

EXPLANATORY MEMORANDUM TO
THE SANCTIONS (EU EXIT) (MISCELLANEOUS AMENDMENTS) (NO.3)
REGULATIONS

2020 No. 950

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 make amendments and corrections to the following sanctions Regulations: the Democratic People’s Republic of Korea (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/411), the Democratic Republic of the Congo (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/433), the South Sudan (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/438), the Iran (Sanctions) (Nuclear) (EU Exit) Regulations 2019 (S.I. 2019/461), 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), the Counter-Terrorism (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/577), the Lebanon (Sanctions) (EU Exit) Regulations 2020 (S.I. 2020/612), the Central African Republic (Sanctions) (EU Exit) Regulations 2020 (S.I. 2020/616), the Lebanon (Sanctions) (Assassination of Rafiq Hariri and others) (EU Exit) Regulations 2020 (S.I. 2020/617), and the Somalia (Sanctions) (EU Exit) Regulations 2020 (S.I. 2020/642).

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 Act and is subject to the negative procedure. It 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 United Kingdom from the European Union.
- 3.2 In addition to the policy changes described below at paragraph 7.1 and 7.2, this instrument contains a number of provisions which correct errors in previous instruments as set out in paragraph 7.3. Having consulted the Statutory Instrument Registrar in accordance with paragraph 4.7.6 of Statutory Instrument Practice the Department will apply the free issue procedure.

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 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 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 As this instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 This instrument is made in exercise of powers conferred by sections 1 and 45 of the Sanctions Act. Previous instruments to use these powers to make amendments to regulations made under the Sanctions Act are the Sanctions (EU Exit) (Miscellaneous Amendments) Regulations 2019 (S.I. 2019/843), the Sanctions (EU Exit) (Miscellaneous Amendments) Regulations 2020 (S.I. 2020/591), and the Sanctions (EU Exit) (Miscellaneous Amendments) (No.2) Regulations 2020 (S.I. 2020/590).

6.2 This instrument makes amendments to the following sanctions Regulations which were made under the Sanctions Act for the purposes of compliance with a UN obligation (as well as, in most cases, for discretionary purposes within s.1(2) of the Sanctions Act): the Democratic People's Republic of Korea (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/411), the Democratic Republic of the Congo (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/433), the South Sudan (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/438), the Iran (Sanctions) (Nuclear) (EU Exit) Regulations 2019 (S.I. 2019/461), 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), the Counter-Terrorism (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/577), the Lebanon (Sanctions) (EU Exit) Regulations 2020 (S.I. 2020/612), the Central African Republic (Sanctions) (EU Exit) Regulations 2020 (S.I. 2020/616), the Lebanon (Sanctions) (Assassination of Rafiq Hariri and others) (EU Exit) Regulations 2020 (S.I. 2020/617), and the Somalia (Sanctions) (EU Exit) Regulations 2020 (S.I. 2020/642).

6.3 A second instrument, which is subject to the made affirmative procedure, makes similar amendments to sanctions Regulations which were made under the Sanctions Act solely for purposes other than compliance with a UN obligation.

7. Policy background

What is being done and why?

7.1 The purpose of this instrument is to: (i) update the sanctions Regulations listed in paragraph 2.1 as a consequence of a change in policy and drafting approach in relation

to sanctions licences issued by the Crown Dependencies and Overseas Territories; and (ii) correct specific errors that have been identified in those sanctions Regulations.

7.2 The sanctions Regulations listed in paragraph 2.1, which this instrument amends, are part of a wider programme of statutory instrument drafting, the objective of which is to bring into UK law the sanctions regimes currently implemented through EU Council Decisions and Regulations. These instruments contain prohibitions that have extra-territorial application to UK persons. This could have the effect of imposing a double prohibition and therefore a double licensing burden on UK persons in the Overseas Territories and Crown Dependencies, given that they will also be covered by specific legislation applicable in these jurisdictions. This instrument therefore introduces an exception for activities carried out under a licence granted by the Overseas Territories and Crown Dependencies.

7.3 This instrument makes amendments to correct specific errors in the following areas:

- An amendment is made to the grounds for Treasury licences in the South Sudan and the Central African Republic sanctions Regulations. In particular, the existing licensing ground which enables funds or economic resources to be utilised to satisfy prior obligations is amended in order to align the wording with that used in the relevant United Nations Security Council Resolutions (for UN designations).
- An amendment is made to the restrictions on investment and commercial activities in the Democratic People's Republic of Korea sanctions Regulations, to clarify where this applies to nationals of that country and what may be done with an ownership interest in certain persons. This amendment better aligns the new UK regime with the way in which the mixed EU/UN regime, which it replaces, operated. The EU/UN regime did not apply the prohibition on financial services and funds to nationals of the DPRK. This amendment aligns the UK Regulations with this approach, consistent with the Government's overall approach of recreating substantially the same policy effect of the sanctions measures being replaced. It also makes minor corrections to clarify that references to an 'ownership interest' apply only to non-natural persons.
- An amendment is made to the application of information powers in the Customs and Excise Management Act 1979 in the ISIL (Da'esh) and Al-Qaida regime, where financial provisions had been referenced unnecessarily. This amendment removes the reference;
- An amendment is made to defences in the Somalia regime where an offence is committed relating to transfer of technology. The person charged with the offence was referred to as 'P' at one point in a provision, but not then throughout the rest of it, creating ambiguity. The amendment inserts the additional references to 'P'.

7.4 This instrument is accompanied by a statutory report that is required to be published under section 46 of the Sanctions Act. In accordance with section 46(2) of the Sanctions Act, the report explains why the Minister considers that the carrying out of the stated purposes of the regulations being amended 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.

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. 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 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. This guidance will be updated to reflect the amendments to those sanctions Regulations made by this instrument.

12. Impact

- 12.1 This instrument makes corrections and 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 UK domestic implementing legislation). They are intended to deliver substantially the same policy effects as the existing sanctions regimes. 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 has not been produced for these Regulations, as this instrument is 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 intended to continue with substantially the same policy effects as the regulatory requirements under existing sanctions regimes. The Foreign, Commonwealth and Development Office does not believe it is possible to

exempt smaller businesses from the requirements to comply with these sanctions Regulations, 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@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 Lord Ahmad of Wimbledon, Minister of State at the Foreign, Commonwealth and Development Office, can confirm that this Explanatory Memorandum meets the required standard.