

EXPLANATORY MEMORANDUM TO
THE DEMOCRATIC PEOPLE’S REPUBLIC OF KOREA (SANCTIONS) (EU EXIT)
REGULATIONS 2019

2019 No. 411

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 the Democratic People’s Republic of Korea (“the DPRK”) 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 the DPRK that is currently in force under EU legislation and related UK regulations. This sanctions regime gives effect to the UK’s obligations under United Nations Security Council Resolutions 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013), 2270 (2016), 2321 (2016), 2356 (2017), 2371(2017), 2375(2017), and 2397 (2017) and is also aimed at restricting the ability of the DPRK to carry on banned programmes, promoting the abandonment by the DPRK of banned programmes and the decommissioning of the DPRK’s banned weapons; and otherwise promoting peace, security and stability on the Korean peninsula.

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 (“**the Sanctions Act**”) and is subject to the negative 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.

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, 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 12 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 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 imposed on the DPRK for the purpose of compliance with the UN obligations of Member States and further of bringing about the complete, verifiable and irreversible denuclearisation in the DPRK 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 revoked and replaced by these Regulations: Council Regulation (EU) No 2017/1509 of 30 August 2017 concerning restrictive measures against the Democratic People's Republic of Korea and repealing Regulation (EC) No 329/2007, the North Korea (United Nations Sanctions) Order 2009(); the Democratic People's Republic of Korea (European Union Financial Sanctions) Regulations 2017(); the Export Control (North Korea Sanctions) Order 2018().

7. Policy background

What is being done and why?

- 7.1 Her Majesty's Government's (HMG's) policy on the DPRK is to disrupt, deter and increase the cost of DPRK's efforts to develop a nuclear weapon, and ballistic missile programmes. The goal is for the DPRK to commit to complete, verifiable and irreversible denuclearisation. This sanctions regime forms part of a wider policy of pressure intended to push the DPRK to take steps to this end and fulfil its obligations under multiple United Nations (UN) Security Council Resolutions. Sanctions also restrict the ability of the DPRK to sustain their nuclear and missile programmes and helps prevent the spread of weapons and materials of mass destruction to other actors.
- 7.2 The first sanctions measures against the DPRK were introduced at the UN after the DPRK's first nuclear test on 9 October 2006. UN Security Council Resolution (UNSCR) 1718 (2006) was adopted on 14 October 2006. UNSCR 1718 called for the complete, verifiable and irreversible denuclearisation on the Korean Peninsula. There have been a further eight UN resolutions strengthening sanctions against the DPRK with the last adopted on 22 December 2017. On 27 May 2016 the EU adopted additional autonomous sanctions in relation to the DPRK, which have been expanded on two further occasions, the last on 16 October 2017. The UK has supported the adoption of these UN and EU sanctions, in line with HMG policy on the DPRK.
- 7.3 The UK and other EU Member States currently meet their international obligation to implement UN sanctions by transposing all UN sanctions into EU law. These Regulations contain measures the UK is obliged, as a matter of international law, to implement in order to meet its UN obligations, as well as measures implemented otherwise than for the purpose of compliance with UN obligations i.e. for discretionary purposes as defined in the Act. 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 the UK to amend and lift the sanctions, or 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 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.
- 7.6 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.
- 7.7 Part 2 of this instrument deals with the designation of persons (including individuals, entities and organisations) under the sanctions regime. It provides that any person for the time being named by the Security Council or its Sanctions Committee for the purposes of paragraph 8(d) of UN Security Council Resolution 1718 is a designated person for the purposes of the asset-freezing and other financial measures. It 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 is or has been involved in in the facilitation of any of the DPRK's military programmes.

- 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 the instrument sets out the conditions under which a ship may be specified. A ship that has been specified is subject to sanctions relating to registration in the UK, insurance and reinsurance, classification services, bunkering and ship supply services. It can be barred from entry to ports, may be detained and can also be subject to directions concerning its movements in and around UK waters. The specification will be made in accordance with the ship's International Maritime Organisation number where possible and may only be done so where there are reasonable grounds to suspect the ship has been involved in relevant activities and that it is deemed appropriate to specify the ship in question. The relevant activities that may result in its specification include the carriage of prohibited or frozen goods or funds, or if it is engaged in ship- to-ship transfers of those goods or funds. In addition using the ship to circumvent this regime or contravene UK law by making frozen goods or funds on board available to a person, dealing with the ship or making unauthorised movements at sea, will also be deemed relevant activity.
- 7.10 Where the specification powers are used, persons affected will be informed and it will be published. If it is considered that publication is not in the interest of national security, international relations, prevention or detection of serious crime in the UK or in the interests of justice then restricted publication is permitted.
- 7.11 Part 4 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 or entity, either directly or indirectly. There are also sectoral financial sanctions which prohibit and restrict activity listed in the regime. For example, it is prohibited to open a new bank account, establish a new correspondent banking relationship, or establish a joint venture with a credit or financial institution domiciled in the DPRK, its branches or subsidiaries, or a credit or financial institution owned or controlled by a person domiciled in the UK. Existing financial relationships with such institutions must be severed. There are also sanctions requiring designated persons to close their representative offices in the UK and prohibiting business arrangements (including joint ventures) with designated persons.
- 7.12 Part 5 of the instrument sets out the effect of immigration measures made under this instrument. Designation under regulation 4 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. The travel ban in respect of persons named on the UN's

DPRK Sanctions List is implemented through section 8B of the Immigration Act 1971, and not these Regulations.

- 7.13 Part 6 of the instrument sets out trade sanctions. These sanctions include extensive restrictions on the trade in 'restricted goods and technology', including military goods and technology and dual-use goods and technology (i.e. goods that can be used for both a military and a civil purpose). They also restrict the trade in other goods and technology such as those intended for the armed forces of the DPRK, luxury goods, gold, precious metals and diamonds, industrial machinery etc. This Part also imposes a prohibition on the provision of services associated with goods and technology (such as technical assistance, financial services and brokering services), and other services, including in relation to ships and aircraft.
- 7.14 Part 7 of the instrument sets out transport sanctions in relation to aircraft. DPRK aircraft are not permitted to overfly or land in the UK, and directions can be made by the Secretary of State to the Civil Aviation Authority to either refuse permissions or withdraw existing permissions to land in or overfly the UK. Directions can also be made by or through air traffic control to direct a DPRK aircraft not to enter UK airspace, to leave UK airspace as well as not to land at or not to take off from an airport. Where an aircraft is already at an airport the airport operator can also be directed to detain an aircraft or direct that it is moved to another specified airport. Failure of a DPRK aircraft comply with these directions is an offence.
- 7.15 Part 8 of the instrument sets out transport sanctions in relation to ships. These sanctions include restrictions on the ownership, movement and registration of ships. It is not permitted for a UK person to own, control, charter or operate a DPRK ship and a person must not deal with a UN-designated ship which is subject to an asset freeze. There are restrictions in relation to certain ships entering UK ports. It is not permitted to register a ship in the DPRK or to obtain authorisation to fly the flag of the DPRK. Additionally, the Registrar General of Shipping and Seaman must refuse to register certain ships and terminate the registration of certain ships following receipt of a termination direction from the Secretary of State. Furthermore, transferring goods to or from DPRK ships is prohibited. This Part also provides for the Secretary of State, or a relevant harbour authority, to control the movement of ships subject to sanctions restrictions in UK waters by issuing directions requiring ships to move to a particular place, to enter a port, to refrain from entering a port or to leave a port, as applicable. The Secretary of State or a relevant harbour authority can also detain ship within a UK port or anchorage.
- 7.16 Part 9 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 activity prohibited by Part 4 (Finance) where it is appropriate for a purpose set out in Schedule 3 of the instrument. Part 9 also details exceptions to trade and transport prohibitions. It states that licences issued by the Secretary of State may permit activity prohibited by Parts 6 (Trade), 7 (Aircraft) and 8 (Ships). Guidance will provide further detail about licensing.
- 7.17 Part 12 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 DPRK 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 the 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 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 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.