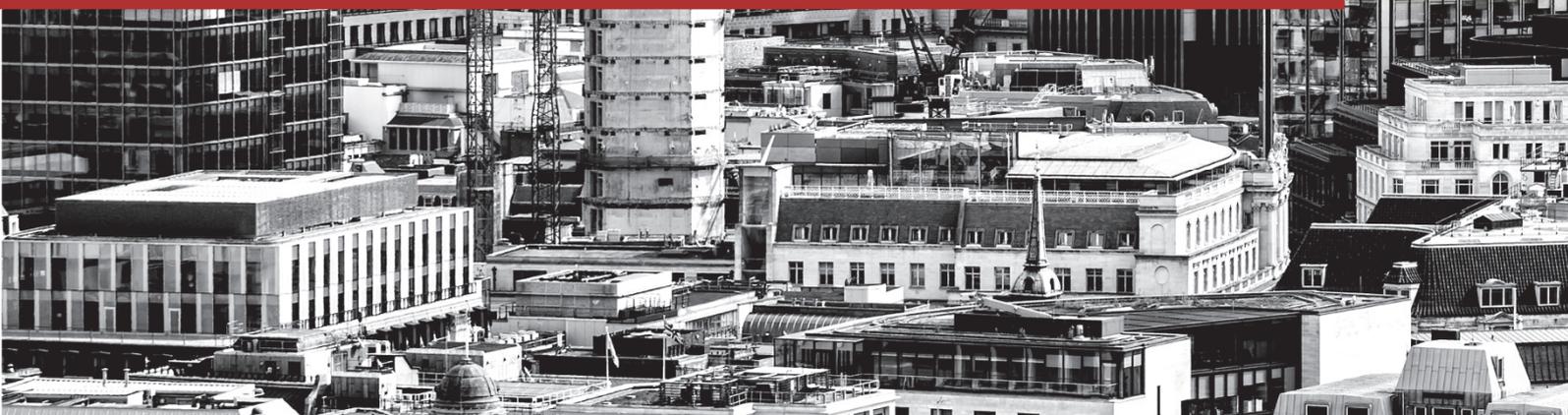




Office of Financial
Sanctions Implementation
HM Treasury

FINANCIAL SANCTIONS

Guidance



August 2017

This guidance is produced by the Office of Financial Sanctions Implementation (OFSI), part of HM Treasury, which is the competent authority for the implementation of financial sanctions in the UK.

It outlines your obligations under financial sanctions as well as OFSI's approach to licensing and compliance issues. It takes into account relevant case law and EU guidance at the date of publication.

This guidance is general in nature so you should also refer to the relevant, up-to-date legislation as well as specific OFSI guidance where it is available. Please note that each case will be considered on the facts and the specific legal requirements that apply.

Please note that OFSI cannot issue definitive guidance on how an EU or UK court might interpret these laws.

Finally, this guidance does not represent legal advice. If you are unsure about your obligations in a given case, you should consider taking independent legal advice.

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Leaving the European Union (EU)

On 23 June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force.

During this period the Government will continue to negotiate, implement and apply EU legislation. The outcome of these negotiations will determine what arrangements apply in relation to EU legislation in future once the UK has left the EU.

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1 Overview of financial sanctions

1.1 Why do we have financial sanctions

Financial sanctions are restrictions put in place by the UN, EU or UK to achieve a specific foreign policy or national security objective. They can:

- limit the provision of certain financial services
- restrict access to financial markets, funds and economic resources.

Financial sanctions are generally imposed to:

- **coerce** a regime, or individuals within a regime, into changing their behaviour (or aspects of it) by increasing the cost on them to such an extent that they decide to cease the offending behaviour
- **constrain** a target by denying them access to key resources needed to continue their offending behaviour, including the financing of terrorism or nuclear proliferation;
- **signal disapproval**, stigmatising and potentially isolating a regime or individual, or as a way of sending broader political messages nationally or internationally; and/or
- **protect the value of assets** that have been misappropriated from a country until these assets can be repatriated

1.2 Who is involved in making and implementing sanctions

The United Nations (UN) imposes financial sanctions and requires member states to implement them through Resolutions passed by the UN Security Council. You can read more about the UN's work on financial sanctions on their website:

<https://www.un.org/sc/suborg/en/sanctions/information>

The European Union (EU) implements all financial sanctions imposed by the UN. It does this through EU regulations which have direct legal effect in the UK and all other EU member states.

The EU can also impose its own financial sanctions, sometimes referred to as 'EU autonomous' sanctions. These are also implemented through regulations that have direct effect in all member states. You can read more about the work of the EU in relation to financial sanctions on their website:

https://eeas.europa.eu/headquarters/headquarters-homepage/423/sanctions-policy_en

The United Kingdom (UK) makes statutory instruments (UK regulations) to:

- impose penalties for breaches of EU regulations
- obtain, provide and use information relating to the operation of these regulations

In certain circumstances, the UK can impose its own financial sanctions and restrictions under the following legislation (collectively the 'domestic regimes'):

- Terrorist Asset-Freezing etc. Act 2010 (TAFA 2010)
- Counter Terrorism Act 2008 (CTA 2008)
- Anti-Terrorism, Crime and Security Act 2001 (ATCSA 2001)

Table 1.A: UK government departments and agencies involved in sanctions

| Department | Role |
|---|--|
| Foreign & Commonwealth Office | Negotiates all international sanctions |
| HM Treasury (Office of Financial Sanctions Implementation) | UK's competent authority for implementing financial sanctions Makes designations under UK domestic regimes Can impose monetary penalties |
| Department for International Trade (Export Control Organisation) | Implements trade sanctions and embargoes |
| Home Office | Implements travel bans |
| HM Revenue & Customs (HMRC) | Enforces breaches of trade sanctions |
| National Crime Agency (NCA) | Investigates breaches of financial sanctions |

1.3 Types of financial sanctions

Financial sanctions come in many forms as they are developed in response to a given situation. The most common types of financial sanctions used in recent years are:

- **Targeted asset freezes:** these apply to named individuals, entities and bodies, restricting access to funds and economic resources. Someone subject to an asset freeze will be listed on OFSI's consolidated list:

<https://www.gov.uk/government/publications/financial-sanctions-consolidated-list-of-targets>
- **Restrictions on a wide variety of financial markets and services:** these can apply to named individuals, entities and bodies, specified groups, or entire sectors. To date these have taken the form of:
 - investment bans
 - restrictions on access to capital markets

- directions to cease banking relationships and activities
- requirements to notify or seek authorisation prior to certain payments being made or received
- restrictions on the provision of financial, insurance, brokering or advisory services or other financial assistance
- **Directions to cease all business:** these will specify the type of business and can apply to a specific person, group, sector or country.

1.4 Who needs to comply with financial sanctions

Financial sanctions apply more broadly than simply to the persons subject to them. The following outlines where financial sanctions apply and who needs to comply with them.

- EU financial sanctions (including where they implement UN sanctions) apply within the territory of the EU and to all EU persons, wherever they are in the world.
- UK financial sanctions apply within the territory of the UK and to all UK persons, wherever they are in the world.
- All individuals and legal entities who are within or undertake activities within the UK's territory must comply with the EU and UK financial sanctions that are in force.
- All UK nationals and UK legal entities established under UK law, including their branches, must also comply with UK financial sanctions that are in force, irrespective of where their activities take place.
- All EU nationals and legal entities established under EU law must comply with the EU financial sanctions that are in force, irrespective of where their activities take place.

2 Who is subject to financial sanctions

2.1 OFSI lists

OFSI maintains two lists of those subject to financial sanctions.

1. The 'consolidated list'

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

The consolidated list includes all designated persons subject to financial sanctions under EU and UK legislation, as well as those subject to UN sanctions which are implemented through EU regulations. OFSI publishes the consolidated list to help businesses and individuals comply with financial sanctions.

OFSI aims to update the consolidated list within one working day for all new UN, EU and UK listings coming into force in the UK, and within three working days for all other amendments.

Where the UK's Linking Regulations have to be updated, OFSI will add new listings to the consolidated list as soon as the update comes into effect.

The UK's consolidated list does not contain listings imposed by non-EU countries or those imposed at the national level by other EU member states.

If you have been de-listed but your name still appears on the consolidated list, you should email OFSI (ofsi@hmtreasury.gsi.gov.uk) with evidence of your de-listing, such as the relevant EU regulation.

2. List of entities subject to capital market restrictions

<https://www.gov.uk/government/publications/financial-sanctions-consolidated-list-of-targets/ukraine-list-of-persons-subject-to-restrictive-measures-in-view-of-russias-actions-destabilising-the-situation-in-ukraine>

OFSI maintains a separate list of entities subject to specific capital market restrictions. These entities are not contained on the consolidated list.

For more information on the restrictions that apply to these entities please see the Ukraine (Sovereignty and Territorial Integrity) regime page on GOV.UK:

<https://www.gov.uk/government/publications/financial-sanctions-ukraine-sovereignty-and-territorial-integrity>

Recent changes allow swift implementation of UN listings and reduce the risk of asset flight

Since 1 April 2017, all new UN listings for existing EU sanctions regimes have a direct effect in the UK as soon as they are made by the UN for 30 days, or until the EU adds the new listings to an existing sanctions regulation, whichever is sooner (Sections 154 and 155 of the Policing and Crime Act 2017).

Where listings have been made under a new UN Security Council Resolution, OFSI's intention is that the Linking Regulations will be amended to include the new Resolution within 48 hours. As soon as they have been amended, the listing will have a direct effect in the UK as described above.

Also since 1 April 2017, the Treasury can create a temporary sanctions regime where the UN makes a new listing but where there is no corresponding EU sanctions regulation in place to implement it. The temporary regime will last for 30 days, (extendable once for another 30 days) or until the EU implements the UN resolution, whichever is sooner (sections 152 and 153 of the Policing and Crime Act 2017).

See the UK's Linking Regulations for more information:

<http://www.legislation.gov.uk/ukxi/2017/478/contents/made>

2.2 Using the consolidated list

The consolidated list contains a range of information to aid the identification of designated persons. For an individual this can include their:

- aliases
- date of birth
- passport details
- nationality
- last known address
- employment or government role

You may find that the name of an individual or entity you are dealing with matches one or more entries on the consolidated list. This is known as a **name match**. However, it does not necessarily mean that the individual or entity you are dealing with is the same one on the list. If you are satisfied that this is the case, you do not need to take further action.

If the individual or entity you are dealing with matches all the information on the consolidated list, this is likely to be a **target match**.

If having consulted the consolidated list you are still unsure on whether you have a target match, you can contact OFSI for assistance.

Table 2.A: Name and target matches

| Situation | Assessment |
|---|---|
| You have a name match for a person who is listed as a Syrian general, commanding troops in Syria at the start of the civil war. However, the person you are dealing with is aged 15 and was born in the UK. | Name match |
| You have a name match for an Egyptian former MP accused of misappropriation. However, the man you are dealing with is a retired teacher with a different date of birth. You've also carried out business with him over the last ten years. | Name match |
| You have a close name match for a person subject to a terrorist asset freeze and they have a similar date of birth but a different address. | Potential target match . You may have identified a new alias being used to circumvent financial sanctions. You should contact OFSI immediately. |

What you are required to do next if you have a target match will depend on the specific sanctions that apply. For asset freezes, this is outlined in Section 3.1.2 of this guide.

2.2.2 Getting updates

OFSI publishes Notices describing changes to financial sanctions on GOV.UK:

<https://www.gov.uk/government/collections/financial-sanctions-regime-specific-consolidated-lists-and-releases>

OFSI notifies its subscribers by email whenever a new Notice is published. To subscribe to our e-alerts, click here:

<https://public.govdelivery.com/accounts/UKHMTREAS/subscriber/new>

2.2.3 Proscription under the Terrorism Act 2000

An organisation may be proscribed ('banned') under the Terrorism Act 2000 if the Home Secretary believes it is involved in terrorism and it is proportionate to do so.

Because proscription involves different restrictions, and because not all proscribed organisations are subject financial sanctions, the list of proscribed organisations is not included in OFSI's consolidated list.

The list of proscribed organisations is maintained by the Home Office and can be found on GOV.UK:

<https://www.gov.uk/government/publications/proscribed-terror-groups-or-organisations--2>

Financial sanctions

3 restrictions

You are prohibited from carrying out certain activities or behaving in a certain way if financial sanctions apply. You should always refer to the up-to-date version of the legislation imposing the specific financial sanctions which apply in your case to understand exactly what is prohibited.

OFSI interprets prohibitions widely, which is in keeping with the way in which the EU courts and other member states approach them. This means that while we will not seek to draw in activities that clearly fall outside of a prohibition, OFSI will consider a wide range of actions when assessing if a breach of financial sanctions has taken place.

This section provides an overview of asset freezing, which is the most common form of financial sanction.

3.1 Asset freezes

3.1.1 What do they do?

Where the financial sanction is an asset freeze, it is generally prohibited to:

- deal with the frozen funds or economic resources, belonging to or owned, held or controlled by a designated person
- make funds or economic resources available, directly or indirectly, to, or for the benefit of, a designated person
- engage in actions that, directly or indirectly, circumvent the financial sanctions prohibitions

The funds and economic resources are to be frozen immediately by the person in possession or control of them. An asset freeze does not involve a change in ownership of the frozen funds or economic resources, nor are they confiscated or transferred to OFSI for safekeeping.

3.1.2 What must you do?

If you know or have 'reasonable cause to suspect' that you are in possession or control of, or are otherwise dealing with, the funds or economic resources of a designated person you must:

- freeze them
- not deal with them or make them available to, or for the benefit of, the designated person, unless:
 - there is an exemption in the legislation that you can rely on
 - you have a licence from OFSI

- report them to OFSI (see Chapter 5 of this guide)

Reasonable cause to suspect refers to an objective test that asks whether there were factual circumstances from which an honest and reasonable person should have inferred knowledge or formed the suspicion.

A breach of these requirements may result in a criminal prosecution or a monetary penalty.

3.1.3 Asset freezing terminology

Funds generally means financial assets and benefits of every kind, including but not limited to:

- cash, cheques, claims on money, drafts, money orders and other payment instruments
- deposits with financial institutions or other entities, balances on accounts, debts and debt obligations
- publicly- and privately-traded securities and debt instruments, including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures and derivatives contracts
- interest, dividends or other income on or value accruing from or generated by assets
- credit, right of set-off, guarantees, performance bonds or other financial commitments
- letters of credit, bills of lading, bills of sale
- documents showing evidence of an interest in funds or financial resources

Economic resources generally means assets of every kind, – tangible or intangible, movable or immovable – which are not funds, but may be used to obtain funds, goods or services.

Goods generally means items, materials and equipment.

Dealing with funds generally means moving, transferring, altering, using, accessing, or otherwise dealing with them in any way which would result in any change to their volume, amount, location, ownership, possession, character, destination or other change that would enable the funds to be used, including portfolio management.

Dealing with economic resources generally means using the economic resources to obtain funds, goods, or services in any way, including, but not limited to, by selling, hiring or mortgaging them. The everyday use by a designated person of their own economic resources for personal consumption is not prohibited.

Making available funds or economic resources, directly or indirectly, to a designated person If funds are made available (directly or indirectly) to a designated person, or economic resources are made available (directly or indirectly) that would likely be exchanged, or used in exchange, for funds, goods, or services, this may constitute a criminal offence.

Making available funds or economic resources for the *benefit* of a designated person If funds or economic resources are made available for the benefit of a designated person and they obtain, or are able to obtain, a 'significant financial benefit', this may constitute a criminal offence.

In this case, 'financial benefit' includes the discharge, in whole or in part, of a financial obligation for which the designated person is wholly or partly responsible.

For TFA 2010, there are additional restrictions on the provision of financial services (see Chapter 2 and Section 40 of TFA 2010).

Practical examples showing how OFSI will apply this prohibition can be found in the Frequently Asked Questions section of this guide.

3.2 Other financial restrictions

Financial sanctions regimes may include other restrictions in addition to asset freezes. Where these exist, they will be listed on the individual regime pages on GOV.UK:

<https://www.gov.uk/government/collections/financial-sanctions-regime-specific-consolidated-lists-and-releases>

4 Ownership and control

If a person is a designated person their name will be recorded on the consolidated list. However, an asset freeze and some financial services restrictions will also apply to entities that are owned or controlled, directly or indirectly, by a designated person. Those entities may not be designated in their own right, so their name may not appear on the consolidated list. However, those entities are similarly subject to financial sanctions.

4.1 Ownership

In line with EU guidance, OFSI considers that the key criterion to assessing whether a legal person or entity is owned by another legal person or entity is the possession of more than 50% of the proprietary rights of an entity or having a majority interest in it. If this criterion is met, and the owner is also a designated person, then financial sanctions will also apply to the entity that is owned by the designated person.

OFSI interprets 'owned' to include both direct and indirect ownership. If the ultimate beneficial ownership of an entity rests with a designated person (for example, they own a corporate body which owns another corporate body), OFSI takes the view that all entities that are part of the ownership chain are subject to financial sanctions.

Box 4.A: Ownership example

For example, **Entity X** is not listed on OFSI's consolidated list. However, your research shows that the majority owner of **Entity X** is designated **Entity Y**.

As the ownership criterion has been met, **Entity X** is also subject to the same restrictions as designated **Entity Y**.

4.1.2 Minority interests

If a designated person has a minority interest in another legal person or entity this does not necessarily mean that financial sanctions also apply to them as the ownership criterion has not been met.

However, you should remain vigilant to any changes in the stake held by the designated person in case it increases to greater than 50% (or they obtain a majority interest) at which point financial sanctions will also apply to that legal person or entity.

You should also consider whether a designated person is in 'control' of another legal person or entity. Financial sanctions apply in this situation even where a designated person may only possess a minority interest.

4.2 Control

In line with EU guidance, OFSI considers that the satisfaction of at least one of the following criteria is sufficient to establish whether a legal person or entity is controlled by another legal person or entity, alone or pursuant to an agreement with another shareholder or other third party.

- Having the right or exercising the power to appoint or remove a majority of the members of the administrative, management or supervisory body of such legal person or entity
- Having appointed solely as a result of the exercise of one's voting rights a majority of the members of the administrative, management or supervisory bodies of a legal person or entity who have held office during the present and previous financial year
- Controlling alone, pursuant to an agreement with other shareholders in or members of a legal person or entity, a majority of shareholders' or members' voting rights in that legal person or entity
- Having the right to exercise a dominant influence over a legal person or entity, pursuant to an agreement entered into with that legal person or entity, or to a provision in its Memorandum or Articles of Association, where the law governing that legal person or entity permits its being subject to such agreement or provision
- Having the power to exercise the right to exercise a dominant influence referred to in the point above, without being the holder of that right (including by means of a front company)

The EU's Best Practices guide can be found here:

<http://data.consilium.europa.eu/doc/document/ST-10254-2015-INIT/en/pdf>

OFSI interprets EU guidance broadly in respect of ownership and control. The above list of criteria is intended to be indicative of the factors leading to control being established and should not be seen as exhaustive.

It's possible that a designated person may have control or use of another person's bank accounts or economic resources and may be using them to circumvent financial sanctions.

Examples could include a designated person registering assets in the name of associates or family members, or using non-designated persons' bank accounts to hold funds and facilitate transfers.

Such actions may constitute a breach of the prohibitions or circumvention of financial sanctions and may result in a criminal prosecution or monetary penalty.

5 Your reporting obligations to OFSI

5.1 EU financial sanctions regimes

EU financial sanctions regimes have two reporting components to them. The first is a general obligation that applies to everyone. The second is a more targeted obligation that applies to specified businesses and professions.

5.1.1 General reporting requirement

EU regulations require natural and legal persons, entities and bodies to supply OFSI as soon as practicable with any information that would 'facilitate compliance' with the regulations. Any information provided will only be used for the purposes for which it was provided or received.

This requirement applies to natural and legal persons, entities and bodies in the UK or under UK jurisdiction and not just to credit or financial institutions or to individuals working for them.

Examples of the kind of information that will facilitate compliance can be found in Table 5.A.

If you are unsure of your reporting obligations, you should seek independent legal advice.

5.1.2 Relevant institution or relevant business or profession

UK regulations, which enforce EU regulations, set out specific reporting obligations for a 'relevant institution' and a 'relevant business or profession'. These include:

'Relevant institution'

- a person who has permission under Part 4A of the Financial Services and Markets Act 2000 (FSMA 2000) (permission to carry on regulated activities)
- a European Economic Area (EEA) credit institution authorised by its home state regulator and that has permission under FSMA 2000
- a business that operates a currency exchange office, transmits money (or any representations of monetary value) by any means, or cashes cheques which are made payable to customers

'Relevant business or profession'

- an auditor
- a casino
- a dealer in precious metals or stones
- an estate agent
- an external accountant
- an independent legal professional

- a tax adviser
- a trust or company service provider

Definitions of these businesses and professions can be found in the Schedules to the relevant UK regulation for each EU sanctions regime. See the European Union Financial Sanctions (Amendment of Information Provisions) Regulations 2017 which inserted these definitions into the Schedules:

http://www.legislation.gov.uk/ukSI/2017/754/pdfs/ukSI_20170754_en.pdf

5.1.3 What you must report

If you are a relevant institution or relevant business or profession you must report to OFSI as soon as practicable if you know or have reasonable cause to suspect that a person:

- is a designated person
- has committed an offence under the regulations

You are required to report this information, or other matter on which your knowledge or suspicion is based, if it came to you in the course of carrying on your business.

When reporting to OFSI you must include:

- the information or other matter on which the knowledge or suspicion is based
- any information you hold about the person or designated person by which they can be identified

If you know or have reasonable cause to suspect that a person is a designated person and that person is a customer of your institution, you must also state the nature and amount or quantity of any funds or economic resources held by you for that customer.

Examples of the kind of information to be provided to OFSI can be found in Table 5.A.

If you are unsure of your reporting obligations, you should seek independent legal advice.

5.2 UK financial sanctions regimes

The UK's domestic regimes carry similar reporting obligations for relevant institutions to the EU regimes. However, you should note that there is no general obligation to report under the domestic regimes, and that they do not include 'relevant businesses or professions' as part of their reporting requirements.

In spite of this, the obligation to comply with financial sanctions still applies.

The reporting obligations under TAFA 2010 can be found in Chapter 3 of that Act. The reporting obligations under ATCSA 2001 can be found in the Schedule to the Orders made under that act. The Orders can be found on GOV.UK:

<https://www.gov.uk/government/publications/financial-sanctions-uk-freezing-orders>

Designations made under the domestic regimes can be found in the following sections of the consolidated list:

Terrorism and Terrorist Financing

- Which includes designations made under TAFA 2010 (and Council Regulation (EC) No. 2580/2001)

UK Freezing Orders

- Which includes designations made under ATCSA 2001

If you are unsure of your reporting obligations, you should seek independent legal advice.

Table 5.A: Examples of information to be reported

| Reporting Area | Example |
|---|---|
| Person is a designated person | <p>A customer or client of yours is a designated person.</p> <p>You must provide OFSI with any information you hold about the designated person by which they can be identified.</p> |
| Offences | <p>Exact offences will depend on the particular legislation, but can include:</p> <ul style="list-style-type: none"> • making funds or economic resources available to a designated person (except where an exemption applies or under licence) • dealing with funds or economic resources that must be frozen (except where an exemption applies or under licence) • activities that circumvent an asset freeze • breaches of licensing conditions |
| Funds and economic resources ^a | <p>You must include details of any funds and economic resources that you have frozen.</p> |

| Reporting Area | Example |
|--|--|
| Credits to frozen accounts ^b | <p>A relevant institutions must inform OFSI without delay whenever it credits a frozen account with:</p> <ul style="list-style-type: none"> • payments due under prior contracts • payments made under judicial decisions rendered in an EU member state • funds transferred to an account by a third party |
| <p>^a See Section 3.1.3 of this guide for a definition of what constitutes funds and economic resources. ^b A relevant institution does not need to inform OFSI when it credits an account with interest or other earnings.</p> | |

5.3 How to report

Reports of frozen funds and economic resources, information regarding a designated person, and notifications of credits to frozen accounts should be emailed to: ofsi@hmtreasury.gsi.gov.uk.

Reports regarding suspected breaches should be submitted to OFSI using the form on GOV.UK: <https://www.gov.uk/guidance/suspected-breach-of-financial-sanctions-what-to-do>

OFSI will handle all information it receives in accordance with the relevant sanctions legislation and the Data Protection Act 1998.

All reports to OFSI involving a designated person should include their 'Group ID' reference number. The Group ID is a unique identifier for a designated person which can be found in their entry on the consolidated list.

5.4 Legal professional privilege

Both EU regulations and the UK domestic regimes make clear that the reporting requirements do not apply to information to which legal professional privilege is attached. However, OFSI expects legal professionals to carefully ascertain whether legal privilege applies, and which information it applies to. OFSI may challenge a blanket assertion of legal professional privilege where it is not satisfied that such careful consideration has been made.

5.5 Reporting offences

A relevant institution or relevant business or profession that fails to comply with its reporting obligations, as set out in the relevant legislation, will be committing an offence, which may result in a criminal prosecution or a monetary penalty.

5.6 OFSI's powers to require information from you

OFSI has statutory powers to require you to provide information. This includes powers to:

- establish the extent of funds and economic resources belonging to, owned, held or controlled by or on behalf of a designated person
- request information concerning any disposal of such funds or economic resources
- monitor compliance or detect evasion
- obtain evidence of the commission of an offence
- require the production of documents

When requesting information from you, OFSI will specify:

- the legislative basis for the request
- the time period within which the information is to be provided to us

In some circumstances OFSI may specify the manner in which the information should be provided.

Failure to comply with a request for information, including by providing false information, destroying documents or, otherwise intentionally obstructing OFSI when exercising these powers is a criminal offence and may result in a criminal prosecution or a monetary penalty.

5.7 Other reporting obligations

Your obligation to report to OFSI is in addition to any other non-financial sanctions reporting obligations you may have. These could include reporting required by your regulator (if you have one), or submitting Suspicious Activity Reports (SARs) to the National Crime Agency (NCA) under the Proceeds of Crime Act 2002.

In some cases, you may have specific obligations to report under section 19 of the Terrorism Act 2000.

Please note that reporting to your regulator or submitting a SAR does not meet your reporting obligations under financial sanctions. If you have information to report regarding financial sanctions, this must be sent to OFSI: ofsi@hmtreasury.gsi.gov.uk.

If you are unsure of your reporting obligations, you should seek independent legal advice.

6 Exemptions and licensing

Specific exemptions and licensing powers are generally contained in financial sanctions legislation and can allow otherwise prohibited transactions to take place in some circumstances.

A licence is a written authorisation from OFSI permitting an otherwise prohibited act.

An exemption to a prohibition applies automatically in certain defined circumstances and does not require you to obtain a licence from OFSI.

The following sections provide a general overview of the standard exemptions and licensing grounds found in financial sanctions legislation. The grounds may vary from regime to regime so it is important that you check the relevant, up-to-date legislation.

6.1 Crediting frozen accounts

Asset freezing legislation generally permits a person to make the following payments into a frozen account without the need for a licence from OFSI, so long as those funds are frozen after being paid in:

- any interest or earnings on the account
- any payments due to a designated person under contracts, agreement or obligations that were concluded or arose before the date the person became sanctioned

The legislation also generally permits, without the need for a licence, a relevant institution to credit a frozen account with payments from a third party, provided that the incoming funds are also frozen and that it informs OFSI of the transaction without delay (see Chapter 5 of this guide).

6.2 Licensing overview

It's important to note that OFSI can only issue licences where there are specific and relevant licensing grounds enabling us to do so, and where the conditions in those grounds have been met. The available grounds can be found in the legislation underpinning each particular financial sanctions regime:

<https://www.gov.uk/government/collections/financial-sanctions-regime-specific-consolidated-lists-and-releases>

OFSI interprets licensing grounds in EU and UK sanctions regimes narrowly, which is in keeping with relevant case law and takes into account the way in which other EU member states approach them. This means that OFSI will only consider licensing those activities that fall within the licensing grounds set out in the legislation.

See Table 6.A for more information on OFSI's approach to the licensing grounds generally found in EU financial sanctions regimes.

Licences cannot be issued retrospectively. If you have carried out an act that required a licence, without having obtained one beforehand, you may have breached financial sanctions and you should consult Chapters 5 and 7 of this guide immediately.

A licence from OFSI does not compel any party, including the financial institutions involved in the payment route, to take any action, nor does it confirm that the proposed transaction is lawful aside from financial sanctions considerations.

6.3 Licensing grounds: EU regimes

The following table sets out the licensing grounds commonly found in EU regulations as well as OFSI's approach to them.

Table 6.A: OFSI's approach to licensing grounds

| Licensing ground | OFSI's approach |
|---|--|
| Basic needs | <p>EU and UK case law provides that basic needs involve those expenses which are necessary to ensure that the very existence of the designated person or dependent family members is not imperilled. These needs will be different if the designated person is a legal entity rather than a natural person.</p> <p>Basic needs licences do not enable a designated person to continue the lifestyle or business activities they had before they were designated.</p> |
| Legal fees and disbursements | The fees must be reasonable and payments of fees and disbursements must relate specifically to the provision of legal advice or involvement in litigation or dispute resolution. |
| Fees or service charges for routine holding or maintenance of frozen funds or economic resources | <p>The fees must be for routine activities.</p> <p>Re-design, refurbishment or redevelopment to improve value is generally not covered.</p> |
| Satisfaction of prior court judgements or arbitration decisions against the designated person or entity | The judgment/decision must have been given before the date of designation and cannot be for the benefit of a designated person. |
| Satisfaction of prior contractual obligations of the designated person | The contract or obligation must have arisen prior to the date of designation and cannot result in funds or economic resources being made available to the designated person. |

| Licensing ground | OFSI's approach |
|------------------------|---|
| Extraordinary expenses | <p>This must be an expense of the designated person and it must be extraordinary in nature (so not recurring or easily anticipated).</p> <p>It cannot be used where other grounds are more suitable or as a way of avoiding the clear limitations of those other grounds.</p> |

6.4 Licensing grounds: domestic regimes

The UK's domestic regimes do not have specific licensing grounds and instead contain a general power to issue licences.

OFSI will exercise these powers according to the provisions of the domestic regime in question, taking into account any relevant law and the stated policy objectives of each regime.

The domestic regimes are set out in the following pieces of legislation:

- Terrorist Asset-Freezing etc. Act 2010 (TAFSA 2010)
- Anti-Terrorism Crime and Security Act 2001 (ATCSA 2001)
- Counter-Terrorism Act 2008 (CTA 2008)

6.5 General licences

OFSI has issued a small number of general licences under following financial sanctions regimes:

Terrorism and Terrorist Financing

- TAFSA 2010
- Council Regulation (EC) No 2580/2001

The ISIL (Da'esh) and Al-Qaida organisations

- Council Regulation (EC) No 881/2002.

These general licences apply to these two sanctions regimes only, and then only in the specific circumstances set out in each licence.

These general licences can be used without making an application to OFSI, although they do carry a mandatory reporting requirement to OFSI if they are used.

Table 6.B: OFSI general licences

| Financial sanctions regime | Area licensed |
|---|---|
| Terrorism and Terrorist Financing | Provision of insurance |
| Terrorism and Terrorist Financing, and ISIL (Da'esh) and Al-Qaida organisations | Temporary provisions under insurance policies |
| Terrorism and Terrorist Financing, and ISIL (Da'esh) and Al-Qaida organisations | Legal aid |
| Terrorism and Terrorist Financing, and ISIL (Da'esh) and Al-Qaida organisations | Legal expenses paid by a third party |

These general licences can be found on GOV.UK:

<https://www.gov.uk/government/publications/counter-financing-of-terrorism-general-licences>

6.6 Applying for a licence

You must provide evidence to support an application and demonstrate that all criteria of the relevant licensing ground (where applicable) have been met. OFSI usually requires input from the designated person for a licence to be issued. Incomplete applications will not be considered and will be returned to the applicant for re-submission.

OFSI will endeavour to assist applicants who contact us to understand the licensing process as well as our evidentiary requirements. However, we cannot provide legal advice and applicants should consider taking independent legal advice before applying, especially for complicated matters.

OFSI expects that legal and professional advisers will have fully considered the relevant law and formed a view about an application before approaching OFSI for guidance or submitting an application.

OFSI does not charge for licences.

6.6.1 Submitting an application

Applicants should use the form available on GOV.UK to apply for a licence from OFSI:

<https://www.gov.uk/guidance/licences-that-allow-activity-prohibited-by-financial-sanctions>

Applicants will generally be required to provide:

- the licensing ground(s) being relied upon in the application including supporting arguments
- full information on the parties involved in the proposed transaction, e.g. the:
 - designated person(s)
 - any financial institution(s) involved (e.g. remitter, correspondent, beneficiary)

- ultimate beneficiary of the transaction
- the complete payment route including account details
- the amount (or estimated amount) of the proposed transaction

You should always refer to the up-to-date version of the legislation that imposes the relevant sanction regime relevant. Links to these can be found on the relevant financial sanctions regime pages:

<https://www.gov.uk/government/collections/financial-sanctions-regime-specific-consolidated-lists-and-releases>

Box 6.A: Tips for applicants

- 1 Read this guide and the up-to-date version of the relevant legislation
- 2 Identify the appropriate licensing ground
- 3 Use the licence application form on our website
- 4 Provide a clear description of the payment chain and all parties involved
- 5 Ensure that all relevant information and supporting evidence is included with the application
- 6 Apply for the licence well before you need it
- 7 Be available to fully engage with OFSI on your application
- 8 Where applicable, make sure your bank is aware of the situation

6.6.2 Counter-terrorism regimes

If you are seeking a licence under either the Terrorism and Terrorist Financing or the ISIL (Da'esh) and Al-Qaida organisations regime, you should email OFSI (ofsi@hmtreasury.gsi.gov.uk) setting out the full details of the proposed transaction.

OFSI's licensing policy for the counter-terrorism regime can be found on GOV.UK:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/511692/Terrorism_licensing_policy_revised.pdf

Knowingly or recklessly providing false or misleading information in any licence application is taken very seriously. Doing so may result in a criminal prosecution or a monetary penalty.

6.7 Licensing timeframes

OFSI aims to engage with applicants on the substance of completed applications within four weeks. This does not mean that a licence will necessarily be issued within four weeks.

A completed application is one where OFSI has received all the information we need to enable us to make a decision about whether there is a legal basis to grant a licence. We will send back incomplete applications or ask you for additional information until we are satisfied that your application can be considered complete.

Please note that failure to submit all of the necessary information requested by OFSI will result in delays to your application being processed.

You should not assume that a licence will be granted or engage in any activities prohibited by financial sanctions until you have received an appropriate licence from OFSI.

6.7.1 Urgent and humanitarian cases

OFSI will prioritise urgent and humanitarian cases, i.e. cases that involve a risk of harm or a threat to life.

If a request is urgent, please say so when submitting your application and explain why.

6.7.2 Notification and approvals

Please note OFSI may need to notify, or in some cases seek approval from, either the European Commission or the relevant United Nations Sanctions Committee before we can issue a licence. These requirements are set out in the relevant UN Security Council Resolutions and EU regulations.

These requirements will lengthen the processing time for such licence applications and may in some cases prevent a licence from being issued.

6.8 Amending licences

Requests for an amendment, variation or extension of a licence should be submitted to OFSI by email as soon as it's apparent that a change is required. Full supporting information and arguments should be provided.

If multiple amendments need to be made to a single licence you should group these together into a single request to OFSI.

OFSI aims to engage with applicants on the substance of completed amendment requests within four weeks. This does not mean that an amended licence will necessarily be issued within four weeks. Nor can OFSI guarantee that last-minute amendment, variations or extensions will be authorised within the requested timeframe.

You must not continue to carry out any action(s) which are not authorised by a licence. For example, if a licence has expired or you have reached a cap on permitted spending, further activity will not be lawful.

Any such actions will be considered a breach of financial sanctions and may result in a criminal prosecution or monetary penalty.

6.9 Refusal of a licence

If OFSI refuses to issue a licence, the proposed transaction or activities will not be lawful. OFSI will write to you giving reasons for refusing your application.

We may also refuse your application if you do not require a licence for the proposed transaction or activities.

If you have had an application for a licence refused you have the following options:

- ask OFSI to review its decision
- re-apply with new or supplementary evidence or new supporting arguments
- seek to judicially review the decision

Under TAFSA 2010, there is a specific provision which means that you need to apply to the High Court, or Court of Session in Scotland, for a review of the decision (Section 27 of TAFSA 2010).

You may wish to seek independent legal advice before taking the matter further.

6.10 Other jurisdictions

Licences issued by OFSI only apply to actions subject to UK jurisdiction. If the prohibited activity also comes under another country's jurisdiction you should consider what other licences you may need to comply with their requirements. For instance, if a payment will pass through several jurisdictions you may need to apply for a licence from each of those countries' competent authorities.

A list of the competent authorities for EU member states is annexed to EU sanctions regulations. For example:

http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOL_2015_257_R_0001&from=EN

6.11 Complying with a licence

Licences issued by OFSI are not published. However, OFSI expects licence holders to share licences with other parties to the transaction and to answer questions about the permissions granted in the licence in the first instance.

However, if you are unsure on whether the action you propose to undertake is within the terms of a licence you can seek clarification from OFSI. We aim to respond to such queries within two weeks of receipt.

If you are unsure about the validity of a licence that a designated person or their representative has shown to you, you should email a copy of the licence to OFSI: ofsi@hmtreasury.gsi.gov.uk. We will aim to confirm whether it matches the licence in our records within one working day.

You should not assume that OFSI agrees with your interpretation of the licence until you receive a response from us.

Any conduct outside the terms of the licence, such as use of a different payment route or payments in excess of a specific payment cap, is a breach of financial sanctions, and may result in a criminal prosecution or monetary penalty.

6.12 Reporting conditions

Licences issued by OFSI come with conditions that often require information to be reported to OFSI within a specific time frame. A failure to comply with these reporting requirements may result in the revocation, suspension or termination of a licence or further restrictions being included in it. It may also result in a criminal prosecution or monetary penalty.

Legal advisors should proactively engage with their clients about the need to provide information to meet the reporting requirements in licences.

6.13 Travel to the UK

OFSI expects all designated persons planning to visit the UK to apply for an appropriate licence authorising any proposed use of funds or economic resources in order to support themselves while in the country.

If a visa application is also required, the licence application should include a request for permission to pay any visa application fees. The granting of a licence does not guarantee that the person will be granted a visa.

The requirement to obtain a licence before travelling may also apply to non-designated persons visiting the UK who are funded, in whole or in part, by a designated person.

OFSI works closely with other parts of government to ensure that designated persons travelling to the UK have an appropriate licence for the duration of their stay in the UK.

Anyone dealing with funds that should be frozen, or who makes economic resources available to a designated person without an appropriate licence will be committing an offence, which may result in a criminal prosecution or a monetary penalty.

Please note that you should apply for a licence at least four weeks before travelling, or before applying for a visa, whichever is sooner.

6.14 Export licences

If you import or export goods, you need to consider if financial sanctions apply to you. You may need a licence from OFSI as well as from the UK's Export Control Organisation (ECO):

<https://www.gov.uk/government/organisations/export-control-organisation>

7 Compliance and enforcement

OFSI is responsible for monitoring compliance with financial sanctions and for assessing suspected breaches. It also has the power to impose monetary penalties for breaches of financial sanctions and to refer cases to law enforcement agencies for investigation and potential prosecution.

OFSI works with other parts of government, supervisory bodies and regulators to consider all cases reported to it, sharing relevant information accordingly.

OFSI may share information as prescribed by the relevant sanctions legislation and wider UK legislation, including the Data Protection Act 1998.

7.1 OFSI's approach to compliance

OFSI's assessment of breaches is informed by our overall approach to financial sanctions compliance. This approach covers the whole lifecycle of compliance in respect of financial sanctions. We take a holistic approach to ensure compliance rather than simply waiting until the law is broken and responding to the breach.

Our approach is summarised by our compliance and enforcement model: promote, enable, respond, and change.

- We will **promote** compliance, publicising financial sanctions and engaging with the private sector
 - an effective compliance approach promotes compliance by reaching the right audiences, through multiple channels, with messages they respond to
- We will **enable** compliance by making it easier to comply, and providing customers with guidance and alerts to help them fulfil their own compliance responsibilities
 - an effective compliance approach enables cost-effective compliance, makes it easy to comply and minimises by design the opportunities for non-compliance
- We will **respond** to non-compliance by intervening to disrupt attempted breaches and by tackling breaches effectively
 - an effective compliance approach responds to non-compliance consistently, proportionately, transparently and effectively, taking into account the full facts of the case, and learning from experience to continuously improve our response
- We do these things to **change** behaviour, directly preventing future non-compliance by the individual and more widely through the impact of compliance and enforcement action

While a decision to pursue a criminal prosecution for breaches of financial sanctions ultimately lies with the prosecuting authorities, OFSI will consider the following when initially considering the course of action to take:

- whether the breach was self-disclosed fully and promptly
- the level of cooperation with any inquiries
- action being taken to improve future compliance

7.2 Reporting a suspected breach of financial sanctions

Your reporting obligations to OFSI are set out in Chapter 5 of this guide. Where you know or have reasonable cause to suspect that a breach has occurred this must be reported to OFSI as soon as practicable.

A form is available on GOV.UK to report suspected breaches to OFSI:

<https://www.gov.uk/guidance/suspected-breach-of-financial-sanctions-what-to-do>

7.3 Penalties for breaches of financial sanctions

Breaches of financial sanctions are considered to be a serious criminal offence. The level of penalties for breaches of financial sanctions were recently expanded and, for custodial sentences, uplifted by the Policing and Crime Act 2017.

7.3.1 Custodial sentences

The maximum term of imprisonment for offences relating to EU financial sanctions regimes has been uplifted to bring them in line those in the UK domestic and EU terrorist asset freezing regimes (found in TAFE 2010).

Offences relating to EU financial sanctions now carry a maximum of seven years' imprisonment on indictment (applying to all of the UK) and, on summary conviction, to a maximum of six months' imprisonment in England, Wales and Northern Ireland, and twelve months in Scotland.

Custodial sentences for ATCSA 2001 and CTA 2008 have been similarly uplifted.

For exact penalties, particularly those relating to different parts of the UK, please consult the relevant legislation.

7.3.2 Deferred Prosecution Agreements (DPAs)

Breaches of financial sanctions legislation are included on the list of offences for which a Deferred Prosecution Agreement (DPA) can be made. DPAs are court-approved agreements between an organisation (a corporate body or unincorporated association, but not an individual person) and a prosecutor who is considering prosecuting the organisation for an offence. They only apply to persons in England and Wales.

In order for a DPA to be entered into, the prosecutor must be satisfied that there is sufficient evidence to prove beyond reasonable doubt that a criminal offence has been committed by the organisation. A DPA can be entered into once the organisation is charged with that offence,

with the effect that proceedings are automatically suspended subject to certain conditions. If the conditions of the DPA are breached, the prosecution may resume.

7.3.3 Serious Crime Prevention Orders (SCPOs)

Breaches of financial sanctions are included on the list of offences for which a Serious Crime Prevention Order (SCPO) may be imposed.

SCPOs are imposed by a court on the civil standard of proof and are designed to prevent an individual or organisation from further engaging in serious crime.

A SCPO does not levy financial penalties but may contain targeted prohibitions, restrictions or requirements that the court considers appropriate for the purpose of restricting or disrupting further involvement in serious crime.

7.3.4 Monetary penalties

OFSI has the power to impose monetary penalties for breaches of financial sanctions under powers in the Policing and Crime Act 2017. The value of a monetary penalty may range from 50% of the total breach up to £1m – whichever is the greater value. OFSI takes several factors into account when considering a proportionate penalty value. The value will be based on the facts of each case, with reductions being applied particularly in cases that have been voluntarily disclosed to OFSI.

Please see our guidance on monetary penalties for more information:

<https://www.gov.uk/government/publications/financial-sanctions-faqs>

8 Challenging designations

Those who are subject to financial sanctions can challenge their listing and request their delisting. The financial sanctions will remain in place while the challenge or request is being considered.

8.1 UN listings

For UN listings under the ISIL (Da'esh) and Al-Qaida sanctions regime, a petition for delisting can be made to the UN Office of the Ombudsperson to the ISIL (Da'esh) and Al-Qaida Sanctions Committee. For more information about the Office of the Ombudsperson please see the UN's website:

<https://www.un.org/sc/suborg/en/node/189>

For all other UN listings, a request should be sent to the UN focal point for delisting. More information about the focal point is available on the UN's website:

<http://www.un.org/sc/committees/dfp.shtml>

Alternatively, if you are a UK resident or citizen, you can petition the UK to submit a delisting request to the UN by contacting the FCO's Sanctions Section:

Address: Sanctions Section
International Organisations Department
Foreign and Commonwealth Office
Room E.302
King Charles Street
London
SW1A 2AH

Email: sanctions@fco.gov.uk

8.2 EU listings

To challenge an EU listing, you should contact the EU directly:

Address: Council of the European Union
General Secretariat
DG C 1C
Rue de la Loi/Wetstraat 175
1048 Bruxelles/Brussel
BELGIQUE/BELGIË

Email: sanctions@consilium.europa.eu

8.3 UK listings

For UK listings under the domestic regimes there are avenues of appeal and judicial review within the specific legislation under which the designation is made. Legal correspondence should be sent to:

Address: The Treasury Solicitor
 Government Legal Department
 One Kemble Street
 London
 WC2B 4TS
 DX 123242 Kingsway

8.4 Mistaken identity

If you believe that your assets have been frozen mistakenly, for instance as a result of mistaken identity, you should first contact the institution that froze your assets requesting an explanation, including a request that they identify whom they believe you are a target match for on the consolidated list.

You may be able to refer the matter to the Financial Ombudsman if the institution is covered by this scheme:

<http://www.financial-ombudsman.org.uk/>

9 Glossary

Disclaimer – The following is a general description of terms used throughout this guide. For exact terms used in context, please see the up-to-date version of the relevant legislation. If you are in doubt about any of the below, please contact OFSI or seek independent legal advice.

Asset freeze – A type of financial sanction. Under an asset freeze it is generally prohibited to:

- deal with the frozen funds or economic resources, belonging to or owned, held or controlled by a designated person
- make funds or economic resources available, directly or indirectly, to, or for the benefit of, a designated person
- engage in actions that, directly or indirectly, circumvent the financial sanctions prohibitions

Competent authority – designated national authorities of EU member states who implement financial sanctions. HM Treasury, through OFSI, is the UK's competent authority for financial sanctions.

Consolidated list – list maintained by OFSI containing designated persons subject to financial sanctions.

Dealing with economic resources – generally means using economic resources to obtain funds, goods, or services in any way, including (but not limited to) by selling, hiring or mortgaging them.

Dealing with funds – generally means moving, transferring, altering, using, accessing or otherwise dealing with funds in any way which would result in any change to their volume, amount, location, ownership, possession, character, destination or other change that would enable the funds to be used, including portfolio management.

Designated person (DP) – a person subject to financial sanctions.

Economic resources – generally means assets of every kind – tangible or intangible, movable or immovable – which are not funds but may be used to obtain funds, goods or services.

Exemption – generally found in financial sanctions legislation. An exemption to a prohibition applies automatically in certain defined circumstances and does not require you to obtain a licence.

Funds – generally means financial assets and benefits of every kind, including but not limited to:

- cash, cheques, claims on money, drafts, money orders and other payment instruments
- deposits with financial institutions or other entities, balances on accounts, debts and debt obligations

- publicly- and privately-traded securities and debt instruments, including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures and derivatives contracts
- interest, dividends or other income on or value accruing from or generated by assets
- credit, right of set-off, guarantees, performance bonds or other financial commitments;
- letters of credit, bills of lading, bills of sale and
- documents showing evidence of an interest in funds or financial resources

Goods – generally means items, materials and equipment.

Licence – a written authorisation from OFSI permitting an otherwise prohibited act.

Linking regulations – the UK’s United Nations and European Union Financial Sanctions (Linking) Regulations 2017.

Name match – the situation where a person you are dealing with partially matches the details of a designated person on the consolidated list. Unlikely to be a target match.

OFSI – Office of Financial Sanctions Implementation. Part of HM Treasury and the UK’s competent authority for implementing financial sanctions.

Ownership – the possession of more than 50% of the proprietary rights of an entity or having a majority interest in it. Includes both direct and indirect ownership.

Person – can be a natural person (an individual), or a legal person, body or entity.

Proscription – The Home Secretary’s power to proscribe (ban) an organisation under the Terrorism Act 2000.

Reasonable cause to suspect – refers to an objective test that asks whether there were factual circumstances from which an honest and reasonable person should have inferred knowledge or formed the suspicion.

Statutory instruments (SIs) – also referred to as secondary, delegated or subordinate legislation. A form of legislation that allows an Act of Parliament to be brought into force or amended without Parliament having to amend that Act. For financial sanctions, SIs generally implement enforcement powers for directly applicable EU regulations.

Target Match – the situation where the person you are dealing with matches the details of a designated person on the consolidated list. Likely to be a confirmed match for that person.

UK regulations – See Statutory instruments.

Frequently asked questions (FAQs)

These FAQs set out OFSI's general approach to common questions, taking into account the range of sanctions in place at the time of publication. They don't contain specific guidance for every situation.

You should read these FAQs in conjunction with OFSI's Guide to Financial Sanctions. You should also:

- review the up-to-date legislation that applies in your situation
- consider taking independent legal advice if you are unsure of your obligations

Each case referred to OFSI will be considered on its own facts. If you think that the circumstances of, or legislation relating to, your specific situation produces a different outcome to the answers provided below, you can raise this with OFSI.

References to 'You' in these FAQs are references to all persons to which each section is addressed. Questions are posed from the point of view of those persons.

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Compliance for designated persons

1

1.1. Individuals

1.1.1 Can I be paid interest on my bank account / savings?

Generally, you can be paid interest on your bank account or savings. There tend to be express provisions for financial institutions to do this, provided your account is frozen. Alternatively, an OFSI licence can be issued to permit this.

1.1.2 Can someone pay a cheque or transfer funds into my frozen account?

A person can generally pay a cheque into your frozen account if the payment is made as a result of a contract or obligation which arose before the person was designated. Otherwise, an OFSI licence is needed to make this payment.

1.1.3 Can I have a debit card?

You are not prohibited from having a debit card but its use will only be permitted where there is a relevant exemption or an OFSI licence. It's the financial institution's decision on whether they are willing to give you a debit card or maintain your access to existing debit cards.

If you are designated under the Terrorist Asset-Freezing etc. Act 2010 (TFAFA 2010), you need an OFSI licence to use a debit card.

1.1.4 Can I have a pre-paid card?

You will need a relevant exemption or an OFSI licence to load and use a pre-paid card.

1.1.5 Can I have a credit card?

Any existing credit cards must be frozen. You will need a relevant exemption or an OFSI licence to be given a new credit card or to use any credit card.

If you are designated under TFAFA 2010, you need an OFSI licence to use a credit card.

1.1.6 Can I use vouchers, coupons or rewards points to pay for things?

Vouchers, coupons or reward points are considered to be funds and fall within the asset freeze. Therefore, you need an exemption or an OFSI licence to accept and use vouchers, coupons or reward points.

If you are designated under TFAFA 2010, you need an OFSI licence to use vouchers, coupons, or reward points.

1.1.7 I am a joint signatory on an account. Will it be frozen too?

Any account you are a joint signatory on is likely to be frozen, at least initially, because all funds owned, held or controlled by you must be frozen.

The financial institution which holds the account will need to consider the following before it decides whether to allow another signatory to access the funds in the account:

- the ownership of the funds
- the level of control you exercise over the funds
- whether - and to what degree - the funds will be made available to you, or for your benefit, if they use the funds in this way or release the funds to other non-designated signatories to the account
- whether there is an OFSI licence

1.1.8 Can I let someone pay a bill for me?

Generally, you will need an exemption or an OFSI licence to let someone else pay a bill for you, where payment of the bill means that you receive a financial benefit. That includes the benefit of not having to pay the bill.

For example, it is generally permitted for someone to pay for your share of a meal without a licence. However, paying your monthly utility bill will require an OFSI licence.

If you are designated under TAFSA 2010, and receive a significant financial benefit as the result of such a payment, you need an OFSI licence before the payment can be made.

1.1.9 Can I take out insurance?

Generally, you can take out insurance.

If you are designated under TAFSA 2010, there is a general licence in place to allow insurance to be provided to you. The payment of claims is permitted where the payment is exempt or an OFSI licence has been granted.

If you are subject to any other asset freeze, providing insurance is not prohibited, but you need an exemption or to apply for an OFSI licence to pay premiums or receive claim payments.

1.1.10 Can I invest my funds?

Generally you can't actively invest your funds, or move them from one account to another, to get a better rate of interest.

The exemptions or existing licensing grounds found in EU regulations are unlikely to allow such activity to be permitted.

Applications for licences in relation to asset freezes imposed by UK law will need to demonstrate that such activity is in line with the licensing policy for that regime.

1.1.11 I jointly own an asset. Can I transfer my ownership?

You can't transfer ownership of an asset without an exemption or an OFSI licence.

1.1.12 Can I avoid paying my debts?

You can apply for an OFSI licence to make payments to cover obligations incurred prior to your designation. Therefore, if an OFSI licence is granted, you can't use the fact that your assets are frozen for not paying your debts.

If you enter into a contract after designation without having an OFSI licence, you may be breaching sanctions.

If you don't have an OFSI licence and you fail to tell the provider of the goods or services about the restrictions on your ability to pay, you may also have committed fraud.

1.1.13 Can I take employment?

Financial sanctions do not prevent you from taking employment. However, you need an exemption or an OFSI licence in order to be paid and those funds need to be paid into a frozen account.

Under Tafa 2010, there is an exemption to the prohibition on making funds or financial services available for the benefit of a designated person. This includes the payment of social security benefits to a non-designated person, whether or not the payment is made in respect of the designated person (see Section 16 of Tafa 2010).

1.1.14 Can I make use of my own assets, e.g. a car?

You may use your assets for your own personal use but not to generate income unless you have an OFSI licence.

For example, you may use your car to do grocery shopping and your house as your personal residence. However, you can't use your car to generate income, e.g. as a courier, or rent your house to someone, without an OFSI licence.

1.1.15 Can I use frozen funds to keep multiple houses open and ready for me to visit?

All asset freezes will enable you to maintain one residence for your use.

If you are subject to an asset freeze imposed by EU regulations, it is OFSI's view that the basic needs licensing ground only requires one residence to be maintained for use.

Licences may be granted for routine maintenance and fees associated with holding other properties. However, this is limited to what is strictly necessary to prevent the property from deteriorating.

If you are subject to an asset freeze imposed by UK law, you need to demonstrate that such activity is in line with the licensing policy for the regime.

1.1.16 Can I use frozen funds to pay for private education for my children?

Your ability to pay for private education for your children may be limited.

If you are subject to an asset freeze imposed by EU regulations, it is OFSI's view that, generally, private education will not be considered to be a basic need where there is a suitable state school alternative available.

There may be licensing grounds which permit the payment of private school fees to the end of any current contract, or to the end of the academic year, to minimise disruption to the child.

OFSI will judge licence requests on a case-by-case basis, taking into account the needs of the children.

If you're subject to an asset freeze imposed by UK law, you need to demonstrate that such payments are in line with the licensing policy for the regime.

1.1.17 Can I use frozen funds to go on holiday?

You need an OFSI licence to use frozen funds to pay for a holiday.

If you wish to use frozen funds, you need to apply for a licence based on the available licensing grounds.

1.1.18 Can I use un-frozen funds from outside of the EU in the UK?

You need a licence because all your funds, or funds made available to you, must be frozen when they enter the EU.

OFSI considers applications for licences to use funds in these circumstances on the same basis as if the funds had initially been held in the UK.

1.1.19 Can I use frozen money in the UK to pay for things outside of the EU?

You may be permitted to use frozen funds in the UK to pay for expenses outside of the EU under an OFSI licence.

Generally, OFSI will require you to demonstrate that you don't have access to unfrozen funds outside of the EU to meet those expenses before we decide whether to issue a licence.

1.1.20 What reporting obligations apply to me?

OFSI may ask you for information about your assets and your financial activities as part of our role in implementing financial sanctions. Specific reporting requirements may also be included in any licence you are issued. For example, you may be required to provide a copy of your bank statement and all receipts each month.

Failure to comply with reporting requirements on time may result in a criminal prosecution or a monetary penalty.

More information on reporting requirements can be found in Chapter 5 of this guide.

1.2 Entities and organisations

1.2 If your business is subject to an asset freeze, its continued existence is not prohibited but its operations are strictly limited under the asset freeze.

1.2.1 Can I still pay my suppliers and staff?

You need an OFSI licence to pay existing staff and suppliers.

The asset freeze may limit the number of staff and suppliers you continue to need as well as your ability to hire new staff or engage new suppliers.

1.2.2 Can I still receive payments from my customers?

Payments due under contracts made prior to your designation can generally be made into your frozen account where there is a relevant exemption to this effect.

Dealings that your business has with customers, after designation, will generally need an OFSI licence. The extent to which you are able to operate your business under the asset freeze will be more restricted than prior to your designation. This is likely to limit the amount of activity you can undertake with new customers.

1.2.3 Can I still receive goods from my suppliers?

You may be able to obtain an OFSI licence, in limited circumstances, to receive goods from your suppliers. These circumstances are likely to be limited to ensuring that your business's continued existence is not imperilled.

1.2.4 Can I invest my profits?

Generally, your business won't be able to actively invest its profits or move funds from one account to another in order to simply get a better rate of interest.

If the nature of the business which has been designated is a wealth fund or investment business, OFSI's view is that limited portfolio management may be permitted, under the 'basic needs' licensing ground, to ensure that the business is not imperilled.

Applications for licences in relation to asset freezes imposed by UK law will need to demonstrate that such activity falls under a relevant licensing ground for the regime.

1.2.5 Can I pay dividends to shareholders?

You may be able to pay dividends to shareholders under an OFSI licence.

1.2.6 Can I issue new equity or debt?

If payments relating to debt or equity issues are due under obligations arising prior to your business' designation, payments may be made into your frozen account without a licence where there is a relevant exemption.

You need an OFSI licence to issue new equity or debt.

The existing licensing grounds under asset freezes imposed by EU regulations, and licensing policy for asset freezes imposed by UK law, are unlikely to permit the issuing of new equity or debt except in the most exceptional circumstances.

1.2.7 Can my business' shares be traded by third parties?

Where your business' shares are owned or controlled by non-designated persons, it is not prohibited for those third-parties to trade those shares, provided that the proceeds of the sale or shares are not made available to the business.

1.2.8 Can I maintain my business premises?

Your ability to use business premises to generate income will be limited as a result of the asset freeze.

You need an OFSI licence to enable payments to be made, and activities undertaken, to ensure that business premises remain safe.

OFSI considers that existing licensing grounds under asset freezes imposed by EU regulations, and licensing policy for asset freezes imposed by UK law, are unlikely to permit significant refurbishment for presentational or business promotion reasons.

1.2.9 Can I manage a property portfolio?

You need an OFSI licence to manage a property portfolio.

The existing licensing grounds in relation to asset freezes imposed by EU regulations are unlikely to allow such activity to be permitted.

However, if the nature of the business which has been designated is property management, OFSI's view is that limited portfolio management may be permitted under the 'basic needs' licensing ground, to ensure that the business is not imperilled.

Applications for licences in relation to asset freezes imposed by UK law need to demonstrate that such activity is in line with the licensing policy for the regime.

1.2.10 Can I obtain insurance?

Generally, you can take out insurance.

If you're designated under the Terrorist Asset-Freezing etc. Act 2010 (TAFSA 2010), there is a general licence that allows insurance to be provided to you. The payment of premiums, however, will require an OFSI licence.

If you are subject to any other asset freeze, the provision of insurance is not prohibited. However, you need an OFSI licence to pay any premiums and for receipt of any claims payment.

1.2.11 As a financial institution which is subject to sanctions, can I continue to operate accounts for customers?

You will need an OFSI licence to release funds to customers.

1.2.12 What reporting obligations apply to me?

OFSI may ask you for information about your assets and your financial activities as part of its role in implementing financial sanctions. Specific reporting requirements may also be included in any licence you are issued. For example, you may be required to provide a copy of your bank statement(s) and all receipts each month.

Failure to comply with reporting requirements may result in criminal prosecution or a monetary penalty.

More information on reporting requirements can be found in Chapter 5 of this guide.

Compliance for family, friends and members of the public

2

If you undertake an act prohibited by an asset freeze and, at the time you did so, you knew or had reasonable cause to suspect that the act was prohibited, you have breached financial sanctions and may face criminal prosecution or a monetary penalty.

If you are unsure about your obligations, you should consider seeking independent legal advice or contact OFSI.

2.1 Can I give or lend money to a designated person?

You almost certainly need an OFSI licence.

2.2 Can I give or lend money to a family member of a designated person?

You can give or lend money to a family member of a designated person. However, you must satisfy yourself that the money is not going to be given to the designated person or used for their significant financial benefit.

If you give money to a person who is financially dependent on the designated person, to discharge an obligation of the designated person, you would be giving the money for the benefit of the designated person.

If the designated person would receive a significant financial benefit from you giving money to a family member of the designated person, it is likely that you will need an OFSI licence.

2.3 Can I give a designated person a gift?

You cannot give a gift of cash, vouchers or other funds without an OFSI licence.

OFSI's view is that if the gift is an economic resource, e.g. a tangible good, which is of a low value and for personal consumption, it will not breach the asset freeze. Examples of such gifts could include a book, an item of clothing, a box of chocolates or a bunch of flowers.

However, if the items are of a higher value or could be used or sold onward to generate income, e.g. a theatre/sporting ticket or a mobile phone, you will require an OFSI licence.

2.4 Can I give a gift to a family member of a designated person?

You can give a gift to a family member of a designated person. However, you must satisfy yourself that the gift is not going to be given to or used for the significant benefit of the designated person.

If the gift is of significant value, or would normally be something that the designated person is responsible for providing to a person who is financially dependent on them, this

may constitute the indirect making available of funds or economic resources for which you require an OFSI licence.

For example, the one-off purchase of a toy or clothing for a child that a designated person is financially responsible for is likely to be permitted without an OFSI licence. However, purchasing an item of furniture, or a whole season's worth of clothing for the child, will require an OFSI licence.

2.5 Can I loan something to a designated person?

You can loan an item to a designated person without an OFSI licence if the item is not funds and is for personal use by the designated person, unless the extent or value of the loan is significant.

However, if the item represents a significant benefit to the designated person or can be used to generate income, an OFSI licence is required.

For example, you could lend a designated person a lawn mower for the day to mow their grass but not for use in a gardening business.

2.6 Can I give a designated person a meal or a drink?

You can give or pay for a meal or a drink for a designated person's personal consumption. However, if you are regularly providing meals to a designated person or buying them groceries, this requires an OFSI licence.

2.7 Can I pay for a designated person's travel or give them my Oyster card?

You need an OFSI licence because an Oyster card is a pre-paid card and equates to the provision of funds.

You need an OFSI licence to pay for a designated person's travel if they would receive a significant financial benefit as a result.

For example, you may make a one-off payment for a local bus fare or day tube pass without an OFSI licence. However, long-distance travel, weekly tickets or repeated payments for short trips require an OFSI licence.

2.8 Can I pay for a designated person's accommodation?

You probably need an OFSI licence as this may represent the indirect provision of funds to the designated person.

2.9 Can I let a designated person stay at my house?

You may allow a designated person to stay at your house for a temporary period without an OFSI licence. However, you should contact OFSI in such circumstances.

OFSI also considers that allowing a person to share your hotel room or similar accommodation that you have paid for, on a temporary basis, doesn't require a licence, provided you're staying there as well.

However, you need an OFSI licence if you are providing access to accommodation to a designated person for free over a prolonged period of time.

2.10 I work for a designated person. What do sanctions mean for me?

Your employer will need an OFSI licence to pay your salary and expenses. You also need to be careful that your actions at work do not breach any of the conditions of the asset freeze.

The continued operation of their business will be restricted by the terms of licences granted. If you are involved in ordering stock or supplies, agreeing contracts or making payments, you should familiarise yourself with the terms of any OFSI licence in place for the business to ensure you comply with the licence. Failure to comply with the terms of the licence may result in criminal prosecution or a monetary penalty.

You are not permitted to make payments on behalf of your employer from your own funds while they are in the process of obtaining licences.

2.11 I bought goods from a designated person. Can I still receive them?

The goods may constitute an economic resource. If they are still owned or controlled by the designated person, you need an OFSI licence to allow the goods to be sent to you.

2.12 I owe a designated person money under a contract agreed before they were designated. Can I pay them back?

You may be able to make a payment due as a result of obligations arising prior to the person being designated, as long as the:

- payment is into a frozen account
- relevant sanctions regime contains a relevant exemption

2.13 A designated person owes me money. Can I get it back?

You need an OFSI licence to allow the designated person to pay you.

There are clear licensing grounds for such payments where the obligation to make the payment arose before the person was designated.

If you entered into a contract with a designated person after their designation, and without an OFSI licence in place, you should contact OFSI for advice.

An OFSI licence does not compel a person to make a payment. If the designated person does not wish to pay you, you may need to take legal action to enforce the debt.

Instituting legal action is not prohibited by sanctions. However, you may need an OFSI licence to enforce any judgement or settlement agreement.

2.14 A designated person is suing me for not completing on a contract. How can I respond to this claim and still comply with sanctions?

How sanctions apply to your situation will depend on the exact circumstances of the claim and you should consider taking independent legal advice.

You may be able to make a payment into a frozen account of the designated person for obligations arising under a contract prior to them being designated, if the relevant sanctions regime contains such an exemption.

An OFSI licence granted in respect of the contract would enable you to complete on the contract.

If you do not want to complete on the contract, or are in dispute about whether you have completed the contract, it is not a breach of sanctions for the designated person to bring a claim against you.

However, they would need an OFSI licence to pay legal representatives or to enforce any judgement in their favour which requires you to make funds or economic resources available to them.

If the designated person is subject to an asset freeze implemented by EU regulations, you can't incur liability for failing to undertake an action, if financial sanctions prevent you from undertaking that action. This protection will not apply where an OFSI licence is available to allow you to undertake that action.

2.15 I am a joint-signatory of an account with a designated person. Can I still access the funds?

Your joint account is likely to be frozen - at least initially - because all funds owned, held or controlled by a designated person must be frozen.

The financial institution needs to consider the following before they can decide whether to allow you to access the funds in the account:

- the ownership of the funds
- the level of control the designated person exercises over the funds
- whether and to what degree funds will be made available to, or for the benefit of, the designated person if the funds are released to you
- whether there is an OFSI licence

Where joint-ownership or control applies, you require an OFSI licence to access the funds.

2.16 I jointly own an asset with a designated person. Can I sell my share?

You are likely to be able to legally sell your share. However, given the complexities of jointly holding assets with a designated person, you should consider taking independent legal advice prior to entering into any agreement to dispose of your share.

OFSI considers that existing licensing grounds under asset freezes, imposed by EU regulations, are unlikely to permit the sale of your share to:

- the designated person
- a third party who has agreed to hold it for the benefit of the designated person

For domestic asset freezes imposed by UK law, an application for a licence would be considered on a case-by-case basis.

2.17 I own shares in a designated person. Can I sell those shares?

You can sell your shares on the secondary market without an OFSI licence provided that the sale will not result in funds or economic resources being made available to the designated person.

OFSI considers that existing licensing grounds under asset freezes imposed by EU regulations are unlikely to permit the sale of your share to:

- the designated person or
- a third party who has agreed to hold it for the benefit of the designated person

For domestic asset freezes imposed by UK law, an application for a licence would be considered on a case-by-case basis.

2.18 I own shares in a designated person. Can they pay me a dividend?

The designated person needs an OFSI licence to pay you a dividend.

As the asset freeze restricts the manner in which the business can operate after designation, the ability to pay dividends may also be limited.

2.19 I have a licence but my bank won't process the payment. What can I do?

An OFSI licence does not compel any party to make a payment. If the bank has not seen your licence, it may help if you show it to them.

When you are doing business with designated persons, you should talk to your bank about the business they are willing to transact through your accounts under an OFSI licence.

2.20 What reporting obligations apply to me?

When a person is designated by the EU, the EU measure will impose a requirement to immediately supply information that would facilitate compliance with the measure. The requirement applies to all persons, and not just the designated person.

In respect of financial sanctions, you must provide information to OFSI, including information about the funds and economic resources that have been frozen.

UK regulations, which enforce EU regulations, set out specific reporting obligations for a 'relevant institution' and a 'relevant business or profession'. See Chapter 5 of the guide for more information.

For all regimes, OFSI may request information from you to:

- establish the extent of funds and assets belonging to a designated person
- monitor compliance and detect evasion
- obtain evidence of the commission of an offence

More information on reporting requirements can be found in Chapter 5 of this guide.

Specific reporting requirements will often be included in licences. Failure to comply with an OFSI request for information may result in a criminal prosecution or a monetary penalty.

If you are unclear on what you need to provide to OFSI, please contact us or seek independent legal advice.

3

Compliance for businesses and financial institutions

3.1. Business in general

3.1 How do I manage my sanctions risk?

If you undertake an act prohibited by financial sanctions and, at the time you did so, you knew or had reasonable cause to suspect that the act was prohibited, you have breached financial sanctions and may face criminal prosecution or a monetary penalty.

OFSI's view is that financial sanctions are generally widely publicised and that businesses, particularly those operating internationally, will have reasonable cause to suspect that sanctions might be relevant to them. Therefore, they won't be able to avoid liability simply by failing to consider their sanctions risks.

OFSI expects all businesses who engage in activities, where financial sanctions apply, to stay up-to-date with the sanctions regimes in force, to:

- consider the likely exposure of their business to sanctions
- take appropriate steps to mitigate those risks, taking into account the specific nature of their activities

It is important to remember, in this context, that designated persons live and operate in the UK.

While anti-money laundering and anti-corruption systems and controls can be integrated with your sanctions compliance systems, there are important differences in terms of the:

- lists to be considered
- specific prohibitions which also need to be expressly considered

OFSI does not require businesses to buy particular software to screen against the sanctions lists. Businesses may find it cost-effective to use specialised software from third parties where, for example, the business is of the view that considerable checking against the OFSI consolidated list is required.

The consolidated list does not currently have a fuzzy-matching search facility although one will be introduced later this year. However, standard direct search tools can be used when the lists are in Excel, PDF and HTML formats.

If you decide that individual checks using an e-verification provider or screening software is appropriate for your business, you should understand its capabilities and limits and ensure that it is tailored to your business needs and risk profile. Some issues to consider include:

- does the search facility include the OFSI consolidated list?
- how often does the search facility or screening software update the list?

- does the search facility or screening software offer fuzzy matching, enabling differences in spelling, name reversal and number removal to be identified?

If you are unsure what systems and controls you should have in place for your specific business to mitigate your sanctions risk, you should consider taking independent legal advice.

3.1.1 Can I talk to my customers, contractors or suppliers about sanctions?

You can discuss sanctions with your customers, contractors and suppliers.

There are no 'tipping off' provisions in relation to sanctions which prevent you discussing sanctions compliance with any person. In most cases, the fact that a person is subject to sanctions is a matter of public record.

If you have been: informed by OFSI that a person is subject to a designation under TFAA 2010; and that OFSI has restricted those notified of the designation and specified that information contained in it is to be treated as confidential, you must:

- comply with the restrictions in Section 10 of that Act and
- not disclose the confidential information without lawful authority

For example, you would have lawful authority to disclose the information to the limited extent that disclosure (for example within your organisation) is necessary to give effect to the asset freeze and ensure compliance with it.

Contravention of this prohibition is a criminal offence.

3.1.2 I bought goods from a designated person. Can I still receive them?

The goods may be an economic resource and, if they are still owned or controlled by the designated person, an OFSI licence is needed for you to receive the goods.

3.1.3 I sold goods to a designated person. Can I still deliver them?

The goods will generally constitute an economic resource and you need an OFSI licence to deliver them.

If the good is of low value and purely for personal consumption - such as food, water or electricity or gas for domestic use - you may provide such goods without a licence.

3.1.4 A designated person owes me money. Can I recover it?

You need an OFSI licence to allow the designated person to pay you.

If the asset freeze relates to a regime implemented at EU level, there are likely to be clear licensing grounds for such payments where the obligations to make the payment arose before the person was designated.

If you entered into a contract with a designated person after their designation without an OFSI licence in place, or the asset freeze relates to any of the domestic asset freeze regimes (including the Terrorist Asset-Freezing etc. Act 2010), please contact OFSI for further advice.

An OFSI licence does not compel a person to make a payment. If the designated person does not wish to pay you, you may need to take legal action to enforce the debt.

Instituting legal action is not prohibited by sanctions. However, you need an OFSI licence to enforce any judgement or settlement agreement.

3.1.5 I owe a designated person money. How can I pay it and still comply with sanctions?

You can make a payment due as a result of obligations arising prior to the person being designated, as long as the payment is into a frozen account where there is an exemption to the asset freeze.

If the debt occurred after the designated person was listed, and in the absence of an OFSI licence, you should contact OFSI for advice.

3.1.6 A designated person is suing me for non-completion of a contract. How can I respond to the claim and still comply with sanctions?

How sanctions apply to your situation will depend on the exact circumstances of the claim and you should consider taking independent legal advice.

You can make a payment to the designated person, in respect of obligations which arose under a contract prior to them being designated, where there is an exemption to the asset freeze.

An OFSI licence granted in respect of the contract will also enable you to complete on the contract.

If you do not want to complete on the contract or are in dispute about whether you have completed the contract, it won't be a breach of sanctions for the designated person to bring a claim against you. However, they will need an OFSI licence to enforce any judgement in their favour.

If the designated person is subject to an asset freeze imposed by EU regulations, you can't incur liability for failing to undertake an action, if financial sanctions prevent you from undertaking that action. This protection will not apply where an OFSI licence is available to allow you to undertake that action.

3.1.7 A designated person owes me money. Can I write it off?

You need an OFSI licence to write off a debt.

3.1.8 A designated person owes me money and I owe them money. Can I exercise the right to set off the debts?

You will need an OFSI licence to set off a debt.

3.1.9 Can I provide goods or services to a designated person?

You will generally need an OFSI licence to make goods available to a designated person.

However, if the goods are of low value and purely for personal consumption, such as food, water, or electricity or gas for domestic use, you may provide these goods without an OFSI licence.

However, if you are regularly providing such goods to a designated person, you require an OFSI licence. In all cases, the designated person needs a licence to pay you for goods.

The provision of services, except in the case of certain financial services, e.g. under TAFE 2010, are not prohibited by sanctions. However, where you provide services on credit, you are creating a debt and will need an OFSI licence to do so.

In all cases, the designated person will need a licence to pay you for services.

3.1.10 Can I issue vouchers, coupons or reward points to a designated person?

You need an OFSI licence to issue or allow the redemption of vouchers, coupons or reward points.

3.1.11 I've made a mistake in how I charged a designated person or realised I gave them poor service. Can I fix the accounting mistake, reimburse my over-charging or give them a refund?

You need an OFSI licence to correct the mistake, reimburse or provide a refund to a designated person.

However, if such actions were expressly permitted under obligations which arose prior to the person's designation and the payment is into a frozen account, an OFSI licence is not required. This is provided the legislation which imposes the asset freeze has the relevant exemption.

3.1.12 I have an existing contract with a designated person. Can the contract be amended or extended?

Whether you may or may not amend a contract will depend on whether the relevant prohibitions would be infringed. We encourage you to seek independent legal advice if you wish to re-consider your contractual position with a designated person.

You may need an OFSI licence to amend or extend an existing contract with a designated person but this may not be possible in all circumstances.

While the contract may not be an economic resource, the amendment or extension of the contract, or the actions it permits, are likely to involve dealing in funds or economic resources.

If the original contract specifically permitted the amendment or extension requested, it may be possible to issue a licence under a prior contract licensing ground. In all other cases, an alternative licensing ground will need to be identified for the amendment or extension to take place.

3.1.13 Can I employ a designated person?

Yes, but you may need an OFSI licence to pay their salary or related expenses. This depends on the terms of their employment and when it began.

We encourage you to seek independent legal advice or contact OFSI if you are unclear about needing a licence.

3.1.14 I jointly own a business with a designated person. Is the whole business subject to sanctions?

You are likely to need an OFSI licence to continue to operate the business. This is because, while the assets of a non-designated person are not frozen, all assets owned, held or controlled by a designated person are frozen. Therefore, in practice, jointly-held assets may be frozen.

Prohibitions also operate to prevent funds or economic resources being made available, directly or indirectly, to the designated person without an exemption or an OFSI licence, which is something that businesses might do.

The extent to which you can operate your business under the asset freeze is more restricted than prior to your co-owners' designation. We encourage you seek independent legal advice, or to contact OFSI, if you are unclear about needing a licence.

3.1.15 I jointly own a business with a designated person. Can I sell my share?

You are likely to be able to legally sell your share to another person. However, given the complexities of jointly holding assets with a designated person, you should:

- consider taking independent legal advice and
- consult with OFSI prior to entering into any agreement to dispose of your share

OFSI considers that existing licensing grounds, under asset freezes imposed by EU regulations, are unlikely to permit the sale of your share to the designated person or to a third party who has agreed to hold it for the benefit of the designated person.

For domestic asset freezes, e.g. TAFE 2010, an application for a licence would be considered on a case-by-case basis.

3.1.16 A designated person owns shares in the business. Can we sell the business?

You need to consider taking independent legal advice given the complexities of assets being part-owned by a designated person. This will depend on the specific ownership structure of the business and the facts of the case.

Generally, any action, which makes funds or economic resources available – directly or indirectly – to or for the benefit of a designated person, is prohibited.

If the sale would make funds or economic resources available to a designated person, OFSI considers that existing licensing grounds, under asset freezes imposed by EU regulations, are unlikely to permit such a sale.

For domestic asset freezes imposed by UK law, an application for a licence would be considered on a case-by-case basis.

3.1.17 I have a licence but my bank will not process the payment. What can I do?

An OFSI licence does not compel any party to make a payment. If the bank has not seen your licence, it may help if you show it to them.

When you are doing business with designated persons, you should talk to your bank about the business they are willing to transact through your accounts under an OFSI licence.

3.1.18 What are my reporting requirements?

When a person is designated by the EU, the EU measure will impose a requirement to immediately supply information that would facilitate compliance with the measure. The requirement applies to all persons, and not just the designated person.

In respect of financial sanctions, you must provide information to OFSI, including information about the funds and economic resources that have been frozen.

UK regulations, which enforce EU regulations, set out specific reporting obligations for a 'relevant institution' and a 'relevant business or profession'. See Chapter 5 of the guide for more information.

For all regimes, OFSI may request information from you to:

- establish the extent of funds and assets belonging to a designated person
- monitor compliance and detect evasion
- obtain evidence of the commission of an offence

More information on reporting requirements can be found in Chapter 5 of this guide.

Specific reporting requirements will often be included in licences. Failure to comply with an OFSI request for information may result in a criminal prosecution or a monetary penalty.

If you are unclear on what you need to provide to OFSI, please contact us or seek independent legal advice.

3.2 Financial sector



3.2.1 What is the role of the FCA in financial sanctions compliance?

The Financial Conduct Authority (FCA), as part of its objective of enhancing the integrity of the UK financial system, requires firms to protect themselves from being misused for financial crime. This includes compliance with UK financial sanctions.

The FCA has published its financial crime guide for firms to illustrate examples of good practice for designing systems to mitigate sanctions risks.

FCA information on financial sanctions is published on their website:

<https://www.fca.org.uk/firms/financial-crime/financial-sanctions>.

3.2.2 Can I close or transfer the accounts of a designated person?

You may need an OFSI licence to close or transfer an account of a designated person.

The existing licensing grounds, imposed by EU regulations, to permit such an action are limited. Whether they can be used will depend on the specific circumstances of the case.

Applications for licences in relation to asset freezes, imposed by UK law, will need to demonstrate that such activity is in line with the licensing policy for the regime.

3.2.3 Can I credit payments from third parties to a frozen account?

Generally, you will be permitted to apply payments from a third party to a frozen account – where it involves a contract, obligation or court order made prior to the person’s designation – without an OFSI licence, provided the asset freeze has the relevant exemption.

You will generally be permitted to apply social security payments to an account, even when they are for the benefit of a person designated under an asset freeze imposed by the Terrorist Asset-Freezing etc. Act 2010 (TAFAs 2010).

You must advise OFSI of any of the above transactions immediately.

You may credit other payments to a frozen account in accordance with an OFSI licence.

3.2.4 Can I apply interest to the account of a designated person?

You can credit interest without an OFSI licence, where the legislation imposing the asset freeze has the relevant exemption.

You can’t apply negative interest rates to the account of a designated person without an OFSI licence.

3.2.5 Can I correct errors in accounts?

If the account was opened prior to designation, and the terms and conditions of operating the account permit you to correct errors, you can make corrections without an OFSI licence.

This is provided that the legislation imposing the asset freeze contains the relevant exemption. Otherwise, you will need an OFSI licence.

You must advise OFSI of the transaction immediately.

3.2.6 Can I give a designated person a credit or debit card?

You must freeze existing accounts and the credit cards of a designated person.

An OFSI licence is required to provide access to a new credit card or use any credit card. You are not prevented from providing a designated person with a debit card but an OFSI licence is required for its use.

If you decide to provide debt or credit cards to a designated person, you should have systems and controls in place to enable you to satisfy yourself that the use of the card(s) is restricted to what is permitted by the OFSI licence.

If you decide to provide debt or credit cards to a designated person under TAFA 2010, you need an OFSI licence to use a credit or debit card.

3.2.7 How do I treat funds being transferred from a designated person, based outside the EU, to a non-designated person in the UK?

Since 1 August 2014, funds arriving in the UK, or in a UK bank anywhere in the world, which have come from or via a designated person based outside the EU, must be frozen on arrival in the UK bank. For more information, please see the Treasury's Notice on GOV.UK:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/332052/Policy_revision_sanctions.pdf

Funds can only be released if an OFSI licence is obtained.

3.2.8 How do sanctions apply to a safety deposit box?

You must freeze safety deposit boxes or secure storage facilities owned, controlled or held by a designated person. This is because a safety deposit box or secure storage facilities may be an economic resource of, or be used to hold funds or economic resources belonging to, a designated person.

You should notify OFSI that you hold such a safety deposit box or secure storage facility for the designated person. Where the contents are not known, the report to OFSI should make that clear. Boxes do not need to be opened or searched before a report is made.

Furthermore, you must not let the designated person access their safety deposit box or secure storage facilities without an OFSI licence.

3.3 Insurance sector

An asset freeze imposed by EU regulations or the UK's Anti-Terrorism, Crime and Security Act 2001 (ATCSA 2001), does not generally ban the provision of insurance. However, insurance payments to and from designated persons require an OFSI licence.

There are certain restrictions on the provision of insurance:

- Where a person has been designated under TFA 2010
- To certain Syrian entities in specific circumstances
- For specific trade transactions which are prohibited by sanctions

Terrorist Asset Freezing etc. Act 2010 (TFA 2010)

There are two general licences which allow you to provide insurance to persons designated under TFA 2010.

The general licences permit the provision of insurance and the immediate and temporary provision of goods and services for an insurance claim, e.g. courtesy cars or emergency hotel accommodation to designated persons.

Payments of claims and the receipt of premiums require an OFSI licence.

The general licences are published on GOV.UK:

<https://www.gov.uk/government/publications/counter-financing-of-terrorism-general-licenses>

Syria

You are required to discontinue insurance in the circumstances set out under the Syrian sanctions regime. For further information, see Council Regulation (EU) 36/2012:

<http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1501504331770&uri=CELEX:32012R0036>

There are no licensing grounds available in relation to prohibited insurance under the Syria financial sanctions regime.

Trade sanctions

For information on restrictions on providing insurance and reinsurance where trade sanctions apply, please contact the Export Control Organisation (ECO) who implement trade sanctions:

<https://www.gov.uk/government/organisations/export-control-organisation>

3.3.1 Who is responsible for sanctions compliance in an insurance chain?

Each business to whom UK sanctions apply¹ is responsible for their own compliance with financial sanctions and the financial related aspects of trade sanctions.

Insurers, re-insurers and underwriters

OFSI's view is that you should undertake reasonable enquiries to identify whether the underlying clients or claimants may be designated persons.

You should also consider your arrangements with introducers and other parties to:

- maximise the level of information provided when providing cover
- make appropriate use of that identifying information in designing your sanctions compliance systems and controls

Where insurance is provided through an agent, broker, introducer, delegated authority or bordereau arrangement, you should satisfy yourself that the third party's systems and controls are sufficient to mitigate the UK sanctions risks. This could include:

- making specific reference to sanctions compliance in their terms of business with introducers
- reviewing sanctions compliance policies
- requiring positive affirmation from their introducers on their financial sanctions systems and controls

Where detailed information cannot be obtained, it may be appropriate for you to screen the partial information you hold on a more targeted basis. For example, this could involve screening:

- UK-focused businesses against designated persons resident in the UK only
- non-UK businesses against entries that correspond to the jurisdiction where the underlying client or claimant is suspected to reside

Agents and brokers

Given that you usually deal directly with clients, OFSI's view is that you should be well placed to obtain sufficient information to conduct appropriate sanctions checks against clients and insurance beneficiaries when cover is issued.

The specific requirements that an insurer or underwriter applies to you in respect of sanctions compliance are a matter for the parties to contract.

3.3.2 I provide pensions and related products to an employer so may not know who the relevant employees are. How can I comply with sanctions?

Depending on the precise arrangements, it is likely that the contract is with the employer and the employer will provide the benefits to the employees in line with their contracts of employment.

¹ See Chapter 1 of OFSI's Guide to Financial Sanctions.

OFSI's view is that you should initially focus on the employer when conducting your sanctions checks. Where specific employees are drawn to your attention – for example, for special underwriting or the direct payment of benefits – OFSI expects you to conduct sanctions checks on the employee details.

3.3.3 What should I do if a person becomes designated after I've agreed to insure them?

An asset freeze imposed by EU regulations or ATCSA 2001 does not:

- void any insurance cover that the designated person had at the time of their designation
- require you to discontinue the provision of insurance

In addition, you won't be required to discontinue insurance issued to a person, designated under Tafa 2010, where:

- a general licence permits the insurance to continue
- a specific OFSI licence is issued for the policy

If you are making an assessment on whether to discontinue cover to a designated person, you should take into account the potential social harm that might be caused if you terminate a contract that is:

- not subject to any restriction
- permitted under a general licence

3.3.4 Can I make payments to or on behalf of a designated person?

You require an OFSI licence. This applies whether you:

- insure the designated person
- are paying out a claim in favour of the designated person on behalf of a third party that you insure

3.3.5 Can I provide temporary access to assets, such as accommodation or vehicles, in response to a claim?

If the provision is to a person designated under Tafa 2010, a general licence may apply.

For all other asset freezes, OFSI's view is that the following don't involve making an economic resource available to a designated person if the provision of the asset is:

- of limited duration, e.g. less than one week
- for personal consumption, e.g. personal use of the vehicle rather than business use of the vehicle

If you are providing the asset beyond that timeframe or for business use, you need an OFSI licence. You should mark the application as urgent and OFSI will endeavour to provide an indication on approach within one working day.

3.4 Legal sector

3.4.1 Can I provide legal advice or act for a designated person?

Generally, you won't be prohibited from providing legal advice under an asset freeze. However, the payment for legal services and the provision of legal services on credit do require an OFSI licence.

Certain legal services, such as the provision of company formation services, may constitute the provision of 'financial services' prohibited under the Terrorist Asset-Freezing etc. Act 2010 (TAFAs 2010).

Also, where sanctions prohibit specific actions, e.g. restructuring of finance, you need to carefully consider whether your advice and support for the client is helping them comply with sanctions or is participating in or facilitating a breach.

For example, if it is prohibited to raise capital on EU markets, providing advice on how this affects a business will be permitted. However, preparing documents to raise such capital may amount to an attempt to circumvent sanctions.

3.4.2 How quickly must I apply for a licence?

If you are providing legal advice to a person designated under the following, you may use the general licences to allow for payments of legal aid or for payments by third parties:

- TAFAs 2010
- EU Council Regulation (EC) No 2580/2001
- EU Council Regulation (EC) No 881/2002 (given effect in the UK by the ISIL (Da'esh) and Al Qaida (Asset Freezing Regulations) 2011)

For asset freezes imposed by other legislation, you will need an OFSI licence.

OFSI recognises that a small amount of work is required to obtain initial instructions and sufficient information to apply to OFSI for an individual licence. You should restrict this work to what is necessary to take initial instructions and apply for the licence.

No funds should be taken on account or disbursements paid until a licence is granted.

If urgent work needs to be undertaken to provide urgent legal services, such as lodging an appeal before it is out of time, please send an email to OFSI immediately on instruction, outlining:

- the details of the services required
- the date by which they must be undertaken
- the accounts which will be used to pay and receive the funds and
- an estimate of the likely level of fees and disbursements

This allows OFSI to consider an urgent interim licence to cover these services. OFSI will endeavour to deal with such requests within one working day.

3.4.3 Do I have to freeze the client's money?

You must freeze any funds or economic resources² owned, held or controlled by the client which are in your possession.

If you hold money on account for a person who is designated after you are instructed by them, you may move the funds from a pooled client account to a designated client account in the UK to freeze the funds. You can do this without an OFSI licence but you should alert OFSI as soon as you have done so.

Interest may be credited to the account in accordance with the Solicitors' Accounts Rules. This is provided that the credited interest is also frozen and that the legislation contains the relevant exemption.

3.4.4 Do I need a licence if the legal services for the designated person are being paid for by a non-designated person?

There is a general licence which is likely to apply to such payments if the designated person is subject to an asset freeze imposed by the following pieces of legislation:

- TAFE 2010
- EU Council Regulation (EC) No 2580/2001
- EU Council Regulation (EC) No 881/2002 (given effect in the UK by the ISIL (Da'esh) and Al Qaida (Asset Freezing Regulations) 2011)

For asset freezes imposed by other legislation, you need an OFSI licence.

You should carefully consider how you establish the retainer, and in whose name you hold the funds, as this will have a bearing on whether any excess funds on account can be returned to the payer at the end of the retainer.

3.4.5 What fees and disbursements can be licenced?

Under an asset freeze, imposed by EU regulations, OFSI is only permitted to licence the release of frozen funds for the payment of reasonable legal fees and disbursements related to the provision of legal services.

The licensing ground does not permit payments for any other services, even if these have been paid for by a law firm. These restrictions apply even if a third party is paying for the legal fees.

3.4.6 What are considered 'reasonable' legal fees and disbursements?

It is for you to demonstrate to OFSI that the legal fees and disbursements are reasonable. You should:

- provide an estimate of the likely fees
- break down how these will be charged in the application
- identify significant disbursements, such as payments for counsel and expert witnesses

² See 3.2.8 re. safety deposit boxes.

OFSI considers that the Supreme Court Cost Guides or the sums that could be expected to be recouped if costs were awarded, provide a useful starting point for assessing the reasonableness of legal fees and disbursements.

If you are seeking fees of a level significantly in excess of those, you need to demonstrate why those increased fees are reasonable in the given case.

3.4.7 How many law firms can I instruct?

Generally, OFSI is of the view that licensing fees for one law firm (and one set of counsel where appropriate) is reasonable for a given action or piece of advice.

You need to provide a detailed case if the designated person is seeking to be represented by more than one law firm or set of counsel. OFSI will consider each application on its merits.

3.4.8 Can court fees be licenced?

OFSI's view is that both court fees and payments into court, for security for costs, can be licenced under the reasonable legal fees licensing ground.

However, OFSI is of the view that a separate licensing ground needs to be identified to pay security for damages into court, depending on the specific circumstances of the case.

For individual legal fee licences, sought in relation to asset freezes imposed by UK law, you need to demonstrate that the amounts sought are in line with licensing policy.

3.4.9 What should I take into account when monitoring compliance with licences?

You, your employees and your clients need to be clear about the specific permissions contained in the licence as they must be strictly complied with.

You should be clear with your client that they can only pay the legal fees permitted by the licence and via the payment route specified in the licence.

You should also ensure that your accounts staff are aware that any funds must remain frozen and that any receipts or payments must be strictly in accordance with the licence.

3.4.10 What should I do if a court order conflicts with sanctions obligations?

You cannot comply with a court order that conflicts with sanctions obligations. To do so would be a breach of EU and UK legislation.

You should consider whether:

- an OFSI licence is available to allow you to comply with the court order
- the court should be made aware of the financial sanctions
- you should ask for the order to be amended

The bringing of a claim, either on behalf of or against a designated person, is not prohibited by sanctions. Nor is it a breach of sanctions for a court or arbitrator to adjudicate on the claim.

However, the claim can only be settled or the court judgement/arbitration order enforced where there is a licensing ground to allow this to happen. Whether there is a licensing

ground available depends on the specific facts of the case and the sanctions regime under which the asset freeze applies.

If a court has ordered a judgement in favour of a person subject to an asset freeze, under EU regulations, and there are no licensing grounds to allow the payment to be made, the third party cannot be made subject to any further liability (such as accruing interest) for their non-payment while the sanctions continue to apply.

3.4.11 Can I return funds to a designated person?

If the obligation to return or pay funds to a designated person arose prior to their designation, you may pay them into a frozen account, where the legislation imposing the asset freeze has the relevant exemption.

In other instances, there are very limited licensing grounds on which to allow the funds to be returned. They may have to remain frozen by the law firm until such time as the designated person is no longer subject to sanctions.

3.4.12 How does legal professional privilege apply to my reporting obligations?

The general reporting obligations are set out in Chapter 5 of OFSI's Guide to Financial Sanctions.

You are not required to provide information that is subject to legal professional privilege. OFSI expects legal professionals to approach their disclosure obligations with rigour and carefully consider where legal professional privilege applies, and to what information.

OFSI will challenge any blanket claims of privilege where we are not satisfied that such careful consideration has been made.

You should proactively engage with your client about the need to provide information to meet the reporting requirements in licences.

3.5 Import/export sector

3.5.1 I have an export control licence. Is that all I need?

Export control licences only provide permissions for trade sanctions and embargoes.

If the goods are going to a designated person or the funds are transferring through a designated person, you need to apply separately for an OFSI licence.

Just because an export control licence has been granted, it is not guaranteed that an OFSI licence will be granted.

3.5.2 My product is not subject to trade controls. Do financial sanctions still apply to me?

You still need to consider financial sanctions if goods are being made available – directly or indirectly – to, or for the benefit of, a designated person.

Equally, if payments are coming from or through a designated person, such as a designated bank, and there is no relevant exemption, an OFSI licence will be required.

3.5.3 Does it make a difference if my goods are for humanitarian, medical or diplomatic purposes?

You need to consider carefully the restrictions in place against the designated person. For example, if a person is subject to sanctions under the Syrian regime, you need to look at the legislation imposing that regime.

Some regimes have specific exemptions or licensing grounds for the provision of goods or funds for humanitarian, medical or diplomatic purposes, which may expand the options from the normal licensing grounds.

OFSI seeks to prioritise applications for licences in these cases.

Compliance for non-governmental organisations/charity sector

4

OFSI recognises the important humanitarian work that NGOs and charities do internationally and that financial sanctions regimes are in force in many areas where NGOs and charities operate.

To facilitate the passage of humanitarian good and funds, the international community creates sanctions measures with humanitarian provisions, i.e. exemptions or licensing grounds to allow goods to be provided and payments made. OFSI treats such licence requests as priority.

However, financial sanctions may still apply to certain payments even if they relate to humanitarian activity.

OFSI is publishing FAQ guidance for the NGO and charity sector in August 2017. This guidance elaborates on the above and answers commonly asked questions. It also provides helpful links to other relevant guidance so that those involved in humanitarian activity consider properly what they need to do to comply with financial sanctions.

Once published, the guide will be available here:

<https://www.gov.uk/government/publications/financial-sanctions-faqs>