

EXPLANATORY MEMORANDUM TO
THE SANCTIONS (HUMANITARIAN EXCEPTION) (AMENDMENT)
REGULATIONS 2023

2023 No. 121

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Foreign, Commonwealth and Development Office and is laid before Parliament by Command of His Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument is made under the Sanctions and Anti-Money Laundering Act 2018 ('the Sanctions Act') to make amendments to:
- The Democratic People's Republic of Korea (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/411);
 - The Democratic Republic of the Congo (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/433);
 - The South Sudan (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/438);
 - The Iran (Sanctions) (Nuclear) (EU Exit) Regulations 2019 (S.I. 2019/461);
 - The ISIL (Da'esh) and Al-Qaida (United Nations Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/466);
 - The Central African Republic (Sanctions) (EU Exit) Regulations 2020 (S.I. 2020/616);
 - The Lebanon (Sanctions) (Assassination of Rafiq Hariri and others) (EU Exit) Regulations 2020 (S.I. 2020/617);
 - The Somalia (Sanctions) (EU Exit) Regulations 2020 (S.I. 2020/642);
 - The Mali (Sanctions) (EU Exit) Regulations 2020 (S.I. 2020/705);
 - The Iraq (Sanctions) (EU Exit) Regulations 2020 (S.I. 2020/707);
 - The Sudan (Sanctions) (EU Exit) Regulations 2020 (S.I. 2020/753);
 - The Yemen (Sanctions) (EU Exit) (No. 2) Regulations 2020 (S.I. 2020/1278);
 - The Libya (Sanctions) (EU Exit) Regulations 2020 (S.I. 2020/1665);
 - The Haiti (Sanctions) (EU Exit) Regulations 2022 (S.I. 2022/1281);
- (together "the Amended Regulations")

The Amended Regulations will give effect to the UK's obligations under United Nations Security Council Resolution 26641 ("resolution 2664"), which was adopted on 9th December 2022. Resolution 2664 creates a humanitarian exception across the above listed sanctions regimes, whereby certain activities necessary for the delivery of

¹ <http://unscr.com/en/resolutions/2664>

humanitarian assistance or to support basic human needs, when carried out by specified organisations, do not violate UN asset freezes.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument, which is subject to the negative procedure, is laid before Parliament on 8th February 2023 under section 55(3) of the Sanctions Act and comes into force the day after the day that it is laid. Bringing the instrument into force the day after laying is justified in this case to enable the UK to give effect to the obligations under resolution 2664 as soon as possible.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the whole of the United Kingdom ('UK').
- 4.2 The territorial application of this instrument is the whole of the UK. 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 As this instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 This instrument is made in exercise of powers conferred by section 1 of the Sanctions Act. Section 1 enables sanctions regulations to be made for the purposes of compliance with United Nations obligations and other international obligations, as well as for other purposes, including that it is in the interests of international peace and security and furthers a foreign policy objective of the government of the UK.
- 6.2 This instrument makes amendments to the Amended Regulations, which were made under the Sanctions Act for the purposes of compliance with United Nations obligations, and in the majority of cases, also for discretionary purposes within section 1(2) of the Sanctions Act. This instrument is made to ensure that the UK can fulfil its obligations to implement resolution 2664, which establishes a humanitarian exception to the asset freezes under UN sanctions regimes. When this instrument comes into force, it will give effect to the UK's UN obligations in respect of the asset freeze in domestic law.

7. Policy background

What is being done and why?

- 7.1 These Regulations create an exception whereby activities necessary for the delivery of humanitarian assistance or to support basic human needs, when carried out by specified organisations, do not violate UN asset freezes. The UK voted in favour of resolution 2664 in the United Nations Security Council in order to provide clarity for humanitarian providers and financial institutions and help to protect efficient and effective humanitarian aid delivery.

Explanations

What did any law do before the changes to be made by this instrument?

7.2

Before resolution 2664, there was no standardised humanitarian exception across UN sanctions regimes, and in the majority of cases, there was no exception at all. It is important to ensure that humanitarian activities and other activities that support basic human needs can continue, but humanitarian providers encountered difficulty navigating the individual provisions of different UN sanctions regimes. Feedback from humanitarian providers was that a standardised exception would provide clarity, improve risk analysis and reduce barriers to services such as financial services, particularly for those operating in high-risk jurisdictions.

Why is it being changed?

7.3

Resolution 2664 and these amendments provide clarity and consistency for humanitarian providers and financial institutions through a standardised humanitarian exception to help to protect efficient and effective humanitarian aid delivery. The amendments allow the UK to fulfil its obligations to implement UN Security Council Resolution 2664. The Resolution does not apply to the Afghanistan (Sanctions) (EU Exit) Regulations 2020, which has a tailored humanitarian exception to address the humanitarian crisis in Afghanistan.

What will it now do?

7.4

All UN sanctions regimes except the Afghanistan regulations will now include a standardised humanitarian exception to the asset freeze provisions. This will allow activity (which would otherwise breach the asset-freeze) which is necessary to ensure the timely delivery of humanitarian assistance, or to support other activities that support basic human needs. In order to fall within the exception, the activity must be carried out by an entity falling within the list specified in the Regulations, and the person providing it must believe that carrying out the activity is necessary for those purposes and has no reasonable cause to suspect otherwise.

7.5

The humanitarian exception applies to the ISIL (Da'esh) and Al-Qaida (United Nations Sanctions) (EU Exit) Regulations 2019 for a period of two years. The UN Security Council will consider renewal of the exception at that point. The exception is indefinite across the other UN sanctions regimes.

8. European Union Withdrawal and Future Relationship

8.1

This instrument itself does not relate to withdrawal from the European Union ('EU') / trigger the statement requirements under the European Union (Withdrawal) Act. The Amended Regulations listed in 2.1 related to the withdrawal of the UK from the EU because they replaced, with substantially the same effect, the previous related sanctions regimes under EU law.

9. Consolidation

9.1

This instrument does not consolidate previous instruments.

10. Consultation outcome

- 10.1 No consultation has been carried out on this instrument. The Explanatory Memorandum to the 2019 Regulations explains the consultation² that has been carried out in relation to the Sanctions Act.
- 10.2 There is neither a requirement in the Sanctions Act for public consultation on instruments made under the Act, nor is there any other legal obligation to consult in respect of this instrument. His Majesty's Government 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 has been published in relation to the prohibitions and requirements under the Amended Regulations. This guidance will be updated to reflect the amendments to those Regulations made by this instrument.

12. Impact

- 12.1 A full Impact Assessment has not been prepared for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.
- 12.2 UK businesses must already comply with sanctions against individuals and entities appearing on a regularly updated gov.uk list³. The process for notifying businesses about sanctions remains unchanged, so we do not expect significant changes to IT systems or administrative changes.
- 12.3 An impact assessment was produced for the primary legislation and can be found here⁴.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No specific action is proposed to mitigate regulatory burdens on small businesses.
- 13.3 It is estimated that the impact on small business in the UK will be negligible, given the assessment that the total costs to all UK business will be negligible. The FCDO does not believe it is possible to exempt smaller businesses from the requirements to comply with the measures introduced by this instrument, as this could provide a route for the circumvention or evasion of sanctions.

14. Monitoring & review

- 14.1 If His Majesty's Government determined that it was no longer appropriate to maintain a sanctions regime or specific sanctions measures, that regime would be removed or amended accordingly. As such, the Minister does not consider that a review clause in this instrument is appropriate.

² <https://www.gov.uk/government/consultations/public-consultation-on-the-united-kingdoms-future-legal-framework-for-imposing-and-implementing-sanctions>

³ <https://www.gov.uk/government/publications/the-uk-sanctions-list>

⁴ <https://publications.parliament.uk/pa/bills/lbill/2017-2019/0069/sanctions-and-anti-money-laundering-IA.pdf>

15. Contact

- 15.1 The Sanctions Directorate at the Foreign, Commonwealth and Development Office, email: SanctionsSIs@fcdof.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Abigail Culank, Deputy Director, Sanctions Directorate at the Foreign, Commonwealth and Development Office, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Minister Docherty at the Foreign, Commonwealth and Development Office can confirm that this Explanatory Memorandum meets the required standard.