



Foreign &
Commonwealth
Office

Sanctions and Anti-Money Laundering Bill

Policy note: Exceptions and Licences

Introduction

1. The UK needs to be able to impose and implement sanctions to comply with our obligations under the UN Charter and to support our wider foreign policy and national security goals. Currently, the UK, like other EU Member States, adopts UN and EU sanctions principally through EU legislation, which is brought into effect in UK law by Section 2 of the European Communities Act 1972.
2. The UK has limited domestic power to impose some sanctions, but these are not sufficient to replicate the full range of sanctions currently in force through the UN and EU. Therefore, when the UK withdraws from the EU, we will need new legal powers that are compliant with our domestic legal system. These will enable us to preserve and update UN sanctions, and to impose autonomous UK sanctions in coordination with our allies and partners.
3. Sanctions are an important foreign policy and national security tool. They can be used to coerce a change in behaviour, to constrain behaviour by limiting access to resources, or to communicate a clear political message. As part of a wider strategy they can encourage positive change.
4. Exceptions and licences are a crucial element of existing UN and EU sanctions regimes and it is our intention for this to continue after we leave the EU. Under all current sanctions regimes, there are licensing grounds and exceptions attached to specific measures within regimes. Each differs depending on the type of measure and regime. The Bill will enable us to carve out exceptions to actions prohibited by sanctions, for example humanitarian activity carried out by NGOs in sanctioned countries and to issue general and specific licences for organisations operating in sanctioned countries in certain circumstances. **This will allow us to do more than is currently possible when we create UK autonomous regimes and is an improvement on current practice, where the use of general licences has been limited by EU law.**
5. General licences will allow multiple parties to undertake specified activities in certain situations without the need for a specific licence explicitly naming them and tailored to their particular circumstances. They will enable key priorities, such as humanitarian and development activity, to be carried out with fewer administrative burdens, and provide greater scope for reassuring third parties such as banks and financial service providers that

processing of (licensed) payments related to them are lawful. For financial sanctions, we have previously issued general licences under UK counter-terrorism legislation, but are currently unable to do so for country-specific sanctions established by EU legislation, due to EU law. They are already used routinely in relation to export controls.

6. This document sets out the policy that the Government intends to adopt to exceptions to activities prohibited by sanctions and the grounds for issuing licences, and demonstrates how this is likely to be used in relation to different types of sanctions. Unless otherwise specified, “designated persons” refers to persons, entities or legal bodies subject to sanctions.

Asset Freezes

7. We intend to maintain a similar framework to existing licensing grounds, keeping the UK aligned with European partners and reducing the burden on industry that would result from a substantially different framework.
8. We plan to write exceptions into the regulations setting up the sanctions regimes where issues are foreseeable at the time of drafting, such as for the purpose of delivering humanitarian or development aid. We also intend to use general licences for issues that are urgent; that we could not foresee at the time of drafting; or need to be time-limited. For example, where the Government introduces an unrelated financial services policy that would otherwise be hindered by sanctions law and does not contradict the policy intent of the sanctions regime.

Intended approach towards the most commonly used licensing grounds for asset freezes

9. The licensing grounds below are indicative of how the government intends to use licensing powers, but is not exhaustive to ensure the Government can respond to unforeseeable priorities and international obligations. If there is a need for specific grounds in respect of specific situations that arise, and those situations are not anticipated by the regulations relating to a particular regime, we will legislate for them on a case-by-case basis.

(a) Basic needs

10. EU legislation currently enables licences to be issued to authorise funding for the basic needs of designated persons, and includes a “*necessity test*”. Necessary payments for food, rent or mortgage, medicines, medical treatment, taxes, insurance premiums and public utility charges are covered by this exception. The exception enables us to uphold our obligations under the ECHR by ensuring that designated persons are able to pay for food, medicine, and accommodation, so their basic human rights can be respected. EU sanctions regulations also include a list of payments that can be licensed. These are the same for both individual persons and legal entities.
11. We intend to maintain the necessity test as we think it is the best way to balance the need to respect basic human rights with the purposes of sanctions. We also intend the split individual persons and legal entities into two distinct licencing grounds, as we consider that the basic and essential needs of each are very different. This will provide a firmer basis on which we can set out the parameters of basic needs for entities or businesses in guidance.

(b) Legal fees

12. EU legislation currently enables licences to be issued for the payment of reasonable professional fees or the reimbursement of incurred expenses associated with the provision of legal services. It enables us to uphold our obligations to respect the human rights of designated persons and ensure they have access to justice. We intend to retain this licensing ground

(c) Routine holding and/or maintenance

13. EU legislation currently enables licences to be issued for the payment of fees or service charges for routine holding or maintenance of frozen funds or economic resources, to maintain the value of assets. We will make clear that services provided must be reasonable and not excessive, ensuring value for money. We also propose to include insurance under this licensing ground to ensure assets can be appropriated insured against risk. These are both important to help prevent assets depreciating, which is contrary to the purpose of some

regimes, and which is particularly important for misappropriations regimes, where we would want assets to be returned to whom they belong.

(d) Extraordinary expenses

14. EU legislation currently enables licences to be issued for payments by designated persons that cannot be easily anticipated and are not recurring. We anticipate preserving the ability to do so in the future, however, for this licencing ground to apply, the transaction must be both “*extraordinary*” and an “*expense*”.
15. This could be used in circumstances where there may be a foreign policy or humanitarian priorities for the UK to which we may want to be able to respond to flexibly, but where no other licensing grounds apply. We want to keep licensing grounds tightly focused to maximise the effectiveness of the asset freeze, so intend to set out parameters to avoid the possibility of this licensing ground becoming a “catch-all”, which is not the intention.

(e) Prior court orders

16. This licensing ground is intended to permit the release of funds or economic resources belonging to a designated person or entity if that person is subject to an arbitral decision, a judicial ruling, or an administrative decision prior to the designation. We recognise the principle that persons who have rights to funds under judgments made in their favour and against designated persons, should not have their ability to access a remedy frustrated by sanctions. This should be balanced against the need to ensure that the asset freeze is effective. At present, the EU law licensing ground only relates to decisions made prior to the designation, and does not take account of ongoing litigation at the time of designation.
17. We propose to ensure that judgments made prior to designation and/or resulting from proceedings in place at the time of designation can be enforced. This is because those persons engaged in litigation at the time of designation have already asserted their rights, at a time when they could reasonably expect to be able to enforce their rights. However, to maintain the integrity of the asset freeze, we do not propose at this time to extend this licensing ground to cover proceedings that are initiated after designation. Persons who commence litigation after designation should be aware that there is an asset freeze in place,

and so have no reasonable expectation that they can enforce their rights against frozen funds when they assert their right to start proceedings. We will also clarify in guidance which judgements can be enforced under this licensing ground.

(f) Prior contracts

18. This licensing ground permits the release of frozen funds or economic resources belonging to designated persons to make payment under a contract or obligation that arose prior to a designation, if specific conditions are met. We propose to continue with this licensing ground.

(g) Humanitarian activities

19. This licensing ground would permit the release of funds or economic resources belonging to designated persons, or the use of funds and economic resources, which is otherwise prohibited by financial sanctions, where it is considered necessary for humanitarian purposes. We would have the ability to grant both individual and general licences and would continue to prioritise applications for humanitarian licences where appropriate.

(h) Diplomatic activities

20. The licensing ground permits funds or economic resources to be released, made available, or paid into the accounts of diplomatic/consular missions or international organisations enjoying immunities in accordance with international law, provided that such funds are intended to be used for their official purposes. We propose to continue to do this where it is necessary.

Counter terrorism

21. We intend to operate the same licensing arrangements for domestic counter-terrorism sanctions as we currently do under section 17 of the Terrorist Asset Freezing Act 2010 (TAFA). It is important to remember that domestic counter-terrorism sanctions have a different focus to other sanctions regimes, in that they aim to manage the risk of terrorist financing, predominantly in cases of individuals located within the UK, to prevent terrorist

financing risks manifesting within the UK. Greater flexibility in licensing better enables us to manage the terrorist financing risk posed by each licence request.

Restrictions on financial activities and investment

22. Some sanctions regimes contain prohibitions on financial activities and investment, as well as on the ownership and control of entities. In general, we intend to continue to employ the same types of licensing grounds and authorisations as those in current EU regulations, for example:

- a. *Prior contracts*: In some cases, the government may wish to exempt or issue licences for obligations under existing contracts to limit undue consequences for businesses.
- b. *Civilian projects*: Licensing grounds to allow for investment, ownership or control of entities undertaking projects exclusively for the benefit of the civilian population.

Restrictions on the export or movement of goods and the provision of services

23. Sanctions regimes contain a wide variety of prohibitions on the export or movement of goods. Regimes also contain prohibitions on the provision of services associated with these goods, as well as on the provision of other services. The specific exceptions and/or licensing grounds will depend on the type of goods or services that each prohibition covers, as well as on the context of the regime itself.

24. In general, we intend to continue to employ the same types of licensing grounds as those in current EU regulations. The main categories of licensing grounds are:

- a. *Humanitarian or development goods and services*: Licensing grounds for vital supplies, such as medical equipment, or the provision of services, such as technical assistance, where the restriction of such goods and services would have an adverse humanitarian impact.

- b. *Humanitarian or development organisations and international missions*: Licensing grounds to allow the work of humanitarian organisations and international missions to continue.
- c. *Health and safety or the environment*: Licensing grounds to allow for the provision of goods and services where there is the potential for a serious impact on human health and safety or the environment.
- d. *Civilian use*: Licensing grounds to allow for goods and services that are exclusively for civilian use.
- e. *Diplomatic*: Licensing grounds to allow supply of UK or other diplomatic missions protected by international law.
- f. *Peacekeeping missions*: Licensing grounds to allow supplies for United Nations or other peacekeeping missions.
- g. *Media*: Licensing grounds to ensure sanctions do not restrict journalists' access to a sanctioned destination, by, for example, allowing the purchase of petrol for vehicles or the transport of protective clothing.
- h. *Prior contracts*: In some cases, the government may wish to exempt or issues licenses for obligations under existing contracts, in order to limit undue consequences for businesses.

Restrictions relating to transport

25. After the UK leaves the EU, the Department for Transport will have a bigger role than currently in sanctions policy and enforcement. We currently envisage transport licences in a number of circumstances, for example, to allow the entry into port of a designated vessel in the case of emergency (e.g. if a ship is damaged and in need of repair); if it has been decided in advance that entry would be for humanitarian reasons; or to allow for inspection.

26. The Department for Transport is currently developing guidance in this area, which will be published in due course.

Travel bans

27. The Bill will provide a power to exempt individuals or a group of individuals from the effects of a travel ban. This provides the flexibility to mitigate the effects of a travel ban either in specific prescribed circumstances, or on a case-by-case basis, for example to allow an individual to travel to attend an international conference convened by an intergovernmental organisation. This can be done either through an exception in the regulations or as directed later by the Secretary of State.

28. The exceptions provision will be used in circumstances that are either foreseeable or have been agreed with international partners in advance, for example, for humanitarian or religious reasons, to take part in peace talks, or to give evidence at a trial. The exceptions provision may also be used where there is an international law obligation, for example if the UK is hosting an international inter-governmental organisation or an international conference convened by, or under the auspices of, the UN.

29. Unlike an exception, a direction would be a flexible mechanism, which could contain conditions, be granted subject to certain criteria, be of a finite duration, and be subsequently varied, revoked or suspended. This would allow the Minister to direct that an individual be exempt from the effects of a travel ban in circumstances which were either not foreseeable at the time that the sanctions regulations were created, or were not agreed with international partners at the time the sanctions regime was negotiated.

30. An individual to whom an exception or direction applied would be given either temporary admission / bail or a form of leave for a specified period to allow them entry.

31. We will not have the same discretion for the UN designations as we are under an international obligation to implement them. The process for an exemption to a UN designation will remain the same. The UK will consider any request for an exemption to a travel ban on a case-by-case basis. If the UK agrees that a person should be allowed to travel to the UK it will apply to the UN for an exemption.

National Security and Serious Crime

32. In relation to activity carried out for the purposes of national security or for the prevention or detection of serious crime, the Bill allows for exceptions to prohibitions in the regulations. This will ensure that UK sanctions legislation does not inhibit legitimate behaviour.