

UK Government Introduces New Human Rights Sanctions Regime

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International Trade, Business and Human Rights

On 6 July 2020, the UK Government announced the creation of a new UK human rights sanctions regime, which is the first independent UK sanctions regime to be established under the Sanctions and Anti-Money Laundering Act 2018 (“SAML 2018”). The [UK Global Human Rights Sanctions Regulations 2020](#) (the “Regulations”) establish a framework to impose asset freezing sanctions and travel bans on individuals and entities that are, in the judgment of the UK Government, known or reasonably suspected to be involved in significant human rights abuses. The Government also published [guidance](#) regarding the considerations that it will take into account when evaluating possible targets for future designations under the Regulations.

The new UK measures have been described colloquially as the UK’s “Magnitsky” sanctions, in recognition of Russian lawyer Sergei Magnitsky, who died in suspicious circumstances in 2009 after investigating allegations of corruption by Russian interior ministry officials. Mr. Magnitsky’s death led to campaigns around the world to apply sanctions against persons deemed to have engaged in human rights abuses. The UK Regulations follow the imposition of “Magnitsky” human rights-related sanctions by the United States and Canada in 2012 and 2017, respectively. The European Union is in the course of evaluating a similar sanctions regime, although it has not yet acted to impose one.

In parallel with the publication of the Regulations and guidance, the UK Government announced the first wave of designations under the new regime. The initial round of designations targets 49 individuals and entities from Russia, Saudi Arabia, Myanmar and North Korea. Further designations are expected in the near future, as the UK Foreign Secretary has [indicated](#) in a House of Commons statement that the Government is already working to identify the next round of targets.

The Regulations are particularly noteworthy insofar as they represent the first occasion on which the UK Government has imposed unilateral economic sanctions under national UK law since the UK’s departure from the European Union earlier this year. In terms of their functional effect, the Regulations are modeled on existing UK asset-freezing and travel-ban sanctions, and therefore do not break significant new ground as a matter of substantive sanctions law.

This alert: (i) provides an overview of the legal framework of the new global human rights sanctions regime; (ii) explains the mechanism for making designations issued under the Regulations and the effect of such a designation; and (iii) considers the potential future implications of these developments.

Overview of the Legislative Framework

Historically, the UK Government has rarely imposed economic sanctions unilaterally against designated countries, entities, or individuals, as the implementation of sanctions regimes was addressed largely through the legal framework of the EU. As a consequence of the UK's departure from the EU ("Brexit"), the Government enacted the SAMLA 2018, which provides a domestic legal framework enabling the United Kingdom to continue implementing pre-existing EU sanctions that were incorporated into UK law through the Brexit process, and to introduce its own independent sanctions regimes.

In this regard, section 1(1) of the SAMLA 2018 authorises the imposition of sanctions where the Government "considers that it is appropriate" to do so for purposes of compliance with United Nations or other international obligations, and for other specified purposes. Section 1(2) of the SAMLA 2018 specifically authorises the making of sanctions regulations where the purpose is to:

- provide accountability for, or be a deterrent to, gross violations of human rights;
- otherwise promote compliance with international human rights law, or respect for human rights; or
- promote compliance with international humanitarian law.

Activities Addressed by the Regulations

The UK Foreign Secretary issued the Regulations in reliance on the powers summarised above. The Regulations are designed to impose sanctions against state or non-state actors who are determined to have engaged in conduct that violate an individual's:

- right to life;
- right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment; or
- right to be free from slavery, not to be held in servitude, or to be required to perform forced or compulsory labour.

The Government has [explained](#) its decision to focus on these specific human rights on the basis that "violations and abuses of these particular rights directly concern the physical and mental integrity of the person, and have a devastating and often irreversible impact on individuals, as well as on wider society".

Powers Conferred by the Regulations

The Regulations empower the Secretary of State to designate “involved persons” for sanctions if the Secretary of State:

- has “reasonable grounds to suspect” that the relevant person is “involved in” activities of the types described above; and
- considers that the designation of the relevant person is “appropriate”, having regard to the purpose of the Regulations.

A person could be designated as an “involved person” if they:

- are or have been “involved in an activity” described above;
- are owned or controlled, directly or indirectly, by a person who is or has been involved in such an activity;
- are acting on behalf, or at the direction, of a person who is or has been involved in such an activity; or
- are a member of, or associated with, a person who is or has been involved in such an activity.

Under regulation 6(3) of the Regulations, a person will be “involved in an activity” falling with the Regulations if they:

- are responsible for or engages in activities of the kind that the Regulations are intended to address;
- facilitate, incite, promote or provide support for such an activity;
- conceal evidence of such an activity;
- provide financial services, or make available funds, economic resources, goods or technology, knowing or having reasonable cause to suspect that those financial services, funds, economic resources, goods or technology will or may contribute to such an activity;
- provide financial services, or make available funds, economic resources, goods or technology to a person responsible for or engaging in such an activity;
- profit financially or obtain any other benefit from such an activity;
- are responsible for the investigation or prosecution of such an activity and intentionally or recklessly fail to fulfil that responsibility; or
- contravene, or assist with the contravention of, any provision of part 3 of the Regulations, which addresses the provision of financing and economic resources to designated persons.

Notably, the foregoing criteria are used in determining *whether to designate* a given person. They would not serve as criteria that would indirectly impose sanctions against a non-listed party that happens to meet any of those criteria. Thus, for example, the fact that a non-listed person is “associated with” a designated party would not, in itself, serve to trigger the direct application of asset-freezing sanctions against the non-listed person. However, being “associated with” a designated party could ultimately cause a non-listed person to be

designated under the Regulations in the future. (Nevertheless, as discussed below, a non-listed person would be subject to asset-freezing sanctions under the Regulations if the non-listed person is majority-owned or controlled by a designated person or entity.)

Scope and Effect of the Regulations

The Regulations apply within the UK and in relation to the conduct of all UK persons, wherever in the world they are located. They also apply to all companies established in any part of the UK, including branches of UK companies based overseas.

The effect of the Regulations is to impose asset freezes and travel bans on designated persons, subject to certain limited exceptions and licences set forth in the Regulations. A person who contravenes the Regulations commits a criminal offence, punishable by a maximum penalty of seven years imprisonment and/or a fine.

Asset freeze

The Regulations impose financial sanctions through a targeted asset freeze on designated persons. This involves the freezing of funds and economic resources (including non-monetary assets, such as property or vehicles) of designated persons, and ensuring that funds and economic resources are not made available to, or for the benefit of, designated persons, either directly or indirectly. The Regulations also prohibit the intentional participation in activities that are known to have the object or effect of directly or indirectly circumventing the foregoing restrictions, or enabling or facilitating the contravention of the m.

The specific terms of the Regulations' asset-freezing provisions follow the same model as those set forth in other UK sanctions measures, implemented over the last year in anticipation of Brexit to incorporate pre-existing EU asset-freezing sanctions into UK law. The Regulations therefore do not represent a fundamental substantive change in how the UK applies asset-freezing sanctions. Notably, as with other recent UK sanctions legislation, the Regulations apply asset-freezing sanctions not only to listed parties, but also to non-listed parties that are "owned or controlled directly or indirectly . . . by the designated person." The Regulations defines the term "owned or controlled" as including circumstances where (1) a designated person holds, directly or indirectly, more than 50% of the shares or voting rights in a non-listed entity, otherwise has the right (directly or indirectly) to appoint or remove a majority of the board of directors of a non-listed entity, or (2) it otherwise "*is reasonable, having regard to all of the circumstances to expect that [a designated party] would (if [the designated party] chose to) be able, in most cases or in significant respects, by whatever means and whether directly or indirectly, to achieve the result that affairs of [a non-listed party] are conducted in accordance with [the designated party's] wishes*".

The foregoing standards represent a slight departure from EU sanctions law. While the EU has, for many years, maintained a baseline standard of extending asset-freezing sanctions to non-listed parties that are "owned or controlled" by designated persons and entities, the EU standard operates as a rebuttable presumption rather than a static rule—it can be rebutted if, in the circumstances of an individual case, it is apparent that dealing with a non-designated party will not result in the conferral of any economic benefit to a designated person or entity. The new UK ownership/control standard does not, at least on its face, contain similar flexibility. The UK standard (and associated guidance, set forth in Schedule 1 of the Regulations and in other similar UK sanctions measures) also employs terminology that varies from relevant EU

guidance and may prove to be challenging to implement as a matter of practice. The extension, for instance, of UK asset-freezing sanctions to non-listed parties where it is “reasonable . . . to expect” that a designated party can control the non-listed party “in most cases or in significant respects” could, in particular, present ambiguities in a wide range of cases.

Travel ban

The Regulations also impose a travel ban on designated persons, by providing that such persons will be “excluded persons” under section 8B of the Immigration Act 1971 (as amended). In practice, this means that such persons will be refused leave to enter or remain in the UK.

Licences

The Regulations include certain targeted exceptions, in line with other recently-enacted UK sanctions measures, and allows for parties to seek licences to engage in transactions otherwise prohibited under the Regulations’ asset-freezing measures. HM Treasury will consider licensing requests under the Regulations in accordance with [existing guidance](#) issued by the Office of Financial Sanctions Implementation. The UK licensing regime represents a departure from the EU sanctions, as it affords the UK Government greater flexibility to grant exceptions to asset-freezing measures than is currently possible under EU legislation (where the licensing options are more closely circumscribed in the underlying sanctions regulations).

Potential Future Implications

- **Potential for further designations in the near term:** Announcing the new Regulations and designations, the UK Government [stated](#) that it intended to “showcase[] our commitment to the rules-based international system and to stand[] up for victims of human rights violations and abuses around the world”. The UK Foreign Secretary’s observation that the Government is already working on the next wave of designations suggests that the Regulations could become an important tool as the UK pursues a post-Brexit foreign policy. Prominent parliamentarians have already urged the Government to use the Regulations to designate persons who have, for instance, been involved in the suppression of pro-democracy protests in Hong Kong, and abuses against the Uyghur population in Xinjiang, China.
- **Potential extension of Regulations to corrupt practices:** The UK Foreign Secretary has [described](#) the new Regulations as a “point of departure”, and he has indicated that the Government will be looking to strengthen the new regime in the months ahead. In particular, he noted that the Government is considering how the regime might be expanded to address corruption, given that corruption and human rights abuses are often interlinked. However, the timeline for these future developments is uncertain, as the UK Foreign Secretary has expressed his desire to avoid inadvertent missteps, and to “get [the legal definition of corruption] right and to avoid all sorts of people bringing litigation against the Government regarding people on the list”.
- **Independence from, but coordination with, the European Union post-Brexit:** The measures constitute an early signal of the willingness of the UK Government to maintain a robust sanctions regime post-Brexit, while forging a more independent path from the EU, including by aligning with key non-EU allies (such as the United States, which has publicly praised the UK’s efforts in implementing the Regulations). However, the UK Foreign Secretary’s announcement also acknowledged the continuing value and

importance of coordinated measures and collective action with international partners. In particular, during the debate regarding his House of Commons statement, he indicated that the Government will “strongly support efforts to bring an EU human rights sanctions regime into effect”, and stands ready to “co-ordinate with our European partners on future measures”.

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