

EXPLANATORY MEMORANDUM TO
THE SYRIA (SANCTIONS) (EU EXIT) REGULATIONS 2019
2019 No. 792

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 ensure that the UK can operate an effective sanctions regime in relation to Syria after the UK leaves the EU. When these Regulations come into force they will replace, with substantially the same effect, the EU sanctions regime relating to Syria that is currently in force under EU legislation and related UK regulations. This sanctions regime is aimed at encouraging the Syrian regime to end the violent repression of the civilian population and to reach a negotiated political settlement to end the conflict in Syria.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The instrument is being laid before Parliament under section 55(3) of the Sanctions and Anti-Money Laundering Act 2018 (“the Sanctions Act”) and appoints different days for the purpose of commencing different provisions of this instrument. In particular, these Regulations will come into force on exit day with the exception of Chapters 1 and 2 of this instrument (which set out the purposes of this sanctions regime and contain the power to designate persons for the purpose of this sanctions regime), which will come into force on the day after the day on which the Regulations are laid before Parliament. These provisions will be brought into force prior to exit day in order to ensure that there is no gap in the implementation of this sanctions regime following the UK’s withdrawal 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 The territorial application of this instrument includes Scotland and Northern Ireland.

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 10 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 The Minister of State for Europe and the Americas at the Foreign and Commonwealth Office, the Rt Hon Sir Alan Duncan MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Syria (Sanctions) (EU Exit) Regulations 2019 are compatible with the Convention rights.”

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, DPRK and Iran, as well as regimes targeting Da’esh, Al Qaida and other terrorist groups.
- 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 sanctions regime concerning restrictive measures in view of the situation in Syria was first imposed in 2011 for the purpose of encouraging the Syrian regime to end the violent repression of its civilian population and to reach a negotiated political settlement to end the conflict in Syria. This regime currently has effect in the UK through both EU instruments and related UK regulations. Using the power contained in section 54(2)(a) of the Sanctions Act, the following will be amended and substantially replaced by these Regulations: the EU Council Regulation (EU) No 36/2012, concerning restrictive measures in view of the situation in Syria and repealing Regulation (EU) No 442/2011; and the Export Control (Syria Sanctions) Order 2013 (S.I. 2013/2012). The Syria (European Union Financial Sanctions) Regulations 2012 (S.I. 2012/129) are also revoked and replaced by this instrument.

7. Policy background

What is being done and why?

- 7.1 Her Majesty's Government's (HMG's) policy on Syria includes the use of sanctions to encourage the Syrian regime, led by Bashar Al-Assad, to end policies that result in the violent repression of the civilian population and to reach a negotiated political settlement in Syria. Sanctions also discourage individuals and companies from supporting the Syrian regime and being directly or indirectly involved in its repression of the civilian population.
- 7.2 The Syria conflict has been one of the most destructive in recent human history: over 400,000 people have been killed and half of Syria's pre-war population displaced. The regime's violent repression of the civilian population was the principal cause of the conflict and is ongoing; the UN Independent Commission of Inquiry on Syria stated that the regime's use of disappearances, torture, rape and sexual violence amount to crimes against humanity. In addition, the regime is responsible for the repeated use of chemical weapons. The UK continues to press for accountability for those responsible for the most serious crimes committed in Syria. The UK supports the UN-facilitated political process to reach a negotiated settlement to the conflict but the Syrian regime has to date failed to engage seriously in negotiations.
- 7.3 The EU has been imposing sanctions on Syria since 2011. The current EU sanctions regulations consists of asset freezes and travel bans on designated individuals as well as imposing a range of financial, trade and transport sanctions. These Regulations are intended to substantially deliver the same policy effects as those existing EU sanctions. The stated purposes of these Regulations are to encourage the Syrian regime to refrain from actions, policies or activities which repress the civilian population in Syria and to participate in negotiations in good faith to reach a negotiated political settlement to being about a peaceful solution to the conflict in Syria.
- 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 This instrument is accompanied by two statutory reports that are required to be published under the Sanctions Act.
- 7.6 Firstly, and in accordance with section 2(4) of the Sanctions Act, a report has been produced to explain why the Minister considers that the carrying out of the stated purposes of this instrument would meet one or more of the discretionary purposes (i.e. purposes other than implementing UN obligations) set out in the Sanctions Act; why there are good reasons to pursue those purposes; and why the Minister considers that the imposition of sanctions is a reasonable course of action for those purposes.
- 7.7 Secondly, and in accordance with section 18 of the Sanctions Act, a report has been produced 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, breaching the prohibitions on exporting certain goods to Syria.
- 7.8 Part 2 of this instrument deals with the designation of persons (including individuals, entities and organisations) under the sanctions regime. It lists the criteria against which a Minister may make a decision to designate a person as being subject to a travel ban

or asset freeze (“**designated persons**”), namely a person who is or has been involved in repressing the civilian population in Syria or who is or has been involved in supporting or benefitting from the Syrian regime. This includes prominent businesspersons in Syria, as well as persons who are or have been (i) a Minister, (ii) a member of the Syrian Armed Forces of the rank of colonel and the equivalent or higher, (iii) a member of the Syrian security and intelligence services, or (iv) members of a militia; and those persons who are or have been carrying on prohibited activities related to chemical weapons. This also includes persons associated with designated persons, including in particular family members of Syrian President Bashar al-Assad or his cousin, the Syrian businessman, Rami Makhlouf.

- 7.9 The names of designated persons are not included in this instrument. These will be held on a separate administrative list on gov.uk to enable immediate publication following a decision to make or amend a designation. This limits the opportunity for designated persons to remove assets from the UK.
- 7.10 Part 3 of the instrument sets out financial sanctions measures that can be 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, either directly or indirectly. There are also sectoral financial sanctions which prohibit and restrict certain activities set out in the regime. For example, UK credit or financial institutions are prohibited from opening a bank account with any Syrian credit or financial institution, opening a representative office in Syria, or establishing a branch or subsidiary in Syria
- 7.11 Part 4 of the instrument sets out the effect of immigration measures made under this instrument. A designation made for the purposes of regulation 5 of the instrument means that section 8B of the Immigration Act 1971 then applies to the 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 may direct, on an individual basis, that the travel ban does not apply, for example for the purposes of attending UN meetings which are being held in the UK.
- 7.12 Part 5 of the instrument sets out trade sanctions. These sanctions include restrictions on trade in goods and technology related to chemical and biological weapons as set out in Schedule 3 to the Regulations. The trade in goods and technology which may be used to intercept or monitor communications or repress the civilian population in Syria is also restricted, as is the provision of interception and monitoring services, to or for the benefit of the Syrian regime. Lists of goods and technology related to interception and monitoring and internal repression are set out at Schedules 4 and 5 of the instrument respectively. Luxury goods and other items listed in Schedule 2 are also subject to trade prohibitions. This Part also imposes prohibitions on the import, purchase and transportation of military goods and technology, crude oil and petroleum products from Syria and on the transfer of military technology.
- 7.13 Part 6 of the instrument sets out restrictions on the movement of aircraft. Any aircraft operated by Syrian Arab Airlines, or which is owned, chartered or operated by a person connected with Syria and which is being used in connection with the provision of air cargo services, must not land in the UK. To this end, directions can be made by the Secretary of State to the Civil Aviation Authority (CAA) to either refuse permissions or withdraw existing permissions for such aircraft to land in the UK. Directions can also be made by or through an airport operator to direct such aircraft not to land at a UK

airport. It is an offence for an aircraft to fail to comply fully with a direction without a reasonable excuse.

- 7.14 Part 7 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 and requirements 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 activities that would otherwise be prohibited under an asset freeze where it is appropriate for a purpose set out in Part 1 of Schedule 6 to these Regulations and there are purposes for which certain financial sectoral prohibitions may be licenced, as set out in Part 2 of Schedule 6. Part 7 also details exceptions to trade and aircraft prohibitions and makes provision for trade and aircraft licences to be issued. Guidance will provide further detail about licencing.
- 7.15 Part 10 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 Syria sanctions 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 which was open for nine weeks. 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. All of 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 available on gov.uk before these Regulations come into force.

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 circumvention or evasion of 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 consequence of that review. As such, the Minister does not consider that a review clause in these Regulations is appropriate.

15. Contact

- 15.1 Ann Herrigan at the Foreign and Commonwealth Office telephone: 020 7008 3830 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.