

**EXPLANATORY MEMORANDUM TO**  
**THE SANCTIONS (EU EXIT) (MISCELLANEOUS AMENDMENTS) (NO. 2)**  
**REGULATIONS**

**2020 No. 590**

**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 The instrument is made under the Sanctions and Anti-Money Laundering Act 2018 (“the Sanctions Act”) to make corrections and amendments to the following sanctions Regulations: the Iran (Sanctions) (Human Rights) (EU Exit) Regulations 2019 (S.I. 2019/134), the Venezuela (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/135), the Burma (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/136), the Republic of Guinea-Bissau (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/554), the Republic of Belarus (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/600), the Zimbabwe (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/604), the Syria (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/792), the Russia (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/855), the Chemical Weapons (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/618), the Burundi (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/1142) and the Guinea (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/1145).
- 2.2 Part 2 of this instrument makes revocations and amendments which are consequential on the provisions in those sanctions Regulations, in particular the revocation of asset-freezing and export control legislation which has been superseded by those sanctions Regulations.

**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 Act and is subject to the made affirmative procedure. It 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 United Kingdom from the European Union. Section 56(5) of the Sanctions Act 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)
- 3.2 The territorial application of this instrument includes Scotland and Northern Ireland.

#### **4. Extent and Territorial Application**

- 4.1 The territorial extent of the instrument is the same as the territorial extent of the instruments which it amends: that is, the whole of the United Kingdom.
- 4.2 The territorial application of the instrument is also the same as the territorial application of the instruments which it amends. That is, it applies to the whole of the United Kingdom. It also applies to conduct by United Kingdom persons outside the United Kingdom.

#### **5. European Convention on Human Rights**

- 5.1 Lord Ahmad of Wimbledon, Minister of State at the Foreign and Commonwealth Office, has made the following statement regarding Human Rights:
- “In my view the provisions of the Sanctions (EU Exit) (Miscellaneous Amendments) (No. 2) Regulations 2020 are compatible with the Convention rights.”

#### **6. Legislative Context**

- 6.1 The instrument is made in exercise of powers conferred by sections 1, 45 and 54(2) of the Sanctions Act. The only previous instrument to use these powers to make amendments to sanctions Regulations made under the Sanctions Act was the Sanctions (EU Exit) (Miscellaneous Amendments) Regulations 2019 (S.I. 2019/843).
- 6.2 The instrument makes amendments to the following sanctions Regulations which were made under the Sanctions Act for purposes other than compliance with a UN obligation: the Iran (Sanctions) (Human Rights) (EU Exit) Regulations 2019 (S.I. 2019/134), the Venezuela (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/135), the Burma (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/136), the Republic of Guinea-Bissau (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/554), the Republic of Belarus (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/600), the Zimbabwe (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/604), the Syria (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/792), the Russia (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/855), the Chemical Weapons (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/618), the Burundi (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/1142) and the Guinea (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/1145).
- 6.3 A second instrument, which is subject to the negative resolution procedure, makes similar amendments to the sanctions Regulations which have been made under the Sanctions Act for the purposes of compliance with a UN obligation.

#### **7. Policy background**

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

- 7.1 The purpose of the instrument is to: (i) achieve consistency and clarity in the drafting of prohibitions, requirements and associated provisions across all sanctions regimes that are being established under the Sanctions Act; (ii) correct specific errors that have been identified in the sanctions Regulations that have already been made; (iii) make revocations and amendments of legislation that are consequential on the provisions in those sanctions Regulations; and (iv) implement changes in policy which are connected to the withdrawal of the United Kingdom from the European Union.

7.2 The sanctions Regulations listed in paragraph 2.1, which this instrument amends, are part of a wider programme of statutory instrument drafting, the objective of which is to bring into UK law the sanctions regimes currently implemented through EU Council Decisions and Regulations. Many of these sanctions regimes contain the same sanctions measures, for example a prohibition on the transfer of technology or a prohibition on dealing with assets or economic resources owned, held or controlled by a designated person. Therefore, it is important that the drafting of those measures - and any references to other legislation such as the Dual-Use Regulation - is consistent across those regimes in order to ensure consistent application, interpretation and enforcement. In particular, businesses may export goods or provide services to more than one destination subject to sanctions, and so there is a risk that inconsistent drafting – however, small the inconsistency and even where the two differently drafted or punctuated provisions may in practice achieve the same legal effect – may lead to confusion or increased compliance costs for UK businesses.

7.3 This instrument makes amendments to ensure consistency and clarity in the provisions relating to:

- the definition of technology (in the Iran, Venezuela, Myanmar, Belarus, Zimbabwe and Syria regimes);
- the description of goods and technology that could be used for internal repression (in the Iran, Myanmar, Venezuela, Belarus, Zimbabwe and Syria regimes) and of interception and monitoring goods and interception and monitoring technology (in the Myanmar, Venezuela and Syria regimes);
- the description of the Secretary of State’s designation power (in the Iran, Venezuela, Myanmar, Guinea-Bissau, Belarus, Zimbabwe, Chemical Weapons, Syria, Burundi and Guinea regimes);
- the jurisdiction to try offences (in the Iran, Myanmar and Venezuela regimes)
- those provisions which should not be considered financial sanctions legislation for the purposes of the Policing and Crime Act 2017 (in the Iran, Myanmar and Venezuela regimes);
- the definition of a “diplomatic mission” for the purposes of issuing a Treasury licence (in the Iran, Myanmar and Venezuela regimes);
- the description of an existing financial sanctions licence (in the Iran, Venezuela and Myanmar regimes);
- trade licences, to clarify that an “existing authorisation” can be an “existing trade licence” or an “existing trade sanctions licence” but not both (in the Belarus, Syria and Russia regimes).

7.4 This instrument corrects some further oversights in the drafting of the sanctions Regulations relating to Iran, Myanmar and Venezuela, namely:

- providing that the power to request information in respect of financial sanctions should extend to funds held, owned or controlled on behalf of designated persons (in all three regimes);
- providing that a ‘relevant provision’ for the purposes of regulation 6 (designation criteria) should include the financial sanctions in Part 3, not just the trade sanctions in Part 5 (all three regimes);

- providing that the disapplication of overlapping trade offences should include the offences at article 37 (misleading applications for licences or certificates) and article 38 (failure to comply with licence conditions) of the Export Control Order 2008 (in the Iran and Venezuela regimes);
  - amending the designation criteria for the Burma regime so that it matches the structural approach taken in other regimes and in particular clarifies what constitutes a ‘relevant activity’.
- 7.5 The instrument also corrects an error in the sanctions Regulations relating to Burundi and Guinea, which included in relation to the Crown Dependencies and Overseas Territories a reference to section 146 of the Policing and Crime Act 2017 (or similar legislation in those jurisdictions), where that reference should have been limited to the United Kingdom.
- 7.6 The instrument provides that – consistent with other sanctions regimes and in order to facilitate effective enforcement of the trade sanctions measures – the maritime enforcement powers for the Iran, Burma and Venezuela regimes may be exercised for the purpose of enforcing a condition of a trade licence in relation to certain trade sanctions prohibitions (in addition to the existing purposes of enforcing those trade sanctions prohibitions themselves).
- 7.7 The sanctions regimes relating to Venezuela and Myanmar currently contain prohibitions relating to ‘military activities’. This instrument amends Chapter 4 of Part 5 (Trade) of the Venezuela (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/135) and the Burma (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/136), which contain those prohibitions, in order to make the drafting of those prohibitions consistent with the drafting of similar provisions contained in the South Sudan, the Democratic Republic of Congo and the ISIL (Da’esh) and Al-Qaida sanctions regimes.
- 7.8 In addition, the Burma sanctions regime currently contains prohibitions relating to dual-use goods and dual-use technology. Chapter 2 of Part 5 (Trade) of the Burma (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/136) imposed those prohibitions – as with other restricted goods and restricted technology – generally in respect of Burma or persons connected with Burma. This instrument amends that Chapter and inserts a new Chapter 2A containing bespoke prohibitions relating to dual-use goods and dual-use technology to correct an error in the earlier instrument which did not limit the prohibition to goods and technology destined for a military end-user. This is consistent with the approach taken to dual-use restrictions in other sanctions regimes such as in regulations 31 to 38 of the Russia (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/855).
- 7.9 The existing sanctions regimes relating to Iran, Burma and Venezuela include a prohibition on the provision of interception and monitoring services to or for the benefit of the Governments of those countries. However, the drafting of that prohibition in these sanctions Regulations was unclear, given that it relied on a defined term of “a person connected with” those countries. Therefore, consistently with the approach taken later in the Syria sanctions regime, the instrument amends these prohibitions to make clear on its face that the prohibition applies to the provision of such services to the or for the benefit of the Governments of those countries.
- 7.10 The trade sanctions in the Regulations relating to Russia and to Syria identify some restricted goods subject to the sanctions by reference to the Tariff of the United Kingdom and its Goods Classification Table. The instrument updates the definition used

for the Tariff and Table to ensure that the definition will capture replacements, revisions and reissues of them, as well as to ensure consistency with the parallel definitions used in the sanctions Regulations for regimes relating to the Democratic People's Republic of Korea and Iran. It also amends references in certain definitions and transitional provisions of those sanctions Regulations from 'exit day' to 'IP completion day'. This reflects that, in accordance with the Withdrawal Agreement, EU sanctions continue to apply in the United Kingdom until the end of the Transition Period.

- 7.11 This instrument also revises the approach to describing chemicals by reference to a Chemical Abstracts Service Registry Number in Schedule 3 (goods and technology relating to chemical and biological weapons) to the Regulations relating to Syria in order to ensure clarity for business operators and to align with the similar description of chemicals used in the Democratic People's Republic of Korea sanctions regime.
- 7.12 This instrument makes two further amendments to the sanctions Regulations in relation to Syria. It corrects an oversight in the original drafting by ensuring that the provision of financial services and funds and the provision of brokering services relating to aviation fuel and aviation fuel additives are exempted from the trade prohibitions in line with the scope of the current sanctions regime. It also amends regulation 37 (purchase of military goods and technology, crude oil and petroleum products) to reflect the position applied in other regimes such as the Democratic People's Republic of Korea, that acquisition of goods from a particular country includes acquisition of goods that originate in or are located in that country, and acquisition of goods from a person connected with that country.
- 7.13 This instrument makes further amendments to the sanctions Regulations in relation to Russia, improving the drafting and correcting oversights with the intention of aligning the sanctions measures in the Regulations more closely to the existing sanctions regime. This includes omitting the prohibition on the acquisition of military goods or technology originating in Russia in regulation 25 (making available or acquiring military goods or military technology); omitting the prohibition on procuring certain financial services in regulation 28(4) and (5) (financial services and funds relating to military goods or military technology); and ensuring that the exception at regulation 61 (trade: exception for emergencies in certain cases) also applies to regulation 46 (prohibition on providing other energy-related services).
- 7.14 This instrument also amends regulation 59 of the Regulations in relation to Russia. Regulation 59 currently exempts from the prohibition on loans in regulation 17 situations where the specific and documented objective was to make funds available for non-restricted trade (between any countries). Since the EU Regulation only exempted loans funding specific non-restricted trade (exports, imports and non-financial services) between the EU and a non-EU country, this amendment alters regulation 59 so that it only exempts loans or credit arrangements funding non-restricted trade in goods and non-financial services between the UK and a non-UK country. This brings regulation 59 in line with the structure of the EU exemption while also accounting for the UK's departure from the EU, and ensures that the Regulations continue to effectively serve the purpose of encouraging Russia to cease actions destabilising Ukraine or undermining or threatening the territorial integrity, sovereignty and independence of Ukraine.
- 7.15 Part 2 of this instrument makes revocations and amendments that are consequential on the provisions of the sanctions Regulations listed in paragraph 2.1. In particular,

regulation 8 revokes the instruments which amend the asset-freezing and export control instruments that were themselves revoked by those Regulations.

- 7.16 This instrument is accompanied by a statutory report that is required to be published under section 46 of the Sanctions Act. In accordance with section 46(2) of the Sanctions Act, the report explains why the Minister considers that the carrying out of the stated purposes of the regulations being amended 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.
- 7.17 This instrument is also accompanied by a section 18 report, outlining offences created by the Regulations.

## **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 United Kingdom from the European Union. This is because the instrument amends sanctions regulations that were made to replace, with substantially the same policy effects, existing EU sanctions legislation.

## **9. Consolidation**

- 9.1 This instrument makes minor amendments to existing sanctions Regulations. Therefore, there is no need for consolidation. The Foreign and Commonwealth 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 Memoranda to the sanctions Regulations listed in paragraph 2.1 of this memorandum explain the consultation that has been carried out in relation to the Sanctions Act.

## **11. Guidance**

- 11.1 In accordance with section 43 of the Sanctions Act, guidance is published in relation to the prohibitions and requirements under the sanctions Regulations which are amended by this instrument. This guidance will be updated to reflect the amendments to those sanctions Regulations made by this instrument.

## **12. Impact**

- 12.1 This instrument makes corrections and amendments to sanctions Regulations which are intended to maintain existing sanctions measures that are already applicable to UK business, charities and voluntary bodies through EU law. They are intended to deliver substantially the same policy effects as the existing EU sanctions. Therefore, we assess that there is no new substantial impact.
- 12.2 Although the amendment to the Regulations relating to Russia referred to in paragraph 7.14 narrows an exception in comparison to existing EU sanctions, this is in line with the UK's EU exit policy and therefore falls within the scope of the changes contemplated by the impact assessment produced for the primary legislation under which those Regulations were made.

- 12.3 There is no, or no significant, impact on the public sector.
- 12.4 An Impact Assessment has not been produced for these Regulations, as this instrument is intended to ensure existing sanctions remain in place following EU exit. As mentioned above, an impact assessment was, however, produced for the primary legislation, which can be found at <https://publications.parliament.uk/pa/bills/lbill/20172019/0069/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 The legislation applies to activities that are undertaken by small businesses.
- 13.2 The amendments made by this instrument are intended to continue with substantially the same policy effects 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 sanctions Regulations as this could provide a route for the circumvention or evasion of sanctions.

### **14. Monitoring & review**

- 14.1 Section 30 of the Sanctions Act requires regular reviews of the sanctions Regulations which are amended by this instrument. However, section 30 does not apply to this instrument, by virtue of section 45(6) of the Sanctions Act. As such, the Minister does not consider that a review clause in this instrument is appropriate.

### **15. Contact**

- 15.1 Jennifer Budniak at the Foreign and Commonwealth Office telephone: 020 7008 5013 or email: [Sanctions.SIs@fco.gov.uk](mailto:Sanctions.SIs@fco.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Lisa Maguire, Deputy Director at the Foreign and Commonwealth Office, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Lord Ahmad of Wimbledon, Minister of State at the Foreign and Commonwealth Office, can confirm that this Explanatory Memorandum meets the required standard.