

EXPLANATORY MEMORANDUM TO
THE DEMOCRATIC REPUBLIC OF THE CONGO (SANCTIONS) (EU EXIT)
(AMENDMENT) REGULATIONS 2021

2021 No. 1041

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.

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 to the Democratic Republic of the Congo (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/433) ('the DRC Regulations'). These amendments are being made to enable financial sanctions required by the UN on the basis of the additional designation criterion in paragraph 3 of UNSCR 2582 to be implemented, and to correct an error in the DRC Regulations.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the same as the territorial extent of the instrument that 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 instrument that it amends. That is, it applies to the whole of the UK. 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 the 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 to amend regulations made under section 1 of that Act. The DRC Regulations were made under section 1 of the Sanctions Act for the purposes of compliance with UN obligations, as well as for discretionary purposes within section 1(2) of that Act.

6.2 This instrument amends the DRC Regulations in order to enable financial sanctions imposed by the United Nations (pursuant to paragraph 3 of United Nations Security Council Resolution (UNSCR) 2582 (2021)) on individuals and entities for planning,

directing, sponsoring or participating in attacks against medical personnel or humanitarian personnel to be implemented in UK law.

- 6.3 It also corrects a reference to the financial sanctions provisions of UNSCR 1807 (2008).

7. Policy background

What is being done and why?

- 7.1 The purposes of this instrument are i) to amend the DRC Regulations to enable the UK to implement its obligations under paragraph 3 of UNSCR 2582 (2021), which decided that the travel ban and asset freeze measures in UNSCR 1807 (2008) shall also apply to individuals and entities designated by the Committee of the Security Council concerning the Democratic Republic of the Congo ('the Committee') for planning, directing, sponsoring or participating in attacks against medical personnel or humanitarian personnel; and ii) to correct an error in regulation 10(1) of the DRC Regulations.
- 7.2 The UK's obligations under the UN DRC sanctions regime are implemented in UK law by the DRC Regulations. This instrument will amend those Regulations to include reference to paragraph 3 of UNSCR 2582 (2021) so as to ensure that any persons designated by the Committee on the basis of the additional designation criterion in paragraph 3 of UNSCR 2582 (2021) will have financial sanctions imposed on them in UK law. The travel ban on such individuals is implemented through the Immigration Act 1971.
- 7.3 The UK was supportive of this change to the UNSCR due to the presence of large numbers of humanitarian actors working to address needs in Eastern DRC. This, combined with the prevalence of armed groups in Eastern DRC, has led to serious and ongoing concerns around attacks on medical and humanitarian personnel by these armed groups. This change is designed to address these concerns.
- 7.4 This instrument will also amend regulation 10(1) of the DRC Regulations, by which persons designated for the purposes of the UN asset-freeze are designated for asset-freeze purposes under the DRC Regulations, by correcting a reference to the asset-freeze provisions of UNSCR 1807(2008).

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act. The DRC Regulations related to the withdrawal of the UK from the EU because they replaced, with substantially the same effect, the previous EU DRC sanctions regime

9. Consolidation

- 9.1 The DRC Regulations have been amended by the Sanctions (EU Exit) (Miscellaneous Amendments) (No. 2) Regulations 2020 (S.I. 2020/590); the Sanctions (EU Exit) (Miscellaneous Amendments) (No. 4) Regulations 2020 (S.I. 2020/951); and by the Sentencing Act 2020 (c.17). This instrument does not consolidate previous instruments. 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 Memorandum to the DRC Regulations explains the consultation that has been carried out in relation to 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 has been published in relation to the prohibitions and requirements under the DRC Regulations. That guidance will be updated to reflect the amendments to those Regulations made by this instrument.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because the Foreign, Commonwealth and Development Office does not expect monetary benefits/costs to UK businesses or the public sector as a result of the additional designation criterion imposed by this instrument. 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>. That assessment concluded that the introduction of the Sanctions Act, and statutory instruments under it to transfer existing sanctions 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 No specific action is proposed to mitigate regulatory burdens on small businesses.
- 13.3 The basis for the final decision on what action to take to assist small businesses is the estimation that the impact on small business in the UK will be negligible, given our assessment that the total costs to all UK business will be negligible. The Foreign, Commonwealth and Development 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 Section 30 of the Sanctions Act requires regular reviews of the DRC 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 The Sanctions Legislation and Policy Team at the Foreign, Commonwealth and Development Office, 0207 008 8553 or email: Sanctions.SIs@fcdo.gov.uk, can be contacted with any queries regarding the instrument.
- 15.2 Lisa Maguire, Deputy Director for Multilateral, Sanctions and Strategic Engagement at the Foreign, Commonwealth and Development Office, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Lord Ahmad, Minister of State for South Asia and the Commonwealth at the Foreign, Commonwealth and Development Office, can confirm that this Explanatory Memorandum meets the required standard.