

Policing and Crime Bill

Financial Sanctions

Background

Enforcement of financial sanctions regimes

1. Financial sanctions are an important foreign policy and national security tool. Their effective implementation and enforcement are vital to their success. However, enforcement measures available for a breach of financial sanctions are currently limited to criminal prosecution or an administrative warning letter.
2. The maximum criminal penalty for breaching a domestic terrorist asset freeze is a prison sentence of seven years imprisonment on conviction on indictment. For breaches of trade sanctions, the maximum criminal penalty is a sentence of ten years' imprisonment on conviction on indictment.
3. By comparison, for financial sanctions regimes implemented by EU Regulations and other UK domestic financial sanctions, the maximum criminal penalty is a custodial sentence of two years' imprisonment on conviction on indictment.
4. HM Revenue and Customs (HMRC) have an alternative enforcement tool in the form of compound penalties in cases where it is not in the public interest to pursue prosecution, but the conduct warrants more than a warning letter. Compound penalties are an alternative to a criminal prosecution, and can be imposed upon those who commit export control offences. There is no equivalent enforcement tool available to address breaches of financial sanctions where it is not in the public interest to prosecute. Four G7 countries (US, Germany, France and Italy) have monetary penalty enforcement powers available beyond criminal penalties.
5. New legislation is required in order to bring consistency to penalties across all the financial sanctions regimes, ensure that penalties for breaches of financial sanctions have a sufficient deterrent effect, and provide the enforcement community with a broader and more flexible array of powers.

Implementation of UN sanctions

6. UN sanctions are given effect in the UK by way of an EU Regulation. In recent years, the EU has taken on average four weeks to adopt sanctions regulations implementing UN asset freezes. As such, this causes a delay for these measures to take effect in the UK.
7. This delay means there is the possibility of asset flight (whereby assets are removed from the UK before the sanctions are imposed) which could put the UK in breach of its international obligations. UN financial sanctions regimes require that financial sanctions be implemented without delay, which international best practice indicates is within 48 hours at most.

8. Although the UK has been working with the EU to reduce the time taken to implement UN-mandated sanctions, implementation across the EU is unlikely to meet international standards in most cases. New UK legislation is therefore required to bridge this gap.

Enforcement of financial sanctions regimes

Harmonisation of criminal penalties

9. Offences relating to the breach of financial sanctions are, in the most part created by regulations made under section 2(2) of the European Communities Act 1972 (“the 1972 Act”). That Act currently limits the maximum custodial penalty that can be applied for offences created under that section to 2 years imprisonment. The Bill provides that in the case of legislation implementing financial sanctions, the maximum penalty for an offence is seven years on conviction on indictment (or six months imprisonment on summary conviction). The statutory instruments currently implementing financial sanctions under the 1972 Act will be amended by further regulations once the Bill is enacted so that these new penalties apply, bringing other financial sanctions legislation into line with the Terrorist Asset Freezing etc. Act 2010.

Alternative enforcement tools: Deferred Prosecution Agreements

10. The Bill amends Schedule 17 to the Crime and Courts Act 2013 to include financial sanction breaches in the list of offences for which a Deferred Prosecution Agreement (DPA) may be entered into.
11. DPAs, which apply to England and Wales only, are court-approved agreements between an organisation (such as a company) and a prosecutor who is considering prosecuting the organisation for an offence. In order for a DPA to be entered into, the prosecutor must be satisfied that there is sufficient evidence for them to be able to prove beyond reasonable doubt that a criminal offence has been committed by the organisation. Once the organisation is charged with that offence, proceedings are automatically suspended subject to certain conditions (for example, paying a financial penalty, disgorging any profits made from the alleged offence, cooperation with investigations related to the alleged offence, or implementing a compliance programme). If the organisation does not satisfy the conditions of the DPA, the prosecution may resume. DPAs would be appropriate for some egregious breaches where criminal prosecution would be the last alternative (should these conditions not be upheld).

Alternative enforcement tools: Serious Crime Prevention Orders

12. The Bill also amends Schedule 1 to the Serious Crime Act 2007 to include financial sanctions breaches in the list of offences for which a Serious Crime Prevention Order (SCPO) may be imposed.

13. SCPOs are civil orders imposed by a court on the civil standard of proof (balance of probabilities) designed to prevent a person from (further) engagement in serious crime. Currently SCPOs are available in England and Wales and Northern Ireland and will shortly be extended to Scotland (when the relevant parts of the Serious Crime Act 2015 are brought into force). A SCPO is awarded by a judge where a person has either been convicted of a serious offence or is involved in serious crime.
14. A SCPO does not levy financial penalties but may contain targeted prohibitions, restrictions or requirements that the court considers appropriate for the purpose of restricting or disrupting further involvement in serious crime.
15. SCPOs can be used in respect of both individuals and organisations and are time-limited to a maximum duration of five years (although this can be extended by the court). Persons subject to a SCPO can apply for it to be varied or discharged and can appeal before a court. Breach of a SCPO is a criminal offence subject to a maximum penalty of five years imprisonment. A breach can also lead to forfeiture of property and the closing down of a company.
16. SCPOs enable law enforcement to apply carefully targeted restrictions to prevent further offending by persons involved in serious crime, at the same time as providing the court power to impose a custodial sentence should that person fail to comply with the terms of that order.
17. Furthermore, while financial institutions are already supervised by the Financial Conduct Authority for the manner in which they manage the risk of financial crime and, where deficiencies are found, can be subject to restrictions on business until remedial action is taken, many other businesses who may breach sanctions do not have such regulatory oversight. SCPOs can bridge this gap by placing specific requirements on a business to robustly ensure their compliance with financial sanctions in the future.

Alternative enforcement tools: monetary penalties

18. As an alternative to a criminal prosecution for breach of financial sanctions, the Bill provides for a new monetary penalties regime.
19. Monetary penalties will be a useful tool to deal with those cases where it is not in the public interest to pursue a criminal prosecution, SCPO or DPA and where the level of the breach or conduct of the individual or organisation is such that a warning letter alone is unlikely to bring about a sufficient change in behaviour.
20. Monetary penalties will be administered by the new Office of Financial Sanctions Implementation (OFSI), which will sit within HM Treasury. Individual cases will be considered following initial law enforcement enquiries and the individual or organisation suspected of breaching financial sanctions will be given an opportunity to make representations as to their conduct.

21. A penalty will only be imposed in situations where OFSI is satisfied, on the balance of probabilities, that a breach had been committed and that the person involved knew or had reasonable cause to suspect that their actions were in breach of sanctions. A person subject to the penalty will have the right to request a review of the decision by a Minister in the first instance, or through the courts by way of judicial review after the ministerial review.
22. HM Treasury will be consulting later this year on the detailed processes for imposing penalties and the levels of penalty imposed in a given situation, and will publish details of the approach to be taken prior to the power being used. The Bill sets the maximum penalty at £1 million or 50% of the total value of the breach, whichever is the greater.
23. To ensure that the penalties also act as a deterrent against poor compliance by individuals and organisations operating in the UK and promote increased awareness of good practice, the details of any penalties imposed will be published. A consultation in 2016 will outline HM Treasury's proposed approach to such a publication.

Implementation of UN sanctions

24. To ensure that new UN financial sanctions regimes can be implemented in the UK without delay, Part 8 of the Bill provides for a new power to enable the Treasury to immediately give effect to such new regimes on a temporary basis pending the adoption of the necessary legislation by the EU. This new power will enable new UN financial sanctions to be implemented in the UK initially for 30 days, but capable of being extended to 60 days. These temporary arrangements would lapse and be replaced by the EU legislation as soon as it is made and the associated criminal offences are concurrently provided for in regulations made under the European Communities Act 1972.

UN Sanctions Delay: Case Study

Between 1 January and 31 December 2015, the EU implemented 20 UN financial sanctions decisions relating to 57 individuals or entities, including 1 new financial sanctions regime. The average time to implement these was 4.2 weeks. By contrast, the Financial Action Task Force, which sets international standards for combatting money laundering, terrorist financing and other related threats to the integrity of the international financial system, has indicated that asset freezes should be implemented "within hours", or at most within 48 hours.

Most decisions related to the Al Qaida regime, where EU implementation occurred between 4 and 12 days after the UN required assets to be frozen. This underscores the need for domestic legislation to ensure immediate implementation of UN-mandated asset freezes within the UK.

New Penalties: Case Study

Over the last two years, HM Treasury have been alerted to a few cases where large UK-based manufacturers failed to comply with the Iran notification and authorisation requirements, resulting in millions of pounds worth of trade with Iran in non-nuclear related materials being conducted contrary to financial sanctions. In these cases, no funds were made available to sanctioned targets and approval may have been given to these transactions if it had been sought. The organisations concerned claimed to have not realised that the specific sanctions requirements applied to their activities. Although these breaches were apparently not intentional and did not result in funds being made available to sanctioned persons, they nevertheless represent a significant breach of financial sanctions. In such cases having wider enforcement powers (other than prosecution or a warning letter) would enable a more nuanced approach to be taken to addressing the breach, considering all of the factors in the case and ensuring that appropriate remedial action is taken to raise awareness and act as a deterrent for future non-compliance both by the specific companies involved and by others within the industry.

**HM Treasury
July 2016**

Annex: Current Financial Sanctions Regimes

1. Afghanistan
2. Al-Qaida
3. Belarus
4. Burundi
5. Central African Republic
6. Democratic Republic of the Congo
7. Egypt
8. Eritrea
9. Republic of Guinea
10. Republic of Guinea-Bissau
11. Iran (human rights)
12. Iran (nuclear proliferation)
13. Iraq
14. Ivory Coast
15. Lebanon and Syria
16. Libya
17. North Korea (Democratic People's Republic of Korea)
18. Somalia
19. South Sudan
20. Sudan
21. Syria
22. Terrorism and terrorist financing
23. Tunisia
24. UK Freezing Order
25. Ukraine (Misappropriation and Human Rights)
26. Ukraine (Sovereignty and Territorial Integrity)
27. Yemen
28. Zimbabwe