



## UK POLICY ON SANCTIONS POST-BREXIT

**On 2 August 2017 the UK Government published its plans<sup>1</sup> for sanctions post-Brexit. This followed a 9-week consultation and the announcement of a Sanctions Bill in the Queen's speech on 21 June 2017.**

As almost all UN and EU sanctions are currently adopted in the UK through directly applicable EU Regulations, Brexit will have a significant impact on sanctions in the UK. The UK will need a new legal framework in place to continue to enforce sanctions, whether they originate from the UK or the UN.

<sup>1</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/635101/consultation-uk-future-legal-framework-sanctions-government-response.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/635101/consultation-uk-future-legal-framework-sanctions-government-response.pdf)

There are over 30 sanctions regimes in place in the UK, around 50% of which flow from UN sanctions. The UN tends to move slowly due to voting thresholds in the Security Council and the veto of permanent members. The other 50% of sanctions flow from a more responsive EU regime, which to date has been strongly influenced by the UK. After Brexit the UK will have to rely on diplomacy to continue this influence.

A new Sanctions Act will allow Government to effect its own specific sanctions regimes and individual designations through secondary legislation. Most of the measures set out in the Government's plan for this Act are familiar - international travel bans and visa restrictions, asset freezes, both financial and trade restrictions - and will be applied and enforced in a similar way post-Brexit. For example, the Government proposes to continue to designate individuals where it has "*reasonable grounds to suspect*" wrongdoing, requiring a "*sufficiently solid factual basis*" for such suspicions (this follows the approach of the EU General Court). The Government will not extend the extra-territoriality of UK sanctions: it will only act against breaches of sanctions in the case of UK companies or parent companies, sterling transactions cleared in the UK, actions directed from the UK or financial products/insurance bought on UK markets. It will also continue to limit the liability of those complying with sanctions for any damage caused to a designated person as a result of that compliance.

Key changes proposed are that (a) the EU Council will be replaced by the UK Government and (b) rights of challenge will be to UK courts. Sanctions will be subject to annual (if not more frequent) review. There will

- be a wider, retrospective obligation to report breaches of financial sanctions (not just for providers of financial services). It will be easier for the Government to freeze assets of those it "reasonably believes" to be involved in terrorism. The Government will also assume new powers not currently existing in the EU regime, including:
- Powers to seize funds and assets.
  - An interim sanctions regime applying the "*reasonable grounds to suspect*" test for individual designations.
  - Temporary management of infrastructure subject to sanctions, where there are economic, environmental, national security or safety risks.
  - New powers to investigate and gather information (not yet detailed).

The powers of the Office of Financial Sanctions Implementation (OFSI) to license otherwise sanctioned activities will be broadened. General exemptions will be available for humanitarian aid and diplomatic/consular activities. The OFSI will review licences on an ongoing basis and its decisions will be subject only to judicial review, with no statutory right of appeal: the Government considers that administrative reassessment provides sufficient safeguards and is therefore the appropriate review mechanism for sanctions decisions. Designated persons will also have a narrow statutory right of challenge in the High Court, applying judicial review principles. Use will continue of the controversial Closed Material Procedure, where sensitive information influencing decisions is kept secret. It is not yet clear whether damages will be available

where designations are successfully challenged (as under current EU rules).

The key sanctions risks for businesses post-Brexit are (a) that the UK regime will add another layer of complexity where previously only EU and UN sanctions applied and (b) that where the UK imposes sanctions independently of the UN or EU, it may do so quickly.

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