

EXPLANATORY MEMORANDUM TO
THE TRADE, AIRCRAFT AND SHIPPING SANCTIONS (CIVIL ENFORCEMENT)
REGULATIONS 2024

2024 No. 948

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 Minister Doughty, 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 The UK maintains a range of sanctions regimes, through regulations made under section 1 of the Sanctions and Anti-Money Laundering Act 2018 ("the Sanctions Act"). Trade sanctions include restrictive measures on the movement of goods, the transfer of technology, and the provision of services. Aircraft and shipping sanctions relate to the movement, registration and ownership of aircraft and ships.
- 4.2 Non-compliance with trade, aircraft and shipping sanctions is a criminal offence. Criminal enforcement of these offences is led by His Majesty's Revenue and Customs (HMRC) for trade sanctions, and by the National Crime Agency (NCA) for aircraft and shipping sanctions.
- 4.3 This instrument provides an overarching framework for the civil enforcement of aircraft, shipping sanctions and certain trade sanctions made under section 1 of the Sanctions Act, to supplement sanctions regulations made under the Act. It does not amend or modify those underlying regulations and is designed to apply to current and future trade, aircraft and shipping sanctions regulations.
- 4.4 Where the instrument confers powers on the Secretary of State for enforcing trade, aircraft and shipping sanctions and related requirements, in practice it will be the Secretary of State responsible for each function who will exercise the relevant enforcement powers. The Department for Business and Trade (DBT), through the

Office of Trade Sanctions Implementation (OTSI), will lead on civil enforcement in relation to trade sanctions that fall within its remit. The Department for Transport (DfT) will lead on civil enforcement in relation to aircraft and shipping sanctions.

- 4.5 The instrument does not confer powers on the Secretary of State for the enforcement of trade sanctions insofar as they relate to matters within scope of HMRC's role as the UK's customs authority. This role concerns the import and export of goods, the transfer of technology to and from the UK, and any relevant ancillary services (such as brokering and financial services) provided for trade-related activities. Nor does the legislation confer powers on the Secretary of State for sanctions measures concerning certain goods and technology, such as military and dual-use goods and technology, which are subject to strategic export controls and are the responsibility of HMRC.
- 4.6 The instrument does not confer powers on the Secretary of State for trade sanctions where the Office of Communications (Ofcom) and His Majesty's Treasury (HMT) already have civil enforcement powers. For HMT, these powers are exercisable in relation to breaches of prohibitions and requirements relating to the transportation of certain oil products, and for Ofcom, for breaches of prohibitions and requirements relating to the provision of internet services.
- 4.7 This instrument confers a range of powers on the Secretary of State necessary to deliver an effective civil enforcement function. This includes powers to request information, to share information with other parties, to impose a civil monetary penalty, and to publish information about a breach of sanctions where a civil monetary penalty has, or could have been, imposed. This instrument also places obligations on 'relevant persons' – such as financial services providers and airport operators - to report suspected breaches that they identify in the course of carrying on their business or activities.

Where does the legislation extend to, and apply?

- 4.8 The extent of this instrument (that is, the jurisdictions which the instrument forms part of the law of) is the whole of the UK.
- 4.9 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the whole of the UK.
- 4.10 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. "UK person" is defined in section 21(2) of the Sanctions Act as a United Kingdom national or a body incorporated or consolidated under the law of any part of the United Kingdom.

5. Policy Context

What is being done and why?

- 5.1 Under the Sanctions Act, Ministers can make sanctions regulations when they consider it appropriate to do so for the carrying out of one or more of the purposes set down in the Sanctions Act. Those purposes (which are relevant to this instrument) include, but are not limited to, compliance with UN obligations, furthering a foreign policy objective of the government of the United Kingdom, and to promote respect for democracy, the rule of law and good governance. The Sanctions Act permits sanctions regulations for trade, aircraft and shipping sanctions to impose prohibitions or requirements, and it further provides that provision may be made for the enforcement of those prohibitions or requirements.

- 5.2 Under current legislation, a breach of a prohibition or a failure to comply with a requirement under trade, aircraft and shipping sanctions legislation is a criminal offence. Whilst this remains a strong deterrent, criminal enforcement may not be a proportionate approach to enforcement in all cases. The civil enforcement regime has been designed to strengthen His Majesty's Government's enforcement capability.
- 5.3 The policy intent of this instrument is to enhance the Government's ability to respond to breaches of aircraft, shipping and certain trade sanctions. The instrument permits the Secretary of State to request such information as they may reasonably require for the purposes of exercising enforcement and related functions under this instrument. These functions include monitoring compliance with, or detecting evasion of, sanctions regulations; and investigating and determining whether a breach of a prohibition, or a failure to comply with an obligation under such regulations, has occurred. The instrument also allows the Secretary of State to share information obtained under certain provisions within the instrument with other parties for purposes such as facilitating, monitoring or ensuring compliance with the Sanctions Act, complying with international obligations, and facilitating sanctions functions for authorities outside the UK.
- 5.4 The instrument enables the Secretary of State to impose civil monetary penalties for breaches of aircraft, shipping and certain trade sanctions, and provides the Secretary of State with a power to publish information about a breach of sanctions, including where a penalty could have been imposed but was not. The instrument also creates an obligation to require certain 'relevant persons' to report suspected breaches to the Secretary of State. In the case of trade sanctions, this includes providers of financial services, money services businesses and legal services where they have relevant information which came to their attention in the course of carrying on their business. In the case of aircraft or shipping sanctions, this includes charterers, airport operators and harbour authorities who obtain relevant information when conducting their business; and a pilot in command or an operator (in relation to aircraft), or a master or pilot of a ship or fishing vessel, who obtain relevant information when carrying on activities in connection with that role, whether paid or unpaid, or for business or leisure. The obligation to report suspected breaches applies only to breaches of aircraft, shipping and certain trade sanctions for which a monetary penalty can be imposed under this instrument.
- 5.5 The instrument also sets out the maximum civil monetary penalties that can be imposed. For trade sanctions, where it is possible to estimate the value of the breach of the prohibition or failure to comply with an obligation, the permitted maximum is the greater of £1,000,000 and 50% of the estimated value of the breach or failure to comply. For aircraft and shipping sanctions, where it is possible to estimate the value of the aircraft or ship used in connection with the breach of the prohibition or failure to comply, the permitted maximum is the greater of £1,000,000 and 50% of the estimated value of the aircraft or ship. In any other cases, the permitted maximum is £1,000,000. The instrument sets out the right to seek a review by the Secretary of State of the decision to impose a penalty, and a right to appeal that decision to the Upper Tribunal. If, on review, the Secretary of State decides to uphold the decision to impose the penalty, or substitutes a different amount of penalty, the person may appeal the decision to the Upper Tribunal on any ground.
- 5.6 The instrument provides that, where a civil monetary penalty can be imposed for a breach, breaches will be determined on a 'strict liability' basis. This means that, when determining whether there has been a breach of aircraft or shipping sanctions, any requirement for a person to have known, suspected or believed any matter, or to have

acted without reasonable excuse, will be ignored. When determining whether there has been a breach of trade sanctions, any defence that a person did not know and had no reasonable cause to suspect that an offence had been committed, will be ignored.

- 5.7 The instrument provides that a failure to comply with the information requesting powers noted in paragraph 5.3 and the reporting obligations detailed in paragraph 5.5 can amount to a criminal offence liable to imprisonment for a term not exceeding 6 months or a fine (or both). HMRC will lead on criminal enforcement where these offences relate to trade sanctions, and the NCA will lead on criminal enforcement where these offences relate to aircraft and shipping sanctions. The instrument also provides that breaches of those provisions can be subject to the imposition of a civil monetary penalty.
- 5.8 The instrument also extends certain investigatory powers, already available in respect of financial sanctions, under Chapter 1 of Part 2 of the Serious Organised Crime and Police Act 2005 (including powers to issue disclosure notices and to enter and seize) to the investigation and enforcement of breaches of aircraft or shipping sanctions.

What was the previous policy, how is this different?

- 5.9 Prior to this instrument, only HMT and Ofcom had powers to impose a civil monetary penalty for a breach of certain UK sanctions. HMT has the power to impose civil monetary penalties for breaches of financial sanctions and prohibitions on the maritime transportation of certain oil and oil products. Ofcom has the power to impose civil monetary penalties for offences related to internet services prohibitions. Civil enforcement powers did not extend to most trade, aircraft and shipping sanctions, meaning that breaches for such matters could only be addressed through criminal enforcement. Criminal enforcement remains led by HMRC for trade sanctions breaches and by the NCA for aircraft and shipping sanctions breaches.
- 5.10 This instrument provides the Secretary of State with a power to impose a civil monetary penalty and exercise civil enforcement powers consistent with those powers exercised by HMT and Ofcom. The instrument also allows His Majesty's Government to consider whether civil or criminal enforcement is most appropriate in a given case and enables a proportionate response to be taken in relation to a breach of trade, aircraft and shipping sanctions. If the Secretary of State considers that criminal enforcement, rather than civil enforcement, may be appropriate, the Secretary of State may refer the case to HMRC for a breach of a trade sanction, and to the NCA for a breach of an aircraft or shipping sanction.

6. Legislative and Legal Context

How has the law changed?

- 6.1 This instrument is made under powers in the Sanctions Act. The Sanctions Act provides Ministers with regulation-making powers to enable them to make sanctions regulations for a number of purposes, including where it is appropriate for compliance with UN obligations or it is appropriate to do so for the carrying out of one or more of the purposes set down within the Sanctions Act. Sections 17 and 17A of the Sanctions Act enable Ministers to make enforcement regulations authorising the imposition of a monetary penalty for a breach of sanctions regulations. This instrument provides the Secretary of State with the power to impose a civil monetary penalty in response to a breach of a trade, aircraft or shipping sanctions measure or requirement imposed by sanctions regulations.

Why was this approach taken to change the law?

- 6.2 The approach of introducing an overarching civil enforcement framework in a single instrument, rather than amending each set of sanctions regulations to introduce new enforcement powers, was taken because it was the most efficient approach for ensuring consistency in delivering the policy intent. The chosen approach provides a clear overarching framework for the civil enforcement of trade, aircraft and shipping sanctions.
- 6.3 This framework applies to all trade, aircraft and shipping sanctions in scope of the instrument, and will continue to apply should future changes be made to these sanctions measures, including the introduction of new measures. Alternative approaches to changing the law, such as inserting civil enforcement powers into individual sanctions regimes, were less suitable in this instance given the number of regimes and individual measures this legislation seeks to include within its scope.

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, statutory guidance has been published. 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 for this instrument as we do not anticipate costs will rise above the de minimus threshold.
- 9.2 Analysis suggests the aggregate net cost to affected UK businesses, based on data from 2023, is unlikely to exceed £1 million. This estimated net cost to business is based on the main expected cost, the familiarisation cost associated with the new regulations on civil monetary penalties. The measures also introduce additional reporting requirements for some businesses; however, these are not expected to impose significant additional costs to businesses already complying with existing sanctions legislation. The estimate of the aggregate familiarisation regulatory cost was calculated using an upper-bound estimate of the potential number of affected trading businesses.

Impact on businesses, charities and voluntary bodies

- 9.3 There is no significant impact on charities or voluntary bodies because no new sanctions measures are created by this instrument.
- 9.4 The instrument impacts small and micro businesses. No specific action is proposed to mitigate regulatory burdens on small and micro businesses. The FCDO does not believe it is possible to exempt smaller businesses from the measures introduced by this instrument, as this could provide a route for the circumvention or evasion of sanctions.
- 9.5 There is no significant impact on the public sector because no new sanctions measures are created by this instrument.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

- 10.1 The effects of this instrument will be monitored through ongoing engagement with the departments involved in its implementation and enforcement, including DBT and DfT, and by engagement with industry, including regulatory and representative bodies.
- 10.2 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. 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 This instrument, which is subject to the made negative procedure, is laid before Parliament on 12 September 2024 under section 55(6) of the Sanctions Act and comes into force on the 10 October 2024.
- 11.2 It may be of interest to Parliament that this instrument provides for a new civil enforcement regime which is designed to apply to both current and future trade, aircraft and shipping sanctions regulations.

12. European Convention on Human Rights

- 12.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

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").