

EXPLANATORY MEMORANDUM TO
THE DEMOCRATIC REPUBLIC OF THE CONGO (SANCTIONS) (EU EXIT)
(AMENDMENT) REGULATIONS 2022

2022No. 1236

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 His 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 to the Democratic Republic of Congo (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/433) ('the DRC Regulations'). These amendments are being made to enable the UK to implement UN sanctions measures by inserting a reference to a new designation criterion in paragraph 3 of UN Security Council Resolution (UNSCR) 2641¹, and to remove references to UNSCRs which have been superseded, as well as to add the new criterion to the domestic designation criteria.

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 (UK)
- 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.
- 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 The Sanctions Act establishes a legal framework which enables His Majesty's Government to impose sanctions for a number of purposes, including that it is in the

¹ <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/407/66/PDF/N2240766.pdf?OpenElement>

interests of international peace and security and furthers a foreign policy objective of the government of the UK.

- 6.2 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 the Sanctions Act.
- 6.3 This instrument is made to ensure that the UK can fulfil its obligations to implement the UN sanctions regime and updates references to the relevant UNSCR texts for DRC. The amendment also provides for a new designation criterion allowing for UK autonomous designations on the basis of involvement in production, manufacture or use in the Democratic Republic of the Congo of improvised explosive devices, or in the commission, planning, ordering, aiding, abetting or otherwise assistance of attacks in the Democratic Republic of the Congo with improvised explosive devices”.

7. Policy background

What is being done and why?

- 7.1 The DRC has faced decades of armed conflict and the security situation in eastern DRC in particular remains highly unstable. There are continued reports of several towns in eastern DRC being attacked by or falling under temporary control of armed groups. There has been an alarming increase in the use of improvised explosive devices (IEDs) in DRC by armed groups, particularly the Allied Democratic Forces (ADF). Casualties have been both civilian and military. The UN Group of Experts has recognised this a growing threat, as have the UN Security Council, which led to the addition of specific designation criteria on IEDs through UNSCR 2641(2022).
- 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 2641, which enabled UN designation of individuals and entities for involvement in the production, manufacture or use in the DRC of improvised explosive devices, or in the commission, planning, ordering, aiding, abetting or otherwise assistance of attacks in the DRC with improvised explosive devices.
- 7.3 This instrument also removes references to paragraphs of UN Security Council Regulations which have been superseded and no longer therefore contain the currently operative designation criteria for listing under the UN regime.
- 7.4 This instrument will further add an additional designation criterion to the UK autonomous sanctions regime for the DRC, replicating the new UN criterion, so that persons may be designated by the UK for involvement in the production, manufacture or use in the DRC of improvised explosive devices, or in the commission, planning, ordering, aiding, abetting or otherwise assistance of attacks in the DRC with improvised explosive devices.

Explanations

What did any law do before the changes to be made by this instrument?

- 7.5 The DRC Regulations give effect to the UK's obligations under United Nations Security Council Resolution 1807 to impose asset freezes and travel bans on persons designated by the UN, and an arms embargo on the DRC, and aim to promote:
- the resolution of the armed conflict in the DRC
 - respect for human rights
 - compliance with international humanitarian law
 - respect for democracy, the rule of law and good governance in the DRC.

Why is it being changed?

- 7.6 The UK has an international obligation to implement the changes to the UN regime effected by UNSCR 2641, which it supported due to the increase in the use of improvised explosive devices (IEDs) in DRC, and the number of civilian casualties. It is also considered appropriate to amend the UK's autonomous regime to address these concerns.

What will it now do?

- 7.7 The Regulations amend the DRC Regulations to insert into regulation 4(4) a reference to paragraph 3 of United Nations Security Council Resolution 2461 (2022), adopted on 30 June 2022. That paragraph decides that the financial and travel sanctions in paragraphs 9 and 11 of United Nations Security Council Resolution 1807 (2008), adopted on 31 March 2008, shall also apply to individuals and entities designated by the relevant UN Sanctions Committee for involvement in the production, manufacture or use in the Democratic Republic of the Congo of improvised explosive devices, or in the commission, planning, ordering, aiding, abetting or otherwise assistance of attacks in the Democratic Republic of the Congo with improvised explosive devices.
- 7.8 The amendments made by this instrument enable implementation of the UK's UN obligations in respect of financial sanctions. They also amend the designation criteria in Regulation 6(2) to allow the Secretary of State to designate persons by name under an equivalent criterion. Further, this instrument removes reference to UNSCRs which have been superseded.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union ('EU') / 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) Regulations 2020 (S.I. 2020/591); the Sanctions (EU Exit) Exit (Miscellaneous Amendments) (No. 3) Regulations 2020 (S.I. 2020/950); the Democratic Republic of the Congo (Sanctions) (EU Exit) (Amendment) Regulations 2021 (S.I. 2021/1041); The Criminal Justice Act 2003 (Commencement No. 33) and Sentencing Act 2020 (Commencement No. 2) Regulations 2022 (S.I. 2022/500); and by the Sanctions (EU Exit) (Miscellaneous Amendments) Regulations 2022 (S.I.

2022/819). 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. His Majesty's Government 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. This guidance will be updated to reflect the amendments to those Regulations made by this instrument.

12. Impact

- 12.1 The Foreign, Commonwealth & Development Office has not undertaken an impact assessment to estimate costs to UK businesses and wider impacts resulting from this instrument. This is because the marginal costs to UK businesses from the amendment are estimated to be negligible.
- 12.2 UK businesses must already comply with sanctions against individuals and entities appearing on a regularly updated gov.uk list. The process for notifying businesses about sanctions remains unchanged, so we do not expect significant changes to IT systems or administrative changes.
- 12.3 An impact assessment² was produced for the primary legislation. The 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 It is estimated that the impact on small business in the UK will be negligible, given the assessment that the total costs to all UK business will be negligible. The FCDO does not believe it is possible to exempt smaller businesses from the requirements to comply with the measures introduced by this instrument, as this could provide a route for the circumvention or evasion of sanctions.

² <https://publications.parliament.uk/pa/bills/lbill/2017-2019/0069/sanctions-and-anti-money-laundering-IA.pdf>

14. Monitoring & review

- 14.1 The DRC sanctions regime will be reviewed before 1 July 2023 by the UN Security Council. If the UK determined that it was no longer appropriate to maintain an autonomous sanctions regime or specific sanctions measures, that regime would be removed or amended accordingly. In the case of the 2019 DRC Regulations, that would include the measures introduced by this instrument. As such, the Minister does not consider that a review clause in this instrument is appropriate.

15. Contact

- 15.1 The Sanctions Directorate at the Foreign, Commonwealth and Development Office Telephone: 0207 008 8553 or email: SanctionsSIs@fcdo.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Nicholas Waddell, Deputy Director, Sanctions Directorate at the Foreign, Commonwealth and Development Office, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Rt Hon Andrew Mitchell MP, Minister of State (Development and Africa) at the Foreign, Commonwealth and Development Office can confirm that this Explanatory Memorandum meets the required standard.