

# UK Introduces Magnitsky-Style Human Rights Sanctions Regime

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On 6 July 2020, the UK implemented a new sanctions regime targeting global human rights abuses, which allows the UK government to impose asset freezes and travel bans on persons it determines to have committed serious human rights violations. These restrictions have initially targeted 49 persons from Myanmar, Russia, Saudi Arabia and North Korea.

This is the first time since Brexit that the UK has diverged from EU sanctions policy. Although many of the targets and restrictions are broadly aligned with the “Magnitsky”-style sanctions previously implemented by the United States and Canada, the UK regime has some important differences. Companies operating in the UK will need to ensure that their sanctions systems and controls reflect this new regime.

## OVERVIEW OF THE REGULATIONS

The new global human rights sanctions regime is set out in the [Global Human Rights Sanctions Regulations 2020](#) (the “Regulations”), which has been implemented under the UK’s [Sanctions and Anti-Money Laundering Act 2018](#) (“SAMLA”). SAMLA was enacted in May 2018 as a framework for post-Brexit sanctions regimes, and this is the first time it has been used to create a new sanctions regime with immediate effect.<sup>1</sup>

The Regulations target three types of human rights abuses: (i) interference with the right to life; (ii) torture or cruel, inhuman or degrading treatment or punishment; and (iii) slavery.

Currently, 49 persons have been sanctioned under the Regulations:

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<sup>1</sup> Prior to the Brexit agreement in January 2020, the UK implemented a number of country-specific sanctions regimes under SAMLA, which were intended to come into effect in the event of a “Hard Brexit.” However, these regimes will not come into force until, at the earliest, the end of the transition period (currently planned to occur at the end of 2020).

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- 25 Russian nationals said to have been involved in the mistreatment and death of Sergei Magnitsky;
  - 20 Saudi Arabian nationals said to have been involved in the death of journalist Jamal Khashoggi;
  - Two Myanmar military generals identified as involved in human rights abuses against the Rohingya people and other ethnic minorities; and
  - Two organisations said to be involved in forced labour, torture and murder in North Korea's prison camps.

The Regulations adopt a thematic approach to sanctions—punishing alleged human rights abusers—and do not target any specific jurisdiction or government. This differs from the traditional EU approach to sanctions, which usually targets specific actions or behaviour in a particular country.<sup>2</sup>

That said, “Magnitsky” sanctions regimes in other jurisdictions tend to cover a much broader range of human rights abuses. For example, in addition to the human rights abuses covered by the new UK regime, the U.S. and Canadian regimes also cover violations of freedoms of religion, expression, association and assembly, and of the rights to a fair trial and democratic elections. These other regimes also permit authorities to sanction persons involved in corruption as well as the financing of corruption or human rights abuses.

Given that the Regulations constitute the UK's first autonomous sanctions regime, it is perhaps unsurprising that the scope of covered human rights violations is more limited than in other jurisdictions. However, the thematic nature of the Regulations leaves open the possibility that the regime will be broadened to cover other types of human rights abuses in the future. Indeed, the UK Government has already suggested that the Regulations may be expanded later in 2020 to cover issues such as corruption.

### KEY DIFFERENCES FROM EU SANCTIONS

The most significant difference between asset freezes adopted under the Regulations and asset freezes employed in EU sanctions regimes is the effect of these restrictions on entities owned or controlled by a sanctioned person.

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<sup>2</sup> The EU has recently started to take more of a thematic approach to sanctions, with the introduction of a regime targeting proliferation of nuclear, chemical and biological weapons and cyber attacks.

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Under EU sanctions, an asset freeze directly affects the person designated as a target (a “Listed Person”). The freeze extends to any funds or economic resources held or controlled by the Listed Person. [EU guidance](#) also states that any funds or economic resources made available to an entity owned or controlled by the Listed Person are presumed to be made available to the Listed Person. This is known as the “indirect benefit presumption”. However, this presumption is rebuttable where it can be reasonably determined that the funds or economic resources will not be used by or be for the benefit of the Listed Person. In practice, this means that subsidiaries of, or entities owned or controlled by, a Listed Person will not always be affected by an EU asset freeze, particularly where they can be shown to operate on an independent basis in their own commercial interests.

In contrast, the Regulations extend the asset freeze to any entity owned or controlled by a Listed Person. This goes beyond making new funds and economic resources available to a Listed Person; the assets and funds of all of a Listed Person’s subsidiaries or controlled entities will also be immediately frozen. There are no exceptions if, for example, an entity that is majority-owned by a Listed Person operates completely independently, with the Listed Person acting as a passive investor.

The Regulations state that a company is “*owned or controlled*” by a Listed Person if either of the following two conditions are met:

- *First*, the Listed Person owns the company if it holds, directly or indirectly, more than 50% of the shares or voting rights in the company, or holds the right, directly or indirectly, to appoint or remove a majority of the board of directors of the company; or
- *Second*, the Listed Person controls the company if it is reasonable in the circumstances to expect that the Listed Person would be able, in most cases or in significant respects, by whatever means and whether directly or indirectly, to ensure that the company’s affairs are conducted in accordance with the Listed Person’s wishes.

## IMPACT ON BUSINESSES

The second limb of the ownership and control criterion in particular is likely to require companies operating in the UK to review their existing sanctions screening procedures. In practice, it will likely require more stringent due diligence to be undertaken whenever dealing with an entity known to be associated with a Listed Person.

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The control requirement also exceeds the standard applied by U.S. sanctions, the so-called “50% rule.” Under the operation of that rule, entities that are majority-owned by a sanctioned person or persons are themselves subject to sanctions, but not those that otherwise may be deemed to be “controlled” by sanctioned persons. In that respect, the UK asset freezes go further than their U.S. counterparts.

This extension of the “ownership and control” test may also require companies operating throughout the EU and in the UK to take different approaches in designing their sanctions systems and controls. In particular, businesses will need to consider any potential differences in scope caused by the new ownership and control test.

## CONCLUSION

The Regulations signify the UK’s first move towards an autonomous sanctions regime. While currently limited in scope, it is likely that the Regulations will be expanded in the future to cover a broader range of human rights violations, including corruption.

Businesses operating in the UK may need to amend their sanctions systems and controls to ensure that they are compliant with the Regulations. In addition to screening against UK sanctions lists, businesses will need to ensure that they are able to respond to the Regulations’ broad definition of Listed Person.

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Please do not hesitate to contact us with any questions.

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