

EXPLANATORY MEMORANDUM TO
THE LIBYA (SANCTIONS) (EU EXIT) REGULATIONS
2020 No. 1665

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 give effect to most of the UK's obligations under United Nations Security Council Resolutions (UNSCR) 1970 (2011)¹, UNSCR 1973 (2011) and UNSCR 2146 (2014)². UN sanctions were imposed in 2011 in response to the violation of human rights in Libya which included the repression of peaceful demonstrators and deaths of civilians. UNSCR 1970 imposed an arms embargo on Libya and an asset freeze and travel ban on those persons or entities designated by the UN Sanctions Committee³ for the purposes of those measures under criteria set out in that resolution. UNSCR 1973 imposed restrictions on aircraft used to transport prohibited goods to Libya. UNSCR 2146 imposed measures in relation to ships designated by the UN Sanctions Committee. Together these measures comprise the UN sanctions regime relating to Libya ("the UN regime") which is currently implemented through EU legislation and related UK legislation. Additional sanctions measures have been imposed on Libya by the EU ("the EU regime") (see paragraph 7.3).
- 2.2 This instrument is intended to ensure that the UK continues to meet its obligations under the UN regime after the Transition Period ends on 31 December 2020. When this instrument comes into force it will replace, with substantially the same effect, the existing EU legislation and related UK legislation by which the EU regime and the UK's UN obligations are given effect in domestic law.
- 2.3 In addition to implementing to the UK's UN obligations, this instrument is intended to ensure that the UK can operate an effective autonomous sanctions regime in relation to Libya for the purposes of promoting respect for human rights in Libya, promoting the peace, stability and security of Libya, promoting the successful completion of Libya's political transition to a democratic, independent and united country, and preventing migrant smuggling and human trafficking taking place from Libya.

¹ As renewed, updated and amended by UN Security Council resolutions 1973 (2011), 2009 (2011), 2174 (2014), 2213 (2015), 2362 (2017), and 2441 (2018).

² As renewed, updated and amended by UN Security Council resolutions 2223 (2015), 2278 (2016), 2362 (2017), 2441 (2018), and 2509 (2020).

³ "the Committee" means the Committee of the Security Council established in accordance with paragraph 24 of resolution 1970.

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, pursuant to section 55(6), is subject to the negative procedure. It appoints different days for the purpose of commencing different provisions of this instrument. Specified provisions in Parts 1 and 2 (which set out the purposes of this sanctions regime and contain the power to designate persons for the purposes of this sanctions regime) come into force on 30 December 2020. The rest of the regulations in this instrument come into force on IP completion day.
- 3.2 This instrument breaches the 21 day rule and it is also laid after it has come into force. The reason for this is that the Foreign, Commonwealth and Development Office consider there would have been a risk of asset flight had the instrument been laid before it came into force. This concern arises from the approach taken in the drafting of the prohibitions in regulations 18 to 20 of the instrument, which implement the UK’s UN obligations under paragraph 15 of UNSCR 2009 (2011). Paragraph 15 of UNSCR 2009 modified the asset freeze imposed by UNSCR 1970 on the Libyan Investment Authority and the Libyan Africa Investment Portfolio, to apply thereafter only to those financial assets and economic resources located outside Libya which were frozen as of the date of UNSCR 2009 (“the partial asset-freeze”). The provisions in regulations 18 to 20 of this instrument have been drafted to ensure consistency with UN Sanctions Committee guidance regarding the treatment of interest and other earnings accruing on accounts subject to the partial asset-freeze, issued by the UN in Implementation Assistance Notice No. 6 on 17 December 2018⁴ and confirmed by the European Commission Opinion of 7 June 2019 on article 5(4) of Council Regulation (EU) 2016/44⁵. They clarify the UK’s understanding of the scope of the current EU legislation. The Foreign, Commonwealth and Development Office understand that there has been mixed practice to date by financial institutions in relation to the treatment of interest and other earnings on these partially frozen funds, with some institutions not currently freezing such interest or earnings. There was consequently judged to be a risk of asset flight had the instrument been laid in advance of it coming into force, which would have defeated the purpose of the asset freeze. The Foreign, Commonwealth and Development Office therefore considered it essential that this instrument came into force before being laid. Notification was sent to the Speaker of the House of Commons and the Speaker of the House of Lords on 30 December 2020, as required by section 4 of the Statutory Instruments Acts 1946 (c. 36).

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 As this instrument is subject to the 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 Available at: https://www.un.org/securitycouncil/sites/www.un.org.securitycouncil/files/ian_6_e.pdf

⁵ Available at: https://ec.europa.eu/fpi/sites/fpi/files/5_en_act_part1_v5_1.pdf.

- 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. In addition, the maritime enforcement powers contained in Part 11 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 the negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 When the UK was a member of the European Union (“EU”), 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. The European Union (Withdrawal) Act 2018 repealed the European Communities Act 1972. However, during the Transition Period, EU sanctions continued to apply in the UK in accordance with the Withdrawal Agreement: section 1A of the European Union (Withdrawal) Act 2018 (c.16)⁶ saves the effect of the European Communities Act 1972 for the purposes of the Withdrawal Agreement.
- 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 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 compliance with international human rights law and respect for human rights; or furthering foreign policy objectives.
- 6.4 The EU sanctions regime imposed on Libya for the purpose of compliance with the UN obligations relating to the situation in Libya, as well as preventing the commission of serious human rights abuses and to promote the peace and stability of Libya, currently has effect in the UK through both EU instruments and related UK regulations. Using the power contained in section 54(2)(a) of the Sanctions Act, the following will be revoked and replaced by this instrument: Council Regulation (EU) 2016/44 of 18 January 2016 concerning restrictive measures in view of the situation in Libya and repealing Regulation (EU) No 204/2011 (to the extent it constitutes retained EU law); the Libya (Financial Sanctions) Order 2011 (S.I. 2011/548); the Libya (European Union

⁶ As inserted by section 1 of the European Union (Withdrawal Agreement) Act 2020

Financial Sanctions) Regulations 2016 (S.I. 2016/45); and the Export Control (Libya Sanctions) Order 2016 (S.I. 2016/787).

7. Policy background

What is being done and why?

- 7.1 Her Majesty's Government's (HMG's) policy on Libya includes the use of sanctions to encourage the pursuit of a political settlement in Libya which will result in a functional transparent government which represents and serves the whole of Libya and the entire population of Libya. Sanctions are a vital lever for HMG as part of a broader strategy to see a political settlement achieved in Libya and to hold accountable and constrain the actions of those seeking to undermine the Libyan Political Agreement and Government of National Accord, or those committing human rights violations and abuses.
- 7.2 The situation in Libya remains of serious concern to both the UK and the international community. Armed groups continue to control state institutions, act with impunity and commit serious human rights abuses. In September 2018, clashes in Tripoli between opposing factions and militias claimed the lives of at least 120 civilians, with many hundreds more injured. The weak law enforcement regime and security vacuum continues to enable systematic human rights violations in prisons and detention centres, and the trafficking of persons is prevalent, with substantial benefit to the armed groups. These acts, along with the continuing threats to Libyan state and financial institutions, fuel instability and undermine the formal economy, and further threaten long-term peace and stability in Libya. Sanctions measures send a clear message that violence and human rights violations and abuses will not be tolerated.
- 7.3 In response to the violation of human rights in Libya by the Qadhafi regime, the UN Security Council imposed sanctions on the country in February 2011. The sanctions include an arms embargo, travel ban and asset freeze on the family of Muammar Al-Qadhafi and certain government officials. The sanctions are imposed via UNSCR 1970 (2011) which established the framework for targeted UN sanctions in Libya, and were supplemented by further resolutions. The EU implemented these UN sanctions and also introduced autonomous sanctions in 2011, imposing travel bans and asset freezes on additional persons. The current EU regime is contained in EU Council Decision (CFSP) 2015/1333 of 31 July 2015 and EU Council Regulation 2016/44 of 18 January 2016. Both UN and EU sanctions in relation to Libya have developed as the political situation in Libya has changed. For example, the UN has imposed sanctions related to the illicit export of oil, and the EU has imposed further trade restrictions related to goods that could be used in human trafficking and migrant smuggling.
- 7.4 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 at the end of the Transition Period, as well as enabling HMG to amend and lift the sanctions, or impose further sanctions, autonomously.
- 7.5 This instrument is accompanied by two statutory reports that are required to be published under the Sanctions Act.
- 7.6 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 discretionary purposes of this instrument (i.e. purposes other than implementing UN obligations) would meet one or more of the conditions set out in section 1(2) of 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.

- 7.7 Secondly, and in accordance with section 18 of the Sanctions Act, a report has been produced that identifies the offences created by this instrument and the prohibitions and requirements to which they relate; explains why there are good reasons for those prohibitions and requirements to be enforceable by criminal proceedings; 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 the Regulations (e.g. breaching the prohibition on exporting certain goods to Libya) or trying to circumvent those principal prohibitions.
- 7.8 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 its Sanctions Committee for the purposes of paragraph 17 of UNSCR 1970 (2011) and paragraph 19 of UNSCR 1973 (2011) is a designated person for the purposes of the asset freezing and other financial measures. This instrument also 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”), including where an individual is or has been involved in: the commission of a serious human rights violation or abuse in Libya; the commission of a serious breach of international humanitarian law in Libya; activities undermining Libya’s transition to a democratic, peaceful and independent country or any other activity that threatens the peace, stability and security of Libya.
- 7.9 With the exception of the Libyan Investment Authority and the Libyan African Investment Portfolio (which are designated for the purposes of the partial asset-freeze in Chapter 2 of Part 3), 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 UN Security Council Consolidated List and designations will also be publicised on gov.uk.
- 7.10 Part 3 of this instrument sets out financial sanctions measures that can be imposed on designated persons and the offences which can be committed if the measures are not adhered to. These financial sanctions consist of 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 prohibitions ensuring that funds and economic resources are not made available, directly or indirectly, to or for the benefit of a designated person. Chapter 2 of Part 3 includes a partial asset-freeze, which applies to two designated persons, the Libyan Investment Authority and the Libyan Africa Investment Portfolio. It makes clear that it applies to funds and economic resources owned, held or controlled by those designated persons located outside Libya immediately before 17 September 2011, as well as to interest and other earnings on the frozen funds and to funds transferred to the designated person to meet a prior obligation.
- 7.11 Part 4 of this instrument sets out the effect of immigration measures made under this instrument. A designation made for the purposes of regulation 22 (immigration) of this instrument means that section 8B of the Immigration Act 1971 then applies to the person: a designated person is excluded from entering or transiting the UK and any permission to stay in the UK that they may have is cancelled. The travel ban in respect

of persons named on the UN's Libya Sanctions List is implemented through section 8B of the Immigration Act 1971, and not these Regulations.

- 7.12 Part 5 of this instrument sets out trade sanctions. These sanctions include restrictions on trade in restricted goods and technology, being arms and related material (including those specified in Schedule 2 to the Export Control Order 2008), items that may be used to repress the population of Libya (specified in Schedule 2 to these Regulations), and goods which could be used for migrant smuggling and human trafficking (specified in Schedule 3 to these Regulations). They also include restrictions on the provision of technical assistance, financial services and funds and brokering services related to restricted goods and technology and on the provision of certain services which enable or facilitate the conduct of armed hostilities in Libya.
- 7.13 Part 6 of this instrument sets out transport and additional financial and trade sanctions in relation to ships designated by the UN, in order to prevent the illicit export of Libyan oil. Specifically, they impose restrictions on: providing access to a port for, and entry into port by, those designated ships; the provision of bunkering or ship supply services in relation to such ships; the transportation of Libyan oil on such ships; and entering into financial transactions in relation to Libyan oil aboard such ships.
- 7.14 Part 7 of this instrument sets out transport sanctions in relation to aircraft. The operator or pilot in command of an aircraft is not permitted to take off from, overfly or land in the UK if an aircraft is being used to transport military goods or armed personnel to any place in Libya. Air traffic control and airport operators are required to take certain actions where they know or have reasonable cause to suspect that an aircraft is being used to transport military goods or armed personnel to any place in Libya.
- 7.15 Part 8 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 under this regime. For example, 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) and regulation 38 (Financial transactions in relation to Libyan oil aboard UN-designated ships) where it is appropriate for one or more of the purposes set out in Schedule 4 of this instrument. Part 8 also makes provision for trade licences and port licences to be issued by the Secretary of State which may permit activity otherwise prohibited by Part 5 (Trade) and certain provisions in Part 6 (UN-designated ships). Guidance will provide further detail about licensing. The Secretary of State may direct, on an individual basis, that the travel ban does not apply, for example for the purposes of attending a UN meeting.
- 7.16 Part 11 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 2018 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 Libya sanctions regime.

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 interest 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 Act, guidance has been published in relation to the prohibitions and requirements under these Regulations. This guidance is available on gov.uk.

12. Impact

- 12.1 As this instrument replaces an existing sanctions regime that is already applicable to the 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 ensure existing sanctions remain in place following the end of the Transition Period. This instrument is intended to substantially deliver the same 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 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 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 regime. The Foreign, Commonwealth and Development 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 this instrument. Under section 30 of the Sanctions 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 these Regulations is appropriate.

15. Contact

- 15.1 Diana Ward at the Foreign, Commonwealth and Development Office telephone: 020 7008 4684 or email: Sanctions.SIs@fcdof.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 Nigel Adams MP, Minister of State at the Foreign, Commonwealth and Development Office, can confirm that this Explanatory Memorandum meets the required standard.