

# Ownership and Control Test in UK Financial Sanctions Regulations

## **Call for Evidence**

---

February 2026



© Crown copyright 2026

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit [nationalarchives.gov.uk/doc/open-government-licence/version/3](https://nationalarchives.gov.uk/doc/open-government-licence/version/3).

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at: [www.gov.uk/official-documents](https://www.gov.uk/official-documents).

Any enquiries regarding this publication should be sent to us at [public.enquiries@hmtreasury.gov.uk](mailto:public.enquiries@hmtreasury.gov.uk)

# Contents

<b>Chapter 1: Introduction</b>	<b>4</b>
<b>Chapter 2: Prevalence and distribution of hypothetical control</b>	<b>9</b>
<b>Chapter 3: Implementing the control test</b>	<b>12</b>
<b>Chapter 4: Typologies of control</b>	<b>14</b>
<b>Chapter 5: How to respond</b>	<b>17</b>
<b>Annex A: Processing of personal data</b>	<b>18</b>
<b>Annex B: List of questions</b>	<b>22</b>

# Chapter 1

## Introduction

### Background

1.1 The policy intention of the UK government's approach to ownership and control in UK sanctions regulations is to ensure that sanctions cannot be easily circumvented.

1.2 If a person or entity is designated, or a ship is specified, their name will be recorded on the UK Sanctions List. An asset freeze and some financial services restrictions will apply to entities (meaning any person who is not an individual) that are owned or controlled, directly or indirectly, by a designated person (DP).

1.3 Where appropriate, the UK government will seek to designate entities or individuals that are owned or controlled by a DP in their own right. However, entities that meet the ownership or control criteria are subject to financial sanctions, whether they are individually designated or not.

1.4 Industry actors are often best placed to undertake reasonable and good faith due diligence. Firms are therefore expected, and required by law, to assess ownership and control in line with existing UK financial sanctions guidance. In doing so, they play a critical first line of defence role in ensuring sanctions are implemented robustly and effectively.

1.5 An entity is owned or controlled directly or indirectly by another person in any of the following circumstances:

- The person holds (directly or indirectly) more than 50% of the shares or voting rights in an entity.
- The person has the right (directly or indirectly) to appoint or remove a majority of the board of directors of the entity.
- It is reasonable, having regard to all the circumstances, to expect that a DP would (if they chose to) be able, in most cases or significant respects, by whatever means and whether directly or indirectly, to achieve the result that affairs of an entity are conducted in accordance with that DP's wishes.

1.6 Financial sanctions also apply to an entity who is owned or controlled, directly or indirectly, by the DP. If any of the above criteria are met and the person who owns or controls the entity is a DP, then financial sanctions will also apply to that entity in its entirety (meaning their assets must also be frozen).

**1.7** The above factors for establishing whether an entity is owned or controlled are set out in relevant UK sanctions regulations, including a schedule that provides rules for interpretation. The text from the Russia (Sanctions) (EU Exit) Regulations 2019 is set out in Figure 1A below as an example.

### **Figure 1A: Regulation 7 of the Russia (Sanctions) (EU Exit) Regulations 2019**

#### **Meaning of “owned or controlled directly or indirectly”**

7.-(1) A person who is not an individual (“C”) is “owned or controlled directly or indirectly” by another person (“P”) if either of the following two conditions is met (or both are met).

(2) The first condition is that P—

- (a) holds directly or indirectly more than 50% of the shares in C,
- (b) holds directly or indirectly more than 50% of the voting rights in C, or
- (c) holds the right directly or indirectly to appoint or remove a majority of the board of directors of C.

(3) Schedule 1 contains provision applying for the purpose of interpreting paragraph (2).

(4) The second condition is that it is reasonable, having regard to all the circumstances, to expect that P would (if P chose to) be able, in most cases or in significant respects, by whatever means and whether directly or indirectly, to achieve the result that affairs of C are conducted in accordance with P's wishes.

**1.8** The two-condition ownership and control (O&C) test serves as a critical safeguard against sanctions circumvention by ensuring that entities owned or controlled by a DP are subject to financial sanctions, even if not listed. In particular, the second condition of that test (also referred to as ‘the control test’) is broadly drafted to capture as much activity as possible.

**1.9** Industry is responsible for the implementation of financial sanctions and effective compliance relies on clear legislation and guidance, as well as thorough due diligence by firms and individuals.

**1.10** HMG expects firms and individuals to fully consider the risks of an entity being owned or controlled by a DP. Recognising that there is no single approach suitable for all circumstances, HMG does not prescribe the level or type of due diligence that should be undertaken to ensure

compliance with financial sanctions, but recommends that robust due diligence may include conducting research, requesting further information from relevant entities and seeking legal advice where obligations are unclear.

**1.11** Financial and legal industry representatives have raised concerns about the practical application of the control test, with particular emphasis on the degree of uncertainty of the control test and the potential for multiple and sometimes conflicting interpretations. Industry stakeholders report that perceived ambiguity in the legislation can impact business operations, introduce litigation risk and create significant difficulty in achieving consistent sanctions implementation.

**1.12** As part of the Review of Sanctions Implementation and Enforcement, published in May 2025, HMG committed to delivering measures to provide further clarity on O&C. This call for evidence forms part of delivering that commitment, by gathering targeted insights about the control test in financial sanctions legislation.

**1.13** The call for evidence focuses on control as a direct response to industry feedback, which has highlighted greater implementation challenges associated with the control element of the O&C test rather than the ownership element. On ownership, HMG continues to actively explore options to respond to calls for greater alignment with international partners, including adopting an aggregation model and amending the 50% ownership rule to “50% or more”, in line with the EU and US sanctions frameworks.

**1.14** Evidence received by HMG on the implementation challenges associated with the control test is often illustrative rather than specific. Industry has reported particular difficulty with the hypothetical choice element of the test (see 7(4) in Figure 1A above), that it is reasonable to expect that a DP *would, if they chose to*, be able to achieve the result that the affairs of an entity are conducted in accordance with their wishes. This hypothetical element is seen as particularly challenging to assess in practice and is frequently cited as a source of ambiguity and compliance risk.

**1.15** The UK’s strict liability model means that enforcement action can be taken in relation to breaches of financial sanctions regardless of whether a firm or individual knew or had reasonable cause to suspect there was a breach. HMG suspects this may have led to an increase in de-risking, as industry actors seek to avoid the potential risk of being found in violation of financial sanctions, particularly where it is challenging to determine whether control of an entity by a DP exists.

**1.16** Through this call for evidence, HMG is seeking to confirm whether the hypothetical choice element of the test is the most notable contributor to these challenges and to gather material evidence on potential compliance burdens and associated costs to business. Equally, HMG also wishes to gather any positive evidence regarding the utility of the hypothetical element of the control test.

## The planned scope of this call for evidence

**1.17** This call for evidence will inform HMG's investigation into the control test under UK financial sanctions regulations. We are aiming to gather evidence on three main areas through this exercise:

- Chapter 2 examines the prevalence and nature of hypothetical control (as defined at paragraph 2.2) in financial sanctions casework, including how frequently this form of control is encountered and in what contexts. We are seeking evidence on its significance in the application of financial sanctions.
- Chapter 3 explores the practical challenges and ease of implementation associated with the control test (see 7(4) in Figure 1A above), with a particular focus on the assessment of the hypothetical element of the test and the financial impact of compliance and implementation.
- Chapter 4 considers the practical utility of control typologies as a tool to assist with assessing the hypothetical element of the control test for financial sanctions. This includes, in particular, the typology of control set out by Deputy Judge Nicholas Thomsell in his ruling on *Kevin Hellard & Ors v OJSC Rossiljsky Kredit Bank & Ors*.

**1.18** It is HMG's intent that this investigation supports ongoing work to consider the effectiveness of the control test, to ensure that UK financial sanctions are both robust and implementable.

**1.19** This call for evidence does not seek to propose options for reforming the control test or to recommend significant changes to its drafting. Rather, it is intended to gather information and insights to inform future policy development.

## A call for evidence

**1.20** This call for evidence seeks input on a broad range of questions across implementation, cost of compliance and how control appears in practice. We invite diverse perspectives from stakeholders across various sectors to ensure a comprehensive understanding of the challenges and experiences associated with the O&C test.

**1.21** We particularly welcome responses from relevant firms (as defined in the UK regulations under the Sanctions and Anti-Money Laundering Act 2018), who are required to inform the Office of Financial Sanctions Implementation (OFSI) as soon as practicable if they know or reasonably suspect a person is a DP or has breached a prohibition or failed to comply with an obligation under the UK regulations.

**1.22** The questions posed in this call for evidence are intentionally broad, designed to capture the full range of respondents' experiences. This will support HMG in identifying specific compliance challenges and associated costs, understanding how the control test is implemented in

practice and exploring how control presents in sanctions casework across different sectors.

**1.23** It should be noted that not all areas examined in this document will necessarily, or are assumed, to require significant policy reform or legislative change. Further engagement may be conducted in response to the findings of this call for evidence.

# Chapter 2

## Prevalence and distribution of hypothetical control

**2.1** The control test (see 7(4) in Figure 1A above) would be satisfied by demonstrating that a DP would, if they chose to, be able to achieve the result that the affairs of an entity are conducted in accordance with their wishes.

**2.2** Evidence presented that the DP has not exercised control does not mean they do not have the ability to do so and therefore does not necessarily refute a DP's control over an entity. This may be referred to as a DP's hypothetical ability to exercise control, or simply 'hypothetical control.'

**2.3** The policy intent behind including the hypothetical control element in the control test is to capture the potential reach of DPs beyond their formal asset ownership. It protects against circumvention of sanctions through complex or opaque ownership arrangements or arrangements designed to obscure the true extent of a DP's influence. This could include, for example, use of trust structures, multi-jurisdictional ownership chains or utilisation of proxies.

**2.4** The hypothetical control element is ultimately intended to ensure that financial sanctions apply to a broader range of circumstances through which a DP could benefit from their ability to exercise control over an entity. This approach is grounded in the objectives of the asset freeze provisions set out in relevant UK sanctions regulations, which prohibit dealing with, or making available funds or economic resources, directly or indirectly, to or for the benefit of DPs.

**2.5** Without the hypothetical element, there is a risk that DPs could retain access to assets even where it is clear that they possess the power to control the affairs of an entity.

**2.6** Capturing hypothetical control also provides a more robust framework for assessing cases where actual exercise of control cannot be readily demonstrated, but where the structure or arrangements suggest that a DP retains the practical ability to direct the entity's affairs. This ensures financial sanctions are comprehensive, future-proof and able to respond to evolving methods of sanctions evasion.

**2.7** Ultimately, the inclusion of the hypothetical element in the control test aims to strengthen the impact and deterrent effect of the asset freeze provisions in the UK's financial sanctions regimes, supporting broader foreign policy and national security objectives.

**2.8** A worked example of what hypothetical control might look like in practice is included at Figure 2A below.

### **Figure 2A: Example of hypothetical control**

Person A is a DP under the Russia (Sanctions) (EU Exit) Regulations 2019.

Before designation, Person A founded and owned Company X. After designation, Person A transfers all their shares in Company X to three associates (Persons B, C and D) and resigns as director and signatory.

Public filings show only Persons B, C and D as shareholders and directors. Day-to-day decisions appear to be taken by the board without reference to Person A, and there is no evidence that Person A is currently exercising control.

However, prior to designation, the shareholders executed a deed that remains in force granting Person A the right, exercisable at any time by written notice, to nominate and remove a majority of the directors. These rights have not been exercised since designation and no board changes have been made at Person A's behest.

Although there is no evidence that Person A is currently exercising control, there is good reason to believe that Person A could, if they chose to do so, exercise control in most cases or in significant respects by using these existing legal rights to appoint directors.

**2.9** The following questions seek to understand how frequently hypothetical control arises.

**2.10** Please provide any relevant examples, anonymised case studies, or data that illustrate the role of hypothetical control in sanctions implementation in your answers to these.

### **Questions**

**2.11** How often does a DP's hypothetical ability to exercise control feature in your sanctions casework? In what proportion or volume of cases does this consideration materially affect the outcome, such as resulting in the test being met?

**2.12** In which sanctions regimes does hypothetical control most commonly arise? Are there particular regimes where it appears more frequently?

**2.13** Are there discernible sectoral or structural trends in the cases involving hypothetical control, for example the use of trusts, proxies, complex corporate structures or cross-jurisdictional arrangements?

**2.14** Have you observed any patterns in the way that DPs structure their interests or relationships that complicate the assessment of the hypothetical element of the control test?

**2.15** Without the hypothetical control element of the control test, how would you or your organisation identify and respond to potential circumvention by DPs through complex or opaque arrangements intended to obscure a DP's influence?

**2.16** What impact, whether positive or negative, does the assessment of hypothetical control have on legal risk and administrative burden?

# Chapter 3

## Implementing the control test

**3.1** The control test in UK financial sanctions legislation (see 7(4) in Figure 1A above) requires a forward-looking assessment based on the facts of each case. There is no single approach for implementing this test and individuals and firms are required to adopt a proportionate, risk-based methodology in their assessments.

**3.2** As explained in Chapter 2, the language used in the test is purposefully broad to strengthen the impact and deterrent effect of the financial sanctions. However, HMG appreciates that this may create challenges for practical application.

**3.3** From previous industry engagement, HMG is aware that the hypothetical control element of the test can be difficult to identify and assess. This can lead to uncertainty, increased compliance costs and a tendency towards de-risking, where firms limit, withdraw or refuse services to clients, sectors or jurisdictions that are perceived as presenting a higher risk of non-compliance with sanctions regulations.

**3.4** While de-risking can in some circumstances be a prudent response to reduce regulatory risk of non-compliance, it can have unintended negative consequences such as undermining legitimate business activity and disadvantaging entities that are not subject to financial sanctions. HMG is keen to ensure compliance with the control test is effective and proportionate.

**3.5** Conversely, the complexity of assessing the hypothetical element may result in inadvertent non-compliance, where firms fail to identify or address cases where financial sanctions should be applied to an entity due to perceived uncertainty or lack of clarity in the legislation or guidance.

**3.6** This can undermine the effectiveness of financial sanctions and expose firms to reputational risk or the possibility of enforcement action. HMG recognises the importance of supporting firms in meeting their sanctions compliance obligations without undue burden or risk of error.

**3.7** The following questions seek to understand implementation challenges associated with the control test.

## Questions

**3.8** Do you find that in practice, there is enough evidence to substantiate the hypothetical element - “P would (if P chose to) be able” - in the control test when dealing with hypothetical control? Why/why not? What evidence or information is most/least persuasive in these cases?

**3.9** What are the main challenges when forming an assessment of whether a DP would be able to exercise control if they chose to? How do these challenges affect due diligence burdens, resource allocation, the risk of litigation against your assessment or inconsistent outcomes?

**3.10** Is it costly to investigate hypothetical control and to implement financial sanctions on this basis? If yes, please provide monetary estimates. Would removing the clause offer tangible savings on your implementation and/or compliance costs?

**3.11** Are there any best practices or internal procedures your organisation has developed for managing issues associated with assessment of the hypothetical element? Conversely, are there any procedures that you disregarded as being ineffective?

**3.12** How, if at all, could HMG better support firms in making an independent assessment of hypothetical control (without providing a determination)? For example, through access to additional public sources of information, the publication of control typologies, and/or facilitating dissemination of industry-produced best practice?

# Chapter 4

## Typologies of control

**4.1** Typologies of control refers to the different types of patterns, mechanisms or methods by which control over an entity can be categorised. Chapters 2 and 3 of this document focus on hypothetical control, which is one such pattern of control, where assessment centres on the potential ability of a DP to exert influence, even if that control is not currently being exercised or evidenced.

**4.2** Other simple examples of types of control include:

- Direct control: This could arise where a DP holds a majority voting right in an entity allowing them to make decisions directly.
- Indirect control: In these cases, a DP might exert influence through a proxy or intermediary or via a complex ownership structure making the link between the DP and the entity less obvious.
- Personal control: Here, a DP could influence the affairs of an entity by exercising control through personal or familial relationships rather than through formal legal rights or contractual powers.

**4.3** In summary, there are various ways in which control can be structured or exercised. Understanding these typologies may be useful for firms and individuals looking to comply with the control test.

**4.4** In recent years, English courts have considered the interpretation of the control test in a number of judgments. For example, in June 2024, Deputy Judge Nicholas Thompsell ruled on the case of *Kevin Hellard & Ors v OJSC Rossiysky Kredit Bank & Ors*. In this judgment, Mr Justice Thompsell introduced a typology of control whereby the concept of control in the control test is organised into four categories. These are set out in Figure 4A below.

### Figure 4A: The typology of control in *Kevin Hellard & Ors v OJSC Rossiysky Kredit Bank & Ors*

**De jure control:** This exists where there is an absolute legal right to exercise control embedded, for example, in the constitution of a company or a body.

**Actual present de facto control:** This exists where the putative controller is manifestly "calling the shots" (to adopt the language used in *Mints*<sup>1</sup>) with no legal right to do so.

**Potential future de facto control:** This would exist where, although the DP enjoyed no current legal right of ownership or control, the DP had the legal means to obtain ownership or control.

**Potential future de jure control:** This would exist where although there was no evidence that the putative controller was currently exercising de facto control, there is some good reason to believe that the putative controller could, if he or she wished, exercise control in some manner.

**4.5** The typology of control set out by Mr Justice Thomsell<sup>2</sup> offers a structured legal framework for assessing control in the context of financial sanctions. However, HMG recognises that real-world arrangements can be complex and that the facts of a case may not always align precisely with these categories.

**4.6** Firms and individuals may encounter situations where the boundaries between different types of control are blurred, or where new or emerging patterns of control present challenges for compliance. Accordingly, HMG is seeking practical insights and evidence from stakeholders to ensure that any future policy development is grounded in the realities of implementation.

**4.7** The following questions seek to gather evidence and views on types of control relevant to assessing the control test, to clarify how control is understood and evaluated in practice.

## Questions

**4.8** Do you find that in practice, the way hypothetical control (as defined at paragraph 2.2) presents in sanctions casework typically corresponds with 'potential future de facto control' or 'potential future de jure control' as given in Mr Justice Thomsell's control typology?

---

<sup>1</sup> Mr Justice Thomsell refers here to *Mints & Ors v PJSC National Bank Trust* - <https://www.judiciary.uk/wp-content/uploads/2023/10/Mints-v-PJSC-judgment-061023.pdf>

<sup>2</sup> *Hellard & Ors v OJSC Rossiysky Kredit Bank & Ors [2024] EWHC 1783 (Ch).*

**4.9** Are there any examples from your casework that do not fit neatly in the four categories given in Mr Justice Thomsell's control typology, or which reveal gaps or ambiguities?

**4.10** Do you identify types of control in your sanctions casework when conducting assessments of control? Are there other typologies or conceptualisations of control not mentioned in this chapter that you consider practically relevant?

# Chapter 5

## How to respond

**5.1** HMG welcomes your views in response to the questions posed. We encourage stakeholders to provide as much evidence as possible to help inform HMG's response to these questions. This will help ensure evidence-based policy decisions. This call for evidence closes at 11:59pm on 13<sup>th</sup> April 2026.

**5.2** We encourage responses to be made via the online form <https://www.smartsurvey.co.uk/s/OwnershipAndControl/>

**5.3** If you cannot respond via the online form, you may send your response by email to [oc-callforevidence@hmtreasury.gov.uk](mailto:oc-callforevidence@hmtreasury.gov.uk)

**5.4** If you are responding via email, please make it clear which question each comment relates to. When responding, please state whether you are responding as an individual or representing the views of an organisation, business, or representative body.

**5.5** Questions or enquiries in relation to this call for evidence should also be directed to the above email address.

# Annex A

## Processing of personal data

### HM Treasury – processing of personal data

This section sets out how we will use your personal data and explains your relevant rights under the UK General Data Protection Regulation (UK GDPR). For the purposes of the UK GDPR, HM Treasury is the data controller for any personal data you provide in response to this call for evidence.

#### **Your data (Data Subject Categories)**

The personal information relates to members of the public, parliamentarians, and representatives of organisations or companies.

#### **The data we collect (Data Categories)**

Information may include the name, address, email address, job title, and employer of the correspondent, as well as their opinions.

It is possible that respondents will volunteer additional identifying information about themselves or third parties.

#### **Purpose**

The personal information is processed for the purpose of obtaining the opinions of members of the public and representatives of organisations and companies, about departmental policies, proposals, or generally to obtain public opinion data on an issue of public interest.

#### **Legal basis of processing**

The processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the HM Treasury. The task is obtaining opinion data in order to develop good effective policies.

#### **Who we share your responses with (Recipients)**

Information provided in response to a call for evidence 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 2018 (DPA) and the Environmental Information Regulations 2004 (EIR).

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 with, amongst other things, obligations of confidence. In view of this it would be helpful if you could explain to us why you regard 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 HM Treasury.

Where someone submits special category personal data or personal data about third parties, we will endeavour to delete that data before publication takes place.

Where information about respondents is not published, it may be shared with officials within [other public bodies](#).

As the personal information is stored on our IT infrastructure, it will be accessible to our IT contractor NTT. NTT will only process this data for our purposes and in fulfilment with the contractual obligations they have with us.

### **How long we will hold your data (Retention)**

Personal information will generally be published and therefore retained indefinitely as a historic record under the Public Records Act 1958.

Personal information in responses that is not published will be retained for three calendar years after the call for evidence has closed.

### **Special data categories**

Any of the categories of special category data may be processed if such data is volunteered by the respondent.

### **Basis for processing special category data**

Where special category data is volunteered by you (the data subject), the legal basis relied upon for processing it is: The processing is necessary for reasons of substantial public interest for the exercise of a function of the Crown, a Minister of the Crown, or a government department.

This function is obtaining opinion data to develop good effective policies.

Your responses and evidence may be shared with other government departments, for the purposes of analysis. Details which may identify you shall be removed prior to sharing taking place. Your responses will not be shared with any other third parties unless separately stated.

## **Your rights**

- You have the right to request information about how your personal data are processed, and to request a copy of that personal data
- You have the right to request that any inaccuracies in your personal data are rectified without delay
- You have the right to request that your personal data are erased if there is no longer a justification for them to be processed
- You have the right in certain circumstances (for example, where accuracy is contested) to request that the processing of your personal data is restricted
- You have the right to object to the processing of your personal data where it is processed for direct marketing purposes

## **Complaints**

If you have any concerns about the use of your personal data, please contact us via this mailbox: [privacy@hmtreasury.gov.uk](mailto:privacy@hmtreasury.gov.uk)

If we are unable to address your concerns to your satisfaction, you can make a complaint to the Information Commissioner, who is an independent regulator.

The Information Commissioner can be contacted at:

Information Commissioner's Office

Wycliffe House

Water Lane

Wilmslow

Cheshire

SK9 5AF

0303 123 1113

[casework@ico.org.uk](mailto:caserwork@ico.org.uk)

Any complaint to the Information Commissioner is without prejudice to your right to seek redress through the courts.

## **Contact details**

The data controller for your personal data is HM Treasury.

The contact details for the data controller are:

HM Treasury  
1 Horse Guards Road  
London  
SW1A 2HQ  
020 7270 5000  
[public.enquiries@hmtreasury.gov.uk](mailto:public.enquiries@hmtreasury.gov.uk)

The contact details for the data controller's Data Protection Officer (DPO) are:

DPO  
1 Horse Guards Road  
London  
SW1A 2HQ  
London  
[privacy@hmtreasury.gov.uk](mailto:privacy@hmtreasury.gov.uk)

# Annex B

## List of questions

### Chapter 2 Questions

**2.11** How often does a DP's hypothetical ability to exercise control feature in your sanctions casework? In what proportion or volume of cases does this consideration materially affect the outcome, such as resulting in the test being met?

**2.12** In which sanctions regimes does hypothetical control most commonly arise? Are there particular regimes where it appears more frequently?

**2.13** Are there discernible sectoral or structural trends in the cases involving hypothetical control, for example the use of trusts, proxies, complex corporate structures or cross-jurisdictional arrangements?

**2.14** Have you observed any patterns in the way that DPs structure their interests or relationships that complicate the assessment of the hypothetical element of the control test?

**2.15** Without the hypothetical control element of the control test, how would you or your organisation identify and respond to potential circumvention by DPs through complex or opaque arrangements intended to obscure a DP's influence?

**2.16** What impact, whether positive or negative, does the assessment of hypothetical control have on legal risk and administrative burden?

### Chapter 3 Questions

**3.8** Do you find that in practice, there is enough evidence to substantiate the hypothetical element - "P would (if P chose to) be able" - in the control test when dealing with hypothetical control? Why/why not? What evidence or information is most/least persuasive in these cases?

**3.9** What are the main challenges when forming an assessment of whether a DP would be able to exercise control if they chose to? How do these challenges affect due diligence burdens, resource allocation, the risk of litigation against your assessment or inconsistent outcomes?

**3.10** Is it costly to investigate hypothetical control and to implement financial sanctions on this basis? If yes, please provide monetary estimates. Would removing the clause offer tangible savings on your implementation and/or compliance costs?

**3.11** Are there any best practices or internal procedures your organisation has developed for managing issues associated with assessment of the hypothetical element? Conversely, are there any procedures that you disregarded as being ineffective?

**3.12** How, if at all, could HMG better support firms in making an independent assessment of hypothetical control (without providing a determination)? For example, through access to additional public sources of information, the publication of control typologies, and/or facilitating dissemination of industry-produced best practice?

## Chapter 4 Questions

**4.8** Do you find that in practice, the way hypothetical control (as defined at paragraph 2.2) presents in sanctions casework typically corresponds with 'potential future de facto control' or 'potential future de jure control' as given in Mr Justice Thomsell's control typology?

**4.9** Are there any examples from your casework that do not fit neatly in the four categories given in Mr Justice Thomsell's control typology, or which reveal gaps or ambiguities?

**4.10** Do you identify types of control in your sanctions casework when conducting assessments of control? Are there other typologies or conceptualisations of control not mentioned in this chapter that you consider practically relevant?

## **HM Treasury contacts**

This document can be downloaded from [www.gov.uk](http://www.gov.uk)

If you require this information in an alternative format or have general enquiries about HM Treasury and its work, contact:

Correspondence Team  
HM Treasury  
1 Horse Guards Road  
London  
SW1A 2HQ

Tel: 020 7270 5000

Email: [public.enquiries@hmtreasury.gov.uk](mailto:public.enquiries@hmtreasury.gov.uk)

