

**EXPLANATORY MEMORANDUM TO**  
**THE DEMOCRATIC REPUBLIC OF THE CONGO (SANCTIONS) (EU EXIT)**  
**REGULATIONS 2019**

**2019 No. 433**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Foreign and Commonwealth Office and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

**2. Purpose of the instrument**

- 2.1 These Regulations are intended to ensure that the UK can operate an effective sanctions regime in relation to the Democratic Republic of the Congo (“the DRC”) 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 the DRC that is currently in force under EU legislation and related UK regulations. This sanctions regime gives effect to the UK’s obligations under United Nations Security Council Resolution 1807 and is aimed at promoting the resolution of the armed conflict in the DRC, respect for human rights, compliance with international humanitarian law and respect for democracy, the rule of law and good governance in the DRC.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 This instrument is laid before Parliament under section 55(6) of the Sanctions and Anti-Money Laundering Act 2018 (“**the Sanctions Act**”) and is subject to the negative procedure. This instrument does not come into force until a date or dates to be appointed in separate regulations made under section 56 of the Sanctions Act (see regulation 1(2)). Section 56 of the Sanctions Act enables special provision to be made for the commencement of sanctions regulations where such provision is appropriate in consequence of, or otherwise in connection with, the withdrawal of the UK from the EU.

*Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

**4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is the whole of the UK.
- 4.2 Subject to paragraph 4.3, the territorial application of this instrument is the UK.
- 4.3 This instrument also applies to conduct by UK persons outside the UK. In addition, the maritime enforcement powers contained in Part 9 of this instrument apply in relation to

British ships in international or foreign waters, ships without nationality in international waters and foreign ships in international waters.

## **5. European Convention on Human Rights**

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **6. Legislative Context**

- 6.1 The UK's implementation of UN and other multilateral sanctions currently relies largely on the European Communities Act 1972. Each sanctions regime generally consists of an EU Council Decision, a corresponding directly-applicable EU Council Regulation, and related UK regulations made under section 2(2) of the European Communities Act 1972 and other domestic legislation. There are currently around 35 sanctions regimes that take effect in the UK under EU law and associated UK secondary legislation. These include country-specific sanctions regimes, including in relation to Russia, DPRK and Iran, as well as regimes targeting Da'esh, Al Qaida and other terrorist groups.
- 6.2 The European Union (Withdrawal) Act 2018 will repeal the European Communities Act 1972 and provides for some EU sanctions law to form part of domestic law after the UK has left the EU. However, that Act does not provide powers to substantially amend that retained EU law and it does not provide powers to lift sanctions or impose new sanctions. In addition, that Act does not retain the effect of certain sanctions (travel bans) which are in force by virtue of EU Council Decisions (rather than under EU Regulations). The Sanctions Act was introduced to address these issues by providing the UK with the legal framework necessary to allow the UK to implement sanctions autonomously.
- 6.3 Section 1 of the Sanctions Act enables sanctions regulations to be made for the purposes of compliance with UN obligations and other international obligations, as well as for a number of other purposes which include: furthering the prevention of terrorism; national security; promoting international peace and security; promoting the resolution of armed conflicts or the protection of citizens in conflict zones; or promoting compliance with international humanitarian law.
- 6.4 The EU sanctions regime imposed on DRC for the purpose of promoting the resolution of the armed conflict in the DRC, respect for human rights, compliance with international humanitarian law and respect for democracy, the rule of law and good governance in the DRC currently has effect in the UK through both EU instruments and related UK legislation (the Democratic Republic of the Congo (Asset-Freezing) Regulations 2012 and the Export Control (Democratic Republic of Congo Sanctions and Miscellaneous Amendments and Revocations) Order 2015).

## **7. Policy background**

### *What is being done and why?*

- 7.1 Her Majesty's Government's (HMG's) policy on the DRC includes the use of sanctions to encourage the DRC regime to comply with international humanitarian law and respect human rights. Sanctions also signal the UK's concern over respect for democratic principles and institutions, the separation of power and the rule of law.

- 7.2 UN sanctions were first imposed on DRC in 2003, as an arms embargo on non-government armed groups and on non-parties to the Global All-Inclusive Peace Agreement. They have been incrementally amended and expanded since then, reflecting changes in the DRC political military situation, and increasingly as a response to particular aspects of the conduct of that conflict for example around child soldiers, and gender-based violence. The EU implements UN sanctions through EU Council Decisions and Regulations. Since December 2016, the EU has also made sanctions designations in addition to those individuals listed by the UN Sanctions Committee. These Regulations are intended to substantially deliver the same policy effects as those sanctions currently in force through EU legislation.
- 7.3 Bringing this sanctions regime into UK law using the powers in the Sanctions Act will enable all the sanctions measures to continue to operate effectively after the UK leaves the EU, as well as enabling HMG to amend and lift the sanctions, or to impose further sanctions, autonomously.
- 7.4 This instrument is accompanied by two statutory reports that are required to be published under the Sanctions Act.
- 7.5 Firstly, and in accordance with section 2(4) of the Sanctions Act, a report has been produced to explain why the Minister considers that the carrying out of the stated purposes of this instrument would meet one or more of the discretionary purposes (i.e. purposes other than implementing UN obligations) set out in the Sanctions Act; why there are good reasons to pursue those purposes; and why the Minister considers that the imposition of sanctions is a reasonable course of action for those purposes.
- 7.6 Secondly, and in accordance with section 18 of the Sanctions Act, a report has been produced that identifies the offences contained in this instrument; explains why there are good reasons for those offences; and explains why there are good reasons for the prescribed penalties in relation to those offences. Offences include, for example, breaching the prohibitions on exporting certain goods to certain persons in the DRC or failing to comply with the conditions of a licence.
- 7.7 Part 2 of this instrument deals with the designation of persons (including individuals, entities and organisations) under the sanctions regime. It provides that any person for the time being named by the UN Security Council or the Democratic Republic of the Congo Sanctions Committee for the purposes of paragraph 11 of the UN Security Council Resolution 1807 is a designated person for the purposes of the asset-freezing and other financial measures. It lists the criteria against which a Minister may make a decision to designate a person as being subject to a travel ban or asset freeze (“**designated persons**”), namely where a person is, or has been, involved in the commission of a serious human rights violation or abuse in the DRC, a violation of international humanitarian law in the DRC, or obstructing or undermining respect for democracy, the rule of law and good governance.
- 7.8 The names of designated persons are not included in this instrument. The names of those designated by the Secretary of State will be held on a separate administrative list on gov.uk to enable immediate publication following a decision to make or amend a designation. This limits the opportunity for designated persons to remove assets from the UK. Persons designated by the UN are listed on the United Nations Security Council Consolidated List and designations will also be publicised on gov.uk.
- 7.9 Part 3 of the instrument sets out financial sanctions measures that can be imposed on designated persons. Financial sanctions include freezing a designated person’s funds

and economic resources (non-monetary assets, such as property or vehicles) and ensuring that funds and economic resources are not made available to or for the benefit of a designated person or entity, either directly or indirectly. The instrument sets out exceptions and licensing derogations from these sanctions that will be applicable or available, as the case may be, under certain prescribed circumstances, such as to enable those listed to have access to funds, for example, to satisfy their basic needs.

- 7.10 Part 4 of the instrument sets out the effect of immigration measures made under this instrument. A designation under regulation 4 of the instrument means that section 8B of the Immigration Act 1971 then applies to the person: a designated person is banned from travelling to or via the UK and any permission to stay in the UK that they may have is cancelled. In certain circumstances, the Secretary of State may direct, on an individual basis, that the travel ban does not apply, for example for the purposes of attending UN meetings. The travel ban in respect of persons named on the UN's Democratic Republic of the Congo Sanctions List is implemented through section 8B of the Immigration Act 1971, and not these Regulations.
- 7.11 Part 5 of the instrument sets out trade sanctions. These sanctions include restrictions on the trade in military goods and military technology, i.e. the goods and technology for the time being specified in Schedule 2 to the Export Control Order 2008. They also include restrictions on the provision of technical assistance, financial services and funds, and brokering services related to military goods and technology, and relating to enabling or facilitating the conduct of armed hostilities in the DRC.
- 7.12 Part 6 of the instrument makes provision in respect of exceptions and licences that may apply or be available, as the case may be, in respect of prohibitions and requirements under this regime. For example, and in relation to Treasury licences, a designated person can apply for a licence allowing funds to be released in order to pay for essential goods or services such as food. It states that the Treasury may issue licences to permit activity prohibited by Part 3 (Finance) where it is appropriate for a purpose set out in Schedule 2 of the instrument. Part 6 states that licences provided by the Secretary of State may permit activity prohibited by Part 5 (Trade). Guidance will provide further detail about licencing.
- 7.13 Part 9 of the instrument confers powers on maritime enforcement officers. These powers are analogous to maritime enforcement powers contained in existing legislation, such as Chapter 5 of the Policing and Crime Act 2017. The key distinction is that those powers are contingent on there being reasonable grounds to suspect that a criminal offence has been committed, whereas the purpose of these powers is to identify, seize and dispose of goods which are being dealt with in contravention, or deemed contravention, of certain trade sanctions.

## **8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

- 8.1 This instrument is not being made under the European Union (Withdrawal) Act but it relates to the withdrawal of the UK from the EU. This is because this instrument replaces, with substantially the same effect, the existing EU sanctions regime in respect of the DRC.

## **9. Consolidation**

- 9.1 This instrument does not consolidate previous instruments.

## **10. Consultation outcome**

- 10.1 HMG ran a public consultation on the Sanctions Act which was open for nine weeks. Over 30,000 individuals and companies received a copy of the White Paper, and 34 individuals provided written responses. Government officials held a number of roundtables with key sectors, including financial services, trade bodies, the legal profession, NGOs and industry professionals and regulators. The main areas of concern raised in consultation responses were around the legal threshold for sanctions designations, the rights of designated persons to challenge their designations, and licensing procedures. All of these concerns were taken into account in the drafting of the Act.
- 10.2 There is neither a requirement in the Act for public consultation on instruments made under the Act, nor is there any other legal obligation to consult in respect of this instrument. HMG will continue engagement with stakeholders on the implementation of UK sanctions.

## **11. Guidance**

- 11.1 In accordance with section 43 of the Act, guidance will be published in relation to the prohibitions and requirements under these Regulations. This guidance will be available on gov.uk before these Regulations come into force.

## **12. Impact**

- 12.1 As this instrument maintains existing sanctions measures that are already applicable to UK business, charities and voluntary bodies through EU law, we assess that there is no new substantial impact. Businesses and charities will need to ensure that they are referring to and complying with the relevant UK law once the UK leaves the EU.
- 12.2 There is no significant impact on the public sector.
- 12.3 An Impact Assessment has not been produced for these Regulations, as the instrument is intended to ensure existing sanctions remain in place following EU exit. This instrument is intended to substantially deliver the same policy effects as the existing EU sanctions. An impact assessment was, however, produced for the Sanctions Act and can be found at <https://publications.parliament.uk/pa/bills/lbill/2017-2019/0069/sanctions-and-anti-money-laundering-IA.pdf>. That assessment concluded that the introduction of the Sanctions Act, and statutory instruments under it to transfer existing regimes into UK law, would overall reduce uncertainty for business and would not result in significant costs or impact, apart from some familiarisation costs for businesses associated with adapting to the new legislative framework.

## **13. Regulating small business**

- 13.1 These Regulations apply to activities that are undertaken by small businesses.
- 13.2 These Regulations are intended to continue the regulatory requirements under the existing EU sanctions regime. The Foreign and Commonwealth Office does not believe it is possible to exempt smaller businesses from the requirements to comply with these Regulations as this could provide a route for the circumvention or evasion of sanctions.

## **14. Monitoring & review**

- 14.1 The Sanctions Act requires regular reviews of these Regulations. Under section 30 of the Act, the Secretary of State must consider whether or not these Regulations are still

appropriate for their stated purpose and lay an annual report before Parliament, confirming either that is the case or explaining what action has or will be taken in consequence of that review. As such, the Minister does not consider that a review clause in these Regulations is appropriate.

**15. Contact**

- 15.1 Catherine O'Neill at the Foreign and Commonwealth Office telephone: 020 7008 4670 or email: Sanctions.SIs@fco.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Qudsi Rasheed, Deputy Director at the Foreign and Commonwealth Office, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Rt Hon Mark Field MP, Minister of State at the Foreign and Commonwealth Office, can confirm that this Explanatory Memorandum meets the required standard.