

SANCTIONS AND ANTI-MONEY LAUNDERING BILL

AMENDMENT TO BE MOVED IN COMMITTEE

Clause 1, page 1, line 8

leave out " appropriate" and insert
"necessary"

Effect

This amendment ensures that a Minister can only exercise regulation making powers if the Minister considers those regulations to be necessary.

Reason

The regulation making powers in the bill are very wide. So far as the scope of the powers is concerned, we believe there should be an express provision that the powers should be used only so far as necessary to create a sanctions regime in the UK's domestic legal framework. The current standard in the bill is that the Minister may make regulations which the Minister considers 'appropriate'. This is a very subjective standard whereas requiring the Minister to consider that the regulations are necessary is more objective and justifiable.

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Clause 14, page 12, line 26

add at end -- "(d) provide for the procedure to be followed for an application for an exception or licence."

Effect

This amendment ensures that the regulations will include as procedure for applying for an exception or for a licence.

Reason

The regulations under clause 14 may :

"(a)create exceptions to any prohibition or requirement imposed by the regulations;

(b)provide for a prohibition imposed by the regulations not to apply to anything done under the authority of a licence issued by an appropriate Minister specified in the regulations;

(c)provide for a requirement imposed by the regulations to be subject to such exceptions as an appropriate Minister specified in the regulations may direct".

We agree with the general principle that there should be provision for exceptions and licences as detailed under clause 14. However there is no provision for regulations to provide for the application procedure for an exception or licence. We believe that this would be a useful addition to the clause 14 for persons seeking an exception or a licence and for those advising them.

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Clause 15, page 13, line 36

add at end -- (f) nothing in these regulations may authorise the disclosure of information or the production of documents which are subject to legal professional privilege or, in Scotland the obligation of confidentiality."

Effect

This amendment excludes material subject to legal professional privilege or confidentiality from the terms of clause 15.

Reason

In relation to clause 15 we are concerned about the maintenance of legal professional privilege/confidentiality which is central to the rule of law and has most recently been recognised in the Investigatory Powers Act 2016. We note that schedule 1 paragraph 7 makes special provision regarding a limitation on the disclosure of material but this is not the same as the broad protection and safeguards for items subject to legal privilege which has been enacted in the Investigatory Powers Act 2016 section 55.

We believe that there should be explicit protection in clause 15 for items subject to legal privilege or confidentiality.

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AMENDMENT TO BE MOVED IN COMMITTEE

Clause 20, page 16, line 43

leave out "3 years" and insert "one year"

Effect

This amendment reduces the review period under clause 20 from 3 years to 1 year.

Reason

We note that the review period under clause 20(4) is a period of 3 years beginning with the date when the Regulations are made and each further period of three years beginning with the date of completion of the review.

In our view there should be a shorter review period.

In response to the Government's pre-legislative consultation we suggested a one year review period.

As Lord Pannick highlighted at Second Reading:

"The appropriate Minister is required to consider any designation of a person every three years. That is far too long a period given the gravity of the consequences of listing a person. In the EU system, the periodic review sometimes occurs every six months, but in all such cases it must occur at least every year. It is true that the listed person can themselves seek a review under Clause 19, but, under Clause 19(2), once such a request has been made,

"no further request may be made ... unless ... there is a significant matter ... not previously ... considered".

There will be cases where although there is no significant new material, the very fact of the passage of time may justify looking again at whether a listing is really appropriate. The three-year period is especially troubling because, as I said, you cannot start court proceedings until you have sought a review by the Minister and received a decision on that review. Will the Minister say why the review period of one year at the most in Europe is being increased to three years, and will he please reconsider the point?" (Official Report 1 November 2017 col 1395).

Lord Pannick's argument highlights a potential problem with the proposed review period of 3 years in the bill and we now take the view that a one year review would be the best period to apply under this clause.

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Clause 30, page 21, line 20

after "request" insert "and must give reasons for the decision made."

Effect

This amendment requires the Appropriate Minister to provide reasons for any decision following a request under clause 30.

Reason

We take the view that the Appropriate Minister should provide reasons complying or refusing to comply with a request for removal from the EU Sanctions list.

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Clause 45, page 30, line 35

add at end-- " (5) A statutory instrument containing regulations under section 1 that repeal, revoke or amend any provision of primary legislation may not be made unless a draft of the instrument has been laid before and approved by each House of Parliament and where the instrument repeals, revokes or amends –

1. (b) an Act of the Scottish Parliament,

2. (c) a Measure or Act of the National Assembly for Wales, or

3. (d) Northern Ireland legislation. the instrument has received the consent of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly."

Effect

This amendment ensures that regulations which amend legislation passed by a devolved legislature will require the consent of that legislature.

Reason

The Sewel convention which provides that "the Parliament of the United Kingdom will not normally legislate with regard to devolved matters without the consent of the Scottish Parliament" (Scotland Act 1998 section 28(8)), does not apply to UK subordinate legislation. Nevertheless these new regulation making powers are significant.

The regulations detailed in clause 45(5) will be able to amend any act of the Scottish Parliament and any legislation passed by the Assemblies in Wales or Northern Ireland.

This is a wide power which requires further justification. It would therefore be helpful were the Government to indicate which devolved legislation it would envisage amending under regulations made under clause 1.