

# UK Publishes First Sanctions Strategy and New Licensing Guidance

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On 22 February 2024, shortly before the second anniversary of Russia's invasion of Ukraine, the UK government published its first [sanctions strategy](#) (the Strategy).<sup>1</sup> The Strategy explains the UK's use and implementation of sanctions as a foreign policy and security tool and signals the government's likely areas of focus going forward.

The publication of the Strategy coincided with the UK's announcement of [designations against 52 individuals and entities](#) under the Russia and Belarus regimes. The new designations focus on those supplying munitions to Russia, as well as key sources of Russian revenue, including relating to metals, diamonds and the energy trade. It builds on the broader UK regime of Russia-related sanctions, which have dramatically restricted trade with Russia and limited Russia's revenue from targeted sectors and products. The UK government estimates that international sanctions have cut approximately \$400 billion of potential funding for Russia in its war against Ukraine.

Shortly after the UK government published the Strategy, the UK Office of Financial Sanctions Implementation (OFSI) announced [the licensing principles for designated individuals](#) (the Principles). These detail the policy principles that OFSI applies to determining licence applications relating to designated individuals and follows an indication by a UK court that OFSI should publish internal guidance regarding its approach to licensing requests.<sup>2</sup>

We set out in this note the key points contained in the Strategy and the Principles and what they mean for the UK sanctions landscape going forward.

## UK Sanctions Strategy

### New Restrictions on Designated Persons

The Strategy indicates that, in 2024, the UK will introduce a new prohibition making it unlawful for a designated person under the UK sanctions regime to act as a director of a UK company. In practice, this is unlikely to lead to a significant change — given ownership and control risks, most UK companies are unlikely to have a designated person sitting on their board. It will, however, strengthen the pressure imposed on sanctioned businessmen who desire retaining involvement in UK commercial operations. This follows OFSI's recent announcement of [new reporting requirements for designated persons](#) under the Russia-related sanctions regime. Designated persons are required to proactively provide to OFSI details of their UK assets (or their worldwide assets if they are a UK person) within a specified time period from designation.<sup>3</sup>

### Release of Sanctioned Funds – Ukraine's Reconstruction

The Strategy confirms that OFSI is developing a voluntary process whereby sanctioned individuals may apply for frozen funds to be released for the express purpose of supporting Ukraine's recovery and reconstruction.

<sup>1</sup> This client alert is for informational purposes only and does not constitute legal advice. Complex assessments often have to be made as to which sanctions regime applies in any given instance, given the multinational touch points of many entities and individuals. In that regard, given the complex and dynamic nature of these sanctions regimes, there may be developments not captured in this summary. Moreover, while the summary was accurate when written, it may become inaccurate over time given developments. For all of these reasons, you should consult with a qualified attorney before making any judgments relating to sanctions, as there are potentially severe consequences of failing to adhere fully to sanctions restrictions.

<sup>2</sup> *Fridman v HM Treasury* [2023] EWHC 2657 (Admin).

<sup>3</sup> These reporting requirements will be extended to the Belarus sanctions regime later this year.

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The announcement cements the UK's intention to build mechanisms (alongside its G7 partners) for redistributing sanctioned funds to support Ukraine's recovery, in addition to a number of existing and planned international mechanisms such as (i) the Council of Europe's [Register of Damage Caused by the Aggression of the Russian Federation Against Ukraine](#), which is designed to be the first component of a future international compensation mechanism in cooperation with Ukraine; (ii) the International Criminal Court (ICC)'s [Trust Fund for Victims](#); and (iii) the Global Survivors Fund.

The Strategy goes further, stating that the UK government is "working with allies to pursue all possible ways, in line with international law, to unlock the value of immobilised Russian sovereign assets to support Ukraine." However, the UK and other countries have struggled to develop nonvoluntary mechanisms to confiscate assets given the complex international law issues and geopolitical considerations involved.

## Increased Focus on Circumvention

The Strategy also announces the UK government's continued focus on Russia's attempts to bypass sanctions and on the third-party countries and networks used to supply and assist Russia. The UK is working with third-party countries to address circumvention risks and has issued multiple warnings and guidelines for the UK financial and business sectors to help identify common circumvention tactics.

The Strategy outlines details of:

- Efforts made by UK officials to travel to countries in Central Asia, Eastern Europe and the Gulf to "share concerns and build relationships."
- The publication by the UK and its allies of the "Common High Priority Items List" — a list of items which are key to Russia's military capacity, signaling to other countries where to focus supply chain restrictions.
- The designation of individuals and entities involved in the supply and manufacture of arms and equipment to Russia.
- Efforts to promote corporate structure and beneficial ownership transparency in the UK and in its overseas territories, including via the Economic Crime and Corporate Transparency Act 2023.

We expect circumvention to be a significant area of focus for enforcement activity and new sanctions in the next 12 months.

## A New Humanitarian Exception

The Strategy also builds on the UK government's [2023 white paper on international development](#) by announcing the intention to introduce a "tailored humanitarian 'exception' across the UK's financial sanctions."

OFSI has published several General Licences for humanitarian activity in respect of the Russian, Syrian and Counter-Terrorism sanctions regimes. These allow "relevant persons" (*i.e.*, humanitarian actors) to perform "relevant activities" without breaching sanctions.<sup>4</sup> The new exception is intended to apply across all sanctions regimes, as opposed to the individual sanctions regimes which are the focus of the current General Licences. This should provide further assurances to humanitarian actors and the financial sector in respect of legitimate humanitarian activity in areas which are subject to comprehensive sanctions measures.

## G7 Collaboration and Alignment

The Strategy makes clear that the UK is seeking to continue collaborating and aligning on sanctions matters with its G7 partners, noting that effective sanctions require the efforts of multiple countries and strong partnerships.

As a case study on collaboration, the Strategy presents the Oil Price Cap — a price cap on Russian oil and oil products subscribed to by G7 countries — as indicative of the UK's increased alignment with the G7. Another example is the [2023 Atlantic Declaration](#) — the result of last year's inaugural UK-US strategic sanctions dialogue. The declaration highlights the strength and depth of the US-UK collaboration on sanctions and sets out joint priorities and initiatives such as meetings and staff secondments between OFSI and the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC). We expect that international sanctions authorities will continue to coordinate closely as further sanctions are imposed against Russia. There is likely to be close alignment in any strategy that is implemented for the confiscation of frozen assets.

## Increased Resourcing and the Overseas Territories

The Strategy notes that key agencies such as the Foreign, Commonwealth and Development Office (FCDO) — the department which determines and sets international sanctions policy in the UK — have received increased resourcing in light of sanctions developments since the Russian invasion of Ukraine in February 2022. For example, the FCDO established a Sanctions Directorate and has more than doubled its sanctions staff. Similarly, OFSI, the UK financial sanctions regulator, increased resources in each of its enforcement, licensing, guidance and engagement teams by over 100% between April 2022 and April 2023. We expect this trend to persist given the UK's continued expansion of its sanctions regimes, in particular in relation to Russia and Belarus.

The increase in resourcing is also likely to lead OFSI and partner agencies to strengthen their focus on enforcement activity. This is confirmed by the Strategy's indication that the UK will boost its

<sup>4</sup> See General Licences: INT/2023/3749168; INT/2023/2711256; INT/2022/1947936.

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existing support for the British Overseas Territories to strengthen sanctions enforcement capabilities, which currently includes sharing expertise with the territories, such as through annual sanctions forums. As of now, UK sanctions apply in Overseas Territories and Crown Dependencies, however each one is responsible for implementing and enforcing its own sanctions within its jurisdiction. The plan to boost support is being funded via the Economic Deterrence Initiative, a £50 million funding program announced in March 2023.

## Designated Individuals Licensing Principles

In addition to the Strategy, OFSI has published the Principles, which provide new guidance detailing the key policy considerations that OFSI applies to licence applications relating to designated individuals across all UK financial sanctions regimes. In short, the Principles illustrate that OFSI will heavily weigh licensing decisions against upholding the aims of the UK's sanctions regimes, it is concerned with licensing activities only to the extent they are necessary and it has broad discretion to decide what is proportionate and licensable.

## General and Fundamental Principles

The Principles indicate that OFSI has the ability to refuse licensing requests, even where all conditions have been met, if it “would not be appropriate to license that activity.” The Principles clearly state that activities which undermine “the integrity and objectives of the sanctions regime” will be rejected.

In addition, the Principles clarify that:

- OFSI will generally only permit designated persons to receive money to UK bank accounts.
- For the purposes of the “prior obligations” exception, OFSI can exercise its residual discretion to license only a proportion of that obligation if, for example, ongoing payments would be disproportionate to the aims of the sanctions regime.
- Activities which can reasonably be provided by the state (*e.g.*, health care) or at a “more basic level”<sup>5</sup> will generally be rejected.
- International travel is not generally permitted unless it falls under the health exception discussed below or is essential to private and family life.
- OFSI may include contingency sums to reduce the administrative burdens of processing future applications.

<sup>5</sup> The Principles give the example of using public transport rather than a private driver.

## Principles on Basic Needs

The Principles confirm that the purpose of licensing is not to enable individuals to return to their standard of living or lifestyle pre-designation. Instead, OFSI will consider the applicant's basic needs, health and personal security.

To this effect, licensing decisions (including refusals) should not “significantly” harm the health or personal security of a designated person or their family dependents. Licensing decisions should also permit “basic needs,” which OFSI appears to assess with reference to the “net UK median wage.”<sup>6</sup> Basic needs will generally be met if a designated individual is granted the net UK median wage, however OFSI will take an objective view of what this requires if expenditure is in excess of what is reasonably expected under the net UK median wage. In addition, where a designated person has an asset they regularly use or occupy, they may need to demonstrate how their use of the asset has been reduced only to basic or reasonable needs (depending on the licensing purpose).

The Principles reveal that OFSI will also consider the risk of harm to third parties but that this will not be a determinative factor. Detriment to third parties will only generally be considered if a non-designated person relies on a designated person for an overwhelming majority of their financial security, and there are no feasible alternatives, or those alternatives are disrupted by sanctions.

## Principles on Frozen Assets

Licensing generally only permits the maintenance of the current state of an asset and not its improvement, other than in exceptional circumstances such as ensuring the asset's safety, prior obligations for improvement work or clear statutory/sectoral requirements. OFSI's guidance confirms that luxury assets which can be linked to recreational use will not be prioritised for these purposes.

Reasons that OFSI may licence asset-maintenance payments include “basic needs” as articulated above, prior obligations and/or routine holding and maintenance derogations. Another purpose that may be permitted, and may influence OFSI to allow high expenditure or large monetary caps, is the “winding down” by a designated individual of their existing obligations — this is aimed at facilitating designated individuals to exit arrangements with UK and third-country suppliers and might include: (i) arrears payments to creditors for services or goods already provided; (ii) salaries to cover notice periods and redundancy payments to staff for services; (iii) tax obligations; and (iv) payments, such as fees, to public bodies.

<sup>6</sup> This figure is not defined in the Principles.

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The Principles also indicate that OFSI will scrutinise existing obligations and a licence will not be granted if these are not deemed necessary and/or reasonable — the expectation appears to be that existing arrangements will be altered if they are no longer the most appropriate arrangement going forward.

## **Ownership and Control**

Finally, the Principles reveal that applicants must clearly demonstrate how a company is subject to sanctions due to its ownership

or control. OFSI generally will not determine an entity's ownership or control on behalf of an applicant unless necessary to do so to issue a licence and will reject speculative applications. Where reasonable evidence has been provided but is not entirely clear, OFSI prefers to consider that the test has been met so that it can issue a licence instead of issuing a negative ownership and control determination.