

EXPLANATORY MEMORANDUM TO
THE SANCTIONS (EU EXIT) (CONSEQUENTIAL PROVISIONS) (AMENDMENT)
REGULATIONS 2020

2020 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Foreign, Commonwealth and Development 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 This instrument is made under the Sanctions and Anti-Money Laundering Act 2018 (“the Sanctions Act”) to amend the ISIL (Da’esh) and Al-Qaida (United Nations Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/466), the Counter-Terrorism (International Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/573) and the Counter-Terrorism (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/577) (“the 2019 sanctions Regulations”).
- 2.2 The amendments provide that the 2019 sanctions Regulations will themselves make amendments to the Charities Act 2011, the Sanctions Act, and to the following Regulations: the Electronic Money Regulations 2011 (S.I. 2011/99), the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692) and the Payment Services Regulations 2017 (S.I. 2017/752). These amendments are consequential on the commencement at the end of the Transition Period of the counter-terrorism sanctions framework established by the 2019 sanctions Regulations.

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(5) of the Sanctions Act and is subject to the draft affirmative procedure. Although this instrument itself does not amend primary legislation, its ultimate effect will be to do so by amending the 2019 sanctions Regulations so that those Regulations will amend primary legislation. Therefore, it is appropriate that the instrument should follow the draft affirmative procedure in accordance with paragraph (a) of section 55(5) of the Sanctions Act.
- 3.2 This instrument represents the first use of the powers under section 54(3) and (4) of the Sanctions Act (with section 1 of that Act) to amend the definition of “terrorist financing” in section 49(3) of the Sanctions Act.
- 3.3 This instrument will 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 United Kingdom from the European Union.

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)

- 3.4 The territorial application of this instrument includes Scotland and Northern Ireland.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the same as the territorial extent of the instruments which it amends: that is, the whole of the United Kingdom.
- 4.2 The territorial application of this instrument is also the same as the territorial application of the instruments which it amends. That is, it applies to the whole of the United Kingdom. It also applies to conduct by United Kingdom persons outside the United Kingdom.

5. European Convention on Human Rights

- 5.1 Lord Ahmad of Wimbledon, Minister of State at the Foreign, Commonwealth and Development Office, has made the following statement regarding Human Rights:
- “In my view the provisions of the Sanctions (EU Exit) (Consequential Provisions) (Amendment) Regulations 2020 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 The instrument amends the 2019 sanctions Regulations. The amendments provide that the 2019 sanctions Regulations will themselves make amendments to the Charities Act 2011, the Sanctions Act, and to the following Regulations: the Electronic Money Regulations 2011 (S.I. 2011/99), the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692) and the Payment Services Regulations 2017 (S.I. 2017/752).

7. Policy background

What is being done and why?

- 7.1 The purpose of this instrument is to make amendments that are consequential on the commencement at the end of the Transition Period of the counter-terrorism sanctions framework established by the 2019 sanctions Regulations. This counter-terrorism sanctions framework is intended to replace the counter-terrorism sanctions regimes currently implemented through EU Council Decisions and Regulations (and associated UK legislation) and through the Terrorist Asset-Freezing etc Act 2010 (“the 2010 Act”). The Sanctions Act provides for the repeal of Part 1 of the 2010 Act and the 2019 sanctions Regulations provide for the revocation of other existing counter-terrorism sanctions regimes at the end of the Transition Period.
- 7.2 Section 178 of the Charities Act 2011 makes provision about persons disqualified from being charity trustees or trustees of a charity. The amendments made by the instrument will remove references to persons designated under the ISIL (Da’esh) and Al-Qaida (Asset-Freezing) Regulations 2011 (the “2011 Regulations”), which are revoked by the Counter-Terrorism (International Sanctions) (EU Exit) Regulations 2019. These amendments will also add references to persons designated under any of the 2019 sanctions Regulations.

- 7.3 Section 49 of the Sanctions Act confers a power to make regulations enabling or facilitating the detection or investigation of terrorist financing, or preventing terrorist financing. Section 49(3) defines “terrorist financing” for these purposes by reference to offences under several other pieces of legislation. The amendments made by the instrument will remove references to offences under the 2011 Regulations and add references to offences under the 2019 sanctions Regulations.
- 7.4 Regulation 13 of the Electronic Money Regulations 2011 provides that an applicant may be refused registration as a small electronic money institution if any of the individuals responsible for the management or operation of the business has been convicted of an offence under specified counter-terrorism sanctions legislation. Regulation 14 of the Payment Services Regulations provides that an applicant may be refused registration as a small payment institution if any of the individuals responsible for the management or operation of the business has been convicted of an offence under specified provisions of counter-terrorism sanctions legislation. The amendments made by the instrument will add to those provisions a reference to certain offences under the Counter-Terrorism (Sanctions) (EU Exit) Regulations 2019.
- 7.5 Regulation 3(1) of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 creates a definition of “terrorist financing” for the purposes of those regulations by reference to offences under several other pieces of legislation. The amendments made by these Regulations will add a reference to offences under the Counter-Terrorism (Sanctions) (EU Exit) Regulations 2019.

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 United Kingdom from the European Union. This is because the instrument amends sanctions regulations that were made to replace, with substantially the same policy effects, existing EU sanctions legislation.

9. Consolidation

- 9.1 This instrument makes minor amendments to existing sanctions Regulations, which will themselves make minor amendments to a number of different pieces of primary and secondary legislation. Therefore, there is no need for consolidation. The Foreign, Commonwealth and Development Office will keep the need for consolidation under review.

10. Consultation outcome

- 10.1 No consultation has been carried out on this instrument. The Explanatory Memoranda to the 2019 sanctions Regulations listed in paragraph 2.1 of this memorandum explain the consultation that has been carried out in relation to the Sanctions Act.

11. Guidance

- 11.1 In accordance with section 43 of the Sanctions Act, guidance is published in relation to the prohibitions and requirements under the sanctions Regulations which are amended by this instrument.

12. Impact

- 12.1 This instrument makes amendments to sanctions Regulations which are intended to maintain existing sanctions measures that are already applicable to UK business, charities and voluntary bodies through EU law and the 2010 Act. They are intended to deliver substantially the same policy effects as the existing EU and UK sanctions. Therefore, we assess that there is no new substantial impact.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment was not produced for the 2019 sanctions Regulations, as they were intended to ensure existing sanctions remain in place following EU exit. An impact assessment was, however, produced for the primary legislation, which can be found at <https://publications.parliament.uk/pa/bills/lbill/20172019/0069/sanctions-and-anti-money-laundering-IA.pdf>. That assessment concluded that the introduction of the 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 The legislation applies to activities that are undertaken by small businesses.
- 13.2 The amendments made by this instrument are consequential on the replacement of existing counter-terrorism sanctions regimes by the new counter-terrorism sanctions framework under the Sanctions Act. This new framework is intended to continue with substantially the same policy effects the regulatory requirements under the existing EU and UK sanctions regimes. The Foreign, Commonwealth and Development Office does not believe it is possible to exempt smaller businesses from the requirements to comply with the prohibitions and requirements under these sanctions regimes as this could provide a route for the circumvention or evasion of sanctions.

14. Monitoring & review

- 14.1 Section 30 of the Sanctions Act requires regular reviews of the sanctions Regulations which are amended by this instrument. However, section 30 does not apply to this instrument by virtue of section 45(6) of the Sanctions Act. As such, the Minister does not consider that a review clause in this instrument is appropriate.

15. Contact

- 15.1 Sarah Henson at the Foreign, Commonwealth and Development Office telephone: 020 7008 0951 or email: Sanctions.SIs@fcdo.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Lisa Maguire, Deputy Director at the Foreign, Commonwealth and Development Office, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Lord Ahmad of Wimbledon, Minister of State at the Foreign, Commonwealth and Development Office, can confirm that this Explanatory Memorandum meets the required standard.