

EXPLANATORY MEMORANDUM TO
THE RUSSIA (SANCTIONS) (EU EXIT) (AMENDMENT) (NO. 2) REGULATIONS
2023

2023 No. 665

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. 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 add a new purpose to the 2019 regulations to establish a clearer legislative basis to enable certain assets to remain frozen/immobilised until Russia pays compensation to Ukraine for the damage it has caused.
- 2.2. They also extend existing finance, shipping and trade sanctions relating to non-government controlled Ukrainian territory (the Autonomous Republic of Crimea and city of Sevastopol ("Crimea") and the non-government controlled areas of the Donetsk and Luhansk oblasts), to the non-government controlled areas of the Kherson and Zaporizhzhia oblasts of Ukraine, for the purposes set out in regulation 4 of the 2019 Regulations.

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 19 June 2023 under section 55(3) of the Sanctions Act and comes into force the day after it is laid. It is appropriate for these measures to enter into force as soon as possible 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. This instrument extends to the whole of the United Kingdom ('UK'). It is subject to any obligation arising in respect of the Windsor Framework as it may apply through section 7A of the European Union (Withdrawal) Act 2018 in respect of Northern Ireland.
- 4.2. Subject to paragraph 4.3, the territorial application of this instrument is the same as its extent.
- 4.3. This instrument also applies to conduct undertaken by UK persons where it occurs wholly or partly outside the UK, and to conduct undertaken by any person in the territorial sea adjacent to the UK.

5. European Convention on Human Rights

- 5.1. The Rt Hon Andrew Mitchell MP, Minister of State for Development and Africa at the Foreign, Commonwealth and Development Office has made the following statement regarding Human Rights:

“In my view the provisions of the Russia (Sanctions) (EU Exit) (Amendment) (No.2) Regulations 2022 are compatible with the Convention rights.”

6. Legislative Context

- 6.1. The Sanctions Act establishes a legal framework which enables His Majesty’s Government to impose sanctions for a number of purposes, including that it is in the interests of international peace and security and furthers 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. Following its illegal annexation of Crimea in 2014, Russia continued a pattern of aggressive action towards Ukraine, which culminated in the invasion of Ukraine’s sovereign territory on 24 February 2022. Announced by President Putin as a “special military operation”, this included recognising the “Donetsk People’s Republic” and “Luhansk People’s Republic” as independent states and deploying Russian military across Ukraine.
- 7.2. In September 2022, Russian-installed officials in four temporarily-controlled regions of Ukraine, namely Donetsk, Luhansk, Kherson and Zaporizhzhia, conducted sham referendums in an attempt to justify their illegal seizure of Ukrainian land. The Russian regime announced the illegal annexation of these regions against the will of the Ukrainian people and in flagrant breach of international law.
- 7.3. The UK has called on Russia to cease its military activity, withdraw its forces from Ukraine and Crimea, end its support for the separatists, and fulfil its international commitments including under the 1975 Helsinki Final Act, the 2014 and 2015 Minsk Protocols, and the 1994 Budapest Memorandum and the UN Charter. UK policy remains focused on ending Russia’s invasion and on assisting Ukraine to secure its borders, ensuring a stable, prosperous and democratic future for all its citizens. The UK is unwavering in its support for the country’s independence, territorial integrity and sovereignty.
- 7.4. These sanctions are part of a broader set of measures which includes: diplomatic, military, financial and humanitarian support; trade, financial and transport sanctions; and designations. Change will therefore be sought through diplomatic pressure and other measures, supported by trade sanctions in respect of actions undermining the territorial integrity, sovereignty and independence of Ukraine.
- 7.5. This instrument amends the 2019 Regulations to introduce a new purpose to the 2019 Regulations to state that, in addition to the current purposes in regulation 4, the regulations are for the purposes of promoting the payment of compensation by Russia for damage, loss or injury suffered by Ukraine as a result of Russia’s invasion of Ukraine on or after 24 February 2022. This reflects the UK position that Russia bears

full responsibility for the war and the damage it has caused, including to Ukraine's critical infrastructure. The UK considers that sanctions measures can contribute to the objective to make sure Russia pays compensation for the damage it has caused. It also amends existing finance, shipping and trade sanctions measures applying to non-government controlled Ukrainian territory so that they apply to non-government controlled areas of Kherson and Zaporizhzhia Oblasts.

Explanations

What did any law do before the changes to be made by this instrument?

- 7.6. Prior to this amendment, the Russia Regulations were for the purposes of 'encouraging Russia to cease actions destabilising Ukraine or undermining or threatening the territorial integrity, sovereignty or independence of Ukraine'.
- 7.7. Prior to this amendment, the Russia Regulations defined non-government controlled Ukrainian territory as "Crimea and non-government controlled areas of the Donetsk and Luhansk oblasts" and "non-government controlled areas of the Donetsk and Luhansk oblasts" as "the parts of the Donetsk oblast and the Luhansk oblast of Ukraine as determined in Decree Number 32/2019 issued by the President of Ukraine on 7th February 2019 under Article 1 of the Law of Ukraine of 18th January 2018 Nr. 2268-VIII "On the Peculiarities of State Policy on Ensuring the State Sovereignty of Ukraine over Temporarily Occupied Territories in Donetsk and Luhansk Oblasts"

What will it now do?

- 7.8. This instrument amends regulation 4 ("purposes") in Part 1 of the 2019 Regulations, to add a further purpose to the 2019 Regulations to state that the purposes of sanctions measures are to promote the payment of compensation by Russia to Ukraine. This is in addition to the current purposes of the Russia Regulations and the UK considers these objectives to be complimentary given the escalation of Russia's actions in Ukraine following the full-scale invasion in February 2022. It is estimated that the cost of Ukrainian reconstruction stands at over \$400billion. The United Kingdom, reaffirmed on May 19th by G7 Leaders in Hiroshima, have been clear that Russia should pay for the damage it has caused.
- 7.9. Adding this purpose strengthens the legal basis for using existing sanctions measures to fulfil the objective of securing payment by Russia to fund Ukrainian reconstruction. It also enables the UK to maintain economic pressure on Russia, and signals that Russia is not just responsible for ceasing its actions, but responsible for remedying the harm it has caused too.
- 7.10. It also amends Part 1 of the 2019 Regulations to include "the non-government controlled areas of the Kherson and Zaporizhzhia oblasts" in the definition of "non-government controlled Ukrainian territory". It removes the previous definition of "non-government controlled areas of the Donetsk and Luhansk oblasts". Measures applying to "non-government controlled Ukrainian territory" in Parts 3 (Finance), 5 (Trade) and 6 (Ships) are therefore applied to additional areas currently not under the control of the Ukrainian government.
- 7.11. The change in definition of the areas covered by this measure reflects the changing geographical territory under the control of the Ukrainian government. The regulations also introduce a defence to the offence under the Customs and Excise Management

Act 1979 where a person had no reasonable cause to suspect that the goods were going to areas of the Donetsk, Luhansk, Kherson and Zaporizhzhia oblasts which were not under the control of the Ukrainian government.

- 7.12. Existing exceptions to the measures applying to non-government controlled Ukrainian territory, for example relating to humanitarian assistance, are also extended to the new territories covered by this amendment.

8. European Union Withdrawal and Future Relationship

- 8.1. This instrument itself does not relate to withdrawal from the European Union ('EU') or 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; S.I. 2022/395; S.I. 2022/452; S.I. 2022/477; S.I. 2022/792; S.I. 2022/801; S.I. 2022/814; S.I. 2022/818; S.I. 2022/850; S.I. 2022/1110; S.I. 2022/1122, S.I. 2022/1331 and S.I. 2023/440 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. HM Government 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 Foreign Commonwealth and Development Office assesses that there is no, or no significant, impact on charities or voluntary bodies.
- 12.2. The Foreign Commonwealth and Development Office assesses that there is no, or no significant, impact on the public sector.
- 12.3. The Foreign, Commonwealth and Development Office has undertaken a de minimis impact assessment to estimate costs to UK businesses and wider impacts resulting from these Regulations. We have estimated the costs to be beneath the threshold of

£5m per annum for a full impact assessment. The direct impacts and costs to business resulting from these sanctions can be reduced to:

- Any potential increase in the length of time over which sanctions remain in place.
- The lost profits from the prohibition on trade and investment with the non-government-controlled areas of the Zaporizhzhia and Kherson oblasts.

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 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. 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 Directorate at the Foreign, Commonwealth and Development Office Telephone: 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 Directorate at the Foreign, Commonwealth and Development Office, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3. The Rt Hon Andrew Mitchell MP, Minister of State for Development and Africa at the Foreign, Commonwealth and Development Office can confirm that this Explanatory Memorandum meets the required standard.