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Claim No: AC-2023-MAN-000238

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
SITTING IN MANCHESTER

Manchester Civil Justice Centre
Strand, London, WC2A 2LL

Date: 07/11/2024

Before :

MR JUSTICE FOXTON

Between :

THE KING

on the application of

- (1) DR IMAD NAASANI**
- (2) DR MOHAMAD BASHIR**
- (3) MR JAAFAR MUSTAFA**

Claimants

- and -

**SECRETARY OF STATE FOR FOREIGN,
COMMONWEALTH AND DEVELOPMENT
AFFAIRS**

Defendant

Dr Abdul-Haq Al-Ani (instructed on a Direct Access basis) for the **Claimants**
Malcolm Birdling (instructed by **GLD**) for the **Defendant**

Hearing date: 28 October 2024

Further submissions: 29 October 2024

Draft judgment to parties: 31 October 2024

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MR JUSTICE FOXTON

This judgment was handed down remotely at 2:00pm on 07 November 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Mr Justice Foxton :

1. This is the hearing of the Claimants’ application under s.38(2) of the Sanctions and Anti-Money Laundering Act 2018 (“**the 2018 Act**”) to challenge certain provisions of the Syria Sanctions (EU Exit) Regulations 2019 (“**the Syria Regulations**”).
2. Section 38 of the 2018 Act provides for court review of decisions under the 2018 Act and regulations enacted thereunder “apply[ing] the principles applicable on an application for judicial review.”
3. The Claimants contend that the Syria Regulations infringe the Claimants’ rights under Article 8 of and/or Article 1 of the First Protocol (“**A1P1**”) to the European Convention on Human Rights (“**ECHR**”) and thereby breach s.6(1) of the Human Rights Act 1998 (“**HRA 1998**”). The breaches are said to arise from the Claimants’ alleged inability:
 - i) to remit money to or receive remittances from close family members in Syria (“**the Remittances Ground**”); and
 - ii) to send correspondence to and receive correspondence from Syria (“**the Correspondence Ground**”).

The background

4. On 9 May 2011, the Council of the EU adopted Decision 2011/273/CFSP concerning restrictive measures against Syria (“**the Decision**”). The Decision was stated to be a response to the regime of Bashar al-Assad’s violent repression of the civil population, including through the use of live ammunition on peaceful protestors and the use of chemical weapons against the civilian population.
5. In advance of the UK’s exit from the EU, Parliament passed Part 1 of the 2018 Act in order to confer on Ministers power to implement effective sanctions following EU law ceasing to apply to the UK. The Secretary of State was given power to make sanctions regulations for a purpose falling within s.1(2): see s.1(1)(c), read with s.1(9)(a). These purposes include (i) furthering a foreign policy objective of the UK (s.1(2)(d)); (ii) promoting the resolution of armed conflicts or the protection of civilians in conflict zones (s.1(2)(e)); (iii) promoting respect for human rights (s.1(2)(f)); and (iv) contributing to multilateral efforts to prevent the spread and use of weapons and materials of mass destruction (s.1(2)(h)). Sanctions regulations include regulations imposing financial and trade sanctions, and making supplemental provision in connection with those purposes: see s.1(5)(a), (c) and (g).
6. The Syria Regulations were made by the Secretary of State in exercise of the powers conferred by Part 1 of the 2018 Act on 3 April 2019. In accordance with s.55(3) of the 2018 Act, the Syria Regulations were approved by a resolution of each House of Parliament after they were made, following a debate in each Chamber. The stated purpose of the Syria Regulations, as identified at the time they were laid before Parliament, is:

“... to ensure that the UK can operate an effective sanctions regime in relation to Syria after the UK leaves the EU. When these Regulations come into force they will replace, with substantially the same effect, the EU sanctions regime relating to

Syria that is currently in force under EU legislation and related UK regulations. This sanctions regime is aimed at encouraging the Syrian regime to end the violent repression of the civilian population and to reach a negotiated political settlement to end the conflict in Syria.”

(Explanatory Memorandum to the Syrian (Sanctions) SI No. 2019 No. 792, paragraph 2.1).

7. The Syria Regulations do not contain any prohibition on individuals sending remittances from the UK to family members in Syria, or *vice versa*, provided the family members are not designated persons.
8. However, the Syria Regulations contain a number of prohibitions which the Secretary of State accepts contribute to it being, in practice, very difficult for persons who are not subject to sanctions (such as the Claimants) to send or receive remittances from Syria:
 - i) Regulation 5(1)(a) of the Syria Regulations confers on the Secretary of State power to designate persons by name for the purposes of Regulations 11 to 15, which contain asset freezing restrictions. Since 31 December 2020, eight Syrian banks (including the Central Bank of Syria) have been designated by the Secretary of State by name under Regulation 5(1)(a) for the purpose of asset freezing restrictions on the basis that there are reasonable grounds to suspect that they are or have been involved in supporting the Syrian regime.
 - ii) Regulation 12(1) of the Syria Regulations prohibits making funds available directly or indirectly to a designated person. Breach of this prohibition is an offence (Regulation 12(3)). The prohibition is subject to Part 7 of the Regulations, which contains provisions for exceptions and licences. Regulation 55 contains certain exceptions, and Regulation 61(1) provides that the prohibition in Regulation 12 does not apply to anything done under the authority of a Treasury licence.
 - iii) Regulation 16(1)(b) provides that a UK credit or financial institution must not establish a new correspondent banking relationship with a credit or financial institution domiciled in Syria (although this does not affect existing correspondent banking relationships), a branch or subsidiary, wherever located, of such an institution, or a credit or financial institution owned or controlled directly or indirectly by a person domiciled in Syria. Correspondent banking services include international funds transfers, cheque clearing and foreign exchange services. Breach of the prohibition is an offence: Regulation 16(6).
 - iv) UK credit and financial institutions are also prohibited from opening a bank account with a Syrian credit or financial institution (Regulation 16(1)(a)) and from opening a representative office, or branch or subsidiary in Syria (Regulation 16(3)). These prohibitions are subject to Part 7 of the Syria Regulations (Regulation 16(4)). In particular, HM Treasury may grant an individual licence authorising conduct otherwise prohibited by Regulations 16(1)(a) or (3) only “for the purpose of providing assistance to the civilian population in Syria” (Regulation 61(2)(b) of, and paragraph 17(1) of Schedule 6 to the Syria Regulations).

9. The Syria Regulations do not contain any prohibition on sending post to Syria, but they do contain in Part 5 a number of trade sanctions, certain of which prohibit the sending of particular items to Syria, including by post. For example, Regulation 41 prohibits the export of bank notes or coinage to, or for the benefit of, the Central Bank of Syria, and Regulation 46 prohibits the export of luxury goods to Syria. In addition, Regulation 51 prohibits direct flights from Syrian Arab Airlines to the UK, and by aircraft owned, chartered or operated by persons connected with Syria (as defined) and used exclusively to carry cargo.
10. The Secretary of State accepts that the effects of the Syria Regulations as set out above are some of the reasons why it is, in practice, difficult to send remittances to or receive remittances from Syria. That direct legal effect is capable of being enlarged if persons or entities who are anxious to avoid breaching the Syria Regulations take steps which impede the transmission of remittances going beyond those necessary to comply with the Syria Regulations on the basis of a mistaken but reasonable belief that that is what the Syria Regulations require (so-called “over-compliance”). The effect of s.44(2) and (1)(a) of the 2018 Act is that persons who act on that basis are not liable to civil proceedings in doing so.
11. A report by the then Minister of State for Europe, the Rt Hon. Sir Alan Duncan MP KCMG, published pursuant to s.2(4) of the 2018 Act (as then in force), stated that the sanctions imposed by the Syria Regulations were “an important lever to bring about change in Syria and send a strong political signal that the atrocities of the Syrian regime have not gone un-noticed” and were intended “to address the ongoing atrocities which continue to take place against civilians across the country”.
12. The Explanatory Memorandum to the Syria Regulations records that over 400,000 persons had been killed in the ongoing conflict in Syria as of March 2019 which had been “one of the most destructive in recent human history”. The Minister stated that targeted sanctions such as those imposed on Syrian banks were intended to address (among others) persons “supporting the Syrian regime” and that sectorial financial sanctions were intended to “restrict the Syrian regime’s ability to access the UK’s financial institutions thereby constraining its ability to carry out its repressive policies against the civilian population” and to send “a signal of strong condemnation towards the actions of the Syrian regime”. In a separate report prepared under s.18 of the 2018 Act (as then in force), the Minister stated that breaches of the prohibitions “could allow the flow of funds to the Syrian regime itself, or others involved in the repression of the civilian population in Syria and those supporting or benefitting from the Syrian regime”. The same Report stated that direct flights between Syria and the UK by Syrian Arab Airlines had been prohibited to restrict “the Syrian regime’s access to the financial and logistical support provided by the national airline”, to apply pressure on the regime and to send a strong signal of condemnation.
13. Having reconsidered the material filed by the Claimants in these proceedings, on 1 February 2024 the Minister of State (Indo-Pacific), the Rt Hon. Anne-Marie Trevelyan MP, and the Minister of State (Middle East, North Africa, South Asia, United Nations and the Commonwealth), Lord Ahmad of Wimbledon, both stated that they remained of the view that the prohibitions are justified and serve the objectives of the Syria Regulations by maintaining pressure on, and providing leverage over, the Assad regime. They stated that they had carefully considered whether an exception (by way of amending

regulations under s.45 of the 2018 Act) or the issue of a general licence by the Treasury could be made to facilitate the transfer of remittances, but decided against that course, subject to officials keeping the matter under review, including progressing work to help address the impact of sanctions over-compliance on legitimate activity in Syria.

14. In reaching that view, the Ministers of State expressed the view that considerable weight ought to be placed on the fact that unilateral action by the UK to address the impact of the Syria Regulations would be unlikely in practice to enable remittances to occur, due to a number of other reasons why it is difficult to send remittances to or from Syria. These included reputational risks and compliance costs for the financial institutions involved, as well as the need to comply with foreign law, including United States' and EU sanctions, and with requirements intended to restrict terrorist financing imposed in this jurisdiction by s.62 of, and Schedule 7 to, the Counter-Terrorism Act 2008. The Ministers stated that easing restrictions under the Syria Regulations would undermine the achievement of their purposes by potentially giving the Syrian regime greater access to funds, and in view of the limited benefit of relaxing the prohibitions, decided that it would not be appropriate to run that risk.
15. Evidence filed by one of the Claimants, Dr Naasani, in these proceedings states that on 5 June 2024 he was told by the Post Office that Western Union would transfer funds from anywhere in the world to Syria and that he successfully transferred the sum of £100 to a friend in Syria via the Post Office. On the basis of that evidence, FCDO officials provided Ministers with updated advice to the effect that this development did not change their overall assessment or advice and that FCDO officials remained of the view that the Syria Regulations do not have a disproportionate effect on the human rights (to the extent these are engaged) of Syrian nationals living in the UK. That advice was considered by Parliamentary Under Secretary of State (Middle East, Afghanistan and Pakistan), Hamish Falconer MP, and the Minister of State (Europe, North America and Overseas Territories), Stephen Doughty MP, in his capacity as the Minister responsible for sanctions. On 3 September 2024 and 5 September 2024 respectively, both Ministers agreed with FCDO officials' recommendations to take no action with respect to the Syria Regulations. Evidence filed by Dr Bashir shortly before hearing suggested that a similar attempt to make a transfer did not go through on 16 October 2024.
16. So far as the sending of correspondence to Syria is concerned, it was common ground at the hearing that there do not appear at the present time to be postal services in operation between the United Kingdom and Syria by any of the major operators. However, there was a dispute as to whether the current suspension of postal services between the UK and Syria by major operators was the result of the Syria Regulations. The Syria Regulations do not prohibit the carriage of mail between the UK and Syria by direct or transit routes. As noted above, Regulation 51(1) prohibits aircraft landing in the UK if (a) they are operated by the State-owned Syrian Arab Airlines; or (b) they are owned, chartered or operated by a person who is connected with Syria; and who is using the aircraft exclusively for the provision of air cargo services, which is defined (in Regulation 51(6)) as services for the carriage by air of cargo, including mails. This prohibition does not affect transit routes. Nor does it affect the ability of persons who are not connected with Syria to land aircraft in the UK even where those aircraft are used for the purpose of the carriage of mails to and from Syria.

17. Royal Mail informed the Secretary of State in response to an enquiry that postal services to Syria were suspended on 6 December 2012 due to the escalating political situation in that country and the consequent impact on operations, including the absence of any direct or transit routes into Syria, rather than on account of sanctions imposed on Syria. Royal Mail issued an update on 5 December 2013 to the effect that: “Due to the political situation, dispatching of all mail products to Syria has been suspended.” It has indicated to the Secretary of State that it keeps international services under regular review, but in the continuing absence of transit routes, it is unable to reinstate postal services at the present time.
18. Following inquiries made by the Secretary of State as a result of this claim, Royal Mail contacted the Post Office to inquire what information it holds concerning the absence of Royal Mail services to Syria. The Post Office has confirmed to Royal Mail that the information it holds is that the suspension of Royal Mail services is due to the political situation in Syria, and not on account of the Syria Regulations.
19. On 15 February 2023, the Claimants (and two others) wrote to then Prime Minister, Rt Hon Rishi Sunak MP, requesting that the sanctions imposed under the Syria Regulations be lifted. On 16 March 2023, the Secretary of State responded to that letter (as the Minister responsible for the imposition and management of designations under the Syria Regulations) refusing that request.
20. The Claimants applied for permission to seek judicial review of that letter on 5 May 2023. In view of the subsequent history of this matter, it is important to note the width of the points originally taken in that challenge which included the following:
 - i) A declaration was sought that the Syria Regulations were unlawful and inconsistent with the UK’s domestic and international law obligations.
 - ii) A declaration was sought that the Syria Regulations breached the Claimants’ ECHR rights.
 - iii) It was alleged that the Syria Regulations unlawfully interfered with the Claimants’ Article 8 Convention rights because (a) they were prevented from travelling to and from Syria due to Syrian Arab Airlines being prevented from flying to the UK; (b) the Claimants were prevented from financially supporting their families in Syria by remitting money there; and (c) the Syria Regulations “terminated all correspondences” such that the Claimants could not send books, packages or items through the post to Syria.
 - iv) It was alleged that the Syria Regulations breached domestic and international criminal law, constituted crimes against humanity, and amounted to support for “genocide” and “terrorism”.
21. In response, in the Summary Grounds of Resistance, the Secretary of State took the preliminary point that the effect of s.39(5) of the 2018 Act was that there was a complete bar to seeking judicial review in respect of any of the matters referred to in s.38(1) of the 2018 Act. It also argued that the complaints made were not properly arguable:

- i) It was said not to be arguable that Article 8 conferred a right to transfer funds between family members or any obligation on Contracting Parties to ensure direct flights or postal services were available.
 - ii) It submitted that it was not arguable that the Syria Regulations amounted to crimes against humanity or support for genocide or terrorism.
22. At the permission hearing before Fordham J in November 2023, he first considered whether there were any arguable grounds of claim (on the basis that the Claimants had chosen to seek judicial review with its permission filter, and, had they not done so, the Secretary of State would have applied to strike out the claim on non-viability grounds): [2023] EWHC 2853 (Admin), [5]. He reached the following conclusions:
 - i) He refused permission for all general grounds relating to the making and maintaining of the Syria Regulations as a whole and to general or specific civilians as breaches of international law because these grounds were not properly arguable ([6]).
 - ii) It was not realistic that the Syria Regulations involved perpetrating terrorism or a breach of international law ([8]-[9]) or of international criminal law ([16]).
 - iii) The challenge to the fact that the Syria Regulations prohibited certain direct flights between the UK and Syria had no realistic prospect of success ([14]).
 - iv) He held that two “narrow HRA grounds” were arguable, namely the alleged Article 8(1) and A1P1 breaches relating to (i) transferring money (remittances) and (ii) sending letters between the UK and Syria (correspondence) ([16]).
23. By Order of Fordham J on 15 November 2023, the Claimants’ application was directed to proceed as an application for statutory review under s.38(2) of the 2018 Act on the two grounds set out above. The application for judicial review was stayed.
24. On 26 April 2024, the Claimants brought to the Secretary of State’s attention a statement published on the Universal Postal Union (“UPU”) website on 25 January 2013 in which the Syrian Post asked the UPU to inform all member countries to route international mail destined for Syria via Amman, Jordan. The UPU is a United Nations specialised agency which is the primary forum for co-operation between postal agencies in 192 countries (including the UK and Syria). The members of the UPU are parties to the Universal Postal Convention (“UPC”) which embodies the rules application to international postage of letters and parcels, with each member being obliged to ensure that their designated operators fulfil the obligations arising from the UPC. The designated operator for the UK is Royal Mail.
25. On 2 May 2024, FCDO officials wrote to Royal Mail and requested clarification from Royal Mail as to its position in relation to its postal service from the UK to Syria. On 19 June 2024 the Director of External Affairs and Policy for Royal Mail responded as follows:

“Further to my previous email, we have not been able to conclusively determine whether at any time [Royal Mail Group] were aware (or should have been aware)

of the route via Jordan, nor is it clear whether this remains a viable route. The IB Circular 126 (15.07.2013) provides an explanation as to why services were suspended back in 2012. We have not discovered anything to suggest the rationale was influenced by the sanctions position of the UK government.”

26. The Secretary of State has stated that inquiries made of postal operators other than Royal Mail (Parcelforce, DHL and FedEx) do not indicate that any operator has suspended services to Syria on account of the Syria Regulations. FedEx has indicated that it has suspended services in part due to United States’ sanctions.
27. On 8 March 2024, Mr Darling on behalf of the Secretary of State filed a witness statement stating that a search had been made of FCDO internal folder systems under the responsibility of FCDO’s Sanctions Directorate and Syria Unit, as well as the mailboxes for individuals working at the time the Syria Regulations were drafted. The search found no responsive documents identifying any specific consideration of the potential effect of the Syria Regulations on the sending and receiving of remittances or postal correspondence.

The Applicable Legal Principles

28. Section 6(1) of the HRA 1998 makes it unlawful for a public authority to act in a way which is incompatible with one of the rights accorded by the ECHR.
29. The Convention rights relied upon in this case are:
 - i) Article 8:
 - “(1) Everyone has the right to respect for his private and family life, his home and his correspondence.
 - (2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”
 - ii) A1P1 which provide:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a state to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

30. The Secretary of State has accepted for the purposes of this hearing that:

- i) the ability to send remittances to or receive them from close relatives is “intimately connected” with the “material aspects” of family life (cf *Merger and Cros v France* (2006) 43 EHRR 51 at [46]) and engaged A1P1;
 - ii) that any ability to send and receive correspondence from close family members is capable in some circumstances of engaging Article 8 (although it is not accepted that such circumstances arise in this case).
31. Given the submissions Dr Al-Ani has advanced, it is helpful to say a little more about the three elements of Article 8(2):
 - i) First, the need for interference to be “in accordance with the law” requires not simply that the interference has a basis in domestic law (in the case of the Syria Regulations, the 2018 Act)) but also has substantive content, requiring the law to be sufficiently clear and accessible (*Malone v United Kingdom* (1984) 7 EHRR 14). This aspect of Article 8(2) is most commonly litigated when the measure in issue accords a discretion to a particular public authority to take decisions which interfere with the Article 8(1) right.
 - ii) Second, the need for the interference to be in pursuit of one of the identified legitimate aims. The ECHR has noted that “in most cases” the Court “will deal quite summarily with the question of the existence of a legitimate aim within the meaning of the second paragraph[h] of Articl[e] 8”, because the aims are “broadly defined and have been interpreted with a degree of flexibility” and so “[t]he real focus of the Court’s scrutiny has rather been on the ensuing and closely connected issue: whether the restriction is necessary or justified”: *LB v Hungary* (2023) 77 EHRR 1, [108]-[109].
 - iii) Third, the need for the interference to be “necessary in a democratic society”, for which purpose it must be in pursuit of a “pressing social need”, justified by “relevant and sufficient” reasons “adduced by the national authorities”, and “proportionate to the legitimate aim pursued” (*LB v Hungary*, [115]).
32. Turning to A1P1, once again the interference with the Claimants’ A1P1 rights can only be justified if it is prescribed by law (“subject to the conditions prescribed by law”) and proportionate (“necessary to control the use of property in accordance with the general interest”): see *Phillips v Secretary of State for Foreign, Commonwealth and Development Affairs* [2024] EWHC 32 (Admin), [137].
33. So far as the issue of proportionality is concerned, in *Dalston Projects Ltd v Secretary of State for Transport* [2024] EWCA Civ 172 (“*Dalston*”), [9] Singh LJ summarised the various questions raised by that ostensible single enquiry as follows:

“It is necessary to determine: (1) whether the objective of the measure is sufficiently important to justify the limitation of a protected right; (2) whether the measure is rationally connected to the objective; (3) whether a less intrusive measure could have been used without unacceptably compromising the achievement of the objective; and (4) whether the measure’s contribution to the objective outweighs the effects on the rights of those to whom it applies.”

34. The issue of whether an act is compatible with a Convention right is a matter of substance for the court to decide (*Dalston*, [11]). However, that does not involve the court embarking on its own *de novo* analysis without regard to the conclusions reached by the relevant decision-maker. That would be to ignore the fact that, in law, responsibility for reaching the relevant determination has not been accorded to the courts but to another decision-maker, who will, in many cases, have been entrusted with that decision because of institutional expertise or because the decision requires evaluative judgments which the court is not well-equipped to make.

35. In that regard, I was referred to the following passage in the judgment of Lord Sumption in *R (Lord Carlisle of Berriew and others) v Secretary of State for the Home Department* [2015] AC 945, [34]:

“Various expressions have been used in the case law to describe the quality of the judicial scrutiny called for when considering the proportionality of an interference with a Convention right: ‘heightened’, ‘anxious’, ‘exacting’, and so on. These expressions are necessarily imprecise because their practical effect will depend on the context. In particular, it will depend on the significance of the right, the degree to which it is interfered with, and the range of factors capable of justifying that interference, which may vary from none at all (article 3) to very wide ranging considerations indeed: article 8 . But the legal principle is clear enough. The court must test the adequacy of the factual basis claimed for the decision: is it sufficiently robust having regard to the interference with Convention rights which is involved? It must consider whether the professed objective can be said to be necessary, in the sense that it reflects a pressing social need. It must review the rationality of the supposed connection between the objective and the means employed: is it capable of contributing systematically to the desired objective, or its impact on the objective arbitrary? The court must consider whether some less onerous alternative would have been available without unreasonably impairing the objective. The court is the ultimate arbiter of the appropriate balance between two incommensurate values: the Convention rights engaged and the interests of the community relied on to justify interfering with it. But the court is not usually concerned with remaking the decision-maker’s assessment of the evidence if it was an assessment reasonably open to her. Nor, on a matter dependent on a judgment capable of yielding more than one answer, is the court concerned with remaking the judgment of the decision-maker about the relative advantages and disadvantages of the course selected, or of pure policy choices (e.g. do we wish to engage with Iran at all?). The court does not make the substantive decision in place of the executive. On all of these matters, in determining what weight to give to the evidence, the court is entitled to attach special weight to the judgments and assessments of a primary decision-maker with special institutional competence.”

36. Finally, the provisions of the Syria Regulations the court is concerned with on this application are general measures (none of the Claimants being designated persons and there being no challenge to any particular designation). The approach to be taken when a challenge is brought to a general measure by reference to the ECHR has been summarised by the Supreme Court in *Reference by the Attorney General for Northern Ireland – Abortion Services (Safe Access Zones) (Northern Ireland) Bill* [2023] AC 505

at [35] (drawing on *Animal Defenders International Ltd v United Kingdom* (2013) 57 EHRR 21):

- “(1) ‘[A] state can, consistently with the Convention, adopt general measures which apply to pre-defined situations regardless of the individual facts of each case even if this might result in individual hard cases’ (para 106).
- (2) The European court attaches particular importance to ‘The quality of the parliamentary and judicial review of the necessity of the measure’ (para 108). In that regard, the court made clear at paras 115–116 the importance which it attaches to judicial consideration of proportionality issues in the light of the Convention case law.
- (3) ‘It is also relevant to take into account the risk of abuse if a general measure were to be relaxed, that being a risk which is primarily for the state to assess’ (para 108).
- (4) ‘A general measure has been found to be a more feasible means of achieving the legitimate aim than a provision allowing a case-by-case examination, when the latter would give rise to a risk of significant uncertainty, of litigation, expense and delay as well as of discrimination and arbitrariness’ (para 108).
- (5) ‘[The] more convincing the general justifications for the general measure are, the less importance the [European] court will attach to its impact in the particular case’ (para 109).
- (6) ‘The central question as regards such measures is not ... whether less restrictive rules should have been adopted or, indeed, whether the state could prove that, without the prohibition, the legitimate aim would not be achieved. Rather the core issue is whether, in adopting the general measure and striking the balance it did, the legislature acted within the margin of appreciation afforded to it’ (para 110).”

The Remittances Ground

37. The Claimants contend that the Syria Regulations are in breach of their Article 8 and/or A1P1 rights because:
- i) The Syria Regulations were not “in accordance with the law”.
 - ii) The Syria Regulations do not pursue a legitimate aim, are not rationally connected to their stated objectives and are not necessary in a democratic society.
 - iii) The Syria Regulations have the effect of imposing a “total ban” on the Claimants’ ability to transfer money between the UK and Syria, in breach of the Claimants’ rights under Article 8 and A1P1.
 - iv) A less intrusive measure could have been used.

- v) The Claimants have had to bear a disproportionate and excessive burden as a result of the Syria Regulations' effect on them.
38. As to (i) (not in accordance with the law), I am satisfied that there is nothing in this objection. The 2018 and the Syria Regulations are accessible (the former an Act of Parliament, the latter a published statutory instrument which was laid before and approved by both House of Parliament) and clear in their terms. While Dr Al-Ani suggested that the Syria Regulations afforded the Secretary of State an arbitrary discretion:
- i) The power to designate persons conferred by the Syria Regulations on the Secretary of State identifies in clear terms the purposes for which such a designation may be made and the designation criteria, and provides for the notification and publication of any designation decision. It also clearly states what the consequences of designation are. The position is essentially the same as that considered by Johnson J in relation to the Russia (Sanctions) (EU Exit) Regulations 2019 in his impressive judgment in *Phillips v Secretary of State for Foreign , Commonwealth and Development Affairs* [2024] EWHC 32 (Admin), [141]-[144].
 - ii) The sectoral and specific activity sanctions are similarly expressed in clearly defined terms.
 - iii) The Syria Regulations provide for exceptions and licences (Part 7) and the 2018 Act confers a power to revoke or vary designation (s.22), provides a right to request revocation or variation (ss.23, 25-27, 29) and provides means to challenge the Regulations or their application before a court of law (s.38).
39. As to (ii) (pursuit of a legitimate aim, rational connection to their objectives and necessary in a democratic society), the material filed by the Secretary of State, the Explanatory Memorandum to the Syria Regulations which was laid before Parliament at the same time as the Syria Regulations and the reports filed with Parliament all confirm that the Syria Regulations pursue a legitimate Article 8(2) object. The Explanatory Memorandum stated that “the sanctions regime is aimed at encouraging the Syrian regime to end the violent repression of the civilian population and to reach a negotiated political settlement to end the conflict in Syria.” The Explanatory Memorandum describes the ongoing conflict in Syria as “one of the most destructive in recent history.” These objectives come within the scope of “national security” as that term is used in the ECHR: see the authorities collected in *Phillips v Secretary of State for Foreign, Commonwealth and Development Affairs* [2024] EWHC 32 (Admin), [146].
40. With specific reference to the financial sector sanctions, the Minister of State for Europe has explained in a report published under s.2(4) of the 2018 Act that they have “restrict[ed] the Syrian regime’s ability to access the UK’s financial institutions thereby constraining its ability to carry out its repressive policies against the civilian population and send .. a signal of strong condemnation towards the actions of the Syrian regime”.
41. In a separate report published by the Minister under s.18 of the 2018 Act, the Minister stated that non-compliance with (and, by necessary implication, the repeal of) the provisions of the Syria Regulations “could allow the flow of funds to the Syrian regime

itself, or others involved in the repression of the civilian population and those supporting or benefiting from the Syrian regime.”

42. I am unable to accept the Claimants’ submission that the Syria Regulations had an unlawful objective, being “to force the Syrian Government to negotiate with the terrorists”. That represents an impermissible attempt to re-open one of the attempted grounds of review dismissed as lacking any realistic prospect of success by Fordham J (see [22(ii)]). Further, to the extent that this involves an adverse judgment on some of the interests engaged in the conflict in Syria, the characterisation of the various actors is a matter within the special institutional competence of the Secretary of State. In any event, I do not accept that an object of promoting negotiations between two sides in an ongoing armed conflict would be “unlawful”, however particular individuals might choose to characterise one or other side.
43. There was debate before me as to whether it was a legitimate aim of the Syria Regulations for Article 8(2) purposes that they were made “for the protection of the rights and freedoms of others”, when the “others” in question were persons in Syria who were not within the territorial scope of the ECHR. In view of my conclusion that any interference with the Claimants’ Article 8(1) and A1P1 rights effected by the Syria Regulations was for the legitimate aim of national security, it is not necessary to resolve this question. However, I am satisfied that the reference to “the protection of the rights and freedoms of others” is not subject to the territorial limitation for which Dr Al-Ani contends. Mr Birdling was able to point to a number of examples of ECHR jurisprudence inconsistent with such a limitation, including:
 - i) *Mennesson v France* App No 65192/11, ECHR 26 September 2014 , [62] (holding that the protection of the rights and freedoms of surrogate mothers outside France constituted “protection of the rights and freedoms of others” for Article 8(2) purposes).
 - ii) *Colombani v France* App No 51279/99, ECHR 25 June 2002, [62] (holding that protection of the reputation of a foreign head of state was capable of constituting “protection of the reputation and rights of others” for Article 10 purposes).
44. The objectives which I have found that the Syria Regulations are intended to serve are important (and I am satisfied that they are of sufficient importance to justify interference with Convention rights where the other elements of the Article 8(2) and A1P1 enquiries are satisfied).
45. Those objectives also meet the requirement for the interference to be “necessary in a democratic society”, the Explanatory Memorandum and the reports filed under the 2018 Act having identified “the pressing social need” for the Regulations, and provided “relevant and sufficient” reasons for them, and the Syria Regulations being targeted against specific persons or entities, sectors or activities. Further, as noted at [38(iii)] above, the Syria Regulations contain a number of important checks and balances.
46. It is next necessary to ask whether the measure is rationally connected to the objective identified. The answer to that question is clear – there is obviously a rational link between the attempts to deny financial resources to the Assad regime or others involved in the repression of the civilian population and those supporting or benefiting from the Syrian

regime, and measures which designate major Syrian banks, prohibit the making of funds available to designated persons, restrict new banking relationships between UK banks and financial institutions domiciled in Syria and prohibit UK banks from opening accounts with Syrian banks or opening offices or branches there. Section 44(2) of the 2018 Act – providing a defence to civil liability for third parties in respect of acts done in the reasonable belief that they were complying with regulations made under the 2018 Act – is also obviously rationally connected with those same aims, forming part of the overall regulatory regime which provides a measure of protection for third parties who might otherwise be deterred from acting on the basis of the regulations for fear of legal liability.

47. The Claimants contend that the Syria Regulations are not rationally connected to their aims as none of the Claimants “is either close to the Syrian regime, has taken part in or contributed to any action of the regime or is in a position to influence the regime’s conduct”. However, the issue for the court is whether the Syria Regulations as a whole are capable of achieving the aims pursued, rather than whether their application in any individual case (such as in relation to the Claimants) would achieve those aims: see *Dalston*, [116]-[117], [213]-[214].
48. As to (iii) (total ban), the Syria Regulations do not impose a prohibition on the sending and receiving of remittances between the UK and Syria. There are cases in which a measure which does not purport to preclude the exercise of a particular right nonetheless imposes conditions upon its exercise “in such a way or to such an extent” as to impair the very essence of the right (*Rees v United Kingdom* (1987) 9 EHRR 56, [50]; *Mathieu-Mohin and Clerfayt v Belgium* (1987) 10 EHRR 1, [52]), which Dr Al-Ani relied upon. However, that is not the effect of the Syria Regulations, which prohibit the making of funds available to designated persons, designate major Syrian banks and prohibit UK banking institutions from initiating certain types of banking relationships with Syrian institutions or certain types of banking activity within Syria. The Syrian Regulations are undoubtedly one of the factors which have made the sending of remittances to and from Syria more difficult – on the material before the court, others include the direct and indirect effect of sanctions imposed by the U.S. or the EU, and the precautionary attitude adopted by UK financial institutions by reason of the restrictions which have been imposed, and reputational risks.
49. I accept, nonetheless, that the Syria Regulations have given rise to a significant interference with the Claimants’ ability to transfer funds to family members in Syria and receive funds from Syria, and the Secretary of State has accepted for the purposes of this hearing that this gives rise to an interference with the Claimants’ A1P1 rights. I will also assume, for the purposes of this challenge, that the same matters give rise to a significant interference with the Claimants’ Article 8 rights.
50. The issue which then arises is whether those interferences are justified. In addressing that question, it is necessary to keep in mind that the relevant provisions in the Syria Regulations are general measures, and that, as Regulations operating in the field of foreign policy, they engage the special institutional competence of the Secretary of State. I am satisfied that those interferences are justified, given the importance of the aim, and the matters considered in [51] to [54] below.

51. As to (iv) (whether a less intrusive measure could have been used without unacceptably compromising the achievement of the objective), the Claimants suggest that only restricting designated persons from sending and receiving remittances would have been “less restrictive and equally effective”. However, the Syria Regulations do not impose a restriction on non-designated persons sending money to or receiving money from other non-designated persons. The Claimants do not appear to be suggesting that the Secretary of State should not have designated major Syrian banks nor prohibit new banking relations and certain types of banking activity between UK banks and Syrian banks, but appear to be arguing that certain types of activity with designated Syrian banks should have been permitted.
52. As to this suggestion:
- i) The FCDO advice to the Minister of 1 February 2024 addressed the issue of whether it would be possible to replace the existing sanctions regime by which individual licenses could be sought from the Office for Sanctions Implementation either with a general licence for the use of the retail services of designated banks to make low value payments, or an exemption from the scope of the Syria Regulations for such transactions.
 - ii) The FCDO concluded that it was unclear whether adopting either of these measures would have any practical effect, given the many other factors apart from the Syria Regulations which made it extremely difficult for remittances to pass between non-designated persons in Syria and persons in the UK.
 - iii) By contrast, the FCDO concluded that taking these steps would create risks (albeit small ones) of (i) cash remittances being appropriated by the Syrian government, against a background of a number of Syrian Presidential Decrees banning the handling of foreign currency and (ii) an opportunity for the Central Bank of Syria to profit from foreign currency inflows.
53. Those conclusions are persuasive, and I agree with them, reminding myself that “there is room for judgment in this area” (*Dalston*, [2011]). There is simply no basis for concluding that any supposedly less intrusive measures which it is suggested could have been adopted would have appreciably ameliorated the impact of the Syria Regulations on the Claimants’ Convention rights, still less done so without reducing the overall efficacy of the sanctions package.
54. Finally, as to (v), there is the question of whether the measure’s contribution to the objective outweighs the effects on the rights of those to whom it applies. I should immediately accept that the difficulties faced by the Claimants (in particular) in remitting funds to family members in Syria or receiving remittances from Syria constitute a source of genuine inconvenience and distress. However:
- i) The Syria Regulations involve a relatively limited restriction on the Claimants’ A1P1 rights, as they remain free otherwise to use their property (whether in Syria or in the UK) in such lawful manner as they wish. Similarly, to the extent that there is an interference with the Claimants’ Article 8 right, the ability to transfer funds between family members is a relatively narrow and limited part of the right to family life.

- ii) In this regard, I should deal with the Claimants' submission that their assets in Syria have effectively been frozen, and their reliance in this context on the decision of the CJEU in *European Commission v Kadi* EU-T:2010:418 (General Court); EU-C:2013:518 (Grand Chambers). That case involved the successful challenge to a regulation freezing Mr Kadi's assets, largely on due process grounds. In any event, the order in *Kadi* froze all of Mr Kadi's funds, with very limited exceptions as regards food, medical expenses and reasonable legal fees provided there was prior notification to the Sanctions Committee. In the present case, by contrast, the Syria Regulations do not restrict the use to which the Claimants' assets (whether in the UK or Syria) may be put, save that they cannot be paid to designated persons, and the practical effect of the Syrian Regulations, in combination with other factors, is to seriously interfere with the movement of funds in one particular manner, namely between Syria and the UK, but not otherwise.
 - iii) The Syria Regulations are only one of a number of factors which have combined to give rise to a serious interference in the Claimants' ability to make remittances to or receive them from family members in Syria.
 - iv) The restrictions are temporary in nature, and to the extent that they have the practical effect of preventing remittances while in force, those same remittances could be made if the restrictions were removed and the effect ceased (although I accept that the inability to use money which would otherwise have been remitted during the intervening period is irreversible).
 - v) There is a power, which on the evidence before me and which I accept is kept under review, to issue a general licence, and individuals may apply under Regulation 12 to HM Treasury for individual licences to conduct certain types of transactions which would otherwise be prohibited. Such licences may be granted for a number of purposes, including to enable anything to be done (i) in connection with the performance of any humanitarian assistance activity; (ii) to protect the safety of individuals; (iii) in order to evacuate an individual from Syria; and (iv) to deal with an extraordinary situation.
 - vi) Having regard to all of these matters, I am satisfied that the contribution of the relevant features of the Syria Regulations to the objective is sufficient to outweigh the limited interference the Regulations have caused to the Claimants' Convention rights. I have attached particular weight in this context to the fact that the balancing exercise involves questions of foreign policy on which the Secretary of State's assessment as to the appropriate response should be given special weight, and that the judgement to maintain the Syria Regulations in force in their present form, and the balance struck by them, is within the Secretary of State's special institutional competence.
55. There is one further matter I should deal with. The Claimants have relied upon the fact that the searches of the relevant FCDO internal records "did not identify any specific consideration being given to the potential effect of the Syria Regulations on the sending and receiving of remittances, nor the issue of postal correspondence" to contend that it necessarily follows that the Syria Regulations cannot have a legitimate aim or be proportionate. I am unable to accept this argument:

- i) The evidence of the Secretary of State’s legitimate aim or objective in making the Syria Regulations is clear, and has been set out at [39]-[47] above.
- ii) The Secretary of State was not required, prior to enacting the Syria Regulations to consider every conceivable effect they might have.
- iii) In assessing the issue of proportionality, the court is not limited to assessing the decision-maker’s process, thinking or assessment at the time the relevant decision was made. As Lord Hoffmann noted in *Belfast City Council v Miss Behavin’ Limited* [2007] 1 WLR 1420, [12]-[13]:

“This approach seems to me not only contrary to the reasoning in the recent decision of this House in *R (SB) v Governors of Denbigh High School* [2007] 1 AC 100 but quite impractical... Either the refusal infringed the applicants’ Convention rights or it did not. If it did, no display of human rights learning by the Belfast City Council would have made the decision lawful. If it did not, it would not matter if the councillors had never heard of article 10 or the First Protocol.”

- iv) In any event, as the Court of Appeal noted in *Dalston* at [208]:

“The difficulty with this line of argument is that ... the proportionality assessment required by the court is not concerned with the decision-making process by the Secretary of State. It is a question of substance for the court to decide in the light of all the material before it.”

That material includes evidence as to the subsequent consideration of these points by the FCDO and the Secretary of State, with the benefit of their special institutional competence and following further enquiries. I am satisfied that these views reflect a conscientious and good faith consideration of the issues, rather than a formalistic attempt to justify an earlier decision. There is evidence of extensive efforts to obtain the views of third parties, including the City UK and UK Finance. I find those subsequent assessments persuasive.

56. Accordingly the Claimants’ challenge to the Syria Regulations on the Remittances Ground fails.

The Correspondence Ground

57. The Claimants contend that the Syria Regulations are in breach of their Article 8 right of correspondence. The basis on which the Correspondence Ground has been advanced has shifted somewhat, but includes the following:
 - i) The Syria Regulations have had the effect of imposing a “total ban” on postal services between Syria and the UK, in breach of the Claimants’ Article 8 rights.
 - ii) The interference does not pursue a legitimate aim, is not in accordance with the law and is not necessary in a democratic society.

- iii) A less restrictive measure could have been used.
 - iv) The Secretary of State has failed to comply with its positive obligation to take steps to facilitate a postal service between the UK and Syria.
58. In addition, by way of a new argument, the Claimants argue that the suspension of postal services to Syria is discriminatory and breaches the Claimants' Article 14 rights.
59. I accept, on the evidence, that there do not appear at the present time to be postal services in operation between the United Kingdom and Syria provided by one of the major postal operators. However, I am not persuaded on the evidence that the Syria Regulations has caused that state of affairs.
60. As Fordham J noted when giving the Claimants permission to pursue the Correspondence Ground, ([2023] EWHC 2853 (Admin), [22]), the Syria Regulations contain no restriction on postal correspondence between the UK and Syria.
61. Further, the evidence does not establish any appreciable incidental effect:
- i) The restrictions on postal correspondence in the Syria Regulations to which the court's attention has been drawn are very narrow and specific.
 - ii) On 31 October 2023, the FCDO contacted Royal Mail to ask if it was currently providing postal services to Syria and, in effect, if not why not. In response on the same day, Royal Mail stated that the service had been suspended in 2012, but further enquiries were being made as to why the service remained suspended.
 - iii) On 1 November 2023, the FCDO sent a further email to Royal Mail asking about the postal service to Syria and stating, "I should add that FCDO is not suggesting that RM considers restarting services, that is a question for RM. Our interest is if the continued suspension of service is the result of the UK's Syria sanctions regime; operational/logistical factors; or some other reason". The Claimants were critical of the terms of this communication, but I am satisfied that they were wholly appropriate. The FCDO does not have relevant regulatory authority over Royal Mail, and it was not for FCDO to seek to influence how Royal Mail operated.
 - iv) By reply the same day, Royal Mail stated that postal services to Syria were suspended on 6 December 2012 because of the escalating political difficulties there, their impact on operations and the absence of direct or transit routes, and not because of sanctions imposed on Syria by the UK Government. The same email stated that Royal Mail had "received very few enquiries around re-establishing a service to Syria, which suggests there is very little demand from both social and business customers."
 - v) On 30 December 2023, Royal Mail informed Dr Naasani that "due to ongoing issues in Syria, we are unable to provide a reliable postal service and therefore at this time our services remain suspended."
 - vi) On 15 January 2024, Royal Mail provided an update to the FCDO confirming their earlier explanation but stating that the Post Office and Royal Mail were now two

separate entities. The Post Office had been contacted by Royal Mail and confirmed that the information available to the Post Office is to the effect that suspension of mail services to Syria is due to the political situation in Syria and not on account of the Syria Regulations.

- vii) On 30 December 2023, Royal Mail informed Dr Naasani that “due to the ongoing issues in Syria we are unable to provide a reliable service.”
 - viii) On 19 June 2024, the Director of External Affairs and Policy for Royal Mail provided a response following a further query arising from the discovery of a reference to transit routes to Syria on the UPU website in 2013, stating that it was not possible to determine whether Royal Mail was aware of this statement, or whether any such route was still viable.
 - ix) There is no information as to why Parcelforce and DGL suspended services to Syria, but FedEx have identified US (but not UK) sanctions as a factor.
62. At the hearing, Dr Al-Ani attempted to raise a new argument, that by prohibiting certain direct flights between Syria and the UK, the Syria Regulations had interfered with the Claimants’ Article 8(1) correspondence right. As to this:
- i) As noted above, Regulation 51 of the Syrian Regulations prevents aircraft operated by Syrian Arab Airlines, or owned, chartered or operated by a person connected with Syria and used exclusively for the provision of air cargo services, from landing in the UK.
 - ii) Dr Al-Ani accepted that the attempt at the hearing to advance the Correspondence Ground by reference to the prohibition in Regulation 51 was a new point. However, I am satisfied that the point is not open to the Claimants. *Fordham J* has already held that any challenge to Regulation 51 is not arguable: see [22(iii)] above.
 - iii) For that reason, it has not been necessary for the Secretary of State to adduce evidence as to the effect of Regulation 51 on international postage. However, such evidence as there is does not establish that the prohibition effected by Regulation 51 has had the effect of interfering with the Claimants’ ability to send correspondence to and receive correspondence from Syria. Regulation 51 does not prohibit non-Syrian connected aircraft from landing, nor the sending of correspondence to Syria by indirect routes. There is evidence that the Syrian Post (the designated UPU operator for Syria) has asked the UPU to route international mail for Syria to Amman in Jordan using Royal Jordanian airline or other airlines flying to Amman, with arrangements having been made to forward the mail to Damascus. Finally, and significantly, neither Royal Mail nor the Post Office have identified the prohibition on direct Syrian Arab Airlines’ flights as one of the reasons why they suspended services to Syria: see [61] above.
63. That is sufficient to dismiss the challenge based on the Correspondence Ground. However, even if it had been established that the Syria Regulations had themselves had the effect of materially interfering with postal traffic between the UK and Syria, and assuming that this would constitute an interference with the Claimants’ Article 8 right, I would in any event have rejected this challenge:

- i) For the reasons set out above, I am satisfied that the Syria Regulations have legitimate objectives of sufficient importance to justify interference with Convention rights where the other elements of the proportionality enquiry are satisfied: see [39]-[47] above.
- ii) Measures to prevent particular items being sent to Syria are rationally connected to those objectives (and are an inevitable feature of almost all sanctions regimes). For obvious reasons, the Claimants did not seek to distinguish between the various categories of goods which are subject to trade sanctions in Part 5 of the Syria Regulations, which include military goods, foreign bank notes, gold and diamonds. The report produced under s.2(4) of the 2018 Act noted that “these prohibitions serve to limit the Syrian regime’s ability to function” and its “access to goods that could be used for the purposes of repressing the civilian population in Syria” as well as sending “a signal of strong condemnation.”
- iii) Similarly, restrictions on direct flights by the Syrian state airline or exclusively cargo carrying services by aircraft owned, operated or controlled by persons connected with Syria were capable of restricting the Syrian regime’s access to the financial and logistical support provided by the national airline or a substitute, applying pressure on the Assad regime and sending a strong signal of condemnation.
- iv) The Claimants have been unable to point to any less intrusive measure which could have been used without unacceptably compromising the achievement of the objectives of the Syria Regulations. In so far as it might have been said that the items sent through the post should have been exempted from Part 5, there is a long history to the use of the mail system to evade sanctions. In the Great War, searches of postal correspondence being sent to and from the Central Powers found securities, bills of exchange, bonds, rubber, revolvers, military boots and other contraband (JW Garner, *International Law in the World War* (1920) vol 2 p.352), with many of those items later being put on display in the British Museum and the Imperial War Museum (see Sir Frederick Pollock’s footnote to *The Noordam* (No 2) [1919] P 255).
- v) Further, advice from FCDO officials of 1 February 2024, prepared in the light of the issues raised in this challenge, considered whether any amendments should be made to the Syria Regulations to improve postal communications between the UK and Syria. The advice concluded (as I have) that the undoubted severe difficulties were not the result of the Syria Regulations but due to “operational decisions made by private postal and logistical operators in the UK.” It noted that “we have not been able to identify any amendments to the Regulations which would have the effect of restoring postal services and it is not therefore obvious what steps, if any, could be taken by the Secretary of State to restore postal services.” The recommendation was approved by the relevant Ministers.
- vi) The Syria Regulations involve a very limited impact on a non- instantaneous means of communication, when numerous forms of instantaneous communication are available (albeit I accept that they will not provide a means of sending or receiving physical items).

- vii) The case law on Article 8(1) is principally concerned with the ability to communicate and the confidentiality of communications. It is clear on the ECHR authorities that the court can have regard to the availability of alternative means of communication when a particular means is not available as a result of the acts of a public authority: *Danilevich v Russia* (2022) 74 EHRR 15, [50].
 - viii) It is not necessary to decide whether Article 8(1) embraces a right in some circumstances to send or receive physical items rather than verbal or written communications. However, the fact that, at best for the Claimants, any interference with their Article 8(1) right would concern a non-core instance of the right of communication when readily accessible and meaningful means of communication remain available supports the view that any interference in this case would be justified.
 - ix) In short, such limited interference with any Article 8(1) correspondence right as might be established is amply justified by the need to secure the wider objectives of the Syria Regulations, including through trade sanctions which might otherwise readily be circumvented.
64. Faced with these difficulties, the Claimants' complaints advanced under the Communications Ground moved their focus from the alleged unlawful nature of the Syria Regulations by reason of their adverse effect on the Claimants' ability to conduct mail correspondence with Syria, to a suggestion that the Secretary of State was in breach of a positive obligation to ensure that a postal service of this kind remained operational, arising either under Article 8(1) or under the UPC.
65. However, an argument of this kind, which is entirely independent of the Syria Regulations, does not fall within the scope of the Claimants' initial application for judicial review nor the ambit of s.38(2) of the 2018 Act. It does not, therefore, fall within the ambit of this hearing. That argument would raise issues as to:
- i) The extent to which Article 8(1) could impose a positive obligation on a signatory state to ensure that there was a functioning international postal service between that state and every other country in the world.
 - ii) Whether the UPC imposes such an obligation on signatory states, and with what, if any, exceptions. For example if, as appears to be the case, *force majeure* might provide a legitimate reason for a designated operator not performing its UPC obligations, it could be argued that a signatory state could not be in breach for failing to require a designated operator to do that which it was excused from doing.
66. Not only would questions of this kind fall outside the scope of these proceedings and this hearing, but the appropriate public authority concerned with the issue of international postage is not before the court. On the evidence before me, Royal Mail is the designated operator under the UPC so far as the UK is concerned and its regulator is the Office of Communications (“**OFCOM**”):

- i) Section 29(1) of the Postal Services Act 2011 provides that OFCOM is under a duty to carry out its services in a way that it considers will secure the provision of a universal postal service.
 - ii) The statutory definition of a “universal postal service” includes the collection of letters and postal packets “for onwards transmission in connection with the provision of a universal postal service” including “onwards transmission outside the United Kingdom” (s.31).
 - iii) Those requirements do not need to be met “in such geographical conditions or other circumstances as OFCOM consider to be exceptional” (s.33(2)(b)) and s.31 does not require the continuation of a service “without interruption, suspension or restriction in an emergency.”
 - iv) That broad structure is replicated in the Postal Services (Universal Postal Service) Order 2012 SI 2012/936.
67. In these circumstances, I am satisfied that this variation of the Correspondence Ground must also fail.
68. For the same reason, the belated suggestion that the Claimants’ Article 14 rights may have been breached because Royal Mail has suspended postal services to Syria but not Ukraine also fails. In any event, no satisfactory explanation has been offered for the late emergence of this point in this long-running matter.

Criminal offences

69. Finally, Dr Al-Ani submitted that only Parliament by direct legislation could create criminal offences (relying in this regard on the decision in *R v Jones (Margaret)* [2007] 1 AC 136 that a crime recognised under customary international law could not be assimilated into domestic criminal law by the courts, who no longer had power to create new criminal offences which was a matter for Parliament). However, it is obvious that Parliament may authorise a minister to enact regulations by way of delegated legislation which create criminal offences. That is what happened here, s.17 of the 2018 Act expressly providing that regulations enacted thereunder may make provision for the enforcement of any prohibitions or requirements imposed by legislation, and that regulations “may create criminal offences for the purposes of enforcement of prohibitions or requirements.”

Remedies

70. Both of the Claimants’ grounds of challenge to the Syria Regulations having failed, it is not necessary to consider what the appropriate remedy would have been if an unlawful interference with the Claimants’ Convention rights had been established.

Relief

71. The Claimants’ application for statutory review under section 38 of the 2018 Act is dismissed.

72. The only surviving grounds of judicial review following Fordham J's order of 15 November 2023 being the same grounds I have dealt with, it follows that the stayed application for judicial review should also be dismissed.
73. The challenge have failed (and permission to appeal being refused), there is no reason not to order the Claimants to pay the Secretary of State's costs. The Claimants made no submissions on the detail of those costs. Applying my own experience I summarily assess them in the sum of £40,000.