



# UK SANCTIONS STATUTORY INSTRUMENTS REVIEW: COUNTER TERRORISM (INTERNATIONAL)

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

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## INTRODUCTION

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

European sanctions have been implemented through regulations made under the European Communities Act 1972<sup>1</sup>. As the Transition Period comes to an end on 31st December 11:00pm GMT as agreed in the Withdrawal Agreement<sup>2</sup>, EU legislation and regulations will cease to have effect in the United Kingdom.

In 2018, the UK passed the Sanctions and Anti Money Laundering Act<sup>3</sup> which allows ministers to make sanctions regulation in application of UN sanctions or any other international obligation, or for a range of purposes<sup>4</sup> (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 2020<sup>5</sup>, 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.

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

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

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

<sup>4</sup> Ibid., see Chapter 1, Section 1.

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

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We have divided issues into the following categories:

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

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# Counter Terrorism (International Sanctions) (EU Exit) Regulations 2019

Restrictive Measure/Category	UK SI reference	EU Legislative SI reference	Change to legal obligation?	Impact?
Scope of the Regulations	Counter Terrorism (International Sanctions) (EU Exit) Regulations. 2019 No. 573 (“ <b>International CTR</b> ”) Reg. 11(5)  The Counter-Terrorism (Sanctions) (EU Exit) Regulations 2019 (“ <b>CTR</b> ”) Reg. 11(5)	Terrorist Asset-Freezing etc. Act 2010 s. 33	(b)	<b>Medium Impact</b>  Terrorist Asset-Freezing etc. Act 2010 (“ <b>TAFA</b> ”) provided that an offence under these Regulations may be committed by conduct wholly or partly outside the UK.  The Counter Terrorism (International Sanctions) (EU Exit) Regulations. 2019 No. 573 (“ <b>International CTR</b> ”) and the Counter-Terrorism (Sanctions) (EU Exit) Regulations 2019 (“ <b>CTR</b> ”) provided that an offence under these Regulations may be committed by conduct both in and outside the UK.  The International CTR and the CTR are wider in scope than TAFA. Whilst this should not have any practical impact on the obligations of financial institutions, it may mean that more activity is sanctioned under the International CTR and the CTR.

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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	International CTR Reg. 11(5)  CTR Reg. 11(5)	TAFA s. 11(1)	(c)	<p><b>Low Impact</b></p> <p>The International CTR and the CTR impose identical measures in relation to asset freezes.</p> <p>For the purposes of the prohibition on dealing with funds or economic resources owned, held or controlled by a designated person, TAFA, which implements effect to the relevant EU Council decisions in the UK, defines the phrase "deals with" economic resources as the "exchange, or use in exchange, for funds, goods or services."</p> <p>This definition has been extended slightly in the CTR and the International CTR to include the pledge of economic resources as security or otherwise.</p> <p>This change is unlikely to have a material impact on the obligations of financial institutions.</p>
Asset freeze in relation to designated persons	International CTR Reg. 11(6)  CTR Reg. 11(6)	Terrorist Asset-Freezing etc. Act 2010, s. 11	(b)	<p><b>Low Impact</b></p> <p>For the purposes of the prohibition on dealing with funds or economic resources owned, held or controlled by a designated person, the CTR and International CTR include a new provision stating that funds or economic resources are "owned, held or controlled" by a person if that person has any legal or equitable interest in such assets, regardless of whether the interest is held jointly with any other person, or if they have any tangible property (other than real property), or bearer security which is comprised in funds or economic resources and is in their possession.</p> <p>This new language is similar in effect to the concept of ownership and control set out in previous non-binding guidance provided by the EU<sup>6</sup>.</p> <p>This change is unlikely to have a material impact on the obligations of financial institutions.</p>

<sup>6</sup> "Update of the EU Best Practices for the effective implementation of restrictive measures" (<https://data.consilium.europa.eu/doc/document/ST-8519-2018-INIT/en/pdf#>)

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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	International CTR. 2019 No. 573 Reg. 11(7)  CTR Reg. 11(7);	Terrorist Asset-Freezing etc. Act 2010, s. 11	(b)	<p><b>Potentially High Impact</b></p> <p>For the purposes of the prohibition on dealing with funds or economic resources owned, held or controlled by a designated person, the CTR and International CRT provide that funds or economic resources are to be "<i>treated as owned, held or controlled by a designated person if they are owned, held or controlled by a person who is owned or controlled directly or indirectly (within the meaning of regulation 7) by the designated person</i>".</p> <p>This new language extends the previous prohibition on dealing with the funds or economic resources of designated persons found in the TAFAs to include a new express prohibition on dealing with the funds or economic resources of <i>entities owned or controlled by</i> such designated persons.</p>
Prohibition on making funds, financial services or economic resources available to designated persons	International CTR. 2019 No. 573 Reg. 12(4)  CTR Reg. 12(4);	Terrorist Asset-Freezing etc. Act 2010, s. 12(1)	(b)	<p><b>Potentially High Impact</b></p> <p>The prohibition on making funds or financial services available directly or indirectly to designated persons is extended by the CTR and International CTR, which provides expressly that funds are made available indirectly to a designated person if made "<i>available to a person who is owned or controlled directly or indirectly (within the meaning of regulation 7) by the designated person</i>".</p> <p>No such provision is contained in the TAFAs.</p> <p>This new prohibition is more restrictive than previous non-binding guidance by the EU, which provided that there was a presumption that making funds available to a person owned or controlled by a designated person was to make them available indirectly to a designated person, albeit this presumption could be rebutted on the facts.</p>

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Restrictive Measure/Category	UK SI reference	EU Legislative SI reference	Change to legal obligation?	Impact?
Prohibition on making funds, financial services or economic resources available to designated persons	Reg. 14(1) International CTR; Reg. 14(1) CTR; Reg.	s. 14(1) TAFA	(b)	<p><b>Potentially High Impact</b></p> <p>For the purposes of the prohibition on making <u>economic resources</u> available to designated persons, the CTR and International CTR provides that economic resources are made available indirectly to a designated person if made "<i>available to a person who is owned or controlled directly or indirectly (within the meaning of regulation 7) by the designated person</i>".</p> <p>This new prohibition is more restrictive than previous non-binding guidance by the EU, which provided that there was a presumption that making economic resources available to a person owned or controlled by a designated person was to make them available indirectly to a designated person, albeit this presumption could be rebutted on the facts.</p>

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Ownership and control provisions	Reg. 7 and Schedule to CTR and International CTR	N/A	(b)	<p><b>Potentially High Impact</b></p> <p>Whilst TAFE does not define control or ownership, the definition of “controlling a legal person, group or entity” under Article 1(6) of the Reg. 2580/2001 has direct effect.</p> <p>The CTR and International CTR simplify the meaning of “owned or controlled directly or indirectly”, so that it applies if either of the following 2 conditions is met:</p> <p>(2) The first condition is that ‘P’:</p> <ul style="list-style-type: none"> <li>(a) holds directly or indirectly more than 50% of the shares in a non-natural person ‘C’,</li> <li>(b) holds directly or indirectly more than 50% of the voting rights in C, or</li> <li>(c) holds the right directly or indirectly to appoint or remove a majority of the board of directors of C.</li> </ul> <p>(3) 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.</p> <p>The first condition broadly matches Art.1(5) of Reg. 2580/2001 which defined ‘Owning a legal person, group or entity’ as being in possession of 50 % or more of the proprietary rights of a legal person, group or entity, or having a majority interest therein.</p> <p>(2)(b) and (c) were effectively covered under Reg. 2580/2001 (Article 1(6)(a)-(e)). However, the Schedule to CTR and International CTR sets out new detailed rules for interpreting the first condition and how to treat:</p> <ul style="list-style-type: none"> <li>- joint interests,</li> <li>- joint arrangements,</li> <li>- calculating shareholdings,</li> <li>- voting rights,</li> <li>- rights to appoint/remove members of the board,</li> <li>- shares/rights held indirectly,</li> <li>- shares held by nominees,</li> <li>- rights treated as held by person who controls their exercise,</li> <li>- rights exercisable only in certain circumstances, and</li> <li>- rights attached to shares held by way of security.</li> </ul>
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Restrictive Measure/Category	UK SI reference	EU Legislative SI reference	Change to legal obligation?	Impact?
				<p>The second conditions substantially covers the EU Regs definitions under Article 1(6), but provides for a potentially wider application of the ownership and control dependent upon the specific circumstances of the case.</p> <p>This may have an impact on financial institutions to the extent it imposes an additional due diligence burden to investigate whether the conditions outlined above are satisfied.</p>
Trade Controls	International CTR Regs. 19-26	N/A	(b)	<p><b>Low Impact</b></p> <p>The International CTR introduces express restrictions on:</p> <ul style="list-style-type: none"> <li>- the export of military goods to a designated person;</li> <li>- the, supply or delivery of military goods from a third country to a designated person;</li> <li>- making military goods or technology available or transferring military technology to or for the benefit of designated persons;</li> <li>- providing technical assistance relating to military goods or military technology to, or for the benefit of designated persons</li> <li>- providing financial and brokering services, and making funds available, to or for the benefit of designated persons; and</li> <li>- providing technical assistance, financial services or funds, or brokering services where such provision enables the conduct of armed hostilities.</li> </ul> <p>Designated persons for purposes of these controls may not be the same as designated persons which are the subject of the financial provisions referred to above.</p> <p>This change is unlikely to have a material impact on the obligations of financial institutions.</p>

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Restrictive Measure/Category	UK SI reference	EU Legislative SI reference	Change to legal obligation?	Impact?
Exemptions to asset freeze and prohibition on making funds and economic resources available to designated persons	International CTR Reg. 29(1) and CTR Reg. 17(1)	N/A	(b)	<p><b>Low Impact</b></p> <p>For the purposes of the prohibition on dealing with funds or economic resources owned, held or controlled by a designated person, the CTR and International CTR set out the following new exception:</p> <p><i>(1) The prohibition in regulation 11 (asset-freeze in relation to designated persons) is not contravened by an independent person ("P") transferring to another person a legal or equitable interest in funds or economic resources where, immediately before the transfer, the interest—</i></p> <p><i>(a) is held by P, and</i></p> <p><i>(b) is not held jointly with the designated person.</i></p> <p><i>(2) In paragraph (1) "independent person" means a person who—</i></p> <p><i>(a) is not the designated person, and</i></p> <p><i>(b) is not owned or controlled directly or indirectly (within the meaning of regulation 7) by the designated person.</i></p> <p>The circumstances in which this exception would apply are not clear from the drafting of the provision or any associated guidance, although it appears likely to apply where different interests (for example, legal and equitable interests) in funds or economic resources are held by different persons, only one of which is a designated person. [Note: please do let us know if you raise the issue with OFSI and receive any further guidance on this point].</p> <p>This change is unlikely to have a material impact on the obligations of financial institutions.</p>

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Restrictive Measure/Category	UK SI reference	EU Legislative SI reference	Change to legal obligation?	Impact?
Exemptions to asset freeze and prohibition on making funds and economic resources available to designated persons	International CTR Reg. 29(3); and CTR Reg. 17(3)	TAFAs s.16(1)	(c)	<p><b>Low Impact</b></p> <p>The TAFAs provided that a person who credits a frozen account with payments due under contracts, agreements or obligations that were concluded or arose before the account became a frozen account will not have contravened the prohibitions on making funds available to or for the benefit of a designated person.</p> <p>The scope of this exception has been amended in the new CTR and International CTR. Under the CTR and International CTR, 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 <i>relevant institution</i> for crediting to an account held or controlled (directly or indirectly) by a designated person, where those funds are transferred in discharge (or partial discharge) of an obligation which arose before the date on which the person became a designated person.</p> <p>This change is unlikely to have a material impact on the obligations of financial institutions.</p>
Exemptions to asset freeze and prohibition on making funds and economic resources available to designated persons	International CTR Reg. 29(6) and CTR Reg 17(6)	N/A	(c)	<p><b>Low Impact</b></p> <p>The CTR and International CTR set 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 13 to 15 are not contravened in relation to a designated person ("P") by a transfer of funds from account A to account B, where—</i></p> <ul style="list-style-type: none"> <li><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></li> <li><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></li> <li><i>(c) accounts A and B are held or controlled (directly or indirectly) by P.</i></li> </ul> <p>This change is unlikely to have a material impact on the obligations of financial institutions.</p>

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Restrictive Measure/Category	UK SI reference	EU Legislative SI reference	Change to legal obligation?	Impact?
Exemptions to asset freeze and prohibition on making funds and economic resources available to designated persons	International CTR Reg. 29(5) and CTR Reg. 17(5)	s. 16(1)(b) TAFE	(c)	<p><b>Low Impact</b></p> <p>TAFE provided that a person who credits a frozen account with payments due under contracts, agreements or obligations that were concluded or arose before the account became a frozen account will not have contravened the prohibitions on making funds available to or for the benefit of a designated person.</p> <p>The scope of this exception has been amended in the CTR and International CTR. Under the CTR and International CTR, 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 <i>a relevant institution</i> for crediting to an account held or controlled (directly or indirectly) by a designated person, where those funds are transferred in discharge (or partial discharge) of an obligation which arose before the date on which the person became a designated person.</p> <p>This change is unlikely to have a material impact on the obligations of financial institutions.</p>

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Restrictive Measure/Category	UK SI reference	EU Legislative SI reference	Change to legal obligation?	Impact?
Exemptions to asset freeze and prohibition on making funds and economic resources available to designated persons	CTR Reg.18.and International CTR Reg 30	N/A	(b)	<p><b>Low Impact</b></p> <p>The CTR and International CTR set out the following new exception for acts done for purposes of national security or prevention of serious crime:</p> <p>(1) <i>“Where an act would, in the absence of this paragraph, be prohibited by regulation 9(2) (confidentiality) or any prohibition in Part 3 (Finance) or 5 (Trade), that prohibition does not apply to the act if the act is one which a responsible officer has determined would be in the interests of—</i></p> <p style="padding-left: 40px;"><i>(a) national security, or</i></p> <p style="padding-left: 40px;"><i>(b) the prevention or detection of serious crime in the United Kingdom or elsewhere.</i></p> <p>(2) <i>Where, in the absence of this paragraph, a thing would be required to be done under or by virtue of a provision of Part 7 (Information and records) [or Part 9 (maritime enforcement)], that requirement does not apply if a responsible officer has determined that not doing the thing in question would be in the interests of—</i></p> <p style="padding-left: 40px;"><i>(a) national security, or</i></p> <p style="padding-left: 40px;"><i>(b) the prevention or detection of serious crime in the United Kingdom or elsewhere.”</i></p> <p>This change is unlikely to have a material impact on the obligations of financial institutions.</p>
Treasury Licences	International CTR Reg. 31 and CTR Reg. 19	TAFAs s. 17	(d)	<p><b>Low Impact</b></p> <p>The provisions relating to licencing under the CTR and International CTR closely reflect the language and effect of the licencing provisions in TAFAs.</p> <p>This licencing regime is different to that created by the post-Brexit statutory instruments for other regimes, in that it does not limit the ability of the Treasury to issue a licence authorising acts by a particular person to instances where the Treasury considers a licence appropriate for a purpose set out in the schedule of the relevant SI.</p> <p>This discrepancy is unlikely to have a material impact on the obligations of financial institutions.</p>

Restrictive Measure/Category	UK SI reference	EU Legislative SI reference	Change to legal obligation?	Impact?
Prohibition on providing financial services, funds and brokering services relating to military goods and military technology to or for the benefit of a designated person	Reg. 24 and 25 International CTR	N/A	(b)	<p><b>Low Impact</b></p> <p>The International CTR introduce a new prohibition that a person must not directly or indirectly provide financial services to, or for the benefit of, a designated person in pursuance of or in connection with an arrangement whose object or effect relates to military goods and technology. This prohibition, and others relating to trade, are not included in the CTR, although it does mirrors the prohibition under the ISIL (Da'esh) and Al-Qaida (United Nations Sanctions) (EU Exit) Regulations 2019 ("ISIL Regs"), which in turn, broadly replicates the prohibition under the EU's autonomous ISIL/Al-Qaida regime.</p> <p>The International CTR also introduces a prohibition on the provision of brokering services relating to military goods and military technology. As above, this prohibition is not included in the CTR but it does mirror that in the ISIL Regs. The prohibition provides a non-exhaustive definition of "brokering services" (Reg. 18(3)) and sets out a list of the specific arrangements in respect of which brokering services are prohibited (Reg.25(1)).</p> <p>This prohibition is unlikely to have a material impact on the obligations of financial institutions. It does, however, introduce a discrepancy between the prohibition under CTR and International CTR.</p>
Enabling or facilitating the conduct of armed hostilities	Reg. 26 International CTR	N/A	(b)	<p><b>Low Impact</b></p> <p>The International CTR introduces a new prohibition on providing financial services, funds or brokering services in relation to an arrangement whose object or effect is to provide, in a non-UK country, technical assistance, financial services or funds, where such provision enables or facilitates the conduct of armed hostilities, directly or indirectly to, or for the benefit of, a designated person</p> <p>This new prohibition 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	CTR Reg. 21(5) and International CRT Reg. 34(5)	TAFAs s.16(4)	(c)	<p><b>Low Impact</b></p> <p>The TAFAs provided that relevant institutions had to inform the Treasury without delay if it credited a frozen account with:</p> <p style="padding-left: 40px;">(a) <i>Interest or other earnings due on the account; or</i>  (b) <i>Payments due under contracts, agreements or obligations that were concluded or arose before the account became a frozen account.</i></p> <p>Under the CTR and International CTR, a relevant institution must inform the Treasury without delay if that institution credits an account in accordance with the relevant regulations relating to receipt of funds to credit a frozen account or the transfers funds from a frozen account.</p> <p>This amendment is unlikely to have a material impact on financial institutions reporting obligations although the scope of what is to be reported is now broader.</p>

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# High Impact

Restrictive Measure/Category	UK SI reference	EU Legislative SI reference	Change to legal obligation?	Impact?
Asset freeze in relation to designated persons	International CTR. 2019 No. 573 Reg. 11(7)  CTR Reg. 11(7);	Terrorist Asset-Freezing etc. Act 2010, s. 11	(b)	<p><b>Potentially High Impact</b></p> <p>For the purposes of the prohibition on dealing with funds or economic resources owned, held or controlled by a designated person, the CTR and International CRT provide that funds or economic resources are to be <i>"treated as owned, held or controlled by a designated person if they are owned, held or controlled by a person who is owned or controlled directly or indirectly (within the meaning of regulation 7) by the designated person"</i>.</p> <p>This new language extends the previous prohibition on dealing with the funds or economic resources of designated persons found in the TAFA to include a new express prohibition on dealing with the funds or economic resources of <i>entities owned or controlled by</i> such designated persons.</p>
Prohibition on making funds, financial services or economic resources available to designated persons	International CTR. 2019 No. 573 Reg. 12(4)  CTR Reg. 12(4);	Terrorist Asset-Freezing etc. Act 2010, s. 12(1)	(b)	<p><b>Potentially High Impact</b></p> <p>The prohibition on making funds or financial services available directly or indirectly to designated persons is extended by the CTR and International CTR, which provides expressly that funds are made available indirectly to a designated person if made <i>"available to a person who is owned or controlled directly or indirectly (within the meaning of regulation 7) by the designated person"</i>.</p> <p>No such provision is contained in the TAFA.</p> <p>This new prohibition is more restrictive than previous non-binding guidance by the EU, which provided that there was a presumption that making funds available to a person owned or controlled by a designated person was to make them available indirectly to a designated person, albeit this presumption could be rebutted on the facts.</p>

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Restrictive Measure/Category	UK SI reference	EU Legislative SI reference	Change to legal obligation?	Impact?
Prohibition on making funds, financial services or economic resources available to designated persons	Reg. 14(1) International CTR; Reg. 14(1) CTR; Reg.	s. 14(1) TAFA	(b)	<p><b>Potentially High Impact</b></p> <p>For the purposes of the prohibition on making <u>economic resources</u> available to designated persons, the CTR and International CTR provides that economic resources are made available indirectly to a designated person if made "<i>available to a person who is owned or controlled directly or indirectly (within the meaning of regulation 7) by the designated person</i>".</p> <p>This new prohibition is more restrictive than previous non-binding guidance by the EU, which provided that there was a presumption that making economic resources available to a person owned or controlled by a designated person was to make them available indirectly to a designated person, albeit this presumption could be rebutted on the facts.</p>

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Ownership and control provisions	Reg. 7 and Schedule to CTR and International CTR	N/A	(b)	<p><b>Potentially High Impact</b></p> <p>Whilst TFA does not define control or ownership, the definition of “controlling a legal person, group or entity” under Article 1(6) of the Reg. 2580/2001 has direct effect.</p> <p>The CTR and International CTR simplify the meaning of “owned or controlled directly or indirectly”, so that it applies if either of the following 2 conditions is met:</p> <ol style="list-style-type: none"> <li>(2) The first condition is that ‘P’: <ol style="list-style-type: none"> <li>(a) holds directly or indirectly more than 50% of the shares in a non-natural person ‘C’,</li> <li>(b) holds directly or indirectly more than 50% of the voting rights in C, or</li> <li>(c) holds the right directly or indirectly to appoint or remove a majority of the board of directors of C.</li> </ol> </li> <li>(3) 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.</li> </ol> <p>The first condition broadly matches Art.1(5) of Reg. 2580/2001 which defined ‘Owning a legal person, group or entity’ as being in possession of 50 % or more of the proprietary rights of a legal person, group or entity, or having a majority interest therein.</p> <p>(2)(b) and (c) were effectively covered under Reg. 2580/2001 (Article 1(6)(a)-(e)). However, the Schedule to CTR and International CTR sets out new detailed rules for interpreting the first condition and how to treat:</p> <ul style="list-style-type: none"> <li>- joint interests,</li> <li>- joint arrangements,</li> <li>- calculating shareholdings,</li> <li>- voting rights,</li> <li>- rights to appoint/remove members of the board,</li> <li>- shares/rights held indirectly,</li> <li>- shares held by nominees,</li> <li>- rights treated as held by person who controls their exercise,</li> <li>- rights exercisable only in certain circumstances, and</li> <li>- rights attached to shares held by way of security.</li> </ul>
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Restrictive Measure/Category	UK SI reference	EU Legislative SI reference	Change to legal obligation?	Impact?
				<p>The second conditions substantially covers the EU Regs definitions under Article 1(6), but provides for a potentially wider application of the ownership and control dependent upon the specific circumstances of the case.</p> <p>This may have an impact on financial institutions to the extent it imposes an additional due diligence burden to investigate whether the conditions outlined above are satisfied.</p>

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# Medium Impact

Restrictive Measure/Category	UK SI reference	EU Legislative SI reference	Change to legal obligation?	Impact?
Scope of the Regulations	Counter Terrorism (International Sanctions) (EU Exit) Regulations. 2019 No. 573 (“ <b>International CTR</b> ”) Reg. 11(5)  The Counter-Terrorism (Sanctions) (EU Exit) Regulations 2019 (“ <b>CTR</b> ”) Reg. 11(5)	Terrorist Asset-Freezing etc. Act 2010 s. 33	(b)	<p><b>Medium Impact</b></p> <p>Terrorist Asset-Freezing etc. Act 2010 (“<b>TAFA</b>”) provided that an offence under these Regulations may be committed by conduct wholly or partly outside the UK.</p> <p>The Counter Terrorism (International Sanctions) (EU Exit) Regulations. 2019 No. 573 (“<b>International CTR</b>”) and the Counter-Terrorism (Sanctions) (EU Exit) Regulations 2019 (“<b>CTR</b>”) provided that an offence under these Regulations may be committed by conduct both in and outside the UK.</p> <p>The International CTR and the CTR are wider in scope than TAFA. Whilst this should not have any practical impact on the obligations of financial institutions, it may mean that more activity is sanctioned under the International CTR and the CTR.</p>

# Low Impact

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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	International CTR Reg. 11(5)  CTR Reg. 11(5)	TAFA s. 11(1)	(c)	<p><b>Low Impact</b></p> <p>The International CTR and the CTR impose identical measures in relation to asset freezes.</p> <p>For the purposes of the prohibition on dealing with funds or economic resources owned, held or controlled by a designated person, TAFA, which implements effect to the relevant EU Council decisions in the UK, defines the phrase "deals with" economic resources as the "exchange, or use in exchange, for funds, goods or services."</p> <p>This definition has been extended slightly in the CTR and the International CTR to include the pledge of economic resources as security or otherwise.</p> <p>This change is unlikely to have a material impact on the obligations of financial institutions.</p>
Asset freeze in relation to designated persons	International CTR Reg. 11(6)  CTR Reg. 11(6)	Terrorist Asset-Freezing etc. Act 2010, s. 11	(b)	<p><b>Low Impact</b></p> <p>For the purposes of the prohibition on dealing with funds or economic resources owned, held or controlled by a designated person, the CTR and International CTR include a new provision stating that funds or economic resources are "owned, held or controlled" by a person if that person has any legal or equitable interest in such assets, regardless of whether the interest is held jointly with any other person, or if they have any tangible property (other than real property), or bearer security which is comprised in funds or economic resources and is in their possession.</p> <p>This new language is similar in effect to the concept of ownership and control set out in previous non-binding guidance provided by the EU<sup>7</sup>.</p> <p>This change is unlikely to have a material impact on the obligations of financial institutions.</p>

<sup>7</sup> "Update of the EU Best Practices for the effective implementation of restrictive measures" (<https://data.consilium.europa.eu/doc/document/ST-8519-2018-INIT/en/pdf#>)

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Restrictive Measure/Category	UK SI reference	EU Legislative SI reference	Change to legal obligation?	Impact?
Trade Controls	International CTR Regs. 19-26	N/A	(b)	<p><b>Low Impact</b></p> <p>The International CTR introduces express restrictions on:</p> <ul style="list-style-type: none"> <li>- the export of military goods to a designated person;</li> <li>- the supply or delivery of military goods from a third country to a designated person;</li> <li>- making military goods or technology available or transferring military technology to or for the benefit of designated persons;</li> <li>- providing technical assistance relating to military goods or military technology to, or for the benefit of designated persons</li> <li>- providing financial and brokering services, and making funds available, to or for the benefit of designated persons; and</li> <li>- providing technical assistance, financial services or funds, or brokering services where such provision enables the conduct of armed hostilities.</li> </ul> <p>Designated persons for purposes of these controls may not be the same as designated persons which are the subject of the financial provisions referred to above.</p> <p>This change is unlikely to have a material impact on the obligations of financial institutions.</p>

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Restrictive Measure/Category	UK SI reference	EU Legislative SI reference	Change to legal obligation?	Impact?
Exemptions to asset freeze and prohibition on making funds and economic resources available to designated persons	International CTR Reg. 29(1) and CTR Reg. 17(1)	N/A	(b)	<p><b>Low Impact</b></p> <p>For the purposes of the prohibition on dealing with funds or economic resources owned, held or controlled by a designated person, the CTR and International CTR set out the following new exception:</p> <p><i>(1) The prohibition in regulation 11 (asset-freeze in relation to designated persons) is not contravened by an independent person ("P") transferring to another person a legal or equitable interest in funds or economic resources where, immediately before the transfer, the interest—</i></p> <p><i>(a) is held by P, and</i></p> <p><i>(b) is not held jointly with the designated person.</i></p> <p><i>(2) In paragraph (1) "independent person" means a person who—</i></p> <p><i>(a) is not the designated person, and</i></p> <p><i>(b) is not owned or controlled directly or indirectly (within the meaning of regulation 7) by the designated person.</i></p> <p>The circumstances in which this exception would apply are not clear from the drafting of the provision or any associated guidance, although it appears likely to apply where different interests (for example, legal and equitable interests) in funds or economic resources are held by different persons, only one of which is a designated person. [Note: please do let us know if you raise the issue with OFSI and receive any further guidance on this point].</p> <p>This change is unlikely to have a material impact on the obligations of financial institutions.</p>

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Restrictive Measure/Category	UK SI reference	EU Legislative SI reference	Change to legal obligation?	Impact?
Exemptions to asset freeze and prohibition on making funds and economic resources available to designated persons	International CTR Reg. 29(3); and CTR Reg. 17(3)	TAFAs.16(1)	(c)	<p><b>Low Impact</b></p> <p>The TAFAs provided that a person who credits a frozen account with payments due under contracts, agreements or obligations that were concluded or arose before the account became a frozen account will not have contravened the prohibitions on making funds available to or for the benefit of a designated person.</p> <p>The scope of this exception has been amended in the new CTR and International CTR. Under the CTR and International CTR, 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 <i>relevant institution</i> for crediting to an account held or controlled (directly or indirectly) by a designated person, where those funds are transferred in discharge (or partial discharge) of an obligation which arose before the date on which the person became a designated person.</p> <p>This change is unlikely to have a material impact on the obligations of financial institutions.</p>
Exemptions to asset freeze and prohibition on making funds and economic resources available to designated persons	International CTR Reg. 29(6) and CTR Reg 17(6)	N/A	(c)	<p><b>Low Impact</b></p> <p>The CTR and International CTR set 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 13 to 15 are not contravened in relation to a designated person ("P") by a transfer of funds from account A to account B, where—</i></p> <ul style="list-style-type: none"> <li><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></li> <li><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></li> <li><i>(c) accounts A and B are held or controlled (directly or indirectly) by P.</i></li> </ul> <p>This change is unlikely to have a material impact on the obligations of financial institutions.</p>

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Restrictive Measure/Category	UK SI reference	EU Legislative SI reference	Change to legal obligation?	Impact?
Exemptions to asset freeze and prohibition on making funds and economic resources available to designated persons	International CTR Reg. 29(5) and CTR Reg. 17(5)	s. 16(1)(b) TAFE	(c)	<p><b>Low Impact</b></p> <p>TAFE provided that a person who credits a frozen account with payments due under contracts, agreements or obligations that were concluded or arose before the account became a frozen account will not have contravened the prohibitions on making funds available to or for the benefit of a designated person.</p> <p>The scope of this exception has been amended in the CTR and International CTR. Under the CTR and International CTR, 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 <i>a relevant institution</i> for crediting to an account held or controlled (directly or indirectly) by a designated person, where those funds are transferred in discharge (or partial discharge) of an obligation which arose before the date on which the person became a designated person.</p> <p>This change is unlikely to have a material impact on the obligations of financial institutions.</p>

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Restrictive Measure/Category	UK SI reference	EU Legislative SI reference	Change to legal obligation?	Impact?
Exemptions to asset freeze and prohibition on making funds and economic resources available to designated persons	CTR Reg.18.and International CTR Reg 30	N/A	(b)	<p><b>Low Impact</b></p> <p>The CTR and International CTR set out the following new exception for acts done for purposes of national security or prevention of serious crime:</p> <p>(1) <i>“Where an act would, in the absence of this paragraph, be prohibited by regulation 9(2) (confidentiality) or any prohibition in Part 3 (Finance) or 5 (Trade), that prohibition does not apply to the act if the act is one which a responsible officer has determined would be in the interests of—</i></p> <p style="padding-left: 40px;"><i>(a) national security, or</i></p> <p style="padding-left: 40px;"><i>(b) the prevention or detection of serious crime in the United Kingdom or elsewhere.</i></p> <p>(2) <i>Where, in the absence of this paragraph, a thing would be required to be done under or by virtue of a provision of Part 7 (Information and records) [or Part 9 (maritime enforcement)], that requirement does not apply if a responsible officer has determined that not doing the thing in question would be in the interests of—</i></p> <p style="padding-left: 40px;"><i>(a) national security, or</i></p> <p style="padding-left: 40px;"><i>(b) the prevention or detection of serious crime in the United Kingdom or elsewhere.”</i></p> <p>This change is unlikely to have a material impact on the obligations of financial institutions.</p>
Treasury Licences	International CTR Reg. 31 and CTR Reg. 19	TAFAs s. 17	(d)	<p><b>Low Impact</b></p> <p>The provisions relating to licencing under the CTR and International CTR closely reflect the language and effect of the licencing provisions in TAFAs.</p> <p>This licencing regime is different to that created by the post-Brexit statutory instruments for other regimes, in that it does not limit the ability of the Treasury to issue a licence authorising acts by a particular person to instances where the Treasury considers a licence appropriate for a purpose set out in the schedule of the relevant SI.</p> <p>This discrepancy is unlikely to have a material impact on the obligations of financial institutions.</p>

Restrictive Measure/Category	UK SI reference	EU Legislative SI reference	Change to legal obligation?	Impact?
Prohibition on providing financial services, funds and brokering services relating to military goods and military technology to or for the benefit of a designated person	Reg. 24 and 25 International CTR	N/A	(b)	<p><b>Low Impact</b></p> <p>The International CTR introduce a new prohibition that a person must not directly or indirectly provide financial services to, or for the benefit of, a designated person in pursuance of or in connection with an arrangement whose object or effect relates to military goods and technology. This prohibition, and others relating to trade, are not included in the CTR, although it does mirror the prohibition under the ISIL (Da'esh) and Al-Qaida (United Nations Sanctions) (EU Exit) Regulations 2019 ("ISIL Regs"), which in turn, broadly replicates the prohibition under the EU's autonomous ISIL/Al-Qaida regime.</p> <p>The International CTR also introduces a prohibition on the provision of brokering services relating to military goods and military technology. As above, this prohibition is not included in the CTR but it does mirror that in the ISIL Regs. The prohibition provides a non-exhaustive definition of "brokering services" (Reg. 18(3)) and sets out a list of the specific arrangements in respect of which brokering services are prohibited (Reg.25(1)).</p> <p>This prohibition is unlikely to have a material impact on the obligations of financial institutions. It does, however, introduce a discrepancy between the prohibition under CTR and International CTR.</p>
Enabling or facilitating the conduct of armed hostilities	Reg. 26 International CTR	N/A	(b)	<p><b>Low Impact</b></p> <p>The International CTR introduces a new prohibition on providing financial services, funds or brokering services in relation to an arrangement whose object or effect is to provide, in a non-UK country, technical assistance, financial services or funds, where such provision enables or facilitates the conduct of armed hostilities, directly or indirectly to, or for the benefit of, a designated person</p> <p>This new prohibition 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	CTR Reg. 21(5) and International CRT Reg. 34(5)	TAFAs s.16(4)	(c)	<p><b>Low Impact</b></p> <p>The TAFAs provided that relevant institutions had to inform the Treasury without delay if it credited a frozen account with:</p> <p style="padding-left: 40px;"><i>(a) Interest or other earnings due on the account; or</i>  <i>(b) Payments due under contracts, agreements or obligations that were concluded or arose before the account became a frozen account."</i></p> <p>Under the CTR and International CTR, a relevant institution must inform the Treasury without delay if that institution credits an account in accordance with the relevant regulations relating to receipt of funds to credit a frozen account or the transfers funds from a frozen account.</p> <p>This amendment is unlikely to have a material impact on financial institutions reporting obligations although the scope of what is to be reported is now broader.</p>

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# Document Version Control

Version	Issue Date	Expiry Date	Notes
1.20	17 <sup>th</sup> February 2021		<ul style="list-style-type: none"><li>Partner logos added to the authors page.</li></ul>
1.10	5 <sup>th</sup> December 2020		<ul style="list-style-type: none"><li>Minor formatting changes.</li></ul>
1.00	5 <sup>th</sup> November 2020	30 <sup>th</sup> November 2020	<ul style="list-style-type: none"><li>First issue.</li><li>Initial review of UK Sanctions Sis available as at September 15 2020.</li></ul>

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