EXPLANATORY MEMORANDUM TO

THE IMMIGRATION (PERSONS DESIGNATED UNER SANCTIONS REGULATIONS) (EU EXIT) (AMENDMENT) REGULATIONS 2022

2022 No. 1394

1. Introduction

1.1 This explanatory memorandum has been prepared by the Home 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 The Sanctions and Anti-Money Laundering Act 2018 provides for the creation of autonomous sanctions regimes following the UK's exit from the European Union, together with mechanisms to review and challenge the sanctions on either individuals or entities.

2.2 In line with the UK's obligations under the European Convention on Human Rights (ECHR) and the Refugee Convention, people who are lawfully in the UK when designated are exempt from the effect of an immigration sanction, also known as a travel ban, until a decision is made on their human rights or protection claim (immigration claim) or (if no immigration claim is submitted) until a Minister directs that the effect of the immigration sanction is enforced.

2.3 This instrument will remove the exemption from the effect of the immigration sanction if a person leaves the UK. This is consistent with the UK's international obligations and brings consistency between people subject to immigration sanctions and those making applications under the Immigration Rules who are not subject to an immigration sanction.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument is being laid pursuant to section 48 of the Sanctions and Anti-Money Laundering Act 2018. This instrument amends the Immigration (Persons Designated Under Sanctions Regulations) (EU Exit) Regulations 2020.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

5. European Convention on Human Rights

5.1 The Minister of State for Immigration, Robert Jenrick MP has made the following statement regarding Human Rights:

"In my view the provisions of the Immigration (Persons Designated Under Sanctions Regulations) (EU Exit) (Amendment) Regulations 2022 are compatible with the Convention 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 address a discrepancy whereby provisions designed to ensure compliance with our international obligations put people subject to an immigration sanction in a better position than people making a human rights or protection claim under the Immigration Rules.

7. Policy background

What is being done and why?

7.1 Immigration sanctions imposed under the Sanctions and Anti-Money Laundering Act 2018 make people excluded persons under section 8B of the Immigration Act 1971. This has the effect, subject to ECHR and Refugee Convention obligations, of cancelling any existing permission to enter or remain in the UK and may mean that they are liable to removal.

7.2 The Immigration (Persons Designated Under Sanctions Regulations) (EU Exit) Regulations 2020 provide for a person who was lawfully in the UK when designated to be exempt from the effect of the immigration sanction until a decision is made on their immigration claim or, if no immigration claim is made, until a direction is given that the effect of the immigration sanction is enforced. This means they retain their immigration status and can travel in and out of the UK during that time. The decision to refuse an immigration claim or direct enforcement of the effect of the immigration sanction removes the exemption, although a person cannot be removed from or required to leave the UK until any appeal has concluded.

7.3 In contrast, the Immigration Rules provide that an application for asylum can be treated as withdrawn if a person leaves the UK, while all other applications under the Immigration Rules can be treated as withdrawn if a person leaves the Common Travel Area. People subject to an immigration sanction are therefore in a better position than those applying under the Immigration Rules who are not subject to an immigration sanction.

7.4 This instrument removes the exemption from the effect of an immigration sanction when a person leaves the UK. This maintains the UK's compliance with our obligations under the ECHR and the Refugee Convention, while bringing consistency with applications of a similar nature made under the Immigration Rules.

8. European Union Withdrawal and Future Relationship

8.1 This instrument is not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the UK from the EU. This is because the Sanctions and Anti-Money Laundering Act 2018 was made to enable the UK to implement United Nations (UN) sanctions regimes and impose autonomous sanctions regimes, following the UK's withdrawal from the EU.

9. Consolidation

9.1 It is not intended to consolidate legislation amended by this instrument.

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 any unforeseen consequences are appropriately handled.

15. Contact

15.1 Miguel San Juan at the Home Office, email: CriminalityPolicyGuidanceQueries@homeoffice.gov.uk can be contacted with any queries regarding this instrument.

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

15.3 Robert Jenrick MP, Minister for Immigration at the Home Office can confirm that this Explanatory Memorandum meets the required standard.