

EXPLANATORY MEMORANDUM TO
THE MISAPPROPRIATION (SANCTIONS) (EU EXIT) REGULATIONS 2020
2020 No. 1468

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 intended to ensure that the UK can operate an effective sanctions regime in relation to the misappropriation of State funds after the Transition Period ends on 31 December 2020. When this instrument comes into force it will replace, with a similar effect, the separate EU misappropriations sanctions regimes relating to Tunisia, Egypt and Ukraine. The purpose of this sanctions regime is to deter, and provide accountability for, the misappropriation of State funds from a country outside the United Kingdom (UK).

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(3) of the Sanctions and Anti-Money Laundering Act 2018 (“**the Sanctions Act**”) and is subject to the made affirmative 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.
- 3.2 Section 56(5) of the Sanctions Act provides that the instrument must be approved by resolution of both Houses within 60 days of the instrument coming into force for it to continue to have effect.

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)

- 3.3 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 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 where that conduct is wholly or partly outside the UK, and some parts of it also apply to conduct by any person in the territorial sea adjacent to the UK.

5. European Convention on Human Rights

5.1 The Minister of State at the Foreign, Commonwealth and Development Office, Lord Ahmad of Wimbledon, has made the following statement regarding human rights:

“In my view the provisions of the Misappropriation (Sanctions) (EU Exit) Regulations 2020 are compatible with the Convention rights.”

6. Legislative Context

6.1 When the UK was a member of the European Union, its implementation of UN and other multilateral sanctions relied largely on the European Communities Act 1972. Each sanctions regime generally consisted 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. During the Transition Period, EU sanctions continue to apply in the UK in accordance with the Withdrawal Agreement: section 1A of the European Union (Withdrawal) Act 2018 (c.16)⁽¹⁾ saves the effect of the European Communities Act 1972 for the purposes of the Withdrawal Agreement. There are currently around 40 sanctions regimes that take effect in the UK. 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 provides for some EU sanctions law to form part of domestic law at the end of the Transition Period. 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 (e.g. 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 United Nations 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 compliance with international human rights law and respect for human rights; furthering foreign policy objectives or promoting respect for democracy, the rule of law and good governance.

6.4 The EU misappropriation sanctions regimes imposed in relation to Tunisia, Egypt and Ukraine currently have effect in the UK through both EU instruments and related UK legislation. Using the power contained in section 54(2)(a) of the Sanctions Act, the following will be revoked and replaced by these Regulations: Council Regulation (EU) No 101/2011 of 4 February 2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Tunisia; Council Regulation (EU) No 270/2011 of 21 March 2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Egypt; Council Regulation (EU) No 208/2014 of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation

¹ As inserted by section 1 of the European Union (Withdrawal Agreement) Act 2020.

in Ukraine; the Tunisia (Asset-Freezing) Regulations 2011⁽²⁾; the Egypt (Asset-Freezing) Regulations 2011⁽³⁾; and the Ukraine (European Union Financial Sanctions) Regulations 2014⁽⁴⁾.

7. Policy background

What is being done and why?

- 7.1 This instrument will replace three current EU regimes concerning misappropriation of State funds in Tunisia, Egypt and Ukraine with a single set of regulations establishing a regime that can address misappropriation of State funds from any country outside the UK.
- 7.2 Her Majesty's Government (HMG) overall objectives on tackling corruption (including misappropriation) are set out in the UK Anti-Corruption Strategy 2017-2022. They are further supported in the UK's Asset Recovery Action Plan (July 2019), which confirms HMG's commitment to ensuring the return of corruptly received assets to victim states, in line with UK obligations under the United Nations Convention on Corruption. Misappropriation of state funds can have a significant impact on societies affected, undermining good democracy and economic growth. Sanctions can act as a signal and a deterrent working alongside other tools and approaches set out in these strategies. Bringing this sanctions regime into UK law using the powers in the Sanctions Act is in line with UK policy to deter, and provide accountability for, the misappropriation of State funds from a country outside the UK.
- 7.3 Creating this sanctions regime in UK law using the powers in the Sanctions Act is in line with UK policy to deter, and provide accountability for, the misappropriation of State funds from a country outside the UK. This purpose is stated in regulation 4 of this instrument.
- 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 set out in the Sanctions Act; why there are good reasons to pursue that purpose; and why the Minister considers that the imposition of sanctions is a reasonable course of action for that purpose.
- 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, contravening the principal prohibitions in this instrument (e.g. breaching an asset-freeze) or trying to circumvent those principal prohibitions.

² S.I. 2011/888, as amended by S.I. 2013/472; S.I. 2013/534; S.I. 2017/560; S.I. 2017/754; S.I. 2018/682; S.I. 2018/1149; and S.I. 2019/380.

³ S.I. 2011/887, as amended by S.I. 2013/472; S.I. 2013/534; S.I. 2017/560; S.I. 2017/754; S.I. 2018/682; S.I. 2018/1149; and S.I. 2019/380.

⁴ S.I. 2014/507, as amended by S.I. 2017/560; S.I. 2017/754; S.I. 2018/682; S.I. 2018/1090; S.I. 2018/1149; and S.I. 2019/380.

- 7.7 Part 2 of this instrument deals with the designation of persons (including individuals, entities and organisations) under the sanctions regime. It lists the criteria against which the Secretary of State may make a decision to designate a person as being subject to a travel ban or asset freeze (“designated persons”).
- 7.8 The names of designated persons are not included in this instrument. These 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.
- 7.9 Part 3 of this instrument sets out financial sanctions measures that can be imposed in relation to designated persons, and the offences which can be committed if the measures are not adhered to. Financial sanctions include an asset freeze, ensuring a designated person’s funds and economic resources (non-monetary assets, such as property or vehicles) are not dealt with 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.
- 7.10 Part 4 of this instrument sets out the effect of immigration measures made under this instrument. A designation under regulation 5 of the instrument means that section 8B of the Immigration Act 1971 then takes effect in relation to the person: a designated person is excluded from the UK and any permission to stay in the UK that they may have is cancelled.
- 7.11 Part 5 of this 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 or made available in order to pay for basic needs 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. Guidance will provide further detail about licensing. 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.

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 similar effect, the existing EU misappropriation sanctions regimes in relation to Egypt, Tunisia and Ukraine.

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 Sanctions Act.

- 10.2 There is neither a requirement in the Sanctions Act for public consultation on instruments made under the Sanctions 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 Sanctions Act, guidance will be published in relation to the prohibitions and requirements under this instrument. This guidance will be available on gov.uk before this instrument comes into force.

12. Impact

- 12.1 As this instrument replaces existing sanctions regimes 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 this instrument following the end of the Transition Period.
- 12.2 There is no significant impact on the public sector.
- 12.3 An Impact Assessment has not been produced for this instrument, as it is intended to replace the EU sanctions regime following the end of the Transition Period. This instrument is intended to deliver similar policy effects as the existing EU sanctions. An impact assessment was, however, produced for the primary legislation 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 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 This instrument applies to activities that are undertaken by small businesses.
- 13.2 This instrument is intended to continue the regulatory requirements under the existing EU sanctions regimes. The Foreign, Commonwealth and Development Office does not believe it is possible to exempt smaller businesses from the requirement to comply with this instrument 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 this instrument. Under section 30 of the Act, the Secretary of State must consider whether or not this instrument is still appropriate for its 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 this instrument is appropriate.

15. Contact

- 15.1 Diana Ward at the Foreign, Commonwealth and Development Office, telephone 020 7008 4684 or email: Sanctions.SIs@fcdo.gov.uk can be contacted with any queries regarding this 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.