

EXPLANATORY MEMORANDUM TO
THE SANCTIONS (AMENDMENT) (EU EXIT) (NO 2) REGULATIONS 2019
2019 No. 380

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) (No 2) Regulations 2019 amend provisions deriving from European Union (EU) legislation which have been retained in domestic law under the European Union (Withdrawal) Act (2018) (“the Act”).
- 2.2 The instrument ensures that the financial sanctions regimes in relation to Afghanistan, Burundi, the Central African Republic, Egypt, the Republic of Guinea, Iraq, Lebanon and Syria (in relation to the 14 February 2005 terrorist bombing in Beirut), the Republic of Maldives, Mali, Somalia, Sudan, Tunisia, Ukraine and Yemen, will continue to be implemented after the United Kingdom (UK) leaves the EU. It will also ensure that the United Nations (UN) obligation that prohibits the transfer of certain cultural property goods from Syria will continue to be implemented.

Explanations

What did any relevant EU law do before exit day?

- 2.3 The EU law that is relevant to this instrument falls into three categories. Part 1 of the Regulations amends domestic financial sanctions regulations, which implement and enforce asset-freeze regimes in relation to the countries listed in paragraph 2.4. Part 2 of these Regulations amends certain provision of the Sanctions (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/26) that were made under the Withdrawal Act that implements both arms embargoes and financial sanctions measures in respect of the following countries: Afghanistan, the Central African Republic, Somalia and Sudan.

Part 3 of these Regulations amend certain provisions of the following direct EU legislation: Council Regulation (EU) No 753/2011 (Afghanistan); Council Regulation (EU) No 2015/1755 (Burundi); Council Regulation (EU) No 224/2014 (Central African Republic); Council Regulation (EU) No 270/2011 (Egypt); Council Regulation (EU) No 1284/2009 (Republic of Guinea); Council Regulation (EC) No 1210/2003 (Iraq); Council Regulation (EC) No 305/2006 (Lebanon); Council Regulation (EU) No 2018/1001 (Republic of Maldives); Council Regulation (EU) No 2017/1770 (Mali); Council Regulation (EU) No 356/2010 (Somalia); Council Regulation (EU) No 747/2014 (Sudan); Council Regulation (EU) No 101/2011 (Tunisia); Council Regulation (EU) No 208/2014 (Ukraine) and Council Regulation (EU) No 1352/2014 (Yemen). Part 3 also amends part of the direct EU legislation relating to Syria (Council Regulation (EU) No 36/2012) to ensure that the prohibitions in relation to certain cultural property goods, as required by United Nations Security

Council Resolution 2199 (2015) will continue to be implemented and enforced in the UK.

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; and replaces references to the competent authorities with references to the Treasury.

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 4 February 2019 with the second of the two Committees making its recommendation on 20 February 2019. Both Sifting Committees agreed that the negative procedure should apply to this instrument.
- 3.2 The Council Regulations referred to in paragraph 2.4 are only being amended by this instrument to the extent that they constitute direct EU legislation under the Act and are required to implement financial sanctions measures post exit day. There are certain provisions of these Council Regulations whose effect has already been reproduced by domestic law. For example, regulation 3(1) of the Republic of Maldives (Asset-Freezing) Regulations 2018 (S.I. 2018/861), which was made under section 2(2) of the European Communities Act 1972 (“the ECA”) and which constitutes EU-derived legislation within the meaning of section 2 of the Act, substantially reproduces the prohibition contained in Article 2(1) of the Council Regulation, concerning restrictive measures in view of the situation in the Republic of Maldives (No 2018/1001). Consequently, those provisions of the Council Regulations will not be retained EU law, by reason of section 3(2)(a)(iii) of the Act, and have not therefore been amended by this instrument.
- 3.3 A direction to the Queen’s printer, using the powers contained in paragraph 2(2) of Schedule 5 to the Act, will be issued in due course to identify the parts of the Council Regulations which will not constitute direct EU legislation within the meaning of the Act based on the reasoning set out in the paragraph above.
- 3.4 The following Council Regulations, insofar as they contain arms embargo prohibitions, have already been amended using powers under the Act by the Sanctions (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/26): 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).

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)

- 3.5 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 United Nations (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 ECA 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, DPRK 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 in due course.
- 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 repealed and 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 the existing UN and EU financial sanctions regimes in respect of Afghanistan, Burundi, the Central African Republic, Egypt, the Republic of Guinea, Iraq, Lebanon and Syria (in relation to the 14

February 2005 terrorist bombing in Beirut), the Republic of Maldives, Mali, Somalia, Sudan, Tunisia, Ukraine and Yemen which are currently in place pursuant to EU Council Regulations. It is intended that upon exit day these asset freeze regimes will continue to be implemented in reliance on retained EU law until regulations are made under the Sanctions Act to substantially replace these regimes and repeal that retained EU law. It is also intended to ensure that the prohibitions in relation to certain cultural property goods, as required by UN Security Council Resolution 2199 (2015), will continue to be implemented and enforced in the UK after exit day.

- 7.2 All the sanctions regimes to which this instrument applies are imposed by either the UN or EU. The policy background on each regime is set out in brief below:
- 7.3 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.
- 7.4 The EU first adopted targeted restrictive measures against Burundi on 1 October 2015 in view of the deterioration of the human rights situation, the violence following the Presidential elections in 2015 and the increasing undermining of democratic principles.
- 7.5 Sanctions against the Central African Republic were adopted by the UN 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 In February 2011 the EU expressed its readiness to support the peaceful and orderly transition to a civilian and democratic government in Egypt. Restrictive measures were adopted on 21 March 2011 against persons identified as responsible for misappropriation of Egyptian State funds, with the aim of the measures to recover the assets misappropriated from Egypt.
- 7.7 The EU first adopted restrictive measures in relation to the Republic of Guinea on 27 October 2009 in response to the violent crackdown by security forces on political demonstrators in Conakry on 28 September 2009. The measures include an arms embargo, an asset freeze and a travel ban against the members of the government.
- 7.8 On 6 August 1990 the UN Security Council (UNSC) adopted a financial and trade embargo on Iraq after the invasion of Kuwait on 2 August 1990. On 22 May 2003 UNSC Resolution 1483 (2003) imposed an asset freeze targeting in particular the former Iraqi President Saddam Hussein and senior officials of his regime. The Resolution also lifted all restrictive measures against Iraq except for the arms embargo and the repealed restrictions on trade were replaced with specific restrictions applying to proceeds from all export sales of petroleum and natural gas from Iraq, and to trade in goods belonging to Iraq's cultural heritage.
- 7.9 On 31 October 2005, to assist in the investigation of the terrorist bombing in Beirut on 14 February 2005 which killed 23 people, including the former Lebanese Prime Minister Rafiq Hariri, the UN decided to impose measures against Lebanon and Syria in respect of all individuals suspected of being involved in the planning, sponsoring, organising or perpetuating the terrorist act.

- 7.10 On 26 February 2018, the EU adopted conclusions which noted with concern the deterioration of the situation in the Republic of Maldives (“the Maldives”) following a number of politically motivated arrests and interference with the work of the Supreme Court of the Maldives. In July 2018 the EU agreed targeted restrictive measures should be imposed against persons and entities responsible for undermining the rule of law or obstructing an inclusive political situation in the Maldives as well as persons and entities responsible for serious human rights violations or abuses.
- 7.11 On 5 September 2017, the UNSC adopted Resolution 2374 (2017) on Mali which imposed travel restrictions and an asset freeze on those responsible for or complicit in, or having engaged in actions and policies that threaten the peace, security or stability of Mali.
- 7.12 On 20 November 2008 the UNSC adopted Resolution 1844 (2008) which introduced an asset freeze and travel ban against those who seek to prevent a peaceful political process, or those who threaten the Transitional Federal Institutions of Somalia or the African Union Mission in Somalia by force, or take action that undermines stability in the region. On 1 March 2010, the UNSC adopted a further Resolution 1907 (2009) which provided for inspections of cargo to and from Somalia.
- 7.13 An arms embargo against Sudan was adopted by UNSC Resolution 1556 (2004) on 30 July 2004, and strengthened by Resolutions 1591 (2005) and 1945 (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 UNSC Resolution 1672 (2006) of 25 April 2006.
- 7.14 On 31 January 2011, the EU adopted restrictive measures to recover assets misappropriated from Tunisia. The measures were to be applied against persons responsible for misappropriation of Tunisian State funds and who are thus depriving the Tunisian people of the benefits of the sustainable development of their economy and society and undermine the development of democracy in the country.
- 7.15 On 3 March 2014 the EU agreed to focus restrictive measures on the freezing and recovery of assets of persons identified as responsible for the misappropriation of Ukrainian State funds and persons responsible for human rights violations, with a view to consolidating and supporting the rule of law and respect for human rights in Ukraine.
- 7.16 The UN imposed restrictive measures on Yemen following adoption of UNSC Resolution 2140 (2014) on 26 February 2014 in view of the ongoing violence, terrorist activities and political, security, economic and humanitarian challenges in Yemen. The restrictive measures included travel restrictions and asset freezes to designated persons and entities.
- 7.17 This instrument is concerned only with making amendments to ensure that the financial sanctions in relation to the above-mentioned regimes will continue to be fully implemented. It will also ensure that the prohibitions relating to Syria (Council Regulation (EU) No 36/2012) in relation to certain cultural property goods, as required by UNSC Resolution 2199 (2015) will continue to be implemented and enforced in the UK. Persons subject to a UN travel ban under the above-mentioned regimes will continue to be excluded persons within the meaning of section 8B of the Immigration Act 1971 and amendments have already been made to some of the above-mentioned Council Regulations to ensure that any arms embargo regimes contained within them can continue to be implemented.

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 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 financial sanctions regimes will be replaced as soon as possible with regulations made under the Sanctions Act. As noted in paragraph 3.2 a direction to the Queen's printer will be issued in due course to identify the parts of the Council Regulations which will not constitute direct EU legislation within the meaning of the Act based on the reasoning set out in the paragraph 3.1.

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 amendments made by this instrument to retained EU law relating to financial sanctions regimes will be replaced as soon as possible with regulations made under the Sanctions Act, so no monitoring is required.
- 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

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) (No 2) 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 existing sanctions regimes and 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 [draft] 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.