

SANCTIONS AND ANTI-MONEY LAUNDERING BILL
SUPPLEMENTARY MEMORANDUM FROM THE FOREIGN
AND COMMONWEALTH OFFICE TO THE DELEGATED POWERS
AND REGULATORY REFORM COMMITTEE

A. INTRODUCTION

1. This supplementary memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of some of the government amendments to the Sanctions and Anti-Money Laundering Bill (“**the Bill**”) tabled for Commons Report stage. This supplementary memorandum identifies those provisions of the government amendments to the Bill that would confer (or amend) powers to make delegated legislation. It explains in each case why the power is to be taken (or amended) and explains the nature of, and the reason for, the procedure selected. The amendments all relate to enforcement in relation to ships.

B. PURPOSE AND EFFECT OF THE GOVERNMENT AMENDMENTS

2. For information regarding the purpose and effect of the Bill as a whole, please refer to the memorandum from the Foreign and Commonwealth Office to the Delegated Powers and Regulatory Reform Committee dated 19 October 2017 (“the DPRRC Memo”).
3. The government amendments with which this supplementary memorandum is concerned would allow for regulations made under clause 1 of the Bill to contain provision for maritime enforcement powers to stop, board, and search British ships, stateless ships, and foreign ships (with flag State consent) in international waters for the purpose of seizing sanctioned goods. The amendments would also confer a power to make regulations about the procedure for dealing with goods seized under these powers.
4. As a result of these amendments, regulations under clause 1 of the Bill could make these powers available in two circumstances. Firstly, where there are reasonable grounds to suspect that the ship is carrying items in contravention of UK trade sanctions. Secondly, where there are reasonable grounds to suspect that the ship is carrying items in relation to which there would be a contravention of UK trade sanctions if the conduct constituting that breach had taken place by a UK person or a person in the UK. The provisions would allow items to be seized where there are reasonable grounds to suspect that those items were being carried in contravention or in deemed contravention of those sanctions.

5. Under clause 17 of the Bill, the enforcement provisions that may be made in regulations under clause 1 do not explicitly provide for the exercise of these maritime enforcement powers, nor do they allow for the enforcement of deemed contraventions of UK sanctions regulations. Although there are currently other maritime enforcement powers in domestic law (the details of which are set out below in relation to each clause respectively), following further consideration the government does not consider that these powers are sufficient to be able to properly enforce UK sanctions regulations, to comply with our obligations under, and to ensure adherence with the standards set out in, UN Security Council Resolutions and to provide protection against the transportation of dangerous and harmful items in international waters (such as chemical weapons).

C. DELEGATED POWERS

New clause: Enforcement: goods etc on ships

- *Powers conferred on: Secretary of State or HM Treasury*
- *Powers 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 contained in regulations that repeal, revoke or amend primary legislation)*

Context and purpose

6. This new clause would enable regulations being made under clause 1 of the Bill to include additional provision as to the powers and duties that prescribed persons have to enforce specific trade sanctions contained in those regulations. In particular, the clause would allow for those regulations to include provision conferring powers to stop, board, divert, detain and search a ship and to seize and dispose of any prohibited items.
7. These powers would be exercisable in relation to: British ships in international and foreign waters (in the latter case authority from the coastal State is required); ships without nationality in international waters; and foreign ships in international waters (in which case authority from the flag State is required).
8. The powers to stop, board and search a ship would be exercisable where there is a reasonable suspicion that the ship is carrying items that have been, or are being, dealt with in contravention of UK trade sanctions. Any prohibited items that are identified during the course of such a search may then be seized. To support the enforcement of these provisions, the clause would also allow provision for persons to be searched to the extent that is reasonably required for the purpose of

identifying prohibited items or anything that may be used to cause physical injury, damage to property or to endanger the safety of the ship.

9. There are currently analogous powers contained in the Customs and Excise Management Act 1979 (“CEMA”) to allow UK officials to enforce trade sanctions in the UK and its territorial waters. This legislative framework does not, however, extend beyond the limits of UK territorial waters.
10. There are also analogous maritime enforcement provisions contained in Chapter 5 of the Policing and Crime Act 2017, Part 3 of the Modern Slavery Act 2015 and Part 3A and Schedule 4A of the Immigration Act 1971. Whereas these powers are concerned only with the taking of enforcement action for the purpose of investigating criminal offences under the law of England and Wales, these new powers are focussed on seizing items that are subject to UK sanctions.

Justification for taking the powers

11. As set out in paragraph 53 of the DPRRC memo, it is considered that detailed provision for the enforcement of sanctions regimes should be set out in secondary legislation rather than on the face of the Bill. This will ensure that any enforcement measures are appropriate to the particular prohibitions and requirements contained in the regulations.
12. Including all relevant enforcement measures within the regulations will ensure that the regulations contain a comprehensive and coherent picture of how sanctions are to be enforced, providing clarity for both enforcement officers and members of the public.
13. This clause prescribes in detail the basis under which the maritime enforcement powers under this clause would be exercisable, including setting out a number of safeguards that must be set out in the regulations. This not only provides some clarity as to the way in which any such powers would be set out in regulations but ensures that the delegation is limited and appropriate.

Justification for the procedure

14. The purpose of the clause is to enable the proper enforcement of trade sanctions contained in regulations made under clause 1 of the Bill. Any provision made in regulations under this clause would be contained in those regulations imposing trade sanctions. The parliamentary procedure selected to attach to this clause is therefore the same procedure that will be applicable to regulations made under clause 1 of the Bill, for which justification is contained in the DPRRC memo and to which the Committee are referred. There are no additional factors to suggest that the inclusion of these powers within sanctions regulations would warrant a higher

level of Parliamentary scrutiny than the Bill already provides for sanctions regulations.

New clause: Enforcement: goods etc on ships: non-UK conduct

- *Powers conferred on: Secretary of State or HM Treasury*
- *Powers 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 contained in regulations that repeal, revoke or amend primary legislation).*

Context and purpose

15. This new clause would enable regulations being made under clause 1 of the Bill to confer powers on prescribed persons to take enforcement action against ships for the purpose of seizing and disposing of items that would be prohibited had they been dealt with by a UK person or a person in the UK. In particular, the clause would allow for those regulations to include provision conferring maritime enforcement powers, namely powers to stop, board, divert, detain and search a ship and to seize any relevant items.
16. These powers would be exercisable in relation to: British ships in international and foreign waters (in the latter case authority from the coastal State is required); ships without nationality in international waters; and foreign ships in international waters (in which case authority from the flag State is required).
17. The powers would be exercisable where there are reasonable grounds to suspect that the ship is carrying items in relation to which there would be a contravention of certain UK trade sanctions if the conduct constituting that breach had taken place by a UK person or a person in the UK. Any items identified during the course of such a search that would be prohibited by UK trade sanctions if there were a UK-link may then be seized. To support the enforcement of these provisions, the clause would also allow provision for persons to be searched to the extent that is reasonably required for the purpose of identifying relevant items or anything that may be used to cause physical injury, damage to property or to endanger the safety of the ship.
18. There are a number of analogous powers available under international law, some of which are set out below for illustrative purposes. The purpose of this clause is to ensure that there is a clearly prescribed domestic framework under which maritime enforcement powers can be operated for sanctions related purposes.

British ships

19. Under articles 91 and 92(1) of the UN Convention on the Law of the Sea (UNCLOS), ships flying the UK flag carry UK nationality and are ships in respect of which the UK has “generally exclusive jurisdiction” in international waters. By reason of article 94 of UNCLOS, this means that the UK is under an obligation to “assume jurisdiction under its internal law over each ship flying its flag and its master, officers and crew in respect of administrative, technical and social matters concerning the ship.”
20. UN Security Council Resolution 1718 (2006), requires Member States to prevent British ships from being used to transfer of certain prohibited items to and from the DPRK. It is expected that this provision is enforced through the inspection of cargo on board British ships going to and coming from the DPRK as necessary and the seizure and disposal of any prohibited goods identified.

Foreign ships

21. UN Security Council Resolution 2375 (2017) calls upon Member States to inspect a ship if they have the consent of the flag state to do so; the ship is in international waters; and the inspecting Member State has information that provides reasonable grounds to believe that the cargo of the ship contains items prohibited under the DPRK sanctions regime. Where a flag state refuses to provide consent, then the UN Sanctions Committee will consider whether or not to designate that ship to enable it to lose its nationality.

Ships without nationality

22. Such ships are not entitled to protection from any State under international law and under the terms of Article 110 of the UN Convention on the Law of the Sea there is a right of visit in respect of ships reasonably suspected as being without nationality. Certain international instruments also provide specific authority for taking action in relation to stateless ships. The Protocol Against the Smuggling of Migrants by Land, Sea and Air of 2000 provides for measures against migrant smuggling ships without nationality. Operative paragraph 5 of UNSCR 2240 (2015) calls upon Member States to inspect any ships without nationality in international waters that they have reasonable grounds to believe are being used by organised criminal enterprises for migrant smuggling or human trafficking from Libya.
23. Enabling sanctions regulations made under clause 1 to contain the powers provided by this clause would ensure that ships in international waters comply with the obligations of, and adhere to the standards set out in, applicable UN Security

Council Resolutions and provide protection against the transportation of dangerous and harmful items in international waters (such as chemical weapons).

Justification for taking the powers

24. As set out in paragraph 53 of the DPRRC memo, it is considered that detailed provision for the enforcement of sanctions regimes should be set out in secondary legislation rather than on the face of the Bill. This will ensure that any enforcement measures are appropriate to the particular prohibitions and requirements contained in the regulations.
25. Including all relevant enforcement measures within the regulations will also ensure that the regulations contain a comprehensive and coherent picture of how sanctions are to be enforced, providing clarity for both enforcement officers and members of the public.
26. This clause builds upon the enforcement powers that may be made in regulations made under clause 1 of the Bill, by making those same powers available in circumstances where a breach of trade sanctions would have occurred had the conduct relating to that breach taken place by a UK person or a person in the UK and so the same justification applies.
27. Again, this clause prescribes in detail the basis under which the maritime enforcement powers under this clause would be exercisable, including setting out a number of safeguards that must be set out in the regulations. This not only provides some clarity as to the way in which any such powers would be set out in regulations but ensures that the delegation is limited and appropriate.

Justification for the procedure

28. This clause builds upon provisions concerned with the enforcement of trade sanctions contained in regulations made under clause 1 of the Bill. Any provision made in regulations under this clause would be contained in those regulations imposing trade sanctions. In particular, this procedure is: negative, for regulations dealing with UN sanctions; made-affirmative, where UN sanctions are not dealt with; and draft-affirmative, where the regulations repeal, revoke or amend primary legislation. The justification for the procedure selected to attach to this clause is the same as for regulations made under clause 1 of the Bill for which justification is contained in the DPRRC memo and to which the Committee are referred. There are no additional factors to suggest that the inclusion of these powers within sanctions regulations would warrant a higher level of Parliamentary scrutiny than the Bill already provides for sanctions regulations.

New clause: Procedure for dealing with goods etc seized from ships

- *Powers conferred on: Secretary of State*
- *Powers exercised by: Regulations made by statutory instrument*
- *Parliamentary procedure: Negative (where contained in separate regulations or where contained in regulations dealing with UN sanctions); made-affirmative (where contained in regulations where UN sanctions are not dealt with); draft-affirmative (where contained in regulations that repeal, revoke or amend primary legislation).*

Context and purpose

29. This amendment is linked to the two amendments discussed above. It would enable regulations to set out how items seized under any powers exercised by virtue of the two new clauses described above are to be dealt with, including how seized items are to be disposed of.

Justification for taking the powers

30. The Government considers that in order to ensure that the powers to seize items are exercised properly and fairly there should be transparent and accessible procedures in place setting out how those items are to be dealt with post-seizure and enabling those who have had items seized to challenge the basis on which that seizure took place and to obtain compensation in appropriate cases. This power would provide the ability to create those procedures.

31. Some further consideration is required in relation the precise detail of the procedures, including the way this would apply to persons who are within the UK and those outside the UK, and the responsibility within Whitehall for decisions and compensation. Taking a power would enable these matters to be considered carefully and set out in regulations. The intention is to create procedures similar to those contained in Schedule 3 of CEMA.

32. This clause sets out a clear framework within which any such procedures would need to take place. This provides some clarity as to the manner in which the regulations would be drafted.

Justification for the procedure

33. The Government proposes that the procedure applicable to this power should be the negative procedure. The main purpose of this power is to enable regulations to set out procedural safeguards that would apply in respect of seized goods, and not to impose any substantive sanctions or obligations. 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.

Schedule 1 – New paragraph 27A: Modifications to CEMA

- *Powers conferred on: Secretary of State or HM Treasury*
- *Powers exercised by: Regulations made by statutory instrument*
- *Parliamentary procedure: Negative (where contained in separate regulations or where contained in regulations dealing with UN sanctions); made-affirmative (where contained in regulations where UN sanctions are not dealt with); draft-affirmative (where contained in regulations that repeal, revoke or amend primary legislation).*

Context and purpose

34. This amendment supplements the power in paragraph 27 of Schedule 2 and is linked to the amendments discussed above. It enables regulations to be made that modify certain provisions of CEMA that are relevant to the enforcement of sanctions regulations made under clause 1 of the Bill.

Justification for taking the powers

35. Modifications to provisions of CEMA might be necessary to properly enforce sanctions regulations made under clause 1 of the Bill and our obligations under, and the standards set out in, UN Security Council Resolutions. For example, under operative paragraph 9 of UNSCR 2017/2397 in relation to the Democratic People's Republic of North Korea, the UK must seize, inspect and detain any ship in its ports where there are reasonable grounds to believe that the ship was involved in sanctioned activities or the transport of prohibited items. To fully implement this obligation, the existing provisions in CEMA, which allow for the seizure of ships that have been used to transport prohibited items, may need to be modified to allow also for the seizure of ships that have been involved in prohibited activities.

Justification for the procedure

36. As set out in the DPRRC memo, the procedure for modifications of CEMA under paragraph 27 of Schedule 1 have a precedent in section 7(2)(b) of the Export Control Act 2002, where orders that modify CEMA adopt the negative procedure. There are no additional factors to suggest that the inclusion of these powers within regulations would warrant a higher level of Parliamentary scrutiny than the Bill already provides for those regulations.

Foreign and Commonwealth Office
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