

EXPLANATORY MEMORANDUM TO

THE YEMEN (SANCTIONS) (EU EXIT) (NO. 2) REGULATIONS

2020 No. 1278

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 Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument replaces the Yemen (Sanctions) (EU Exit) Regulations 2020 (S.I. 2020/733) and is intended to give effect to the UK's obligations under United Nations Security Council Resolutions (UNSCRs) 2140 (2014) and 2216 (2015). Resolutions 2140 and 2216 established a sanctions regime relating to Yemen, ("the UN regime") which is currently implemented through EU legislation and related UK legislation. UN sanctions were imposed in 2014 and 2015 in response to the ongoing political, security, economic and humanitarian challenges in Yemen. 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 Yemen 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 Yemen.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument is laid in response to the Joint Committee's Twenty-Fourth Report of Session 2019-21, which reported the Yemen (Sanctions) (EU Exit) Regulations 2020 (S.I. 2020/733) for doubtful vires on the basis that there was no reference to section 4 (immigration sanctions) of the Sanctions and Anti-Money Laundering Act 2018 ("the Sanctions Act") in the preamble. Accordingly, this instrument includes reference to section 4 of the Sanctions Act. There are no amendments to the policy in relation to this instrument and the substance of this instrument is the same as S.I. 2020/733. This instrument revokes S.I. 2020/733 and is being issued free of charge to all known recipients of S.I. 2020/733.
- 3.2 This instrument is laid before Parliament under section 55(6) of 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 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)

- 3.3 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)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.

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

- 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 on Yemen for the purpose of promoting the peace, stability and security of Yemen currently has effect in the UK through both EU instruments and related UK legislation. Using the power contained in section 54(2)(a) of the Sanctions Act, the following will be revoked and replaced by these Regulations: the Yemen (Sanctions) (EU Exit) Regulations 2020 (S.I. 2020/733); Council Regulation (EU) No 1352/2014 concerning restrictive measures in view of the situation in Yemen; the Yemen (European Union Financial Sanctions) Regulations 2014 (S.I. 2014/3349); and the Export Control (Yemen Sanctions) Regulations 2015 (S.I. 2015/1586).

7. Policy background

What is being done and why?

- 7.1 The UK is a supporter of sanctions in relation to Yemen at the UN Security Council. The current sanctions regime in respect of Yemen was established in UNSCR 2140 (2014) which included an asset-freeze and travel ban. The UN sanctions regime was renewed and enlarged in subsequent resolutions, including the imposition of a targeted arms embargo in UNSCR 2216 (2015). The sanctions regime was established as part of the UN's response to the ongoing political, security, economic and humanitarian challenges in Yemen, and in particular the implementation of a political transition "turning the page" from the presidency of Ali Abdullah Saleh.
- 7.2 The regime contains an asset freeze and travel ban against persons designated by the UN Sanctions Committee² for engaging in or providing support for acts that threaten the peace, security or stability in Yemen. A number of specific examples of acts falling within this listing criterion, e.g. committing violations of international humanitarian law or obstructing humanitarian assistance, are set out in UNSCR 2140 and subsequent resolutions. The regime also includes a targeted arms embargo against three individuals named in UNSCR 2216 as well as persons designated by the Committee for the purposes of the embargo.
- 7.3 The UK supports the Saudi-led Coalition military intervention, which was established in response to the request of President Hadi who was forced to flee Sana'a following a rebel insurgency that took the capital by force and overthrew the internationally recognised government of Yemen. The dire situation in Yemen remains of concern. It is the largest humanitarian crisis in the world with over 80% of the population in need of humanitarian assistance. The sanctions send a strong political message to those that are at the root of this crisis.
- 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 at the end of the Transition Period, as well as enabling Her Majesty's Government (HMG) to impose further sanctions autonomously.

² The Sanctions Committee was established in accordance with paragraph 19 of UN Security Council Resolution 2140.

- 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 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.
- 7.7 Secondly, and in accordance with section 18 of the Sanctions Act, a report has been produced that identifies the offences contained in this instrument 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.
- 7.8 Part 2 of this instrument provides that anyone named by the UN Security Council or the Sanctions Committee is a designated person for the purposes of Part 3 (Finance) (including individuals, entities and organisations) and that anyone named for the purposes of paragraph 14 of Resolution 2216 by the Security Council or the Committee is a designated person for the purposes of Part 5 (Trade). A person may be designated by the Sanctions Committee for reasons set out in the relevant UN Security Council Resolutions which include acts that threaten the peace, stability or security of Yemen, such as obstructing or undermining the successful completion of the political transition; impeding the implementation of the outcomes of the final report of the comprehensive National Dialogue Conference through violence, or attacks on essential infrastructure; or planning, directing, or committing acts that violate applicable international human rights law or international humanitarian law, or acts that constitute human rights abuses, in Yemen. 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 or a targeted arms embargo (“designated persons”) including where an individual is or has been involved in the commission of a serious human rights violation or abuse, or a violation of international humanitarian law.
- 7.9 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 be publicised on gov.uk.
- 7.10 Part 3 of this instrument sets out financial sanctions measures that can be imposed on 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.

- 7.11 Part 4 of this instrument sets out the effect of immigration designations made under this instrument. A designation made for the purposes of regulation 18 (immigration) of this instrument means that section 8B of the Immigration Act 1971 then applies to the person: a designated person is excluded from entering or transiting the UK and any permission they may have to stay in the UK is cancelled.
- 7.12 Part 5 of this instrument sets out trade sanctions. These sanctions include restrictions on the trade of military goods or military technology, i.e. the goods and technology for the time being specified in Schedule 2 to the Export Control Order 2008, where the trade is with, or benefits, a designated person. They also include restrictions on the provision of technical assistance, financial services and funds, and brokering services relating to military goods and military technology to, or for the benefit of, a designated person. There are also restrictions on the provision to, or for the benefit of a designated person, of technical assistance, armed personnel, financial services and funds, and brokering services which enable or facilitate the conduct of armed hostilities.
- 7.13 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 which permit activity prohibited by Part 3 (Finance) by a particular person where it is appropriate for a purpose set out in Schedule 2 of the 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.
- 7.14 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 Yemen 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 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 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 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 Sanctions 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, Commonwealth and Development 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 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, Commonwealth and Development Office telephone: 020 7008 4684 or email: Sanctions.SIs@fcdo.gov.uk can be contacted with any queries regarding this instrument.
- 15.2 Lisa Maguire, Deputy Director at the Foreign, Commonwealth and Development Office, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Lord Ahmad of Wimbledon, Minister of State at the Foreign, Commonwealth and Development Office, can confirm that this Explanatory Memorandum meets the required standard.