



# **SANCTION. CONFISCATE. COMPENSATE.**

**Briefing: Repurposing Frozen Russian Assets for Victims  
in Ukraine**

**June 2022**



## **Summary**

The UK has frozen billions of pounds in Russian assets under sanctions following the invasion of Ukraine. The UK government has an opportunity to repurpose this wealth to provide reparations for the damage caused.

Current UK law does not provide the tools needed to confiscate and repurpose most of the Russian assets frozen under sanctions. Other countries, such as the US and Canada, are developing laws and policies to make the confiscation and repurposing of assets frozen under sanctions possible. The UK government has not yet put forward any proposals.

The first step is for the UK government to be transparent about frozen Russian assets and any steps being taken to seek their repurposing.

# RECOMMENDATIONS FOR THE UK GOVERNMENT

The UK Government should:

1. **Publish its data on Russian assets it has frozen** globally, and assets frozen within the UK's jurisdiction, with a breakdown by asset class, including oligarch, state-owned enterprises and state assets.
2. **Consult with civil society and experts** on what it intends to do with frozen assets, including in the development of any new legislation to enable confiscation.
3. **Engage in early, multi-stakeholder consultations** with experts and civil society organisations, including Ukrainian and Russian civil society organisations, on the development and implementation of any new legislation to enable the confiscation and repurposing of frozen assets as compensation.
4. **Involve civil society in the implementation and monitoring of any compensation regimes** involving the repurposing of frozen assets.
5. **Increase coordination between relevant government departments** (including the Foreign Office, Home Office, and National Crime Agency) to encourage inter-departmental collaboration on asset recovery and consistent engagement with civil society.
6. **Commit to repurposing fines from breaches of sanctions** related to Russia's invasion of Ukraine as compensation for victims of the invasion.
7. **Increase resources** for investigating and prosecuting sanctions breaches.
8. **Ensure swift sanctions coordination** with allied states to ensure greater consistency across jurisdictions.

## WHICH ASSETS ARE FROZEN?

- **Oligarchs' and other individuals' assets:** the UK has sanctioned over 1000 individuals connected to the Russian regime. The total global wealth of these individuals is in excess of £150 billion. The UK government has not yet disclosed what proportion of this is frozen in the UK, but it is likely to be significant. The proceeds from Russian oligarch Roman Abramovich's sale of Chelsea football club alone amount to £2.5 billion.
- **Russian commercial bank assets:** The total global value of the Russian banks the UK has sanctioned since the invasion amounts to £500 billion. Again, the UK government has not yet disclosed the proportion of this that is frozen in the UK.
- **Russian Central Bank assets:** an estimated £37 billion is frozen in the UK.
- **Other Russian State assets:** the amount frozen in the UK is currently unclear.

The amount of assets frozen within the UK is likely to be at least one hundred times the £400 million the UK has so far committed in support to Ukraine.

## WHO IS ENTITLED TO THE ASSETS?

The following may be entitled to Russian assets in accordance with international law:

- Ukrainian victims of serious violations of human rights and humanitarian law have a right to reparation under international law, including restitution, compensation and rehabilitation.
- The state of Ukraine is entitled to reparations for the

damage caused by Russia's invasion.

- The Russian people may have a right to some of the assets acquired through corruption under international anti-corruption standards. However, as the basis for the relevant sanctions is Russia's invasion of Ukraine, rather than corruption, this briefing focuses on repurposing the frozen assets for victims of the invasion.

## HOW COULD THE FROZEN FUNDS HELP UKRAINE?

Human rights groups have documented evidence of war crimes by Russian troops against Ukrainian civilians including summary execution, rape, torture, unlawful violence, and looting. 12.8 million people have been displaced from their homes. Russia's invasion has caused an estimated US\$92 billion damage to Ukraine's infrastructure. Repurposing the frozen funds as reparations for victims and to help to rebuild Ukraine has the potential to dramatically improve their situation.

It is critical that the government consults with victims and civil society in determining how the funds are used. Doing so is crucial to upholding victims' rights and is in line with international law and human rights principles.

Considering the substantial amount of funds that could be confiscated, the government should consider different avenues to repurpose the funds which may be complementary and maximise impact. Asset repurposing could be achieved through:

- Existing civil society in Ukraine.
- Establishing an independent charitable foundation to administer the funds.
- An International Claims Commission managed by the Ukrainian government, based on a state-state agreement, which can adjudicate claims for compensation arising out of Russia's actions. Any such fund must involve civil society in implementation and monitoring.
- Existing reparations mechanisms such as the Global Survivors Fund, or through making voluntary contributions to the International Criminal Court Trust Fund for Victims.

### **CASE STUDY: ROMAN ABRAMOVICH AND CHELSEA FOOTBALL CLUB**

Russian oligarch Roman Abramovich announced in March 2022 that he would sell Chelsea Football Club and donate the proceeds to victims of the war in Ukraine. Shortly after, he was sanctioned by the UK. A deal has been struck whereby the Office for Financial Sanctions Implementation (OFSI) provided a licence for the sale of the football club to go

ahead. The proceeds of the sale, £2.5 billion, will be deposited into a frozen bank account for eventual donation to a charity for the benefit of victims of the war, which will be set up by former head of Unicef, Mike Pembrose. When the UK is satisfied with the plans to repurpose the funds, it will issue a special license allowing the charity to control the funds. £2.5 billion is more than five times the value of humanitarian and economic support that the UK has already provided to Ukraine.

## WHAT ARE OTHER COUNTRIES DOING?

### US

Since the Russian invasion, several bills have been introduced into Congress on the confiscation and repurposing of frozen Russian assets.

The [Asset Seizure for Ukraine Reconstruction Act](#) has passed in the House and will now be reviewed in the Senate. It encourages the President to seize and confiscate assets valued at over US\$2 million of foreign persons who are sanctioned by the President, whose wealth is derived in part through corruption linked to, or political support for, Putin's regime. The liquidated funds are to be used for post-conflict reconstruction of Ukraine, humanitarian assistance, Ukrainian government security forces, refugee support, countering Russian internet censorship and humanitarian and development assistance for the Russian people. The bill establishes an interagency working group to determine the legal mechanisms that may be used to seize and confiscate the assets.

Other Bills that have been introduced to the House of Representatives and/or the Senate include the [Oligarch Asset Forfeiture Act](#), the [Yachts for Ukraine Act](#), the [Repurposing Elite Luxuries into Emergency Funds for Ukraine Act](#), and [A bill to authorize the confiscation of assets of the Russian Federation and the use of such assets to offset costs to the United States of assistance to Ukraine](#).

### Canada

Canada has amended its laws to enable the confiscation and repurposing of frozen assets. The C-19 budget implementation Act received royal assent on 23 June 2022, modifying the country's Special Economic Measures Act and Magnitsky Act. The amendments allow the Minister of Foreign Affairs to apply for a court order for assets frozen under sanctions to be forfeited where there has been a grave breach of international security, gross and systematic human rights violations or significant corruption overseas, or a UN request for sanctions. A judge may make an order for assets which are owned, held or controlled by a foreign state, a person in that foreign state, or a national of the foreign state, to be forfeited. The net proceeds can be used for reconstructing a foreign state, restoring international peace and security and compensating victims. While the amendments are applicable to any international conflict, the Canadian government's priority is to help victims of Russia's invasion of Ukraine.

## WHY ARE EXISTING UK LAWS INSUFFICIENT?

Current UK law is not equipped to confiscate Russian assets frozen under sanctions.

Under the Proceeds of Crime Act 2002 (POCA), **assets of individuals** can be confiscated in two circumstances.

First, the assets of an offender convicted of a criminal offence can be confiscated where the offender has benefited from their criminal conduct. Prosecutions are difficult and costly, and are unlikely to be successful against Russian oligarchs who are not in the UK, or for whom it is difficult to establish beyond a reasonable doubt that they committed a crime.

Second, property that is obtained through unlawful conduct can be subject to civil confiscation. An unexplained wealth order (UWO) is an investigative tool that may be used against persons who are politically exposed or connected to serious crime, where their wealth is disproportionate to their lawfully-obtained income. By putting the burden on the respondent to prove that their property was lawfully obtained, a UWO can lay the foundation for subsequently obtaining a civil recovery order.

Civil confiscation is unlikely to be effective against Russian oligarchs whose fortunes may have derived from historical corruption but are presently invested in, and derived from, business ventures which appear to be legitimate. These challenges are compounded by insufficient resources for the National Crime Agency (NCA) to use civil confiscation tools effectively.

While the recently-passed Economic Crime (Transparency and Enforcement) Act 2022 aims to make this process more effective, it has done little to address these issues. The Home Secretary has stated that there will be a follow-on Bill with additional measures. However, the Economic Crime and Corporate Transparency Bill introduced in the Queen's speech does not commit to further asset recovery measures.

There are no comparable options to POCA for confiscation of **Russian state assets**, which would require the establishment of a new legal basis.



# LEGISLATIVE REFORM



Flexible, robust laws are needed to bridge the gap between asset freezing and confiscation. They should be applicable to the situation in Ukraine, as well as other instances of serious violations of human rights and international humanitarian law, and corruption around the world. This can be achieved through updating POCA or developing a new, standalone law. New legislation must address the question of both private and state asset confiscation.

Laws on private asset confiscation must:

- Respect due process, including appropriate legal and evidentiary thresholds, appeal rights and judicial oversight, and
- Respect the right to property under the European Convention on Human Rights by ensuring the proportionality of confiscation measures.

Laws on state asset confiscation must limit the forfeiture of sovereign immunity to very specific circumstances which respect international law.

New laws should establish a clear legal basis on which assets can be confiscated, for example as property of an aggressor state, or because their owner is complicit in, or has supported or benefited from, serious human rights violations or corruption. There could also be a rebuttable presumption that property will be confiscated in particular circumstances. Different categories of assets will require different approaches, and not all frozen Russian assets will necessarily meet the criteria for confiscation. However, repurposing even a small portion of the assets frozen in the UK can make a profound difference for victims in Ukraine.

## REPURPOSING FINES FOR SANCTIONS BREACHES

Another option is to repurpose the fines from sanctions breaches. For this to be effective, it is crucial that sanctions enforcement is consistent and proactive. This will not only protect the integrity of the sanctions regime, but it will ensure that funds are available to support Ukraine and provide reparations to victims.

Traditionally, OFSI has a very low enforcement rate for breaches of sanctions and the fines imposed are very low. However, it is hoped that increased political will and legal and policy changes will lead to more effective sanctions enforcement.

The recent Economic Crime (Transparency and Enforcement) Act made breaches of financial sanctions attracting a monetary penalty a strict liability offence, meaning it is not necessary that the individual or entity knew that they were breaching sanctions for them to be liable. The government also announced the establishment of a dedicated NCA 'Kleptocracy' unit to investigate evasion of Russian sanctions, promising that those seeking to bypass sanctions "will be caught and punished."

## **CONCLUSION**

To realise the potential of sanctioned assets to compensate Ukraine and provide reparations for victims, the UK government must join its allies in proactively exploring legal routes. In doing so, the government should increase transparency, ensure compliance with rule of law and human rights principles, and collaborate with civil society and victims' groups.

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