SANCTIONS AND ANTI-MONEY LAUNDERING BILL

MEMORANDUM FROM THE FOREIGN AND COMMONWEALTH OFFICE

TO THE DELEGATED POWERS AND REGULATORY REFORM COMMITTEE

A. INTRODUCTION

1. This memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Sanctions and Anti-Money Laundering Bill ("**the Bill**"). The Bill was introduced in the House of Lords on 18th October 2017. This memorandum identifies the provisions of the Bill that confer powers to make delegated legislation. It explains in each case why the power has been taken and explains the nature of, and the reason for, the procedure selected.

B. PURPOSE AND EFFECT OF THE BILL

2. Part 1 of the Bill would enable the Government to impose and implement sanctions in order to comply with its obligations under the United Nations Charter and to support its wider foreign policy and national security goals. Many current powers used to do so flow from the European Communities Act 1972, and so would not be available after exit from the EU, so the Bill would put in place new legal powers to impose sanctions. It is not possible to achieve this through the European Union (Withdrawal) 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 the UK in breach of its international obligations and unable to work effectively with European and international partners to tackle shared challenges.

3. The Bill would make provision allowing the UK Government to impose sanctions under new powers, including in relation to asset freezing, financial markets, immigration, trade, and aircraft and shipping.

4. Within these areas, the Bill would make provision for designation of persons by description and by name, subject to meeting the threshold of reasonable grounds to suspect that the person is an 'involved person' (namely, a person involved in the activities targeted by sanctions, such as nuclear proliferation) and that the listing is appropriate with regard to the purpose of the sanctions regime. It would make provision for designated persons to be notified of their designation, and robust procedures for reviews of, and challenges to, designations.

5. Part 2 of the Bill contains a framework power to create regulations which make provision for money laundering and terrorist financing. The UK currently makes provision in respect of money laundering and counter terrorist financing through the European Communities Act 1972. The most recent incarnation of these provisions is the Money Laundering Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 ("the Money Laundering Regulations 2017"), implementing the EU's Fourth Money Laundering Directive. Upon exit from the EU, there is no similar power in UK legislation that would enable the UK to create, update or revoke anti money laundering legislation.

6. The Bill is in three parts:

   (a) Part 1 would enable the Government to make sanctions regulations.

   (b) Part 2 would enable the Government to make regulations about money laundering and terrorist financing.

   (c) Part 3 deals with general matters.

C. DELEGATED POWERS

Part 1: SANCTIONS REGULATIONS

Clause 1: Sanctions regulations

Power conferred on: *Secretary of State or HM Treasury*

Power exercised by: *Regulations made by statutory instrument*

Parliamentary Procedure: *Negative (for regulations dealing with UN sanctions); made-affirmative (where UN sanctions are not dealt with); draft-affirmative (where the regulations repeal, revoke or amend primary legislation)*

Context and purpose

7. The power under clause 1, which is supplemented by clauses 2 to 17, 38, 42, 44 and Schedule 1, would give effect to the core purpose of the Bill; it would enable Ministers to make regulations imposing sanctions, enabling the UK to continue to comply with its international obligations and to play a key role in international affairs, including the fight against terrorism, once the UK has left the EU.

8. The proposed powers to make sanctions regulations should be considered in light of the other provisions in this Bill, including:

   (a) Clauses 19, 21 and 23, which give individuals who are affected the ability to request a reassessment of their designation (or, in the case of a ship, specification);

   (b) Clauses 20, 24 and 26, which require Ministers to undertake regular reviews of sanctions; and

   (c) Chapter 4 of Part 1, which provides access to courts for those affected by sanctions.

9. 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. For example, sanctions put in place against Da'esh and Al Qaida. 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, the UK is obliged under international law to implement sanctions agreed by the UN Security Council[1].

10. The UK and our international partners have also imposed and implemented autonomous sanctions in situations where the UN has chosen not to act but where we consider an international response is still necessary. Often this has involved close cooperation between the EU and United States, with the support of others, including Canada, Australia, Switzerland and Norway. An example of such autonomous sanctions is the regime in respect of Syria. On occasion, the EU and like-minded partners have decided to supplement UN sanctions with additional autonomous measures, for example against North Korea.

11. The UK currently implements over 30 sanctions regimes. These include country-specific sanctions regimes, including on Russia, North Korea and Iran, as well as regimes targeting Da'esh, Al Qaida and other terrorist groups. Between North Korea and Syria alone, the UK has been instrumental in designating over 500 individuals and entities. Sanctions can have real impact as shown in the role they played in bringing Iran to the negotiating table and securing agreement that its nuclear regime will be exclusively peaceful. There are currently around 2000 persons and entities subject to UN and EU sanctions implemented by the UK.

Existing powers

12. Currently, sanctions are implemented, for the most part, through EU legislation (mostly directly effective EU Regulations) and legislation made under section 2(2) of the European Communities Act 1972 following the negative procedure. The Member States of the EU generally implement their UN obligations with respect to sanctions via EU legislation.

13. Once the 1972 Act is repealed, the UK would have some, but limited, powers that it could use to implement sanctions. Unfortunately, none of those powers is capable of reproducing the full range of sanctions currently imposed.

[1] See UN Charter Article 25.

14. The United Nations Act 1946 contains powers to give effect to UN Security Council resolutions. However, in 2010 the UK Supreme Court ruled[2] 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.

Financial sanctions and counter-terrorism

15. Financial sanctions are currently implemented by way of directly effective EU Regulations. There are currently no available powers in relation to sanctions that would enable the UK to implement in future the kind of broad measures imposed by Article 23 of Council Regulation (EU) 267/2012 in respect of nuclear proliferation by Iran (asset freeze). There are some limited powers in relation to asset freezing. The UK has counter-terrorism asset freezing legislation in place – the Terrorist Asset-Freezing etc. Act 2010. 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). However, it cannot be used for asset freezing that is not connected with terrorism, such as that provided for by Article 23 of Council Regulation (EU) 267/2012 in relation to nuclear proliferation by Iran. The UK also 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 that must be satisfied to use these powers make them unsuitable for implementing wider sanctions regimes.

Aircraft sanctions

16. There are currently no aviation-specific powers in relation to sanctions. Where UN regimes prescribe aviation sanctions, the UK has implemented these via secondary legislation made under the United Nations Act 1946. For example, Article 6A of the North Korea (United Nations Sanctions) Order 2006 prohibits the leasing or chartering of an aircraft, or the provision of crew services for an aircraft, to North

[2] HMT vs. Ahmed [2010] UKSC

Korea, any person listed in Annex IV to Council Regulation (EC) 329/2007, or any person acting on behalf of, or at the direction of, North Korea or a person listed in the aforementioned Annex. Further aircraft sanctions are implemented in UK law due to the direct effect of certain EU legislation.

17. However, when the UK leaves the EU, the UK will have no power to impose new aircraft sanctions other than where required by a UN Security Council resolution. Existing aviation powers are not sufficient to put in place the stringent prohibitions required to render international sanctions effective.

Trade sanctions

18. The main existing power to control exports is the Export Control Act 2002 (the "2002 Act"). Under the 2002 Act, the Secretary of State has the power to impose, by Orders following the negative procedure, various types of controls under sections 1 to 4. These can be put in place for the purpose of giving effect to the UK's international obligations (section 5(2) of the 2002 Act). Otherwise, those controls must relate to one or more of the categories of goods, technology or technical assistance specified in the Schedule (section 5(4) of the 2002 Act).

19. The 2002 Act is currently used to implement controls on the trade in military and dual-use equipment and technology, to implement some measures contained within EU sanctions regimes, and to implement elements of the Organization for Security and Co-operation in Europe's sanctions regimes. Orders made under the United Nations Act 1946 are also used to give effect to a small number of import, export and trade provisions[3] from UN sanctions regimes. These relate to import, export and trade of military goods, WMD-related goods, and technical and financial assistance.

20. 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 is necessary to expand the powers in domestic legislation to cover these additional measures if the UK wishes to avoid

[3] For example, these provisions include:
- Purchase, import or transfer of military or WMD goods from North Korea (S.I. 2009/1749) and Iran (S.I. 2009/886).
- Export, Supply, delivery or acts calculated to supply or deliver military items to Iraq (S.I. 2003/1519), Somalia (S.I. 2002/2628) and Liberia (S.I. 2004/348).
- Provision of technical and financial assistance or training to Somalia (S.I. 2002/2628).

reducing its ability to impose sanctions when it leaves the EU. For example, the 2002 Act does not enable controls to be placed on:

(a) goods, such as luxury goods, that do not fall within the categories set out in the Schedule to the 2002 Act (except on a temporary basis pursuant to section 6 of the 2002 Act);

(b) services such as brokering, technical assistance, financing and financial assistance, unrelated to goods;

(c) the acquisition or making available of land;

(d) the entering into, or continuing to be a party to arrangements for commercial purposes; or

(e) owning, controlling or having a prescribed interest in persons (other than individuals).

Shipping sanctions

21. There are currently no shipping-specific powers in relation to sanctions. Where UN regimes prescribe shipping sanctions, the UK has implemented this via Orders (with no Parliamentary procedure) under the United Nations Act 1946. For example, Article 6 of the North Korea (United Nations Sanctions) Order 2006 makes it an offence to own, lease, operate or insure a ship which is registered in North Korea. Further shipping sanctions are implemented in UK law due to the direct effect of certain EU legislation.

22. However, the UK currently has no power to impose sanctions where neither of the above scenarios is applicable. Existing maritime powers are not sufficient to put in place the stringent prohibitions required to render international sanctions effective.

How these powers would be used

23. Clause 1 would enable Ministers to make sanctions regulations where they think that sanctions are appropriate for the purpose of compliance with UN obligations, or other international obligations, or for one of the purposes set out in subsection (2). The purposes of sanctions regulations in subsections (1) and (2) are crafted to fit the

purposes for which the UK currently implements sanctions; this clause enables the continuation of existing practice. Subsection (3) would require that the regulations should always state the purpose of the sanctions regulations, ensuring that the regulations could only be made for one of the purposes set out in the Bill. The prohibitions and requirements in the regulations, which are provided for under clauses 2 to 7, always need to be considered against the original purpose of the sanctions.

24. Although the power could be used to provide a single regulation containing all sanctions, the Government expects that this power would be used to make one set of regulations for each sanctions regime (there are around 30 regimes currently). It will therefore be possible to see at a glance all of the sanctions that are relevant to any given country or regime.

Financial sanctions

25. Financial sanctions, including asset freezes, are a common element of sanctions regimes. Clause 2 would enable the Secretary of State to provide in regulations for the imposition of prohibitions and restrictions on designated persons. The clause sets out the types of financial sanctions that can be imposed.

(a) Clause 2(1)(a) deals with the freezing of funds, and could be used together with clause 2(1)(d) and (e) to impose a general prohibition on dealing with the funds or economic resources belonging to or owned, held or controlled by a designated person. This type of sanction is widely imposed, for example in relation to Iran under Article 23(a) of Council Regulation (EU) 267/2012.

(b) Clause 2(1)(b) and (c) refer to preventing financial services being supplied to, or being procured from, designated persons or other prescribed persons. This would give the UK government the ability to impose wide financial restrictions, including prohibitions on access to finance and capital markets and prohibiting the transfer of funds to a country, region or sector. This could be used to give effect to sanctions currently implemented by Article 21 of Council Regulation (EU) 2017/1509, which places controls on the transfers of funds to and from North Korea.

(c) Clauses 2(1) (d) and (e) refer to preventing funds and economic resources from being received from and made available to persons, not only to designated persons but also to other prescribed persons. This type of sanction is currently imposed, for example, under Article 17 of Council Regulation (EU) 2017/1509 which prevents investment in commercial activities of certain North Korean entities.

(d) Clause 2(1)(f) refers to prohibitions on trading in financial products issued by designated persons. This could be used to implement the sanctions currently imposed under Article 5 of Council Regulation (EU) 833/2014, which places controls on the trading of money market instruments issued by Russian economic operators listed in Annex III.

(e) Clause 2(1)(g) and (2) refer to prohibitions on acquiring or maintaining ownership interests in persons, and on entering into or continuing commercial relationships with prescribed persons, including designated persons. This could be used to make provision equivalent to Article 26 of Council Regulation (EU) 2017/1509, which requires financial institutions in the EU to break off commercial relations (such as correspondent banking relationships) with North Korean financial institutions.

Immigration sanctions

26. Travel bans are a common element of a sanctions regime. Clause 3 would enable the Secretary of State to provide, in sanctions regulations, that designated persons are "excluded persons" for the purpose of the Immigration Act 1971. The effect of being an "excluded person" is that:

(a) they must be refused leave to enter the UK – section 8B(1)(a) of the 1971 Act;

(b) they must be refused leave to remain in the UK – section 8B(1)(b) of the 1971 Act;

(c) any existing leave to enter or remain in the UK is automatically cancelled – section 8B(2) of the 1971 Act; and

(d) any leave subsequently given is invalid – section 8B(1) of the 1971 Act;

27. Travel bans that are required by a UN Security Council Resolution are automatically brought into effect through section 8B of the Immigration Act 1971. Therefore the powers in this clause would only be used where the UK was acting with international partners outside the UN. This might include replicating the EU autonomous sanctions regimes for Syria or Russia, which both contain travel ban requirements.

Trade sanctions

28. Trade sanctions are one of the principal elements of a sanctions regime. They fall into two main categories:

    (a) Controls on the import, export and overseas movement of goods.

    (b) Controls on the provision and supply of services (such as technical and financial assistance), and on land, funds, investment and economic resources, whether or not associated with such goods.

29. The trade powers fall into the following groups in the Bill:

    (a) Paragraphs 2, 3, 4, 6 and 7 of Schedule 1 deal with controls on goods. Examples of how these powers could be used would be to provide for the controls in Article 3(1) of Council Regulation (EU) 1509/2017 (North Korea) in relation to exports to a prescribed country and Article 1(1) of Council Decision (CFSP) 2016/1693 (Da'esh and Al-Qaeda) in relation to exports to designated persons;

    (b) Paragraphs 5, 6 and 7 relate to controls on technology. This power could be used to provide for Article 2b(1) of Council Regulation (EU) 692/2014 (Crimea and Sevastopol);

    (c) Paragraphs 8 and 9 would enable controls on land. This power could be used to provide for Article 2a(1) of Council Regulation (EU) 692/2014 (Crimea and Sevastopol);

    (d) Paragraph 10 would enable controls on activities related to military activities. This power could be used to provide for Article 8(1) of Council Regulation (EU) 356/2010 (Somalia);

(e) Paragraphs 11-14 would enable controls on services. This power could be used to provide for Article 4(1) of Council Regulation (EU) 833/2014 (Russia) and Article 1(2) of Council Decision (CFSP) 2016/1693 (Da'esh and Al-Qaeda);

(f) Paragraph 15 would enable controls on ships specified in UN Security Council resolutions. This power could be used to provide for Article 15 of Council Regulation (EU) 2016/44 (Libya); and

(g) Paragraph 16 would enable controls on cultural property. This power could be used to provide for a provision achieving the effect of Article 11c of Council Regulation (EU) 36/2012 (Syria).

Aircraft sanctions

30. Aviation sanctions have an important role in limiting the economic (and in some cases leisure) activity of countries, individuals and companies which are subject to sanctions. They operate in two key ways:

(a) by prohibiting the use of aircraft and related services from relevant countries, individuals or entities; and

(b) by prohibiting the provision of aircraft (for example via a charter) and related services to relevant countries, individuals or entities.

31. Clause 5 would allow regulations to be made which allow the Secretary of State to prevent certain aircraft from taking off in, landing in or overflying the UK, and for controlling the movement of aircraft within the UK. The power could be exercised by the Secretary of State or, where specified, by the Civil Aviation Authority and the air traffic control service provider or, where appropriate, an airport operator, all of whom can give the required direction to the operator or pilot in command of the aircraft.

32. The power to prevent an aircraft from taking off in, landing in or overflying the UK would be used, for example, to comply with paragraph 21 of UN Security Council resolution 2270/2016 (North Korea), which requires Member States to prohibit these activities unless it is for the purposes of an inspection.

33. Subsection (1)(c) would enable regulations to be made which impose prohibitions or requirements in order to prevent UK persons owning, chartering or operating aircraft which are registered in a prescribed country. This would be used, for example, to comply with paragraph 19 of UN Security Council resolution 2270/2016 (North Korea) which prohibits Member States from allowing their nationals to lease, charter or provide crew services to North Korea.

34. Subsection (1)(d) would allow the Secretary of State to prohibit UK persons from registering aircraft in a prescribed country. This power would be used, for example, to supplement paragraph 20 of UN Security Council resolution 2270/2016 (North Korea), which prohibits Member States from allowing their nationals to register vessels in North Korea, by applying this sort of restriction to aircraft.

35. Subsection (1)(e) and (4) would permit the making of regulations which would allow the Secretary of State to issue directions to the Civil Aviation Authority, to the effect that an aircraft is to be refused registration or be removed from the register. The former would be used where the Secretary of State becomes aware that an aircraft which is owned or partly owned by a designated person or a prescribed country is seeking to become registered in the UK. The latter would be used where an owner of an aircraft subsequently becomes subject to sanctions.

Shipping sanctions

36. Sanctions relating to maritime transport are an important means of limiting the ability of a country or entity which is subject to sanctions to trade, as well as potentially impacting on the lifestyle of designated individuals. They operate in two key ways:

    (a) by prohibiting the use of ships and related services from relevant countries, individuals or entities; and

    (b) by prohibiting the provision of ships (for example via a charter) and related services to relevant countries, individuals or entities.

37. Clause 6 would allow regulations to be made which allow the Secretary of State to impose prohibitions or requirements in order to detain or control the movement of certain ships within the UK, to ensure that such ships do not enter the UK or that they leave the UK. The powers would be exercisable by the Secretary of State, who

could give a direction directly to the master or pilot of the ship, or direct a relevant harbour authority to give such a direction.

38. These powers to control the movement of a vessel, which include preventing a vessel from entering the UK, would be used, for example, to comply with Article 22 of UN Security Council resolution 2270/2016 (North Korea), which requires Member States to prohibit the entry into their ports of any vessel in relation to which there are reasonable grounds to believe is owned or controlled, directly or indirectly, by a designated individual or entity.

39. The power to detain a vessel in the UK would be used, for example, in accordance with Article 19 of UN Security Council resolution 2270/2016 (North Korea), which states that Member States must prohibit their nationals from leasing or chartering their flagged vessels to North Korea and any designated persons or entities. Thus a vessel which it is reasonably suspected has been, or purports to be, chartered by such a person or entity, can be prevented from undertaking the voyage it has been chartered in relation to.

40. Subsection (1)(c) would allow regulations to be made which impose prohibitions or requirements in order to prevent UK persons owning, controlling, chartering or operating ships which are registered in or fly the flag of a prescribed country. This would be used, for example, to comply with Article 20 of UN Security Council resolution 2270/2016 (North Korea).

41. Subsection (1)(d) would allow the Secretary of State to make regulations which prohibit UK persons from registering ships in or flying the flag of a prescribed country. This power would be used, for example, to meet the requirements of Article 20 of UN Security Council resolution 2270/2016 (North Korea).

42. Subsection (1)(e) would permit the making of regulations which would allow the Secretary of State to prevent the registration of ships in which a designated person holds a prescribed interest and ships in which persons connected with a prescribed country hold a prescribed interest, as well as specified ships. Subsections (2) and (4) allow the making of regulations which allow the Secretary of State to issue directions to the Registrar General of Shipping and Seamen, to the effect that a ship is to be removed from the Register. The former would be used where the Secretary of State

becomes aware that a ship which is owned by a designated person or a prescribed country is seeking to become registered in the UK. The latter would be used where someone named on the Register subsequently becomes subject to sanctions.

Other sanctions

43. Clause 7 would enable the Secretary of State to make sanctions regulations in relation to any sanctions that are not mentioned above but which are appropriate for the purpose of implementing a UN sanction. This would enable the powers in the Bill to be used to put in place UN sanctions that are not covered by any of the provisions made above, as such types of sanctions emerge. This clause is essential to ensure that the UK can continue to act in concert with its international partners and continue to play a central role in international affairs. Without this clause, the UK would be at risk of being in breach of its international obligations under the UN Charter because it would be obliged under international law to put them in place but not have a specific power within the Bill to be able to do so. Sanctions are a dynamic and evolving tool, and the powers in this clause would be used to provide for sanctions that are not provided for elsewhere in the Bill.

Designation

44. Clauses 9 to 11 would enable regulations made under clause 1 to empower Ministers to designate persons for the purpose of specific sanctions. Persons can be designated by name and by description. The term 'person' is defined widely to catch natural and legal persons as well as organisations and bodies. These clauses would provide that the Secretary of State must have reasonable grounds to suspect that a person is involved in an activity specified in the regulations (this threshold is already used by the UK when deciding on designations at both the UN and EU level). The regulations may only specify an activity if to do so is in accordance with the purpose of the regulations, which would ensure that the activities specified are those which are the target of the sanctions. Those purposes must, in turn, fall within one of the purposes set out in clause 1. The designation of persons is a common feature of all current sanctions regimes. Designated persons attract individual sanctions, including asset freezes. Designations are an effective way of coercing or constraining individuals who are directly involved or closely associated with the activity or behaviour targeted by the

sanctions. The Government would intend to publish the names of designated persons on a list on its website, and would also notify those persons, where possible, in accordance with clause 1. There are currently around 2000 designated persons under existing sanctions regimes implemented by the UK. Clause 12 provides for designation of those on UN sanctions lists.

Specified ships

45. Shipping sanctions made under clause 6 and trade sanctions made under Schedule 1 may contain powers for an authorised Minister to specify ships for the purposes of those regulations. Clause 13 makes additional provision about what may and must be contained in such regulations, very similar to the provision that is made in relation to the designation of persons.

Exceptions, licences, information and enforcement

46. Clauses 14 to 16 would enable the Secretary of State or Treasury to implement and enforce sanctions set out in sanctions regulations. Clause 14 enables the Secretary of State or Treasury to create exceptions to the regime or to licence otherwise prohibited activity. Clause 15 would enable the Secretary of State to require people to give authorities information or authorise or restrict the disclosure of information, while clause 16 would enable the creation of offences for the enforcement both of:

(a) prohibitions and requirements imposed directly by the regulation; and

(b) licence conditions, directions and other things done under the regulations.

47. Clause 16 makes a number of supplementary provisions:

(a) Subsection (5) enables the provisions of the Customs and Excise Management Act 1979 to apply in relation to certain sanctions, with or without modification. This enables HMRC to use their powers to enforce them.

(b) Subsection (7) enables investigatory powers in Chapter 1 of Part 2 to the Serious Organised Crime and Police Act 2005 to be used as part of enforcement.

(c) Subsection (8) enables the regulations made under clause 1 to set out which sanctions, when breached, can result in a civil monetary penalty being imposed under Chapter 8 of the Policing and Crime Act 2017.

48. Clause 17 enables sanctions to be enforceable against UK persons outside of the UK. Subsection (4) is dealt with below – see clause 51.

Justification for taking the powers

49. As set out above, new powers are considered by the Government to be essential if the UK is to continue to comply with its obligations under international law (in particular under the UN Charter), and take an active role with international partners in sanctions going forward.

50. The Government considers that it would be inappropriate for primary legislation to contain the detail of each individual sanctions regime, since this would inhibit the Government's ability to implement sanctions quickly in response to global events and satisfy its international obligations, leaving the UK in breach of international law.

51. Having the detail of sanctions regimes in primary legislation would also potentially frustrate the purposes for which sanctions are designed: for example, a peace process could be hindered due to the time taken to have sanctions amended or lifted through primary legislation. The Government considers it important that the framework enables sanction to be adapted and lifted in response to developments.

52. The Government therefore considers it necessary and appropriate to provide framework powers that enable detailed sanctions regimes to be set out in secondary legislation.

53. It follows that detailed provision for the enforcement of sanctions regimes should also be set out in secondary legislation rather than on the face of the Bill. For example, seeking to set out the detail of criminal offences in the Bill solely by reference to the powers under which sanctions regulations will be made would risk producing wrong results once the regulations are actually drafted. Precisely what the prohibitions or requirements will be – and therefore who can commit the offence of breaching them, how serious that offence is, and what is the appropriate penalty – cannot be determined until the regulations are drafted. If the offences were set out on the face

of the Bill, it might not be clear in all cases which elements of the sanctions regulations they related to. Trying to set out the offences in primary legislation would risk producing offences and penalties that are defective or disproportionate or both. It would also run counter to the general principle that provisions creating criminal offences should be precisely drafted and clear in their effect. However, the Government proposes that maximum sentences should be set out on the face of the Bill, in line with the Committee's previous guidance to enable Parliament to decide what the limits of sentences should be.

Justification for the procedure

54. Given the importance of sanctions and the significant effect that sanctions may have on those affected by them, the Government considers it important that the detail of individual sanctions regimes are placed before Parliament for consideration. However, the type of Parliamentary procedure chosen is important: the procedure chosen potentially affects the UK's continued compliance with international law, the UK's position as a leading player in international affairs, and the effectiveness of sanctions themselves.

55. The fact that sanctions need to be implemented quickly is important in determining the right Parliamentary procedure. The Government needs to be able to act swiftly to keep pace with quickly developing global events. In response to a fast-paced political crisis, new sanctions may be agreed (for example at the UN) in very short order, and may also be amended soon after, in response to a deterioration or improvement in the situation. Any delay in implementation of such sanctions in the UK could enable sanctions to be anticipated and circumvented, potentially completely undermining the purpose of the sanctions. In the case of asset freezes this is particularly stark: any delay could enable asset flight. For all sanctions, whether UN or otherwise, any procedure which requires regulations to be laid in Parliament in draft would effectively give those subject to sanctions (particularly asset freezes) advance notice of the sanctions, enabling them to remove their assets from the UK or otherwise take measures that would undermine the purpose of the sanctions. Therefore the Government considers that the draft-affirmative procedure, which requires draft regulations to be laid before Parliament before being made, is generally inappropriate for sanctions regulations.

56. Turning specifically to UN sanctions, the UK is obliged as a matter of international law to put these sanctions in place. The UN Charter requires the UK to carry out the binding decisions of the UN Security Council, including those pertaining to sanctions. Under the UN Charter the UK – at the domestic law level – has no discretion in whether to comply with sanctions imposed by the UN Security Council. It must do so without delay. Therefore any affirmative procedure (that is, either the made-affirmative procedure or the draft-affirmative procedure), which would involve obtaining Parliamentary approval each time a sanctions regime was put in place, would put the UK in breach of its obligations under international law to implement UN sanctions were Parliament not to approve the regulations. Were the UK to find itself in breach of its international law obligations, this would have a huge impact on the UK's reputation as a State that complies with international law and promotes the rule of law. This would in turn affect the UK's ability to play a leading role in proposing and negotiating sanctions at the UN. It would also call into question the effectiveness and status of the UK as a reliable Permanent Member of the Security Council if the UK were not able to properly implement the UN sanctions it had agreed should be made in that role. These issues in turn risk undermining the confidence of our international partners and may impact upon the continued ability of the UK to play a major role in international affairs.

57. It is important to note that other powers currently used (or available for use) for sanctions use the negative procedure. The most recent example are the powers contained in sections 152 and 153 of the Policing and Crime Act 2017, which enable regulations to be made to implement certain financial sanctions required under UN obligations. Those regulations follow the negative procedure. Orders under the Export Control Act 2002, which are currently used to implement the enforcement aspects of trade sanctions flowing from the UN and EU, generally follow the negative procedure. Those examples are also consistent with the procedure used for the exercise of powers under the European Communities Act 1972 which is currently used to implement most sanctions regimes in the UK. Moreover, Orders in Council under section 1 of the United Nations Act 1946, which are still used to implement some sanctions, including against North Korea, do not require any Parliamentary procedure at all, other than laying before Parliament. The Government accepts that the 1946 Act can no longer be used for the full range of sanctions used in modern

international relations (see paragraph 14 above). However, the proposed use of the negative procedure for UN sanctions does allow increased Parliamentary scrutiny compared to the current position under the 1946 Act in relation to some existing sanctions. The Government therefore considers that the negative procedure is necessary and appropriate for regulations dealing with UN sanctions; that procedure strikes a balance between the need for Parliamentary scrutiny, and ensuring that the UK continues to comply with international law in a timely manner and maintains a leading role in international affairs.

58. In relation to sanctions outside areas where the UN has acted, the Government considers that additional parliamentary scrutiny is appropriate. Therefore where the sanctions regulations do not deal with UN sanctions, it is proposed that they will be subject to the made-affirmative procedure. This ensures that Parliament has enhanced oversight of sanctions regimes in cases where the UK has chosen to act in an area where the UN is not acting. The Bill sets out in detail the types of sanctions that can be imposed in these situations and there is no power, under sanctions regulations, to go beyond these types of sanctions where the government is implementing non-UN sanctions. Parliament has the opportunity to scrutinise and further delineate the scope of the powers as they pass through Parliament.

59. In addition, the Bill provides a number of in-built protections that will apply to all sanctions, which the Government considers further contribute to the proposed procedures being the appropriate ones in the circumstances. In particular, the Bill provides for an annual review of each regime against the purpose it was put in place to achieve, which will involve looking at the current global picture (ensuring that sanctions will not become stale and remain in place when circumstances have changed); the Bill also provides for a broader triennial substantive review of all of the designations (and, in the case of ships, specifications) under the regime. The Bill also provides a number of safeguards to ensure that the Government does not act unreasonably when imposing sanctions on individuals, including evidentiary thresholds and opportunities for reassessments and challenges.

60. Where any regulations repeal, revoke or amend primary legislation as a consequence of the matters contained in the regulations, the Bill of course provides that sanctions regulations will following the draft-affirmative procedure, which is in line with the

advice from the Committee. However, the Government considers that it has identified, in the Bill, all of the consequential amendments to primary legislation that are required to implement sanctions, and therefore the draft-affirmative procedure is not expected to be used in practice for sanctions regulations.

Clause 27: Procedures for requests and reviews

Power conferred on: Secretary of State or HM Treasury

Power exercised by: Regulations made by statutory instrument

Parliamentary procedure: Negative

Context and purpose

61. Chapter 2 of Part 1 deals with requests for reassessments of designations and for the periodic review of designations. This clause would enable the Secretary of State or the Treasury to provide the procedures to be followed in relation to those requests and reviews. This might include, for example, providing for documents to be produced by applicants.

Justification for delegation

62. The Bill sets out the rights of designated persons to request reviews, and the requirement for periodic reviews to be carried out by the appropriate Minister. The Government proposes that the detailed procedure for such reviews should be specified by the Ministers who will carry them out. This would also allow these procedures to reflect differences between sanctions regimes, relevant international procedures, security and data protection issues relating to information that forms part of the review process, etc.

Justification for the procedure

63. The Government proposes that the procedure applicable to these regulations, which deal with procedural aspects of review, should be the negative procedure. These regulations would not impose any substantive sanctions, they simply set out administrative procedures. They would not be more onerous than the sanctions

regulations made under clause 1. Any regulations made under this clause must be compatible with the Human Rights Act 1998, including in relation to Article 6 of the European Convention on Human Rights.

Clause 29(2)(a): Power to make regulations setting out the conditions for adding people to existing (retained) EU sanctions regimes

Power conferred on: Secretary of State or HM Treasury

Power exercised by: Regulations made by statutory instrument

Parliamentary procedure: Negative

Context and purpose

64. The Government aims to use the powers in the Bill, if enacted, to replace existing sanctions contained in EU legislation with regulations made under clause 1. However, clause 29(2)(a) is part of a contingency measure that would enable the Secretary of State or Treasury to set out the conditions for adding people to existing EU sanctions regimes (which would be retained in UK law under the EU (Withdrawal) Bill). This power could only able to be used for a temporary period of two years, which reflects the period for using powers under the EU (Withdrawal) Bill. This power would only be used where the UK continues to rely on retained EU law in that period. The regulation making power only sets up the conditions in which the lists of designated persons in the retained EU sanctions regimes can be updated. It does not provide a power to update the lists; that is provided for by clause 28 of the Bill. Nor does it enable any substantive sanctions measures to be added or removed.

Justification for delegation

65. The Government considers that this power is necessary to enable the Government to act quickly to designate individuals in the event that an existing EU regime is retained in UK law, without needing to replace the entire existing EU sanctions regime with a UK regime. This will assist with the transition of sanctions from retained EU law into new UK law, as it will mean that the Government can continue to rely on EU retained law where necessary for a short period after exit. The scope of this power is very

narrow, as it does not enable the retained EU sanctions regimes themselves to be altered, or new sanctions set up. Powers under clause 1 of the Bill will need to be used to replace the retained EU sanctions regime with an UK one in due course.

Justification for the procedure

66. The Government proposes that regulations under this clause should be subject to the negative procedure. The Government considers that this is appropriate because of the very narrow scope of the power: the power can only be used to set the conditions for adding to lists of individuals, and it can only be used by reference to the purposes of the retained EU sanctions regimes that are already in place. The power to add and remove individuals itself resides in primary legislation (clause 28).

Clause 34: Rules of court

Power conferred on: Lord Chancellor

Power exercised by: Rules of court

Parliamentary procedure: Made-affirmative

Context and purpose

67. Clause 32 of the Bill provides a statutory challenge mechanism to enable persons who are affected by sanctions (primarily, designated persons) to challenge the imposition of sanctions. Although the Government strives to use open source material to make decisions wherever possible, there will be some occasions when the Government has relied on sensitive material to make that decision, public disclosure of which would be harmful to national security or another important public interest. In order to balance the need to protect national security with a person's ability to challenge their designations in court, clause 34(1) allows the closed material procedures in sections 66 to 68 of the Counter Terrorism Act 2008 to be used in respect of any sensitive material.

68. This clause enables the Lord Chancellor, having consulted the relevant head of the judiciary, to make rules of court about how the court conducts itself during the closed

material procedure. It can only be exercised once, the first time the closed material procedure is used. After that, the power reverts to the normal rule makers. It does not extend to Scotland as the power to make rules of court in the Court of Session is held by that Court.

Justification for delegation

69. The Government considers that this power is necessary to enable the Government to ensure that consistent court procedure is followed in relation to the sensitive material that can sometimes be involved in decision making. The procedure is the same as that set out in sections 28 and 29 of the Terrorist Asset-Freezing etc. Act 2010 which deals with the same issue.

Justification for the procedure

70. The Government proposes that regulations under this clause should be subject to the made-affirmative procedure, to balance the need to move swiftly to put these procedures in place where sensitive material is relevant to a challenge, and the need for proper Parliamentary scrutiny.

Clause 35: Power to make regulations suspending sanctions

Power conferred on: Secretary of State or HM Treasury

Power exercised by: Regulations made by statutory instrument

Parliamentary procedure: Negative

Context and purpose

71. Clause 35 would enable the Secretary of State or the Treasury to make regulations suspending sanctions. An example of where sanctions have been suspended is in relation to Iran. Under the 2016 nuclear deal, Iran sanctions can be "snapped back" by the EU if there is a breach of the international commitments made by Iran in relation to nuclear development. This power will enable sanctions contained in regulations made under Bill powers to be suspended.

Justification for delegation

72. This power would allow the Secretary of State to react swiftly to changes in circumstance, to enable sanctions to be lifted temporarily. Without this power, the Government would be restricted in the options it could take where a country or designated person had indicated that they would change their behaviour if sanctions were lifted. It would need to use the main regulation making power in clause 1 which would add uncertainty around obtaining votes in Parliament and potentially undermine any deal to suspend sanctions. This could result in missed opportunities to further the interests of international peace and security.

Justification for the procedure

73. The Government proposes that regulations under this clause should be subject to the negative procedure. It considers that this level of Parliamentary scrutiny is appropriate given that this power would not involve the imposition of sanctions. The lifting of sanctions has a positive effect on individuals who are no longer subject to restrictions, so there are no negative effects that might justify a higher level of Parliamentary scrutiny. The negative procedure would also enable the Government to act more nimbly and with more confidence in international negotiations about the lifting of sanctions, because the negotiation would not be subject to the express approval of Parliament. This would ensure that the UK will continue to play a key role in the negotiations around the lifting of sanctions, such as in relation to Iran.

Clause 36: Guidance

Power conferred on: Secretary of State or HM Treasury

Power exercised by: Statutory guidance

Parliamentary procedure: None

74. The purpose of guidance under this provision would be to aid policy implementation by supplementing the legal rules. It would be important that guidance could be updated rapidly to keep pace with events. It is Government policy that guidance should not be used to circumvent the usual way of regulating a matter: it would not

create rules that must be followed. There would be nothing to prevent Parliament from scrutinising the guidance at any time.

Clause 39: Power to amend Part 1 to authorise additional sanctions

Power conferred on: Secretary of State or HM Treasury

Power exercised by: Regulations made by statutory instrument

Parliamentary procedure: Draft-affirmative

Context and purpose

75. Clause 39 would allow the Secretary of State or Treasury to amend Part 1 of the Bill through regulations to impose types of sanctions not yet listed within Chapter 1 of the Bill, and specifically to amend the definition of sanctions regulations. It would not enable any amendment to be made to the purposes of sanctions set out in clause 1(1) and (2). This clause is intended to future-proof the Bill and would allow a future Secretary of State to amend the Bill if necessary to include new types of sanctions which are not currently imposed, for example in relation to cyber communications. That would permit the UK to take forward these new types of sanctions in situations where the UN has chosen not to act.

Justification for delegation

76. This power would allow the Secretary of State to react to changes in circumstance which may require a new kind of sanction to be imposed quickly. It is not possible to predict all the kinds of sanctions which may be useful or necessary in future. Without this power, the Government would not be able to react quickly to new types of sanctions (where they are not imposed by the UN) and would be less able to play a leading role in the development of sanctions as a tool in international relations. This power could be used in conjunction with clause 7 to enable the UK to take forward new types of sanctions both through the UN and in situations where the UN has chosen not to act.

Justification for the procedure

77. It is proposed that regulations under this clause should be subject to the draft-affirmative resolution procedure, in line with the Committee's previous guidance and as befitting a Henry VIII power of this type.

Clause 40: Power to make provision for immigration appeals

Power conferred on: Secretary of State

Power exercised by: Regulations made by statutory instrument

Parliamentary procedure: Draft-affirmative

Context and purpose

78. As set out at previously, the imposition of a travel ban on a designated person has consequences for their immigration status. Those who are in the UK will lose the right to remain and may be subject to removal from the UK. As a result, they may claim asylum or humanitarian protection, or claim that removal will breach their human rights. Those who are outside the UK will be refused entry. They may claim that this breaches their human rights. These 'immigration claims' are usually decided by the Secretary of State for the Home Department. The making of an asylum claim also has further effects under the Immigration Acts, such as the ability to access financial support. A decision on an immigration claim by the Secretary of State for the Home Department can give rise to a right of appeal before the Immigration and Asylum Chamber of the First Tier Tribunal, a specialist tribunal with expertise in deciding such claims.

Justification for delegation

79. The Government recognises that the proper decision maker in respect of an immigration claim is the Secretary of State for the Home Department, and the proper venue for deciding an appeal related to an immigration claim is the Tribunal. However, there is an overlap between these immigration claims and claims that can be made under the review and challenge mechanisms in the Bill. This may result in another

Secretary of State or the Treasury being the decision maker on, and the High Court hearing an appeal in relation to, an immigration claim.

80. This power would allow the Secretary of State to make regulations setting out what happens when an immigration claim is made in relation to any request for review, or challenge of a designation in the High Court. The power to make regulations will ensure that claims are sent to the Secretary of State for the Home Department for decision, and appeals to the Tribunal for resolution. The power would enable the Secretary of State to modify and disapply relevant legislation if required.

Justification for the procedure

81. It is proposed that regulations under this clause should be subject to the draft-affirmative resolution procedure, in line with the Committee's previous guidance and as befitting a power of this type.

Clause 41 and Schedule 2: Power to make provision for prevention of money laundering and prevention of terrorist financing

Power conferred on: Secretary of State or HM Treasury

Power exercised by: Regulations made by statutory instrument

Parliamentary Procedure: Made-affirmative (for new provision about high-risk countries); otherwise draft-affirmative

Context and purpose

82. The Fourth Money Laundering Directive (EU) 2015/849 is currently transposed into UK law mainly via regulations made under section 2(2) of the European Communities Act 1972; the Money Laundering Regulations 2017. These regulations also contain enforcement provisions for the directly applicable Funds Transfer Regulation (EU) 2015/847.

83. The EU seeks to align its legal acts in this area with the International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation, most recently updated by the Financial Action Task Force ("FATF") in February 2012.

84. These EU and domestic measures form an important part of the UK's regime for combating money laundering and terrorist financing, alongside statutory prohibitions of those crimes in the Proceeds of Crime Act 2002 and the Terrorism Act 2000. The Fourth Money Laundering Directive and transposing regulations require businesses involved in the financial, legal, accountancy and certain other sectors to mitigate the risks of their customers misusing the financial system to launder illicit money or channel funds into terrorist purposes. The Funds Transfer Regulation also requires payment service providers to attach information to electronic transfers of funds to enable senders and recipients to be identified.

85. The Money Laundering Regulations 2017, made by the Treasury, implement these EU level rules in UK law. Separate legislation relating to companies, made by the Secretary of State for Business, deals with issues of corporate transparency under the Directive.

Justification for taking the power

86. Once section 2(2) of the European Communities Act 1972 is repealed by the EU (Withdrawal) Bill, the Treasury and Secretary of State will have far more limited powers to make changes to the UK's anti-money laundering and counter-terrorist financing regime (whether by increasing or reducing regulation). To keep the UK's legal measures up to date with changes in technology and the changing nature of threats to the integrity of the financial system, and to comply with international standards such as those of FATF, it is necessary to enable new provision to be made in future in secondary legislation. That could include amendments to the Money Laundering Regulations 2017 that go beyond the scope of the powers in the EU (Withdrawal) Bill to fix deficiencies and inoperabilities.

87. Clause 41 would allow the Treasury or Secretary of State to make provision for the purposes of preventing money laundering, preventing terrorist financing, and implementing FATF Standards on combating threats to the integrity of the international financial system.

88. Schedule 2 makes more detailed provision about the kinds of provision that might be made under clause 38 for those purposes. They follow the existing provisions in the Money Laundering Regulations 2017 and currently required by the Fourth Money Laundering Directive. For example:

89. Paragraph 2 deals with risk assessments of the kind required by regulation 18 of the Money Laundering Regulations 2017 and Article 8 of the Fourth Money Laundering Directive.

90. Paragraph 3 deals with policies, controls and procedures as required by regulation 19 and Article 8.

91. Paragraph 7(1)(d) deals with approval of individuals with ownership or control over prescribed entities, as in regulation 26, which meets the requirement of Article 47.3 in order to prevent criminals having management functions in or beneficial ownership of certain types of business.

92. Paragraph 13 deals with civil penalties, as provided for in regulation 79, and Article 58 (sanctions).

93. It would not be possible for regulations under this clause to impose criminal penalties involving imprisonment for more than two years on conviction on indictment (paragraph 18), reflecting the maximum sentences currently available under the Money Laundering Regulations 2017.

94. There would be additional powers relating to an "oversight body" (paragraph 8) which are concerned with the proposed Office of Professional Anti Money Laundering Supervisors. This is designed to ensure effective co-operation and co-ordination of measures relating to supervisory authorities.

Justification for the procedure

95. The Money Laundering Regulations 2017, and the Money Laundering Regulations 2007 they replaced, are subject to the negative procedure. The Government proposes that new regulations should be made under the draft-affirmative procedure, which will give increased Parliamentary scrutiny of money laundering measures. However, in some cases there will be a need to act quickly to comply with international standards in relation to high-risk countries. The FATF recommendations include the need for firms to apply certain enhanced "due diligence" measures to relationships and transactions with persons and institutions from those countries that have been identified through FATF's International Cooperation Review Group as having strategic deficiencies in their anti-money laundering and counter terrorist financing regimes. If the

requirement for enhanced due diligence is delayed in taking effect, the potential for fraud, money laundering, and financial crime is higher (particularly in those countries placed on notice that such measures are forthcoming). In such cases it is proposed that the made-affirmative procedure apply: this would enable the UK to put in place requirements quickly, but subject still to Parliamentary approval. If regulations under this clause do repeal, revoke or otherwise amend provision in primary legislation they will be subject to the draft-affirmative resolution procedure, in line with the Committee's previous guidance and as befitting a Henry VIII power of this type.

Clauses 42 and 44: Power to make provision binding the Crown, and to make different provisions for different purposes, confer functions and jurisdiction and make supplemental, incidental, consequential or transitional provision, etc

Power conferred on: Secretary of State or HM Treasury

Power exercised by: Regulations made by statutory instrument

Parliamentary Procedure: Negative, made-affirmative or draft-affirmative, depending on the power used.

96. These clauses set out certain matters that may be contained in regulations made under the Bill. Clause 44 enables the Secretary of State to make supplemental, incidental, consequential or transitional provisions, as well as provisions conferring functions on people and conferring jurisdiction on courts. Clause 42 enables regulations under clause 1 or 41 to make provision binding the Crown.

97. The power to make consequential provision includes the power to amend, repeal or revoke primary legislation in the case of regulations made under clause 1 or 41. The powers are limited by the fact that any amendments made under the regulation-making power must be genuinely consequential on those regulations. As noted in the commentary above in relation to clauses 1 or 41, any provisions that repeal, revoke or otherwise amend provision in primary legislation will be subject to the draft-affirmative resolution procedure, in line with the Committee's previous guidance and as befitting a Henry VIII power of that type.

98. There are various precedents for consequential powers including section 85 of the Serious Crime Act 2015 and section 61 of the Psychoactive Substances Act 2016. Schedule 3 to the Bill already includes changes to various enactments as a consequence of the provisions in the Bill but it is possible that other consequential amendments could be required in the future. The Government considers that it would therefore be prudent for the Bill to contain a power to deal with these in secondary legislation.

Clause 46: Regulations under section 1: transitory provision

Power conferred on: Secretary of State or HM Treasury

Power exercised by: Regulations made by statutory instrument

Parliamentary procedure: None

99. Clause 46 would confer a power on the appropriate Minster to bring sanctions regulations into force by commencement regulations *if* the Secretary of State considers it appropriate to do in connection with the UK's withdrawal from the EU. As usual with commencement powers, it is proposed that regulations made under this clause not be subject to any Parliamentary procedure. The sanctions regulations would have been made under the procedure specified by the Bill, and so would have been subject to Parliamentary scrutiny already. In the case of made-affirmative sanctions regulations under clause 1 of the Bill, if commenced by regulations under this clause those sanctions regulations will cease to have effect after 60 days from the day they come into force (instead of 28 days from the day they are laid), unless approved by a resolution of each House of Parliament during that period.

100. Commencement by regulations would enable the sanctions regulations to be brought into force at a convenient time, for example by reference to the day on which the UK's exit from the EU takes place.

Clause 51 (and clause 17(4)): Extent and extra-territorial application

Power conferred on: Her Majesty

Power exercised by: Order in Council

Parliamentary procedure: None

101. Clause 51 would confer a power on Her Majesty, exercisable by Order in Council, to extend the provisions of the entire Bill, with such adaptations or other modifications as appear to Her Majesty to be appropriate, to any of the Channel Islands, the Isle of Man, or any British overseas territory. Similarly, clause 17(4) confers a power on Her Majesty, exercisable by Order in Council, to provide that prohibitions or requirements in relation to conduct outside the United Kingdom or its territorial sea can apply to bodies incorporated under the law of any of the Channel Islands, the Isle of Man, or any of the British overseas territories.

102. These powers have been taken in order to allow the Bill to be extended to such jurisdictions, subject to any modifications as appropriate. The standard practice in such situations is that were these jurisdictions pass appropriate legislation themselves, this power will not be used. However, some jurisdictions prefer to have UK regimes extended, without them having to legislate in their own jurisdictions.

103. The Government proposes that these Orders will not be subject to Parliamentary procedure, on the basis that that legislation by means of an Order in Council without Parliamentary procedure is the appropriate way to reflect the constitutional status of the Crown dependencies and overseas territories. There are a number of similar provisions which also contain no Parliamentary procedure. Examples include the Landmines Act 1998, section 29(4); the Chemical Weapons Act 1996, section 39(3); the Biological Weapons Act 1974, section 6(2); the Prevention of Terrorism Act 2005, section 16(8); and the Export Control Act 2002, section 16(5). Most recently, the Policing and Crime Act 2017 contains a power to make Orders in Council relating to financial sanctions, without a Parliamentary procedure.

Clause 52: Commencement

Power conferred on: Secretary of State

Power exercised by: Regulations made by statutory instrument

Parliamentary procedure: None

104. Clause 52(2) would confer standard powers for the Secretary of State to bring provisions of the Bill into force by commencement regulations. As usual with commencement powers, it is proposed that regulations made under this clause not be subject to any Parliamentary procedure. Parliament would have approved the principle of the provisions to be commenced by enacting them; commencement by regulations merely enables the provisions to be brought into force at a convenient time.

105. Subsection (4) confers power on the Secretary of State to make transitional and saving provisions in connection with the coming into force of any provision of the Bill. This is a standard power to enable the changes made by the Bill to be implemented in an orderly manner. Such powers are often included as part of the power to make commencement regulations. Again, the Government proposes that provision made under this power should not be subject to any Parliamentary procedure on the grounds that Parliament would already have approved the principle of the Bill more generally.

Schedule 1, paragraph 27: Power to modify the Customs and Excise Management Act 1979

Power conferred on: Secretary of State or HM Treasury

Power exercised by: Regulations made by statutory instrument

Parliamentary procedure: Negative (for UN regulations); made-affirmative (where no UN regulations)

Context and purpose

106. This power would enable the Secretary of State to modify the application of the Customs and Excise Management Act 1979 ("CEMA") to provide that any provision which specifies the maximum period of imprisonment for certain offences may have effect such that those offences are punishable with imprisonment for a period not exceeding 10 years. This would enable the maximum penalties under relevant CEMA offences to reflect the maximum penalties under this Bill.

Justification for delegation

107. Offences provided in CEMA in relation to the export and import of goods will apply to goods subject to sanctions regulations made under this Bill. A number of those offences, such as those in sections 68(3)(b) and 170(3)(b) CEMA, provide for a maximum penalty of 7 years. Government considers that it is logical to ensure that in a sanctions context there is consistency between the maximum penalties available in the case of the relevant CEMA offences and in the case of offences made using the Bill powers, to avoid incoherence or inconsistency in the penalties imposed on offenders.

Justification for the procedure

108. An equivalent power is found in section 7(2)(b) of the 2002 Act that uses the negative parliamentary procedure. That power is utilised to provide that relevant offences in CEMA carry a maximum penalty of 10 years in relation to controls made under the 2002 Act, consistent with the power in section 7(1)(g) of that Act. For example, see Article 17(4) of the Export Control (Syria Sanctions) Order 2013 (SI 2013/2012).

109. This power will need to be used in a similar way to modify relevant CEMA penalties in line with the overall Parliamentary procedure applicable to the regulations made under the Bill. As such, the applicable parliamentary procedure will either be negative or made-affirmative in line with the regulation of which it forms part. This provides the appropriate level of parliamentary scrutiny for the powers conferred by this paragraph because the applicable penalties will relate to the substantive prohibitions created by the regulations.

Foreign and Commonwealth Office

19 October 2017