

EXPLANATORY MEMORANDUM TO

THE RUSSIA (SANCTIONS) (EU EXIT) (AMENDMENT) (NO. 3) REGULATIONS 2023

2023 NO. 713

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Foreign, Commonwealth and Development Office and Ministry of Justice 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') (c.13) to make amendments to the Russia (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/855) ('the 2019 Regulations'). These amendments will extend restrictions on trade with Russia for the purposes of encouraging Russia to cease actions destabilising Ukraine or undermining or threatening the territorial integrity, sovereignty or independence of Ukraine, as stated 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 29 June 2023 under section 55(3) of the Sanctions Act and comes into force on 30 June 2023. Bringing the measure into force on this date will put further pressure on the Russian government, with the ambition of urgently ending the war in Ukraine.

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 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 David Rutley, Parliamentary Under Secretary of State at the Foreign, Commonwealth and Development Office, has made the following statement regarding Human Rights:

5.2 “In my view the provisions of the Russia (Sanctions) (EU Exit) (Amendment) (No. 3) Regulations 2023 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 that it 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 This instrument amends the 2019 Regulations to impose further trade sanctions in relation to Russia.

7.2 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.

7.3 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 The provision of legal services is already partially restricted by the 2019 Regulations, including by regulations 19 and 55 (the “circumvention regulations”) and several regulations that limit the provision of ancillary services related to sanctioned goods and technologies. The circumvention regulations prevent a person intentionally providing legal advisory services where the object or effect of the legal advisory services directly or indirectly circumvents prohibitions imposed by certain 2019 Regulations, or enables or facilitates the contravention of those prohibitions. However, as a result of the territorial application of the 2019 Regulations, this generally applies only to legal advisory services provided in relation to prohibited activity undertaken in the UK or by a UK person.

7.6 This means that without these Regulations, it would potentially be lawful for a UK legal services provider to support commercial activity which advances the interests of

Russia, where that activity does not have sufficient connection to the UK to be prohibited under the UK sanctions regime. This is a particular concern given that the law of England and Wales is often chosen as the law governing international commercial activities, and as such, the services of UK lawyers are frequently engaged in relation to those activities, even if the activity is not conducted in the UK or by UK persons.

- 7.7 This instrument addresses this issue and supplements other restrictions on providing legal services. It means that no UK person or person in the UK can provide legal advisory services in relation to certain financial or trade activity which would be prohibited under the UK sanctions regime if the activity was done by a UK person or was taking place in the UK.
- 7.8 This restriction is limited to legal advisory services and does not cover legal representation services. Access to legal representation is an important element of the core democratic principle of the rule of law, and this sort of legal service has therefore been excluded. In keeping with this principle, the instrument introduces an exception that enables services providers to offer expert evidence in connection with legal proceedings, even where the services activity would otherwise be prohibited to a person connected with Russia. Other exceptions to the restriction are also set out including legal advice related to compliance with the sanctions regime itself.
- 7.9 The instrument also introduces a new exception to the prohibition on the provision of professional and business services. The exception, which applies to auditing services, provides companies and auditors with a legal basis under which they can operate where there are statutory or regulatory obligations. This reflects how this measure interacts with the audit requirement in UK Company Law and the auditor's obligations to shareholders.
- 7.10 This instrument also sets out a referral process relevant to the way that His Majesty's Revenue and Customs will investigate certain offences under the 2019 Regulations.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union or trigger the statement requirements under the European Union (Withdrawal) Act. The 2019 Regulations are 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, SI 2022/452, SI 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, SI 2022/1331, S.I. 2023/440 and S.I. 2023/665 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 The Explanatory Memorandum to the 2019 Regulations explains the consultation that has been carried out in relation to the Sanctions Act.

10.2 No consultation has been carried out on this instrument. 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 Ministry of Justice has undertaken a de minimis impact assessment to estimate costs to UK businesses and wider impacts resulting from these Regulations. It is estimated that the costs are beneath the threshold of £5m per annum for a full impact assessment.

12.2 The direct impacts and costs to business resulting from these sanctions can be reduced to:

- the costs of compliance and other economic losses to UK legal service professionals who will no longer be able to provide the sanctioned activities;
- the costs to impacted clients of no longer being in a position to avail of legal advice from UK lawyers on relevant commercial activity.

12.3 There is no significant impact on the public sector as the policy focuses on legal services providers and their clients.

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 minimise regulatory burdens on small businesses. 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 The effects of the legislation will be monitored through ongoing engagement with the government departments involved in its implementation and enforcement, and by engagement with the legal sector, including regulatory and representative bodies (e.g. the Solicitors Regulation Authority, the Bar Council of England and Wales, the Law Society), and practitioners and firms.

14.2 The instrument does not include a statutory review clause. If 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 Holly O’Callaghan at the Ministry of Justice: holly.o’callaghan1@justice.gov.uk or Peter White at the Foreign, Commonwealth and Development Office: peter.white1@fcdof.gov.uk
- 15.2 Abigail Culank, Deputy Director for Sanctions Strategy, Legislation and Engagement at the Foreign, Commonwealth and Development Office can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 David Rutley, Parliamentary Under Secretary of State at the Foreign, Commonwealth and Development Office, can confirm that this Explanatory Memorandum meets the required standard.