EXPLANATORY MEMORANDUM TO

THE RUSSIA (SANCTIONS) (EU EXIT) (AMENDMENT) (NO.4) REGULATIONS 2023

2023 No. 1364

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 powers in the Sanctions and Anti-Money Laundering Act 2018 ('the Sanctions Act') and amends the Russia (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/855) ('the 2019 Regulations'). These amendments will introduce new restrictions on trade and financial measures for the purposes of encouraging Russia to cease actions destabilising Ukraine or undermining or threatening the territorial integrity, sovereignty or independence of Ukraine, as stated in regulation 4 of the 2019 Regulations. We continue to implement sanctions at an unprecedented pace, tightening the screws against Russian aggression in Ukraine.

2.2 The measures brought into effect by this statutory instrument deliver on the Prime Minister's commitment to ban imports of Russian metals including aluminium, nickel, and copper. Export measures introduced in this instrument continue to fulfil the UK Government's commitment to ban the export of all items that have been used by Russia on the battlefield to date, and further aligns the UK with international partners.

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 14 December 2023 under section 55(3) of the Sanctions Act and, with the exception of four regulations, comes into force on 15 December 2023. Regulations 17, 18, 20 and 21 come into force on 26 December 2023.

4. Extent and Territorial Application

4.1 This instruments extends to the whole of the United Kingdom ('UK'). It is subject to any obligation arising in respect of the Windsor Framework as it may apply through section 7A of the European Union (Withdrawal) Act 2018 in respect of Northern Ireland.

4.2 Subject to paragraph 4.3, the territorial application of this instrument is the same as its extent. That is, it applies to the whole of the UK.

4.3 This instrument also applies to conduct undertaken by UK persons were it occurs wholly or partly outside the UK, and to conduct undertaken by any person in the territorial sea adjacent to the UK.

5. European Convention on Human Rights

5.1 Rt Hon Anne Marie Trevelyan MP, Minister for State for the Indo Pacific and Sections at the Foreign, Commonwealth and Development Office has made the following statement regarding Human Rights:

"In my view the provisions of the Russia (Sanctions) (EU Exit) (Amendment (No.4) Regulations 2023 are compatible with the Convention rights."

6. Legislative Context

6.1 The Sanctions Act establishes a legal framework which enables His Majesty's Government to impose sanctions for a number of purposes, including that it is in the interests of international peace and security and that it furthers a foreign policy objective of the government of the UK.

6.2 This instrument makes amendments to the 2019 Regulations, which were made under the Sanctions Act for discretionary purposes within section 1(2) of that Act.

7. Policy background

What is being done and why?

7.1 This instrument amends the 2019 Regulations to impose further trade and financial sanctions on Russia.

7.2 Following its illegal annexation of Crimea in 2014, Russia continued a pattern of aggressive action towards Ukraine, which culminated in the invasion of Ukraine's sovereign territory on 24 February 2022. Announced by President Putin as a "special military operation", this included recognising the "Donetsk People's Republic" and "Luhansk People's Republic" as independent states and deploying Russian military across Ukraine.

7.3 In September 2022, Russian-installed officials in four temporarily-controlled regions of Ukraine, namely Donetsk, Luhansk, Kherson and Zaporizhzhia, conducted sham referendums in an attempt to justify their illegal seizure of Ukrainian land. The Russian regime announced the illegal annexation of these regions against the will of the Ukrainian people and in flagrant breach of international law.

7.4 The UK has called on Russia to cease its military activity, withdraw its forces from Ukraine and Crimea, end its support for the separatists, and fulfil its international commitments including under the 1975 Helsinki Final Act, the 2014 and 2015 Minsk Protocols, and the 1994 Budapest Memorandum and the UN Charter. UK policy remains focused on ending Russia's invasion and on assisting Ukraine to secure its borders, ensuring a stable, prosperous and democratic future for all its citizens. The UK is unwavering in its support for the country's independence, territorial integrity and sovereignty.

7.5 At the time of the G7 summit in Japan in May 2023, the Prime Minister committed to banning the import of Russian origin aluminium, copper, and nickel by the end of 2023. The UK targeting the import of certain Russian base metals, including copper, aluminium, and nickel, and articles of base metals, demonstrates our commitment to curtailing the revenues available to Russia. Certain Russian base metals have been subject to an additional 35 percentage points import tariff.

7.6 The measures in this instrument tighten sanctions on £662 million of exports, based on 2021 trade flows, that are subject to restrictions. The measures further restrict Russia's ability to access strategic goods and technology.

7.7 These sanctions are part of a broader set of measures which include: diplomatic, military, financial and humanitarian support; trade, financial and transport sanctions; and designations. To achieve maximum impact, UK trade sanctions are aligned with allies as far as possible, including the US and EU. 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.

Explanations

What did any law do before the changes to be made by this instrument?

7.8 This instrument amends Part 3 (Finance), Part 5 (Trade), Part 7 (Exceptions and Licences), Part 8 (Information and records) and Part 9 (Enforcement) of the 2019 Regulations.

7.9 This instrument amends Schedule 2A (Critical-industry goods and critical-industry technology), Schedule 3A (Luxury Goods), Schedule 3B (Iron and Steel Products), Schedule 3C (Defence and Security Goods and Defence and Security Technology), Schedule 3E (G7 dependency and further goods) and Schedule 3I (Russia's vulnerable goods) introduced by Part 5 (Trade) of the 2019 Regulations, which contains trade sanctions measures, and makes related consequential amendments.

7.10 This instrument also amends Schedule 5 (Treasury licenses: purposes) introduced in Part 3 (Finance) of the 2019 regulations, which contains financial sanctions measures and makes related consequential amendments.

7.11 Previous trade sanctions imposed through the 2019 Regulations include wide-ranging prohibitions on the export of goods and services, including defence and security goods and technology, goods used for Russia's energy sector, and services for which Russia depends on the West. They also include import prohibitions on iron and steel products, gold, oil, coal, and key revenue generating goods that originate or are consigned from Russia.

7.12 Previous financial sanctions include asset freezes, prohibitions on the provision of financial services for foreign exchange reserve and asset management for Russian state banks, investment in Russia or non-government controlled Ukrainian territory, or the provision of trust services for a designated person.

What will it now do?

7.13 This instrument imposes a number of new trade restrictions to build on those already in place. These include:

- Prohibitions on the export, supply and delivery, and making available to, or for use in Russia of additional categories of goods with a potential for military and industrial application. This includes chemicals, electrical goods, metals, vehicles and machine parts. These goods have been added to existing schedules in the 2019 Regulations, namely Schedules 2A (critical-industry goods and critical-industry technology), 3C (defence and security goods and defence and security technology), and 3E (G7 dependency and further goods).

- Amendments to Schedules 3A, 3E and 3I to align with EU measures and to minimise overlap between different schedules, and minor amendments to ensure clarity and consistency in Schedule 3C.
- Prohibitions on the provision of ancillary services, including technical assistance, financial services and provision of funds, and brokering services, for luxury goods in Chapter 4B. This aligns with EU measures.
- Import prohibitions on further iron and steel products and a new chapter and schedule for "Metals". This will further constrain Russia's ability to raise money to fund its war effort and will further degrade the competitiveness and influence of the Russian metals sector.
- Limited exceptions to measures in the new metals chapter, as well as certain previous prohibitions on iron and steel. These specifically cover "old stock" goods: goods of Russian origin having left Russia, legally, prior to their relevant prohibition dates.
- Exceptions which apply to existing prohibitions, such as humanitarian assistance activity, will apply to the new goods. As with the existing prohibitions, licences will be assessed on a case-by-case basis and may be granted where they would be consistent with the purposes of the sanctions.
- This instrument extends the referral process relevant to the way that His Majesty's Revenue and Customs will investigate certain offences under the 2019 Regulations.

7.14 This instrument also amends and builds upon Part 3 (Finance), Part 8 (Information and records) and Schedule 5 (Treasury licences: purposes) of the 2019 Regulations, which contain financial sanctions, prohibitions, and obligations. These include:

- The introduction of new licensing grounds to support UK entities who wish to fully or partially divest themselves of their Russian interests, UK entities outside Russia wishing to carry out divestment of investors who are the Russian Government or designated persons under the Russia Regulations and UK persons assisting another person undertaking the divestment of interests or investors. These have been added to the existing licensing grounds in Schedule 5.
- Amendment of the existing prohibition in regulation 17A(2). This measure currently prohibits UK credit and financial institutions from processing Sterling payments which have travelled to, from or via a credit/financial institution which is designated for the purposes of regulation 17A, or to, from or via a (UK or non-UK) credit/financial institution which is owned or controlled directly or indirectly by such a designated person. The amendment will expand this prohibition to prohibit UK credit and financial institutions from processing payments in any currency, not just Sterling payments. The amendment will also clarify the meaning of "processing" in this context and add a new exception to enable UK credit and financial institutions to transfer funds for the purposes of compliance with regulation 17A(2) in certain circumstances.
- The introduction of new reporting obligations under regulation 70. These include:
    - The obligation for persons designated under the asset freeze to disclose the value and nature of any funds or economic resources they own, hold or control in the UK or as UK persons. Assets must be disclosed within 10 weeks of the legislation coming into force or from date of designation, whichever is later. Any new assets obtained or assets which have been disposed of in the period after this must be reported to the Treasury as soon as practicable. This will be added under regulation 70A.

- The obligation for relevant firms, to disclose funds and economic resources, held by them for the entities to whom the provision of certain financial services is prohibited by regulation 18A(1), to the Treasury as soon as practicable and on an annual basis.

8. European Union Withdrawal and Future Relationship

8.1 This instrument itself does not relate to withdrawal from the European Union ('EU'). The 2019 Regulations are 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 S.I. 2020/590; S.I. 2020/951; S.I. 2022/123; S.I. 2022/194; S.I. 2022/195; S.I. 2022/203; S.I. 2022/205; S.I. 2022/241; S.I. 2022/395; SI 2022/452; SI 2022/477; S.I. 2022/792; S.I. 2022/801; S.I. 2022/814; S.I. 2022/818; S.I. 2022/850; S.I. 2022/1110; S.I. 2022/1122, SI 2022/1331; SI 2023/149, 440, 665, and 713 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 No consultation has been carried out on this instrument. The Explanatory Memorandum to the 2019 Regulations themselves explain that consultation 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. HM 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 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 net direct cost to business per year is £6.8m whilst the total net present social value (NPSV) across the whole appraisal period is -£53.9m. The NPSV is made up entirely of costs to businesses.

12.2 There is no impact on the public sector.

12.3 UK businesses must already comply with sanctions against individuals and entities appearing on a regularly updated gov.uk list. The process for notifying businesses about sanctions remains unchanged, so we do not expect significant changes to IT systems or administrative charges.

12.4 A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses. No specific action is proposed to mitigate regulatory burdens on small businesses.

13.2 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 His Majesty's Government determined that it was no longer appropriate to maintain a sanctions regime or specific sanctions measures, that regime would be removed or amended accordingly. In the case of the 2019 Regulations, that would include 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 Abigail Culank, Deputy Director, 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 for State for the Indo Pacific and Sanctions at the Foreign, Commonwealth and Development Office can confirm that this Explanatory Memorandum meets the required standard.