

EXPLANATORY MEMORANDUM TO

THE EXTRATERRITORIAL US LEGISLATION (SANCTIONS AGAINST CUBA, IRAN AND LIBYA) (PROTECTION OF TRADING INTERESTS) (AMENDMENT) ORDER 2018

2018 No. 1357

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for International Trade and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The EU has in place Council Regulation (EC) No. 2271/96, the “Blocking Regulation”. This prohibits EU companies and individuals from complying with sanctions imposed by the United States on Cuba, Iran and Libya, insofar as such sanctions purport to have effect on these companies and individuals outside of the US. The US suspended these sanctions with regard to Iran as part of the Joint Comprehensive Plan of Action (JCPOA), in return for Iran agreeing to suspend its nuclear ambitions. The US withdrew from the JCPOA in May 2018 and announced it would reimpose its extraterritorial sanctions. In response the EU updated the Blocking Regulation to include these re-imposed sanctions. The Regulation forbids EU natural and legal persons from complying with those sanctions, unless exceptionally authorised to do so by the Commission. This instrument updates the UK’s implementing legislation – the Extraterritorial US Legislation (Sanctions against Cuba, Iran and Libya) (Protection of Trading Interests) Order 1996 (“the 1996 Order”) - so that it refers to the updated Blocking Regulation.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

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 extent of this instrument is the whole of the United Kingdom.
4.2 The territorial application of this instrument is the whole of the United Kingdom.

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 The Annex to the Blocking Regulation sets out the third country sanctions legislation with which persons specified under Article 11 of (EC) No 2271/96 must not comply. Following the US' withdrawal from the JCPOA, the Annex to the Blocking Regulation was amended by Commission Delegated Regulation (EU) 2018/1100 of 6 June 2018 with the effect that the recently re-imposed US sanctions legislation against Iran are now within scope of the Blocking Regulation. This means that EU nationals and entities must not, generally speaking, comply with such US legislation (unless acting within the territory of the US).
- 6.2 The provisions of the Blocking Regulation forbidding EU persons from complying with the US extraterritorial sanctions are enforced by each Member State. In the UK enforcement is by the 1996 Order. The Order makes a breach of certain provisions of the Blocking Regulation an offence which is potentially punishable by an unlimited fine.
- 6.3 This Statutory Instrument amends the 1996 Order to take into account updates to the Blocking Regulation. The update to the 1996 Order principally takes the form of specifying that the 1996 Order should be read as referring to the Blocking Regulation as last amended by Commission Delegated Regulation (EU) 2018/1100 of 6 June 2018. This ensures that UK companies or individuals complying with the newly re-imposed US extraterritorial sanctions will generally speaking be committing a criminal offence.

7. Policy background

What is being done and why?

- 7.1 The EU adopted Council Regulation (EC) No. 2271/96 in November 1996 to protect EU businesses and nationals from US sanctions against Cuba, Iran and Libya which purported to have effect outside the territory of the US. The Regulation forbids EU persons from complying with these sanctions, unless exceptionally authorised to do so by the Commission. The Regulation also allows EU operators to recover damages arising from the relevant extra-territorial sanctions from the persons causing said damage and nullifies the effect in the EU of any foreign court rulings based on them.
- 7.2 On 14 July 2015 the UK, Germany, France, the US, the EU, Russia, China and Iran agreed the Joint Comprehensive Plan of Action (JCPOA). In reaching the deal, Iran agreed to limit its nuclear ambitions in exchange for the lifting of some international sanctions. The US lifted or modified many of its secondary (extraterritorial) sanctions as part of the implementation of the JCPOA.
- 7.3 On 8 May 2018 the US announced that it planned to withdraw from the JCPOA and intended to reinstate secondary sanctions against individuals or entities if they undertook certain economic activities with Iran. On 6 June 2018, the European Commission responded by announcing its intention to adopt an update to the Blocking Regulation bringing the new and reimposed US secondary sanctions within the scope of the Blocking Regulation. The update to the Blocking Regulation is therefore part of a package of measures aimed at backing the JCPOA and the Government supports the Commission's intention to signal its support for the JCPOA to businesses, Iran, and the US.

7.4 The Blocking Regulation has been enforced in the UK since 1996 by the Extra-territorial US Legislation (Sanctions against Cuba, Iran and Libya) (Protection of Trading Interests) Order 1996. This SI expands the scope of the 1996 Order to include the new US sanctions legislation regarding Iran purporting to have extraterritorial effects which is listed in the amended Annex to the Blocking Regulation.

7.5 We will continue to work with our European partners on matters of significance to the UK, even as we leave the EU. We intend to uphold the policy intent of the Blocking Regulation in our statute book once we have left the EU, so that we can mitigate the impact of extraterritorial sanctions on our trading interests. The UK will assume responsibility for listing extraterritorial sanctions legislation with which UK businesses must not comply.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 None.

10. Consultation outcome

10.1 This instrument provides for the technical implementation of EU tertiary legislation. No consultation on the Order was necessary.

10.2 Foreign and Trade Policy is a reserved matter under the UK's devolution settlements and no Devolved Administration interests arise. The Devolved Administrations have, however, been sighted on this EM and SI.

11. Guidance

11.1 The European Commission has published a Guidance Note on its website: https://ec.europa.eu/fpi/what-we-do/updated-blocking-statute-support-iran-nuclear-deal_en.¹ This explains in particular the procedure by which companies may seek authorisation from the Commission to comply with US sanctions as allowed under Article 5 of the Blocking Regulation. The Commission has also published a template for businesses seeking such authorisations to complete.² The Commission has set out the criteria by which it will consider such an authorisation in Commission Implementing Regulation (EU) 2018/1101 of 3 August, in particular Article 4.

11.2 The Commission's Guidance is comprehensive and follows from discussion with the Member States. No further guidance from the UK Government is necessary.

12. Impact

12.1 The Blocking Regulation seeks to protect EU businesses and individuals, charities or voluntary bodies carrying out lawful activities outside the territory of the United States from the impact of the listed extraterritorial US sanctions relating to trade with Iran. The 1996 Order, and its amendment by this Order, concern enforcement in the UK of that Regulation.

¹ "Questions and Answers: adoption of update of the Blocking Statute", [OJ C 277L, 7.8.2018, p. 4–10](#).

² "[Template for Applications for Authorisations](#)".

- 12.2 The aim is to ensure that EU and UK persons operate as they would have done in the absence of the relevant US sanctions.
- 12.3 There may be some impact on businesses, charities or voluntary bodies. This impact is expected to be small, however. This is because we either expect UK companies and individuals to comply with the amended Blocking Regulation or to seek an authorisation from the Commission to be permitted to comply with the relevant US sanctions legislation. Therefore, an Impact Assessment would not be proportionate.
- 12.4 The principal additional cost to affected persons from this update to the 1996 Order is expected to be familiarisation costs. These costs are likely to come from additional legal advice for operators that operate in both the US and Iranian markets. Only a small number of businesses are likely to be affected so the overall cost to business is expected to be minimal – on average over the period 2015-17, annual UK trade³ in goods and services with Iran was 0.03% of total UK trade with the World.⁴
- 12.5 The Blocking Regulation impacts the public sector through UK government officials providing occasional advice to businesses and through responsibility for enforcement. The update to the Blocking Regulation may result in increased demand for advice from officials, imposing some additional cost to the public sector.

13. Regulating small business

- 13.1 The impact of the requirement on small businesses not to comply with extraterritorial US sanctions on Iran is minimised because the Order does not involve any additional regulatory, supervisory or reporting requirements. Penalties would only be applied if a business commits a breach of the Order.
- 13.2 The procedure to obtain an authorisation from the Commission to comply with the extraterritorial US sanctions on Iran could be disproportionately burdensome for small businesses. The Regulation does not give the UK the authority to amend the procedure for small businesses by means of this Order. However, it is likely that few, if any, small businesses would meet the conditions for such an authorisation.

14. Monitoring & review

- 14.1 A review of the 1996 Order, as amended by this Order, must be carried out within five years of the amendments coming into force, and every five years thereafter. This is achieved by the insertion, by this Order, of a statutory review into the 1996 Order.

15. Contact

- 15.1 Robert Jones at the Department for International Trade, Telephone: 0207 215 2829 or email: robert.jones@trade.gov.uk, can be contacted with any queries regarding the instrument.
- 15.2 Vic Platten at the Department for International Trade can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 George Hollingbery MP at the Department for International Trade can confirm that this Explanatory Memorandum meets the required standard.

³ Total of imports and exports.

⁴ DIT calculations using trade data from the ONS Pink Book 2018.