

EXPLANATORY MEMORANDUM TO
THE MALI (SANCTIONS) (EU EXIT) REGULATIONS

2020 No. 705

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 give effect to the UK's obligations under UN Security Council Resolution 2374 (2017). Resolution 2374 provides for a sanctions regime relating to Mali ("the UN regime") which is currently implemented through EU legislation and related UK legislation. UN sanctions were imposed in 2017 in order to support the implementation of the 2015 Agreement on Peace and Reconciliation in Mali, by enabling sanctions against those responsible for undermining the peace and stability of Mali.
- 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, relevant existing EU legislation and related UK legislation by which the UK's UN obligations are currently given effect in domestic law. EU sanctions continue to apply in the UK during the Transition Period.
- 2.3 In addition to implementing the UK's UN obligations, this instrument is also intended to ensure that the UK can operate an effective autonomous sanctions regime in relation to Mali.

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 to be appointed under separate regulations (see regulation 1(2)). This uses the power in section 56 of the Sanctions Act, which enables special provision to be made for the commencement of 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 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 As this instrument is subject to 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, 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 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 35 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; or furthering foreign policy objectives.
- 6.4 The UN sanctions regime imposed in relation to Mali for the purpose of progressing implementation of the 2015 Agreement on Peace and Reconciliation in Mali ("the Agreement") currently has effect in the UK through both EU instruments and related UK legislation. Using the power contained in section 54(2) of the Sanctions Act, the following will be revoked and replaced by this instrument: Council Regulation (EU) No 2017/1770, a directly applicable regulation concerning restrictive measures in

¹¹¹ As inserted by section 1 of the European Union (Withdrawal Agreement) Act 2020

view of the situation in Mali that would otherwise form part of domestic law on exit day under the European Union (Withdrawal) Act 2018; and the Republic of Mali (European Union Financial Sanctions) Regulations 2017 (S.I. 2017/972).

7. Policy background

What is being done and why?

- 7.1 The UK is a supporter of sanctions in relation to Mali at the UN Security Council. Sanctions were imposed under UN Security Council resolution (“UNSCR”) 2374 in 2017 with the purpose of progressing implementation of the Agreement by targeting individuals and entities that obstruct its implementation.
- 7.2 Whilst more progress on implementation was made in the past year than in the first four years following signature of the Agreement, overall progress remains slow and insufficient. To date, eight individuals have been designated under the sanctions regime and the UN Security Council has recently expressed its intention to continue utilising measures under the sanctions regime against individuals and entities that obstruct or threaten the implementation of the Agreement.
- 7.3 The UK is scaling up its engagement with and support to Mali as part of the Government’s Africa Strategy. Reinforcing the Government’s commitment to supporting countries on the front line of instability, the Government’s objective is for the countries of the Sahel to be increasingly able to tackle the drivers of poverty and instability afflicting their region, and for threats to regional security and wider UK interests to be contained. The full, effective, and inclusive implementation of the Agreement is integral to the return of peace and security to Mali.
- 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 Her Majesty’s Government (“HMG”) to 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 the purposes set out in the instrument; 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 instrument (e.g. breaching an asset-freeze) or trying to circumvent those principal prohibitions.
- 7.8 Part 2 of this instrument provides that anyone named by the UN Security Council or its Mali Sanctions Committee for the purposes of paragraph 4 of UNSCR 2374 is a

designated person for the purposes of regulations 12 to 16 (asset-freeze etc.) (including individuals, entities and organisations). A person may be designated by the Sanctions Committee if they are responsible for or complicit in, or have engaged in, directly or indirectly, actions or policies that threaten the peace, security, or stability of Mali. 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, asset freeze and other sanctions (“designated persons”), including where an individual is or has been involved in failing to comply with or to implement the Agreement.

- 7.9 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.
- 7.10 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. 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.
- 7.11 Part 4 of this instrument sets out the effect of immigration designations made under this instrument. A designation made under regulation 5(1)(b) 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 they may have to stay in the UK is cancelled.
- 7.12 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 which 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 addition, 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.

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 Mali 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 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 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 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 the instrument is intended to ensure existing sanctions remain in place following EU exit. This instrument is intended to deliver substantially 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 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 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 designated persons to evade 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 Jennifer Budniak at the Foreign and Commonwealth Office telephone: 020 7008 5013 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 Lord Ahmad of Wimbledon, Minister of State at the Foreign and Commonwealth Office, can confirm that this Explanatory Memorandum meets the required standard.