

EXPLANATORY MEMORANDUM TO
THE LIBYA (SANCTIONS) (OVERSEAS TERRITORIES) ORDER 2021
2021 No. 37

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.

2. Purpose of the instrument

- 2.1 This instrument extends the Libya (Sanctions) (EU Exit) Regulations 2020 (S.I. 2020/1665) (“the 2020 Regulations”), as amended from time to time, to all British overseas territories (except Bermuda and Gibraltar which implement sanctions through their own domestic legislation) with the modifications required to enable implementation and enforcement of the sanctions regime by the authorities in those territories (“the modified Regulations”).
- 2.2 It also extends to those British overseas territories, with suitable modifications and for the purposes of the modified Regulations, sections 44, 52(3) and 53 of the Sanctions and Anti-Money Laundering Act 2018 (“the Sanctions Act”) which are required to ensure the effective implementation in those territories of the modified Regulations.
- 2.3 It also implements in those territories the travel ban imposed by paragraph 15 of United Nations Security Council Resolution (“UNSCR”) 1970 (2011) in relation to persons designated by the Sanctions Committee established in accordance with paragraph 24 of UNSCR 1970 (2011) (which is implemented in the United Kingdom by way of section 8B of the Immigration Act 1971).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

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 not subject to parliamentary 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.

4. Extent and Territorial Application

- 4.1 The extent of this instrument and the modified Regulations is: Anguilla, British Antarctic Territory, British Indian Ocean Territory, Cayman Islands, the Falkland Islands, Montserrat, Pitcairn (including Henderson, Ducie and Oeno Islands), St Helena, Ascension and Tristan da Cunha, South Georgia and the South Sandwich Islands, the Sovereign Base Areas of Akrotiri and Dhekelia, the Turks and Caicos Islands and the Virgin Islands (“the Territories”).
- 4.2 Subject to paragraph 4.3, the application of this instrument and the modified Regulations is the Territories.

- 4.3 The modified Regulations which are extended to the Territories by this instrument also apply to conduct by a Territory person where that conduct is wholly or partly outside the Territory. “Territory person” is defined in regulation 2 of the modified Regulations as meaning, in relation to the Territory, a person who is:
- (a) an individual ordinarily resident in the Territory who is—
 - (i) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen,
 - (ii) a person who under the British Nationality Act 1981 is a British subject, or
 - (iii) a British protected person within the meaning of that Act, or
 - (b) a body incorporated or constituted under the law of any part of the Territory.
- 4.4 The maritime enforcement powers contained in Part 11 of the modified Regulations may be exercised in international waters in respect of ships registered in the Territories, or ships which are not registered outside the Territories but are wholly owned by Territory persons.

5. European Convention on Human Rights

- 5.1 As this instrument is not subject to parliamentary procedure, no statement is required.

6. Legislative Context

- 6.1 This instrument is made in exercise of statutory powers under section 1 of the United Nations Act 1946 and section 63(3)(c) and (4) of the Sanctions Act.
- 6.2 This instrument also exercises statutory powers under section 1 of the United Nations Act 1946, section 112 of the Saint Helena Act 1833, the British Settlements Acts 1887 and 1945, and the legislative power of the royal prerogative, in order to revoke the Libya (Restrictive Measures) (Overseas Territories) Order 2011 (S.I. 2011/1080) (the “2011 Order”) and other related instruments listed in paragraph 6.6, which were made in exercise of those powers.
- 6.3 The 2020 Regulations were made on 29th December 2020 using the powers in Part 1 of the Sanctions Act and were laid before Parliament on 4th January 2021. They are intended to ensure that the United Kingdom can operate an effective sanctions regime in relation to Libya after the end of the Transition Period. The 2020 Regulations, which came fully into force at the end of the Transition Period, replace in the United Kingdom, with substantially the same effect, the EU sanctions regime relating to Libya that was previously in force in the United Kingdom under EU legislation and related United Kingdom regulations. The sanctions regime gives effect to most of the United Kingdom’s obligations under UNSCR 1970 (2011)¹, UNSCR 1973 (2011) and UNSCR 2146 (2014)² which comprise the UN sanctions regime in relation to Libya. The sanctions regime is also intended to ensure that the UK can operate an effective autonomous sanctions regime in relation to Libya for the purposes of promoting respect for human rights in Libya, promoting the peace, stability and security of Libya, promoting the successful completion of Libya’s political transition to a democratic, independent and united country, and preventing migrant smuggling and human trafficking taking place from Libya. The United Kingdom’s obligations under

¹ As renewed, updated and amended by UN Security Council resolutions 1973 (2011), 2009 (2011), 2174 (2014), 2213 (2015), 2362 (2017), and 2441 (2018).

² As renewed, updated and amended by UN Security Council resolutions 2223 (2015), 2278 (2016), 2362 (2017), 2441 (2018), and 2509 (2020).

UNSCR 1970 in respect of immigration sanctions (“the UN travel ban”) are implemented in the United Kingdom separately by way of section 8B of the Immigration Act 1971.

- 6.4 Section 63(3)(c) of the Sanctions Act provides that Her Majesty may by Order in Council provide for any provision of Part 1 of that Act, or any regulations under Part 1 of that Act, to extend with or without modifications to any of the British overseas territories. Section 63(4) provides that this includes the power to extend any regulations as amended from time to time. This instrument extends to the Territories with relevant modifications both the 2020 Regulations and the provisions of the Sanctions Act required for the effective implementation in the Territories of the 2020 Regulations, namely in relation to protection for acts done for purposes of compliance, Crown application and saving for prerogative powers.
- 6.5 Section 1 of the United Nations Act 1946 provides that Her Majesty may by Order in Council make such provision as appears to Her necessary or expedient for enabling the effective application of certain measures where, under Article 41 of the Charter of the United Nations, the Security Council has called upon Her Majesty’s Government in the United Kingdom to apply such measures to give effect to any decision of that Council. In accordance with subsection (2) of that section, such Orders in Council may extend to the British overseas territories. This instrument implements the UN travel ban in respect of Libya.
- 6.6 This instrument is made at the earliest opportunity following the coming into force of the 2020 Regulations. The 2011 Order, which currently implements the existing UN and EU sanctions regime in the Territories, is revoked by this instrument, as are the Libya (Restrictive Measures) (Overseas Territories) (Amendment) Order 2011 (S.I. 2011/2717); the Libya (Restrictive Measures) (Overseas Territories) (Amendment) Order 2012 (S.I. 2012/356); and the Libya (Restrictive Measures) (Overseas Territories) (Amendment) Order 2013 (S.I. 2013/3160).

7. Policy background

What is being done and why?

- 7.1 Her Majesty’s Government (HMG)’s policy on Libya includes the use of sanctions to encourage the pursuit of a political settlement in Libya which will result in a functional transparent government which represents and serves the whole of Libya and the entire population of Libya. Sanctions are a vital lever for HMG as part of a broader strategy to see a political settlement achieved in Libya and to hold accountable and constrain the actions of those seeking to undermine the Libyan Political Agreement and Government of National Accord, or those committing human rights violations and abuses.
- 7.2 The situation in Libya remains of serious concern to both the UK and the international community. Armed groups continue to control state institutions, act with impunity and commit serious human rights abuses. In September 2018, clashes in Tripoli between opposing factions and militias claimed the lives of at least 120 civilians, with many hundreds more injured. The weak law enforcement regime and security vacuum continues to enable systematic human rights violations in prisons and detention centres, and the trafficking of persons is prevalent, with substantial benefit to the armed groups. These acts, along with the continuing threats to Libyan state and financial institutions, fuel instability and undermine the formal economy, and further

threaten long-term peace and stability in Libya. Sanctions measures send a clear message that violence and human rights violations and abuses will not be tolerated.

- 7.3 In response to the violation of human rights in Libya by the Qadhafi regime, the UN Security Council imposed sanctions on the country in February 2011. The sanctions include an arms embargo, travel ban and asset freeze on the family of Muammar Al-Qadhafi and certain government officials. The sanctions are imposed via UNSCR 1970 (2011) which established the framework for targeted UN sanctions in Libya, and were supplemented by further resolutions.
- 7.4 The EU implements UN sanctions through EU Council Decisions and Regulations. The EU also introduced autonomous sanctions in 2011, imposing travel bans and asset freezes on additional persons. The current EU regime is contained in EU Council Decision (CFSP) 2015/1333 of 31 July 2015 and EU Council Regulation 2016/44 of 18 January 2016. Both UN and EU sanctions in relation to Libya have developed as the political situation in Libya has changed. For example, the UN has imposed sanctions related to the illicit export of oil, and the EU has imposed further trade restrictions related to goods that could be used in human trafficking and migrant smuggling. The 2020 Regulations are intended to deliver in the United Kingdom substantially the same policy effects as those sanctions previously in force in the United Kingdom through EU legislation.
- 7.5 It is the policy of Her Majesty's Government to give effect in the Territories to United Kingdom autonomous sanctions measures, in order to make sanctions as effective as possible.
- 7.6 Therefore, this instrument extends the 2020 Regulations, and relevant provisions of the Sanctions Act, to the Territories, as well as implementing the UN travel ban, so that the sanctions measures in the Territories in relation to Libya, together with associated criminal offences and enforcement powers, align with the sanctions regime in the United Kingdom. Schedule 2 to this instrument sets out the modifications to be made to the 2020 Regulations as extended by article 2 so that they can be effectively implemented and enforced in the Territories.
- 7.7 In particular, the modified Regulations ensure that the financial sanctions measures in the 2020 Regulations apply with the same effect in the Territories in respect of persons designated by the Secretary of State under the 2020 Regulations, as well as to persons designated by the UN Security Council or its Committee for the purposes of paragraph 17 of UNSCR 1970 (2011) and paragraph 19 of UNSCR 1973 (2011). The names of designated persons are not included in this instrument or the modified Regulations. Instead, the Governor of the Territory is required to publish, and keep up to date, a list of designated persons under this sanctions regime.
- 7.8 The modifications set out in Schedule 2 to this instrument ensure that persons designated for the purposes of immigration sanctions by the Secretary of State under the 2020 Regulations (i.e. who are to be excluded from the United Kingdom) are also to be excluded from the Territories. This instrument also makes separate provision for persons designated by the UN Security Council or its Committee for the purposes of paragraph 15 of UNSCR 1970 to be excluded from the Territories.
- 7.9 The provisions in the 2020 Regulations in relation to licences which may be issued in respect of financial, transport and trade sanctions measures are modified by Schedule 2 of this instrument so that the licensing powers in the Territories are exercisable by the Governor of a Territory only with the consent of the Secretary of State. The

provisions enabling directions to be given by the Secretary of State in relation to the immigration provisions in the 2020 Regulations are also modified so that the Governor of the Territory may, with the consent of the Secretary of State, direct that the immigration provisions in the modified Regulations do not apply to specified persons. The modified Regulations also provide that a person's conduct outside the Territory will not contravene a relevant prohibition or requirement under the modified Regulations if the conduct has been authorised by a licence or direction issued by the Secretary of State or Treasury under the 2020 Regulations; similarly, a person's conduct in another British overseas territory or a Crown Dependency will not contravene a relevant prohibition or requirement under the modified Regulations if the conduct has been authorised by a licence, direction or similar authorisation issued under the law of that British overseas territory or Crown Dependency.

- 7.10 The modifications set out in Schedule 2 in relation to criminal penalties and enforcement powers are intended to ensure that the implementation and enforcement of the Libya sanctions regime in the Territories is aligned, as far as possible and reflecting the unique legal and governance arrangements in each Territory, with its implementation and enforcement in the United Kingdom.

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 relates to the withdrawal of the United Kingdom from the European Union. This is because it extends the 2020 Regulations to the Territories and the 2020 Regulations replace in the United Kingdom, with substantially the same effect, the previous EU sanctions regime in relation to Libya. The 2011 Order, and other instruments amending that Order, which currently implement the EU sanctions regime in the Territories are revoked by this instrument.

9. Consolidation

- 9.1 This instrument does not consolidate previous instruments.

10. Consultation outcome

- 10.1 Officials at the Foreign, Commonwealth and Development Office have engaged with the Territories on the approach to the extension to the Territories of sanctions regimes established under the Sanctions Act, including consultation on the approach to modifications and on the 'model' drafting to be included in the Orders in Council.

11. Guidance

- 11.1 The Foreign, Commonwealth and Development Office is working with the Territories to ensure that adequate information and guidance is published to ensure the effective implementation and understanding of the sanctions regime in the Territories.

12. Impact

- 12.1 The territorial extent of this instrument and the modified Regulations is the Territories: no, or no significant, impact is foreseen on business, charities or voluntary bodies in the United Kingdom.
- 12.2 There is no, or no significant, impact on the public sector in the United Kingdom.

12.3 An Impact Assessment has not been prepared for this instrument.

13. Regulating small business

13.1 The territorial extent of this instrument and the modified Regulations is the Territories: the legislation does not apply to activities that are undertaken by small businesses in the United Kingdom.

14. Monitoring & review

14.1 The Sanctions Act requires regular reviews of regulations made under section 1 of that Act. These obligations apply to the 2020 Regulations which are extended to the Territories by this instrument.

14.2 The UN sanctions are monitored and reviewed by the UN Security Council and by its Sanctions Committee. If the UN sanctions are suspended or lifted by the Security Council, this instrument will be reviewed and updated or revoked as necessary.

15. Contact

15.1 Stuart Connick at the Foreign, Commonwealth and Development Office, email: Sanctions.SIs@fcdo.gov.uk, can be contacted with any queries regarding this instrument.

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