

**THE SANCTIONS (EU EXIT) (MISCELLANEOUS AMENDMENTS) (NO. 2)
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 Sanctions (EU Exit) (Miscellaneous Amendments) (No.2) 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. The Regulations make various amendments to the following sanctions regulations: the Iran (Sanctions) (Human Rights) (EU Exit) Regulations 2019 (S.I. 2019/134), the Venezuela (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/135), the Burma (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/136), the Republic of Guinea-Bissau (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/554), the Republic of Belarus (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/600), the Zimbabwe (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/604), the Syria (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/792), the Russia (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/855), the Chemical Weapons (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/618), the Burundi (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/1142) and the Guinea (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/1145).
5. Reports under section 18 of the Act were laid before Parliament to accompany each of these sanctions regulations on the following dates:
 - the Iran (Sanctions) (Human Rights) (EU Exit) Regulations 2019: report laid before Parliament on 31 January 2019;
 - the Venezuela (Sanctions) (EU Exit) Regulations 2019: report laid before Parliament on 31 January 2019;

- the Burma (Sanctions) (EU Exit) Regulations 2019: report laid before Parliament on 31 January 2019;
 - the Republic of Guinea-Bissau (Sanctions) (EU Exit) Regulations 2019: report laid before Parliament on 15 March 2019;
 - the Republic of Belarus (Sanctions) (EU Exit) Regulations 2019: report laid before Parliament on 20 March 2019;
 - the Zimbabwe (Sanctions) (EU Exit) Regulations 2019: report laid before Parliament on 20 March 2019;
 - the Chemical Weapons (Sanctions) (EU Exit) Regulations 2019: report laid before Parliament on 22 March 2019;
 - the Syria (Sanctions) (EU Exit) Regulations 2019: report laid before Parliament on 5 April 2019;
 - the Russia (Sanctions) (EU Exit) Regulations 2019: report laid before Parliament on 11 April 2019;
 - the Burundi (Sanctions) (EU Exit) Regulations 2019: report laid before Parliament on 19 July 2019;
 - the Guinea (Sanctions) (EU Exit) Regulations 2019: report laid before Parliament on 19 July 2019.
6. This report provides an update to the original section 18 reports relating to the Venezuela (Sanctions) (EU Exit) Regulations 2019 (“**the 2019 Venezuela Regulations**”), the Burma (Sanctions) (EU Exit) Regulations 2019 (“**the 2019 Burma Regulations**”), and the Syria (Sanctions) (EU Exit) Regulations 2019 (“**the 2019 Syria Regulations**”) in light of the amendments to those sanctions regulations made by the Regulations which create offences.
 7. Regulation 3(8) of the Regulations substitutes Chapter 4 of Part 5 (Trade) of the 2019 Venezuela Regulations to replace the existing prohibitions and offences relating to military activities etc. This amendment has been made to ensure that the drafting of those prohibitions and offences is consistent with the drafting of similar provisions contained in the South Sudan, the Democratic Republic of the Congo and the ISIL (Da’esh) and Al-Qaida sanctions regimes.
 8. Regulation 4(9) of the Regulations amends the 2019 Burma Regulations to insert a new Chapter 2A which creates prohibitions and offences in relation to dual-use items. This amendment has been made to correct an error in the earlier instrument which did not limit the prohibition to goods and technology destined for a military end-user.
 9. Regulation 4(11) of the Regulations substitutes Chapter 4 of Part 5 (Trade) of the 2019 Burma Regulations to replace the existing prohibitions and offences relating to military activities etc. This amendment has been made to ensure that the drafting of those prohibitions and offences is consistent with the drafting of similar provisions contained in the South Sudan, the Democratic Republic of the Congo and the ISIL (Da’esh) and Al-Qaida sanctions regimes.

10. Regulation 9(10) of the Regulations amends regulation 37 of the 2019 Syria Regulations to insert a prohibition on directly or indirectly acquiring certain goods or technology from a person connected with Syria. This amendment has been made to correct an oversight in the original instrument. Regulation 37 is intended to achieve substantially the same policy effects as the existing EU sanctions measure which prohibits the acquisition of those goods or technology “from Syria”. In line with the policy approach adopted in other sanctions regimes (for example, the Democratic People’s Republic of Korea), such a prohibition should be applied to goods or technology originating or located in Syria, or to goods or technology acquired from a person connected with Syria.
11. Details of these trade-related offences created by the Regulations, the prohibitions and requirements to which those offences relate, and the maximum penalties relating to each offence, are set out in the table in the Annex to this report.

C: REASONS FOR CREATING THE OFFENCES

The 2019 Venezuela Regulations

12. In order to fulfil the stated purposes of the 2019 Venezuela Regulations, the prohibitions created in the Regulations need to be properly enforced. Having the ability to take enforcement action through criminal proceedings 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.
13. Importantly, the offences created by the Regulations are consistent with the other offences contained in the 2019 Venezuela Regulations, and the legislation which they will replace. Failing to create offences would mean that there would be an enforcement gap between existing legislation and the 2019 Venezuela Regulations. Special care has been taken to ensure that offences are consistent with existing offences while not duplicating any offences that already exist.
14. Breaches of the principal trade prohibitions – which include the prohibitions substituted at Chapter 4 of Part 5 – are a serious matter as they undermine sanctions which are in place to constrain the National Bolivarian Armed Forces’ ability to engage in human rights violations by denying them access to technical assistance, armed personnel, financial services, funds and related brokering services. Breaches of these prohibitions, or acts circumventing them, have the potential to facilitate the repression of civil society or hinder attempts to bring about a peaceful solution to the political crisis in Venezuela. Creating criminal offences serves as an effective deterrent for such serious actions.
15. The offences created by the Regulations are consistent with, but will not duplicate, existing offences relating to trade sanctions. In particular, the categories of criminal offences created by the Regulations are the same as those contained in the Export Control (Venezuela Sanctions) Order 2018 (S.I. 2018/108) (“the 2018 Venezuela

Order”), which is made under the Export Control Act 2002 and section 2(2) of the European Communities Act 1972. The offences in the Regulations replace offences in the 2018 Venezuela Order and the relevant provisions of the 2018 Venezuela Order will be revoked by the 2019 Venezuela Regulations at the end of the Transition Period, ensuring that there is no overlap.

The 2019 Burma Regulations

16. In order to fulfil the stated purposes of the 2019 Burma Regulations, the prohibitions created in the Regulations need to be properly enforced. There are several mechanisms through which these measures can be enforced without criminal proceedings. These include the seizure of goods being dealt with in contravention of certain trade sanctions measures.
17. 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.
18. Importantly, the offences created by the Regulations are consistent with the other offences contained in the 2019 Burma Regulations, and the legislation which it will replace. Failing to create offences would mean that there would be an enforcement gap between existing legislation and the 2019 Burma Regulations. Special care has been taken to ensure that offences are consistent with existing offences while not duplicating any offences that already exist.
19. Breaches of the principal trade prohibitions – which include the new prohibitions inserted at Chapter 2A and the prohibitions substituted at Chapter 4 of Part 5 (Trade) – are a serious matter as they undermine sanctions which are in place to constrain the Myanmar Security Forces’ ability to engage in human rights violations by denying them access to restricted goods, technology and services (including dual-use goods and technology, as well as funds and services which enable or facilitate the conduct of armed hostilities). Breaches of these prohibitions, or acts circumventing them, have the potential to facilitate human rights violations in Myanmar. Creating criminal offences serves as an effective deterrent for such serious actions.
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 offences created by the Regulations are consistent with, but will not duplicate, existing offences relating to trade sanctions. In particular, the categories of criminal offences created by the Regulations are the same as those contained in the Export Control (Burma Sanctions) (No. 2) Order 2018 (S.I. 2018/894) (“the 2018 Burma Order”), which is made under the Export Control Act 2002 and section 2(2) of the European Communities Act 1972. The offences in the Regulations replace offences in the 2018 Burma Order and the relevant provisions of the 2018 Burma Order will be revoked by the 2019 Burma Regulations, ensuring that there is no overlap.
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 dual-use 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.

The 2019 Syria Regulations

23. In order to fulfil the stated purposes of the 2019 Syria Regulations, the prohibitions created in the Regulations need to be properly enforced. There are several mechanisms through which these measures can be enforced without criminal proceedings. These include the seizure of goods being dealt with in contravention of certain trade sanctions measures.
24. 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.
25. Importantly, the offence created by the Regulations is consistent with the other offences contained in the 2019 Syria Regulations, and the legislation which it will replace. Failing to create this offence would mean that there would be an enforcement gap between existing legislation and the 2019 Syria Regulations. Special care has been taken to ensure that the offence is consistent with existing offences while not duplicating any offences that already exist.
26. Breaches of the principal trade prohibitions – which include the prohibition inserted at regulation 37 of the 2019 Syria Regulations – are a serious matter as they undermine sanctions which are in place for the purpose of encouraging the Syrian regime to refrain from actions, policies or activities which repress the civilian population in Syria, and to participate in negotiations in good faith to reach a negotiated political settlement to bring about a peaceful solution to the conflict in Syria. Creating criminal offences serves as an effective deterrent for such serious actions.

27. 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.

The offences created by the Regulations are consistent with, but will not duplicate, existing offences relating to trade sanctions. In particular, the criminal offence created by the Regulations in part replaces the similar offence contained in the Export Control (Syria Sanctions) Order 2013 (S.I. 2013/2012) (“the 2013 Syria Order”), which is made under the Export Control Act 2002 and section 2(2) of the European Communities Act 1972. The relevant provisions of the 2013 Syria Order will be revoked by the 2019 Syria Regulations at the end of the Transition Period, ensuring that there is no overlap.

D: REASONS FOR MAXIMUM PENALTIES

28. The offences created by these Regulations link to penalties already created for breaches of the principal trade prohibitions in the Venezuela (Sanctions) (EU Exit) Regulations 2019, the Burma (Sanctions) (EU Exit) Regulations 2019 and in the Syria (Sanctions) (EU Exit) Regulations 2019. The penalties imposed by the Regulations are set out in the Annex. 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 trade prohibitions

29. The maximum term of imprisonment for offences related to breaches of the principal trade prohibitions in the 2019 Venezuela Regulations, the 2019 Burma Regulations and the 2019 Syria Regulations (including the prohibitions inserted or substituted by the Regulations), or circumvention of them, is 10 years. This is in line with the penalties in article 8(3) of the 2018 Venezuela Order, article 8(1) of the 2018 Burma Order and article 17(1) of the 2013 Syria Order, which contain equivalent offences. The 10-year maximum penalty is considered to be an effective deterrent and is proportionate to the seriousness of the offence.
30. The 2019 Venezuela Regulations, 2019 Burma Regulations and 2019 Syria Regulations are also consistent with article 8(6) of the 2018 Venezuela Order, article 9 of the 2018 Burma Order and article 42 of the Export Control Order 2008 in that they modify the Customs and Excise Management Act 1979 to increase the maximum term of imprisonment for the offence of breaching export controls from seven years to 10 years. This increase ensures alignment with the maximum term of imprisonment for other similar offences created by those Regulations. An industry association stakeholder has commented that such provision has “a beneficial effect in assisting export control

compliance staff within companies to get the attention of their colleagues on export control matters”.¹ A 10 year maximum term of imprisonment provides an effective deterrent and is proportionate to the potential seriousness of the offence.

31. As previously set out in the section 18 reports for the 2019 Venezuela Regulations, the 2019 Burma Regulations and the 2019 Syria Regulations, it should be noted that existing penalties relating to the prohibitions referred to in article 8(2) of the 2018 Venezuela Order, article 8(3) of the 2018 Burma Order and article 17(3) of the 2013 Syria Order, which are replaced by prohibitions in Part 5 of the 2019 Venezuela Regulations, the 2019 Burma Regulations and the 2019 Syria Regulations, are set at a maximum of two years’ imprisonment. This is because those provisions of the 2018 Venezuela Order, 2018 Burma Order and 2013 Syria Order 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 8(2) of the 2018 Burma Order. 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.

E: CONCLUSIONS

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, 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 Venezuela, Burma and Syria sanctions regimes. 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 is amended by the Regulations, or consistent with similar offences in other existing legislation; they are an effective deterrent; and

¹ 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.

they are proportionate to the seriousness of the types of offences to which they relate.

Lord Ahmad of Wimbledon

**Minister of State for South Asia and the Commonwealth, on behalf of the
Secretary of State for Foreign and Commonwealth Affairs**

Annex: Table of trade sanctions offences

Type of sanction offences	Specific offence	Relevant prohibition or requirement	Maximum penalty
Military activities or otherwise enabling or facilitating the conduct of armed hostilities	Military activities or otherwise enabling or facilitating the conduct of armed hostilities	reg. 30 of the 2019 Venezuela Regulations	<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 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</p> <p>To imprisonment for a term not exceeding 10 years or a fine (or both).</p>
Breach of controls on exporting dual-use goods to Burma for military use	Exporting dual-use goods.	<p>reg. 28B of the 2019 Burma Regulations</p> <p>Offence contained within Customs and Excise Management Act 1979 S. 68(1)</p>	<p>Liable on summary conviction</p> <p>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 indictment</p> <p>To a penalty of any amount, or to imprisonment for a term not exceeding 7 years (modified to 10 years).</p>
Breach of controls on dual-use goods and technology to	<p>1. Supplying or Delivering dual-use goods.</p> <p>2. Making dual-use goods and technology available.</p>	<p>1. reg. 28C of the 2019 Burma Regulations</p> <p>2. reg. 28D of the 2019 Burma Regulations</p>	<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 section 154(1) of the Criminal</p>

Burma for military use.	<p>3. Transferring dual-use technology.</p> <p>4. Providing technical assistance relating to dual-use goods and technology.</p> <p>5. Providing financial services and funds relating to dual-use goods and technology.</p> <p>6. Providing brokering services relating to dual-use goods and technology</p>	<p>3. reg. 28E of the 2019 Burma Regulations</p> <p>4. reg. 28F of the 2019 Burma Regulations</p> <p>5. reg. 28G of the 2019 Burma Regulations</p> <p>6. reg. 28H of the 2019 Burma Regulations</p>	<p>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 indictment To imprisonment for a term not exceeding 10 years or a fine (or both).</p>
Military activities or otherwise enabling or facilitating the conduct of armed hostilities	Military activities or otherwise enabling or facilitating the conduct of armed hostilities	reg. 30 of the 2019 Burma Regulations	<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 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</p> <p>To imprisonment for a term not exceeding 10 years or a fine (or both).</p>
Acquisition of goods and technology	<p>1. Acquiring crude oil and petroleum products from a person connected with Syria</p> <p>2. Acquiring military goods or military technology from a person connected with Syria</p>	<p>1. reg. 37(1)(c) of the 2019 Syria Regulations</p> <p>2. reg. 37(1)(c) of the 2019 Syria Regulations</p>	<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 section 154(1) of the Criminal Justice Act 2003 (general limit on magistrates' court's power to</p>

			<p>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> <p>To imprisonment for a term not exceeding 10 years or a fine (or both).</p>
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