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UNITED KINGDOM

- 1. Which are the procedures for the incorporation of Security Council resolutions imposing sanctions into the internal legal order of your State? Are they incorporated through legislation, regulations or in any other way? Has the implementation given rise to any constitutional or other legal problems at national level? Is there any relevant case law?**

Community competence

UN sanctions within Community competence are implemented in the UK as a Member State of the European Union by directly applicable EC Regulation.

Member state or shared competence

Other aspects are implemented domestically through secondary legislation. The UK has legislative powers to implement decisions of the Security Council in the UK and overseas territories by Order under the United Nations Act 1946, which provides:

“If, under Article 41 of the Charter of the United Nations....., the Security Council of the United Nations call upon His Majesty’s Government in the United Kingdom to apply any measures to give effect to any decision of that Council, His Majesty may by Order in Council make such provision as appears to Him necessary or expedient for enabling those measures to be effectively applied.....”

The UK possesses other legislative powers to implement sanctions. These may be used, if for example, an EU Common Position gives effect to measures beyond those in the UNSCR.

Travel bans

The UK implements both UN Security Council regulations and EU Common Positions using secondary legislation under Section 8B of the Immigration Act 1971 (as inserted by Section 8 of the Immigration and Asylum Act 1999). The Immigration Act 1971 provides for the exclusion from the UK of persons subject to UN or EU travel bans designated by Order. Unless an exemption in the designating order applies, an excluded person must be refused leave to enter or remain in the UK, or have his or her existing leave cancelled. Pending the designation of new UNSCRs (or EU Common Positions) by Order, the UK can use administrative provisions under its Immigration Rules to prevent targeted persons transiting or travelling to the UK. The Home Secretary, an entry clearance officer or an immigration officer may exclude the individual where his presence in the UK would not be conducive to the public good.

Arms embargoes

UN arms embargoes may be implemented under the United Nations Act 1946. Additionally, administrative decision making enforces such measures, as all export licence applications for licensable equipment are assessed on a case-by-case basis against the UK’s Consolidated EU and National Arms Export Licensing Criteria, Criterion 1 of which provides that export licences will not be issued if approval would be inconsistent with the UK’s international obligations. Trafficking and brokering of arms and related material is controlled by secondary legislation under the Export Control Act 2002. Where a directly effective EC Regulation imposes a ban

on the supply of technical assistance or training and equipment likely to be used for internal repression (in addition to UN measures), increased penalties and licences will be implemented in the UK by orders under the European Communities Act 1972.

Financial sanctions

UN sanctions can be implemented pursuant to the United Nations Act. Where there is a directly effective EC Regulation implementing UN sanctions, HM Treasury may make regulations under Section 2(2) of the European Communities Act 1972 to increase the penalties for breach of that EC Regulation to levels found in other sanctions measures. It should be noted that following the Supreme Court decision in *Her Majesty's Treasury v A, K, M, Q and G* [2010] UKSC (for detail please see paragraph 6(b) below) primary legislation was introduced to give effect to the United Kingdom's obligations under the UN's terrorism regime which had hitherto been implemented by way of an Order pursuant to the power contained in the United Nations Act 1946. No such legislation was necessary in respect of the struck-down Al-Qaeda and Taliban Order as the measures contained therein are subject of a directly effective EU Regulation.

Other measures

Implementation of other types of sanctions (flight bans, commodity embargoes, investment bans etc) will depend on a case by case examination as to whether they fall within Community competence and the available domestic powers.

Crown Dependencies

The UK has power to legislate for the Crown Dependencies under the United Nations Act 1946. The Crown Dependencies will adopt their own legislation to implement any additional EU measures, or to provide for increased penalties and proceedings in respect of EC Regulations.

Overseas Territories

The UK has power to legislate for the Overseas Territories under the United Nations Act 1946. Gibraltar adopts its own legislation to give effect to UN sanctions resolutions. Where the EU implementation goes beyond the UN sanctions, the UK can legislate in respect of territories other than Gibraltar and Bermuda using powers in the Saint Helena Act 1833, British Settlements Act 1887 and 1947 and prerogative powers. Gibraltar adopts its own legislation to implement any additional EU measures, or to provide for increased penalties and proceedings in respect of EC Regulations. Bermuda adopts its own legislation equivalent to EU measures.

Penalties for breach of sanctions

Breaches of sanctions are generally criminal offences, the severity of which depends on the individual offence, with unlimited fines and maximum custodial sentences of 7 years (10 years for arms exports) for the most serious offences.

Case law

A number of cases have been heard before the English courts relating to financial sanctions, see e.g. *R (on the application of M) (FC) v Her Majesty's Treasury* (2008) UKHL 26; and *Her Majesty's Treasury v A, K, M, Q and G* [2010] UKSC.

2. Does the choice depend on the content and the legal nature of the Security Council Resolution?

The UK implements all legally binding Security Council resolutions. The implementing legislation will depend on whether the measures fall within Community competence or not, and on the subject matter (of question 1).

3. When sanctions are imposed for a fixed period of time which is not renewed, are they tacitly repealed within your domestic legal order or is any normative action required?

EC Regulations implementing UN sanctions normally remain in force and require normative action to be repealed, if the Security Council fails to renew them. Domestic implementing Orders normally contain a clause permitting their suspension or termination following a Security Council decision, which can be carried out quickly by publication of an official notice. A formal revocation instrument will follow in due course.

4. When a Security Council Resolution imposing an export embargo provides for exceptions while establishing a committee to authorise such exceptions, does the incorporating act appoint a national authority which is competent to authorise export?

The Government applies a rigorous export licensing regime for equipment subject to export control restrictions. The Department for Business, Enterprise and Regulatory Reform (BERR) is the UK's licensing authority. The licensing authority will observe decisions of the UN Security Council when considering whether or not to issue an export licence. Export controlled goods without a licence is a criminal offence punishable by up to 10 years imprisonment.

5. Are Sanctions Committee decisions specifying Security Council sanctions or setting conditions for their activation incorporated into domestic law?

Such measures may be incorporated in a variety of ways under UK legislation. It is often most convenient to incorporate the measures by direct reference to the decisions of the Sanctions Committee. For example, the Al-Qa'ida and Taliban (United Nations Measures) (Overseas Territories) Order 2002 (S.I 2002/112) imposes financial sanctions against "listed persons", which "listed persons" are defined by reference to the Sanctions Committee list. Alternatively the implementing legislation could replicate the substantive decisions of the Sanctions Committee.

For matters within Community competence, please refer to the EU's questionnaire.

6. Have there been cases where the act incorporating sanctions in the domestic legal order was challenged for being in violation of human rights? For example, have national courts assumed jurisdiction in cases where sanctions are challenged by individuals affected by sanctions:

- a. For cases on UN sanctions directed against individuals which are implemented through EC regulations, see question 7.
- b. In *Her Majesty's Treasury v A, K, M, Q and G* [2010] UKSC, the Supreme Court struck down the Terrorism Order (implementing the UN's terrorism regime) and the Al Qaida and Taliban Order (implementing the UN's 1267 sanctions regime). Broadly speaking the court held that as the provisions of the Terrorism Order had severe effects on individuals its terms could only be such as were necessary to implement the SCR and by applying a test of 'reasonable suspicion' in respect of those against whom action could be taken the Order had gone beyond the terms of the relevant SCR. In respect of the AQ/Taliban Order a

majority of the court held that the Order did not provide for effective judicial remedy to challenge an individuals listing by the 1267 Committee.

- c. In R (on the application of M) (FC) v Her Majesty's Treasury [2008] UKHL 26, the House of Lords made a reference to the European Court of Justice asking whether Article 2(2) of Council Regulation 881/2001/EC (on financial sanctions targeting Al Qaida) applies to the provision by the State of social security or assistance benefits to the spouse of a person designated by the UN 1267 Committee on the ground that only the spouse lives with the designated person and will or may use some of the money to pay for goods and services which the later will consume or from which he will benefit. The AG gave an opinion on 14 January 2010 that Article 2(2) does not apply to the provision by the State of social security or social assistance benefits to the spouse of a designated person. The ECJ agreed and ruled that Article 2(2) must be construed as not applying to the provision of social security or assistance benefits to the spouse of a designated person on the grounds only that the spouse lives with the designated person and will or may use some of those payments to pay for goods from which the designated person will benefit.
- d. The High Court case R (S) v Her Majesty's Treasury, a claim brought by the spouse of a listed person relating to the conditions attached to a licence for benefit payments, was discontinued following the listed person being detained and thus ceasing to be part of the relevant household in receipt of the benefit payments in question.
- e. In Georgias v Secretary of State for the Home Department, the Deputy Minister for Economic Development challenged before the Asylum and Immigration Tribunal (AIT) and the High Court his refusal of entry into the UK, which was based in the travel ban imposed on him by Common Position 2007/235/CFSP (part of the EU regime imposing restrictive measures against Zimbabwe). The claimant's claim for judicial review was dismissed by the High Court and his appeal before the AIT was also dismissed but he was requested reconsideration of the AIT decision.

7. Are there decisions of national courts or state practice concerning the relationship between sanctions towards individuals and human rights of these individuals?

The Supreme Court case of Her Majesty's Treasury v A,K,M,Q and G (see detail at paragraph 6(b) above) is important in this respect.

In Lord Alton of Liverpool and others (People's Mojahadeen Organisations of Iran v Secretary of State for the Home Department (POAC Appeal No PC/02/06), the Proscribed Organisations Appeal Commission found that although the rights of the appellants under the European Convention on Human Rights were limited by the Terrorism Act 2000 (which enables the Secretary of State for the Home Department to designate an organisation as being 'concerned in terrorism'), those provisions were legitimate and proportionate.

Annex

1. Crown Dependencies

The "Crown Dependencies" comprise:

- The Bailiwick of Guernsey (including Alderney, Sark and Herm)
- The Isle of Man and
- The Bailiwick of Jersey

The Islands are not part of the United Kingdom. The Islands have their own legislative assemblies, administrative, fiscal and legal systems and their own courts of law.

2. Overseas Territories

The British overseas territories are:

- Anguilla
- Bermuda
- British Antarctic Territory
- British Indian Ocean Territory
- British Virgin Islands
- Cayman Islands
- Falkland Islands
- Gibraltar
- Montserrat
- Pitcairn, Henderson, Ducie and Oeno Islands
- St Helena, Ascension and Tristan da Cunha
- South Georgia and Sandwich Islands
- Sovereign Base Areas of Akrotiri and Dhekelia
- Turks and Caicos Islands