

THE SUDAN (SANCTIONS) (EU EXIT) REGULATIONS 2020
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 Sudan (Sanctions) (EU Exit) Regulations 2020 (“**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. In addition to ensuring compliance with relevant UN obligations, the principal prohibitions and requirements in the Regulations are aimed at promoting the peace, stability and security of Sudan; encouraging the resolution of the armed conflicts in Sudan and the stabilisation of Sudan; promoting respect for democracy, the rule of law and good governance in Sudan; promoting the effective delivery of the mandates of the missions and mechanisms whose activities contribute to the peace, stability and security of Sudan; promoting respect for humanitarian assistance activity in Sudan; promoting compliance with the rules of international humanitarian law applicable to the armed conflicts in Sudan; and promoting respect for, and accountability in relation to violations or abuses of human rights in Sudan.
5. The Regulations state that each person for the time being named for the purposes of paragraph 3(c) of resolution 1591 by the Security Council or the Committee is a designated person for the purposes of regulations 12 to 16 (asset-freeze etc). The Regulations also provide for an autonomous power for the Secretary of State to designate persons for the purposes of those regulations. The Regulations then provide a number of prohibitions in relation to designated persons (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). They also impose various prohibitions including on trade in

military goods and technology and in relation to enabling or facilitating the conduct of armed hostilities in Sudan.

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;
 - d. failing to comply with requirements relating to the providing and recording of information; and
 - e. disclosing confidential information in certain cases where the designation power has been used.
7. Details of each of the offences created by these Regulations, the prohibitions and requirements to which those offences relate, 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 confidential information requirement in **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 government to take a proportionate response where 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 already exist.
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 12 to 16 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 17 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 such actions undermine the purpose of the sanctions regime. In this case, breaches could result in the breach of UN obligations and/or the flow of funds to those who are engaging in or providing support for acts that undermine the peace, stability and security of Sudan, including serious human rights abuses and violations, or violations of international humanitarian law.
15. The ability to institute criminal proceedings in relation to these matters serves as an effective deterrent. It also enables the 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
17. The Regulations are consistent with, but will not duplicate, existing financial sanctions offences. The financial sanctions offences in the Regulations will replace financial sanctions offences and penalties that were created by the Sudan (European Union Financial Sanctions) Regulations 2014 (S.I. 2014/1826). This will ensure that there is no gap in the UK government's ability to enforce financial sanctions in relation to Sudan in compliance with the UK's UN obligations.

¹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/708991/Monetary_Penalties_Guidance_web.pdf

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 (involvement in terrorist activity, terrorist financing, threats to UK national security) 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 may undermine sanctions which are in place for the purpose of compliance with UN obligations. In this case, breaches could result in the breach of UN obligations and/or the flow of military goods or military technology to those who are engaging in or providing support for acts that undermine the peace, stability and security of Sudan, including serious human rights abuses and violations, or violations of international humanitarian law.

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 (Sudan, South Sudan and Central African Republic Sanctions) Order Regulations 2014 (S.I. 2014/3258) (“**the 2014 Regulations**”), which is made under section 2(2) of the European Communities Act 1972. The offences in the Regulations will replace offences in the 2014 Regulations and the 2014 Regulations will be revoked by the Regulations, 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 67 ensures there is no direct overlap between offences committed under that Order and the Regulations.

22. Importantly, these Regulations do not create criminal offences where it is judged that there already exists a criminal offence that can effectively enforce the prohibitions or requirements in question. For example, the Regulations do not create a criminal offence in relation to the prohibition on exporting restricted goods, because offences relating to the export of goods will continue to be dealt with under Section 68 of the Customs and Excise Management Act 1979.

Breaches of prohibitions and requirements relating to licensing

23. 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.
24. The licensing offences are consistent with those currently applicable under the existing Sudan sanctions regime and domestic export control legislation (including the strict liability offences in relation to purporting to act under the authority of licence).

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, where requested, information concerning their assets to the Treasury.
 - c. persons to register or record information relevant to general trade licences.
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 Regulations, and is better able to target its compliance efforts according to the information received.
27. In relation to general trade licences, the offences will help ensure that use of any such general licences can be properly monitored and enforced. The use of a general trade licence requires auditing to ensure that activity undertaken is in line with the terms of the licence. Without criminal penalties, there would be no means to compel licence-holders to provide the relevant information. This is in line with current practice and related offences in respect of use of general licences for controlled goods and technology under the Export Control Order 2008.

Breaches of the confidential information prohibitions

28. Regulation 9 contains provisions relating to the treatment of information relating 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.
29. A breach of the prohibition on the disclosure of confidential information 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.

30. 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 any breach.

D: REASONS FOR MAXIMUM PENALTIES

31. 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 are set out below.

Breaches of, and circumvention of, the principal financial prohibitions

32. 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

33. 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 the Export Control Order 2008, which contains equivalent offences. The 10-year maximum penalty is considered to be an effective deterrent and is proportionate to the seriousness of the offence.
34. The Regulations are also consistent with article 42 of the Export Control 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 alignment with the maximum term of imprisonment for other similar offences created by the Regulations. An industry association stakeholder

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).

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.

35. It should be noted that existing penalties relating to the prohibitions referred to in regulation 9 of the 2014 Regulations, which are replaced by prohibitions in Part 5 of the Regulations, are set at a maximum of two years’ imprisonment. This is because those provisions of the 2014 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 sanctions prohibitions, for example under article 34 of the Export Control Order 2008. 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

36. The Regulations provide that the maximum term of imprisonment for financial sanctions licensing offences is 7 years. 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.
37. The Regulations provide that the maximum term of imprisonment for financial sanctions information offences is 6 months. The level of harm associated with a failure to provide information, where this does not constitute a breach of any of the substantive financial sanctions prohibitions, is not deemed sufficiently high to warrant a higher maximum sentence.
38. 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.
39. The Regulations provide that the maximum term of imprisonment for trade licensing and information offences is 2 years’ imprisonment, which is in line with equivalent domestic export control and sanctions legislation, for example under Regulation 9 of the 2014 Regulations. The Secretary of State considers that there are good reasons to

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, p75, published on 7 August 2007.

ensure that the maximum terms of imprisonment provided for under the Regulations are consistent with that legislation. There is a good reason for a lesser maximum term of imprisonment for these offences, as compared with the offences relating to the principal prohibitions, since while penalties need to be set at a level that promotes compliance, breaches are unlikely to result in the same level of harm as for breaches of the principal prohibitions.

E: CONCLUSIONS

40. 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 create criminal offences where it has been judged that there already exists a criminal offence that can effectively enforce the prohibitions or requirements in question.
- 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.

Lord Ahmad of Wimbledon

**Minister of State 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 the benefit of a designated person. 	<ol style="list-style-type: none"> 1. reg. 12 2. reg. 13 3. reg. 14 4. reg. 15 5. reg. 16 	<p>Liabe 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>Liabe on conviction 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. 12-16 (Part 3 Finance) or enabling or facilitating the contravention of prohibitions.	reg. 17	" " "
Breach of requirements under Treasury licences	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 Treasury licence.	<ol style="list-style-type: none"> 1. reg. 37 2. reg. 37 	" " "

	2. Failing to comply with the conditions of a licence.		
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 regulation 37 (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. 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. 	<ol style="list-style-type: none"> 1. reg. 40 2. reg. 40 3. reg. 40 	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).
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. 42 2. Knowingly or recklessly providing false information in respect of information requested under reg. 42 3. Evasion of requests to provide information or produce documents made under reg. 42 or reg. 43. 4. Obstruction of Treasury requests for information made under reg. 42 or reg. 43. 	<ol style="list-style-type: none"> 1. reg. 44 2. reg. 44 3. reg. 44 	" " "

Annex B: Table of trade sanctions offences

Type of sanction offences	Specific offence	The Sudan (Sanctions) (EU Exit) Regulations 2020 reference to relevant prohibition or requirement (or other legislation)	Maximum penalty
Breach of controls on exporting goods.	1. Exporting military goods.	reg 21 Offence contained within Customs and Excise Management Act 1979 S.68	<p>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</p> <p>Liable on conviction 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 CEMA).</p>
Breach of controls on military goods and technology.	1. Supplying or delivering military goods. 2. Making military goods and technology available. 3. Transferring military technology. 4. Providing technical assistance relating to military goods and technology. 5. Providing financial services and funds relating to military goods and technology. 6. Providing brokering services relating to military goods and technology	1. reg 22 2. reg 23 3. reg 24 4. reg 25 5. reg 26 6. reg 27	<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 conviction on indictment To imprisonment for a term not exceeding 10 years or a fine (or both).</p>
Enabling or facilitating the	Enabling or facilitating the conduct of armed	reg 28	Liable on summary conviction

conduct of armed hostilities	hostilities		<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>Liabe on conviction on indictment To imprisonment for a term not exceeding 10 years or a fine (or both).</p>
Circumvention etc. of prohibitions	Intentionally participate in activities knowing that the object or effect of them is, whether directly or indirectly to circumvent any of the prohibitions in regulations 21-28 (Trade) or to enable or facilitate the contravention of any such prohibition.	reg 29	”
Licensing offences	<p>a. Knowingly or recklessly:</p> <p>i. Providing information that is false in a material respect, or</p> <p>ii. Providing or producing a document that is not what it purports to be, for the purpose of obtaining a trade licence.</p> <p>b. Purporting to act under the authority of a trade licence but failing to comply with any condition contained in the licence.</p>	reg 38	<p>Liabe 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>Liabe on conviction on indictment</p>

			To imprisonment for a term not exceeding 2 years or a fine (or both).
Information Offences	<p>1. Failing to comply with record keeping requirements in reg. 45(2) – (4).</p> <p>2. (a) Intentionally obstructing an official in the performance of any of the official’s functions (b) Failing to produce a register, record or document when reasonably required to do so by an official.</p>	<p>1. reg 46 2. reg 47</p>	<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 conviction on indictment To imprisonment for a term not exceeding 2 years or a fine (or both).</p>

Annex C: Table of other offences

Other offences	Specific offence	Relevant prohibition or requirement	Maximum penalty
Breach of confidential information provision	Disclosure of information specified by the Secretary of State as confidential, where knowledge or reasonable cause to suspect that the information is to be treated as confidential	reg. 9	<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 conviction on indictment - to imprisonment for a term not exceeding 2 years or a fine (or both).</p>

