

EXPLANATORY MEMORANDUM TO

THE BOSNIA AND HERZEGOVINA (SANCTIONS) (EU EXIT) REGULATIONS

2020 No. 608

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 This instrument is intended to ensure that the UK can operate an effective sanctions regime in relation to Bosnia and Herzegovina (BiH) after the end of the Transition Period. When this instrument comes into force it will replace the EU sanctions regime relating to BiH which was established on 21 March 2011 as a framework in order to signal the EU's continued support for the General Framework Agreement for Peace (GFAP or Dayton Agreement, 1995). The purposes of this sanctions regime are to promote respect for the sovereignty, territorial integrity, international personality and constitutional order of BiH; to promote the peace, stability and security of BiH; and to encourage compliance with, and the implementation of, the GFAP.

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(3) of the Sanctions and Anti-Money Laundering Act 2018 (“**the Sanctions Act**”) and is subject to the made affirmative procedure. This instrument does not come into force until a date or dates to be appointed in separate regulations made under section 56 of the Sanctions Act (see regulation 1(2)). Section 56 of the Sanctions Act enables special provision to be made for the commencement of sanctions regulations where such provision is appropriate in consequence of, or otherwise in connection with, the withdrawal of the UK from the EU.
- 3.2 Section 56(5) of the Sanctions Act provides that the instrument must be approved by resolution of both Houses within 60 days of the instrument coming into force for it to continue to have effect. This defers parliamentary debates in relation to this instrument until after it has come into force.

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 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 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.

5. European Convention on Human Rights

5.1 The Minister of State at the Foreign and Commonwealth Office, Lord Ahmad of Wimbledon, has made the following statement regarding human rights:

“In my view the provisions of the Bosnia and Herzegovina (Sanctions) (EU Exit) Regulations 2020 are compatible with the Convention rights.”

6. Legislative Context

6.1 When the UK was a member of the European Union, its implementation of UN and other multilateral sanctions relied largely on the European Communities Act 1972. Each sanctions regime generally consisted 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. During the Transition Period, EU sanctions continue to apply in the UK in accordance with the Withdrawal Agreement: section 1A of the European Union (Withdrawal) Act 2018 (c.16)⁽¹⁾ saves the effect of the European Communities Act 1972 for the purposes of the Withdrawal Agreement. There are currently around 35 sanctions regimes that take effect in the UK. 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 provides for some EU sanctions law to form part of domestic law at the end of the Transition Period. 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 (e.g. 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 relating to BiH is currently contained in a single Council Decision (Decision 2011/173/CFSP, as amended), adopted under the EU's Common Foreign and Security Policy; this Decision was most recently extended until 31 March 2021 by Council Decision (CFSP) 2020/435. A directly applicable Council Regulation under Article 215 of the Treaty on the Functioning of the European Union has not yet been adopted for this regime, meaning that the UK has not made any corresponding implementing regulations under section 2(2) of the European Communities Act 1972. Therefore there is no domestic law or directly applicable Council Regulation (that would otherwise form part of domestic law at the conclusion

¹ As inserted by section 1 of the European Union (Withdrawal Agreement) Act 2020.

of the Transition Period under the European Union (Withdrawal) Act 2018) that needs to be amended or revoked by this instrument. However this instrument is required to ensure that the UK can operate an effective sanctions regime in relation to BiH when the Transition Period ends on 31 December 2020.

7. Policy background

What is being done and why?

- 7.1 BiH is one of the countries at greatest risk of instability in the Western Balkans region. The UK and the international community remains concerned about the domestic political situation, which continues to be affected by institutional dysfunctionality, divisive ethno-nationalist rhetoric, attempts to undermine the functioning of the state and its institutions, challenges to the GFAP and historical revisionism. Statements from officials within the Republika Srpska (RS) which deny the statehood of BiH and advocate the secession of the RS and a union with Serbia are of particular concern. The UK, alongside the other members of the Peace Implementation Council Steering Board has repeatedly expressed its commitment to BiH's fundamental structure as a single, sovereign state comprising these two entities.
- 7.2 In line with its broad foreign policy approach, based on respect for democratic values and the rule of law, Her Majesty's Government (HMG) seeks to encourage compliance with the GFAP and to hold to account those whose actions undermine democratic processes and policies or affect the peace, security and stability of the country. These and other purposes are stated in regulation 4 of this instrument.
- 7.3 The EU adopted its current sanctions regime in respect of BiH on 21 March 2011, as part of the EU comprehensive strategy towards BiH. The EU sanctions regime can be applied against persons whose activities undermine the sovereignty, territorial integrity, constitutional order and international personality of BiH; seriously threaten the security situation in BiH or undermine the GFAP. It provides for asset freeze measures and travel bans directed against those who engage in such activities. This instrument is intended to deliver substantially the same policy effects as the existing EU regime. Bringing this sanctions regime into UK law using the powers in the Sanctions Act is in line with UK policy on BiH.
- 7.4 This instrument is accompanied by two statutory reports that are required to be published under the Sanctions Act.
- 7.5 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 set out in the Sanctions Act; why there are good reasons to pursue that purpose; and why the Minister considers that the imposition of sanctions is a reasonable course of action for that purpose.
- 7.6 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, contravening the principal prohibitions in this instrument (e.g. breaching an asset-freeze) or trying to circumvent those principal prohibitions.

- 7.7 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 the Secretary of State may make a decision to designate a person as being subject to a travel ban or asset freeze (“designated persons”).
- 7.8 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.
- 7.9 Part 3 of this instrument sets out financial sanctions measures that can be imposed in relation to designated persons, and the offences which can be committed if the measures are not adhered to. Financial sanctions include an asset freeze, ensuring a designated person’s funds and economic resources (non-monetary assets, such as property or vehicles) are not dealt with 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.
- 7.10 Part 4 of this instrument sets out the effect of immigration measures made under this instrument. A designation under 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.
- 7.11 Part 5 of this 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 or made available in order to pay for basic needs 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. In certain circumstances, 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.

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 BiH 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 Sanctions Act.

- 10.2 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. HMG will continue engagement with stakeholders on the implementation of UK sanctions.

11. Guidance

- 11.1 In accordance with section 43 of the Sanctions Act, guidance will be published in relation to the prohibitions and requirements under this instrument. This guidance will be available on gov.uk before this instrument comes into force.

12. Impact

- 12.1 As this instrument replaces an existing sanctions regime that was adopted by the EU, we assess that there is no new substantial impact on UK business, charities and voluntary bodies. Businesses and charities will need to ensure that they are referring to and complying with this instrument following the end of the Transition Period.
- 12.2 There is no significant impact on the public sector.
- 12.3 An Impact Assessment has not been produced for this instrument, as it is intended to replace the EU sanctions regime following the end of the Transition Period. This instrument is intended to deliver substantially the same policy effects as the existing EU regime. 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 This instrument applies to activities that are undertaken by small businesses.
- 13.2 This instrument is intended to replace the existing EU sanctions regime. The Foreign and Commonwealth Office does not believe it is possible to exempt smaller businesses from the requirement to comply with this instrument as this could provide a route for the circumvention or evasion of sanctions.

14. Monitoring & review

- 14.1 The Sanctions Act requires regular reviews of this instrument. Under section 30 of the Act, the Secretary of State must consider whether or not this instrument is still appropriate for its 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 this instrument is appropriate.

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 this instrument.
- 15.2 Lisa Maguire, Deputy Director at the Foreign and Commonwealth Office, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Lord Ahmad of Wimbledon, Minister of State at the Foreign and Commonwealth Office, can confirm that this Explanatory Memorandum meets the required standard.