



UK SANCTIONS STATUTORY INSTRUMENTS REVIEW: BURUNDI

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

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The Burundi (Sanctions) (EU Exit) Regulations 2019

Restrictive Measure/Category	UK SI reference	EU Legislative SI reference	Change to legal obligation?	Impact?
Power to designate	The Burundi (Sanctions) (EU Exit) Regulations 2019 (the “2019 UK SI”) – Regs 5 to 6, Regs 8 and 9	-	(b)	<p>Low Impact</p> <p>The 2019 UK SI sets out specific designation criteria at Regulation 4 which the Secretary of State must adhere to. These are new requirements as the Secretary of State did not have the power to designate under the 2015 SI as designations were determined by the EU.</p> <p>Although this is unlikely to have a material impact on financial institutions, these institutions should monitor any new designations under the 2019 SI.</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 Burundi (Sanctions) (EU Exit) Regulations 2019 – Reg 7	-	(c)	<p>High Impact</p> <p>The 2019 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>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="padding-left: 20px;">(a) <i>holds directly or indirectly more than 50% of the shares in C,</i></p> <p style="padding-left: 20px;">(b) <i>holds directly or indirectly more than 50% of the voting rights in C, or</i></p> <p style="padding-left: 20px;">(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 existing guidance previously provided by the EU. Schedule 1 of the 2019 UK SI sets out the rules of interpretation for determining ownership and control.</p> <p>The rules of interpretation may have an impact on financial institutions in relation to the due diligence and investigational efforts to determine whether the conditions in Regulation 7 are met.</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 Burundi (Sanctions) (EU Exit) Regulations 2019 – Reg 11(1)-(4), Reg 11(6)	The Burundi (European Union Financial Sanctions) Regulations 2015 (the “2015 SI”) – Reg 3(1)	(c)	<p>Low Impact</p> <p>The 2015 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>In the 2019 UK SI, the term “<i>belonging to</i>” has been removed in relation to designated persons.</p> <p>Although it is unlikely to have an impact on financial institutions, it will be important to monitor the publication of any guidance provided by the UK government on why this term has been removed and whether the terms “<i>owned, held or controlled</i>” are considered by their ordinary definition to cover “<i>belonging</i>”.</p>
Asset freeze in relation to designated persons	The Burundi (Sanctions) (EU Exit) Regulations 2019 – Reg 11(5)	The Burundi (European Union Financial Sanctions) Regulations 2015 – Reg 3(2)	(c)	<p>Low Impact</p> <p>For the purposes of the prohibition on dealing with economic resources owned, held or controlled by a designated person, the 2015 SI previously defined the phrase “<i>deal with</i>” as the “<i>exchange, or use in exchange, for funds, goods or services</i>”.</p> <p>This definition is extended in the 2019 UK SI to add “<i>(whether by pledging them as security or otherwise)</i>”.</p> <p>Although it is unlikely to have an impact on financial institutions, it will be important to monitor the publication of any guidance provided by the UK government on this additional wording.</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 Burundi (Sanctions) (EU Exit) Regulations 2019 – Reg 11(6)	The Burundi (European Union Financial Sanctions) Regulations 2015 – Reg 3	(b)	<p>Low Impact</p> <p>The 2019 UK SI includes a new provision stating that funds or economic resources that are "<i>owned, held or controlled</i>" by a person includes a reference to (i) funds or economic resources in which the person has any legal or equitable interest in such assets, regardless of whether the interest is held jointly with any other person and regardless of whether any other person holds an interest in the funds or economic resources , or (ii) any tangible property (other than real property), or bearer security that is comprised in funds or economic resources and is in the possession of the person.</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 Burundi (Sanctions) (EU Exit) Regulations 2019 – Reg 11(7)	The Burundi (European Union Financial Sanctions) Regulations 2015 – Reg 3	(b)	<p>High Impact</p> <p>The 2019 UK SI provides that funds or economic resources are considered "<i>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>".</p> <p>This extends the scope of the wording in the 2015 SI by adding an express prohibition on dealing with funds and economic resources of entities owned or controlled by a designated person.</p> <p>This change appears to reflect existing OFSI guidance on ownership and control (July 2020).</p>

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Restrictive Measure/Category	UK SI reference	EU Legislative SI reference	Change to legal obligation?	Impact?
Making funds and economic resources available to designated persons	The Burundi (Sanctions) (EU Exit) Regulations 2019 – Reg 12 and Reg 14	The Burundi (European Union Financial Sanctions) Regulations 2015 – Reg 4 and Reg 6	(c)	<p>High Impact</p> <p>The 2015 SI states that a person (“P”) must not make funds/economic resources available directly or indirectly to a designated person if P knows, or has reasonable cause to suspect, that P is making the funds/economic resources so available.</p> <p>The 2019 UK SI explicitly states making funds/economic resources available indirectly to a designated person includes making them available to a person who is owned or controlled directly or indirectly by the designated person.</p> <p>The 2019 UK SI appears to be more restrictive than existing EU guidance which provides that making available funds and economic resources to a non-designated person owned or controlled by a designated person, is considered to be making available these funds and economic resources to the designated person, albeit this could be rebutted on the facts.⁶ The 2019 UK SI does not include a rebuttable presumption.</p>

⁶ <http://data.consilium.europa.eu/doc/document/ST-15530-2016-INIT/en/pdf>, para. 66

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Restrictive Measure/Category	UK SI reference	EU Legislative SI reference	Change to legal obligation?	Impact?
Exceptions	The Burundi (Sanctions) (EU Exit) Regulations 2019 – Reg 18	-	(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 2019 UK SI sets out the following new exception:</p> <p><i>(1) The prohibition in regulation 11 (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>

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Restrictive Measure/Category	UK SI reference	EU Legislative SI reference	Change to legal obligation?	Impact?
Exceptions	The Burundi (Sanctions) (EU Exit) Regulations 2019 – Reg 18	-	(b)	<p>Low Impact</p> <p>The 2019 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><i>(6) The prohibitions in regulations 11 to 13 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"> <i>(a) 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> <i>(b) account B is with a ring-fenced body within the meaning of section 142A of the Financial Services and Markets Act 2000, and</i> <i>(c) 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>
Exceptions	The Burundi (Sanctions) (EU Exit) Regulations 2019 – Reg 19	-	(b)	<p>Low Impact</p> <p>The 2019 UK SI contains a new exception which provides that prohibitions within the SI do not apply where it is in the interests of national security or to prevent or detect a serious crime in the UK or elsewhere.</p> <p>This is unlikely to have an impact on 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 Burundi (Sanctions) (EU Exit) Regulations 2019 – Reg 20 (1)-(3), 21, Schedule 2	The Burundi (European Union Financial Sanctions) Regulations 2015 – Reg 9	(b)	<p>Low Impact</p> <p>The 2019 UK SI limits the ability of the Treasury to issue a licence authorising acts by a particular person where the Treasury considers a licence appropriate for a purpose as set out in Schedule 2 of the 2019 UK SI. Similar restrictions did not apply expressly under the 2015 SI.</p> <p>Although it is unlikely to have a material impact on financial institutions, such institutions should familiarise themselves with the circumstances in which licences can be granted and ensure the terms of any licence are complied with when a licence is granted.</p>
Treasury licences	The Burundi (Sanctions) (EU Exit) Regulations 2019 – Reg 20 (4) – (6)	The Burundi (European Union Financial Sanctions) Regulations 2015 – Reg 9	(b)	<p>Low Impact</p> <p>Under the 2015 SI the Treasury may vary or revoke a licence at any time. The new 2019 UK SI further provides that a person who issues a licence may also <i>suspend</i> it at any time.</p> <p>This is unlikely to have a material impact on financial institutions although the ability of the Treasury to issue general licence should be monitored.</p>
Treasury licences	The Burundi (Sanctions) (EU Exit) Regulations 2019 – Reg 21	The Burundi (European Union Financial Sanctions) Regulations 2015 – Reg 9 (5)	(c)	<p>Low Impact</p> <p>Under the 2015 SI, a person commits an offence if they “<i>knowingly or recklessly provides information that is false in a material respect, or provides or produces a document that is not what it purports to be.</i>” The 2019 UK SI adds that this is applicable in the event that the licence is sought “<i>whether for P or anyone else</i>”.</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?
Reporting obligations	The Burundi (Sanctions) (EU Exit) Regulations 2019 – Reg 23	The Burundi (European Union Financial Sanctions) Regulations 2015 – Reg 15 and Schedule	(c)	<p>Low Impact</p> <p>The 2015 SI imposed reporting obligations on “relevant institutions” or “<i>relevant business or profession</i>”. In the 2019 UK SI this has been replaced with “<i>relevant firm</i>”. Regulation 24 in the 2019 UK SI clearly defines what a “<i>relevant firm</i>” is, extending the scope of the entities concerned by the information obligations.</p> <p>This change is unlikely to have a material impact on the obligations of financial institutions.</p>
Reporting obligations	The Burundi (Sanctions) (EU Exit) Regulations 2019 – Reg 23(4)	The Burundi (European Union Financial Sanctions) Regulations 2015 – Schedule	(c)	<p>Low Impact</p> <p>The 2015 SI required relevant institutions which had a customer who was a designated person to inform the treasury of the “nature and amount or quantity of any funds or economic resources held by it for the customer”. The 2019 UK SI adds “<i>at the time when it first had the knowledge or suspicion</i>” to the end of the existing obligation, thereby adding an additional element to the reporting obligation.</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?
Credits to frozen accounts	The Burundi (Sanctions) (EU Exit) Regulations 2019 – Reg 18	The Burundi (European Union Financial Sanctions) Regulations 2015 – Reg 8 and Schedule	(a), (b) and (c)	<p>Medium impact</p> <p>Both the 2015 SI and the 2019 UK SI contain exceptions relating to certain credits to frozen accounts. However, the following should be noted:</p> <ul style="list-style-type: none"> - in the 2015 SI the exceptions applied to “a person”, whereas in the 2019 UK SI the exceptions apply to “relevant institutions” only, which is defined as a person with Part 4A permission under the Financial Services and Markets Act 2000; - the 2019 UK SI applies the exception relating to the credit of interest or other earnings due on an account 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; and - the exception under the 2015 SI which permitted a person to credit a frozen account with payments due under judicial, administrative or arbitral decisions rendered in an EU Member State or enforceable in the Member State concerned without contravening the prohibitions on making funds available to or for the benefit of a designated person has been deleted and this exception is not present in the 2019 UK SI; <p>Financial institutions should ensure they understand the amended provisions to ensure any credits made to frozen accounts are in accordance with the new and amended exceptions.</p>

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Restrictive Measure/Category	UK SI reference	EU Legislative SI reference	Change to legal obligation?	Impact?
Disclosure of information	The Burundi (Sanctions) (EU Exit) Regulations 2019 – Reg 28	The Burundi (European Union Financial Sanctions) Regulations 2015 – Schedule	(b)	<p>Both the 2015 SI and the 2019 UK SI set out provisions regarding the disclosure of information obtained pursuant to the relevant regulations. However, there are some key differences in the new 2019 UK SI, including:</p> <ul style="list-style-type: none"> - The 2015 SI authorised the disclosure of information by the Treasury, whereas the 2019 UK SI authorises the disclosure of information by the Treasury <i>or the Secretary of State</i>; - the 2015 SI permitted the disclosure of information to the “Legal services Commission, the Scottish Legal Aid Board or the Northern Legal Services Commission”. The 2019 UK SI only authorises disclosure to the Scottish Legal Aid Board but does not include the other two elements specified in the 2015 SI (the Legal Services Commission was replaced by the Legal Aid Agency in 2013 but this is also not included in the 2019 UK SI) - Both the 2015 SI and the 2019 UK SI permit disclosure to “any other regulatory body”, however, the 2015 SI stated “including those of other Member States”, whereas the 2019 UK SI is broader and states “whether or not in the United Kingdom”; - Both the 2015 SI and the 2019 UK SI permit disclosure to other Governments, however, the 2015 SI stated “the Government of a Member State” whereas the 2019 UK SI is broader and states “the Government of any country”; - Both the 2015 SI and the 2019 UK SI permit disclosure to the Council of the European Union and the European Commission, however the 2019 UK SI also includes the European External Action Service; and - The 2019 UK SI also has a new category for disclosure which states that disclosure can be made to “<i>any other person where the Secretary of State or the Treasury (as the case may be) consider that it is appropriate to disclose the information</i>”
Consent to prosecute	-	The Burundi (European Union Financial Sanctions) Regulations 2015 – Reg 14	(a)	<p>The 2015 SI stated that proceedings for offences under the regulations (other than for summary offences) could only be instituted with the consent of the Attorney General (in England and Wales) and with the consent of the Advocate General for Northern Ireland or the Director of Public Prosecutions for Northern Ireland (depending on the circumstances). This requirement does not appear to be present in the new 2019 UK SI.</p>

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High Impact

Restrictive Measure/Category	UK SI reference	EU Legislative SI reference	Change to legal obligation?	Impact?
Ownership and control provisions	The Burundi (Sanctions) (EU Exit) Regulations 2019 – Reg 7	-	(c)	<p>High Impact</p> <p>The 2019 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> <ul style="list-style-type: none"> (1) <i>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> (2) <i>The first condition is that P—</i> <ul style="list-style-type: none"> (a) <i>holds directly or indirectly more than 50% of the shares in C,</i> (b) <i>holds directly or indirectly more than 50% of the voting rights in C, or</i> (c) <i>holds the right directly or indirectly to appoint or remove a majority of the board of directors of C.</i> (3) <i>Schedule 1 contains provision applying for the purpose of interpreting paragraph (2).</i> (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>This new provision extends and replaces existing guidance previously provided by the EU. Schedule 1 of the 2019 UK SI sets out the rules of interpretation for determining ownership and control.</p> <p>The rules of interpretation may have an impact on financial institutions in relation to the due diligence and investigational efforts to determine whether the conditions in Regulation 7 are met.</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 Burundi (Sanctions) (EU Exit) Regulations 2019 – Reg 11(7)	The Burundi (European Union Financial Sanctions) Regulations 2015 – Reg 3	(b)	<p>High Impact</p> <p>The 2019 UK SI provides that funds or economic resources are considered “<i>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>”.</p> <p>This extends the scope of the wording in the 2015 SI by adding an express prohibition on dealing with funds and economic resources of entities owned or controlled by a designated person.</p> <p>This change appears to reflect existing OFSI guidance on ownership and control (July 2020).</p>
Making funds and economic resources available to designated persons	The Burundi (Sanctions) (EU Exit) Regulations 2019 – Reg 12 and Reg 14	The Burundi (European Union Financial Sanctions) Regulations 2015 – Reg 4 and Reg 6	(c)	<p>High Impact</p> <p>The 2015 SI states that a person (“P”) must not make funds/economic resources available directly or indirectly to a designated person if P knows, or has reasonable cause to suspect, that P is making the funds/economic resources so available.</p> <p>The 2019 UK SI explicitly states making funds/economic resources available indirectly to a designated person includes making them available to a person who is owned or controlled directly or indirectly by the designated person.</p> <p>The 2019 UK SI appears to be more restrictive than existing EU guidance which provides that making available funds and economic resources to a non-designated person owned or controlled by a designated person, is considered to be making available these funds and economic resources to the designated person, albeit this could be rebutted on the facts.⁷ The 2019 UK SI does not include a rebuttable presumption.</p>

⁷ <http://data.consilium.europa.eu/doc/document/ST-15530-2016-INIT/en/pdf>, para. 66

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Restrictive Measure/Category	UK SI reference	EU Legislative SI reference	Change to legal obligation?	Impact?
Disclosure of information	The Burundi (Sanctions) (EU Exit) Regulations 2019 – Reg 28	The Burundi (European Union Financial Sanctions) Regulations 2015 – Schedule	(b)	<p>Both the 2015 SI and the 2019 UK SI set out provisions regarding the disclosure of information obtained pursuant to the relevant regulations. However, there are some key differences in the new 2019 UK SI, including:</p> <ul style="list-style-type: none"> - The 2015 SI authorised the disclosure of information by the Treasury, whereas the 2019 UK SI authorises the disclosure of information by the Treasury <i>or the Secretary of State</i>; - the 2015 SI permitted the disclosure of information to the “Legal services Commission, the Scottish Legal Aid Board or the Northern Legal Services Commission”. The 2019 UK SI only authorises disclosure to the Scottish Legal Aid Board but does not include the other two elements specified in the 2015 SI (the Legal Services Commission was replaced by the Legal Aid Agency in 2013 but this is also not included in the 2019 UK SI) - Both the 2015 SI and the 2019 UK SI permit disclosure to “any other regulatory body”, however, the 2015 SI stated “including those of other Member States”, whereas the 2019 UK SI is broader and states “whether or not in the United Kingdom”; - Both the 2015 SI and the 2019 UK SI permit disclosure to other Governments, however, the 2015 SI stated “the Government of a Member State” whereas the 2019 UK SI is broader and states “the Government of any country”; - Both the 2015 SI and the 2019 UK SI permit disclosure to the Council of the European Union and the European Commission, however the 2019 UK SI also includes the European External Action Service; and - The 2019 UK SI also has a new category for disclosure which states that disclosure can be made to “<i>any other person where the Secretary of State or the Treasury (as the case may be) consider that it is appropriate to disclose the information</i>”
Consent to prosecute	-	The Burundi (European Union Financial Sanctions) Regulations 2015 – Reg 14	(a)	<p>The 2015 SI stated that proceedings for offences under the regulations (other than for summary offences) could only be instituted with the consent of the Attorney General (in England and Wales) and with the consent of the Advocate General for Northern Ireland or the Director of Public Prosecutions for Northern Ireland (depending on the circumstances). This requirement does not appear to be present in the new 2019 UK SI.</p>

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Medium Impact

Restrictive Measure/Category	UK SI reference	EU Legislative SI reference	Change to legal obligation?	Impact?
Credits to frozen accounts	The Burundi (Sanctions) (EU Exit) Regulations 2019 – Reg 18	The Burundi (European Union Financial Sanctions) Regulations 2015 – Reg 8 and Schedule	(a), (b) and (c)	<p>Medium impact</p> <p>Both the 2015 SI and the 2019 UK SI contain exceptions relating to certain credits to frozen accounts. However, the following should be noted:</p> <ul style="list-style-type: none"> - in the 2015 SI the exceptions applied to “a person”, whereas in the 2019 UK SI the exceptions apply to “relevant institutions” only, which is defined as a person with Part 4A permission under the Financial Services and Markets Act 2000; - the 2019 UK SI applies the exception relating to the credit of interest or other earnings due on an account 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; and - the exception under the 2015 SI which permitted a person to credit a frozen account with payments due under judicial, administrative or arbitral decisions rendered in an EU Member State or enforceable in the Member State concerned without contravening the prohibitions on making funds available to or for the benefit of a designated person has been deleted and this exception is not present in the 2019 UK SI; <p>Financial institutions should ensure they understand the amended provisions to ensure any credits made to frozen accounts are in accordance with the new and amended exceptions.</p>

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Restrictive Measure/Category	UK SI reference	EU Legislative SI reference	Change to legal obligation?	Impact?
Disclosure of information	The Burundi (Sanctions) (EU Exit) Regulations 2019 – Reg 28	The Burundi (European Union Financial Sanctions) Regulations 2015 – Schedule	(b)	<p>Both the 2015 SI and the 2019 UK SI set out provisions regarding the disclosure of information obtained pursuant to the relevant regulations. However, there are some key differences in the new 2019 UK SI, including:</p> <ul style="list-style-type: none"> - The 2015 SI authorised the disclosure of information by the Treasury, whereas the 2019 UK SI authorises the disclosure of information by the Treasury <i>or the Secretary of State</i>; - the 2015 SI permitted the disclosure of information to the “Legal services Commission, the Scottish Legal Aid Board or the Northern Legal Services Commission”. The 2019 UK SI only authorises disclosure to the Scottish Legal Aid Board but does not include the other two elements specified in the 2015 SI (the Legal Services Commission was replaced by the Legal Aid Agency in 2013 but this is also not included in the 2019 UK SI) - Both the 2015 SI and the 2019 UK SI permit disclosure to “any other regulatory body”, however, the 2015 SI stated “including those of other Member States”, whereas the 2019 UK SI is broader and states “whether or not in the United Kingdom”; - Both the 2015 SI and the 2019 UK SI permit disclosure to other Governments, however, the 2015 SI stated “the Government of a Member State” whereas the 2019 UK SI is broader and states “the Government of any country”; - Both the 2015 SI and the 2019 UK SI permit disclosure to the Council of the European Union and the European Commission, however the 2019 UK SI also includes the European External Action Service; and - The 2019 UK SI also has a new category for disclosure which states that disclosure can be made to “<i>any other person where the Secretary of State or the Treasury (as the case may be) consider that it is appropriate to disclose the information</i>”
Consent to prosecute	-	The Burundi (European Union Financial Sanctions) Regulations 2015 – Reg 14	(a)	<p>The 2015 SI stated that proceedings for offences under the regulations (other than for summary offences) could only be instituted with the consent of the Attorney General (in England and Wales) and with the consent of the Advocate General for Northern Ireland or the Director of Public Prosecutions for Northern Ireland (depending on the circumstances). This requirement does not appear to be present in the new 2019 UK SI.</p>

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Low Impact

Restrictive Measure/Category	UK SI reference	EU Legislative SI reference	Change to legal obligation?	Impact?
Power to designate	The Burundi (Sanctions) (EU Exit) Regulations 2019 (the “2019 UK SI”) – Regs 5 to 6, Regs 8 and 9	-	(b)	<p>Low Impact</p> <p>The 2019 UK SI sets out specific designation criteria at Regulation 4 which the Secretary of State must adhere to. These are new requirements as the Secretary of State did not have the power to designate under the 2015 SI as designations were determined by the EU.</p> <p>Although this is unlikely to have a material impact on financial institutions, these institutions should monitor any new designations under the 2019 SI.</p>
Asset freeze in relation to designated persons	The Burundi (Sanctions) (EU Exit) Regulations 2019 – Reg 11(1)-(4), Reg 11(6)	The Burundi (European Union Financial Sanctions) Regulations 2015 (the “2015 SI”) – Reg 3(1)	(c)	<p>Low Impact</p> <p>The 2015 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>In the 2019 UK SI, the term “<i>belonging to</i>” has been removed in relation to designated persons.</p> <p>Although it is unlikely to have an impact on financial institutions, it will be important to monitor the publication of any guidance provided by the UK government on why this term has been removed and whether the terms “<i>owned, held or controlled</i>” are considered by their ordinary definition to cover “<i>belonging</i>”.</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 Burundi (Sanctions) (EU Exit) Regulations 2019 – Reg 11(5)	The Burundi (European Union Financial Sanctions) Regulations 2015 – Reg 3(2)	(c)	<p>Low Impact</p> <p>For the purposes of the prohibition on dealing with economic resources owned, held or controlled by a designated person, the 2015 SI previously defined the phrase "<i>deal with</i>" as the "<i>exchange, or use in exchange, for funds, goods or services</i>".</p> <p>This definition is extended in the 2019 UK SI to add "<i>(whether by pledging them as security or otherwise)</i>".</p> <p>Although it is unlikely to have an impact on financial institutions, it will be important to monitor the publication of any guidance provided by the UK government on this additional wording.</p>
Asset freeze in relation to designated persons	The Burundi (Sanctions) (EU Exit) Regulations 2019 – Reg 11(6)	The Burundi (European Union Financial Sanctions) Regulations 2015 – Reg 3	(b)	<p>Low Impact</p> <p>The 2019 UK SI includes a new provision stating that funds or economic resources that are "<i>owned, held or controlled</i>" by a person includes a reference to (i) funds or economic resources in which the person has any legal or equitable interest in such assets, regardless of whether the interest is held jointly with any other person and regardless of whether any other person holds an interest in the funds or economic resources , or (ii) any tangible property (other than real property), or bearer security that is comprised in funds or economic resources and is in the possession of the 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?
Exceptions	The Burundi (Sanctions) (EU Exit) Regulations 2019 – Reg 18	-	(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 2019 UK SI sets out the following new exception:</p> <p><i>(1) The prohibition in regulation 11 (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>

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Restrictive Measure/Category	UK SI reference	EU Legislative SI reference	Change to legal obligation?	Impact?
Exceptions	The Burundi (Sanctions) (EU Exit) Regulations 2019 – Reg 18	-	(b)	<p>Low Impact</p> <p>The 2019 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><i>(6) The prohibitions in regulations 11 to 13 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"> <i>(a) 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> <i>(b) account B is with a ring-fenced body within the meaning of section 142A of the Financial Services and Markets Act 2000 , and</i> <i>(c) 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>
Exceptions	The Burundi (Sanctions) (EU Exit) Regulations 2019 – Reg 19	-	(b)	<p>Low Impact</p> <p>The 2019 UK SI contains a new exception which provides that prohibitions within the SI do not apply where it is in the interests of national security or to prevent or detect a serious crime in the UK or elsewhere.</p> <p>This is unlikely to have an impact on 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 Burundi (Sanctions) (EU Exit) Regulations 2019 – Reg 20 (1)-(3), 21, Schedule 2	The Burundi (European Union Financial Sanctions) Regulations 2015 – Reg 9	(b)	<p>Low Impact</p> <p>The 2019 UK SI limits the ability of the Treasury to issue a licence authorising acts by a particular person where the Treasury considers a licence appropriate for a purpose as set out in Schedule 2 of the 2019 UK SI. Similar restrictions did not apply expressly under the 2015 SI.</p> <p>Although it is unlikely to have a material impact on financial institutions, such institutions should familiarise themselves with the circumstances in which licences can be granted and ensure the terms of any licence are complied with when a licence is granted.</p>
Treasury licences	The Burundi (Sanctions) (EU Exit) Regulations 2019 – Reg 20 (4) – (6)	The Burundi (European Union Financial Sanctions) Regulations 2015 – Reg 9	(b)	<p>Low Impact</p> <p>Under the 2015 SI the Treasury may vary or revoke a licence at any time. The new 2019 UK SI further provides that a person who issues a licence may also <i>suspend</i> it at any time.</p> <p>This is unlikely to have a material impact on financial institutions although the ability of the Treasury to issue general licence should be monitored.</p>
Treasury licences	The Burundi (Sanctions) (EU Exit) Regulations 2019 – Reg 21	The Burundi (European Union Financial Sanctions) Regulations 2015 – Reg 9 (5)	(c)	<p>Low Impact</p> <p>Under the 2015 SI, a person commits an offence if they “<i>knowingly or recklessly provides information that is false in a material respect, or provides or produces a document that is not what it purports to be.</i>” The 2019 UK SI adds that this is applicable in the event that the licence is sought “<i>whether for P or anyone else</i>”.</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?
Reporting obligations	The Burundi (Sanctions) (EU Exit) Regulations 2019 – Reg 23	The Burundi (European Union Financial Sanctions) Regulations 2015 – Reg 15 and Schedule	(c)	<p>Low Impact</p> <p>The 2015 SI imposed reporting obligations on “relevant institutions” or “<i>relevant business or profession</i>”. In the 2019 UK SI this has been replaced with “<i>relevant firm</i>”. Regulation 24 in the 2019 UK SI clearly defines what a “<i>relevant firm</i>” is, extending the scope of the entities concerned by the information obligations.</p> <p>This change is unlikely to have a material impact on the obligations of financial institutions.</p>
Reporting obligations	The Burundi (Sanctions) (EU Exit) Regulations 2019 – Reg 23(4)	The Burundi (European Union Financial Sanctions) Regulations 2015 – Schedule	(c)	<p>Low Impact</p> <p>The 2015 SI required relevant institutions which had a customer who was a designated person to inform the treasury of the “nature and amount or quantity of any funds or economic resources held by it for the customer”. The 2019 UK SI adds “<i>at the time when it first had the knowledge or suspicion</i>” to the end of the existing obligation, thereby adding an additional element to the reporting obligation.</p> <p>This change is unlikely to have a material impact on the obligations of financial institutions.</p>

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Disclosure of information	The Burundi (Sanctions) (EU Exit) Regulations 2019 – Reg 28	The Burundi (European Union Financial Sanctions) Regulations 2015 – Schedule	(b)	<p>Both the 2015 SI and the 2019 UK SI set out provisions regarding the disclosure of information obtained pursuant to the relevant regulations. However, there are some key differences in the new 2019 UK SI, including:</p> <ul style="list-style-type: none"> - The 2015 SI authorised the disclosure of information by the Treasury, whereas the 2019 UK SI authorises the disclosure of information by the Treasury <i>or the Secretary of State</i>; - the 2015 SI permitted the disclosure of information to the “Legal services Commission, the Scottish Legal Aid Board or the Northern Legal Services Commission”. The 2019 UK SI only authorises disclosure to the Scottish Legal Aid Board but does not include the other two elements specified in the 2015 SI (the Legal Services Commission was replaced by the Legal Aid Agency in 2013 but this is also not included in the 2019 UK SI) - Both the 2015 SI and the 2019 UK SI permit disclosure to “any other regulatory body”, however, the 2015 SI stated “including those of other Member States”, whereas the 2019 UK SI is broader and states “whether or not in the United Kingdom”; - Both the 2015 SI and the 2019 UK SI permit disclosure to other Governments, however, the 2015 SI stated “the Government of a Member State” whereas the 2019 UK SI is broader and states “the Government of any country”; - Both the 2015 SI and the 2019 UK SI permit disclosure to the Council of the European Union and the European Commission, however the 2019 UK SI also includes the European External Action Service; and - The 2019 UK SI also has a new category for disclosure which states that disclosure can be made to “<i>any other person where the Secretary of State or the Treasury (as the case may be) consider that it is appropriate to disclose the information</i>”
Consent to prosecute	-	The Burundi (European Union Financial Sanctions) Regulations 2015 – Reg 14	(a)	<p>The 2015 SI stated that proceedings for offences under the regulations (other than for summary offences) could only be instituted with the consent of the Attorney General (in England and Wales) and with the consent of the Advocate General for Northern Ireland or the Director of Public Prosecutions for Northern Ireland (depending on the circumstances). This requirement does not appear to be present in the new 2019 UK SI.</p>

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Document Version Control

Version	Issue Date	Expiry Date	Notes
1.20	17 th February 2021		<ul style="list-style-type: none">Partner logos added to the authors page.
1.10	5 th December 2020		<ul style="list-style-type: none">Minor formatting changes.
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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