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Dear Chris

PROCUREMENT BILL: FINANCIAL EXCLUSION GROUNDS

Thank you for your email of 14 November in relation to your amendment at Committee proposing exclusion grounds where there is evidence of financial and economic criminal activity. I apologise for the delay in responding. I had considered it preferable to discuss either at our meeting on Wednesday 23 November, or in the Report debate yesterday. However, I am happy to reiterate my concerns about this amendment in writing.

I appreciate your point that criminal investigations into financial and economic crimes may sometimes take considerable time. As I said in the debate, this is for a variety of reasons including the complexity of the issues involved. An amendment would require authorities to make a judgement as to whether there is sufficient evidence that offences have been committed in order to apply the ground, at a point when the investigating authorities have not reached a view. The mere fact that a supplier is under investigation should not lead to potential exclusion. Requiring authorities to come to a view on complex issues of criminal culpability would not be straightforward and would constitute a significant new burden.

The exclusions regime must strike a balance between protecting contracting authorities from the risks posed by unfit suppliers and avoiding the imposition of disproportionate burdens in the conduct of procurements, whilst also avoiding suppliers being excluded unfairly. We have aimed to achieve this in the Bill by focusing on the issues most relevant to public procurement. Where contracting authorities are required to make their own assessment of evidence of misconduct in the absence of a court or regulatory ruling, it is in order to guard against major and particular risks to public procurement and in areas where a conviction or ruling is less likely to come to fruition. For example, this includes where prosecution is unlikely or impossible, such as modern slavery in jurisdictions where there is no relevant legislation or where there are enforcement issues.

I should note that we carefully considered a range of evidence and stakeholder views in developing the exclusion grounds on financial and economic misconduct. These grounds are stronger in a number of respects compared to the exclusion

grounds in the current regulations. We have provided for a wider range of offences in relation to theft, fraud, bribery and tax evasion. Combined with other changes such as a clearer definition of connected persons and the introduction of a centralised debarment regime, I am confident these measures are sufficient to protect contracting authorities and the public.

Thank you again for your engagement on this. I will deposit this letter in the House Libraries.

Warm regards

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Baroness Neville-Rolfe DBE CMG