

**EXPLANATORY MEMORANDUM TO**  
**THE RUSSIA (SANCTIONS) (EU EXIT) (AMENDMENT) (NO. 4) REGULATIONS**  
**2024**

**2024 No. 900**

**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 His Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

**2. Declaration**

- 2.1 Anneliese Dodds MP, Minister of State at the Foreign, Commonwealth and Development Office, confirms that this Explanatory Memorandum meets the required standard.
- 2.2 Abigail Culank, Deputy Director for Sanctions at the Foreign, Commonwealth and Development Office, confirms that this Explanatory Memorandum meets the required standard.

**3. Contact**

- 3.1 The Sanctions Directorate at the Foreign, Commonwealth and Development Office, telephone: 0207 008 8553 or email: fcdo.correspondence@fcdo.gov.uk, can be contacted with any queries regarding the instrument.

**Part One: Explanation, and context, of the Instrument**

**4. Overview of the Instrument**

*What does the legislation do?*

- 4.1 This instrument amends the Russia (Sanctions) (EU Exit) Regulations 2019 (“the 2019 Regulations”), so far as the 2019 Regulations impose a prohibition on the provision of certain legal advisory services. These measures clarify the knowledge a person must have before the prohibition applies and amend the exceptions to the prohibition and the definition of “legal advisory services”.

*Where does the legislation extend to, and apply?*

- 4.2 The instrument extends to the whole of the United Kingdom (“UK”).
- 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.
- 4.4 This instrument also applies to conduct by UK persons where that conduct is wholly or partly outside the UK, and to conduct undertaken by any person in the territorial sea adjacent to the UK. “UK person” is defined in section 21(2) of the Sanctions and Anti-Money Laundering Act 2018 (c. 13) (“the Sanctions Act”).

## 5. Policy Context

### *What is being done and why?*

- 5.1 The purpose of the UK's Russia sanctions regime is to encourage the Russian Government to cease its invasion of Ukraine, and other actions undermining or threatening the territorial integrity, sovereignty, and independence of Ukraine.
- 5.2 In June 2023, regulation 54D, which prohibits the provision of certain legal advisory services, was inserted into the 2019 Regulations by the Russia (Sanctions) (EU Exit) (Amendment) (No. 3) Regulations 2023 (S.I. 2023/713). This regulation supplemented restrictions already in place under the 2019 Regulations on legal advisory services, such as regulations 19 and 55 (the "circumvention provisions") and other provisions in the 2019 Regulations which limit the provision of ancillary services related to sanctioned goods and technologies. The circumvention provisions prevent a person intentionally providing legal advisory services where the object or effect of the legal advisory services, directly or indirectly, circumvents prohibitions imposed by certain provisions in the 2019 Regulations or enables or facilitates the contravention of those prohibitions.
- 5.3 However, as a result of the territorial application of the 2019 Regulations, this generally applies only to legal advisory services provided in relation to prohibited activity undertaken in the UK or by a UK person.
- 5.4 Regulation 54D prohibited UK legal services providers from supporting activity which was itself prohibited under Parts 3 (Finance) and Part 5 (Trade), where that activity did not have sufficient connection to the UK to already be prohibited under the UK sanctions regime. This meant that no UK person or person in the UK could provide legal advisory services to a non-UK person, in relation to or in connection with certain financial or trade activity which would be prohibited under the UK sanctions regime if the activity was done by a UK person or was taking place in the UK.
- 5.5 A post-implementation review was conducted into the effect of regulation 54D, in consultation with the legal sector and other stakeholders. It became apparent that Regulation 54D could prevent the legitimate provision of legal advisory services on non-UK sanctions compliance under certain circumstances. In August 2023, action was taken to address this concern by issuing a general licence, which permitted legal advisory services on non-UK sanctions compliance. This instrument replaces that licence and puts beyond doubt that legal advice in relation to compliance with global sanctions and criminal legislation is permitted.
- 5.6 To further improve the clarity of regulation 54D, the instrument also makes a number of other amendments, including to the definition of legal advisory services. Information on these amendments can be found at paragraph 5.7 below.

### *What was the previous policy, how is this different?*

- 5.7 This instrument seeks to refine the scope of regulation 54D and implement clarificatory amendments which have been identified as necessary through engagement with stakeholders. Outlined below is the series of amendments made to regulation 54D, implemented in this instrument:
  - (a) **Amendment to the scope of the regulation by amending the way in which regulation 54D applies:** This instrument amends the scope of the prohibition in regulation 54D by prohibiting the provision of legal advisory services to a non-UK person, if the person providing the advice knows that the object or effect of this

advice is to enable or facilitate certain financial or trade activity, which would be prohibited under the UK sanctions regime if the activity was done by a UK person or was taking place in the UK. This amends the previous prohibition, whereby legal advisory services were prohibited if they were provided “in relation to or in connection with,” certain activity that would be prohibited under the UK sanctions regime, if done by a UK person or taking place in the UK. This amendment to the scope more closely aligns regulation 54D with the circumvention provisions which prevent a person intentionally providing legal advisory services where the object or effect of the legal advisory services is directly or indirectly to circumvent prohibitions imposed by other provisions in the 2019 Regulations, or to enable or facilitate the contravention of those prohibitions. This provides greater clarity to providers of legal advisory services who are now, with this amendment, able to provide legal advisory services, under similar parameters, when advising UK persons within the parameters of circumvention regulations and non-UK persons within the parameters of regulation 54D.

- (b) **Clarification on where the activity must take place, to be prohibited under regulation 54D:** This instrument clarifies that the provision of legal advisory services is prohibited under regulation 54D is activity which is not taking place in the UK. Legal advisory services are subject to other prohibitions under the 2019 Regulations, such as the circumvention provisions, when advising on activity that is done by UK persons or taking place within the UK, so this avoids unnecessary overlap between offences in the 2019 Regulations.
- (c) **Legal advice in relation to the discharge of or compliance with UK statutory and regulatory obligations:** Regulation 54D originally provided that the provision of legal advisory services was not prohibited if given in satisfaction of an obligation to provide legal advice on UK statutory and regulatory obligations. This generated sector uncertainty as a person may not be ‘obligated’ to provide legal advice. This exception has now been clarified.
- (d) **Sanctions compliance advice:** The ability to receive sanctions compliance advice with UK and non-UK sanctions regimes is paramount in influencing behaviours to maximise compliance. Regulation 54D previously only included an exception for sanctions compliance advice when advice was given to comply with the 2019 Regulations. This instrument amends this position and ensures that legal advisory services in relation to compliance with non-UK sanctions and criminal legislation is permitted. This also enables a robust response to the growing Russian counter-sanctions offensive, by permitting the provision of legal advisory services on these measures.
- (e) **Meaning of legal advisory services:** Amendments have been made to the definition of legal advisory services at paragraph 8A of Schedule 3J to the 2019 Regulations. The amendment to paragraph 8A(1)(b) clarifies that legal advisory services do not include representation or advice (etc.) in any proceedings before administrative agencies, courts or other duly constituted official tribunals in any jurisdiction. The addition of “in any jurisdiction” clarifies that this applies to non-UK courts or agencies. It is not the intention of His Majesty’s Government to prohibit access to

advice for legal representation as it is an important element of the core democratic principle of the rule of law. This amendment addresses this policy aim and puts beyond doubt that these legal representation services are not prohibited. The amendment to paragraph 8A(c) clarifies that the meaning of legal advisory services does not include the provision of legal advice or other services in connection with the management of claims under a contract of insurance or reinsurance.

- 5.8 The effects of the legislation will be monitored through ongoing engagement with the government departments involved in its implementation and enforcement, and by engagement with the legal and other affected sectors.

## **6. Legislative and Legal Context**

### *How has the law changed?*

- 6.1 This instrument makes amendments to the 2019 Regulations, which were made under the Sanctions Act for discretionary purposes within section 1(2).
- 6.2 The Sanctions Act establishes a legal framework which enables His Majesty's Government to impose sanctions for a number of purposes, including in the interests of international peace and security and furthering a foreign policy objective of the Government of the UK.
- 6.3 More specifically, this instrument amends regulation 54D and provisions connected with regulation 54D in the 2019 Regulations. Regulation 54D restricts the provision of legal advisory services in some circumstances, and this instrument amends the way regulation 54D applies. The definition of legal advisory services is set out in paragraph 8A of Schedule 3J to the 2019 Regulations. This instrument amends that definition. Regulation 54D is subject to Part 7 (Exceptions and licenses) of the 2019 regulations, and this instrument amends regulation 60DB in that Part, to include additional exceptions to the prohibitions in regulation 54D.

### *Why was this approach taken to change the law?*

- 6.4 The effect of some of the provisions in this instrument could be, and has been (on a temporary basis), achieved through issuing a general licence. Amending the 2019 Regulations under the legal framework provided by the Sanctions Act was considered to be the most effective and appropriate way to change the law and is in line with the approach which has been taken for associated sanctions measures.

## **7. Consultation**

### *Summary of consultation outcome and methodology*

- 7.1 No formal consultation has been carried out on this instrument. 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.
- 7.2 However, informal engagement with stakeholders has taken place on this instrument, with representation from across the legal, financial, and business sectors. The Government will continue engagement with stakeholders on the implementation of UK sanctions.

## **8. Applicable Guidance**

- 8.1 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. Updates will also be made to the non-statutory professional services guidance where relevant.

## **Part Two: Impact and the Better Regulation Framework**

### **9. Impact Assessment**

- 9.1 A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, public or voluntary sector is foreseen. A de minimis assessment has been prepared as this instrument is likely to involve only minor administrative costs for UK businesses which we do not anticipate will rise above the de minimus threshold.

#### *Impact on businesses, charities and voluntary bodies*

- 9.2 There is no significant known impact on businesses, charities or voluntary bodies as this is an update to existing legislation.
- 9.3 The legislation is anticipated to have a minimal impact on small or micro businesses.
- 9.4 There is no significant impact on the public sector as the policy focuses on legal services providers and their clients.

### **10. Monitoring and review**

#### *What is the approach to monitoring and reviewing this legislation?*

- 10.1 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.

## **Part Three: Statements and Matters of Particular Interest to Parliament**

### **11. Matters of special interest to Parliament**

- 11.1 During parliamentary debate on 19 July 2023 concerning the Russia (Sanctions) (EU Exit) (Amendment) (No. 3) Regulations 2023 (S.I. 2023/713), which enacted regulation 54D, the previous Government noted that it was willing to consider whether amendments to the SI to address, in particular, the issue of non-UK sanctions compliance, were necessary and if so, to bring forward such amendments.<sup>1</sup> This instrument amends regulation 54D to clarify that non-UK sanctions compliance advice is permitted, among other things.
- 11.2 This instrument, which is subject to the made affirmative procedure, is laid before Parliament on 5 September 2024 under section 55(3) of the Sanctions Act and comes into force on the 6 September 2024. Bringing the instrument into force on this date is required to ensure the relevant sanction on legal advisory services works as effectively as possible to continue to put pressure on the Russian Government, with the ambition of ending the war in Ukraine.

### **12. European Convention on Human Rights**

- 12.1 Anneliese Dodds MP, Minister of State 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 2024 are compatible with the Convention rights.”

### **13. The Relevant European Union Acts**

- 13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 (“relevant European Union Acts”).

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<sup>1</sup> <https://hansard.parliament.uk/commons/2023-07-19/debates/9FFA87CC-D4A6-4EFF-BA05-A3EFB9FDC7A3/Sanctions>