EXPLANATORY MEMORANDUM TO

THE HAITI (SANCTIONS) (AMENDMENT) REGULATIONS 2024

2024 No. 178

1. Introduction

1.1 This explanatory memorandum has been prepared by the Foreign, Commonwealth and Development Office ("FCDO") 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 give effect to the UK's obligations under UN Security Council Resolutions ("UNSCR") 2699 (2023) and 2700 (2023), which amended UNSCR 2653 (2022). This further implements an embargo on the supply of small arms, light weapons and ammunition to Haiti, which replaced the targeted arms embargo against designated persons under the Haiti (Sanctions) Regulations 2022 (S.I. 2022/1281) ("the 2022 Regulations").

2.2 The Haiti (Sanctions) (Amendment) Regulations 2024 ("the 2024 Regulations") makes changes to the 2022 Regulations. These are necessitated as a result of omissions in the Haiti (Sanctions) (Amendment) Regulations 2023 (S.I. 2023/1320) ("the 2023 Regulations"). Amongst other changes, the 2023 Regulations sought to remove references in the 2022 Regulations to "military goods" and replace them with the term "small arms, light weapons and ammunition", the definition of which is now found in Schedule 1A to the 2022 Regulations.

2.3 The term "military goods" was not substituted in the prohibitions established by regulations 15(1), 16(1) and 17(1) of the 2022 Regulations. The 2024 Regulations now make this substitution as well as correct cross-references to the title of regulation 15 in regulations 36(2)(a) and 46(1) of the 2022 Regulations. The 2024 Regulations also amend the definition of "small arms, light weapons and ammunition" in paragraph 6(a) of Schedule 1A to the 2022 Regulations so that it refers to paragraph ML4, instead of paragraph ML4b, of Schedule 2 to the Export Control Order 2008 (S.I. 2008/3231).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 On 24 January 2024, the Joint Committee on Statutory Instruments ("JCSI") requested a memorandum from the FCDO asking whether there had been omissions in the 2023 Regulations, by not amending three substantive provisions and not updating two cross-references in the 2022 Regulations.

3.2 In a memorandum dated 30 January 2024, the FCDO accepted that these were omissions and undertook to lay an instrument rectifying the errors in the coming weeks.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the whole of the UK.

4.2 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 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 various purposes, including compliance with UN obligations. These Regulations are made under section 1(1)(a) of the Sanctions Act in accordance with procedure specified in section 55(6) of the Sanctions Act. When this instrument comes into force, it will give full effect in domestic law to the UK's UN obligations in respect of the implementation of an embargo on the supply of small arms, light weapons and ammunition to Haiti.

7. Policy background

What is being done and why?

7.1 The UK supports the Haiti UN sanctions regime which the UN Security Council adopted in October 2022 in UNSCR 2653 (2022) to tackle issues threatening the peace, stability and security of Haiti. The UK made the 2022 Regulations to implement its UN obligations under UNSCR 2653 (2022) which imposed financial sanctions, immigration sanctions and trade sanctions (an arms embargo) on individuals who had been designated by the Sanctions Committee created by UNSCR 2653.

7.2 On 2 October 2023, UNSCR 2699 (2023) changed the existing targeted arms embargo on designated individuals to an embargo on the supply small arms, light weapons and ammunition to Haiti. However, UNSCR 2699 (2023) was never intended to be a sanction focused UNSCR; instead, it was meant to secure agreement for the deployment of a multi-national security support mission to Haiti which remains a priority for the UK. Therefore, the change from a targeted arms embargo to an embargo on the export of small arms, light weapons and ammunition was reaffirmed when the main UN Haiti sanctions regime was renewed on 19 October 2023 in UNSCR 2700 (2023).

7.3 The UK's obligations under the UN Haiti sanctions regime in respect of the country-wide embargo on small arms, light weapons, and ammunition was implemented in domestic law by the 2023 Regulations which made amendments to the 2022 Regulations. The 2024 Regulations introduce further amendments to the 2022 Regulations to ensure that the prohibitions properly take effect in UK law.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union ('EU') / trigger the statement requirements under the European Union (Withdrawal) Act 2018.

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. 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 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 will be published on gov.uk in relation to the prohibitions and requirements under this instrument.

12. Impact

12.1 There is no impact on business, charities or voluntary bodies. When making the 2023 Regulations, the FCDO undertook a De Minimis impact assessment to estimate costs to UK businesses and wider impacts resulting from the amendment. It estimated that the costs were beneath the threshold of £5m per annum which would require a full impact assessment. This sum results primarily from low transition and compliance costs and a potential negligible reduction in UK GDP due to lower levels of inward Foreign Direct Investment, migration to/from and exports to Haiti. The impact to UK business from the new country-wide small arms, light weapons and ammunition embargo is expected to be negligible. No separate impact assessment has been undertaken for the 2024 Regulations since these merely remedy omissions in the 2023 Regulations.

12.2 There is no impact on the public sector.

12.3 UK businesses must comply with sanctions against the countries appearing on a regularly updated gov.uk list[1]. The process for notifying businesses about sanctions remains unchanged, so we do not expect significant changes to IT systems or administrative changes.

12.4 An impact assessment[2] was produced for the primary legislation. The 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

[1] https://www.gov.uk/government/publications/the-uk-sanctions-list

[2] https://publications.parliament.uk/pa/bills/lbill/2017-2019/0069/sanctions-and-anti-money-laundering-IA.pdf

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 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 the UN determined that it was no longer appropriate to maintain the Haiti sanctions regime or that it should be modified, the 2022 Regulations would be amended accordingly. As such, the Minister does not consider that a review clause in this instrument is appropriate.

15. Contact

15.1 The Sanctions Directorate in the Foreign, Commonwealth and Development Office, email: SanctionsSIs@fcdo.gov.uk can be contacted with any queries regarding the instrument.

15.2 Abigail Culank, Sanctions Directorate at the Foreign, Commonwealth and Development Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 Rt Hon Anne-Marie Trevelyan MP, Minister of State for the Indo Pacific and Sanctions at the Foreign, Commonwealth and Development Office can confirm that this Explanatory Memorandum meets the required standard.