

EXPLANATORY MEMORANDUM TO
THE REPUBLIC OF BELARUS (SANCTIONS) (EU EXIT) (AMENDMENT)
REGULATIONS 2022

2022 No. 748

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 (S.I. 2019/600) ('the 2019 Regulations'). This instrument introduces additional purposes to those set out in regulation 4 of the 2019 Regulations, widens the designation powers and introduces new financial, trade, shipping and aircraft sanctions measures.

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 4 July 2022 under section 55(3) of the Sanctions Act and comes into force on 5 July 2022. Bringing the instrument into force soon after it is laid is necessary given the international situation and it is appropriate for these measures to enter into force as soon as possible.

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 ('the 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 Lord Ahmad of Wimbledon has made the following statement regarding Human Rights:

"In my view the provisions of the Republic of Belarus (Sanctions) (EU Exit) (Amendment) 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 (HMG) 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 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 additional purposes to those set out in regulation 4 of those Regulations, to widen the powers of the Secretary of State to designate persons and to introduce new financial, trade, aircraft and ships sanctions measures.
- 7.2 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 31 December 2020, replacing the equivalent EU sanctions regime in UK law. The EU sanctions regime had direct effect in the UK since it was established on 24 September 2004. The 2019 Regulations were amended in 2021 by S.I. 2021/1146, to introduce additional financial, trade and aircraft sanctions measures and add to the list of activities which might give grounds for a person to be designated. This followed the escalation of serious human rights violations in Belarus following August 2020's disputed presidential election, including violent repression, by Belarusian authorities, of civil society, democratic opposition, independent media and journalists and the continued undermining of democratic principles and rule of law.
- 7.3 The further amendments to the 2019 Regulations contained in this instrument are a response to the Belarusian regime's direct support to Russia since its invasion of Ukraine on 24 February 2022. In addition Belarus and Russia have close economic and security links and since the flawed Presidential elections of August 2020 and the widespread violent repression that followed, the Lukashenko regime has become increasingly reliant on the economic, diplomatic and security support of Russia.
- 7.4 Although Belarus has not committed its own forces against Ukraine, the regime is facilitating the invasion. Under the guise of a joint military exercise, it allowed in excess of 30,000 Russian troops and their equipment to enter Belarus in January and February. It then permitted the use of Belarusian territory and infrastructure by these Russian forces to conduct offensive air and land operations against Ukraine and provided logistical support to Russian forces.
- 7.5 The Prime Minister communicated the Government's intention to apply further sanctions to Belarus for its role in the assault on Ukraine to Parliament on 24 February 2022 during an oral statement. This was confirmed by the Foreign Secretary in a press release on 24 February. Since then, HMG has designated a number of Belarusian individuals and organisations, including senior defence officials and military enterprises, under the Russia sanctions regime. In addition, HMG have denied Belarus and Russia access to Most Favoured Nation tariffs for hundreds of their exports and imposed import tariffs on an additional £130 million worth of products from Belarus and Russia.

- 7.6 Further sanctions measures are being introduced now, as the conflict in Ukraine becomes more protracted, to further increase the pressure on Belarus to desist in aiding and abetting Russia's invasion. Statements made publicly by President Alexander Lukashenko during events to mark Victory Day on 9 May in Belarus and comments made by Lukashenko last month during his meeting with Russian President Putin claiming that the massacre in Bucha was in fact a British 'psychological operation', illustrate firmly that the Belarusian regime is steadfast in its support of Russia's actions and that further international pressure is needed to encourage a behaviour change.
- 7.7 Following the re-orientation of the Russia offensive in the Donbas and south of Ukraine, a large part of the Russian military forces in Belarus have been re-deployed. The re-deployment of these forces from Belarus to Russia utilised Belarusian infrastructure. Russian air assets and ballistic missiles remain in place on Belarusian territory and are ready and able to support ongoing Russian aggression towards Ukraine.
- 7.8 Applying many of the same sanctions measures placed on Russia to Belarus is intended to promote peace and stability in Eastern Europe by encouraging Belarus to cease supporting or enabling Russian actions destabilising Ukraine. UK policy seeks to deter Belarus from taking further actions, including participating more directly in the conflict. Expanding these measures will signal to Belarus that the UK is aligned with international partners, and will signal to the wider international community that support for Russia's territorial expansionism is unacceptable and will be met with a serious response. Extending the majority of the Russia measures to Belarus seeks to coerce the Belarusian leadership into changing policy by causing significant short-term disruption to its financial system and economy and in the long term further constrain Belarus' economic development. These measures will also constrain Belarus' ability to provide economic, military and in-kind support to Russia's costly invasion and occupation of Ukraine. The measures introduced by this instrument are based on measures in the Russia (Sanctions) (EU Exit) Regulations 2019 as of 14 April. Subsequent measures included in the Russia regime may be introduced in further amendments to the Belarus regime.
- 7.9 In addition to introducing these sanctions measures we continue to apply diplomatic pressure on Belarus. Change will therefore be sought through diplomatic pressure, and other measures, supported by implementing sanctions in respect of actions undermining the territorial integrity, sovereignty or independence of Ukraine, or otherwise undermining or threatening the peace, security or stability in Eastern Europe.
- 7.10 Under Part 2 of this instrument the 2019 Regulations are amended to:
- widen the purposes in regulation 4 to target actions by the Government of Belarus in destabilising Ukraine or undermining or threatening the territorial integrity, sovereignty or independence of Ukraine, including by supporting or facilitating Russia's actions in respect of Ukraine and any other action which undermines or threatens peace, security or stability in eastern Europe;
 - amend regulation 5 (power to designate persons) to widen the powers of the Secretary of State to designate persons, including for the purposes of prohibitions on the provision of technical assistance in relation to aircraft and ships and for the purposes of new aircraft and shipping sanctions;

- set out conditions relating to the exercise of the power of the Secretary of State to designate persons under the standard procedure and the urgent procedure, which was introduced by the Economic Crime (Transparency and Enforcement) Act 2022;
- amend regulation 6 of the 2019 Regulations to expand the criteria for designating individuals to incorporate conduct destabilising Ukraine. This includes persons supporting or facilitating Russia's actions in respect of Ukraine or obtaining a benefit from or supporting the Government of Belarus through carrying on a relevant business activity including in sectors of economic and strategic significance to the Government of Belarus.

7.11 Part 3 of this instrument amends Part 3 (Finance) of the 2019 Regulations which contains financial sanctions:

- The instrument widens the prohibitions on dealing with transferable securities or money-market instruments, in particular apply the prohibitions to securities or money-market instruments issued by a wide range of persons connected with Belarus and related entities.
- The instrument widens the prohibitions on providing loans and credit arrangements, so that they apply to a wide range of persons connected with Belarus and related entities and a wider range of loans to certain persons connected to the Government of Belarus.
- The instrument introduces new financial sanctions to prohibit the provision of financial services in relation to foreign exchange reserve and asset management to The National Bank of Belarus and the Ministry of Finance of Belarus, and related entities.

7.12 Part 4 of this instrument amends Part 5 (Trade) to impose further trade restrictions in relation to Belarus. These include:

- To widen the prohibitions on the export, supply and delivery, making available and transfer of dual-use items so that they apply irrespective of whether there is a military end-user;
- To prohibit the export, supply and delivery, making available and transfer of critical industry goods and technology (as well as related technical assistance, financial services, funds and brokering services);
- To prohibit the export, supply and delivery, making available and transfer of quantum computing and advanced materials-related goods and technology (as well as related technical assistance, financial services, funds and brokering services);
- To prohibit the export, supply and delivery, making available and transfer of oil refining goods and technology (as well as related technical assistance, financial services, funds and brokering services);
- To prohibit the export, supply, delivery, making available and transfer of certain luxury goods;
- To widen the existing prohibitions on petroleum products to capture a wider range of oils and other products;

- To prohibit the import of iron and steel products which are consigned from or originate in Belarus;
 - To prohibit the provision of technical assistance, financial services, funds and brokering services relating to the import of potash, iron and steel products;
 - To extend the current prohibition of the provision of technical assistance relating to aircraft to, or for the benefit of a designated person in Belarus, to ships;
 - To prohibit a person providing technical assistance, armed personnel, financial services or funds, or brokering services where such provisions enables or facilitates the conduct of military activities by the Belarusian military or other military end-users connected with Belarus.
- 7.13 Part 5 of this instrument amends Part 5A (Aircraft) of the 2019 Regulations and contains several measures relating to aircraft including:
- giving the Secretary of State power to direct an airport operator to detain a Belarusian aircraft;
 - requiring refusal of applications for registration, or termination of existing registration, of aircraft owned by designated persons.
- 7.14 This instrument inserts a new Part 5B (Ships). Despite being a landlocked country, Belarus has the ability to flag and register vessels. The shipping sanctions include:
- prohibiting Belarusian ships, and other ships specified by the Secretary of State, from entering ports in the United Kingdom;
 - conferring powers on the Secretary of State to control the movement of Belarusian ships or specified ships by requiring them to leave or enter specified ports, proceed to a specified place or remain where they are;
 - conferring powers on the Secretary of State and harbour authorities to detain Belarusian ships or specified ships at ports or anchorages;
 - prohibiting the registration of ships on the UK Ship Register where they are owned, controlled, chartered or operated by a designated person or persons connected with Belarus, or where they are a specified ship.
- 7.15 The instrument also makes amendments to the 2019 Regulations to provide for exceptions from these measures, and makes amendments to licensing and enforcement provisions, including the creation or application of criminal offences.
- 7.16 The instrument does not include some of the measures that are included in the Russia sanctions regime. For example, the instrument does not include measures relating specifically to Crimea, Donetsk and Luhansk as duplication of those measures in the Belarus sanctions regime would have no further impact. Trade measures in relation to goods required for upstream energy production have also not been included on the grounds that these were thought to have minimal impact given the differences between the structure of the Belarusian and Russian economies. Belarus is a net importer of energy whereas Russia is a significant energy producer. Measures relating to the export of oil refining goods and technology have been replicated given the significance of the oil-refining sector to the Belarusian economy. Trade measures in relation to aviation and space goods have also not been included as Belarus does not have the exact same role as Russia in the war against Ukraine. Further measures may be considered in due course in response to events.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument 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 related sanctions regime.

9. Consolidation

- 9.1 The 2019 Regulations have been amended by S.I. 2020/590; S.I. 2020/951; S.I. 021/922 and S.I. 2021/1146 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, HM Treasury, the Department for International Trade and the Department for Transport assesses that direct impacts and costs to UK businesses can be summarised as follows:
- The measures will impose opportunity costs on UK business of future profit they may have made from the export of goods and services that will be subject to restrictions under the new measures.
 - The measures will impose impacts on ancillary services, supply chain effects, displacement and business closure as well as the chilling effect of sanctions.
 - The new import measures may increase production costs to downstream firms in the UK who may have benefitted from relatively lower costs of Belarusian steel.
 - Financial measures could also impact the provision of ancillary services and contribute to asset-price volatility for those already holding Belarusian securities.
- 12.2 In a central, best estimate, the Impact Assessment concluded that the sanctions measures imply a cumulative net social cost in the form of lost revenue of £370.2m over the next nine years. On average, this amounts to an average direct cost to UK businesses of £5.9m per year in the form of lost profits.

- 12.3 UK businesses must already comply with sanctions against individuals and entities appearing on a regularly updated gov.uk list. The process for notifying businesses about sanctions remains unchanged, so we do not expect significant changes to IT systems or administrative changes.
- 12.4 An Impact Assessment for The Republic of Belarus (Sanctions) (EU Exit) (Amendment) Regulations 2022 is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.
- 12.5 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 Her Majesty's Government determined 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 Taskforce 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 Abigail Culank, 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 at the Foreign, Commonwealth and Development Office can confirm that this Explanatory Memorandum meets the required standard.