

Sanctions Bill

Foreign and Commonwealth Office

RPC rating: fit for purpose

Description of proposal

Sanctions are used by the UK Government as a national security and foreign policy tool. The Sanctions Bill aims to ensure that following the UK's exit from the European Union (EU), the UK Government will have appropriate powers to place sanctions on individuals and regimes, and meet the UK's international obligations including its obligations as a member of the UN Security Council (for example on non-proliferation of weapons of mass destruction, terrorism, and money-laundering).

Sanctions are a foreign policy and national security tool used to coerce a change in behaviour, change behaviour or communicate a clear political message by limiting access to resources. The UK does not currently have general powers to make, repeal or amend secondary legislation relating to anti-money laundering and countering terrorist financing. The legal basis for the UK's sanctions currently derives from the European Communities Act 1972, and the European Union (Withdrawal) Bill will freeze the UK's existing sanctions on the date of the UK's exit from the European Union. The Foreign and Commonwealth Office (FCO) argues that this position will not protect the UK from legal and fiscal risk or allow it to meet its international obligations, as the existing regime will quickly become out of date. The Bill therefore specifies four different types of sanctions, for which regulations can be made by the UK Government as necessary:

- **Financial sanctions** – for example, restricting market access for individuals, entities or sectors, imposing asset-freezes on specific individuals or entities, and preventing the movement or dissipation of suspected misappropriated funds until their rightful owner has been determined.
- **Trade sanctions** – for example, placing controls on the import, export and movements of goods; the provision and procurement of services (such as technical and financial assistance) and investment.
- **Immigration controls** – for example, travel bans preventing people from coming to, or transiting through, the UK, and provide for the cancellation of any existing leave granted to citizens of other countries. The Bill would allow travel bans to be imposed upon designated people, as well as providing the ability to create exceptions to travel bans in certain circumstances.

- **Sanctions against aircraft and maritime vessels** – for example, prohibiting access to UK ports and airports and removing ships from the register for ships maintained by the Registrar General of Shipping and Seamen.

In addition, the Bill will provide review and challenge mechanisms to protect the rights of individuals.

The impact assessment (IA) also highlights that the UK, as permanent member of the UN Security Council, has international obligations to uphold sanctions.

Impacts of proposal

The impacts of the UK's sanctions regimes fall on those businesses, charities, and other non-government organisations that might interact with regimes or individuals subject to sanctions in the course of their normal activities. The IA states that UK currently implements around 30 sanctions for regimes covering countries or terrorist groups, and there are currently around 2,000 individual entities subject to sanctions in the UK.

The FCO argues in paragraphs 28 – 31 of the IA, that the UK will maintain its existing approach to sanctions, including the existing requirements for ensuring compliance with the various regimes. The Bill is intended only to create the powers that the UK will use to implement, impose and lift sanctions in the future. The IA states that costs to compliant businesses are therefore limited to familiarisation and transition costs. The FCO does not quantify these costs, but argues that they would be small on the grounds that there is no intent to change the Government's actual approach to sanctions. The FCO intends to issue guidance to accompany the legislation before the commencement of the legislation in March 2019.

The IA notes that familiarisation costs could place a higher relative burden on smaller businesses on the grounds that relatively small absolute familiarisation and transition costs may be larger relative to these firms' overall operating budgets.

The IA recognises that sanction may affect the human rights of individuals, and notes that the Bill includes provisions to mitigate these effects and safeguard these rights as far as possible, as is also the case under the existing system. In particular, it states that the Bill includes provision for robust review and challenge mechanisms so that people and entities affected by sanctions have access to the legal system and can hold the Government to account. The legislation will also include procedural protections allowing administrative challenge to sanctions for individuals.

Quality of submission

The FCO provides a clear narrative discussion of the impacts, including wider impacts around international standing and human rights. It argues convincingly that, given the intent not to change policy on sanctions, the impacts of the measure on compliant businesses are limited to familiarisation and transition costs. However, its argument that these will be small is not fully evidenced and indeed it also argues that they cannot be estimated at present. The assessment could be improved by adding a clearer explanation as to why the FCO believes either that a small number of businesses are affected or that the unit costs of familiarisation will be small. This would allow it to provide proportionate support for its argument that the overall costs of the measure will be low. It would also be improved by adducing a clearer argument as to why the scale of familiarisation costs cannot be estimated at this stage.

Explanation of counterfactual

The IA appears to assume that businesses would incur the same costs as those presently incurred to comply with EU law. The implicit counterfactual here would, therefore, appear to be continued UK membership of the EU. The IA would benefit from including an explicit discussion of the counterfactual(s) used in its assessment, addressing this point in particular in the context of the counterfactual approach taken by the Government on EU Exit IAs more generally.

Departmental assessment

Classification	Non-qualifying provision
Equivalent annual net cost to business (EANDCB)	Not monetised
Business net present value	Not monetised
Societal net present value	Not monetised

RPC assessment

Classification	Under the framework rules for the 2015-17 parliament: non-qualifying regulatory provision; familiarisation costs may be qualifying.
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Small and micro business assessment

fit for purpose



Michael Gibbons CBE, Chairman