

2020 No. 1284

OVERSEAS TERRITORIES
SANCTIONS

The Afghanistan (Sanctions) (Overseas Territories) Order 2020

Made - - - - *11th November 2020*

Laid before Parliament *18th November 2020*

Coming into force in accordance with article 1(1)

At the Court at Windsor Castle, the 11th day of November 2020

Present,

The Queen's Most Excellent Majesty in Council

Under Article 41 of the Charter of the United Nations the Security Council of the United Nations has, by a resolution adopted on 21st December 2015, called upon Her Majesty's Government in the United Kingdom to apply certain measures to give effect to decisions of that Council in relation to Afghanistan^(a):

Her Majesty, in exercise of the powers conferred on Her by section 1 of the United Nations Act 1946^(b) and section 63(3)(c) and (4) of the Sanctions and Anti-Money Laundering Act 2018^(c), is pleased, by and with the advice of Her Privy Council, to make the following Order:

Citation, commencement and extent

1.—(1) This Order may be cited as the Afghanistan (Sanctions) (Overseas Territories) Order 2020 and comes into force on IP completion day^(d).

(2) This Order extends to each British overseas territory listed in Schedule 1.

(a) The Security Council of the United Nations adopted resolution 2255 (2015) on 21st December 2015 ("resolution 2255"). Paragraph 1(b) of resolution 2255 requires States to take the necessary measures to prevent the entry into or transit through their territories of all persons designated by the Committee established in paragraph 30 of resolution 1988 ("the Committee"). Resolution 1988 established the UN sanctions regime in view of the situation in Afghanistan in respect of the Taliban the threat to the peace, stability and security of Afghanistan. That regime is now given effect to by resolution 2255.

(b) 1946 c.45.

(c) 2018 c.13.

(d) Schedule 1 to the Interpretation Act 1978 (c. 30) provides that "IP completion day" has the same meaning as in the European Union (Withdrawal Agreement) Act 2020 (c. 1) (see section 39(1) to (5) of that Act).

Extension of the Afghanistan (Sanctions) (Overseas Territories) Order 2020

2. The Afghanistan (Sanctions) (EU Exit) Regulations 2020^(a) as amended from time to time extend to each British overseas territory listed in Schedule 1 with the modifications specified in Schedule 2.

Extension of the Sanctions and Anti-Money Laundering Act 2018

3. Subject to the modification set out in paragraph (c), the following provisions of the Sanctions and Anti-Money Laundering Act 2018 extend to each British overseas territory listed in Schedule 1 for the purposes of the Afghanistan (Sanctions) (EU Exit) Regulations 2020 as modified and extended to the territories by this Order—

- (a) section 44 (protection for acts done for purposes of compliance);
- (b) section 52(3) (Crown application);
- (c) section 53 (saving for prerogative powers), except that, in its application to a particular British overseas territory, the reference in subsection (1) of that section to the United Kingdom is to be read as a reference to that territory.

Exclusion of UN designated persons from the Territory

4.—(1) A person who is for the time being named on the list created pursuant to resolution 1988 and maintained by the Committee must not enter, transit or remain in the Territory.

(2) Paragraph (1) does not apply to a person who—

- (a) belongs to the Territory, or
- (b) in respect of the Sovereign Base Areas, is permitted to reside in the Sovereign Base Areas under the law applicable to the Sovereign Base Areas.

(3) Paragraph (1) does not apply to a person if—

- (a) the application of that paragraph to that person would be contrary to the United Kingdom's obligations under—
 - (i) the European Convention on Human Rights, or
 - (ii) the Refugee Convention, or
- (b) the person has been exempted from the application of paragraph (1) under a process applying by virtue of a resolution adopted by the Security Council.

(4) The Governor may, with the consent of the Secretary of State, direct that, in relation to any person falling within paragraph (1) whose name is specified, or who is of a specified description, that paragraph has effect subject to specified exceptions.

(5) A direction under this article—

- (a) may contain conditions;
- (b) must be of a defined duration (and that duration may be expressed in any way, including, for example, being expressed in a way such that the direction ceases to have effect on, or within a specified period after, the occurrence of a specified event).

(6) The Governor may, with the consent of the Secretary of State, vary, revoke or suspend a direction under this article at any time.

(7) On the issue, variation, revocation or suspension of a direction under this article, the Governor may take such steps as the Governor considers appropriate to publicise the issue, variation, revocation or suspension of the direction.

(8) The Governor may, to such extent and subject to such restrictions and conditions as the Governor thinks proper, delegate or authorise the delegation of any of the Governor's powers

(a) S.I. 2020/948.

under this article to any person, or class or description of persons, and any references in this article to the Governor are to be construed accordingly.

(9) In the exercise of any power conferred on the Governor by this article, the Governor is to act in their discretion.

(10) In the application of this article to a particular British overseas territory, the expression “the Territory” means that territory.

(11) For the purposes of this article, a person (“P”) belongs to the Territory if—

- (a) in respect of Anguilla, P is an Anguillian (within the meaning given to that term in the law of Anguilla);
- (b) in respect of the Cayman Islands, P is a Caymanian (within the meaning given to that term in the law of the Cayman Islands);
- (c) in respect of the Falkland Islands, P has Falkland Islands status (within the meaning given to that term in the law of the Falkland Islands);
- (d) in respect of Montserrat, P is a Montserratian (within the meaning given to that term in the law of Montserrat);
- (e) in respect of Pitcairn, P has the right of abode in Pitcairn under the law of Pitcairn;
- (f) in respect of St Helena, P has St Helenian status (within the meaning given to that term in the law of St Helena);
- (g) in respect of Tristan da Cunha, P has the right of abode in Tristan da Cunha under the law of Tristan da Cunha;
- (h) in respect of the Turks and Caicos Islands, P is a Turks and Caicos Islander (within the meaning given to that term in the law of the Turks and Caicos Islands);
- (i) in respect of the Virgin Islands, P belongs to the Virgin Islands (within the meaning given to that term in the law of the Virgin Islands).

(12) In this article—

“the Committee” means the Committee of the Security Council established in accordance with paragraph 30 of resolution 1988;

“the European Convention on Human Rights” means the Convention for the Protection of Human Rights and Fundamental Freedoms done at Rome on 4 November 1950 and the Protocols to the Convention^(a);

“the Governor” means, in relation to the Territory, the person holding or acting in the office of Governor of the Territory, or, if there is no such office, the officer for the time being administering the Territory;

“Pitcairn” means Pitcairn, Henderson, Ducie and Oeno Islands;

“the Refugee Convention” means the Convention relating to the Status of Refugees done at Geneva on 28 July 1951 and the Protocol to the Convention^(b);

“resolution 1988” means resolution 1988 (2011) adopted by the Security Council on 17 June 2011;

“Security Council” means the Security Council of the United Nations;

“the Sovereign Base Areas” means the Sovereign Base Areas of Akrotiri and Dhekelia in the Island of Cyprus;

“specified” means specified in a direction under this article.

Richard Tilbrook
Clerk of the Privy Council

(a) ETS Numbers 005, 009, 046, 114, 117, 177, 187 and CETS Numbers 194, 213 and 214.

(b) United Nations Treaty Series, vol. 189, p. 137 and vol. 606, p. 267.

SCHEDULE 1

Article 1(2)

British overseas territories

Anguilla
British Antarctic Territory
British Indian Ocean Territory
Cayman Islands
Falkland Islands
Montserrat
Pitcairn, Henderson, Ducie and Oeno Islands
St Helena, Ascension and Tristan da Cunha
South Georgia and the South Sandwich Islands
The Sovereign Base Areas of Akrotiri and Dhekelia in the Island of Cyprus
Turks and Caicos Islands
Virgin Islands

SCHEDULE 2

Article 2

Modifications to be made in the extension of the Afghanistan (Sanctions) (EU Exit) Regulations 2020 to each British overseas territory listed in Schedule 1

1. In regulation 1 (citation and commencement)—
 - (a) in the heading, omit “and commencement”;
 - (b) omit paragraph (2) (commencement).
2. In regulation 2 (interpretation)—
 - (a) the existing text becomes paragraph (1);
 - (b) in that paragraph—
 - (i) in the appropriate places, insert the following definitions—
 - ““aircraft” has the same meaning as it has in section 6(9) of the Act;”;
 - ““authorised officer” means, in relation to the Territory—
 - (a) a member of Her Majesty’s forces in the Territory,
 - (b) a police or customs officer of the Territory,
 - (c) a person authorised by the Governor for the purposes of exercising, whether generally or in a particular case, any power conferred by—
 - (i) regulation 32 (finance: powers to request information),
 - (ii) regulation 33 (finance: production of documents),
 - (iii) regulation 35 (trade: information powers),
 - (iv) regulation 36 (disclosure of information),
 - (v) regulation 37A (suspected ships, aircraft or vehicles), or
 - (vi) regulation 37B (search warrants), or

(d) any person acting under the authority of a person falling within any of paragraphs (a) to (c);”

““financial sanctions licence” means, in relation to the Territory, a licence issued by the Governor under regulation 28(1);”;

““the Governor” is to be read in accordance with regulation 4A;”;

““Her Majesty’s forces” does not include a force of any country, other than the United Kingdom, that is a member of the Commonwealth;”;

““ship” has the same meaning as it has in section 7(14) of the Act;”;

““territorial sea of the Territory” means the territorial sea as defined in an enactment applicable in the Territory or, in the absence of such an enactment, the territorial sea adjacent to the Territory;”;

““Territory aircraft” means, in relation to the Territory—

- (a) an aircraft registered in the Territory, or
- (b) an aircraft which is not registered under the law of a country outside the Territory but is wholly owned by persons each of whom is a Territory person;”;

““Territory person” means, in relation to the Territory, a person who is—

- (a) an individual ordinarily resident in the Territory who is—
 - (i) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen,
 - (ii) a person who under the British Nationality Act 1981(a) is a British subject, or
 - (iii) a British protected person within the meaning of that Act, or
- (b) a body incorporated or constituted under the law of any part of the Territory;”;

““Territory ship” means, in relation to the Territory—

- (a) a ship registered in the Territory, or
- (b) a ship which is not registered under the law of a country outside the Territory but is wholly owned by persons each of whom is a Territory person;”;

““vehicle” means a land transport vehicle.”

(ii) omit the definitions of—

- (aa) “the Commissioners”,
- (bb) “Treasury licence”, and
- (cc) “United Kingdom person”;

(c) after that paragraph insert—

“(2) In the application of these Regulations to a particular British overseas territory, the expression “the Territory” means that territory.”

3. In regulation 3 (application of prohibitions and requirements outside the United Kingdom)—

- (a) in the heading, for “United Kingdom” substitute “Territory”;
- (b) in paragraphs (1) and (4), for “United Kingdom person” substitute “Territory person”;
- (c) in paragraphs (1), (4) and (7), for “United Kingdom” substitute “Territory”;
- (d) in paragraphs (2) and (5), after “in the territorial sea” insert “of the Territory”;
- (e) in paragraphs (3) and (6), for “Treasury licence” substitute “financial sanctions licence”.

4. In regulation 4 (purposes), for “the regulations contained in this instrument that are made under section 1 of the Act” substitute “these Regulations”.

(a) 1981 c.61. Part IV has been amended by the British Overseas Territories Act 2002 (c.8), section 1(1)(b); and the Nationality, Immigration and Asylum Act 2002 (c.41), Schedule 2, paragraph 1(i).

5. At the end of Part 1 (General), insert—

“Functions of the Governor

4A.—(1) In these Regulations, “the Governor” means, in relation to the Territory, the person holding or acting in the office of Governor of the Territory, or, if there is no such office, the officer for the time being administering the Territory.

(2) The Governor may, to such extent and subject to such restrictions and conditions as the Governor thinks proper, delegate or authorise the delegation of any of the Governor’s powers under these Regulations to any person, or class or description of persons, and any references in these Regulations to the Governor are to be construed accordingly.

(3) In the exercise of any power conferred on the Governor by these Regulations, the Governor is to act in their discretion.”

6. After regulation 5 insert—

“Requirement to publish a list of designated persons

5A.—(1) The Governor must—

- (a) publish a list of designated persons, and
- (b) keep the list up to date.

(2) The Governor may publish the list under paragraph (1) in any form the Governor considers appropriate, including by means of a website.

(3) For the purpose of this regulation, “designated person” means a person who is designated for the purposes of regulations 8 to 12 (asset-freeze etc.) by reason of regulation 5 (designation of persons named under UN Security Council Resolutions).”

7. In regulation 14 (interpretation of expressions used in this Part)—

(a) for paragraph (1) substitute—

“(1) For the purposes of this Part—

- (a) “export” means export from the Territory, and
- (b) goods transported out of the Territory by aircraft or ship as stores within the meaning of CEMA (see section 1(1) and (4) of that Act) are to be regarded as exported.

(1A) Paragraph 36 of Schedule 1 to the Act (trade sanctions) applies for the purpose of interpreting expressions in this Part.”

(b) for paragraph (2) substitute—

“(2) In this Part, any reference to the Territory includes a reference to the territorial sea of the Territory.”

8. In regulation 15 (export of military goods), at the end insert—

“(3) A person who contravenes the prohibition in paragraph (1) commits an offence, but it is a defence for a person charged with the offence of contravening paragraph (1) (“P”) to show that P did not know and had no reasonable cause to suspect that the export was to, or for the benefit of, a designated person.”

9. In regulation 16 (supply and delivery of military goods), in paragraph (4) for “United Kingdom or the Isle of Man” substitute “Territory”.

10. In regulation 21 (brokering services: non-UK activity relating to military goods and military technology)—

- (a) in the heading, for “non-UK” substitute “non-Territory”;
- (b) in paragraph (1), for “non-UK country”, in each place it occurs, substitute “non-Territory country”;

- (c) for paragraph (4) substitute—
“(4) In this regulation, “non-Territory country” means a country that is not the Territory.”

11. In regulation 22 (enabling or facilitating the conduct of armed hostilities)—

- (a) in paragraph (1)(d), for “non-UK country” substitute “non-Territory country”;
- (b) in paragraph (4), for the definition of “non-UK country” substitute—
““non-Territory country” means a country that is not the Territory;”.

12. In regulation 25 (finance: exceptions from prohibitions)—

- (a) omit paragraph (6);
- (b) in paragraph (7), for the definition of “relevant institution” substitute—
““relevant institution”, in relation to the Territory, means a person domiciled in the Territory who would satisfy the threshold conditions for permission under Part 4A of the Financial Services and Markets Act 2000(a) if it had its registered office (or if it does not have one, its head office) in the United Kingdom.”
- (c) omit paragraph (8).

13. For regulation 26 (exception for authorised conduct in a relevant country) substitute—

“Exceptions for authorised conduct outside the Territory

26.—(1) Where a person’s conduct outside the Territory would, in the absence of this paragraph, contravene a prohibition in any of regulations 8 to 12 (asset-freeze etc.), the prohibition is not contravened if the conduct is authorised by a licence issued under regulation 28 (Treasury licences) (as it has effect in the United Kingdom).

(2) Where a person’s conduct in a relevant country would, in the absence of this paragraph, contravene a prohibition in any of regulations 8 to 12 (“the relevant prohibition”), the relevant prohibition is not contravened if the conduct is authorised by a licence or other authorisation which is issued—

- (a) under the law of the relevant country, and
- (b) for the purpose of disapplying a prohibition in that jurisdiction which corresponds to the relevant prohibition.

(3) In this regulation—

“relevant country” means—

- (a) any of the Channel Islands,
- (b) the Isle of Man, or
- (c) any British overseas territory other than the Territory.

(4) Nothing in this regulation affects the application of a prohibition in a case where it would be incompatible with a UN obligation for the prohibition not to apply.”

14. For regulation 27 (exception for acts done for purposes of national security or prevention of serious crime), substitute—

“27.—(1) Where an act would, in the absence of this paragraph, be prohibited by any prohibition in Part 3 (Finance) or Part 4 (Trade), that prohibition does not apply to the act if the act is one which—

- (a) a responsible officer has determined would be in the interests of—
 - (i) national security, or

(a) 2000 c.8. Part 4A was inserted by the Financial Services Act 2012 (c.21), section 11(2) and most recently amended by S.I. 2018/1149; it is prospectively amended by S.I. 2019/632.

- (ii) the prevention or detection of serious crime in the United Kingdom or elsewhere, or
 - (b) the Governor, with the consent of the Secretary of State, has determined would be in the interests of the prevention or detection of serious crime in the Territory.
- (2) Where, in the absence of this paragraph, a thing would be required to be done under or by virtue of a provision of Part 6 (Information and records) or Part 8 (Maritime Enforcement), that requirement does not apply if—
- (a) a responsible officer has determined that not doing the thing in question would be in the interests of—
 - (i) national security, or
 - (ii) the prevention or detection of serious crime in the United Kingdom or elsewhere, or
 - (b) the Governor, with the consent of the Secretary of State, has determined that not doing the thing in question would be in the interests of the prevention or detection of serious crime in the Territory.
- (3) In this regulation, “responsible officer” means a person in the service of the Crown or holding office under the Crown in the United Kingdom, acting in the course of that person’s duty.
- (4) Nothing in this regulation affects the application of a prohibition or requirement in a case where it would be incompatible with a UN obligation for the prohibition or requirement not to apply.”

15. For regulation 28 (Treasury licences), substitute—

“Financial sanctions licences

28.—(1) The prohibitions in regulations 8 to 12 (asset-freeze etc.) do not apply to anything done under the authority of a licence issued by the Governor under this paragraph.

(2) The Governor may issue a financial sanctions licence only with the consent of the Secretary of State.

(3) A financial sanctions licence—

- (a) must specify the acts authorised by it;
- (b) may be general or may authorise acts by a particular person or persons of a particular description;
- (c) may—
 - (i) contain conditions;
 - (ii) be of indefinite duration or a defined duration.

(4) The Governor may issue a financial sanctions licence which authorises acts in relation to a designated person only where the Governor considers that it is appropriate to issue the licence for a purpose set out in Schedule 2.

(5) Where the Governor issues a financial sanctions licence, the Governor may, with the consent of the Secretary of State, vary, revoke or suspend it at any time.

(6) Where the Governor issues, varies, revokes or suspends a financial sanctions licence which authorises acts by a particular person, the Governor must give written notice to that person of the issue, variation, revocation or suspension of the licence.

(7) Where the Governor issues, varies, revokes or suspends a financial sanctions licence which is general or which authorises acts by persons of a particular description, the Governor must take such steps as the Governor considers appropriate to publicise the issue, variation, revocation or suspension of the licence.”

16. In regulation 29 (finance: licensing offences), for “Treasury licence”, in both places it occurs, substitute “financial sanctions licence”.

17. In regulation 30 (finance: reporting obligations)—

- (a) for “Treasury”, in each place it occurs, substitute “Governor”;
- (b) for paragraph (5) substitute—

“(5) A relevant institution must inform the Governor without delay if that institution credits a frozen account in accordance with regulation 25(4) (finance: exceptions from prohibitions).”

18. For regulation 31 (“relevant firm”) substitute—

“**31.**—(1) The following are relevant firms for the purposes of regulation 30—

- (a) a relevant institution;
- (b) an undertaking that by way of business—
 - (i) operates a currency exchange office,
 - (ii) transmits money (or any representation of monetary value) by any means, or
 - (iii) cashes cheques that are made payable to customers;
- (c) a firm or sole practitioner that provides to other persons, by way of business—
 - (i) accountancy services,
 - (ii) advice about tax affairs,
 - (iii) auditing services,
 - (iv) legal or notarial services, or
 - (v) trust or company services;
- (d) a firm or sole practitioner that carries out, or whose employees carry out, estate agency work;
- (e) the holder of a licence to operate a casino in the Territory;
- (f) a person engaged in the business of making, supplying, selling (including selling by auction) or exchanging—
 - (i) articles made from gold, silver, platinum or palladium, or
 - (ii) precious stones or pearls.

(2) For the purposes of paragraph (1), the following definitions apply—

“estate agency work”, in relation to the Territory, is to be read in accordance with section 1 of the Estate Agents Act 1979(a), but as if references in that section to disposing of or acquiring an interest in land included (despite anything in section 2 of that Act) references to disposing of or acquiring an estate or interest in land outside the Territory where that estate or interest is capable of being owned or held as a separate interest;

“firm” means any entity that, whether or not a legal person, is not an individual, and includes a body corporate and a partnership or other unincorporated body;

“relevant institution” has the same meaning as it has in regulation 25(7);

“trust or company services” means any of the following services—

- (a) forming companies or other legal persons;
- (b) acting, or arranging for another person to act—
 - (i) as a director or secretary of a company,
 - (ii) as a partner of a partnership, or

(a) 1979 c. 38. Section 1 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73), Schedule 1, paragraph 40; the Planning (Consequential Provisions) Act 1990 (c.11), Schedule 2, paragraph 42; the Planning (Consequential Provisions) (Scotland) Act 1997 (c.11), Schedule 2, paragraph 28; the Enterprise and Regulatory Reform Act 2013 (c.24), section 70; S.I. 1991/2684; S.I. 2000/121; and S.I. 2001/1283.

- (iii) in a similar capacity in relation to other legal persons;
- (c) providing a registered office, business address, correspondence or administrative address or other related services for a company, partnership or any other legal person or arrangement;
- (d) acting, or arranging for another person to act, as—
 - (i) a trustee of an express trust or similar legal arrangement, or
 - (ii) a nominee shareholder for a person.

(3) For the purposes of regulation 30(1), information or another matter comes to a relevant firm “in the course of carrying on its business” if the information or other matter comes to the firm—

- (a) in the case of a relevant firm within paragraph (1)(a), in the course of carrying on an activity in respect of which permission under Part 4A of the Financial Services and Markets Act 2000 would be required if it had its registered office (or if it does not have one, its head office) in the United Kingdom, and
- (b) in the case of a relevant firm within any other provision of paragraph (1), in the course of carrying on an activity mentioned in that provision.”

19. In regulation 32 (finance: powers to request information)—

- (a) in paragraph (1), for “The Treasury” substitute “An authorised officer”;
- (b) in paragraph (2)—
 - (i) for “The Treasury”, in the first place it occurs, substitute “An authorised officer”;
 - (ii) for “the Treasury”, in the second place it occurs, substitute “the authorised officer”;
- (c) in paragraph (4), for “the Treasury believe” substitute “the authorised officer believes”;
- (d) in paragraph (5)—
 - (i) for “The Treasury” substitute “An authorised officer”;
 - (ii) for “Treasury licence” substitute “financial sanctions licence”;
- (e) for paragraph (6) substitute—

“(6) An authorised officer may request a person to provide information within paragraph (7) if the authorised officer believes that the person may be able to provide the information.”
- (f) in paragraph (7)—
 - (i) for “the Treasury” substitute “the authorised officer”;
 - (ii) in sub-paragraph (b)(iii), for “Treasury licence” substitute “financial sanctions licence”;
- (g) in paragraph (8), for “The Treasury” substitute “The authorised officer”;
- (h) in paragraph (10), for “the Treasury”, in both places it occurs, substitute “the authorised officer”.

20. In regulation 33 (finance: production of documents)—

- (a) in paragraph (2), for “the Treasury request that documents be produced, the Treasury” substitute “an authorised officer requests that documents be produced, the authorised officer”;
- (b) for paragraph (3), substitute—

“(3) Where an authorised officer requests a designated person or a person acting under a financial sanctions licence to produce documents, that person must—

 - (a) take reasonable steps to obtain the documents (if they are not already in the person’s possession or control);

- (b) keep the documents under the person’s possession or control (except for the purpose of providing them to the authorised officer or as the authorised officer may otherwise permit).”

21. In regulation 34 (finance: information offences), in paragraph (1)(d), for “the Treasury” substitute “an authorised officer”.

22. For regulation 35 (trade: application of information powers in CEMA) substitute—

“Trade: information powers

35.—(1) An authorised officer may request a person who is concerned (in whatever capacity) in a relevant activity to provide such information as the authorised officer may reasonably require about the relevant activity.

(2) The authorised officer may specify the way in which, and the period within which, information is to be provided.

(3) If no such period is specified, the information which has been requested must be provided within a reasonable time.

(4) A request under paragraph (1) may include a request to produce specified documents or documents of a specified description.

(5) Where the authorised officer requests that documents be produced, the authorised officer may—

- (a) take copies or extracts from any document so produced,
- (b) request any person producing a document to give an explanation of it,
- (c) where that person is a body corporate, partnership or unincorporated body other than a partnership, request any person who is—
 - (i) in the case of a partnership, a present or past partner or employee of the partnership, or
 - (ii) in any other case, a present or past officer or employee of the body concerned, to give such an explanation, and

(d) remove, at a reasonable time and for a reasonable period, any document so produced if the authorised officer considers it is necessary to do so.

(6) Where a document has been removed by an authorised officer under paragraph (5)(d)—

- (a) the authorised officer must, on request, provide a receipt for the document;
- (b) if the document is reasonably required for the proper conduct of a business, the authorised officer must, as soon as practicable and free of charge, provide a copy of the document to the person who produced it.

(7) Where a document requested to be produced under paragraph (4) is subject to a lien, the production or removal of the document in accordance with this regulation does not affect, and is not to be regarded as breaking, the lien.

(8) For the purposes of paragraph (1), a “relevant activity” means an activity which would constitute a contravention of any prohibition in Part 4 (Trade).”

23. After regulation 35 (trade: information powers) insert—

“Trade: information offences

35A.—(1) A person commits an offence if that person—

- (a) without reasonable excuse, refuses or fails within the time and in the manner specified (or, if no time has been specified, within a reasonable time) to comply with any request under regulation 35 (trade: information powers);

- (b) knowingly or recklessly gives any information, or produces any document, which is false in a material particular in response to such a request;
- (c) with intent to evade any provision of regulation 35, destroys, mutilates, defaces, conceals or removes any document;
- (d) otherwise intentionally obstructs an authorised officer in the exercise of their powers under regulation 35.

(2) Where a person is convicted of an offence under this regulation, the court may make an order requiring that person, within such period as may be specified in the order, to comply with the request.”

24. In regulation 36 (disclosure of information)—

- (a) in paragraph (1), for “Secretary of State or the Treasury” substitute “Governor or an authorised officer”;
- (b) in paragraph (2)—
 - (i) after sub-paragraph (c) insert—

“(ca) taking any action with a view to instituting, or otherwise for the purposes of, any proceedings in the Territory for an offence under any provisions of these Regulations;”;
 - (ii) in sub-paragraph (d)—
 - (aa) in paragraph (i), after “Regulations” insert “(as they have effect in the United Kingdom)”;
 - (bb) in paragraph (ii), after “regulation 15(1) (export of military goods)” insert “(as it has effect in the United Kingdom)”;
 - (iii) in sub-paragraph (e), after “any British overseas territory” insert “other than the Territory”;
 - (iv) in sub-paragraph (g), for “United Kingdom” substitute “Territory”;
- (c) in paragraph (3)—
 - (i) in sub-paragraph (f), for “United Kingdom” substitute “Territory”;
 - (ii) in sub-paragraph (j), for “Secretary of State or the Treasury (as the case may be) consider” substitute “Governor considers”.

25. In regulation 37 (Part 6: supplementary)—

- (a) for paragraph (2) substitute—

“(2) But nothing in that regulation authorises a disclosure that would contravene the data protection legislation if that legislation were applicable to the Territory.”
- (b) in paragraph (5), for “Treasury licence” substitute “financial sanctions licence”;
- (c) after paragraph (5) insert—

“(5A) An authorised officer must, if requested to do so, produce evidence of their authority before exercising any power conferred by this Part.”
- (d) in paragraph (6), in the definition of “privileged information”, omit “(in Scotland, to confidentiality of communications)”.

26. In Part 7 (Enforcement), at the beginning insert—

“Suspected ships, aircraft or vehicles

37A.—(1) Where an authorised officer has reasonable cause to suspect that a ship, aircraft or vehicle has been, or is being, or is about to be, used in the commission of an offence under Part 4 (Trade), the authorised officer may—

- (a) in relation to an aircraft or vehicle, require the relevant person to keep the aircraft or vehicle and any goods it is carrying in the Territory, until the authorised officer

notifies the relevant person that the aircraft or vehicle (as the case may be) may depart, or

- (b) in relation to a ship, require the relevant person—
 - (i) not to cause or permit the ship to proceed with the voyage on which it is engaged or about to engage, until the authorised officer notifies the relevant person that the ship may proceed;
 - (ii) not to land any part of the ship's cargo at any port specified by the authorised officer, except with the authorised officer's prior consent;
 - (iii) if the ship is in port in the Territory, to cause the ship to remain there until the authorised officer notifies the relevant person that the ship may depart;
 - (iv) if the ship is in any other place, to cause it to proceed to a port specified by the authorised officer and keep it there, until the authorised officer notifies the relevant person that the ship may depart.

(2) Where the authorised officer considers it necessary in order to secure compliance with a requirement made under paragraph (1), the authorised officer may detain the ship, aircraft or vehicle and any goods it is carrying.

(3) Where an authorised officer detains a ship, aircraft or vehicle and any goods it is carrying in accordance with paragraph (2), the authorised officer must deliver to the master of the ship, the aircraft operator or the owner of the vehicle (as the case may be) a detention direction.

(4) A detention direction under paragraph (3) must—

- (a) be in writing,
- (b) state the grounds on which the ship, aircraft or vehicle is detained, and
- (c) state that—
 - (i) the power to detain is exercised under this regulation, and
 - (ii) any requirements subject to which the detention is carried out must be complied with.

(5) Paragraph (6) applies, in relation to a ship or aircraft, if—

- (a) the ship or aircraft (as the case may be) is not a Territory ship or Territory aircraft, and
- (b) there is in the Territory a consular officer for the country to which the ship or aircraft belongs.

(6) A copy of the detention direction must be sent as soon as practicable to the nearest consular officer for the country to which the ship or aircraft belongs.

(7) An authorised officer may use reasonable force, if necessary, in the exercise of any power conferred by this regulation.

(8) An authorised officer must, if requested to do so, produce evidence of their authority before exercising any power conferred by this regulation.

(9) Nothing in this regulation affects any other provision of law conferring powers, imposing restrictions or enabling restrictions to be imposed in respect of ships, aircraft or vehicles.

(10) In this regulation—

“consular officer”, in relation to a foreign country, means the officer recognised by Her Majesty as a consular officer of that foreign country in the Territory;

“the relevant person” means any of the following—

- (a) in relation to a ship, the owner, master or charterer of the ship;
- (b) in relation to an aircraft, the owner, charterer, operator or commander of the aircraft;
- (c) in relation to a vehicle, the owner, driver or operator of the vehicle.

Search warrants

37B.—(1) A magistrate or justice of the peace may issue a search warrant if satisfied by information on oath that—

- (a) there is reasonable cause to suspect that a relevant offence under these Regulations has been, or is being, or is about to be, committed, and
- (b) evidence in relation to the offence is to be found on a ship, aircraft, vehicle or premises specified in the information.

(2) A search warrant issued under this regulation is a warrant empowering an authorised officer to enter and search the ship, aircraft, vehicle or premises specified in the information, at any time within one month from the date of the warrant.

(3) The powers conferred on an authorised officer by a search warrant under this regulation include powers to—

- (a) in the case of a power to enter a ship, aircraft or vehicle, stop that ship, aircraft or vehicle;
- (b) enter any land, where such entry appears to the authorised officer to be necessary in order to enter the ship, aircraft, vehicle or premises specified in the information;
- (c) take such other persons and such equipment on to the ship, aircraft, vehicle or premises as appear to the authorised officer to be necessary;
- (d) inspect and seize any thing found in the course of a search if the authorised officer has reasonable cause to suspect that—
 - (i) it is evidence in relation to a relevant offence under these Regulations, or
 - (ii) it is necessary to seize it in order to prevent it being concealed, lost, damaged, altered or destroyed;
- (e) take copies of any document.

(4) An authorised officer who enters a ship, aircraft, vehicle or premises under a search warrant issued under this regulation may—

- (a) search any person found on the ship, aircraft, vehicle or premises whom the officer has reasonable cause to suspect to be in possession of any thing which may be required as evidence for the purposes of proceedings in respect of a relevant offence under these Regulations, and
- (b) seize any such thing found in such a search.

(5) Any thing seized under paragraphs (3)(d) or (4)(b)—

- (a) may be retained for so long as is necessary in all the circumstances, and
- (b) where that thing is military goods and is not authorised by a trade licence, may be forfeited, disposed of or transferred as appropriate.

(6) A search of a person under paragraph (4)(a) must be carried out by a person of the same sex.

(7) An authorised officer may use reasonable force, if necessary, in the exercise of any power conferred by this regulation.

(8) An authorised officer must, if requested to do so, produce evidence of their authority before exercising any power conferred by this regulation.

(9) Nothing in this regulation affects any other provision of law conferring powers, imposing restrictions or enabling restrictions to be imposed in respect of ships, aircraft or vehicles.

(10) For the purposes of this regulation—

“information on oath” includes any other form of application for a search warrant applicable in the Territory;

“justice of the peace” includes other competent judicial authorities within the Territory responsible for issuing search warrants;

“military goods” has the meaning given in regulation 14 (interpretation of expressions used in this Part);

“relevant offence” means an offence which is punishable with a term of imprisonment of more than 6 months.”

27. For regulation 38 (penalties for offences) substitute—

“**38.**—(1) Paragraphs (3) to (6) apply to—

- (a) Anguilla;
- (b) British Antarctic Territory;
- (c) British Indian Ocean Territory;
- (d) Cayman Islands;
- (e) Montserrat;
- (f) Pitcairn, Henderson, Ducie and Oeno Islands;
- (g) Turks and Caicos Islands;
- (h) Virgin Islands.

(2) Paragraphs (7) to (10) apply to—

- (a) Falkland Islands;
- (b) St Helena, Ascension and Tristan da Cunha;
- (c) South Georgia and the South Sandwich Islands;
- (d) the Sovereign Base Areas of Akrotiri and Dhekelia in the Island of Cyprus.

(3) A person who commits an offence under any provision of Part 3 (Finance) or regulation 29 (finance: licensing offences) is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months, or a fine not exceeding £5,000 or its equivalent in the currency of the Territory, or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 7 years, or a fine, or both.

(4) A person who commits an offence under any provision of Part 4 (Trade) is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months, or a fine not exceeding £5,000 or its equivalent in the currency of the Territory, or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 10 years, or a fine, or both.

(5) A person who commits an offence under regulation 30(6) or 34 (information offences in connection with Part 3) is liable, on summary conviction, to imprisonment for a term not exceeding 6 months, or a fine not exceeding £5,000 or its equivalent in the currency of the Territory, or both.

(6) A person who commits an offence under regulation 35A (trade: information offences) is liable, on summary conviction, to a fine not exceeding £1,000 or its equivalent in the currency of the Territory.

(7) A person who commits an offence under any provision of Part 3 (Finance) or regulation 29 (finance: licensing offences) is liable on conviction to imprisonment for a term not exceeding 7 years, or a fine, or both.

(8) A person who commits an offence under any provision of Part 4 (Trade) is liable on conviction to imprisonment for a term not exceeding 10 years, or a fine, or both.

(9) A person who commits an offence under regulation 30(6) or 34 (information offences in connection with Part 3) is liable on conviction to imprisonment for a term not exceeding 6 months, or a fine not exceeding £5,000 or its equivalent in the currency of the Territory, or both.

(10) A person who commits an offence under regulation 35A (trade: information offences) is liable on conviction to a fine not exceeding £1,000 or its equivalent in the currency of the Territory.

(11) Where a fine in this regulation is expressed to be a sum in sterling or its equivalent in the currency of the Territory, the Governor may issue guidance specifying how to calculate the amount in the currency of the Territory which is to be considered equivalent to that sum in sterling.”

28. In regulation 39 (liability of officers of bodies corporate etc.), omit paragraph (4).

29. In regulation 40 (jurisdiction to try offences)—

- (a) in paragraphs (1) and (2), for “United Kingdom”, in each place it occurs, substitute “Territory”;
- (b) omit paragraphs (3) and (4).

30. After regulation 40 (jurisdiction to try offences), insert—

“Consent to prosecutions

40A.—(1) Proceedings for an offence under these Regulations must not be instituted in the Territory except with the consent of the principal public officer of the Territory responsible for criminal prosecutions.

(2) Nothing in paragraph (1) prevents—

- (a) the arrest, or the issue or execution of a warrant for the arrest, of any person in respect of an offence under these Regulations, or
- (b) the remand in custody or on bail of any person charged with such an offence.”

31. For regulation 41 (procedure for offences by unincorporated bodies) substitute—

“41. Any provision in an enactment which applies in the Territory in relation to criminal proceedings brought against a body corporate applies also for the purposes of proceedings in the Territory for an offence under these Regulations brought against an unincorporated body.”

32. In regulation 42 (time limit for proceedings for summary offences), omit paragraph (4).

33. Omit regulation 43 (trade enforcement: application of CEMA) (including the heading).

34. Omit regulation 44 (trade offences in CEMA: modification of penalty) (including the heading).

35. Omit regulation 45 (application of Chapter 1 of Part 2 of the Serious Organised Crime and Police Act 2005(a)) (including the heading).

36. Omit regulation 46 (monetary penalties) (including the heading).

37. In regulation 47 (exercise of maritime enforcement powers)—

- (a) for paragraph (1) substitute—

“(1) A maritime enforcement officer may, for a purpose mentioned in paragraph (2) or (3), exercise any of the maritime enforcement powers in relation to a relevant ship in international waters.”

(a) 2005 c.15. Chapter 1 of Part 2 has been amended by the Terrorism Act 2006 (c.11), section 33(2) to (4); the Northern Ireland (Miscellaneous Provisions) Act 2006 (c.33), sections 26(2) and 30(2) and Schedules 3 and 5; the Bribery Act 2010 (c.23), section 17(2) and Schedule 1; the Criminal Justice and Licensing (Scotland) Act 2010 (asp.13), section 203 and Schedule 7, paragraph 77; the Crime and Courts Act 2013 (c.22), section 15 and Schedule 8, paragraphs 157 and 159; the Criminal Finances Act 2017 (c.22), section 51(1); the Sanctions and Anti-Money Laundering Act 2018, section 59(4) and Schedule 3, paragraph 4; and S.I. 2014/834.

- (b) omit paragraph (5);
- (c) at the end insert—
 - “(6) In this Part, “a relevant ship” means, in relation to the Territory, a Territory ship.”

38. In regulation 48 (maritime enforcement officers)—

- (a) in paragraph (1)—
 - (i) omit sub-paragraphs (b), (d), (e), (f) and (h);
 - (ii) for sub-paragraph (c) substitute—
 - “(c) a police officer of the Territory;”;
 - (iii) for sub-paragraph (g) substitute—
 - “(g) a customs officer of the Territory;”;
- (b) omit paragraph (2).

39. In regulation 49(2)(c) (power to stop, board, search etc.), for “United Kingdom” substitute “Territory”.

40. Omit regulation 51 (restrictions on exercise of maritime enforcement powers) (including the heading).

41. In regulation 53 (notices)—

- (a) in paragraph (1), for “regulation 28 (Treasury licences)” substitute “regulation 28 (financial sanctions licences)”;
- (b) for “United Kingdom”, in each place it occurs, substitute “Territory”.

42. Omit regulation 54 (trade: overlapping offences) (including the heading).

43. Omit regulation 55 (revocations) (including the heading).

44. Omit regulation 56 (amendment of the United Nations and European Union Financial Sanctions (Linking) Regulations 2017) (including the heading).

45. In regulation 57 (transitional provision: Treasury licences)—

- (a) in the heading, for “Treasury licences” substitute “financial sanctions licences”;
- (b) in paragraph (1)(a), for “, or deemed to be granted, by the Treasury under regulation 9 of the 2011 Regulations” substitute “by the Governor under article 20 of the 2012 Order”;
- (c) in paragraph (2), for “Treasury under regulation 28(1) (Treasury licences)” substitute “Governor under regulation 28(1) (financial sanctions licences)”;
- (d) in paragraph (3), for “2011 Regulations” substitute “2012 Order”;
- (e) in paragraph (4), after sub-paragraph (a), insert—
 - “(aa) the 2012 Order;”;
- (f) in paragraph (5)(a), for “2011 Regulations” substitute “2012 Order”;
- (g) in paragraph (6), omit “(Treasury licences)”;
- (h) in paragraph (7)—
 - (i) at the appropriate place, insert—
 - ““the 2012 Order” means the Afghanistan (United Nations Measures) (Overseas Territories) Order 2012 (a);”;
 - (ii) for the definition of “the relevant date” substitute—
 - ““the relevant date” means the date on which Part 3 comes into force.”

(a) S.I. 2012/1758, as amended by S.I. 2013/1758 and S.I. 2018/1076.

46. In regulation 58 (transitional provisions: prior obligations)—

(a) in paragraph (2)(b), for “(Treasury licences: purposes)” substitute “(financial sanctions licences: purposes)”;

(b) in paragraph (3), for the definition of “the relevant date” substitute—

““the relevant date” means the date on which Part 3 comes into force.”

47. In Schedule 2 (Treasury licences: purposes), in the heading, for “Treasury licences” substitute “Financial sanctions licences”.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order extends with modifications the Afghanistan (Sanctions) (EU Exit) Regulations 2020 (S.I. 2020/948) (“the Afghanistan Regulations”) as amended from time to time to all British overseas territories except Bermuda and Gibraltar (which implement sanctions under their own legislative arrangements). It also implements in those territories the travel ban in respect of UN designated persons required by paragraph 1(b) of resolution 2255 (2015) adopted by the Security Council on 21st December 2015 (which in the United Kingdom is implemented by way of the Immigration Act 1971 (c.77) rather than the Afghanistan Regulations).

Section 63(3)(c) of the Sanctions and Anti-Money Laundering Act 2018 (c.13) (“the Sanctions Act”) provides that Her Majesty may by Order in Council provide for any provision of Part 1 of that Act, or any regulations under Part 1 of that Act, to extend with or without modifications to any of the British overseas territories. Section 63(4) provides that this includes the power to extend any regulations as amended from time to time.

Section 1 of the United Nations Act 1946 (c.45) provides that Her Majesty may by Order in Council make such provision as appears to Her necessary or expedient for enabling the effective application of certain measures where, under Article 41 of the Charter of the United Nations, the Security Council has called upon Her Majesty’s Government in the United Kingdom to apply such measures to give effect to any decision of that Council. In accordance with subsection (2) of that section, such Orders in Council may extend to the British overseas territories.

The Afghanistan Regulations were made under Part 1 of the Sanctions Act to establish a sanctions regime which, following the United Kingdom’s withdrawal from the European Union, implement the UN sanctions regime in relation to Afghanistan. Resolution 1988 established the UN sanctions regime in view of the situation in Afghanistan in respect of the Taliban and the threat to the peace, stability and security of Afghanistan. That regime is now given effect by resolution 2255.

The Afghanistan Regulations, as modified and extended to the territories by this Order (“the modified Regulations”), provide that persons designated by the UN as associated with the Taliban in constituting a threat to the peace, stability and security of Afghanistan are designated for the purposes of the modified Regulations. Designated persons are subject to financial sanctions, including having their funds or economic resources frozen. The modified Regulations also impose trade restrictions on military goods and technology for persons designated by the UN as associated with the Taliban in constituting a threat to the peace, stability and security of Afghanistan

The modified Regulations provide for certain exceptions to this sanctions regime (for example to allow for frozen accounts to be credited with interest or other earnings and to allow acts done for the purpose of national security or the prevention of serious crime). The Governor of a British overseas territory to which the modified Regulations extend may, with the consent of the Secretary of State, issue a licence in respect of activities that would otherwise be prohibited under the modified Regulations. Schedule 2 sets out the purposes pursuant to which the Governor may issue a financial sanctions licence. The modified Regulations also require the Governor of the territory to publish an up-to-date list of designated persons.

The modified Regulations prescribe powers for the provision and sharing of information to enable the effective implementation and enforcement of the sanctions regime. The modified Regulations also prescribe enforcement powers in relation to suspected ships, aircraft or vehicles, or for the

issue of a search warrant. The modified Regulations make it a criminal offence to contravene, or circumvent, any of the prohibitions in the modified Regulations and prescribe the penalties that apply to such offences.

This Order also extends to the territories for the purposes of the modified Regulations specific provisions of Part 1 of the Sanctions Act, namely provisions relating to protection for acts done for purposes of compliance, Crown application and saving for prerogative powers.

This Order also provides that, subject to certain exceptions, UN designated persons must not enter, transit or remain in the territories.

An Impact Assessment has not been prepared for this instrument: the territorial extent of the instrument and the modified Regulations is the British overseas territories listed in Schedule 1, and no, or no significant, impact is foreseen on the private, voluntary or public sectors in the United Kingdom.

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£6.90

UK202011041023 11/2020 19585

<http://www.legislation.gov.uk/id/uksi/2020/1284>

ISBN 978-0-34-821530-4



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