

EXPLANATORY MEMORANDUM TO
THE SANCTIONS (EU EXIT) (MISCELLANEOUS AMENDMENTS)
REGULATIONS 2022

2022 No. 819

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 is made under the Sanctions and Anti-Money Laundering Act 2018 ('the Sanctions Act') to make amendments and corrections to:
- (a) the Democratic People's Republic of Korea (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/411);
 - (b) the Democratic Republic of the Congo (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/433);
 - (c) the South Sudan (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/438);
 - (d) the Iran (Sanctions) (Nuclear) (EU Exit) Regulations 2019 (S.I. 2019/461);
 - (e) the ISIL (Da'esh) and Al-Qaida (United Nations Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/466);
 - (f) the Counter-Terrorism (International Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/573);
 - (g) the Counter-Terrorism (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/577);
 - (h) the Central African Republic (Sanctions) (EU Exit) Regulations (S.I. 2020/616);
 - (i) the Lebanon (Sanctions) (Assassination of Rafiq Hariri and others) (EU Exit) Regulations 2020 (S.I. 2020/617);
 - (j) the Somalia (Sanctions) (EU Exit) Regulations 2020 (S.I. 2020/642), the Iraq (Sanctions) (EU Exit) Regulations 2020 (S.I. 2020/707);
 - (k) the Mali (Sanctions) (EU Exit) Regulations 2020 (S.I. 2020/705);
 - (l) the Sudan (Sanctions) (EU Exit) Regulations 2020 (S.I. 2020/753);
 - (m) the Afghanistan (Sanctions) (EU Exit) Regulations 2020 (S.I. 2020/948);
 - (n) the Yemen (Sanctions) (EU Exit) (No.2) Regulations 2020 (S.I. 2020/1278); and
 - (o) the Libya (Sanctions) (EU Exit) Regulations 2020 (S.I. 2020/1665),
- (together "**the Amended 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 negative procedure, is laid before Parliament on 19 July 2022 under section 55(3) of the Sanctions Act and comes into force on 9 August 2022, except as specified in paragraph 3.2 below.
- 3.2 The following provisions come into force on 30 August 2022 in order to give new “relevant firms” time to understand the changes to the legislation and adapt their systems and practices to implement the new requirements:
- (a) regulation 2(2);
 - (b) regulation 3(2);
 - (c) regulation 4(2);
 - (d) regulation 5(2);
 - (e) regulation 6(3);
 - (f) regulation 7(4);
 - (g) regulation 8(2);
 - (h) regulation 9(2);
 - (i) regulation 10(3);
 - (j) regulation 11(3);
 - (k) regulation 12(3);
 - (l) regulation 13(2);
 - (m) regulation 14(2);
 - (n) regulation 15(3);
 - (o) regulation 16(2); and
 - (p) regulation 17(4).

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the same as the territorial extent of the Amended Regulations, that is, the whole of the United Kingdom (“UK”).
- 4.2 Subject to paragraph 4.3, the territorial application of this instrument is also the same as the territorial application of the Amended Regulations, that is, it applies to the whole of 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. “UK person” is defined in section 21(2) of the Sanctions Act.

5. European Convention on Human Rights

- 5.1 The Parliamentary Under-Secretary of State at the Foreign, Commonwealth and Development Office, Rehman Chishti MP, has made the following statement regarding human rights:
- “In my view, the provisions of the Sanctions (EU Exit) (Miscellaneous Amendments) Regulations 2022 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 The Sanctions Act establishes a legal framework which enables Her Majesty's Government to impose sanctions for a number of purposes, which include the interests of international peace and security and the furtherance of a foreign policy objective of the government of the UK.
- 6.2 This instrument makes amendments to the Amended Regulations, which were made under the Sanctions Act for discretionary purposes within section 1(2) of the Sanctions Act.

7. Policy background

What is being done and why?

- 7.1 This instrument amends a number of financial sanctions provisions in the Amended Regulations.
- 7.2 This instrument inserts a new information-sharing power in each of the Amended Regulations to authorise Government departments, agencies and relevant bodies to share information to enable or assist the Treasury to discharge its functions in connection with financial sanctions. These functions include issuing licences and investigating breaches of financial sanctions. The sharing of such information aids effective implementation and enforcement of UK financial sanctions.
- 7.3 This instrument widens the definition of a "relevant firm" to include "cryptoasset exchange providers" and "custodian wallet providers" in each of the Amended Regulations. These terms are defined in the instrument. Under the Amended Regulations, a "relevant firm" is required to report as soon as practicable to the Treasury: (i) if it knows or has reasonable cause to suspect that a person is a designated person or has committed an offence under those regulations (and the information on which this is based came to it in the course of carrying on its business), and (ii) if the designated person is a customer of the relevant firm, the nature and amount or quantity of any frozen assets it holds for the customer at the time it first had the knowledge or suspicion.
- 7.4 Cryptoasset exchange providers and custodian wallet providers have been brought within the scope of these reporting obligations to further support the UK's implementation of Recommendation 15 of the Financial Action Task Force (FATF) standards, FATF being the international standard setting body for anti-money laundering, counter-terrorist financing and counter proliferation financing. In particular, this is achieved by extending these reporting requirements to those included within the FATF definition of "virtual asset service provider". Through these changes, the instrument seeks to address the risk of cryptocurrency being used to breach or circumvent financial sanctions. The instrument uses existing definitions of "cryptoasset exchange providers" and "custodian wallet providers" from paragraph 1(12) of Schedule 9 to the Proceeds of Crime Act 2002. These definitions are intended to cover firms that either record holdings of or enable the transfers of cryptocurrencies, and are therefore most likely to hold information relevant to the Treasury's financial sanctions functions.
- 7.5 Regulations 6(2), 10(2), 12(2) and 15(2) make amendments to:
 - (a) the ISIL (Da'esh) and Al-Qaida (United Nations Sanctions) (EU Exit) Regulations 2019;

- (b) the Lebanon (Sanctions) (Assassination of Rafiq Hariri and others) (EU Exit) Regulations 2020;
- (c) the Iraq (Sanctions) (EU Exit) Regulations 2020; and
- (d) the Afghanistan (Sanctions)(EU Exit) Regulations 2020, respectively,

to clarify that the definition of ‘designated person’ in the Treasury licences provision in regulations 29, 16, 35 and 28, respectively, has the same meaning as in Part 3 (Finance) of the relevant Regulations. The purpose of this amendment is to assist interpretation of the provisions relating to licensing.

- 7.6 Regulation 7(2) makes a correction in the Counter-Terrorism (International Sanctions) (EU Exit) Regulations 2019 to a cross-reference in respect of reporting obligations which would arise in the event of a transfer of funds to a ring-fenced account. Regulation 7(3) corrects a grammatical error in the Counter-Terrorism (International Sanctions) (EU Exit) Regulations 2019.
- 7.7 Regulation 11(2) makes an amendment to the Somalia (Sanctions) (EU Exit) Regulations 2020 to reflect the change in name of the African Union’s mission in Somalia from AMISOM to ATMIS as per UN Security Council Resolution 2628.
- 7.8 Regulation 17(2) makes an amendment to regulation 43 of the Libya (Sanctions) (EU Exit) Regulations 2020 (the “Libya Regulations”). The Libya Regulations impose financial, trade, immigration and aviation sanctions for the purpose of complying with the UK’s obligations pursuant to United Nations Security Council resolution (UNSCR) 1970 (2011) as well as subsequent UNSCRs. As well as a full asset freeze (set out in Chapter 1 of Part 3), the Libya Regulations impose other prohibitions and requirements including a partial asset freeze (set out in Chapter 2 of Part 3, and currently only applying to the Libya Investment Authority and Libyan Africa Investment Portfolio). Unlike the full asset freeze, the prohibition against dealing with funds owned, held or controlled by a person subject to the partial asset freeze only applies to certain categories of funds and economic resources, being: (i) funds and economic resources located outside Libya before 17 September 2011; (ii) funds credited on or after 17 September 2011 to a relevant account¹ in discharge (or partial discharge) of an obligation which arose before the date on which the person became a designated person; and (iii) any interest or other earnings on the above funds credited on or after 17 September 2011 to a relevant account. Furthermore, while there is a prohibition against making “relevant funds”² available to or for the benefit of a person subject to the partial asset freeze, there is no prohibition against making available to or for their benefit economic resources or funds which are not “relevant funds”.
- 7.9 Regulation 43(3) of the Libya Regulations provides for an exception to the full asset freeze and the partial asset freeze to allow financial institutions to credit frozen

¹ “Relevant account” is defined in regulation 18(8) of the Libya Regulations as an account with a relevant institution which is held or controlled (directly or indirectly) by a designated person.

² “Relevant funds” are defined in regulation 19(4) of the Libya Regulations as:

- a) interest or other earnings due on funds held in a relevant account (within the meaning of regulation 18) which are frozen by virtue of regulation 18(1), and
- b) funds due to a designated person by virtue of an obligation which arose prior to the date on which the person became a designated person.

accounts and “relevant accounts” with interest or other earnings due on the accounts. At present, regulation 43(3) states that the exception is only applicable, in relation to the partial asset freeze, to the prohibition in regulation 18 (i.e. the prohibition against dealing with certain funds or economic resources of persons subject to the partial asset freeze). This instrument makes an amendment to make clear that the exception in regulation 43(3) is also applicable, in relation to the partial asset freeze, to the prohibitions in regulations 19 and 20 (i.e. the prohibition on making funds available to or for the benefit of persons subject to the partial asset freeze). This amendment brings the exception in regulation 43(3) as regards the partial asset freeze in line with the exception for the full asset freeze.

- 7.10 The Treasury has the power under regulation 48 to issue licences that authorise acts otherwise prohibited by the financial sanctions measures set out in the Libya Regulations. The purposes for which the Treasury may grant such licences are set out in Schedule 4 of the Libya Regulations. Regulation 17(3) of this instrument makes a correction to the Libya Regulations to specify that the licence purposes available in respect of those designated under the partial asset freeze also include the purpose of satisfying prior obligations as set out in Part 2 of Schedule 4. This aligns the available licensing derogations with the UN position.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union or trigger the statement requirements under the European Union (Withdrawal) Act. The Amended Regulations related to the withdrawal of the UK from the EU because they replaced, with substantially the same effect, previous EU sanctions regimes.

9. Consolidation

- 9.1 This instrument does not consolidate previous instruments. The Foreign, Commonwealth and Development 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 Amended Regulations explain the [consultation](#) that has been carried out in relation to the Sanctions Act.
- 10.2 There is neither a requirement in the Sanctions 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. Her 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 has been published in relation to the prohibitions and requirements under the Amended Regulations. This guidance will be updated to reflect the amendments to those Regulations made by this instrument.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

13. Regulating small business

- 13.1 The legislation 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 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 the circumvention or evasion of sanctions.

14. Monitoring & review

- 14.1 If determined that it was no longer appropriate to maintain a sanctions regime or specific sanctions measures, that regime would be removed or amended accordingly. In the case of the Amended Regulations, that would include the measures introduced by this instrument. 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, 0207 008 8553 or email: Sanctions.SIs@fcdo.gov.uk, can be contacted with any queries regarding the instrument.
- 15.2 Abigail Culank, Deputy Director Sanctions Directorate at the Foreign, Commonwealth and Development Office, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Rehman Chishti, Parliamentary Under-Secretary of State at the Foreign, Commonwealth and Development Office, can confirm that this Explanatory Memorandum meets the required standard.