

**EXPLANATORY MEMORANDUM TO**  
**THE NICARAGUA (ASSET-FREEZING) REGULATIONS 2019**  
**2019 No. 1353**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by HM Treasury 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 puts in place the UK's domestic enforcement regime for a new EU sanctions regime relating to Nicaragua. Restrictive measures, including financial sanctions provisions, were adopted in Council Regulation (EU) 2019/1716 of 14th October 2019 ("the Council Regulation"), which enters into force on 16th October 2019.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 In the Joint Committee on Statutory Instruments' Sixty-fourth Report of Session 2017-19, the Committee requested, in the context of The Cyber-Attacks (Asset-Freezing) Regulations 2019, elucidation from HM Treasury on why the regulations prohibiting funds and economic resources from being made available for the benefit of a designated person only applied where that person would thereby obtain a significant financial benefit. HM Treasury provided a memorandum to explain that a policy choice had been made to limit the application of the criminal law in this way, so that penalties for infringing the provisions of the corresponding EU Regulation are effective, proportionate and dissuasive. This instrument, alongside others drafted to enforce other EU sanctions regimes, adopts the same approach. The policy rationale for this in the context of this instrument is set out in paragraph 7.7 of this Explanatory Memorandum.
- 3.2 In the Joint Committee on Statutory Instruments' Seventh Report of Session 2016–17, the Committee invited HM Treasury to reconsider its approach to the repetition of EU provisions in UK statutory instruments if the Democratic People's Republic of Korea (European Union Financial Sanctions) Regulations 2013 came to be revoked and replaced. HM Treasury wrote to the Clerk of the Joint Committee on Statutory Instruments on 21st December 2016 in response to those comments explaining why HM Treasury intends to continue with its current approach in relation to financial sanctions Regulations. This instrument adopts the same approach to the issue as that taken in other similar financial sanctions Regulations.
- 3.3 Annex I to the Council Regulation does not currently contain any designated persons to whom the new financial sanctions provisions apply. The EU will designate persons by including them in Annex I in due course. In that situation, if this instrument were not in force, persons within the UK who breach the measures would not face

enforcement consequences for such breaches. Given that financial sanctions are a matter of international and domestic security, and that the UK has obligations under EU law to put them in place and enforce them, it is necessary to ensure that the sanctions can be enforced in relation to any designated persons who are added to Annex I after this instrument is made.

***Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)***

- 3.4 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

**4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is the whole of the United Kingdom.
- 4.2 The territorial application of this instrument is the whole of the United Kingdom, and outside the United Kingdom to any UK national or any body incorporated in the United Kingdom.

**5. European Convention on Human Rights**

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

**6. Legislative Context**

- 6.1 This instrument has been made under section 2(2) of the European Communities Act 1972.
- 6.2 It puts in place the enforcement provisions which apply to the financial sanctions provisions in the Council Regulation. The penalty for contravention of Regulation 8(3) of the instrument (reporting without delay the crediting of a frozen account to the Treasury) is found in the Policing and Crime Act 2017, section 146, which enables the HM Treasury to impose a monetary penalty where a person has breached a requirement or prohibition of any “financial sanctions legislation”. This instrument falls within the meaning of financial sanctions legislation with that Act.

**7. Policy background**

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

- 7.1 The EU has adopted new restrictive measures in view of the situation in Nicaragua. These include travel restrictions and freezing of funds and economic resources of persons responsible for serious human rights violations or abuses or for the repression of civil society and democratic opposition in Nicaragua, as well as persons whose actions, policies or activities otherwise undermine democracy and the rule of law in Nicaragua, and persons associated with them.
- 7.2 The financial sanctions are set out in the Council Regulation, which comes into force on the day after its publication in the EU’s Official Journal. The Council Regulation was published in the Official Journal on 15th October 2019.
- 7.3 The Council Regulation introduces the framework for targeted restrictive measures which will apply to persons, entities and bodies listed in Annex I to the Council

Regulation. Annex I is currently blank (that is, there are no designations immediately) and there are not expected to be any persons, entities or bodies added to that Annex within the next 21 days.

- 7.4 Designations under the Nicaragua sanctions regime will be adopted by the EU Council following unanimous agreement by the EU. Once Annex I of the Council Regulation is amended with any such designations, the restrictive measures will immediately apply to those listed. The HM Treasury consolidated list of financial sanctions targets in the UK will be amended to reflect this.
- 7.5 The UK is obliged to put enforcement provisions in place for breaches of the financial sanctions contained in the Council Regulation, to ensure the asset freezes can be effectively enforced within the UK when listings are added to the regime at EU level.
- 7.6 This instrument creates domestic penalties for breaching the asset freeze prohibitions in the Council Regulation. The instrument also makes provision for information gathering and information disclosure and creates offences for failure to comply with a request for information.
- 7.7 In relation to the prohibitions, set out in the Council Regulation, on making funds or economic resources available for the benefit of a designated person, HM Treasury has taken a policy choice to give some meaning to the term “benefit” for the purposes of domestic criminal law (given that this term is not defined in the Council Regulation). In deciding how best to enforce the provisions of EU law in the UK, HM Treasury has consistently taken the view in provisions such as these that it is an effective, proportionate and dissuasive approach to limit the application of the criminal law to those cases where a person makes funds or economic resources available to a person for the benefit of a designated person, only where that person would thereby obtain a significant financial benefit. This would rule out prosecution, for example, in cases such as a person buying a bus ticket on a one-off basis for the benefit of a designated person. The drafting in this instrument follows that in all analogous instruments drafted to enforce other EU sanctions regimes. It is also used in the Terrorist Asset-Freezing etc Act 2010, sections 13 and 15.

## **8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

- 8.1 This instrument does not relate to withdrawal from the European Union.

## **9. Consolidation**

- 9.1 Not applicable.

## **10. Consultation outcome**

- 10.1 No consultation has been carried out in relation to this instrument, which provides for enforcement of financial sanctions that have been imposed by the Council Regulation.

## **11. Guidance**

- 11.1 Guidance on asset freezing and other financial sanctions measures is available on HM Treasury’s website (<https://www.gov.uk/government/publications/financial-sanctions-consolidated-list-of-targets>).
- 11.2 The Office of Financial Sanctions Implementation, within HM Treasury, operates a free subscription email service alerting subscribers to changes to the asset freezing

regime, and to other financial sanctions measures. A dedicated telephone line and email address are available for the financial sector and any other persons to submit queries on the asset freezing and financial sanctions regimes.

## **12. Impact**

- 12.1 The impact on business, charities or voluntary bodies is negligible, because this instrument does not impose substantive requirements itself.
- 12.2 The impact on the public sector is also negligible.
- 12.3 An Impact Assessment has not been prepared for this instrument because any impact results from the Council Regulation rather than this instrument, which only relates to enforcement powers.

## **13. Regulating small business**

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), HM Treasury works with the financial sector on the requirements for complying with the asset freezing and financial sanctions measures set out in the Council Regulation. HM Treasury have provided detailed guidance to assist business in complying with these measures.

## **14. Monitoring & review**

- 14.1 It is not appropriate to make provision for periodic review as contemplated in sections 28-32 of the Small Business Enterprise and Employment Act 2015 because this instrument does not regulate business.
- 14.2 The EU monitors and reviews its financial sanctions measures, which HM Treasury is under an obligation to implement.

## **15. Contact**

- 15.1 Please contact [SanctionsLegislation@hmtreasury.gov.uk](mailto:SanctionsLegislation@hmtreasury.gov.uk) for any queries regarding the instrument.
- 15.2 Giles Thomson, Deputy Director for Sanctions and Illicit Finance, at HM Treasury can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Economic Secretary to HM Treasury, John Glen MP, can confirm that this Explanatory Memorandum meets the required standard.