

EXPLANATORY MEMORANDUM TO
THE ISIL (DA'ESH) AND AL-QAIDA (UNITED NATIONS SANCTIONS) (EU EXIT)
REGULATIONS 2019

2019 No. 466

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Foreign and Commonwealth 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 These Regulations are intended to give effect to the UK's obligations under UN Security Council Resolution 2368. Resolution 2368 provides for a sanctions regime relating to ISIL (Da'esh) and Al-Qaida, ("the UN regime") which is currently implemented through EU legislation and related UK legislation. These Regulations are intended to ensure that the UK's obligations continue to operate effectively after the UK leaves the EU.
- 2.2 The Resolution imposes certain measures against those for the time being named on the UN's ISIL (Da'esh) and Al-Qaida Sanctions List. When these Regulations come into force they will replace, with substantially the same effect, relevant existing EU legislation and related UK legislation.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument is laid before Parliament under section 55(6) of the Sanctions and Anti-Money Laundering Act 2018 ("the Sanctions Act") and is subject to the negative procedure. This instrument does not come into force until a date to be appointed under separate regulations (see regulation 1(2)). This uses the power in section 56 of the Sanctions Act, which enables special provision to be made for the commencement of regulations where such provision is appropriate in consequence of, or otherwise in connection with, the withdrawal of the UK from the EU.

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)

- 3.2 As the instrument is subject to 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 UK.
- 4.2 Subject to paragraph 4.3, the territorial application of this instrument is the UK.
- 4.3 This instrument also applies to conduct by UK persons outside the UK. In addition, the maritime enforcement powers contained in Part 9 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 the instrument is subject to 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 thematic regimes including chemical weapons and counter-terrorism regimes such as this one.
- 6.2 The European Union (Withdrawal) Act 2018 will repeal the European Communities Act 1972 and provides for some EU sanctions law to form part of domestic law after the UK has left the EU. However, that Act does not provide powers to substantially amend 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 Section 1 of the Sanctions Act enables sanctions regulations to be made for the purposes of compliance with United Nations obligations and other international obligations, as well as for a number of other purposes which include: furthering the prevention of terrorism; national security; promoting international peace and security; promoting compliance with international human rights law and respect for human rights; or furthering foreign policy objectives.
- 6.4 The EU implemented the UN sanctions regime through Council Regulation (EC) No 881 of 27 May 2001 ("the EU regime"). The EU regime currently has effect in the UK through Council Regulation (EC) 881 and related UK legislation. Council Regulation (EC) 881 would form part of domestic law on exit day under the EU (Withdrawal) Act 2018 but is revoked and replaced by these Regulations. Amendments are made to the ISIL (Da'esh) and Al-Qaida (Asset-Freezing) Regulations 2011 (S.I. 2011/2742) and the Export Control (Al-Qaida and Taliban and Sanctions) Regulations 2011 (S.I. 2011/2649) so that there is no overlap between those Regulations and these Regulations.

7. Policy background

What is being done and why?

- 7.1 Her Majesty's Government (HMG) employs counter-terrorism sanctions as a key part of the UK's national, and international, response to global terrorism. Sanctions form an important part of the UK's counter-terrorism policy; their objective is to further the

prevention of global terrorism by fulfilling the UK's international responsibility to comply with the relevant UN obligations.

- 7.2 Global terrorism is a serious threat to international peace and security. Countering the terrorist threat is a priority for HMG and sanctions are an important tool in our efforts against terrorism. The UK remains concerned about the extremist ideology and violent actions of terrorists. Da'esh (ISIL), Al-Qaida and their affiliates, continue to be responsible for the deaths of innocent civilians and other victims, the destruction of property, and for greatly undermining stability through terrorist attacks around the world. HMG will continue to play a leading role in supporting global efforts against terrorism.
- 7.3 The United Nations counter-terrorism sanctions regime was created by UNSCR 1267 (1999) which first imposed sanctions on the Taliban. It has been amended and extended on numerous occasions, most notably to include Al-Qaida in 2000 (UNSCR 1333(2000)), and ISIL (Da'esh) in 2015 (UNSCR 2253(2015)). The EU regime was implemented through Council Regulation (EC) No 881 of 27 May 2002 (as amended). The UN sanctions regime (UNSCR 2368 (2017)) provides for a travel ban and trade and financial measures to be imposed on persons and entities named on the ISIL (Da'esh) and Al-Qaida Sanctions List (which is maintained by the UN ISIL (Da'esh) and Al-Qaida Sanctions Committee). These Regulations are intended to substantially deliver the same policy effects as those under the UN regime and implemented through the EU regime. The travel ban in respect of persons named on the ISIL (Da'esh) and Al-Qaida Sanctions List is implemented through section 8B of the Immigration Act 1971, and not these Regulations.
- 7.4 Bringing this sanctions regime into UK law using the powers in the Sanctions Act will enable all the sanctions measures to continue to operate effectively after the UK leaves the EU, as well as enabling HMG to amend and lift the sanctions, or impose further sanctions, autonomously.
- 7.5 In accordance with section 18 of the Sanctions Act, this instrument is accompanied by a report that identifies the offences contained in this instrument; explains why there are good reasons for those offences; and explains why there are good reasons for the prescribed penalties in relation to those offences. Offences include, for example, making funds available directly or indirectly to a designated person.
- 7.6 Part 2 of this instrument provides that anyone named on the UN's ISIL (Da'esh) and Al-Qaida Sanctions List is a designated person for the purposes of Part 3 (Finance) and Part 4 (Trade) (including individuals, entities and organisations). A person may be added to the UN ISIL (Da'esh) and Al-Qaida Sanctions List if they are associated with ISIL (Da'esh) or Al-Qaida.
- 7.7 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 gov.uk.
- 7.8 Part 3 of the instrument details financial sanctions measures that are imposed on designated persons. Financial sanctions include freezing a designated person's funds and economic resources (non-monetary assets, such as property or vehicles) and ensuring that funds and economic resources are not made available to or for the benefit of a designated person or entity, either directly or indirectly. The instrument sets out exceptions and licensing derogations from these sanctions that will be applicable or available, as the case may be, under certain prescribed circumstances. For example, this

would enable those listed to have access to funds to satisfy their basic needs. Part 5 of the instrument imposes an asset-freeze on the assets owned by Usama bin Laden immediately before his death (or which form part of his estate), which may be unfrozen on application, as required under the UN regime.

- 7.9 Part 4 of the instrument details trade sanctions. These sanctions include an embargo on the export, supply and delivery, making available and transfer of military goods and military technology to, or for the benefit of, a designated person, as well as restrictions on provision of technical assistance, financial services, funds and brokering relating to military goods and military technology and armed hostilities.
- 7.10 Part 6 of the instrument makes provision in respect of exceptions and licences that may apply or be available, as the case may be, in respect of prohibitions under this regime. For example, and in relation to Treasury licences, a designated person can apply for a licence allowing funds to be released in order to pay for essential goods or services such as food. It states that the Treasury may issue licences to permit activity prohibited by Part 3 (Finance) where it is appropriate for a purpose set out in Schedule 2 of the instrument. Guidance will provide further detail about licensing.
- 7.11 Part 9 of the 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.

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

- 8.1 This instrument is not being made under the European Union (Withdrawal) Act but it relates to the withdrawal of the UK from the EU. This is because this instrument replaces, with substantially the same effect, the existing EU regime.

9. Consolidation

- 9.1 This instrument does not consolidate previous instruments.

10. Consultation outcome

- 10.1 HMG ran a public consultation on the Sanctions Act. 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. These concerns were taken into account in the drafting of the Act.
- 10.2 There is neither a requirement in the Act for public consultation on instruments made under the Act, nor is there any other legal obligation to consult in respect of this instrument. HMG will continue engagement with stakeholders on the implementation of UK sanctions.

11. Guidance

- 11.1 In accordance with section 43 of the Act, guidance will be published in relation to the prohibitions and requirements under these Regulations. This guidance will be published on gov.uk.

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. An impact assessment was however produced for the primary legislation and can be found at <https://publications.parliament.uk/pa/bills/lbill/2017-2019/0069/sanctions-and-anti-money-laundering-IA.pdf>. That assessment concluded that the introduction of the Act, and statutory instruments under it to transfer existing 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 These Regulations apply to activities that are undertaken by small businesses.
- 13.2 These Regulations are intended to continue the regulatory requirements under the existing EU sanctions regime. 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 The Sanctions Act requires regular reviews of these Regulations. Under section 30 of the Act, the Secretary of State must consider whether or not these Regulations are still appropriate for their stated purpose and lay an annual report before Parliament, confirming either that is the case or explaining what action has or will be taken in consequences of that review. As such, the Minister does not consider that a review clause in these Regulations is appropriate.

15. Contact

- 15.1 Clare Kendall-Bohoslawec at the Foreign and Commonwealth Office telephone: 020 7008 8637 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.