

EXPLANATORY MEMORANDUM TO
THE RUSSIA (SANCTIONS) (EU EXIT) (AMENDMENT) (NO. 5) REGULATIONS
2022

2022 No. 205

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 Russia (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/855) ('the 2019 Regulations'). These amendments will introduce a new financial sanctions measure, for the purposes set out in regulation 4 of the 2019 Regulations.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument, which is subject to the made affirmative procedure, is laid before Parliament on 1 March 2022 under section 55(3) of the Sanctions Act and comes into force at 5.00 p.m. on the same day that it is laid. Bringing the instrument into force on the same day is necessary given the international situation and it is appropriate for these measures to enter into force as soon as possible.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the same as the territorial extent of the instrument which it amends: that is, the whole of the United Kingdom ('UK').
- 4.2 Subject to paragraph 4.3, 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 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 The Secretary of State for Foreign, Commonwealth and Development Affairs, has made the following statement regarding human rights:

“In my view the provisions of the Russia (Sanctions) (EU Exit) (Amendment) (No. 5) Regulations 2022 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 The Sanctions Act establishes a legal framework which enables Her Majesty's Government to impose sanctions for a number of purposes, which include that it is in the interests of international peace and security and furthering a foreign policy objective of the government of the UK.
- 6.2 This instrument is made in exercise of powers conferred by sections 1, 3, 15-17, 45 and 62 of the Sanctions Act. It makes amendments to the 2019 Regulations, which were made under the Sanctions Act for discretionary purposes within section 1(2) of the Sanctions Act.

7. Policy background

What is being done and why?

- 7.1 This instrument amends the 2019 Regulations to impose and amend prohibitions and requirements in relation to financial sanctions measures.
- 7.2 Following its illegal annexation of Crimea in 2014 Russia has continued to pursue a pattern of aggressive action towards Ukraine. This has included use of military force to invade Ukraine, announced by President Putin on 24 February 2022 as a "special military operation", and the recognition of the 'Donetsk People's Republic' and 'Luhansk People's Republic' as independent states, and the deployment of Russian military to those regions.
- 7.3 The UK has called on Russia to cease its military activity, withdraw its forces from Ukraine and Crimea and fulfil its international commitments including under the 1975 Helsinki Act, the Minsk Protocols and 1994 Budapest memorandum. The UK continues to reiterate its support for Ukraine and in addition to withdrawing its troops from Ukrainian soil, has called on Russia to end its support for the separatists, and enable the restoration of security along the Ukraine-Russia border under effective and credible international monitoring.
- 7.4 UK policy is focused on ending the crisis in Ukraine and on assisting Ukraine to secure its borders against Russia's aggressive actions, ensuring a stable, prosperous and democratic future for all its citizens, and has been unwavering in its support for the country's territorial integrity and sovereignty.
- 7.5 These sanctions are part of a broader policy of measures which includes: diplomatic pressure; trade sanctions; economic and financial sanctions and designations. Change will therefore be sought through diplomatic pressure, and other measures, supported by implementing sanctions in respect of actions undermining the territorial integrity, sovereignty and independence of Ukraine.
- 7.6 The Chancellor, in coordination with the Governor of the Bank of England, announced the Government's intention to introduce these measures on 28 February 2022. The Foreign Secretary communicated this further to Parliament in her oral statement of 28 February 2022.
- 7.7 The Regulations add new financial sanctions to Part 3 (Finance) of the 2019 Regulations.
- 7.8 Paragraph (1) of Regulation 18A states that a person must not provide financial services to persons mentioned in paragraph (2) where—

- (a) the financial services are for the purpose of foreign exchange reserve and asset management; and
 - (b) that person knows, or has reasonable cause to suspect, that the financial services are provided to a person mentioned in paragraph (2).
- (2) The persons mentioned in paragraph (1) are—
- (a) the Central Bank of the Russian Federation,
 - (b) the National Wealth Fund of the Russian Federation,
 - (c) the Ministry of Finance of the Russian Federation,
 - (d) a person owned and controlled directly or indirectly (within the meaning of regulation 7) by a person mentioned in sub-paragraph (a) to (c), or
 - (e) a person acting on behalf of or at the direction of a person mentioned in sub-paragraph (a) to (c).
- 7.9 “Foreign exchange reserve and asset management” means activities relating to reserves or assets of the persons mentioned in paragraph (2) of regulation 18A in respect of financial activities, including the following—
- (a) money market instruments (including cheques, bills and certificates of deposit),
 - (b) foreign exchange,
 - (c) derivative products (including futures and options),
 - (d) exchange rate and interest rate instruments (including products such as swaps and forward rate agreements),
 - (e) transferable securities,
 - (f) other negotiable instruments and financial assets (including bullion), or
 - (g) special drawing rights.
- 7.10 This instrument also makes amendments to the 2019 Regulations to provide for licensing and enforcement, including the creation of criminal offences.
- 7.11 This instrument is accompanied by two statutory reports that are required to be published under section 46 of the Sanctions Act in relation to the 2019 Regulations.
- 7.12 First, and in accordance with section 46(2) of the Sanctions Act, the report explains why the Minister considers that the carrying out of the stated purposes of the regulations being amended would meet one or more of the discretionary purposes (i.e. purposes other than implementing UN obligations) set out in the Sanctions Act; why there are good reasons to pursue those purposes; and why the Minister considers that the imposition of sanctions is a reasonable course of action for pursuing those purposes.
- 7.13 Secondly, and in accordance with section 18 of the Sanctions Act, a report has been produced that identifies the offences contained in 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 contravening the principal prohibitions in the Regulations (e.g. breaching one of the financial sanctions prohibitions) or circumventing those principal prohibitions.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument itself does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act. The 2019 Regulations related to the withdrawal of the UK from the EU because they replaced, with substantially the same effect, the previous EU Russia and Ukraine-related sanctions regimes.

9. Consolidation

- 9.1 The 2019 Regulations have been amended by the Russia (Sanctions) (EU Exit) (Amendment) Regulations 2022 (S.I. 2022/123); the Russia (Sanctions) (EU Exit) (Amendment) (No. 2) Regulations 2022 (S.I. 2022/194); the Russia (Sanctions) (EU Exit) (Amendment) Regulations (No. 3) 2022 (S.I. 2022/195); the Sanctions (EU Exit) (Miscellaneous Amendments) (No. 2) Regulations 2020 (S.I. 2020/590); the Sanctions (EU Exit) (Miscellaneous Amendments) (No. 4) Regulations 2020 (S.I. 2020/951); and by the Sentencing Act 2020 (c.17). This instrument does not consolidate previous instruments. The Foreign, Commonwealth and Development Office will keep the need for consolidation under review.

10. Consultation outcome

- 10.1 The Explanatory Memorandum to the 2019 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 has been published in relation to the prohibitions and requirements under the 2019 Regulations. This guidance will be updated to reflect the amendments to those Regulations made by this instrument.

12. Impact

- 12.1 The Foreign, Commonwealth & Development Office has undertaken a De Minimis impact assessment to estimate costs to UK businesses and wider impacts resulting from these Regulations. We have estimated the costs to be beneath the threshold of £5m per annum for a full impact assessment, with costs resulting primarily the loss of revenue associated with financial services provided to the Central Bank of Russia.
- 12.2 There are risks associated with this measure, most notably that of (possibly asymmetric) retaliatory action by Russian authorities. There could also be unintended consequences, such as a negative impact on bilateral trade. However, this is already expected to fall due to a combination of other sanctions measures being introduced by the UK and allies and the ‘chilling effect’ the Ukraine conflict is having on business’ appetite to have economic links with Russia.
- 12.3 An impact assessment was produced for the primary legislation and can be found [here](#).

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 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 Section 30 of the Sanctions Act requires regular reviews of the 2019 Regulations which are amended by this instrument. Standalone reviews of this instrument are not required. However, reviews of the 2019 Regulations which take place after this instrument enters into force will include a review of the measures introduced by this instrument. 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, 0207 008 8553 or email: Sanctions.SIs@fcdo.gov.uk, can be contacted with any queries regarding the instrument.
- 15.2 Daniel Drake, Director of Sanctions Unit at the Foreign, Commonwealth and Development Office, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Rt. Hon. James Cleverly MP, Minister of State for Europe and North America, can confirm that this Explanatory Memorandum meets the required standard.