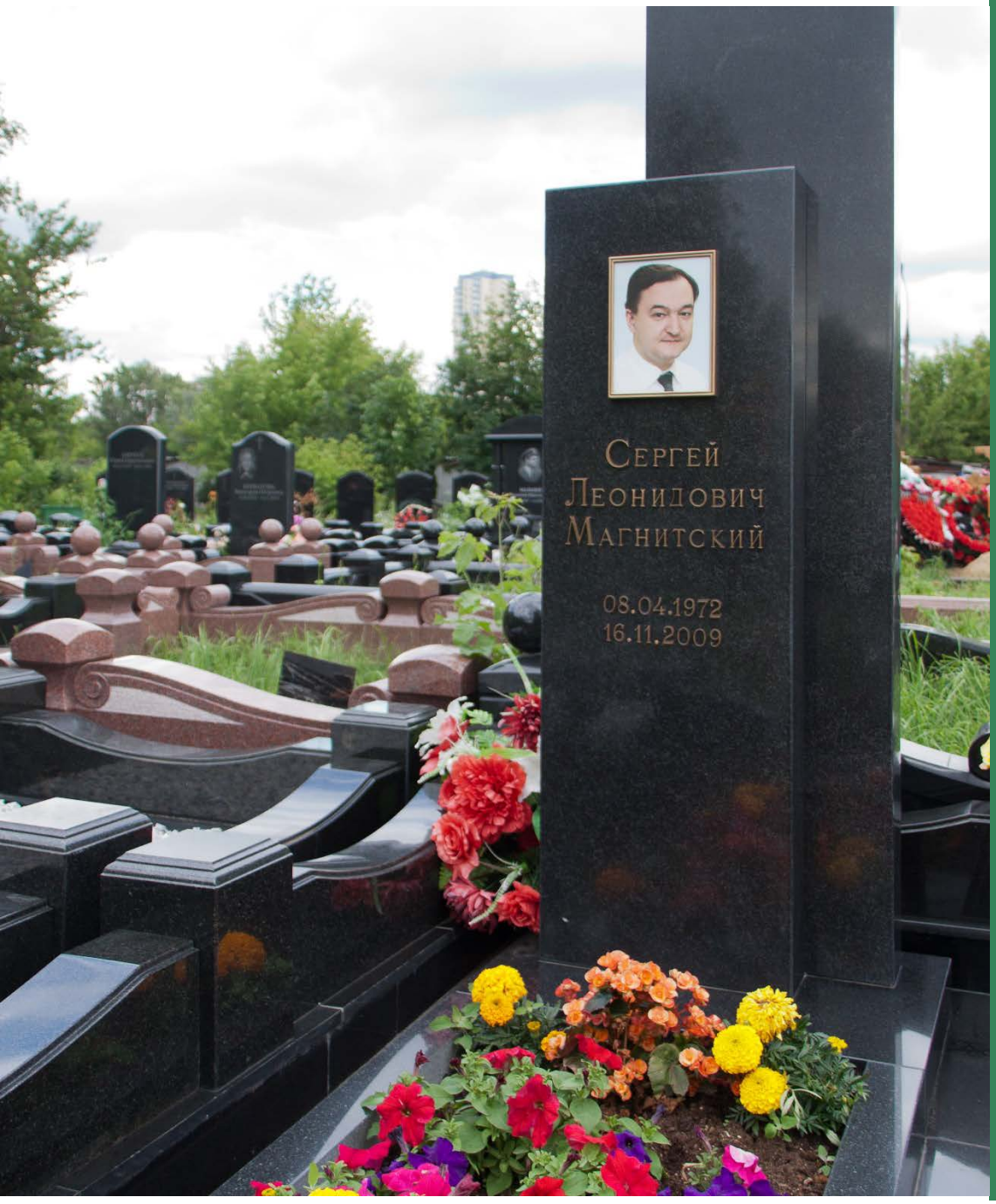
HOUSE OF COMMONS LIBRARY

BRIEFING PAPER

Number [redacted] 6 July 2018

Magnitsky legislation

By Ben Smith
Joanna Dawson



Contents:

Contents

Summary

Sergei Magnitsky was a Russian lawyer who uncovered large-scale tax fraud. While working for Hermitage Capital, a firm based in London and run by the US-born financier Bill Browder, he discovered that millions of dollars of Hermitage tax payments had been syphoned off into the pockets of Russian officials. He was arrested but refused to withdraw his testimony and died in 2009, after mistreatment in jail.

Bill Browder, now a UK citizen, started a campaign to have sanctions imposed on the officials involved – to get the officials banned from visiting the US and using the US financial system.

A *Magnitsky Act* that named the Russians involved was passed by the US Congress in 2012. It was later broadened to become in 2016 the *Global Magnitsky Act*, applying to gross human rights abusers anywhere. Other countries including Canada, Lithuania and Estonia have introduced their own versions of the legislation.

There has been increasing pressure for the UK to follow suit. Various pieces of legislation have come before Parliament, in the form of Private Members' Bills and amendments to Government Bills, although "Magnitsky" does not appear in their official titles and they do not refer to Russia.

Arguments used against introducing Bills or changing existing law to provide Magnitsky legislation have included questions about the definition of 'gross human rights abuse' and the suggestion that powers to sanction gross human rights abusers are already there in existing legislation.

Two major pieces of legislation to have 'Magnitsky' elements added to them: the *Proceeds of Crime Act 2002* and the Sanctions and Anti-Money Laundering Bill (now the *Sanctions and anti-Money Laundering Act 2018*).

The *Criminal Finances Act 2017* amended the *Proceeds of Crime Act 2002* to expand the definition of 'unlawful conduct' to include gross human rights abuse or violation. After Opposition and Government amendments, the *Sanctions and anti-Money Laundering Act 2018* includes gross human rights violation as a reason for imposing sanctions on a person or an entity.

Persons or entities who are subject to financial sanctions are named on public lists – if they were not, finance companies would not know who to apply the sanctions to. People who are the subject of visa bans are not routinely named, however, as the Government does not believe that that would be in the public interest.

There are some who question the effectiveness of Magnitsky legislation: there are countless powerful officials who commit gross human rights abuses; choosing who to impose sanctions is likely to be a subjective business. Inconsistencies in application would make designations even more likely to be litigated.

The recent legislative changes to the *Proceeds of Crime Act* and the *Sanctions and Anti-Money Laundering Bill* have been broadly welcomed, however, and the Sanctions Act also includes stronger provisions against money laundering since amendment in Parliament.

1. Legislation elsewhere

USA

Congress passed the Magnitsky Act in 2012. It provided for sanctions against on a list of Russian officials believed to be responsible for serious human rights violations, with measures including asset freezes and travel bans, and was passed as a section of another Russia-specific piece of legislation, *Russia and Moldova Jackson-Vanik Repeal Act*.

In 2016, Congress built on that legislation, enacting the *Global Magnitsky Human Rights Accountability Act,* which allowed the Government to impose visa bans and targeted sanctions on individuals anywhere in the world responsible for committing human rights violations or acts of significant corruption.

The text of the legislation does not mention Russia, but it is aimed specifically at government officials who commit abuses to protect their illegal activities, or those who help them. Under the legislation, the President may impose sanctions on those a person who, according to the evidence:

> (1) is responsible for extrajudicial killings, torture, or other gross violations of internationally recognized human rights committed against individuals in any foreign country who seek—
>
> > (A) to expose illegal activity carried out by government officials; or
> >
> > (B) to obtain, exercise, defend, or promote internationally recognized human rights and freedoms, such as the freedoms of religion, expression, association, and assembly, and the rights to a fair trial and democratic elections;
>
> (2) acted as an agent of or on behalf of a foreign person in a matter relating to an activity described in paragraph (1);
>
> (3) is a government official, or a senior associate of such an official, that is responsible for, or complicit in, ordering, controlling, or otherwise directing, acts of significant corruption, including the expropriation of private or public assets for personal gain, corruption related to government contracts or the extraction of natural resources, bribery, or the facilitation or transfer of the proceeds of corruption to foreign jurisdictions; or
>
> (4) has materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, an activity described in paragraph (3).

Canada

Canadian legislation billed as the Sergei Magnitsky law was passed in October 2017. It allows the Canadian Government to impose asset freezes on:

- a foreign national is responsible for, or complicit in, extrajudicial killings, torture or other gross violations of internationally recognized human rights against whistle-blowers or human rights defenders.
- a foreign national who is a government official of a foreign state and who is responsible for, or complicit in, ordering,

> controlling or otherwise directing "acts of significant corruption.[1]

The Sergei Magnitsky law also amended immigration legislation to make foreign nationals liable to being banned from entering Canada if they were responsible for

- gross violations of internationally recognized human rights and acts of significant corruption.

Or if they are

- subject to an order or regulation made under clause 4 of the Sergei Magnitsky Law.[2]

There were already several pieces of legislation in place in Canada giving powers to sanction individuals in other ways.

European Parliament

In October 2012, the European Parliament recommended to the Council of the European Union that measures similar to those contained in the US legislation should be implemented.[3] The EP called for:

- a common EU list of officials responsible for the death of Sergei Magnitsky, for the subsequent judicial cover-up and for the ongoing and sustained harassment of his mother and widow;
- an EU-wide visa ban on these officials
- to freeze any financial assets they or their immediate family may hold inside the European Union.[4]

In 2018, several MEPs wrote to the President of the European COUnil, Donald Tusk, Commission President Jean-Claude Juncker and High Representative for foreign policy Federica Mogherini calling for an EU version of the Magnitsky Act. The MEPs also called for synchronisation between EU and US sanctions lists.

Estonia

Estonia passed legislation in December 2016 banning foreign nationals from entering the country if there was evidence that they had caused death or serious injury to a person or caused them to be wrongly convicted of something for political motives. An Estonian MP said:

> We will finally have the ability to ban entry into Estonia for those types of people who beat Magnitsky to death in jail and those who tortured Nadiya Savchenko.[5]

---

1 Legislative Summary: Bill S-226: An Act to provide for the taking of restrictive measures in respect of foreign nationals responsible for gross violations of internationally recognized human rights and to make related amendments to the Special Economic Measures Act and the Immigration and Refugee Protection Act, Library of Parliament, Canada

2 *Ibid.*

3 European Parliament recommendation of 23 October 2012 to the Council on establishing common visa restrictions for Russian officials involved in the Sergei Magnitsky case (2012/2142(INI))

4 *Ibid.*

5 'Estonia becomes first European nation to introduce a 'Magnitsky law'', EU-OCS, 12 December 2016

Nadiya Savchenko is the Ukrainian pilot who was sentenced to 22 years in prison in Russia, then released in exchange for Russian prisoners in Ukraine.

Lithuania

Lithuania passed a Magnitsky Act in 2017. The law contained a list of 44 Russians to be banned from entering Lithuania and be subject to other measures.[6]

The law provides for travel bans of up to five years if there is evidence that a person has committed violations of human rights and freedoms in a foreign country, has committed a corruption offence or been involved money laundering, or is on the national list of foreigners denied entry to an EU, EFTA and NATO member state.[7]

6 'Lithuanian Lawmakers Pass Magnitsky-Inspired Human Rights Legislation', *RFE/RL*, 16 November 2017

7 'Lithuanian parliament passes 'Magnitsky act'' *Baltic Times*, 16 November 2017

2. UK Government's increasing acceptance of Magnitsky powers

When parliamentarians and others have called for Magnitsky powers to be added to Bills, the Government's line has often been that the UK has sufficient powers to be able to impose sanctions on human rights abusers. In 2016, in connection with the report on the death of Alexander Litvinenko, Prime Minister Theresa May said:

> I say once again to those who think that the creation of a Magnitsky Act and a list of people who are excluded will, in some sense, add to the strength of measures that we already have that it is already possible for us to exclude people from the United Kingdom. I repeat: we want those individuals who came to London and committed this act on its streets to be brought to the UK to face trial, so that justice can be done.[8]

Some parliamentarians continued to argue that the existing powers are insufficient, however:

> **Baroness Kennedy of The Shaws:** I want to challenge the idea that the pieces of law that we have managed to put together from different legislation that has gone through this House in recent years fills all the gaps; it is my suggestion that it does not.[9]

Baroness Kennedy said that visas were still being granted to Russian Government officials who were guilty of human rights abuses.

As mentioned below, the Government amended the *Criminal Finances Bill* in 2017 to allow gross human rights abusers to have their assets frozen, after a backbench motion attracted wide support.

In February 2018, the then Foreign Secretary, Boris Johnson, was still arguing that the Sanctions Bill provided enough powers:

> I hesitate to accuse the hon. Lady of failure to read the Bill, but clause 1(2) makes it absolutely clear that sanctions can be imposed to promote human rights. A fortiori, that obviously involves a Magnitsky clause to prevent the gross abuse of human rights. The measure that she seeks is in the Bill.[10]

By early 2018, the Prime Minister's tone had changed and she said that the Government would consider changes to the *Sanctions and Anti-Money Laundering Bill*:

> The right hon. Gentleman talked about Magnitsky powers. I have been challenged previously on this question. We do already have some of the powers that are being proposed in relation to the Magnitsky law. However, we have already been talking with all parties about the amendment that has been put down, and we will work with others to ensure that we have the maximum possible consensus before the Report stage.[11]

---

8 HC Deb 21 January 2016, c1578
9 HL Deb 12 March 2018, c1385
10 HC Deb 20 February 2018, c82
11 HC Deb 12 March 2018, c623-4

3. Publication of names

Names not usually published

One of Bill Browder's arguments is that all persons subject to sanctions should have their names published, or Magnitsky legislation does not do its job. The subjects of financial sanctions have their names published on administrative lists, since financial institutions could not take action to comply with sanctions if they did not know who was subject to them.

The names of targets of visa bans, however, are usually kept confidential in the UK.[12] Information about individuals excluded from the UK does sometimes come into the public domain.[13] Furthermore, information about the use of the exclusion powers, such as numbers and nationalities and grounds for exclusion, has sometimes been released in answer to PQs.[14]

2009 exception

The previous Labour Government did briefly adopt a policy of publishing details of individuals who had been excluded for engagement in "unacceptable behaviour". In May 2009 the Home Office published the names of 16 people who had been excluded between October 2008 and March 2009 "for fostering extremism or hatred."[15]

The Home Office decided that it was not in the public interest to publish the names of the other six people who had also been excluded on those grounds during that period. The American radio presenter Michael Savage, who had not applied for a visa to come to the UK, was one of the individuals identified. He objected to his inclusion on the list and threatened to sue the then Home Secretary, Jacqui Smith, for defamation.[16]

Return to previous policy

The 2010-15 Coalition Government's view was that 'naming and shaming' was the wrong approach, since it "simply invited costly and long-running litigation where it could have been avoided."[17]

In April 2014 Karen Bradley, a junior Home Office Minister at the time, explained in detail the reasons for this approach during a debate:

---

12 For more information see the Commons Briefing Paper *'Visa bans': Powers to refuse or revoke immigration permission for reasons of character, conduct or associations*, July 2016

13 See, for example, BBC News [online], 'US bloggers banned from entering UK', 26 June 2013; "Indian preacher Zakir Naik is banned from UK", 18 June 2010; 'Who does the UK want to keep out?', 12 February 2009;

14 See, for example, HC Deb 18 April 2013 c499W; HC Deb 11 November 2010 c455W; HL Deb 1 July 2010 cWA303-4; HC Deb 7 July 2010 c285W; HC Deb 15 July 2009 c397-8W; HL Deb 24 January 2008 cWA66

15 Home Office, *press release*, 'Home Office name hate promoters banned from the UK', 5 May 2009 (available from archived version of Home Office website; accessed 24 November 2014)

16 The Telegraph [online], "US radio shock jock Michael Savage brands Jacqui Smith a 'witch over UK banned list", 7 May 2009

17 HC Deb 2 April 2014, c299WH

> We do not routinely publish the names of individuals who are prevented from entering the UK. The Home Secretary and her officials use such powers to protect national security, to prevent extremists and terrorists from coming to the UK, and to disrupt the activities of serious criminals. When those powers are exercised, public disclosure of the names of the individuals concerned does not always assist in achieving those aims.
>
> It is important that we use those powers to achieve the best results in protecting the UK and the British public. That is most often achieved without the glare of publicity, particularly when we are seeking to cause a change in behaviour. My hon. Friend the Member for Esher and Walton will appreciate that once it has been made public that a person has been banned from or refused entry to the UK—and so their reputation has been affected—they have less to gain by moderating their behaviour.
>
> Furthermore, the Home Office has a duty of confidentiality, and the details of individual immigration cases will not routinely be made public. Where it is considered that there is a strong public interest in doing so, which clearly outweighs our duty to individuals, and there is sufficient information to confirm individual identity, the Home Office will disclose names. In exceptional circumstances, we occasionally confirm that an individual has been denied entry to the UK when the information is already in the public domain or there is a legitimate public interest in doing so, but it is certainly not routine or regular.
>
> (…)
>
> As my hon. Friend will be aware, that is a long-standing position that successive Governments have adopted. I quite understand that there is a view that disclosing the details of those who have been banned from this country, or refused entry, will reassure both the House and the wider public that steps are being taken to deny the most undesirable people access to this country. However, for the reasons I have just explained, that is not always in the UK's best interest.
>
> (…)
>
> It is right that Ministers consider whether making details public can support our aims. That is one of the tools that can be used to increase the effectiveness of the ban, but it can be done only on a case by case basis, taking into account the individual circumstances. It would of course reflect the impact on the individual concerned and the wider policy aim, as well as the impact on wider Government objectives.[18]

Dominic Raab intervened to challenge the Minister on the Government's position:

> **Mr Raab:** The Minister is setting out the Government's position with a degree of clarity that I have not previously heard. She talks about the considerations when the Government decide whether to make public the name of someone who has been banned, including whether doing so might deter or correct that behaviour. If we are dealing with people who are complicit in torture and there is enough evidence to substantiate and justify a visa ban, what possible countervailing reason can there be, whether it is to change their behaviour or otherwise, for not making their name public? Would not making their name public deter others?

[18] HC Deb 2 April 2014 c299-300WH

> **Karen Bradley:** My hon. Friend, as always, makes a coherent argument. The point, however, is that a decision to make someone's name public will depend on individual circumstances. A blanket approach would be wrong, because decisions will depend on each case's individual circumstances and evidence. We must consider such decisions on a case by case basis, rather than having an overriding one-size-fits-all approach to all cases involving, for example, torture.[19]

Dominic Raab's attempt to force disclosure

Dominic Raab applied to the Information Commission to release information on the possible visa applications of 60 Russian officials allegedly implicated in Sergei Magnitsky's murder. The Information Commission refused the request in February 2014, so Dominic Raab took legal action against the Information Commission and the Home Office. The First-Tier Tribunal (Information Chamber) dismissed the claims.[20]

Baroness Kennedy's Private Member's Bill

Baroness Kennedy of the Shaws introduced a Private Member's Bill in the House of Lords in December 2017. The *Immigration Control (Gross Human Rights Abuses) Bill* would have made gross human rights violations an explicit reason to impose travel bans and would have ended the practice of keeping secret the names of people subject to those bans.[21] Lady Kennedy said:

> Under the Immigration Rules as presently constituted, the Home Secretary has a personal, non-statutory power to issue travel bans to individuals on the basis that their exclusion from the United Kingdom is conducive to the public good. Section 3(5)(a) of the Immigration Act 1971 also confers upon the Home Secretary discretionary power to deport anyone if it is deemed to be,
>
> "conducive to the public good".
>
> I would like us to ask ourselves how often those powers have been used against human rights abusers. However, the current powers allow the Home Secretary to prevent the names of those who have been banned being published.
>
> […]
>
> The Immigration Control (Gross Human Rights Abuses) Bill would introduce two missing elements of a fully fledged Magnitsky law: explicit powers to ban from the UK those responsible for, and complicit in, gross human rights violations; and transparent naming requirements for those who are banned.[22]

Responding to Lady Kennedy's arguments about naming the subjects of travel bans, Baroness Williams of Trafford said for the Government:

> The noble Baroness, Lady Kennedy, talked about naming individuals, and this touches on a point made by my noble friends Lord Trimble and Lady Warsi. There are compelling reasons for naming and shaming individuals but the Government have always

---

19 HC Deb 2 April 2014 c300-302WH
20 Case UKFTT EA/2014/0051, judgment of 17 November 2014
21 For more information see the House of Lords Library Briefing *Immigration Control (Gross Human Rights Abuses) Bill [HL] (HL Bill 17 of 2017–19),* December 2017
22 HL Deb 15 December 2017, c1788

> stated that they will not do that. Doing so would send a message to those not named that, by their omission, they are of less concern than those who are named, although that might not be the case. Naming individuals might also alert those named and not named as to the level of information that the Government hold on them.[23]

[23] HL Deb 15 December 2017, c1804

4. Proceeds of Crime Act

Proceeds of Crime Act: gross human rights abuses

Chapter 2 of Part 5 of the *Proceeds of Crime Act 2002* (POCA) makes provision for civil recovery, which is a civil procedure in the High Court to recover the proceeds of crime. It provides for the recovery of property obtained through "unlawful conduct". "Unlawful conduct" is defined in section 241 of POCA as conduct which is unlawful under the criminal law in the part of the UK where it occurred or, if it occurred in another country, is contrary to the criminal law of that country and would be unlawful under the criminal law of a part of the UK (if it occurred in that part).

Section 13 of the *Criminal Finances Act 2017* amended POCA to expand the definition of 'unlawful conduct' to include:

- conduct which occurs in a country or territory outside the UK
- that constitutes (or is connected with) the commission of a gross human rights abuse or violation; and
- if it occurred in a part of the UK, would be unlawful under the criminal law of that part.

This removes the requirement for dual criminality in these cases, that is, the need for conduct which takes place abroad to be unlawful both in the jurisdiction in which it took place, and in the UK.

"Gross human rights abuse or violation" means conduct which constitutes the torture, or cruel, inhuman or degrading treatment or punishment, of a person on the grounds that that person has sought to obtain, exercise, defend or promote human rights, or has sought to expose illegal activity by a public official. The conduct must be carried out in consequence of the person having sought to do these things. It must be carried out by a public official or a person acting in a public capacity in performance or purported performance of their official duties. Alternatively, it may be committed by another person acting with the consent or acquiescence of a public official or a person acting in an official capacity, where such consent or acquiescence occurred in the performance or purported performance of official duties.

This definition applies regardless of whether such conduct is contrary to the criminal law of the country in which it occurred.

As a result of these amendments, any property obtained through gross human rights abuses or violations can be subject to the existing civil recovery powers within Part 5 of POCA.

Explaining the amendments during the Criminal Finances Bill's report stage, the Minister said:

> We have tried to come some way towards meeting many of the concerns of hon. Members by tabling new clause 7 and the consequential amendments 58 and 59. They would widen the definition of "unlawful conduct" in part 5 of the Proceeds of Crime Act 2002 to include torture or

> "the cruel, inhuman or degrading treatment"
>
> of those exposing corruption, or obtaining, exercising, defending or promoting human rights, including in cases where that conduct was not an offence in the jurisdiction in which it took place. That would allow any assets held in the UK that were deemed to be the proceeds of such activity to be recovered under the provisions in part 5.
>
> …
>
> We should remember that we are putting on the statute book a new power to take action based on gross human rights abuse, torture and degrading treatment. We have not done that before and it is a major step. It is a major signal to countries around the world that if evidence is presented, we could interdict with their assets. That sends the powerful message that London and the United Kingdom are not bases for them to put their assets or ill-gotten gains from such behaviour.[24]

The Minister referred to Members' concerns, which were reflected in an amendment tabled by Dominic Raab, then a backbench MP, with cross party support. The Raab amendment would have gone further than the Government amendment, enabling third parties to initiate proceedings, and placing an obligation on Government agencies to act. It would also have established a public register of individuals subject to such orders. Mr Raab explained it thus:

> New clause 1 would enable the Secretary of State, an individual or a non-governmental organisation to convince the High Court to make an order to empower the UK authorities to freeze assets where it can be demonstrated, on the balance of probabilities, to a senior judge that those assets relate to an individual involved in, or profiting from, gross human rights abuses. The clause would put a duty on the Secretary of State to pursue such an order when there is sufficient evidence and when it is in the public interest to do so—there is a measure of flexibility—and would establish a public register of those who are subject to such orders, all against the backdrop of appropriate safeguards and due process in law.
>
> The Government have responded with their own proposal, new clause 7. In fairness, it is only right and proper to pay tribute to the Security Minister and the Foreign Secretary for engaging so seriously with the issue and, ultimately, for being willing to act. New clause 7 would, indeed, mark a significant step forward, principally because it would provide specific statutory grounds for an asset-freezing order based on gross human rights abuses and would target individuals responsible for, or profiting from, such crimes against whistleblowers and defenders of human rights abroad.
>
> My view is that new clause 7 is not as robust as new clause 1, mainly because it does not impose a duty on UK law enforcement agencies to act subject to the flexibility I described, and it omits the third-party application procedure and removes the public register. In each of those three cases, I understand and recognise the Minister's reasons why that is the Government's position—it is probably to be expected—and I do not want to let the best be the enemy of the good, but I retain at least a measure of underlying concern. My concern touches on something that is so often the case with criminal justice legislation: the extent to which the new

[24] HC Deb, 21 February 2017

> power will be enforced in practice. The hon. Member for Rhondda (Chris Bryant) touched on that, and the concern is probably shared across the House.[25]

In response to Mr Raab's concerns, the Minister committed to collecting and publishing statistics on the use of the powers annually, in order to enable scrutiny of how the new powers were being used. Ultimately, the Government's new clause was accepted.

[25] Ibid

5. Sanctions and Anti-Money Laundering Act

Section 1 of the *Sanctions and Anti-Money Laundering Act 2018* gives ministers the power to impose sanctions on people and entities such as companies, by making regulations. In its original version as published by the Government it set out the purposes of those sanctions as:

> a. complying with a United Nations obligation;
>
> b. complying with any other international obligations (which could include obligations from UK membership of other international organisations, for example the Organisation for Security and Co-operation in Europe (OSCE), as well as other international treaties or agreements); or
>
> c. for purposes which:
>
> i. further the prevention of terrorism both in the UK and elsewhere;
>
> ii. are in the interests of national security;
>
> iii. are in the interests of international peace and security; or
>
> iv. further a foreign policy objective[26]

These purposes are wide. Empowering ministers to impose sanctions in pursuit of "a foreign policy objective" almost gives ministers a free hand, given that the Cabinet can decide what the UK's foreign policy objectives are with little interference. Some Members of both the House of Commons and the Lords argued for amendments that would set out the principles of UK foreign policy.[27]

In February 2018, the then Foreign Secretary said that the Sanctions Bill contained sufficient powers.

Promoting human rights added as purpose of sanctions

During the Report Stage of the Bill in the House of Lords, Lord Collins spoke to an Opposition amendment to Clause 1 of the sanctions bill, which added the purposes of:

- resolving armed conflict and protecting civilians in conflict zones
- promoting compliance with international humanitarian and human rights law
- preventing the proliferation of weapons of mass destruction
- promoting democracy, human rights, the rule of law and good governance.[28]

---

26 *Sanctions and Anti-Money Laundering Bill [HL]:* Explanatory Notes

27 For more information see the Commons Briefing Paper *The Sanctions and Anti-Money laundering Bill 2017-19*, February 2018

28 HL Deb 15 January 2018, c440

He said that the amendment would set out the UK's principles in foreign policy: "in the new situation we will be in – and it is a new situation."[29] The amendment was agreed.[30]

Further pressure in the Commons

The Government maintained that Clause 1 of the Sanctions and Anti-Money Laundering Bill provided for imposing sanctions on human rights abusers:

> **Boris Johnson**: I hesitate to accuse the hon. Lady of failure to read the Bill, but clause 1(2) makes it absolutely clear that sanctions can be imposed to promote human rights. A fortiori, that obviously involves a Magnitsky clause to prevent the gross abuse of human rights. The measure that she seeks is in the Bill.
>
> **Helen Goodman**: I am afraid that I do not think the Bill makes that clear. First, it does not include the phrase, "gross human rights abuses", which the Foreign Secretary just used, and furthermore, it does not refer to public officials. This is a matter that we can debate upstairs in Committee, and I will be happy to do so with the Minister.[31]

During the House of Commons Committee Stage, Helen Goodman MP, leading on the Bill for the Opposition, moved another amendment to Clause 1 that would have enabled sanctions regulations to be made aiming to prevent, or in response to, a gross human rights abuse or violation.

It was discussed with an amendment providing for sanctions regulations aimed against serious organised crime and trafficking, and another defining a gross human rights abuse or violation, including the torture of a person who has sought to expose the illegal activity of a public official, a 'Magnitsky clause'.

Helen Goodman pointed out that Magnitsky amendments had been included in the *Criminal Finances Act 2017*, (as mentioned above).

Foreign Office Minister Sir Alan Duncan said that the Government would not seek to overturn the amendment made by Lord Collins of Highbury in the House of Lords that added promoting human rights and the other purposes for sanctions regulations.

With Lord Collins's amendment backed by the Government, Ms Goodman's amendment was not agreed.

Government adds Magnitsky clause

Later, however, during the House of Commons Third Reading, Sir Alan Duncan made further amendments to the part setting out purposes for sanctions, to make them more specifically Magnitsky-related. "Gross human rights violations" would now include:

- the torture of a person who had sought to expose the illegal activity of a public official, or

29 HL Deb 15 January 2018, c445
30 HL Deb 15 January 2018, c446-8
31 HC Deb 20 February 2018, c82

- the torture of a person who had sought to defend human rights or fundamental freedoms, by a public official or a person acting in an official capacity.[32]

The definitions are those used in the Proceeds of Crime Act 2002 as amended.

No change on publishing travel ban names

The *Sanctions and Anti-Money Laundering Act* uses the powers in the 1971 Immigration Act to impose travel bans. The Act amends the definition of an 'excluded person' in that Act so that travel bans could be imposed in regulations made under Section 1 of the Sanctions Act.[33] It does not change the policy of not publishing a visa ban list.

[32] *Sanctions and Anti-Money Laundering Bill [HL],* Amendment 33, Explanatory text

[33] Section 8B of the 1971 Act as amended by Schedule 3 of the *Sanctions and Anti Money Laundering Act*: "Excluded person" means—(a)a person named by or under, or of a description specified in, an instrument falling within subsection (5), or (b)a person who under regulations under section 1 of the Sanctions and Anti-Money Laundering Act 2018 is an excluded person for the purposes of this section (see section 4 of that Act)."

6. Do Magnitsky amendments make a difference?

Powers existed anyway?

Technically, adding these purposes to the reasons for making sanctions to the *Sanctions and Anti-Money Laundering Act* may have changed little.

One press report read: "Britain will be able to impose sanctions on people who commit gross human rights violations under a so-called "Magnitsky amendment" backed by members of parliament on Tuesday."[34]

As mentioned at the beginning of the section about the *Sanctions and Anti-Money Laundering Act*, however, the original wording in the Bill gave ministers broad powers to impose sanctions to further UK foreign policy and comply with international obligations. Sanctioning people who commit gross human rights violations would have been possible using the powers as originally set out.

Nevertheless, setting out Magnitsky-style purposes in the legislation may encourage governments to use sanctions powers in that way.

During the debate about Baroness Kennedy of the Shaws' Bill, she argued that the power to deny visas had probably not often been used to ban gross human rights violators entry to the UK. The new Sanctions Act might change that, encouraging governments to deny visas to more people.

So far, the Government has not ceded to demands that names on the list of persons to be denied visas should be published. At present it is therefore impossible to know the full extent of the visa ban list.

Politically selective?

Except where they are imposed by the UN, sanctions against individual officials from other countries would be under the control of national governments. It would be nigh on impossible to produce an equitable list of corrupt or rights-abusing officials from around the world, so any application of Magnitsky legislation is bound to be selective. It also lays governments open to litigation.[35]

Apart from the original US Magnitsky Act, these pieces of legislation do not have "Magnitsky" in their formal titles and can lead to the sanctioning of people from anywhere. According to one analyst, the fact that they are being labelled "Magnitsky": "serves as a constant reminder of Russian corruption and, as such, they invariably provoke Moscow's anger".[36]

---

34 'MPs back 'Magnitsky amendment' on sanctions for human rights abuses', *Reuters,* 1 May 2018

35 Anton Moiseienko, 'A UK Magnitsky Act: would it work?', RUSI Commentary, April 2018

36 Anton Moiseienko, 'A UK Magnitsky Act: would it work?', RUSI Commentary, April 2018

To be effective, the Magnitsky legislation would have to be used as consistently as possible.

Anti-money laundering

During the passage of the Sanctions Bill, several parliamentarians linked sanctioning corrupt officials with dealing with laundering of the proceeds of corruption. As well as arguing for Magnitsky clauses, Parliament made other amendments to the *Sanctions and Anti-Money Laundering Bill* concerned with anti-money laundering: requiring public registers of beneficial ownership in the Overseas Territories and tightening the rules on Scottish limited partnerships. These changes were welcomed by some commentators as providing a range of new tools against corrupt officials. Patrick Wintour of the *Guardian* tweeted:

> By introducing a Magnitsky clause & a public register of beneficial ownership in overseas territories, UK eases the hypocrisy charge as it tries this year to solidify an international coalition against Russia, & Putin's dirty money.

Bond, a network for NGOs worming in overseas development said that the new Act has the potential to make a difference to the lives of millions across the world:

> While there is still much work to be done, the bill is a crucial step in the right direction. This progress would not have happened without the support and action of peers and parliamentarians from across the political spectrum, and tireless campaigning of civil society groups (including several Bond members), who have worked hard over many years to raise awareness of these issues and advocate for change.[37]

[37] Rowan Popplewell, '[Sanctions and anti-money laundering bill: a crucial step for NGOs and developing countries]', Bond, 2 May 2018

BRIEFING PAPER
Number
16 July 2018

About the Library

The House of Commons Library research service provides MPs and their staff with the impartial briefing and evidence base they need to do their work in scrutinising Government, proposing legislation, and supporting constituents.

As well as providing MPs with a confidential service we publish open briefing papers, which are available on the Parliament website.

Every effort is made to ensure that the information contained in these publicly available research briefings is correct at the time of publication. Readers should be aware however that briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

If you have any comments on our briefings please email papers@parliament.uk. Authors are available to discuss the content of this briefing only with Members and their staff.

If you have any general questions about the work of the House of Commons you can email hcenquiries@parliament.uk.

Disclaimer