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| **Title:** [Export Control (Al-Qaida and Taliban Sanctions) Regulations 2011](http://www.legislation.gov.uk/uksi/2011/2649/contents/made)  PIR No: Click here to enter text.  Original IA/RPC No: RPC-4191(1)-DIT  Lead department or agency: Department for International Trade  Other departments or agencies:  HM Revenue and Customers | |  | | --- | | Post Implementation Review | | Date: 16 May 2017 | | Type of regulation: Domestic | | Type of review: Statutory | | Date measure came into force:  30 November 2011 | | **Recommendation: Keep** | |  | |  | |  | |
| Contact for enquiries: Peter Monday | **RPC Opinion: Green** |

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| 1. What were the policy objectives of the measure?  Measures against Al-Qaida and Taliban  The principal policy purpose of the Export Control (Al-Qaida and Taliban Sanctions) Regulations 2011 (the “measure”) was to introduce criminal penalties and enforcement capability for UK exporters acting in breach of the restrictive measures set out in two European Union Regulations.  The first of the Regulations is [Council Regulation (EC) 881/2002](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:139:0009:0022:EN:PDF) (“the Al-Qaida Regulation”) as principally amended by [Council Regulation (EU) No 754/2011](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:199:0023:0032:EN:PDF) which concerns certain specific restrictive measures directed against certain targeted persons and entities associated with the Al-Qaida network. In total the Al-Qaida Regulation has been amended over 250 times.  The second Regulation is [Council Regulation (EU) No 753/2011](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:199:0001:0022:EN:PDF) (“the Taliban Regulation”) which concerns restrictive measures directed against certain individuals, groups, undertakings and entities that are part of or are associated with the Taliban. This Regulation has been amended numerous times in subsequent years.  The Regulations contain a number of prohibitions on technical advice, assistance, and training or related to military activities to any person listed in Annex I of either the Al-Qaida Regulation or the Taliban Regulation.  Both EU Regulations remain in force across all EU Member States as of May 2017.  The UK would be in breach of EU law if it failed to maintain criminal penalties in relation to breaches of these Regulations. If the UK was in breach of EU law, it would be exposed to the risk of infraction proceedings which could be instigated by the EU Commission.  The UK policy objective in setting the required penalties laid out in the measure was to introduce effective, proportionate and dissuasive penalties for breaches of the EU Regulations.  The penalties set for infringements of the Regulations are broadly equivalent (as far as possible) to other export control offences in UK domestic law. In this particular measure, the penalty is up to three months imprisonment or a fine not exceeding the statutory maximum or both (on summary conviction) and a prison term of up to two years or an unlimited fine or both (on conviction on indictment).  This review relates to the measure which makes provision for penalties and enforcement, not to the effectiveness of monitoring and enforcing of the controls, which is the responsibility of Her Majesty’s Revenue and Customs and has separate legislation[[1]](#footnote-1).  This Order will be revoked and replaced when an equivalent instrument is laid under the [Sanctions and Anti-Money Laundering Act 2018](http://www.legislation.gov.uk/ukpga/2018/13/contents/enacted/data.htm). The Act will give the UK the necessary legal powers to continue to implement sanctions and introduce tough new measures post-Brexit. This will enable us to maintain existing sanctions regimes currently imposed through EU law, while providing the necessary legal underpinning for the UK to decide when and how to take action against new threats. |
| 2. What evidence has informed the PIR?  No impact assessment was conducted when the measure was originally introduced in 2011, since both the Al-Qaida and Taliban Regulations are directly applicable in all EU Member States.  The penalties imposed were, and continue to be, in line with similar export control penalty measures arising from domestically legislated sanctions.  The following evidence has informed the review:   * the list of EU Restrictive measures (sanctions) in force (i.e. the current status of sanctions measures in the EU) * our knowledge of the volume of correspondence and calls concerning the sanctions or penalty measures in question   This measure targets breaches in relation to specific individuals, groups and entities associated with Al-Qaida and the Taliban. The export licensing data stored on SPIRE (the Export Control Organisation export licensing database) would not provide any indication whether a breach has occurred.  The [EU’s Restrictive measures (sanctions) in force](https://eeas.europa.eu/sites/eeas/files/restrictive_measures-2016-10-11-clean.pdf) lists all the measures in force on the specified date. The latest list continues to refer to the Al-Qaida and Taliban EU Council Regulations as they remain in force.  There has been no significant volume of correspondence or queries concerning sanctions or the associated penalties imposed in relation to Al Qaida or the Taliban. |
| **3. To what extent have the policy objectives been achieved?**  Both EU Council Regulations specify that each Member State shall determine the penalties to be imposed where the provisions of these Regulations are infringed. These penalties “shall be effective, proportionate and dissuasive” as specified in Article 10 of [Council Regulation (EC) 881/2002](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:139:0009:0022:EN:PDF) and in Article 12 of [Council Regulation (EU) No 753/2011](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:199:0001:0022:EN:PDF).  Additionally, the measures specify that “Member States shall notify the Commission of those rules without delay after the entry into force of this Regulation and shall notify it of any subsequent amendment”. The UK did not receive any communication on these measures from the EU and presumes that the penalties set under the Order were deemed acceptable by the Commission.  Furthermore, we consider that the policy objectives have been achieved in relation to being:  Effective and Dissuasive  As suggested in the Macrory (2006) Report[[2]](#footnote-2) (*Regulatory Justice: Making Sanctions Effective*), if penalties are below the potential private benefit to a business of breaching sanctions, some firms may decide to breach them and risk incurring the resulting penalties. As at November 2016, there have been no significant detected breaches of the controls in question, indicating that the penalties (and any related costs of breaching the sanctions such as reputational damage) are at a level which exceeds the potential benefits of breaching the sanctions. Collecting evidence to monetise the potential benefit to firms of breaching the controls would be impractical and a disproportionate use of resources given that:  a) the measure does not impose compliance costs on business (and altering the level of penalties will have no impact); and  b) the requirements of the EU Regulation and existing domestic practice regarding trade sanction measures leave limited policy flexibility to consider alternative penalty regimes (i.e. it is not practical to do so).  That there have been no significant breaches of these sanctions is viewed as sufficient evidence that the measure under review has been and continues to be an effective deterrent.  Proportional  As described above, no detection of significant breaches indicates that the penalty levels are adequate. The penalties do not impose compliance costs on business, and because the measures under review are in line with other similar penalty measures for domestically-set sanctions, there is no reason to suggest the penalties are excessive[[3]](#footnote-3).  The penalties provided for in the measure are in line with similar UK regimes so we can reasonably assume that familiarisation costs for businesses producing or distributing relevant products are minimal or nil, whereas an alternative penalty regime may introduce such costs. Given that this measure does not impose costs on compliant businesses, it is not proportional to seek to monetise costs and benefits of alternative penalty regimes which can be reasonably expected to be more, not less costly to business.  There is no significant volume of calls or correspondence concerning this measure. We would view this as support for the proportionality of our approach to this review and the measures themselves.  In summary, we believe the objectives of the policy under review are being met based on:   * evidence which is proportionate to collect (in light of the zero impact of penalties for compliant businesses and limited policy flexibility in choosing a penalty regime given EU requirements and existing domestic export control offence policies); and the * implied approval by the EU Commission soon after the measure was established.   As such, we recommend that the measure be kept in its current form. |
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Sign-off For Post Implementation Review: Chief economist/Head of Analysis and Minister

I have read the PIR and I am satisfied that it represents a fair and proportionate assessment of the impact of the measure.

Signed: Richard Price (Chief Economist/Head of Analysis)

Date: 9 October 2017

Signed: Mark Garnier (Minister for Investment, Department for International Trade)

Date: 25 October 2017

**Further Information Sheet**

Please provide additional evidence in subsequent sheets, as required.

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| 4. What were the original assumptions?  The original assumption was that setting penalties consistent to those of other domestic export control measures would be appropriate and sufficient to meet the requirements of the imposed by the relevant EU Council Regulations. |
| **5. Were there any unintended consequences?**  No, the measures are targeted and there have been neither significant known breaches of the controls nor any unintended consequences. Correspondence and queries about Al-Qaida and Taliban sanctions and the measures have been minimal compared to some other, similar, measures (e.g. Iran and Russia). HMRC has not raised any concerns about the measure from a monitoring and enforcement perspective. |
| **6. Has the evidence identified any opportunities for reducing the burden on business?**  No. As previously stated, these measures do not impose burdens on businesses:   * The penalties do not affect compliant businesses. * The measure is in line with other UK export control offence measures. We do not have reason to believe businesses have incurred or will incur familiarisation or implementation costs with respect to this measure. This is supported in that there are far fewer queries and less correspondence relating to this measure compared with other sanctions measures imposed on specific destinations such as Russia or Iran. |
| 7. For EU measures, how does the UK’s implementation compare with that in other EU member states in terms of costs to business?  The [Export Control (Al Qaida and Taliban Sanctions) Regulations 2011](http://www.legislation.gov.uk/uksi/2011/2649/contents/made) is not an EU measure specifically, but it derives from obligations laid out under the Al-Qaida Regulation and the Taliban Regulation. Under these EU Regulations each Member State is obligated to impose penalty measures.  Penalties are therefore set according to each Member State’s national practice. The Regulations require that penalties must be effective, proportionate and dissuasive and that Member States shall take all measures necessary to ensure that the regulation is implemented and enforced. UK business will, like companies in other Member States, only incur costs if they act in breach of the underlying EU sanctions regime.  As noted in response to question number 6 above, this Order does not impose costs on business. |

1. The Customs and Excise Management Act 1979 - <http://www.legislation.gov.uk/ukpga/1979/2/contents> [↑](#footnote-ref-1)
2. <http://webarchive.nationalarchives.gov.uk/20121212135622/http:/www.bis.gov.uk/files/file44593.pdf> [↑](#footnote-ref-2)
3. Under the terms of the [Export Control Act 2002](http://www.legislation.gov.uk/ukpga/2002/28/contents), the maximum penalty for deliberate and premeditated breaches the UK’s export control regulations is up to 10 years in prison and an unlimited fine. Depending on the exact nature of the offence, HMRC also have powers to impose compound penalty fines (for instance in cases of accidental breaches). [↑](#footnote-ref-3)