



Foreign &  
Commonwealth  
Office

King Charles Street  
London SW1A 2AH

Minister of State for  
Europe and the Americas

6 February 2019

Tom Tugendhat MP  
Chair, Foreign Affairs Committee  
House of Commons  
London  
SW1A 0AA

Dear Tom,

I wrote to you in November to explain that we are laying a series of Statutory Instruments under the Sanctions and Anti-Money Laundering Act 2018 (the Sanctions Act), in preparation for a possible exit from the EU without a deal being agreed.

I wanted to write to you as Chair of the Foreign Affairs Committee to explain the parliamentary procedure that will apply to certain Statutory Instruments (SIs) that the Department will be laying under the Sanctions Act between now and exit day.

The Sanctions Act received Royal Assent in May, and enables the UK to implement and enforce its own sanctions after leaving the EU. The SIs to be laid will set up regimes under the Act, on countries such as Iran, the Democratic People's Republic of Korea and Russia. When these instruments come into force they will replace, with substantially the same effect, sanctions currently in force in the UK under EU legislation and related UK regulations. In addition to these, there will be two SIs laid under the EU (Withdrawal) Act 2018 to allow us to temporarily implement some sanctions regimes in reliance on retained EU law. One of these two "deficiencies" SIs has already been through the sifting procedure and was made and laid as a negative instrument in January. The second was laid before the sifting committees in on 4 February.

With the exception of those two deficiencies SIs, the remaining sanctions-related instruments are being laid under the Sanctions Act and are therefore not subject to the sifting procedure under the EU (Withdrawal) Act.

The appropriate procedure for regulations made under the Sanctions Act was debated during the passage of the Act, and is set out in section 55. It states that, in general, regulations containing provisions dealing with United Nations obligations are to be subject to the negative resolution procedure and regulations with purposes other than implementing UN obligations are subject to the made-affirmative procedure, under which regulations are made, then laid in Parliament, and will cease to have effect unless approved by subsequent resolution of each House within 28 days of their being laid. Regulations are not laid in draft so that sanctions can be fully effective immediately, to prevent, for example, a designated person from moving assets before the statutory instrument comes into force.

In making our first sets of regulations under the Sanctions Act, we also intend to rely on section 56 of the Act in combination with section 55. Section 56 makes special provision for the commencement of statutory instruments connected with EU exit, providing the Minister with power to commence all or some of those regulations by further regulations. Given the uncertainty over the EU-exit timetable, this will ensure that the sanctions regulations will be brought into force at the appropriate time. In relation to instruments subject to the made-affirmative procedure, where the section 56 mechanism is used the period for parliamentary approval starts from the date on which the regulations first come into force and is extended from 28 days to 60 days from the day appointed.

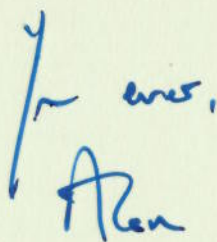
The Department intends to make use of these provisions for three reasons.

First, given the current uncertainty over the EU-exit timetable we need flexibility for the SIs to come into force at the appropriate time (i.e. when EU law no longer applies in the UK).

Second, with parliamentary time at a premium, providing for the debates on made-affirmative instruments under the Sanctions Act to take place after the date on which they come into force (which will likely be on or just before exit day), allows parliamentary time for the passage of other secondary legislation.

Third, the parliamentary debates must take place within 60 days of the date when the Regulations come into force, rather than when they were made. In a "no deal" situation, the SIs would need to come into force on Exit Day, and the content of the commencement regulations will likely be substantially similar to those first laid before Parliament, but in case of a deal, and an implementation period, they may not be needed until the end of that period (by which time their contents will likely have been subject to amendments). By using section 56, the debates can take place closer to when the Regulations will come into force, taking into account the latest information, the facts on the ground and the most up to date version of the regulations that will be in force. This should ultimately allow for effective scrutiny of each regime.

I trust this is helpful and my officials in the Sanctions Team would be happy to brief you further if you wished.

A handwritten signature in blue ink, appearing to read 'Alan Duncan', with a vertical line extending upwards from the start of the signature.

**RT HON SIR ALAN DUNCAN MP**