



UK SANCTIONS STATUTORY INSTRUMENTS REVIEW: CYBER

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

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INTRODUCTION

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

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

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

OBJECTIVES

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

SCOPE

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

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

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

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

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

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

⁴ Ibid., see Chapter 1, Section 1.

⁵ 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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The Cyber (Sanctions) (EU Exit) Regulations 2020

Restrictive Measure / UK SI reference Category	UK SI reference	EU Legislative SI reference	Change to legal obligation?	Impact?
Scope of the Regulations	Regulation 3(1) & (7) of the Cyber (Sanctions) (EU Exit) Regulations 2020 No. 597 ("UK Cyber SI").	Article 1(1) & (2) of EU Council Regulation 2019/796 ("EC Regulation 2019/796"). Regulation 1(2) of The Cyber-Attacks (Asset-Freezing) Regulations 2019 No. 956 ("EU Cyber SI").	(b)	<p>Potentially High Impact</p> <p>EC Regulation 2019/796 has a requirement for the cyber threat to be external (i.e. outside the Union) which is not a requirement in the UK Cyber SI, which captures cyber activity taking place both outside and in the UK.</p> <p>The UK Cyber SI is wider in scope than the old EU Cyber SI. Whilst this should not have any practical impact on the obligations of financial institutions, it may mean that more cyber activity is sanctioned under the UK Cyber SI.</p>
Purpose of the Regulations	UK Cyber SI, Reg. 4(2).	EC Regulation 2019/796, article 1(1) and article 2.	(c)	<p>Potentially High Impact</p> <p>EC Regulation 2019/796 applies to "<i>cyber-attacks with a significant effect, including attempted cyber-attacks with a potentially significant effect, which constitute an external threat to the Union or its Member States</i>". The factors which determine whether an attack has had a (or potential) "<i>significant effect</i>" are defined in article 2 as including:</p> <ul style="list-style-type: none"> (a) "<i>the scope, scale, impact or severity of disruption caused, including to economic and societal activities, essential services, critical State functions, public order or public safety;</i> (b) "<i>the number of natural or legal persons, entities or bodies affected;</i> (c) "<i>the number of Member States concerned;</i>

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Restrictive Measure / UK SI reference Category	UK SI reference	EU Legislative SI reference	Change to legal obligation?	Impact?
				<p>(d) the amount of economic loss caused, such as through large-scale theft of funds, economic resources or intellectual property;</p> <p>(e) the economic benefit gained by the perpetrator, for himself or for others;</p> <p>(f) the amount or nature of data stolen or the scale of data breaches; or the nature of commercially sensitive data accessed.”</p> <p>Under the UK Cyber SI, the purpose of the regulations is to further the prevention of “relevant cyber activity” which is defined as activity which:</p> <p>(a) “undermines, or is intended to undermine, the integrity, prosperity or security of the United Kingdom or a country(4) other than the United Kingdom,</p> <p>(b) directly or indirectly causes, or is intended to cause, economic loss to, or prejudice to the commercial interests of, those affected by the activity,</p> <p>(c) undermines, or is intended to undermine, the independence or effective functioning of—</p> <p>(i) an international organisation, or</p> <p>(ii) a non-governmental organisation or forum whose mandate or purposes relate to the governance of international sport or the Internet, or</p> <p>(d) otherwise affects a significant number of persons in an indiscriminate manner” (Reg 4(2))</p> <p>There is no express provision regarding the purpose of the regulations in the EU Cyber SI.</p> <p>The purpose of the UK Cyber SI is not qualified by a need to have “significant effect” and is broader in scope than the EC Regulation 2019/796. Whilst this should not have any practical impact on the obligations of financial institutions, it may mean that more cyber activity is sanctioned under the UK Cyber SI.</p>

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Restrictive Measure / UK SI reference Category	UK SI reference	EU Legislative SI reference	Change to legal obligation?	Impact?
Asset freeze in relation to designated persons	UK Cyber SI, Reg. 11(5).	EU Cyber SI, Reg. 3(2).	(c)	<p>Low Impact</p> <p>For the purposes of the prohibition on dealing with funds or economic resources owned, held or controlled by a designated person, the EU Cyber SI previously defined the phrase "<i>deals with</i>" economic resources as the "<i>exchange, or use in exchange, for funds, goods or services</i>".</p> <p>This definition has been extended slightly in the UK Cyber SI to include the pledge of economic resources as security or otherwise.</p> <p>This change is unlikely to have a material impact on the obligations of financial institutions.</p>
Asset freeze in relation to designated persons	11(6)	EU Cyber SI, Reg. 3.	(b)	<p>Low Impact</p> <p>For the purposes of the prohibition on dealing with funds or economic resources owned, held or controlled by a designated person, the UK Cyber SI includes a new provision stating that funds or economic resources are "<i>owned, held or controlled</i>" by a person if that person has any legal or equitable interest in such assets, regardless of whether the interest is held jointly with any other person, or if they have any tangible property (other than real property), or bearer security which is comprised in funds or economic resources and is in their possession.</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.⁶</p> <p>This change is unlikely to have a material impact on the obligations of financial institutions.</p>

⁶ "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 / UK SI reference Category	UK SI reference	EU Legislative SI reference	Change to legal obligation?	Impact?
Asset freeze in relation to designated persons	UK Cyber SI, Reg. 11(7).	EU Cyber SI, Reg. 3(1).	(b)	<p>Potentially High Impact</p> <p>For the purposes of the prohibition on dealing with funds or economic resources owned, held or controlled by a designated person, the UK Cyber SI provides that funds or economic resources are treated as owned, held, or controlled by a designated person if they are “<i>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 EU Cyber SI to include a new express prohibition on dealing with the funds or economic resources of entities owned or controlled by such designated persons.</p>
Prohibition on making funds and economic resources available to designated persons	UK Cyber SI, Reg. 12(4).	EU Cyber SI, Reg. 4.	(b)	<p>Potentially High Impact</p> <p>The prohibition on making <u>funds</u> available directly or indirectly to designated persons is extended by the UK Cyber SI, which provides expressly that funds are made available indirectly to a designated person if made “<i>available to a person who is owned or controlled directly or indirectly (within the meaning of regulation 7) by the designated person</i>”.</p> <p>No such provision is contained in the EU Cyber SI.</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>
Prohibition on making funds and economic resources available to designated persons	UK Cyber SI, Reg. 14 (4).	EU Cyber SI, Reg. 6.	(b)	<p>Potentially High Impact</p> <p>For the purposes of the prohibition on making <u>economic resources</u> available to designated persons, the UK Cyber SI provides that economic resources are made available indirectly to a designated person if made “<i>available to a person who is owned or controlled directly or indirectly (within the meaning of regulation 7) by the designated person</i>”.</p>

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Restrictive Measure / UK SI reference Category	UK SI reference	EU Legislative SI reference	Change to legal obligation?	Impact?
				<p>No such provision is contained in the EU Cyber SI.</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>
Ownership and control provisions	UK Cyber SI, Reg.7.	N/A	(b)	<p>Potentially High Impact</p> <p>The UK Cyber SI provides that, for the purposes of the asset freeze and prohibition on making funds or economic resources available, a person will be deemed to be "<i>owned or controlled directly or indirectly</i>" by another person if either of two conditions are met.</p> <p>(1) <i>A person who is not an individual ("C") is "owned or controlled directly or indirectly" by another person ("P") if either of the following two conditions is met (or both are met).</i></p> <p>(2) <i>The first condition is that P—</i></p> <p style="margin-left: 40px;">(a) <i>holds directly or indirectly more than 50% of the shares in C,</i></p> <p style="margin-left: 40px;">(b) <i>holds directly or indirectly more than 50% of the voting rights in C, or</i></p> <p style="margin-left: 40px;">(c) <i>holds the right directly or indirectly to appoint or remove a majority of the board of directors of C.</i></p> <p>(3) <i>Schedule 1 contains provision applying for the purpose of interpreting paragraph (2).</i></p> <p>(4) <i>The second condition is that it is reasonable, having regard to all the circumstances, to expect that P would (if P chose to) be able, in most cases or in significant respects, by whatever means and whether directly or indirectly, to achieve the result that affairs of C are conducted in accordance with P's wishes.</i></p> <p>The EU Cyber SI and EC Regulation 2019/796 do not provide a definition of ownership and control, but the EU has provided non-binding guidance on the definition.</p> <p>This new provision extends and replaces non-binding guidance previously provided by the EU.</p>

Restrictive Measure / UK SI reference Category	UK SI reference	EU Legislative SI reference	Change to legal obligation?	Impact?
				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.
Exemptions to asset freeze and prohibition on making funds and economic resources available to designated persons	UK Cyber SI, Reg. 18(1) & (2).	EU Cyber SI, Reg. 3.	(b)	<p>Low Impact</p> <p>For the purposes of the prohibition on dealing with funds or economic resources owned, held or controlled by a designated person, the UK Cyber SI sets out the following new exception:</p> <p><i>(1) The prohibition in regulation 11 (asset-freeze in relation to designated persons) is not contravened by an independent person ("P") transferring to another person a legal or equitable interest in funds or economic resources where, immediately before the transfer, the interest—</i></p> <ul style="list-style-type: none"> <i>(a) is held by P, and</i> <i>(b) is not held jointly with the designated person.</i> <p><i>(2) In paragraph (1) "independent person" means a person who—</i></p> <ul style="list-style-type: none"> <i>(a) is not the designated person, and</i> <i>(b) is not owned or controlled directly or indirectly (within the meaning of regulation 7) by the designated person.</i> <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 / UK SI reference 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	UK Cyber SI, Reg. 18(3).	EU Cyber SI, Reg. 8(1)(a).	(c)	<p>Low Impact</p> <p>The EU Cyber SI previously provided that a person who credits a frozen account with interest or other earnings due on an account will not have contravened the prohibitions on making funds available to or for the benefit of a designated person.</p> <p>The scope of this exception has been amended in the new UK Cyber SI. First, the exception now expressly applies to <i>relevant institutions (i.e. firms with Part 4A permission under FSMA)</i> only. Second, under the UK Cyber SI this exception applies to the <i>prohibition on dealing with funds or economic resources owned, held or controlled by a designated person</i>, as well as the prohibitions on making funds available to or for the benefit of a designated person.</p> <p>This change is unlikely to have a material impact on the obligations of financial institutions.</p>
Exemptions to asset freeze and prohibition on making funds and economic resources available to designated persons	UK Cyber SI, Reg. 18(5).	EU Cyber SI, Reg. 8(1)(b).	(c)	<p>Low Impact</p> <p>The EU Cyber SI provided that a person who credits a frozen account with payments due under contracts, agreements or obligations that were concluded or arose before the account became a frozen account will not have contravened the prohibitions on making funds available to or for the benefit of a designated person.</p> <p>The scope of this exception has been amended in the new UK Cyber SI. Under the new UK Cyber SI, the prohibitions on making funds available to or for the benefit of a designated person will not be contravened by the transfer of funds to a relevant institution for crediting to an account held or controlled (directly or indirectly) by a designated person, where those funds are transferred in discharge (or partial discharge) of an obligation which arose before the date on which the person became a designated person.</p> <p>This change is unlikely to have a material impact on the obligations of financial institutions.</p>

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Restrictive Measure / UK SI reference 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	UK Cyber SI, Reg. 20(3), Schedule 2(6)	EU Cyber SI, Reg. 8(1)(c).	(b)	<p>Medium Impact</p> <p>The previous exception under the EU Cyber SI allowing a person to credit a frozen account with payments due under judicial, administrative or arbitral decisions rendered in an EU Member State or enforceable in the Member State concerned without contravening the prohibitions on making funds available to or for the benefit of a designated person has been deleted.</p> <p>The UK Cyber SI provides that a Treasury Licence is required to enable, the use by a designated person's frozen funds or economic resources, the implementation or satisfaction (whether in whole or in part) of a judicial, administrative or arbitral decision or lien provided the funds or economic resources used are the subject of the decision or lien, the decision or lien was made or established prior to the person becoming designated, and the use of the frozen funds or economic resources does not directly or indirectly benefit any other designated person (Schedule 2(6)).</p> <p>This would impact financial institutions seeking to credit frozen accounts with payments due under judicial, administrative, or arbitral decisions in that they would under, the new UK Cyber SI, need to apply for a licence to do this.</p>
Exemptions to asset freeze and prohibition on making funds and economic resources available to designated persons	UK Cyber SI, Reg. 18(6)	N/A	(b)	<p>Low Impact</p> <p>The UK Cyber SI sets out the following new exception to the prohibitions on dealing with funds or economic resources owned, held or controlled by a designated person, and on making funds available to or for the benefit of a designated person, allowing designated persons to transfer funds between two accounts:</p> <p><i>(6) The prohibitions in regulations 11 to 13 are not contravened in relation to a designated person ("P") by a transfer of funds from account A to account B, where—</i></p> <ul style="list-style-type: none"> <i>(a) account A is with a relevant institution which carries on an excluded activity within the meaning of section 142D of the Financial Services and Markets Act 2000(7),</i> <i>(b) account B is with a ring-fenced body within the meaning of section 142A of the Financial Services and Markets Act 2000(8), and</i> <i>(c) accounts A and B are held or controlled (directly or indirectly) by P.</i> <p>This change is unlikely to have a material impact on the obligations of financial institutions.</p>

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Exemptions to asset freeze and prohibition on making funds and economic resources available to designated persons	UK Cyber SI, Reg. 19.	N/A	(b)	<p>Low Impact</p> <p>The UK Cyber SI sets out the following new exception for acts done for purposes of national security or prevention of serious crime</p> <p><i>(1) “Where an act would, in the absence of this paragraph, be prohibited by regulation 9(2) (confidentiality) or any prohibition in Part 3 (Finance), 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><i>(a) national security, or</i></p> <p><i>(b) the prevention or detection of serious crime in the United Kingdom or elsewhere.</i></p> <p><i>(2) Where, in the absence of this paragraph, a thing would be required to be done under or by virtue of a provision of Part 6 (Information and records), 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><i>(a) national security, or</i></p> <p><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	UK Cyber SI, Reg. 20(3) and Schedule 2.	EU Cyber SI, Reg. 9.	(b)	<p>Low Impact</p> <p>The UK Cyber SI limits 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 Schedule 2 of the UK Cyber SI. Similar restrictions did not expressly apply under the EU Cyber SI.</p> <p>This change is unlikely to have a material impact on the obligations of financial institutions.</p>
Treasury Licences	UK Cyber SI, Reg. 20(3) and Schedule 2(8).	EU Cyber SI, Reg. 9. EC Regulation	(b)	<p>Low Impact</p> <p>As stated above, Schedule 2 of the UK Cyber SI provides a list of circumstances in which the Treasury may issue a licence authorising acts by a particular person. The list of purposes set out in Schedule 2 reflects the</p>

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		2019/796, article 4 – article 7		<p>list of possible derogations contained in the EC Regulation 2019/796 except for the following purpose which is listed in the UK Cyber SI only:</p> <p><i>“Extraordinary Situations To enable anything to be done to deal with an extraordinary situation.”</i></p> <p>Whilst this change is unlikely to have a material impact on the day to day obligations of financial institutions, it arguably broadens the scope of the licencing regime which could have an impact on financial institutions who are faced with extraordinary situations and are granted a licence by the Treasury authorising a specific act.</p>
Treasury Licences	UK Cyber SI, Reg. 20(4).	EU Cyber SI, Reg. 9(3).	(c)	<p>Low Impact</p> <p>Under the EU Cyber SI the Treasury may vary or revoke a licence at any time. The new UK Cyber SI further provides that a person who issues a licence may also <i>suspend</i> it at any time.</p> <p>This change is unlikely to have a material impact on the obligations of financial institutions.</p>
Treasury Licences	UK Cyber SI, Reg. 21.	EU Cyber SI, Reg. 9(5).	(c)	<p>Low Impact</p> <p>Under the EU Cyber 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 Cyber 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>
Designation of Persons	UK Cyber SI, Reg 9	N/A	(b)	<p>Low Impact</p> <p>Under the UK Cyber SI, the Secretary of State may inform only certain persons of a designation, variation or revocation of the content of a statement of reasons and may specify that such information is to be treated as confidential. It is an offence to disclose this information knowing or with reasonable cause to suspect</p>

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				<p>that the information is confidential except if the disclosure is made with “lawful authority”.</p> <p>No such offence exists under the EU Cyber SI.</p> <p>This change is unlikely to have a material impact on the obligations of financial institutions unless they obtain information that is to be treated as confidential.</p>
Information Obligations	UK Cyber SI, Reg. 23(5) & 20(3) & Schedule 2	EU Cyber SI, Reg. 8(3).	(c)	<p>Medium Impact</p> <p>The EU Cyber SI provided that relevant institutions had to inform the Treasury without delay if it credited a frozen account with:</p> <ul style="list-style-type: none"> (a) Interest or other earnings due on the account; (b) Payments due under contracts, agreements or obligations that were concluded or arose before the account became a frozen account, or (c) Payments due under judicial, administrative or arbitral decisions rendered in a Member State or enforceable in the UK.” <p>Under the UK Cyber SI, a relevant institution must inform the Treasury without delay if that institution credits an account in accordance with regulation 18(4) (receipt of funds to credit a frozen account) or regulation 18(6) (transfers funds from a frozen account).</p> <p>Further, under the UK Cyber SI, a Treasury licence is required to credit a frozen account (or otherwise use funds in a frozen account to make):</p> <ul style="list-style-type: none"> - with payments due arising from pre-existing obligations due under contracts or other agreements (Schedule 2(9)); or - to implement or satisfy pre-existing judicial, administrative or arbitral decisions or liens (Schedule 2(6)) <p>This would impact financial institutions seeking to credit frozen accounts with payments arising from pre-existing obligations or due under judicial, administrative or arbitral decisions in that they would under, the new UK Cyber SI, need to apply for a licence to do these activities.</p>

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High Impact

Restrictive Measure / UK SI reference Category	UK SI reference	EU Legislative SI reference	Change to legal obligation?	Impact?
Scope of the Regulations	Regulation 3(1) & (7) of the Cyber (Sanctions) (EU Exit) Regulations 2020 No. 597 ("UK Cyber SI").	Article 1(1) & (2) of EU Council Regulation 2019/796 ("EC Regulation 2019/796"). Regulation 1(2) of The Cyber-Attacks (Asset-Freezing) Regulations 2019 No. 956 ("EU Cyber SI").	(b)	<p>Potentially High Impact</p> <p>EC Regulation 2019/796 has a requirement for the cyber threat to be external (i.e. outside the Union) which is not a requirement in the UK Cyber SI, which captures cyber activity taking place both outside and in the UK.</p> <p>The UK Cyber SI is wider in scope than the old EU Cyber SI. Whilst this should not have any practical impact on the obligations of financial institutions, it may mean that more cyber activity is sanctioned under the UK Cyber SI.</p>
Purpose of the Regulations	UK Cyber SI, Reg. 4(2).	EC Regulation 2019/796, article 1(1) and article 2.	(c)	<p>Potentially High Impact</p> <p>EC Regulation 2019/796 applies to "<i>cyber-attacks with a significant effect, including attempted cyber-attacks with a potentially significant effect, which constitute an external threat to the Union or its Member States</i>". The factors which determine whether an attack has had a (or potential) "<i>significant effect</i>" are defined in article 2 as including:</p> <ul style="list-style-type: none"> (a) "<i>the scope, scale, impact or severity of disruption caused, including to economic and societal activities, essential services, critical State functions, public order or public safety;</i> (b) "<i>the number of natural or legal persons, entities or bodies affected;</i> (c) "<i>the number of Member States concerned;</i>

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				<p>(d) the amount of economic loss caused, such as through large-scale theft of funds, economic resources or intellectual property;</p> <p>(e) the economic benefit gained by the perpetrator, for himself or for others;</p> <p>(f) the amount or nature of data stolen or the scale of data breaches; or the nature of commercially sensitive data accessed.”</p> <p>Under the UK Cyber SI, the purpose of the regulations is to further the prevention of “relevant cyber activity” which is defined as activity which:</p> <p>(a) “undermines, or is intended to undermine, the integrity, prosperity or security of the United Kingdom or a country(4) other than the United Kingdom,</p> <p>(b) directly or indirectly causes, or is intended to cause, economic loss to, or prejudice to the commercial interests of, those affected by the activity,</p> <p>(c) undermines, or is intended to undermine, the independence or effective functioning of—</p> <p>(iii) an international organisation, or</p> <p>(iv) a non-governmental organisation or forum whose mandate or purposes relate to the governance of international sport or the Internet, or</p> <p>(d) otherwise affects a significant number of persons in an indiscriminate manner” (Reg 4(2))</p> <p>There is no express provision regarding the purpose of the regulations in the EU Cyber SI.</p> <p>The purpose of the UK Cyber SI is not qualified by a need to have “significant effect” and is broader in scope than the EC Regulation 2019/796. Whilst this should not have any practical impact on the obligations of financial institutions, it may mean that more cyber activity is sanctioned under the UK Cyber SI.</p>

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Restrictive Measure / UK SI reference Category	UK SI reference	EU Legislative SI reference	Change to legal obligation?	Impact?
Asset freeze in relation to designated persons	UK Cyber SI, Reg. 11(7).	EU Cyber SI, Reg. 3(1).	(b)	<p>Potentially High Impact</p> <p>For the purposes of the prohibition on dealing with funds or economic resources owned, held or controlled by a designated person, the UK Cyber SI provides that funds or economic resources are treated as owned, held, or controlled by a designated person if they are “<i>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 EU Cyber SI to include a new express prohibition on dealing with the funds or economic resources of entities owned or controlled by such designated persons.</p>
Prohibition on making funds and economic resources available to designated persons	UK Cyber SI, Reg. 12(4).	EU Cyber SI, Reg. 4.	(b)	<p>Potentially High Impact</p> <p>The prohibition on making <u>funds</u> available directly or indirectly to designated persons is extended by the UK Cyber SI, which provides expressly that funds are made available indirectly to a designated person if made “<i>available to a person who is owned or controlled directly or indirectly (within the meaning of regulation 7) by the designated person</i>”.</p> <p>No such provision is contained in the EU Cyber SI.</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>
Prohibition on making funds and economic resources available to designated persons	UK Cyber SI, Reg. 14 (4).	EU Cyber SI, Reg. 6.	(b)	<p>Potentially High Impact</p> <p>For the purposes of the prohibition on making <u>economic resources</u> available to designated persons, the UK Cyber SI provides that economic resources are made available indirectly to a designated person if made “<i>available to a person who is owned or controlled directly or indirectly (within the meaning of regulation 7) by the designated person</i>”.</p>

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Restrictive Measure / UK SI reference Category	UK SI reference	EU Legislative SI reference	Change to legal obligation?	Impact?
				<p>No such provision is contained in the EU Cyber SI.</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>
Ownership and control provisions	UK Cyber SI, Reg.7.	N/A	(b)	<p>Potentially High Impact</p> <p>The UK Cyber 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><i>(1) 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><i>(2) The first condition is that P—</i></p> <p><i>(a) holds directly or indirectly more than 50% of the shares in C,</i></p> <p><i>(b) holds directly or indirectly more than 50% of the voting rights in C, or</i></p> <p><i>(c) holds the right directly or indirectly to appoint or remove a majority of the board of directors of C.</i></p> <p><i>(3) Schedule 1 contains provision applying for the purpose of interpreting paragraph (2).</i></p> <p><i>(4) The second condition is that it is reasonable, having regard to all the circumstances, to expect that P would (if P chose to) be able, in most cases or in significant respects, by whatever means and whether directly or indirectly, to achieve the result that affairs of C are conducted in accordance with P's wishes.</i></p> <p>The EU Cyber SI and EC Regulation 2019/796 do not provide a definition of ownership and control, but the EU has provided non-binding guidance on the definition.</p> <p>This new provision extends and replaces non-binding guidance previously provided by the EU.</p>

Restrictive Measure / UK SI reference Category	UK SI reference	EU Legislative SI reference	Change to legal obligation?	Impact?
				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.

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Medium Impact

Restrictive Measure / UK SI reference 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	UK Cyber SI, Reg. 20(3), Schedule 2(6)	EU Cyber SI, Reg. 8(1)(c).	(b)	<p>Medium Impact</p> <p>The previous exception under the EU Cyber SI allowing a person to credit a frozen account with payments due under judicial, administrative or arbitral decisions rendered in an EU Member State or enforceable in the Member State concerned without contravening the prohibitions on making funds available to or for the benefit of a designated person has been deleted.</p> <p>The UK Cyber SI provides that a Treasury Licence is required to enable, the use by a designated person's frozen funds or economic resources, the implementation or satisfaction (whether in whole or in part) of a judicial, administrative or arbitral decision or lien provided the funds or economic resources used are the subject of the decision or lien, the decision or lien was made or established prior to the person becoming designated, and the use of the frozen funds or economic resources does not directly or indirectly benefit any other designated person (Schedule 2(6)).</p> <p>This would impact financial institutions seeking to credit frozen accounts with payments due under judicial, administrative, or arbitral decisions in that they would under, the new UK Cyber SI, need to apply for a licence to do this.</p>
Information Obligations	UK Cyber SI, Reg. 23(5) & 20(3) & Schedule 2	EU Cyber SI, Reg. 8(3).	(c)	<p>Medium Impact</p> <p>The EU Cyber SI provided that relevant institutions had to inform the Treasury without delay if it credited a frozen account with:</p> <ul style="list-style-type: none"> (a) Interest or other earnings due on the account; (b) Payments due under contracts, agreements or obligations that were concluded or arose before the account became a frozen account, or (c) Payments due under judicial, administrative or arbitral decisions rendered in a Member State or enforceable in the UK." <p>Under the UK Cyber SI, a relevant institution must inform the Treasury without delay if that institution credits an account in accordance with regulation 18(4) (receipt of funds to credit a frozen account) or</p>

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Restrictive Measure / UK SI reference Category	UK SI reference	EU Legislative SI reference	Change to legal obligation?	Impact?
				<p>regulation 18(6) (transfers funds from a frozen account).</p> <p>Further, under the UK Cyber SI, a Treasury licence is required to credit a frozen account (or otherwise use funds in a frozen account to make):</p> <ul style="list-style-type: none"> - with payments due arising from pre-existing obligations due under contracts or other agreements (Schedule 2(9)); or - to implement or satisfy pre-existing judicial, administrative or arbitral decisions or liens (Schedule 2(6)) <p>This would impact financial institutions seeking to credit frozen accounts with payments arising from pre-existing obligations or due under judicial, administrative or arbitral decisions in that they would under, the new UK Cyber SI, need to apply for a licence to do these activities.</p>

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Low Impact

Restrictive Measure / UK SI reference Category	UK SI reference	EU Legislative SI reference	Change to legal obligation?	Impact?
Asset freeze in relation to designated persons	UK Cyber SI, Reg. 11(5).	EU Cyber SI, Reg. 3(2).	(c)	<p>Low Impact</p> <p>For the purposes of the prohibition on dealing with funds or economic resources owned, held or controlled by a designated person, the EU Cyber SI previously defined the phrase "<i>deals with</i>" economic resources as the "<i>exchange, or use in exchange, for funds, goods or services</i>".</p> <p>This definition has been extended slightly in the UK Cyber SI to include the pledge of economic resources as security or otherwise.</p> <p>This change is unlikely to have a material impact on the obligations of financial institutions.</p>
Asset freeze in relation to designated persons	11(6)	EU Cyber SI, Reg. 3.	(b)	<p>Low Impact</p> <p>For the purposes of the prohibition on dealing with funds or economic resources owned, held or controlled by a designated person, the UK Cyber SI includes a new provision stating that funds or economic resources are "<i>owned, held or controlled</i>" by a person if that person has any legal or equitable interest in such assets, regardless of whether the interest is held jointly with any other person, or if they have any tangible property (other than real property), or bearer security which is comprised in funds or economic resources and is in their possession.</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.⁷</p> <p>This change is unlikely to have a material impact on the obligations of financial institutions.</p>

⁷ "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 / UK SI reference 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	UK Cyber SI, Reg. 18(1) & (2).	EU Cyber SI, Reg. 3.	(b)	<p>Low Impact</p> <p>For the purposes of the prohibition on dealing with funds or economic resources owned, held or controlled by a designated person, the UK Cyber SI sets out the following new exception:</p> <p><i>(1) The prohibition in regulation 11 (asset-freeze in relation to designated persons) is not contravened by an independent person ("P") transferring to another person a legal or equitable interest in funds or economic resources where, immediately before the transfer, the interest—</i></p> <p><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>
Exemptions to asset freeze and prohibition on making funds and economic resources available to designated persons	UK Cyber SI, Reg. 18(3).	EU Cyber SI, Reg. 8(1)(a).	(c)	<p>Low Impact</p> <p>The EU Cyber SI previously provided that a person who credits a frozen account with interest or other earnings due on an account will not have contravened the prohibitions on making funds available to or for the benefit of a designated person.</p> <p>The scope of this exception has been amended in the new UK Cyber SI. First, the exception now expressly applies to <i>relevant institutions (i.e. firms with Part 4A permission under FSMA)</i> only. Second, under the UK Cyber SI this exception applies to the <i>prohibition on dealing with funds or economic resources owned, held</i></p>

Restrictive Measure / UK SI reference Category	UK SI reference	EU Legislative SI reference	Change to legal obligation?	Impact?
				<p><i>or controlled by a designated person</i>, as well as the prohibitions on making funds available to or for the benefit of a designated person.</p> <p>This change is unlikely to have a material impact on the obligations of financial institutions.</p>
Exemptions to asset freeze and prohibition on making funds and economic resources available to designated persons	UK Cyber SI, Reg. 18(5).	EU Cyber SI, Reg. 8(1)(b).	(c)	<p>Low Impact</p> <p>The EU Cyber SI provided that a person who credits a frozen account with payments due under contracts, agreements or obligations that were concluded or arose before the account became a frozen account will not have contravened the prohibitions on making funds available to or for the benefit of a designated person.</p> <p>The scope of this exception has been amended in the new UK Cyber SI. Under the new UK Cyber SI, the prohibitions on making funds available to or for the benefit of a designated person will not be contravened by the transfer of funds to a relevant institution for crediting to an account held or controlled (directly or indirectly) by a designated person, where those funds are transferred in discharge (or partial discharge) of an obligation which arose before the date on which the person became a designated person.</p> <p>This change is unlikely to have a material impact on the obligations of financial institutions.</p>
Exemptions to asset freeze and prohibition on making funds and economic resources available to designated persons	UK Cyber SI, Reg. 18(6)	N/A	(b)	<p>Low Impact</p> <p>The UK Cyber SI sets out the following new exception to the prohibitions on dealing with funds or economic resources owned, held or controlled by a designated person, and on making funds available to or for the benefit of a designated person, allowing designated persons to transfer funds between two accounts:</p> <p><i>(6) The prohibitions in regulations 11 to 13 are not contravened in relation to a designated person ("P") by a transfer of funds from account A to account B, where—</i></p> <ul style="list-style-type: none"> <i>(a) account A is with a relevant institution which carries on an excluded activity within the meaning of section 142D of the Financial Services and Markets Act 2000(7),</i> <i>(b) account B is with a ring-fenced body within the meaning of section 142A of the Financial Services and Markets Act 2000(8), and</i>

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Restrictive Measure / UK SI reference Category	UK SI reference	EU Legislative SI reference	Change to legal obligation?	Impact?
				<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>
Exemptions to asset freeze and prohibition on making funds and economic resources available to designated persons	UK Cyber SI, Reg. 19.	N/A	(b)	<p>Low Impact</p> <p>The UK Cyber SI sets out the following new exception for acts done for purposes of national security or prevention of serious crime</p> <p><i>(1) "Where an act would, in the absence of this paragraph, be prohibited by regulation 9(2) (confidentiality) or any prohibition in Part 3 (Finance), 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><i>(2) Where, in the absence of this paragraph, a thing would be required to be done under or by virtue of a provision of Part 6 (Information and records), 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	UK Cyber SI, Reg. 20(3) and Schedule 2.	EU Cyber SI, Reg. 9.	(b)	<p>Low Impact</p> <p>The UK Cyber SI limits 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 Schedule 2 of the UK Cyber SI. Similar restrictions did not expressly apply under the EU Cyber SI.</p> <p>This change is unlikely to have a material impact on the obligations of financial institutions.</p>

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Restrictive Measure / UK SI reference Category	UK SI reference	EU Legislative SI reference	Change to legal obligation?	Impact?
Treasury Licences	UK Cyber SI, Reg. 20(3) and Schedule 2(8).	EU Cyber SI, Reg. 9. EC Regulation 2019/796, article 4 – article 7	(b)	<p>Low Impact</p> <p>As stated above, Schedule 2 of the UK Cyber SI provides a list of circumstances in which the Treasury may issue a licence authorising acts by a particular person. The list of purposes set out in Schedule 2 reflects the list of possible derogations contained in the EC Regulation 2019/796 except for the following purpose which is listed in the UK Cyber SI only:</p> <p><i>“Extraordinary Situations To enable anything to be done to deal with an extraordinary situation.”</i></p> <p>Whilst this change is unlikely to have a material impact on the day to day obligations of financial institutions, it arguably broadens the scope of the licencing regime which could have an impact on financial institutions who are faced with extraordinary situations and are granted a licence by the Treasury authorising a specific act.</p>
Treasury Licences	UK Cyber SI, Reg. 20(4).	EU Cyber SI, Reg. 9(3).	(c)	<p>Low Impact</p> <p>Under the EU Cyber SI the Treasury may vary or revoke a licence at any time. The new UK Cyber SI further provides that a person who issues a licence may also <i>suspend</i> it at any time.</p> <p>This change is unlikely to have a material impact on the obligations of financial institutions.</p>
Treasury Licences	UK Cyber SI, Reg. 21.	EU Cyber SI, Reg. 9(5).	(c)	<p>Low Impact</p> <p>Under the EU Cyber 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 Cyber 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>

Restrictive Measure / UK SI reference Category	UK SI reference	EU Legislative SI reference	Change to legal obligation?	Impact?
Designation of Persons	UK Cyber SI, Reg 9	N/A	(b)	<p>Low Impact</p> <p>Under the UK Cyber SI, the Secretary of State may inform only certain persons of a designation, variation or revocation of the content of a statement of reasons and may specify that such information is to be treated as confidential. It is an offence to disclose this information knowing or with reasonable cause to suspect that the information is confidential except if the disclosure is made with “lawful authority”.</p> <p>No such offence exists under the EU Cyber SI.</p> <p>This change is unlikely to have a material impact on the obligations of financial institutions unless they obtain information that is to be treated as confidential.</p>

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Document Version Control

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

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