EXPLANATORY MEMORANDUM TO

THE IMMIGRATION (PERSONS DESIGNATED UNDER SANCTIONS REGULATIONS) (EU EXIT) REGULATIONS 2020

2020 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Home 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 The Sanctions and Anti-Money Laundering Act 2018 provides for the creation of autonomous sanctions regimes after the UK's exit from the European Union, together with mechanisms to review and challenge the sanctions on either individuals or entities. Immigration sanctions, or travel bans, will make an individual an excluded person under section 8B of the Immigration Act 1971 and this will affect the immigration status of those already in the UK.

2.2 In line with the UK's obligations under the European Convention on Human Rights and the Refugee Convention, such individuals will be able to lodge a human rights or protection claim against the consequences of the travel ban. If refused, such claims carry a right of appeal.

2.3 This instrument ensures that the current process for considering a human rights or protection claim is retained for those subject to new autonomous travel bans and is not conflated with the review and challenge mechanisms for the sanctions themselves.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument is laid pursuant to section 48 of the Sanctions and Anti-Money Laundering Act 2018.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 The powers under which this instrument is made cover the entire United Kingdom (see section 63(1) of the Sanctions and Anti-Money Laundering Act 2018) and the territorial application of this instrument is not limited either by the Act or by the instrument.

Matters of special interest to the Committee on the UK's exit from the European Union

3.3 This instrument is relevant to the withdrawal of the United Kingdom from the European Union because it relates to sanctions imposed under the UK's domestic sanctions regime which comes into force at the end of the transition period.

4. Extent and Territorial Application

4.1 The extent of this instrument is the United Kingdom plus the Channel Islands, the Isle of Man, and all of the British Overseas Territories (the legislatures of which have not been consulted since they have no competence in matters relating to immigration, nationality and citizenship).

4.2 The territorial application of this instrument is the United Kingdom. It also applies to the Channel Islands, the Isle of Man, and all of the British Overseas Territories (again, the legislatures of which have not been consulted since they have no competence in matters relating to immigration, nationality and citizenship).

5. European Convention on Human Rights

5.1 The Parliamentary Under Secretary of State for Immigration Compliance and the Courts, Chris Philp MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Immigration (Persons Designated Under Sanctions Regulations) (EU Exit) Regulations 2020 are compatible with the European Convention on Human Rights."

6. Legislative Context

6.1 This instrument is laid under section 48 of the Sanctions and Anti-Money Laundering Act 2018. The intention is to clearly set out that the Immigration and Asylum Chamber (IAC) of the First-tier Tribunal can only consider matters within its jurisdiction; that is, the immigration consequences of refusal of a human rights or protection claim.

6.2 Section 38 of the Sanctions and Anti-Money Laundering Act 2018 provides for reviews by the High Court, or, in Scotland, the Court of Session, of the decision to impose a sanction under Section 1 of that Act.

6.3 This instrument keeps separate the routes for appeal against the immigration consequences of the sanction and challenge to the sanction itself. The IAC has no jurisdiction to review matters relating to the decision to make a designation and individuals cannot challenge the imposition of the travel ban at an immigration appeal.

7. Policy background

What is being done and why?

7.1 The UK currently implements over 30 UN and other multilateral sanctions regimes, the implementation of which largely relies on the European Communities Act 1972. These include country-specific sanctions regimes, including on Russia, DPRK and Iran, as well as regimes targeting Daesh, Al Qaida and other terrorist groups. There are currently around 2,000 individuals and entities subject to sanctions in the UK, which include travel bans, asset freezing and transport and trade sanctions. After the end of the transition period the UK is no longer bound by sanctions regimes imposed by the Council of the European Union, and so a new domestic legal framework is needed to implement UN sanctions and any additional UK autonomous measures. If we do not do this, we will be in breach of international law.

7.2 The European Union (Withdrawal) Act 2018 preserved existing sanctions regimes and underlying designations as they were on the date of the UK's exit from the EU.

However, this alone is not sufficient as these regimes and designations would quickly become out of date. The Sanctions and Anti-Money Laundering Act 2018 (SAMLA) therefore provides a mechanism to introduce autonomous domestic sanctions regimes, designating individuals and entities for particular purposes.

7.3 Immigration sanctions, or travel bans, imposed by SAMLA will make individuals excluded persons under section 8B of the Immigration Act 1971. Most of them will be overseas with no intention of travelling to the UK, but for those already in the UK the exclusion will, as a matter of domestic law, have consequences for their immigration status; any existing permission to remain will be cancelled and they may be liable to removal.

7.4 In line with the UK's obligations under the European Convention on Human Rights and the Refugee Convention, such individuals will be able to lodge a human rights or protection claim against the consequences of the designation. If refused, such claims carry a right of appeal.

7.5 This instrument ensures that such appeals remain within the existing immigration appeals system and are considered by those with the expertise and capacity to do so.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument relates to withdrawal from the European Union.

9. Consolidation

9.1 This is the first instrument being made under these powers. Consolidation is therefore not applicable.

10. Consultation outcome

10.1 There has been no public consultation on this proposal.

11. Guidance

11.1 The Home Office will publish guidance for the public and caseworkers when this instrument comes into force.

12. Impact

12.1 There is no impact on business, charities or voluntary bodies.

12.2 There is no impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because no impact on the private, voluntary or public sector is foreseen.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The impact of the changes made by this instrument will be monitored internally by the Home Office, including as cases arise to ensure there is no confliction with challenges to sanctions themselves and neither jurisdiction is considering matters more appropriately within the remit of the other.

15. Contact

15.1 Fiona Johnstone at the Home Office, Telephone: 07775 791643 or email: Fiona.johnstone@homeoffice.gov.uk can answer any queries regarding the instrument.

15.2 Matthew Bligh, Deputy Director for the Enforcement and Criminality Policy Unit (ECPU) at the Home Office, can confirm that this Explanatory Memorandum meets the required standard.

15.3 Chris Philp MP, Minister for Immigration Compliance and the Courts, at the Home Office can confirm that this Explanatory Memorandum meets the required standard.