

THE RUSSIA (SANCTIONS) (EU EXIT) (AMENDMENT) (NO. 3) REGULATIONS 2022
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 Russia (Sanctions) (EU Exit) (Amendment) (No. 3) Regulations 2022 ("**the Amendment Regulations**").
2. Section 18(2) of the Sanctions Act requires a report to be laid in 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 Amendment Regulations amend the Russia (Sanctions) (EU Exit) Regulations 2019 ("**the 2019 Regulations**").
5. A report under section 18 of the Act was laid before Parliament to accompany the 2019 Regulations on 11 April 2019.
6. The Amendment Regulations amend Part 5 (Trade) of the 2019 Russia Regulations to impose new trade restrictions measures, as follows:
 - To replace the existing prohibitions relating to dual-use items with new prohibitions on the export, supply and delivery, making available and transfer of dual-use items to, or for use in, Russia, irrespective of end-user (as well as the provision of related technical assistance, financial services, funds and brokering services).
 - To prohibit the export, supply and delivery, making available and transfer of critical industry items to, or for use in, Russia (as well as the provision of related technical assistance, financial services, funds and brokering services).
7. In some cases, the Amendment Regulations extend the scope of certain prohibitions in the 2019 Regulations which already have criminal offences attached. Details of each of the

offences extended, created or maintained by the Amendment 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.

8. The offences created or extended by the Amendment Regulations fall into the following categories:
 - a. contravening the principal prohibitions (e.g. breaching a financial or trade restriction) 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.

C: REASONS FOR CREATING THE OFFENCES

9. In order to fulfil the stated purpose of the 2019 Regulations (as amended) the prohibitions and requirements created in these Regulations need to be properly enforced.
10. There are several mechanisms through which some of these measures can be enforced without criminal proceedings. These include the imposition of monetary penalties for breaching financial sanctions and the seizure of goods being dealt with in contravention of certain trade sanctions measures.
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 UK Government to take a proportionate response where severity of the act or omission warrants it.
12. Importantly, the offences created by the Amendment Regulations or to which the prohibitions amended by the Amendment Regulations relate are consistent with the other offences contained in the 2019 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

13. Breaches of the principal trade prohibitions are a serious matter because such actions undermine the purposes of the sanctions regime - namely encouraging Russia to cease actions destabilising Ukraine or undermining or threatening the territorial integrity, sovereignty and independence of Ukraine. Disrupting strategic industries linked to the military, such as maritime and aviation, and limiting access to goods required by the

Russian military-industrial complex to maintain and develop its capabilities would constrain Russia, and signal to Russia and the wider international community that Russia's military actions to change international borders and threaten Ukraine's sovereignty is unacceptable and should be met with a serious response. Breaches of these prohibitions, or acts circumventing them would reduce the pressure exerted on the Government of Russia to change its behaviour and enable it to continue activities that the sanctions regime is intended to deter.

14. There are other enforcement tools available in relating 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 trade sanctions.
15. The offences created by the Amendment Regulations, or to which the prohibitions amended by the Amendment Regulations relate are consistent with, but do not duplicate, existing offences relating to trade sanctions.
16. Importantly, the Amendment 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 21 regarding the modification of the relevant penalties under the Customs and Excise Management Act 1979).

Breaches of prohibitions and requirements relating to licensing and information

17. The extension of these offences is consistent with those currently applicable under the existing Russia sanctions regime and domestic export control legislation. The section 18 report which accompanied the 2019 Regulations sets out in detail why there are good reasons for these offences.

D: REASONS FOR MAXIMUM PENALTIES

18. The penalties imposed by the Amendment Regulations, or to which the prohibitions amended by the Amendment Regulations relate, are set out in Annex A. The offences for breaches of the trade prohibitions provided for by the Amendment Regulations are consistent with the penalties already created for breaches of the principal trade prohibitions in the 2019 Regulations. In all cases the penalties are consistent with similar offences in other regulations made under the Act. Further detail on the maximum sentences relating to the different categories of offence is set out below.

Breaches of, and circumvention of, the principal trade prohibitions

19. The maximum term of imprisonment for offences related to breaches of the principal trade prohibitions in the 2019 Russia Regulations, as amended, or circumvention of them, is ten years. As explained in the report accompanying the 2019 Russia Regulations, the 10-year maximum penalty is considered to be an effective deterrent and is proportionate to the seriousness of the offence.

20. The 2019 Russia Regulations, as amended, 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 2019 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

21. As set out in this report:
 - a. There are good reasons for each of the prohibitions and requirements set out in, or extended by the Amendment 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, the Amendment 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 for 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.

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.

The Rt. Hon. Elizabeth Truss MP
Secretary of State for Foreign, Commonwealth and Development Affairs

Annex A: Table of trade sanctions offences

Type of sanction offences	Specific offence	Russia (Sanctions) (EU Exit) Regulations 2019 reference to relevant prohibition or requirement (or other legislation)	Maximum penalty
Breach of controls on exporting restricted goods	Exporting restricted goods	Offence contained within Customs and Excise Management Act 1979 S.68(1) and S.170 (2)	<p>Liabe 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>Liabe on conviction on indictment 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 restricted goods and technology (other than export)	<ol style="list-style-type: none"> 1. Supplying or delivering restricted goods. 2. Making restricted goods or restricted technology available. 3. Transferring restricted technology. 4. Providing technical assistance relating to restricted goods or restricted technology. 5. Providing financial services or funds relating to restricted goods or restricted technology. 6. Providing brokering services relating to restricted goods or restricted technology 	<ol style="list-style-type: none"> 1. Reg. 24 2. Reg 25 3. Reg 26 4. Reg 27 5. Reg 28 6. Reg 29 	<p>Liabe on summary conviction - to imprisonment to 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>Liabe on conviction on indictment - to imprisonment for a term not exceeding 10 years or a fine (or both).</p>
Circumvention etc. of prohibitions	Circumventing directly or indirectly the prohibitions of regs 22-	1. Reg 55	<p>Liabe on summary conviction - To imprisonment to a term not exceeding 12 months or a fine (or</p>

	53 (Trade) or enabling the contravention of prohibitions.		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 in Scotland. To imprisonment to a term not exceeding 6 months or a fine (or both) in Northern Ireland. Liable on indictment- To imprisonment for a term not exceeding 10 years or a fine (or both).
Licensing offences	1. Knowingly or recklessly: o Providing information that is false in a material respect, or o Providing or producing a document that is not what it purports to be, for the purpose of obtaining a trade licence. 2. Purporting to act under the authority of a trade licence but failing to comply with any condition contained in the licence.	1. Reg 68(1)(a) and (b) 2. Reg 68(2)	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 in Scotland. To imprisonment to a term not exceeding 6 months or a fine (or both) in Northern Ireland. Liable on indictment- To imprisonment for a term not exceeding 2 years or a fine (or both).
Information offences	1. Failing to comply with record keeping requirements in reg. 77 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	1. Reg 77(6) 2. Reg 78(5)(a)(b)	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

	when reasonably required to do so by an official under this regulation.		<p>a term not exceeding 12 months in Scotland. To imprisonment to a term not exceeding 6 months or a fine (or both) in Northern Ireland.</p> <p>Liable on indictment- To imprisonment for a term not exceeding 2 years or a fine (or both).</p>
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