



HM Government

Public consultation on the United Kingdom's future legal framework for imposing and implementing sanctions

Government response



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Government response

**Foreign and Commonwealth Office
HM Treasury
Department for International Trade**

Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty

August 2017

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Introduction

I.1 The UK needs to be able to impose and implement sanctions in order to comply with our obligations under the United Nations (UN) Charter and to support our wider foreign policy and national security goals. Many of our current sanctions regimes are established via powers in the European Communities Act 1972 (ECA) so we will need new legal powers to replace these once the ECA is repealed. It is not possible to achieve this through the European Union (Withdrawal) Bill, as it will not provide the powers necessary to update, amend or lift sanctions after exit day in response to fast moving events. This inability would leave us in breach of our international obligations and unable to work effectively with our European and international partners to tackle shared challenges.

I.2 On 21 April 2017 the government launched a nine week consultation, which closed on 23 June 2017, on the proposed legal powers to enable the UK to impose and implement sanctions once we have left the European Union (EU). On 21 June 2017 the Queen's Speech confirmed the government's intention to introduce a Sanctions Bill during the current Parliamentary session.

I.3 The White Paper was published on gov.uk and was also sent out by email to over 30,000 individuals and companies. Government officials held a number of roundtables to consult with key sectors including representatives from financial services, the legal profession, NGOs, industry professionals, and representative bodies. Officials also held informal consultations with international partners.

I.4 There were thirty-four written responses to the consultation. These, together with the views expressed during the roundtable events, form the basis of this consultation response. We are grateful for the written responses and the participation in the roundtable events.

How this document is structured

I.5 The White Paper was divided into chapters, most of which contained one or more questions. The roundtable events followed the same structure, and this response is arranged in the same way. The first two chapters of the White Paper have not been repeated here, as these set out background on the political context and the UK's current approach to sanctions, rather than posing questions about the future sanctions framework.

I.6 Responses to the questions that were asked have been analysed and collated into broad themes. These responses are listed according to the section of the original White Paper to which they most closely relate.

I.7 Every comment was considered individually. Many of them covered similar points; where that was the case we have only included one example of the general point, and given one thematic response. However, where specific questions or issues were raised which warranted a longer response, we have included them individually.

I.8 Statistics on the responses have been calculated using only the written responses we received before the consultation closed, listed at Annex A. Comments made during roundtables have been included and responded to in narrative form, but do not form part of the statistical data.

I.9 Respondents also raised a large number of points which were outside the scope of the consultation, focused on the policy goals behind sanctions in general and behind specific sanctions regimes. We have not captured those points in this response, but,

where relevant, we will take them into consideration when making future decisions about our sanctions policy.

I.10 This response should be read with the original White Paper, which is available on www.gov.uk/publications.

I.11 The respondents to the consultation are listed at Annex A and the industries/sectors that participated in the roundtables are listed at Annex B. All respondents and participants gave us their comments on a non-attributable basis, as was set out in the consultation criteria. We have not attributed views discussed in this response.

I.12 The government will continue to engage regularly with industry stakeholders on issues around implementation and enforcement of sanctions, through our existing channels.

1

Proposed powers to designate individuals and impose financial and trade restrictions

The first section of the White Paper explained the powers the government proposes to include in primary sanctions legislation and the types of sanctions measures the primary legislation would enable. It also set out the proposed jurisdiction and territorial extent of the UK's sanctions regimes.

We asked the following question:

Consultation Question 1. Are there further powers that you think the UK Government needs at its disposal?

1.1 Of those who responded to this question, the majority (62%) made comments which generally supported the proposed powers and did not think the government needed additional powers to those set out in the White Paper. Several, including participants in roundtables who supported the proposed powers, referenced their support as contingent upon the proposed powers replicating the powers available to the government whilst an EU member state. The remainder of respondents (38%) suggested further powers the government should consider, which are set out below.

A power to impose interim sanctions

1.2 Three respondents suggested the government introduce a power to impose interim sanctions, based on a lower threshold for designation than for “permanent” sanctions. Two respondents stated that “permanent” sanctions should require a threshold of “reasonable grounds to believe”, and one respondent suggested “reasonable grounds to believe, and necessary”, but recognised that this would restrict the ability of the government to propose sanctions in response to emerging events, particularly when it was doing so as part of a co-ordinated international response. They proposed using interim sanctions with a threshold for designation of “reasonable grounds to suspect” in these circumstances where quick action was necessary.

Our response

1.3 Having taken account of the consultation responses under Question 3, the government considers that “reasonable grounds to suspect” is the correct threshold to adopt, together with a package of procedural protections that will be contained in the bill (see Chapter 2, Question 3). We do not believe there is a need for a power to impose interim sanctions. The “reasonable grounds to suspect” threshold provides the agility required for effective sanctions policy.

1.4 We have set out fully why we only intend to introduce one threshold for designation under Chapter 2, Question 3.

Additional activities to target

1.5 There was support from two respondents for sanctions to target those responsible for a broader range of activities such as slavery, human trafficking, religious persecution, poor working conditions, cyber crime, and drug-related crime.

[Our response](#)

1.6 The government proposes to use sanctions where the UK is required to do so under its international obligations, or where appropriate for the purposes of national or international security, or for the advancement of the UK's other foreign policy objectives. Therefore most of the activities listed by respondents are activities that could potentially be targeted using sanctions.

1.7 As it is not possible to foresee all of the foreign policy situations that might necessitate sanctions in the future, we wish to maintain flexibility to use sanctions in appropriate circumstances. Under the government's proposals, each time the government wishes to establish a sanctions regime it will table secondary legislation in Parliament, including details of the activities that the sanctions are trying to address.

[Extension to the Overseas Territories and Crown Dependencies](#)

1.8 One respondent suggested the UK Government should legislate directly for all Overseas Territories and Crown Dependencies to ensure consistency of application, and to enable a more rapid response to new sanctions regimes.

[Our response](#)

1.9 The UK has responsibility for the external relations and national security of Overseas Territories and Crown Dependencies and we will continue our policy of ensuring that the Overseas Territories and Crown Dependencies apply sanctions. We are consulting with the Overseas Territories and Crown Dependencies on how best to achieve this end. We will include a power in the Sanctions Bill for the UK to continue to legislate directly where appropriate.

[Flexible power to impose additional sanctions measures](#)

1.10 One respondent suggested the government should take a flexible power to impose types of sanctions measures not currently foreseen, to operate in a similar way to Section 6 of the Export Control Act 2002.

[Our response](#)

1.11 The government agrees that sanctions need to evolve and be tailored to the specific activities they aim to address. The Sanctions Bill would specify the main measures that may be included in a specific sanctions regime but would also give the government a degree of flexibility to suggest other measures when it creates or amends a specific sanctions regime through secondary legislation. This flexibility will allow the government of the day to impose sanctions measures appropriate to the circumstances.

1.12 Section 5 of the Export Control Act 2002 creates certain limitations on the items that can be subject to control under the Act, unless those controls are applied temporarily (for a maximum of 12 months) in which case the limitations do not apply (Section 6 of the Act refers). In order to maintain our ability to impose trade sanctions, we cannot limit our powers with an equivalent to Section 5; therefore we will not require an equivalent of Section 6.

[Designation overseas](#)

1.13 One respondent suggested that, where a terrorist designation has been made by another state or international organisation, the new legislation should provide that the UK will consider designating that person/entity under a terrorism regime in the UK. Another

respondent opposed the government designating an individual based solely on them being sanctioned by another country.

[Our response](#)

1.14 The government has an international obligation to implement all UN sanctions, including counter-terrorism designations. We do not intend to create an obligation on the government to assess the possibility of making a counter-terrorism or other sanctions designation in response to every designation made by another country. However, there will certainly be occasions on which we wish to act in concert with allies. We will use the powers in the bill, as appropriate, to align UK designations with those of international partners, where this supports our security and foreign policy objectives. In such cases, the evidential grounds for designation will be assessed independently by the UK in accordance with the threshold established in the bill.

[Additional comments](#)

1.15 Some respondents made comments outside the scope of question that was asked in the consultation. These comments are captured below.

[Extraterritoriality](#)

1.16 Several respondents urged the UK not to expand the jurisdiction of its sanctions. Others, including participants at roundtables, asked for clear guidance on the territorial application of UK sanctions. One respondent expressed concerns about a lack of clarity relating to the concept of a UK nexus, and concerns about the extent to which the nexus might apply.

[Our response](#)

1.17 There is no plan to expand UK sanctions beyond the UK's current reach of sanctions. The bill would set out how UK sanctions will apply where there is a link to the UK or 'UK nexus'. The government will also provide clear guidance on this issue.

[Blacklisting](#)

1.18 Participants at a roundtable made a suggestion to blacklist entities who have deliberately and consistently breached sanctions, to prevent them being able to bid for government contracts, and for sanctions breaches to be declared as offences under the Serious Organised Crime and Police Act 2005.

[Our response](#)

1.19 The Policing and Crime Act 2017 increased criminal and civil penalties for breaches of financial sanctions. The government believes that these penalties are sufficient.

1.20 The suitability of applicants for government contracts can be assessed through procurement processes.

2

Proposed procedures for exercise of powers

The White Paper explained the procedures for establishing a sanctions regime and designating individuals or entities under that regime. This included the broad types of activity that would be targeted, a proposed legal threshold for designating individuals and entities under sanctions regimes, and the powers to suspend and lift sanctions regimes.

We asked the following questions:

Consultation Question 2. Should the legislation capture domestic and international terrorist activity as a behaviour that the sanctions powers should target?

2.1 Of those who responded to this question, 55% answered yes, 6% answered no, and 39% made wider ranging comments on the question. We have addressed detailed comments and questions below.

Definition of terrorism

2.2 Several respondents stated that the definition of ‘terrorism’ needed to be clarified in the bill.

Our response

2.3 The government agrees that it is important the bill includes clear definitions, and proposes to use definitions that are in line with existing legislation, where definitions are required.

Interaction with existing legislation

2.4 Several respondents who supported the proposals also requested further details of how the new legislation would interact with existing counter-terrorism legislation, in particular the Terrorist Asset Freezing etc. Act 2010 (TAFAs). One respondent argued that TAFAs already gives the government sufficient powers, and therefore did not endorse including counter-terrorism sanctions in the new legislation. Other respondents suggested that there should be broader powers to capture those associated with terrorism.

2.5 In addition, some respondents suggested that all terrorist powers and legislation should be consolidated.

Our response

2.6 The consolidation of all counter-terrorism powers is beyond the purpose of the Sanctions Bill, the primary objective of which is to allow the government to implement UN sanctions and impose UK autonomous sanctions after the UK leaves the EU.

2.7 The Sanctions Bill would sit alongside the other extant counter-terrorism legislation, providing specific counter-terrorism powers in relation to sanctions. The government believes it is necessary to include some counter-terrorism powers within the Sanctions Bill to ensure that counter-terrorism sanctions remain a useful tool and an effective way to deal with the threat of terrorism. Having a consistent evidential threshold for all UK sanctions would improve the coherence and clarity of our sanctions framework as a whole.

Extraterritoriality

2.8 Clarity was requested on extraterritoriality, with a preference for consistency with the Home Office's recent counter-terrorism guidance.

Our response

2.9 The government has addressed and clarified the policy on extraterritoriality in Chapter 1, Question 1 of this document. Our approach will be consistent with the Home Office's counter-terrorism guidance.¹

Consultation Question 3. What are your views on the proposed threshold for individual designations?

3.1 57% of respondents who addressed this question believed the threshold of "reasonable grounds to suspect" an individual or entity meets the criteria for designation was appropriate for all designations. 24% expressed specific concerns about this threshold, and the rest of the respondents made other comments and suggestions. Participants at roundtables had mixed views, with some believing "reasonable grounds to suspect" was appropriate, whilst others thought it was too low a threshold.

3.2 Several respondents proposed an alternative threshold of "reasonable grounds to believe". There was concern that reasonable suspicion could be formed on the basis of insufficient evidence, or that "reasonable grounds to suspect" was too low a threshold given the impact of sanctions designations. One respondent proposed a further alternative of "reasonable grounds to believe and necessary for the protection of national or international security".

3.3 Two respondents argued for different thresholds depending on the circumstances of the designation. They suggested a higher threshold or a consideration of proportionality for less urgent designations or when designations were being reviewed. One suggested that in these cases the government would have time to collect sufficient evidence to support a higher threshold.

3.4 One respondent proposed separate thresholds for UN and non-UN sanctions. They argued that the UK should not be able to support a designation in the UN Security Council unless satisfied there were "reasonable grounds to believe" an individual or entity met the designation criteria. For non-UN sanctions they proposed a two-limb test of (1) "reasonable grounds to believe" and (2) that the designation is necessary for the purposes of the relevant sanctions regime.

3.5 A further respondent argued that the two-limb test in Terrorist Asset Freezing etc. Act 2010 (TAFAs) (reasonable belief and necessity) should be maintained, as it had recently been approved by Parliament.

Our response

3.6 Having taken account of the consultation responses, we remain of the view that the "reasonable grounds to suspect" test is the appropriate threshold. Importantly, the threshold would only be met if there is sufficiently solid evidence to enable the government to form a reasonable suspicion. As acknowledged by the EU General Court, "reasonable grounds to suspect" can meet the requirement for a listing to have a "sufficiently solid

¹ This guidance can be found at <https://www.gov.uk/government/publications/operating-within-counter-terrorism-legislation>.

factual basis” (the standard applied by the EU courts)², provided that those grounds are supported by sufficient information or evidence.

3.7 Having a similar threshold for imposing sanctions as international partners would facilitate international coordination of sanctions policy. A coordinated policy is more likely to achieve its policy aims and coherence across jurisdictions would help mitigate the risks of circumvention. The “reasonable grounds to suspect” test allows flexibility to advance UK foreign policy. The government agrees with several respondents who suggested that an alternative “reasonable grounds to believe” test would limit the government’s scope to act swiftly in response to international crises (see Chapter 1, Question 1).

3.8 The bill would also include protections to hold the government to account for its use of sanctions designation powers, such as the right of individuals and entities to challenge their listing by applying to the government or to the courts, and the requirement for the government to review sanctions listings (detailed in Chapter 3 of this document). Further, the government will operate in accordance with the Human Rights Act when making decisions to designate.

3.9 Introducing different thresholds depending on the circumstances of the designation or at a review stage would, we believe, introduce confusion. It would not be fair on designated entities to introduce different thresholds based purely on the length of time the government had to consider their designation. We also do not consider it appropriate to make a distinction in the test applied between ‘short-term’ and ‘long-term’ sanctions; all sanctions are intended to be temporary.

3.10 The threshold for designation in the bill would have statutory force in relation to the Secretary of State’s decisions to designate persons or entities under UK autonomous sanctions regimes. The bill would, however, provide separately for UN sanctions, which the UK is obliged to implement under international law. As a permanent member of the UN Security Council, the UK will be involved in any Council negotiations on whether to impose UN designations. In line with our current practice, we will continue to apply the “reasonable grounds to suspect” threshold when deciding whether to support UN designations.

Additional comments

3.11 Some respondents made comments and suggestions that were not directly in response to the consultation questions asked. These comments are captured below.

Identifiers of designated persons

3.12 Two respondents had no objection to the proposed threshold but argued the legislation should require the government to hold specific details of an individual or entity (including addresses, nationality, date of birth and all known aliases) before being able to make a designation. They believed this would help institutions implement sanctions more effectively.

Our response

3.13 The government acknowledges that the lack of specific details to identify individuals or entities can be a bar to the effective implementation of sanctions by financial institutions and others. We will always seek to incorporate as many identifying details as possible for individuals or entities designated under UK autonomous sanctions. However, it would not be appropriate to introduce through primary legislation an obligation to provide specific

² (Mohammed Al-Ghabra v European Commission, Case T 248/13).

identifying details, as this could limit the government's flexibility in responding swiftly to international crises.

3

Review and challenge mechanisms

The White Paper made proposals for internal, administrative reviews of sanctions regimes and a mechanism for designated persons to challenge their designation before the courts. The challenge mechanism would include a closed material procedure to allow the government, in certain cases, to rely on sensitive material to defend designations.

We asked the following questions:

Consultation Question 4. Should the government review non-UN sanctions regimes after a fixed period as well as in response to political developments?

4.1 A significant majority of 89% said the government should conduct reviews of non-UN sanctions after a fixed period, whilst 11% did not think this was necessary.

4.2 The respondents who believed the government should conduct periodic reviews of sanctions, as well as reviewing them in response to political developments, proposed a variety of review mechanisms. Some supported internal reviews, others did not comment on the exact review process. Several respondents argued that those people reviewing decisions should be independent of those people involved in the initial designation decision. There were also a range of review frequencies proposed, from annually to every three years.

4.3 Of the respondents who did not support regular reviews of regimes, one group of stakeholders suggested reviewing regimes in response to political developments. One respondent suggested regimes should also be reviewed in accordance with a UN peace support strategy, where appropriate. Another respondent believed the government should focus their resources on gathering evidence to support a higher threshold for designation, rather than on regular reviews. They believed that allowing designated persons to request a reassessment of their designation was sufficient.

Our response

4.4 We want to ensure that sanctions remain relevant and appropriate and agree with the vast majority of respondents who felt that reviews are necessary. We believe that regular review would ensure that sanctions regimes remain properly targeted and that there are clear incentives for changes in behaviour by designated individuals and entities.

4.5 Having taken account of the responses to this question, the government intends to review on an annual basis whether each UK autonomous sanctions regime remains appropriate. In addition, we envisage that every individual listing under each autonomous UK regime would be subject to review by the government at least every three years.

4.6 The government would have the further ability to review UK autonomous sanctions regimes in response to significant events.

4.7 The government would apply the same legal threshold to reviews as to original designations (see Chapter 2, Question 3).

4.8 UN sanctions regimes and the individual listings under them will not be subject to regular unilateral reviews as they are agreed at the UN level, and the UK does not have the unilateral power to suspend or lift them. We will keep them under review as part of our

role in the UN Security Council. However, designated persons will still have the ability to challenge UN sanctions listings (see Chapter 3, Question 5).

Consultation Question 5. What are your views on the proposed challenge mechanism?

5.1 26% of respondents who directly addressed this question were content with the proposals and offered no further comment on them. 3% of respondents said the proposals were insufficient. The other 71% who responded offered general comments. We have summarised and responded to the main relevant themes of these comments below.

Challenge process: legal principles

5.2 Several respondents argued that only a full merits appeal process was sufficient, believing that the court should be able to reach its own factual findings based on the available evidence. They argued that this would match the current position in the EU courts. However, another respondent believed that a judicial review hearing would suffice.

5.3 Several respondents and roundtable participants expressed concern about the proposal to require designated persons to provide new information in order to request a review. Other suggestions were that it should also be possible to make an application which identified underpinning evidence as misinformation, or one that challenged the government's reasoning as flawed.

Our response

5.4 Those subject to UK sanctions would be protected by the ability to request an administrative reassessment of the government's decision at the time they are designated or re-designated. They would be able to request an administrative reassessment at any other time, if they are able to put forward relevant information, evidence or arguments that have not previously been considered. We believe that this provides sufficient safeguards, whilst preventing repeated requests that raise nothing new. This ability to request an administrative reassessment would also apply to UN sanctions designations.

5.5 Designated persons would also be able to challenge their designation in the High Court by way of a statutory challenge procedure applying judicial review principles. This is consistent with provisions for challenges in many other areas relating to UK national security.

5.6 The government believes a procedure applying judicial review principles is the appropriate procedure for challenges as it enables the court to properly determine the legality of the decision, whilst ensuring that it can consider all of the facts necessary to reach its judgement. We do not consider it appropriate or necessary for the court to be entitled to substitute its assessment of the policy reasons for designation of a person, as would be implicit in a full merits review.

5.7 The challenge process forms part of a wider system of safeguards, such as regular reviews of sanctions (as described fully under Question 4), to ensure the powers in the bill are used responsibly.

Closed material procedures

5.8 Three respondents argued that the government should ensure the use of closed material procedures was limited as far as possible. Two respondents argued that the government should ensure the use of closed material procedures did not impact the quality of identifying information available to financial institutions. There was a suggestion to

develop a mechanism for sharing sensitive information with financial institutions. One respondent also recommended limiting the use of Special Advocates.

[Our response](#)

5.9 Sensitive intelligence material may be needed in order to support listings. Accordingly, a mechanism is required in order to enable the government to rely on such information before the courts. Special Advocates are lawyers who have undergone the necessary security vetting procedure, are able to represent designated persons in closed hearings, and are a necessary part of any closed material procedure.

5.10 We have reflected carefully on the feedback we have received in this area. Our intention remains to include provisions in the bill to enable the use of closed material procedures as proposed in the White Paper. However, it would be our policy to limit the use of such procedures to cases where we believe it is necessary.

5.11 Due to the sensitivity of some of the material used as evidence to designate individuals, the government is unable to disclose any of this information to the financial sector or other interested parties. However, we would always provide an unclassified statement of reasons for designation.

[Independent reviewer](#)

5.12 Several respondents felt that there should be an independent reviewer or Ombudsperson for sanctions. A number of potential areas of focus were put forward for this person: assisting designated persons; assisting the government; and making reports to Parliament.

[Our response](#)

5.13 As set out above, those subject to UK sanctions would be protected by the ability to request an administrative reassessment of the government's decision, as well as to challenge their designation in the High Court. The government believes this provides sufficient procedural protection for designated persons and is consistent with the approach followed by the EU and by other international partners with autonomous sanctions powers. Therefore we are not proposing to establish an independent reviewer or Ombudsperson focused specifically on UK sanctions. We do see a case for improving the way designations are agreed and reviewed at the UN level, building on the good work of the UN Ombudsperson for the ISIL (Da'esh) and Al-Qaida Sanctions Committee.

[Safeguards](#)

5.14 A number of respondents felt that the review process should feature additional safeguards that have not been covered above. One suggestion was to provide prior notification (where possible) of the reasons for designation. It was recognised that this would not always be possible in initial designations where there was a risk of asset flight, but the respondent argued that this should be the standard for all re-designations. Another suggestion was to introduce a short time limit within which the review process must be completed.

[Our response](#)

5.15 The government would be unable to give prior notification of the reasons for a designation because of the risk of asset flight. We would, however, provide a statement of reasons after the initial designation.

5.16 Following requests to reassess designations, the government would endeavour to complete the reassessment process swiftly.

Licensing reassessments

5.17 Several respondents suggested that any challenge mechanism should also include challenges to licensing decisions.

Our response

5.18 We have detailed our response on the issue of challenges to licensing decisions under Chapter 4, Questions 6 and 7.

4

Implementation

This chapter of the White Paper set out the reporting obligations that would be imposed on businesses to ensure compliance with sanctions. It also contained a high-level description of the licensing regimes for financial and trade sanctions respectively.

We asked the following questions:

Consultation Question 6. Are the proposed licensing powers for financial sanctions fit for purpose?

6.1 53% believed the proposals in the White Paper were fit for purpose, 37% said they were not fit for purpose and 10% neither supported nor opposed the proposals but proposed changes from the current system.

6.2 Some respondents replied to questions six and seven jointly. Given the overlap between these two questions, we consider that these two sections should be read alongside each other.

6.3 Generally respondents called for broad powers, and a number recommended that the Office for Financial Sanctions Implementation (OFSI) should have more flexibility in its ability to issue licences, and be able to issue general licences. There was a suggestion that licensing grounds should be as broad as those set out in the EU Best Practices paper on sanctions published in 2015. There were mixed views on licensing derogations, and whether they should be included in primary or secondary legislation.

Our response

6.4 We are broadening the licensing powers available to OFSI to improve efficiency and flexibility. This is so licence provisions can be appropriately tailored and clearly defined to meet specific political, foreign policy or national security objectives, whilst ensuring we fulfil our human rights obligations. We intend to create licensing grounds that are broad in some circumstances and stricter in others. Therefore we have suggested a new framework as an alternative to the one included in the EU's Best Practices on Sanctions 2015.

6.5 We intend to create a power enabling general licences to be introduced in certain circumstances to authorise specific activities, for example to facilitate humanitarian aid to regions affected by sanctions.

6.6 The government would also take a power in the bill to create more specific licensing grounds which, for example, would enable persons affected by sanctions to pay for their basic needs, access justice, and make payments under contracts and judgments. These would be set at a level which respects the basic rights of those persons and are appropriate in view of the purpose for which sanctions are imposed.

Additional comments

6.7 Some respondents made comments which did not directly answer the consultation question. These comments are captured below.

Guidance

6.8 There was a clear desire from respondents for greater clarity and more guidance to be issued by OFSI on the licensing system for financial sanctions. It was also suggested

that OFSI and the Export Control Joint Unit (ECJU) should publish consolidated guidance when the new legislation comes into effect.

[Our response](#)

6.9 We recognise the call for clear and consistent guidance. Accordingly, the bill would provide for the government to issue guidance on the content and implementation of sanctions. The government is committed to ensuring that this guidance would be of a high standard. We will use the feedback received in this area when developing the guidance, and keep it under review once it has been issued.

[Reporting obligations](#)

6.10 The most common concern was that the reporting obligations set out in the White Paper appeared to have broader application than is current practice. Respondents and roundtable participants wanted clarity. One requested that reporting obligations should be more restricted than applying to “anyone”, and that retrospective reporting on customers over the previous five years should not be required.

[Our response](#)

6.11 We believe that the obligation to report should be broad to ensure compliance in all sectors. This is in line with our current approach; EU guidance states that the responsibility for such reporting extends to “everyone”. A requirement to report breaches of financial sanctions retrospectively allows sanctions to be implemented in a robust manner.

6.12 The reporting obligations set out in the consultation would apply only to financial sanctions – there is no intention to apply them to trade sanctions. Trade sanctions would have separate reporting requirements. The powers to impose such requirements will be broadly in line with those in the Export Control Act 2002.

[Licensing process](#)

6.13 Several respondents raised issues around the process of licensing. One respondent suggested there should be a single application process for licences for both financial and trade sanctions. They suggested that the electronic licensing system (SPIRE) used for export licensing should be extended to cover financial licences granted by OFSI, and that licensing targets should be set and a performance dashboard regularly published.

[Our response](#)

6.14 The detailed comments made on the licensing process are outside the scope of this consultation, which focuses on the proposed powers for sanctions. However, where relevant we would consider the feedback we have received when looking at improving the licensing process in future.

[Identifying listed or licensed entities](#)

6.15 One respondent suggested an additional requirement for licensed entities to have to disclose that status to financial institutions before seeking any services from them. At one of the round tables, there was a similar suggestion for an additional requirement for listed entities to declare their listed status before entering into a contract with insurers.

[Our response](#)

6.16 The names of those currently subject to sanctions are already published in the “Consolidated list of financial sanctions targets in the UK”. We are also able to verify the

authenticity of licences for the parties named on them. The government does not intend to introduce further disclosure requirements.

Licensing reviews

6.17 There were suggestions that the government should review licences annually, above and beyond provision for legal challenges against licensing decisions based on judicial review principles.

Our response

6.18 Instead of a fixed annual review, OFSI intends to review its licensing procedures on an ongoing basis to ensure that they are robust and efficient. OFSI also sets expiry dates for licences which ensure that they are active for an appropriate period of time.

6.19 The proposed mechanism to challenge licensing decisions would continue to be a judicial review. We believe that this provides an adequate judicial safeguard for people who want to challenge a licensing decision.

Consultation Question 7. Are the proposed licensing powers for trade sanctions fit for purpose?

7.1 50% responded yes, 6% responded no, and a further 44% neither supported nor opposed the proposals, but proposed other changes to the current system.

7.2 Some respondents replied to questions six and seven jointly. Given the overlap between these two questions, we consider that these two sections should be read alongside each other.

7.3 Respondents were generally in favour of broad licensing powers in primary legislation, rather than narrowly defined ones. One respondent specified that broad powers should allow general and project-based licences to be introduced. One respondent noted that broad powers should be balanced out by a statutory right of appeal by way of re-hearing for licensing decisions. Another respondent argued that judicial review was an insufficient recourse for challenges to licensing decisions.

7.4 Proposals for changing or improving the current system of trade licensing mainly centred on greater clarity and coordination, rather than the licensing powers themselves.

Our response

7.5 We would be looking to take a broad licensing power in the primary legislation to provide the flexibility that we need, including the power to use general licences. The broad licensing power would be applied more specifically in each statutory instrument made under the legislation. This would give us the necessary scope to tailor licensing to each particular sanctions regime.

7.6 As set out above, the government does not agree that a statutory appeal would be appropriate for licensing decisions. While it is right for the court to continue to judicially review such an administrative decision (as is the case for other licensing decisions), we do not consider it is necessary for the court to take that decision themselves.

The government will strive for clarity and coordination to ensure that the licensing system is user-friendly, and we are committed to ensuring that we publish high quality guidance.

Additional comments

7.7 Some respondents made comments outside the scope of the consultation question. These comments are captured below.

Coordination

7.8 Several respondents raised the importance of continued coordination with the EU on sanctions following Brexit. One respondent asked that licences be mutually recognised, in order to avoid the need for duplicate licences for organisations or individuals based in both jurisdictions.

Our response

7.9 Sanctions are most effective as a foreign policy tool when delivered by a number of countries simultaneously. We expect to continue working closely with the EU and international partners in future on sanctions, including on licensing and other implementation-related issues.

Consolidated criteria

7.10 One respondent pointed to a perceived lack of clarity on how the consolidated EU and UK criteria on arms exports will change following the UK's exit from the EU, and what their future legal status will be.

Our response

7.11 Common Position 2008/944/CFSP is given effect in the UK through the Consolidated EU and National Arms Export Licensing Criteria. This has the status of guidance given under Section 9 of the Export Control Act 2002. After the UK leaves the EU, the current criteria would remain in force until such time as new or amended guidance is announced to Parliament.

Identifying licensed entities

7.12 One respondent proposed a searchable online system showing whether entities or individuals had been granted licences.

Our response

7.13 Disclosure of this information would be likely to prejudice the commercial interests of the companies who have applied for licences. Licence applications and the documents associated with them contain commercially sensitive information (including, in particular, sensitive information about the applicant, the goods or services and the destination or recipient) that could be of use to competitors. Disclosure of this information would reveal details of the markets in which companies are operating and possibly details of commercial opportunities that are still available. We are therefore not going to introduce disclosure requirements for entities with trade licences, although this may be reviewed again in future.

7.14 The government will always act in line with its data protection and freedom of information obligations.

5

Enforcement

This chapter of the White Paper explained how the government currently enforces sanctions regimes, including the penalties for breaches and the bodies responsible for enforcement, and proposed to maintain the current system as far as possible. It also set out proposals for an additional power to improve the enforcement of sanctions by allowing the government to seize funds and assets in order to freeze them.

We asked the following question:

Consultation question 8. What are your views on the extent of the government's proposed additional power to seize funds and assets in order to freeze them?

8.1 61% of the respondents who directly addressed this question supported the proposal. Some caveated this support as subject to clear guidance on how it would be used and appropriate legal safeguards against its abuse.

8.2 The other 39% were unclear why the government needed this additional power. It was suggested that powers were already contained in existing legislation, specifically the Proceeds of Crime Act 2002 and the Criminal Finance Act 2017. There was a request for further guidance and an explanation of why this power was needed, if it was not covered by existing legislation. Some respondents suggested that there should be a further consultation following the publication of this additional information.

Our response

8.3 The proposed power in the Sanctions Bill to seize funds and assets in order to freeze them is not covered by existing legislation. There are some key differences with existing legislation that are set out below.

8.4 The Proceeds of Crime Act 2002 (POCA) and the Criminal Finances Act 2017 (CFA) apply to funds obtained through criminal conduct, as well as funds intended for use in unlawful conduct. Assets (including funds) that are subject to sanctions may not have been obtained through criminal conduct, or be inherently unlawful in nature. Through the Sanctions Bill, we intend to create the power to enable law enforcement to seize and detain assets that are subject to an asset freeze whether or not they have been obtained through, or are intended for use in, unlawful conduct, without breaching the asset-freeze itself.

8.5 Given that POCA is about confiscation of funds, it also requires a court judgement before funds can be frozen with a view to confiscation. However, no funds are confiscated as part of an asset freeze; they are just frozen with no change in their ownership. Given the need to avoid delay when dealing with assets that should be frozen (so that they are not dissipated), and as no question of confiscation arises, there is no need for a court to make such a prior order.

8.6 We intend to take a new power to seize and detain funds and assets that are subject to an asset freeze. We want to ensure that the implementation of sanctions in the UK following our withdrawal from the EU is full and robust, so we intend to include this proposed power in the bill. Having raised this issue as a specific question in the White Paper and clarified our plans in this document, we do not see a need for further consultation.

Additional comments

8.7 Some respondents made comments outside the scope of the consultation questions which related to other parts of this chapter. These comments are captured below.

Disclosure Notices

8.8 One respondent suggested the government should enhance investigative powers for the enforcement of sanctions. In particular, they advocated the greater use of disclosure notices.

Our response

8.9 We are taking broad information gathering powers within the Sanctions Bill to give the government the ability to gather information to aid investigations. We are continuing to develop the powers that would be contained in the bill, and will ensure that they enable the government to compel the production of information where it is appropriate to do so.

6

Miscellaneous powers

The White Paper then set out some additional miscellaneous powers to be contained in the legislation, including anti-money laundering provisions, a clause limiting liability and a power to share information to support the implementation and enforcement of sanctions.

We asked the following question:

Consultation question 9. What are your views on the design and extent of the proposed “no-claims clause”?

9.1 94% of the respondents who directly addressed this question supported the proposal to limit liability for those complying with sanctions, although some did so with caveats. There was also strong support for the proposed “no-claims clause” from participants in roundtables. No respondents opposed this proposal, although some respondents offered general comments which we have addressed below.

9.2 Some respondents were concerned that the limitation of liability should be restricted to acting in “good faith” to avoid encouraging de-risking by financial institutions, while others thought the clause should be broader to cover all potential activity related to sanctions compliance. There was a consistent demand for clear guidance.

9.3 One respondent asked for clarification of what activity this clause would cover.

9.4 Some respondents argued that the proposal to limit the damages payable to those successful in challenging their designation was unnecessary. They suggested that the Human Rights Act 1998 already provided sufficient protection for the government.

Our response

9.5 In line with the feedback received in this area, the government intends to take powers to limit liability for those who comply with sanctions, in a way that protects those implementing sanctions in good faith.

9.6 The clause would ensure that such persons are able to comply with their obligations under the law, and act in accordance with the prohibitions and requirements of sanctions regimes made under the bill, without having to take further steps to protect themselves from litigation as a result of their compliance activities. This is in line with current EU practice to limit liability where people act to comply with sanctions in good faith. We would seek to ensure that the obligations on those persons or entities who implement UK sanctions are equivalent to those outside the UK.

9.7 The government also intends to put limits on the ability of a designated person to seek compensation in respect of a successful challenge to designation. This will be done in a way that is consistent with the Human Rights Act 1998.

Information sharing

9.8 Several respondents emphasised the need for the government to ensure it had sufficient power to share information as necessary, both with other governments and the private sector, to promote sanctions compliance. Some were more cautious and wanted the government to ensure there was clear guidance about these powers and that any information sharing was compliant with all relevant data protection legislation.

Our response

9.9 We intend to include a power for government to share information, which would include sharing information with third countries to enable mutual cooperation on sanctions policy. There are also other reasons for sharing sanctions information, for instance to facilitate better implementation and in response to requests for mutual legal assistance. Our information sharing policy would be consistent with other legal obligations, notably in relation to data protection and commercial and banking confidentiality requirements.

A

List of respondents

A.1 The Government received 34 written responses to the “Public consultation on the United Kingdom’s future legal framework for imposing and implementing sanctions”. Organisations that responded are listed below. Individuals who responded on their own behalf are not listed.

- 20 Essex Street
- ADS Group
- Association of British Insurers
- Baker McKenzie
- BBA
- Caravanwise Ltd
- Conciliation Resources
- Crown Prosecution Service
- Doncasters Blaenavon
- Dechert LLP
- Edgen Murray Europe Ltd
- Gambling Commission
- Government of Jersey
- HSBC
- International Underwriting Association of London
- Isle of Man Government
- NFU Mutual
- NGO Counter-Terrorism and Sanctions Working Group
- Poeton Industries
- RSA Insurance Group plc
- Saferworld
- Sanctions Practitioners Group
- Scottish Government
- Singletons Solicitors
- The Law Society of Scotland
- The States of Guernsey
- TheCityUK
- Vitol Group

B

Roundtable events and meetings

B.1 Government officials held meetings with representatives from the following sectors.

- Academia
- Charity and NGO
- Financial Services
- Import/export
- Insurance
- Legal

