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# New UK Sanctions and Export Controls Rules – Top 10 Takeaways

***The new rules are set to go in effect when the UK leaves the European Union on 31 December at 11 p.m. GMT.***

The United Kingdom's transition period for withdrawing from the European Union is scheduled to end on 31 December 2020 at 11 p.m. GMT. Subject to certain exceptions (particularly regarding Northern Ireland), the UK will at that point no longer automatically implement EU laws — with important ramifications for the UK's sanctions and export controls regimes.

This *Client Alert* sets out top 10 takeaways for how the end of the transition period will affect sanctions and export controls in the UK.

## 1. The UK will implement a new, independent set of sanctions regimes

The UK will implement a new set of autonomous sanctions regimes, separate from the EU regimes that the UK has previously applied.

The UK will implement the new sanctions regimes via regulations enacted pursuant to the Sanctions and Anti-Money Laundering Act 2018 (SAMLA).

Many of these regulations are already available online. The UK government's web pages on sanctions and export controls will be updated when the regulations take effect at 11 p.m. GMT on 31 December 2020.

## 2. UK and EU sanctions regulations may diverge over time

Currently, the UK's new sanctions regulations broadly replicate the existing EU legislation. However, the UK and EU's approaches may diverge over time.

Earlier in 2020, the UK introduced its own set of sanctions targeting global human rights offenders pursuant to SAMLA. This predated the EU's version of a human rights-focused sanctions regime by several months.

## 3. The UK and EU regulations will contain textual differences

The new UK sanctions regulations currently aim to produce the same policy effects as the original EU regimes; however, the transition into UK law has produced several changes.

For instance, several EU regimes concerning sanctions relating to Russia have been amalgamated into one set of UK sanctions: the Russia (Sanctions) (EU Exit) Regulations 2019 (the UK Russia Regulations).

Similarly, the UK's new sanctions regulations reflect differences in drafting style from EU regulations. For instance, whereas EU regulations might include wording making it an offence to "sell, supply, transfer or export, directly or indirectly" certain restricted goods to particular persons or places, the UK drafting may instead set out a series of separate clauses prohibiting each individual action.

Some changes have additional significance. For instance, the UK Russia Regulations appear to go beyond the original EU legislation in requiring a licence for the provision of financial services relating to certain energy-related goods not only "for use in Russia" but also "to a person connected with Russia" (as defined in the UK Russia Regulations).

## 4. The shift in focus from EU to UK-related restrictions may have a number of consequences

In addition to the textual differences noted above, the new UK sanctions regulations will reflect the fact that they affect persons under the jurisdiction of the UK, not the EU.

For instance:

- The relevant EU regulation on Russia prohibiting dealing with certain transferable securities or money market instruments for particular Russian companies also captures such dealings with those companies' 50% or more-owned subsidiaries that are established "outside" the EU. That prohibition excludes those Russian companies' EU subsidiaries unless they are acting on behalf or at the direction of a designated Russian company or non-EU subsidiary.

- By contrast, the UK Russia Regulations only capture such dealings if those Russian companies' subsidiaries are incorporated "under the law of a non-UK country". Accordingly, while the UK's prohibition will not apply to those Russian companies' UK subsidiaries (unless acting on behalf or at the direction of a designated Russian company or non-UK subsidiary), it will apply to their EU subsidiaries. As the UK government's guidance notes: "This differs from the EU sanctions regime".

- Similarly, whereas the EU regulations featured an exemption for loans that make funds available for non-prohibited trade between the EU and any third State, the equivalent exemption in the UK Russia Regulations requires the underlying trade to have a UK nexus.

The UK has also largely retained the substance of the EU's so-called "Blocking Regulation", which prohibits compliance with certain US sanctions that the UK (like the EU) considers "extraterritorial" and to unduly affect "non-U.S. persons in any jurisdiction". However, it should be noted that:

- The EU Blocking Regulation contains an exception permitting requests for compliance with certain listed US sanctions relating to Iran and Cuba by EU persons if "non-compliance would seriously damage their interests or those of the [EU]". The UK government guidance on the "retained Blocking Regulation" indicates that the UK exception will permit requests for compliance by UK persons "if not doing so would cause serious damage to their interests or the interests of the UK".

- After 31 December 2020 at 11 p.m. GMT, it will no longer be the European Commission that manages and enforces the Blocking Regulation for the purposes of the UK sanctions but rather the UK's Secretary of State for International Trade.

## 5. The UK will issue "General Licences" for the first time

The UK government notes that the power to issue General Licences is being introduced under many of the UK's new autonomous sanctions regimes.

As in the US, these General Licences will allow multiple parties to undertake specified activities that would otherwise be prohibited by sanctions regulations without the need for a specific licence.

Users of a General Licence will be required to notify the UK's Office of Financial Sanctions Implementation (OFSI) and keep records of any activity taken pursuant to that licence.

## 6. The UK's sanctions lists will be updated on 31 December 2020 at 11 p.m.

OFSI is part of Her Majesty's Treasury. Through OFSI, HM Treasury presently publishes a "consolidated list" of asset all asset freeze targets (the Consolidated List) under the EU regulations and any current UK sanctions that go beyond the EU measures.

On 31 December 2020 at 11 p.m. GMT, OFSI will update this list so that it only includes financial sanctions targets under the SAMLA-derived regulations or other relevant UK legislation (e.g., the UK's Anti-terrorism, Crime and Security Act 2001).

The UK's Foreign, Commonwealth and Development Office (FCDO) plans to publish a separate "UK Sanctions List" that will (after 31 December 2020 at 11 p.m. GMT) contain all individuals, entities, and ships specified or designated under SAMLA or its derivative regulations — including not only those designated under financial sanctions, but also under immigration, trade, and transport sanctions.

## 7. A "Bridging Document" should help facilitate sanctions screening

The UK government has announced that it will publish a "Bridging Document" to facilitate sanctions screening as a result of the changes to the Consolidated List.

The Bridging Document will be identical to the Consolidated List as published on 31 December 2020 at 10:59 p.m., with only certain administrative fields updated to reflect the changes made at 11 p.m.

While the UK government cautions that the Bridging Document is not a substitute for the Consolidated List, it is provided to allow separate screenings against certain administrative fields, so as to minimize the number of flags on a re-screen of the Consolidated List.

## 8. The UK will provide new rules relating to "ownership and control"

The Council of the EU had previously issued non-binding guidance on how to determine whether an entity was owned or controlled by a target of asset-freezing sanctions for the purposes of EU sanctions compliance.

The UK's new sanctions regulations, on the other hand, will contain new statutory definitions and guidance. The new UK sanctions that have been published to date typically contain common language to the effect that an entity will be deemed "owned or controlled directly or indirectly" by another person in one of the following circumstances:

- The person holds (directly or indirectly) more than 50% of the shares or voting rights in the entity.

- The person has the right (directly or indirectly) to appoint or remove a majority of the board of directors of the entity.

- It is reasonable to expect that the person would be able to ensure the affairs of the entity are conducted in accordance with the person's wishes.

New UK sanctions regulations containing such language also typically contain a schedule containing further guidance in the form of "rules for interpretation" of the regulations on attribution.

Care should accordingly be taken to use appropriate diligence to avoid dealing with an entity that the UK authorities would consider "owned or controlled" by a target of asset-freezing sanctions.

## 9. Export controls will be impacted by the UK's legal transition to "third country" status

As of 31 December 2020 at 11 p.m., EU law will no longer have automatic effect in the UK. The UK will accordingly be treated as a "third country" from the perspective of EU law. (As this *Alert* will explain below, this is subject to certain exceptions — particularly in respect of Northern Ireland, which will continue to be subject to certain EU laws automatically.)

In a similar manner to how the new UK sanctions regulations will, at least initially, broadly replicate the existing EU sanctions regime, the main export control regulations such as the EU Dual-Use Regulation (notably the version in force as of 15 December 2020), will essentially be retained and transposed into UK law.

Nevertheless, the UK's transition to "third country" status will impact licensing requirements. Persons exporting between the UK, the EU, and other countries may need to consider whether their current licences will continue to have legal effect, and whether they need to seek new licences either from the UK or a competent EU Member State.

For operators using the present legislation and licences produced pursuant to the EU's Dual-Use Regulation, the UK government advises as follows:

- From the UK to the EU (and the Channel Islands):
  - Operators will require an export licence issued by the UK if they are exporting dual-use items from the UK to the EU (or the Channel Islands). (This provision is subject to an exception regarding Northern Ireland, as elaborated upon later in this *Alert*.)
  - The UK's Export Control Joint Unit has published an "Open General Export Licence" (OGEL) for exports of dual-use items to EU countries (and the Channel Islands). This OGEL removes the need to apply for individual licences and can be used from 1 January 2021. Operators must nonetheless register through the UK's online export licensing system, SPIRE.
- From the EU to the UK:
  - Operators will need an export licence issued by the competent EU Member State for exporting dual-use items from the EU to the UK.

  - The EU's Dual-Use Regulation provides for certain "Union General Export Authorisations" for the export of certain dual-use items to certain third countries under certain conditions. The category of "EU001" provides a Union general export authorisation for certain low-risk transactions, such as exports to Australia, Canada, Japan, New Zealand, Norway, Switzerland, and the US. Following the European Commission's proposal, the EU is anticipated to add the UK as a permitted destination under EU001 in order to mitigate the administrative burden and risks of disruption.

- From the UK to a non-EU country:

  - Licences that operators already have to export dual-use items to a non-EU country issued by the UK will remain valid for export from the UK.

  - An export licence issued by an EU Member State will, however, no longer be valid for export from the UK.

- From the EU to a non-EU country

  - An export licence issued in the UK will no longer be valid to export dual-use items from an EU Member State.

  - Operators who hold an export licence previously issued by the UK, but who intend to export a dual-use item from an EU Member State to a non-EU country will need an export licence issued by an EU Member State.

## 10. The Northern Ireland Protocol will produce certain export control exceptions

As a result of the Northern Ireland Protocol, certain EU laws, including regulations and directives relating to strategic export controls (such as dual-use goods), will continue to apply in Northern Ireland.

The UK government has accordingly requested affected operators to indicate, via SPIRE, whether the export has a nexus relating to Northern Ireland.

As explained in recent UK government guidance, the regime applicable to the export of dual-use goods to and from Northern Ireland is anomalous: the UK government has clarified that there will be no additional licence requirements for the export of dual-use goods from Northern Ireland to the EU, or to move dual-use goods between Northern Ireland and Great Britain.

The situation surrounding Northern Ireland may remain dynamic, and operators with a connection to Northern Ireland should continue to monitor developments so as to remain alert to potential requirements that may arise.

If you have questions about this *Client Alert*, please contact one of the authors listed below or the Latham lawyer with whom you usually consult:

**Les P. Carnegie**
les.carnegie@lw.com
+1.202.637.1096
Washington, D.C.

**Charles Claypoole**
charles.claypoole@lw.com
+44.20.7710.1178
London

**William M. McGlone**
william.mcglone@lw.com
+1.202.637.2202
Washington, D.C.

**Eric S. Volkman**
eric.volkman@lw.com
+1.202.637.2237
Washington, D.C.

**Elizabeth K. Annis**
elizabeth.annis@lw.com
+1.202.637.1011
Washington, D.C.

**Andrew P. Galdes**
andrew.galdes@lw.com
+1.202.637.2155
Washington, D.C.

**Thomas F. Lane**
thomas.lane@lw.com
+44.20.7710.3030
London

**Robert Price**
robert.price@lw.com
+44.20.7710.4682
London

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