

EXPLANATORY MEMORANDUM TO

THE SANCTIONS (AMENDMENT) (EU EXIT) REGULATIONS 2019

2019 No. [XXXX]

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Foreign and Commonwealth Office and is laid before Parliament by Act.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 The Sanctions (Amendment) (EU Exit) Regulations 2019 amend provisions deriving from EU legislation which have been retained in domestic law under the European Union (Withdrawal) Act (2018) (“the Act”).
- 2.2 The instrument ensures that aspects of arms embargo regimes in relation to Afghanistan, the Central African Republic, Lebanon, Somalia and Sudan will continue to be implemented after the United Kingdom (UK) leaves the European Union (EU). This instrument also ensures that the prohibition against claims being made in respect of the historic sanctions regimes applicable to Haiti, Iraq, Libya and Serbia and Montenegro will continue to apply after the UK leaves the EU.

Explanations

What did any relevant EU law do before exit day?

- 2.3 The EU law that is relevant to this instrument falls into two categories. Firstly, the following EU Council Regulations, whether in whole or in part, implement United Nations (UN) arms embargoes in respect of the following countries: Council Regulation (EU) No 753/2011 (Afghanistan); Council Regulation (EU) No 224/2014 (Central African Republic); Council Regulation (EC) No 1412/2006 (Lebanon); Council Regulation (EU) No 356/2010 and Council Regulation (EC) No 147/2003 (both in respect of Somalia); and Council Regulation (EU) No 747/2014 (Sudan). Secondly, the following EU Council Regulations implement UN obligations to prohibit claims being made in respect of historic UN sanctions regimes in relation to the following countries: Council Regulation (EC) No 1264/94 (Haiti); Council Regulation (EEC) No 3541/92 (Iraq); Council Regulation No (EC) 3275/93 (Libya) and Council Regulation (EC) No 1733/94 (Serbia and Montenegro).

Why is it being changed?

- 2.4 This instrument makes minor and technical amendments to address failures of the retained EU law cited above to operate effectively which have arisen as a result of the exit of the UK from the EU. In particular, it amends provisions which are inappropriate or redundant as a result of the withdrawal of the UK from the EU.

For example, the instrument replaces references to Member States and the Union with references to the UK; references to the EU Common Military List with references to Schedule 2 to the Export Control Order 2008; and replaces references to the competent authorities with references to the Secretary of State.

What will it now do?

- 2.5 This instrument makes no significant policy changes. The amended sanctions Council Regulations, as they form part of retained EU law, will ensure that those sanctions measures can continue to be implemented as before exit day.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The proposed instrument was presented to the Sifting Committees for consideration on 30 November 2018 with the second of the two Committees making its recommendation on 18 December 2018. Both Sifting Committees agreed that the negative procedure should apply to this instrument.
- 3.2 The following Council Regulations are only being partially amended by this instrument: Council Regulation (EU) No 753/2011 (Afghanistan), Council Regulation (EU) No 224/2014 (Central African Republic); Council Regulation (EU) No 356/2010 (Somalia); and Council Regulation (EU) No 747/2014 (Sudan). These Council Regulations implement aspects of EU arms embargoes and asset-freeze measures. However, any amendments to be made to retained EU law to ensure that these EU asset-freeze regimes can continue to be implemented once the UK leaves the EU will be made in a separate instrument under the Act.

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)

- 3.3 As the instrument is subject to the negative resolution 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 at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the whole of the United Kingdom.
- 4.2 The territorial application of this instrument is the whole of the United Kingdom.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 The UK's implementation of UN and other multilateral sanctions currently relies largely on the European Communities Act 1972. Each sanctions regime generally consists of an EU Council Decision, a corresponding directly-applicable EU Council Regulation, and related UK regulations made under section 2(2) of the European Communities Act 1972 and other domestic legislation. There are currently around 35 sanctions regimes that take effect in the UK under EU law and associated UK secondary legislation. These include country-specific sanctions regimes, including in relation to Russia, North Korea and Iran, as well as counter-terrorism regimes targeting Da'esh, Al Qaida and other terrorist groups.
- 6.2 The Act will repeal the European Communities Act 1972 and provide for some EU sanctions law to form part of domestic law after the UK has left the EU. However,

the Act does not provide powers to substantially amend the sanctions measures contained in that retained EU law and it does not provide powers to lift sanctions or impose new sanctions. In addition, that Act does not retain the effect of certain sanctions (travel bans) which are in force by virtue of EU Council Decisions (rather than under EU Regulations). The Sanctions Act was introduced to address these issues by providing the UK with the legal framework necessary to allow the UK to implement sanctions autonomously.

- 6.3 Regulations will be made under section 1 of the Sanctions Act to replace existing EU sanctions regimes and revoke the retained EU law relating to those regimes.
- 6.4 This instrument is made under section 8(1) of the Act to address deficiencies in the retained EU law relating to the EU sanctions regimes that will not have been replaced by regulations made under the Sanctions Act before the UK leaves the EU.

7. Policy background

What is being done and why?

- 7.1 The purpose of this instrument is to maintain parts of the existing UN arms embargoes regimes in respect of Afghanistan, the Central African Republic, Lebanon, Somalia, and Sudan which are currently in place pursuant to EU Council Regulations. It is intended that upon exit day these parts of the arms embargo regimes will temporarily be implemented in reliance on retained EU law until regulations are made under the Sanctions Act to substantially replace these regimes.
- 7.2 In particular this relates to the prohibitions on providing technical assistance, financing or brokering services in relation to arms. The substantive arms embargo prohibitions, that prohibit the sale, supply, transfer or export of arms, are contained in EU Council Decisions (which will not be retained EU law), and so will continue to be implemented domestically using the Export Control Order 2008 after exit day.
- 7.3 All the sanctions regimes to which this instrument applies are imposed by the United Nations. The policy background on each UN Regime is set out in brief below:
- 7.4 The Afghanistan sanctions regime has been in place since 15 October 1999 and was formerly part of the UN 1267 (Counter Terrorism) regime until it was separated out in 2011. Restrictive measures include an arms embargo, asset freeze and travel ban against the Taliban and its supporters in constituting a threat to peace, security, and stability of Afghanistan.
- 7.5 Sanctions against the Central African Republic were adopted on 5 December 2013 and are targeted at those who threaten or impede the stabilisation and reconciliation process or who fuel violence. Restrictive measures include an asset freeze, a travel ban, and an arms embargo.
- 7.6 To enable the Government of Lebanon to exercise its full sovereignty over all Lebanese territory, the UN adopted an arms embargo against all arms transfers to Lebanon not authorised by the Government of Lebanon or the UN Interim Force in Lebanon on 11 August 2006.
- 7.7 An arms embargo was adopted against Somalia on 23 January 1992 to stem the flow of weapons into the country. Further restrictive measures, including an asset freeze and a travel ban, were instituted on 20 November 2008. On 1 March 2010, the UN

adopted a further Resolution which provided for inspections of cargo to and from Somalia.

- 7.8 An arms embargo against Sudan was adopted by the UN on 30 July 2004, and strengthened in 2005 and 2010, in view of the humanitarian crisis and widespread human rights violations in Darfur. Restrictive measures including an asset freeze and a travel ban were imposed on individuals designated by the UN on 25 April 2006.
- 7.9 This instrument is concerned only with making amendments to ensure that arms embargoes in relation to the above-mentioned regimes will continue to be fully implemented. As set out at paragraph 3.1, retained EU law relating to asset-freeze measures will be amended by a separate instrument made under the Act. Persons subject to a travel ban under the above-mentioned regimes will continue to be excluded persons within the meaning of section 8B of the Immigration Act 1971.
- 7.10 This instrument also implements UN obligations that prohibit claims being made in respect of historic UN sanctions regimes in relation to the following countries: Haiti, Iraq, Libya, and Serbia and Montenegro. There are no powers to replace these regimes using the powers contained in the Sanctions Act and so this instrument ensures that the UK will continue to meet its international obligations in relation to these regimes after exit day.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument is being made using the power in section 8(1) of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Annex A Part 2 to this Explanatory Memorandum.

9. Consolidation

- 9.1 This instrument does not amend or consolidate previous instruments.

10. Consultation outcome

- 10.1 HMG has not conducted consultations as the instrument makes no significant policy changes.

11. Guidance

- 11.1 No guidance to accompany this instrument will be published as this instrument makes no significant policy changes, so the existing EU guidance applicable to these regimes will continue to substantively apply. In any event it is intended that the arms embargo regimes will be replaced as soon as possible with regulations made under the Sanctions Act.

12. Impact

- 12.1 As this instrument maintains existing sanctions measures that are already applicable to UK business, charities and voluntary bodies through EU law, we assess that there is no new substantial impact. Businesses and charities will need to ensure that they are referring to and complying with the relevant UK law once the UK leaves the EU.

- 12.2 There is no significant impact on the public sector.
- 12.3 An Impact Assessment has not been produced for these Regulations, as the instrument is intended to ensure existing sanctions remain in place following EU exit. This instrument is intended to substantially deliver the same policy effects as the existing EU sanctions.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 These Regulations are intended to continue the regulatory requirements under existing EU sanctions regimes. The Foreign and Commonwealth Office does not believe it is possible to exempt smaller businesses from the requirements to comply with these Regulations as this could provide a route for designated persons to evade sanctions.

14. Monitoring & review

- 14.1 It is intended that the arms embargo regimes will be replaced as soon as possible with regulations made under the Sanctions Act, so no monitoring is required. The prohibition on claims regimes will continue so as long there remains a UN obligation.
- 14.2 As this instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required.

15. Contact

- 15.1 Diana Ward at the Foreign and Commonwealth Office, Telephone: 020 7008 4684 or email: Sanctions.SIs@fco.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Qudsi Rasheed, Deputy Director at the Foreign and Commonwealth Office can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Rt Hon Sir Alan Duncan MP, Minister of State at the Foreign and Commonwealth Office can confirm that this Explanatory Memorandum meets the required standard.

Annex A

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising clauses 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/ESIC
Appropriateness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising clauses 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising clauses 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising clauses 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising clauses 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising clauses 8(1), 9, and 23(1) or jointly exercising	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		powers in Schedule 2 to create a criminal offence	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising clauses 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Sch 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s.2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s.2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s.2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Appropriateness statement

1.1 The Minister of State at the Foreign and Commonwealth Office, the Rt Hon Sir Alan Duncan MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Sanctions (Amendment) (EU Exit) Regulations 2019 do no more than is appropriate”.

1.2 This is the case because the instrument will carry across the existing EU sanctions regimes in order to implement, but go no further than, the UK’s international obligations to the United Nations.

2. Good reasons

2.1 The Minister of State at the Foreign and Commonwealth Office, the Rt Hon Sir Alan Duncan MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.

2.2 These are that the instrument will correct deficiencies contained in the retained EU law arising as a result of the UK no longer being a Member State of the EU, without which the UK may not be able to maintain these existing UN sanctions regimes upon exit day (paragraphs 6.1 and 7.1 in the main body of this Explanatory Memorandum).

3. Equalities

3.1 The Minister of State at the Foreign and Commonwealth Office, the Rt Hon Sir Alan Duncan MP, has made the following statement(s):

“The instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.

3.2 The Minister of State at the Foreign and Commonwealth Office, the Rt Hon Sir Alan Duncan MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I, the Rt Hon Sir Alan Duncan MP, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.”

4. Explanations

4.1 The explanations statement has been made in section 2 of the main body of this Explanatory Memorandum.