

LexisNexis

Impact of new Sanctions and Anti-Money Laundering Act considered

06/06/2018

Corporate Crime analysis: Alexandra Webster, Supervising Associate at Simmons & Simmons LLP, discusses the likely impact of the Sanctions and Anti Money-Laundering Act (SAML) 2018, as well as the interesting features of beneficial ownership registers in British Overseas Territories and the promotion of international human rights.

Original news

[Sanctions and Anti-Money Laundering Act 2018](#)

An Act to make provision enabling sanctions to be imposed where appropriate for the purposes of compliance with United Nations obligations or other international obligations or for the purposes of furthering the prevention of terrorism or for the purposes of national security or international peace and security or for the purposes of furthering foreign policy objectives; to make provision for the purposes of the detection, investigation and prevention of money laundering and terrorist financing and for the purposes of implementing Standards published by the Financial Action Task Force (FATF) relating to combating threats to the integrity of the international financial system; and for connected purposes.

What are the key provisions of SAML 2018 as it now is?

The purpose of SAML 2018 is to ensure that, when the UK leaves the EU, it can continue to:

- impose, update, and lift sanctions provided for by the UN and pursuant to other international obligations
- effectively detect and prevent money laundering and terrorist financing, including by implementing internationally recognised standards

Consistent with that, SAML 2018, Pt 1 introduces a power for Ministers to make sanctions regulations:

- for the purposes of compliance with a UN or other international obligation
- to achieve one of a number of defined 'discretionary purposes', including preventing terrorism, promoting national and international peace and security, and responding to gross human rights violations

Where a Minister seeks to introduce a sanctions regulation for a discretionary purpose, he/she must be satisfied that:

- the purpose of the measure is one permitted by SAML 2018
- there are 'good reasons to pursue' that purpose
- the imposition of sanctions is a 'reasonable course of action' for achieving that purpose

A report explaining how those criteria are met must be put before Parliament by the Minister, together with each new regulation. The Minister must also review and report to Parliament annually on whether the regulation continues to meet its stated purpose and, where such purpose is a discretionary one, whether the criteria identified above continue to be met.

SAML 2018, Pt 2 introduces a power for Ministers to make regulations for the purposes of:

- enabling or facilitating the detection, investigation or prevention of money laundering and terrorist financing
- implementing FATF standards

These regulations can be broad in scope and may provide for the creation of registers and records (including in relation to beneficial ownership of companies), the provision of information to enforcement authorities, the conduct of risk assessments and/or introduction of policies and procedures by persons carrying out high risk business activity.

The regulations may also confer certain powers on supervisory authorities (including, but not limited to, the FCA and HMRC) to collect information, give directions, issue guidance, conduct investigations (including by conferring powers of entry, and search and seizure), and impose penalties.

What were some of the areas which caused controversy as the Bill made its way through both houses, and how were these resolved?

Earlier drafts of the Bill provided for fewer checks and balances on the powers afforded to Ministers to introduce regulations. This led the House of Lords Constitution Committee to publish a report in November 2017 identifying a number of concerns, including that:

- new forms of sanctions could be created by secondary legislation without sufficient safeguards or parliamentary scrutiny
- the power to designate persons subject to sanctions by description, rather than by name, was too broad
- the ability for Ministers to introduce new criminal offences punishable by up to ten years' imprisonment by regulation was 'constitutionally unacceptable'

A number of amendments to the Bill were made in response to these and similar concerns during debates in the Report Stage in the House of Lords. These included:

- measures to confine the regulation-making powers afforded to Ministers (as described above) to circumstances where there are good reasons to introduce the regulations and they are a reasonable course of action, and to require the Minister to report to Parliament on these criteria
- the addition of a condition to the power to designate persons by description limiting its use to situations where 'the description of persons specified is such that a reasonable person would know whether [a designated] person fell within it'
- the imposition of additional safeguards to limit the Ministers' freedom to create criminal offences, including a procedure for Parliament to consider and vote on new measures and a requirement on the Minister to report to Parliament on the reasons why a criminal offence should be introduced, and why the penalty should be set at the suggested level

Another area of significant debate related to the introduction of beneficial ownership registers in British Overseas Territories, which is considered in further detail below. A late stage decision was made by the government not to vote against this amendment, which had cross party support, and it was introduced into the text of the Bill on 1 May 2018.

What are the most interesting features of this piece of legislation in your view?

Beneficial ownership registers in British Overseas Territories

As well as creating the power for a Minister to introduce registers of beneficial ownership of companies in the UK, SAML 2018 specifically requires the Secretary of State to:

- provide 'all reasonable assistance' to the governments of the British Overseas Territories (including the Cayman Islands and the British Virgin Islands (BVI)) to enable the establishment of beneficial ownership registers of companies registered in those jurisdictions and
- by 31 December 2020, prepare a draft Order in Council 'requiring' the government of any British Overseas Territory that has not introduced a register of beneficial owners by then to do so

The introduction of public beneficial ownership registers in British Overseas Territories is a contentious topic. It is a move that has historically been firmly resisted by the territories amid concerns that it would damage their economies, impacting their ability to attract business over competitor jurisdictions which require less transparency. Currently four overseas territories have registers of beneficial ownership in place, but the information they contain is only made available on request to law-enforcement agencies.

Since the passing of SAML 2018, questions have been raised about the legality from a constitutional perspective of requiring the introduction of registers. On 30 May 2018 the BVI Government announced that it was seeking advice on a potential legal challenge to the provision, which it considers raises 'serious constitutional and human rights issues'.

Promotion of international human rights, including delivery of humanitarian aid

There are several aspects of SAML 2018 which seek to promote or protect international human rights. One is the inclusion within SAML 2018 of a so-called Magnitsky clause, allowing the government to place sanctions on individuals implicated in gross violations of human rights. Having previously voted down amendments to introduce similar powers at earlier stages in the passage of the Bill, the government announced that it would support the inclusion of the clause following the poisoning of former Russian spy Sergei Skripal and his daughter Yulia in Salisbury earlier this year.

Secondly, it is hoped that SAML 2018 will enable a more flexible and effective licensing regime in the UK, mitigating the complexity surrounding the delivery of humanitarian aid caused by (among other things) the increased use of sanctions as a foreign policy tool. In a policy note published on 10 May 2018, the Foreign and Commonwealth Office confirmed its belief that the Bill (as it then was) would allow the UK to issue general licences (the use of which had been limited under EU law), enabling humanitarian and development activity to be carried out with fewer administrative burdens, and providing greater scope for reassuring banks and financial service providers that processing of (licensed) payments related to such activities are lawful.

What do you think is the likely impact for those operating in the corporate crime arena?

Once the UK leaves the EU it will, under the terms of SAML 2018, have a greater flexibility to adopt sanctions measures autonomously, or in conjunction with non-EU countries like the US. However, it seems more likely that the UK will continue to take an approach that is consistent with the EU, with whom its foreign policy goals are currently most closely aligned, than moving closer to the US position or treading its own path.

The additional powers and flexibility afforded to the UK pursuant to the SAML 2018 are therefore most likely to be used to ease tensions between sanctions measures introduced by the EU and adopted by the UK, and other government objectives and initiatives. This may include the implementation of licences and exemptions to facilitate the delivery of humanitarian and development aid, or to allow the adoption of unrelated policies (such as financial services policies) which would otherwise be hindered by sanctions law, but which do not contradict the policy aims of the sanctions regime.

For the most part, the anti-money laundering and terrorist financing measures introduced by the SAML 2018 will generate very little in the way of real change. The frameworks for the prevention and detection of these activities are necessarily international and are facilitated by the UK's adherence to recognised standards and best practices both within Europe and beyond. It remains to be seen exactly what the ramifications of those provisions will be, but the requirement for British Overseas Territories to introduce beneficial ownership registers is likely to be the section of the SAML 2018 which attracts most attention over the next two years. However, whether it will have a significant practical impact outside of the territories to which it applies is unclear.

Interviewed by Varsha Patel.

The views expressed by our Legal Analysis interviewees are not necessarily those of the proprietor.

The Future of Law. Since 1818.



RELX (UK) Limited, trading as LexisNexis®. Registered office 1-3 Strand London WC2N 5JR. Registered in England number 2746621. VAT Registered No. GB 730 8595 20. LexisNexis and the Knowledge Burst logo are registered trademarks of RELX Inc. © 2017 LexisNexis SA-0617-25. The information in this document is current as of June 2017 and is subject to change without notice.