

UK UPDATE: RUSSIA SANCTIONS

This is an updated version of a Client Alert published on 18 March.

The UK, working with its allies and partners, has imposed a series of sanctions aimed at encouraging Russia to cease actions threatening the territorial integrity, sovereignty and independence of Ukraine. This is the first time post-Brexit that a major set of trade sanctions are emanating from Brussels and London separately, as detailed in our earlier alert.¹

The currently existing UK measures can, in part, be traced back to the sanctions put in place when the UK was a member of the EU² and reflected in UK statute.³ As part of the new UK sanctions powers, amendments to the governing regulations were made on 10 February which broadened the scope of the designation criteria, enabling the UK to more readily designate a greater number of individuals and businesses associated with the Kremlin.⁴ These therefore moved the UK position further from the EU regulations currently in force. The granting of royal assent to the Economic Crimes (Transparency and Enforcement) Act 2022 has moved this further.

The latest UK measures can be divided into several areas, as set out below.

Asset freezes and blocking sanctions

The UK has imposed asset freezes and blocking sanctions on a large number of specific banks (such as VTB, Russia's second-largest bank),⁵ high-net worth individuals and leading members of the Russian elite (including President Putin and Foreign Minister Lavrov),⁶ and certain companies (Rostec for example, Russia's biggest defence company) and members of the Duma and Federation council.⁷

There is an increasing cascade of designations being updated by the government,⁸ as well as a pro-active trend of self-exclusion by individuals who may potentially be targeted in the future, and are now seeking to divest themselves of interests - and measures to "streamline" the

¹ Gide Loyrette Nouel's recent Europe briefing on sanctions sets out the various EU measures, <https://www.gide.com/fr/actualites/sanctions-targeting-russia-in-response-to-the-crisis-in-ukraine-update>

² This includes principally Regulations (EU) No 269/2014, No 692/2014 and No 833/2014.

³ Russia (Sanctions) (EU Exit) Regulations 2019 (SI, 2019, No. 855).

⁴ Russia (Sanctions) (EU Exit) (Amendment) Regulations 2022 (SI, 2022, No. 123).

⁵ Russia Financial Sanctions Notice, 24 February 2022.

⁶ Russia Financial Sanctions Notice, 25 February 2022; supplemented by the "mirroring" provisions in the Economic Crimes (Transparency and Enforcement) Act 2022 as of 15 March 2022.

⁷ Current list of designated persons: Russia, available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1058111/Russia.pdf

⁸ The people, entities and ships designated or specified under regulations made under the Sanctions and Anti-Money Laundering Act 2018 are detailed in the UK Sanctions List, available at: <https://www.gov.uk/government/publications/the-uk-sanctions-list#full-publication-update-history>

designation process have come into force on 15 March 2022 with the introduction of the Economic Crime (Transparency and Enforcement) Act 2022 (see further below).

On 15 March 2022, the UK announced further asset freezes and travel bans on over 300 high-profile Russian businessmen and politicians, following the passage of the Economic Crime (Transparency and Enforcement) Act 2022. A further 14 entries were made on the same day.⁹ These were designated under the new power provided under that Act, called "mirroring" provisions¹⁰ which provide that where the designated minister has reason to believe that person is an "involved person" and that person has already been designated by key allies that they will be added to the sanctioned persons list.

A new element introduced by the Act's provisions related to sanctions is the power to designate persons not only by name but also by description.¹¹ This will allow either categories of people, or perhaps people that there is a security reason not to name, as being subject to sanctions. This is a departure from the position that existed when the UK was a member of the EU.

On 24 March 2022, the UK announced 65 new Russian sanctions against a range of key strategic industries and individuals.¹² These new sanctions targeted key industries supporting Russia's illegal invasion, including Russian Railways and defence company Kronshtadt, the main producer of Russian drones. The Wagner Group has also been sanctioned.

The UK has now sanctioned over 1,000 individuals and businesses under the Russia sanctions regime since the invasion.

Financial sanctions

A number of financial measures have been introduced to restrict Russian access to finance through the UK.

The Russia (Sanctions) (EU Exit) (Amendment) (No 2) Regulations 2022 came into force on 1 March 2022,¹³ amending the existing sanctions prohibiting dealing with transferable securities or money-making instruments.

The scope of the existing prohibitions has been extended to widen the scope of dealing with securities or money-market instruments issued across sectors of the Russian economy. The legislation also prohibits dealing in Russian sovereign debt issued on or after 1 March. This is part of the proposals by the UK to cut off Russian state access to financial resources through the UK economy.

Access to UK finance

Specifically this instrument extends existing restrictions prohibiting the issuing of loans or credit, such that:¹⁴

⁹ Russia Financial Sanctions Notices, 15 March 2022.

¹⁰ See ss.58 and 59 of the Act.

¹¹ Economic Crime (Transparency and Enforcement) Act 2022, s 59.

¹² Russia Financial Sanctions Notices, 24 March 2022.

¹³ Russia (Sanctions) (EU Exit) (Amendment) (No 2) Regulations 2022 (SI, 2022, No. 194).

¹⁴ As listed in Schedule 2 to the Russia (Sanctions) (EU Exit) Regulations 2019 (SI, 2019, No. 855).

- the prohibitions apply to loans and credit issued to a person connected with Russia¹⁵ as well as those owned by a such persons or those acting on their behalf or at their direction (which is aimed at circumvention);
- the prohibitions apply to loans and credit provided to the Government of Russia; and
- the scope of the existing prohibitions is expanded to apply to loans and credit provided to entities incorporated or constituted under UK law which are owned by sectorally-sanctioned entities.

Clearing and Settlement in Pounds Sterling

The Russia (Sanctions) (EU Exit) (Amendment) (No 2) Regulations 2022 additionally introduced a new measure to prohibit a UK credit or financial institution from establishing or continuing a correspondent banking relationship and from processing sterling payments to, from or via a designated person or a credit or financial institution owned or controlled by them.

As the "processing" of a sterling payment includes the clearing and settlement of such a payment wherever they emanate from, this measure has an extra-territorial effect. There is therefore potential for transactions denominated in Sterling, but with no UK nexus, to be caught and funds seized, in a manner similar to OFAC's operation of sanctions regimes with Cuba and Iran, for example.

As was seen with the payment of Russian sovereign debt due on 16 March 2022, there are general licences that allow for foreign debt to be serviced.¹⁶ However, the debt that has come due to date was foreign currency denominated debt without any conversion right. Where that debt had been settled in local currency (rubles), this would have been a default. There are a number of convertible and non-convertible payments on the horizon. Additionally, these general licences are time limited and there is no guarantee that they will be extended after each date of expiry. Where payments are made into Russian escrow accounts in rubles, the Russian counter-sanctions and foreign exchange controls must be considered.

Trade restrictions

New restrictions on Russian ships came into force on 1 March 2022, by way of the Russia (Sanctions) (EU Exit) (Amendment) (No. 4) Regulations 2022:¹⁷

- prohibiting Russian ships, and other ships specified by the Secretary of State, from entering ports in the United Kingdom;
- conferring powers on the Secretary of State to give movement or detention directions; and

¹⁵ As defined in Regulation 19A(2) of the Russia (Sanctions) (EU Exit) Regulations 2019 (SI, 2019, No. 855).

¹⁶ U.S. Office of Foreign Assets Control (OFAC) issued general license 9A on March 2 which authorises transactions for U.S. persons with regards to "the receipt of interest, dividend, or maturity payments in connection with debt or equity" issued by Russia's finance ministry, central bank or national wealth fund. The equivalent UK general licence is General Licence INT/2022/1277777.

¹⁷ Russia (Sanctions) (EU Exit) (Amendment) (No. 4) Regulations 2022 (SI, 2022, No. 203).

- prohibiting the registration of ships on the UK Ship Register where they are owned, controlled, chartered or operated by a designated person or persons connected with Russia, or where they are a specified ship.

These shipping sanctions could lead to genuine cases of impossibility of performance under the law of frustration (in addition to the force majeure claims that were seen during the Covid-19 pandemic as a result of government restrictions), which would be a highly unusual legal development.

Foreign exchange

Finally, the Russia (Sanctions) (EU Exit) (Amendment) (No. 5) Regulations 2022 (in force from 1 March 2022)¹⁸ prohibit the provision of financial services for the purpose of foreign exchange reserve and asset management to the following:

- the Central Bank of the Russian Federation;
- the National Wealth Fund of the Russian Federation;
- the Ministry of Finance of the Russian Federation;
- a person owned or controlled (directly or indirectly) by any of the above; or
- a person acting on behalf of or at the direction of any of the above.

“Foreign exchange reserve and asset management” means activities relating to the reserves or assets of the above persons, including:

- money market instruments;
- foreign exchange;
- derivative products (including futures and options);
- exchange rate and interest rate instruments (including products such as swaps and forward rate agreements); transferable securities; other negotiable instruments and financial assets (including bullion); and
- special drawing rights.

General licences

The UK’s OFSI has published a number of Russia-related general licences¹⁹ to help financial institutions deal with issues raised by sanctions, for example those licences allowing transactions with certain sanctioned entities to be wound down.²⁰ Taking these actions within the time frames allowed by each general licence is the responsibility of the parties affected, outside of which they will be non-compliant and subject to penalties.

The UK’s approach is similar to the Office of Foreign Assets Control (OFAC) in the US, providing exemptions in general licences to allow certain activity that would otherwise be

¹⁸ Russia (Sanctions) (EU Exit) (Amendment) (No. 5) Regulations 2022 (SI, 2022, No. 205).

¹⁹ General Licence INT/2022/1277777; General Licence INT/2022/1277778; General Licence INT/2022/1277877.

²⁰ General Licence INT/2022/1272278; General Licence INT/2022/1280976; General Licence INT/2022/1280876; General Licence INT/2022/1295476, General Licence INT/2022/1381276, General Licence INT/2022/1424276.

prohibited by financial sanctions. A special licence may be needed where activity is not covered by a general licence.

This is a fast-moving area - thirteen general licences have been issued since 25 February 2022 - and companies should be vigilant to changes that may arise (e.g. with respect to the trade in petroleum and gas products under General Licence INT/2022/1277877).

The Russia-related general licences have broadly been updated to expand the definition of "subsidiary" to include controlled entities, allowing the wind down of a wider range of transactions.²¹

Penalties

The penalties for offences committed under the UK sanctions regime are severe. A person who commits a financial sanctions offence, for example, is liable (i) on summary conviction in England and Wales to imprisonment for a term not exceeding 12 months or a fine (or both); and (ii) on conviction on indictment, to imprisonment for a term not exceeding 7 years or a fine (or both).²² Under the regulations, officers of bodies corporate and bodies corporate themselves are also liable.²³

Economic Crime (Transparency and Enforcement) Act 2022

On the 15 March 2022, the Economic Crime (Transparency and Enforcement) Act (the "Act") received Royal Assent, following an expedited passage through Parliament.

The Act covers three main areas: (i) Registration of overseas entities, (ii) Unexplained wealth orders and (iii) Reforms to various aspects of the UK's sanctions regime.

This is therefore a far wider-ranging target to this legislation reflecting the particular aspects of the UK's role as an international centre for raising funds and the way in which property has been held for beneficial interests. These issues have become conflated with the Russia sanctions through current circumstances.

London Stock Exchange

Whilst not a governmental action, the London Stock Exchange has suspended, "in light of market conditions, and in order to maintain orderly markets", the trading of global depository receipts (GDR) and American depository receipts (ADR) of a number of companies with strong links to Russia, blocking trading of their secondary listings in London.²⁴

On 10 March 2022, the FCA suspended trading in the shares of London-listed steel company Evraz, "in order to protect investors pending clarification of the impact of the UK sanctions", after major shareholder Roman Abramovich was sanctioned. This is indicative of a wider

²¹ General Licence INT/2022/1272278 was updated on 7 March 2022, for example.

²² Regulation 80 of the Russia (Sanctions) (EU Exit) Regulations 2019 (SI, 2019, No. 855).

²³ Regulation 81 of the Russia (Sanctions) (EU Exit) Regulations 2019 (SI, 2019, No. 855).

²⁴ Including: EN+ (which is incorporated in the UK); Novolipetsk Steel; Gazprom; Gazprom Neft; Lukoil; Norilsk Nickel; Taftneft; Polyus; Severstal; Rosneft; Sberbank; VK; Ros Agro; Surgutneftegas; TCS Group; Rosseti; PhosAgro; RusHydro; Magnitogorsk Iron and Steel Works; Novatek; Fix Price Group; Global Ports Investment; Globaltrans Investment; HMS Hydraulic Machines & Systems Group; Lenta International; Medical Group; X5 Retail; and VTB.

targeting of the interests of designated persons that will be a compliance risk for those with whom their businesses have ongoing dealings.

Export control

The UK has implemented punitive new restrictions on trade and export controls against Russia's hi-tech and strategic industries, such as electronics, telecommunications, and aerospace, similar to those implemented by the EU and the US.

On 1 March 2022, the Export Control Joint Unit issued a notice to inform exporters of the immediate suspension of extant licenses for the export of all dual-use items to Russia.²⁵

Another statutory instrument which came into force on 1 March 2022, the Russia (Sanctions) (EU Exit) (Amendment) (No. 3) Regulations 2022,²⁶ expanded the existing restrictions applicable to military and dual-use items.

This legislation prohibits the export, supply and delivery, making available and transfer of dual-use items and critical industry items to, or for use in, Russia, irrespective of end-user. This restriction further extends to the provision of related technical assistance, financial services, funds and brokering services.²⁷

As we have learned from the experience of enforcement under the Iran sanctions, the list of products that are potentially dual-use can be extremely wide. These restrictions therefore have the potential to be extremely far reaching in catching a wide range of technology which may not appear to be restricted at first glance and each company should have a compliance policy in place for monitoring of whole group activity in this regard.

On 15 March 2022, the UK announced via a press release a ban on exports to Russia of high-end luxury goods, likely to affect luxury vehicles, high-end fashion and works of art. These new export restrictions are not yet in force but the Government announced that they will come into force shortly.²⁸ On the same day, the UK also announced that it will no longer issue any new guarantees, loans and insurance for exports to Russia and Belarus.²⁹

Aircraft and insurance measures

The Russia (Sanctions) (EU Exit) (Amendment) (No 6) Regulations 2022 came into force on 8 March 2022,³⁰ introducing new aircraft and trade sanctions measures.

Aircraft measures

New aircraft measures were introduced to provide for:

²⁵ Notice to Exporters 2022/03: licence suspensions and OGELs revised, available at: <https://www.gov.uk/government/publications/notice-to-exporters-202203-licence-suspensions-and-ogels-revised/nte-202203-licence-suspensions-and-ogels-revised>

²⁶ Russia (Sanctions) (EU Exit) (Amendment) (No. 3) Regulations 2022 (SI, 2022, No. 195).

²⁷ "Critical industry goods" includes the software and technology specified in Schedule 2A to the (No.3) Regulations, Schedule 2 or 3 to the Export Control Order 2008, or Annex I of the EU Dual-Use Regulation.

²⁸ UK announces new economic sanctions against Russia, press release, available at: <https://www.gov.uk/government/news/uk-announces-new-economic-sanctions-against-russia>

²⁹ UK cuts off export finance support to Russia and Belarus, press release, available at: <https://www.gov.uk/government/news/uk-cuts-off-export-finance-support-to-russia-and-belarus>

³⁰ Russia (Sanctions) (EU Exit) (Amendment) (No 6) Regulations 2022 (SI, 2022, No. 241).

- termination of existing registration, and refusal of application for registration, of aircraft owned by designated persons within the UK;
- banning Russian aircraft (owned, operated or chartered by a designated person or a person connected with Russia, as well as aircraft registered in Russia) from overflying or landing in the UK (otherwise than to protect life); and
- giving the Secretary of State power to direct an airport operator to detain Russian aircraft.

In order to target ultimate beneficial owners, these measures may be taken against those who possess the legal title to the aircraft (or to any share in the aircraft), or have a beneficial interest in the aircraft (or in any share in the aircraft).

Restrictions were also applied to aircraft and space technology.

Insurance measures

This new instrument contains further measures prohibiting:

- the export, supply and delivery, making available and transfer of aviation and space items to, or for use in, Russia (as well as the provision of related technical assistance, financial services, funds and brokering services); and
- the provision of insurance and reinsurance services relating to aviation and space goods and technology, to a person connected with Russia, or for use in Russia.

On 8 March 2022, the Export Control Joint Unit published a general trade licence permitting for a time-limited period the provision of certain insurance and reinsurance services relating to aviation and space goods and aviation and space technology.³¹ Any person seeking to rely on the licence must register online via the online export licensing system SPIRE, within 30 days of their first use of the licence.

On 17 March 2022, a general trade licence was published authorising the provision of technical assistance, financial services or brokering services in respect of restricted goods and restricted technology for third party vessels passing through the UK, although not to facilitate contravention of sanctions (e.g. the sale of assets or such vessels entering UK waters not under their own steam).³²

All open general export licences have now been amended to exclude Belarus.³³

Trade restrictions

In a co-ordinated response, the UK and US announced bans on Russian oil imports on 8 March 2022. The UK announced plans to phase out imports of Russian oil by the end of the year and the US announced a ban on imports of Russian oil and gas. The UK further established a new Taskforce on Oil to work with industry on the transition. The government is "exploring options" to end the use of Russian natural gas.

³¹ General Trade Licence (Russia Sanctions – Aviation Insurance), dated 8 March 2022

³² NTE 2022/09: General Trade Licence Russia Sanctions - Vessels

³³ NTE 2022/06, published 9 March 2022

On 15 March 2022, the UK announced that it will deny Russia and Belarus access to Most Favoured Nation tariff for hundreds of their exports. It has published an initial list of goods that will face an additional 35 percent import tariffs. This includes iron, steel, fertilisers, wood, tyres, railway containers, cement, copper, aluminium, silver, lead, iron ore, residue/food waste products, beverages, spirits and vinegar (this includes vodka), glass and glassware, cereals, oil seeds, paper and paperboard, machinery, works of art, antiques, fur skins and artificial fur, ships and white fish. The Customs (Additional Duty) (Russia and Belarus) Regulations 2022 have now brought these into effect commencing on 25 March 2022.³⁴

Russian counter-measures

In 2014, Russia imposed special economic measures against countries that introduced sanctions against Russia, and in September 2021 President Putin extended these measures until 31 December 2022.

In response to the unprecedented sanctions regimes mentioned above, Russia has introduced new counter-sanctions on 28 February³⁵ and 1 March 2022.³⁶ The UK has been included on Russia's new "unfriendly" nations list and UK-incorporated entities and legal persons face the possibility of further potential restrictions.

It has been reported that Russia provided, by means of a presidential decree issued on 5 March, that Russia and Russian companies could settle debts in rubles (as alternative to any other contractual currency). As a consequence, there is a concern that Gazprom may require European gas buyers to pay for gas in rubles, potentially a breach of sanctions in itself.

There are reports that Russia may legislate more extensively,³⁷ for example to allow Russian entities to ignore arbitration clauses in their private contracts and refer disputes to Russian courts. There is also a risk of measures under Russian law becoming applicable that could breach UK sanctions for the Russian subsidiary's UK parent (e.g. capitalisation requirements that fall outside the UK general licences). Companies will therefore need to take counsel in the affected jurisdictions and, in the case of Russia, check whether this is covered by a general licence (e.g. General Licence INT/2022/1280876 allows UK legal persons to pay legal fees and insurance premiums in respect of maintaining subsidiaries basic needs).

What's next for companies?

Following the rapid developments and increasing numbers of sanctions imposed, commercial groups with operations in the UK will have an evolving compliance position to monitor. There are a number of specific areas where companies may need to pay particular attention, for example:

- when unwinding portfolios of investments that have the effect of providing finance to sanctioned entities, including derivatives transactions and close-out payments;

³⁴ UK announces new economic sanctions against Russia, press release, available at: <https://www.gov.uk/government/news/uk-announces-new-economic-sanctions-against-russia>

³⁵ Decree No. 79 "On the Application of Special Economic Measures in Connection with the Unfriendly Actions of the United States of America and Foreign States and International Organizations who have Joined the United States of America", dated 28 February 2022.

³⁶ Decree No. 81 "On Additional Temporary Economic Measures to Ensure Financial Stability of the Russian Federation", dated 1 March 2022.

³⁷ Based upon drafts seen of a proposed law "On the external administration in respect of the management of organisations" (*О внешней администрации по управлению организацией*)

- where joint ventures involving affected assets (e.g. real estate, stocks and shares) need to be isolated or divested and need lead time to achieve this;
- where preparation for sanctions with extra-territorial effect (e.g. currency clearing or US secondary sanctions) may involve significant operational challenges in international groups (such as isolating group operational functions like IT, accounting, e-mail and other corporate services) and the monitoring of the activities of overseas subsidiaries that currently carry out these activities independently;
- where force majeure clauses in commercial contracts might be triggered and lead either to a suspension of performance or trigger payments and/or the ability to terminate;
- in respect of compliance where fungible goods are involved, which could affect both physical commodities (e.g. oil in a tank from various sources) and non-physical assets (e.g. fungible securities); and
- in the context of export control review - as the list of products that are potentially dual-use can be extremely wide.

Gide's International Trade & Regulation Team in Brussels and London will provide further updates and guidance as matters continue to unfold.

Our Team will gladly assist you should you have questions or need legal assistance in ensuring compliance when dealing under the newly adopted sanctions.

CONTACTS

COLIN GRAHAM

colin.graham@gide.com

GERALD MONTAGU

gerald.montagu@gide.com

JAMES CASEY

james.casey@gide.com

You can also find this legal update on our website in the News & Insights section: [gide.com](https://www.gide.com)

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