

BRIEFING NOTE

# THE UK GLOBAL ANTI-CORRUPTION SANCTIONS REGIME



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# INTRODUCTION

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The UK global anti-corruption sanctions regime was introduced on 26 April 2021 (the 'Anti-Corruption sanctions regime'). It authorises the imposition of financial and immigration sanctions on individuals involved in serious corruption.

This briefing note has been prepared for a civil society workshop training session on the Anti-Corruption sanctions regime organised by the International Lawyers Project (ILP), with funding from the ROLE UK Programme.

## LEGISLATION

The regime was introduced by the [Global Anti-Corruption Sanctions Regulations 2021](#) (the 'Regulations').

The UK government has the power to make UK sanctions regulations under section 1 of the Sanctions and Anti-Money Laundering Act 2018 (the 'Act').

## RESOURCES

The UK government has published the following resources:

- [Global anti-corruption sanctions: information note for non-government organisations](#)
- [Statutory guidance – Global anti-corruption sanctions](#)
- [Policy paper – Global anti-corruption sanctions: factors in designating people involved in serious corruption](#)
- [OFSI financial sanctions guidance](#)

## CURRENT DESIGNATIONS

At the time of writing 27 individuals have been sanctioned. Designations are [viewable on the UK government's website](#). The Anti-Corruption sanctions regime is still relatively new, therefore it is difficult to discern any distinct pattern in the designations that have been made thus far.

The first tranche of designations under the Anti-Corruption sanctions regime targeted 22 individuals from Russia, South Africa, South Sudan, and Latin America.

# SCOPE OF THE SANCTIONS REGIME

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## PURPOSE

The purpose of the Anti-Corruption sanctions regime is to prevent and combat serious corruption. By corruption, the UK government means bribery or the misappropriation of property.

The government in the [Information Note for NGOs](#) provides further detail on the meaning of bribery and misappropriation of property:

- Bribery as defined in the Regulations includes both giving a financial or other advantage to a foreign public official and a foreign public official receiving a financial or other advantage. A full definition of bribery is set out in the Regulations.
- Misappropriation of property occurs where a foreign public official improperly diverts or allocates property entrusted to them in their official role. This may be intended to benefit them or a third person. Property can include anything of value, including contracts or licenses or concessions.

The full definitions of these concepts are set out in the Regulations (at Regulation 4).

Please note that the definition of Bribery in the Regulations is similar, but different to, the definition of bribery under the UK Bribery Act 2010.

Unlike the UK Bribery Act 2010, which criminalised private bribery, a foreign public official must be involved in the serious corruption for a designation to be made under the Anti-Corruption sanctions regime.

The scope of the term “corruption” (detailed above) is intentionally narrower in the Anti-Corruption sanctions regime than in its US counterpart. Additionally, the definition of corruption used by the Anti-Corruption sanctions regime is closely linked to the definition contained in the United Nations Convention against Corruption. The thinking behind this was to start with well-known, recognised definitions of corruption with the ability to broaden the scope with time.

## TYPES OF SANCTIONS

The UK can impose the following sanctions under the Anti-Corruption sanctions regime:

- Asset freezes: The freezing of funds and economic resources (which means non-monetary assets, such as real property) of designated persons and ensuring that funds and economic resources are not made available to, or for the benefit of, designated persons, either directly or indirectly.
- Travel ban: The imposition of immigration restrictions on designated persons. A person who is designated in this way becomes an ‘excluded person’ for the purposes of section 8B of the Immigration Act 1971. This means that the individual will be refused leave to enter or remain in the UK.

Something that is not in the original provisions, but is a side-effect of being sanctioned, is that it disrupts the provision of services. When asset freezes and travel bans have been imposed, the designated person is stopped from accessing professional advice such as advice on accounts, legal advice or tax advice. This is extremely impactful with the City of London, and all of its services, being taken out of reach for designated persons. However, it is not an entire disruption; a designated person can apply for a licence to have funds released in order to pay for legal bills.

## WHO CAN BE DESIGNATED?

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The Regulations provide the relevant UK Secretary of State (the Foreign Secretary) with the power to designate 'involved persons' (under Regulations 5 and 6).

An involved person could potentially be an individual, a corporation or an organisation. The Regulations set out that a person is an 'involved person' if the person:

- is responsible for or engages in serious corruption that falls within the scope of the Anti-Corruption sanctions regime;
- facilitates, incites, promotes, or provides support for such conduct;
- conceals or disguises, or facilitates the concealment or disguise of, such conduct or any profit or proceeds from such conduct;
- transfers or converts, or facilitates the transfer or conversion of, any profit or proceeds from such conduct;
- is responsible for the investigation or prosecution of such conduct and intentionally or recklessly fails to fulfil that responsibility;
- uses threats, intimidation or physical force to interfere in, or otherwise interferes in, any law enforcement or judicial process in connection with such conduct;
- profits financially or obtains any other benefit from such conduct; or
- contravenes, or assists with the contravention of, certain provisions in the Regulations.
- Under the Regulations, a person is also an 'involved person' if the person:
  - is owned or controlled by a person who has been involved as above (owned/controlled in this case means 50% or more shareholdings **or** the ability to control that business or entity);
  - acts on behalf of or at the direction of such a person; or
  - is a member of, or associated with, such a person.

## LEGAL TESTS

Before a person can be designated:

- There must be 'reasonable grounds to suspect' that the person is an 'involved person' (Regulation 6(1)(a)); and
- The designation of that person must be considered appropriate, having regard to the purposes of the Anti-Corruption sanctions regime, and the likely significant effects the designation will have on that person (Regulation 6(1)(b)).

Essentially, what is being asked when considering whether the designation is appropriate or not is why the use of the Anti-Corruption sanctions regime is the most appropriate tool to solve the problem as opposed to, for example, diplomacy, working with the local law enforcement or an international justice effort.

## CONSIDERATION OF DESIGNATIONS

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The following factors have been identified in the [FCDO Policy Paper](#) as relevant, but not exhaustive, in deciding whether a person should be considered for designation.

- **The UK government's anti-corruption policy priorities.** These policy priorities are guided by the UK's anti-corruption strategy, which recognises the damage that corruption causes to countries outside the UK, especially to governance, economic growth and development, as well as to the UK's own national security and business interests. In line with the UK's anti-corruption strategy, the UK government is likely to have particular regard to serious corruption that:
  - a. enables or fuels national and international security threats
  - b. is linked to terrorism, serious and organised crime or instability overseas, particularly in fragile and conflict-affected states
  - c. undermines development and poverty reduction and the achievement of the Sustainable Development Goals
  - d. impedes international trade and investment or undermines growth, including that which impacts directly on UK business
  - e. undermines a country's democratic governance, the rule of law, and human rights
  - f. weakens vital public institutions including international organisations
  - g. exacerbates inequality or deprives citizens of vital public resources, including natural resources
- **The scale, nature, and impact of the serious corruption.** The UK government will have regard to whether the conduct is systemic, the financial value of the bribe(s) or assets in question is significant relative to local context, the conduct is sophisticated, or represents an external threat to the country or countries affected.
- **The status, connections, and activities of the involved person.** Where there are a range of individuals who could be considered for designation based on their conduct, the UK government will consider which designation(s) would have the most impact in preventing or combating serious corruption.
- **Collective international action.** The UK government is likely to prioritise cases where international partners have adopted, or propose to adopt anti-corruption sanctions, and where action by the UK is likely to increase the effect of the designation in addressing the corruption in question.
- **Interaction with law enforcement activities.** The UK government is likely to pay particular attention to cases where local law enforcement authorities have been unwilling or unable to hold individuals involved in serious corruption to account. In exceptional cases this might include designating individuals in the UK.
- **Risk of reprisals.** The UK government will pay particular attention to potential reprisals that a designation may have to journalists, civil society organisations, human rights defenders, or whistle-blowers.

## WHAT INFORMATION IS REQUIRED AND PREFERRED?

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When considering designations, the UK government requires the following information:

1. **What is the activity that justifies the application of sanctions?**

The activity that constitutes serious corruption under the Regulations must be clearly identified, with supporting evidence.

2. **Who is the person?**

For example, name (including any aliases), title, and other identifying information that can definitively identify the person in question.

3. **How, and to what extent, is the person involved in the activity?**

In what way(s) is the person an 'involved person' under the Regulations (as set out above)? For example, was the person directly responsible for, or engaged in, the serious corruption, or did they facilitate or support it, or conceal evidence of it?

The UK government advises that those seeking to provide information ensure that each of these elements is sufficiently evidenced in order to demonstrate "reasonable grounds to suspect" that the person in question is an 'involved person'.

Accordingly, steps should be taken to ensure that any information provided is accurate, necessary, and proportionate. This includes making sure that information is verified, or verifiable and from a trusted source, and only information relevant to the proposed designation is provided.

### CONFIDENTIALITY

The UK government [states](#) that information which should be treated as confidential must be marked as such. It must be noted that there could be circumstances where the UK government may have to disclose information provided to it in accordance with UK law, such as under data protection or freedom of information regimes, or in the context of litigation.

Accordingly, consideration should be given to any risks if the information is disclosed.

It should be noted that if a strong case was made to protect the information, such as concerns over life or serious harm, there's a good chance that the FCDO would be successful in any application for protection to the High Court. However, none of this is guaranteed; the Anti-Corruption sanctions regime is in a very early stage, and it still remains unseen as to how the High Court will deal with this situation.

The UK Government has recommended civil society organisations that are preparing submissions to use open-source information where possible for the reasons outlined above.

## WHO MUST COMPLY?

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The Regulations impose restrictions and requirements that apply within the UK and to the conduct of all UK persons, wherever they are in the world. UK persons include British nationals, as well as all bodies incorporated or constituted under the law of any part of the UK.

Therefore the prohibitions and requirements imposed by the Regulations apply to all companies established in any part of the UK. They also apply to branches of UK companies operating overseas.

A person subject to the Regulations is prohibited from:

- intentionally participating in any activities if that person knows that the object or effect of the activity is to circumvent the Regulations or to enable or facilitate the contravention of UK sanctions; as well as
- providing financial assistance to a designated person.

## REVIEW OF DESIGNATIONS

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Under the Act designations may be amended by the relevant UK government Minister in certain circumstances:

- A relevant designation may at any time be varied or revoked by the UK government Minister (section 22(2)).
- The UK government Minister must revoke the designation if at any time they consider that the required conditions (see 'Legal Tests' above) are not met (section 22(3) & (4)).
- The designated person may ask that the UK government Minister vary or revoke the designation at any time while it has effect (section 23(1)).
  - i. On receiving such a request, the UK government Minister must decide whether to vary or revoke the designation, or to take no action (section 23(3)).
  - ii. A further request following that initial request to vary or revoke the designation may only be made if there is a significant matter which has not previously been considered by the UK government Minister (section 23(2)).
- The UK government Minister must review every active designation made under the Regulations within three years of the implementation of the Regulations, and then again within every three years running from the date that the previous review was completed (section 24).

Designations are reviewed by a court in the following circumstances:

- Following a review by the UK government Minister, the designated person, or any person affected by the decision, may apply to the High Court, or, in Scotland, the Court of Session, for the decision to be set aside (section 38(1)-(3)).
- In determining whether the decision should be set aside, the court must apply the principles relevant to an application for judicial review (section 38(4)).



# UK GLOBAL ANTI-CORRUPTION SANCTIONS REGIME FAQ

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## **Q. Are there any written or informal rules about how old evidence of corruption can be in order for a submission to still be accepted by the FCDO?**

There are no limitation rules explicitly set out in the Anti-Corruption sanctions regime, and the FCDO has confirmed the same. The time-limit on a case would most likely be subject to the “appropriateness” test laid out within the regulations.

## **Q. How could one find out the reason a case was not picked up by the FCDO?**

As this is a foreign policy tool, rather than a judicial tool, the FCDO’s obligations to provide a response to civil society is not set out. The FCDO has stated that they cannot provide information about ongoing investigations as it often impacts other pending investigations. The best way at the moment to find this out is through informal channels, such as speaking to the FCDO’s Desk Officer for your country, or the sanctions teams themselves.

## **Q. When making a submission on an individual to be designated, how helpful is it to the case if they are already designated on another list, for example, in the US?**

Number 5 on the policy document is about collective international action. The FCDO has expressed its willingness in working together with other countries, principally, other countries with these sanctions regimes, e.g., the US and Canada. Any person added to a US sanctions list would be a strong reason for the UK to do the same.

There is the issue that the UK regime is intentionally more limited in scope when concerning corruption (bribery or misappropriation of property). As the US regime has a much more open definition, there will be persons designated on their list that would not necessarily be considered sanctionable under the UK regime.

However, the definition of “involved person” in the UK regime is very open, and so it will be easier to sanction those persons who are facilitators of corruption under it.

## **Q. What are the best ways to determine whether a person has assets in the UK?**

There are a number of organisations that have investigators. If you are interested in assets in the UK, the UK Anti-Corruption Coalition (UKACC) has a number of members, some of those members are specialist investigations groups, that you could contact for assistance.

## **Q. What UK nexus is needed for applying for the Anti-Corruption sanctions regime?**

It really comes down to a test of appropriateness, i.e., is it appropriate for the UK to apply or use sanctions in this context. There is no “stock answer” on nexus. If someone were to have assets in the UK, or spend time in or travel to the UK, then you will be much more persuasive in terms of demonstrating how much impact the sanctions would have.

If not, we get into the difficult issue of “signaling sanctions”, where the person doesn’t have a clear link to the UK, but the sanctions are carried out to signal that what they have done is wrong. Most cases need a nexus, however, there are some examples of the corruption being so egregious and serious, that the UK sanctions them to send out the message that they are not welcome in the country, regardless of whether they have a nexus in the UK or not.

## **Q. What are the asset recovery resources for victims of corruption? Is there a pathway for a country to apply for recovery to the FCDO once an individual has been sanctioned?**

Sanctions freeze assets, they don’t seize assets. Once assets are frozen, they are still subject to internal investigation domestically or internationally. There is still the ability for asset return procedures to take place.

In order for frozen assets to be seized, one would then need to go through either civil or criminal asset forfeiture or seizure procedures. The UK has very strong legislation on the books for going after those assets, through civil recovery or criminal routes.

