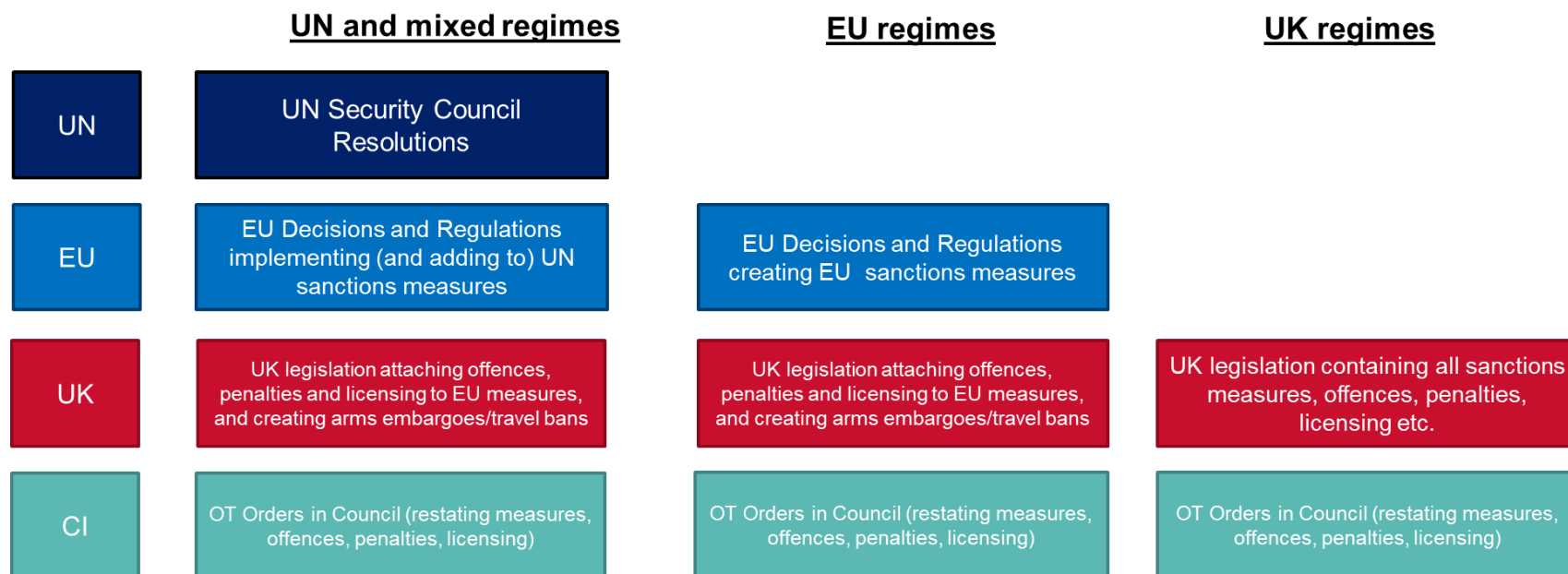


## UK and Overseas Territories (OT's) Sanctions after the end of the BREXIT Transition Period

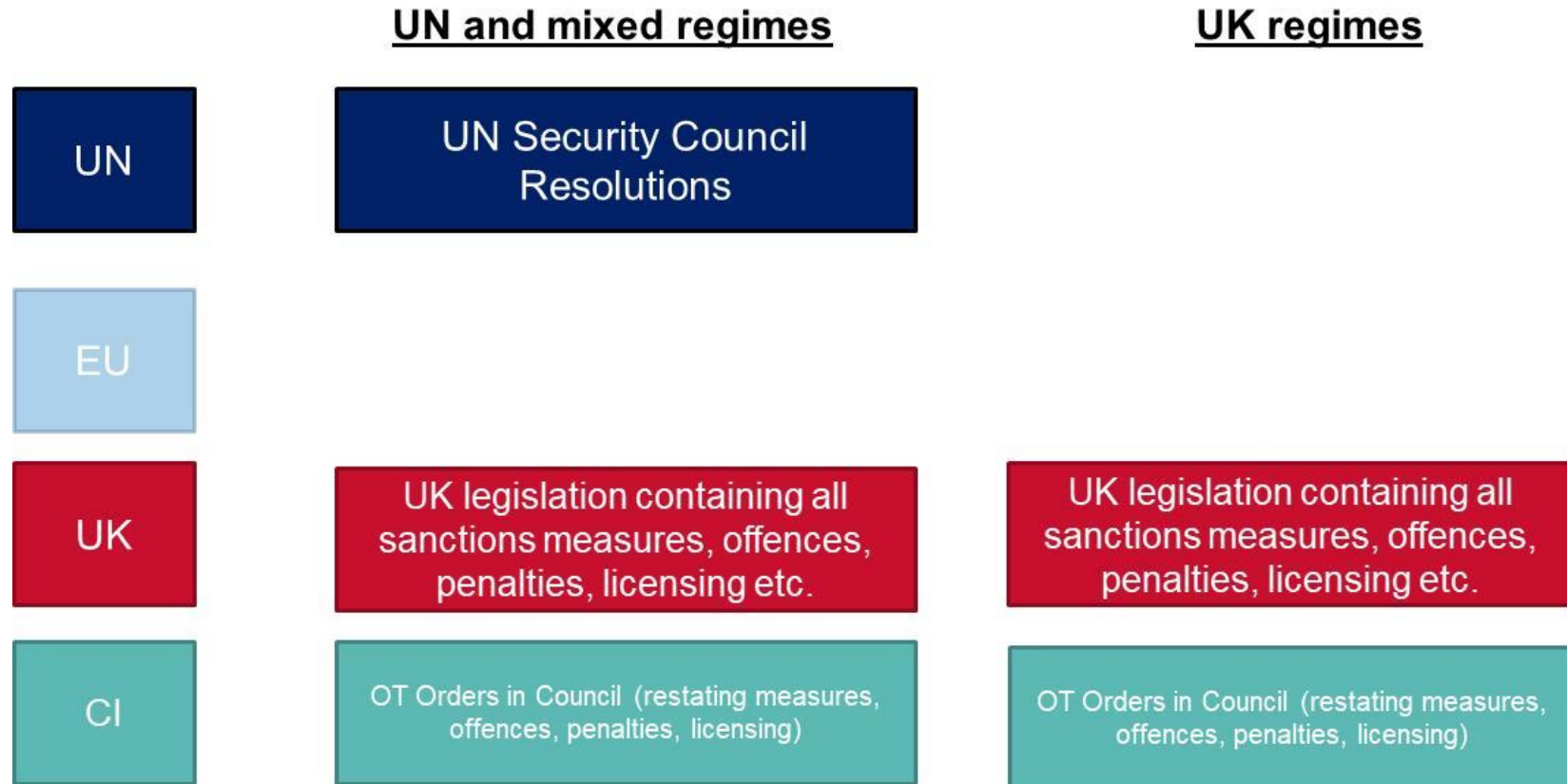
On the 31<sup>st</sup> of December 2020 at 11 p.m. (GMT), (6 p.m. Cayman Islands (CI)), the sanctions framework in the United Kingdom (UK) will be amended as a result of its decision to exit the European Union (EU) (aka BREXIT). As a result, at the end of the transition period all sanctions regimes will be implemented autonomously, through UK regulations, and the UK will no longer implement sanctions obligations via EU sanctions regulations. As a British Overseas Territory, the Cayman Islands is reliant upon the UK's framework for sanctions implementation and thus the UK regulations will be extended with modifications through new Overseas Orders in Council (OT Orders) that will come into force at the same time.

### <sup>1</sup>Current Legislative framework



<sup>1</sup> Adapted from the Foreign, Commonwealth & Development Office

<sup>2</sup>New legislative framework



<sup>2</sup> Adapted from the Foreign, Commonwealth & Development Office

### <sup>3</sup>New legislative framework



<sup>3</sup> Adapted from the Foreign, Commonwealth & Development Office

## **Format of SAMLA Secondary Legislation**

All of the new legislation will have the following structure:

- Purposes
- 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 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), which determines international sanctions policy in the UK, 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 on <https://www.legislation.gov.uk> website) – see Appendix 1

While these regulations are intended to deliver substantially the same policy as the existing regimes, 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**

- SAML A 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 FRA's website.

### **Sanctions lists in the UK**

#### **UK sanctions list**

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

- Published by the FCDO
- Contains all individuals, entities and ships specified/designated under SAML A
- Includes those designated under all types of sanctions including financial, immigration, trade and transport.
- Currently only contains designations under the one sanctions regime-operating under SAML A, Global Human Rights.

## **OFSI Consolidated list of financial sanctions targets**

<https://www.gov.uk/government/publications/financial-sanctions-consolidated-list-of-targets/consolidated-list-of-targets>

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 FRA's website). 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 (6 p.m. CI time) 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. As a result of this update, you should be prepared for a significant number of changes to occur across multiple fields, such as aliases and other identifying information. These changes come about as a result of the UK having a different legal test for designations under the SAMLA Regulations.

FCDO will also be updating the [UK Sanctions List](#) at the same time, which will consist of all designations (financial or otherwise) made under SAMLA Regulations

## **Key changes to licensing**

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

- Exceptions also set out in each regime 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 FRA is in the process of updating its guidance and will publish as soon as completed.

Applicants should continue to apply for specific licences through the FRA. There is a new form for applications under SAMLA which will be available soon on the FRA’s website and which may be used now for the Global Human Rights regime; ~~and~~ this will be the standard application form across all regimes from the end of the Transition Period.

## **Compliance and enforcement**

You should continue to use the compliance form on the FRA website to report any suspected breach of financial sanctions. This form is being updated and the FRA will be accepting submissions as usual. The FRA 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 Counter-Terrorism \(Sanctions\) \(Overseas Territories\) Order 2020](#)

## **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. Further, please note that the FRA Sanctions Guidance document is being updated to reflect the changes to sanctions implementation in Cayman Islands.

## Appendix 1

New Overseas Orders in Council (OT Orders) that will come into force after the transition:

1. [The Afghanistan \(Sanctions\) \(Overseas Territories\) Order 2020](#)
2. [The Bosnia and Herzegovina \(Sanctions\) \(Overseas Territories\) Order 2020](#)
3. [The Burma \(Sanctions\) \(Overseas Territories\) Order 2020](#)
4. [The Burundi \(Sanctions\) \(Overseas Territories\) Order 2020](#)
5. [The Central African Republic \(Sanctions\) \(Overseas Territories\) Order 2020](#)
6. [The Chemical Weapons \(Sanctions\) \(Overseas Territories\) Order 2020](#)
7. [The Counter-Terrorism \(International Sanctions\) \(Overseas Territories\) Order 2020](#)
8. [The Counter-Terrorism \(Sanctions\) \(Overseas Territories\) Order 2020](#)
9. [The Cyber \(Sanctions\) \(Overseas Territories\) \(No. 2\) Order 2020](#)
10. [The Democratic People's Republic of Korea \(Sanctions\) \(Overseas Territories\) Order 2020](#)
11. [The Democratic Republic of the Congo \(Sanctions\) \(Overseas Territories\) Order 2020](#)
12. [The Guinea \(Sanctions\) \(Overseas Territories\) Order 2020](#)
13. [The Iran \(Sanctions\) \(Human Rights\) \(Overseas Territories\) Order 2020](#)
14. [The Iran \(Sanctions\) \(Nuclear\) \(Overseas Territories\) Order 2020](#)
15. [The Iraq \(Sanctions\) \(Overseas Territories\) Order 2020](#)
16. [The ISIL \(Da'esh\) and Al-Qaida \(United Nations Sanctions\) \(Overseas Territories\) Order 2020](#)
17. [The Lebanon \(Sanctions\) \(Assassination of Rafiq Hariri and others\) \(Overseas Territories\) Order 2020](#)
18. [The Lebanon \(Sanctions\) \(Overseas Territories\) Order 2020](#)
19. [The Mali \(Sanctions\) \(Overseas Territories\) Order 2020](#)
20. [The Misappropriation \(Sanctions\) \(Overseas Territories\) Order 2020](#)
21. [The Nicaragua \(Sanctions\) \(Overseas Territories\) \(No. 2\) Order 2020](#)
22. [The Republic of Belarus \(Sanctions\) \(Overseas Territories\) Order 2020](#)
23. [The Republic of Guinea-Bissau \(Sanctions\) \(Overseas Territories\) Order 2020](#)
24. [The Russia \(Sanctions\) \(Overseas Territories\) Order 2020](#)
25. [The Sanctions \(Overseas Territories\) \(Amendment\) Order 2020](#)
26. [The Sanctions \(Overseas Territories\) \(Revocations\) Order 2020](#)
27. [The Somalia \(Sanctions\) \(Overseas Territories\) Order 2020](#)

28. [The South Sudan \(Sanctions\) \(Overseas Territories\) Order 2020](#)
29. [The Sudan \(Sanctions\) \(Overseas Territories\) Order 2020](#)
30. [The Syria \(Sanctions\) \(Overseas Territories\) Order 2020](#)
31. [The Syria \(United Nations Sanctions\) \(Cultural Property\) \(Overseas Territories\) Order 2020](#)
32. [The Unauthorised Drilling Activities in the Eastern Mediterranean \(Sanctions\) \(Overseas Territories\) Order 2020](#)
33. [The Sanctions \(Overseas Territories\) \(Revocations\) Order 2020](#)
34. [The Venezuela \(Sanctions\) \(Overseas Territories\) Order 2020](#)
35. [The Yemen \(Sanctions\) \(Overseas Territories\) Order 2020](#)
36. [The Zimbabwe \(Sanctions\) \(Overseas Territories\) Order 2020](#)