

EXPLANATORY MEMORANDUM TO
THE SANCTIONS (EU EXIT) (MISCELLANEOUS AMENDMENTS) (NO. 5)
REGULATIONS

2020 No. 1397

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Foreign, Commonwealth and Development 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 This instrument is made under the Sanctions and Anti-Money Laundering Act 2018 (“the Sanctions Act”) to make amendments and corrections to the Mali (Sanctions) (EU Exit) Regulations 2020 (S.I. 2020/705) and the Afghanistan (Sanctions) (EU Exit) Regulations 2020 (S.I. 2020/948).

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 Act and is subject to the negative 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.
- 3.2 This instrument contains provisions which correct errors in previous instruments as set out in paragraph 7.3. The amendment to the Mali Regulations follows the JCSI’s Twenty-Fourth Report of Session 2019-21 concerning the vires for the ambulatory definition in the instrument as introduced. Having consulted the Statutory Instrument Registrar in accordance with paragraph 4.7.6 of Statutory Instrument Practice the Department will apply the free issue procedure.

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

6. Legislative Context

- 6.1 This instrument is made in exercise of powers conferred by sections 1 and 45 of the Sanctions Act. Previous instruments using these powers to make amendments to regulations made under the Sanctions Act are the Sanctions (EU Exit) (Miscellaneous Amendments) Regulations 2019 (S.I. 2019/843), the Sanctions (EU Exit) (Miscellaneous Amendments) Regulations 2020 (S.I. 2020/591), the Sanctions (EU Exit) (Miscellaneous Amendments) (No. 2) Regulations 2020 (S.I. 2020/590), the Sanctions (EU Exit) (Miscellaneous Amendments) (No. 3) Regulations 2020 (S.I. 2020/950), and the Sanctions (EU Exit) (Miscellaneous Amendments) (No. 4) Regulations 2020 (S.I. 2020/951).
- 6.2 This instrument makes amendments to the following sanctions Regulations which were made under the Sanctions Act for the purposes of compliance with a UN obligation (as well as, in the case of the Mali Regulations, for discretionary purposes within s.1(2) of the Sanctions Act): the Mali (Sanctions) (EU Exit) Regulations 2020 (S.I./705) (“the Mali Regulations”) and the Afghanistan (Sanctions) (EU Exit) Regulations 2020 (S.I./948) (“the Afghanistan Regulations”).

7. Policy background

What is being done and why?

- 7.1 The purpose of this instrument is to correct specific errors that have been identified in the Mali and Afghanistan Regulations.
- 7.2 The sanctions Regulations 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.
- 7.3 This instrument makes amendments to correct specific errors in the following areas:
- A correction to the Mali Regulations to substitute in the designation criteria (regulation 6) for the reference to “military goods or military technology” (defined by reference to the Export Control Order 2008 (S.I. 2008/3231)) a reference to “arms or material related to arms”.
 - A correction to the Afghanistan Regulations to insert two sub-paragraphs inadvertently omitted from those Regulations.
- 7.4 This instrument is accompanied by a statutory report that is required to be published under section 46 of the Sanctions Act in relation to the Mali Regulations. 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.

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 this instrument amends sanctions Regulations that were made to replace, with substantially the same policy effects, exiting 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, Commonwealth and Development 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 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 (and UK domestic implementing legislation). They are intended to deliver substantially the same policy effects as the existing sanctions regimes. Therefore, we assess that there is no new substantial impact.

12.2 There is no, or 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 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 existing sanctions regimes. The Foreign, Commonwealth and Development 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 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 Diana Ward at the Foreign, Commonwealth and Development Office telephone: 020 7008 4684 or email: Sanctions.SIs@fcd.o.gov.uk can be contacted with any queries regarding the instrument.

15.2 Lisa Maguire, Deputy Director at the Foreign, Commonwealth and Development Office, can confirm that this Explanatory Memorandum meets the required standard.

15.3 Lord Ahmad of Wimbledon, Minister of State at the Foreign, Commonwealth and Development Office, can confirm that this Explanatory Memorandum meets the required standard.