

The UK's Sanctions Regime Comes into Force

13 January 2021

At 11pm on 31 December 2020, the Brexit transitional period ended and the UK's autonomous sanctions regime, consisting of approximately 30 regulations, came into force. It is largely based on the EU's sanctions legislation that was previously implemented in the UK, but there are important differences.

Companies operating in the UK will need to ensure that their sanctions systems and controls reflect this sanctions legislation. Companies will also need to consider if these changes could affect existing contractual relationships and their approach to sanctions-related representations and warranties in the future.

UK SANCTIONS LEGISLATION

The UK's [Sanctions and Money Laundering Act 2018](#) ("SAML A") was enacted in May 2018 as a framework for the UK's post-Brexit sanctions regimes. SAML A gives the UK government the power to enact sanctions and details the types of measures that may be imposed. However, the substantive restrictions are contained in approximately 30 country-specific, or thematic, regulations (the "UK Regulations" and, together with SAML A, "UK Sanctions").

UK Sanctions apply to: (1) persons and entities located in the UK; (2) entities incorporated in the UK, including their foreign branches and offices, and potentially foreign subsidiaries if the UK parent company maintains control or oversight; and (3) UK citizens located anywhere in the world (together, "UK Persons"). The majority of the UK Regulations were passed in 2019, but to the extent they overlapped with the scope of existing EU sanctions, they could only come fully into force once the Brexit transitional period had ended.

UK FINANCIAL & CAPITAL MARKET SANCTIONS

There are three features of the UK's financial and capital market sanctions that differ from those of the EU.

Financial Sanctions—Ownership and Control

The most significant difference between asset freezes employed in the UK and the EU is their effect of on entities owned or controlled by a sanctioned person.

Under EU sanctions, an asset freeze directly affects the person it targets (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 a Listed Person are presumed to be made available to the Listed Person. This is known as the "indirect benefit presumption". This presumption can be rebutted if 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 if they can be shown to operate independently in their own commercial interests.

In contrast, UK Sanctions 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 must be immediately frozen under UK Sanctions. There are no exceptions if, for example, an entity that is majority-owned by a Listed Person operates independently, with the Listed Person acting as a passive investor.

Prohibition on Providing "Financial Services"

EU trade sanctions prohibit persons subject to EU sanctions ("EU Persons") from providing "*financial assistance*" in relation to certain goods. In contrast, UK sanctions prohibit UK Persons from providing "*financial services*" in relation to those goods. "*Financial services*" are defined more broadly than "*financial assistance*" and include the provision of insurance and payment and money transmission services.¹

Russia Capital Market Exemption

UK and EU capital market restrictions against Russia prohibit directly or indirectly purchasing, selling, providing investment services for or assistance in the issuance of, or otherwise dealing with, certain transferable securities and money-market instruments of designated state-owned Russian banks, manufacturers and oil and gas companies.

¹ See section 61 of SAMLA, and UK Export Control Joint Unit Guidance Note, [Russia sanctions](#), 9 May 2019.

They also prohibit offering certain new loans or credit to such designated entities. These restrictions apply to any entity that is more than 50% owned by a designated entity (directly or indirectly), or that acts on behalf or at the direction of a designated entity.

The EU sanctions create an exemption to the above for EU subsidiaries of designated entities. The UK sanctions, however, provide an exemption only for UK subsidiaries of designated entities. The UK sanctions also contain no grounds on which UK Persons can obtain a licence to provide restricted services to an EU subsidiary of a designated person.² Consequently, UK Persons are now prohibited from entering into certain transactions with large EU banks, such as Sberbank Europe and VTB Bank Austria.

UK ASSET FREEZE LIST

The [UK asset freeze list](#) was released at 11 pm on 31 December 2020. It largely tracks the EU list, with a few exceptions:

- 113 persons subject to EU asset freezes are no longer subject to asset freezes under the UK legislation. Almost all of the de-listings relate to government officials and their family members, the majority of whom are located in Tunisia (42% of the de-listings), Belarus (24%), Egypt (8%), Guinea- Bissau (7%) and Syria (4%). The UK has not provided formal reasons for each of these de-listings, though according to Foreign, Commonwealth and Development Office (“FCDO”) officials, they are primarily due to the FCDO’s determination that there were insufficient grounds for sanctioning these persons under the UK criteria (usually due to a lack of evidence);
- Seven persons subject to UN sanctions are no longer subject to asset freezes under the UK legislation;
- Ten persons have been listed under a different sanctions regime in the UK than the regime under which they are listed in the EU, and one person listed under multiple EU sanctions regimes is only listed under one UK regime (Iran nuclear sanctions); and
- Eleven persons have had additional aliases added to their asset freeze listings.

So far, the UK has not added anyone to its asset freeze lists under the country-specific regimes it imported from the EU. It is likely that the UK will do so in the near future as it seeks to establish its own foreign and economic policy.

² There is an exception for acts done for the purposes of national security or the prevention of serious crime.

A Listed Person, or a person acting on their behalf, can request a revocation or variation of their UK sanctions designation by submitting a [Sanctions Review Request Form](#), along with supporting evidence, to FCDO, which will review the request and notify the applicant of its decision and reasoning. FCDO's decision can be challenged in the English High Court.³ There is no longer any mechanism to challenge EU sanctions designations in the UK courts.

NEW SANCTIONS REGIME: MISAPPROPRIATION OF STATE FUNDS

The [Misappropriation \(Sanctions\) \(EU Exit\) Regulations 2020](#) (the “Misappropriation Regulations”) impose financial and immigration sanctions to deter and punish misappropriation of State funds from a foreign country. The regime has been introduced as part of the UK government's objective to tackle corruption (including misappropriation), as set out in the [UK Anti-Corruption Strategy 2017- 2022](#).

The Misappropriation Regulations represent a significant step forward for the UK's foreign policy. When the [UK introduced its Global Human Rights sanctions](#) regime in July 2020, it faced criticism for excluding corruption as a ground for which sanctions could be imposed. Research has shown a strong link between endemic corruption and serious human rights abuses,⁴ leading the U.S. and Canada to extend their human rights sanctions regimes to cover corruption.

The Misappropriation Regulations replace three country-specific EU regimes—against Egypt, Ukraine and Tunisia—and create a thematic regime that can be used to target persons in any jurisdiction. This may make it easier to deploy the restrictive measures, as it avoids political sensitivities surrounding sanctioning specific countries. It also limits the impact of the sanctions on unintended third parties: country-specific sanctions can be an event of default in some financing agreements, even if the parties to the agreement are not directly targeted.

So far, no persons have been sanctioned under the Misappropriation Regulations. The persons targeted under the three EU regimes are sanctioned in the UK under the Global Human Rights regulations, demonstrating the close link between corruption and human rights abuses.

³ See Chapter 4 of SAMLA and FCDO Guidance Note, [How to request variation or revocation of a sanctions designation or review of a UN listing](#), 31 December 2020.

⁴ European Parliamentary Research Service, [EU human rights sanctions Towards a European Magnitsky Act](#), December 2020, page 6.

CHANGES TO THE LICENCING REGIME

The UK's sanctions regime contains some important differences from the EU's regime.

UK General Licences

Under SAMLA, the UK authorities can issue general licences that allow multiple parties to undertake activities that would otherwise be prohibited by sanctions legislation without the need for a specific licence. In addition to the [general licences](#) introduced by the UK in 2011, on 1 January 2021, the Office for Financial Sanctions Implementation ("OFSI") introduced a [general licence](#) to allow UK Persons to make payments to the Crimean Sea Ports for the provision of certain services. Companies conducting business in the UK should be aware of the general licences available to them and their scope.

UK Specific Licences

UK Persons wishing to obtain a licence to undertake an activity that is otherwise prohibited by UK sanctions must complete the new OFSI [Licence Application Form](#). Some UK sanctions regimes have changed licencing criteria, so companies will need to ensure that they continue to have licencing grounds available to them.

KEY TAKEAWAYS

There are three practical takeaways for companies conducting business in the UK.

Sanctions Screening Software Updates

Companies operating within the UK should ensure that their sanctions screening software has been updated to include the new UK asset freeze lists and the new ownership and control provisions. This is particularly important if companies rely on in-house software, or manual tools, to conduct sanctions screening. International companies with operations in the UK should also ensure that their global policies include appropriate provisions for applicable UK sanctions.

Reviewing Contractual Arrangements

Companies should check their existing contractual arrangements to see if they have any sanctions-related warranties or representations that could be affected by the divergence between EU and UK sanctions regimes.

New Guidance

Companies should ensure that they comply with the comprehensive guidance issued by FDCO and OFSI on the [UK Regulations](#), as well as financial sanctions and monetary penalties [guidance](#).

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Please do not hesitate to contact us with any questions.

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