

THE LEBANON (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 Lebanon (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. The principal prohibitions and requirements in the Regulations are aimed at compliance with United Nations (UN) obligations.
5. The Regulations impose various prohibitions on trade in military goods and technology i.e. the goods and technology for the time being specified in Schedule 2 to the Export Control Order 2008. They also include restrictions on the provision of technical assistance, financial services and funds, and brokering services related to military goods and technology.
6. The offences created by the Regulations fall into the following categories:
 - a) contravening the principal prohibitions in the Regulations (e.g. supply and delivery of military goods to Lebanon) 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; and
 - d) failing to comply with requirements relating to the providing and recording of information.
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 in the table in **Annex A** 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 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 prohibitions

13. A breach of these prohibitions is a serious matter because such actions 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 Lebanon without the authorisation of the Government of Lebanon or UNIFIL.
14. 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.
15. The Regulations replace offences related to trade sanctions contained in the Lebanon (Technical Assistance, Financing and Financial Assistance) (Penalties and Licences) Regulations 2006 (S.I. 2006/2681) (“**the 2006 Regulations**”) made under section 2(2) of the European Communities Act 1972. The offences in the Regulations will replace offences in the 2006 Regulations and the relevant provisions of the 2006 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 40 ensures there is no direct overlap between offences committed under that Order and the Regulations.

16. Section 68 of the Customs and Excise Management Act 1979 provides offences in relation to the export of prohibited or restricted goods and so such an offence has not been created by the Regulations.

Breaches of prohibitions and requirements relating to licensing

17. 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.
18. The licensing offences are consistent with those currently applicable under the existing Lebanon (Arms Embargo) sanctions regime and domestic export control legislation (including the strict liability offences in relation to purporting to act under the authority of a licence).

Breaches of requirements relating to information

19. As set out in Annex A, the Regulations require persons to register or record information relevant to general trade licences.
20. Enabling requirements to be enforceable by criminal proceedings ensures greater compliance with the Regulations.
21. 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.

D: REASONS FOR MAXIMUM PENALTIES

22. The penalties imposed by the Regulations are set out in Annex A. 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 is set out below.

Breaches of, and circumvention of, the principal prohibitions

23. 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.
24. The Regulations are also consistent with 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 ten years. This increase ensures alignment with the maximum term of imprisonment for other similar offences created by the 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.

25. It should be noted that existing penalties relating to the prohibitions referred to in regulation 4 of the 2006 Regulations, which are replaced by prohibitions in Part 4 of the Regulations, are set at a maximum of two years’ imprisonment. This is because those provisions of the 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 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

26. The Regulations provide that the maximum term of imprisonment for trade licensing and information offences is two years’ imprisonment, which is in line with equivalent domestic export control and sanctions legislation, for example under regulation 4 of the 2006 Regulations. The Secretary of State considers that there are good reasons to 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

27. 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

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.

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 trade sanctions offences

Type of sanction offences	Specific offence	Lebanon (Sanctions) (EU Exit) Regulations 2020 reference to relevant prohibition or requirement (or other legislation)	Maximum penalty
Breach of controls on exporting military goods.	1. Exporting military goods.	reg. 7 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	reg. 8 reg. 9 reg. 10 reg. 11 reg. 12 reg. 13	<p>Liable on summary conviction To imprisonment to a term not exceeding 12 months or a fine (or both) 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, six months). To imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both) in Scotland. To imprisonment to a term not exceeding 6 months or a fine not exceeding the</p>

			<p>statutory maximum (or both) in Northern Ireland.</p> <p>Liable on conviction on indictment To imprisonment for a term not exceeding 10 years or a fine (or both).</p>
<p>Circumvention etc. of prohibitions</p>	<p>Circumventing directly or indirectly the prohibitions of regs. 7-13 (Trade) or enabling the contravention of prohibitions.</p>	<p>reg. 14</p>	<p>Liable on summary conviction To imprisonment to a term not exceeding 12 months or a fine (or both) 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, six months). To imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both) in Scotland. To imprisonment to a term not exceeding 6 months or a fine not exceeding the statutory maximum (or both) in Northern Ireland.</p> <p>Liable on conviction on indictment To imprisonment for a term not exceeding 10 years or a fine (or both).</p>
<p>Licensing offences</p>	<p>a. Knowingly or recklessly: i. Providing information that is false in a material respect, or ii. Providing or producing a document that is not what it purports to be, for the purpose of obtaining a trade licence. b. Purporting to act under the authority of a trade licence but failing to comply with any</p>	<p>reg.18</p>	<p>Liable on summary conviction To imprisonment to a term not exceeding 12 months or a fine (or both) 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, six months). To imprisonment for a term not exceeding 12 months</p>

	condition contained in the licence.		<p>or a fine (or both) in Scotland. To imprisonment to a term not exceeding 6 months or a fine (or both) in Northern Ireland.</p> <p>Liabe on conviction on indictment To imprisonment for a term not exceeding 2 years or a fine (or both).</p>
Information Offences	<p>1. Failing to comply with record keeping requirements in regs. 45 and 46.</p> <p>2. (a) Intentionally obstructing an official in the performance of any of the official's functions under this regulation, or (b) Failing to produce a register, record or document when reasonably required to do so by an official under this regulation.</p>	<p>reg. 20</p> <p>reg 21</p>	<p>Liabe on summary conviction To imprisonment to a term not exceeding 12 months or a fine (or both) 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, six months). To imprisonment for a term not exceeding 12 months or a fine (or both) in Scotland. To imprisonment to a term not exceeding 6 months or a fine (or both) in Northern Ireland.</p> <p>Liabe on conviction on indictment To imprisonment for a term not exceeding 2 years or a fine (or both).</p>