

EXPLANATORY MEMORANDUM TO
THE BURUNDI (SANCTIONS) REGULATIONS 2021
2021 No. 1404

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 establishes a UK autonomous sanctions regime in respect of Burundi comprising financial and immigration sanctions. The purposes of this sanctions regime are to encourage the Government of Burundi to respect democratic principles and institutions, the rule of law and good governance in Burundi; and to refrain from policies or activities which repress civil society in Burundi and to comply with international human rights law and promote respect for human rights.
- 2.2 This instrument replaces the existing sanctions regime established by the Burundi (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/1142) (“the 2019 Regulations”).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument, which is subject to the made affirmative procedure, is laid before Parliament under section 55(3) of the Sanctions and Anti-Money Laundering Act 2018 (“the Sanctions Act”) and comes into force on the 14th December, the day after it is laid. Bringing the instrument into force quickly guards against the risk that persons who may be designated under the regime (including in the period that the Regulations are debated in Parliament), or others who may potentially be affected by the sanctions, remove their assets from UK jurisdiction.

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 this instrument is the whole of the United Kingdom (‘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 for South Asia, the UN and the Commonwealth at the Foreign, Commonwealth and Development Office, Lord Ahmad of Wimbledon, has made the following statement regarding human rights:

“In my view the provisions of the Burundi (Sanctions) Regulations 2021 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 The Sanctions Act establishes a legal framework which enables Her Majesty’s Government (“HMG”) to impose sanctions in order to comply 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.
- 6.2 The current UK sanctions regime in respect of Burundi was established by the 2019 Regulations. This instrument revokes and replaces the 2019 Regulations.

7. Policy background

What is being done and why?

- 7.1 After reviewing the Burundi sanctions regime in the Annual Review, in accordance with our statutory obligations under section 30 of the Sanctions Act, Ministers decided that the 2019 Regulations were no longer appropriate for all the purposes set out in regulation 4(b). The purpose in regulation 4(b) of the 2019 Regulations encourages the Government of Burundi to ‘participate in negotiations with its political opponents in good faith to bring about a peaceful solution to the political situation in Burundi’. Following elections in Burundi in May 2020, there was a managed, broadly peaceful transfer of power to a new President, and although political tensions remain, there is no longer an immediate political crisis.
- 7.2 As such the Regulations were no longer appropriate for all of their purposes, and the Minister decided to revoke and replace the 2019 Regulations to reflect the removal of the purpose in regulation 4(b) and its corresponding designation criterion, regulation 6(2)(a)(ii). Apart from this, the Burundi (Sanctions) Regulations 2021 maintain the same effects as the 2019 Regulations. The purpose of the regime is to encourage the Government of Burundi to build on positive political developments and demonstrate its commitment to progress by ensuring its behaviour reflects: respect for democracy, rule of law and good governance; refrainment from suppression of civil society, and respect for human rights.
- 7.3 This instrument is accompanied by two statutory reports that are required to be published under the Sanctions Act.
- 7.4 First, 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 (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.

- 7.5 Secondly, and in accordance with section 18 of the Sanctions Act, a report has been produced that identifies the offences contained in this instrument and the prohibitions and requirements to which they relate; explains why there are good reasons for those prohibitions and requirements to be enforceable by criminal proceedings; and explains why there are good reasons for the prescribed penalties in relation to those offences. Offences include, for example, contravening the principal prohibitions in the Regulations (e.g. breaching an asset-freeze) or trying to circumvent those principal prohibitions.
- 7.6 The purposes of the Regulations are to encourage the Government of Burundi to respect democratic principles and institutions, the rule of law and good governance in Burundi; refrain from policies or activities which repress civil society in Burundi; comply with international human rights law and to respect human rights, including in particular, to respect—
- (i) the right to life of persons in Burundi;
 - (ii) the right of persons not to be subjected to torture or cruel, inhuman or degrading treatment or punishment in Burundi, including in the context of rape, other forms of sexual violence and gender-based violence;
 - (iii) the right to liberty and security of persons in Burundi, including freedom from arbitrary arrest, detention or enforced disappearance;
 - (iv) the rights of journalists, human rights defenders and other persons in Burundi to freedom of expression and peaceful assembly.
- 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”). 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.
- 7.8 Part 3 of the instrument sets out financial sanctions measures that can be imposed on designated persons. These financial sanctions consist of an asset freeze, ensuring a designated person’s funds and economic resources (non-monetary assets, such as property or vehicles) are not dealt with, and prohibitions ensuring that funds and economic resources are not made available (directly or indirectly) to or for the benefit of a designated person or entity.
- 7.9 Part 4 of the instrument sets out the effect of immigration measures made under this instrument. A designation made for the purposes of regulation 17 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.
- 7.10 Part 5 of the 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, 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 provides further detail

about licensing. 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 and Future Relationship

- 8.1 This instrument itself does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act. It revokes and replaces existing UK legislation under the Sanctions Act. The 2019 Regulations related to the withdrawal of the UK from the EU because they replaced, with substantially the same effect, the previous EU Burundi sanctions regime.

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 Sanctions Act 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 Sanctions Act, guidance will be published in relation to the prohibitions and requirements under this instrument. This guidance will be available on GOV.UK on the same day that the instrument is laid in Parliament.

12. Impact

- 12.1 An impact assessment has not been produced for these Regulations, as the only substantive changes from the previous regime are to remove a purpose and associated designation criterion, and therefore no, or no significant, impact is foreseen on the private, voluntary or public sectors in the United Kingdom.
- 12.2 An impact assessment was 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 Sanctions Act, and statutory instruments under it to transfer existing sanctions 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 This instrument is intended to continue the regulatory requirements under the existing UK sanctions regime. The Foreign, Commonwealth and Development 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 designated persons to circumvent or evade sanctions.

14. Monitoring & review

- 14.1 The Sanctions Act requires regular reviews of this instrument. Under section 30 of the Sanctions 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 The Sanctions Legislation and Policy Team at the Foreign, Commonwealth and Development Office, email: Sanctions.SIs@fcdo.gov.uk, can be contacted with any queries regarding the instrument.

- 15.2 Lisa Maguire, Deputy Director for Multilateral, Sanctions and Strategic Engagement 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 for South Asia, the UN and the Commonwealth can confirm that this Explanatory Memorandum meets the required standard.