

UK Introduces Sanctions Regime Targeting Global Human Rights Offenders

The regulations will enable the UK government to sanction persons “involved” in human rights abuses — potentially anywhere in the world.

On 6 July 2020, the UK Foreign Secretary announced the introduction of the [Global Human Rights Sanctions Regulations 2020](#) (Regulations), which is secondary legislation enacted pursuant to the [Sanctions and Anti-Money Laundering Act 2018](#) (SAML A). After the UK withdrawal from the European Union, SAML A will provide the UK government with the legal basis to impose sanctions, such as through the Regulations, independently from the United Nations or the EU.

The Regulations bear similarities to sanctions regimes targeting human rights already adopted by the United States and Canada. The Regulations will provide a legal basis for the UK government to designate as sanctions targets (in practice, targets of asset-freeze sanctions and travel restrictions) persons who are or have been “involved” in certain activities which, if they had been carried out by or on behalf of a State, would amount to serious violations of certain human rights by that State. Specifically, these human rights include the:

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

The Regulations emphasise that involvement in such activities may constitute a breach of these human rights, “whether or not the activity is carried out by or on behalf of a State”.

In parallel with its announcement of the Regulations, the UK [released a list](#) of 47 individuals and two organisations designated under the Regulations for a range of alleged global human rights violations.

Designated Persons

The Regulations enable the UK government (through the Foreign Secretary) to designate persons as asset-freeze targets or to impose restrictions on their entry to the UK, or both.

This measure corresponds to EU and UK asset-freeze regimes administered by the UK Treasury's Office of Financial Sanctions Implementation. In particular:

It is prohibited to “deal with” “funds or economic resources owned, held or controlled by a designated person”.

- The terms “funds” and “economic resources” are broadly defined to include all types of assets. Funds or economic resources in which the designated person has any legal or equitable interest are considered to be “owned, held or controlled” by the designated person for the purposes of the Regulations.
- The term “deal with” is also broad and includes all types of use, alteration, movement, transfer, or any activity that allows the designated person access to or use of the funds or economic resources. The use of the funds or economic resources in exchange for funds, goods, or services is also prohibited.

It is prohibited to make “funds” or “economic resources” available, directly or indirectly, to or for the benefit of designated persons.

- As with the current UK asset-freeze sanctions regimes, making available funds or economic resources to or for the benefit of a person (in reality, an entity) “owned or controlled” by a designated person is prohibited unless there is no reasonable cause to suspect that the designated person will benefit from those funds or economic resources.
- An entity is “owned or controlled directly or indirectly” by a designated person if (1) the latter owns 50% or more of the shares or voting rights in that entity, or is able to appoint or remove a majority of the board of directors, and (2) the designated person would “be able, in most cases or in significant respects” and by whatever means, to ensure that the entity directs its affairs in accordance with the wishes of the designated person. This definition differs slightly from EU guidance regarding the meaning of similar concepts under the EU asset-freeze sanctions regimes.

Additionally, the Regulations include the customary strict prohibition on intentional activities designed to circumvent or to “enable or facilitate” contraventions of the asset freeze.

Becoming a Designated Person Under the Regulations

The Regulations provide a number of ways in which a person may be designated by the Foreign Secretary for “involvement” in the human rights violations identified by the Regulations.

Beyond merely being “responsible for or engaging” in violations of these human rights, persons may be considered “involved” if they:

- Facilitate or conceal evidence of the human rights violations
- Provide resources that they know or reasonably suspect may contribute to the human rights violations, or provide resources to persons responsible for such violations
- Profit financially from human rights violations, or, having been made responsible for the investigation or prosecution of such violations, intentionally or recklessly fail to fulfil that responsibility
- Assist in breaching the asset freezes imposed on designated persons

The Foreign Secretary has further scope to consider whether persons are owned or controlled by, acting on behalf of or at the direction of, or associated with persons “involved” in the human rights violations. Such persons may themselves be considered “involved” for the purposes of the Regulations.

If the Foreign Secretary has reasonable grounds to suspect someone of being an “involved person”, the Secretary of State may designate that person under the Regulations, having regard to the purpose of deterring and ensuring accountability for the human rights violations targeted by the Regulations and the “likely significant effects of the designation on that person”.

Policy Paper

The UK’s Foreign and Commonwealth Office (FCO) has released a [policy paper](#) containing a non-exhaustive list of factors to which the UK government may have regard when considering designation. These include:

- The UK government’s human rights priorities, which go beyond the advancement of the three rights described above and also include promoting freedom of the press and freedom of religion
- The nature of the victim, with particular attention potentially granted to individuals such as journalists, civil society activists, and whistleblowers
- The seriousness of the conduct, including whether the conduct is systematic in nature or is part of a pattern of behaviour
- Elements of an international profile or collective action, with the UK Government likely to give particular consideration to cases that draw similar sanctions from international partners
- The role of non-State actors, with the UK government likely to give particular attention to non-State actors who have acquired a significant degree of control, authority, and organisation over people or an area
- The status and connection of the person involved, with the UK government more likely to make designations that would have a significant impact in providing accountability for the violation or abuse in question
- The effectiveness of other measures, with the UK government likely to give particular attention to cases in which the relevant jurisdiction’s law enforcement authorities have been unwilling or unable to act

Conclusion

Following the UK’s withdrawal from the EU, the UK will continue to apply UN sanctions, and during the transition period (which is scheduled to last until 31 December 2020), the UK will continue to apply EU sanctions.

However, the emergence of the Regulations reflects the UK’s intention to implement an autonomous sanctions regime independent of that enforced by the EU. Nonetheless, the Foreign Secretary’s [statement to Parliament](#) indicated that the UK intends to support efforts to bring into effect a similar EU human rights sanctions regime and to coordinate with other European countries on future measures. The statement also indicated that the FCO is considering how to build on the Regulations to include other human rights abuses and corrupt conduct as activities that may result in UK sanctions designations.

Businesses subject to the UK sanctions regime must continue to take care to comply with the prohibitions on doing business with designated persons, including those newly designated persons targeted by the Regulations. Businesses operating globally that have adopted a policy not to engage in activities with persons subject to international and national sanctions regimes should ensure that their policies and procedures are updated to reflect this new regime, given that failure to do so may result in legal or at least reputational consequences.

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