

EXPLANATORY MEMORANDUM TO
THE GLOBAL HUMAN RIGHTS SANCTIONS REGULATIONS 2020
2020 No. 680

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 This instrument is intended to deter, and provide accountability for, activities which, if carried out by or on behalf of a State, would amount to a serious violation of certain human rights by that State. This instrument enables the Secretary of State to impose asset freezes and travel bans on persons involved in such conduct.

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. Section 55(3) provides that the instrument must be approved by resolution of both Houses within 28 days, beginning on the day on which it is made.

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 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 outside the UK, and to conduct by any person in the territorial sea adjacent to the UK.

5. European Convention on Human Rights

- 5.1 The Secretary of State for Foreign and Commonwealth Affairs has made the following statement regarding human rights:

“In my view the provisions of the Global Human Rights Sanctions Regulations 2020 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 The UK’s implementation of UN and other multilateral sanctions currently relies largely on the European Communities Act 1972 (as saved by the European Union (Withdrawal Agreement) Act 2020). 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. These include country-specific and thematic sanctions regimes, including in relation to Russia, DPRK and counter-terrorism.

- 6.2 The Sanctions Act establishes a legal framework which enables Her Majesty's Government (HMG) to continue to give effect to those sanctions regimes, and to introduce other new sanctions regimes. 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.

7. Policy background

What is being done and why?

- 7.1 HMG seeks to champion human rights, good governance and the rule of law. Serious human rights violations by State actors, and similar conduct by non-State actors, leads to unstable and less prosperous societies. Such conduct perpetuates violent conflict, creates a world where terrorism flourishes and where democratic institutions are weakened. It has a devastating impact on individuals and places the safety of individuals and societies at risk. Successfully deterring such conduct would help create fairer and more just societies, which support the long-term global conditions most conducive to security, economic growth and the safety of all.
- 7.2 This instrument will enable HMG to designate persons who are involved in certain activities which, had they been carried out by or on behalf of a State within the territory of that State, would amount to a serious violation by that State of certain human rights. These are: an individual's right to life; an individual's right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment; and an individual's right to be free from slavery, not to be held in servitude or required to perform forced or compulsory labour. Such persons are able to be designated for the purpose of a travel ban or an asset freeze. The designation of such persons is intended to deter, and provide accountability for, such activities. The activities could be carried out by a State or a non-State actor.
- 7.3 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 a Minister may make a decision to designate a person as being subject to a travel ban or asset freeze ("designated persons"). 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 in advance of designation.
- 7.4 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. 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, either directly or indirectly.

- 7.5 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 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.
- 7.6 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. It states that the Treasury may issue specific licences to permit activity prohibited by Part 3 (Finance) where it is appropriate for a purpose set out in Schedule 2 of the instrument. Schedule 2 outlines the circumstances in which a person can apply for a licence allowing funds to be released, for example in order to pay for basic needs, such as food. The Treasury's Office for Financial Sanctions Implementation provides general information and guidance about licensing. In certain circumstances the Secretary of State may direct that the travel ban does not apply.
- 7.7 This instrument is accompanied by two statutory reports that are required to be published under the Sanctions Act.
- 7.8 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 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.
- 7.9 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 or circumventing the substantive financial sanctions measures or providing false information for the purpose of obtaining a Treasury licence.

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.

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 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 when this instrument comes into force.

12. Impact

- 12.1 This instrument introduces a new sanctions regime and as a result will have an impact on business. The Foreign and Commonwealth Office have looked at the impacts of this secondary legislation to estimate costs to UK businesses and wider impacts resulting from this instrument. We have estimated the costs to be beneath the threshold of £5 million per annum for a full impact assessment, with costs resulting primarily from a small increase in the number of sanctions listings.
- 12.2 UK businesses must already comply with sanctions against the individuals and entities appearing on a regularly-updated gov.uk list. The process for notifying businesses about sanctions and designated persons remains unchanged, so we do not expect significant changes to IT systems or administrative changes. Therefore, costs are limited to: familiarisation costs, costs of non-compliance, opportunity costs of travel bans and asset freezes, and costs relating to compliance, legal advice and other professional services.
- 12.3 Fully quantifying costs is not possible as the UK's use of sanctions will depend on future events and ministerial decisions, however our best estimate is that they sit well below the £5 million threshold.
- 12.4 We assess that there would not be a significant impact on the private or voluntary sector with this new sanctions regime, as there is already a business burden that is applicable to UK business, charities and voluntary bodies with regard to sanctions regimes.
- 12.5 There is no significant impact on the public sector.
- 12.6 As noted in para. 12.1, a full Impact Assessment has not been produced for this instrument. A *de minimis* Impact Assessment has, however, been produced and is published alongside this instrument at www.legislation.gov.uk. In addition, an Impact Assessment was 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>.

13. Regulating small business

- 13.1 This instrument applies to activities that are undertaken by small businesses.
- 13.2 The Foreign and Commonwealth Office does not believe it is possible to exempt smaller businesses from the requirements 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 Sanctions Act, the Secretary of State must consider whether or not this instrument is 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. Consequently, the Minister does not consider that a review clause in this instrument is appropriate.

15. Contact

- 15.1 Diana Ward at the Foreign and Commonwealth Office telephone: 020 7008 4684 or email: Sanctions.SIs@fco.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Lisa Maguire, Deputy Director at the Foreign and Commonwealth Office, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Rt Hon Dominic Raab MP, Secretary of State for Foreign and Commonwealth Affairs, can confirm that this Explanatory Memorandum meets the required standard.