill, Dr Huq suggested that there were "chinks in the armoury for fighting money laundering".[83] For example, she noted that a number of NGOs—such as Transparency International and Amnesty International—were concerned that the Bill did not address the issue of beneficial ownership:

> The elephant in the room is the issue of beneficial ownership and the UK's inaction in tackling the financially secretive companies and practices that lie at the heart of the economies of many of our overseas territories and Crown dependencies. Beneficial ownership is entirely not present in the Bill. It is conspicuous by its absence. In other words, I am referring to our "tax havens".[84]

Dr Huq argued that the UK was "facilitating some of the largest and most well-known tax havens, so we should be leading not following".[85] She suggested that the Government was using the same excuses for not tackling illicit financial activity in the Crown Dependencies and Overseas Territories, such as claiming the UK did not have the constitutional legitimacy to do so or that those jurisdictions were already adhering to international standards. Dr Huq also noted that the Government had said it wanted the Overseas Territories and Crown Dependencies to adopt public registers of beneficial ownership.

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[78] HC *Hansard*, 21 February 2017, col 954.
[79] Financial Action Task Force, 'Who We Are', accessed 28 February 2017.
[80] Financial Action Task Force, *Transparency and Beneficial Ownership*, 2014, p 8.
[81] House of Commons, *Report Stage Proceedings as at 21 February 2017*, 22 February 2017.
[82] HC *Hansard*, 21 February 2017, col 948.
[83] ibid, col 945.
[84] ibid.
[85] ibid.

In conclusion, Dr Huq said:

> [W]e could have gone all the way and become the gold standard for other Governments to follow. We could also have dealt with the public disquiet over perceived levels of tax evasion, which the former Prime Minister, to his credit, wanted to tackle. This massive oversight undermines not only the claims made by the former Member for Witney, but citizens in some of the poorest developing countries of the world, which are at the end of these complex supply chains of criminality. Those citizens are the main losers in all of this.[86]

In response to those concerns, Ben Wallace said that the Government had not changed its ambition to have public registers of beneficial ownership in the Overseas Territories and Crown Dependencies.[87] He added that it aimed to fulfil the commitment to keep either central registers or linked registers by June 2017.[88] Mr Wallace stated that the Government was "committed to allowing our law enforcement agencies to have automatic access to those registers" and that "we already do that in some of those territories".[89]

Mr Wallace also stated that the Government had successfully achieved linked registers and access to registers for the UK's law enforcement agencies without "imposing" on the democratically elected Governments in the Overseas Territories and Crown Dependencies.[90] Mr Wallace described new clause 17 as "constitutionally bankrupt", and suggested that it was questionable whether the UK Government could impose its will on a Crown Dependency in that manner.[91]

New clause 17 was moved to a division, where it was rejected by 301 votes to 180.

### Culture of the Banking Industry and Limited Partnerships

The SNP's Treasury Spokesperson, Roger Mullin, tabled three amendments at report stage, one of which was pushed to a division. New clause 18 concerned protections for whistleblowers in the banking and financial services sector but was not called.

New clause 10 sought to stop the Treasury from laying regulations before Parliament on new limited partnerships before the Secretary of State had completed a review of the proposed regulations. Mr Mullin explained that he had been campaigning on the issue of Scottish Limited Partnerships (SLPs). He argued that SLPs were a "front for some of the worst international crime, money laundering and hiding of criminal assets to be found".[92] However, Mr Mullin observed that the Government was introducing a new form of limited partnership—private fund limited partnerships—through a legislative reform order. He argued that these new limited partnerships were even less regulated than SLPs[93] and called for the Government to conduct a

[86] HC *Hansard*, 21 February 2017, col 951.
[87] ibid.
[88] ibid.
[89] ibid, col 952.
[90] ibid, col 953.
[91] ibid, col 952.
[92] ibid, col 924.
[93] ibid.

review into limited partnerships:

> [O]ur new clause would require the Home Office to conduct a review before the Treasury introduces any legislation to create a new form of limited partnership so that we can ensure that those limited partnerships will not be subject to the type of criminal abuse and illegality that we have found with Scottish limited partnerships.[94]

Richard Arkless (SNP MP for Dumfries and Galloway) said the SNP would push new clause 10 to a vote depending on the response of the minister.[95] Mr Wallace reiterated that any legislative response to the review of limited partnership law would take precedence.[96] New clause 10 was not called.

New clause 19 was also debated alongside new clause 17, would have required the Secretary of State to undertake a review into the extent to which banking culture contributed to the failure to prevent the facilitation of tax evasion in the banking sector. Commenting on new clause 19, Richard Arkless argued that:

> New clause 19 gets to the heart of the issue surrounding criminal finances: what I would describe as the responsibility-shedding, banking sales-driven culture that we have in the UK […] Unless we deal with that culture, we will not be able to deal properly with the facilitating that big companies and banks can give to criminal finances. It is a shame that that opportunity has not been taken in the Bill.[97]

Roger Mullin had tabled a similar amendment during committee stage, but this was withdrawn. Mr Wallace had argued at during committee stage he did not think such a review should be conducted immediately after royal assent.[98] He said:

> It is the Government's view that we should focus our efforts on effectively implementing the new offences, and on using them to help trigger further cultural change, prior to diverting resources to a further review of the arrangements.[99]

New clause 19 was subsequently moved to a division at report, where it was defeated by 300 votes to 241.

## 2.4 Third Reading

At the Bill's third reading, Ben Wallace argued that it would help improve the Government's ability to tackle financial crimes. He told MPs:

> Financial profit is at the heart of almost all forms of serious and organised crime, which directly affects the most vulnerable in society. The Bill will significantly improve our ability to tackle money laundering, corruption, tax evasion and terrorist financing. It is a key part of the Government's critical work to reduce the flow of dirty money into the

[94] HC *Hansard*, 21 February 2017, col 925.
[95] ibid, col 943.
[96] ibid, col 955.
[97] ibid, col 944.
[98] Public Bill Committee, *Criminal Finances Bill*, 22 November 2016, session 2016–17, 6th sitting, col 188.
[99] ibid.

> City and to cut off the funding streams to the fraudsters, money launderers and kleptocrats.[100]

On the issue of freezing the assets of those that had committed human rights abuses, Mr Wallace stated that the Government was "committed to promoting and strengthening universal human rights globally".[101] He argued that the Government's amendment, agreed at report, would:

> Allow for the recovery of property connected with torture or cruel, inhumane and degrading treatment overseas. This sends out the strong message that those seeking to profit from torture and other serious abuses will not be able to do so in the UK.[102]

On the issue of transparency in the Overseas Territories and Crown Dependencies, Mr Wallace argued that the UK was promoting corporate transparency and tackling tax evasion. He explained:

> The UK is at the forefront of the global approach to increasing corporate transparency and tackling tax evasion and corruption. That work started under David Cameron, and it continues.
>
> I share the desire for the Crown Dependencies and Overseas Territories to take further steps towards full corporate transparency. That is why this Government continue to work closely with them towards that goal, but we must recognise the significant progress they have already made, putting them well ahead of many other jurisdictions.[103]

Summing up, Mr Wallace suggested that Bill would send a message that the UK would not tolerate financial crime:

> This Government have done more than any other to tackle money laundering and terrorist financing, but the scale of the threat is clear and we must do more. This Bill sends the clear message that we will not stand for money laundering or the funding of terrorism through the UK, and I commend it to the House.[104]

The Shadow Home Secretary, Diane Abbott, stated that the Labour Party broadly supported the Bill. However, she argued that "tax avoidance and money laundering are the opposite of victimless crimes", arguing that they can cause inflated asset prices, such as the housing market in London.[105] Ms Abbott added that:

> I remind the House that the genesis of the Bill was the Panama papers, which revealed extremely widespread and highly lucrative avoidance of tax on an industrial scale. There were 11 million leaked files, and Britain was the second most prominent country in which the law firms' middlemen operated.[106]

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[100] HC *Hansard*, 21 February 2017, col 975.
[101] ibid, col 976.
[102] ibid.
[103] ibid.
[104] ibid, col 977.
[105] ibid.
[106] ibid, col 978.

Ms Abbott added that Labour welcomed the Government's new clause 7, agreed to report stage. She said that while there was a "technical argument" over legislating for the Overseas Territories and Crown Dependencies, "the moral issue is substantially the same".[107] In conclusion, Ms Abbott said that:

> The Opposition are calling for a wide-ranging review of the UK tax gap, including an assessment of the loss of income tax due to tax evasion. As several Members on both sides of the House have said, if the legislation simply rests on the statute book and does not result in commensurate prosecutions, it will be a dead letter. We note that the Minister has listened thus far, and I hope that the Government and the appropriate departments are listening when I urge them to ensure that the legislation amounts to more than just good intentions and that it is actively used to bear down on tax evasion, money laundering and corruption.[108]

[107] HC *Hansard*, 21 February 2017, col 978.
[108] ibid.