



Law Society
of Scotland

Sanctions and Anti-Money Laundering Bill Second Reading 20 February 2018

Briefing by the Law Society of Scotland

February 2018



Introduction

The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

The Society's Public Policy Committee welcomes the opportunity to consider and respond to the Sanctions and Anti-money Laundering Bill. The Committee has the following comments to make on the bill.

General Comments

We agree that sanctions are an important foreign policy and national security tool and that the current sanctions regime needs revision to take account of the UK's withdrawal from the EU. The EU sanctions have their legal base in EU legislation which is brought into UK law by the European Communities Act 1972. When that Act is repealed there will need to be in place domestic UK legislation which creates the capacity to preserve and update UN sanctions and to impose autonomous UK sanctions. We note that the provisions of clauses 3 (Financial sanctions), 4 (Immigration sanctions), 5 (Trade sanctions), 6 (Aircraft sanctions) and 7 (shipping sanctions) are provided for within the context of the bill. We welcome this schematic which goes a long way to consolidation of sanctions legislation. This will be helpful and reduce some of the burden on legal and other advisors who may have to interpret these provisions.

We also note in clause 37 provision is made requiring the appropriate Minister to issue guidance about any prohibitions and requirement imposed by the regulations made under section 1. We agree that guidance on the sanctions regime should be consolidated and made available. It will be important for there to be an official communications campaign to assist legal and other advisers in becoming familiar with the UK sanctions regime. The Office of Financial Sanctions Implementation (OFSI) should also produce sector specific guidance covering the use of such issues as automated sanctions screening systems and legal professional privilege in the context of sanctions compliance.

We comment in this briefing only on the clauses in the bill where we have a specific observation to raise.

Specific Comments on the Bill

Clause 1 Power to make sanctions regulations

We acknowledge that clause 1 permits the “appropriate Minister” to make sanctions regulations where that Minister considers that it is appropriate to make the regulations. We note that the “appropriate Minister” is defined in clause 1 (7) as:

“(a) the Secretary of State;

(b) the Treasury”.

We agree that regulations made under clause 1 should fulfil the purposes set out in clause 1(2) but they should only be made when they are necessary. We acknowledge that the Government amended the bill during its passage in the House of Lords. However new clause 2 still leaves the Minister with a broad discretion when it comes to making regulations under clause 1. New clause 2 still concentrates the decision as to reasonableness in the mind of the Minister and that means a significant degree of subjective decision making.

We also believe that clause 1(2)(a) should not be restricted to the prevention of terrorism but should include serious organised crime and trafficking.

We take the view that the Secretary of State should also maintain a register that lists all sanctions including descriptions of any designated person and the types of sanction which are imposed and also the exemptions from such sanctions. This register should be published on the internet on behalf of the Secretary of State and insure that the register is available for public inspection at all reasonable times.

Clause 15 Exceptions and licences

We agree with the general principle that there should be provision for the exceptions and licences as detailed under clause 15. However there is no provision that regulations may provide for the procedure under which a licence or exception may be applied for. We believe that this would be a useful addition to the clause 15. That there may be many types of procedure is not an argument for excluding statutory provision rather it supports the need for clear, transparent and legal provisions.

Clause 19 Power to vary or revoke designation made under regulations

Clause 19(2) provides that a relevant designation may “at any time” be varied or revoked by the Minister. We encourage the Government to consider whether it would be more appropriate for there to be a fixed term for designations which would provide the fixed term would be revoked at a certain date subject to further amendment or extension.

Clause 21 Periodic review of certain designations

We note that the review period in terms of clause 21(4) is a period of three years beginning with the date when the Regulations are made and each further period of three years begins with the date of completion of the review. In our view it may be appropriate for there to be a shorter review period. In response to the Government's pre legislative consultation we suggested a one year review period and following debates in the House of Lords believe that one year is the correct period and the bill should be amended accordingly

Clause 43 Money laundering and terrorist financing etc

We have no comments to make on clause 43 as such. The Society has been in discussion with the Treasury about the implementation of the Fourth Money Laundering Directive under the Money Laundering Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 "(the regulations)".

We strongly support the Government's intention to strengthen the response to money laundering and terrorist financing threats to protect the safety of its citizens and the integrity of the UK financial system. We are therefore taking forward significant change to our AML supervisory regime following the implementation of the regulations.

It should be noted however that further legislative change is essential if we are to achieve the intentions of the Government. The ability to apply appropriate sanctions (eg: to apply significant fines and to stop a regulated person from practicing) following the identification of breaches of the regulations are essential tools for effective AML supervision. We require additional statutory powers, however furthering this issue has proven challenging amid other legislative pressures. We are continuing to discuss with both the Treasury and the Scottish Government how to make the necessary changes to ensure the law is effective and efficient.

Clause 44 Regulations: general and Clause 45 Parliamentary procedure for Regulations

We note that that both these clauses make provision for the procedure which will be employed for regulations which will be capable of amending Acts of the Scottish Parliament. Will the Government intend to consult the Scottish Government before making regulations which make such amendments?



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