

# DISPUTE RESOLUTION ALERT: THE UK GLOBAL HUMAN RIGHTS SANCTIONS REGIME

JULY 2020

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## Overview

On 6 July 2020, the UK Government implemented the Global Human Rights Sanctions Regulations 2020 (the "**Regime**") - secondary legislation that establishes the UK's independent sanctions programme and is underpinned by the Sanctions and Anti-Money Laundering Act 2018.

Historically, the UK has largely followed EU and UN sanctions regimes. This marks the first occasion that the UK has introduced broad, standalone measures of this kind focused on tackling international human rights abuses; much like the US/Canada "Magnitsky" regimes. The Regime is also a significant step in the development of the UK's post-Brexit strategy to target human rights offenders and is intended to signify the UK Government's commitment to defending human rights on a global scale.

## The Regime

The Regime introduces sanctions that are aimed at deterring and providing accountability for activities or omissions which, if carried out by or on behalf of a state within the territory of that state (but whether or not the activity is actually carried out by or on behalf of a state), would amount to serious violation of 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 required to perform forced or compulsory labour.

49 individuals and organisations have been listed in the first wave of designations under the Regime for their responsibility in some of the gravest human rights abuses in recent history, including political assassinations, torture, degrading treatment, forced labour and servitude. The first designees include:

- **25 Russian nationals** involved in the mistreatment and death of Russian lawyer and tax auditor Sergei Magnitsky, who uncovered widespread Russian corruption by a group of Russian tax and police officials (including a former minister in the Russian Interior Ministry, prison doctors and the head of Russia's Investigative Committee)
- **20 Saudi nationals** involved in the death of journalist Jamal Khashoggi, a prominent Saudi journalist and critic of Saudi Arabia's

government, in the Saudi consulate in Istanbul (including a former Saudi royal advisor and the former deputy head of the Saudi intelligence services)

- **2 high-ranking Myanmar military generals** involved in the systematic and brutal violence against the country's Rohingya population and other ethnic minorities in 2017
- **2 North Korean government organisations** with responsibility for running the country's network of prison camps, that were implicated in forced labour, enslavement, torture and murder against prisoners

## Key Points

- **Application / targets:** the new UK sanctions have wide potential application and may be imposed on those who facilitate, incite, promote or support violations and abuses, those who conceal evidence of such activities, together with those who profit financially from human rights violations and abuses; although they are less widely-aimed than other national regimes, and are not (at least yet) intended to target those who seek to undermine the freedoms of religion, expression, association and assembly; or the rights to a fair trial and democratic elections.
- **Legal threshold:** a person may be sanctioned if there are reasonable grounds to suspect their involvement in acts or omissions amounting to human rights abuses, and if designation is considered appropriate to deter, and provide accountability for, such activities.
- **Effect of sanctions:** significantly, the Regime imposes a comprehensive asset freeze on its targets; as well as a travel ban. The asset freeze extends to "funds or economic resources owned, held or controlled by" targets; making the scope of the sanctions significantly broader – and harder to ensure compliance with – than (for example) a straight prohibition on providing new money to a listed sanctioned person. The "owned or controlled" test means that the asset freeze will extend to :
  - i. all companies directly or indirectly more than 50% owned (in terms of shares or voting rights), or whose boards of directors are controlled by, the listed sanctioned person; and
  - ii. any company which, in the circumstances, can reasonably be expected (by whatever means and whether directly or indirectly) to have its

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affairs conducted in accordance with the listed sanctioned person's wishes.

- **Breach of sanctions:** in summary, it is an offence (punishable by a fine and/or imprisonment) to make funds or economic resources available to or for the benefit of a sanctioned person (i.e. to breach the asset freeze). Given the “owned or controlled” test described above, it may prove especially practically difficult for businesses to ensure that they comply with the Regime. As always, conducting proper due diligence on current and prospective transaction partners will be crucial
- **Territorial scope:** an activity falls within the scope of the Regime if it is carried out: (i) within the UK; or (ii) outside the UK by any UK person (which includes UK-incorporated companies).

## Next Steps

As the UK continues to develop and impose its own sanctions strategy, outside of the scope of the existing EU and UN regimes, what is already an extremely complicated legal and political landscape will only grow more complex. In particular, organisations and individuals that operate in countries and sectors with a history of human rights abuses should remain particularly diligent as the landscape evolves; and all businesses incorporated in or which operate in the UK should take note of the new Regime and take steps to ensure they are compliant with it.

Key issues that may arise in future include:

- **Expanded scope of the Regime:** the UK Government is understood to be considering adding more human rights to the scope of the Regime. In addition, individuals, organisations and

governments who may be guilty of corruption may also be targeted in due course.

- **Further designations under the Regime:** the UK Government is working on further designations to be made and must keep the list under “constant review”. Many commentators have criticised China's exclusion from the initial wave of sanctions.
- **Interaction with (/overlap with) other sanctions regimes:** the UK will continue to utilise a range of tools to tackle serious human rights violations and abuses around the world, including the UN and EU multilateral sanctions regimes. The UK is required by law to enforce existing EU sanctions it is a party to until the end of the Brexit transition period on 1 January 2021. The government has said it will maintain these after that date, as well as existing UN sanctions. In practice, businesses will likely need to consider the UK regime alongside at least one or more other existing regimes.
- **Increased cooperation between other global defenders of human rights:** the Regime is intended to signpost the UK's cooperation and work with global organisations and governments – notably including the US, Canada, Australia and the EU – on human rights-focused sanctions regimes. US Secretary of State, Mike Pompeo, said that the Regime “marks the beginning of a new era for UK sanctions policy and cooperation between our two democracies”.

The development and application of sanctions regimes by the UK is a rapidly evolving topic and, particularly post-Brexit, will necessitate continuous monitoring to ensure ongoing compliance.

If you would like more information about the topics raised in this briefing, please speak to your regular contact at Weil or to any of the authors listed below.

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