

SANCTIONS AND ANTI-MONEY LAUNDERING BILL [HL]

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Sanctions and Anti-Money Laundering Bill [HL] as introduced in the House of Lords on 18 October 2017 (HL Bill 69).

- These Explanatory Notes have been prepared by the Foreign and Commonwealth Office in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

- 1 The Sanctions and Anti-Money Laundering Bill will:
 - a. enable the UK to continue to implement United Nations (UN) sanctions regimes and to use sanctions to meet national security and foreign policy objectives; and
 - b. enable anti-money laundering and counter-terrorist financing measures to be kept up to date, helping to protect the security of the UK and continuing to align the UK with international standards.
- 2 These matters are currently largely dealt with through the European Communities Act 1972, which will be repealed when the UK withdraws from the European Union (EU).
- 3 The Bill is in three parts and has three schedules.
 - a. Part 1 provides powers to create sanctions regimes.
 - b. Part 2 provides powers to make anti-money laundering and counter-terrorist financing regulations.
 - c. Part 3 contains supplementary clauses to support Parts 1 and 2 of the Bill, as well as definitions and final provisions.
 - d. Schedule 1 makes further provision for regulations which impose trade sanctions and relates to clause 4 in Part 1.
 - e. Schedule 2 makes further provision for regulations for the purposes of anti-money laundering and counter-terrorist financing and relates to Part 2.
 - f. Schedule 3 deals with the consequential amendments to other, connected primary legislation.

Policy background

- 4 Sanctions are an important foreign policy and national security tool. They are restrictive measures which are designed to be temporary and can be used to coerce a change in behaviour, to constrain behaviour, or to communicate a clear political message to other countries or persons. 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 Charter states, the UK is obliged under international law to implement UN sanctions.
- 5 The UK and its international partners have also imposed and implemented sanctions in situations where the UN has chosen not to act, but where the UK has considered an international response was still necessary. Often this has involved close cooperation between the EU and United States (US), with the support of others, including Canada, Australia, Switzerland and Norway. This has included putting in place sanctions regimes, such as those in relation to Syria, and enhancing UN sanctions with additional autonomous measures, for example the sanctions against North Korea.
- 6 The UK currently implements over 30 sanctions regimes. These include country-specific sanctions regimes, including in relation to Russia, North Korea and Iran, as well as regimes targeting Da'esh, Al Qaida and other terrorist groups. As part of the North Korea and Syria sanctions regimes alone, the UK has played a key role in designating over 500 individuals and entities who are considered a threat to international peace and security. Sanctions can have a real impact, as shown in the key role they played in bringing Iran to the negotiating table and securing agreement to place robust safeguards on its nuclear programme. There are currently around 2,000 individuals and entities subject to sanctions implemented by the UK. Such "individuals and entities" are referred to collectively as "designated persons".
- 7 As set out in the government's White Paper, *Public consultation on the United Kingdom's future legal framework for imposing and implementing sanctions* (Cm 9408), the new legislative framework will need to provide powers to impose sanctions, to enable the UK to comply with its international obligations and continue to use sanctions as a foreign policy and national security tool once the European Communities Act 1972 has been repealed. The Bill intends to ensure maximum continuity and certainty; it sets up the powers that the UK will need to carry on implementing sanctions as it currently does. This view was also reflected in the formal government response to the consultation which was published on 2 August 2017 (Cm 9490).¹
- 8 The government's White Paper additionally set out the intention to create a new legislative power (through the Bill) to enable it to make substantive amendments to the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (Money Laundering Regulations 2017) on the UK's withdrawal from the EU, and to pass new regulations making provision against money laundering and terrorist financing. In the absence of such a power, it would not be possible to reform that regime to address emerging risks in this area after the UK ceases to be a member of the EU. The government would also be unable to update that regime to reflect international standards set by the Financial Action Task Force (FATF), of which the UK is a member.

¹ Both the White Paper and the government's response to the public consultation can be found on gov.uk.

Legal background

- 9 The UK's implementation of UN and other multilateral sanctions regimes largely relies on the European Communities Act 1972. The UK has limited domestic powers to unilaterally impose some sanctions (notably in domestic counter-terrorism), but these are not sufficient to implement the full range of sanctions currently in force through the UN and EU.
- 10 The United Nations Act 1946 provides powers for the government to implement sanctions agreed through resolutions of the UN Security Council. However, in 2010 the UK Supreme Court ruled that the power in that Act could not be lawfully used to apply asset freezes, which are a core element of most sanctions regimes. This led to the passing of the Terrorist Asset-Freezing etc. Act 2010. Part 1 of that Act, which deals with terrorist asset-freezing, will be replaced by this Bill.
- 11 Other legislation relating to sanctions includes the Immigration Act 1971 (which automatically excludes individuals from the UK who are subject to UN or EU travel bans) and the Export Control Act 2002 (which enables trade sanctions to be put in place). The most recent domestic primary legislation relating to sanctions is the Policing and Crime Act 2017, which put in place new powers enabling UN sanctions to be implemented without delay and made changes to the measures used to enforce financial sanctions.
- 12 After the UK leaves the EU, the UK will be unable to continue to use the European Communities Act 1972; therefore the UK will need a domestic framework of powers to continue to meet its international obligations to implement UN sanctions. Without this, the UK will be in breach of international law. The UK will also need new powers to implement sanctions which have not been put in place at UN level, otherwise it will be unable to co-operate with international allies, using sanctions as a foreign policy and national security tool.
- 13 The European Union (Withdrawal) Bill will freeze current sanctions regimes and designations in effect on the date of the UK's withdrawal from the EU. The UK will not be able to rely on that provision in the long term because it does not enable frozen sanctions to be amended to keep up with fast moving events, and so existing regimes would quickly become out of date. Without new domestic sanctions powers, the UK would not be able to add, amend or lift sanctions regimes in response to UN requirements or in response to other objectives, such as foreign policy or national security imperatives.
- 14 The UK also currently relies on the European Communities Act 1972 to transpose EU Directives relating to money laundering and terrorist financing. Such Directives typically reflect the international standards set by the Financial Action Task Force. These powers were most recently used in June 2017 to transpose the Fourth EU Money Laundering Directive and associated Funds Transfer Regulation. Although the European Union (Withdrawal) Bill will freeze the UK's Anti-Money Laundering/Counter-Terrorist Financing regime in effect as on the date of the UK's withdrawal from the EU, the UK needs a legal power to make, amend and repeal relevant regulations. Failure to make such a power would prevent the UK updating that regime to address matters including emerging risks and updated international standards.

15 This Bill amends:

- a. The Immigration Act 1971;
- b. The Senior Courts Act 1981;
- c. The Regulation of Investigatory Powers Act 2000;
- d. The Serious Organised Crime and Police Act 2005;
- e. The Serious Crime Act 2007;
- f. The Crime and Courts Act 2013;
- g. The Investigatory Powers Act 2016; and
- h. The Policing and Crime Act 2017.

16 The Bill also makes repeals consequential on the repeal of Part 1 of the Terrorist Asset-Freezing etc. Act 2010.

Territorial extent and application

- 17 The territorial extent of the Bill is set out in clause 51.
- 18 The provisions of the Bill and regulations made under it will be enforceable against all persons within the UK, as well as all UK persons abroad.
- 19 The provisions of the Bill and regulations made under it could be extended to the British Overseas Territories and Crown Dependencies by an Order in Council.
- 20 The matters to which the provisions of the Bill relate are not within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly, and no legislative consent motion is being sought in relation to any provision of the Bill.
- 21 The table in Annex B contains a summary of the position regarding territorial extent and application in the United Kingdom. The table also summarises the position regarding Legislative Consent Motions (LCMs).

Commentary on provisions of Bill

Part 1: Sanctions Regulations

Chapter 1: Power to make sanctions regulations

Clause 1: Power to make sanctions regulations

- 22 This clause gives effect to the core purpose of this part of the Bill. It enables an appropriate Minister to make regulations imposing sanctions. An ‘appropriate Minister’ is defined as the Secretary of State or the Treasury. This power will enable the UK to continue to comply with its international obligations and to use sanctions to meet foreign policy and national security objectives after exiting the EU.
- 23 Regulations may only be made where the appropriate Minister considers it appropriate for the following purposes:
- a. complying with a United Nations obligation;
 - b. complying with any other international obligations (which could include obligations from UK membership of other international organisations, for example the Organisation for Security and Co-operation in Europe (OSCE), as well as other international treaties or agreements); or
 - c. for purposes which:
 - i. further the prevention of terrorism both in the UK and elsewhere;
 - ii. are in the interests of national security;
 - iii. are in the interests international peace and security; or
 - iv. further a foreign policy objective.
- 24 All sanctions regulations made by the appropriate Minister must set out the purpose for which they have been made (subsection (3)).
- 25 In subsection (4) the different types of sanctions that may be imposed are laid out. These different types of sanctions are subsequently set out and explained in clauses 2-7 of the Bill (and paragraphs 26 to 46 of these notes). The Parliamentary procedure used to make these regulations will vary dependent on their content and is set out in clause 45 (explained at paragraphs 123 – 126 below)

Clause 2: Financial sanctions

- 26 This clause sets out the types of financial sanctions that can be imposed. Subsection (1)(a) enables the government to subject a designated person to an asset freeze. Asset-freezing means that it is generally prohibited to deal with the frozen funds or economic resources, belonging to or owned, held or controlled by a designated person. This would limit a designated person’s ability to deal with any economic resource or funds they currently own, hold, or control, and prevents them from acquiring new economic resources or funds (where this transaction would take place within the UK). The terms “funds”, “economic resources” and “freeze” are defined in clause 48 of the Bill (and are explained by paragraphs 131 – 134 of these notes).

- 27 Subsections (1)(b) and (c) contain wide powers enabling the government to prevent financial services from being provided to, or being procured from, prescribed persons (including designated persons). This will enable the government to impose wider financial restrictions, including prohibitions on access to finance and capital markets. This could include, but is not limited to, prohibiting the supply of financial services to certain markets, prohibiting commercial relationships, or preventing the transfer of funds to a country, region or sector. A current example of this is the restriction on the amount of funds that can be transferred to the North Korea, unless the transfer is subject to an exemption contained in UK Regulations. There are also capital markets restrictions in the Ukraine sanctions regime, which were designed to constrain Russia by restricting access to the EU financial system. The term “financial services” is defined in clause 49.
- 28 Subsection (1)(d) enables the government to prohibit funds and economic resources being made available to, or for the benefit of, prescribed persons (including designated persons). “Benefit” means a significant financial benefit, including discharging of a financial obligation for which the designated person is wholly or partly responsible. No particular threshold level or amount of financial benefit is specified as constituting “significant” financial benefit. Whether a financial benefit is “significant” is dependent on the circumstances of each particular case. Various factors may lead to a conclusion that financial benefit is or is not significant, including the value of the financial benefit, the frequency with which the financial benefit is given to the designated person and the nature of the financial benefit. Subsection 2(1)(e) makes further provision about funds and economic resources being received from prescribed persons (including designated persons). Subsection 2(1)(f) makes further provision enabling the government to prevent trading in financial products issued by designated persons. “Financial products” are also defined in clause 49.
- 29 Subsections (1)(g) and (2) enable the government to place restrictions on taking, acquiring, of holding ownership interests in, or commencing or maintaining commercial relationships with, prescribed persons (including designated persons). These powers enable the government to put in place the wide range of financial sanctions currently implemented via EU legislation.
- 30 Subsection (3) provides that the powers in subsection (1) include the ability to prohibit funds, economic resources or financial services being made available either directly or indirectly.
- 31 Subsections (4) to (6) deal with terms used in the clause.

Clause 3: Immigration sanctions

- 32 This clause provides for a person who is the subject of a travel ban to become an excluded person within the meaning of section 8B of the Immigration Act 1971. Section 8B of the Immigration Act 1971 provides that an excluded person must be refused leave to enter or leave to remain in the UK, any leave the person holds is cancelled, and any exemption from immigration control no longer applies.
- 33 Travel bans are used to restrict the movement of designated persons and those associated with regimes or groups, including terrorist groups, whose behaviour is considered unacceptable by the international community. Currently, section 8B of the Immigration Act 1971 provides for an international travel ban made either by the UN Security Council or the EU to be enforceable by the UK. Unless an exemption applies, a person who is subject to a travel ban is prevented from entering the UK.
- 34 The Bill (see Schedule 3) amends section 8B of the Immigration Act 1971 to accommodate UK autonomous sanctions regimes, as well as making provision for retained EU travel bans after the UK has left the EU.

Clause 4: Trade sanctions

- 35 Trade sanctions are used to prevent a variety of activities relating to target countries, specific sectors within target countries, or designated persons. They cover the export, import, movement and transfer of goods and technology, and the provision and procurement of services. They also cover investment and company ownership. Clause 4 links to Schedule 1 which sets out the types of trade sanctions that can be imposed and their effect. This schedule is explained further in paragraphs 140 to 164 of these notes.

Clause 5: Aircraft sanctions

- 36 This clause enables the government to impose prohibitions or requirements in relation to aircraft. These powers would, for example, permit the Secretary of State to make directions controlling the movement of the aircraft within the UK and the airspace over the UK. Directions could also require a disqualified aircraft to remain in the UK once landed or, if in flight, to not overfly the UK or to leave UK airspace. Such directions can be given by the Secretary of State to the Civil Aviation Authority, a licensee who is providing air traffic services, or an airport operator in relation to a disqualified aircraft. These bodies will also have the authority to direct aircraft operators or pilots in command of disqualified aircraft for the same purposes.
- 37 Disqualified aircraft are aircraft which are registered in, or originate from, a prescribed (sanctioned) country, as well as aircraft which are owned, chartered or operated by designated persons or persons connected with a prescribed country.
- 38 Aircraft sanctions will allow the government to control the movement of disqualified aircraft in line with its existing sanctions obligations. For example, there is currently a prohibition against aircraft operated by North Korea or aircraft originating from the North Korea from overflying the UK. Aircraft sanctions will also enable relevant UK permits to be denied to such aircraft which would prevent them from using UK airports.
- 39 This clause also allows regulations to be made which would prevent UK persons registering an aircraft in a prescribed country which is subject to sanctions. Regulations may also make it an offence to own, charter or operate an aircraft which is registered in a prescribed country. Directions can also be given to a British-controlled aircraft, preventing the aircraft from overflying or landing in a prescribed country.
- 40 This clause also provides the power for the Secretary of State to direct the CAA to refuse to register an aircraft or to remove an aircraft from the UK aircraft register where it has been identified that a designated person holds an interest in that aircraft.

Clause 6: Shipping sanctions

- 41 This clause creates powers to control the movement of disqualified or specified ships to prevent such ships from entering UK waters or, if they have already done so, to require such ships to leave or to be detained whilst enforcement action is taken.
- 42 Disqualified ships are those which are registered in, or fly the flag of, or originate from a prescribed (sanctioned) country. They can also be applied to ships which are owned (wholly or partially), controlled, chartered, operated or crewed (wholly or partially) by designated persons, persons in a prescribed country, or a prescribed description of persons connected with a prescribed country. A specified ship is one which has been designated by the UN or specified by the appropriate Minister. The grounds on which a Minister may specify a ship are set out at clause 13 and paragraphs 57 to 59 of these notes.

- 43 The Secretary of State give directions to the master or pilot of a ship, or direct the relevant harbour authority to give such a direction. These directions can include, but are not limited to, directing a ship to leave the UK, to go to a specified harbour or not to enter the UK.
- 44 This subsection allows ships to be refused registration on the UK Ship Register on the basis that a designated person or persons connected with a prescribed country hold an interest in them, or because it has been specified by an appropriate Minister. If a vessel is already on the UK Ship Register, the Bill will allow for it to be removed if these circumstances arise.
- 45 The Secretary of State can also issue directions to a British ship anywhere in the world, in order to prevent it from entering a country in which relevant sanctions are in force.

Clause 7: Other sanctions for the purposes of UN obligations

- 46 This clause enables Ministers to put in place other forms of sanctions not specifically mentioned in clauses 1 to 6 but which are required in order to comply with UN obligations. This would enable the UK to continue to uphold its international law obligations in the event that the UN requires the imposition of a sanction that is not otherwise contained within clauses 2 to 6. It would also act so as to future-proof the Bill against the development of new types of sanctions which may be agreed by the UN Security Council.

Clauses 8 and 9: “Designated persons” and Designation powers: general

- 47 Clauses 8 to 12 deal with the designation of persons for the purpose of sanctions. These provisions would enable persons to be individually subjected to sanctions measures such as asset freezes (see clause 2). There are around 2,000 designated persons under existing sanctions regimes. Examples include individuals involved in providing support to the Syrian regime or those assisting in the nuclear, ballistic and weapons of mass destruction programmes in North Korea.
- 48 Clause 8 introduces the term “designated persons”. Persons can be designated by an appropriate Minister either by name (see clause 10) or description (see clause 11). There is a separate procedure for the designation of those named in UN Security Council resolutions (see clause 12). “Persons” can also be companies and other entities that have legal personality as well as associations or groups of persons.
- 49 Clause 9 enables Ministers to set out in regulations how designation powers are to be exercised, including requirements for notification and publicity.
- 50 These designation provisions should be considered alongside provisions in Chapter 2, which require Ministers to undertake regular reviews of sanctions and give designated persons the right to reassessment, and Chapter 4, which enables designated persons to have access to the courts.
- 51 The government intends to publish the details of UK designated persons on an administrative list which will be kept up to date and made available on [its website](#). This is consistent with the approach taken at the moment by the Office of Financial Sanctions Implementation (OFSI), which already publishes a [consolidated list of financial sanctions targets](#).

Clause 10: Designation of a person by name under a designation power

- 52 This clause places restrictions on the ability of an appropriate Minister to designate a person by name. These restrictions must be set out in sanctions regulations.
- 53 The Minister can only designate a person where the Minister has reasonable grounds to suspect the person is involved in, or connected to, an activity set out in the regulations for a particular sanctions regime (“an involved person”) and that it is appropriate to designate that person, with regard to the purpose of the sanctions regime as set out in the regulations.

- 54 An “involved person” could be an individual, group or organisation involved in an activity, or a person controlled by such a person, someone acting on their behalf, or someone associated. The regulations can set out what is meant by “associated with”.

Clause 11: Designation of persons by description under a designation power

- 55 This clause is similar to clause 10 but provides for circumstances where an appropriate Minister designates persons by description rather than by name. The same restrictions apply as to designations under clause 10.

Clause 12: Persons named by or under UN Security Council Resolutions

- 56 This clause enables designation where the UK has an obligation under international law to designate persons who are named on a UN list. In these cases the regulations made under the Bill must provide that the persons named on a UN list are designated persons. Subsections (2) and (3) enables the regulations to refer to the UN list without having to replicate that listing in UK regulations.

Clause 13: “Specified ships”

- 57 This clause enables an appropriate Minister to specify a ship that will be subject to sanctions, when authorised to do so by the regulations.
- 58 The Minister can only specify a ship where they have reasonable grounds to suspect that a ship is involved in an activity specified in the regulations, and where they consider it is appropriate for that ship to be specified, having in mind the purpose of the regime as set out in the regulations or the sanctions imposed by the regulations. Sanctions against individual vessels are currently used against, for example, vessels known to be involved in the smuggling of Libyan oil or owned by a company implicated in breaching the arms embargo relating to North Korea.
- 59 As is the case for financial sanctions detailed in paragraph 51, a consolidated list of specified ships will be maintained on gov.uk.

Clause 14: Exceptions and licences

- 60 This clause enables Ministers to disapply the effect of sanctions in particular circumstances.
- 61 Subsection (2)(a) enables regulations to provide for exceptions to any prohibition or requirement imposed by regulations. Examples of where an exception may be used are:
- a. to enable interest or other earnings on accounts to accrue, provided that any such interest, other earnings and payments will also be frozen;
 - b. to enable financial or credit institutions in the UK to credit frozen accounts where they receive funds transferred to the account of a sanctioned person, entity or body, provided that any credits to such accounts will also be frozen;
 - c. to enable the export of, and associated technical assistance for, equipment used by peacekeeping missions.
- 62 Subsection (2)(b) provides that persons may take any actions which would otherwise breach the prohibitions in the regulations, if they do so under authority of a licence granted by an appropriate Minister. The government will set out in the relevant regulation the licensing grounds and any criteria, however licensing grounds for sanctions may include:
- a. payment to satisfy the essential needs and/or payments necessary for basic expenses of natural or legal persons, entities or bodies, such as food, rent, and energy;
 - b. payment for insurance;

- c. reasonable professional fees and the reimbursement of reasonable and necessary incurred expenses associated with the provision of legal services;
- d. the fees or service charges for routine holding or maintenance of frozen funds or economic resources;
- e. extraordinary situations or expenses;
- f. payment required to fulfil a prior court order;
- g. payment due under contracts, agreements or obligations that were concluded or arose before the date on which the natural or legal person, entity or body referred to in the asset freeze was sanctioned;
- h. payment necessary to ensure human safety, environmental protection or evacuations, or for the verification and destruction of chemical weapons; or
- i. payment intended to be used for official purposes of a diplomatic mission, consular post or international organisation;
- j. export of goods or transfer of technology for humanitarian purposes;
- k. brokering, technical assistance, and other services provided for humanitarian purposes.

63 Subsection (3) deals with the contents, scope and duration of licences issued by an appropriate Minister. A licence must specify the acts it authorises. It may be general, or granted to a category of persons or to a particular person. It may be subject to conditions. It may be of indefinite duration, or subject to an expiry date. A general licence may authorise specific activities, for example certain types of transactions relating to humanitarian aid. A licence may be varied or revoked, and any such changes will be communicated to any affected designated person or their authorised representative.

64 This clause also provides a power to make exceptions to a travel ban either for an individual or for a group of individuals. This provides the flexibility to disapply the effects of a travel ban on a case-by-case basis, for example to allow an individual to travel to attend an international conference convened by an intergovernmental organisation. This can be done either in the regulation itself or as directed by the appropriate Minister at a later date.

65 Subsection (6) provides for exceptions to the prohibitions and requirements in any regulations to be made, to support activity carried out for the purposes of national security or the prevention or detection of serious crime.

Clause 15: Information

66 This clause intends to help the government ensure that sanctions work effectively, by requiring people to report relevant information, by enabling the government to collect information, and by authorising the sharing of information relating to designated persons.

67 These powers enable the government to monitor compliance with the regulations and obtain evidence if it believes that the regulations have been contravened or circumvented.

68 In relation to financial sanctions, the powers are intended to be used to require people to report cases where they become aware or have reasonable grounds to suspect they are dealing with a designated person or a designated person has committed an offence. The government's intention is that the regulations will set out what information these persons must report.

69 This provision enables the UK to replicate the wide scope of the existing reporting requirement under directly-applicable EU law.

- 70 In relation to financial sanctions, for example, the regulations will give the government powers to request information from a designated person on the funds or economic resources they hold, own or control or that someone else does on their behalf, and how those funds are disposed of. The government may request information on expenditure by or on behalf of the designated person. The government can use these powers when it thinks it is necessary for the purposes of monitoring compliance or detecting evasion of the regulations.
- 71 The regulations could also require registers or records to be maintained, and to request from any person in or resident in the UK any information that the government may reasonably require to assess compliance with licences.
- 72 The regulations under this section could also allow the government to disclose information received on the basis of these provisions. This includes police officers, office holders of the Crown in the UK government or devolved administrations, regulatory bodies in the UK and international partners.

Clause 16: Enforcement

- 73 This clause makes provision for the implementation of civil and criminal enforcement for sanctions regimes through secondary legislation. This clause enables the government to replicate the existing legal frameworks which are currently used to enforce sanctions. This will enable continuity once the UK leaves the EU.
- 74 Subsection (2) ensures that regulations can include provisions to enable enforcement of the prohibitions and requirements in this Bill, and to prevent them from being circumvented.
- 75 Subsection (3) means that regulations may create offences, and provides for dealing with those offences, including setting out defences and how evidence is treated.
- 76 Subsection (4) enables maximum sentences of up to 10 years for offences contained in the regulations.
- 77 Offences that relate to prohibitions or requirements in trade sanctions imposed by the Export Control Act 2002 currently have a maximum permitted term of ten years. Offences that relate to prohibitions or requirements in financial sanctions imposed under the European Communities Act 1972 (as modified by the Policing and Crime Act 2017) currently have a maximum permitted term of seven years. These provisions enable regulations made under the Bill to keep in place the different existing maximum sentences for trade sanctions and financial sanctions. The government does not intend to increase maximum sentences in relation to financial sanctions.
- 78 Subsection (5) allows regulations to apply with or without modification provisions of the Customs and Excise Management Act 1979 for the purposes of enforcement. Subsection (7) enables the regulations to specify that investigatory powers in Chapter 1 of Part 2 of the Serious Organised Crime and Police Act 2005 can be used to investigate breaches of sanctions.
- 79 Subsection (8) enables the regulations made under clause 1 to specify whether the civil monetary penalty regime in Part 8 of Policing and Crime Act 2017 applies in the case that prohibitions are breached. That Act created powers to impose monetary penalties for financial sanctions offences and brings financial sanctions offences into the scope of Deferred Prosecution Agreements (under the Crime and Courts Act 2013) and Serious Crime Prevention Orders (under the Serious Crime Act 2007). Consequential amendments made in paragraph 8 of Schedule 3 preserve these powers for financial sanctions offences and bring other sanctions offences within the scope of Deferred Prosecution Agreements and Serious Crime Prevention Orders (as explained below in relation to Schedule 3). The government does not intend to impose civil monetary penalties in respect of breaches of trade sanctions.

These Explanatory Notes relate to the Sanctions and Anti-Money Laundering Bill [HL] as introduced in the House of Lords on 18 October 2017 (HL Bill 69)

Clause 17: Extra-territorial application

- 80 This clause refers to the scope of regulations made under clause 1 of the Bill. It confirms that prohibitions, or requirements can be imposed on any person in the UK (including UK territorial waters), or on any UK person anywhere in the world. A UK person is defined as including either a UK national or a body, for example a company, which is incorporated or constituted in the UK.
- 81 The clause also allows for Her Majesty, by Order in Council, to extend the effect of sanctions bodies incorporated or constituted under the law of any of the Channel Islands, the Isle of Man, and any of the British Overseas Territories.

Chapter 2: Review by appropriate Minister

Clause 18: Power to vary or revoke designation made under regulations

- 82 This clause enables the appropriate Minister who made a designation to revoke or vary that designation.
- 83 Revoking a designation would mean that the designated person in question would no longer be subject to the restrictions set out in the relevant sanctions regulations. Varying a designation would allow the Minister to adjust a designation to match any change in the situation, for example updating the information used to identify an individual as new information comes to light.
- 84 This clause allows the appropriate Minister to vary or revoke at their discretion. However, it also requires Ministers to use this power to revoke a designation where the required conditions are not met in respect of the designation. This might be as a result of actions taken by persons to seek reassessment of their designation, or the government's own review of designations, as set out below (in clauses 18, 19, 20, 21, 24, 25, 26, 27).

Clause 19: Right to request variation or revocation of designation

- 85 This clause gives those who have been designated by an appropriate Minister under a sanctions regime the right to ask the government to revoke or vary their designation, for example where a person believes he has been misidentified, or considers the designation does not meet the required evidentiary threshold. This is an administrative challenge which leads to a reassessment of a designation, and is designed to allow access to quick redress. This clause does not apply to designations that are made as a result of a UN obligation – separate provision is made for this in clause 21 which is explained below.
- 86 The appropriate Minister will have a duty to consider these requests. The Minister may take the decision to use the power to vary or revoke a decision, or may choose to take no action so that the designation remains in force. Designated persons need to follow this procedure before bringing any challenge in the courts (as specified in clause 32).
- 87 Once a request has been reassessed, the government will not be required to consider further requests from the same person, unless that person can show that there is a significant matter that the government had not previously been aware of. This restriction is to guard against vexatious repetition of requests.

Clause 20: Periodic review of certain designations

88 This clause requires the government to reconsider every designation which is in force within a time period that is no less than three years since the original designation or the last review. The clause permits reviews to be carried out against a shorter time frame if desired. This ensures that the information against all designated persons is regularly reviewed, and that sanctions are not maintained in perpetuity by default. In practice, this would require a reassessment of the evidence used to designate a person.

Clause 21: Right of UN-named person to request review

89 Under this clause a person who has been designated in order to comply with a UN designation may request that the appropriate Minister use their best endeavours to persuade the UN to remove them from the relevant UN instrument. The appropriate Minister must decide whether or not to comply with this request. Once a request has been made, further requests cannot be made unless there is a significant new matter (similar to the provision under clause 19). This clause reflects the fact that the UK is under a binding obligation in international law to designate the person, and the designation can only be lifted by the UN itself.

Clause 22: Power to revoke specification of ship made under regulations

90 This clause requires the Minister who specified the ship, under the procedure mentioned in clause 13, to revoke the specification, when the Minister considers that the required conditions for specification are no longer met.

Clause 23: Right to request revocation of specification of ship

91 Any person affected by a ship being specified for sanctions purposes (as defined in clause 13), may make a request to the appropriate Minister to revoke the specification. This is similar to the revocation of a designation under clause 19. When a request has been made under this section, further requests cannot be made unless it is based on a significant new matter that the Minister has not previously considered.

92 The appropriate Minister will have a duty to consider these requests. The Minister may take the decision to use the power to revoke a decision, or they may choose to take no action so that the specification remains in force. Persons affected by the specification need to follow this procedure before bringing any challenge in the courts (as specified in clause 32).

93 In considering whether or not to grant the request, the appropriate Minister must consider subsection 22(3), which states that the Minister must revoke a specification if at any time they consider that the required conditions for specification are not met.

Clause 24: Periodic review where ships are specified

94 The clause requires the Minister, who has specified a ship under clause 13, to review the specification within three years from the date of the regulations coming into force and within every three year period after the previous review. As with clause 22, the Minister will have to assess whether the required conditions for specification continue to be met.

Clause 25: UN-specified ship: right to request review

95 Where a ship has been specified for any purposes by a UN Security Council Resolution, any persons affected by the specification may request the Secretary of State to use their best endeavours to secure that the ship ceases to be designated. The Secretary of State has discretion as to whether to accede to this request or not. This clause reflects the fact that the UK is under a binding obligation in international law to designate UN specified ships, and the designation can only be lifted by the UN itself.

- 96 When a request has been made under this section, further requests cannot be made unless they are based on a significant matter that the appropriate Minister has not previously considered.

Clause 26: Review by appropriate Minister of regulations under section 1

- 97 This clause requires that, on an annual basis, the appropriate Minister must consider whether sanctions regulations are still appropriate for their specified purposes. This will help to ensure that each sanctions regime only remains in place for as long as it is serving a purpose and will help to prevent regimes remaining on the statute book after they are no longer required. This would be a high level political review of the overall regime, particularly focused on whether or not it is contributing to its intended purpose, and would not include a review of the evidence underpinning each designation.

Clause 27: Procedure for requests and reviews

- 98 This clause allows Ministers to set out, through regulations, the procedures applying to the review and reassessment mechanisms in the Bill.

Chapter 3: Temporary powers in relation to EU sanctions lists

Clause 28: Temporary powers as respects EU sanctions lists

- 99 Clauses 28 to 31 contain temporary powers that apply for a two-year period after the UK has left the EU. They enable certain changes to be made to any EU sanctions regimes that have been retained by the EU (Withdrawal) Bill, and have not been replaced by a UK sanctions regime contained in regulations made under clause 1. These powers are aimed at ensuring that the EU sanctions regimes can be updated for a short period after exit from the EU, until they are replaced by UK regimes, and are limited to enabling Ministers to add or remove names from lists of persons who are designated by virtue of their inclusion in a list attached to an EU instrument. These powers do not enable the substantive sanctions in retained EU law to be amended. Any such provision would require regulations under clause 1. This power would be used alongside the power in the EU (Withdrawal) Bill to make retained EU law operable after the UK leaves the EU.

Clause 29: Directions under section 28: further provision

- 100 This clause sets out the conditions for adding a person's name to an EU sanctions list (except UN-name persons). The conditions reflect the conditions for designation of persons under clauses 10 and 11. However, instead of having regard to the provisions in UK regulations, the Minister has to have regard to the purposes of the EU provision (as defined in a set of short regulations made under this clause).

Clause 30: Rights of person on EU sanctions lists

- 101 This clause enables persons who are designated under a retained EU sanctions list to make a request to be removed from that list. Where such a request is made it must be granted where the conditions of subsection 29(1) are not met, namely that the appropriate Minister does not have reasonable grounds to suspect the designated person is an "involved person" as defined in subsections 29(2) and (3), or it is not considered appropriate for the person to be designated.

Clause 31: Right of UN-named person on EU sanctions list

- 102 Where a person is on a retained EU sanctions list by virtue of a UN Security Council resolution, the procedure for seeking removal from that list reflects the procedure in clause 21; namely, that they can only make a request to the appropriate Minister to use best endeavours to remove their name from the relevant UN list.

Chapter 4: Court reviews

Clause 32: Court review of decisions

103 This clause ensures that those who do not agree with a decision made under Part 1 of the Bill have a route to challenge a government decision in the courts. These decisions include:

- a. an administrative reassessment of a UK designation, under clause 19;
- b. a UK government review of a UK designation, under clause 20;
- c. an administrative reassessment of a UN designation, under clause 21;
- d. an administrative reassessment of a retained EU designation, under clause 30;
- e. an administrative reassessment of a UK-specified ship, under clause 23;
- f. a UK government review of a UK-specified ship, under clause 24; or
- g. an administrative reassessment of a UN-specified ship, under clause 25.

104 When considering an application brought under this clause, the courts will apply the principles of judicial review.

105 If a designated person seeks a revocation or variation of their listing, they must apply for this through the mechanism provided for in clauses 19, 27, or 30 in the first instance, before they are able to access the redress through a legal challenge provided for in this clause. This provision helps to ensure that quick redress is available to the designated person and seeks to minimise unnecessary litigation, on the part of both the designated person and the government.

Clause 33: Court reviews: further provision

106 This clause contains some additional provisions about how legal challenges are to be dealt with by the courts. It provides that where a court would otherwise have the power to award damages (for example, by virtue of the Senior Courts Act 1981 for England and Wales), it may not do so unless that power stems from the tort of negligence (or for Scotland, negligence has been committed) or unless there has been bad faith. This approach is comparable with the current law on awards of damages in sanctions cases within the EU. This clause also confirms that legal challenges are to be dealt with under the provisions in clause 32.

Clause 34: Rules of court

107 This clause sets out that that the closed material procedure provided for in the Counter Terrorism Act 2008 may be used in respect of legal challenges. This means that for such challenges, the government may apply to the court for sensitive material to be disclosed only to special advocates and the court, on the basis of this being in the public interest. This would enable the government to use sensitive information to place sanctions on persons without the additional risks posed by more open disclosure of such material. This clause also sets out how, on the first occasion that the closed material procedure is used, the rules of court which set out the court's procedure are to be made by the Lord Chancellor, after consulting the relevant head of the judiciary, in England, Wales, and Northern Ireland. In Scotland, the power to make rules of court resides in the Court of Session, and this clause makes no provision in respect of those rules.

Chapter 5: Miscellaneous

Clause 35: Suspension of prohibitions and requirements

108 This clause allows sanctions regulations, or specific restrictions within sanctions regulations, to be suspended for a period of time, during which they would not be enforced. This allows flexibility in circumstances where sanctions might need to be temporarily lifted or altered, but where it might not be appropriate to repeal a regulation completely. For example, if a state which was subject to sanctions had altered its behaviour and this warranted the sanctions being suspended to reward that behavior, or in order to take agreed steps so that they could be lifted, an appropriate Minister could suspend the regulations but still retain the ability, should the state in question revert to its previous behavior or fail to meet a specified condition, to apply the regulations again quickly.

Clause 36: Guidance about regulations under section 1

109 The clause imposes a duty on an appropriate Minister to issue guidance covering best practice for compliance with sanctions, details about enforcement, and details of relevant exceptions.

Clause 37: Protection for acts done for purposes of compliance

110 This clause ensures that a person, who may have been liable to civil proceedings as a result of compliance with the regulations contained within the Bill, is not liable if they reasonably believe that they were acting in compliance with regulations in place at the time. It aims to protect people from any adverse results generated by compliance (for example, a breach of a contract to supply goods that are prohibited from export by sanctions).

Clause 38: Revocation and amendment of regulations under section 1

111 This clause allows for regulations made under clause 1 to revoke or amend regulations previously made using the powers detailed in clause 1, to be made without the revoking or amending regulations including a separate statement of the purposes of sanctions. The revoking or amending regulations can only be made if the regulations continue to meet the stated purpose of the regulations.

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

112 This clause allows an appropriate Minister to amend Part 1 of the Bill through regulations to add different types of sanctions not yet listed within Chapter 1 of the Bill. It does not enable any modification to be made to the purposes for which sanctions can be made, as set out in subsections 1(1) and 1(2). This clause future-proofs the Bill against a changing sanctions landscape. It would allow the UK to use new types of sanctions as they are created, even if they are not imposed at UN level and so are not covered by clause 7. The regulations must follow the draft affirmative procedure and this is detailed further in clause 44 and paragraph 122 of these notes.

Clause 40: Power to make provision relating to immigration appeals

113 The imposition of a travel ban on a designated person has consequences on their immigration status. Those who are in the UK will lose the rights to remain here 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.

- 114 These ‘immigration claims’ are usually decided by the Home Secretary. 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 Home Secretary 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.
- 115 The Government recognises that the proper decision maker in respect of an immigration claim is the Home Secretary, 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.
- 116 This clause gives a power to the Secretary of State to make regulations setting out the mechanisms by which the immigration consequences of sanctions will be considered both during a review of the sanction by the appropriate Minister and in the context of court proceedings. The power to make regulations will ensure that claims are sent to the Home Secretary for decision, and appeals to the Tribunal for resolution. This will ensure that immigration consequences which engage the UK’s obligations under the European Convention on Human Rights and the Refugee Convention will continue to be dealt with by those parts of government and Her Majesty’s Courts and Tribunals Service that are equipped to deal with them. Finally, the power will enable any consequent amendments to legislation, including primary legislation, that such provisions require. Regulations made under this power will use the draft-affirmative procedure.

Part 2: Anti-Money Laundering

Clause 41: Money laundering and terrorist financing etc

- 117 This clause enables Ministers to make regulations about money laundering and terrorist financing. Further details of these powers are given in Schedule 2, explained below. It also enables Ministers to make regulations to implement the international standards set by the Financial Action Task Force (FATF). FATF is an international body tasked with setting standards in this area, of which the UK is a member. Regulations made using this power will be subject to the draft-affirmative procedure except where it is used solely for the purpose of updating a list of high risk third countries where enhanced due diligence measures are required (which will be done by way of made-affirmative procedure, so that the enhanced due diligence requirements apply without any delay).
- 118 The effect of this clause is to give the appropriate Minister a legal power to make, amend and repeal secondary legislation relating to anti-money laundering and counter-terrorist financing after the UK ceases to be a member of the EU. The most recent major reform of such legislation EU-wide was the Fourth EU Money Laundering Directive 2015/849/EC (4MLD), which entered into force in June 2015. In June 2017, the UK transposed 4MLD into national law under powers conferred by section 2(2) of the European Communities Act 1972, by enacting the Money Laundering Regulations 2017. The power provided for in this clause gives the appropriate Minister (following withdrawal from the EU) a legal power to amend domestic legislation transposing such EU law.
- 119 This power also ensures that the UK can continue to comply with the international standards set by FATF and address emerging risks relating to money laundering and terrorist financing. For these purposes money laundering and terrorist financing are defined by reference to existing statutory definitions set out in the Proceeds of Crime Act 2002; the Terrorism Act 2000; the Anti-terrorism, Crime and Security Act 2001; the Terrorist Asset-Freezing etc. Act 2010; and the ISIL (Da’esh) and Al-Qaida (Asset-Freezing) Regulations 2011.

Part 3: General

Clause 42: Crown application

120 This clause provides that sanctions regulations and regulations under clause 41 may make provision binding the Crown, although they may not make the Crown criminally liable. Nothing in this Bill affects Her Majesty in Her private capacity.

Clause 43: Saving for prerogative powers

121 This clause ensures that the provisions of the Bill do not abrogate or modify any prerogative power to exclude individuals from the UK.

Clause 44: Regulations: general

122 This clause sets out the types of provision which may be made by regulations made under the powers provided by this Bill. It enables the appropriate Minister to make consequential provision such as repealing, revoking or otherwise amending existing legislation. This is not a standalone power but gives details of regulation-making powers in the Bill.

Clause 45: Parliamentary procedure for regulations

123 This clause lays out the Parliamentary procedures to be used for regulations made under the Bill. Regulations would be made using three types of procedure.

124 Regulations which do not deal with the implementation of UN Security Council resolutions, or which are mentioned in paragraph 125 below, will use the made-affirmative procedure. This will ensure that the regulations will come into force as soon as they are laid before Parliament to prevent asset flight, but will still allow Parliament oversight of the regulations. The regulations will cease to have effect if both Houses of Parliament have not voted to approve them within 28 days of them being laid.

125 Regulations which would repeal, revoke or amend any provision of primary legislation, or which authorise additional sanctions (under clause 39), or which would set out procedures to deal with immigration decisions (under clause 40), or which would make provision related to money laundering and terrorist financing (under clause 41) will be subject to the draft-affirmative procedure. This procedure requires the approval of both Houses before the regulations can come into force.

126 Any other regulations will be subject to the negative procedure. Such regulations will remain in force unless either of the Houses annuls the regulation by passing a resolution against it.

Clause 46: Regulations under section 1: transitory provision

127 This clause allows Ministers to make regulations subject to slightly different procedures than those set out in clause 45 if they consider it appropriate to do so as a result of or in connection with the withdrawal of the United Kingdom from the EU, for example in the case when a UK regime replaces an EU regime.

128 In those circumstances, sanctions regulations may provide that they will be brought into force on the day that Ministers specify in further regulations. This will allow flexibility for the sanctions regulations to be brought into force at the appropriate time.

129 Where this mechanism is used for any regulations subject to the made-affirmative procedure (see paragraph 124), the period for each House to vote to approve them (without which they will cease to have effect) will be 60 days rather than 28. The 60 day period specified by the made-affirmative procedure will start to run from the appointed date rather than the date of making.

Clause 47: Consequential amendments and repeals

130 This clause repeals most of Part 1 of the Terrorist Asset Freezing etc. Act 2010. It makes the consequential amendments and repeals set out in Schedule 3.

Clause 48: Meaning of “funds”, “economic resources” and “freeze”

131 Subsection (1) defines “funds” as financial assets and benefits of any kind, but not including property or non-tradable assets. It sets out a list of examples; this list is not exhaustive, and any form of financial assets which do not appear on the list will still be subject to sanctions if they are a financial asset or benefit to the designated person. By targeting “funds” as defined here, sanctions can effectively cut off a designated person’s revenue stream or access to assets.

132 Subsection (2) defines “economic resources”, and provides the government with the ability to restrict access to any type of asset which would not be covered under “funds”. Economic resources means assets of every kind, – tangible or intangible, movable or immovable – which are not funds, but may be used to obtain funds, goods or services.

133 Subsection (3) further defines what happens when funds (as defined in 36(1)) are “frozen”. Freezing funds prevents the designated person from dealing with funds in any way, including for example moving funds (for example from one account to another), changing their worth or ownership, or any use whatsoever.

134 Subsection (4) explains the application of “freezing” to other economic resources which fall outside of the definition of funds, such as property or other assets. It prevents these goods from being “dealt with”, which is defined as if they are used either directly or indirectly. These definitions relate to the obligation to freeze funds and economic resources. Regulations made under the Bill will define what is meant by ‘making available’ funds and economic resources.

Clause 49: Meaning of “financial services” and “financial products”

135 Subsection (1) defines “financial services” as any service of a financial nature. It sets out a non-exhaustive list of examples; any forms of financial service which do not appear on the list will still be subject to sanctions if they are utilised to move funds which are subject to sanctions (as in clause 48(1)) or to move, transfer or increase the wealth of the designated person or associated entities. “Financial products” are defined by reference to a number of different types of financial product, including transferable securities and money market instruments.

Clause 50: Interpretation

136 This clause sets out the meanings of various terms used in the Bill and is self-explanatory.

Clause 51: Extent

137 This clause provides that the Bill extends to England and Wales, Scotland, and Northern Ireland. It also allows for Her Majesty, by Order in Council, to extend the provisions of Part 1 and Part 3 of the Bill, or any regulations made under Part 1 of the Bill, with or without modifications, to any of the Channel Islands, the Isle of Man, or any of the British Overseas Territories.

Clause 52: Commencement

138 This clause sets out when the provisions in the Bill would come into force. Clauses 42-46 and 48-53 would come into force on the day on which the Bill becomes an Act of Parliament. The remaining clauses would come into force on a day appointed by the Secretary of State.

Clause 53: Short title

139 This clause confirms that, should the Bill be granted Royal Assent and become an Act of Parliament, it would be known as the Sanctions and Anti-Money Laundering Act 2017.

Schedules

Schedule 1: Trade sanctions

140 Schedule 1 provides further detail on the scope of the regulations that can be made under clause 4 (trade sanctions).

Part 1 - Trade sanctions

141 Part one of the schedule sets out the different types of trade sanctions.

142 Paragraph 2 deals with the export of specified goods. Regulations may provide for the prevention of exports to, or for the benefit of, prescribed countries, and for exports to, or for the benefit of, three categories of persons. These three categories are used throughout the schedule and cover:

- a. persons designated under each regulation (see clause 8);
- b. persons connected with a country prescribed in the regulation. Subsection 50(4) specifies that regulations can set out the nature of the connection between the persons and the prescribed country. This category could capture all persons connected to a country in a specified way;
- c. a prescribed description of persons connected with a prescribed country. Subsection 50(4) specifies that regulations can set out a description of the persons in question and the nature of the connection between them and the prescribed country. This category could capture groups of persons connected to a country in a specified way.

143 Paragraph 3 deals with imports of goods. Amongst other things, regulations may apply to goods originating or consigned from a prescribed country. This can cover goods originating in a prescribed country that are routed through a third country and vice versa. "Origin" is defined in sub-paragraph 34(b).

144 Paragraph 4 deals with movement of specified goods outside the UK. An example of a measure falling under this power would be a prohibition on the brokering of military goods from outside the UK to a prescribed country.

145 Paragraph 5 is about transfer of specified technology. Technology in this case is defined in paragraph 36, and refers in general to information and software. An example of a measure falling under this power would be a prohibition on the transfer of military technology to a prescribed country.

146 Paragraphs 6 and 7 provide that sanctions regulations can prevent specified goods or technology from being made available or acquired. "Making available" in this sense is intended to cover situations other than export where goods are made available. It could include the gifting, delivery or disposal of goods and technology. "Acquisition" is defined in paragraph 34.

147 Paragraphs 8 and 9 are about preventing land from being made available or acquired. An example of a measure falling under this power would be a prohibition on the purchase of land in a prescribed country.

- 148 Paragraph 10 is about restricting activities that relate to military activities. An example of a measure falling under this power would be a prohibition on the provision of technical assistance relating to military activities in a prescribed country.
- 149 Paragraphs 11 to 14 deal with provision and procurement of services. An example of a measure falling under this power would be a prohibition on the provision of services related to a specific industry in a prescribed country.
- 150 Paragraphs 13 and 14 make clear that the sanctions regulations can restrict services that are connected to other sanctions prohibitions or connected to particular projects, industries, sectors, infrastructure, aircraft, ships, services or other activities. An example of a measure falling under this power would be a prohibition on the provision of technical assistance relating to the export of military goods to a prescribed country.
- 151 Paragraph 15 makes clear that sanctions regulations can place restrictions on goods, technology and services connected with vessels that are designated under UN Security Council Resolutions.
- 152 Paragraph 16 provides that sanctions regulations can deal with objects of cultural interest. An example of a measure falling under this power would be a prohibition on the purchase of objects of cultural interest that have been removed from a prescribed country.

Part 2 - Further provision

- 153 Part Two of the schedule makes further provision as to the restriction and interpretation of trade sanctions.
- 154 Paragraphs 17 to 20 are about how goods, services and technology can be described in sanctions regulations. For example, paragraph 17 makes clear that goods may be described by reference to a use to which they may be put, the types of users of the goods, the industries, sectors, infrastructure or projects to which they may relate or the place where they originate.
- 155 Paragraphs 21 to 23 make clear that the sanctions regulations can include cross-references to other legislation and lists. This would serve to make it easier to interpret sanctions regulations. This includes references to orders made under the Export Control Act 2002 (paragraph 21), to EU lists (paragraph 22) and to other technical lists, including those related to the UK's UN obligations (paragraph 23).
- 156 Paragraphs 24 and 25 make clear that the movement of vehicles, ships and aircraft under their own power may be counted as exports or imports under trade sanctions regulations. Paragraph 26 enables vessels to be described by reference to a UN instrument on an ambulatory basis.
- 157 Paragraph 27 allows regulations to modify, up to a maximum of 10 years, the period of imprisonment in relation to offences under the Customs and Excise Management Act 1979.
- 158 Paragraph 28 specifies that regulations made under Part 1 of Schedule 1 may not have the effect of prohibiting or regulating certain specified activities, unless the interference by the regulations in the freedom to carry on the activity in question is necessary (and no more than necessary).
- 159 Paragraph 29 states that it is for the appropriate Minister to determine that any interference in any of the activities described in paragraph 28 is necessary, in light of the circumstances prevailing at the time, having considered the reasons for seeking to control the activity in question and the need to respect the freedom to carry on the activity.

- 160 Paragraph 30 specifies that references to goods, technology, land, or services being moved, made available, acquired, provided, procured or received are reference to those things being done directly or indirectly.
- 161 Paragraphs 31 and 32 define 'export' and 'import' for the purposes of the Schedule, and specify that goods moved between the Isle of Man and the United Kingdom are not to be regarded as exports/imports. This is due to the fact that the Isle of Man forms part of a joint customs area with the United Kingdom. This is in line with section 11(3) of the Export Control Act 2002 and section 8(1)(a) of the Import, Export and Customs Powers (Defence) Act 1939.
- 162 Paragraph 33 specifies that goods imported into the Isle of Man in contravention of a prohibition, where a corresponding prohibition applies to the import of goods of that kind to the UK pursuant to a purpose mentioned in paragraph 3, may be regarded as imported if they are subsequently moved from the Isle of Man to the United Kingdom.
- 163 Paragraphs 34 to 36 define certain terms.
- 164 Paragraph 36 specifies that references to services in Schedule 1 may include financial services.

Schedule 2: Money laundering and terrorist financing etc

- 165 Schedule 2 provides further detail on the scope of the regulations that can be made under clause 41 (relating to money laundering and terrorist financing). Paragraph 1 of Schedule 2 makes express provision that regulations made under clause 41 may do anything mentioned in paragraphs 2 to 17. These paragraphs cover the broad topics addressed in the Money Laundering Regulations 2017. The Money Laundering Regulations 2017 are the main legislation that transposes 4MLD (and the enforcement provisions of the associated Funds Transfer Regulation 2015/847/EC) into UK law.
- 166 The effect of paragraphs 1 to 17 of Schedule 2 is that regulations made under clause 41 may make provisions addressing similar topics to those addressed in the Money Laundering Regulations 2017. Paragraph 7, for example, confirms that regulations made under clause 41 can confer supervisory functions on prescribed bodies and gives a non-exhaustive list of powers or duties that could be conferred on such supervisory authorities. Paragraph 1 also confirms that such regulations may also address topics other than those set out in paragraphs 2-17 provided that they fall within the scope of clause 41. Paragraph 18 provides for regulations made under clause 41 to contain provision for criminal offences to be punishable on both summary conviction and indictment. The maximum sentences that can be imposed by regulations made under paragraph 15 are identical to those currently provided for in the Money Laundering Regulations 2017, which may include imprisonment for up to three months (on summary conviction) or up to two years (on conviction on indictment). There is a separate penalty regime established under Part 7 of the Proceeds of Crime Act 2002 for criminal offences relating to money laundering. This regime provides for longer prison sentences not exceeding five or fourteen years (depending on the offence). Paragraph 19 confirms that regulations made under clause 41 may impose requirements in relation to conduct outside the UK by a UK natural or legal person. This is a continuation of the policy position under the Money Laundering Regulations 2017, and captures – for example – instances where a person in an overseas branch of a UK firm commits an offence under regulations made for the purpose of preventing money laundering.
- 167 Paragraph 20(a) confirms that regulations made under clause 41 may, subject to any modifications that the appropriate Minister considers appropriate, make provision corresponding or similar to the Money Laundering Regulations 2017 (as these have effect immediately prior to the UK's withdrawal from the EU). This provides flexibility to ensure that clause 41 can be used to make future regulations similar to any provisions of the Money

Laundering Regulations 2017 that are amended prior to the UK's withdrawal from the EU. The EU is currently negotiating targeted amendments to 4MLD which are expected to come into effect (and be transposed into the national law of EU Member States) prior to the date of the UK's withdrawal from the EU. It is expected that any such amendments would take effect in UK law through amendments to the Money Laundering Regulations 2017. Paragraph 20(b) confirms that regulations made under clause 41 can be used to amend or revoke the Money Laundering Regulations 2017.

168 Paragraph 21 defines certain terms used in clause 41 and Schedule 2. In particular, it confirms that the definitions of "money laundering" and "terrorist financing" have the meaning currently used in the Money Laundering Regulations 2017.

Schedule 3: Consequential amendments

169 Part 1 of this Schedule makes some changes to existing primary legislation.

Part 1 – Amendments consequential on Part 1

170 Paragraph 1 amends section 8B of the Immigration Act 1971 by making changes which enable the implementation of travel bans imposed under the Bill.

171 Paragraph 2 amends Schedule 1 of the Senior Courts Act 1981 to assign legal challenges under clause 32 to the Queen's Bench Division of the High Court.

172 Paragraph 3 amends the Regulation of Investigatory Powers Act 2000 to enable material obtained under powers in that Act to be used in court proceedings relating to legal challenges under clause 32.

173 Paragraph 4 amends the Serious Organised Crime and Police Act 2005 to enable the powers in that Act to be used to investigate offences under regulations made under clause 1 ("sanctions offences").

174 Paragraph 5 amends Schedule 1 of the Serious Crime Act 2007 to allow serious crime prevention orders to be obtained in respect of sanctions offences.

175 Paragraph 6 amends Schedule 17 of the Crime and Courts Act 2013 by including a sanctions offence as an offence in relation to which a deferred prosecution agreement may be entered into.

176 Paragraph 7 amends Schedule 3 of the Investigatory Powers Act 2016 to enable material obtained under powers in that Act to be used in court proceedings relating to challenges under clause 32.

177 Paragraph 8 amends the Policing and Crime Act 2017 so that the power in section 143 of that Act to impose a civil monetary penalty will continue to apply to financial sanctions made under the Bill.

178 Paragraph 8(4) omits sections 152 to 156 of the Policing and Crime Act 2017. These powers enable the government to make temporary provisions to implement UN financial sanctions without delay, so that there is no implementation gap between the UN agreeing these sanctions and the EU adopting them. Once the Bill is in force these powers will no longer be necessary, since the powers in this Bill will enable UN sanctions to be implemented by the UK directly.

Part 2 – Repeals etc consequential on repeal of Terrorist Asset-Freezing etc Act 2010

179 Part 2 of this Schedule contains repeals consequential on the repeal of Part 1 of the Terrorist Asset-Freezing etc. Act 2010.

Commencement

180 Clause 52 provides that the powers contained within this Bill commence on a day set out in regulations, with the exception of clauses 42 to 46 and 48 to 53 which would be brought into force on the day on which the Bill becomes an Act of Parliament.

Financial implications of the Bill

181 The direct costs of the Sanctions and Anti-Money Laundering Bill are expected to be negligible. This is because the Bill does not create new policy, but ensures that the UK has the necessary domestic legal powers after leaving the EU to continue to meet its international obligations, use sanctions as a national security and foreign policy tool, and tackle money laundering and terrorist financing.

182 As the powers being created enable regulations to be made in UK law that reflect those already put in place by the EU, it is not anticipated that significant costs to business, apart from some familiarisation costs (including reading new guidance etc.) will arise. The anticipated “Net costs to business per year” and the “Total Net Present Value” are both less than £1 million.

183 These considerations are summarised in the accompanying impact assessment for this Bill.

Parliamentary approval for financial costs or for charges imposed

184 This section will be completed when the Bill transfers to the House of Commons.

Compatibility with the European Convention on Human Rights

185 Lord Ahmad of Wimbledon, Minister of State for the Commonwealth and the UN, has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

“In my view, the provisions of the Sanctions and Anti-Money Laundering Bill are compatible with the Convention rights.”

186 The government will publish a separate memorandum with its assessment of compatibility of the Bill’s provisions with the Convention rights.

Related documents

187 The following documents are relevant to the Bill and can be read online or at the stated locations:

- [White Paper](#)
- [Consultation Response](#)
- Impact Assessment (available in the Printed Paper Office in the first instance)
- Delegated Powers Memorandum (available in the Printed Paper Office in the first instance)
- [Immigration Act 1971](#)
- [The European Communities Act 1972;](#)
- [The Anti-Terrorism, Crime and Security Act 2001;](#)
- [The Export Control Act 2002;](#)
- [The Counter-Terrorism Act 2008;](#)
- [The Terrorist Asset-Freezing etc Act 2010.](#)
- [The Crime and Courts Act 2013](#)
- [The Criminal Finances Act 2017](#)
- [The Policing and Crime Act 2017](#)
- [The European Union \(Withdrawal\) Bill 2017-19](#)

Annex A – Glossary

Draft-affirmative procedure	Statutory Instruments that are subject to the "draft-affirmative procedure" require the approval of both Houses of Parliament before they have effect.
Made-affirmative procedure	Statutory Instruments that are subject to the "made-affirmative procedure" become effective immediately, but require the approval of both Houses of Parliament within a certain period. It allows powers to be exercised quickly.
Negative procedure	Statutory instruments that are subject to the "negative procedure" automatically become effective unless they are annulled by either the House of Commons or the House of Lords.
Orders in Council	Orders in Council are used when an ordinary statutory instrument would be inappropriate, such as for transferring responsibilities between government departments. They are issued by and with the advice of HM Privy Council and are approved in person by the monarch. Orders in Council were used to transfer powers from Ministers of the UK government to the devolved governments. They are used to extend UK legislation to the Crown Dependencies and British Overseas Territories.
Regulations	Regulations are a form of Statutory Instrument (SIs).
Statutory Instrument (SI)	Statutory instruments are a type of delegated (or secondary) legislation. They can be used to make specific changes to the law under powers from an existing Act of Parliament, without Parliament having to pass a new Act.

Annex B – Territorial extent and application in the United Kingdom

This Bill applies to the whole of the UK.

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Clauses 1 to 53 and the Schedules	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No

SANCTIONS AND ANTI-MONEY LAUNDERING BILL [HL]

EXPLANATORY NOTES

These Explanatory Notes relate to the Sanctions and Anti-Money Laundering Bill [HL] as introduced in the House of Lords on 18 October 2017 (HL Bill 69).

Ordered by the House of Lords to be printed, 18 October 2017

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