Lord Ahmad of Wimbledon
Minister of State for the Commonwealth and the UN
Kings Charles Street
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21 December 2017

Dear Lord Ahmad of Wimbledon

THE SANCTIONS AND ANTI-MONEY LAUNDERING BILL

I write on behalf of the Joint Committee on Human Rights with the authorisation of the Chair of the Committee, Rt Hon Harriet Harman QC MP. As you will be aware, the Committee is currently scrutinizing the Sanctions and Anti-Money Laundering Bill. We are very grateful for the publication of the ECHR memorandum which sets out the Government’s assessment of the Bill’s compliance with Convention rights. In order to assist the Committee with its ongoing scrutiny, we would be very grateful if you could clarify the following issues for the Committee.

1. **Delegated powers**

Clause 39 of the Bill permits the Secretary of State or Treasury to make regulations to authorise new kinds of sanctions in addition to those listed in clauses 2 - 7. 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. Whilst delegated powers may be necessary to allow for sanctions regimes to be created and amended in individual cases, such powers must be sufficiently circumscribed and any interferences with rights must be clearly defined in law. Clause 39 is a broad power that allows entire new categories of sanctions to be imposed without the safeguards of parliamentary scrutiny required by primary legislation.
We would be grateful if you could clarify why the Government believes the delegated power in clause 39 is justified.

2. Lowering of the threshold to “reasonable suspicion”

Clauses 10(2) and 11(2) of the Bill replace the threshold of “reasonable belief” currently set out in the Terrorist Asset Freezing Act 2010 (TAFA) with a lower threshold of “reasonable suspicion”. The Government justifies the lowering of this threshold on the basis that it is permissible in accordance with international standards and has been endorsed by the UK Supreme Court and EU courts. Whilst this lower threshold of “reasonable suspicion” may not appear prima facie to violate international standards, it represents a lowering of the domestic standard and is at odds with the threshold for comparable restrictive measures such as Terrorism Prevention and Investigation Measures (TPIMs), which can only be imposed where the Minister is “satisfied on the balance of probabilities”.

When TAFA was originally introduced it proposed a standard of “reasonable suspicion”, but this was raised to “reasonable belief” during the course of parliamentary scrutiny. In a letter from Lord Sassoon to the 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.”

We would be grateful if you could clarify why the Government has lowered the threshold for designation decisions to one of reasonable suspicion.

3. A right to notification and reasons

The ECHR memorandum states that “the Government anticipates that those persons who are subjected to sanctions will be informed of the reasons for doing so…. However, in order to avoid asset flight this will in most circumstances be after the designation.” In spite of this reassurance, there is no requirement in the Bill to ensure the individual notification of designations. Nor is there a duty to give reasons for a designation or to name individuals subject to designation.

We would be grateful if you could clarify why the Bill does not include a duty to notify and a duty to give reasons for designation as far as possible, whilst allowing for necessary and proportionate restrictions on the basis of public interest.
4. Review periods

Clause 20 of the Bill introduces a periodic review of designation. Currently designations are reviewed annually to ensure that they continue to be justified. However, clause 20 reduces the frequency of review to a maximum of every three years. A shorter time frame can be applied, but this is discretionary. The Government has not put forward any reasons to justify the decision to review designations less frequently than under the current arrangements. Annual review is an important mechanism for ensuring that sanctions remain necessary and proportionate to the legitimate aim. 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. We note that clause 26 of the Bill sets out an annual ministerial review of the regulations made under clause 1, but this is a “high level political review of the overall regime” rather than a review of the evidence underpinning each designation.

We would be grateful if you could clarify why the Government is extending the period of review to a maximum of three years for individual designation decisions.

5. Judicial oversight and independent oversight

Clauses 32-34 of the Bill set out the provisions relating to court reviews. Clause 32 provides a right to challenge various Government decisions as a measure of last resort. Individuals must first seek variation or revocation before commencing litigation. Currently, under TAFA, the court can conduct a full appeal. When it was first introduced, TAFA circumscribed the court’s jurisdiction to one of judicial review. However, at Committee stage, TAFA was amended to allow challenges to interim and final asset-freezes by way of full appeal to the High Court or Court of Session to ensure that judicial scrutiny of asset-freezing decisions was properly robust and rigorous. The Bill has regressed to limit the courts’ powers to judicial review.

We would be grateful if you could clarify why the courts are being limited to judicial review as opposed to conducting a full appeal.

Under section 31 of TAFA, the Independent Reviewer of Terrorism Legislation is under a statutory duty to report annually on the implementation of the Act. During the consultation on the Bill, several respondents advocated independent review of sanctions or an Ombudsperson model. By repealing TAFA and not replicating section 31 of TAFA in the Bill, the Government has removed independent oversight.

We would be grateful if you could clarify why the Government is removing independent oversight currently provided by the Independent Reviewer of Terrorism Legislation.
6. Licensing and exemptions

The Bill allows for exemptions and licenses to be granted to disapply the effect of sanctions in particular circumstances. The Explanatory Notes to the Bill offer some examples of licensing grounds, however, it is not clear how the process will work as the detail will be contained within regulations. The licensing and exemption process enables crucial activities to continue unhindered by sanctions and are a key mechanism for guarding against unlawful interference with Convention rights.

We would be grateful if you could clarify whether it would be possible for the various grounds on which the Secretary of State may grant licences and exemptions to be set out on the face of the Bill.

We would be very grateful for a response by 15 January 2018.

Yours sincerely,

Ms Samantha Godec
Deputy Counsel to the Joint Committee on Human Rights