



House of Lords
House of Commons
Joint Committee on
Human Rights

Legislative Scrutiny: The Sanctions and Anti- Money Laundering Bill

Third Report of Session 2017–19

*Report, together with formal minutes relating
to the report*

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Joint Committee on Human Rights

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Summary

This Bill provides a legal framework for sanctions and anti-money laundering measures once the UK has left the EU. In our view, the principal human rights issues arise in connection with the powers to impose sanctions, so our scrutiny is focused on Part 1 of the Bill.

The current sanctions regime is a mix of UN, EU and domestic competences. There will need to be a new legal framework to allow the UK to impose sanctions after EU withdrawal. While the Bill provides for a two year transition period after exit, it is not clear to what extent the UK will have formal international agreements with the EU regarding sanctions following the transition. The Bill repeals Part 1 of the Terrorist Asset Freezing Act (2010), which sets out the current legal grounds on which the UK Government can impose terrorist-related sanctions. In doing so, it removes the supervision of the Independent Reviewer of Terrorism Legislation over terrorist-related sanctions.

Sanctions are an important foreign policy instrument and are often themselves deployed to protect human rights or encourage respect for the rule of law. Where sanctions are imposed on particular countries or regimes there may be impacts on the whole population. Over recent decades, practice has moved toward targeting individuals or identifiable organisations rather than imposing broad sanctions which may affect entire populations. We welcome this approach. Targeted sanctions are an important mechanism for dealing with terrorists and human rights abusers, and we strongly support their appropriate use. Nonetheless, depending upon the nature of the restrictive measures, the imposition of sanctions as provided for in this Bill may interfere with numerous Convention rights, including the right to a fair trial (Article 6 ECHR); the right to respect for private and family life (Article 8); the right to an effective remedy and just satisfaction (Articles 13 and 41); and the right to peaceful enjoyment of possessions (Article 1 of Protocol 1 to the ECHR). Targeted sanctions can have very serious consequences for those involved, and it is possible that individuals or organisations may be wrongly sanctioned, for example because of mistaken identity. In our scrutiny, we have borne in mind the complexity of this subject and the need to ensure the Government's powers in this area are both effective and proportionate.

We have given particular scrutiny to the following issues arising in the Bill:

- The broad delegated powers given to Ministers to create sanctions regulations;
- The low threshold for designation decisions;
- The limitations on due process, in particular:
 - the infrequency of Ministerial reviews of designation decisions;
 - the removal of full appeal rights for designated persons and the restrictions on the right to an effective remedy;
 - the removal of independent oversight of designation decisions; and
 - the absence of any details regarding licensing and exemptions to sanctions.

Power to create sanctions regulations and threshold for designation decisions

The Bill gives Ministers the power to make sanctions regulations where they consider it is “appropriate” for the purpose of complying with UN or international agreements, or for a number of other policy objectives set out on the face of the Bill, including prevention of terrorism, national security, or furthering a foreign policy objective of the United Kingdom. The term “appropriate” confers a “very broad latitude and discretion”. At Report Stage in the Lords, the Government put forward an amendment to insert what is currently clause 2 (Additional requirements for regulations for a purpose within section 1(2)). This provides that it is not “appropriate” for Ministers to create sanctions regulations for any purpose other than compliance with UN or international obligations, unless they consider there are “good reasons” to pursue the purpose and that the imposition of sanctions is a “reasonable course of action” for that purpose.¹ Further, the Minister must lay a report before Parliament explaining why the Minister considers there are “good reasons” and why the Minister considers it is a “reasonable course of action”.² We consider the inclusion of clause 2 mitigates our concerns about the broad powers given by clause 1 of the Bill

We note that the Bill lowers the current threshold for imposing terrorist-related sanctions autonomously from “reasonable grounds to believe” that a person is involved in terrorist activity to “reasonable grounds to suspect” that this is the case. The Government notes this threshold is in accordance with international standards and has been upheld by the UK Supreme Court and EU courts.³ The Government justifies this change on the ground that “aligning the threshold in relation to domestic counter-terrorism with other sanctions designations will improve the coherence and clarity of our sanctions framework as a whole. It will allow the Government to impose sanctions based on similar levels of evidence as our international partners ensuring that we can maintain productive international co-operation on this issue.”⁴ We acknowledge that whether or not there is a formal agreement with our former EU partners, it is likely to be desirable to continue to coordinate with them. If there is no formal agreement on this matter, it would obviously cause difficulties for such cooperation if the UK’s threshold for imposing sanctions was significantly different from the international norm. Nonetheless, we are concerned by this reduction in the threshold. International standards tend to offer lowest common denominators and states are not obliged to adopt such standards for autonomous systems.⁵ We encourage colleagues involved in legislative scrutiny of the Bill to press the Government to explain its reasoning on this threshold more clearly.

1 [Sanctions and Anti-Money Laundering Bill](#), Clause 2(2)

2 [Sanctions and Anti-Money Laundering Bill](#), Clause 2(4)

3 Foreign and Commonwealth Office and HM Treasury (SAB0005), [paras 21–25](#)

4 Letter from Lord Ahmad of Wimbledon, Minister of State for the Commonwealth to Harriet Harman MP, Chair, Joint Committee on Human Rights, [15 January 2018](#)

5 Professor C. Walker ([SAB0004](#)), para 3.8

Due process

A number of provisions in the Bill restrict the rights of designated persons. Firstly, the Bill relieves the Government from its current obligation to conduct annual reviews of designation decisions, and replaces this with a requirement for triennial reviews. Annual review is an important mechanism for ensuring that sanctions remain necessary and proportionate. We have seen no evidence that annual reviews are currently unsustainable and recommend that clause 21 is amended to require annual reviews of designation decisions. Regular periodic review of designations is essential for ensuring that decisions remain justified, necessary, and proportionate and do not interfere with rights for longer than required.

Currently, under TAFE, an individual subject to an asset-freeze can exercise full rights of appeal. The current Bill has regressed from this position by limiting the courts' powers to judicial review.⁶ We are concerned that this standard of review is inadequate and may risk interference with Article 6(1) of the ECHR, which requires "sufficiency of review" of administrative decisions. While it is likely that, regardless of the limitations in clause 33, the courts will interpret their jurisdiction more widely than traditional judicial review constraints and will apply an "intense scrutiny" to designation decisions, this is not reflected on the face of the Bill. In our view, it is undesirable to leave any room for uncertainty as to the courts' jurisdiction in cases involving severe interferences with the fundamental rights of individuals.

The Bill further restricts the courts' powers to award damages, by limiting this to cases where the impugned decision was taken in bad faith or negligently. The Government has not justified limiting the courts' discretion to award damages to cases in which designation decisions have been taken in bad faith or in negligence. We recommend a probing amendment to allow the courts discretion to award damages in order to comply with the right to an effective remedy as protected by the Convention.

Clause 35 of the Bill permits closed material proceedings (CMPs). The right of access to a court is only meaningful if the person who is the subject of the sanction has sufficient information about the case against them to be able to give effective instructions to those representing them. We expect that Ministers will adhere to this standard of disclosure when giving reasons to designated individuals.

The Bill repeals the oversight of the Independent Reviewer of Terrorism Legislation in respect of terrorist-related sanctions. We see no reason for the removal of this oversight function. We recommend that the powers of review currently vested in the Independent Reviewer are retained and set out clearly on the face of the Bill.

Licensing and exemptions

The Bill allows for exemptions and licenses to be granted to disapply the effect of sanctions in particular circumstances.⁷ This is particularly important for ensuring that interferences with the rights of designated and associated persons, as well as those operating in affected regions, are proportionate. We understand from correspondence

6 [Sanctions and Anti-Money Laundering Bill](#), Clause 32(4)

7 [Sanctions and Anti-Money Laundering Bill](#), Clause 15

with the Government that their intention is to publish guidance on the matter, but the absence of detail in the Bill precludes scrutiny of this important regime.⁸ We recommend that the publication of the guidance regarding licensing and exemptions is expedited.

Decisions on whether or not to impose sanctions, with their potential effect on individuals and even entire populations, have to take into account matters such as national security, the effective conduct of international relations and international respect for human rights and the rule of law. The balance is not easy, and for that very reason powers to impose sanctions must be subject to strict safeguards and the right to due process and effective remedies must be protected. The UK's withdrawal from the EU should not result in lower safeguards and unjustified restrictions on rights to due process and remedies; indeed it offers an opportunity to ensure rights are properly protected.

⁸ Letter from Lord Ahmad of Wimbledon, Minister of State for the Commonwealth and the UN, to Rt Hon Harriet Harman QC MP, Chair, Joint Committee on Human Rights, [15 January 2018](#)

1 Background

1. The Sanctions and Anti-Money Laundering Bill (*hereinafter* ‘the Bill’) was introduced in the House of Commons on 25 January 2018. The purpose of the Bill is twofold:
 - a) Part 1 enables the UK to continue to implement UN and EU sanctions regimes after the UK’s exit from the EU as well as providing powers to impose autonomous sanctions.
 - b) Part 2 enables anti-money laundering and counter-terrorist financing measures to be kept up to date and to ensure that the UK adheres to international standards.⁹
2. This Report focuses on Part 1 as the most significant human rights issues arise in the context of sanctions.
3. The Bill was originally introduced in the House of Lords on 18 October 2017. On 6 November 2017, the Government published an ECHR memorandum setting out its assessment of the Bill’s compliance with Convention rights. The Bill was brought to the Commons on 25 January 2018. Secretary of State Boris Johnson MP has certified that, in his view, the Bill is compatible with Convention rights.
4. In November 2017, we called for evidence on the human rights implications of the Bill. We received written submissions from The Equality and Human Rights Commission; The Law Society; and Professor Clive Walker (Special Advisor to the Independent Reviewer of Terrorism Legislation). We are grateful for their submissions and have taken their evidence into account in our deliberations.

Sanctions regimes

5. We recognise that sanctions play a key role in the UK’s foreign policy objectives including the reduction of the threat of terrorism, conflict and weapons proliferation, and promoting compliance with human rights law. The current sanctions regime is a complex web of UN, EU and autonomous UK regimes. At present, the majority of sanctions implemented in the UK derive from the UN and the EU. The UN has power to impose sanctions under Article 41, Chapter VII of the UN Charter where there is a threat to international peace and security. They are binding in international law. UN sanctions are often implemented by EU law which is given domestic effect in the UK by virtue of the European Community Act 1972 (ECA). As well as giving effect to UN sanctions, the EU has powers to impose its own sanctions, which may supplement a UN regime or may deal with separate situations. Finally, the UK has autonomous powers to impose sanctions under the Terrorist Asset Freezing Act 2010 (TAFSA), the Counter-Terrorism Act 2008, and the Anti-Terrorism, Crime and Security Act 2001.

9 [Explanatory Notes to the Sanctions and Anti-Money Laundering Bill](#), [Lords] Clause 2(2) [Bill 157 (2017–19) –EN] p 3, para 1

6. By virtue of clause 1 of the *EU (Withdrawal) Bill*, the ECA will be repealed and various legal powers deriving from the European Community Act 1972 will be lost. As EU law gives effect to the majority of sanctions regimes in the UK. Part 1 of the Bill provides for domestic powers to impose, amend, and revoke sanctions after the UK's exit from the EU. It also repeals and replaces Part 1 of TAFE 2010.¹⁰

Human rights implications

7. Sanctions can take various forms including arms and trade embargoes, asset-freezes, and travel bans and may target individuals by name or description, regimes or governments. Over time, there has been a welcome move away from more widespread sanctions measures, such as trade embargoes. Such measures can have significant impacts affecting whole populations and whilst these measures will rarely be litigated in the Courts as engaging individual human rights, the potential humanitarian impacts can be significant and damaging. We therefore welcome the move, where possible, towards using more targeted sanctions that instead place targeted asset-freezes or travel bans on designated named individuals who are responsible for supporting a particular abusive regime or terrorist group. We recognise that this type of targeted sanctions is to be preferred since their humanitarian effect on the wider population is generally much less significant, although they can raise more specific human rights concerns in individual cases.

8. The imposition of financial and other sanctions on individuals constitutes a severe interference with their human rights. David Anderson QC, the former Independent Reviewer of Terrorism Legislation, has said that “exceptional powers require exceptional safeguards”.¹¹ In the case of *Ahmed*, Lord Hope stated that “designated persons are effectively prisoners of the state... their freedom of movement is severely restricted without access to funds or other economic resources, and the effect on both them and their families can be devastating.”¹²

9. Sanctions can adversely affect persons or entities beyond those who are specifically targeted, such as organisations carrying out humanitarian work or poor communities who find their access to resources restricted as a result of trade embargoes. In *Bosphorus II*, the Court of Justice of the EU (CJEU) held that “any measure imposing sanctions has, by definition, consequences which affect the right to property and the freedom to pursue a trade or business, thereby causing harm to persons who are in no way responsible for the situation which led to the adoption of the sanctions”.¹³

10. Depending upon the nature of the restrictive measures, the imposition of sanctions may interfere with numerous Convention rights. The Bill primarily engages the following Convention rights:

- a) The right to a fair trial (Article 6 ECHR);
- b) The right to respect for private and family life (Article 8);
- c) The right to an effective remedy and just satisfaction (Articles 13 and 41); and

10 Clause 50. Sets out repeal of Part 1 of TAFE with some exceptions.

11 D. Anderson QC, [Fourth Report on the Operation of the Terrorist Asset Freezing Act 2010](#), March 2015

12 *HM Treasury v Ahmed*, [2010] UKSC 2, para 60

13 *Bosphorus II*, C-84/95, 30 July 1996, para 22

- d) The right to peaceful enjoyment of possessions (Article 1 of Protocol 1 to the ECHR).

11. With the exception of Article 6,¹⁴ each of the above Convention rights is qualified and may be interfered with if the interference is in accordance with the law,¹⁵ necessary in a democratic society,¹⁶ and proportionate as required by human rights law.¹⁷

12. We note the following issues arising in the Bill:

- a) The delegated powers given to Ministers to create sanctions regimes;
- b) The low threshold for designation decisions;
- c) The limitations on due process, in particular:
 - i) the infrequency of Ministerial reviews of designation decisions;
 - ii) the removal of full appeal rights for designated persons;
 - iii) the removal of independent oversight of designation decisions; and
- d) The absence of grounds for licensing and exemptions to sanctions.

13. Given the severe impact sanctions may have on individuals and the breadth of persons who may be adversely affected, the Bill must strike the right balance between respect for human rights and other interests such as the protection of national security and foreign policy objectives. It must ensure that there are mechanisms to safeguard individuals or organisations who have been subject to sanctions because of mistakes about their identities or activities. Powers to impose sanctions must be subject to strict safeguards, and the right to due process and effective remedies must be protected. The UK's withdrawal from the EU should not result in lower safeguards and unjustified restrictions on rights to due process and remedies; indeed it offers an opportunity to ensure rights are properly protected.

14 Article 6 is not qualified but it is limited, i.e. it can be restricted in explicit/finite circumstances set out in the article itself or restrictions implied by the European Court of Human Rights. See Blackstone's Guide to the Human Rights Act 1998, 2011, OUP, Chapter 2, para 2.28

15 There must be a specific legal rule or regime which authorises the interference; the individual must have adequate access to the law in question (*The Sunday Times v United Kingdom* (1979) 2 EHRR 245); and the law must be formulated with sufficient precision to enable the citizen to foresee the circumstances in which the law would or might be applied (*Malone v United Kingdom* (1984) 7 EHRR 14).

16 Necessity requires that an interference corresponds to a pressing social need and that it is proportionate to the legitimate aim pursued.

17 If a measure has been adopted which infringes an individual's Convention right in some way, it will not be considered disproportionate if it is restricted in its application and effect, and is duly attended by safeguards in national law so that the individual is not subject to arbitrary treatment (*MS v Sweden* (1997) 3 BHRC 248).

2 Threshold for making sanctions regulations

14. The Bill provides for the use of delegated powers to make sanctions regulations and administrative decisions on individual cases using the powers conferred by the Bill and by regulations. Clause 1(1) and (2) provides that an appropriate Minister¹⁸ may make sanctions regulations where that Minister considers that it is “appropriate” to make the regulations either to comply with a UN or other obligation, or for the following purposes:

- a) to further the prevention of terrorism, in the United Kingdom or elsewhere;
- b) in the interests of national security;
- c) in the interests of international peace and security;
- d) to further a foreign policy objective of the government of the United Kingdom;
- e) to promote the resolution of armed conflicts or the protection of civilians in conflict zones;
- f) to promote compliance with international humanitarian and human rights law;
- g) to contribute to multilateral efforts to prevent the spread and use of weapons and materials of mass destruction;
- h) to promote respect for human rights, democracy, the rule of law and good governance;¹⁹ or
- i) to comply with a UN obligation (i.e. a Security Council Resolution) or with any other international obligation.²⁰

15. At Report stage in the Lords, a Government amendment was agreed which inserted a new clause, currently clause 2 of the Bill (Additional requirements for regulations for a purpose within section 1(2)). This provides that it is not “appropriate” for Ministers to create sanctions regulations for any of the above “discretionary” purposes (i.e. any purpose other than compliance with UN or international obligations), unless they consider there are “good reasons” to pursue the purpose and that the imposition of sanctions is a “reasonable course of action” for that purpose.²¹ Further, the Minister must lay a report before Parliament explaining why the Minister considers there are “good reasons” and why the Minister considers it is a “reasonable course of action”.²²

16. We have given consideration as to whether this clause 1, as qualified by clause 2, is sufficiently circumscribed. We note that “appropriate” is not a technical term and that it confers a “very broad latitude and discretion”.²³ What is considered to be “appropriate” for the purpose of “furthering a policy objective of the UK” is open to very broad interpretation. We considered whether this power should be subject to a test of “necessity”.

18 Defined as the Secretary of State or Treasury

19 [Sanctions and Anti-Money Laundering Bill](#), Clause 1(2)

20 [Sanctions and Anti-Money Laundering Bill](#), Clause 1(1) and (2)

21 [Sanctions and Anti-Money Laundering Bill](#), Clause 2(2)

22 [Sanctions and Anti-Money Laundering Bill](#), Clause 2(4)

23 [Department of Justice v Bell \[2017\] NICA 69](#)

However, we recognise that this is high threshold to impose on the exercise of foreign policy decisions. On balance, we consider that the amendment introducing clause 2 is a reasonable approach.

17. We welcome Clause 2 of the Bill which requires Ministers to explain why they think it appropriate to introduce regulations for a discretionary purpose.

Magnitsky clause

18. *We note that during Second Reading debate in the Commons, consideration was given to the inclusion of a “Magnitsky clause” which would enable sanctions regulations to be made for the purpose of preventing or responding to “gross human rights abuse or violations.” We support the intention behind a “Magnitsky” amendment. We welcome the provisions in the Bill that allow for the imposition of sanctions to deal with all forms of human rights abuses. We consider it should be a strong presumption that the names of those sanctioned by refusal of entry to the UK, together with the reasons for this, should be made public. We urge Ministers to give reassurance on this point. Similarly, we consider that and that use of the exclusions in clause 11 (9) and 12(9) should be the exception and not the norm.*

Power to add new types of sanctions

19. Clauses 3–8 set out the *types* of sanctions that can be imposed by regulations: financial; immigration; trade; aircraft; shipping; and those imposed by UN obligations.²⁴ Although this list appears *prima facie* exhaustive, clause 41 confers a Henry VIII power, permitting the Minister to make regulations to amend the Act to authorise new types of sanctions in addition to those listed, subject to the affirmative resolution procedure.

20. The Government states that “this power would allow the Secretary of State to react to changes in circumstance which may require a new kind of sanction to be imposed quickly. It is not possible to predict all the kinds of sanctions which may be useful or necessary in the future. Without this power, the Government would not be able to react quickly to new types of sanctions [...] and would be less able to play a leading role in the development of sanctions as a tool in international relations.”²⁵

21. We note that the House of Lords Constitution Committee has said that it is constitutionally inappropriate for new kinds of sanctions to be created by regulations as opposed to primary legislation.²⁶ We also note the views of the Delegated Powers and Regulatory Reform Committee that “particularly compelling reasons are needed to justify Henry VIII powers which allow the amendment of the Bill itself.”²⁷ We agree with the views of both Lords Committees on delegated powers. **We particularly note the views of the Delegated Powers and Regulatory Reform Committee on the parliamentary procedure for scrutiny of sanctions regulations.**

24 [Sanctions and Anti-Money Laundering Bill](#), Clauses 3–8

25 Foreign and Commonwealth Office, [Sanctions and Anti-Money Laundering Bill \[HL\]: Delegated Powers Memorandum](#), [para 76](#)

26 House of Lords, Select Committee on the Constitution, Eighth Report of Session 2017–19, [Sanctions and Anti-Money Laundering Bill \[HL\]](#), HL Paper 39, para 10–11

27 House of Lords, Delegated Powers and Regulatory Reform Committee, Seventh Report of Session 2017–19, [Sanctions and Anti-Money Laundering Bill \[HL\]](#), HL Paper 38, para 34

22. At Report stage in the Lords an amendment was agreed which imposed a limitation on this power, so that any new type of sanctions created by regulations must replicate the types of sanctions that have been or are currently imposed at the international level.²⁸

23. We recognise that delegated powers are necessary to allow for sanctions regimes to be created and amended in individual cases. However, such powers must be sufficiently circumscribed. We therefore welcome the amendment to clause 41 stipulating that the power to specify new types of sanction by regulation will only be exercisable if it replicates sanctions or kinds of sanctions used at the international level.

3 Threshold for designation decisions

24. The Bill applies to all types of sanctions regimes, both terrorist and non-terrorist related, and gives appropriate Ministers the power to create sanctions and designate persons by regulations. The Bill repeals and replaces Part 1 of the Terrorist Asset Freezing Act 2010 (TAFAs), which deals specifically with terrorist-related financial sanctions.²⁹ The current legal threshold for the imposition of terrorist-related sanctions is set out in section 2 of TAFAs, which provides that a person can only be designated if the Treasury **reasonably believes** that:

- a) the person is or has been involved in terrorist activity;³⁰ or
- b) the person is owned or controlled directly or indirectly by a person within subparagraph (i); or
- c) the person is acting on behalf of or at the direction of a person within subparagraph (i); **and**
- d) they consider that it is **necessary** for purposes connected with protecting members of the public from terrorism that financial restrictions should be applied in relation to the person.³¹

25. However, for the purpose of designating a person by name or description, the Bill adopts a threshold of “reasonable grounds to suspect” that a person is an “involved person”.³² The designation must also be “appropriate” having regard to the purpose of the regulations and the likely effects on the designated individual.³³ The Government justifies this low threshold on the basis that it is permissible in accordance with international standards and has been upheld by the UK Supreme Court and EU courts.³⁴

26. In correspondence with the Committee, Lord Ahmad noted that “[a]ligning the threshold in relation to domestic counter-terrorism with other sanctions designations will improve the coherence and clarity of our sanctions framework as a whole. It will allow the Government to impose sanctions based on similar levels of evidence as our international partners, ensuring we can maintain productive international co-operation on this issue”.³⁵ We accept the importance of international cooperation and the need for compatibility with international regimes, particularly given the UK’s position as an international centre for financial services and a hub for travel.

27. This lower threshold of “reasonable grounds to suspect” does not appear *prima facie* to violate *international* standards as long as there is a “sufficiently solid factual basis” for the designation decision and the “grounds are supported by sufficient information

29 [Sanctions and Anti-Money Laundering Bill](#), Clause 50

30 Involvement in terrorist activity is any one or more of the following: the commission, preparation or instigation of acts of terrorism; conduct that facilitates the commission, preparation or instigation of such acts, or that is intended to do so; or conduct that gives support or assistance to persons who are known or believed by the person concerned to be involved in conduct falling within (i) or (ii).

31 [Terrorist Asset Freezing Act 2010](#), section 2

32 An “involved person” is defined in clause 11(3).

33 [Sanctions and Anti-Money Laundering Bill](#), Clauses 11(2) (b) and 12(5)(b)

34 Foreign and Commonwealth Office and HM Treasury (SAB0005), [paras 21–25](#)

35 Letter from Lord Ahmad of Wimbledon, Minister of State for the Commonwealth and the UN, to Rt Hon Harriet Harman MP QC, Chair, Joint Committee on Human Rights, [15 January 2018](#)

or evidence.”³⁶ However, as noted by Professor Clive Walker, Specialist Advisor to the Independent Reviewer, whilst the reasonable suspicion test “will not ruffle international feathers”, international standards tend to offer lowest common denominators and states are not obliged to adopt such standards for autonomous systems.³⁷

28. Further, this proposed standard represents a lowering of the current *domestic* standard that is applied to terrorist-related sanctions. It is notable that both comparable asset-freezing regimes under Part 2 of the Anti-terrorism, Crime and Security Act 2001 or Schedule 7 to the Counter-terrorism Act 2008 adopt a test of “reasonable belief”. This is also at odds with the threshold for comparable restrictive measures such as TPIMs,³⁸ which can only be imposed where the Minister is “satisfied on the balance of probabilities”. It is noteworthy that this threshold was raised from “reasonable belief” under the *Counter Terrorism and Security Act 2015*, following the recommendation of the former Independent Reviewer of Terrorism Legislation.³⁹

29. When TAFE was originally introduced, the Bill proposed a standard of “reasonable suspicion”, but this was amended to “reasonable belief” during the course of parliamentary scrutiny.⁴⁰ The Bill was further amended to give the Treasury the power to make an *interim* asset-freeze on the basis of reasonable suspicion. It is noteworthy that in a letter from Lord Sassoon, former Commercial Secretary to the Treasury, to our predecessor Committee in 2010, he stated that “raising the legal threshold [to reasonable belief]... will allow the UK to maintain an effective terrorist asset-freezing regime, consistent with international standards, while addressing what I consider to be the legitimate civil liberties concerns that reasonable suspicion is too low a threshold for freezing assets on an indefinite basis.”⁴¹

30. The Government has not fully explained why they have chosen to lower the threshold given both the current regime under TAFE and comparable domestic legislation adopt a higher threshold. The lower the threshold, the more individuals are at risk from interferences with their rights to property, privacy, home and family rights. The Government has not set out its evidence as to why the threshold needs to be lowered.

31. Max Hill QC, the Independent Reviewer of Terrorism Legislation, commented:

“It does not strike me as being necessary to fall back from the high watermark that we had established in this jurisdiction, bearing in mind that much of the legislation that you make in this place actually forms a template for other countries to follow—it is not so much the other way around. The fact that reasonable belief used to be the standard but we have

36 Kadi II, C584/10P, C593/10P and C595/10P and Al-Ghabra v Commission, Case T-248/13

37 Professor C. Walker, (SAB0004), para 3.8

38 A Terrorism Prevention and Investigation Measure (TPIM) notice imposes restrictions on an individual in order to protect the public from a threat posed by a person suspected of terrorism-related activity. TPIMs are intrusive measures aimed at disrupting terrorism-related activity and facilitating the investigation of such activity. They are intended to be used as an exceptional measure in cases where there is a terrorist threat but it is not possible to prosecute or deport the suspect.

39 D. Anderson QC, [Report on the Terrorism Prevention and Investigation Measures in 2013](#), March 2014, p 49, paras 6.16–6.19

40 Professor C. Walker, (SAB0004), para 3.7

41 Letter from Lord Sassoon, former Commercial Secretary to the Treasury, to the Joint Committee on Human Rights, [4 October 2010](#)

fallen back to reasonable suspicion is a matter of regret on the part of many commentators reasonable suspicion is understandable but, to a degree, regrettable, when we had advanced a standard above that.”⁴²

32. We do not consider that the Government has been sufficiently clear in setting out its reasons for reducing the threshold for making designation decisions from “reasonable grounds to believe” to “reasonable grounds to suspect”. We would be grateful if the Government could set out in more detail why it is necessary to use the lower international standard as opposed to the higher standard that is currently applied to domestic terrorist-related sanctions. Colleagues may wish to probe this matter further in the course of their legislative scrutiny.

42 Oral evidence taken on 31 January 2018, [HC \(2017–19\) 765](#), Q 6 [Max Hill QC, Independent Reviewer of Terrorism Legislation]

4 Due process for designated persons

33. When the Bill was introduced, there was no requirement placed upon Ministers to ensure that individuals were notified of designations or given reasons for their designation. We welcome the amendments that were agreed at Report stage in the Lords that rectified these deficiencies.

34. However, there are a number of provisions in the Bill which restrict the rights of designated persons. Firstly, the Bill relieves the Government from its current obligation to conduct annual reviews of designation decisions, and replaces this with a requirement for triennial reviews. Secondly, the Bill removes existing full appeal rights and limits the jurisdiction of the courts to the application of judicial review principles. Thirdly, the Bill further restricts the courts' powers to award damages, by limiting this to cases where the impugned decision was taken in bad faith or negligently. Fourthly, the Bill repeals the oversight of the Independent Reviewer of Terrorism Legislation in respect of terrorist-related sanctions.

The right to review of designation decisions

35. The Bill provides for various powers of review by the appropriate Minister and various rights of designated individuals to request variation, revocation, or review of their designation. A person's right to challenge a designation depends upon whether the sanctions derive from the UN, the EU or the UK autonomously.

Autonomous sanctions (UK)

36. Clauses 19 and 20 provide individuals with a right to request variation or revocation of designations and a power for Ministers to vary or revoke designations made under regulations at any time. Whilst this right is welcome, no guidance is given as to the exercise of this power.

37. Clause 21 of the Bill introduces a periodic review of designation. Currently designations are reviewed annually to ensure that they continue to be justified. However, clause 21 of the Bill reduces the frequency to a triennial review. A shorter time frame can be applied, but this is discretionary. The Government states that the other safeguards in the Bill provide a robust package of safeguards so an annual re-examination of each designation is unnecessary as well as resource intensive.⁴³

38. Annual review is an important mechanism for ensuring that sanctions remain necessary and proportionate. David Anderson QC noted in his final report on TAFA that "annual review of all designations continues to be an effective mechanism".⁴⁴ As a point of comparison, TPIMs can be imposed for a maximum of two years (after which they expire unless new circumstances arise) and must be reviewed annually. In *Ahmed*, Lord Brown stated that financial sanctions could be "even more paralyzing" than control orders (now replaced by Terrorism Prevention and Investigation Measures (TPIMs)).⁴⁵ An

43 Letter from Lord Ahmad of Wimbledon, Minister of State for the Commonwealth and the UN, to Rt Hon Harriet Harman MP QC, Chair, Joint Committee on Human Rights, [15 January 2018](#), p 4

44 David Anderson QC, [Fourth Report on the Operation of the Terrorist Asset Freezing Act 2010](#), March 2015, p 30, para 6.2

45 *HM Treasury v Ahmed*, [2010] UKSC 2, para 192

annual ministerial review of the regulations made under clause 1 is set out in clause 26 of the Bill, but this is a “high level political review of the overall regime”⁴⁶ rather than a review of the evidence underpinning each designation. We do not consider this to be sufficient to replace the annual reviews of individual designations which are currently required under TAFE. We also note that the number of designation decisions under the TAFE regime is relatively low. We have seen no evidence that annual reviews are currently unsustainable. ***We recommend that clause 21 is amended to require annual reviews of designation decisions. (See Appendix 1).***

EU Sanctions

39. The EU has autonomous powers to target persons independently of the UN, in addition to its power to implement UN sanctions.⁴⁷ The EU can establish sanctions regimes under which it can list and de-list individuals, freeze assets and impose travel bans in response to nominations made by Member States or third states to tackle particular terrorist groups or regimes.

40. Clauses 29 to 32 set out temporary powers which apply for two years after the UK’s exit from the EU. These powers allow changes to be made to the EU sanctions regimes which have been retained in domestic law after exit, allowing Ministers to add or remove names from the lists of designated persons designated at the EU level.

41. We note that the House of Lords EU Committee has recently conducted a short inquiry into the legality of EU sanctions, following a number of decisions by the EU courts to strike down sanctions on the basis of a failure to uphold due process rights as set out in the Charter of Fundamental Rights. In their report, the Committee raised a number of concerns, particularly with regard to the EU’s re-listing practices, including: a) that annulment of sanctions by a court is often rendered ineffective by the practice of relisting individuals or companies; b) that some re-listings occur before a judgment has been issued on the original sanctions; and c) that relisting is often on the basis of slightly different wording as opposed to materially different matters.⁴⁸ The Lords EU Justice Committee undertook correspondence on these issues with the FCO, and will conclude its deliberations in early 2018. We look forward to the outcome of their correspondence.

42. Under clauses 29–32, persons on retained EU sanctions lists have a right to request their removal from the list. Clause 30 provides that the requesting person must be treated as if they are removed from an EU sanctions list if the Minister does not have “reasonable grounds to suspect” that the designated person is involved in a specified activity or that the designation is not “appropriate”. Our concerns regarding the threshold test in relation to domestic sanctions apply equally to transitional retained EU sanctions lists.

43. However, we understand the desirability of consistency in the sanctions regimes between the UK, the EU, and the UN as far as possible. Nonetheless, we regret that to achieve an effective international regime it is necessary to accept a weaker standard of proof than the UK applies to its autonomous measures.⁴⁹ We urge the Government to

46 [Explanatory Notes to the Sanctions and Anti-Money Laundering Bill](#), [Bill 157 (2017–19) –EN], para 97

47 See Council Decision CFSP 2016/1693 and Council Regulation 2016/1686 of 20 September 2016

48 House of Lords, Report of the Select Committee on the European Union Committee Justice Sub-Committee, Session 2016–17, [HL Paper 102](#)

49 Clause 30 adopts the “reasonable grounds to suspect” threshold.

use its influence to ensure that international sanctions do not interfere unjustifiably with human rights. As the Lords Justice Committee has highlighted in its correspondence with the FCO, there is room for significant improvement in the EU regime.

UN Sanctions

44. The UK currently implements UN designation orders through EU law. The Bill therefore gives effect to UN sanctions following the UK's exit from the EU. However, the right to challenge designation under a UN sanction regime is very limited. At UN level, there are sanctions targeting countries, regimes, and Al Qaeda and ISIL affiliated terrorism. The latter sanctions regime has had some due process developments over recent years and is largely run by the Sanctions Committee (also known as the 1267 Committee)⁵⁰

45. The Sanctions Committee has the power to designate and remove persons on request of Governments. States can raise objections to the 'Focal Point for De-Listing' which are then communicated to the Sanctions Committee. However, this process has been found to be an ineffective remedy by the European Court of Human Rights.⁵¹ The Office of Ombudsperson has power to assist with the assessment of de-listing requests in relation to Al-Qaida and ISIL-related sanctions, but Professor Clive Walker notes that these inquiries are secretive, lack judicial credentials, and have been held to be insufficient guarantees of due process by both the CJEU and the European Court of Human Rights.⁵²

46. Clause 13 enables designation where the UK has an obligation under international law to designate persons on UN lists. Regulations made under the Bill must provide that persons named on a UN list are designated.⁵³ The UK is under a binding obligation in international law to designate persons on UN lists and cannot therefore unilaterally revoke the designation. There is very little scope for an individual to challenge these designations. Clause 22 provides a right of review for persons on UN lists but this is limited to requiring the appropriate Minister to using their "best endeavours" to persuade the UN to remove the person from the UN list. Under the *Counter Terrorism Act 2008*, individuals can apply to the High Court to have UN sanctions set aside,⁵⁴ although these proceedings can only be initiated against the Treasury and will have no impact at the UN level.⁵⁵

47. We recognise that the UK is bound by international law to implement UN listings. However, where there is scope within the domestic system to strengthen due process rights, this should be done. Regular periodic review of designations is essential for ensuring that decisions remain justified, necessary, and proportionate and do not interfere with rights for longer than required.

50 Established by UNSCR 1267 of 15 October 1999 to deal with the Taliban but later extended to include Al-Qaida, and ISIL.

51 Al-Dulimi v Switzerland, App. No. 5809/08, 26 November 2013, para 118

52 Professor C. Walker (SAB0004), para 2.4

53 [Sanctions and Anti-Money Laundering Bill](#), Clause 12

54 [Counter-Terrorism Act 2008](#), Section 63

55 Professor C. Walker (SAB0004), para 2.5. Article 103 of the UN Charter provides that "In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail."

Restricting the jurisdiction of the courts to judicial review principles

48. Clauses 33–34 of the Bill set out the provisions relating to court reviews. Clause 33 provides a right to challenge various Government decisions as a measure of last resort. Individuals must first seek variation or revocation before commencing litigation. Clause 34(2) removes the power of the courts to award damages unless the impugned decision was made in bad faith or negligence.

49. Currently, under TAFAs, an individual subject to an asset-freeze can exercise full rights of appeal. However, when TAFAs were first introduced, the Bill circumscribed the court's jurisdiction to one of judicial review. Judicial review confines the court to review whether the decision was unlawful, unreasonable, or procedurally unfair, but does not allow it to conduct a full merits review. However, at Committee stage, the Bill was amended to allow challenges to interim and final asset-freezes by way of full appeal to the High Court or Court of Session. Noting the civil liberties concerns that had been raised at Second Reading debate, Lord Sassoon tabled an amendment acknowledging that challenges to decisions to impose, vary or renew asset freezes should be heard by the courts under an appeal rather than a judicial review procedure to ensure “that there will be a robust, in-depth review by the courts of the Treasury decisions.”⁵⁶

50. The current Bill has regressed from this position by limiting the courts' powers to judicial review.⁵⁷ We are concerned that this standard of review is inadequate and may risk interference with the right of access to a court. Article 6(1) does not guarantee the right to access a court of full jurisdiction but it does require “sufficiency of review” of administrative decisions. Judicial review is not always sufficient. In *Tsfayo v UK*, the European Court of Human Rights made clear that where the original decision maker was responsible for taking an assessment largely based on factual determinations, the flaws in the decision making process cannot be remedied on judicial review, which is incapable of reassessing the facts of any case.⁵⁸

51. In assessing whether there is “sufficiency of review” for the purpose of Article 6(1), the court will take into account a number of factors as set out in *Fazia Ali v UK*:

- a) the powers of the judicial body;
- b) the subjectmatter of the decision appealed against, in particular, whether or not it concerned a specialised issue requiring professional knowledge or experience and whether it involved the exercise of administrative discretion and if so, to what extent;
- c) the manner in which that decision was arrived at, in particular, the procedural guarantees available in the proceedings before the adjudicatory body; and
- d) the content of the dispute, including the desired and actual grounds of appeal.⁵⁹

Whether judicial review is sufficient for the purpose of Article 6(1) will therefore depend upon consideration of the whole legislative scheme and the safeguards involved.

56 HL Deb, 6 October 2010, col 120 [Lords Chamber]

57 [Sanctions and Anti-Money Laundering Bill](#), Clause 32(4)

58 *Tsfayo v UK* [2006] ECHR 981

59 *Fazia Ali v UK* (Application No. 40378/10)

52. In ‘traditional’ judicial review cases, the courts are unable to make their own determination on the facts. They are limited to making a determination as to the lawfulness, reasonableness, and procedural fairness of the decision. However, the High Court has previously treated its judicial review jurisdiction over control orders (the precursor to TPIMs) as tantamount to an appellate jurisdiction due to the severity of the impact on individuals. For example, in *Secretary of State for the Home Department v GG*, a case concerning the imposition of a control order, the High Court considered section 3(11) of the *Prevention of Terrorism Act 2005* which required them to “apply the principles applicable on an application for judicial review”. Mr. Justice Collins held that he “had to consider all evidence, whether or not known to or reasonably ascertainable by the SSHD at any stage during the subsistence of the order, to make any necessary findings of fact and then to decide whether the order or any renewal or any obligation could reasonably have been imposed ... The statutory provision is poorly drafted since the principles of judicial review normally preclude reliance by a claimant on facts unknown and unavailable to the decision maker when the decision was made. That, as I have said, cannot apply in these cases.”⁶⁰

53. We also note that the provisions of sections 66–68 of the Counter-Terrorism Act 2008 (CTA) will apply to any judicial review claims brought under clause 33. These provisions enable special rules of the court to be made in respect of “financial restrictions proceedings”. Such rules are set out in Part 79 of the Civil Procedure Rules (‘CPR’), and provide that a designated person is “entitled to adduce evidence and to cross-examine witnesses”.⁶¹ We accept that where these special rules apply, the jurisdiction of the court is wider than in traditional judicial review cases. It is therefore likely that, regardless of the limitations in clause 33, the courts will interpret their jurisdiction more widely than traditional judicial review constraints and will apply an “intense scrutiny” to designation decisions. However, this is not reflected on the face of the Bill. The powers in clause 33 at present must be interpreted by reference to the Counter-Terrorism Act 2008, Part 79 of the Civil Procedure Rules, and to case law.

54. *In our view, it is undesirable to leave any room for uncertainty as to the courts’ jurisdiction. In cases involving severe interferences with the fundamental rights of individuals, they should have a full right of appeal. We therefore recommend that clause 33(4) is amended to provide for a full right of appeal for designated persons. (See Appendix 1).*

Limitations on the right to a remedy

55. Clause 34 of the Bill provides that the court can only award damages in where the impugned designation decision was made in bad faith or in negligence. This applies to designations made autonomously and under the UN regime. This limitation on awards of damages engages Article 13 (right to an effective remedy). However, the Government states that this restriction is compatible with the Convention for four reasons.⁶²

60 *Secretary of State for the Home Department v GG* [2016]. [2016] EWHC 1193 (Admin)

61 Civil Procedures Rules, [Part 79](#), rule 79.22

62 Foreign and Commonwealth Office and HM Treasury ([SAB0005](#))

56. Firstly, the Government states that removal from the designation list would place the person in the position they would have been in had the breach not occurred. There is no need for a further remedy.⁶³ We disagree. Section 8 of the Human Rights Act 1998 enables a UK Court to grant such relief or remedy, within its powers, as it considers just and appropriate. Section 8 then places further restrictions on the awarding of damages, requiring that the Court be “satisfied that the award is necessary to afford just satisfaction”. In determining any award of damages, that section then requires a UK Court to “take into account” the principles applied by the European Court of Human Rights in relation to the award of compensation under Article 41 of the Convention. The fundamental principle of an award of just satisfaction under the Convention is *restitutio in integrum*. The applicant should, in so far as possible, be placed in the same position as if his Convention rights had not been infringed. Removal from the designation list might not place the person in the position they would have been in had the breach not occurred. They may have suffered pecuniary and/or non-pecuniary loss that cannot be adequately compensated by simply quashing the designation decision. The courts are instructed to have regard to any other remedies or relief granted when determining whether an award is necessary, but a remedy of another kind by no means precludes an award of damages.⁶⁴ It is not therefore correct to state that “there is no need for another remedy”.

57. Secondly, the Government states that an award of damages under Article 41 ECHR is discretionary and only arises where “necessary”.⁶⁵ We agree, but note that the Bill, as drafted, removes the court’s discretion to determine what is “necessary” and we therefore consider that there could be gaps falling short of the Convention requirements.”.

58. Thirdly, the Government states that an award of damages “may depend upon whether the breach was inadvertent, or arose from a misunderstanding, or was the result of a conscious decision to breach ECHR rights”.⁶⁶ We accept this has been stated in *Clayton and Tomlinson* and cited by the courts. However, this has not been used as authority for only allowing damages where breaches were based on bad faith or negligence. We would emphasise the operative use of the word “may”. Whether there is fault, and to what extent, is among the factors for the court to take into account when determining what is appropriate.

59. Fourthly, the Government states that in *Wainwright*, the House of Lords said that whether or not a remedy in damages is required may depend on whether the act complained of was done “intentionally, negligently or accidentally.”⁶⁷ However, the statement relied upon in *Wainwright* is an *obiter* statement of Lord Hoffman who appeared to suggest there would be no damages unless the wrongdoing was intentional. This statement is rebutted in *Clayton and Tomlinson* who point out that this view cannot be reconciled with Convention case law as awards of just satisfaction are not confined to intentional breaches. Section 8(4) HRA requires the domestic court to take into account the jurisprudence of the European Court of Human Rights when deciding whether an award of damages is necessary to afford just satisfaction for violations of a Convention right.

63 Foreign and Commonwealth Office and HM Treasury ([SAB0005](#)), para 45

64 Human Rights Act 1998, [Section 8\(3\)](#)

65 Foreign and Commonwealth Office and HM Treasury ([SAB0005](#)), para 46

66 Foreign and Commonwealth Office and HM Treasury ([SAB0005](#)), para 46

67 Foreign and Commonwealth Office and HM Treasury ([SAB0005](#)), para 47

60. We are mindful of the risk that a culture of prohibitive damages could prevent the ability of the Government to use sanctions as a useful tool to seek to combat horrific human rights abuses in third countries. However, we also underline the importance of compliance with the right to an effective remedy, as protected by Article 13 of the Convention. It would not be helpful for Parliament to pass a Sanctions Bill that was then subject to successful (and costly) judicial challenge before the UK Courts or the Strasbourg Court for failure to adequately provide for effective remedy under Article 13 of the Convention. Colleagues may wish to test the Government's thinking on this matter further in the course of their legislative scrutiny. We therefore propose a probing amendment to clause 34(2) dealing with the right to an effective remedy. This may establish why the Government does not appear concerned that, as drafted, the Bill would seem to be vulnerable to challenge as non-compliant with Article 13 of the Convention.

Closed material proceedings

61. Closed material proceedings (CMPs) are permitted by clause 35 of the Bill. The compatibility of CMPs and special advocates with the right to a fair trial has been the subject of a number of judicial decisions. In general, the right of access to a court is only meaningful if the person who is the subject of the sanction has sufficient information about the case against them to be able to give effective instructions to those representing them. In *Bank Mellat*, the Court of Appeal considered CMPs in the context of sanctions cases and held that “the requirements of article 6(1) are such that the information to be provided by the Treasury must not merely be sufficient to enable the Bank to deny what was said against it. The Bank must be given sufficient information to enable it to actually refute, in so far as possible, the case made against it.”⁶⁸ Similarly, in *Kadi*, the CJEU held that unless the individual subject to an asset-freeze has a proper opportunity to answer the case against them and to put their case, they are deprived of the right to effective judicial protection.⁶⁹ Although this legal standard has been set out by the domestic and EU courts, it is not set out in the Bill itself.

62. In order to ensure compliance with Article 6, the standard of disclosure should be sufficient to ensure persons challenging their designation are given sufficient information to enable them to refute, as far as possible, the case against them. We expect that Ministers, when giving a “statement of reasons” as required by clauses 11(8) and 12(8), will adhere to this standard.

Removal of independent oversight

63. By virtue of section 31 of TAFA, the Independent Reviewer of Terrorism Legislation is under a statutory duty to report annually on the implementation of that Act. During the consultation on the Bill, several respondents advocated the independent review of sanctions or an ombudsperson model. However, the Government has stated that administrative

68 Bank Mellat, [2010] EWCA Civ 483

69 Kadi v European Commission, Case T-85/09, (30 September 2010) at paras 171–181

and judicial review provides sufficient procedural protection for designated persons.⁷⁰ By repealing TAFE and not replicating s.31 of TAFE in the Bill, the Government has removed independent oversight of terrorist-related sanctions.

64. In evidence to the Committee on 31 January 2018, Max Hill QC (the current Independent Reviewer of Terrorism Legislation) explained that whilst his remit was limited to terrorist designations as opposed to the entire sanctions regime, he did not believe that it was the Government's intention to remove his oversight of any measures relating to domestic counter-terrorism. He further explained that he was seeking clarification from the Government on the matter and was grateful for the assurances he had received thus far. However, he agreed that "looking at the black letter of the draft law and even at the correspondence that I have seen, no solution has yet been provided."⁷¹

65. In addition to the limitations placed on the courts, the Bill has removed existing independent oversight arrangements in relation to terrorist-related sanctions. We see no reason for the removal of this oversight function and invite the Government to provide this. Pending any such explanation we recommend that the powers of review currently vested in the Independent Reviewer are retained and set out clearly on the face of the Bill. (See amendment in Appendix 1).

Lack of grounds for licensing and exemptions to sanctions

66. The Bill allows for exemptions and licenses to be granted to disapply the effect of sanctions in particular circumstances.⁷² For example, an exemption may be granted to allow the export of equipment for use in a humanitarian operation. Licenses may be granted to allow persons to take actions which would otherwise breach the prohibitions in the regulations. This is particularly important for ensuring that interferences with the rights of designated and associated persons, as well as those operating in affected regions, are strictly necessary and proportionate. In the absence of licences and exemptions, such powers would fall foul of the requirements of human rights law, as well as being contrary to the UK's foreign policy and trade interests. The licensing and exemption process enables crucial activities to continue unhindered by sanctions, such as the delivery of aid and humanitarian work taking place in sanctioned regions or countries. Licensing and exemptions are key mechanisms for guarding against unlawful interference with Convention rights. However, the Bill does not set out the grounds or criteria for issuing such exemptions or licenses. The Explanatory Notes to the Bill offer some examples of licensing grounds, such as payments necessary for basic expenses, humanitarian purposes, or diplomatic missions.⁷³ However, it is not clear on the face of the Bill how the licensing process will work as the detail will be contained within regulations. The Law Society notes that the licensing process is "extremely important in terms of access to justice (as it enables designated persons to access legal advice) and in relation to humanitarian work".⁷⁴ We

70 Foreign and Commonwealth Office, HM Treasury, Department for International Trade, *Public consultation on the United Kingdom's future legal framework for imposing and implementing sanctions, Government response*, Cm 9490, August 2017, p 15

71 Oral evidence taken on 31 January 2018, [HC \(2017–19\) 765](#), Q 6 [Max Hill QC, Independent Reviewer of Terrorism Legislation]

72 [Sanctions and Anti-Money Laundering Bill](#), Clause 15

73 [Explanatory Notes to the Sanctions and Anti-Money Laundering Bill](#), [Bill 157 (2017–19) –EN], para 62

74 The Law Society ([SAB0001](#))

understand from correspondence with the Government that their intention is to publish guidance on the matter,⁷⁵ but the absence of detail in the Bill precludes scrutiny of this important regime.

67. In evidence to the Committee on 31 January 2018, Max Hill QC commented that a number of leading charities have expressed to him the need for safeguards for their work and that they are currently “anxious at the moment lest any support seems to be *ex post facto* or piecemeal.” He further commented that, “unless, in advance, there is some general licence that can be provided and assurance provided for those NGOs, the valuable work, resource and input into the project could fall at a late hurdle, and that would be counterproductive.”⁷⁶

68. ***We recommend that the publication of the guidance regarding licensing and exemptions is expedited.***

75 Letter from Lord Ahmad of Wimbledon, Minister of State for the Commonwealth and the UN, to Rt Hon Harriet Harman QC MP, Chair, Joint Committee on Human Rights, [15 January 2018](#)

76 Oral evidence taken on 31 January 2018, [HC \(2017–19\) 765](#), Q 6 [Max Hill QC, Independent Reviewer of Terrorism Legislation]

Conclusions and recommendations

Threshold for making sanctions regulations

1. We welcome Clause 2 of the Bill which requires Ministers to explain why they think it appropriate to introduce regulations for a discretionary purpose. (Paragraph 17)

Magnitsky clause

2. *We note that during Second Reading debate in the Commons, consideration was given to the inclusion of a “Magnitsky clause” which would enable sanctions regulations to be made for the purpose of preventing or responding to “gross human rights abuse or violations.” We support the intention behind a “Magnitsky” amendment. We welcome the provisions in the Bill that allow for the imposition of sanctions to deal with all forms of human rights abuses. We consider it should be a strong presumption that the names of those sanctioned by refusal of entry to the UK, together with the reasons for this, should be made public. We urge Ministers to give reassurance on this point. Similarly, we consider that and that use of the exclusions in clause 11 (9) and 12(9) should be the exception and not the norm.* (Paragraph 18)

Power to add new type of sanctions

3. We particularly note the views of the Delegated Powers and Regulatory Reform Committee on the parliamentary procedure for scrutiny of sanctions regulations. (Paragraph 21)
4. We recognise that delegated powers are necessary to allow for sanctions regimes to be created and amended in individual cases. However, such powers must be sufficiently circumscribed. We therefore welcome the amendment to clause 41 stipulating that the power to specify new types of sanction by regulation will only be exercisable if it replicates sanctions or kinds of sanctions used at the international level. (Paragraph 23)

Threshold for designation decisions

5. *We do not consider that the Government has been sufficiently clear in setting out its reasons for reducing the threshold for making designation decisions from “reasonable grounds to believe” to “reasonable grounds to suspect”. We would be grateful if the Government could set out in more detail why it is necessary to use the lower international standard as opposed to the higher standard that is currently applied to domestic terrorist-related sanctions. Colleagues may wish to probe this matter further in the course of their legislative scrutiny.* (Paragraph 32)

Due process for designated persons

6. *We recommend that clause 21 is amended to require annual reviews of designation decisions. (See Appendix 1).* (Paragraph 38)

7. We recognise that the UK is bound by international law to implement UN listings. However, where there is scope within the domestic system to strengthen due process rights, this should be done. Regular periodic review of designations is essential for ensuring that decisions remain justified, necessary, and proportionate and do not interfere with rights for longer than required. (Paragraph 47)
8. *In our view, it is undesirable to leave any room for uncertainty as to the courts' jurisdiction. In cases involving severe interferences with the fundamental rights of individuals, they should have a full right of appeal. We therefore recommend that clause 33(4) is amended to provide for a full right of appeal for designated persons. (See Appendix 1).* (Paragraph 54)
9. We are mindful of the risk that a culture of prohibitive damages could prevent the ability of the Government to use sanctions as a useful tool to seek to combat horrific human rights abuses in third countries. However, we also underline the importance of compliance with the right to an effective remedy, as protected by Article 13 of the Convention. It would not be helpful for Parliament to pass a Sanctions Bill that was then subject to successful (and costly) judicial challenge before the UK Courts or the Strasbourg Court for failure to adequately provide for effective remedy under Article 13 of the Convention. Colleagues may wish to test the Government's thinking on this matter further in the course of their legislative scrutiny. We therefore propose a probing amendment to clause 34(2) dealing with the right to an effective remedy. This may establish why the Government does not appear concerned that, as drafted, the Bill would seem to be vulnerable to challenge as non-compliant with Article 13 of the Convention. (Paragraph 60)
10. In order to ensure compliance with Article 6, the standard of disclosure should be sufficient to ensure persons challenging their designation are given sufficient information to enable them to refute, as far as possible, the case against them. We expect that Ministers, when giving a "statement of reasons" as required by clauses 11(8) and 12(8), will adhere to this standard. (Paragraph 62)

Removal of independent oversight

11. In addition to the limitations placed on the courts, the Bill has removed existing independent oversight arrangements in relation to terrorist-related sanctions. We see no reason for the removal of this oversight function and invite the Government to provide this. Pending any such explanation we recommend that the powers of review currently vested in the Independent Reviewer are retained and set out clearly on the face of the Bill. (See amendment in Appendix 1). (Paragraph 65)

Guidance

12. *We recommend that the publication of the guidance regarding licensing and exemptions is expedited.* (Paragraph 68)

Appendix 1: Suggested amendments

Clause 21

Page 18, line 34, leave out “3 years” and insert “1 year”

Page 18, line 36, leave out “3 years” and insert “1 year”

Clause 33

Page 26, line 23, leave out “apply to the High Court or, in Scotland, the Court of Session, for the decision to be set aside” and insert “appeal against any such decision to the High Court or, in Scotland, the Court of Session.”

Page 26, line 33, leave out sub-section (4)

Page 26, line 35, leave out sub-section (5)

Clause 34

Page 27, line 15, after sub-section (2)(b), insert—

“Or,

(c) where the Court considers that damages would be required in accordance with the right to an effective remedy, as protected by Article 13 of the European Convention on Human Rights.”

To move the following Clause—

Independent review of operation of terrorist-related sanctions

- (1) The Treasury must appoint an individual to review the operation of terrorist-related sanctions under section 1(2) (“the independent reviewer”).
- (2) The Treasury—
 - (a) must aim to appoint an individual who is likely to be perceived as independent of government, and
 - (b) may combine the appointment with another office or appointment).
- (3) In January of each calendar year the independent reviewer must send the Treasury a list of proposed reviews for that year.
- (4) The independent reviewer—
 - (a) must aim to complete the reviews listed under subsection (3) within the relevant year; and
 - (b) may undertake other reviews.
- (5) After completing a review the independent reviewer must send the Treasury a report as soon as reasonably practicable.

- (6) On receiving a report the Treasury must lay it before Parliament as soon as reasonably practicable.
- (7) The Treasury may pay reasonable allowances and expenses to the independent reviewer, and must publish the scale of allowances and expenses to be paid.

Declarations of Lords' Interests

Baroness Hamwee

Liberal Democrat Lords Spokesperson (Immigration)

Baroness Lawrence of Clarendon

Chancellor of De Montfort University

President of Stephen Lawrence Charitable Trust

Baroness Prosser

No relevant interests to declare

Lord Woolf

Membership of Committees,

Office holder of Solicitors and the bodies interested/involved with criminal law, penal policy and other justice issues.

Editor of De Smith Judicial Review, various editions

Chair of an EHRC event about the EU (Withdrawal) Bill (January 2018)

Chief Justice of the Commercial Court of the AIFC

Patron Woolf Institute

Ex Chair of UCL London, London University

Lord Trimble

No relevant interests to declare

Baroness O'Cathain

No relevant interests to declare

Formal minutes

Wednesday 28 February 2018

Members present:

Ms Harriet Harman MP, in the Chair

Ms Karen Buck MP	Baroness Hamwee
Fiona Bruce MP	Baroness Lawrence of Clarendon
Alex Burghart MP	Baroness O’Cathain
Joanna Cherry MP	Lord Trimble
Jeremy Lefroy MP	Lord Woolf

Draft Report (*Legislative Scrutiny: The Sanctions and Anti-Money Laundering Bill*), proposed by the Chair, brought up and read.

Ordered, That the Chair’s draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 68 read and agreed to.

Summary read and agreed to.

Appendix 1 read and agreed to.

Resolved, That the Report be the Third Report of the Committee.

Ordered, That the Chair make the Report to the House of Commons and that the Report be made to the House of Lords.

Ordered, That embargoed copies of the Report be made available (House of Commons Standing Order No. 134).

[Adjourned till Wednesday 7 March 2018]

Published written evidence

The following written evidence was received and can be viewed on the [inquiry publications page](#) of the Committee's website.

SAB numbers are generated by the evidence processing system and so may not be complete.

- 1 Equality and Human Rights Commission ([SAB0002](#))
- 2 Foreign and Commonwealth Office and HM Treasury ([SAB0005](#))
- 3 Professor Emeritus Clive Walker ([SAB0004](#))
- 4 The Law Society ([SAB0001](#))

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the [publications page](#) of the Committee's website. The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2017–19

First Report	Legislative Scrutiny: The EU (Withdrawal) Bill: A Right by Right Analysis	HC 774 HL Paper 70
First Special Report	Human Rights and Business 2017: Promoting responsibility and ensuring accountability: Government Response to the Committee's Sixth Report of Session 2016–17	HC 686
Second Special Report	Mental Health and Deaths in Prison: Interim Report: Government Response to the Committee's Seventh Report of Session 2016–17	HC 753