

THE MISAPPROPRIATION (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 Sanctions Act**”) in relation to the Misappropriation (Sanctions) (EU Exit) Regulations 2020 (“**the Regulations**”).
2. Section 18(2) of the Sanctions Act requires a report to be laid before Parliament where regulations made under section 1 of the Sanctions 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 deterring, and providing accountability for, the misappropriation of State funds from a country outside the United Kingdom.
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 that person is, or has been involved in, the misappropriation of State funds from a country outside the United Kingdom. The Secretary of State must also consider that the designation of that person is appropriate, having regard to the purpose stated in regulation 4, and the likely significant effects of the designation on that person. An ‘involved person’ is defined as a person who has been involved in the misappropriation of State funds from a country outside the United Kingdom, is owned or controlled directly or indirectly by a person who is or has been so involved, is acting on behalf of or at the direction of a person who is or has been so involved, or is a member of, or associated with, a person who is or has been so involved. The Regulations set out the ways in which a person can be ‘involved in’ an activity.
6. The Regulations then provide a number of prohibitions in relation to designated persons (including that no person is to deal with the assets of a designated person or provide funds or other economic resources to them or for their benefit).

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 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.
8. 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 the disclosure of confidential information where the designation power has been used, in the table in **Annex B** 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.
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 government to take a proportionate response where the 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 offences are consistent with existing offences while not duplicating any offences that already exist.

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 misappropriated State funds from countries outside the UK being dealt with or made available in contravention of sanctions, and thus depriving that State's people of the benefits of those funds.
16. 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.
17. The ability to institute criminal proceedings sits alongside other enforcement measures relating to financial sanctions. In particular, the Office of Financial Sanctions Implementation (OFSI) has the power to impose civil monetary penalties under Part 8 of the Policing and Crime Act 2017 to enforce breaches of the financial sanctions prohibitions contained in the Regulations¹. 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, but will not duplicate, existing financial sanctions offences. In particular, the financial sanctions offences in the Regulations will replace financial sanctions offences and penalties that were created by the Egypt (Asset-Freezing) Regulations 2011 (S.I. 2011/887), the Tunisia (Asset-Freezing) Regulations 2011 (S.I. 2011/888) and the Ukraine (European Union Financial Sanctions) Regulations 2014 (S.I. 2014/507). This will ensure that there is no gap in the UK government's ability to enforce financial sanctions in respect of the misappropriation of State funds from countries outside the UK.
19. 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; and existing regulations made under the Sanctions Act. However, each of these legislative regimes has a different underlying purpose and basis for

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

designation (for example, involvement in terrorist activity, terrorist financing and threats to UK national security, amongst others) 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.

Breaches of prohibitions and requirements relating to licensing

20. 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.
21. The licensing offences are consistent with those currently applicable under the existing EU Tunisia, Egypt and Ukraine misappropriation sanctions regimes.

Breaches of requirements relating to information

22. 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.
23. 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.

Breaches of the confidential information prohibitions

24. Regulation 9 contains provisions 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.
25. 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.
26. 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

27. The penalties imposed by the Regulations are set out in Annexes A and B. In all cases the penalties are consistent with similar offences in other existing 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

28. 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 at the end of the Transition Period. The government considers the maximum penalty provides an effective deterrent and is proportionate compared to other serious crime penalties.

Licensing and information offences

29. The Regulations provide that the maximum term of imprisonment for financial sanctions licensing offences is 7 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.

30. 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 also constitute a breach of any of the substantive financial sanctions prohibitions, is not deemed sufficiently high to warrant a higher maximum sentence.

31. 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 created in the Terrorist Asset-Freezing etc. Act 2010.

E: CONCLUSIONS

²https://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 paragraph 24(2) of Schedule 22 to the Sentencing Act 2020) comes into force).

32. 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 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 similar 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 for South Asia and the Commonwealth, on behalf of the Secretary of
State for Foreign, Commonwealth and Development Affairs**

Annex A: Table of financial sanctions offences

Type of Sanctions offences	Specific offence	Relevant prohibition or requirement	Maximum penalty
Breach of sanctions	<ol style="list-style-type: none"> 1. Dealing with funds or economic resources owned, held or controlled by a designated person 2. Making funds available directly or indirectly to a designated person 3. Making funds available for the benefit of a designated person 4. Making economic resources available directly or indirectly to a designated person 5. Making economic resources available for benefit of a designated person 	<ol style="list-style-type: none"> 1. reg. 11 2. reg. 12 3. reg. 13 4. reg. 14 5. reg. 15 	<p>Liable on summary conviction -</p> <p>to imprisonment for a term not exceeding 12 months in England and Wales (or, in relation to offences committed before paragraph 24(2) of Schedule 22 to the Sentencing Act 2020 (Increase in 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 -</p> <p>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"> 1. Knowingly or recklessly providing false information or providing a document that is not what it purports to be for the purpose of obtaining a licence 2. Failing to comply with the conditions of a licence 	<ol style="list-style-type: none"> 1. reg. 22 2. reg. 22 	" " "

Breach of reporting obligations	<ol style="list-style-type: none"> 1. Failure to inform the Treasury about knowledge or reasonable cause to suspect that a person is a designated person or has committed an offence under Part 3 of the Regulations or reg. 23 (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. 24 2. reg. 24 3. reg. 24 	<p>Liable on summary conviction -</p> <p>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>
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. 27 2. Knowingly and recklessly providing false information in respect of information requested under reg. 27 3. Evasion of requests to provide information or produce documents made under reg. 27 or reg. 28 4. Obstruction of Treasury requests for information made under reg. 27 or reg. 28 	<ol style="list-style-type: none"> 1. reg. 28 2. reg. 28 3. reg. 28 4. reg. 28 	<p style="text-align: center;">" " "</p>

Annex B: 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 paragraph 24(2) of Schedule 22 to the Sentencing Act 2020 (Increase in 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>