

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

2019 No. 1145

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 These Regulations are intended to ensure that the UK can operate an effective sanctions regime in relation to Guinea after the UK leaves the EU. When these Regulations come into force they will replace, with substantially the same effect, the EU sanctions regime relating to Guinea that is currently in force in the UK under EU legislation and related UK legislation. This sanctions regime is aimed at encouraging the Government of Guinea to investigate properly violent repression which occurred in the Republic of Guinea on 28th September 2009 and the aftermath of that violent repression, and to hold to account and bring criminal proceedings against the persons responsible for that violent repression and its aftermath.

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(3) of the Sanctions and Anti-Money Laundering Act 2018 (“the Sanctions Act”) and is subject to the made affirmative procedure. This instrument 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 UK from the EU.
- 3.2 Section 56(5) of the Sanctions Act also provides that the instrument must be approved by resolution of both Houses within 60 days of the Regulations coming into force for it to continue to have effect. This defers parliamentary debates in relation to this instrument until after it has come into force.

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 The territorial application of this instrument includes Scotland and Northern Ireland.

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 outside the UK.

5. European Convention on Human Rights

5.1 The Minister of State for Europe and the Americas at the Foreign and Commonwealth Office, the Rt Hon Sir Alan Duncan MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Guinea (Sanctions) (EU Exit) Regulations 2019 are compatible with the Convention rights.”

6. Legislative Context

6.1 The UK’s implementation of UN and other multilateral sanctions currently relies largely on the European Communities Act 1972. Each sanctions regime generally consists 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. There are currently around 35 sanctions regimes that take effect in the UK under EU law and associated UK secondary legislation. These include country-specific sanctions regimes, including in relation to Russia, the Democratic People’s Republic of Korea (DPRK) and Iran, as well as regimes targeting Da’esh, Al Qaida and other terrorist groups.

6.2 The European Union (Withdrawal) Act 2018 will repeal the European Communities Act 1972 and provides for some EU sanctions law to form part of domestic law after the UK has left the EU. 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 (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 EU sanctions regime imposed in relation to Guinea currently has effect in the UK through both EU instruments and related UK legislation. Using the power contained in section 54(2)(a) of the Sanctions Act, the following will be revoked and replaced by these Regulations: Council Regulation (EU) No 1284/2009 a directly applicable regulation imposing restrictive measures in respect of Guinea that would otherwise form part of domestic law on exit day under the EU (Withdrawal) Act 2018); and the Republic of Guinea (Asset-Freezing) Regulations 2012 (S.I. 2012/1508).

7. Policy background

What is being done and why?

7.1 Her Majesty’s Government’s (HMG’s) policy on Guinea includes the use of targeted sanctions to encourage the Government of Guinea to properly investigate violent repression which took place on 28 September 2009 and its aftermath, and to hold the perpetrators of human rights violations to account. Applying these sanctions gives a

signalling intention to prevent further such activities and to maintain pressure on Guinea to hold to account and bring criminal proceedings against those responsible for the crackdown on protestors in Conakry on 28 September 2009 during which more than 150 people were killed and over 100 women were raped.

- 7.2 Although members of the former military junta and Presidential Guard have been charged and the location of the courtroom has been chosen, movement has been slow and there is still further progress to be made in order to ensure that there has been full accountability for these events. In line with its broad foreign policy approach, HMG seeks to promote the rule of law and good governance and to seek to prevent actions which threaten democratic principles, and violate international human rights law. It therefore uses targeted sanctions to continue to encourage Guinea to hold those responsible for the violent repression and its aftermath to account.
- 7.3 The EU first adopted restrictive measures on 22 December 2009 in response to the violent crackdown by security forces on political demonstrators in Conakry on 28 September 2009. The measures included an arms embargo, an asset freeze and a travel ban against members of the Government. In view of the positive developments in the country, restrictions were eased on 14 April 2014 and the arms embargo was lifted. The EU sanctions regime currently provides for travel ban and asset freeze measures directed against those who were involved in committing human rights violations during, or in the aftermath of, the violence in September 2009. These Regulations are intended to deliver substantially the same policy effects as those existing EU sanctions.
- 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 after the UK leaves the EU, as well as enabling HMG to amend and lift the sanctions, or 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 stated purposes of this instrument would meet one or more of the discretionary purposes set out in the Sanctions Act; why there are good reasons to pursue that purpose; and why the Minister considers that the imposition of sanctions is a reasonable course of action for that purpose.
- 7.7 Secondly, and in accordance with section 18 of the Sanctions Act, a report has been produced that identifies the offences contained in this instrument; explains why there are good reasons for those offences; 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 Regulations (e.g. breaching an asset-freeze) or trying to circumvent those principal prohibitions.
- 7.8 Part 2 of this instrument deals with the designation of persons (including individuals, entities and organisations) under the sanctions regime. It lists the criteria against which a Minister may make a decision to designate a person as being subject to a travel ban or asset freeze (“designated persons”).
- 7.9 The names of designated persons are not included in this instrument. These 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.

- 7.10 Part 3 of the instrument sets out financial sanctions measures that can be imposed on designated persons. Financial sanctions include freezing a designated person's funds and economic resources (non-monetary assets, such as property or vehicles) 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 the instrument sets out the effect of immigration measures made under this instrument. A designation made for the purposes of regulation 17 of the instrument 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 to stay in the UK that they may have is cancelled. The Secretary of State may direct, on an individual basis, that the travel ban does not apply, for example for the purposes of attending UN meetings.
- 7.12 Part 5 of the instrument makes provision in respect of exceptions and licences that may apply or be available, as the case may be, in respect of prohibitions under this regime. For example, and in relation to Treasury licences, a designated person can apply for a licence allowing funds to be released in order to pay for essential goods or services such as food. It states that the Treasury may issue licences to 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 licencing.

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 Guinea 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 Act.
- 10.2 There is neither a requirement in the 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 Act, guidance will be published in relation to the prohibitions and requirements under these Regulations. This guidance will be available on gov.uk before these Regulations come 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 once the UK leaves the EU.
- 12.2 There is no significant impact on the public sector.
- 12.3 An Impact Assessment has not been produced for these Regulations, as the instrument is intended to ensure existing sanctions remain in place following EU exit. This instrument is intended to substantially deliver 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 These Regulations apply to activities that are undertaken by small businesses.
- 13.2 These Regulations are 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 these Regulations as this could provide a route for the circumvention or evasion of sanctions.

14. Monitoring & review

- 14.1 The Sanctions Act requires regular reviews of these Regulations. Under section 30 of the Act, the Secretary of State must consider whether or not these Regulations are still appropriate for their 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 these Regulations is appropriate.

15. Contact

- 15.1 Palan Suchak at the Foreign and Commonwealth Office telephone: 020 7008 4628 or email: Sanctions.SIs@fco.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Qudsi Rasheed, Deputy Director at the Foreign and Commonwealth Office, can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Rt Hon Sir Alan Duncan MP, Minister of State at the Foreign and Commonwealth Office, can confirm that this Explanatory Memorandum meets the required standard.