



Asset Freezing (Compensation) Bill [HL] (HL Bill 6 of 2017–19)

Summary

The [Asset Freezing \(Compensation\) Bill \[HL\]](#) is a private member's bill introduced by Lord Emsley (Ulster Unionist). The Bill received its first reading in the House of Lords on 26 June 2017 and is scheduled to have its second reading on 27 October 2017. The Bill seeks to impose restrictions on assets owned by persons involved in giving support and assistance to terrorist organisations in the UK, in order to secure compensation for UK citizens who are victims of those organisations. Lord Emsley has outlined the intentions behind his Bill as follows:

There is growing momentum in Parliament to try and right the wrong many feel has been done to the victims of Gaddafi sponsored terrorism in the UK. A debate in Westminster Hall on 23 February 2016, secured by Poplar and Limehouse MP Jim Fitzpatrick (Labour), allowed Members to express their frustration at the lack of progress and failure of successive governments over many years to get any compensation from the Libyan Government for the actions of Colonel Muammar Gaddafi in supplying weapons to the IRA, which were subsequently used in notorious attacks such as the Docklands bombing. A group in Parliament, chaired by Romford MP Andrew Rosindell (Conservative), meets regularly to help the victims of these bombings. The group went to see both Treasury and Foreign Office officials and a Minister in 2016 to promote the Bill and seek to persuade the Government to approach the United Nations and EU for agreement to vary the terms of the freezing of Libyan assets.¹

Key Provisions

- Clause 1, subsection 1 states that HM Treasury must “take all actions necessary” to prevent the release of particular assets (outlined in subsection 3) which have been frozen under European Union Council Regulations, until circumstances described in subsection 5 have been met.
- Subsection 2 states that these actions may include imposing domestic asset freezing measures under the Terrorist Asset-Freezing etc. Act 2010.
- Subsection 3 sets out the people with assets who are covered by this Act. It states that the assets are owned by persons, “including but not limited to state parties, who are or have been involved in conduct that gives support and assistance to terrorist organisations in the United Kingdom”.
- Subsection 4 sets out when a person would be considered to have been involved in conduct which supported terrorist organisations in the UK. These include a United Nations Security Council resolution or that HM Treasury “reasonably believes that the person is or has been involved in conduct to that effect”.
- Subsection 5 describes the circumstances referred to in subsection 1. Under this provision, the frozen assets could only be released if a settlement to compensate UK victims of terrorism was reached.

- Subsection 6 outlines the definitions used by the Bill. It defines terrorist organisations in the UK as organisations which are “based in the United Kingdom, and that the Treasury reasonably believes are or have been involved in terrorist activity, within the meaning of the Terrorist Asset-Freezing etc. Act 2010”. In addition, it states that ‘UK citizen’ has the same meaning as in the British Nationality Act 1981.
- Clause 2 states that the Bill would apply to the whole of the UK; will come into force on the day it is passed; and sets out its short title.

Compensation for Victims of Libyan-sponsored Terrorism

Between the early 1970s and the 1990s, Colonel Gaddafi’s regime in Libya provided support to the Provisional IRA in the form of arms, ammunition, financing, military training and explosives, such as semtex.² For a number of years, the victims of IRA attacks carried out using such materials have been seeking compensation from the Libyan authorities.³ Campaigners have sought to fund such compensation using the former Gaddafi regime’s assets frozen in the UK following the 2011 uprising. Currently, it is estimated that almost £9.5 billion of assets from the Gaddafi regime are frozen within the UK’s jurisdiction.⁴ The funds had been frozen after the United Nations Security Council unanimously adopted a resolution to freeze the assets of the then-Libyan leader Muammar Gaddafi and members of his family in February 2011.⁵ The EU implemented these measures through Council Regulation 204/2011 of March 2011. This was then repealed and replaced by Council Regulation (EU) 2016/44, which came into effect from January 2016.⁶ In the 2017 Queen’s Speech, the Government announced that it intends to bring forward an International Sanctions Bill. This would return “decision making powers on non-UN Sanction to the UK” and “enable the UK’s continued compliance with international law” when the UK leaves the EU.⁷

A number of other countries—such as the US, France and Germany—have secured compensation from the Libyan authorities for their citizens who were victims of Gaddafi-sponsored terrorism. For example, on 14 August 2008, the US and Libyan Governments signed the US-Libya Claims Settlement Agreement (LCSA). This agreement created a fund worth \$1.8 billion to be used for the compensation of American nationals with terrorism-related claims against Libya.⁸ This followed the signing into law of the US Libya Claims Resolution Act on 4 August 2008 which restored Libya’s immunity to terrorism-related court actions upon receipt of sufficient funds to compensate people with claims against Libya.⁹

In a Westminster Hall debate held on 23 February 2016, Jim Fitzpatrick (Labour MP for Poplar and Limehouse), who initiated the debate, asked if it was possible to use Gaddafi’s frozen assets to compensate the victims of the IRA Canary Wharf bombing in 1996. The then Exchequer Secretary to the Treasury, Damian Hinds, observed that it was important to recognise that the whole Libyan Government was not subject to sanctions, but that a “small number of entities associated with the Libyan Government are subject to asset freezes”.¹⁰ As a consequence of this, Mr Hinds argued that the “existing financial sanctions would not prevent the Libyan Government from agreeing compensation with victims and making payments to them from unfrozen funds”.¹¹ In addition, the Minister explained that there were specific exemptions or licensing grounds under which the frozen assets could be accessed:

[F]irst, for the basic needs of the designated person; secondly, for the legal fees of that person; thirdly, for fees for the routine maintenance of frozen assets; fourthly, for the extraordinary expenses of the designated person; fifthly, for the satisfaction of judicial or administrative orders enforceable in the EU; sixthly, for humanitarian purposes; and seventhly, for obligations arising under contracts prior to the imposition of sanctions.¹²

Mr Hinds argued that “it is clear that none of the licensing grounds would allow the Treasury to select a frozen account at will and require that funds be paid from it to a third party”.¹³ Mr Hinds suggested that the Treasury would be able to consider granting an exception if the Libyan Government came to an arrangement with the victims regarding compensation, and with the individuals and entities responsible for the frozen accounts.¹⁴ Further information on the financial sanctions regime can be found in the Office of Financial Sanctions Implementation’s *Financial Sanctions: Guidance*.¹⁵

Lord Empey’s Previous Bill Private Member’s Bill

The Asset Freezing (Compensation) Bill was introduced on 23 May 2016 and had its second reading on 10 June 2016. During the second reading debate, Lord Empey explained that the Bill was the “brainchild of the all-party support group for the UK victims of Libyan-IRA terrorism”.¹⁶ He argued that his Bill was an “attempt to provide Her Majesty’s Government with the means to right the wrong that has been done to the many victims of Gaddafi-sponsored terrorism”.¹⁷ Responding for the Government, Viscount Younger of Leckie argued that the powers granted by the Bill would put the UK in “breach of its obligations under UN Security Council resolutions, EU sanctions regulations and the European Convention on Human Rights”.¹⁸ Viscount Younger argued that the EU and UN sanctions regimes give no power to transfer the ownership of these assets.¹⁹ He added that the Government maintained the “position that we want to see a fair solution for all victims of terrorism, including attacks perpetrated by the IRA and in particular Gaddafi-sponsored IRA terrorism”, but that “these compensation claims are private matters that are best pursued directly with the Libyan authorities”.²⁰ The Bill received its third reading on 22 November 2016 and was introduced in the Commons on 30 November 2016 by James Cartledge (Conservative MP for South Suffolk). However, the Bill did not proceed further due to a lack of parliamentary time.

Northern Ireland Affairs Committee Report on Government Support for IRA Victims of Gaddafi-supplied Arms

On 24 July 2015, the House of Commons Northern Ireland Affairs Committee launched an inquiry into the role of the UK Government in seeking compensation for the victims of IRA attacks that involved semtex and other weapons provided by the former Gaddafi regime.²¹ The Committee published its report on 2 May 2017.

The report argued that successive UK Governments had failed to “pursue compensation from Libya on behalf of the many victims of Gaddafi-sponsored terrorism” and suggested that they had missed a number of opportunities to pursue the matter.²² For example, the report argued that the former Labour Government failed to adequately pursue the issue of compensation while the Gaddafi regime was seeking better relations with the West. Further, the report noted the exclusion of UK citizens from the 2008 US-Libya Claims Settlement Agreement and suggested that it was “deeply regrettable” that the US Government did not appear willing to help the UK in delivering justice for its victims.²³ In September 2009, the UK Government set up the Libya Reconciliation Unit to support efforts to secure compensation and a parliamentary delegation met Gaddafi regime officials in October 2009. However, the report observed that the delegation was criticised because it could not claim to represent the UK Government.²⁴ With the overthrow of the Gaddafi regime in October 2011, the report argued that an “eight-year window of opportunity, during which successive UK Governments could have sought to resolve this issue, had closed”.²⁵ Further, the report argued that “no tangible progress” on this issue was made under the Coalition Government, even though the then Chairman of the National Transitional Council of Libya had signed a statement in support of providing compensation in 2011.²⁶ This, the report suggested, indicated that an agreement was possible.²⁷

The report paid tribute to those who had campaigned over the years seeking compensation but warned that “as they grow older, time is running out for many of the victims”.²⁸ It recommended that rather than “leaving the victims to reach an agreement with the Libyan authorities themselves”, the UK Government should “begin direct negotiations itself to agree a compensation package for these victims”.²⁹ On the issue of using the Libyan assets held in the UK for compensation, the report acknowledged that this had been a “source of great frustration to the victims and their representatives” but noted that the UN Resolution and EU regulation freezing the Gaddafi-regime assets do not allow them to be used for the purposes of compensation.³⁰ Moreover, the UK Government had argued that trying to renegotiate these was unlikely to be successful.³¹ The report suggested that it “would be preferable for the Libyan authorities to voluntarily agree a compensation package than for the UK Government to act unilaterally” and suggested that the frozen assets could be used as leverage.³² However, it recommended that if a government-to-government deal by the end of 2017 looked unlikely in the short to medium term, the UK Government should establish its own fund to provide funding for community projects and compensation for individuals.³³

The Government published its response to the Northern Ireland Affairs Committee report on 15 September 2017.³⁴ In response to the Committee’s call for the Government to “adopt a fresh approach” for securing compensation for the victims, the Government stated that while it “considers compensation claims to be private matters” the Government will continue to provide support to victims, their representatives, and campaign groups, and would raise the issue with the Libyan Government.³⁵

The Government reiterated that the UK’s international legal obligations prevent it from accessing the £9.5 billion worth of frozen Gaddafi regime assets and stated that seizing these would not be a feasible option to pursue. In addition, the Government rejected the suggestion of creating a compensation fund for the victims of Gaddafi sponsored terrorism. It argued that it was not a “viable option” and stated:

The Government also notes the potential challenges of making additional UK resources available specifically to the victims of Gaddafi-sponsored IRA terrorism, which would need to be considered carefully against Government support to victims of terrorism more generally, including in Northern Ireland.

In response to the Committee’s criticism that the victims had been let down by successive governments, it stated:

The Government expresses its sincerest condolences to the victims of Gaddafi-sponsored IRA terrorism and their families, and acknowledges their disappointment that their claims for compensation have not yet been successful. HMG wishes to see a just solution to their suffering and has made this clear to successive Libyan Governments.

In the press release announcing the publication of the Government response, the Committee stated the response would be “deeply disappointing to victims”.

¹ Text supplied by Lord Empey on request from the Library.

² House of Commons Northern Ireland Affairs Committee, [HM Government Support for UK Victims of IRA Attacks that Used Gaddafi-supplied Semtex and Weapons](#), 2 May 2017, HC 49 of session 2016–17, p 29.

² [HL Hansard, 10 June 2016, col 945](#).

³ BBC News, [‘Libyan-Sponsored Terrorism: IRA Victims ‘Let Down’, by UK Governments’](#), 2 May 2017.

⁴ House of Commons Northern Ireland Affairs Committee, [HM Government Support for UK Victims of IRA Attacks that Used Gaddafi-supplied Semtex and Weapons](#), 2 May 2017, HC 49 of session 2016–17, p 24.

⁵ *Financial Times* (£), [‘UN Unanimously Backs Gaddafi Sanctions’](#), 26 February 2011.

⁶ House of Commons, [‘Written Question: Libya: Freezing of Assets’](#), 31 January 2017, 62598.

⁷ Cabinet Office, [Queen’s Speech 2017: Background Briefing Notes](#), 21 June 2017, p 13.

⁸ House of Commons Northern Ireland Affairs Committee, [HM Government Support for UK Victims of IRA Attacks that Used Gaddafi-supplied Semtex and Weapons](#), 2 May 2017, HC 49 of session 2016–17, pp 10–11; and US State Department, [‘Libya Claims Settlement’](#), 14 August 2008.

⁹ House of Commons Northern Ireland Affairs Committee, [HM Government Support for UK Victims of IRA Attacks that Used Gaddafi-supplied Semtex and Weapons](#), 2 May 2017, HC 49 of session 2016–17, pp 6 and 14–15

¹⁰ [HC Hansard, 23 February 2016, col 31WH](#).

¹¹ *ibid.*

¹² *ibid.*

¹³ *ibid.*

¹⁴ *ibid.*

¹⁵ Office of Financial Sanctions Implementation, [Financial Sanctions: Guidance](#), April 2017.

¹⁶ [HL Hansard, 10 June 2016, cols 943](#).

¹⁷ *ibid.*, col 944.

¹⁸ *ibid.*, col 952.

¹⁹ *ibid.*

²⁰ *ibid.*, col 953.

²¹ House of Commons Northern Ireland Affairs Committee, [‘Government Support for IRA Victims of Gaddafi-supplied Arms Inquiry Launched’](#), 24 July 2015.

²² House of Commons Northern Ireland Affairs Committee, [HM Government Support for UK Victims of IRA Attacks that Used Gaddafi-supplied Semtex and Weapons](#), 2 May 2017, HC 49 of session 2016–17, p 3.

²³ *ibid.*, p 27.

²⁴ *ibid.*, pp 14–15.

²⁵ *ibid.*, p 28.

²⁶ *ibid.*

²⁷ *ibid.*, p 14.

²⁸ *ibid.*, p 28.

²⁹ *ibid.*, p 3.

³⁰ *ibid.*, p 29.

³¹ *ibid.*, p 24.

³² *ibid.*, p 29.

³³ *ibid.*

³⁴ House of Commons Northern Ireland Affairs Committee, [HM Government Support for UK Victims of IRA Attacks that used Gaddafi-supplied Semtex and Weapons: Government Response](#), 15 September 2017, HC 331 of session 2016–17.

³⁵ *ibid.*, pp 1–2.

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