

UK Insight: Analysis: The UK's New Global Human Rights Sanctions Regulations – What Do They Mean for UK Sanctions After Brexit?

One of the many legal questions raised by Brexit was what a new, independent United Kingdom sanctions regime might look like. Would it adhere closely to the European Union's foreign policy goals, or chart a different path?

We know that for the foreseeable future, the existing EU (and United Nations) sanctions will essentially remain in place. Until [11pm on 31 December, 2020](#), EU sanctions will apply directly in the UK, after which new UK regulations will replace those sanctions, to substantially the same effect.

However, recently-announced sanctions signal the UK's intent to go beyond the EU's regime in terms of the countries and types of activities it targets.

The Global Human Rights Sanctions Regulations 2020

In early July, the [UK announced](#) a new, unilateral sanctions regime contained in the *Global Human Rights Sanctions Regulations 2020* (the "Regulations"), which it described as being in the style of the United States' [Global Magnitsky Sanctions](#). Although this is not the first time the UK has implemented sanctions outside the EU and UN frameworks, such unilateral actions are likely to become more frequent and extensive in a post-Brexit UK.

The Targeted Activity

The [Regulations target](#) individuals and organisations for involvement in "*serious violations or abuses*" of three human rights: the right to life, the right to be free from torture or cruel treatment or punishment, or the right to be free from slavery or forced labour. Providing financial support for such activities or participating in circumventing the Regulations can also [subject those involved](#) to designation.

Those designated under the Regulations will be subject to UK asset freezes and travel bans.

Offences for Violations

The Regulations prohibit UK persons, as well as all individuals and entities on UK territory, from knowingly:

- [Dealing with](#) funds or economic resources owned, held or controlled by a designated person;
- Making funds or other economic resources available to, or for the benefit of, designated persons; or
- [Participating](#) in activities that directly or indirectly circumvent the prohibitions in the Regulations.

“UK persons” [are defined as](#) UK nationals or bodies incorporated or constituted under the law of any part of the UK.

A [person convicted](#) of any of these offences on a summary conviction could face up to 12 months in prison, a fine, or both. A person convicted on indictment could face a prison sentence of up to 7 years, a fine, or both.

In addition, entities and assets “owned, held, or controlled,” directly or indirectly, by a designated person are subject to the asset freeze in the same manner as the designated person. An [entity is defined](#) as being “owned or controlled directly or indirectly” if the designated person:

- holds directly or indirectly more than 50% of the entity’s shares;
- holds directly or indirectly more than 50% of the voting rights in the entity;
- holds the right directly or indirectly to appoint or remove a majority of the board of directors of the entity; or
- holds de facto control over the entity.

Also in July, the Office of Financial Sanctions Implementation (“OFSI”), the authority responsible for implementing the UK’s financial sanctions on behalf of HM Treasury, published [general guidance](#) for financial sanctions under the Sanctions and Anti-Money Laundering Act 2018.

A Departure from EU Foreign Policy

The UK has [made clear](#) that its post-Brexit foreign policy will be a departure from that of the EU, and the Regulations are a concrete step in that direction.

To be sure, the Regulations are not the first sanctions that the UK has imposed beyond the EU and UN regimes, contrary to some of the press reporting. For example, [in 2008](#), the UK used domestic anti-terrorism sanctions to freeze the UK assets of a troubled Icelandic bank during the financial crisis that year. [In 2011](#), the UK introduced its own sanctions regime against Iran, which prohibited UK financial institutions from doing business with Iranian banks. And [in 2016](#) (repeated in [2020](#)), the UK imposed

sanctions on two Russian individuals whom it believed to be involved in the 2006 death of Alexander Litvinenko.

Further, the UK has also been rebuffed in the recent past from being able to impose sanctions it sought. For example, in 2017, the [G7 rejected](#) then-Foreign Secretary Boris Johnson's proposal for sanctions against Russia in connection with chemical weapons use in Syria.

The Regulations enable the UK to, in its own words, "work independently with allies such as the US, Canada, Australia," in addition to the EU. The first designations under the Regulations are evidence of its move towards a foreign policy in line such countries. Along with the Regulations, the UK has designated 49 individuals and organisations under the Regulations.

The 49 designated persons are described as Russian nationals involved in the death of Sergei Magnitsky, Saudi nationals involved in the death of Jamal Khashoggi, Myanmar generals involved in violence against the Rohingya people, and organisations involved in forced labour in North Korea. There is substantial overlap in the list of designees under the Regulations with those designated under the US's Global Magnitsky Sanctions, which targets similar human rights violations. It is expected that the list of those designated under the Regulations will grow.

The reach of the Regulations has also been extended to cover many of the offshore financial centres linked to the United Kingdom. For example, equivalent regulations have been enacted in or for the [Isle of Man](#), [Jersey](#), [Guernsey](#), the [Cayman Islands and the British Virgin Islands](#), while under [Gibraltar's Sanctions Act 2019](#) UK sanctions have automatic effect. Bermuda is likely to implement the Regulations as well.

A Broad View of Sanctions Jurisdiction

In this context those concerned with sanctions compliance should recall the broad view of the territorial reach of the UK's sanctions as espoused by OFSI.

In addition to all conduct within the territory and territorial waters of the UK, and conduct of all "UK persons" (UK nationals or bodies incorporated or constituted under the law of any part of the UK), wherever they are in the world, [OFSI has warned](#) that a breach of a sanctions prohibition, or a failure to comply with a sanctions obligations merely needs a "UK nexus" to come within its enforcement purview. In OFSI's view, examples of a sufficient UK nexus include "*a UK company working overseas, transactions using clearing services in the UK, actions by a local subsidiary of a UK company (depending on the governance), action taking place overseas but directed from within the UK, or financial products or insurance bought on UK markets but held or used overseas.*"

In Sum

The UK's new, unilateral Global Human Rights Sanctions Regulations 2020 mark a shift in practice reflecting the reality of post-Brexit Britain. The British government now has a tool with which to unilaterally and swiftly give effect to some of its own foreign policy goals. This is almost certainly the start of a new trend and over time it is likely that the UK's sanctions regime will differ more and more from that imposed by the EU. Overlap in many of those designated will no doubt remain but global sanctions compliance will increasingly require adherence to the UK's independent sanctions in addition to those from the US, the UN and the EU.

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