



HM Government

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



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**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

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Purpose of this White Paper

The purpose of this White Paper is to seek views on the legal powers the Government will need upon the UK's withdrawal from the European Union (EU) to continue to be able to impose and implement sanctions.

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 powers flow from the European Communities Act 1972 so we will need new legal powers to replace these. It is not possible to achieve this through the Great Repeal Bill, as preserving or freezing sanctions would not provide the powers necessary to update, amend or lift sanctions in response to fast moving events. This would leave us in breach of our international obligations and unable to work effectively with our European and international partners to tackle shared challenges.

This consultation is about the legal powers we need to maintain sanctions as a viable instrument of foreign policy. It is not about the policy goals themselves or how we will align UK sanctions in future with those imposed by the EU or other international partners. However we recognise that sanctions require broad application to be effective and we will continue to work closely with allies and partners to this end.

We welcome all feedback from our stakeholders at home and overseas to help inform the content of any future sanctions legislation. Details of how to respond can be found in Chapter 9.

Chapter 1 Introduction and political context

Why and how are sanctions imposed?

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, for example by helping bring Iran to the negotiating table on its nuclear programme.

As a Permanent Member of the UN Security Council, the UK plays a central role in negotiating global sanctions to counter threats to international peace and security. Like all other UN Member States, we are obliged under international law to implement UN sanctions.

The UK and our EU partners have also imposed and implemented “autonomous sanctions” in situations where the UN has chosen not to act but we consider an international response is still necessary. Often this has involved close cooperation between the EU and the United States, with the support of others including Canada, Japan, Australia, Norway and Switzerland. On occasion, the EU and like-minded partners have decided to supplement UN sanctions with additional autonomous measures (against the Democratic People’s Republic of Korea, for example).

What measures do sanctions involve?

UN and EU sanctions typically involve three broad types of measures:

- 1. International travel bans**, restricting the movement of sanctioned persons associated with regimes or groups whose behaviour is considered threatening or unacceptable by the international community. Travel bans are designed to prevent sanctioned persons from obtaining visas and travelling to the UK and other participating states.

2. **Assets freezes**, requiring the funds and assets of sanctioned persons to be frozen, and also preventing funds and other economic resources being made available to them.

3. **Financial and trade restrictions**, generally targeting specific sectors but sometimes ranging more widely. A recent example is the EU's ban on investment and joint ventures with organisations in Crimea and Sevastopol. Another example is an arms embargo, which is routinely imposed where there are concerns about the stability of a country or the potential for a regime to take violent action against its people. An arms embargo can be aimed at a specific part of, or a specific group within, a country (e.g. terrorist groups and other non-state actors), or it can be applied to the whole country.

“Sanctioned persons” can include individuals (e.g. members of a government) as well as companies and other entities that have legal personality. They are sometimes referred to as “listed persons” or “designated persons”.

Why does the UK need new legal powers?

Currently the UK, like other EU Member States, adopts UN and EU sanctions primarily through EU legislation which is brought into effect within UK law by section 2 of the European Communities Act 1972 (ECA). The UK has some limited domestic powers 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.

As highlighted in a recent House of Lords report on sanctions,¹ the new powers need to be similar to those we will lose by repealing the ECA if we are to continue to meet our international obligations. The Government intends to preserve its current ability to impose and implement travel bans, asset freezes, and broader financial and trade restrictions. We also intend to maintain our current emphasis on applying sanctions carefully to maximise the effect on the target whilst minimising unintended consequences. This includes establishing a robust framework for sanctioned persons to challenge their listings and a system for licensing legitimate business activity. New legislation will give us greater flexibility in the way we approach these issues and allow us to draw on international best practice.

The legislation will need to be in place before we leave the EU to ensure that we can preserve current UK sanctions policy, although entry into force will be timed to coincide with the date of our actual withdrawal. While the UK is a member of the EU we will continue to exercise all the rights and obligations of membership including with respect to the Common Foreign and Security Policy.

¹ The Legality of EU Sanctions, House of Lords Report 102 of 2 February 2017

Chapter 2 The UK's current approach to sanctions

Working in a multilateral framework and meeting our international obligations

Most of the sanctions currently implemented by the UK arise from multilateral agreements. The UN Security Council can impose sanctions in response to any threat to international peace and security through UN Security Council Resolutions (“UNSCRs”) adopted under Chapter VII of the UN Charter. These Resolutions are binding on the UK in international law and we are obliged to implement them domestically.

Nine out of the 15 members of the Security Council need to support the adoption of sanctions, with no veto from any of the five Permanent Members (China, France, Russia, the UK and the US). UNSCRs set out the sanctions being imposed, as well as the progress expected of the targeted state or non-state actor.

UNSCRs may be subject to a review by the Security Council and can establish Sanctions Committees to monitor the implementation and effectiveness of sanctions, add new sanctions, and grant exemptions to the measures. These Committees are made up of representatives of the 15 Security Council members. They are often advised by independent experts (Panels of Experts/Monitoring Groups) who undertake field visits, collect evidence on sanctions violations and make recommendations for improved implementation.

Where sufficient consensus cannot be achieved at a UN level, the EU can impose sanctions for broader reasons. These are based on the EU's Common Foreign and Security Policy and include: upholding respect for good governance, human rights, democracy and the rule of law. Starting in the 1980s, the EU has adopted a range of autonomous sanctions in addition to those agreed at UN level. The EU's use of autonomous sanctions increased after the

end of the Cold War and the entry into force of the Maastricht Treaty in 1992.

EU Member States act collectively to implement over 30 sanctions regimes, of which around half flow from UN obligations. All elements of a UN or EU sanctions regime are set out in an EU Council Decision adopted under the Common Foreign and Security Policy. In areas such as trade, where the EU has competence, a Council Regulation is also adopted and this has direct effect within UK law due to section 2 of the European Communities Act 1972 (ECA). Additional action is required (typically by HM Treasury, the Department for International Trade and Home Office) to implement different aspects of sanctions, including making the breach of sanctions a criminal offence in the UK. This is done through statutory instruments made under the ECA and other relevant powers.

The UK extends sanctions regimes to the majority of the Overseas Territories (OTs), with Bermuda, Gibraltar, and the Crown Dependencies (CDs) legislating for themselves.

Current UK powers

The United Nations Act 1946 (UN Act) provides powers for the Government to implement sanctions agreed through Resolutions of the UN Security Council. However, in 2010 the UK Supreme Court ruled² that the power in the UN Act could not be lawfully used to apply asset freezes; that it was used in breach of Article 6 of the European Convention on Human Rights; and that additional powers were needed for measures of this kind involving infringement on individual rights. This led to the passing of the UK Terrorist Asset Freezing etc. Act 2010 and a greater reliance on EU Regulations brought into effect within UK law by section 2 of the European Communities Act 1972, to make provision for asset freezes.

International travel bans

² HMT vs. Ahmed [2010] UKSC

When an international travel ban is agreed, UN or EU member states must deny the individuals concerned entry into, or transit through, their territory, except in limited circumstances. A UN or EU member state is not expected to refuse entry to its own nationals. Specific rules apply for the UK and other EU Member States for handling of European Economic Area (EEA) nationals.

Once the UN or EU impose an international travel ban on a non-European Economic Area (non-EEA) national, the provisions in section 8B of the Immigration Act 1971 take effect. This means, unless the exemptions to the provision apply, the individual becomes an 'excluded person' within the meaning of section 8B(4) and:

- under section 8B(1) they must be refused leave to enter or remain in the UK and any leave subsequently given is invalid;
- under section 8B(2) any leave the person holds is automatically cancelled;
- under section 8B(3) any exemption from immigration control, provided by section 8 of the Immigration Act 1971, no longer applies so long as they are an excluded person.

The Government will need to continue to meet its obligations under UNSCRs in relation to travel bans and to work with a range of international partners beyond the UN to implement additional international travel bans. We will need to amend our current legislation to ensure that sanctioned persons become 'excluded persons' under UK law. This will allow the UK to impose international travel bans on – and to refuse or cancel visas to – individuals identified by the UK who are not covered by UNSCRs.

Counter-terrorism financial sanctions

The UK's counter-terrorism strategy (CONTEST) includes a substantial component on counter-terrorist finance (CTF). The UK's approach to CTF is sophisticated, and financial sanctions are a key part. Besides making the best use of financial sanctions, our approach also includes better information sharing with the private

sector, reform of the suspicious activity report regime and new powers contained in the Criminal Finances Bill. It also covers working through the international Financial Action Task Force and the G7 to ensure the UK has the strongest possible CTF regime consistent with respect for fundamental rights. In April 2016 the Government published a CTF action plan which set out the Government's commitment to introduce new measures to make the UK a more hostile place for a variety of activities, including the evasion of sanctions.

As mentioned above, the UK has counter-terrorism asset freezing legislation in place – the Terrorist Asset Freezing etc. Act 2010 (“TAFA”). This is designed to provide domestic powers to impose asset freezes and to assist with implementation of UK obligations under two landmark UN Security Council Resolutions: UNSCR 1373 (adopted in the wake of 9/11); and UNSCR 1452 (on humanitarian exemptions).

The UK possesses a limited range of other existing financial sanctions powers. Powers exist in the Anti-terrorism, Crime and Security Act 2001 to make freezing Orders, and in the Counter-terrorism Act 2008 to make directions to cease specified financial activity with a specified third party, sector or country. However, the strict criteria in these powers that must be satisfied to use these powers make them unsuitable for implementing wider sanctions regimes.

Trade sanctions

The UK has existing powers to impose or implement many types of trade measures (for example in the Export Control Act 2002). However, these powers are primarily used to implement controls on exports to non-sanctioned destinations. In recent years, a number of additional trade-related sanctions which go beyond the existing powers have been imposed by the EU, and implemented in the UK using powers in the European Communities Act 1972. It will be necessary to expand the powers in domestic legislation to

cover these additional measures if the UK wishes to avoid reducing its ability to impose sanctions.

Exemptions to sanctions

Exemptions to sanctions measures are a crucial element of existing UN and EU sanctions regimes, which help address any adverse humanitarian impact and unnecessary constraints on UK persons. Licences can be granted both to sanctioned persons and to others whose activity might otherwise be unnecessarily restricted. These can take the form of broad exemptions which permit certain types of activity, as well as licensing regimes. For example, the UK's current licensing regime can enable a competent UK authority (e.g. HM Treasury) to permit a person subject to an asset freeze to access sufficient funds and economic resources to satisfy their basic needs, allow them to pay legal fees or enable them to settle debts owed to non-sanctioned persons. It also enables exceptions to be made for military goods destined for UN peacekeeping operations. Exemptions to sanctions measures and licensing regimes will continue to be an important element of the UK's new sanctions powers.

Enforcement of sanctions

The Government takes sanctions compliance very seriously. Sanctions are only effective if they are enforced, including through civil and criminal penalties for sanctions breaches where appropriate. The UK will continue our robust approach to the enforcement of sanctions. Full details are set out in Chapter 7 below.

Chapter 3 Proposed powers to designate individuals and impose financial and trade restrictions

Primary legislation will create a framework containing powers to impose sanctions regimes, the details of which will be laid out in the secondary legislation made using those powers. The legislation will also contain over-arching provisions relating to the processes which will apply when sanctions are created, such as provisions for reviews, challenges, and enforcement.

Secondary legislation will be needed to put in place the detailed measures for specific sanctions regimes (including country and counter-terrorism regimes) and sanctions designations. A rapid and flexible response to international crises is often necessary. Targets need to be listed quickly to prevent asset flight or other forms of sanctions evasion. Adopting primary legislation to implement each new sanctions measure would not be practical.

The Government expects that the powers included in primary legislation will:

- Complement the existing powers in the Immigration Act 1971 to deport or exclude a person from the UK.
- Enable application of asset freezes to designated persons and restricting their access to funds and economic resources.
- Expedite the freezing/suspension of assets. As part of the overall review of our asset freezing provisions, we will be exploring whether we have the right mechanisms to freeze assets quickly, in whole or in part, where needed urgently for operational reasons.
- Allow adoption of financial and trade restrictions, preventing UK persons and operators from engaging in specified trade or financial activities with a target country or regime, or to trade in arms with a target country, part of a country or a target regime.

- For the financial sector these will include:
 - investment bans;
 - restrictions on access to capital markets;
 - directions to cease banking relationships and activities;
 - requirements to notify or seek authorisation prior to certain payments being made or received;
 - restrictions on provision of financial, insurance, brokering, advisory services or other financial assistance; and
 - directions to cease all business of a specified type with a specific person, group, sector or country.
- For the trade sector, the existing powers in the Export Control Act 2002, and other relevant legislation will be supplemented by new powers to enable:
 - control over the export of goods and services;
 - control over the import of goods and services;
 - control over the involvement of UK persons in the movement, sale or brokering of goods, even if the goods aren't exported from the UK;
 - control over the transfer of technology;
 - control over the provision of technical assistance;
 - control over the provision of financial assistance;
 - prohibitions on investment, including participation in joint ventures; and
 - restrictions on trade targeted at specific entities or individuals.
- Complement existing powers in the transport sector to control use of ports, ships, aircrafts and other transport vehicles used in relation to sanctions targets.
- Include additional powers deemed necessary to implement and enforce the above measures.

Jurisdiction and territorial effect

In line with current practice, we expect that UK sanctions will continue to apply to persons in the UK and those subject to the UK's jurisdiction (see Figure 1 below). The UK also has responsibility for the foreign policy and national security of Overseas Territories and Crown Dependencies and we will continue our policy of promoting their adherence to sanctions that the Government adopts.

Figure 1: UK current approach to extra-territorial effect in the enforcement of sanctions

A breach does not have to occur within UK borders for the Government's authority to be engaged. To come within the Government's enforcement of sanctions, there has to be a connection to the UK, which we call a UK nexus. This is not a new concept, and neither this guidance nor the Policing and Crime Act 2017 extends or alters the reach of UK financial sanctions.

A UK nexus might be created by such things as a UK company working overseas, a sterling transaction overseas that clears in the UK, action by a local subsidiary of a UK parent company (depending on the structure of governance), action taking place overseas but directed from within the UK, or financial products or insurance bought on UK markets but held or used overseas. This is not an exhaustive or definitive list – whether or not there is a UK nexus will depend on the facts in the case.

We will not artificially bring something within UK authority that does not clearly and naturally come under it. Some breaches of financial sanctions do involve complicated structures or relationships, where a genuine UK nexus exists but is not immediately apparent. In every case, we will consider the facts to see whether the potential breach comes within our authority.

If we come across breaches of financial sanctions in another jurisdiction, we may use our information-sharing powers to pass details to relevant authorities if this is appropriate and possible under UK law.

CONSULTATION QUESTION

Q: Are there further powers that you think the UK Government needs at its disposal?

Chapter 4 Proposed procedures for exercise of powers

Rationale for establishing a specific sanctions regime

In line with our international obligations we will continue to implement all UN sanctions regimes. Working with like-minded international partners, we also expect to maintain a range of autonomous sanctions regimes in support of our wider foreign policy and national security goals. The primary legislation will define the overarching purposes for which sanctions can be used. Detailed criteria for each sanctions regime will then be set out in secondary legislation. The criteria will relate to the activities that the sanctions are trying to stop.

Threshold for imposing sanctions on persons

Under each regime, the Government would then have the power to designate persons where there is enough evidence to suggest “reasonable grounds to suspect” that they meet the agreed criteria. The application of this threshold has recently been considered and endorsed by both the UK’s Supreme Court³ and the EU General Court⁴. In its judgment, the EU General Court acknowledged that “reasonable grounds to suspect” can meet the requirement for a listing to have a “sufficiently solid factual basis” (a standard applied by the EU Courts), provided that those grounds are supported by sufficient information or evidence.

The threats the UK faces from domestic and international terrorism constantly evolve and have changed since the introduction of the Terrorist Asset Freezing etc. Act (TAFE) in 2010. There have been no new designations made under TAFE since February 2015. We need to ensure that UK counter-terrorist sanctions powers remain a useful tool for UK law enforcement and intelligence agencies, including ensuring that we can cooperate with international

³ (Youssef v Secretary of State for Foreign and Commonwealth Affairs [2016] UKSC)

⁴ (Mohammed Al-Ghabra v European Commission, Case T 248/13)

partners and allies in the fight against terrorism.

Therefore, the Government envisages that the new powers will include the ability to establish sanctions in support of counter-terrorist activity. This will also enable the use of a common “reasonable grounds to suspect” threshold for designations under counter-terrorism and country sanctions regimes.

CONSULTATION QUESTION

Q: Should the legislation capture domestic and international terrorist activity as a behaviour that the sanctions powers should target?

Q: What are your views on the proposed threshold for individual designations?

Suspension power

When sanctions start to achieve results, and to promote political engagement, for example with a government that has begun to respect its international obligations, we want to have the ability to suspend sanctions without entirely lifting them. This will enable us to reward changes in behaviour while retaining the ability to rapidly reapply the sanctions should the offending behaviours return. For example, the EU suspended its travel ban on the Foreign Minister of Iran so he could engage in political talks aimed at resolving the crisis regarding Iran’s nuclear programme. In addition, some of the sectoral embargoes on Iran were suspended in recognition of the fact that there had been progress in meeting the objectives of the sanctions.

Ability to lift sanctions

When sanctions have achieved their desired outcomes we will also need to be able to lift them as rapidly as possible. If political progress has been made it is important that momentum is not lost because sanctions cannot be removed with sufficient speed.

We anticipate that sanctions will be suspended or lifted by making the necessary changes to the secondary legislation which contains the detail of the sanctions. This will provide the flexibility required in terms of responding to positive developments, aligning quickly with action by international partners, and limiting unnecessary impacts on those affected by the measures.

Chapter 5 Review and challenge mechanisms

Periodic reviews of sanctions regimes

Both UN and EU sanctions are subject to internal reviews by the UN or EU. We propose a similar approach under our new legislation, ensuring in the case of UN sanctions that our review process remains consistent with our obligations under international law. Internal reviews by the Government could include periodic reviews of individual designations or of entire regimes. They could also include reviews prompted by requests from those subject to sanctions or by new information.

We will also need to consider when periodic reviews of *entire sanctions regimes* should occur, bearing in mind that the Government will be closely monitoring political developments in the target country and adjusting its sanctions policy accordingly.

CONSULTATION QUESTION

Q: Should the Government review non-UN sanctions regimes after a fixed period as well as in response to political developments?

Internal administrative reviews of designations

Those subject to UK sanctions will be able to challenge their listing by requesting an internal review, where this is consistent with our obligations under UN Security Council Resolutions (UNSCRs). The sanctions will remain in place while the challenge or request is being considered.

Under EU law, sanctioned persons can ask the EU Council to reconsider a decision. We propose to adopt a similar approach under UK legislation. Sanctioned persons will be able to request a review of their listing by the Government, which will consider all evidence and representations put forward. However, these requests should be based on the provision of additional

information by the sanctioned person.

Challenge before the Courts

Additionally, the new legislation will provide a mechanism for sanctioned persons to challenge their UK listings before the Courts. This challenge mechanism will ensure that they have access to an independent and impartial route to determine the lawfulness of individual designations. We will ensure that the challenge mechanism is sufficiently robust to protect the rights of a sanctioned person and will allow them to make any necessary arguments.

CONSULTATION QUESTION

Q: What are your views on the proposed challenge mechanism?

Closed Material Procedure

The Government will always seek to sanction an individual or entity on the basis of open-source evidence which can be disclosed to the listed person in the event of a legal challenge. However, in certain cases the Government may wish to rely on sensitive material, the disclosure of which would be damaging to national security, international relations or another public interest. In order to protect the sensitive material from disclosure but make it available to the presiding judge, a closed material procedure should be available.

The use of sensitive material will be subject to proper safeguards. The Government intends to put in place procedures for dealing with sensitive material, including a special advocate procedure (see Figure 2 below), to ensure that challenges to sanctions involving sensitive material are considered in a fair manner.

Where sensitive material needs to be relied upon, we intend to use the provisions for the use of closed material procedures and

special advocates set out in the Counter-Terrorism Act 2008. These procedures have already been approved by Parliament as having sufficient judicial safeguards.

Figure 2: Special Advocate Procedures

Provisions of the Counter-Terrorism Act 2008 put in place the appropriate safeguards in court proceedings to protect sensitive material, including providing for the appointment of special advocates. Special advocates are lawyers who have undergone the necessary security vetting procedure. They are barristers in independent practice of the highest integrity, experience and ability, from civil and criminal practices. They are bound by the ethical standards of the Bar Council. The role of the special advocate is to act in the interests of the appellant in relation to closed source material – to receive and make submissions on intelligence evidence to which the appellant and the appellant’s representatives cannot have access. However, the special advocate does not represent the appellant, and the appellant is not the special advocate’s client.

Chapter 6 Implementation

Reporting obligations to promote compliance

Businesses play a crucial role in monitoring financial transactions involving sanctioned persons to ensure compliance. We expect the private sector to help ensure that restrictions on access to financial services and markets are upheld by taking steps to act in accordance with the prohibitions (for example, by not dealing in prohibited money market instruments). Businesses have a responsibility to freeze accounts and other financial products if they know or have reasonable cause to suspect that they are in possession or control of funds or economic resources of a sanctioned person.

The new sanctions powers will include reporting obligations on anyone who becomes aware of or suspects a breach of financial sanctions. They will be required to report to the Government if they know or suspect that a current customer, or any customer in the previous five years, is a sanctioned person, or has committed an offence under the legislation. This will replicate and clarify the current reporting duties under EU law.

The reports submitted to the Government on the accounts and financial products of sanctioned persons, together with reports on payments received on frozen accounts, provide valuable information on the financial activity of sanctioned persons. This also assists the Government in confirming or identifying gaps in information provided by sanctioned persons, identifying potential breaches of the asset freeze and providing information that may be relevant to ongoing investigations.

The Government recognises that sanctions inevitably impose some costs on businesses. However, the Government seeks to ensure that these costs are proportionate and no more than is necessary to meet the objectives of the measures. It will continue to work closely with the financial sector to seek to raise standards of compliance and avoid unnecessary costs by:

- seeking continually to improve the design and operation of sanctions regimes, for example by raising the quality of identifying information and the consistency of financial sanctions legislation;
- raising awareness of the financial sanctions regime and providing high-quality information about financial sanctions legislation and sanctions targets; and
- using the licensing regime to permit transactions, where appropriate, that would otherwise be blocked by the asset freeze.

The Government's aim is that the new legislation will not add additional burdens on industry, and we will seek to reduce those burdens whenever we can do so without jeopardising the integrity of the sanctions regimes themselves. This includes the use of exemptions to mitigate unintended consequences.

Licensing for financial sanctions – general principles

The Government operates a robust licensing system which supports the policy objectives of each sanctions regime. It also mitigates the risk that asset freezes are circumvented by setting out closely defined grounds for licensing, requirements to report on any use of licences and procedures to manage breaches of financial sanctions.

The Government wants to maintain this licensing system as far as possible. We will continue to ensure that the UK's obligations under the European Convention on Human Rights are upheld, in particular Articles 6, 8 and Article 1 of Protocol 1. We will also seek to enhance the system where there are opportunities to improve its efficiency and flexibility.

In line with the above, the Government will ensure that the licensing powers are:

- **Robust**, with well-defined grounds for licensing informed by

those currently in operation, appropriate safeguards to protect against the risk of funds being diverted to circumvent sanctions, clear processes and procedures in place to deal with breaches of licences by sanctioned persons, and provisions to minimise breaches by other affected parties;

- **Proportionate**, with licence conditions which take human rights into account and ensure that only conditions that are necessary are imposed;
- **Flexible**, where necessary, with regimes tailored to meet specific foreign policy objectives and the introduction of general licences which will authorise specific activities, for example certain types of transactions relating to humanitarian aid; and
- **Efficient**, with licence requests dealt with effectively and promptly, genuinely urgent requests prioritised, and licences issued that are both workable and clear.

Primary legislation will provide powers for the Government to grant licences under its sanctions regimes. Secondary legislation will then detail the relevant licensing grounds for each regime to enable the system to be properly targeted. In addition, the Government will publish supporting guidance where needed.

Licensing in relation to asset freezing

Asset-freezing regimes will contain grounds for permitting otherwise prohibited activity to authorise the release or making available of certain frozen funds or economic resources to pay for:

- a) the essential needs of natural or legal persons, entities or bodies
- b) reasonable and necessary professional fees and reimbursement of incurred expenses associated with the provision of legal services
- c) the fees or service charges for routine holding or maintenance of frozen funds or economic resources and
- d) extraordinary situations or expenses.

This will continue the licensing practice that the Government currently operates. Exemptions for country sanctions regimes will be further defined within either secondary legislation or by reference to statutory

guidance.

Secondary legislation may specify further derogations appropriate to the aims of the relevant sanctions regime, such as licensing grounds in relation to the provision of humanitarian aid or diplomatic and consular activities. It may also include licensing grounds which are specified in any relevant UN Security Council resolutions. In appropriate circumstances a Minister may also be able to authorise a general licence.

The Government will act swiftly on completed licence applications, prioritising urgent and humanitarian cases. If granted, licences will provide clear instructions on the conditions under which financial institutions may release funds or economic resources. The mechanism to challenge licensing decisions will continue to be a Judicial Review.

The conditions applied to counter-terrorism licences will reflect two broad objectives:

- to ensure that sanctioned persons do not have access to funds which can be more easily diverted to terrorist activity; and
- to ensure that there is a reasonable audit trail to address terrorist finance risks, so that the Government can monitor compliance with the terms of the licence and identify if any breaches have occurred that could give rise to national security concerns.

CONSULTATION QUESTION

Q: Are the proposed licensing powers for financial sanctions fit for purpose?

Licensing for trade sanctions

Trade sanctions can be an outright ban on the activity concerned, or may require that a person or entity seeking to carry out the activity needs a licence to do so. Licensing is the responsibility of the Secretary of State for International Trade.

Day to day licensing functions are handled by the Export Control Joint Unit (ECJU), and the Import Licensing Branch (ILB) which sit within the Department for International Trade (DIT). ECJU was formed as a result of the 2015 Strategic Defence and Security Review (SDSR) and includes staff from the Department for International Trade, the Foreign and Commonwealth Office and Ministry of Defence. It is primarily responsible for licensing export and trade in military and 'dual-use' items (items which could have both a military and civilian use). The ECJU processes applications for licences for goods, technology or services under sanctions regimes using the same procedures and systems as it does for military and dual-use items. These powers are contained in section 7 of the Export Control Act 2002. The process involves assessing licence applications on a case-by-case basis according to the 'Consolidated EU and National Arms Export Licensing Criteria'. The first of these criteria relates to denying licences which would contravene sanctions.

It is proposed that the ECJU will continue to license goods, technology and services subject to sanctions in the same manner as it currently does. These existing licensing powers will be extended to cover the new trade sanction measures that are brought into UK law.

CONSULTATION QUESTION

Q: Are the proposed licensing powers for trade sanctions fit for purpose?

Chapter 7 Enforcement

Enforcement of financial sanctions

In order to strengthen the penalties for financial sanctions, the Policing and Crime Act 2017 (“the 2017 Act”) changed the legal framework for enforcing financial sanctions regulations⁵. The changes provide a more flexible, effective and proportionate set of enforcement measures. The Act has: harmonised the maximum penalty for an offence at seven years on conviction (or six months imprisonment on summary conviction) across all financial sanctions regimes, bringing them into line with other UK domestic legislation; introduced deferred prosecution agreements (DPAs) and serious crime prevention orders (SCPOs); and provided a power for the Government to impose monetary penalties. HM Treasury recently consulted on the process for imposing monetary penalties for breaches of financial sanctions and the government’s response to that consultation can be found here:

<https://www.gov.uk/government/consultations/the-process-for-imposing-monetary-penalties-for-breaches-of-financial-sanctions>.

Monetary penalties are currently administered by HM Treasury and imposed where HM Treasury is satisfied that, on the balance of probabilities, an entity has breached a prohibition or failed to comply with an obligation imposed under financial sanctions legislation; and that the person involved knew, or had reasonable cause to suspect, that their actions were in breach of financial sanctions. Penalties are not automatic and the level will depend on the case. The maximum penalty is £1 million or 50% of the total value of the breach, whichever is the greater.

The Government believes these enforcement powers have been set at the correct level. The new legislation will restate the current position on length of imprisonment, and keep the current powers for DPAs, SCPOs, and civil monetary penalties as they are currently in the 2017 Act. Any sanctions legislation will make the

⁵ Section 146 of the 2017 Act

necessary changes to ensure these enforcement powers are compatible with the new sanctions power introduced.

The Government will ensure that the new provisions are clear that a breach of sanctions would capture those directly evading sanctions, as well as other forms of contravention and circumvention. Furthermore, the new legislation will make it an offence not to supply information relating to breaches of financial sanctions to the Government, consistent with international standards in this area. Information about sanctions compliance and suspected breaches will be shared and used by the Government within the same limits that are currently prescribed in the relevant EU Regulations and the UK legislation, including the Data Protection Act 1998. These offences will replicate the current position under EU sanctions legislation.

We will also continue to ensure that criminal liability does not apply to breaches of sanctions where it was not known, or there was not reasonable cause to suspect, that the action would be a breach of sanctions.

In addition to the above, the Government will include a power within the new legislation that allows law enforcement to seize funds/assets from a sanctioned person to enable those funds/assets to be frozen. This would be the case when a sanctioned person brings funds/assets into the UK without the relevant licences or when a UK sanctioned person is found with funds without the appropriate licence. As with any frozen funds/assets, these would still be owned by the sanctioned person but would be frozen until their listing is lifted. Law enforcement would not be breaching sanctions by handling these assets during the process.

CONSULTATION QUESTION

Q: What are your views on the extent of the Government's proposed additional power to seize funds and assets in order

to freeze them?

Enforcement of trade sanctions

HM Revenue and Customs currently investigate possible breaches of export control legislation, including possible breaches of UN or EU trade-related sanctions under powers contained in the Export Control Order 2008 or sanctions-related Statutory Instruments or Orders. We will bring forward necessary measures to ensure that HM Revenue and Customs can continue to use the provisions and powers in the Customs & Excise Management Act 1979 for UK sanctions.

Penalties for those knowingly contravening export control prohibitions, or enabling or facilitating the contravention of those prohibitions, are a maximum of ten years imprisonment, or a fine, or both. We believe these to be proportionate, and do not plan to revise them.

Enforcement of sanctions against maritime vessels and aircraft

There are a number of domestic powers which have been relied upon in order to enforce sanctions against maritime vessels and aircraft. In enforcing UN sanctions against maritime vessels and aircraft, we have previously relied upon powers including those under the United Nations Act 1946, Air Navigation Order 2016 and the Civil Aviation Act 1982. In enforcing EU sanctions we have relied upon section 2 of the European Communities Act 1972. Following the UK's withdrawal from the EU, we will need new powers to enforce autonomous UK sanctions.

The new legislation will also provide for a power to enable the Government to enforce sanctions against *maritime* vessels. This will include the ability to stop and search vessels, seize vessels, control registry, leasing chartering, and ownership of vessels, as well as port entry of vessels, and control supply of services and crew to vessels.

The new legislation will provide for a power, where current domestic powers are insufficient, to enable the Government to enforce sanctions against *aircraft*. This will include the ability to stop and search aircraft, impound aircraft, control registry, leasing, chartering and ownership of aircraft, as well as control access to UK airspace and airports and the provision of services to aircraft. This power will also need to be sufficient to capture future developments in aviation such as unmanned aerial vehicles and other innovations.

These powers will need to be consistent with the UK's international obligations, including under the UN Convention on the Law of the Sea and the Convention on International Civil Aviation. The powers in the new legislation will also allow the Government to issue licenses for these activities.

Enforcement of international travel bans

There are a number of existing powers to enforce travel bans that can be relied upon after the UK withdraws from the EU. Under section 8B of the Immigration Act 1971, a person subject to an international travel ban imposed by the UN and EU is refused leave to enter or remain. Under the Authority to Carry Scheme 2015, carriers may be refused authority to carry to (or from) the UK individuals who are listed by the UN and EU as being subject to travel restrictions (to the extent the individual is seeking to travel in breach of those restrictions).

If the person is in the UK when a travel ban is imposed then their leave is cancelled and the person is required to leave the UK. The enforcement of travel bans is subject to our ECHR and Refugee Convention 1951 obligations, and these considerations are taken into account when deciding what action to take in response to a travel ban.

Once the UK withdraws from the EU, these enforcement provisions will continue to apply to UN sanctions. We intend to extend these provisions so that they will apply also to those

designated under new or amended sanctions powers.

Chapter 8 Miscellaneous powers

Anti-money laundering and counter-terrorist financing

The Government is determined to protect the security and prosperity of UK citizens and the integrity of our world-leading financial system. By June 2017, the Government will transpose the Fourth Money Laundering Directive and the required elements of the Funds Transfer Regulation using section 2(2) of the European Communities Act 1972. The resulting regulations will strengthen the UK's defences against money laundering and terrorist financing, in line with the latest international standards set by the Financial Action Task Force (FATF). The EU is currently negotiating amendments to the Fourth Money Laundering Directive. The Government will transpose these in the same way after they have been published in the Official Journal of the European Union and come into force.

Once section 2(2) of the European Communities Act 1972 is repealed, the Government will need to ensure that it has the power to make substantive amendments to existing regulations, revoke them and pass new ones. In the absence of such a power, it would not be possible to reform the anti-money laundering and counter-terrorist financing regime to address emerging risks after the UK leaves the EU. The Government would be similarly unable to update the regulations after FATF next updates its standards. The Government intends to take an appropriate power through the new legislation which would come in to force to coincide with the UK's withdrawal.

Temporary management of infrastructure subject to sanctions

Sanctions can have unintended consequences, including on the management of UK infrastructure. This can pose economic, environmental, national security and safety risks, or risks to the security of the UK's energy supply. To mitigate this, we are

considering a new power to enable the Government to establish management schemes in relation to infrastructure subject to sanctions⁶.

Limiting liability

Under the current EU legislation which gives effect to EU and UN sanctions, there are provisions which limit the ability to seek damages from persons simply because they are complying with sanctions (for example, a sanctions target seeking damages from a bank that has frozen their account). The Government intends to create a similar provision to provide that no liability for damages is incurred simply by a person applying UK sanctions to a sanctioned person in accordance with UK law.

This “no-claims clause” in the legislation will provide that where funds or economic resources are frozen or not made available in accordance with domestic sanctions legislation, no liability shall arise on the part of the person, entity or body doing so, unless as a result of negligence. This is currently the position in EU and UN sanctions regimes contained in EU legislation.

At present, the EU courts do not award damages to those persons who successfully challenge their designations unless there are special circumstances that justify the award of compensation. We are also considering whether the UK’s domestic sanctions legislation could include any measure that would require a similar approach by the UK courts.

CONSULTATION QUESTION

Q: What are your views on the design and extent of the proposed “no-claims clause”?

⁶ Sanctioned entities responsible for offshore petroleum infrastructure have previously been subject to a temporary management scheme established under section 2 of the European Communities Act 1972 (The Hydrocarbons (Temporary Management Scheme) Regulations 2013).

Information-sharing

Any new sanctions legislation would provide the Government power to obtain and share information relating to sanctions. The Government's ability to share information will extend to Government bodies, agencies, regulators, businesses, operational partners, other public bodies and international partners. It will be similar to the ability to obtain, use, and share information under current EU legislation and will be consistent with, and subject to the safeguards in, the existing UK and international provisions regarding the sharing of information.

Guidance

The clarity of the UK's future sanctions framework will be critical for its success. The Government gives a clear undertaking that it will provide the necessary guidance and outreach to those responsible for implementation and compliance.

Read across to other legislation

The Government will propose technical amendments to existing legislation to ensure consistency with the new legislation.

Chapter 9 Consultation questions and procedure

CONSULTATION QUESTIONS

1. Are there further powers that you think the UK Government needs at its disposal?
2. Should the legislation capture domestic and international terrorist activity as a behaviour that the sanctions powers should target?
3. What are your views on the proposed threshold for individual designations?
4. Should the Government review non-UN sanctions regimes after a fixed period as well as in response to political developments?
5. What are your views on the proposed challenge mechanism?
6. Are the proposed licensing powers for financial sanctions fit for purpose?
7. Are the proposed licensing powers for trade sanctions fit for purpose?
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?
9. What are your views on the design and extent of the proposed "no-claims clause"?

Process and Timeline for the Consultation

Comments on this consultation should be sent by 23 June 2017, either to:

Sanctions Consultation, IOD Sanctions Legislation Team, Foreign and Commonwealth Office, King Charles Street, London, SW1A 2AH

Or by email to:

sanctions.consultation@fco.gov.uk

If you have any questions about the content of this consultation paper, you can also contact the Sanctions Team through the above email address.

About the Consultation Process

This consultation has been conducted in accordance with the criteria in the Government's Consultation Principles 2016 [https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/492132/20160111_Consultation_principles_final.pdf]:

Consultation Principles 2016

A. Consultations should be clear and concise

Use plain English and avoid acronyms. Be clear what questions you are asking and limit the number of questions to those that are necessary. Make them easy to understand and easy to answer. Avoid lengthy documents when possible and consider merging those on related topics.

B. Consultations should have a purpose

Do not consult for the sake of it. Ask departmental lawyers whether you have a legal duty to consult. Take consultation responses into account when taking policy forward. Consult about policies or implementation plans when the development of the policies or plans is at a formative stage. Do not ask questions about issues on which you already have a final view.

C. Consultations should be informative

Give enough information to ensure that those consulted understand the issues and can give informed responses. Include validated assessments of the costs and benefits of the options being considered when possible; this might be required where proposals have an impact on business or the voluntary sector.

D. Consultations are only part of a process of engagement

Consider whether informal iterative consultation is appropriate, using new digital tools and open, collaborative approaches. Consultation is not just about formal documents and responses. It is an on-going process.

E. Consultations should last for a proportionate amount of time

Judge the length of the consultation on the basis of legal advice and taking into account the nature and impact of the proposal. Consulting for too long will unnecessarily delay policy

development. Consulting too quickly will not give enough time for consideration and will reduce the quality of responses.

F. Consultations should be targeted

Consider the full range of people, business and voluntary bodies affected by the policy, and whether representative groups exist. Consider targeting specific groups if appropriate. Ensure they are aware of the consultation and can access it. Consider how to tailor consultation to the needs and preferences of particular groups, such as older people, younger people or people with disabilities that may not respond to traditional consultation methods.

G. Consultations should take account of the groups being consulted

Consult stakeholders in a way that suits them. Charities may need more time to respond than businesses, for example. When the consultation spans all or part of a holiday period, consider how this may affect consultation and take appropriate mitigating action.

H. Consultations should be agreed before publication

Seek collective agreement before publishing a written consultation, particularly when consulting on new policy proposals. Consultations should be published on gov.uk.

I. Consultation should facilitate scrutiny

Publish any response on the same page on gov.uk as the original consultation, and ensure it is clear when the government has responded to the consultation. Explain the responses that have been received from consultees and how these have informed the policy. State how many responses have been received.

J. Government responses to consultations should be published in a timely fashion

Publish responses within 12 weeks of the consultation or provide an explanation why this is not possible. Where consultation concerns a statutory instrument publish responses before or at the same time as the instrument is laid, except in exceptional circumstances. Allow appropriate time between closing the consultation and implementing policy or legislation.

K. Consultation exercises should not generally be launched during local or national election periods. If exceptional circumstances make a consultation absolutely essential (for example, for safeguarding public health), departments should seek advice from the Propriety and Ethics team in the Cabinet Office.

Confidentiality disclosure

You should be aware that information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to

us why you view the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the Data Protection Act and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Glossary

Term	Definition
Autonomous sanctions	Sanctions which are imposed without a UN Security Council Resolution.
Competence	Competence means all the areas where the treaties give the EU the ability to act, including the provisions in the treaties giving the EU institutions the power to legislate, to adopt non-legislative acts, or to take any other sort of action. The EU's competences are set out in the EU treaties, which provide the basis for any actions the EU institutions take. The EU can only act within the limits of the competences conferred on it by the treaties, and where the treaties do not confer competences on the EU they remain with the member states. See Article 5(2) TEU.
Court of Justice of the European Union (CJEU)	The CJEU has jurisdiction to rule on the interpretation and application of the treaties. In particular, the Court has jurisdiction to rule on challenges to the validity of EU acts, in infraction proceedings brought by the Commission against member states, on references from national courts concerning the interpretation of EU acts and challenges to sanctions listings. The Court is made up of two sub-courts: the General Court and the Court of Justice (which is sometimes called the ECJ). See Article 19 TEU

and Articles 251 to 281 TFEU.

Decision

A legal act of the EU which is binding upon those to whom it is addressed. See Article 288 TFEU.

Directive

A legislative act of the EU which requires member states to achieve a particular result without dictating the specific legislative means of achieving that result. Directives must be transposed into national law using domestic legislation, in contrast to regulations, which are enforceable as law in their own right. See Article 288 TFEU.

The EU Treaties (including TEU and TFEU)

The European Economic Community (EEC) was established by the Treaty of Rome in 1957. This Treaty has since been amended and supplemented by a series of treaties, the latest of which is the Treaty of Lisbon. The Treaty of Lisbon, which entered into force on 1 December 2009, re-organised the two treaties on which the European Union is founded: the Treaty on European Union (TEU) and the Treaty establishing the European Community, which was re-named the Treaty on the Functioning of the European Union (TFEU).

European Convention on Human Rights (ECHR)

An international convention, ratified by the United Kingdom and incorporated into UK law in the Human Rights Act 1998. It specifies a list of protected Human Rights, and establishes a Court (European Court of Human Rights sitting in Strasbourg) to

determine breaches of those rights. The Convention is a Council of Europe Convention, which is a different organisation from the EU.

Regulation

A legislative act of the EU which is directly applicable in member states without the need for national implementing legislation (as opposed to a directive, which must be transposed into national law by member states using domestic legislation). See Article 288 TFEU.

Sanctioned persons

An individual, company or other entity which is the target of sanctions. They are sometimes referred to as “designated persons” or “listed persons”.

Secondary legislation

Legal instruments (including regulations and orders) made under powers delegated to ministers or other office holders in Acts of Parliament. They have the force of law but can be disapplied by a court if they do not comply with the terms of their parent Act. Also called subordinate or delegated legislation.

Statutory instrument

A form of secondary legislation to which the Statutory Instruments Act 1946 applies.

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