

EXPLANATORY MEMORANDUM TO
THE COUNTER-TERRORISM (SANCTIONS) (EU EXIT) REGULATIONS 2019
2019 No. 577

1. Introduction

- 1.1 This explanatory memorandum has been prepared by Her Majesty's Treasury 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 The government will repeal Part 1 of the Terrorist Asset-Freezing etc. Act 2010 (TAFA) after EU Exit. When these regulations come into force they are intended to replace TAFA, with substantially the same effect.
- 2.2 This sanctions regime is aimed at furthering the prevention of terrorism in the UK or elsewhere and protecting UK national security interests and will ensure that the UK implements its international obligations under UN Security Council Resolution 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 SAML A and is subject to the negative procedure. This instrument does not come into force until a date to be appointed under separate regulations (see regulation 1(2)). This uses the power in section 56 of the SAML A, which 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.

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 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 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 SAMLA was introduced to provide the UK with the legal framework necessary to allow the UK to implement sanctions autonomously following the UK's exit from the EU.
- 6.2 Section 1 of SAMLA 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.
- 6.3 The existing EU counter-terrorism sanctions regimes currently have effect in the UK both through EU instruments and related UK legislation (TAFAs). Part 1 of TAFAs is the current UK framework enabling the imposition of asset-freezes against persons involved in terrorist activity. Section 59 of SAMLA makes provision for the repeal of Part 1 of TAFAs. This Part will be repealed after EU exit once this and related statutory instruments are in force.

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 further the prevention of terrorism and terrorist financing in the UK and elsewhere.
- 7.2 This instrument is one in a package of related instruments dealing with the terrorist threat. The ISIL (Da'esh) and Al-Qaida (United Nations Sanctions) (EU Exit) Regulations 2019 will implement the UN ISIL (Da'esh) and Al-Qaida regime in the UK. The Counter-Terrorism (International Sanctions) (EU Exit) Regulations 2019 will provide for the domestic implementation of the EU's counter-terrorism sanctions regime set out in Council Common Position 2001/931/CFSP ("CP931"), and on an autonomous UK basis, enables sanctions measures to be taken in relation to other persons, groups or entities involved in terrorism where there is an international nexus.
- 7.3 The intention of this instrument will be the designation of persons, groups or entities with a clear UK nexus (e.g. the target resides in the UK, is likely to return to the UK, holds economic resources in the UK, or where the designation will be in the interests of UK national security in a counter-terror context where UN financial sanctions are not available or deemed an appropriate tool to utilise). Any current designations under TAFAs with a domestic focus, will, subject to meeting the new designation criteria, be listed under these Regulations and revoked under TAFAs. This domestic counter-terrorism regime will allow HMG to continue to meet the UK's obligation under UN Resolution 1373 and designate those who have a domestic UK nexus.
- 7.4 The government will repeal TAFAs after EU exit and once any appropriate designations are carried across to new regimes. The threats the UK faces from domestic and international terrorism constantly evolve and have changed since the introduction of TAFAs in 2010. We need to ensure that UK counter-terrorist sanction powers remain a useful tool for UK law enforcement and intelligence agencies. Using the powers in SAMLA, this new regulation will enable the domestic counter-terrorist sanctions regime to operate more effectively and will ensure that elements of the

counter-terrorism sanctions regimes are harmonised with other sanctions regimes under SAMLA.

- 7.5 This instrument is accompanied by two statutory reports that are required to be published under the SAMLA.
- 7.6 Firstly, and in accordance with section 2(4) of SAMLA, 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 SAMLA; 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. As mentioned in paragraph 2.1 above, the stated purposes of these regulations are to further the prevention of terrorism in the UK and elsewhere, meet UN obligations under UNSCR 1373, and to protect UK national security interests.
- 7.7 Secondly, and in accordance with section 18 of SAMLA, 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, breaching the prohibitions on making funds available to designated persons.
- 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 Treasury Minister may make a decision to designate a person as being subject to an asset freeze (“designated persons”), namely where a person is or has been involved in terrorism.
- 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, 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 exceptions and licensing powers, which give flexibility to manage terrorist financing risks. It states that the Treasury may issue licences to permit activity prohibited by Part 3 (Finance).
- 7.12 Part 5 of the instrument deals with powers to request information and reporting obligations for relevant firms.

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 2018, but it relates to the withdrawal of the UK from the EU. EU Regulation 2580/2001 (EU sanctions that contribute to the UK implementing UNSCR 1373) is enforced in the UK via TAFE.

9. Consolidation

- 9.1 This instrument does not amend any other legislation, and there is no intention to consolidate this SI in the future with other related instruments.

10. Consultation outcome

- 10.1 HMG ran a public consultation on SAMLA 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 meetings 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 and the full consultation response can be found at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/635101/consultation-uk-future-legal-framework-sanctions-government-response.pdf.
- 10.2 There is neither a requirement in SAMLA 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. This instrument is intended to substantially deliver the same policy effects as the existing UK 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 The Treasury 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 SAMLA requires regular reviews of these Regulations. Under section 30 of the Act, the appropriate Minister 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 Payal Khamar at Her Majesty's Treasury, telephone: 020 7270 7808 or email: payal.khamar@hmtreasury.gov.uk can be contacted with any queries regarding the instrument.

15.2 Giles Thomson, Deputy Director at Her Majesty's Treasury, can confirm that this Explanatory Memorandum meets the required standard.

15.3 John Glen MP, Economic Secretary at Her Majesty's Treasury, can confirm that this Explanatory Memorandum meets the required standard.