

The background of the entire image is a dense, abstract pattern of fiber optic cables. The cables are arranged in a way that creates a sense of depth and movement, with many cables crossing each other. The colors of the cables are vibrant and varied, including shades of red, grey, blue, yellow, and purple. The overall effect is a complex, multi-colored web of light and shadow.

**Baker
McKenzie.**

Brexit Webinar Series: International Trade and Competition

Tuesday 26 January - Wednesday 3 February 2021

The background of the slide is a dark blue field filled with a dense, overlapping network of colorful fiber optic cables. The cables are primarily in shades of red, white, yellow, and blue, with some purple and green accents. They are arranged in a complex, crisscrossing pattern that creates a sense of depth and connectivity, resembling a data center or a global network map.

Trade Sanctions & Export Controls

Thursday 28 January, 3.30 - 4.30 pm GMT

Speakers



Tristan Grimmer
Partner, London



Ben Smith
Partner, London

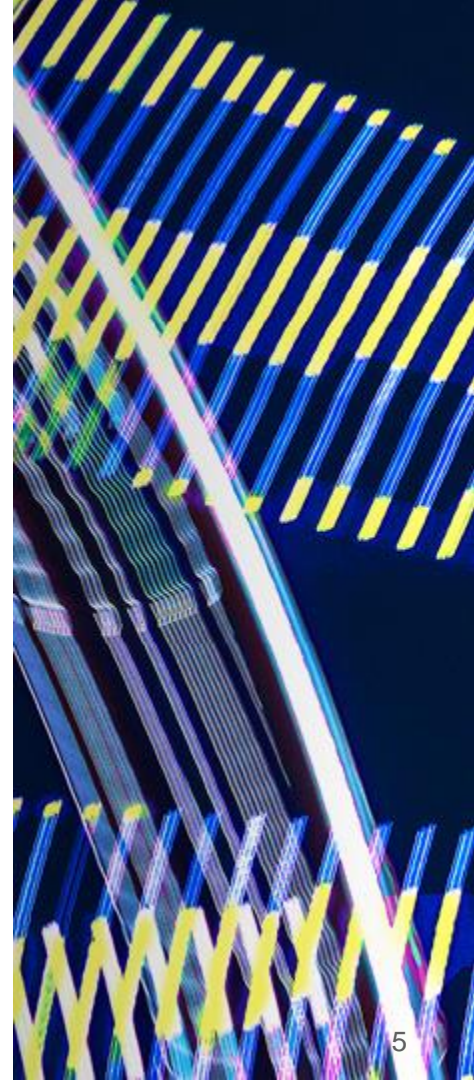
The background of the slide is a complex, abstract pattern of fiber optic cables. The cables are bundled together and fan out from the center, creating a sense of depth and movement. The colors of the cables are vibrant and varied, including shades of red, blue, yellow, green, and purple. The overall effect is a dynamic and futuristic visual.

01

Sanctions

UK Sanctions post Brexit

- EU Decisions and Regulations no longer have direct effect in the UK
- The UK has adopted its own standalone sanctions regime, under the framework of the **Sanctions and Anti-Money Laundering Act 2018 ("SAMLA")**
- Under SAMLA, the UK issued a series of regime-specific regulations providing for sanctions against particular jurisdictions / groups, which came into force on 31 December 2020
- The UK (OFSI) has also issued new sanctions guidance (including general, topic- and country-specific e.g. relating to Russia, Libya)
- Going forwards, there is scope for further material divergence between the independent UK and EU sanctions regimes (as we already saw in 2020 with the introduction of the UK's autonomous Global Human Rights sanctions regime)
- Sanctions were not addressed in the EU/UK Trade Cooperation Agreement - remains to be seen to what extent EU and UK will cooperate on sanctions matters moving forward



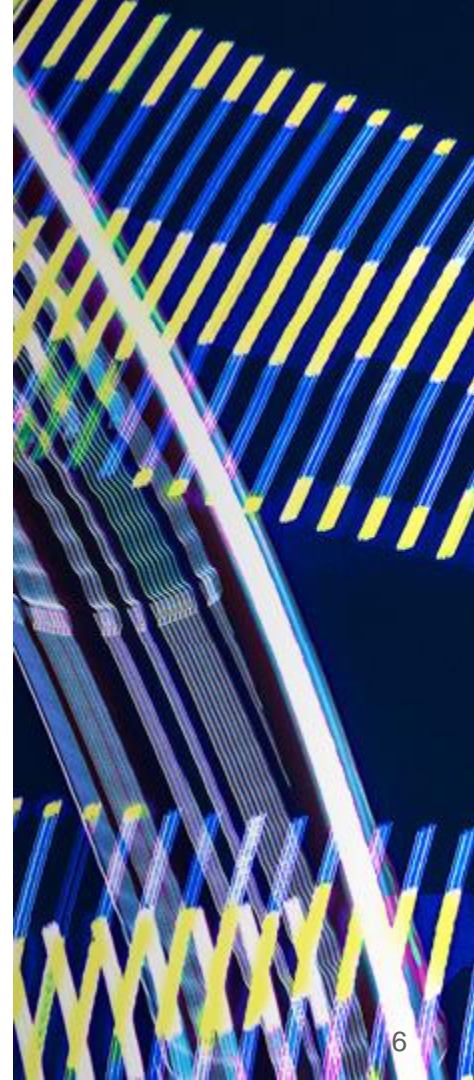
Key Changes (1)

Sanctions lists

- Divergences between the UK and EU regimes already apparent and are likely to become more pronounced over time
 - Not all designations carried over from EU to UK
 - 113 individuals/entities from EU sanctions regulations not carried across
 - Publication of new UK Sanctions List

Other provisions that provide the UK with greater flexibility as regards designated party restrictions include:

- Designations by description under SAMLA
- National security/crime prevention overrides
- Licences for an "extraordinary situation"
- Ability to issue "directions"



Key Changes (2)

Ownership and control: introduction of new second condition that extends concept of direct/indirect ownership or control:

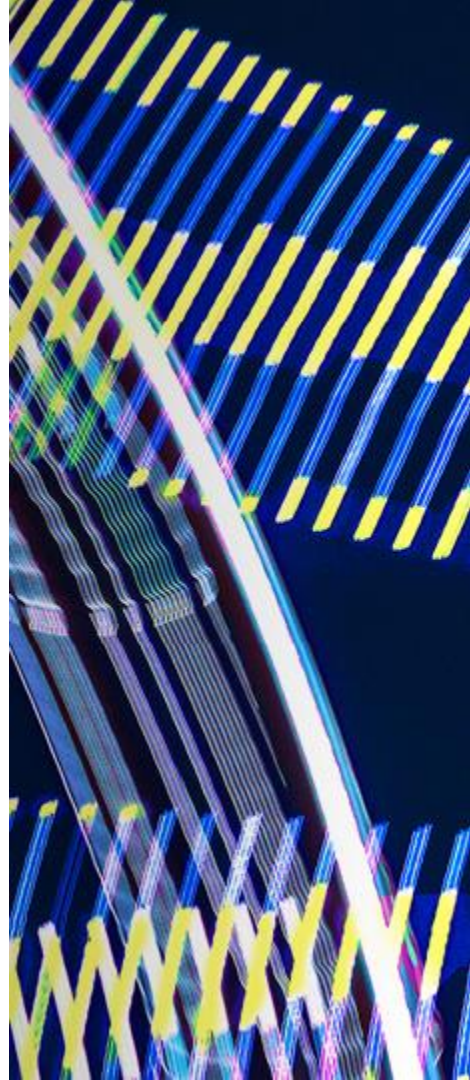
- *"where it is reasonable, having regard to all the circumstances, to expect that the person would be able, in most cases or in significant respects [...] to achieve the result that the affairs of the entity are conducted in accordance with their wishes"*

Owned or controlled entities likely to be designated

- *"will look to designate owned or controlled entities/individuals in their own right where possible"*
- may be more aligned with US approach

Broader controls on financial and other services under SAMLA; changes to licensing

- Processing payments in relation to sanctions-controlled items considered "financial services" (alongside broader definitions of "funds" and "financial services" in SAMLA)
- Broader definition of "brokering services" in Regulations
- Licences that have been issued in the UK will not cover the activities of nationals of EU-27 Member States, and vice versa



Regime-specific changes – examples

Russia

Narrower sectoral sanctions exemptions:

- Exemption applicable to EU subsidiaries of sectorally sanctioned parties will no longer apply in UK, and vice versa
- UK's equivalent to the EU "trade finance exemption" under Article 5(3) of Regulation 833/2014 maintained and substantially same as under EU law, but will only apply to trade with a UK nexus, and vice versa

Two general licences already issued:

- Granting payment exemptions in relation to certain sea ports in Crimea
- Permitting provision of technical assistance, financial services and funds, and brokering services related to "energy-related goods" where for use outside Russia

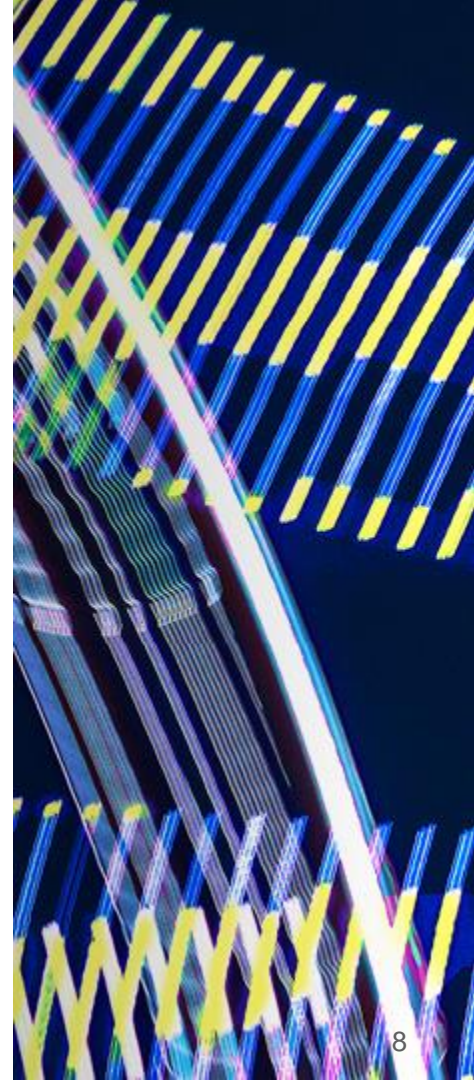
Iran

UK version of Blocking Regulation now in force:

- The Protecting against the Effects of the Extraterritorial Application of Third Country Legislation (Amendment) (EU Exit) Regulations 2019
- Accompanied by UK guidance

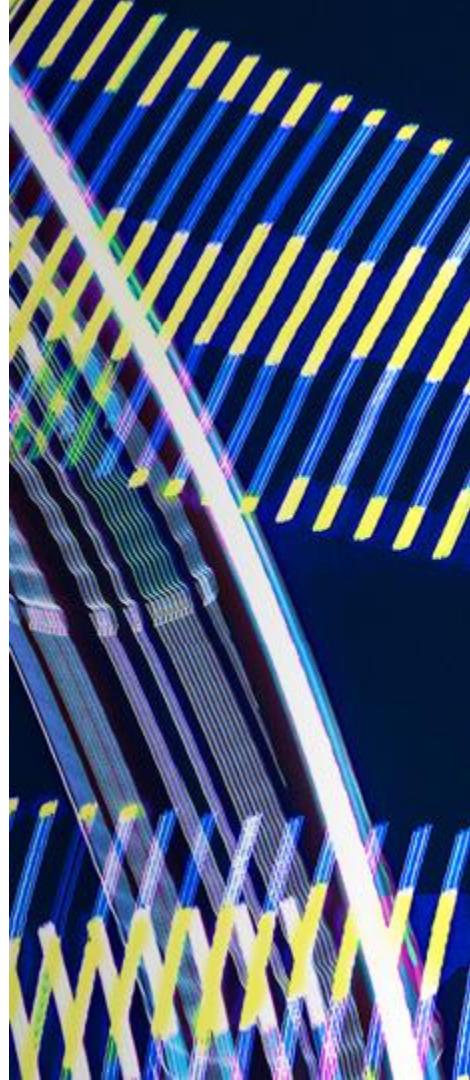
UK foreign policy position:

- Unlikely to see material shift in position under the Blocking Regulation
- On Iran, the UK government has consistently emphasised its support for the JCPOA



Global Human Rights Sanctions

- The Global Human Rights Sanctions Regulations 2020
 - Aimed at individual and entities involved in human rights violations
 - similar to the US' Magnitsky sanctions regime
- Target activities that threaten an individual's:
 - right to life
 - right not to be subject to torture
 - right to be free from slavery
- Used for the first time on 6 July 2020, introduction of sanctions against 47 Saudi, Russian and Burmese individuals and 2 DPRK entities for human rights abuses
- First divergence from EU, although EU has since created their own human rights regime
 - EU regime includes broader range of human rights violations than three rights in UK



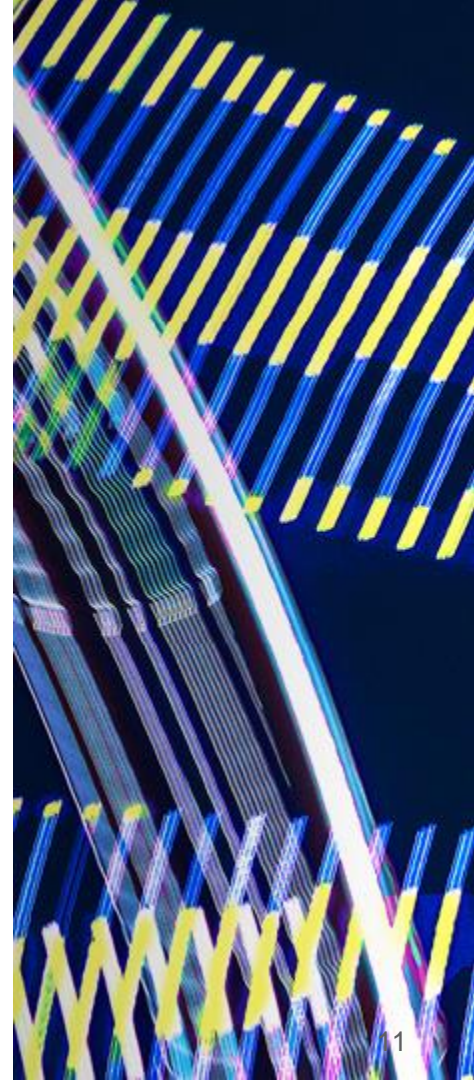
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02

**Export
Controls**

Overview

- The EU Dual-Use Regulation (428/2009) no longer has direct effect in the UK, following the end of the transition period on 31 December 2020
- The UK has transposed the EU Dual-Use Regulation (and EU Torture Regulation) into UK law as retained EU law
- Under the Protocol on Ireland/Northern Ireland, the EU Dual-Use Regulation continues to apply in respect of Northern Ireland
- Key dual-use export considerations:
 - Separate EU and UK dual-use export regimes
 - Initial alignment of regulations and dual-use lists; scope for divergence going forward (unclear to what extent UK will track changes to the recast EU Dual-Use Regulation)
 - Immediate impact on dual-use licensing
 - Unique position for exports to/from Northern Ireland
 - No automatic exchange of information on dual-use exports between EU and UK authorities (e.g., information on licence denials; collaboration on enforcement)

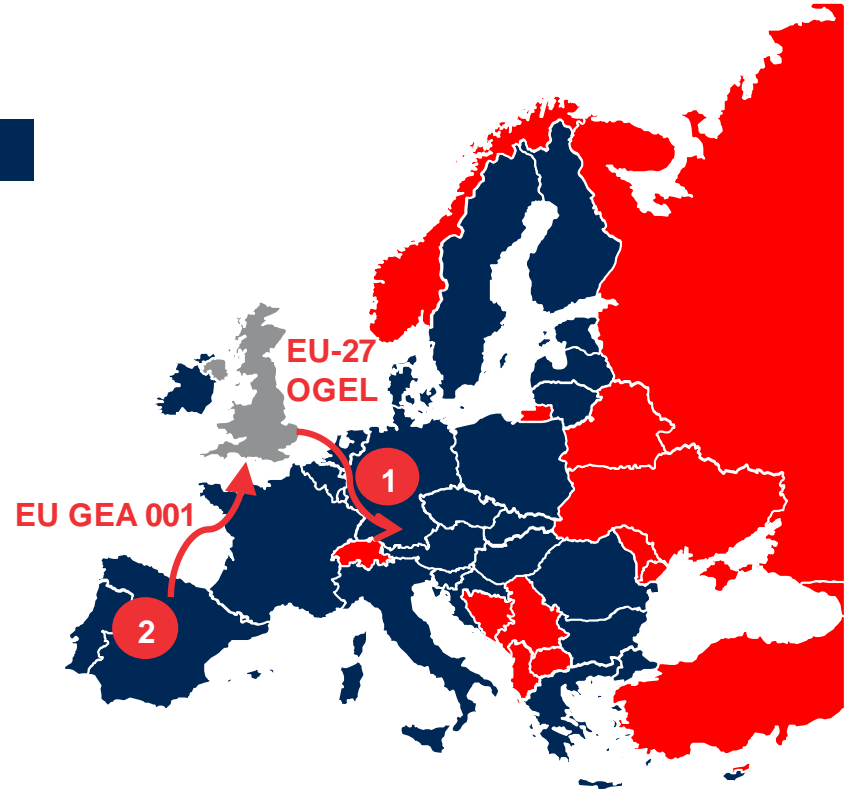


Dual-use exports between GB and EU

The UK (except for NI) will be considered a "third country" under EU dual-use export controls, and vice versa

Exports between GB and EU

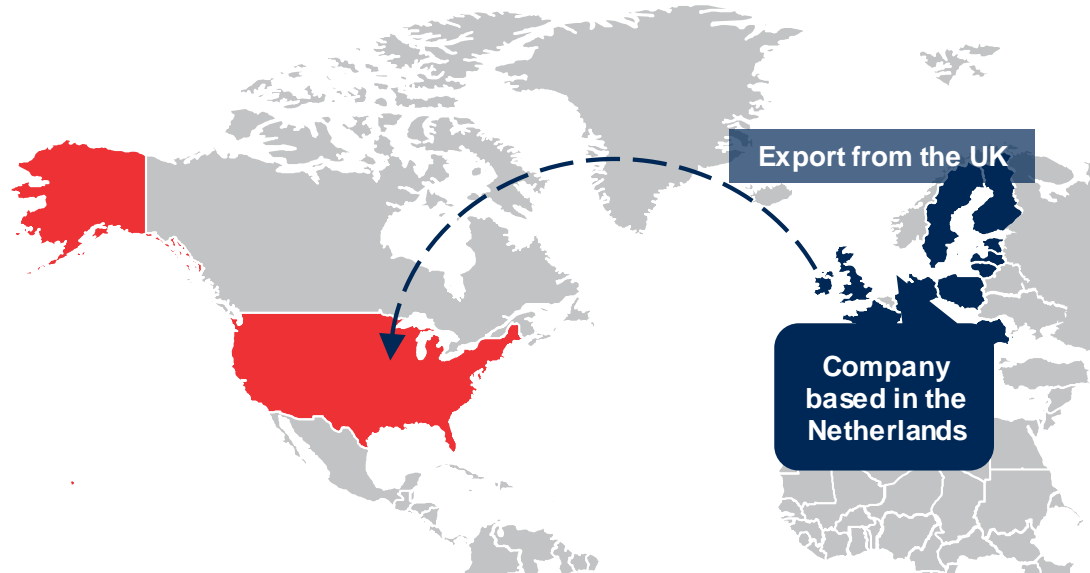
1. Export of dual-use items **from GB to EU** (which would not previously have required a licence) now **require an export licence issued by the UK**
 - UK ECJU published an EU-27 OGEL for exports of dual-use items to EU Member States (and the Channel Islands)
 - No need to apply for individual licences
 - Register through the online export licensing system, SPIRE
 - Beware: need to ensure full compliance with conditions
2. Export of dual-use items **from EU to GB** require an export licence issued by a competent EU Member State
 - GB has been added to list of jurisdictions under EU General Export Authorisation 001



Dual-use exports from EU/UK to RoW

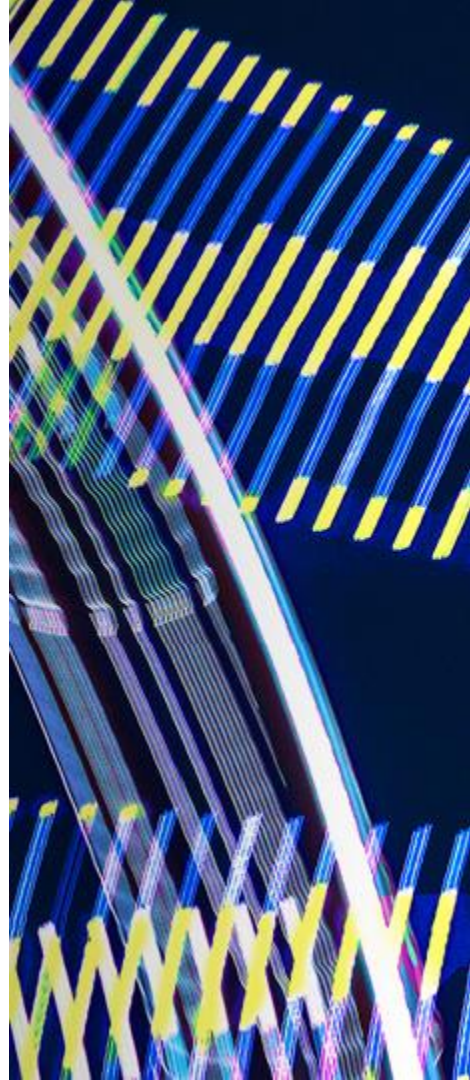
Exports from EU/UK to the rest of the world

1. Export licences issued in EU-27 Member States not valid for exports from UK
 - UK has retained the existing EU General Export Authorisations in UK law (rGEAs)
2. UK export licences not valid for exports from EU-27 Member States
3. "Exporter" must be "established" in the EU to export from the EU, and in the UK to export from the UK



Status of pre-existing UK / EU dual-use licences

1. Pre-existing licences to export dual-use items from UK to non-EU countries issued by the UK remain valid for export from the UK (including GEAs)
2. Pre-existing licences issued by UK no longer valid to export items to outside EU from an EU Member State, and vice versa
3. Existing intra-EU transfer licences issued by an EU Member State for transfers to the UK became valid licences for exports to the UK (until expiry)



Northern Ireland and the IE/NI Protocol

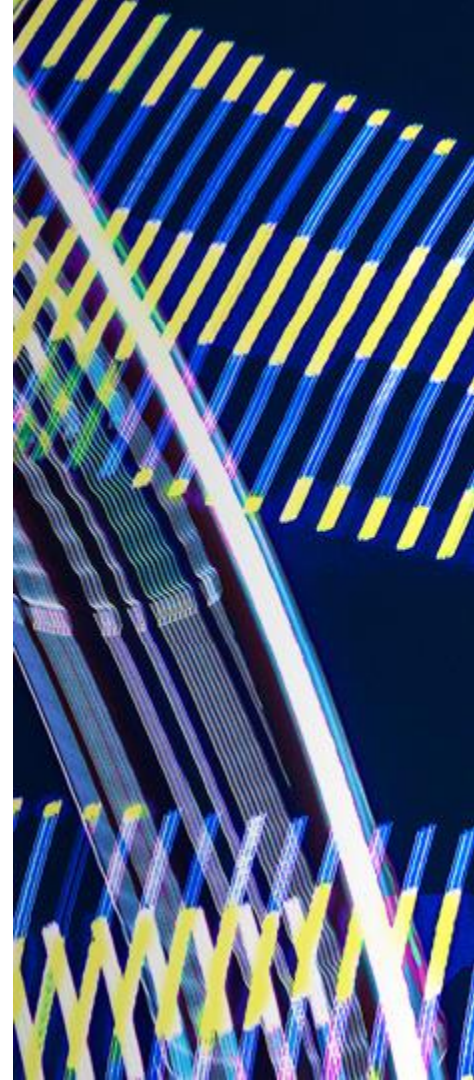
Dual-use exports to/from Northern Ireland

1. Rules that apply to transfers **between two EU Member States** also **apply to** exports between **NI and an EU Member State**, and vice versa (treated as an intra-EU transfer)
2. **Exports from NI to rest of world** (outside UK/EU) subject to EU Dual-use Regulation, with UK (ECJU) as competent authority (such licences only valid for exports from NI, not any EU Member State)
3. For **exports from GB to NI**, UK guidance states that no export licence is required
4. For **exports from NI to GB**, the EU has stated that such a movement is licensable, whereas UK guidance states that no export licence is required; practical implications



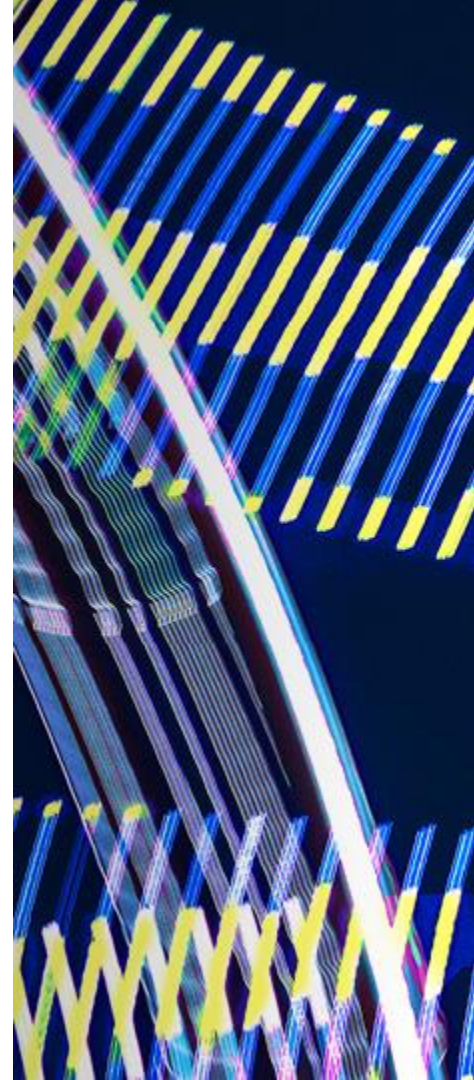
Other key considerations

- Key legislation to ensure existing legislation reflects UK's departure from EU, including:
 - The Trade etc. in Dual-Use Items and Firearms etc. (Amendment) (EU Exit) Regulations 2019
 - The Trade etc. in Dual-Use Items and Firearms etc. (Amendment) (EU Exit) (No.2) Regulations 2019
 - amend the retained EU Dual-Use Regulation
 - Trade in Torture etc. Goods (Amendment) (EU Exit) Regulations 2020
 - amends the retained EU Torture Regulation
 - The Export Control (Amendment) (EU Exit) Regulations 2019
 - The Export Control (Amendment) (EU Exit) Regulations 2020
 - amend the UK's Export Control Order 2008 and Export of Radioactive Sources (Control) Order 2006
- UK will continue to have independent military export regime
 - no material change follow Brexit (exports of military goods to EU controlled pre-Brexit)



Practical takeaways

- **Risk assessment and monitoring:** new standalone UK export and sanctions regimes with potential for material divergence over time; consider impact on supply chains and business with sanctioned countries
- **Screening:** ensure screening against correct, updated lists; consider impact of changes to UK lists
- **Licensing and compliance:** ensure appropriate sanctions and export licence coverage, including full compliance with all conditions. In particular:
 - broader scope of UK sanctions restrictions in a number of areas
 - impact on UK staff previously operating under EU Member State-issued sanctions licences, and vice versa
 - impact of narrower exemptions to Russia-related sectoral sanctions
 - consider availability of UK General Licences and divergences in licensing exemptions for sanctions
 - licences now required for dual-use exports between UK and EU, and vice versa (consider also position of NI)
 - need for UK-granted dual-use exports to export from UK, and EU Member State-granted licences to export from EU
 - application of UK/EU brokering controls could result in dual licensing between UK and EU in some scenarios





Questions

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