

UK implements first autonomous sanctions for human rights abuses

The UK left the EU on 31 January 2020 and, pursuant to the Withdrawal Agreement,¹ EU law, including EU sanctions, will continue to apply to the UK until 31 December 2020. After this date, the UK sanctions regime will fall under the Sanctions and Anti-Money Laundering Act 2018 (“**2018 Act**”). The 2018 Act enables the UK to continue to comply with its international obligations and to use sanctions to meet foreign policy and national security objectives after exiting the EU.²

On 6 July 2020, the Foreign Secretary, Dominic Raab, introduced the UK’s first autonomous human rights sanctions regime in the form of the Global Human Rights Sanctions Regulations 2020 (the “**2020 Regulations**”).³ The 2020 Regulations, which were made under the powers prescribed under the 2018 Act, give the UK the power to impose sanctions on individuals involved in human rights abuses. In its press statement accompanying the 2020 Regulations, the Foreign & Commonwealth Office (the FCO) announced that “*the ground-breaking global regime means the UK has new powers to stop those involved in serious human rights abuses and violations from entering the country, channelling money through UK banks, or profiting from our economy*”.⁴

On the same day, 49 individuals and entities were sanctioned under the new regime, including Russian nationals involved in the death of Sergei Magnitsky, Saudi nationals involved in the death of Jamal Khashoggi, high-ranking Myanmar military generals for their alleged involvement in the treatment of the Rohingya people, and two organisations involved in the forced labour, torture and murder that takes place in North Korea’s gulags. This short article addresses some of the key features of the 2018 Act and the 2020 Regulations.

The process for designation

The 2018 Act grants the Secretary of State and the Treasury⁵ the power to make regulations imposing sanctions where they consider that it is appropriate (i) for the purposes of compliance with a UN obligation⁶ or any other international obligation;⁷ or (ii) for any one of a variety of prescribed purposes set out under s.1(2) of the 2018 Act. One of those purposes is to “*provide accountability for or be a deterrent to gross violations of human rights, or otherwise promote (i) compliance with international human rights law, or (ii) respect for human rights*”.⁸

The 2020 Regulations were made pursuant to the power set out under s.1 of the 2018 Act, and are specifically designed to address gross violations of human rights. It is the first time that the UK has imposed sanctions on human rights grounds independently of the UN and/or the EU. In doing so, the UK has mirrored the approach already taken in other jurisdictions, including the United States, Canada and elsewhere.

¹ Officially called “Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community”, and available [here](#).

² The 2018 Act Explanatory notes are available [here](#).

³ The Global Human Rights Sanctions Regulations 2020 are available [here](#).

⁴ See the FCO’s announcement [here](#).

⁵ [S.1\(9\) of the 2018 Act](#) provides that “an appropriate minister”, defined as the Secretary of State or the Treasury, may make these Regulations.

⁶ [S.1\(1\)a of the 2018 Act](#).

⁷ [S.1\(1\)b of the 2018 Act](#).

⁸ [S.1\(2\) of the 2018 Act](#).

The designation criteria under the 2020 Regulations are set out under regulation 6.⁹ An individual or entity can only be designated if there are reasonable grounds to believe that that person is an “*involved person*” and that designation is appropriate, having regard to the purposes of the 2020 Regulations,¹⁰ and the likely significant effects of the designation on the person. “*Involved person*” means someone who (i) has been involved in activities which violate the human rights set out under regulation 4(2) (right to life, prohibition on torture, cruel inhuman treatment, prohibition on slavery); (ii) is owned or controlled directly or indirectly by such a person; (iii) is acting on behalf or at the direction of such a person; or (iv) is a member of, or associated with, a person who is or has been so involved.

Although 49 individuals and entities were designated on 6 July 2020, it is open to the Secretary of State to designate any other individual or entity that satisfies those criteria. Although there are strict criteria under the 2020 Regulations, there is also a considerable degree of discretion built in. The FCO has indicated in an information note for NGOs and Civil Society that the Secretary of State will have regard to requests for designation from any person or organisation who wishes to submit information to the FCO.¹¹

A designation may be for the purpose of the freezing of assets (regulations 11¹² to 15¹³) and/or the imposition of travel restrictions (regulation 17).¹⁴

Challenging sanctions designations

While seeking to protect human rights at a geopolitical level, sanctions also have the potential to significantly impact on human rights at an individual level. Stringent administrative and judicial mechanisms have therefore been established in order to ensure that sanctions are implemented correctly and effectively, and that those who are sanctioned have a right to challenge their designation.

It is important that individuals sanctioned under the 2020 Regulations are aware of these mechanisms, and the options open to them should they wish to challenge a designation.

The 2018 Act provides a right to request variation or revocation of sanctions designations made thereunder, at any time while a relevant designation has effect.¹⁵

Following a request for variation or revocation of designations, the Minister who made the designation¹⁶ must decide whether to vary or revoke the designation or to take no action.¹⁷ If a request for variation or revocation is made and refused, a designated individual will not be able to make any further request until he or she is able to raise a “*significant matter which has not previously been considered by the Minister*”.¹⁸

The 2018 Act guidance explains that this mechanism “*helps to ensure that quick redress is available to the designated person and seeks to minimise unnecessary litigation, on the part of both the designated person and the government*”.¹⁹

A decision not to vary or revoke a designation under s.23 of the 2018 Act²⁰ can be challenged in the High Court under s.38.²¹ These provisions make it clear that it is first

⁹ [Regulation 6 of the 2020 Regulations.](#)

¹⁰ [Regulation 4 of the 2020 Regulations.](#)

¹¹ The FCO’s Information Note for NGOs and Civil Society is available [here](#).

¹² [Regulation 11 of the 2020 Regulations.](#)

¹³ [Regulation 15 of the 2020 Regulations.](#)

¹⁴ [Regulation 17 of the 2020 Regulations.](#)

¹⁵ [S.23\(1\) 2018 Act.](#)

¹⁶ [S.22\(1\) 2018 Act.](#)

¹⁷ [S.23\(3\) 2018 Act.](#)

¹⁸ [S.23\(2\) 2018 Act.](#)

¹⁹ [2018 Act Explanatory notes, p.20.](#)

necessary to go through the administrative procedure, before bringing any litigation. In determining whether the decision should be set aside, the court will apply the principles applicable on an application for judicial review.²²

As mentioned above, EU sanctions will cease to apply in the UK at the end of this year. Any judicial review of a sanctions measure implemented by the UK government will need to be brought in the UK courts. Given the importance of the UK economically and socially to many individuals, it is likely that UK courts will see a dramatic increase in sanctions litigation.

The EU courts have proved to be a popular avenue for challenging both autonomous EU sanctions and UN sanctions implemented by the EU.²³ Although the UK courts will likely be informed in part by the significant EU jurisprudence in this area, it is likely that they will develop their own expertise and jurisprudence in the sanctions arena, drawing on public law principles.

Conclusions

The 2020 Regulations are an important step forward in the protection of human rights, clearly signalling the UK's commitment to hold to account those involved in gross human rights abuses. Their effectiveness will ultimately depend on the extent to which they are in fact used to designate individuals and entities who satisfy the designation criteria, while also ensuring that the procedural safeguards built into the process are respected, and that the imposition of any sanctions has careful regard to the far-reaching consequences of designation on an individual.

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²⁰ [S.23 2018 Act](#).

²¹ [S.38 2018 Act](#).

²² [S.38\(4\) 2018 Act](#).

²³ See [Cases C-402/05 P and C-415/05, ECLI:EU:C:2008:461](#) (3 September 2008) ("*Kadi I*") and [Cases C-584/10 P, C-593/10 P and C-595/10 P, ECLI:EU:C:2013:518](#) (18 July 2013) ("*Kadi II*").