

EXPLANATORY MEMORANDUM TO

THE RUSSIA (SANCTIONS) (EU EXIT) (AMENDMENT) (NO. 7) REGULATIONS 2022

2022 No. 395

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 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 Russia (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/855) (‘the 2019 Regulations’). These amendments will: introduce a power to designate persons by description; extend existing finance, trade and shipping sanctions measures in relation to Crimea and the city of Sevastopol (‘Crimea’) to the non-government controlled areas of the Donetsk and Luhansk oblasts of Ukraine; and introduce prohibitions on technical assistance relating to aircraft and ships, for the purposes set out in regulation 4 of the 2019 Regulations.
- 2.2 This instrument will also amend the 2019 Regulations to resolve issues, including the correction of errors, arising from the recent amendments to the 2019 Regulations made by the Russia (Sanctions) (EU Exit) (Amendment) (No. 2) Regulations 2022 (S.I. 2022/194), the Russia (Sanctions) (EU Exit) (Amendment) (No. 5) Regulations 2022 (S.I. 2022/205), and the Russia (Sanctions) (EU Exit) (Amendment) (No. 6) Regulations 2022 (S.I. 2022/241). It will be issued free of charge to all known recipients of S.I. 2022/194 and S.I. 2022/241.

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 30 March 2022 under section 55(3) of the Sanctions Act and comes into force on the same day that it is laid. Bringing the instrument into force on the same day is necessary given the international situation and it is appropriate for these measures to enter into force as soon as possible.
- 3.2 The amendments made by this instrument to the 2019 Regulations respond to the Joint Committee’s Twenty Ninth Report of Session 2021-22 in which it reported S.I. 2022/241 for doubt as to whether that statutory instrument is intra vires in one respect and that it is defectively drafted in two respects. In particular, this instrument removes the Secretary of State’s power under regulation 57J(8) (movement of aircraft) to issue a direction making an exception to a prohibition, replacing it with a power to issue an aircraft licence. The instrument also remedies the defective drafting identified by the Joint Committee by inserting into regulation 57L (directions under regulation 57J: supplementary) a reference to the suspension of a permission and by omitting from

regulation 57O (interpretation of Part 6A) the definition of “Russian aircraft” and instead providing in regulation 57N (offences) that “Russian aircraft” has the same meaning as in regulation 57J.

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 Minister of State at the Foreign, Commonwealth and Development Office, Lord Ahmad of Wimbledon, has made the following statement regarding human rights:
“In my view the provisions of the Russia (Sanctions) (EU Exit) (Amendment) (No. 7) Regulations 2022 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 that it is in the interests of international peace and security and furthering a foreign policy objective of the government of the UK.
- 6.2 This is the first time that the Secretary of State has used the powers in section 12 of the Sanctions Act to include in a UK sanctions regime a power to designate persons by description. The instrument 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 This instrument amends the 2019 Regulations to introduce a power to designate persons by description; and to extend the existing finance, shipping and trade sanctions relating to Crimea to the non-government controlled areas of the Donetsk and Luhansk oblasts of Ukraine. The instrument also imposes a prohibition in relation to aviation and shipping technical assistance, and resolves issues arising from recent amendments to the 2019 regulations, including the correction of errors.
- 7.2 Following its illegal annexation of Crimea in 2014 Russia has continued to pursue a pattern of aggressive action towards Ukraine. This has included use of military force to invade Ukraine, announced by President Putin on 24 February 2022 as a “special military operation”, and its recognition of the ‘Donetsk People’s Republic’ and ‘Luhansk People’s Republic’ as independent states, and the deployment of Russian military to those regions.

- 7.3 The UK has called on Russia to cease its military activity, withdraw its forces from Ukraine and Crimea and fulfil its international commitments including under the 1975 Helsinki Final Act, the 2014 and 2015 Minsk Protocols and the 1994 Budapest memorandum. The UK continues to reiterate its support for Ukraine and has called on Russia to withdraw its troops, end its support for the separatists, and enable the restoration of security along the Ukraine-Russia border under effective and credible international monitoring.
- 7.4 UK policy is focused on ending the crisis in Ukraine and on assisting Ukraine to secure its borders against Russia's aggressive actions, ensuring a stable, prosperous and democratic future for all its citizens. The UK has been unwavering in its support for the country's territorial integrity and sovereignty.
- 7.5 These sanctions are part of a broader policy of measures which includes: diplomatic pressure; other trade sanctions; economic and financial sanctions and designations. 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.

Designation by description

- 7.6 This instrument amends regulation 5 of the 2019 Regulations to introduce a power for the Secretary of State to provide that persons of a specified description are designated persons. In line with the recent amendments to the Sanctions Act by the Economic Crime (Transparency and Enforcement) Act 2022 (c. 10) designations by description may be made using an urgent procedure or a standard procedure. This will enable the Government to collectively designate persons that are members of a group.

Technical assistance relating to aircraft and ships

- 7.7 This instrument amends Part 5 (Trade) of the 2019 Regulations, which contains trade sanctions measures, to prohibit a person from directly or indirectly providing technical assistance relating to an aircraft or ship to, or for the benefit of, a person who has been designated for the purposes of that sanctions measure.

Extension of existing Crimea measures to the non-government controlled areas of the Donetsk and Luhansk oblasts

- 7.8 This instrument amends Part 1 of the 2019 Regulations to insert definitions of "non-government controlled areas of the Donetsk and Luhansk oblasts of Ukraine" and "non-government controlled Ukrainian territory". The instrument also extends the existing investment and trade measures in respect of Crimea in Parts 3 (Finance) and 5 (Trade) to non-government controlled areas of the Donetsk and Luhansk oblasts.
- 7.9 The instrument extends the existing shipping sanctions in respect of Crimea to enable the Secretary of State to also issue a direction prohibiting British cruise ships from entering a port or ports located in the non-government controlled areas of the Donetsk and Luhansk oblasts.

Amendments to financial and aircraft measures

- 7.10 This instrument also amends the 2019 Regulations to correct errors or resolve issues arising from recent amendments to the 2019 Regulations.
- 7.11 In particular, the instrument amends regulation 19 (circumventing etc. prohibitions) of the 2019 Regulations to include within the scope of those prohibitions regulation 18A

(provision of financial services relating to foreign exchange reserve and asset management). It also makes provision to correct an omission from the Russia (Sanctions) (EU Exit) (Amendment) (No. 2) Regulations 2022 (S.I. 2022/194), namely to provide for Part A1 (Interpretation) of Schedule 5 (Treasury licences: purposes) to have effect.

7.12 It also makes provision to correct or resolve a number of issues arising from the Russia (Sanctions) (EU Exit) (Amendment) (No. 6) Regulations 2022 (S.I. 2022/241): first, to remove the Secretary of State's power to issue directions under regulation 57J(8) (movement of aircraft) and instead replace it with a power to issue a licence to authorise a movement of aircraft that would otherwise be prohibited; second, to ensure the effective resolution of conflicts between provisions of the Air Navigation Order 2016 and any direction under regulation 57J(9)(c) or (d) to suspend, rather than just revoke a permission; third, to ensure that the definition of "Russian aircraft" in Part 6A (Aircraft) includes an aircraft owned, operated or controlled by a designated person; fourth, to ensure that regulation 63(1) (exception for acts done for purposes of national security or prevention of serious crime) applies to prohibitions in and under Part 6A (Aircraft); and fifth to amend regulation 80 (penalties for offences) to ensure that each offence in Part 6 (Ships) and Part 6A (Aircraft) may be enforced through the appropriate level of penalties.

7.13 This instrument also makes amendments to the 2019 Regulations to provide for exceptions from these measures, licensing and enforcement, including the creation or application 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 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 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 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 will be updated to reflect the amendments to those Regulations made by this instrument.

12. Impact

- 12.1 The FCDO has completed a De Minimis self-certification to estimate costs to UK businesses resulting from these Regulations, and estimated the costs to be beneath the threshold of £5m per annum for a full impact assessment.
- 12.2 The FCDO, Department for Transport, HM Treasury and Department for International Trade assess that the direct impacts and costs to business resulting from these sanctions can be summarised as:
- (i) Lost profits from the prohibition on trade and investment with the non-government controlled areas of the Donetsk and Luhansk oblasts; and
 - (ii) Lost profits from the prohibition on providing technical assistance services to, or for the benefit of, designated persons in relation to aircraft and ships.
- 12.3 UK businesses must already comply with sanctions against individuals and entities appearing on a regularly updated gov.uk list. The additional transition costs resulting from this amendment are expected to be negligible, although some changes to UK systems or administrative processes may be required for UK business to comply.
- 12.4 For the reasons stated in paragraph 12.1, an impact assessment has not been conducted for this instrument. An impact assessment was produced for the primary legislation and can be found [here](#).

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 If determines that it is no longer appropriate to maintain a sanctions regime or specific sanctions measures, that regime will 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 Daniel Drake, Deputy Director, Sanctions Taskforce 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 at the Foreign, Commonwealth and Development Office can confirm that this Explanatory Memorandum meets the required standard.