

EXPLANATORY MEMORANDUM TO
THE SANCTIONS (EU EXIT) (MISCELLANEOUS AMENDMENTS)
REGULATIONS

2020 No. 591

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 This 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 Democratic People’s Republic of Korea (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/411), the Democratic Republic of the Congo (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/433), the South Sudan (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/438) the Iran (Sanctions) (Nuclear) (EU Exit) Regulations 2019 (S.I. 2019/461), the ISIL (Da’esh) and Al-Qaida (United Nations Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/466) and the Counter-Terrorism (International Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/573).
- 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sanctions Regulations, in particular the revocation of asset-freezing and export control legislation which has been superseded by those sanctions Regulations.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(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.

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 this 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 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 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, 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 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 most cases, for discretionary purposes within s.1(2) of the Sanctions Act): the Democratic People's Republic of Korea (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/411), the Democratic Republic of the Congo (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/433), the South Sudan (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/438) the Iran (Sanctions) (Nuclear) (EU Exit) Regulations 2019 (S.I. 2019/461), the ISIL (Da'esh) and Al-Qaida (United Nations Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/466) and the Counter-Terrorism (International Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/573).
- 6.3 A second instrument, which is subject to the made affirmative procedure, makes similar amendments to the sanctions Regulations which were made under the Sanctions Act solely for purposes other than compliance with a UN obligation.

7. Policy background

What is being done and why?

- 7.1 The purpose of this 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, 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 Democratic People’s Republic of Korea, Iran, ISIL (Da’esh) and Al-Qaida and Counter-Terrorism regimes);
- the description of the Secretary of State’s designation power (in the Democratic Republic of the Congo and South Sudan regimes);
- the description of an existing financial sanctions licence (in the Iran, Democratic Republic of the Congo, South Sudan and ISIL (Da’esh) and Al-Qaida 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 Democratic Republic of the Congo and South Sudan regimes).

7.4 This instrument makes a specific transitional amendment to the sanctions Regulations relating to Iran to reflect that licences might have been issued under the Export Control Order 2008 authorising activity which would otherwise be prohibited by the Regulations (an “existing trade licence”), and to provide that such licences should continue to have effect. It also provides that existing trade sanctions licences issued under the Iran (United Nations Sanctions) Order 2009 (S.I. 2009/886) should continue to have effect.

7.5 This 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 Democratic Republic of the Congo and South Sudan 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).

7.6 The trade sanctions in the Regulations relating to the Democratic People’s Republic of Korea and to Iran originally used the Harmonised Commodity Description and Coding System as the means to identify some restricted goods subject to the sanctions. In order to improve the specificity of tariff references and consistency across sanctions Regulations, this instrument amends these references to provide that those goods are identified by reference to the Tariff of the United Kingdom and its Goods Classification Table. It also amends references in certain definitions 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.

7.7 This instrument also revises the approach to describing chemicals by reference to a Chemical Abstracts Service Registry Number in Schedule 2 to the Regulations relating to the Democratic People’s Republic of Korea, in order to ensure clarity for

business operators and to align with the description of goods and technology relating to chemical and biological weapons used in the Syria sanctions regime.

- 7.8 This instrument also makes an amendment to clarify that the territorial scope of the prohibition on port entry in regulation 71 of the Regulations relating to the Democratic People's Republic of Korea is the United Kingdom, namely that a person must not provide certain ships with access to a port in the United Kingdom.
- 7.9 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, export control and other United Nations sanctions instruments that were themselves revoked by those Regulations; it also revokes the Iran (United Nations Sanctions) Order 2009 (S.I. 2009/886) and its amending instruments whose provisions are superseded by the Iran (Sanctions) (Nuclear) (EU Exit) Regulations 2019 (S.I. 2019/411).
 - regulation 9 amends the Schedule to the United Nations and European Union Financial Sanctions (Linking) Regulations 2017 (S.I. 2017/478) to remove the link between United Nations Security Council Resolution 2253 (2015) and Council Regulation (EC) No. 881/2002, the effect of which is achieved by way of Part 2 of the ISIL (Da'esh) and Al-Qaida (United Nations Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/466).
 - regulation 10 makes amendments consequential on the revocation of the ISIL (Da'esh) and Al-Qaida (Asset-Freezing) Regulations 2011 (S.I. 2011/2742, as renamed by S.I. 2016/937), by replacing references to those Regulations with references to the ISIL (Da'esh) and Al-Qaida (United Nations Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/466) and the Counter-Terrorism (International Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/573).
- 7.10 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.

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 (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 this instrument is intended to ensure existing sanctions remain in place following EU exit. 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 existing sanctions regimes. 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 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.