

# **THE COUNTER TERRORISM (INTERNATIONAL 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 Counter Terrorism (International 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 the UK’s compliance with the relevant UN obligations and to further the prevention of terrorism in the United Kingdom or elsewhere. In these Regulations, “the relevant UN obligations” means the obligations the United Kingdom has by virtue of paragraph 1 and 2 of resolution 1373 (measures to prevent terrorism).
5. The Regulations confer a power on the Secretary of State to designate persons where the Secretary of State has reasonable grounds to suspect that the person is an involved person, and considers that the designation of that person is appropriate having regard to the purposes stated in regulation 4, and the likely significant effects of the designation on that person. In these Regulations an “involved person” means a person who:
  - a. is or has been, involved in terrorist activity,
  - b. is owned or controlled directly or indirectly (within the meaning of regulation 7) by a person who is or has been so involved,
  - c. is acting on behalf of or at the direction of a person who is or has been so involved, or
  - d. is a member of, or associated with, a person who is or has been so involved.
6. The Regulations then provide a number of prohibitions in relation to designated persons. The Secretary of State may designate different persons for the purposes of

different provisions. The provisions include 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. They also impose various prohibitions on trade in military goods and technology and in relation to enabling or facilitating the conduct of armed hostilities.

7. 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.
  - e. disclosing confidential information in certain cases where the designation power has been used.
8. Details of each of the offences 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 the disclosure of confidential information where the designation power has been used, in the table in **Annex C** to this report.

## **C: REASONS FOR CREATING THE OFFENCES**

9. In order to fulfil the stated purpose of this sanctions regime, the prohibitions and requirements in these Regulations need to be properly enforced.
10. 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.
11. 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 severity of the act or omission warrants it.

12. 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 where conduct contravenes prohibitions and restrictions under these regulations and related offences in export control legislation, only the offences set out in these regulations will be taken as having been committed.
13. 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***

14. The prohibitions contained in regulations 11 to 15 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 16 prohibits intentional conduct whose known object or effect is to circumvent any of those prohibitions.
15. A breach of these prohibitions is a serious matter because such actions undermine the purpose of the sanctions regime. In this case, breaches could result in the flow of funds to those who are involved in terrorism.
16. 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.
17. 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 prohibitions<sup>1</sup>. 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.
18. The Regulations are consistent with existing financial sanctions offences. In particular, the financial sanctions offences in the Regulations will in part replace financial sanctions offences and penalties that were created in Part 1 of the Terrorist Asset-Freezing etc. Act 2010 (when that Act is repealed) and UK regulations (the ISIL

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(Da'esh) and Al-Qaida (Asset-Freezing) Regulations 2011 (S.I. 2011/2742). This will ensure that there is no gap in the UK government's ability to comply with its international obligations under resolution 1373.

19. As provided for in s.59(1) SAMLA, it is the government's intention to repeal the Terrorist Asset Freezing etc. Act after EU Exit. Once this has happened, there will be no overlap between the criminal offences in the Regulations and other criminal offences relating to financial sanctions imposed for the purposes of combatting international terrorism.

***Breaches of, and circumvention of, the principal trade prohibitions***

20. Breaches of the principal trade prohibitions are a serious matter as they undermine sanctions which are in place prevent terrorism in the United Kingdom or elsewhere. Creating criminal offences serves as an effective deterrent for such serious actions.
21. 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.
22. The Regulations will supplement export control prohibitions in the Export Control Order 2008 and regulation 55 ensures there is no direct overlap between offences committed under that Order and the Regulations.
23. 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***

24. The licensing offences are intended to ensure that people do not obtain 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***

25. 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.
26. 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 the financial sanctions Regulations, and is better able to target its compliance efforts according to the information received.

***Breaches of the confidential information prohibitions***

27. Regulation 9 contains prohibitions relating to the treatment of information relating to the statement of reasons for a person's designation and states that in certain circumstances the Secretary of State may specify that any of that information should be treated as confidential.

A breach of these prohibitions is a serious matter because disclosing information supporting the reasons why a person has been designated, that is not already available to the public from other sources, could undermine national security or damage international relations or could impede the prevention or detection of serious crime in the UK or elsewhere.

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.

**D: REASONS FOR MAXIMUM PENALTIES**

28. The penalties imposed by the Regulations are set out in Annexes A, B and C. 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 is set out below.

***Breaches of, and circumvention of, the principal financial prohibitions***

29. In relation to financial sanctions, the government committed in the White Paper consultation on sanctions<sup>2</sup> 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 Terrorist Asset Freezing etc. Act 2010 (and are consistent with other Regulations made under the Sanctions & Anti-Money Laundering Act 2018). The maximum sentence on indictment for financial sanctions in that Act (TAFSA) is seven years. There is no good reason for the government to revisit the level of penalties on exit from the EU. The

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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*

30. 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.
31. 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 10 years. This increase ensures that the maximum term of imprisonment for breaches of export prohibitions 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”.<sup>3</sup> A 10-year maximum term of imprisonment provides an effective deterrent and is proportionate to the potential seriousness of the offence.

*Licensing and information offences*

32. 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.
33. 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 with another form of breach, is not deemed sufficiently high to warrant a higher maximum sentence.
34. The Regulations provide that the maximum term of imprisonment for the offence of disclosure of confidential information is two years which is in line with the equivalent offence under the Terrorist Asset-Freezing etc. Act 2010.

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<sup>3</sup> 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, p75, published on 7 August 2007.

## **E: CONCLUSIONS**

35. 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**

<b>Type of Sanctions offences</b>	<b>Specific offence</b>	<b>Relevant prohibition or requirement</b>	<b>Maximum penalty</b>
Breach of financial sanctions	<ol style="list-style-type: none"> <li>1. Dealing with funds or economic resources owned, held or controlled by a designated person</li> <li>2. Making funds available directly or indirectly to a designated person</li> <li>3. Making funds available for the benefit of a designated person</li> <li>4. Making economic resources available directly or indirectly to a designated person</li> <li>5. Making economic resources available for benefit of a designated person</li> </ol>	<ol style="list-style-type: none"> <li>1. reg. 11</li> <li>2. reg. 12</li> <li>3. reg. 13</li> <li>4. reg. 14</li> <li>5. reg. 15</li> </ol>	<p><b>Liable on summary conviction -</b> 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><b>Liable on conviction on indictment -</b> 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. 11-15 (Part 3 Finance) or enabling the contravention of prohibitions.	reg. 16	" " "
Breach of requirements under licences	<ol style="list-style-type: none"> <li>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</li> <li>2. Failing to comply with the conditions of a licence</li> </ol>	<ol style="list-style-type: none"> <li>1. reg. 32</li> <li>2. reg. 32</li> </ol>	" " "
Breach of reporting obligations	<ol style="list-style-type: none"> <li>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</li> <li>2. Failure to provide the Treasury with information on which the knowledge or</li> </ol>	<ol style="list-style-type: none"> <li>1. reg. 34</li> <li>2. reg. 34</li> <li>3. reg. 34</li> </ol>	<p><b>Liable on summary conviction -</b> 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>



	<p>suspicion is based or information by which the person can be identified</p> <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.</p>		
<p>Failure to comply with requests for information</p>	<p>1. Failure to provide information in the time and manner requested under reg. 36</p> <p>2. Knowingly and recklessly providing false information in respect of information requested under reg. 36</p> <p>3. Evasion of requests made under reg. 36 or reg. 37</p> <p>4. Obstruction of Treasury requests for information made under reg. 36 or reg. 37</p>	<p>1. reg. 38</p> <p>2. reg. 38</p> <p>3. reg. 38</p> <p>4. reg. 38</p>	<p>" " "</p>

**Annex B: Table of trade sanctions offences**

<b>Type of sanction offences</b>	<b>Specific offence</b>	<b>Relevant prohibition or requirement (or other legislation)</b>	<b>Maximum penalty</b>
Breach of controls on exporting military goods and technology	Exporting military goods	Reg.19 Offence contained within Customs and Excise Management Act 1979 S. 68(1)	<p><b>Liabe on summary conviction</b> 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</p> <p><b>Liabe on conviction on indictment</b> 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).</p>
Breach of controls on military goods and technology	<ol style="list-style-type: none"> <li>1. Supplying or delivering military goods.</li> <li>2. Making military goods or military technology available.</li> <li>3. Transferring military technology.</li> <li>4. Providing technical assistance relating to military goods or military technology.</li> <li>5. Providing financial services or funds relating to military goods or military technology.</li> <li>6. Providing brokering</li> </ol>	<ol style="list-style-type: none"> <li>1. Reg.20</li> <li>2. Reg.21</li> <li>3. Reg.22</li> <li>4. Reg.23</li> <li>5. Reg.24</li> <li>6. Reg.25</li> </ol>	<p><b>Liabe on summary conviction</b> 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><b>Liabe on conviction on indictment</b> To imprisonment for a term not exceeding 10 years or a fine (or both).</p>

	services relating to military goods or military technology.		
Breaches 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.26	<p><b>Liabe on summary conviction</b></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><b>Liabe on conviction on indictment</b></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.19-26.	Reg.27	<p><b>Liabe on summary conviction</b></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><b>Liabe on conviction on indictment</b></p> <p>To imprisonment for a term not exceeding 10 years or a fine (or</p>

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**Annex C: Table of other offences**

<b>Other offences</b>	<b>Specific offence</b>	<b>Relevant prohibition or requirement</b>	<b>Maximum penalty</b>
Breach of confidential information provision	Disclosure of confidential information	reg. 9	<p><b>Liable on summary conviction</b></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><b>Liable on conviction on indictment</b></p> <p>To imprisonment for a term not exceeding 2 years or a fine (or both).</p>