

SCHEDULE 2

Article 2

Modifications to be made in the extension of the Syria (United Nations Sanctions) (Cultural Property) (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).
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 17 (trade: information powers),
 - (ii) regulation 18 (disclosure of information),
 - (iii) regulation 19A (suspected ships, aircraft or vehicles), or
 - (iv) regulation 19B (search warrants), or
 - (d) any person acting under the authority of a person falling within any of paragraphs (a) to (c);”;
 - ““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,

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- (ii) a person who under the British Nationality Act 1981(1) 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”, and
- (bb) “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”.
- 4. In regulation 4 (purpose), for “the regulations contained in this instrument that are made under section 1 of the Act” substitute “these Regulations”.
- 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. In regulation 6 (interpretation of other expressions used in this Part)—
- (a) for paragraph (1) substitute—
- “(1) For the purposes of this Part—
- (a) “export” means export from the Territory,

(1) 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).

- (b) “import” means import to the Territory, and
 - (c) 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.”;
- (b) for paragraph (2) substitute—
- “(2) In this Part, any reference to the Territory includes a reference to the territorial sea of the Territory.”
7. In regulation 7 (export and import of illegally removed Syrian cultural property), at the end insert—
- “(4) A person who contravenes a prohibition in paragraph (1) or (2) commits an offence, but it is a defence for a person charged with the offence of contravening paragraph (1) or (2) to show that they did not know and had no reasonable cause to suspect that the goods were illegally removed Syrian cultural property.”
8. In regulation 8 (supply and delivery of illegally removed Syrian cultural property), in paragraph (4) for “United Kingdom, the Isle of Man” substitute “Territory”.
9. In regulation 11 (brokering services: non-UK activity relating to illegally removed Syrian cultural property)—
- (a) in the heading, for “non-UK” substitute “non-Territory”;
 - (b) in paragraph (1)(c), for “non-UK country” substitute “third country”;
 - (c) for paragraph (4) substitute—
- “(4) In this regulation, “third country” means a country that is not the Territory.”
10. For regulation 16 (exception for acts done for purposes of national security or prevention of serious crime), substitute—
- “16.—(1) Where an act would, in the absence of this paragraph, be prohibited by any prohibition in Part 2 (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
 - (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 4 (Information and records) or Part 6 (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.

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(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⁽²⁾ for the prohibition or requirement not to apply.”

11. For regulation 17 (trade: application of information powers in CEMA) substitute—

“Trade: information powers

17.—(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, unless done pursuant to regulation 15 (exception for the return of Syrian cultural

(2) Section 1(8) of the Sanctions and Anti-Money Laundering Act 2018 defines a “UN obligation” as an obligation that the United Kingdom has by virtue of a UN Security Council Resolution. “UN Security Council Resolution” is also defined in section 1(8).

property) or 16 (exception for acts done for purposes of national security or prevention of serious crime), constitute a contravention of—

- (a) any prohibition in Chapter 2 of Part 2 (Trade), or
- (b) which would constitute a contravention of the prohibition in regulation 13 (circumventing etc. prohibitions).”

12. After regulation 17 (trade: information powers) insert—

“Trade: information offences

17A.—(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 17 (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 17, destroys, mutilates, defaces, conceals or removes any document;
- (d) otherwise intentionally obstructs an authorised officer in the exercise of their powers under regulation 17.

(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.”

13. In regulation 18 (disclosure of information)—

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

“(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 7(1) and (2) (exports and imports)” insert “(as they have 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)(j), for “Secretary of State, the Treasury or the Commissioners (as the case may be) consider” substitute “Governor considers”.

14. In regulation 19 (Part 4: 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) after paragraph (4) insert—

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“(4A) An authorised officer must, if requested to do so, produce evidence of their authority before exercising any power conferred by this Part.”;

- (c) in paragraph (5), in the definition of “privileged information”, omit “(in Scotland, to confidentiality of communications)”.

15. In Part 5 (Enforcement), at the beginning insert—

“Suspected ships, aircraft or vehicles

19A.—(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 2 (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) 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

19B.—(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

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- (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 illegally removed Syrian cultural property and regulation 15 (exception for the return of Syrian cultural property) does not apply, may be forfeited 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—
 - “illegally removed Syrian cultural property” has the meaning in regulation 5 (definition of illegally removed Syrian cultural property);
 - “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;
 - “relevant offence” means an offence which is punishable with a term of imprisonment of more than 6 months.”

16. For regulation 20 (penalties for offences) substitute—

- “**20.**—(1) Paragraphs (3) and (4) 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 (5) and (6) 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 2 (Trade) is liable—

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- (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.

(4) A person who commits an offence under regulation 17A (trade: information offences) is liable, on summary conviction, to a fine not exceeding £1,000 or its equivalent in the currency of the Territory.

(5) A person who commits an offence under any provision of Part 2 (Trade) is liable on conviction to imprisonment for a term not exceeding 10 years, or a fine, or both.

(6) A person who commits an offence under regulation 17A (trade: information offences) is liable on conviction to a fine not exceeding £1,000 or its equivalent in the currency of the Territory.

(7) 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.”

17. In regulation 21 (liability of officers of bodies corporate etc.), omit paragraph (4).

18. After regulation 21 (liability of officers of bodies corporate etc.), insert—

“Consent to prosecutions

21A.—(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.”

19. For regulation 22 (procedure for offences by unincorporated bodies) substitute—

“**22.** 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.”

20. In regulation 23 (time limit for proceedings for summary offences), omit paragraph (4).

21. Omit regulation 24 (trade enforcement: application of CEMA) (including the heading).

22. Omit regulation 25 (trade offences in CEMA: modification of penalty) (including the heading).

23. Omit regulation 26 (monetary penalties) (including the heading).

24. In regulation 27 (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.”;

(b) omit paragraph (5);

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(c) at the end, insert—

“(6) In this Part, “a relevant ship” means, in relation to the Territory, a Territory ship.”

25. In regulation 28 (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).

26. In regulation 29(2)(c) (power to stop, board, search etc.), for “United Kingdom” substitute “Territory”.

27. Omit regulation 31 (restrictions on exercise of maritime enforcement powers) (including the heading).

28. Omit regulation 33 (revocations) (including the heading).