



EPA-EFE/Andy Rain

Nazanin Zaghari-Ratcliffe's release may depend on the UK repaying its debt to Iran – but can it lawfully pay?

Published: November 18, 2021 3.10pm GMT

Alexandra Fowler

Lecturer in International Law, Westminster Law School, University of Westminster

Richard Ratcliffe's efforts to secure the release of his wife Nazanin Zaghari-Ratcliffe from Iran, where she has been detained for over five years for "national security-related" offences, have failed to bear fruit, despite his recent 21-day hunger strike outside the UK Foreign Office.

The sticking point, according to many observers, is the UK's continuing non-payment of £400 million owed by the UK to Iran as a result of the UK's incomplete fulfilment of a 1970s defence contract. Iran has long sought repayment of the sum, and the debt was confirmed in international arbitration in 2001 and again in 2009.

Former foreign secretary Jeremy Hunt and current defence secretary, Ben Wallace, have also acknowledged the debt.

Even so, the Foreign Office has insisted that the debt and Iran's detention of dual nationals should not be linked. Politics aside, can the UK lawfully pay?

Comprehensive sanctions imposed on Iran

The UN sanctions regime against Iran stems from concerns expressed in 2003 by the IAEA that it was not satisfied that Iran was compliant with its nuclear safeguards agreement (the agreement which ensures the peaceful use of its nuclear material).

In response, the UN via Security Council Resolution 1737 (2006) banned trade with Iran in nuclear proliferation-sensitive items and imposed an asset freeze on a list of persons and entities involved in activities deemed likely to result in proliferation. Under the resolution, all states had to ensure that any funds, financial assets or economic resources were not made available by any persons or entities to or for the benefit of these listed entities.

In the years since, other UN resolutions added many extra names to the list of entities and individuals. These included a range of entities associated with the Iranian Ministry of Defence and Armed Forces Logistics (MODAFL) and the Iranian Revolutionary Guards Corp (IRGC).

The resolutions also required countries to “exercise vigilance” over financial interactions with “all banks domiciled in Iran” if they had “information that provides reasonable grounds to believe that such business could contribute” to proliferation-related activity.

The 2015 Iran nuclear deal

The Joint Comprehensive Plan of Action (JCPoA) agreement between China, France, Germany, Russia, the US and the UK and Iran was reached in July 2015 which provided an agreed way forward on the Iranian nuclear issue. In endorsing the JCPoA, Resolution 2231 provided that the previous comprehensive sanctions measures were to be lifted upon the IAEA’s certification that Iran had met its obligations.

Iran completed its initial nuclear-related commitments under JCPoA in January 2016, with the result that the nuclear-related sanctions, which included restrictions on financial transfers to and from Iran, were lifted.



Nazanin Zaghari-Ratcliffe was detained in Iran in 2016 and convicted and sentenced to prison for ‘security-related offences’. She remains under house arrest. EPA-EFE/Vickie Flores

However, Resolution 2231 contains so-called “snapback provisions” which allow the Security Council to reimpose comprehensive sanctions following the report by any member of a significant violation of the JCPOA. Since the lifting of nuclear sanctions, Iran has chosen to continue to test ballistic missiles, which has been of significant concern to JCPOA states and against the spirit of the deal, but not enough to reimpose the sanctions that were lifted.

Unhappy with the situation, in 2018 the then US president Donald Trump took the US out of the deal. The US urged the Security Council to reinstate nuclear sanctions in 2020 and although its draft resolution failed to pass, the US nevertheless announced that it considered UN sanctions had indeed “snapped back” and that all member states should act accordingly. This was considered by other JCPOA states (including the UK) to have misconstrued the Resolution 2231 mechanism and its legality in international law was highly dubious. Iran has breached the JCPOA in recent years, but the mechanism to “snap back” comprehensive nuclear sanctions has not been invoked.

Non-proliferation requirements remain

As far as the UK and payment of the outstanding £400 million is concerned, it needs to ensure what it does complies with general non-proliferation obligations particularly given Iran’s policy to continue uranium enrichment and missile testing. There are also other UN sanctions on Iran related to human rights. The legislation passed by the UK after Brexit to replace the EU’s sanctions regime thus sets out a lengthy list of entities and individuals still subject to bans, and Iran’s defence ministry (MODAFL) and many Iranian defence-related entities are on this list. Under these rules, making any funds or economic resource available, either directly or indirectly, to such persons is prohibited. As the £400 million is owed to MODAFL, payment would be unlawful.

Secondary sanctions

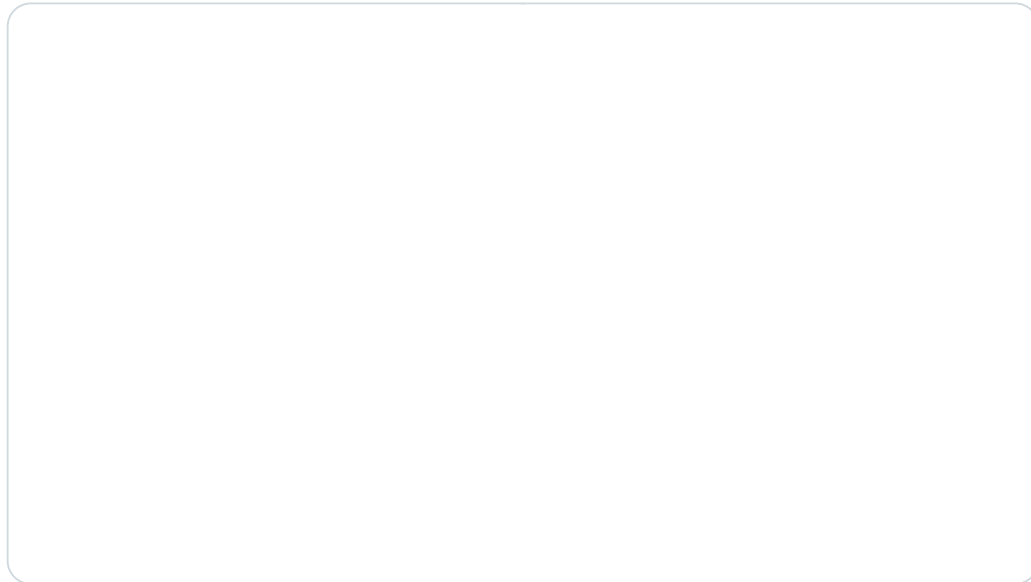
All this is quite apart from the risk that UK banks helping to transfer money would be vulnerable to US secondary sanctions or fines. US law threatens the imposition of penalties on non-US persons acting entirely outside of the US who deal with anyone on its list of “specially designated nationals”. For Iran, these are people or bodies the US has identified to be in connection with weapons (WMD) programmes or Iran’s support for international terrorism. It includes the Central Bank of Iran and many other Iranian banks. Any UK bank involved in transferring funds to Iran risks steep US penalties, a measure which is clearly having a chilling effect on any dealings with Iran internationally.

JOHN NICOLSON M.P. 

@MrJohnNicolson · [Follow](#)



At the [#NazaninZaghariRatcliffe](#) debate. Never seen Westminster Hall so packed. Enormous support for the family and cross party frustration that the UK Government has failed them so badly.



2:44 PM · Nov 16, 2021 from London, England



 **3.1K**  **Reply**  **Share**

[Read 34 replies](#)

US sanctions law contains exceptions allowing foreign financial institutions to conduct or facilitate transfers of agricultural commodities or humanitarian items without penalty. The regulations also allow foreign governments and financial institutions to receive written confirmation in advance that they will not attract US sanctions in relation to the transfer of such goods in exchange for them committing to provide “robust information ... on a monthly basis”.

Legally, this would allow the UK to transfer the £400 million in the form of humanitarian goods, but there have been several credible reports of exempted trade not going ahead for fear of US sanctions.

So it would be very difficult for the UK to find a lawful method of paying the sum to MODAFL itself or another government-affiliated body. The humanitarian goods option is feasible, but problematic for other reasons.