

THE SOMALIA (SANCTIONS) (EU EXIT) (AMENDMENT) REGULATIONS 2021
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 Somalia (Sanctions) (EU Exit) (Amendment) Regulations 2021 (“**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 amended by 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 an amendment to the Somalia (Sanctions) (EU Exit) Regulations 2020 (“**the 2020 Regulations**”).
5. A report under section 18 of the Act was laid before Parliament to accompany the 2020 Regulations on 29th June 2020.
6. This report provides an update to the original section 18 report relating to the 2020 Regulations in respect of the amendments made by the Regulations to provisions of the 2020 Regulations which create offences.
7. The Regulations amend Part 3 of Schedule 2 of the 2020 Regulations to insert nitroglycerin (except when it is packaged or prepared in individual medicinal doses) into the list of goods which are subject to the trade prohibitions in Chapter 2 of Part 5 of the 2020 Regulations. The reason for this amendment is to implement the UK’s obligations under paragraph 26 of United Nations Security Council Resolution (UNSCR) 2551 (2020) which added nitroglycerin to the list of improvised explosive device (‘IED’) components which it is prohibited to sell, supply or transfer to Somalia.

8. The existing UN measures in relation to IED components in paragraph 26 of UNSCR 2498 (2019) are implemented by prohibitions and related offences in the 2020 Regulations and the Regulations update these prohibitions.
9. The Regulations omit tetryl from this same list in Part 3 of Schedule 2 of the 2020 Regulations. The reason for this amendment is that the item and the technology used to produce it are already subject to the arms embargo by virtue of being specified in Part 1 of Schedule 2 of the Export Control Order 2008.
10. The Regulations also amend Part 3 of Schedule 2 to insert technology required for the production or use of nitrocellulose and nitroglycerin into the list of technology subject to the trade prohibitions in Chapter 2 of Part 5 of the 2020 Regulations. This corrects an omission in the 2020 Regulations and implements the UK's obligations under paragraph 26 of UNSCR 2498 and paragraph 26 of UNSCR 2551.
11. The Regulations do not create any new criminal offences or change the penalties for those offences. However, they do update the scope of certain prohibitions in the 2020 Regulations which already have criminal offences attached. Details of each of these offences, the prohibitions and requirements to which those offences relate, and the maximum penalties relating to each offence, are set out in relation to trade sanctions in the table in **Annex A** to this report.

C: REASONS FOR CREATING THE OFFENCES

12. In order to fulfil the stated purpose of the 2020 Somalia Regulations, the prohibitions and requirements amended by these Regulations need to be properly enforced.
13. 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.
14. 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.
15. Importantly, the offences to which the prohibitions amended by the Regulations relate are consistent with the other offences contained in the 2020 Regulations. Special care has been taken to ensure that offences are consistent with existing offences while not duplicating any offences that already exist.

Breaches of, and circumvention of, the principal trade prohibitions

16. Breaches of the principal trade prohibitions which are amended by these Regulations (in respect of trade prohibitions relating to IED component goods and technology) are

a serious matter as they undermine sanctions which are in place for the purpose of compliance with UN obligations. The amendments made by the Regulations implement the UK's obligations under UNSCR 2498 and UNSCR 2551 and so breaches of the amended prohibitions would result in breaches of these UN obligations.

17. 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.
18. The amendments made by these Regulations do not change the assessment in the report accompanying the 2020 Regulations that the offences to which the prohibitions relate are consistent with, but do not duplicate, existing offences relating to trade sanctions.
19. Importantly, the 2020 Regulations (as amended by the 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, section 68 of the Customs and Excise Management Act 1979 makes it a criminal offence to export prohibited or restricted goods and so such offences have not been created by the Regulations (but see paragraph 22 regarding the modification of the relevant penalties under the Customs and Excise Management Act 1979).

D: REASONS FOR MAXIMUM PENALTIES

20. The Regulations amend the scope of certain existing prohibitions in the 2020 Regulations and the relating offences and penalties in those regulations are unchanged. These penalties are set out in Annex A. In all cases the penalties are consistent with similar offences in other existing legislation. Further detail on the maximum sentences relating to the prohibitions amended by the Regulations is set out below.

Breaches of, and circumvention of, the principal trade prohibitions

21. The maximum term of imprisonment for offences related to breaches of the principal trade prohibitions in the 2020 Regulations which are amended by the Regulations, or circumvention of them, is ten years. As explained in the report accompanying the 2020 Regulations, the 10-year maximum penalty is considered to be an effective deterrent and is proportionate to the seriousness of the offence.
22. The 2020 Regulations also 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.

E: CONCLUSIONS

23. As set out in this report:

- a. There are good reasons for each of the prohibitions and requirements in the Somalia Regulations which are amended by 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.
- b. There are also good reasons for the maximum terms of imprisonment that attach to the offences to which the prohibitions amended by the Regulations relate: the maximum penalties are 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 for South Asia and the Commonwealth, on behalf of the
Secretary of State for Foreign, Commonwealth and Development Affairs**

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.

Annex A: Table of trade sanctions offences

Type of sanction offences	Specific offence	Somalia (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 and Improvised Explosive Devices (IED) Components	1. reg 21 Offence contained within Customs and Excise Management Act 1979 (CEMA) 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 Improvised Explosive Devices (IED) Components	1. Supplying or delivering IED components goods. 2. Making IED components goods and technology available. 3. Transferring IED components technology.	1. reg 22 2. reg 23 3. reg 24	<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>