The Rt Hon Harriet Harman QC MP  
Chair of the Joint Committee on Human Rights  
Houses of Parliament  
London  
SW1A 0AA

15 January 2018

Dear Harriet,

Sanctions and Anti-Money Laundering Bill [HL]

I am grateful to the Joint Committee on Human Rights for its statement that the Sanctions and Anti-Money Laundering Bill will be one of its five priority bills in this Parliamentary session; I look forward to reading its report in due course. On 21 December 2017, Ms Samantha Godec, the Committee’s Deputy Counsel, wrote to me on behalf of the Committee. I am replying to set out and clarify the Government’s position to the Committee’s questions, and take each in turn.

We would be grateful if you could clarify why the Government believes the delegated power in clause 39 is justified.

It is not possible to predict all the types of sanctions which may be useful or required in future. The Government wants to be able to react in an agile manner and to continue to play a leading role in the development of sanctions as a tool of foreign policy. The power in clause 39 would allow the Secretary of State to react to changes in circumstance which may require the UK to impose a new type of sanction quickly as part of broader international efforts. On both Iran and Russia, for example, transatlantic cooperation has resulted in sanctions that were substantively different from anything previously agreed in other sanctions regimes.

As noted in my letter of 10 January 2018 to the Delegated Powers and Regulatory Reform Committee, regulations under clause 39 would be subject to the draft-affirmative resolution procedure, in line with that Committee’s previous guidance, and as befitting a Henry VIII power.

Ahead of Report stage, I have tabled a Government amendment that would further restrict the use of this power. The amendment stipulates that the clause 39 power to
create new types of sanctions may only be used where the UK is or has been subject to a UN obligation or other international obligations of that type. The amendment also makes clear that the clause 39 power may not be used to alter the *purposes* of sanctions specified in clause 1 or clause 2.

I hope this amendment will provide the necessary reassurance of our intent to strike a careful balance between allowing the Government to use sanctions flexibly in an unstable and changing world, and maintaining democratic oversight.

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

Let me be clear: the “reasonable grounds to suspect” threshold is not new. It is the threshold that we use when considering designations at the United Nations and as part of the EU including designations under UN and EU counter-terrorism sanctions. The application of this threshold was considered and endorsed by the Supreme Court in the Youssef case¹ in 2016. It was also considered by the EU General Court in the case against Mohammed Al-Ghabra², where the court indicated that it can meet the requirement for a listing to have a “sufficiently solid factual basis” (the standard applied by the EU courts), provided that the grounds are supported by sufficient information or evidence. The final point is an important one – the suspicion must be based on grounds substantiated by evidence or information.

The importance of a clear threshold of this kind is evident. This point was underlined in the House of Lord’s EU Committee’s 11th report of the 2016-17 Session, *The Legality of EU Sanctions*, where the Committee recommended the codification of the standard used at the EU level. In addition, maintaining the threshold that we currently use when considering designations at the UN and EU will facilitate alignment with our international partners where our political objectives converge. As noted in the EU Committee’s 8th Report of Session 2017–19, *Brexit: sanctions policy*, the most effective sanctions regimes are designed and applied alongside international partners.

As foreshadowed in the Government White Paper, published in April 2017, and in the consultation response dated August 2017, the Bill aligns the threshold for domestic counter-terrorism sanctions to the “reasonable grounds to suspect” threshold for other counter-terrorism and country sanctions. This is a change from the current approach under the Terrorist Asset-Freezing etc. Act 2010 (“TAFA”), where Treasury Ministers must have “reasonable grounds to believe” that an individual is involved in a particular activity and that the designation is necessary for the protection of the public.

The Committee will be aware of how the threat from terrorism has changed even in the short time since TAFA was passed. Therefore it is important that we have the right tools for countering this threat. 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.

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¹ Youssef v Secretary of State for Foreign and Commonwealth Affairs [2016] AC 1457
² Al-Ghabra v Commission, T-248/13
That said, a fine balance must be struck between keeping our citizens safe — a priority for any Government is the security of their citizens — and protecting the fundamental rights of individuals. While the threshold for designating individuals for domestic counter-terrorism asset freezes would be changed by the Bill, the protections and procedural safeguards offered elsewhere in the Bill are robust and in line with international best practice. I believe that the Bill strikes the right balance.

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.

The courts have already made several findings on the need for disclosure of reasons and evidence in cases of designations, and the Bill as drafted made no effort to disturb this requirement which the Government is committed to meet.

Recognising that the Bill could make these matters more transparent, I have tabled Government amendments ahead of Report stage. The effect of these amendments would be to place a duty on the Government to notify a person of their designation and the reasons why they have been designated. You will appreciate that some aspects of the reasons may not be suitable for disclosure due to national security, international relations, the prevention or detection of serious crime, or the interests of justice.

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.

I recognise the need to ensure that sanctions designations are based on robust evidence. The UK has pushed hard for this in the EU and that is widely recognised, for example in the House of Lord’s EU Committee’s 11th report of the 2016-17 Session, “The Legality of EU Sanctions”. We are committed to maintaining these high standards.

The EU generally reviews its sanctions regimes on a yearly basis, but these reviews are relatively light touch. Designated persons are invited by the Council to present new information and Member States are able to make observations – but they are under no obligation to engage. By contrast, the triennial review envisaged under this Bill would be a comprehensive re-examination of each and every designation.

The Bill as drafted includes a robust package of procedural safeguards and these would be further reinforced by the Government amendments I have tabled for consideration at Report stage. The combined package would provide a high level of protection for designated persons, at least as strong as current EU standards. The Government will review all sanctions regulations annually and present the results in a written report to Parliament. If the report concludes that there are no longer good reasons for maintaining a UK sanctions regime, then we will lift it. Any changes made to the equivalent sanctions regimes of the EU or other international partners, including implications for the UK, will be examined closely as part of the annual review.

Alongside this annual review of the regulations, the Bill requires the Government to put in place a dynamic process to reassess individual designations upon their request
the triennial review is not the only opportunity for this. A designated person can request a reassessment of their designation at any time, and can request a further reassessment where there is a significant matter that has not previously considered by the Minister. Under the new Government amendments, a Minister would have to deal with this request as soon as reasonably practicable, and inform the person of the decision and reasons, with appropriate caveats, as soon as reasonably practicable after a decision had been made.

A Minister can also instigate a reassessment at any time, for example if the person concerned has been delisted by the EU. Ministers would have every interest in initiating reassessments proactively both in the interests of justice and to minimise the risk and cost of legal challenges. In any case where the EU decided to revoke the designation of a person also designated in the UK, I would certainly want to reassess the corresponding UK designation.

Taken together, these provisions will ensure that UK sanctions are under constant scrutiny and that the Government is obliged to respond swiftly to new information and challenges. The triennial review then provides a further backstop, ensuring that each and every designation is looked at afresh on a regular cycle. This aligns with current practice in Australia and would put us ahead of countries such as the US and Canada which have no such process at all. Carrying out an exercise on this scale every year would be hugely resource intensive and I do not believe it is necessary.

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

An application to the courts for judicial review is the usual way of challenging decisions of the Government.

The Committee has previously accepted that the courts take a robust approach to the examination of decision-making in a national security context and that the courts apply a rigorous standard of scrutiny in all cases where it considers this appropriate. In Secretary of State for the Home Department v MB, Phillips CJ said: “a court conducting a judicial review has all the powers it requires, including the power to hear oral evidence and to order cross-examination of witnesses, to enable it to substitute its own judgment for that of the decision maker, if that is what article 6 requires.” Any question about the appropriate route for challenges against the Government’s action under the Bill must be seen against that background having regard to the suite of procedural safeguards in the Bill as a whole.

Clause 19 of the Bill enables all designated persons to request a re-assessment of their designation. The designated person can make an initial request for re-assessment at any time. They can also make subsequent requests where there is a significant matter which has not previously been considered by the Minister. If the designated person is not content with the result of the re-assessment, they can challenge it by way of an application to the High Court (or, in Scotland, the Court of Session) applying judicial review principles. As set out in the memorandum sent to the Committee, these procedural safeguards will enable all designated persons to fully exercise their Article 6 rights. We do not consider that any further appeal route is necessary either to make

\[1\] [2007] QB 415
the Bill compatible with Convention rights nor for any other reasons.

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

The Independent Reviewer of Terrorism Legislation has responsibility for reviewing all of the Government’s counter terrorism powers including the power to freeze assets for domestic CT purposes as stipulated in the Terrorist Asset Freezing etc. Act 2010 (TAFPA). However, he is not responsible for reviewing the UK’s implementation of international CT sanctions agreed by the UN and EU, which constitute the vast majority of current CT designations.

The Sanctions and Anti-Money Laundering Bill will repeal Part 1 of TAFPA and, by extension, the Independent Reviewer’s statutory role in relation to that legislation. Part 1 of TAFPA will be replaced by the Bill and by UK secondary legislation made under the Bill. As such, future CT designations will be subject to the robust procedural safeguards outlined above, including the right of individuals to challenge the Government in court. Ahead of Report stage, I have tabled a set of Government amendments that would further reinforce these safeguards, for example by placing a duty on the Minister to judge whether a designation is appropriate, having regard to the purposes of the regulations and the likely significant effects of the designation on the individual. The Government amendments also create a requirement for a written report to Parliament whenever the Minister imposes, amends or revokes sanctions, and a separate report after each annual review of UK sanctions (including CT regulations). I am confident that these provisions will ensure the necessary transparency and accountability.

With the exception of Part 1 of TAFPA, the current role of the Independent Reviewer of Terrorism Legislation in providing independent oversight of all the Government’s other counter-terrorism powers would be unaffected by the Bill.

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.

This is a framework Bill which sets out the enabling powers the UK will need to impose and implement sanctions after we leave the EU. As set out in the White Paper published in April 2017 and the Government’s response to the consultation process published in August 2017, we want to use the Bill to improve the current system for licensing and exemptions and provide greater flexibility where we can, while continuing to comply with our international obligations including relevant UN Security Council Resolutions.

The Bill places a duty on the Government to publish guidance. The government intends to publish guidance on the grounds for licensing and exemptions. However, this is a complex and evolving area and we do not think it would be appropriate to set out these grounds on the face of the Bill. Given the difficulty in foreseeing all the possible grounds at this stage, enshrining a list in primary legislation risks preventing the Government from being able to tailor future sanctions regimes to fast-moving
events. It could also make it harder for the UK to align our approach to licensing and exemptions with that of international partners.

LORD AHMAD OF WIMBLEDON
Minister of State for the Commonwealth and the UN
Prime Minister’s Special Representative for Preventing Sexual Violence in Conflict