

FSIU NOTICE:

Updates to Bermuda Sanctions Regime Post Brexit

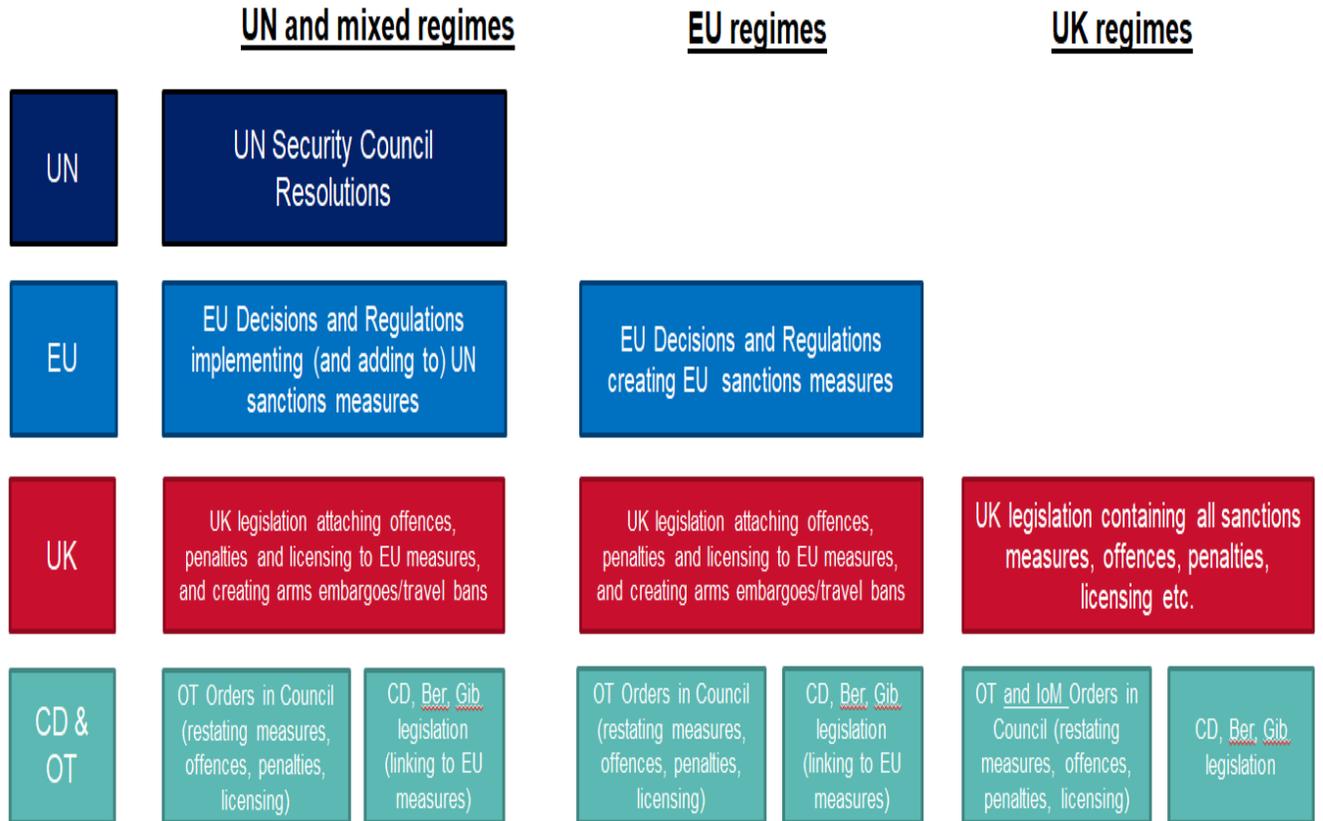
Take note that legislative changes have been made to the International Sanctions Regulations 2013 in order to update Bermuda's Sanctions Regime. The changes are necessary to comply with the United Kingdom's (UK) updates made to the implementation of sanctions. The changes made by the UK Foreign, Commonwealth & Development Office ("FCDO") are required to ensure the UK is compliant with global sanctions obligations once the BREXIT transition period comes to an end on 31 December 2020. From this date onwards, the UK will implement sanctions autonomously and will no longer implement sanctions via European Union (EU) Regulations. In order for Bermuda to also be compliant, the UK's new OT Orders have to be brought into force domestically as, unlike other OTs, OT Orders brought into force in the UK do not automatically come into force in Bermuda.

The sanctions regulations made in the UK under the Sanctions and Anti-Money Laundering Act 2018 (SAML) will replace the UK's existing sanctions framework.

UK and Overseas Territories (OT's) Sanctions after the end of the BREXIT Transition Period

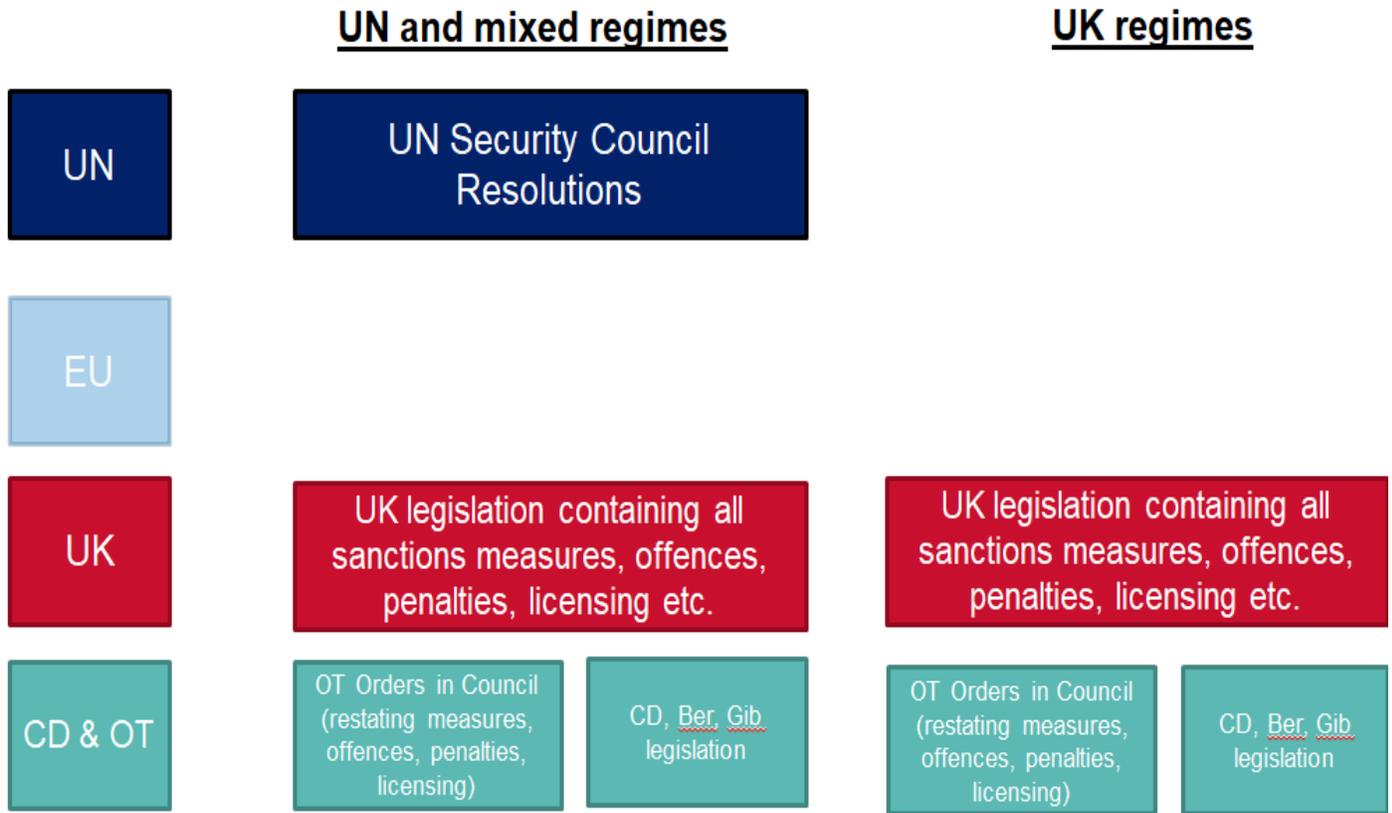
On the 31st of December 2020 at 11pm (GMT), (7pm AST), the sanctions framework in the United Kingdom (UK) will be amended as a result of its decision to exit the European Union (EU) (aka BREXIT). At the end of the transition period all sanctions regimes will be implemented autonomously, through UK regulations. As a British Overseas Territory, Bermuda is reliant upon the UK's framework for sanctions implementation and thus the UK regulations will be extended with modifications through new Overseas Territories Orders in Council (OT Orders) that will come into force at the same time. The mechanism through which Bermuda achieves compliance, the International Sanctions Act 2003 and the International Sanctions Regulations 2013 (2013 Regulations), will remain the same. However, most of the existing OT Orders contained in Schedule 1 of the 2013 Regulations will be repealed and new OT Orders will be brought into force. An updated sanctions notice will be published accordingly.

Current Legislative framework¹



¹ Foreign, Commonwealth and Development Office

New legislative framework²



Legislation:



² Foreign, Commonwealth and Development Office

Format of SAMLA Secondary Legislation

All of the new legislation will have the following structure:

- Purpose
- Designation power and criteria
- Sanctions measures - Financial, Trade, Immigration, Transport
- Exceptions and licences
- Information and records
- Enforcement (including maritime enforcement)
- Transitional provision

Overseas Territory Orders in Council

The new OT Orders will:

- Extend the provisions of the SAMLA Statutory Instruments (SIs) to OT's (with modifications)
- Extend relevant provisions of SAMLA itself
 - Section 44 (protection for acts done for purposes of compliance);
 - Section 52(3) (Crown application);
 - Section 53 (saving for prerogative powers)

In addition, modifications ensure that, where appropriate, provisions exercised by the Secretary of State can be exercised by the Governor.

Regulations

SAMLA provides the legal framework for the UK to impose, update and lift sanctions autonomously. The Foreign, Commonwealth and Development Office (FCDO) determines international sanctions policy in the UK. The FCDO has already laid regulations for over 30 sanctions regimes in preparation for the transition (over 30 Orders have also been laid for OT's and are available [here](#)).

The SAMLA regulations are intended to deliver substantially the same policy as the existing regimes. However, you should not assume that they are identical. In many cases the process of recreating the regimes in UK law has necessitated clearer and more specific drafting. You should check the new legislation to ensure that your activities are still compliant.

Some former EU regimes have been merged, separated or renamed by FCDO to help reflect their purpose and policy intention. For example, persons designated under the Ukraine (Sovereignty and Territorial Integrity) and those businesses subject to restrictive measures

under the current EU Regulations will both move to the new Russia sanctions regime. With respect to the OT's, "The Ukraine (Sanctions) (Overseas Territories) (No. 3) Order 2014" has been merged into [The Russia \(Sanctions\) \(Overseas Territories\) Order 2020](#)

Decision-making

- UN designations will be implemented automatically
- UK designations may only take place where the appropriate Minister:
 - has "reasonable grounds to suspect" that a person "is or has been" involved in a specified activity (or is owned or controlled or acting on behalf of or at the direction of or is a member of, or associated with, such a person);
 - then considers that the designation is "appropriate" given the purpose of the regulations/sanctions; and having regard to the "likely significant effects" of the designation on that person.
 - each regime's regulations set out the designation criteria and purposes associated with that regime.

OT's can make designations under the order extending the Counter-Terrorism (Sanctions) (EU Exit) Regulations 2019.

Publicity and notification

- SAMLA places an obligation on the UK Government to take such steps as are reasonably practicable to inform a person of their designation and to publicise this. This is carried out through the publication of the UK Sanctions List.
- The list will be updated and published on GOV.UK as soon as reasonably practicable after a change to a sanctions designation occurs, whether by the UK or the UN.
- The UK Government will also contact those designated where this is practicable.

The OT orders place a requirement on the Governor to publish and maintain a list of designated persons. This is carried out by the publication of the UK's Sanctions List on the FSIU's webpage.

Sanctions lists in the UK

<https://www.gov.uk/government/publications/the-uk-sanctions-list>

- The sanctions list will be published by the FCDO
- Contains all individuals, entities and ships specified/designated under SAMLA

- Includes those designated under all types of sanctions including financial, immigration, trade and transport.

OFSI Consolidated List

OFSI will continue to maintain its [Consolidated Lists of financial sanctions targets](#) on its GOV.UK webpages (a link to this page is on the [International Sanctions Measures webpage](#)). The OFSI Consolidated List will no longer include EU designations and will instead include those designations on the [UK Sanctions List](#) that are financial in nature.

The lists will be updated with information from FCDO's [UK Sanctions List](#) at 11pm on 31 December 2020 (7pm AST) to reflect all financial sanctions designations made under SAMLA Regulations. In order to ensure compliance with the Regulations, you may need to screen these entries as they may contain new information.

You should prepare for changes to occur across multiple fields, such as aliases and other identifying information. These changes are a result of the UK modifying the legal test for designations under the SAMLA Regulations.

Key changes to licensing

Licensing grounds (derogations) are now explicitly set out in the regulations

- Exceptions also set out in each regime's SI
- All regimes will specify which derogations apply; check the Schedule in the relevant SI.
- Authorisations will exist under SAMLA SIs but they are now referred to as licences and treated in the same way

You should be aware that there are some changes to financial sanctions licensing grounds compared to those under EU Regulations. SAMLA Regulations clarify that reasonableness is applicable to disbursements under the legal fees licensing ground. A reasonableness test has been added to the derogation for the routine holding and maintenance of funds or economic resources. A new derogation has been added – extraordinary situations; and the basic needs derogation now explicitly refers to the basic needs of individuals and basic needs of entities separately. Full definitions of the derogations can be found in OFSI's [UK financial sanctions general guidance](#). The FSIU is in the process of updating its guidance, which will be published in January 2021.

Applicants should continue to apply to the FSIU for specific licences. There is a new form for applications under SAMLA which will be available soon on the sanctions-measures' webpage and this will be the standard application form across all regimes moving forward.

Licensing overlaps

- To prevent UK persons in OTs from being subject to a double licensing burden:
 - The UK legislation provides that where conduct is licensed by an OT authority, it does not contravene UK prohibitions.
 - The OT orders also provide that where conduct is licensed by the UK, or any other OT, it does not contravene the OT prohibitions.

Status of extant licences

- The vast majority of extant licences granted by the UK that are still valid at the end of the transition period will continue to be valid under the new framework up until the end of the validity period stated on the licence or the licence is revoked.
- The same provision has been written into OT orders.

If you are uncertain whether your licence will remain valid, please contact fsiu@gov.bm. New specific licences issued from 11:00pm on 31 December will be issued under licensing grounds, also known as derogations, as provided for in the SAMLA Regulations.

Compliance and Enforcement

You should continue to use the compliance form on the FSIU website to report any suspected breach of financial sanctions. The FSIU will take a case by case approach when assessing instances of non-compliance with financial sanctions restrictions.

Enforcement for financial sanctions remains the same at the end of the transition period. The enforcement provisions have been moved from HMT regulations to SAMLA regulations. There is no change to the maximum penalties for breaches of financial sanctions. The maximum custodial sentence for a breach of financial sanctions is a term of 7 years imprisonment.

Counter-terrorism

The UK's main domestic asset-freezing legislation the Terrorist Asset Freezing etc. Act 2010 (TAFAs) will be repealed at the end of the transition period. It will be replaced by a domestic counter terrorism regime under the [Counter-Terrorism \(Sanctions\) \(EU Exit\) Regulations 2019](#), which will be managed by HM Treasury; and by an international counter terrorism regime under [the Counter-Terrorism \(International Sanctions\) \(EU Exit\) Regulations 2019](#), which has been introduced by the FCDO.

The OT's can make designations under the order extending the Counter-Terrorism (Sanctions) (EU Exit) Regulations 2019.

Guidance and Outreach

To assist stakeholders across multiple sectors to prepare for the end of the transition period, OFSI has published its UK financial sanctions general guidance to highlight the main changes. It has also published [sectoral guidance on the new Russia regime](#). All other guidance documents will be updated to reflect the new sanctions framework and these updated versions will be available from 11:00pm on 31 December. In addition, the FSIU Sanctions Guidance is being updated to reflect the changes to sanctions implementation in Bermuda.