

UK Post-Brexit: Sanctions, Anti-Money Laundering & Export Control Compliance

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What's this about?

As of 1 January 2021 the UK has entered into a new post-Brexit phase. Looking forward, this brief article looks at the possible changes in compliance terms for the trio of Sanctions, Anti-Money Laundering and Export Controls.

Sanctions

Sanctions rules may affect businesses as follows:

- They must have in place adequate systems and procedures in place to ensure compliance;
- They may be asked to provide information about their accounts or assets/accounts they hold; and
- They may commit criminal offences if they fall foul of sanctions rules.

The UK now operates a unilateral and autonomous sanctions regime.

The UK had already put legislation in place in May 2018 to be able to deal post-Brexit with sanctions (and Anti-Money Laundering – see below), namely the Sanctions and Anti-Money Laundering Act 2018 (SAML 2018, found here <https://www.legislation.gov.uk/ukpga/2018/13/contents>). This is now the primary UK sanctions legislation.

The purpose of SAML 2018 with sanctions is to ensure that the UK continues to be able to impose, update and lift sanctions provided for by the United Nations (UN) and pursuant to other international obligations.

Under SAML 2018 UK Ministers have the power to make sanctions regulations:

- To comply with a UN or other international regulation; or,
- To achieve one of a number of defined so-called “discretionary purposes” including preventing terrorism, promoting national and international peace and security, and responding to gross human rights violations.

This power also enables the UK to meet challenging foreign policy and national security objectives post-Brexit.

The different types of sanctions that can be imposed are set out and explained in SAML 2018 and cover financial, immigration, trade, aircraft, shipping and other sanctions. In territorial terms SAML 2018 will be enforceable against those within the UK and also UK individuals abroad.

Under this regime the UK has adopted its own particular approach in some respects e.g. sanctions in the form of an asset freeze may be adopted on individuals by description rather than by specific name.

The result for businesses is that:

- They will have to adapt their existing policies, processes and procedures to cater for UK sanctions – due diligence will have to be fine-tuned accordingly; and,
- They will have to keep a check on the UK sanctions list published by the Office of Financial Sanctions Implementation (OFSI), as found here <https://www.gov.uk/government/publications/the-uk-sanctions-list>. A consolidated list of sanctions targets can also be found here <https://www.gov.uk/government/publications/financial-sanctions-consolidated-list-of-targets/consolidated-list-of-targets>, and a list of financial sanctions targets by regime in force in the UK can also be found here <https://www.gov.uk/government/collections/financial-sanctions-regime-specific-consolidated-lists-and-releases>.

The UK is seeking to make its mark with sanctions, e.g. the so-called “Magnitsky”-style of sanctions adopted in the summer of 2020 targeting those who have been involved in very serious human rights violations and abuses around the world (see here <https://www.gov.uk/government/news/uk-announces-first-sanctions-under-new-global-human-rights-regime>). Further action is being talked about including against China (see our alert this month here <https://bit.ly/mschinalaw>).

It should also be noted that the UK has transposed the so-called “EU Blocking Statute” into UK law – this prohibits compliance with some aspects of US sanctions relating to Cuba and Iran.

Whilst the UK will continue to work closely with both the EU and the US in relation to sanctions the UK can also be expected to diverge from the EU and the US. For compliance professionals this will mean one extra regime to follow.

Anti-Money Laundering

Anti-money laundering (AML) rules may affect businesses as follows:

- They must have in place adequate systems and procedures to ensure compliance;
- They may have to report suspicious activity; and
- They may commit criminal offences if they fall foul of AML rules.

The UK now operates a unilateral and autonomous AML regime.

The UK had already put legislation in place in May 2018 to be able to deal post-Brexit with anti-money laundering (and sanctions – see above), namely the SAMLA 2018. The UK also has in place various rules that deal with various aspects of AML, in particular the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (see here <https://www.legislation.gov.uk/uksi/2017/692/contents/made>) and the Proceeds of Crime Act 2002 (see here <https://www.legislation.gov.uk/ukpga/2002/29/contents>),

The purpose of SAMLA 2018 with regard to anti-money laundering is to ensure that the UK continues to effectively detect and prevent money-laundering and terrorist financing.

Ministers also have powers under SAMLA 2018 to make regulations for the purposes of enabling or facilitating the detection, investigation or prevention of money-laundering and terrorist financing. These wide-ranging powers will allow a Minister to make, amend and repeal secondary legislation relating to AML and counter-terrorist financing post-Brexit to ensure that the UK can continue to comply with standards set by the Intergovernmental Financial Action Task Force and deal with emerging risks relating to money-laundering and terrorist financing.

The EU’s 6th Anti-Money Laundering Directive, which establishes minimum rules on the definition of criminal offences and penalties relating to money laundering throughout the EU, was to be transposed into national law by EU Member States by 3 December 2020. The UK opted out of transposing it on the basis that UK legislation is largely compliant with it (and in fact goes further in relation to the offences and sentences set out in it). This said, there is one significant difference between the 6th Anti-Money Laundering Directive and corresponding UK legislation concerning corporate criminal liability.

At this stage there is little to indicate that the UK will diverge from the EU AML regime. The UK also continues to be a member of the global anti-money laundering organisation the Financial Action Task Force and is unlikely to depart from the latter’s guidelines and expectations concerning AML standards. But AML is a key area of enforcement in the UK and in the real world things move quickly in this area so it may be the case that the UK does diverge from the EU, for example by heightening standards.

The compliance upshot for businesses is that:

- They will have to adapt their existing policies, processes and procedures to cater for UK Anti-Money Laundering rules.

Export Control

Export controls rules may affect businesses as follows:

- They must have in place adequate systems and procedures in place to ensure compliance;
- They may be required to obtain a licence to be able to export, broker or transship certain goods; and
- They may commit criminal offences if they fall foul of export control rules.

Export controls are not only in a number of instances technically very complex but they are also far-reaching and apply regardless of a number of issues including the nationality of the person exporting or the recipient, whether a recipient shares the exported items, or the purposes for which the recipient uses the exported items. So even more compliance care has to be undertaken.

The UK now operates a unilateral and autonomous export control regime.

The SAMLA 2018 creates a general framework for implementing UK trade controls measures and there is also other UK legislation that deals with export controls, in particular the UK Export Control Act 2002 (see here <https://www.legislation.gov.uk/ukpga/2002/28/contents>) and the UK Export Control Order 2008 (for dual-use goods – see here <https://www.legislation.gov.uk/uksi/2008/3231/contents/made>); the EU dual-use regulation has been transposed into UK law as so-called “retained” EU regulation.

Dual-use items now generally-speaking require licensing for exports from the EU to the UK, and likewise from the UK to the EU; note that here is a lot of technical legal detail in this area. In addition:

- From the UK to a non-EU country: (a) existing licences to export dual-use items to a non-EU country issued by the UK will remain valid for export from the UK; but, (b) existing export licences issued by an EU Member State will no longer be valid for export from the UK;
- From the EU to a non-EU country: (a) export licences issued in the UK will no longer be valid to export dual-use items from an EU Member State; and, (b) under existing export licences previously issued by the UK, where the intention is to export a dual-use item from an EU Member State to a non-EU country, an export licence issued by an EU Member State will be needed.

The Export Control Joint Unit, a unit of the Department for International Trade, is responsible for licensing controlled goods and for monitoring exporters’ compliance with export controls in the UK (see here <https://www.gov.uk/government/organisations/export-control-organisation> and also here for its guidance <https://www.gov.uk/guidance/exporting-controlled-goods-after-eu-exit>). Breaches of export controls are a criminal offence – HM Revenue & Customs along with the Crown Prosecution Service are responsible for investigating and prosecuting organisations who fail to comply.

UK exporters also need to be aware of the potential application of (severe) US export controls under US export controls rules – US Government authorisation is required for the re-export of: US-origin controlled items; foreign-made items containing defined proportions of US-origin controlled components; and, foreign-made items that are a direct product of certain controlled US technologies.

For the foreseeable future it is not anticipated that the UK’s approach to export controls will diverge from the EU’s approach but variations may emerge in areas such as the UK’s dual-use control list, licensing policies or legal definitions.

The compliance upshot for businesses is that:

- They will have to adapt their existing policies, processes and procedures to cater for UK export controls rules; and,
- Those exporting between the UK, the EU, and other countries should consider whether their current licences are still legally valid and/or whether they need to seek new licences from either the UK or an EU Member State.

For more information on how Brexit might affect you find details of our Brexit Impact Plan here <https://www.corderycompliance.com/solutions/brexit-impact-plan/>

We report about Brexit issues here <https://www.corderycompliance.com/category/brexit/>.

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