

Title: Amendments to Sanctions and Anti-Money Laundering Act 2019 (Economic Crime (Transparency and Enforcement) Bill)	De minimis assessment
	Date: 06/03/2022
Lead department: FCDO	Type of legislation: Domestic
	Date measure comes into force:
Contact for enquiries: sanctions@fcdo.gov.uk	On Royal Assent
Cost of Preferred Option: <£5m	Equivalent Annual Net Direct Cost to Business per year: <£5m

1. What is the problem under consideration? Why is government intervention necessary?

Sanctions are an important foreign policy and national security tool. They are restrictive measures which can be used to coerce a change in behaviour, to constrain behaviour, or to communicate a clear political message to other countries or persons.

The Sanctions and Anti-Money Laundering Act 2018 (“the Sanctions Act”) provides the domestic legal framework to enable the UK to implement UN and other sanctions regimes through the laying of Statutory Instruments.

The measures covered within this impact assessment (IA) will enhance FCDO’s ability to respond swiftly to fast moving developments with a streamlined sanctions framework, to ensure that we stay in step with allies and protect the public purse, in line with our foreign policy and national security objectives.

The Economic Crime (Transparency and Enforcement) Bill (the “Bill”) encompasses a number of measures for which Impact Assessments have been completed. Those making amendments relevant to imposition of sanctions measures are an FCDO responsibility and this IA covers those measures only.

2. What are the policy objectives and the intended effects?

The Bill is introducing several measures to deliver the Government’s policy objectives by amending existing sanctions legislation:

1. Urgent designation of persons by name and by description
2. Streamlining process of making sanctions regulations
3. Removal of reviews and reporting requirements
4. Court reviews: restrictions regarding damages

1. Urgent designation of persons by name and description

We intend to amend Section 11 of the Sanctions Act to provide for an urgent designation procedure to allow us to align more swiftly with partners’ sanctions to improve international coordination. It will also streamline the process by which a Minister can make designations by removing the requirement to consider “appropriateness” of designations.

This measure would remove the statutory need to consider whether a designation is appropriate having regard to the purpose of the relevant sanctions regulations and to the likely significant effects of designation on the person (the "appropriateness test").

These changes will speed up the making of new designations.

The amendments will also ensure we can mirror the listings already adopted by our allies via an urgent designation procedure, enabling the Foreign Secretary to swiftly designate individuals and entities already designated by our allies. The US, Canada, Australia and the EU, amongst our closest allies, are listed on the face of the Bill: others may be added by a power as needed. This will facilitate the closest possible international coordination in our sanctions response.

The objective of this measure is to strengthen our ability to coordinate with allies and ensure Government can impose sanctions designations swiftly in support of broader foreign policy or national security objectives. Coordinating our response with allies will increase the power of the signal of UK sanctions towards malign actors, improving their effectiveness.

We also intend to streamline the designation by description. The proposed amendment will remove the appropriateness test for such designations. It will also remove the restriction that designation by description can only be used where it is not practicable to identify and designate all members by name. These amendments will speed up the making of designations and allow us to better respond to fast-moving events.

The overall effect of the proposed amendments may lead to some immediate increase in the number of designated individuals. The direct cost to UK business of an increased number of designated persons would be higher compliance costs, as businesses will likely need to increase their expertise on UK sanctions regulations in order to keep up with more frequent updates to the UK sanctions list, and foregone revenue from UK travel bans.

2. Streamlining process of making sanctions regulations

This measure will omit all of the additional requirements in Section 2 of the Sanctions Act which currently apply to the making of non-UN sanctions regulations. This will be an administrative measure with no cost impact on businesses.

3. Removal of reviews and reporting requirements

This amendment removes requirements to review sanctions regulations (annually) and designations (every three years) and report to Parliament. This will be a purely administrative provision with no additional cost impact for UK businesses, who will be required to familiarise themselves with new designations and regulations/measures when they are implemented.

4. Court reviews: restrictions regarding damages

Amendments to impose a cap on damages and limit damages for sanctions cases to instances of bad faith will not have any direct cost impact on businesses. This will limit the ability of businesses to claim damages for sanctions cases.

We assume that a rational UK business will comply with UK sanctions as a baseline for our assessment.

3. What policy options have been considered, including any alternatives to regulation? Please justify preferred option

Option 1 – Amend existing legislation (Preferred)

The preferred option is that which is proposed within this impact assessment - to legislate to create a new urgent procedure for designations of individuals and entities, ship specifications, and designations by description, streamline other requirements and limit the ability to claim damages for sanctions cases. These amendments will ensure we can impose sanctions in concert with allies even more swiftly and effectively and protect the public purse.

Option 2 - Do nothing

To do nothing could be highly contentious, as at the time of writing there is high public and media interest surrounding recent designations and sanctions in relation to the ongoing situation in Russia. To not provide FCDO sufficiently swift powers to pursue sanctions may undermine the critical role sanctions play in supporting the UK's foreign policy and national security objectives.

4. Please justify why the net impacts (i.e., net costs or benefits) to business will be less than £5 million a year.

Direct Costs to Business

Any designations made under Regulations pursuant to the new amendments will use established processes for notifying businesses about sanctions and designated individuals, entities and organisations in accordance with the Sanctions Act. This includes updating the public UK Sanctions List and press releases. As such, we do not believe significant changes to IT systems or administrative processes will be required for UK businesses to comply with new designations made pursuant to the proposed amendments to the Bill.

These amendments may lead to an unquantifiable increase in the number of designations in the immediate period, notably in response to the current Russian invasion of Ukraine.

The key cost to UK businesses of these amendments will be increased compliance and due diligence costs relating to any additional designations that may be implemented. However, many of these designations will have been made by our allies and therefore businesses are likely to already comply with high levels of due diligence.

The UK currently designates approximately 2200-2300 persons across existing UK autonomous and UN sanctions. It is not possible to accurately estimate the proportion of future designated persons that might have UK assets, given HMG has not determined (or yet disclosed) persons to be designated.

Another relevant cost to UK businesses will be the foregone revenue arising from individuals subject to a travel ban, in the event of additional designations.

Overall, we forecast marginal costs for businesses to implement the amendments to be low.

Other direct costs to UK Businesses

- **Asset freezes – compliance.** There may be an increase in administrative and reporting costs on a range of relevant firms. We cannot quantify these costs prior to designation.
- **Asset freezes – opportunity costs** (e.g. bank accounts, stocks and shares, property). As the designated persons will be unable to access their assets, they will also be unable to buy/sell assets. As such, there will likely be forgone commission on transactions that cannot take place (e.g. property sales) which otherwise would have been received in revenue by a range of relevant firms. Furthermore, the inability to transfer holdings out of underperforming assets and into other, more profitable, assets represents a minor inefficiency in the allocation of capital in the economy. On the other hand, UK businesses will likely see a

reputational benefit from reduced likelihood of profiting from transactions conducted on behalf of such individuals. We cannot quantify these costs prior to designation.

- There may be a small proportional increase in **asset flight** (equivalent to the proportional increase in sanctions designations) as a greater number of individuals/entities, believing they are at risk of sanctions, transfer assets outside UK jurisdiction to avoid them being frozen. However, businesses in the UK will see a reputational benefit as the likelihood of managing the assets of those involved in serious corruption falls.
- An increase in **business' external legal costs and other professional services** will have a distributional impact, but we have assumed they will net to approximately zero across the UK as a whole, assuming legal and professional services firms engaged are UK-based.
- "Licensing" is when an application is made to undertake activities prohibited under the Regulations, e.g. deal with the assets of designated individuals or entities. We do not expect significant additional impact on businesses in relation to **licensing** procedures, though there could be a proportional increase in the number of licensing applications. While there is no fee for applying for OFSI licences, companies may need to seek legal advice regarding licences; therefore, there may also be administrative costs.

Benefits for businesses

- A robust sanctions regime, in the long-term, should increase opportunities for UK businesses, trade and prosperity. There are no monetisable direct benefits for UK businesses arising from these amendments.

Public Sector Equality Duty (PSED) Test

We carry out a PSED analysis for regulations made under the Sanctions Act as necessary.

5. Please confirm whether your measure could be subject to call-in by BRE (Better Regulation Executive) under the following criteria. If yes, please provide a justification of why a full impact assessment is not appropriate:

a) Significant distributional impacts (such as significant transfers between different businesses or sectors)

No. The measures do not oblige any businesses to change any of their processes or procedures and therefore does not have any significant distributional impact.

b) Disproportionate burdens on small businesses

No. There is no disproportionate burden enforced within these measures to small businesses as a whole, because these measures extend to businesses on a risk rather than size basis. Furthermore, the measures do not oblige any business, regardless of size to change its current process or procedures.

c) Significant gross effects despite small net impacts

No. As per the above there should be limited to none, gross and net effects.

d) Significant wider social, environmental, financial or economic impacts

No. These measures do not oblige any businesses to change any of their processes or procedures and most businesses will likely have appropriate processes in place already therefore there should be insignificant impact on the above.

e) Significant novel or contentious elements

No. The policies being proposed are within public interest and wider policy aims.

Sign-off for de minimis assessment: SCS

I have read the de minimis assessment and I am satisfied that it represents a fair and proportionate assessment of the impact of the measure.

Senior Policy Sign off

Signed: ***Katherine Wilde***

Date: 06/03/2022

Senior Analyst Sign Off

Signed: ***Tom Strachan***

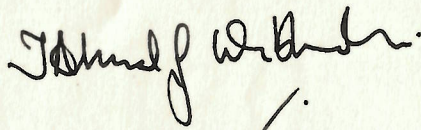
Date: 06/03/2022

Sign-off for de minimis assessment: Minister

I have read the de minimis assessment and I am satisfied that it represents a fair and proportionate assessment of the impact of the measure.

Lord Ahmad of Wimbledon, Minister for South Asia, North Africa, the United Nations and the Commonwealth at the Foreign, Commonwealth & Development Office (FCDO).

Signed:



Date: 08/03/2022