EXPLANATORY MEMORANDUM TO

THE AFGHANISTAN (SANCTIONS) (OVERSEAS TERRITORIES) ORDER 2020

2020 No. 1284

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.

2. Purpose of the instrument

2.1 This instrument extends the Afghanistan (Sanctions) (EU Exit) Regulations 2020 (S.I. 2020/948) ("the 2020 Regulations"), as amended from time to time, to all British overseas territories (except Bermuda and Gibraltar which implement sanctions through their own domestic legislation) with the modifications required to enable implementation and enforcement of the sanctions regime by the authorities in those territories ("the modified Regulations").

2.2 It also extends to those British overseas territories, with suitable modifications and for the purposes of the modified Regulations, sections 44, 52(3) and 53 of the Sanctions and Anti-Money Laundering Act 2018 ("the Sanctions Act") which are required to ensure the effective implementation in those territories of the modified Regulations.

2.3 It also implements in those territories the travel ban imposed by paragraph 1(b) of United Nations Security Council Resolution 2255 (2015) ("UNSCR 2255") in relation to persons designated by the Sanctions Committee established in accordance with paragraph 30 of UNSCR 1988 (2011) (the "Sanctions Committee") (which is implemented in the United Kingdom by way of section 8B of the Immigration Act 1971).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

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 not subject to parliamentary 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.

4. Extent and Territorial Application

4.1 The extent of this instrument and the modified Regulations is: Anguilla, British Antarctic Territory, British Indian Ocean Territory, Cayman Islands, the Falkland Islands, Montserrat, Pitcairn (including Henderson, Ducie and Oeno Islands), St Helena, Ascension and Tristan da Cunha, South Georgia and the South Sandwich Islands, the Sovereign Base Areas of Akrotiri and Dhekelia, the Turks and Caicos Islands and the Virgin Islands ("the Territories").

4.2 Subject to paragraph 4.3, the application of this instrument and the modified Regulations is the Territories.

4.3 The modified Regulations which are extended to the Territories by this instrument also apply to conduct by a Territory person where that conduct is wholly or partly outside the Territory. "Territory person" is defined in regulation 2 of the modified Regulations as meaning, in relation to the Territory, a person who is:

(a) an individual ordinarily resident in the Territory who is—

(i) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen,

(ii) a person who under the British Nationality Act 1981 is a British subject, or

(iii) a British protected person within the meaning of that Act, or

(b) a body incorporated or constituted under the law of any part of the Territory.

4.4 The maritime enforcement powers contained in Part 8 of the modified Regulations may be exercised in international waters in respect of ships registered in the Territories, or ships which are not registered outside the Territories but are wholly owned by Territory persons.

5. European Convention on Human Rights

5.1 As this instrument is not subject to parliamentary procedure, no statement is required.

6. Legislative Context

6.1 This instrument is made in exercise of statutory powers under section 1 of the United Nations Act 1946 and section 63(3)(c) and (4) of the Sanctions Act.

6.2 The 2020 Regulations were made on 3rd September 2020 using the powers in Part 1 of the Sanctions Act and were laid before Parliament on 8th September 2020. They are intended to ensure that the United Kingdom can operate an effective sanctions regime in relation to Afghanistan after the end of the Transition Period. When these Regulations come into force, they will replace in the United Kingdom, with substantially the same effect, the EU sanctions regime relating to Afghanistan that is currently in force under EU legislation and related UK regulations. The sanctions regime gives effect to the United Kingdom's obligations under UNSCR 2255 in respect of an asset freeze and targeted arms embargo, aimed at those associated with the Taliban in constituting a threat to peace, security and stability in Afghanistan. The United Kingdom's obligations under UNSCR 2255 in respect of immigration sanctions ("the UN travel ban") are implemented in the United Kingdom separately by way of section 8B of the Immigration Act 1971.

6.3 Section 63(3)(c) of the Sanctions Act provides that Her Majesty may by Order in Council provide for any provision of Part 1 of that Act, or any regulations under Part 1 of that Act, to extend with or without modifications to any of the British overseas territories. Section 63(4) provides that this includes the power to extend any regulations as amended from time to time. This instrument extends to the Territories with relevant modifications both the 2020 Regulations and the provisions of the Sanctions Act required for the effective implementation in the Territories of the 2020 Regulations, namely in relation to protection for acts done for purposes of compliance, Crown application and saving for prerogative powers.

6.4 Section 1 of the United Nations Act 1946 provides that Her Majesty may by Order in Council make such provision as appears to Her necessary or expedient for enabling the effective application of certain measures where, under Article 41 of the Charter of the United Nations, the Security Council has called upon Her Majesty's Government in the United Kingdom to apply such measures to give effect to any decision of that Council. In accordance with subsection (2) of that section, such Orders in Council may extend to the British overseas territories. This instrument implements the UN travel ban in respect of Afghanistan.

7. Policy background

What is being done and why?

7.1 The UK supports sanctions in relation to Afghanistan at the UN Security Council. The current sanctions regime was initially established by UNSCR 1267 (1999) which included financial and transport sanctions on the Taliban. It formed part of the UN's response to the ongoing political and security challenges in Afghanistan. It was expanded by UNSCR 1333 (2000), to expand the transport sanctions and to freeze the funds of Osama bin Laden and associates. UNSCR 1333 also imposed an arms embargo. UNSCR 1988 (2011) separated listings for the Taliban and its supporters from those for Al-Qaida and Da'esh, which remain under the ISIL (Da'esh) and Al-Qaida (1267) sanctions regime, and imposed an asset freeze, travel ban and targeted arms embargo. UNSCR 2255 (2015) restated these measures as substantive obligations. 135 individuals and 5 entities have been designated by the Sanctions Committee for engaging in or providing support for acts which threaten the peace, security and stability of Afghanistan.

7.2 In line with its international obligations under the Charter of the United Nations, the United Kingdom is committed to the implementation of UN sanctions in the Territories.

7.3 The EU implements UN sanctions through EU Council Decisions and Regulations. The 2020 Regulations are intended to deliver substantially the same policy effects in the United Kingdom as those sanctions currently in force through EU legislation.

7.4 Therefore, this instrument extends the 2020 Regulations, and relevant provisions of the Sanctions Act, to the Territories, as well as implementing the UN travel ban, so that the sanctions measures in the Territories in relation to Afghanistan, together with associated criminal offences and enforcement powers, align with the sanctions regime in the United Kingdom. Schedule 2 to this instrument sets out the modifications to be made to the 2020 Regulations as extended by article 2 so that they can be effectively implemented and enforced in the Territories.

7.5 In particular, the modified Regulations ensure that the financial sanctions measures in the 2020 Regulations apply with the same effect in the Territories in respect of persons designated by the Sanctions Committee for the purposes of UNSCR 2255. The names of designated persons are not included in this instrument or the modified Regulations. Instead, the Governor of the Territory is required to publish, and keep up to date, a list of designated persons under this sanctions regime.

7.6 This instrument also makes provision for persons designated by the Sanctions Committee for the purposes of paragraph 1(b) of UNSCR 2255 to be excluded from the Territories.

7.7 The provisions in the 2020 Regulations in relation to licences which may be issued in respect of financial sanctions measures are modified by Schedule 2 of this instrument so that the licensing powers in the Territories are exercisable by the Governor of a Territory only with the consent of the Secretary of State. The modified Regulations also provide that a person's conduct outside the Territory will not contravene a prohibition under the modified Regulations if the conduct has been authorised by a licence issued by the Treasury under the 2020 Regulations; similarly, a person's conduct in another British overseas territory or a Crown Dependency will not contravene a prohibition under the modified Regulations if the conduct has been authorised by a licence or similar authorisation issued under the law of that British overseas territory or Crown Dependency.

7.8 The modifications set out in Schedule 2 in relation to criminal penalties and enforcement powers are intended to ensure that the implementation and enforcement of the Afghanistan sanctions regime in the Territories is aligned, as far as possible and reflecting the unique legal and governance arrangements in each Territory, with its implementation and enforcement in the United Kingdom.

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 relates to the withdrawal of the United Kingdom from the European Union. This is because it extends the 2020 Regulations to the Territories and the 2020 Regulations replace in the United Kingdom, with substantially the same effect, the existing EU sanctions regime in relation to Afghanistan. The Order in Council which currently implements the EU sanctions regime in the Territories will be revoked at the end of the Transition Period.

9. Consolidation

9.1 This instrument does not consolidate previous instruments.

10. Consultation outcome

10.1 Officials at the Foreign, Commonwealth and Development Office have engaged with the Territories on the approach to the extension to the Territories of sanctions regimes established under the Sanctions Act, including consultation on the approach to modifications and on the 'model' drafting to be included in the Orders in Council.

11. Guidance

11.1 The Foreign, Commonwealth and Development Office is working with the Territories to ensure that adequate information and guidance is published to ensure the effective implementation and understanding of the sanctions regime in the Territories.

12. Impact

12.1 The territorial extent of this instrument and the modified Regulations is the Territories: no, or no significant, impact is foreseen on business, charities or voluntary bodies in the United Kingdom.

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

12.3 An Impact Assessment has not been prepared for this instrument.

13. Regulating small business

13.1 The territorial extent of this instrument and the modified Regulations is the Territories: the legislation does not apply to activities that are undertaken by small businesses in the United Kingdom.

14. Monitoring & review

14.1 The Sanctions Act requires regular reviews of regulations made under section 1 of that Act. These obligations apply to the 2020 Regulations which are extended to the Territories by this instrument.

14.2 The UN sanctions are monitored and reviewed by the UN Security Council and by its Sanctions Committee. If the UN sanctions are suspended or lifted by the Security Council, this instrument will be reviewed and updated or revoked as necessary.

15. Contact

15.1 Catherine Cherag-zade at the Foreign, Commonwealth and Development Office, email: Sanctions.SIs@fcdo.gov.uk, can be contacted with any queries regarding this instrument.

15.2 Lisa Maguire, Deputy Director and Head 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 of Wimbledon, Minister of State for South Asia and the Commonwealth at the Foreign, Commonwealth and Development Office, can confirm that this Explanatory Memorandum meets the required standard.