



UK SANCTIONS STATUTORY INSTRUMENTS REVIEW: AFGHANISTAN

This review of the UK's autonomous sanctions regimes has been prepared for general information purposes and in order to illustrate the potential impact of the new UK sanctions provisions. This review does not constitute legal advice and should not be relied on by UK Finance members or any other parties. The impact and applicability of the new autonomous sanctions regimes will differ from firm to firm. It is important, therefore, for all parties to consider and assess the impact of the new sanctions regimes individually and, if appropriate, with the benefit of their own legal advice which takes into account their relevant activities.

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INTRODUCTION

Three sources have traditionally driven sanctions legislation in the United Kingdom. The UK currently applies and implements sanctions originating from the United Nations; sanctions originating from the European Union, commonly referred to as restrictive measures; as well as its own domestic sanctions.

European sanctions have been implemented through regulations made under the European Communities Act 1972¹. As the Transition Period comes to an end on 31st December 11:00pm GMT as agreed in the Withdrawal Agreement², EU legislation and regulations will cease to have effect in the United Kingdom.

In 2018, the UK passed the Sanctions and Anti Money Laundering Act³ which allows ministers to make sanctions regulation in application of UN sanctions or any other international obligation, or for a range of purposes⁴ (including furthering the prevention of terrorism, furthering a foreign policy objective, in the interest of international peace and security, etc.). Under this Act, a number of statutory instruments have been laid before parliament in the past few months. Most will come into force at the end of the Transition Period, with the exception of the Global Human Rights Sanctions Regulations 2020⁵, the first UK autonomous sanctions regime, which came into force on 6th July 2020.

OBJECTIVES

This paper aims to provide a helpful resource for financial institutions and other firms with a responsibility to comply with UK sanctions legislation either in the UK or overseas.

SCOPE

This paper covers statutory instruments passed in application of SAMLA and replacing regulations made under the European Communities Act 1972, as well as new autonomous regimes such as the Global Human Rights Sanctions Regulations. This paper should be read in correlation with SAMLA provisions and relevant definitions.

This review focuses on financial sanctions and related trade sanctions that could impact financial institutions and firms in international trade. It does not provide an analysis of other types of sanctions such as immigration.

The paper studies all sanctions regulations, both country and “thematic” (e.g. Global Human Rights Sanctions) sanctions regimes. The tables that follow illustrate a range of areas in which members have indicated they face difficulty preparing for the end of the Transition period. The tables are not comprehensive as there are still UK Sanctions Statutory Instruments (SIs) to be published. Many firms are still working through their post-transition period sanctions obligations, and it is likely that other issues will arise as their analysis of the legislative and regulatory framework is finalised.

¹ European Communities Act 1972 (<https://www.legislation.gov.uk/ukpga/1972/68/contents>)

² <https://www.gov.uk/government/publications/new-withdrawal-agreement-and-political-declaration>

³ Sanctions and Anti-Money Laundering Act 2018 (<https://www.legislation.gov.uk/ukpga/2018/13/contents/enacted>)

⁴ Ibid., see Chapter 1, Section 1.

⁵The Global Human Rights Sanctions Regulations 2020 (<https://www.legislation.gov.uk/uksi/2020/680/contents/made>)

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We have divided issues into the following categories:

- a) Areas where existing EU derived Sanctions requirements drop away and are not carried through to the equivalent UK autonomous SI.
- b) Areas where the UK autonomous SI brings in new Sanctions requirements not present in the equivalent EU derived SI.
- c) Areas where the spirit of the requirement remains, but the wording or language changes and causes a different opinion or obligation to arise.
- d) UK autonomous Sanctions SIs that use a different interpretation or language for a provision, causing inconsistency in the total UK Sanctions SI framework

Document Authors:

UK Finance worked in collaboration with leading Sanctions and Legal specialists all of whom contributed to this review.

Allen & Overy LLP

Matthew Townsend, Jonathan Benson, Sophie Davis.

Clifford Chance LLP

Michael Lyons, Carla Lewis, Ajay Agarwal.

Eversheds Sutherland LLP

Zia Ullah, Victoria Turner, Rachel Callister.

Herbert Smith Freehills LLP

Daniel Hudson, Joseph Duggin, Jessica Chappatte, Rebecca Critchley.

Hogan Lovells International LLP

Jamie Rogers, Ellie Rees, Sarah McQuillan.

Paul Hastings LLP

Arun Srivastava, Konstantin Burkov, Nina Moffatt.

UK Finance

Neil Whiley, Agathe Duchiron.

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The Afghanistan (Sanctions) (EU Exit) Regulations 2020.

Restrictive Measure/Category	UK SI reference	EU Legislative SI reference	Change to legal obligation	Impact
Asset freeze in relation to designated persons	The Afghanistan (Sanctions) (EU Exit) Regulations 2020, Reg.8(1)	The Afghanistan (Asset-Freezing) Regulations 2011, Reg.3(1)	(c)	<p>Low Impact</p> <p>The Afghanistan (Asset-Freezing) Regulations 2011 (the "EU SI") imposed a prohibition on dealing with funds or economic resources "<i>belonging to, or owned, held or controlled by</i>" a designated person.</p> <p>The wording of this prohibition has been amended slightly in the new Afghanistan (Sanctions) (EU Exit) Regulations 2020 (the "UK SI") to remove the reference to funds or economic resources "<i>belonging</i>" to designated persons.</p> <p>This change is unlikely to have a material impact on the obligations of financial institutions.</p>

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Restrictive Measure/Category	UK SI reference	EU Legislative SI reference	Change to legal obligation	Impact
Asset freeze in relation to designated persons	The Afghanistan (Sanctions) (EU Exit) Regulations 2020, Reg.8(5)(b)	The Afghanistan (Asset-Freezing) Regulations 2011, Reg.3(2)(b)	(c)	<p>Low Impact</p> <p>For the purposes of the prohibition on dealing with funds or economic resources owned, held or controlled by a designated person, the EU SI previously defined the phrase "<i>deals with</i>" economic resources as the "<i>exchange, or use in exchange, for funds, goods or services</i>".</p> <p>This definition has been extended slightly in the UK SI to include the pledge of economic resources as security or otherwise.</p> <p>This change is unlikely to have a material impact on the obligations of financial institutions.</p>
Asset freeze in relation to designated persons	The Afghanistan (Sanctions) (EU Exit) Regulations 2020, Reg.8(6)	The Afghanistan (Asset-Freezing) Regulations 2011, Reg.3	(b)	<p>Low Impact</p> <p>For the purposes of the prohibition on dealing with funds or economic resources owned, held or controlled by a designated person, the UK SI includes a new provision stating that funds or economic resources are "<i>owned, held or controlled</i>" by a person if that person has any legal or equitable interest in such assets, regardless of whether the interest is held jointly with any other person, or if they have any tangible property (other than real property), or bearer security which is comprised in funds or economic resources and is in their possession. This new language largely mirrors previous non-binding guidance provided by the EU.</p> <p>This change is unlikely to have a material impact on the obligations of financial institutions.</p>

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Restrictive Measure/Category	UK SI reference	EU Legislative SI reference	Change to legal obligation	Impact
Asset freeze in relation to designated persons	The Afghanistan (Sanctions) (EU Exit) Regulations 2020, Reg.8(7)	The Afghanistan (Asset-Freezing) Regulations 2011, Reg.3	(b)	<p>Potentially High Impact</p> <p>For the purposes of the prohibition on dealing with funds or economic resources owned, held or controlled by a designated person, the UK SI provides that funds or economic resources are to be "<i>treated as owned, held or controlled by a designated person if they are owned, held or controlled by a person who is owned or controlled directly or indirectly (within the meaning of regulation 7) by the designated person</i>" (emphasis added).</p> <p>This new language extends the previous prohibition on dealing with the funds or economic resources of designated persons found in the EU SI to include a new express prohibition on dealing with the funds or economic resources of <i>entities owned or controlled by</i> such designated persons.</p>
Prohibition on making funds and economic resources available to designated persons	The Afghanistan (Sanctions) (EU Exit) Regulations 2020, Reg.9(4)	The Afghanistan (Asset-Freezing) Regulations 2011, Reg.4	(b)	<p>Potentially High Impact</p> <p>The prohibition on making funds available directly or indirectly to designated persons is extended by the UK SI, which provides expressly that funds are made available indirectly to a designated person if made "<i>available to a person who is owned or controlled directly or indirectly (within the meaning of regulation 7) by the designated person</i>" (emphasis added).</p> <p>This new prohibition is more restrictive than previous non-binding guidance by the EU, which provided that there was a presumption that making funds available to a person owned or controlled by a designated person was to make them available indirectly to a designated person, albeit this presumption could be rebutted on the facts.</p>

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Restrictive Measure/Category	UK SI reference	EU Legislative SI reference	Change to legal obligation	Impact
Prohibition on making funds and economic resources available to designated persons	The Afghanistan (Sanctions) (EU Exit) Regulations 2020, Reg.10(4)(b)	The Afghanistan (Asset-Freezing) Regulations 2011, Reg.5(2)(b)	(c)	<p>Low Impact</p> <p>For the purposes of the prohibition on making funds available to any person for the benefit of a designated person, the EU SI previously defined the phrase "<i>financial benefit</i>" to include the discharge of a financial obligation for which the designated person is wholly or partly responsible.</p> <p>This definition has been extended slightly in the UK SI to include a "<i>partial discharge</i>" of such financial obligations as well.</p> <p>This change is unlikely to have a material impact on the obligations of financial institutions.</p>
Prohibition on making funds and economic resources available to designated persons	The Afghanistan (Sanctions) (EU Exit) Regulations 2020, Reg.11(4)	The Afghanistan (Asset-Freezing) Regulations 2011, Reg.6	(b)	<p>Potentially High Impact</p> <p>For the purposes of the prohibition on making economic resources available to designated persons, the UK SI provides that economic resources are made available indirectly to a designated person if made "<i>available to a person who is owned or controlled directly or indirectly (within the meaning of regulation 7) by the designated person</i>" (emphasis added).</p> <p>This new prohibition is more restrictive than previous non-binding guidance by the EU, which provided that there was a presumption that making economic resources available to a person owned or controlled by a designated person was to make them available indirectly to a designated person, albeit this presumption could be rebutted on the facts.</p>

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Prohibition on making funds and economic resources available to designated persons	The Afghanistan (Sanctions) (EU Exit) Regulations 2020, Reg.12(4)(b)	The Afghanistan (Asset-Freezing) Regulations 2011, Reg.7(2)(b)	(c)	<p>Low Impact</p> <p>For the purposes of the prohibition on making economic resources available to any person for the benefit of a designated person, the EU SI previously defined the phrase "<i>financial benefit</i>" to include the discharge of a financial obligation for which the designated person is wholly or partly responsible.</p> <p>This definition has been extended slightly in the UK SI to include a "<i>partial discharge</i>" of such financial obligations as well.</p> <p>This change is unlikely to have a material impact on the obligations of financial institutions.</p>

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Restrictive Measure/Category	UK SI reference	EU Legislative SI reference	Change to legal obligation	Impact
Ownership and control provisions	The Afghanistan (Sanctions) (EU Exit) Regulations 2020, Reg.7	-	(c)	<p>Potentially High Impact</p> <p>The UK SI provides that, for the purposes of the asset freeze and prohibition on making funds or economic resources available, a person will be deemed to be "<i>owned or controlled directly or indirectly</i>" by another person if either of two conditions are met.</p> <p>(1) <i>In this Part, a person who is not an individual ("C") is "owned or controlled directly or indirectly" by another person ("P") if either of the following two conditions is met (or both are met).</i></p> <p>(2) <i>The first condition is that P—</i></p> <p style="margin-left: 40px;">(a) <i>holds directly or indirectly more than 50% of the shares in C,</i></p> <p style="margin-left: 40px;">(b) <i>holds directly or indirectly more than 50% of the voting rights in C, or</i></p> <p style="margin-left: 40px;">(c) <i>holds the right directly or indirectly to appoint or remove a majority of the board of directors of C.</i></p> <p>(3) <i>Schedule 1 contains provision applying for the purpose of interpreting paragraph (2).</i></p> <p>(4) <i>The second condition is that it is reasonable, having regard to all the circumstances, to expect that P would (if P 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 C are conducted in accordance with P's wishes.</i></p> <p>This new provision extends and replaces non-binding guidance previously provided by the EU.</p> <p>Schedule 1 sets out the rules of interpretation for determining ownership and control. This may have an impact on financial institutions to the extent it imposes an additional due diligence burden to investigate whether the conditions outlined above are satisfied.</p>

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Restrictive Measure/Category	UK SI reference	EU Legislative SI reference	Change to legal obligation	Impact
Exemptions to asset freeze and prohibition on making funds and economic resources available to designated persons	The Afghanistan (Sanctions) (EU Exit) Regulations 2020, Reg.25(1)-(2)	The Afghanistan (Asset-Freezing) Regulations 2011, Reg.3	(b)	<p>Low Impact</p> <p>For the purposes of the prohibition on dealing with funds or economic resources owned, held or controlled by a designated person, the UK SI sets out the following new exception:</p> <p><i>(1) The prohibition in regulation 8 (asset-freeze in relation to designated persons) is not contravened by an independent person ("P") transferring to another person a legal or equitable interest in funds or economic resources where, immediately before the transfer, the interest—</i></p> <p><i>(a) is held by P, and</i></p> <p><i>(b) is not held jointly with the designated person.</i></p> <p><i>(2) In paragraph (1) "independent person" means a person who—</i></p> <p><i>(a) is not the designated person, and</i></p> <p><i>(b) is not owned or controlled directly or indirectly (within the meaning of regulation 7) by the designated person.</i></p> <p>This change is unlikely to have a material impact on the obligations of financial institutions.</p>
Exemptions to asset freeze and prohibition on making funds and economic resources available to designated persons	The Afghanistan (Sanctions) (EU Exit) Regulations 2020, Reg.25(3)	The Afghanistan (Asset-Freezing) Regulations 2011, Reg.8(1)(a)	(c)	<p>Low Impact</p> <p>The EU SI previously provided that a person who credits a frozen account with interest or other earnings due on an account will not have contravened the prohibitions on making funds available to or for the benefit of a designated person.</p> <p>The scope of this exception has been amended in the new UK SI. First, the exception now expressly applies to <i>relevant institutions (i.e. firms with Part 4A permission under FSMA)</i> only. Second, under the UK SI this exception applies to the <i>prohibition on dealing with funds or economic resources owned, held or controlled by a designated person</i>, as well as the prohibitions on making funds available to or for the benefit of a designated person.</p> <p>This change is unlikely to have a material impact on the obligations of financial institutions.</p>

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Restrictive Measure/Category	UK SI reference	EU Legislative SI reference	Change to legal obligation	Impact
Exemptions to asset freeze and prohibition on making funds and economic resources available to designated persons	The Afghanistan (Sanctions) (EU Exit) Regulations 2020, Reg.25(5)	The Afghanistan (Asset-Freezing) Regulations 2011, Reg.8(1)(b)	(c)	<p>Low Impact</p> <p>The EU SI provided that a person who credits a frozen account with payments due under contracts, agreements or obligations that were concluded or arose before the account became a frozen account will not have contravened the prohibitions on making funds available to or for the benefit of a designated person.</p> <p>The scope of this exception has been amended in the new UK SI. Under the new UK SI, the prohibitions on making funds available to or for the benefit of a designated person will not be contravened by the transfer of funds to a relevant institution for crediting to an account held or controlled (directly or indirectly) by a designated person, where those funds are transferred in discharge (or partial discharge) of an obligation which arose before the date on which the person became a designated person.</p> <p>This change is unlikely to have a material impact on the obligations of financial institutions.</p>
Exemptions to asset freeze and prohibition on making funds and economic resources available to designated persons	The Afghanistan (Sanctions) (EU Exit) Regulations 2020, Reg.25(6)	The Afghanistan (Asset-Freezing) Regulations 2011, Reg.8	(c)	<p>Low Impact</p> <p>The UK SI sets out the following new exception to the prohibitions on dealing with funds or economic resources owned, held or controlled by a designated person, and on making funds available to or for the benefit of a designated person, allowing designated persons to transfer funds between two accounts:</p> <p>(6) <i>The prohibitions in regulations 8 to 10 are not contravened in relation to a designated person ("P") by a transfer of funds from account A to account B, where—</i></p> <ul style="list-style-type: none"> (a) <i>account A is with a relevant institution which carries on an excluded activity within the meaning of section 142D of the Financial Services and Markets Act 2000,</i> (b) <i>account B is with a ring-fenced body within the meaning of section 142A of the Financial Services and Markets Act 2000, and</i> (c) <i>accounts A and B are held or controlled (directly or indirectly) by P.</i> <p>This change is unlikely to have a material impact on the obligations of financial institutions.</p>

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Restrictive Measure/Category	UK SI reference	EU Legislative SI reference	Change to legal obligation	Impact
Treasury Licences	The Afghanistan (Sanctions) (EU Exit) Regulations 2020, Reg.28(2)	The Afghanistan (Asset-Freezing) Regulations 2011, Reg.9	(b), (d)	<p>Low Impact</p> <p>The UK SI limits the ability of the Treasury to issue a licence authorising acts in relation to a designated person to instances where the Treasury considers a licence appropriate for a purpose set out in Schedule 2 of the UK SI. Similar restrictions did not apply expressly under the EU SI.</p> <p>This provision should be contrasted with regulation 34(2) of the Sudan (Sanctions) (EU Exit) Regulations 2020. Whilst the provisions are similar, in the new Sudanese Regulations the phrase "<i>by a particular person</i>" has been added. It should further be noted that the grounds for granting a licence differ.</p> <p>This change is unlikely to have a material impact on the obligations of financial institutions.</p>
Treasury Licences	The Afghanistan (Sanctions) (EU Exit) Regulations 2020, Reg.28(4)	The Afghanistan (Asset-Freezing) Regulations 2011, Reg.9(3)	(c)	<p>Low Impact</p> <p>Under the EU SI the Treasury may vary or revoke a licence at any time. The new UK SI further provides that a person who issues a licence may also <i>suspend</i> it at any time.</p>
Treasury Licences	The Afghanistan (Sanctions) (EU Exit) Regulations 2020, Reg.29(1)	The Afghanistan (Asset-Freezing) Regulations 2011, Reg.9(5)	(c)	<p>Low Impact</p> <p>Under the EU SI a person commits an offence if they knowingly or recklessly provide materially false information, or documents that are not what they purport to be, for the purpose of obtaining a licence. The UK SI clarifies that this offence will be committed whether the licence is being sought for the accused's own benefit or for anyone else's.</p> <p>This change is unlikely to have a material impact on the obligations of financial institutions.</p>

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Restrictive Measure/Category	UK SI reference	EU Legislative SI reference	Change to legal obligation	Impact
Information Obligations	The Afghanistan (Sanctions) (EU Exit) Regulations 2020, Reg.30(5)	The Afghanistan (Asset-Freezing) Regulations 2011, Reg.8(3)	(c)	<p>Low Impact</p> <p>The EU SI requires a relevant institution to inform the Treasury without delay if it credits a frozen account with payments due under contracts, agreements or obligations that were concluded or arose before the account became a frozen account, or with funds transferred to the account.</p> <p>Under the UK SI, a relevant institution must inform the Treasury without delay if that institution credits an account in accordance with regulation 25(4) (receipt of funds to credit a frozen account) or transfers funds from a frozen account in accordance with regulation 25(6).</p>
Trade Controls	The Afghanistan (Sanctions) (EU Exit) Regulations 2020, Reg.15-18	-	(c)	<p>Low Impact</p> <p>The UK SI contains express restrictions on the export of military goods to a designated person, and the supply or delivery of military goods from a third country to a designated person. There is also a restriction on making military goods or technology available or transferring military technology to or for the benefit of a designated person.</p> <p>This change is unlikely to have a material impact on the obligations of financial institutions as similar restrictions are currently contained in the Export Control Order 2008</p>

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Restrictive Measure/Category	UK SI reference	EU Legislative SI reference	Change to legal obligation	Impact
Trade Controls	The Afghanistan (Sanctions) (EU Exit) Regulations 2020, Reg.19	The Export Control (Al-Qaida and Taliban Sanctions) Regulations 2011, Reg.4 and 5	(c)	<p>Low Impact</p> <p>The Export Control (Al-Qaida and Taliban Sanctions) Regulations 2011 (the "EU Export Control SI") prohibits providing technical advice, assistance or training related to military activities, and technical assistance related to goods and technology listed in the Common Military List of the European Union, to designated persons. There is a further prohibition on participating, knowingly and intentionally, in activities the object or effect of which is, directly or indirectly, to promote these prohibited transactions.</p> <p>The UK SI similarly prohibits a person from directly or indirectly providing technical assistance relating to military goods or military technology to a designated person. The UK SI does not contain a requirement on the prosecution to establish intent. There is however a defence if the accused did not know and had no reasonable cause to suspect that the person to whom, or for whose benefit, the technical assistance was provided was a designated person. If evidence is adduced which is sufficient to raise an issue with respect to the defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not (Reg.24(2)).</p>

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Restrictive Measure/Category	UK SI reference	EU Legislative SI reference	Change to legal obligation	Impact
Trade Controls	The Afghanistan (Sanctions) (EU Exit) Regulations 2020, Reg.20	-	(b)	<p>Low Impact</p> <p>The UK SI contains express restrictions on the provision of "<i>financial services and funds</i>" relating to military goods and military technology as follows:</p> <ol style="list-style-type: none"> (1) <i>A person must not directly or indirectly provide financial services to, or for the benefit of, a designated person in pursuance of or in connection with an arrangement whose object or effect is—</i> <ol style="list-style-type: none"> (a) <i>the export of military goods,</i> (b) <i>the direct or indirect supply or delivery of military goods,</i> (c) <i>directly or indirectly making military goods or military technology available to a person,</i> (d) <i>the transfer of military technology, or</i> (e) <i>the direct or indirect provision of technical assistance relating to military goods or military technology.</i> (2) <i>A person must not directly or indirectly make funds available to, or for the benefit of, a designated person in pursuance of or in connection with an arrangement mentioned in paragraph (1).</i> (3) <i>A person must not directly or indirectly provide financial services or funds in pursuance of or in connection with an arrangement whose object or effect is—</i> <ol style="list-style-type: none"> (a) <i>the export of military goods to, or for the benefit of a designated person,</i> (b) <i>the direct or indirect supply or delivery of military goods to, or for the benefit of, a designated person,</i> (c) <i>directly or indirectly making military goods or military technology available to, or for the benefit of, a designated person —</i> (d) <i>the transfer of military technology to, or for the benefit of, a designated person —</i> (e) <i>the direct or indirect provision of technical assistance relating to military goods or military technology to, or for the benefit of, a designated person.</i> <p>The UK SI does not contain a requirement on the prosecution to establish intent. There is however a defence if the accused did not know and had no reasonable cause to suspect that they were engaged in any of the above prohibited activities. If evidence is adduced which is sufficient to raise an issue with respect to the defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not (Reg.24(2)).</p>

Restrictive Measure/Category	UK SI reference	EU Legislative SI reference	Change to legal obligation	Impact
Trade Controls	The Afghanistan (Sanctions) (EU Exit) Regulations 2020, Reg.21	-	(b)	<p>High Impact</p> <p>New restrictions are imposed in the UK SI concerning the provision of "<i>brokering services</i>" in relation to arrangements concerning the export, supply, delivery and transfer of military goods and technology involving designated persons</p> <p>This change is unlikely to have a material impact on the obligations of financial institutions.</p>
Trade Controls	The Afghanistan (Sanctions) (EU Exit) Regulations 2020, Reg.22(1)	-	(b)	<p>Medium Impact</p> <p>New restrictions are imposed in the UK SI concerning enabling or facilitating the conduct of armed hostilities, including a specific prohibition on directly or indirectly providing financial services or funds to or for the benefit of a designated person where such provision enables or facilitates the conduct of armed hostilities.</p> <p>This change is unlikely to have a material impact on the obligations of financial institutions.</p>

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High Impact.

Restrictive Measure/Category	UK SI reference	EU Legislative SI reference	Change to legal obligation	Impact
Asset freeze in relation to designated persons	The Afghanistan (Sanctions) (EU Exit) Regulations 2020, Reg.8(7)	The Afghanistan (Asset-Freezing) Regulations 2011, Reg.3	(b)	<p>Potentially High Impact</p> <p>For the purposes of the prohibition on dealing with funds or economic resources owned, held or controlled by a designated person, the UK SI provides that funds or economic resources are to be "<i>treated as owned, held or controlled by a designated person if they are owned, held or controlled by a person who is owned or controlled directly or indirectly (within the meaning of regulation 7) by the designated person</i>" (emphasis added).</p> <p>This new language extends the previous prohibition on dealing with the funds or economic resources of designated persons found in the EU SI to include a new express prohibition on dealing with the funds or economic resources of <i>entities owned or controlled by</i> such designated persons.</p>
Prohibition on making funds and economic resources available to designated persons	The Afghanistan (Sanctions) (EU Exit) Regulations 2020, Reg.9(4)	The Afghanistan (Asset-Freezing) Regulations 2011, Reg.4	(b)	<p>Potentially High Impact</p> <p>The prohibition on making funds available directly or indirectly to designated persons is extended by the UK SI, which provides expressly that funds are made available indirectly to a designated person if made "<i>available to a person who is owned or controlled directly or indirectly (within the meaning of regulation 7) by the designated person</i>" (emphasis added).</p> <p>This new prohibition is more restrictive than previous non-binding guidance by the EU, which provided that there was a presumption that making funds available to a person owned or controlled by a designated person was to make them available indirectly to a designated person, albeit this presumption could be rebutted on the facts.</p>

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Restrictive Measure/Category	UK SI reference	EU Legislative SI reference	Change to legal obligation	Impact
Prohibition on making funds and economic resources available to designated persons	The Afghanistan (Sanctions) (EU Exit) Regulations 2020, Reg.11(4)	The Afghanistan (Asset-Freezing) Regulations 2011, Reg.6	(b)	<p>Potentially High Impact</p> <p>For the purposes of the prohibition on making economic resources available to designated persons, the UK SI provides that economic resources are made available indirectly to a designated person if made "<i>available to a person who is owned or controlled directly or indirectly (within the meaning of regulation 7) by the designated person</i>" (emphasis added).</p> <p>This new prohibition is more restrictive than previous non-binding guidance by the EU, which provided that there was a presumption that making economic resources available to a person owned or controlled by a designated person was to make them available indirectly to a designated person, albeit this presumption could be rebutted on the facts.</p>

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Restrictive Measure/Category	UK SI reference	EU Legislative SI reference	Change to legal obligation	Impact
Ownership and control provisions	The Afghanistan (Sanctions) (EU Exit) Regulations 2020, Reg.7	-	(c)	<p>Potentially High Impact</p> <p>The UK SI provides that, for the purposes of the asset freeze and prohibition on making funds or economic resources available, a person will be deemed to be "<i>owned or controlled directly or indirectly</i>" by another person if either of two conditions are met.</p> <p>(1) <i>In this Part, a person who is not an individual ("C") is "owned or controlled directly or indirectly" by another person ("P") if either of the following two conditions is met (or both are met).</i></p> <p>(2) <i>The first condition is that P—</i></p> <p style="margin-left: 40px;">(a) <i>holds directly or indirectly more than 50% of the shares in C,</i></p> <p style="margin-left: 40px;">(b) <i>holds directly or indirectly more than 50% of the voting rights in C, or</i></p> <p style="margin-left: 40px;">(c) <i>holds the right directly or indirectly to appoint or remove a majority of the board of directors of C.</i></p> <p>(3) <i>Schedule 1 contains provision applying for the purpose of interpreting paragraph (2).</i></p> <p>(4) <i>The second condition is that it is reasonable, having regard to all the circumstances, to expect that P would (if P 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 C are conducted in accordance with P's wishes.</i></p> <p>This new provision extends and replaces non-binding guidance previously provided by the EU.</p> <p>Schedule 1 sets out the rules of interpretation for determining ownership and control. This may have an impact on financial institutions to the extent it imposes an additional due diligence burden to investigate whether the conditions outlined above are satisfied.</p>

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Restrictive Measure/Category	UK SI reference	EU Legislative SI reference	Change to legal obligation	Impact
Trade Controls	The Afghanistan (Sanctions) (EU Exit) Regulations 2020, Reg.21	-	(b)	<p>High Impact</p> <p>New restrictions are imposed in the UK SI concerning the provision of "<i>brokering services</i>" in relation to arrangements concerning the export, supply, delivery and transfer of military goods and technology involving designated persons</p> <p>This change is unlikely to have a material impact on the obligations of financial institutions.</p>

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Medium Impact.

Restrictive Measure/Category	UK SI reference	EU Legislative SI reference	Change to legal obligation	Impact
Trade Controls	The Afghanistan (Sanctions) (EU Exit) Regulations 2020, Reg.22(1)	-	(b)	<p>Medium Impact</p> <p>New restrictions are imposed in the UK SI concerning enabling or facilitating the conduct of armed hostilities, including a specific prohibition on directly or indirectly providing financial services or funds to or for the benefit of a designated person where such provision enables or facilitates the conduct of armed hostilities.</p> <p>This change is unlikely to have a material impact on the obligations of financial institutions.</p>

This review does not constitute legal advice and should not be relied upon by any parties.

Low Impact.

Restrictive Measure/Category	UK SI reference	EU Legislative SI reference	Change to legal obligation	Impact
Asset freeze in relation to designated persons	The Afghanistan (Sanctions) (EU Exit) Regulations 2020, Reg.8(1)	The Afghanistan (Asset-Freezing) Regulations 2011, Reg.3(1)	(c)	<p>Low Impact</p> <p>The Afghanistan (Asset-Freezing) Regulations 2011 (the "EU SI") imposed a prohibition on dealing with funds or economic resources "<i>belonging to, or owned, held or controlled by</i>" a designated person.</p> <p>The wording of this prohibition has been amended slightly in the new Afghanistan (Sanctions) (EU Exit) Regulations 2020 (the "UK SI") to remove the reference to funds or economic resources "<i>belonging</i>" to designated persons.</p> <p>This change is unlikely to have a material impact on the obligations of financial institutions.</p>

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Restrictive Measure/Category	UK SI reference	EU Legislative SI reference	Change to legal obligation	Impact
Asset freeze in relation to designated persons	The Afghanistan (Sanctions) (EU Exit) Regulations 2020, Reg.8(5)(b)	The Afghanistan (Asset-Freezing) Regulations 2011, Reg.3(2)(b)	(c)	<p>Low Impact</p> <p>For the purposes of the prohibition on dealing with funds or economic resources owned, held or controlled by a designated person, the EU SI previously defined the phrase "<i>deals with</i>" economic resources as the "<i>exchange, or use in exchange, for funds, goods or services</i>".</p> <p>This definition has been extended slightly in the UK SI to include the pledge of economic resources as security or otherwise.</p> <p>This change is unlikely to have a material impact on the obligations of financial institutions.</p>
Asset freeze in relation to designated persons	The Afghanistan (Sanctions) (EU Exit) Regulations 2020, Reg.8(6)	The Afghanistan (Asset-Freezing) Regulations 2011, Reg.3	(b)	<p>Low Impact</p> <p>For the purposes of the prohibition on dealing with funds or economic resources owned, held or controlled by a designated person, the UK SI includes a new provision stating that funds or economic resources are "<i>owned, held or controlled</i>" by a person if that person has any legal or equitable interest in such assets, regardless of whether the interest is held jointly with any other person, or if they have any tangible property (other than real property), or bearer security which is comprised in funds or economic resources and is in their possession. This new language largely mirrors previous non-binding guidance provided by the EU.</p> <p>This change is unlikely to have a material impact on the obligations of financial institutions.</p>

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Restrictive Measure/Category	UK SI reference	EU Legislative SI reference	Change to legal obligation	Impact
Prohibition on making funds and economic resources available to designated persons	The Afghanistan (Sanctions) (EU Exit) Regulations 2020, Reg.10(4)(b)	The Afghanistan (Asset-Freezing) Regulations 2011, Reg.5(2)(b)	(c)	<p>Low Impact</p> <p>For the purposes of the prohibition on making funds available to any person for the benefit of a designated person, the EU SI previously defined the phrase "<i>financial benefit</i>" to include the discharge of a financial obligation for which the designated person is wholly or partly responsible.</p> <p>This definition has been extended slightly in the UK SI to include a "<i>partial discharge</i>" of such financial obligations as well.</p> <p>This change is unlikely to have a material impact on the obligations of financial institutions.</p>
Prohibition on making funds and economic resources available to designated persons	The Afghanistan (Sanctions) (EU Exit) Regulations 2020, Reg.12(4)(b)	The Afghanistan (Asset-Freezing) Regulations 2011, Reg.7(2)(b)	(c)	<p>Low Impact</p> <p>For the purposes of the prohibition on making economic resources available to any person for the benefit of a designated person, the EU SI previously defined the phrase "<i>financial benefit</i>" to include the discharge of a financial obligation for which the designated person is wholly or partly responsible.</p> <p>This definition has been extended slightly in the UK SI to include a "<i>partial discharge</i>" of such financial obligations as well.</p> <p>This change is unlikely to have a material impact on the obligations of financial institutions.</p>

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Restrictive Measure/Category	UK SI reference	EU Legislative SI reference	Change to legal obligation	Impact
Exemptions to asset freeze and prohibition on making funds and economic resources available to designated persons	The Afghanistan (Sanctions) (EU Exit) Regulations 2020, Reg.25(1)-(2)	The Afghanistan (Asset-Freezing) Regulations 2011, Reg.3	(b)	<p>Low Impact</p> <p>For the purposes of the prohibition on dealing with funds or economic resources owned, held or controlled by a designated person, the UK SI sets out the following new exception:</p> <p><i>(1) The prohibition in regulation 8 (asset-freeze in relation to designated persons) is not contravened by an independent person ("P") transferring to another person a legal or equitable interest in funds or economic resources where, immediately before the transfer, the interest—</i></p> <p style="padding-left: 40px;"><i>(a) is held by P, and</i></p> <p style="padding-left: 40px;"><i>(b) is not held jointly with the designated person.</i></p> <p><i>(2) In paragraph (1) "independent person" means a person who—</i></p> <p style="padding-left: 40px;"><i>(a) is not the designated person, and</i></p> <p style="padding-left: 40px;"><i>(b) is not owned or controlled directly or indirectly (within the meaning of regulation 7) by the designated person.</i></p> <p>This change is unlikely to have a material impact on the obligations of financial institutions.</p>
Exemptions to asset freeze and prohibition on making funds and economic resources available to designated persons	The Afghanistan (Sanctions) (EU Exit) Regulations 2020, Reg.25(3)	The Afghanistan (Asset-Freezing) Regulations 2011, Reg.8(1)(a)	(c)	<p>Low Impact</p> <p>The EU SI previously provided that a person who credits a frozen account with interest or other earnings due on an account will not have contravened the prohibitions on making funds available to or for the benefit of a designated person.</p> <p>The scope of this exception has been amended in the new UK SI. First, the exception now expressly applies to <i>relevant institutions (i.e. firms with Part 4A permission under FSMA)</i> only. Second, under the UK SI this exception applies to the <i>prohibition on dealing with funds or economic resources owned, held or controlled by a designated person</i>, as well as the prohibitions on making funds available to or for the benefit of a designated person.</p> <p>This change is unlikely to have a material impact on the obligations of financial institutions.</p>

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Restrictive Measure/Category	UK SI reference	EU Legislative SI reference	Change to legal obligation	Impact
Exemptions to asset freeze and prohibition on making funds and economic resources available to designated persons	The Afghanistan (Sanctions) (EU Exit) Regulations 2020, Reg.25(5)	The Afghanistan (Asset-Freezing) Regulations 2011, Reg.8(1)(b)	(c)	<p>Low Impact</p> <p>The EU SI provided that a person who credits a frozen account with payments due under contracts, agreements or obligations that were concluded or arose before the account became a frozen account will not have contravened the prohibitions on making funds available to or for the benefit of a designated person.</p> <p>The scope of this exception has been amended in the new UK SI. Under the new UK SI, the prohibitions on making funds available to or for the benefit of a designated person will not be contravened by the transfer of funds to a relevant institution for crediting to an account held or controlled (directly or indirectly) by a designated person, where those funds are transferred in discharge (or partial discharge) of an obligation which arose before the date on which the person became a designated person.</p> <p>This change is unlikely to have a material impact on the obligations of financial institutions.</p>
Exemptions to asset freeze and prohibition on making funds and economic resources available to designated persons	The Afghanistan (Sanctions) (EU Exit) Regulations 2020, Reg.25(6)	The Afghanistan (Asset-Freezing) Regulations 2011, Reg.8	(c)	<p>Low Impact</p> <p>The UK SI sets out the following new exception to the prohibitions on dealing with funds or economic resources owned, held or controlled by a designated person, and on making funds available to or for the benefit of a designated person, allowing designated persons to transfer funds between two accounts:</p> <p>(6) <i>The prohibitions in regulations 8 to 10 are not contravened in relation to a designated person ("P") by a transfer of funds from account A to account B, where—</i></p> <ul style="list-style-type: none"> (a) <i>account A is with a relevant institution which carries on an excluded activity within the meaning of section 142D of the Financial Services and Markets Act 2000,</i> (b) <i>account B is with a ring-fenced body within the meaning of section 142A of the Financial Services and Markets Act 2000, and</i> (c) <i>accounts A and B are held or controlled (directly or indirectly) by P.</i> <p>This change is unlikely to have a material impact on the obligations of financial institutions.</p>

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Restrictive Measure/Category	UK SI reference	EU Legislative SI reference	Change to legal obligation	Impact
Treasury Licences	The Afghanistan (Sanctions) (EU Exit) Regulations 2020, Reg.28(2)	The Afghanistan (Asset-Freezing) Regulations 2011, Reg.9	(b), (d)	<p>Low Impact</p> <p>The UK SI limits the ability of the Treasury to issue a licence authorising acts in relation to a designated person to instances where the Treasury considers a licence appropriate for a purpose set out in Schedule 2 of the UK SI. Similar restrictions did not apply expressly under the EU SI.</p> <p>This provision should be contrasted with regulation 34(2) of the Sudan (Sanctions) (EU Exit) Regulations 2020. Whilst the provisions are similar, in the new Sudanese Regulations the phrase "<i>by a particular person</i>" has been added. It should further be noted that the grounds for granting a licence differ.</p> <p>This change is unlikely to have a material impact on the obligations of financial institutions.</p>
Treasury Licences	The Afghanistan (Sanctions) (EU Exit) Regulations 2020, Reg.28(4)	The Afghanistan (Asset-Freezing) Regulations 2011, Reg.9(3)	(c)	<p>Low Impact</p> <p>Under the EU SI the Treasury may vary or revoke a licence at any time. The new UK SI further provides that a person who issues a licence may also <i>suspend</i> it at any time.</p>
Treasury Licences	The Afghanistan (Sanctions) (EU Exit) Regulations 2020, Reg.29(1)	The Afghanistan (Asset-Freezing) Regulations 2011, Reg.9(5)	(c)	<p>Low Impact</p> <p>Under the EU SI a person commits an offence if they knowingly or recklessly provide materially false information, or documents that are not what they purport to be, for the purpose of obtaining a licence. The UK SI clarifies that this offence will be committed whether the licence is being sought for the accused's own benefit or for anyone else's.</p> <p>This change is unlikely to have a material impact on the obligations of financial institutions.</p>

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Restrictive Measure/Category	UK SI reference	EU Legislative SI reference	Change to legal obligation	Impact
Information Obligations	The Afghanistan (Sanctions) (EU Exit) Regulations 2020, Reg.30(5)	The Afghanistan (Asset-Freezing) Regulations 2011, Reg.8(3)	(c)	<p>Low Impact</p> <p>The EU SI requires a relevant institution to inform the Treasury without delay if it credits a frozen account with payments due under contracts, agreements or obligations that were concluded or arose before the account became a frozen account, or with funds transferred to the account.</p> <p>Under the UK SI, a relevant institution must inform the Treasury without delay if that institution credits an account in accordance with regulation 25(4) (receipt of funds to credit a frozen account) or transfers funds from a frozen account in accordance with regulation 25(6).</p>
Trade Controls	The Afghanistan (Sanctions) (EU Exit) Regulations 2020, Reg.15-18	-	(c)	<p>Low Impact</p> <p>The UK SI contains express restrictions on the export of military goods to a designated person, and the supply or delivery of military goods from a third country to a designated person. There is also a restriction on making military goods or technology available or transferring military technology to or for the benefit of a designated person.</p> <p>This change is unlikely to have a material impact on the obligations of financial institutions as similar restrictions are currently contained in the Export Control Order 2008</p>

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Restrictive Measure/Category	UK SI reference	EU Legislative SI reference	Change to legal obligation	Impact
Trade Controls	The Afghanistan (Sanctions) (EU Exit) Regulations 2020, Reg.19	The Export Control (Al-Qaida and Taliban Sanctions) Regulations 2011, Reg.4 and 5	(c)	<p>Low Impact</p> <p>The Export Control (Al-Qaida and Taliban Sanctions) Regulations 2011 (the "EU Export Control SI") prohibits providing technical advice, assistance or training related to military activities, and technical assistance related to goods and technology listed in the Common Military List of the European Union, to designated persons. There is a further prohibition on participating, knowingly and intentionally, in activities the object or effect of which is, directly or indirectly, to promote these prohibited transactions.</p> <p>The UK SI similarly prohibits a person from directly or indirectly providing technical assistance relating to military goods or military technology to a designated person. The UK SI does not contain a requirement on the prosecution to establish intent. There is however a defence if the accused did not know and had no reasonable cause to suspect that the person to whom, or for whose benefit, the technical assistance was provided was a designated person. If evidence is adduced which is sufficient to raise an issue with respect to the defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not (Reg.24(2)).</p>

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Restrictive Measure/Category	UK SI reference	EU Legislative SI reference	Change to legal obligation	Impact
Trade Controls	The Afghanistan (Sanctions) (EU Exit) Regulations 2020, Reg.20	-	(b)	<p>Low Impact</p> <p>The UK SI contains express restrictions on the provision of "<i>financial services and funds</i>" relating to military goods and military technology as follows:</p> <ul style="list-style-type: none"> (1) <i>A person must not directly or indirectly provide financial services to, or for the benefit of, a designated person in pursuance of or in connection with an arrangement whose object or effect is—</i> <ul style="list-style-type: none"> (a) <i>the export of military goods,</i> (b) <i>the direct or indirect supply or delivery of military goods,</i> (c) <i>directly or indirectly making military goods or military technology available to a person,</i> (d) <i>the transfer of military technology, or</i> (e) <i>the direct or indirect provision of technical assistance relating to military goods or military technology.</i> (2) <i>A person must not directly or indirectly make funds available to, or for the benefit of, a designated person in pursuance of or in connection with an arrangement mentioned in paragraph (1).</i> (3) <i>A person must not directly or indirectly provide financial services or funds in pursuance of or in connection with an arrangement whose object or effect is—</i> <ul style="list-style-type: none"> (a) <i>the export of military goods to, or for the benefit of a designated person,</i> (b) <i>the direct or indirect supply or delivery of military goods to, or for the benefit of, a designated person,</i> (c) <i>directly or indirectly making military goods or military technology available to, or for the benefit of, a designated person —</i> (d) <i>the transfer of military technology to, or for the benefit of, a designated person —</i> (e) <i>the direct or indirect provision of technical assistance relating to military goods or military technology to, or for the benefit of, a designated person.</i> <p>The UK SI does not contain a requirement on the prosecution to establish intent. There is however a defence if the accused did not know and had no reasonable cause to suspect that they were engaged in any of the above prohibited activities. If evidence is adduced which is sufficient to raise an issue with respect to the defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not (Reg.24(2)).</p>

Document Version Control

Version	Issue Date	Expiry Date	Notes
1.00	5 th November 2020	30 th November 2020	<ul style="list-style-type: none">• First issue.• Initial review of UK Sanctions Sis available as at September 15 2020.

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