

Sanctions in 2021: Brexit, Biden and the EU Blocking Regulation



Two major political events in early 2021 are likely to have significant impacts on international sanctions: Brexit and Biden.

Over the course of two articles, we will consider upcoming and potential developments in sanctions as a result of: the end of the Brexit transition period on 31 December 2020; and Joe Biden becoming President of the United States in January 2021.

UK Sanctions after the end of the Transition Period

What will happen after 11.00pm on 31 December 2020?

Whilst technically the UK has already left the EU, throughout the transition period, EU sanctions have remained in force in the UK.

That will change after 11pm on 31 December 2020. Thereafter, only UK sanctions will apply under the Sanctions and Anti-Money Laundering Act 2018 (the "**Sanctions Act**"). The UK will also continue to implement UN sanctions into UK domestic law.

That's not to say that EU sanctions will become irrelevant overnight. To ensure that there are no gaps in post-transition sanctions, EU sanctions will

continue to apply as retained law under the EU (Withdrawal) Act 2018, if the UK has not introduced its own sanctions in respect of that specific area/regime.

What do the UK sanctions look like?

Under the Sanctions Act, the UK will implement (or already has implemented) separate legislation in respect of specific sanctions regimes: e.g. Iran, Russia, Syria, Venezuela etc (there are many more targets). As well as country specific sanctions, there may also be sanctions in respect of other targets, e.g.: chemical weapons; counter terrorism; cyber-crime, etc.

The UK's sanctions regulations generally include the following detail:

- the purposes of the sanctions regime (what the UK hopes will be achieved through imposing sanctions)
- the criteria for sanctions to be imposed on a person or entity
- the type of sanctions, such as trade and financial sanctions, travel bans or transport restrictions
- details of exemptions that may apply
- details of any licences available
- how the government will enforce sanctions/potential penalties for breaches
- other rules, such as circumstances in which information about sanctions may be shared

There are also two sanctions lists which include details of those subject to sanctions: the UK sanctions list ("**UK Sanctions List**"); and the OFSI consolidated list of financial sanctions targets ("**Consolidated List**"). These can be found on the UK Government website:

<https://www.gov.uk/government/publications/the-uk-sanctions-list>

<https://www.gov.uk/government/publications/financial-sanctions-consolidated-list-of-targets/consolidated-list-of-targets>

The UK Sanctions List contains all individuals, entities and ships designated under the Sanctions Act (including all financial, immigration, trade and transport sanctions).

At the time of writing, it currently only contains designations made under the one UK specific sanctions regime in force, i.e. the Global Human Rights regime (considered further below).

The Consolidated List contains all entities/individuals designated under UN, EU and UK financial sanctions, such as asset freezing measures. (There is a separate list in respect of entities subject to certain investment ban targets with respect to Russian sanctions.)

At 11.00pm on 31 December 2020, the UK Sanctions List will be updated to include all designations made under EU sanctions which are being transitioned into UK domestic law. The Consolidated List will no longer include EU designations.

Are the UK sanctions different from the EU sanctions?

As it currently stands, the UK sanctions are broadly intended to replicate EU sanctions and to achieve the same ends. However, the UK Government has not just 'copied and pasted' the relevant EU legislation into UK domestic law; there are differences between them – both stylistically and in substance.

Taking the EU and UK Russian sanctions as an example: the UK's Russia (Sanctions) (EU Exit) Regulations 2019 merges the provisions set out in three EU regulations into one statutory instrument, which covers: sanctions against certain individual and entities (who have undermined Ukraine's territorial integrity, sovereignty and independence); sectoral measures (restricting areas of Russian finance, energy and military/defence sectors); and Crimea and Sevastopol (restrictions on investment in infrastructure and tourism as part of non-recognition of Russian control of the regions).

Moreover, when comparing the wording between the equivalent provisions in the EU and UK Russian sanctions, it is apparent that the drafting is quite different, although the end effects are broadly the same.

Aside from stylistic and drafting differences however, there are some more substantial differences between the UK and EU sanctions, such as the introduction of 'General Licences' and definition of 'ownership and control'. This was also considered in a previous update, available [here](#).

In summary, while the UK sanctions are intended to broadly replicate the current EU sanctions, they are not the same.

Moreover, as set out further below, the two regimes may diverge further in the future, given the ever-changing nature of sanctions.

It is therefore crucial to read and understand the new UK regulations and guidance (and the latest measures in force) – and do not count on the UK sanctions being the same as the EU's.

What may the future hold?

In July 2020, the UK effectively introduced its own version of the US Magnitsky Act, by virtue of The Global Human Rights Sanctions Regulations 2020 (the "**Global Human Rights Regulations**") (made under the Sanctions Act).

The FCO explained that 49 people had been sanctioned as a result of their involvement in some of "*the worst human rights abuses in recent memory*". As well as those involved in the killing of Sergei Magnitsky, the Global Human Rights Regulations also target Saudi nationals involved in the death of Jamal Khashoggi, Myanmar generals involved in the abuse of the Rohingya and organisations involved in North Korean gulags. They are intended to target individuals or organisations involved in serious human rights violations or abuses, not individual countries.

So why is this interesting in the context of things to come? In short, because the UK was following US sanctions rather than EU sanctions (although the EU may well introduce its own Magnitsky style legislation in due course).

While we think it is likely that the UK and EU will remain aligned on sanctions policies going forward, the UK will have the choice, should it so wish, to follow the US's lead rather than the EU's. It may also of course act independently, or ahead of, the US/EU.

Of course, this potential divergence will make sanctions compliance even more challenging for businesses, particularly those which must comply with the sanctions of more than one jurisdiction.

As to which direction the US may go under President Elect Biden and how this will impact UK/EU businesses, we consider this in next month's article.

If you have any questions or comments in relation to these issues, please do not hesitate to contact us.



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Rovine has been consistently named as one of the leading shipping and dispute resolution lawyers for the last decade by various international legal directories including Legal 500 EMEA, Chambers Global, Top 250 by Lawyer Monthly and Legal's Finest 200.

Charlotte has experience in a wide range of disputes involving international trade and commodities, shipping and general commercial matters. She works on cases heard in the Commercial Court, as well as arbitrations, often with multi-jurisdictional aspects and including urgent applications for interim relief.

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