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# New UK Sanctions Designation Criteria – A move towards “Secondary Sanctions”?

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On 31 July 2024, the UK government published the Russia (Sanctions) (EU Exit) (Amendment) (No. 3) Regulations 2024 (“**Amendment Regulation No. 3**”) which amended the Russia (Sanctions) (EU Exit) Regulations 2019 (the “**UK Russia Regulations**”) by broadening out the criteria which the UK Government can use to designate a person as subject to an asset freeze under the UK sanctions regime.

The expansion of the designation criteria for UK sanctions against Russia has happened incrementally since February 2022, however the latest amendment represents the most significant change to date and broadens the potential application of UK sanctions further than we have seen before.

We consider the impact of these changes further in detail in this briefing.

## **Background**

Under the UK Russia Regulations, the UK Government may designate a person as subject to an asset freeze if they fall within a range of criteria.

Prior to February 2022, the designation criteria was primarily in relation to actors involved in activity that was found to be destabilising Ukraine or undermining or threatening the territorial integrity, sovereignty or threatening the territorial independence of Ukraine. Following February 2022, the designation criteria was expanded to catch activities, for example, in relation to obtaining a benefit or supporting the Government of Russia.

## **Changes to the designation criteria**

The Amendment Regulation No.3 amended regulation 6 of the UK Russia Regulations which enables the UK Government to designate a person where there are reasonable grounds to suspect that the person is an “involved person”. The definition of an involved person includes a person who has been involved in (i) “destabilising Ukraine or undermining or threatening the territorial integrity, sovereignty or independence of Ukraine”, or (ii) “obtaining a benefit from or supporting the Government of Russia”.<sup>1</sup>The UK Russia Regulations sets out detailed definitions of when a party can be said to be engaging in such activities – as set out in regulation 6(3), regulation 6(4) and regulation 6(4A).The Amendment Regulation No. 3 further expands who falls within the scope of an involved person.

Under **regulation 6(3)**, the designation criteria for being involved in destabilising Ukraine or undermining or threatening the territorial integrity, sovereignty or independence of Ukraine now includes two new additions:

- **regulation 6(3)(h)** – a person who owns or controls directly or indirectly (within the meaning of regulation 7), or is working as a director (whether executive or non-executive), trustee, or other manager or equivalent of, a person, other than an individual, which falls within sub-paragraphs 6(3)(a) to (g);
- **regulation 6(3)(i)** – a person who holds the right, directly or indirectly, to nominate at least one director (whether executive or non-executive), trustee or equivalent of a person, other than an individual, which falls within sub-paragraphs 6(3)(a) to (g).

Under **regulation 6(4)**, the criteria for being involved in obtaining a benefit from or supporting the Government of Russia has been expanded. The inclusion of a new regulation 6(4)(f) means that those who provide financial services, or make available funds, economic resources, goods or technology to a person who falls within paragraph 6(4)(a) to (e) will now fall within the scope of the “involved person” restrictions and can be subject to designation.

Similarly, under **regulation 6(4A)**, the addition of new regulation 6(4A)(m) means that the definition of a person that is involved in destabilising Ukraine or undermining or threatening the territorial integrity, sovereignty or independence of Ukraine or obtaining a benefit from or supporting the Government of Russia if they work for, or are affiliated to, the Government of Russia, now includes any person who provides financial services, or makes available funds, economic resources, goods or technology to a person who falls within paragraph 6(4A)(a) to (l).

### **What is the impact of these changes?**

The impact of the expansion of the designation criteria should not be understated – particularly that in regulation 6(4)(f) and regulation 6(4A)(m).

The changes mean that any person, whether a UK person or not, may be designated by the UK for providing financial services, funds, economic resources, goods or technology to any person falling within the descriptions set out in the sub-paragraphs above – the person in receipt of such services or goods does not need to be a UK designated person.

This change is material as being designated as subject to an asset freeze carries significant legal, regulatory, commercial and reputational risk. The expansion of the designation criteria, in theory, enables the UK Government to designate a person for undertaking activity that is not otherwise a breach of UK law (whether undertaken by a UK person or not) and is outside of the UK sanctions regime territorial scope.

This may have serious consequences for non-UK entities who are not legally required to comply with UK sanctions. Whereas global organisations commonly undertake screening to ensure that they do not business with a person designated by the UK, even though they are not within UK jurisdiction, organisations may have to go further with respect to their due diligence to ensure that they are not doing business with any person falling within one of the categories identified in the expanding designation criteria, or they themselves could risk being designated by the UK Government.

## Do these changes result in secondary sanctions by stealth?

In explaining the amendment, the UK Government stated that the Amendment Regulation No. 3 amendments expand the scope of the UK Russia Regulations *“to designate entities, including foreign financial institutions that facilitate transactions on behalf of, or in support of, specified sectors of strategic significance to the Government of Russia. This in line with G7 commitments to further curtail Russia’s use of the international financial system which Russia is using to facilitate its war in Ukraine.”*

The UK has demonstrated an increasing willingness to designate non-Russia persons for supporting Russia and the war in Ukraine, including by circumventing western sanctions. The Government has noted that *“the focus of effort by the G7 countries and the EU has increasingly been on preventing sanctions evasion and closing any remaining loopholes in the existing [sanctions regime against Russia]”*. For this reason, *“individuals and entities in third countries have also increasingly become sanctions targets”*. Countries that have been specifically identified to be supporting Russia’s invasion of Ukraine include Belarus, Iran, North Korea, and China.

Non-Russia persons have also been designated by the UK for supplying goods to Russia’s military, and operating in or supporting Russia’s most profitable sectors (e.g., the Liquefied Natural Gas (LNG) sector). Examples of such designations include Sino Machinery Co. (based in China), Bosfor Avrasya (based in Türkiye), Texel FCG Tech 2100 Ltd (based in Israel), and LLC Inter Style Plus (based in Kyrgyzstan) – these entities were designated for providing supplies to the Russian military industrial complex.

Whilst this latest change has not been explicitly said to be secondary sanctions, the effect of them appears to reflect a move by the UK to influence the behaviour of persons outside of its territorial scope in a similar way that the US has sought to do with its use of secondary sanctions.

The US has a sophisticated secondary sanctions regime in place with respect to various jurisdictions, most notably including Iran, and has been utilised and expanded upon in relation to Russia. For example, the US Treasury has the ability to sanction foreign financial institutions for engaging in transactions related to Russia’s military-industrial base, even where the foreign financial institution in question is not legally required to comply with US sanctions.

US secondary sanctions are a significant risk for non-US entities and acts as a considerable incentive for non-US entities to comply with US sanctions despite not being within the US’ jurisdiction.

The expansion of the UK designation criteria enables the UK government to take a similar approach to that of the US and to implement asset freezes against actors who are engaging in what is otherwise lawful activity. The expansion of the designation criteria has the potential to create a considerable burden on entities from a due diligence perspective as financial institutions (and other entities) will need to know whether their customers or parties they engage in activity with fall within the definitions set out in regulation 6(4)(a) to (e) or regulation 6(4A)(a) to (l). As the amendments do not appear to require the customer to be designated pursuant to these definitions, it will not be enough to rely on sanctions screening—further due diligence will be required. By not limiting the requirement to the provision of

financial services, funds, economic resources, goods or technology to persons designated pursuant to regulation 6(4)(a) to (e) or regulation 6(4A)(a) to (l) the UK government has potentially created significant challenges for UK and non-UK businesses.

To date, no persons have been designated since the Amendment Regulation No. 3 came into force. As such, the application of this new designation criteria in practice remains to be seen.

[\[1\]](#) See regulation 6(2)(a)(i) and regulation 6(2)(a)(ii) of the UK Russia Regulations.