

EXPLANATORY MEMORANDUM TO
THE HAITI (SANCTIONS) REGULATIONS 2022

2022 No. 1281

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 His 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 give effect to the UK's obligations under United Nations Security Council Resolution 2653 (2022)¹ ("resolution 2653"). Resolution 2653 provides for a sanctions regime for Haiti, ("the UN Haiti sanctions regime") which was adopted on 21 October 2022.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the whole of the United Kingdom ('UK').
- 4.2 The territorial application of this instrument is the whole of the UK. 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. In addition, the maritime enforcement powers contained in Part 8 of this instrument apply in relation to British ships in international or foreign waters, ships without nationality in international waters and foreign ships in international waters.

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 section 1 of the Sanctions Act. Section 1 enables sanctions regulations to be made for the purposes of compliance with United Nations obligations and other international obligations, as well as for other purposes, including that it is in the interests of international peace and security and furthers a foreign policy objective of the government of the UK.

¹ <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/646/04/PDF/N2264604.pdf?OpenElement>

6.2 This instrument is made to ensure that the UK can fulfil its obligations to implement the UN Haiti sanctions regime, which is designed to target criminal actors, gangs, and their financiers whose actions are causing instability and exacerbating the suffering of the Haitian people. Under the UN Haiti sanctions regime, an asset freeze, a travel ban and restriction on the transfer of arms, must be imposed on those designated by the Committee established by resolution 2653 (“the 2653 Sanctions Committee”). When this instrument comes into force, it will give effect to the UK’s UN obligations in respect of the asset freeze and arms embargo in domestic law. The travel ban in respect of persons designated is implemented through section 8B of the Immigration Act 1971, and not this instrument.

7. Policy background

What is being done and why?

- 7.1 The UK is a supporter of sanctions in relation to Haiti at the UN Security Council. This sanctions regime has been set up to tackle the issues threatening the peace, stability and security of Haiti. There have been protracted and deteriorating political, institutional, economic, security, human rights, humanitarian and food security crises in Haiti. Violence and insecurity, including extremely high levels of gang violence and other criminal activities, including kidnappings, trafficking in persons and the smuggling of migrants, and homicides, and sexual and gender-based violence including rape and sexual slavery exacerbate the vulnerabilities of the Haitian population. The UN Haiti sanctions regime forms a part of the UN’s response to the ongoing political and security challenges in Haiti.
- 7.2 The UK’s obligations under the UN Haiti sanctions regime in respect of the asset freeze and arms embargo will be implemented in UK law by this instrument. Bringing this sanctions regime into UK law using the powers in the Sanctions Act will allow the sanctions measures to operate effectively in the UK.
- 7.3 Part 2 of this instrument provides that anyone designated by the UN Security Council or the 2653 Sanctions Committee is a designated person for the purposes of Part 3 (Finance) (including individuals, entities and organisations), and anyone designated by the 2653 Sanctions Committee is a designated person for the purposes of Part 4 (Trade). The names of designated persons are not included in this instrument. Persons designated by the UN are listed on the United Nations Security Council Consolidated List and designations will be publicised on ²~~2022~~. A person may be designated by the UN if responsible for or involved in actions that threaten the peace, security or stability of Haiti. The full designation criteria are set out in paragraph 16 of resolution 2653.
- 7.4 Part 3 of this instrument sets out financial sanctions measures that can be imposed on designated persons. Financial sanctions include 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 ensuring that funds and economic resources are not made available to or for the benefit of a designated person, either directly or indirectly.
- 7.5 Part 4 of this instrument sets out trade sanctions. These sanctions include restrictions on the trade in military goods and military technology, i.e. the goods and technology for the time being specified in Schedule 2 to the Export Control Order 2008, where

² <https://www.un.org/securitycouncil/content/un-sc-consolidated-list>

the trade is with, or benefits, a designated person. They also include restrictions on the provision of technical assistance, financial services and funds, and brokering services relating to military goods and military technology to, or for the benefit of, a designated person. There are also restrictions on the provision to, or for the benefit of, a designated person, of technical assistance, armed personnel, financial services or funds, and brokering services which enable or facilitate the conduct of armed hostilities. Part 4 also makes provision for offences

- 7.6 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, in relation to Treasury licences, a designated person can apply for a licence allowing funds to be released or made available in order to pay for basic needs, such as food. It states that the Treasury may issue licences to permit activity prohibited by Part 3 (Finance) where it is appropriate for one or more of the purposes set out in Schedule 2 of this instrument.
- 7.7 Part 8 of this instrument confers powers on maritime enforcement officers. These powers are analogous to maritime enforcement powers contained in existing legislation, such as Chapter 5 of the Policing and Crime Act 2017. The key distinction is that those powers are contingent on there being reasonable grounds to suspect that a criminal offence has been committed, whereas the purpose of these powers is to identify, seize and dispose of goods which are being dealt with in contravention, or deemed contravention, of certain trade sanctions.
- 7.8 This instrument also sets out offences which can be committed if prohibitions or requirements in the instrument are not complied with.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union ('EU') / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 This instrument does not consolidate previous instruments.

10. Consultation outcome

- 10.1 No consultation has been carried out on this instrument. 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. His Majesty's Government 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 on gov.uk in relation to the prohibitions and requirements under this instrument.

12. Impact

- 12.1 The Foreign, Commonwealth & Development Office has undertaken a De Minimis impact assessment to estimate costs to UK businesses and wider impacts resulting from these Regulations. We have estimated the costs to be beneath the threshold of £5m per annum for a full impact assessment, with costs resulting primarily from low transition and compliance costs and a potential small reduction in UK GDP due to lower levels of inward FDI, migration and exports to Haiti. The impact to UK business from the new sanctions regime is expected to be negligible.
- 12.2 UK businesses must comply with sanctions against the individuals and entities appearing on a regularly-updated gov.uk list³. The process for notifying businesses about sanctions remains unchanged, so we do not expect significant changes to IT systems or administrative changes.
- 12.3 An impact assessment⁴ was produced for the primary legislation. The 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 This instrument applies to activities that are undertaken by small businesses.
- 13.2 No specific action is proposed to mitigate regulatory burdens on small businesses.
- 13.3 It is estimated that the impact on small business in the UK will be negligible, given the assessment that the total costs to all UK business will be negligible. The FCDO does not believe it is possible to exempt smaller businesses from the requirements to comply with the measures introduced by this instrument, as this could provide a route for the circumvention or evasion of sanctions.

14. Monitoring & review

- 14.1 If the UK determined that it was no longer appropriate to maintain this sanctions regime or specific sanctions measures, that regime would be removed or amended accordingly. As such, the Minister does not consider that a review clause in this instrument is appropriate.

15. Contact

- 15.1 The Sanctions Directorate at the Foreign, Commonwealth and Development Office, email: SanctionsSIs@fcdo.gov.uk can be contacted with any queries regarding the instrument.

³ <https://www.gov.uk/government/publications/the-uk-sanctions-list>

⁴ <https://publications.parliament.uk/pa/bills/lbill/2017-2019/0069/sanctions-and-anti-money-laundering-IA.pdf>

- 15.2 Nicholas Waddell, Deputy Director, Sanctions Directorate at the Foreign, Commonwealth and Development Office can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Minister Rutley, Parliamentary Under Secretary of State at the Foreign, Commonwealth and Development Office can confirm that this Explanatory Memorandum meets the required standard.