

EXPLANATORY MEMORANDUM TO
THE SOMALIA (SANCTIONS) (EU EXIT) REGULATIONS

2020 No. 642

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 give effect to the UK's obligations under UN Security Council Resolutions 733 (1992), 1844 (2008), 2036 (2012) and 2498 (2019). Resolution 733 imposed an arms embargo on Somalia¹. Resolution 1844 imposed an asset-freeze, travel ban and targeted arms embargo on those persons or entities designated by the UN Sanctions Committee² for the purposes of those measures under criteria set out in that Resolution³. Resolution 2036 (2012) imposed measures to prevent the export of charcoal from Somalia and Resolution 2498 (2019) imposed measures to restrict the trade in component materials of Improvised Explosive Devices (IED). Together these measures comprise the UN sanctions regime relating to Somalia ("the UN regime") which is currently implemented through EU legislation and related UK legislation. This instrument is intended to ensure that the UK continues to meet its obligations under the UN regime after the Transition Period ends on 31 December 2020. EU sanctions continue to apply in the UK during the Transition Period.
- 2.2 Under the UN regime, certain measures are imposed upon those named on the UN's Somalia Sanctions List. When this instrument comes into force it will replace, with substantially the same effect, relevant existing EU legislation and related UK legislation by which the UK's UN obligations are given effect in domestic law. This instrument is intended to give effect not only to the UK's UN obligations but also to ensure that the UK can operate an effective and autonomous sanctions regime in relation to Somalia.

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

¹ The arms embargo was updated and amended by UN Security Council Resolutions 1425 (2002) and 2498 (2019).

² The UN Sanctions Committee was established in accordance with paragraph 11 of UN Security Council Resolution 751 (1992).

³ The criteria for designating persons was amended and updated by UN Security Council Resolutions 2002 (2011), 2036 (2012), 2060 (2012), 2093 (2013) and 2444 (2018).

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 this 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 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. 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 this instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

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. The European Union (Withdrawal) Act 2018 repealed the European Communities Act 1972. However, 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) 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 UN sanctions regime imposed in relation to Somalia for the purpose of promoting the peace, stability and security of Somalia currently has effect in the UK through both EU instruments and related UK legislation. Using the power contained in section 54(2) of the Sanctions Act, the following will be revoked and replaced by this instrument: Council Regulation (EU) No. 356/2010 and Council Regulation (EU) No. 147/2003; the Somalia (Asset-Freezing) Regulations 2010 (S.I. 2010/2956); the Somalia (United Nations Sanctions) Order 2002 (S.I. 2002/2628); and the Export Control (Somalia) Order 2011 (S.I. 2011/146).

7. Policy background

What is being done and why?

- 7.1 Somalia has made considerable progress in the last decade, but remains a highly fragile state. It poses a threat to regional stability, providing a foothold to terrorist groups and fuelling irregular migration. Insecurity, conflict and terrorism affect all parts of Somalia and Al-Shabaab continue to have capacity within the region to conduct attacks against both civilians and military. There are ongoing difficulties in delivering humanitarian aid in Somalia, and Somalia has some of the worst statistics for use of child soldiers and sexual violence in conflict (primarily by Al-Shabaab). The capacity of the Somali security forces remains extremely low, and the management and protection of weapons and ammunition stocks is poor. UK support aims for Somalia to be increasingly secure, stable and prosperous by 2030, with the principal threats to regional stability and to UK interests diminished.
- 7.2 The UN sanctions regime in Somalia aims to restrict the flow of weapons and ammunition into Somalia and to counter threats to the peace and security of Somalia by restricting financial flows to Al-Shabaab. The sanctions regime was first imposed in 1992 under UN Security Council Resolution 733 as a general and complete arms embargo on deliveries of weapons and military equipment to Somalia (including Somaliland). A number of exemptions to the embargo were included in subsequent resolutions, including to allow the supply of non-lethal equipment for humanitarian or protective use, and to permit international support to the Somali Security Forces in their efforts to tackle Al-Shabaab. The UN Security Council has also imposed a ban on the trade of charcoal from Somalia, as a significant source of revenue for Al-Shabaab; adopted targeted measures (namely an asset freeze, targeted arms embargo and travel ban) against persons designated by the UN Sanctions Committee; and added measures to limit the import of IED components into Somalia. The UK has been a supporter of sanctions in relation to Somalia at the UN Security Council.
- 7.3 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 at the end of the Transition Period, as well as enabling Her Majesty's Government ("HMG") to impose further sanctions autonomously.

- 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 discretionary purposes of this instrument (i.e. purposes other than implementing UN obligations) would meet one or more of the conditions set out in section 1(2) of the Sanctions Act; why there are good reasons to pursue the purposes set out in the Regulations; and why the Minister considers that the imposition of sanctions is a reasonable course of action for those purposes.
- 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 and the prohibitions and requirements to which they relate; explains why there are good reasons for those prohibitions and requirements to be enforceable by criminal proceedings; 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 the Regulations (e.g. breaching an asset-freeze) or trying to circumvent those principal prohibitions.
- 7.7 Part 2 of this instrument provides that anyone named by the UN Sanctions Committee (including individuals, entities and organisations) for the purposes of paragraph 3 of UN Security Council Resolution 1844 (asset-freeze etc.) is a designated person for the purposes of Part 3 (Finance) and anyone named by the UN Sanctions Committee for the purposes of paragraph 7 of UN Security Council Resolution 1844 (targeted arms embargo) is a designated person for the purposes of Chapter 3 of Part 5 (Trade) and regulation 35 (enabling or facilitating the conduct of armed hostilities: designated persons). A person may be designated by the UN Sanctions Committee if they meet the criteria set out in the relevant UN Security Council Resolutions, including engaging in or providing support for acts that threaten the peace, security or stability of Somalia, acting in violation of the general and complete arms embargo or obstructing the delivery of humanitarian assistance to Somalia. This instrument also lists the criteria against which a Minister may make a decision to designate a person as being subject to a travel ban, asset freeze and other sanctions (“designated persons”), including where an individual has been involved in the commission of a serious human rights violation or abuse, or a violation of international humanitarian law.
- 7.8 The names of designated persons are not included in this instrument. The names of those designated by the Secretary of State 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. Persons designated by the UN are listed on the United Nations Security Council Consolidated List and designations will also be publicised on gov.uk.
- 7.9 Part 3 of this instrument sets out financial sanctions measures that can be imposed on designated persons and 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 immigration sanctions made under this instrument. A designation under regulation 5 of this instrument for the purposes of regulation 18 (immigration) 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 travel ban in respect of persons named on the UN's Somalia Sanctions List is implemented through section 8B of the Immigration Act 1971, and not this instrument.
- 7.11 Part 5 of this instrument sets out trade sanctions. These sanctions include restrictions on: trade in military goods and military technology, i.e. the goods and technology for the time being specified in Schedule 2 to the Export Control Order 2008; the provision of unauthorised technical assistance, financial services and funds, and brokering services related to military goods and technology; unauthorised trade in military goods, military technology, provision of technical assistance, financial services and funds, and brokering services relating to military goods and technology to a designated person; and the provision of technical assistance, armed personnel, financial services and funds and brokering services related to enabling or facilitating the conduct of armed hostilities in Somalia. These restrictions apply to trade with Somalia as well as targeted measures which apply to trade with a designated person. The trade sanctions in this instrument also include restrictions on the trade in IED components and the import of charcoal from Somalia, whether or not such charcoal originated in Somalia.
- 7.12 Part 6 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 3 of this instrument. Part 6 also makes provision for trade licences to be issued by the Secretary of State. The prohibitions in Part 5 (Trade) do not apply to anything done under the authority of such a licence. Guidance will provide further detail about licensing. The Secretary of State may direct, on an individual basis, that the travel ban does not apply, for example for the purposes of attending a UN meeting.
- 7.13 Part 9 of this 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 sanctions regime in respect of Somalia.

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 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 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 this instrument, as it is intended to ensure existing sanctions remain in place following EU exit. This instrument is intended to deliver substantially 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 This instrument applies to activities that are undertaken by small businesses.
- 13.2 This instrument is 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 this instrument 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 consequence of that review. As such, the Minister does not consider that a review clause in these Regulations is appropriate.

15. Contact

- 15.1 Arezoo Eslah at the Foreign and Commonwealth Office telephone: 020 7008 4653 or email: Sanctions.SIs@fco.gov.uk can be contacted with any queries regarding the 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.