



UK SANCTIONS STATUTORY INSTRUMENTS REVIEW: CENTRAL AFRICAN REPUBLIC

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.

This document is valid until Monday 30 November 2020 at which time an updated version will be issued.

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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 Central African Republic (Sanctions) (EU Exit) Regulations 2020

Restrictive Measure/Category	UK SI reference	EU Legislative SI reference	Change to legal obligation?	Impact?
				<ul style="list-style-type: none"> - The Central African Republic (Sanctions) (EU Exit) Regulations 2020/616 (the "UK SI") - The Central African Republic (European Union Financial Sanctions) Regulations 2014 (the "EU Financial Services SI") - EU Council Regulation 224/2014 concerning restrictive measures in view of the situation in the Central African Republic (the "EU Regulation") - EU Guidance 8519/18 on Restrictive measures (Sanctions) – Update of the EU Best Practices for the effective implementation of restrictive measures (the "EU Guidance") - Export Control (Sudan, South Sudan and Central African Republic Sanctions) Regulations 2014/3258 (the "EU Export Control SI") - Export Control Order 2008/3231 (the "Export Control Order") - Sanctions and Anti-Money Laundering Act 2018 (the "SAML A")
Asset freeze in relation to designated persons	The Central African Republic (Sanctions) (EU Exit) Regulations 2020/616, Reg. 12(1)	The Central African Republic (European Union Financial Sanctions) Regulations 2014/587, Reg. 3(1)	(c)	<p>Low Impact</p> <p>The EU Financial Services 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 substantive difference is that the UK SI has removed the language of funds or economic resources "<i>belonging to</i>" any designated person.</p> <p>This change is unlikely to have a material impact on the obligations of financial institutions.</p>

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Asset freeze in relation to designated persons	The Central African Republic (Sanctions) (EU Exit) Regulations 2020/616, Reg. 12(5)	The Central African Republic (European Union Financial Sanctions) Regulations 2014/587, Reg. 3(2)	(c)	<p>Low Impact</p> <p>The EU Regulation defines freezing of economic resources as "<i>preventing the use of economic resources to obtain funds, goods or services in any way, including, but not limited to, by selling, hiring or mortgaging them.</i>"</p> <p>The UK SI adopts a more specific definition, stating that a person "<i>deals with</i>" economic resources if that person "<i>exchanges the economic resources for funds, goods or services, or uses the economic resources in exchange for funds, goods or services (whether by pledging them as security or otherwise).</i>" This largely mirrors the language of the EU Financial Services SI, however the reference to pledging the resources as security is new (albeit similar to "<i>mortgaging</i>").</p> <p>Although the EU Regulation's definition is slightly broader (covering "<i>use</i>" in "<i>any way</i>"), it is unlikely that in most cases the UK SI's language of "<i>exchanging</i>" or "<i>using the economic resources in exchange for...</i>" will produce substantively different results. The EU examples of "<i>selling, hiring or mortgaging [economic resources]</i>" are also replaced by the example of "<i>pledging them as security or otherwise.</i>" In theory, this creates greater scope of debate over what constitutes "<i>use...in exchange for funds</i>", etc., but again this is unlikely to produce drastically different results in practice. It is worth noting that the definition of "<i>economic resources</i>" in section 60 of the Sanctions and Anti-Money Laundering Act 2018 does not refer to the "<i>exchange</i>" of economic resources; it simply refers to "<i>assets...which can be used to obtain funds</i>" so the use of the word "<i>exchange</i>" may have something of a limiting effect.</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 Central African Republic (Sanctions) (EU Exit) Regulations 2020/616, Reg. 12(6)	EU Guidance 8519/18	(c)	<p>Low Impact</p> <p>The UK SI provides further detail on the meaning of funds or economic resources that are treated as "<i>owned, held or controlled</i>" stating that they include:</p> <ul style="list-style-type: none"> (a) "<i>funds or economic resources in which the person has any legal or equitable interest, 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</i>" (emphasis added); and (b) "<i>any tangible property (other than real property) or bearer security that is comprised in funds or</i>

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				<p><i>economic resources and is in possession of the person."</i></p> <p>This language does not appear in the EU Financial Services SI. However, EU Guidance states that "<i>holding or controlling</i>" should be construed as comprising all situations where, without having a title of ownership, a designated person or entity is able lawfully to dispose of or transfer funds or economic resources he, she or it does not own, without any need for prior approval by the legal owner. A designated person is considered as holding or controlling funds or economic resources, <i>inter alia</i>, if he or she:</p> <ul style="list-style-type: none"> (a) has banknotes or debt certificates issued to bearer, (b) has movable goods on his or her premises which he or she owns jointly with a non-designated person or entity, (c) has received full or similar powers to represent the owner, allowing him or her to order the transfer of funds he or she does not own (e.g. for the purpose of managing a specific bank account), or (d) is a parent or guardian administering a bank account of a minor in accordance with the applicable national law. <p>Although both sets of examples given in the UK SI and EU Guidance are non-exhaustive, it would appear the UK SI casts a wider net on the meaning of "<i>owned, held or controlled</i>" as it captures <u>any</u> legal or equitable interest, without the requirement that the designated person can dispose of or transfer the funds/economic resources without any need for prior approval from the legal owner (which is required under EU Guidance). It also covers any tangible property comprised in funds/economic resources in possession of the designated person, which is seemingly wider than EU Guidance.</p> <p>Therefore, we may see a differing approach in UK and EU concepts of holding or controlling funds/economic resources.</p>

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Asset freeze in relation to designated persons	The Central African Republic (Sanctions) (EU Exit) Regulations 2020/616, Reg. 12(7)	EU Guidance 5993/13	(c)	<p>High Impact</p> <p>Under the UK SI, "<i>funds or economic resources are to be 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 [discussed below]) by the designated person.</i>"</p> <p>This language does not appear in the EU Financial Services SI. However, EU Guidance on the provision of funds or economic resources to non-listed persons or entities which are owned or controlled by a listed person or entity, states that this will "<i>in principle be considered as making them indirectly available to the [listed person or entity], unless it can be reasonably determined, on a case-by-case basis using a risk-based approach, taking into account all of the relevant circumstances [...] that the funds or economic resources concerned will not be used by or be for the benefit of that listed person or entity</i>" (emphasis added).</p> <p>The new language in the UK SI - which prohibits dealing with the funds or economic resources of entities "<i>owned or controlled</i>" by designated persons - mirrors EU Guidance. However under the EU Regulation there would be a rebuttable presumption that doing so is making funds indirectly available to designated persons, whereas the UK SI now makes this an express statutory provision with no possibility of proving that the funds or economic resources were not, in fact, for the benefit of the designated person. Financial institutions will need to ensure they have appropriate checks and balances in place to identify the ownership <u>and</u> control structures of their counterparties.</p>

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Prohibition on making funds and economic resources available to designated persons	The Central African Republic (Sanctions) (EU Exit) Regulations 2020/616, Regs. 13 and 15	The Central African Republic (European Union Financial Sanctions) Regulations 2014/587, Regs. 4 and 6	(c)	<p>High Impact</p> <p>There is new language in the UK SI, which does not appear in the EU Financial Services SI, at subsection (4) of Regs. 13 and 15 - which prohibits making funds or economic resources available to entities "<i>owned or controlled directly or indirectly</i>" by a designated person.</p> <p>This extension mirrors EU Guidance on the "indirect" ways to make funds or economic resources available to listed persons or entities (outlined above). However under the EU Guidance, there would be a rebuttable presumption that doing so is making funds indirectly available to designated persons, whereas the UK SI now makes this an express statutory provision with no possibility of proving that the funds or economic resources were not, in fact, for the benefit of the designated person. Financial institutions will need to ensure they have appropriate checks and balances in place to identify the ownership <u>and</u> control structures of their counterparties.</p>
Prohibition on making funds or economic resources available for the benefit of designated persons	The Central African Republic (Sanctions) (EU Exit) Regulations 2020/616, Regs. 14 and 16	The Central African Republic (European Union Financial Sanctions) Regulations 2014/587, Regs. 5 and 7	(c)	<p>Low Impact</p> <p>Under the UK SI, funds/economic resources "<i>are made available for the benefit of a designated person only if that person thereby obtains, or is able to obtain, a significant financial benefit</i>" (emphasis added) and a "<i>financial benefit includes the discharge (or partial discharge) of a financial obligation for which the designated person is wholly or partly responsible</i>".</p> <p>The definition above is included in the EU Financial Services SI and therefore there is not likely to be any change to financial institutions' obligations. However, the concept of "<i>significant financial benefit</i>" differs from the EU Guidance on what constitutes making economic resources available and does not appear in the EU Regulation – although not defined, it has a wide meaning under European jurisprudence and "<i>encompasses all the acts necessary under the applicable national law if a person is effectively to obtain full power of disposal in relation to the economic resource concerned...</i>" The test of "<i>full power of disposal</i>" is, on its face, more stringent than a "<i>significant financial benefit</i>". Again, we could see a divergence between EU and UK concepts of "making available".</p>

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Non-liability for freezing in “good faith”	Sanctions and Anti-Money Laundering Act 2018, s. 44	EU Council Regulation 224/2014 concerning restrictive measures in view of the situation in the CAR, Art. 13(1)	(a)	<p>Low Impact</p> <p>Art. 13 of the EU Regulation contains a sheltering provision which provides that where funds or economic resources were frozen, or there was a refusal to make funds or economic resources available, performed in good faith on the basis that doing so was in accordance with the EU Regulation, does not give rise to any liability unless it is proven that those acts were negligent.</p> <p>Under s. 44 of the SAMLA, a person is not liable to civil proceedings for acts done in the reasonable belief that they were in compliance with sanctions regulations (including financial sanctions and trade sanctions). The SAMLA exception does not exclude negligent acts/omissions – this therefore appears to provide for a broader sheltering provision in UK sanctions legislation.</p>
Ownership and control provisions	The Central African Republic (Sanctions) (EU Exit) Regulations 2020/616, Reg. 7 and Sch. 1	-	(c)	<p>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>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>(a) <i>holds directly or indirectly more than 50% of the shares in C,</i></p> <p>(b) <i>holds directly or indirectly more than 50% of the voting rights in C, or</i></p> <p>(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>[...]</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>

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				<p>Limb (c) of the first condition and the second condition effectively contain the UK SI's definition of "control". This is arguably narrower than the corresponding definition in the EU Guidance, which provides the following (non-exhaustive) criteria for establishing control <u>in addition to</u> the ability to appoint or remove a majority of the board:</p> <ul style="list-style-type: none"> <i>(a) having the right or exercising the power to appoint or remove a majority of the members of the administrative, management or supervisory body of such legal person or entity;</i> <i>(b) having appointed solely as a result of the exercise of one's voting rights a majority of the members of the administrative, management or supervisory bodies of a legal person or entity who have held office during the present and previous financial year;</i> <i>(c) controlling alone, pursuant to an agreement with other shareholders in or members of a legal person or entity, a majority of shareholders' or members' voting rights in that legal person or entity;</i> <i>(d) having the right to exercise a dominant influence over a legal person or entity, pursuant to an agreement entered into with that legal person or entity, or to a provision in its Memorandum or Articles of Association, where the law governing that legal person or entity permits its being subject to such agreement or provision;</i> <i>(e) having the power to exercise the right to exercise a dominant influence referred to in point (d), without being the holder of that right;</i> <i>(f) having the right to use all or part of the assets of a legal person or entity;</i> <i>(g) managing the business of a legal person or entity on a unified basis, while publishing consolidated accounts;</i> <i>(h) sharing jointly and severally the financial liabilities of a legal person or entity, or guaranteeing them.</i> <p>The UK SI has adopted the approach of having a catch all, as show in subsection (4) above, and so likely having regard to 'all the circumstances' will include the factors above. However, on the fact of it, the wording of the UK SI presents a much more limited view of what constitutes 'control'.</p> <p>In addition to codifying the definition of ownership and control, the UK SI contains at Schedule 1 rules of interpretation that apply in connection with these concepts. Of significance, are the following:</p> <ul style="list-style-type: none"> - Pursuant to paragraph 2 of Schedule 1, persons who hold a share or right jointly are each treated as holding that share or right; - Pursuant to paragraph 3 of Schedule 1, if separate shares or rights are held by persons but subject to

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				<p>a joint arrangement between those persons, each of them is treated as holding the combined shares/rights held by both of them.</p> <p>These provisions are not directly replicated in the EU Guidance and whilst there are aspects of the EU Guidance that may have a similar effect (see paragraph (c) in particular), the language of the codified UK SI is broader. The EU Guidance does not expressly reference joint interests and arrangements and in several places the wording seems to anticipate only one person holding rights or exercising powers in order for the control test to be met.</p> <p>Paragraph 4 of Schedule 1 defines a person holding “more than 50% of the shares” in a person to be a person holding shares comprised in the issued share capital of that person “of a nominal value exceeding (in aggregate) 50% of that share capital”. This does not require a numerical calculation of the number of issued shares, but instead appears to assess the aggregate value of all issued shares. This may be complicated to apply in relation to companies with different categories of shares issued at different nominal values and is slightly different from the EU Guidance which focusses on more than “50% of the proprietary” rights in a person.</p> <p>Paragraph 9 of Schedule 1 deals with the meaning of shares or rights being held “indirectly”. This occurs where a person has a “majority stake” in another person and that other person holds the share in question or is part of a chain which ultimately holds such share. The definition of “majority stake” is odd because it deploys language which derives from the EU Guidance and not the provisions in the UK SI.</p> <p>Also, paragraph 9(4) of Schedule 1 of the UK SI sets out a definition of what constitutes the right to appoint or remove the majority of the board of directors of a person for purposes of understanding what constitutes holding a “majority stake”. This definition appears to be narrow as it refers to situations where a person’s appointment as director flows from their appointment as director of the entity with the “majority stake” or where the entity with the “majority stake” itself holds the directorship. It does not refer to situations where the entity with the “majority stake” exercises the right to appoint persons that are not also its directors and does not itself hold the directorship. It is unclear if this provision is intended to be exhaustive or not (if the latter, then it is likely that these situations would also be picked up, but the drafting is unclear).</p> <p>Paragraphs 10 and 11 of Schedule 1 of the UK SI also provide helpful codification of the application of ownership and control provisions in relation to nominee situations not expressly captured in the EU Guidance</p>

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				(albeit that the EU Guidance can be interpreted to apply to nominee situations). Similar helpful codification is provided in paragraph 14 in relation to rights attached to shares held by way of security (which are to be treated as being held by the person providing such security where they can only be exercised in accordance with that person's instructions or in that person's interests (except for purposes of preserving or exercising security)).
Exceptions to asset freeze and prohibition on making funds and economic resources available to designated persons	The Central African Republic (Sanctions) (EU Exit) Regulations 2020/616, Reg. 31(3)	EU Council Regulation 224/2014 concerning restrictive measures in view of the situation in the CAR, Art. 10(2)(a)	(c)	<p>Low Impact</p> <p>The EU Regulation provides that a person who credits a frozen account with interest or other earnings due on an account does not contravene the prohibitions on making funds or economic resources 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 relevant institutions (i.e., firms with Part 4A permission under FSMA) only. Second, under the UK SI this exception applies to the prohibition on dealing with funds or economic resources owned, held or controlled by a designated person, 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>
Exceptions to asset freeze and prohibition on making funds and economic resources available to designated persons	The Central African Republic (Sanctions) (EU Exit) Regulations 2020/616, Reg. 31(5)	EU Council Regulation 224/2014 concerning restrictive measures in view of the situation in the CAR, Art. 10(2)(b)	(c)	<p>Low Impact</p> <p>The EU Regulation provides that a person who credits a frozen account with payments due under contracts, agreements or obligations that were concluded or arose before the date on which the person was designated 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>

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				This change is unlikely to have a material impact on the obligations of financial institutions but the UK SI wording is broader for non-financial institutions as it allows them to remit the money to the financial institution.
Exceptions to asset freeze and prohibition on making funds and economic resources available to designated persons	The Central African Republic (Sanctions) (EU Exit) Regulations 2020/616, Reg. 31(6)	-	(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><i>(6) The prohibitions in regulations 12 to 14 are not contravened in relation to a designated person ("P") by a transfer of funds from account A to account B, where—</i></p> <p><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></p> <p><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></p> <p><i>(c) accounts A and B are held or controlled (directly or indirectly) by P.</i></p> <p>This change is unlikely to have a material impact on the obligations of financial institutions.</p>
Exceptions to asset freeze and prohibition on making funds and economic resources available to designated persons	The Central African Republic (Sanctions) (EU Exit) Regulations 2020/616, Reg. 31	EU Council Regulation 224/2014 concerning restrictive measures in view of the situation in the CAR, Art. 10(2)(c)	(b)	<p>Medium Impact</p> <p>The exception under the EU Regulation allowing a person to credit a frozen account with payments due under judicial, administrative or arbitral decisions rendered in the EU or enforceable in the EU Member State concerned without contravening the prohibitions on making funds available to or for the benefit of a designated person has been deleted (and there is no equivalent carried across in respect of judicial, administrative or arbitral decisions rendered in the UK or enforceable in the UK).</p>

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Exceptions to asset freeze and prohibition on making funds and economic resources available to designated persons	The Central African Republic (Sanctions) (EU Exit) Regulations 2020/616, Reg. 32	-	(b)	<p>Low Impact</p> <p>Reg. 32 contains a new exception for acts done for the purposes of national security or prevention of serious crime, as determined by a person in the service of the Crown or holding office under the Crown, acting in the course of that person's duty.</p> <p>This change is unlikely to have a material impact on the obligations of financial institutions.</p>

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Treasury Licences	The Central African Republic (Sanctions) (EU Exit) Regulations 2020/616, Reg. 33(2) – (3)	EU Council Regulation 224/2014 concerning restrictive measures in view of the situation in the CAR, Art. 6	(c)	<p>Low Impact</p> <p>Under the UK SI, the Treasury's rights to issue licences in respect of asset freeze restrictions are split into those that apply in relation to a non-UN designated person and those that apply in relation to a UN designated person.</p> <ul style="list-style-type: none"> - For both UN designated and non-UN designated persons: <ul style="list-style-type: none"> o A licence to enable the basic needs of a designated person, or any dependent family member of such a person, to be met remains (see Sch. 2, Part 2, para. 2). However, (i) the types of "basic needs" has been split into those for an individual and those for an entity, (ii) the language appears to focus on the "needs" for food, etc. rather than "payments for" the same – this could potentially allow for broader application, (iii) there are a couple of additional specific "basic needs" for entities such as "the payment of reasonable fees for the provision of property management services" and the "payment of remuneration, allowances or pensions of employees". There is also a fairly broad clarification of what constitutes a "dependent family member" which is likely to assist with decisions of whether a licence would be available in certain circumstances. o A licence to enable the payment of reasonable professional fees for the provision of legal services remains (see Sch. 2, Part 2, para. 3). However, there is a new qualification in respect of a licence to enable the payment of expenses associated with the provision of legal services for such expenses to also be "reasonable" (albeit this is in accordance with the practice OFSI applies already). o A licence to enable the payment of fees or service charges arising from the routine holding or maintenance of frozen funds or economic resources also remains (see Sch. 2, Part 2, para. 4). However, again, such fees and service charges are now required to be "reasonable". o A licence to enable payment of extraordinary expenses remains (see Sch. 2, Part 2, para. 5). However, there is a new qualification in that the expenses must be of a designated person. o A licence in respect of prior obligations still remains (see Sch. 2, Part 2, para. 7). However, the provision in the UK SI does not on its face require the funds or economic resources to be used for a payment by a designated person, instead it provides for "the use of a designated person's frozen funds or economic resources..." which may broaden the potential for licences to be granted to third parties of the same. In addition, the new provision requires that "the obligation arose before the date on which the person became a designated person". This appears to potentially be narrower than the licensing ground in the EU Regulation which also applies where the "contract or agreement ...was concluded...before the date on which [the person was designated]". For the purposes of a licence application under this ground, the
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				<p>key criterion will therefore be on what date the obligation in question arose rather than the date the agreement in question concluded and therefore precludes the use of any arguments in relation to extension of the term of pre-existing agreements.</p> <ul style="list-style-type: none">- For non-UN designated persons, the following new licensing purposes also apply (see Sch. 2, Part 3):<ul style="list-style-type: none">o Humanitarian assistance activities;o Diplomatic missions; ando Extraordinary situations (which is not defined so is potentially flexible, but this is unclear). <p>This is beneficial as it provides greater scope for licensing.</p>
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Restrictive Measure/Category	UK SI reference	EU Legislative SI reference	Change to legal obligation?	Impact?
Treasury Licences	The Central African Republic (Sanctions) (EU Exit) Regulations 2020/616, Reg. 35(5)	The Central African Republic (European Union Financial Sanctions) Regulations 2014/587, Reg. 9(3)	(c)	<p>Low Impact</p> <p>Under the EU Financial Services 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 Central African Republic (Sanctions) (EU Exit) Regulations 2020/616, Reg. 36(1)	The Central African Republic (European Union Financial Sanctions) Regulations 2014/587, Reg. 9(5)	(c)	<p>Low Impact</p> <p>Under the EU Financial Services 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>
Information Obligations	The Central African Republic (Sanctions) (EU Exit) Regulations 2020/616, Reg. 39(5)	The Central African Republic (European Union Financial Sanctions) Regulations 2014/587, Reg. 8(3)	(c)	<p>Medium Impact</p> <p>The EU Financial Services SI requires a relevant institution to inform the Treasury without delay if it credits a frozen account (i) with interest or other earnings due on the account, (ii) payments due under contracts, agreements or obligations that were concluded or arose before the account became a frozen account, or (iii) with payments due under judicial, administrative or arbitral decisions rendered in the EU or enforceable in the EU Member State concerned. The last two notification requirements have been deleted from the UK SI.</p> <p>Under the UK SI, a relevant institution must inform the Treasury without delay if that institution credits a frozen account in accordance with Reg. 31(4) (receipt of funds to credit a frozen account) or transfers funds from a frozen account in accordance with Reg. 31(6). The latter notification requirement is a new addition.</p>

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Information Obligations	The Central African Republic (Sanctions) (EU Exit) Regulations 2020/616, Reg. 39(4)	The Central African Republic (European Union Financial Sanctions) Regulations 2014/587, Sch. 1, para. 1(4)	(c)	<p>Low Impact</p> <p>It is clarified in Reg. 39(4) that where a relevant firm is under a reporting obligation to the Treasury, it must "<i>state the nature and amount or quantity of any funds or economic resources held by it for the customer at the time when it first had the knowledge or suspicion</i>" (emphasis added).</p> <p>This change is unlikely to have a material impact on the obligations of financial institutions.</p>
Information Obligations	The Central African Republic (Sanctions) (EU Exit) Regulations 2020/616, Reg. 41(6)	The Central African Republic (European Union Financial Sanctions) Regulations 2014/587, Sch. 1, para. 2(4)	(c)	<p>Low Impact</p> <p>Under the EU Financial Services SI, the Treasury was permitted to request "<i>any person in or resident in the United Kingdom</i>" to provide relevant information, whereas under the UK SI, this has been widened to any person "<i>if the Treasury believe that the person may be able to provide the information</i>".</p>
Information Obligations	The Central African Republic (Sanctions) (EU Exit) Regulations 2020/616, Reg. 41(7)(c)	The Central African Republic (European Union Financial Sanctions) Regulations 2014/587, Sch. 1, para. 2(5)(c)	(c)	<p>Low Impact</p> <p>Under the UK SI, the basis on which the Treasury may reasonably require information has been expanded slightly to include "<i>detecting or obtaining evidence of the commission of an offence...</i>" (emphasis added).</p> <p>This 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 Central African Republic (Sanctions) (EU Exit) Regulations 2020/616, Reg. 47	The Central African Republic (European Union Financial Sanctions) Regulations 2014/587, Sch. 1, para. 5 Export Control Order 2008/3231, Art. 43	(c)	Low Impact In relation to provisions in respect of disclosure of information, the UK SI effectively merges the rights contained in the EU Financial Services SI and the Export Control Order (with several additions) such that the scope of the Secretary of State's, the Treasury's and the Commissioners' powers to disclose information obtained under the relevant parts of the UK SI are now wider than previously, both in terms of the purpose for which such information can be disclosed and to whom. For example, information may be disclosed for any purpose stated in Reg. 4 (i.e., the purposes of the UK SI), and to " <i>any other person where the Secretary of State, the Treasury or the Commissioners (as the case may be) consider that it is appropriate to disclose the information</i> ".
Trade Controls	The Central African Republic (Sanctions) (EU Exit) Regulations 2020/616, Reg. 21	Export Control Order 2008/3231, Art. 3	(b)	Low Impact The UK SI introduces a prohibition on the export of military goods to, or for use in, the Central African Republic. This is not contained in the EU Regulation (consistent with the European Union's Common Security and Defence Policy). However, this is in line with the general prohibition (subject to exceptions and licensing) on the export of military goods contained in the Export Control Order, Art. 3 (which will remain in force even after Exit Day) and the UK SI provisions will sit alongside the same. The standalone prohibition is unlikely to have a material impact on the obligations of financial institutions subject to any changes in the licensing and exceptions available.
Trade Controls	The Central African Republic (Sanctions) (EU Exit) Regulations 2020/616, Reg.	Export Control Order 2008/3231, Art. 20	(b)	Low Impact The UK SI introduces a prohibition on the direct or indirect supply or delivery of military goods from a third country to a place in the Central African Republic, unless that person did not know and had no reasonable cause to suspect that the goods were destined (or ultimately destined) for the Central African Republic. This is not contained in the EU Regulation (consistent with the European Union's Common Security and Defence Policy).

Restrictive Measure/Category	UK SI reference	EU Legislative SI reference	Change to legal obligation?	Impact?
	22			<p>However, this is in line with the general prohibition (subject to exceptions and licensing) contained in the Export Control Order at Art. 20 (and the defence for "no reasonable suspicion" in Art. 34). The Export Control Order prohibits the supply or delivery, an agreement to supply or deliver, and any act calculated to promote the supply for delivery to the Central African Republic (being an "embargoed destination"). The UK SI provisions will sit alongside this.</p> <p>The standalone prohibition is unlikely to have a material impact on the obligations of financial institutions subject to any changes in the licensing and exceptions available.</p>
Trade Controls	The Central African Republic (Sanctions) (EU Exit) Regulations 2020/616, Reg. 23 – 24	-	(b)	<p>Potentially Medium Impact</p> <p>The UK SI introduces at Reg. 23 a new prohibition on directly or indirectly making military goods or military technology available to a person connected with the Central African Republic or for use in the Central African Republic, however it is a defence if there is no knowledge, or reasonable cause to suspect that the person was connected with the Central African Republic, or that the goods or technology were for use in the Central African Republic.</p> <p>Similarly, by virtue of Reg. 24, it is also now prohibited to transfer military technology to a place in the Central African Republic or to a person connected with the Central African Republic (unless there was no knowledge, or reasonable cause to suspect, that the transfer was to a place in the Central African Republic or to a person connected with the Central African Republic). This will be more difficult to screen for.</p> <p>The definition of "connected with" is extremely broad and includes:</p> <ul style="list-style-type: none"> - An individual who is, or an associated or combination of individuals who are, <u>ordinarily resident in</u> the Central African Republic, - An individual who is, or an associated or combination of individuals who are, <u>located in</u> the Central African Republic; - A person, other than an individual, which is incorporated or constituted under the law of the Central African Republic, or - A person, other than an individual, which is domiciled in the Central African Republic. <p>This prohibition does not appear in the EU Financial Services SI, the EU Regulation or the Export Control</p>

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				Order. The prohibition is broadly drafted, particularly the prohibition on "indirect making available" military goods and technology. This could capture financial transactions to facilitate the movement or purchase of targeted goods by someone "connected with" the Central African Republic, or for use in the Central African Republic. Financial institutions will again need to ensure sufficient diligence is conducted on transactions to identify any touchpoint to the Central African Republic, to ensure they can benefit from the defence of having "no reasonable cause to suspect".
Trade Controls	The Central African Republic (Sanctions) (EU Exit) Regulations 2020/616, Reg. 25	EU Council Regulation 224/2014 concerning restrictive measures in view of the situation in the CAR, Art. 2(a) Export Control (Sudan, South Sudan and Central African Republic Sanctions) Regulations 2014/3258, Reg. 6(a)	(b) and (c)	<p>Medium Impact</p> <p>The EU Regulation contains a prohibition on the direct or indirect provision of technical assistance related to the goods and technology listed in the Common Military List, or related to the provision, manufacture, maintenance and use of goods included in that list, to any person, entity or body in the Central African Republic or for use in the Central African Republic. This was transposed into UK law by the EU Export Control SI.</p> <p>The new UK SI contains a similar prohibition, subject to three changes:</p> <ul style="list-style-type: none"> (a) it prohibits the provision of technical assistance to "<i>a person connected with the Central African Republic</i>". As above, this is an extremely broad definition and wider than the scope of a designated person. (b) it does not include the reference to "<i>technical assistance...related to the provision, manufacture, maintenance or use of goods</i>." Therefore this technically applies a narrower prohibition, however as the definition of "technical assistance" in the UK SI includes technical support relating to the provision, maintenance and use of the goods or technology, this is unlikely to have any material impact (albeit there may be divergence in interpretation). (c) the EU Export Control SI stipulates that, for an offence to occur in relation to the provision of technical assistance, a person must be knowingly concerned in activity <u>with the intent to evade the prohibition</u> in the regulations. The UK SI does not contain a requirement on the prosecution to establish "intent to evade". 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 (see Reg. 30).

Restrictive Measure/Category	UK SI reference	EU Legislative SI reference	Change to legal obligation?	Impact?
Trade Controls	<p>The Central African Republic (Sanctions) (EU Exit) Regulations 2020/616, Reg. 26</p> <p>Sanctions and Anti-Money Laundering Act 2018, s. 61</p>	<p>EU Council Regulation 224/2014 concerning restrictive measures in view of the situation in the CAR, Art. 2(b)</p> <p>Export Control (Sudan, South Sudan and Central African Republic Sanctions) Regulations 2014/3258, Reg. 6(b)</p>	(a) and (b)	<p>Medium Impact</p> <p>The UK SI's prohibition on providing financial services and funds related to military goods and technology to persons in, or for use in the 23 September 2020 Central African Republic is broader than the equivalent provisions in the EU Regulation and EU Export Control SI. Specifically, there are restrictions on:</p> <ul style="list-style-type: none"> (a) Directly or indirectly providing, to a person connected with the Central African Republic, financial services in pursuance of or in connection with an arrangement whose object or effect is: <ul style="list-style-type: none"> a. the export of military goods, b. the direct or indirect supply or delivery of military goods, c. directly or indirectly making military goods or military technology available to a person, d. the transfer of military technology, or e. the direct or indirect provision of technical assistance relating to military goods or military technology. (b) Directly or indirectly making funds available to a person connected with the Central African Republic in pursuance of or in connection with an arrangement mentioned in (1) above. (c) Directly or indirectly providing financial services or funds in pursuance of or in connection with an arrangement whose object or effect is— <ul style="list-style-type: none"> a. the export of military goods to, or for use in, the Central African Republic, b. the direct or indirect supply or delivery of military goods to a place in the Central African Republic, c. directly or indirectly making military goods or military technology available to a person connected with the Central African Republic or for use in the Central African Republic, d. the transfer of military technology to a person connected with the Central African Republic or for use in the Central African Republic, or e. the direct or indirect provision of technical assistance relating to military goods or military technology to a person connected with the Central African Republic or for use in the Central African Republic. <p>The key differences for financial institutions are as follows:</p>

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				<p>(a) as the definition of "connected person" is extremely wide (see above) and this category of persons is broader than designated persons, and will therefore fall outside screening procedures – this is particularly concerning for the prohibition at (2) on the "making funds available" to such persons.</p> <p>(b) UK has merged the concepts in the EU prohibition of "financing and financial assistance" into "financial services", which is non-exhaustively defined in the SAMLA as including insurance-related, banking and other financial services. The EU listed examples of "financial assistance" are all explicitly covered by the SAMLA (that is, loans, export credit insurance, insurance and reinsurance) except for grants. It is not clear whether grants will constitute "financial services" but given the wide formulation of the SAMLA definition, this will likely be the case.</p> <p>(c) It was prohibited under the EU Regulation/EU Export Control SI to provide financing or financial assistance for the provision of related brokering services. It appears this prohibition is not explicitly replicated.</p> <p>(d) the EU Export Control SI stipulates that, for an offence to occur in relation to the (narrower) prohibition on providing financing or financial assistance to designated persons related to military activities, a person must be knowingly concerned in the provision of such financing or financial assistance with the intent to evade the prohibition in the regulations. The UK SI does not contain a requirement on the prosecution to establish "intent to evade". 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 (see Reg. 30).</p>
Trade Controls	The Central African Republic (Sanctions) (EU Exit) Regulations 2020/616, Reg. 27	EU Council Regulation 224/2014 concerning restrictive measures in view of the situation in the CAR, Art. 2(a) Export Control	(b)	<p>High Impact</p> <p><u>Change in Definition</u></p> <p>The UK SI's definition of "brokering services" is wider than in the EU Regulation (where it is, in summary limited to: (i) buying or selling or (ii) the negotiation or arrangement of transactions for purchase, sale or supply of goods, technology or financial or technical services from a third country to another third country.</p> <p>Under the UK SI, it includes:</p> <p>Any services to secure, or otherwise in relation to, an arrangement, including (but not limited to):</p>

Restrictive Measure/Category	UK SI reference	EU Legislative SI reference	Change to legal obligation?	Impact?
		(Sudan, South Sudan and Central African Republic Sanctions) Regulations 2014/3258, Reg. 6(a)		<p>(a) the selection or introduction of persons as parties or potential parties to the arrangement,</p> <p>(b) the negotiation of the arrangement,</p> <p>(c) the facilitation of anything that enables the arrangement to be entered into; and</p> <p>(d) the provision of any assistance that in any way promotes or facilitates the arrangement.</p> <p><u>Change in Prohibition</u></p> <p>Under the EU Regulation and the EU Export Control SI, the prohibition of brokering services is in relation to the provision, manufacture, maintenance and use of goods on the Common Military List to any person, entity or body in the Central African Republic or for use in the Central African Republic.</p> <p>In the UK SI, the scope of the prohibition against brokering services is, on its face, wider. It covers arrangements where the object or effect is:</p> <p>(a) the direct or indirect supply or delivery of military goods from a third country to a place in the Central African Republic;</p> <p>(b) directly or indirectly making military goods or technology available in a third country for direct or indirect supply or delivery to a person connected with the Central African Republic or to a place in the Central African Republic;</p> <p>(c) the transfer of, or making available for transfer, military technology from a place in a third country to a person connected with the Central African Republic or to a place in the Central African Republic;</p> <p>(d) the direct or indirect provision in a non-UK country, of technical assistance relating to military goods or technology to a person connected with the Central African Republic or to a place in the Central African Republic;</p> <p>(e) the direct or indirect provision, in a non-UK country, of financial services to a person connected with the Central African Republic or to a place in the Central African Republic (where the arrangement, or any connected arrangement, is within the scope of Reg. 26 (outlined above);</p> <p>(f) directly or indirectly making funds available, in a non-UK country, to a person connected with the Central African Republic (where the arrangement, or any connected arrangement, is within the scope of Reg. 26 (outlined above); or</p> <p>(g) the direct or indirect provision of funds from a non-UK country, where the arrangement or any other connected arrangement is within the scope of Reg. 26 (outlined above).</p>

Restrictive Measure/Category	UK SI reference	EU Legislative SI reference	Change to legal obligation?	Impact?
				As above, the UK SI does not contain a requirement on the prosecution to establish "intent to evade", which is currently required under the EU Export Control SI. 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 (see Reg. 30).
Trade Controls	The Central African Republic (Sanctions) (EU Exit) Regulations 2020/616, Reg. 28 Sanctions and Anti-Money Laundering Act 2018, s. 61	EU Council Regulation 224/2014 concerning restrictive measures in view of the situation in the CAR, Art. 2(c)	(b)	Medium Impact There is a prohibition in the EU Regulation against technical assistance, financing or financial assistance, brokering services or transport services related to the provision of armed mercenary personnel in the Central African Republic or for use in the Central African Republic. However, the UK SI includes a prohibition on the direct or indirect provision of technical assistance, armed personnel, financial services or funds, or brokering services where such provision enables or facilitates the conduct or armed hostilities in the Central African Republic. The UK SI's wording is broader (targeting the "facilitation" of armed hostilities rather than the provision of mercenary). Further, given that "financial services" are non-exhaustively and broadly defined under the SAMLA as including insurance-related, banking and other financial services, this has a potentially wide application which could capture the transactions arranged by financial institutions. It is, however, a defence to show there was no knowledge, or reason to suspect, that the relevant act would enable or facilitate the conduct of armed hostilities in the CAR
Trade Controls	-	EU Council Regulation 224/2014 concerning restrictive measures in view of the situation in the	(a)	Potentially Medium Impact The EU Regulation contains an exemption to the trade control restrictions contained in Art. 2 for the provision of technical assistance, financing or financial assistance or brokering services: <i>(a) intended solely for the support of or use by MINUSCA, the UN missions and the French forces deployed in the CAR, as well as other UN Member States' forces providing training and assistance as notified to the Sanctions Committee;</i> <i>(b) related to protective clothing, including flak jackets and military helmets, temporarily exported to the CAR by UN personnel, representatives of the media and humanitarian and development</i>

Restrictive Measure/Category	UK SI reference	EU Legislative SI reference	Change to legal obligation?	Impact?
		CAR, Art. 3		<p><i>workers and associated personnel, for their personal use only;</i></p> <p><i>(c) related to the supplies of non-lethal equipment and provision of assistance, including operational and non-operational training to the CAR security forces, including State civilian law enforcement institutions, intended solely for support of or use in the CAR process of Security Sector Reform, in coordination with MINUSCA, provided that they have been notified in advance to the Sanctions Committee;</i></p> <p><i>(d) related to non-lethal military equipment intended solely for humanitarian or protective use, provided that the provision of such assistance or services has been notified at least 20 days in advance to the Sanctions Committee;</i></p> <p><i>(e) related to weapons with a calibre of 14,5 mm or less and ammunition and components specially designed for such weapons, and to unarmed ground military vehicles and ground military vehicles mounted with weapons with a calibre of 14,5 mm or less, and their spare parts, and to rocket-propelled grenades, and ammunition specially designed for such weapons, to the CAR security forces, including state civilian law enforcement institutions, where such weapons, ammunition, components and vehicles are intended solely for support of, or use in, the CAR process of SSR, provided that the provision of such assistance or services has been notified at least 20 days in advance to the Sanctions Committee;</i></p> <p><i>(f) related to arms and other related lethal equipment that are not listed in point (e) of Article 3, to the CAR security forces, including state civilian law enforcement institutions, where such arms and equipment are intended solely for support of, or use in, the CAR process of SSR, as approved in advance by the Sanctions Committee."</i></p> <p>This exemption is not carried forward into the UK SI which could have an impact for financial institutions that currently rely on these exemptions.</p>
Trade Control Licences	The Central African Republic (Sanctions) (EU Exit) Regulations 2020/616, Reg. 35(4)(b)	The Export Control Order 2008/3231, Art. 26(6)(b)	(c)	<p>Low Impact</p> <p>Reg. 35(4)(b) provides that trade licences may be of indefinite duration or of a defined duration. However, under the Export Control Order, trade licences may only be "<i>limited so as to expire on a specified date unless renewed</i>". This is potentially beneficial for licence holders as it may decrease the administration associated with licence renewals.</p>

Restrictive Measure/Category	UK SI reference	EU Legislative SI reference	Change to legal obligation?	Impact?
Trade Control Licences	The Central African Republic (Sanctions) (EU Exit) Regulations 2020/616, Reg. 37(2)	The Export Control Order 2008/3231, Art. 38(1)–(2)	(c)	<p>Low Impact</p> <p>Pursuant to Reg. 37(2) it is an offence for a person to purport to act under the authority of a trade licence but to fail to comply with any condition of the licence. This offence is similar to the offence under Art. 38(1) of the Export Control Order save that under Reg. 37(2) there is no carve out from the offence where the licence is modified after completion of the act authorised. This means that the UK SI contains a broader prohibition.</p>
Defences	The Central African Republic (Sanctions) (EU Exit) Regulations 2020/616, Reg. 30(2)	-	(b)	<p>Medium Impact</p> <p>There is a new reverse burden of proof where a Defendant adduces sufficient evidence to raise an issue with respect to the defence. The defence will be satisfied unless the prosecution proves, beyond a reasonable doubt, that it is not.</p> <p>This will make it easier for financial institutions to rely upon defences.</p>
Satisfaction of claims	-	EU Council Regulation 224/2014 concerning restrictive measures in view of the situation in the CAR, Art. 14	(a)	<p>Low Impact</p> <p>The EU Regulation contains a restriction on the satisfaction of claims made by a designated person or person acting through or on behalf of a designated person in connection with any contract or transaction the performance of which has been affected, directly or indirectly, in whole or in part, by the measures imposed under the EU Regulation.</p> <p>This is not carried forward into the UK SI but is unlikely to have a material impact for financial institutions.</p>

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High Impact

Restrictive Measure/Category	UK SI reference	EU Legislative SI reference	Change to legal obligation?	Impact?
				<ul style="list-style-type: none"> - The Central African Republic (Sanctions) (EU Exit) Regulations 2020/616 (the "UK SI") - The Central African Republic (European Union Financial Sanctions) Regulations 2014 (the "EU Financial Services SI") - EU Council Regulation 224/2014 concerning restrictive measures in view of the situation in the Central African Republic (the "EU Regulation") - EU Guidance 8519/18 on Restrictive measures (Sanctions) – Update of the EU Best Practices for the effective implementation of restrictive measures (the "EU Guidance") - Export Control (Sudan, South Sudan and Central African Republic Sanctions) Regulations 2014/3258 (the "EU Export Control SI") - Export Control Order 2008/3231 (the "Export Control Order") - Sanctions and Anti-Money Laundering Act 2018 (the "SAMLA")

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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 Central African Republic (Sanctions) (EU Exit) Regulations 2020/616, Reg. 12(7)	EU Guidance 5993/13	(c)	<p>High Impact</p> <p>Under the UK SI, "<i>funds or economic resources are to be 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 [discussed below]) by the designated person.</i>"</p> <p>This language does not appear in the EU Financial Services SI. However, EU Guidance on the provision of funds or economic resources to non-listed persons or entities which are owned or controlled by a listed person or entity, states that this will "<i>in principle be considered as making them indirectly available to the [listed person or entity], unless it can be reasonably determined, on a case-by-case basis using a risk-based approach, taking into account all of the relevant circumstances [...] that the funds or economic resources concerned will not be used by or be for the benefit of that listed person or entity</i>" (emphasis added).</p> <p>The new language in the UK SI - which prohibits dealing with the funds or economic resources of entities "<i>owned or controlled</i>" by designated persons - mirrors EU Guidance. However under the EU Regulation there would be a rebuttable presumption that doing so is making funds indirectly available to designated persons, whereas the UK SI now makes this an express statutory provision with no possibility of proving that the funds or economic resources were not, in fact, for the benefit of the designated person. Financial institutions will need to ensure they have appropriate checks and balances in place to identify the ownership <u>and</u> control structures of their counterparties.</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 Central African Republic (Sanctions) (EU Exit) Regulations 2020/616, Regs. 13 and 15	The Central African Republic (European Union Financial Sanctions) Regulations 2014/587, Regs. 4 and 6	(c)	<p>High Impact</p> <p>There is new language in the UK SI, which does not appear in the EU Financial Services SI, at subsection (4) of Regs. 13 and 15 - which prohibits making funds or economic resources available to entities "<i>owned or controlled directly or indirectly</i>" by a designated person.</p> <p>This extension mirrors EU Guidance on the "indirect" ways to make funds or economic resources available to listed persons or entities (outlined above). However under the EU Guidance, there would be a rebuttable presumption that doing so is making funds indirectly available to designated persons, whereas the UK SI now makes this an express statutory provision with no possibility of proving that the funds or economic resources were not, in fact, for the benefit of the designated person. Financial institutions will need to ensure they have appropriate checks and balances in place to identify the ownership <u>and</u> control structures of their counterparties.</p>
Ownership and control provisions	The Central African Republic (Sanctions) (EU Exit) Regulations 2020/616, Reg. 7 and Sch. 1	-	(c)	<p>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>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>(a) <i>holds directly or indirectly more than 50% of the shares in C,</i></p> <p>(b) <i>holds directly or indirectly more than 50% of the voting rights in C, or</i></p> <p>(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>[...]</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>

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				<p>Limb (c) of the first condition and the second condition effectively contain the UK SI's definition of "control". This is arguably narrower than the corresponding definition in the EU Guidance, which provides the following (non-exhaustive) criteria for establishing control <u>in addition to</u> the ability to appoint or remove a majority of the board:</p> <ul style="list-style-type: none"> <i>(a) having the right or exercising the power to appoint or remove a majority of the members of the administrative, management or supervisory body of such legal person or entity;</i> <i>(b) having appointed solely as a result of the exercise of one's voting rights a majority of the members of the administrative, management or supervisory bodies of a legal person or entity who have held office during the present and previous financial year;</i> <i>(c) controlling alone, pursuant to an agreement with other shareholders in or members of a legal person or entity, a majority of shareholders' or members' voting rights in that legal person or entity;</i> <i>(d) having the right to exercise a dominant influence over a legal person or entity, pursuant to an agreement entered into with that legal person or entity, or to a provision in its Memorandum or Articles of Association, where the law governing that legal person or entity permits its being subject to such agreement or provision;</i> <i>(e) having the power to exercise the right to exercise a dominant influence referred to in point (d), without being the holder of that right;</i> <i>(f) having the right to use all or part of the assets of a legal person or entity;</i> <i>(g) managing the business of a legal person or entity on a unified basis, while publishing consolidated accounts;</i> <i>(h) sharing jointly and severally the financial liabilities of a legal person or entity, or guaranteeing them.</i> <p>The UK SI has adopted the approach of having a catch all, as show in subsection (4) above, and so likely having regard to 'all the circumstances' will include the factors above. However, on the fact of it, the wording of the UK SI presents a much more limited view of what constitutes 'control'.</p> <p>In addition to codifying the definition of ownership and control, the UK SI contains at Schedule 1 rules of interpretation that apply in connection with these concepts. Of significance, are the following:</p> <ul style="list-style-type: none"> - Pursuant to paragraph 2 of Schedule 1, persons who hold a share or right jointly are each treated as holding that share or right;

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Restrictive Measure/Category	UK SI reference	EU Legislative SI reference	Change to legal obligation?	Impact?
				<ul style="list-style-type: none"> - Pursuant to paragraph 3 of Schedule 1, if separate shares or rights are held by persons but subject to a joint arrangement between those persons, each of them is treated as holding the combined shares/rights held by both of them. <p>These provisions are not directly replicated in the EU Guidance and whilst there are aspects of the EU Guidance that may have a similar effect (see paragraph (c) in particular), the language of the codified UK SI is broader. The EU Guidance does not expressly reference joint interests and arrangements and in several places the wording seems to anticipate only one person holding rights or exercising powers in order for the control test to be met.</p> <p>Paragraph 4 of Schedule 1 defines a person holding “more than 50% of the shares” in a person to be a person holding shares comprised in the issued share capital of that person “of a nominal value exceeding (in aggregate) 50% of that share capital”. This does not require a numerical calculation of the number of issued shares, but instead appears to assess the aggregate value of all issued shares. This may be complicated to apply in relation to companies with different categories of shares issued at different nominal values and is slightly different from the EU Guidance which focusses on more than “50% of the proprietary” rights in a person.</p> <p>Paragraph 9 of Schedule 1 deals with the meaning of shares or rights being held “indirectly”. This occurs where a person has a “majority stake” in another person and that other person holds the share in question or is part of a chain which ultimately holds such share. The definition of “majority stake” is odd because it deploys language which derives from the EU Guidance and not the provisions in the UK SI.</p> <p>Also, paragraph 9(4) of Schedule 1 of the UK SI sets out a definition of what constitutes the right to appoint or remove the majority of the board of directors of a person for purposes of understanding what constitutes holding a “majority stake”. This definition appears to be narrow as it refers to situations where a person’s appointment as director flows from their appointment as director of the entity with the “majority stake” or where the entity with the “majority stake” itself holds the directorship. It does not refer to situations where the entity with the “majority stake” exercises the right to appoint persons that are not also its directors and does not itself hold the directorship. It is unclear if this provision is intended to be exhaustive or not (if the latter, then it is likely that these situations would also be picked up, but the drafting is unclear).</p> <p>Paragraphs 10 and 11 of Schedule 1 of the UK SI also provide helpful codification of the application of</p>

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				ownership and control provisions in relation to nominee situations not expressly captured in the EU Guidance (albeit that the EU Guidance can be interpreted to apply to nominee situations). Similar helpful codification is provided in paragraph 14 in relation to rights attached to shares held by way of security (which are to be treated as being held by the person providing such security where they can only be exercised in accordance with that person's instructions or in that person's interests (except for purposes of preserving or exercising security)).
Trade Controls	The Central African Republic (Sanctions) (EU Exit) Regulations 2020/616, Reg. 27	EU Council Regulation 224/2014 concerning restrictive measures in view of the situation in the CAR, Art. 2(a) Export Control (Sudan, South Sudan and Central African Republic Sanctions) Regulations 2014/3258, Reg. 6(a)	(b)	<p>High Impact</p> <p><u>Change in Definition</u></p> <p>The UK SI's definition of "brokering services" is wider than in the EU Regulation (where it is, in summary limited to: (i) buying or selling or (ii) the negotiation or arrangement of transactions for purchase, sale or supply of goods, technology or financial or technical services from a third country to another third country.</p> <p>Under the UK SI, it includes:</p> <p style="padding-left: 40px;">Any services to secure, or otherwise in relation to, an arrangement, including (but not limited to):</p> <ul style="list-style-type: none"> (a) the selection or introduction of persons as parties or potential parties to the arrangement, (b) the negotiation of the arrangement, (c) the facilitation of anything that enables the arrangement to be entered into; and (d) the provision of any assistance that in any way promotes or facilitates the arrangement. <p><u>Change in Prohibition</u></p> <p>Under the EU Regulation and the EU Export Control SI, the prohibition of brokering services is in relation to the provision, manufacture, maintenance and use of goods on the Common Military List to any person, entity or body in the Central African Republic or for use in the Central African Republic.</p> <p>In the UK SI, the scope of the prohibition against brokering services is, on its face, wider. It covers arrangements where the object or effect is:</p> <ul style="list-style-type: none"> (h) the direct or indirect supply or delivery of military goods from a third country to a place in the Central African Republic;

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				<ul style="list-style-type: none"> (a) directly or indirectly making military goods or technology available in a third country for direct or indirect supply or delivery to a person connected with the Central African Republic or to a place in the Central African Republic; (b) the transfer of, or making available for transfer, military technology from a place in a third country to a person connected with the Central African Republic or to a place in the Central African Republic; (c) the direct or indirect provision in a non-UK country, of technical assistance relating to military goods or technology to a person connected with the Central African Republic or to a place in the Central African Republic; (d) the direct or indirect provision, in a non-UK country, of financial services to a person connected with the Central African Republic or to a place in the Central African Republic (where the arrangement, or any connected arrangement, is within the scope of Reg. 26 (outlined above)); (e) directly or indirectly making funds available, in a non-UK country, to a person connected with the Central African Republic (where the arrangement, or any connected arrangement, is within the scope of Reg. 26 (outlined above)); or (f) the direct or indirect provision of funds from a non-UK country, where the arrangement or any other connected arrangement is within the scope of Reg. 26 (outlined above). <p>As above, the UK SI does not contain a requirement on the prosecution to establish "intent to evade", which is currently required under the EU Export Control SI. 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 (see Reg. 30).</p>

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Medium Impact

Restrictive Measure/Category	UK SI reference	EU Legislative SI reference	Change to legal obligation?	Impact?
				<ul style="list-style-type: none"> - The Central African Republic (Sanctions) (EU Exit) Regulations 2020/616 (the "UK SI") - The Central African Republic (European Union Financial Sanctions) Regulations 2014 (the "EU Financial Services SI") - EU Council Regulation 224/2014 concerning restrictive measures in view of the situation in the Central African Republic (the "EU Regulation") - EU Guidance 8519/18 on Restrictive measures (Sanctions) – Update of the EU Best Practices for the effective implementation of restrictive measures (the "EU Guidance") - Export Control (Sudan, South Sudan and Central African Republic Sanctions) Regulations 2014/3258 (the "EU Export Control SI") - Export Control Order 2008/3231 (the "Export Control Order") - Sanctions and Anti-Money Laundering Act 2018 (the "SAML A")
Exceptions to asset freeze and prohibition on making funds and economic resources available to designated persons	The Central African Republic (Sanctions) (EU Exit) Regulations 2020/616, Reg. 31	EU Council Regulation 224/2014 concerning restrictive measures in view of the situation in the CAR, Art. 10(2)(c)	(b)	<p>Medium Impact</p> <p>The exception under the EU Regulation allowing a person to credit a frozen account with payments due under judicial, administrative or arbitral decisions rendered in the EU or enforceable in the EU Member State concerned without contravening the prohibitions on making funds available to or for the benefit of a designated person has been deleted (and there is no equivalent carried across in respect of judicial, administrative or arbitral decisions rendered in the UK or enforceable in the UK).</p>
Information Obligations	The Central African Republic (Sanctions) (EU Exit)	The Central African Republic (European Union Financial	(c)	<p>Medium Impact</p> <p>The EU Financial Services SI requires a relevant institution to inform the Treasury without delay if it credits a frozen account (i) with interest or other earnings due on the account, (ii) payments due under contracts, agreements or obligations that were concluded or arose before the account became a frozen account, or (iii)</p>

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Restrictive Measure/Category	UK SI reference	EU Legislative SI reference	Change to legal obligation?	Impact?
	Regulations 2020/616, Reg. 39(5)	Sanctions) Regulations 2014/587, Reg. 8(3)		<p>with payments due under judicial, administrative or arbitral decisions rendered in the EU or enforceable in the EU Member State concerned. The last two notification requirements have been deleted from the UK SI.</p> <p>Under the UK SI, a relevant institution must inform the Treasury without delay if that institution credits a frozen account in accordance with Reg. 31(4) (receipt of funds to credit a frozen account) or transfers funds from a frozen account in accordance with Reg. 31(6). The latter notification requirement is a new addition.</p>
Trade Controls	The Central African Republic (Sanctions) (EU Exit) Regulations 2020/616, Reg. 23 – 24	-	(b)	<p>Potentially Medium Impact</p> <p>The UK SI introduces at Reg. 23 a new prohibition on directly or indirectly making military goods or military technology available to a person connected with the Central African Republic or for use in the Central African Republic, however it is a defence if there is no knowledge, or reasonable cause to suspect that the person was connected with the Central African Republic, or that the goods or technology were for use in the Central African Republic.</p> <p>Similarly, by virtue of Reg. 24, it is also now prohibited to transfer military technology to a place in the Central African Republic or to a person connected with the Central African Republic (unless there was no knowledge, or reasonable cause to suspect, that the transfer was to a place in the Central African Republic or to a person connected with the Central African Republic). This will be more difficult to screen for.</p> <p>The definition of "connected with" is extremely broad and includes:</p> <ul style="list-style-type: none"> - An individual who is, or an associated or combination of individuals who are, <u>ordinarily resident in</u> the Central African Republic, - An individual who is, or an associated or combination of individuals who are, <u>located in</u> the Central African Republic; - A person, other than an individual, which is incorporated or constituted under the law of the Central African Republic, or - A person, other than an individual, which is domiciled in the Central African Republic. <p>This prohibition does not appear in the EU Financial Services SI, the EU Regulation or the Export Control Order. The prohibition is broadly drafted, particularly the prohibition on "indirect making available" military goods and technology. This could capture financial transactions to facilitate the movement or purchase of targeted goods by someone "connected with" the Central African Republic, or for use in the Central African Republic. Financial institutions will again need to ensure sufficient diligence is conducted on transactions to</p>

Restrictive Measure/Category	UK SI reference	EU Legislative SI reference	Change to legal obligation?	Impact?
				identify any touchpoint to the Central African Republic, to ensure they can benefit from the defence of having "no reasonable cause to suspect".
Trade Controls	The Central African Republic (Sanctions) (EU Exit) Regulations 2020/616, Reg. 25	EU Council Regulation 224/2014 concerning restrictive measures in view of the situation in the CAR, Art. 2(a) Export Control (Sudan, South Sudan and Central African Republic Sanctions) Regulations 2014/3258, Reg. 6(a)	(b) and (c)	<p>Medium Impact</p> <p>The EU Regulation contains a prohibition on the direct or indirect provision of technical assistance related to the goods and technology listed in the Common Military List, or related to the provision, manufacture, maintenance and use of goods included in that list, to any person, entity or body in the Central African Republic or for use in the Central African Republic. This was transposed into UK law by the EU Export Control SI.</p> <p>The new UK SI contains a similar prohibition, subject to three changes:</p> <ul style="list-style-type: none"> (a) it prohibits the provision of technical assistance to "<i>a person connected with the Central African Republic</i>". As above, this is an extremely broad definition and wider than the scope of a designated person. (b) it does not include the reference to "<i>technical assistance...related to the provision, manufacture, maintenance or use of goods</i>." Therefore this technically applies a narrower prohibition, however as the definition of "technical assistance" in the UK SI includes technical support relating to the provision, maintenance and use of the goods or technology, this is unlikely to have any material impact (albeit there may be divergence in interpretation). (c) the EU Export Control SI stipulates that, for an offence to occur in relation to the provision of technical assistance, a person must be knowingly concerned in activity <u>with the intent to evade the prohibition</u> in the regulations. The UK SI does not contain a requirement on the prosecution to establish "intent to evade". 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 (see Reg. 30).
Trade Controls	The Central African	EU Council Regulation	(a) and (b)	Medium Impact

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	<p>Republic (Sanctions) (EU Exit) Regulations 2020/616, Reg. 26</p> <p>Sanctions and Anti-Money Laundering Act 2018, s. 61</p>	<p>224/2014 concerning restrictive measures in view of the situation in the CAR, Art. 2(b)</p> <p>Export Control (Sudan, South Sudan and Central African Republic Sanctions) Regulations 2014/3258, Reg. 6(b)</p>		<p>The UK SI's prohibition on providing financial services and funds related to military goods and technology to persons in, or for use in the 23 September 2020 Central African Republic is broader than the equivalent provisions in the EU Regulation and EU Export Control SI. Specifically, there are restrictions on:</p> <ul style="list-style-type: none"> (a) Directly or indirectly providing, to a person connected with the Central African Republic, financial services in pursuance of or in connection with an arrangement whose object or effect is: <ul style="list-style-type: none"> a. the export of military goods, b. the direct or indirect supply or delivery of military goods, c. directly or indirectly making military goods or military technology available to a person, d. the transfer of military technology, or e. the direct or indirect provision of technical assistance relating to military goods or military technology. (b) Directly or indirectly making funds available to a person connected with the Central African Republic in pursuance of or in connection with an arrangement mentioned in (1) above. (c) Directly or indirectly providing financial services or funds in pursuance of or in connection with an arrangement whose object or effect is— <ul style="list-style-type: none"> a. the export of military goods to, or for use in, the Central African Republic, b. the direct or indirect supply or delivery of military goods to a place in the Central African Republic, c. directly or indirectly making military goods or military technology available to a person connected with the Central African Republic or for use in the Central African Republic, d. the transfer of military technology to a person connected with the Central African Republic or for use in the Central African Republic, or e. the direct or indirect provision of technical assistance relating to military goods or military technology to a person connected with the Central African Republic or for use in the Central African Republic. <p>The key differences for financial institutions are as follows:</p> <ul style="list-style-type: none"> (a) as the definition of "connected person" is extremely wide (see above) and this category of persons is broader than designated persons, and will therefore fall outside screening procedures – this is

Restrictive Measure/Category	UK SI reference	EU Legislative SI reference	Change to legal obligation?	Impact?
				<p>particularly concerning for the prohibition at (2) on the "making funds available" to such persons.</p> <p>(b) UK has merged the concepts in the EU prohibition of "financing and financial assistance" into "financial services", which is non-exhaustively defined in the SAMLA as including insurance-related, banking and other financial services. The EU listed examples of "financial assistance" are all explicitly covered by the SAMLA (that is, loans, export credit insurance, insurance and reinsurance) except for grants. It is not clear whether grants will constitute "financial services" but given the wide formulation of the SAMLA definition, this will likely be the case.</p> <p>(c) It was prohibited under the EU Regulation/EU Export Control SI to provide financing or financial assistance for the provision of related brokering services. It appears this prohibition is not explicitly replicated.</p> <p>(d) the EU Export Control SI stipulates that, for an offence to occur in relation to the (narrower) prohibition on providing financing or financial assistance to designated persons related to military activities, a person must be knowingly concerned in the provision of such financing or financial assistance with the intent to evade the prohibition in the regulations. The UK SI does not contain a requirement on the prosecution to establish "intent to evade". 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 (see Reg. 30).</p>

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Trade Controls	The Central African Republic (Sanctions) (EU Exit) Regulations 2020/616, Reg. 28 Sanctions and Anti-Money Laundering Act 2018, s. 61	EU Council Regulation 224/2014 concerning restrictive measures in view of the situation in the CAR, Art. 2(c)	(b)	Medium Impact There is a prohibition in the EU Regulation against technical assistance, financing or financial assistance, brokering services or transport services related to the provision of armed mercenary personnel in the Central African Republic or for use in the Central African Republic. However, the UK SI includes a prohibition on the direct or indirect provision of technical assistance, armed personnel, financial services or funds, or brokering services where such provision enables or facilitates the conduct or armed hostilities in the Central African Republic. The UK SI's wording is broader (targeting the "facilitation" of armed hostilities rather than the provision of mercenary). Further, given that "financial services" are non-exhaustively and broadly defined under the SAMLA as including insurance-related, banking and other financial services, this has a potentially wide application which could capture the transactions arranged by financial institutions. It is, however, a defence to show there was no knowledge, or reason to suspect, that the relevant act would enable or facilitate the conduct of armed hostilities in the CAR
Trade Controls	-	EU Council Regulation 224/2014 concerning restrictive measures in view of the situation in the CAR, Art. 3	(a)	Potentially Medium Impact The EU Regulation contains an exemption to the trade control restrictions contained in Art. 2 for the provision of technical assistance, financing or financial assistance or brokering services: <ul style="list-style-type: none"> (a) <i>intended solely for the support of or use by MINUSCA, the Union missions and the French forces deployed in the CAR, as well as other UN Member States' forces providing training and assistance as notified to the Sanctions Committee;</i> (b) <i>related to protective clothing, including flak jackets and military helmets, temporarily exported to the CAR by UN personnel, representatives of the media and humanitarian and development workers and associated personnel, for their personal use only;</i> (c) <i>related to the supplies of non-lethal equipment and provision of assistance, including operational and non-operational training to the CAR security forces, including State civilian law enforcement institutions, intended solely for support of or use in the CAR process of Security Sector Reform, in coordination with MINUSCA, provided that they have been notified in advance to the Sanctions Committee;</i> (d) <i>related to non-lethal military equipment intended solely for humanitarian or protective use,</i>

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				<p><i>provided that the provision of such assistance or services has been notified at least 20 days in advance to the Sanctions Committee;</i></p> <p><i>(e) related to weapons with a calibre of 14,5 mm or less and ammunition and components specially designed for such weapons, and to unarmed ground military vehicles and ground military vehicles mounted with weapons with a calibre of 14,5 mm or less, and their spare parts, and to rocket-propelled grenades, and ammunition specially designed for such weapons, to the CAR security forces, including state civilian law enforcement institutions, where such weapons, ammunition, components and vehicles are intended solely for support of, or use in, the CAR process of SSR, provided that the provision of such assistance or services has been notified at least 20 days in advance to the Sanctions Committee;</i></p> <p><i>(f) related to arms and other related lethal equipment that are not listed in point (e) of Article 3, to the CAR security forces, including state civilian law enforcement institutions, where such arms and equipment are intended solely for support of, or use in, the CAR process of SSR, as approved in advance by the Sanctions Committee.”</i></p> <p>This exemption is not carried forward into the UK SI which could have an impact for financial institutions that currently rely on these exemptions.</p>
Defences	The Central African Republic (Sanctions) (EU Exit) Regulations 2020/616, Reg. 30(2)	-	(b)	<p>Medium Impact</p> <p>There is a new reverse burden of proof where a Defendant adduces sufficient evidence to raise an issue with respect to the defence. The defence will be satisfied unless the prosecution proves, beyond a reasonable doubt, that it is not.</p> <p>This will make it easier for financial institutions to rely upon defences.</p>

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Low Impact

Restrictive Measure/Category	UK SI reference	EU Legislative SI reference	Change to legal obligation?	Impact?
				<ul style="list-style-type: none"> - The Central African Republic (Sanctions) (EU Exit) Regulations 2020/616 (the "UK SI") - The Central African Republic (European Union Financial Sanctions) Regulations 2014 (the "EU Financial Services SI") - EU Council Regulation 224/2014 concerning restrictive measures in view of the situation in the Central African Republic (the "EU Regulation") - EU Guidance 8519/18 on Restrictive measures (Sanctions) – Update of the EU Best Practices for the effective implementation of restrictive measures (the "EU Guidance") - Export Control (Sudan, South Sudan and Central African Republic Sanctions) Regulations 2014/3258 (the "EU Export Control SI") - Export Control Order 2008/3231 (the "Export Control Order") - Sanctions and Anti-Money Laundering Act 2018 (the "SAML A")
Asset freeze in relation to designated persons	The Central African Republic (Sanctions) (EU Exit) Regulations 2020/616, Reg. 12(1)	The Central African Republic (European Union Financial Sanctions) Regulations 2014/587, Reg. 3(1)	(c)	<p>Low Impact</p> <p>The EU Financial Services 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 substantive difference is that the UK SI has removed the language of funds or economic resources "<i>belonging to</i>" any designated 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 Central African Republic (Sanctions) (EU Exit)	The Central African Republic (European Union Financial	(c)	<p>Low Impact</p> <p>The EU Regulation defines freezing of economic resources as "<i>preventing the use of economic resources to obtain funds, goods or services in any way, including, but not limited to, by selling, hiring or mortgaging them.</i>"</p>

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Restrictive Measure/Category	UK SI reference	EU Legislative SI reference	Change to legal obligation?	Impact?
	Regulations 2020/616, Reg. 12(5)	Sanctions) Regulations 2014/587, Reg. 3(2)		<p>The UK SI adopts a more specific definition, stating that a person "deals with" economic resources if that person "exchanges the economic resources for funds, goods or services, or uses the economic resources in exchange for funds, goods or services (whether by pledging them as security or otherwise)." This largely mirrors the language of the EU Financial Services SI, however the reference to pledging the resources as security is new (albeit similar to "mortgaging").</p> <p>Although the EU Regulation's definition is slightly broader (covering "use" in "any way"), it is unlikely that in most cases the UK SI's language of "exchanging" or "using the economic resources in exchange for..." will produce substantively different results. The EU examples of "selling, hiring or mortgaging [economic resources]" are also replaced by the example of "pledging them as security or otherwise." In theory, this creates greater scope of debate over what constitutes "use...in exchange for funds", etc., but again this is unlikely to produce drastically different results in practice. It is worth noting that the definition of "economic resources" in section 60 of the Sanctions and Anti-Money Laundering Act 2018 does not refer to the "exchange" of economic resources; it simply refers to "assets...which can be used to obtain funds" so the use of the word "exchange" may have something of a limiting effect.</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 Central African Republic (Sanctions) (EU Exit) Regulations 2020/616, Reg. 12(6)	EU Guidance 8519/18	(c)	<p>Low Impact</p> <p>The UK SI provides further detail on the meaning of funds or economic resources that are treated as "owned, held or controlled" stating that they include:</p> <ul style="list-style-type: none"> (a) "funds or economic resources in which the person has any legal or equitable interest, 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" (emphasis added); and (b) "any tangible property (other than real property) or bearer security that is comprised in funds or economic resources and is in possession of the person." <p>This language does not appear in the EU Financial Services SI. However, EU Guidance states that "holding or controlling" should be construed as comprising all situations where, without having a title of ownership, a designated person or entity is able lawfully to dispose of or transfer funds or economic resources he, she or</p>

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				<p>it does not own, without any need for prior approval by the legal owner. A designated person is considered as holding or controlling funds or economic resources, <i>inter alia</i>, if he or she:</p> <ul style="list-style-type: none"> (a) has banknotes or debt certificates issued to bearer, (b) has movable goods on his or her premises which he or she owns jointly with a non-designated person or entity, (c) has received full or similar powers to represent the owner, allowing him or her to order the transfer of funds he or she does not own (e.g. for the purpose of managing a specific bank account), or (d) is a parent or guardian administering a bank account of a minor in accordance with the applicable national law. <p>Although both sets of examples given in the UK SI and EU Guidance are non-exhaustive, it would appear the UK SI casts a wider net on the meaning of "<i>owned, held or controlled</i>" as it captures <u>any</u> legal or equitable interest, without the requirement that the designated person can dispose of or transfer the funds/economic resources without any need for prior approval from the legal owner (which is required under EU Guidance). It also covers any tangible property comprised in funds/economic resources in possession of the designated person, which is seemingly wider than EU Guidance.</p> <p>Therefore, we may see a differing approach in UK and EU concepts of holding or controlling funds/economic resources.</p>
Prohibition on making funds or economic resources available for the benefit of designated persons	The Central African Republic (Sanctions) (EU Exit) Regulations 2020/616, Regs. 14 and 16	The Central African Republic (European Union Financial Sanctions) Regulations 2014/587, Regs. 5 and 7	(c)	<p>Low Impact</p> <p>Under the UK SI, funds/economic resources "<i>are made available for the benefit of a designated person only if that person thereby obtains, or is able to obtain, a significant financial benefit</i>" (emphasis added) and a "<i>financial benefit includes the discharge (or partial discharge) of a financial obligation for which the designated person is wholly or partly responsible</i>".</p> <p>The definition above is included in the EU Financial Services SI and therefore there is not likely to be any change to financial institutions' obligations. However, the concept of "<i>significant financial benefit</i>" differs from the EU Guidance on what constitutes making economic resources available and does not appear in the EU Regulation – although not defined, it has a wide meaning under European jurisprudence and "<i>encompasses all the acts necessary under the applicable national law if a person is effectively to obtain full power of disposal in relation to the economic resource concerned...</i>" The test of "<i>full power of disposal</i>" is,</p>

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Restrictive Measure/Category	UK SI reference	EU Legislative SI reference	Change to legal obligation?	Impact?
				on its face, more stringent than a " <i>significant financial benefit</i> ". Again, we could see a divergence between EU and UK concepts of "making available".
Non-liability for freezing in "good faith"	Sanctions and Anti-Money Laundering Act 2018, s. 44	EU Council Regulation 224/2014 concerning restrictive measures in view of the situation in the CAR, Art. 13(1)	(a)	<p>Low Impact</p> <p>Art. 13 of the EU Regulation contains a sheltering provision which provides that where funds or economic resources were frozen, or there was a refusal to make funds or economic resources available, performed in good faith on the basis that doing so was in accordance with the EU Regulation, does not give rise to any liability unless it is proven that those acts were negligent.</p> <p>Under s. 44 of the SAMLA, a person is not liable to civil proceedings for acts done in the reasonable belief that they were in compliance with sanctions regulations (including financial sanctions and trade sanctions). The SAMLA exception does not exclude negligent acts/omissions – this therefore appears to provide for a broader sheltering provision in UK sanctions legislation.</p>
Exceptions to asset freeze and prohibition on making funds and economic resources available to designated persons	The Central African Republic (Sanctions) (EU Exit) Regulations 2020/616, Reg. 31(3)	EU Council Regulation 224/2014 concerning restrictive measures in view of the situation in the CAR, Art. 10(2)(a)	(c)	<p>Low Impact</p> <p>The EU Regulation provides that a person who credits a frozen account with interest or other earnings due on an account does not contravene the prohibitions on making funds or economic resources 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 relevant institutions (i.e., firms with Part 4A permission under FSMA) only. Second, under the UK SI this exception applies to the prohibition on dealing with funds or economic resources owned, held or controlled by a designated person, as well as the prohibitions on making funds available to or for the benefit of a designated person.</p>

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Restrictive Measure/Category	UK SI reference	EU Legislative SI reference	Change to legal obligation?	Impact?
				This change is unlikely to have a material impact on the obligations of financial institutions.
Exceptions to asset freeze and prohibition on making funds and economic resources available to designated persons	The Central African Republic (Sanctions) (EU Exit) Regulations 2020/616, Reg. 31(5)	EU Council Regulation 224/2014 concerning restrictive measures in view of the situation in the CAR, Art. 10(2)(b)	(c)	<p>Low Impact</p> <p>The EU Regulation provides that a person who credits a frozen account with payments due under contracts, agreements or obligations that were concluded or arose before the date on which the person was designated 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 but the UK SI wording is broader for non-financial institutions as it allows them to remit the money to the financial institution.</p>
Exceptions to asset freeze and prohibition on making funds and economic resources available to designated persons	The Central African Republic (Sanctions) (EU Exit) Regulations 2020/616, Reg. 31(6)	-	(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><i>(6) The prohibitions in regulations 12 to 14 are not contravened in relation to a designated person ("P") by a transfer of funds from account A to account B, where—</i></p> <p><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></p> <p><i>(b) account B is with a ring-fenced body within the meaning of section 142A of the Financial</i></p>

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Restrictive Measure/Category	UK SI reference	EU Legislative SI reference	Change to legal obligation?	Impact?
				<p><i>Services and Markets Act 2000, and</i> <i>(c) accounts A and B are held or controlled (directly or indirectly) by P.</i></p> <p>This change is unlikely to have a material impact on the obligations of financial institutions.</p>
Exceptions to asset freeze and prohibition on making funds and economic resources available to designated persons	The Central African Republic (Sanctions) (EU Exit) Regulations 2020/616, Reg. 32	-	(b)	<p>Low Impact</p> <p>Reg. 32 contains a new exception for acts done for the purposes of national security or prevention of serious crime, as determined by a person in the service of the Crown or holding office under the Crown, acting in the course of that person's duty.</p> <p>This change is unlikely to have a material impact on the obligations of financial institutions.</p>

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Treasury Licences	The Central African Republic (Sanctions) (EU Exit) Regulations 2020/616, Reg. 33(2) – (3)	EU Council Regulation 224/2014 concerning restrictive measures in view of the situation in the CAR, Art. 6	(c)	<p>Low Impact</p> <p>Under the UK SI, the Treasury's rights to issue licences in respect of asset freeze restrictions are split into those that apply in relation to a non-UN designated person and those that apply in relation to a UN designated person.</p> <ul style="list-style-type: none"> - For both UN designated and non-UN designated persons: <ul style="list-style-type: none"> o A licence to enable the basic needs of a designated person, or any dependent family member of such a person, to be met remains (see Sch. 2, Part 2, para. 2). However, (i) the types of "basic needs" has been split into those for an individual and those for an entity, (ii) the language appears to focus on the "needs" for food, etc. rather than "payments for" the same – this could potentially allow for broader application, (iii) there are a couple of additional specific "basic needs" for entities such as "the payment of reasonable fees for the provision of property management services" and the "payment of remuneration, allowances or pensions of employees". There is also a fairly broad clarification of what constitutes a "dependent family member" which is likely to assist with decisions of whether a licence would be available in certain circumstances. o A licence to enable the payment of reasonable professional fees for the provision of legal services remains (see Sch. 2, Part 2, para. 3). However, there is a new qualification in respect of a licence to enable the payment of expenses associated with the provision of legal services for such expenses to also be "reasonable" (albeit this is in accordance with the practice OFSI applies already). o A licence to enable the payment of fees or service charges arising from the routine holding or maintenance of frozen funds or economic resources also remains (see Sch. 2, Part 2, para. 4). However, again, such fees and service charges are now required to be "reasonable". o A licence to enable payment of extraordinary expenses remains (see Sch. 2, Part 2, para. 5). However, there is a new qualification in that the expenses must be of a designated person. o A licence in respect of prior obligations still remains (see Sch. 2, Part 2, para. 7). However, the provision in the UK SI does not on its face require the funds or economic resources to be used for a payment by a designated person, instead it provides for "the use of a designated person's frozen funds or economic resources..." which may broaden the potential for licences to be granted to third parties of the same. In addition, the new provision requires that "the obligation arose before the date on which the person became a designated person". This appears to potentially be narrower than the licensing ground in the EU Regulation which also applies where the "contract or agreement ...was concluded...before the date on which [the person was designated]". For the purposes of a licence application under this ground, the
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				<p>key criterion will therefore be on what date the obligation in question arose rather than the date the agreement in question concluded and therefore precludes the use of any arguments in relation to extension of the term of pre-existing agreements.</p> <ul style="list-style-type: none">- For non-UN designated persons, the following new licensing purposes also apply (see Sch. 2, Part 3):<ul style="list-style-type: none">o Humanitarian assistance activities;o Diplomatic missions; ando Extraordinary situations (which is not defined so is potentially flexible, but this is unclear). <p>This is beneficial as it provides greater scope for licensing.</p>
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Restrictive Measure/Category	UK SI reference	EU Legislative SI reference	Change to legal obligation?	Impact?
Treasury Licences	The Central African Republic (Sanctions) (EU Exit) Regulations 2020/616, Reg. 35(5)	The Central African Republic (European Union Financial Sanctions) Regulations 2014/587, Reg. 9(3)	(c)	<p>Low Impact</p> <p>Under the EU Financial Services 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 Central African Republic (Sanctions) (EU Exit) Regulations 2020/616, Reg. 36(1)	The Central African Republic (European Union Financial Sanctions) Regulations 2014/587, Reg. 9(5)	(c)	<p>Low Impact</p> <p>Under the EU Financial Services 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>
Information Obligations	The Central African Republic (Sanctions) (EU Exit) Regulations 2020/616, Reg. 39(4)	The Central African Republic (European Union Financial Sanctions) Regulations 2014/587, Sch. 1, para. 1(4)	(c)	<p>Low Impact</p> <p>It is clarified in Reg. 39(4) that where a relevant firm is under a reporting obligation to the Treasury, it must "<i>state the nature and amount or quantity of any funds or economic resources held by it for the customer at the time when it first had the knowledge or suspicion</i>" (emphasis added).</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 Central African Republic (Sanctions) (EU Exit) Regulations 2020/616, Reg. 41(6)	The Central African Republic (European Union Financial Sanctions) Regulations 2014/587, Sch. 1, para. 2(4)	(c)	<p>Low Impact</p> <p>Under the EU Financial Services SI, the Treasury was permitted to request "<i>any person in or resident in the United Kingdom</i>" to provide relevant information, whereas under the UK SI, this has been widened to any person "<i>if the Treasury believe that the person may be able to provide the information</i>".</p>
Information Obligations	The Central African Republic (Sanctions) (EU Exit) Regulations 2020/616, Reg. 41(7)(c)	The Central African Republic (European Union Financial Sanctions) Regulations 2014/587, Sch. 1, para. 2(5)(c)	(c)	<p>Low Impact</p> <p>Under the UK SI, the basis on which the Treasury may reasonably require information has been expanded slightly to include "<i>detecting or obtaining evidence of the commission of an offence...</i>" (emphasis added).</p> <p>This is unlikely to have a material impact on the obligations of financial institutions</p>
Information Obligations	The Central African Republic (Sanctions) (EU Exit) Regulations 2020/616, Reg. 47	The Central African Republic (European Union Financial Sanctions) Regulations 2014/587, Sch. 1, para. 5 Export Control Order 2008/3231, Art.	(c)	<p>Low Impact</p> <p>In relation to provisions in respect of disclosure of information, the UK SI effectively merges the rights contained in the EU Financial Services SI and the Export Control Order (with several additions) such that the scope of the Secretary of State's, the Treasury's and the Commissioners' powers to disclose information obtained under the relevant parts of the UK SI are now wider than previously, both in terms of the purpose for which such information can be disclosed and to whom.</p> <p>For example, information may be disclosed for any purpose stated in Reg. 4 (i.e., the purposes of the UK SI), and to "<i>any other person where the Secretary of State, the Treasury or the Commissioners (as the case may be) consider that it is appropriate to disclose the information</i>".</p>

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Restrictive Measure/Category	UK SI reference	EU Legislative SI reference	Change to legal obligation?	Impact?
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Trade Controls	The Central African Republic (Sanctions) (EU Exit) Regulations 2020/616, Reg. 21	Export Control Order 2008/3231, Art. 3	(b)	<p>Low Impact</p> <p>The UK SI introduces a prohibition on the export of military goods to, or for use in, the Central African Republic. This is not contained in the EU Regulation (consistent with the European Union's Common Security and Defence Policy). However, this is in line with the general prohibition (subject to exceptions and licensing) on the export of military goods contained in the Export Control Order, Art. 3 (which will remain in force even after Exit Day) and the UK SI provisions will sit alongside the same.</p> <p>The standalone prohibition is unlikely to have a material impact on the obligations of financial institutions subject to any changes in the licensing and exceptions available.</p>
Trade Controls	The Central African Republic (Sanctions) (EU Exit) Regulations 2020/616, Reg. 22	Export Control Order 2008/3231, Art. 20	(b)	<p>Low Impact</p> <p>The UK SI introduces a prohibition on the direct or indirect supply or delivery of military goods from a third country to a place in the Central African Republic, unless that person did not know and had no reasonable cause to suspect that the goods were destined (or ultimately destined) for the Central African Republic. This is not contained in the EU Regulation (consistent with the European Union's Common Security and Defence Policy).</p> <p>However, this is in line with the general prohibition (subject to exceptions and licensing) contained in the Export Control Order at Art. 20 (and the defence for "no reasonable suspicion" in Art. 34). The Export Control Order prohibits the supply or delivery, an agreement to supply or deliver, and any act calculated to promote the supply for delivery to the Central African Republic (being an "embargoed destination"). The UK SI provisions will sit alongside this.</p> <p>The standalone prohibition is unlikely to have a material impact on the obligations of financial institutions subject to any changes in the licensing and exceptions available.</p>

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Restrictive Measure/Category	UK SI reference	EU Legislative SI reference	Change to legal obligation?	Impact?
Trade Control Licences	The Central African Republic (Sanctions) (EU Exit) Regulations 2020/616, Reg. 35(4)(b)	The Export Control Order 2008/3231, Art. 26(6)(b)	(c)	Low Impact Reg. 35(4)(b) provides that trade licences may be of indefinite duration or of a defined duration. However, under the Export Control Order, trade licences may only be " <i>limited so as to expire on a specified date unless renewed</i> ". This is potentially beneficial for licence holders as it may decrease the administration associated with licence renewals.
Trade Control Licences	The Central African Republic (Sanctions) (EU Exit) Regulations 2020/616, Reg. 37(2)	The Export Control Order 2008/3231, Art. 38(1)–(2)	(c)	Low Impact Pursuant to Reg. 37(2) it is an offence for a person to purport to act under the authority of a trade licence but to fail to comply with any condition of the licence. This offence is similar to the offence under Art. 38(1) of the Export Control Order save that under Reg. 37(2) there is no carve out from the offence where the licence is modified after completion of the act authorised. This means that the UK SI contains a broader prohibition.
Satisfaction of claims	-	EU Council Regulation 224/2014 concerning restrictive measures in view of the situation in the CAR, Art. 14	(a)	Low Impact The EU Regulation contains a restriction on the satisfaction of claims made by a designated person or person acting through or on behalf of a designated person in connection with any contract or transaction the performance of which has been affected, directly or indirectly, in whole or in part, by the measures imposed under the EU Regulation. This is not carried forward into the UK SI but is unlikely to have a material impact for financial institutions.

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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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