

A brief guide to export and sanctions controls in Russia

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Introduction

The situation in Ukraine is highly charged and dynamic. In the short term, safety and wellbeing of people has been a priority for businesses with connections to or employees working in Russia and the surrounding areas. However, longer term, business continuity issues along with the potential effect of sanctions and other restrictions on existing commercial arrangements are also relevant.

The sanctions against Russia are constantly changing, with the list of designated individuals and banks lengthening every few days. The current situation has made it difficult, if not impossible, for companies to perform their contractual obligations. It is possible that a customer, client or supplier (or those who own or control them) has become designated while a business is dealing with them. Due to financial sanctions, there is the very real possibility of not being able to receive or provide payment for dealings with Russia. There is also a risk of damage to reputation for continuing to deal with Russia and even the possibility of sanctions being placed on your business.

This note sets out the export controls and sanctions which currently apply to UK companies dealing with Russia and highlights issues which UK businesses should be considering.

This briefing is not intended to be relied on as formal legal advice. It has been prepared by Scots lawyers and as such any reference to the laws of other countries is intended as guidance only. Specific queries relating to the laws of other countries should be directed to a law firm in those jurisdictions.

This guidance is correct at the date of publishing. Export controls and sanctions are subject to change and must be kept under regular review. This guide summarises the position as at 28 March 2022.

Current restrictions

Are there restrictions on trading with Russia?

Restrictions have been in place since 2014 when Russia annexed the Ukrainian state of Crimea. These are mainly aimed at goods, software and technology intended for military use and Russia’s oil exploration and production projects. There are restrictions on the export of energy related equipment and an outright ban on providing certain services which could be used in oil projects in deep water, Arctic Circle or shale formations in Russia. The usual export restrictions continue to apply if you have suspicions that goods are intended for military purposes or weapons of mass destruction (WMD).

Have there been any changes to the restrictions since 2014?

The invasion of Ukraine at the end of last month has prompted various countries, including the UK and the EU, to impose harsher trade, financial, shipping, aviation and immigration restrictions on Russia. The main restrictions, with limited exceptions and licencing options, are:

TRADE	FINANCIAL	TRANSPORT/IMMIGRATION
Dealings related to military items (arms embargo).	Dealings with transferable securities and money market instruments issued by certain Russian banks, or by banks which are owned or controlled by those banks.	Ban on Russian ships from entering UK ports.
Export of dual-use goods (with very limited exceptions).	Asset freezes on designated persons and organisations.	Ban on registration of ships owned, controlled, chartered or operated by designated persons or persons connected with Russia on UK Ship Registry/
Providing drilling, well testing, logging and completion services and specialised floating vessels to oil projects in deep water (>500m), Arctic Circle or shale formations in Russia.	Entering into new loans or credit agreements with certain entities.	Ban on Russian aircraft from flying in UK airspace or taking off and landing in the UK.

Export of “high-tech” goods (with very limited exceptions).	Exclusion of certain Russian banks from the SWIFT banking system, and the UK banking system as a whole.	Travel bans on designated individuals.
Export of aviation and space goods and technology (with very limited exceptions).		
Export of energy related goods and services.		

Can I get a licence to export goods or provide services to Russia?

Yes, in very limited circumstances. Licences are available where export is necessary to prevent harm to human health or the environment, as well as where it is necessary for the maintenance and safety of the goods within the UK. Contracts for exports which were entered into before the restrictions came into force may also be granted a licence, provided authorisation is sought before 1 May 2022. Humanitarian licences are available and certain situations involving civilian use or benefit are also covered.

Trade licences should be sought from the Department of International Trade’s Export Control Joint Unit (ECJU). Financial sanctions licences are dealt with by the UK Treasury’s Office of Financial Sanctions Implementation (OFSI).

OFSI has also issued general licences to cover wind down of contracts with and receipt of payments from designated entities.

Beware of financial sanctions!

The UK has placed asset freezes on over 1,000 entities and individuals.

An asset freeze means that you are prohibited from dealing with that person's funds or economic resources.

Restrictions also apply to entities "owned or controlled" by designated persons. An entity is owned or controlled if the designated person holds 50% or more of the shares or voting rights of that entity. The UK government has tried to ensure that relevant subsidiaries are designated in their own right, but this may not always be the case.

Care should be taken to ensure you understand the corporate structure of the companies you are dealing with.

Are any other restrictions possible or expected?

The situation is evolving constantly, and it is likely that further restrictions will be introduced. The UK government recently announced a ban on export of luxury goods to Russia, following in the footsteps of the EU and the US, seeking to deprive Russian oligarchs and other individuals associated with the Russian government access to those goods. Those restrictions are expected to come into force very soon.

The UK Government has yet to confirm which goods will be subject to restrictions but it is likely to be similar to the current EU list, which includes items such as certain alcoholic spirits, champagne, beer, soups and broths, perfumes and leather goods.

Russian exports to the UK are to be restricted, with Russia and Belarus being denied access to Most Favoured Nation status for imports to the UK.

This means a huge increase in import tariffs and will affect goods related to a number of industries, like food and drink, manufacturing, engineering and constructions. Goods such as iron, steel, fertiliser, wood, tyres, railway containers, cement, copper, aluminium, silver, lead, beverages, spirits (including vodka) and white fish are all covered by the import tariff increase.

Be careful if you do business from other countries, out with the UK.

If you only export from the UK, then you will only need to worry about the UK restrictions. However, if you trade out of the EU, for example, you may need to apply for a licence from the particular member state from which you wish to export.

Although the UK and EU have imposed very similar restrictions, there are subtle differences which makes compliance with both regimes challenging.

Beware of any US nexus

If your business is owned or controlled by a US person or organisation (where the US person or entity holds more than a 50% share in your business) then US restrictions may also apply. US persons working in your organisation may also be required to comply with US restrictions on Russia.

Even if your business has no links to the US, you may still be caught by US export controls if your goods contain more than 25% US-origin content or you are using the US banking system.

Compliance and enforcement

What can happen if I don't comply?

Breach of UK sanctions restrictions and export controls is a criminal offence, with potential liability for companies and individuals.

Where there has been a breach of trade restrictions, the maximum penalty is 10 years' imprisonment or an unlimited fine, or both. A breach of a licence condition carries a maximum penalty of 2 year's imprisonment or an unlimited fine, or both.

The penalty for a breach of financial sanctions is 7 years' imprisonment or an unlimited fine, or both.

OFSI has the power to impose a civil penalty, in lieu of prosecution, in certain circumstances. The maximum fine is £1million or 50% of the value of the transaction, whichever is the greater.

Other Consequences of Non-Compliance

- Regulatory investigation and disruption to business.
- Increased scrutiny by the regulator in relation to audits and future licence applications.
- Loss of business/customers.
- Reputation damage.

Upcoming Changes to Enforcement of Financial Sanctions – Strict Liability

A financial penalty can only be imposed where there is evidence, on the balance of probabilities, that a person knew, or had reasonable cause to suspect, that they were in breach of the prohibition or (as the case may be) had failed to comply with the obligation. This means that if there is evidence to demonstrate that you carried out due diligence and made reasonable enquiries to ensure you did not breach a provision, then that could be used as a defence to any allegations of breach.

The new Economic Crime (Transparency and Enforcement) Act 2022, passed into law last week, will mean that there will be no requirement to demonstrate that somebody had knowledge or reasonable cause to suspect that they were breaching a prohibition or restriction. The new law is set to come into force sometime in the next 3 months.

This means that financial sanctions breaches will be treated as strict liability offences. The UK government hopes that this will make it easier for OFSI and prosecuting authorities to enforce the provisions. Any evidence available to demonstrate that there has been due diligence undertaken will be treated as a mitigating factor when determining the appropriate level of fine to impose, so it is still important to ensure you have appropriate compliance measures in place and keep records of steps which have been taken to ensure compliance.

Issues to consider

What if I have employees or contractors working in Russia right now?

UK health and safety law can apply to operations abroad where those are managed from the UK. A breach of UK health and safety law is a criminal offence, with liability for both companies and individuals.

If your business relies on the movement of people to or through Russia and the surrounding areas, or you have facilities in high-risk areas, you should be considering any measures required to remove employees from those areas quickly if needed. The situation is fast-moving so you should review any measures you have in place regularly to ensure that they remain effective.

Travel between the UK and Russia is difficult right now, with many commercial flights being cancelled or reduced. The UK Foreign, Commonwealth and Development Office (FCDO) has advised against all travel to Russia due to the lack of flights and increased economic volatility. The FCDO has also strongly advised UK nationals to consider leaving Russia if their presence there is not essential.

You should also speak to your insurers to find out whether you have cover for employees in Russia and whether there are any specific requirements you need to follow.

I currently do business in Russia. What should I be thinking about?

Consider any commercial or reputational risks of continuing to do business in Russia. Whilst the law does not require UK businesses to cut all ties with Russia, your suppliers or customers may be asking what you are planning to do. Will your decision cause damage to your reputation or affect your ability to secure business in the future?

Consider your current export and sanctions compliance regime and whether there are adequate and proportionate procedures in place. Reviewing any risk assessments you have in place for export and sanctions compliance is a good place to start and can highlight any gaps. Even where you consider the risks to be low it is prudent to formalise any risk assessments in writing and keep them under regular review.

Review the changes to trade and financial sanctions in Russia and check whether any of your business interests are prohibited or restricted. Consider whether you need to apply for new licences or whether any of your activities fall within any of the exemptions. You should review your existing licences and check whether they are still valid. Consider how long licence applications will take and plan for rejection too.

Review your contracts to ensure that you have a right to terminate or suspend if your circumstances change and consider whether you need to make any changes. Consider what happens if you do not receive payment under the contact or if you are unable to make payments.

I have decided to cease all business in Russia. What should I do?

If you wish to suspend or terminate your contractual obligations there is the possibility that you could face legal action for non performance.

It is important that you review your contracts related to Russia and the surrounding areas now. Consider whether you have suspension or termination rights, whether there is a Force Majeure clause and whether that covers acts of war or sanctions related activity. Bear in mind that other businesses may also rely on these clauses if they are unable to perform their side of the contract.

Is there anything else I should be thinking about?

BRIBERY AND CORRUPTION AND MONEY LAUNDERING RISKS

Both Russia and Ukraine are ranked highly in relation to bribery risks in the Transparency International Corruption Perception Index. The conflict increases risks further, generally in relation to transactions and more specifically across specific sectors, such as construction and food and drink where demand for materials may suffer putting pressure across supply chains.

Consider whether you need to review your bribery risk assessments and any relationships you have with agents or other third parties in or around Russia to ensure adequate and proportionate procedures are in place and any control measures are suitably sufficient and robust.

Dealing with a jurisdiction which is heavily sanctioned could increase money laundering and terrorist financing risks, with third parties seeking to hide proceeds of crime in the UK

Review your anti-money laundering controls to deal with the increased risk of any transactions being used for this purpose.

INSURANCE

It is important to know which of your business assets and locations are covered by wartime insurances. It will be important to review new insurance policies related to business interruption, cyber insurance, and political risk policies.

SUPPLY CHAINS

Review your business continuity plans to ensure you can respond to disruption to your supply chains caused by the new restrictions. Lack of specific supplies and use of alternatives could introduce additional risks (including safety risks), which would need to be managed appropriately.

Get in touch

We have been advising businesses on compliance with export controls and international sanctions against Russia since before the invasion of Ukraine. This guidance contains just some of the issues we are seeing now. Get in touch if you currently do business in Russia, or you are looking to suspend or terminate any business relationships you have there.

We can help with reviewing and updating your existing policies, procedures and risk assessments, and we can also assist with planning and creating a compliance regime to respond to the current climate. We can also provide general awareness training to business management, Boards and employees as well as review your existing contractual arrangements. Our immigration colleagues can also assist with moving your people.

We can also provide general advice on compliance with the current sanctions regime as well as health and safety, anti-bribery and corruption and anti-money laundering requirements.

“Lynne Gray and Lynne Moss provided reassurance that they understood our requirements and provided excellent and timely advice. Approachable and highly professional.”

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Lynne is head of our health & safety and corporate crime team. She is regularly instructed by leading corporate clients responding to incidents, facing investigation or prosecution from authorities, including Police Scotland, the Health and Safety Executive, the Offshore Major Accident Regulator, OPRED and SEPA.

She has considerable experience of regulatory investigations and enforcement specialising in complex cases involving crisis management, fatalities and major health, safety and

environmental incidents, and in relation to anti-bribery where she also advises on corporate crime investigations and international sanctions issues.

Lynne leads our Crisis Response Team developed to support clients involved in major and unfolding incidents, working other specialists in the firm and often alongside communication teams. She also supports cross border investigations for international clients, advising on compliance with and operation of specialist regulatory regimes in Scotland and criminal enforcement.

Lynne also provides legal compliance and risk management advice to clients on health & safety and corporate crime matters across all sectors. She speaks at events on health & safety matters and develops bespoke training for senior management of clients.



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Lynne is a Director in our health & safety and corporate crime team. Her work includes assisting clients with investigations into health & safety or environmental breaches, as well as liaising with the regulators on their behalf. She also represents clients at health & safety prosecutions, fatal claims, personal injury actions and Fatal Accident Inquiries. Lynne has a range of experience advising on all aspects of safety and regulatory compliance.

Lynne also advises energy clients on matters relating to regulatory and financial crime including anti-bribery and corruption and export and sanctions. She has most recently been involved in advising clients on the implications of Brexit, providing practical advice on how to ensure compliance. She also regularly provides training to boards and management teams on anti-bribery and corruption and export and sanctions compliance.

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