

**EXPLANATORY MEMORANDUM TO**  
**THE COUNTER-TERRORISM (INTERNATIONAL SANCTIONS) (EU EXIT)**  
**REGULATIONS**

**2019 No. 573**

**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 provide for part of the UK's counter-terrorism sanctions regimes after the UK leaves the EU. When these Regulations come into force they will replace, with substantially the same effect, counter-terrorism regimes that are currently in force under a range of EU legislation and related UK legislation. They will replace the EU autonomous sanctions regime in respect of ISIL (Da'esh) and Al-Qaida, and the EU's counter-terrorism sanctions regime set out in Council Common Position 2001/931/CFSP ("CP931"). This sanctions regime also gives effect to the UK's obligations under United Nations Security Council Resolution (UNSCR) 1373.

**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 and Anti-Money Laundering Act 2018 ("the Sanctions Act") and is subject to the negative procedure. This instrument does not come into force until a date or dates to be appointed under 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 regulations where such provision is appropriate in consequence of, or otherwise in connection with, the withdrawal of the UK from the EU.
- 3.2 In the event that the UK leaves the EU without a deal on 29 March 2019 then the instrument would need to be commenced on a date or dates that would enable the UK to continue to impose counter-terrorism sanctions at the point of departure. In this event, there would be a breach of the 21 day rule. The Department regrets that the risk of a breach has arisen in this instance, which has resulted from the number and complexity of the instruments it has been necessary to prepare to ensure the UK can properly continue to impose sanctions in the event that the UK leaves the EU without a deal on 29 March.

*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 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 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. In addition, the maritime enforcement powers contained in Part 9 of this instrument apply in relation to British ships in international or foreign waters, ships without nationality in international waters and foreign ships in international waters.

**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 UK's implementation of United Nations (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, DPRK and Iran, as well as regimes (such as this one) targeting 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 UN 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 existing EU counter-terrorism sanctions regimes, CP931 and the EU autonomous ISIL (Da'esh) and Al-Qaida regime, currently have 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, that legislation will be revoked and replaced by these Regulations, namely Council Regulation (EC) No 2580/2001; Council Implementing Regulation (EU) 2019/24; and Council Regulation (EU) 2016/1686; and the ISIL (Da'esh) and Al-Qaida (Asset-Freezing) Regulations 2011.

## **7. Policy background**

### *What is being done and why?*

- 7.1 Her Majesty's Government's (HMG's) policy on counter-terrorism includes the use of sanctions to encourage those who are, or have been, involved in terrorism to change their behaviour. These Regulations are aimed at furthering the prevention of terrorism in the UK and elsewhere and they bring together elements of several existing sanctions regimes. Bringing this sanctions regime into UK law using the powers in the Sanctions Act will enable all the current sanctions measures to continue to be implemented after the UK leaves the EU, as well as enabling the UK to amend and lift the sanctions, or impose further measures and sanctions, autonomously.
- 7.2 The UN Security Council (UNSC) passed UNSCR 1373 in 2001 in response to the 11 September terrorist attacks in the United States. The EU implemented the obligations under Resolution 1373 through CP931. The UK implements its obligations under Resolution 1373, and CP931, through the Terrorist Asset-Freezing Act etc. 2010 ("TAFA"). These Regulations will partially replace the implementation of CP931 and ensure the UK can continue to fulfil the UN obligations under UNSCR 1373. Section 59 of the Sanctions Act makes provision for the repeal of Part 1 of TAFA, and that repeal will be commenced after EU exit and once this (and related) statutory instruments are in force.
- 7.3 The UN sanctions regime in relation to ISIL (Da'esh) and Al-Qaida, established under UNSCR 1267, is implemented by the EU under Council Regulation 881 of 2002, and by the UK under domestic legislation. The UN ISIL Da'esh and Al-Qaida regime has been implemented under the ISIL (Da'esh) and Al-Qaida (United Nations Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/466) and which repealed the previous domestic legislation. In addition to implementing the UN regime, the EU created an autonomous ISIL (Da'esh) and Al-Qaida sanctions regime to supplement the UN regime. These Regulations replace that EU autonomous regime.
- 7.4 The Regulations will enable the UK to apply counter-terrorism sanctions in respect of persons for whom there are reasonable grounds to suspect they are or have been involved in terrorist activity, and in particular with a focus on persons who operate internationally. A domestic counter-terrorism sanctions regime, which also implements obligations under UNSCR 1373, will be dealt with in a separate instrument laid by HM Treasury.
- 7.5 This instrument is accompanied by two statutory reports that are required to be published under the Sanctions Act.
- 7.6 First, 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 (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.

- 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.
- 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, asset freeze or trade prohibitions, in particular where there are reasonable grounds to suspect a person of being or having been involved in terrorist activities.
- 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), prohibiting the provision of financial services, and ensuring that funds, financial services 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 under regulation 5 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.
- 7.12 Part 5 of the instrument sets out trade sanctions. These sanctions include restrictions on the export, supply and delivery, making available and transfer of military goods and military technology to, or for the benefit of, a designated person. There are further restrictions on the provision of technical assistance, financial services, funds and brokering services related to military goods and military technology to, or for the benefit of, a designated person. There is also a prohibition in relation to enabling or facilitating the conduct of armed hostilities.
- 7.13 Part 6 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 and requirements 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 provides that the Treasury may issue licences to permit an activity prohibited by Part 3 (finance) where it is appropriate to do so, which gives HM Treasury flexibility to manage terrorist financing risks. Part 6 also details exceptions to trade prohibitions however no licences are available in respect of engaging in trade with designated persons. Guidance will provide further detail about licensing.
- 7.14 Part 9 of the instrument confers powers on maritime enforcement officers. These powers are analogous to maritime enforcement powers contained in existing legislation, such as Chapter 5 of the Policing and Crime Act 2017. The key distinction is that those powers are contingent on there being reasonable grounds to suspect that a criminal offence has been committed, whereas the purpose of these powers is to identify, seize

and dispose of goods which are being dealt with in contravention, or deemed contravention, of certain trade sanctions.

- 7.15 All those designated under these Regulations (“designated persons”) may be subject to an asset freeze, travel ban and/or targeted arms embargo. CP931 and TAFE currently only include financial sanctions (including a prohibition on the provision of financial services). Therefore, the travel ban and arms embargo are additional measures in respect of persons currently designated under CP931 and TAFE who may be designated under these Regulations. The EU autonomous ISIL (Da’esh) and Al-Qaida regime currently includes financial sanctions (but not a prohibition on the provision of financial services), travel ban and targeted arms embargo, but persons designated for the purposes of Part 3 (finance) will now also be subject to a prohibition on the provision of financial services. These Regulations harmonise the measures currently in force through the EU counter-terrorism regimes and help to further the prevention of terrorism in the UK or elsewhere by limiting designated persons’ access to arms (and related material), terrorist financing, and travel.

## **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 the existing EU autonomous ISIL (Da’esh) and Al-Qaida sanctions regime and CP931.

## **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. However, 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 This instrument in effect maintains existing sanctions measures that are already applicable to UK business, charities and voluntary bodies under EU law. There may also be additional measures imposed under this instrument on some people who are not currently subjected to them i.e. targeted arms embargo, travel ban, and prohibitions on providing financial services to designated persons. Under the UK's existing framework of control of export and trade in military goods and technology an export licence would not be granted where there was an unacceptable risk that the goods and technology may be diverted to terrorists. Therefore we assess that there is no new substantial impact arising from imposing trade restrictions in relation to persons designated because of suspected involvement in terrorism and that it is reasonable to impose such prohibitions. These Regulations harmonise the sanctions measures that are currently in three existing regimes. Businesses, charities and voluntary bodies have processes in place to comply with existing EU sanctions. We therefore assess that there is no new substantial impact arising from this instrument. 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 and it is considered that the additional measures should not have a further significant impact. 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 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 designated persons to evade 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. Under section 31 of the Act, the Secretary of State must appoint a person to review the operation of the asset freeze provisions contained in these regulations as they contain a counter-terrorism purpose. As such, the Minister does not consider that a review clause in these Regulations is appropriate.

**15. Contact**

- 15.1 Clare Kendall-Bohoslawec at the Foreign and Commonwealth Office telephone: 020 7008 8637 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.