

EXPLANATORY MEMORANDUM TO
THE REPUBLIC OF BELARUS (SANCTIONS) (EU EXIT) (AMENDMENT) (NO. 2)
REGULATIONS 2021

2021 No. 1146

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 Republic of Belarus (Sanctions) (EU Exit) Regulations 2019 ('the 2019 Regulations'). It revokes and replaces the Republic of Belarus (Sanctions) (EU Exit) (Amendment) Regulations 2021 (S.I. 2021/922), which introduced new financial, trade and aircraft sanctions measures, and added to the list of activities which may give grounds for a person to be designated. This instrument corrects a small number of errors in S.I. 2021/922, but otherwise makes the same provision as that instrument.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument is laid to rectify an error made in the Republic of Belarus (Sanctions) (EU Exit) (Amendment) Regulations 2021, which were laid in Parliament on 9 August 2021. The error had the effect of deleting a prohibition on the transfer of 'restricted technology' (meaning military, internal repression and interception/monitoring technology) to a place in Belarus or a person connected with Belarus. It also makes a small number of other corrections, including in relation to the application to the new financial sanctions measures of exceptions for authorised conduct in the Channel Islands, Isle of Man or British overseas territories.
- 3.2 There are no amendments to the policy in relation to Belarus sanctions and the substance of this instrument is the same as S.I. 2021/922, save for these corrections. This instrument revokes S.I. 2021/922 and is being issued free of charge to all known recipients of S.I. 2021/922.
- 3.3 This instrument, which is subject to the made affirmative procedure, is laid before Parliament under section 55(3) of the Sanctions Act and comes into force at 12.00 noon on the same day that it is laid. As for previous regulations made under the Sanctions Act since the end of the transition period, bringing the instrument into force on the same day it is laid guards against the risk that those potentially affected by the sanctions take action in anticipation of entry into force to avoid the effect of the sanctions (for example, accelerating imports or exports of goods, or entering into contracts to benefit from exceptions and exemptions relating to prior contracts), and thereby weaken the sanctions' impact. In this case also, the provision made by this

instrument largely maintains existing measures, so there are only very limited new effects.

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 Republic of Belarus (Sanctions) (EU Exit) (Amendment) (No. 2) Regulations 2021 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 promoting compliance with international human rights law and respect for human rights and furthering foreign policy objectives.
- 6.2 This instrument revokes and replaces S.I. 2021/922.
- 6.3 This instrument is made in exercise of powers conferred by sections 1, 45 and other provisions 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 The 2019 Regulations established a UK sanctions regime in relation to Belarus, which came fully into force at the end of the transition period on the 31st December 2020, replacing the equivalent EU sanctions regime in UK law. The EU sanctions regime had had direct effect in the UK since it was established on 24th September 2004.
- 7.2 This instrument amends the 2019 Regulations to impose financial, trade and aircraft sanctions measures, to confer a power to designate persons for the purpose of prohibitions on technical assistance relating to aircraft and to add to the list of activities which may give grounds for a person to be designated. It maintains (with corrections) the amendments made by S.I. 2021/922.
- 7.3 The amendments to the 2019 Regulations are a response to the escalation of serious human rights violations in Belarus, the Belarusian authorities' continued violent oppression of civil society, democratic opposition leaders and supporters, independent media and journalists, and continued undermining of democratic principles and the

rule of law. This escalation has included the forced diversion and landing of the Ryanair flight FR4978 to Minsk on 23 May 2021 by the Belarusian authorities in order to arrest a journalist, Roman Protasevich, and his partner Sofia Sapega; the arbitrary detention of over 35,000 people; the imprisonment of nearly 600 people on politically motivated charges; the attempted forcible expulsion of the opposition figure Maria Kolesnikova and forced expulsion of other opposition figures; the arbitrary sentencing of the opposition candidate, Viktor Babiriko, to 14 years' imprisonment; the introduction of legislation in May 2021, which suppresses media freedoms and peaceful assembly and was used as justification to raid the independent organisations Nasha Niva and Tut.by; and the many credible reports of physical mistreatment and torture by the penal and security forces in Belarus, which the UN High Commissioner for Human Rights noted in her report to the Human Rights Council in February 2021.

- 7.4 The UK adopted additional sanctions measures to further encourage the Government of Belarus to respect democratic principles and institutions, the separation of powers and the rule of law in Belarus, refrain from actions, policies or activities which repress civil society in Belarus, comply with international human rights law, and respect human rights.
- 7.5 Under Part 2 of this instrument, the 2019 Regulations are amended to confer a power on the Secretary of State to designate persons for the purpose of a prohibition on the provision of technical assistance relating to aircraft. Regulation 6 of the 2019 Regulations is amended to include 'providing support for or obtaining an economic benefit from the Government of Belarus' as a type of involvement in the activities specified in regulation 6(2), which include, among others, activities which undermine democracy or the rule of law in Belarus.
- 7.6 Part 3 of this instrument amends Part 3 (Finance) of the 2019 Regulations to impose financial sanctions.
- The instrument prohibits dealing with transferable securities and money-market instruments issued by relevant persons. This prohibition applies to securities and money-market instruments with a maturity exceeding 90 days that are issued after the date on which S.I. 2021/922 came into force.
 - A further measure prohibits granting loans and credit arrangements with a maturity exceeding 90 days, and entering into any arrangement to grant such loans or credit arrangements, to those same relevant persons.
 - Thirdly, prohibitions are imposed in relation to the provision of insurance and reinsurance services to a specified category of persons.
- 7.7 Part 4 of this instrument provides for a number of trade restrictions, as follows.
- Prohibitions on the export, supply and delivery, making available and transfer of specified goods and technology that could be used for the interception and monitoring of communications. There is also a prohibition on the provision of related technical assistance, brokering services, financial services and funds.
 - A prohibition on the provision of interception and monitoring services, to or for the benefit of the Belarusian Government.
 - Prohibitions on the export, supply and delivery and making available of specified goods used in the production and manufacture of tobacco products.
 - Prohibitions on the export, supply and delivery, making available and transfer of dual-use goods and dual-use technology for military use. There is also a

prohibition on the provision of related technical assistance, brokering services, financial services and funds.

- Prohibitions on the import, acquisition and supply and delivery of petroleum products and potassium chloride ('potash') originating in or consigned from Belarus, or from a person connected with Belarus. In addition, there is a prohibition on the provision of technical assistance, brokering services, financial services and funds relating to trade in petroleum products.
- A prohibition on the provision of technical assistance to or for the benefit of any person designated under regulation 5(1)(c) of the 2019 Regulations, where that technical assistance relates to an aircraft.
- Reimposition of the prohibition on the making available of military technology and interception and monitoring technology, which was erroneously removed by S.I. 2021/922.

7.8 Part 5 of this instrument makes provision to allow the Secretary of State to direct the Civil Aviation Authority to refuse permission under articles 250 and 252 of the Air Navigation Order 2016 in respect of Belarusian aircraft, and to suspend or revoke existing permissions. It allows air traffic control to direct the operator or pilot in command of a Belarusian aircraft not to enter UK airspace, or to leave UK airspace by a specified route. It also allows an airport operator to direct the operator or pilot in command of a Belarusian aircraft not to land at an airport. The Secretary of State may direct air traffic control and airport operators to make such directions.

7.9 This instrument also makes amendments to the 2019 Regulations to provide for exceptions from these measures, licensing and enforcement, including the creation of criminal offences.

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 Belarus sanctions regime.

9. Consolidation

9.1 The 2019 Regulations have been amended by 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). They were also amended by S.I. 2021/922, which is revoked and replaced by this instrument. 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 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 was updated to reflect the amendments to those Regulations made by the Republic of Belarus (Sanctions) (EU Exit) Amendment Regulations 2021, which this instrument replaces.

12. Impact

- 12.1 The impact on business, charities or voluntary bodies will depend on how long these measures might remain in effect, which it is not possible to forecast. However, in the most likely scenario which assumes the measures will be in place for the full appraisal period (10 years), the FCDO's Impact Assessment finds the net direct cost to UK business of the sanctions measures to be £2.8m per year.
- 12.2 There may be wider economic impacts on the UK; however, given the relatively low levels of trade between the UK and Belarus, the FCDO does not expect these to be significant. The key cost to UK businesses will be the opportunity cost of future profit they may have made from the import and export of goods and services (and the trading of securities and money-market instruments) that will be subject to restrictions under the measures first introduced by S.I. 2021/922. The measures will also impact airports and National Air Traffic Services (NATS) in reducing the revenue they may have made from charges to Belarusian airlines. However, the trade and business relations between the UK and Belarus are very limited. In the banking sector, the FCDO expects the impact to be limited to the opportunity cost of lost profits. The measures targeting imports of potash from Belarus are likely to have an impact on potash supply in the UK, which could affect potash prices for producers and ultimately consumers, which in this case are UK farmers, but the FCDO believes the impacts will be small given the very low volumes of Belarusian potash imports to the UK.
- 12.3 These measures may have an impact on public sector resourcing through an increased provision of licensing advice and licence applications. Any required resource will be drawn from the existing workforce for sanctions licensing in the first instance.
- 12.4 A full Impact Assessment, a copy of the Impact Assessment for the Republic of Belarus (Sanctions) (EU Exit) (Amendment) Regulations 2021, is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website. This instrument is equivalent to the Republic of Belarus (Sanctions) (EU Exit) (Amendment) Regulations 2021, with the exception of the errors rectified as referred to in paragraph 3.1. The effect of this is to reimpose prohibitions on the making available of military technology, and internal repression technology that were removed by S.I. 2021/922, and to impose a new prohibition on the making available of interception and monitoring technology. In relation to the restrictions which were already in force prior to August 2021, there is no additional cost to UK business from these beyond the 'do nothing' option. The costs to business from the additional restriction on interception and monitoring equipment are expected to be negligible. This instrument also provides for the correct application to the new financial sanctions measures of exceptions for authorised conduct in the Channel

Islands, Isle of Man or British overseas territories. This measure will not impose any additional costs on UK business, but will remove a double prohibition, and double licensing burden, from UK persons operating in those jurisdictions. As the estimated costs to UK business from the minor changes from the amendments already made to the 2019 Regulations are negligible – and given the voluntary submission of an IA for independent scrutiny for S.I. 2021/922 – a new Impact Assessment has not been conducted for this instrument.

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 Lisa Maguire, Deputy Director for Multilateral, Sanctions and Strategic Engagement at the Foreign, Commonwealth and Development Office, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Lord Ahmad of Wimbledon, Minister of State for South Asia, the UN and the Commonwealth can confirm that this Explanatory Memorandum meets the required standard.