

THE ISIL (DA'ESH) AND AL-QAIDA (UNITED NATIONS SANCTIONS) (EU EXIT) REGULATIONS 2019

REPORT UNDER SECTION 18 OF THE SANCTIONS AND ANTI-MONEY LAUNDERING ACT 2018 IN RELATION TO CRIMINAL OFFENCES

A: INTRODUCTION

1. This is a report under section 18 of the Sanctions and Anti-Money Laundering Act 2018 (“the Act”) in relation to The ISIL (Da’esh) and Al-Qaida (United Nations Sanctions) (EU Exit) Regulations 2019 (“the Regulations”).
2. Section 18(2) of the Act requires a report to be laid before Parliament where regulations made under section 1 of the Act create offences for the purposes of enforcing any prohibitions or requirements imposed by those regulations, or for the purposes of preventing the circumvention of those prohibitions or requirements.
3. In accordance with section 18, this report: sets out the offences created by the Regulations (see Part B); explains why there are good reasons for the relevant prohibitions or requirements in the Regulations to be enforceable by criminal proceedings (Part C); and sets out the maximum terms of imprisonment that apply to those offences and why there are good reasons for those maximum terms (Part D).

B: THE OFFENCES

4. The principal prohibitions and requirements in the Regulations are aimed at ensuring compliance with the relevant UN obligations, which are aimed at combatting ISIL (Da’esh) and Al-Qaida. The relevant “UN obligations” means the obligations that the United Kingdom has by virtue of-
 - a) paragraph 1(a) of resolution 2368 (asset freeze etc.) and;
 - b) paragraph 1(c) of resolution 2368 (export, supply, sale, transfer, etc. of, and technical assistance relating to arms),
to take the measures required by those provisions in respect of persons for the time being named on the ISIL (Da’esh) and Al-Qaida Sanctions List; and
 - c) paragraph 76 of resolution 2368 (Usama bin Laden).
5. The Regulations state that each person for the time being named on the ISIL (Da’esh) and Al-Qaida Sanctions List by the Security Council or the 1267/1989/2253 ISIL (Da’esh) and Al-Qaida Sanctions Committee is a designated person for the purposes of regulations 8 to 12 (asset freeze etc.) and 15 to 22 (trade). The Regulations impose

various prohibitions in relation to those designated persons, namely financial prohibitions, including that no person is to deal with the assets of the person or provide funds or other economic resources to them or for their benefit, and trade prohibitions, including trade in military goods and military technology and in relation to the conduct of armed hostilities.

6. The offences created by the Regulations fall into the following categories:
 - a. contravening the principal prohibitions in the Regulations (e.g. breaching an asset-freeze or breaching a trade restriction) or trying to circumvent those principal prohibitions;
 - b. knowingly or recklessly providing false information for the purpose of obtaining a licence;
 - c. breaching the terms of a licence; and
 - d. failing to comply with requirements relating to the providing and recording of information.
7. Details of each of the offences either created by these Regulations or which apply to the prohibitions and requirements created by the Regulations, and the maximum penalties relating to each offence, are set out:
 - a) in relation to financial sanctions, in the table in **Annex A** to this report;
 - b) in relation to trade sanctions, in the table in **Annex B** to this report.
 - c) in relation to other sanctions for the purposes of UN obligations, in the table at Annex C to this report.

C: REASONS FOR CREATING THE OFFENCES

8. In order to fulfil the stated purpose of this sanctions regime, the prohibitions and requirements in these Regulations need to be properly enforced.
9. There are several mechanisms through which these measures can be enforced without criminal proceedings. These include the imposition of monetary penalties for breaching financial sanctions and the seizure of goods being dealt with in contravention of certain trade sanctions measures.
10. Having the ability to take enforcement action through criminal proceedings, alongside these other enforcement measures, is appropriate for several reasons. The offences act as a deterrent in relation to the commission of serious acts and omissions which would

undermine the purpose of the regime. They also allow the UK government to take a proportionate response where the severity of the act or omission warrants it.

11. Importantly, the offences created by the Regulations are consistent with the offences contained in the legislation which the Regulations will replace. Failing to create offences would mean that there would be an enforcement gap between existing legislation and the Regulations. Special care has been taken to ensure that offences are consistent with existing offences while not duplicating any offences that will exist when these Regulations come into force.
12. These issues are addressed in more detail below in relation to the different types of offences in the Regulations.

Breaches of, and circumvention of, the principal financial prohibitions

13. The prohibitions contained in regulations 8 to 12 prohibit persons from dealing with funds or economic resources owned, held or controlled by a designated person and from making funds or economic resources available to or for the benefit of a designated person where the person doing so knows or has reasonable cause to suspect that this is the case. Regulation 13 prohibits intentional conduct whose known object or effect is to circumvent any of those prohibitions.
14. A breach of these prohibitions is a serious matter because it undermines UN sanctions with which the UK is obliged to comply. Creating criminal offences serves as an effective deterrent for such serious actions. A breach of these prohibitions could result in the flow of funds to Da'esh (ISIL), Al-Qaida and their affiliates, responsible for causing the deaths of innocent civilians and other victims, the destruction of property, and for greatly undermining stability through terrorist attacks around the world.
15. The ability to institute criminal proceedings in relation to these matters serves as an effective deterrent. It also enables the UK government to take a proportionate response which corresponds to the severity of the breach.
16. The ability to institute criminal proceedings sits alongside other enforcement measures relating to financial sanctions. In particular, the Regulations provide the Office of Financial Sanctions Implementation (OFSI) with the ability to impose civil monetary penalties under Part 8 of the Policing and Crime Act 2017 to enforce breaches of these prohibitions¹. Enabling these prohibitions to be enforceable by criminal proceedings alongside these other enforcement measures ensures that a range of enforcement options is available to enforcement bodies, enabling them to take action that is proportionate to the breach in question.

¹ See

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/708991/Monetary_Penalties_Guidance_web.pdf

17. The Regulations are consistent with, but will not duplicate, existing financial sanctions offences. In particular, the financial sanctions offences in the Regulations will replace financial sanctions offences and penalties that were created by The ISIL (Da'esh) and Al-Qaida (Asset-Freezing) Regulations 2011 (S.I. 2011/2742 as renamed by S.I. 2016/937). This will ensure that there is no gap in the UK government's ability to enforce financial sanctions relating to persons named on the UN ISIL (Da'esh) and Al-Qaida Sanctions List.
18. The offences in the Regulations are also consistent with those contained in other legislation, including: Part 1 of the Terrorist Asset-Freezing etc. Act 2010; Schedule 3 to the Anti-terrorism, Crime and Security Act 2001; and Schedule 7 to the Counter-Terrorism Act 2008. However, each of these legislative regimes have a different underlying purpose and basis for designation and so cannot be directed to breaches of the financial prohibitions in the Regulations. There is therefore no overlap between the criminal offences in the Regulations and other criminal offences relating to financial sanctions that will continue in domestic legislation once the Regulations come into force.

Breaches of, and circumvention of, the principal trade prohibitions

19. Breaches of the principal trade prohibitions are a serious matter as they undermine UN sanctions with which the UK is obliged to comply. Creating criminal offences serves as an effective deterrent for such serious actions. A breach of these prohibitions could result in the flow of military goods or military technology to Da'esh (ISIL), Al-Qaida and their affiliates, responsible for causing the deaths of innocent civilians and other victims, the destruction of property, and for greatly undermining stability through terrorist attacks around the world.
20. There are other enforcement tools available in relation to trade sanctions, most notably the powers contained in the Customs and Excise Management Act 1979 to issue compound penalties, and to seize and dispose of goods where they are being dealt with in contravention of trade sanctions. The ability to institute criminal proceedings sits alongside these other powers and provides the government with a suite of tools to police and ensure compliance with trade sanctions and ensure that there are penalties that are appropriate to the seriousness of breaches of sanctions measures.
21. The Regulations replace offences related to trade sanctions contained in the Export Control (Al-Qaida and Taliban Sanctions) Regulations 2011 ("**the 2011 Regulations**") (S.I. 2011/2649), made under section 2(2) of the European Communities Act 1972. The Regulations amend the 2011 Regulations so as to remove any reference to Al-Qaida ensuring that there is no overlap. The Regulations will also supplement other export control prohibitions relating to military goods and technology in the Export Control Order 2008 and regulation 55 ensures there is no direct overlap between offences committed under that Order and the Regulations.

22. Section 68 of the Customs and Excise Management Act 1979 provides offences in relation to the export of prohibited or restricted goods and so such an offence has not been created by the Regulations.

Breaches of prohibitions and requirements relating to licensing

23. The licensing offences are intended to ensure that people do not obtain Treasury licences based on false information or documents and also that any licence conditions are complied with. The creation of criminal offences will help ensure robust compliance with the Regulations. The system of licensing cannot effectively operate without a strong disincentive to breaching the terms of a licence or making misleading applications.

Breaches of requirements relating to information

24. As set out in Annexes A and B, the Regulations require:

- a. banks and other relevant firms, businesses and professions to report relevant information to the Treasury in relation to financial sanctions;
- b. designated persons to provide information concerning their assets to the Treasury;

25. Enabling requirements to be enforceable by criminal proceedings ensures greater compliance with the Regulations. The Treasury relies on reporting by (a) relevant firms and (b) designated persons to assess compliance with financial sanctions, and is better able to target its compliance efforts according to the information received.

D: REASONS FOR MAXIMUM PENALTIES

26. The penalties imposed by the Regulations are set out in Annexes A and B. In all cases the penalties are either consistent with penalties relating to offences in legislation that will be replaced by the Regulations or consistent with similar offences in other existing legislation. Further detail on the maximum sentences relating to the different categories of offence are set out discussed below.

Breaches of, and circumvention of, the principal financial prohibitions

27. In relation to financial sanctions, the government committed in the White Paper consultation on sanctions² to ensure consistency of offences and penalties for financial sanctions contained across domestic legislation. In accordance with that commitment, the Regulations provide for penalties consistent with those provided for in the Policing and Crime Act 2017³. The maximum sentence on indictment for financial sanctions was increased by that Act from two years to seven years and there is no good reason for the government to revisit the level of penalties on exit from the EU. The government considers the maximum penalty provides an effective deterrent and is proportionate compared to other serious crime penalties.

Breaches of, and circumvention of, the principal trade prohibitions

28. The maximum term of imprisonment for offences related to breaches of the principal trade prohibitions in these Regulations, or circumvention of them, is ten years. This is in line with the penalties in article 34(6) of the Export Control Order 2008 (S.I. 2008/3231) (“**the 2008 Order**”), which is made under the Export Control Act 2002 which contains offences for breaches of similar trade prohibitions relating to military goods and technology. The 10-year maximum penalty is considered to be an effective deterrent and is proportionate to the seriousness of the offence.

29. The Regulations are also consistent with article 42 of the 2008 Order in that they modify the Customs and Excise Management Act 1979 to increase the maximum term of imprisonment for the offence of breaching export controls from seven years to ten years. This increase ensures that the maximum term of imprisonment for breaches of export controls in this Regulation is aligned with maximum penalties for breaches under the 2008 Order. An industry association stakeholder has commented that such provision has “a beneficial effect in assisting export control compliance staff within companies to get the attention of their colleagues on export control matters”.⁴ A 10-year maximum term of imprisonment provides an effective deterrent and is proportionate to the potential seriousness of the offence.

2

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/635101/consultation-uk-future-legal-framework-sanctions-government-response.pdf

³ The maximum terms of imprisonment for indictable offences under Schedule 3 to the Anti-terrorism, Crime and Security Act 2001 and Schedule 7 to the Counter-Terrorism Act 2008 were increased from two years to a maximum of seven years and, for summary offences under those provisions, the maximum terms of imprisonment were increased from three months to 12 months (this being six months for offences committed before section 154(1) of the Criminal Justice Act 2003 comes into force).

⁴ Evidence given by the Export Group on Aerospace and Defence (EGAD) to the Defence, Foreign Affairs, International Development and Trade and Industry Committees, Strategic Export Controls: 2007 Review, p. 75, published on 7 August 2007.

30. It should be noted that existing penalties relating to the prohibitions referred to in article 7(1) of the 2011 Regulations, which are replaced by prohibitions in Part 4 of the Regulations, are set at a maximum of two years imprisonment. This is because those provisions of the 2011 Regulations were made under section 2(2) of the European Communities Act 1972, which caps penalties at two years (under Schedule 2(1)(d) of that Act). These penalties are currently out of line with domestic penalties for other services that assist prohibited export and trade activities, and do not reflect the serious nature of breaches of trade sanctions. We have therefore harmonised the penalties for these offences with the 10-year maximum penalties currently available for breaches of similar prohibitions related to military goods and technology, for example under article 34(6) of the 2008 Order. Aligning the enforcement of trade sanctions and other export controls is appropriate because breaches of trade sanctions are equally as serious as other breaches of export controls.

Licensing and information offences

31. The Regulations provide that the maximum term of imprisonment for financial sanctions licensing offences is seven years imprisonment. Due to the scope for circumventing sanctions through improper use of a financial sanctions licence, the Secretary of State considers there are good reasons for the maximum term of imprisonment provided for licensing offences under the Regulations to be set at the same level as for breaches of the principal financial prohibitions.

32. The Regulations provide that the maximum term of imprisonment for financial sanctions information offences is six months. The level of harm associated with a failure to provide information, that is not related to another form of breach, is not deemed sufficiently high to warrant a higher maximum sentence.

E: CONCLUSIONS

33. As set out in this report:

- a. There are good reasons for each of the prohibitions and requirements set out in the Regulations to be enforceable by criminal proceedings. The ability to enforce these measures by criminal proceedings is an effective deterrent, it is consistent with existing legislation and, in conjunction with the use of other enforcement measures, it enables the government to take a proportionate response to potentially serious acts and omissions which would undermine the purpose of the sanctions regime. Importantly, these Regulations do not duplicate any offences that will exist when these Regulations come into force.

- b. There are also good reasons for the maximum terms of imprisonment that attach to those offences: the maximum penalties are consistent with penalties relating to offences in legislation that will be replaced by the Regulations, or consistent with similar offences in other existing legislation; they are an effective deterrent; and they are proportionate to the seriousness of the types of offences to which they relate.

The Rt Hon Sir Alan Duncan MP KCMG

**Minister of State for Europe and the Americas, on behalf of the Secretary of
State for Foreign and Commonwealth Affairs**

Annex A: Table of financial sanctions offences

Type of Sanctions offences	Specific offence	Relevant prohibition or requirement	Maximum penalty
Breach of sanctions	<ol style="list-style-type: none"> 1. Dealing with funds or economic resources owned, held or controlled by a designated person 2. Making funds available directly or indirectly to a designated person 3. Making funds available for the benefit of a designated person 4. Making economic resources available directly or indirectly to a designated person 5. Making economic resources available for benefit of a designated person 	<ol style="list-style-type: none"> 1. reg. 8 2. reg. 9 3. reg. 10 4. reg. 11 5. reg. 12 	<p>Liable on summary conviction - to imprisonment for a term not exceeding 12 months in England and Wales (or, in relation to offences committed before section 154(1) of the Criminal Justice Act 2003 (general limit on magistrates' court's power to impose imprisonment) comes into force, 6 months) and 12 months in Scotland, and 6 months in Northern Ireland or a fine, which in Scotland or Northern Ireland may not exceed the statutory maximum (or both);</p> <p>Liable on indictment - to imprisonment for a term not exceeding 7 years or a fine (or both).</p>
Circumvention etc. of prohibitions	Circumventing directly or indirectly the prohibitions of regs. 8-12 (Part 3 Finance) or enabling the contravention of prohibitions.	reg. 13	" " "
Breach of requirements under licences	<ol style="list-style-type: none"> 1. Knowingly or recklessly providing false information or providing a document that is not what it purports to be for the purpose of obtaining a licence 2. Failing to comply with the conditions of a licence 	<ol style="list-style-type: none"> 1. reg. 30 2. reg. 30 	" " "
Breach of reporting obligations	<ol style="list-style-type: none"> 1. Failure to inform the Treasury about knowledge or reasonable cause to suspect that a person is a designated person or has committed an offence under Part 3 of the Regulations or reg. 30 (finance: licensing offences) 2. Failure to provide the Treasury with information on which the knowledge or suspicion is based or information by which the person can be identified 	<ol style="list-style-type: none"> 1. reg. 31 2. reg. 31 3. reg. 31 	<p>Liable on summary conviction - to imprisonment for a term not exceeding 6 months in England and Wales, 6 months in Scotland, and 6 months in Northern Ireland or a fine, which in Scotland or Northern Ireland may not exceed level 5 on the standard scale (or both).</p>

	3. Failure to provide the Treasury with information about any funds or economic resources it holds for a designated person at the time when it first had knowledge or suspicion.		
Failure to comply with requests for information	<ol style="list-style-type: none"> 1. Failure to provide information in the time and manner requested under reg. 33 2. Knowingly and recklessly providing false information in respect of information requested under reg. 33 3. Evasion of requests made under reg. 33 or reg. 34 4. Obstruction of Treasury requests for information made under reg. 33 or reg. 34 	<ol style="list-style-type: none"> 1. reg. 35 2. reg. 35 3. reg. 35 4. reg. 35 	" " "

Annex B: Table of trade sanctions offences

Type of sanction offences	Specific offence	Relevant prohibition or requirement (or other legislation)	Maximum penalty
Breach of controls on exporting military goods and technology.	Exporting military goods.	Reg.15 Offence contained within Customs and Excise Management Act 1979 S.68(1)	Liable on summary conviction To a penalty of £20,000 or of three times the value of the goods, whichever is the greater, or to imprisonment for a term not exceeding 6 months, or to both Liable on indictment To a penalty of any amount, or to imprisonment for a term not exceeding 10 years (this is a modification to the 7 year maximum set out in the Customs and Excise Management Act 1979).
Breach of controls on military goods and technology.	<ol style="list-style-type: none"> 1. Supplying or delivering military goods. 2. Making military goods or military technology available. 3. Transferring military technology. 4. Providing technical assistance relating to military goods or military technology. 5. Providing financial services and funds relating to military goods or military technology. 	<ol style="list-style-type: none"> 1. Reg.16 2. reg.17 3. reg.18 4. reg.19 5. reg.20 6.reg.21 	Liable on summary conviction To imprisonment to a term not exceeding 12 months or a fine (or both) in England and Wales (or, in relation to offences committed before section 154(1) of the Criminal Justice Act 2003 (general limit on magistrates' court's power to impose imprisonment) comes into force, six months). To imprisonment for a term not exceeding 12 months in Scotland. To imprisonment to a term not exceeding 6 months or a fine (or both) in Northern Ireland. Liable on indictment To imprisonment for a term not exceeding 10 years or a fine (or both).

	6. Providing brokering services relating to military goods or military technology.		
Breach of controls on enabling or facilitating armed hostilities	providing technical assistance, financial services or funds or brokering services that enable or facilitate the conduct of armed hostilities	Reg.22	<p>Liable on summary conviction</p> <p>To imprisonment to a term not exceeding 12 months or a fine (or both) in England and Wales (or, in relation to offences committed before section 154(1) of the Criminal Justice Act 2003 (general limit on magistrates' court's power to impose imprisonment) comes into force, six months). To imprisonment for a term not exceeding 12 months in Scotland. To imprisonment to a term not exceeding 6 months or a fine (or both) in Northern Ireland.</p> <p>Liable on indictment</p> <p>To imprisonment for a term not exceeding 10 years or a fine (or both).</p>
Circumvention etc. of prohibitions.	Circumventing directly or indirectly the prohibitions of regs. 15-22.	Reg.23	<p>Liable on summary conviction</p> <p>To imprisonment to a term not exceeding 12 months or a fine (or both) in England and Wales (or, in relation to offences committed before section 154(1) of the Criminal Justice Act 2003 (general limit on magistrates' court's power to impose imprisonment) comes into force, six months). To imprisonment for a term not exceeding 12 months in Scotland. To imprisonment to a term not exceeding 6 months or a fine (or both) in Northern Ireland.</p>

			Liable on indictment To imprisonment for a term not exceeding 10 years or a fine (or both).
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Annex C: Table of other sanctions for the purposes of UN obligations

Type of sanction offences	Specific offence	Relevant prohibition or requirement (or other legislation)	Maximum penalty
Breach of sanctions	Dealing with funds or economic resources owned, held or controlled by Usama bin Laden	Reg 25	<p>Liable on summary conviction -</p> <p>to imprisonment for a term not exceeding 12 months in England and Wales (or, in relation to offences committed before section 154(1) of the Criminal Justice Act 2003 (general limit on magistrates' court's power to impose imprisonment) comes into force, 6 months) and 12 months in Scotland, and 6 months in Northern Ireland or a fine, which in Scotland or Northern Ireland may not exceed the statutory maximum (or both);</p> <p>Liable on indictment -</p> <p>to imprisonment for a term not exceeding 7 years or a fine (or both).</p>
Circumvention etc of prohibitions in respect of the asset-freeze in relation to Usama bin Laden	Circumventing directly or indirectly, or enabling or facilitating the contravention of, the prohibitions on dealing with funds or economic resources owned, held or controlled by Usama bin Laden	Reg.26	" " "