EXPLANATORY MEMORANDUM TO

THE AFGHANISTAN (SANCTIONS) (EU EXIT) (AMENDMENT) REGULATIONS 2022

2022 No. 65

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 is made under the Sanctions and Anti-Money Laundering Act 2018 ('the Sanctions Act') to make amendments to the Afghanistan (Sanctions) (EU Exit) Regulations 2020 (S.I. 2020/948) ('the 2020 Regulations'). It implements an exception created by the United Nations (UN) Security Council to financial sanctions under the UN Afghanistan sanctions regime, to facilitate humanitarian assistance and other activities that support basic human needs in Afghanistan.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument breaches the 21 day rule as it comes into force the day after it has been laid. The reason for this is that the Foreign, Commonwealth and Development Office consider that there is an urgent need to implement the UK's obligations under UN Security Council resolution 2615 (2021) in order to facilitate the delivery of urgently needed humanitarian assistance in Afghanistan and other activities that support basic human needs in Afghanistan. The UN Security Council has expressed deep concern regarding the humanitarian situation in Afghanistan. The Foreign, Commonwealth and Development Office therefore considers that the amendment in this instrument should come into force without delay.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the same as the territorial extent of the instrument that it amends: that is, the whole of the United Kingdom.

4.2 The territorial application of this instrument is also the same as the territorial application of the instrument that it amends. That is, it applies to the whole of the United Kingdom. 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 the instrument is subject to 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 sections 1 and 45 of the Sanctions Act. The 2020 Regulations were made under section 1 of the Sanctions Act for the purpose of compliance with the UK's UN obligations.

7. Policy background

What is being done and why?

7.1 The purpose of this instrument is to amend the 2020 Regulations to ensure that the UK implements its obligations under UN Security Council resolution 2615 (2021) ('UNSCR 2615'). Paragraph 1 of UNSCR 2615 decides that humanitarian assistance and other activities that support basic human needs in Afghanistan are not a violation of the financial sanctions measures imposed by paragraph 1(a) of UN Security Council resolution 2255 (2015), and that certain financial and other activities necessary to ensure the timely delivery of such assistance or to support such activities are permitted.

7.2 This instrument implements paragraph 1 of UNSCR 2615 by inserting an exception to regulations 8 to 12 (asset-freeze etc.) of the 2020 Regulations. This exception provides that the prohibitions in regulations 8 to 12 are not contravened by a person carrying out an activity which is necessary–

(a) to ensure the timely delivery of humanitarian assistance in Afghanistan, or

(b) to carry out other activities that support basic human needs in Afghanistan,

provided that the person believes that such activity is so necessary and there is no reasonable cause for the person to suspect otherwise.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 This instrument and the Sanctions (EU Exit) (Miscellaneous Amendments) (No. 5) Regulations 2020 (S.I. 2020/1397) make minor changes to Part 5 of the 2020 Regulations. This instrument does not consolidate these amendments. The Foreign, Commonwealth and Development Office will keep the need for consolidation under review.

10. Consultation outcome

10.1 No consultation has been carried out on this instrument. The Explanatory Memorandum to the 2020 Regulations explains the consultation 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. 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 is published in relation to the prohibitions and requirements under the 2020 Regulations which are amended by this instrument. This guidance will be updated to reflect the amendments to those Regulations made by this instrument.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because the Foreign, Commonwealth and Development Office does not expect monetary benefits/costs to UK businesses or the public sector as a result of the exception to the financial sanctions measures introduced by this instrument. An impact assessment was 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 sanctions 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 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 We estimate that the impact on small businesses in the UK will be minimal.

14. Monitoring & review

14.1 Section 30 of the Sanctions Act requires regular reviews of the 2020 Regulations that are amended by this instrument. However, section 30 does not apply to this instrument, by virtue of section 45(6) of the Sanctions Act. As such, the Minister does not consider that a review clause in this instrument is appropriate.

15. Contact

15.1 The Sanctions Legislation and Policy Team at the Foreign, Commonwealth and Development Office, email: Sanctions.SIs@fcdo.gov.uk, can be contacted with any queries regarding the instrument.

15.2 Daniel Drake, Director of the Sanctions Unit at the Foreign, Commonwealth and Development Office, can confirm that this Explanatory Memorandum meets the required standard.

15.3 Lord Ahmad, Minister of State for South Asia, the UN and the Commonwealth at the Foreign, Commonwealth and Development Office, can confirm that this Explanatory Memorandum meets the required standard.