EXPLANATORY MEMORANDUM TO

THE LEBANON (SANCTIONS) (ASSASSINATION OF RAFIQ HARIRI AND OTHERS) (EU EXIT) REGULATIONS 2020

2020 No. 617

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 This instrument is intended to give effect to the UK's obligations under UN Security Council Resolution 1636 (2005). Resolution 1636 established a sanctions regime imposing restrictive measures against certain persons suspected of involvement in the assassination of former Lebanese Prime Minister Rafiq Hariri and others ("the UN regime") which is currently implemented through EU legislation and related UK legislation. This instrument is intended to ensure that the UK continues to meet its obligations 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 for the time being named on the UN's Lebanon 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.

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 2018 ("**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)

3.2 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 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 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.

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 in relation to Lebanon in respect of the 2005 assassination of former Lebanese Prime Minister Rafiq Hariri and others currently has effect in the UK through both EU instruments and related UK regulations. Using the power contained in section 54(2) of the Sanctions Act, Council Regulation (EC) No 305/2006 of 21 February 2006 imposing specific restrictive measures against certain persons suspected of involvement in the assassination of former Lebanese Prime Minister Rafiq Hariri and the Lebanon and Syria (Asset-Freezing) Regulations 2012 (S.I. 2012/1517) will be revoked.

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

7. Policy background

What is being done and why?

7.1 The UK has been a supporter of sanctions in relation to Lebanon at the UN Security Council. UN Security Council Resolution 1636 (2005) established a sanctions framework (including an asset freeze and travel ban) with the aim of bringing to justice those individuals suspected of involvement in the 2005 terrorist bombing that killed former Lebanese Prime Minister Rafiq Hariri and others. To date, no individuals have been designated.

7.2 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.

7.3 In accordance with section 18 of the Sanctions Act, a report has been produced that identifies the offences created by 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 this instrument (e.g. breaching an asset-freeze) or trying to circumvent those principal prohibitions.

7.4 Part 2 of this instrument provides that anyone named by the UN Security Council Committee established pursuant to resolution 1636 is a designated person for the purposes of Part 3 (Finance) (including individuals, entities and organisations).

7.5 Persons designated by the UN are listed on the United Nations Security Council Consolidated List and designations will also be publicised on gov.uk.

7.6 Part 3 of the instrument sets out financial sanctions measures that can be imposed in relation to 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. Part 3 also prohibits intentionally participating in circumventing or facilitating the breach of financial sanctions prohibitions made under the instrument.

7.7 Part 4 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 or made available in order to pay for essential goods or services such as food. It states that the Treasury may issue licences which permit activity prohibited by Part 3 (Finance) where it is appropriate for one or more of the purposes set out in Schedule 2 of the instrument.

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 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 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 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 the existing sanctions framework that is 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 the existing sanctions framework remains in place following EU exit. This instrument is intended to deliver a similar policy effect as the existing EU sanctions framework. 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 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 these Regulations is appropriate.

15. Contact

15.1 Arezoo Eslah at the Foreign and Commonwealth Office telephone: 020 7008 4653 or email: Sanctions.SIs@fco.gov.uk can be contacted with any queries regarding the instrument.

15.2 Lisa Maguire, Deputy Director at the Foreign and Commonwealth Office, can confirm that this Explanatory Memorandum meets the required standard.

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