

EXPLANATORY MEMORANDUM TO
THE NICARAGUA (SANCTIONS) (EU EXIT) REGULATIONS

2020 No. 610

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 intended to ensure that the UK can operate an effective sanctions regime in relation to Nicaragua after the Transition Period ends on 31 December 2020. When this instrument comes into force it will replace, with a similar effect, the EU sanctions regime relating to Nicaragua that is currently in force under EU legislation and related UK Regulations. The purposes of the EU sanctions regime are to encourage the Government of Nicaragua to respect democratic principles and institutions, the separation of powers and the rule of law in Nicaragua; refrain from actions, policies and activities which repress civil society in Nicaragua; and comply with international human rights law and to respect human rights.

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 and Anti-Money Laundering Act 2018 (“**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 UK from the EU.
- 3.2 Section 56(5) of the Sanctions Act provides that the instrument must be approved by resolution of both Houses within 60 days of the instrument coming into force for it to continue to have effect.

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 The territorial application of this instrument includes Scotland and Northern Ireland.

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 where that conduct is wholly or partly outside the UK, and some parts of it also apply to conduct by any person in the territorial sea adjacent to the UK.

5. European Convention on Human Rights

5.1 The Minister of State at the Foreign and Commonwealth Office, Lord Ahmad, has made the following statement regarding human rights:

“In my view the provisions of the Nicaragua (Sanctions) (EU Exit) Regulations 2020 are compatible with the Convention rights.”

6. Legislative Context

6.1 When the UK was a member of the European Union, its implementation of UN and other multilateral sanctions relied largely on the European Communities Act 1972. Each sanctions regime generally consisted 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. During the Transition Period, EU sanctions continue to apply in the UK in accordance with the Withdrawal Agreement: section 1A of the European Union (Withdrawal) Act 2018 (c.16)^[1] saves the effect of the European Communities Act 1972 for the purposes of the Withdrawal Agreement. There are currently around 35 sanctions regimes that take effect in the UK. These include country-specific sanctions regimes, including in relation to Russia, DPRK and Iran, as well as regimes targeting Da'esh, Al Qaida and other terrorist groups.

6.2 The European Union (Withdrawal) Act 2018 provides for some EU sanctions law to form part of domestic law at the end of the Transition Period. 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 (e.g. 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 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.

6.4 The EU sanctions regime imposed in relation to Nicaragua, currently has effect in the UK through both EU instruments and related UK Regulations. Using the power contained in section 54(2)(a) of the Sanctions Act, the following will be revoked and replaced by this instrument: Council Regulation (EU) 2019/1716 of 14 October concerning restrictive measures in view of the situation in Nicaragua and the Nicaragua (Asset-Freezing) Regulations 2019 (S.I. 2019/1353).

^[1] As inserted by section 1 of the European Union (Withdrawal Agreement) Act 2020.

7. Policy background

What is being done and why?

- 7.1 Pursuing these purposes will help address the ongoing climate of repression, the shrinking space for freedom of expression, restrictions on the right to peaceful assembly, and reports of harassment and arbitrary detentions. Sanctions seek to both hold those who undermine democracy and the rule of law to account, and encourage the Nicaraguan Government to end the repression against its citizens. The Ortega regime has systematically repressed peaceful protests since the start of the crisis in April 2018. The security forces and pro-government armed groups continue to use disproportionate, and at times lethal, force to repress political opponents, demonstrators, journalists, civil society organisations and members of the Catholic Church. Political prisoners are being held, there are persistent rumours of further clandestine facilities, and mass graves have been reported. Police and paramilitaries deny access to areas where these are allegedly situated. A 7 June 2019 Amnesty law exonerates perpetrators of human rights violations at the height of the crisis, leaving victims with no recourse to justice. The position of Her Majesty's Government (HMG) is that only the full implementation of the lapsed March 2019 agreement between the Ortega administration and the opposition, a credible and inclusive dialogue, as well as political and electoral reforms according to international standards, can halt the ongoing crisis and lead to a peaceful and democratic resolution. Sanctions attempt to encourage the Nicaraguan authorities back to the negotiating table, and get them to work toward the re-establishment of democracy.
- 7.2 On 14 October 2019, the EU adopted a framework for targeted restrictive measures in view of the situation in Nicaragua. This framework provides for the possibility of imposing sanctions against persons and entities responsible for human rights violations and abuses, the repression of civil society and democratic opposition, or the undermining of democracy and the rule of law. On 4 May 2020, the EU announced its first listings; travel bans and asset freezes targeted at six individuals responsible for serious human rights violations in Nicaragua. This instrument is intended to deliver similar policy effects to that of the existing EU sanctions framework.
- 7.3 Bringing this sanctions regime into UK law using the powers in the Sanctions Act will enable the existing sanctions framework to continue to operate effectively after the UK leaves the EU, as well as enabling HMG to make designations or amend or lift the framework autonomously.
- 7.4 This instrument is accompanied by two statutory reports that are required to be published under the Sanctions Act.
- 7.5 Firstly, 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 set out in the Sanctions Act; why there are good reasons to pursue that purpose; and why the Minister considers that the imposition of sanctions is a reasonable course of action for that purpose.
- 7.6 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. Offences include, for example,

breaching or circumventing the substantive financial sanctions measures or providing false information for the purpose of obtaining a Treasury licence.

- 7.7 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 the Secretary of State may make a decision to designate a person as being subject to a travel ban or asset freeze (“designated persons”).
- 7.8 The names of designated persons are not included in the 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.
- 7.9 Part 3 of this instrument sets out financial sanctions measures that can be imposed in relation to designated persons, and the offences which can be committed if the measures are not adhered to. Financial sanctions include freezing a designated person’s funds and economic resources (non-monetary assets, such as property or vehicles) and ensuring that funds and economic resources are not made available to or for the benefit of a designated person, either directly or indirectly.
- 7.10 Part 4 of this instrument sets out the effect of immigration measures made under this instrument. A designation for the purpose of Regulation 17 (immigration) 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.
- 7.11 Part 5 of this 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 states that the Treasury may issue licences to permit activity prohibited by Part 3 (Finance) where it is appropriate for a purpose set out in Schedule 2 of the instrument. Guidance will provide further detail about licensing. In certain circumstances, the Secretary of State may direct, on an individual basis, that the travel ban does not apply, for example for the purposes of attending UN meetings.

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, with similar effect, the existing EU sanctions regime in relation to Nicaragua.

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 Sanctions Act.

- 10.2 There is neither a requirement in the Act for public consultation on instruments made under the Sanctions 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 this instrument. This guidance will be available on gov.uk before this instrument come into force.

12. Impact

- 12.1 As this instrument maintains the existing sanctions framework that is 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 this instrument, as the instrument is intended to ensure the existing sanctions framework remains in place following EU exit. This instrument is intended to deliver a similar policy effect as the existing EU sanctions framework. 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 This instrument applies to activities that are undertaken by small businesses.
- 13.2 This instrument is 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 this instrument as this could provide a route for the circumvention or evasion of sanctions.

14. Monitoring & review

- 14.1 The Sanctions Act requires regular reviews of this instrument. Under section 30 of the Act, the Secretary of State must consider whether or not this instrument is still appropriate for its 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 this instrument is appropriate.

15. Contact

- 15.1 Geoff Collier at the Foreign and Commonwealth Office telephone: 020 7008 8198 or email: Sanctions.SIs@fco.gov.uk can be contacted with any queries regarding this 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, Minister of State at the Foreign and Commonwealth Office, can confirm that this Explanatory Memorandum meets the required standard.