

EXPLANATORY MEMORANDUM TO

THE SANCTIONS (EU EXIT) (MISCELLANEOUS AMENDMENTS) REGULATIONS 2024

2024 No. 644

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. Declaration

- 2.1 The Rt Andrew Mitchell MP, Minister of State at the Foreign, Commonwealth and Development Office, can confirm that this Explanatory Memorandum meets the required standard.
- 2.2 Abigail Culank, Deputy Director Sanctions Directorate at the Foreign, Commonwealth and Development Office, can confirm that this Explanatory Memorandum meets the required standard.

3. Contact

- 3.1 The Sanctions Directorate at the Foreign, Commonwealth and Development Office, 0207 008 8553 or email: fcdo.correspondence@gov.uk, can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

- 4.1 The instrument makes amendments to sanctions regimes currently in effect in UK law. It introduces a new power to designate persons for the purpose of disqualifying those persons from being a director of a company or directly or indirectly taking part in or being concerned in the promotion, formation or management of a company. This instrument makes amendments to the enforcement of existing trade sanctions regimes and clarifies necessary enforcement powers for non-customs provisions related to technical assistance, financial and brokering sanctions offences agreed in alignment with other government departments. It also introduces immigration sanction powers to impose travel bans under the domestic counter-terrorism regime.
- 4.2 This instrument is made under the Sanctions and Anti-Money Laundering 2018 (“the Sanctions Act”) to make amendments 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 Somalia (Sanctions) (EU Exit) Regulations 2020 (S.I. 2020/642),
- j) the Mali (Sanctions) (EU Exit) Regulations 2020 (S.I. 2020/705),
- k) the Iraq (Sanctions) (EU Exit) Regulations 2020 (S.I. 2020/707),
- l) the Sudan (Sanctions) (EU Exit) Regulations 2020 (S.I. 2020/753),
- m) the Syria (United Nations Sanctions) (Cultural Property) (EU Exit) Regulations 2020 (S.I. 2020/1233),
- 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**”).

Where does the legislation extend to, and apply?

- 4.3 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”).
- 4.4 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.
- 4.5 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. Policy Context

What is being done and why?

- 5.1 This instrument amends several sanctions provisions in the Amended Regulations.
- 5.2 This instrument will introduce a new power to designate an individual or an entity, which, once exercised, will make it unlawful for the designated person to act as a director of a UK company. A designated person subject to this new measure will commit an offence if they act as a director of a company or directly or indirectly take part in the management, formation or promotion of a UK company, further preventing those sanctioned from accessing or deriving benefit from the UK economy.
- 5.3 The Department for Business and Trade (DBT) will be able to issue a licence to persons to allow them to undertake activity that is otherwise prohibited. An offence will be committed if the person subject to this new measure provides false or misleading information to obtain a licence or fails to comply with the conditions stated in the licence.

- 5.4 The Company Directors Disqualification Act 1986 for England, Wales and Scotland along with the Company Directors Disqualification (Northern Ireland) Order 2002 (as amended by the Economic Crime and Corporate Transparency Act 2023), provides for the publication of designations and licences in relation to this sanction on the Director Disqualification Register and Northern Ireland equivalent, which will be maintained by Companies House and Northern Ireland Department for the Economy respectively. Designations will also be published on the UK Sanctions List maintained by FCDO¹.
- 5.5 This instrument also clarifies the responsibilities of HM Revenue & Customs (HMRC) for the enforcement of trade sanctions. Under these measures, HMRC has full enforcement responsibility for trade sanctions offences within its customs remit. Specific offences outside HMRC's customs remit require a referral to HMRC from DBT or another named organisation for criminal enforcement consideration or a decision by HMRC to treat the matter as though it had been referred. Through these amendments, additional offences that are outside HMRC's customs remit will be specified within sanctions regulations as requiring a referral for criminal enforcement consideration.
- 5.6 Regulation 8 of the instrument inserts immigration measures into the Counter-Terrorism (Sanctions) (EU Exit) Regulations 2019 ("domestic CT regime"). A designation, by His Majesty's Treasury (HMT), under regulation 5 of the domestic CT regime (as amended by this instrument) for the purposes of regulation 16B (as inserted by this instrument) means that section 8B of the Immigration Act 1971 then applies to that 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. The Secretary of State for the Home Department may direct, on an individual basis, that the travel ban does not apply, for example for the purposes of attending UN meetings.
- 5.7 The travel ban provides an additional tool for the prevention of terrorism in the UK. Allowing HMT to impose immigration sanctions, under the domestic CT regime, on non-UK nationals reduces risk of exploitation of the UK financial markets and increases the utility of the regime.
- 5.8 The amendment will bring the domestic CT regime in line with UK autonomous sanctions regimes which already provide for travel bans, establishing a more consistent approach across regimes.

What was the previous policy, how is this different?

- 5.9 Persons designated under the Sanctions Act, and subject to an asset freeze, have not been prevented from acting as a UK company director as a result of their designation. This is because acting as a director of a UK company does not necessarily require the provision of funds or economic resources by UK persons. This instrument closes that loophole whereby designated persons subject to an asset freeze are still able to act as directors of UK companies and further prevents those sanctioned from accessing or deriving benefit from the UK economy.
- 5.10 HMRC was previously responsible for enforcing all trade sanctions offences. Following the unprecedented level of sanctions introduced against Russia in response to their illegal invasion of Ukraine, the government has made changes to departmental responsibilities for implementing and enforcing sanctions.
- 5.11 HMRC's customs remit includes both civil and criminal enforcement responsibilities for trade sanctions offences. For offences that fall outside of HMRC's customs remit,

¹ <https://www.gov.uk/government/publications/the-uk-sanctions-list>

the Office of Trade Sanctions Implementation (OTSI) will oversee the enforcement of trade sanctions violations underpinned by civil law. This change has already been reflected in the Russia (Sanctions) (EU Exit) Regulations 2019 and the Republic of Belarus (Sanctions) (EU Exit) Regulations 2019. This instrument makes the change for all other UK autonomous sanctions regimes, ensuring a consistent approach to the enforcement of trade sanctions.

- 5.12 The domestic CT regime was the only autonomous regime that did not contain travel ban provisions. Therefore, persons designated under the domestic CT regime could only be subject to a travel ban under certain Royal Prerogative powers held by the Secretary of State for the Home Department, which are entirely separate from sanctions legislation. Inclusion of a travel ban under the domestic CT regime will allow for a more streamlined process to be applied where HMT is considering designations under the regime. Where appropriate, an asset freeze and a travel ban could then be applied by HMT at the same time. If the number of persons designated under the domestic CT regime increases, it is important for the efficiency of HMT for there to be the option to directly impose a travel ban at the same time as imposing an asset freeze.

6. Legislative and Legal Context

How has the law changed?

- 6.1 This instrument applies to regulations made under powers in the Sanctions Act. The Sanctions Act establishes a legal framework which enables His Majesty's Government to impose sanctions for a number of 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.
- 6.2 This instrument exercises a power in section 3A of the Sanctions Act, inserted by the Economic Crime and Corporate Transparency Act 2023, to enable the Secretary of State to impose director disqualification sanctions. It does so by adding this purpose into the Amended Regulations. The instrument also amends the relevant regulations to make provision for licensing.
- 6.3 Recent amendments to Regulation 85 of the Russia (Sanctions) (EU Exit) Regulations 2019 and Regulation 53 of the Republic of Belarus (Sanctions) (EU Exit) Regulations 2019 introduced new paragraphs 3A to 3C to limit the Commissioner's ability to investigate certain 'non-customs' offences unless they were referred by a relevant Department or agency. This instrument will amend all relevant UK autonomous sanctions regimes to implement equivalent provisions and ensure consistency across the enforcement of all sanctions regimes.
- 6.4 In respect of the immigration sanctions provisions under the domestic CT regime, the legislative power to make immigration sanctions is found in sections 1 and 4 of the Sanctions Act, as read with section 8B of the Immigration Act 1971. This instrument provides HMT with authority to impose immigration sanctions under the domestic CT regime. It does not alter the Secretary of State for the Home Department's Royal Prerogative powers to exclude persons. As is the case for travel bans under other UK sanctions regimes, the Home Office will also be responsible for the implementation of the domestic CT regime travel ban.
- 6.5 Immigration sanctions are included in all UK autonomous regimes (mixed autonomous and UN regimes) including the international CT regime, which shares the

most similarities with the domestic CT regime. The change in the law ensures greater consistency across UK sanctions regimes.

Why was this approach taken to change the law?

- 6.6 As noted above, this instrument delivers on strengthening sanctions enforcement and effectiveness through various amendments. Amending the Regulations under the legal framework provided by the Sanctions Act was considered to be the most effective and appropriate way to change the law and is in line with the approach which has been taken for associated sanctions measures.

7. Consultation

Summary of consultation outcome and methodology

- 7.1 No public consultation has been carried out on this instrument, however was carried out in relation to the Sanctions Act.
- 7.2 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. His Majesty's Government will continue engagement with stakeholders on the implementation of UK sanctions.

8. Applicable Guidance

- 8.1 In accordance with section 43 of the Sanctions and Anti-Money Laundering Act, applicable guidance will be published in relation to the prohibitions and requirements under these Regulations. This guidance will be available on GOV.UK once these regulations come into force.
- 8.2 Regarding the clarification of HMRC's responsibilities for the enforcement of trade sanctions, these provisions will not introduce new sanctions offences. It will amend the existing legal framework to align with HMRC's internal operational agreement for a criminal enforcement consideration. Therefore, we expect no impact on the end user as a result of these provisions and will not be producing external guidance.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

- 9.1 A full Impact Assessment has not been prepared for this instrument because of the low level of impact per business expected.

Impact on businesses, charities and voluntary bodies

- 9.2 There is no significant impact on business, charities or voluntary bodies because the amendments create powers – they do not guarantee their use.
- 9.3 The legislation does impact small or micro businesses.
- 9.4 Small and micro businesses will not be exempt from the requirements of the regulation as this would be inconsistent with the aims of the regulation.
- 9.5 There is no significant impact on the public sector because the main cost would be administration and enforcement and the infrastructure for this is already in place.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

- 10.1 If His Majesty's Government determined that it was no longer appropriate to maintain a sanctions regime or specific sanctions measures, that regime would be removed or amended accordingly. This would include the measures introduced by this instrument. As such, the Minister does not consider that a review clause in this instrument is appropriate.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

- 11.1 This instrument, which is subject to the negative parliamentary procedure, is laid before Parliament on 15 May 2024 under section 55(3) of the Sanctions Act and comes into force 21 days after laying.

12. European Convention on Human Rights

- 12.1 The Rt Hon Andrew Mitchell MP, Minister of State at the Foreign, Commonwealth and Development Office, has made the following statement regarding Human Rights: “In my view the provisions of the Sanctions (EU Exit) (Miscellaneous Amendments) Regulations 2024 are compatible with the Convention rights.”

13. The Relevant European Union Acts

- 13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 (“relevant European Union Acts”).