EXPLANATORY MEMORANDUM TO

THE RULES OF THE COURT OF JUDICATURE (NORTHERN IRELAND) (AMENDMENT) (EU EXIT) 2019

2019 No. 8

1. Introduction

1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The purpose of this statutory instrument is to set out the procedure for court reviews in Northern Ireland against sanctions decisions made under the Sanctions and Anti-Money Laundering Act 2018 ("the Act"). It makes amendments to existing rules of court (the Rules of the Court of Judicature (Northern Ireland)) so that the government can apply to the court for sensitive material to be disclosed only to special advocates and the court on the basis of this being in the public interest.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

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 territorial application of this instrument is limited to Northern Ireland.

3.3 The instrument does not have any minor or consequential effects outside Northern Ireland.

4. Extent and Territorial Application

4.1 The extent of this instrument is Northern Ireland.

4.2 The territorial application of this instrument is Northern Ireland.

5. European Convention on Human Rights

5.1 The Rt. Hon. David Gauke M.P., Lord Chancellor and Secretary of State for Justice, has made the following statement regarding Human Rights:

"In my view the provisions of the Rules of the Court of Judicature (Northern Ireland) (Amendment) (EU Exit) 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 The statutory instrument is made under section 40 of the Act, which applies sections 66 to 68 of the Counter-Terrorism Act 2008 in relation to proceedings in Northern Ireland in respect of challenges against sanctions decisions.

6.2 Sections 66 to 68 of the Counter-Terrorism Act 2008 and rules of court made under those provisions allow the Treasury to ask for a closed material procedure to apply to

proceedings involving challenges to financial restriction directions made under that Act. The procedure allows for the non-disclosure of sensitive material to the person reviewing the decision, the hearing of proceedings in the absence of that party to proceedings and for the appointment of special advocates to represent the interest of the person concerned.

6.3 Order 116B of the Rules of the Court of Judicature (Northern Ireland) 1980 was first created using the powers under sections 66 to 68 of the Counter Terrorism Act 2008 (see the Rules of the Supreme Court (Northern Ireland) (Amendment No.3) 2008 (S.R. 2008/479)), for the purpose of providing rules of court in relation to financial restriction proceedings under Part 6 of the Counter-Terrorism Act 2008. These provisions were also relied upon (see the Rules of the Court of Judicature (Northern Ireland) (Amendment No.3) 2010 (S.R. 2010/430)), to amend Order 116B for the purpose of providing rules of court for applications under section 26 of the Terrorist Asset-Freezing etc. Act 2010 (appeals to the court in relation to designations).

6.4 This will be the first instance of the use of the powers in sections 66 to 68 of the Counter Terrorism Act 2008 in the context of sanctions.

6.5 The UK's implementation of UN and other multilateral sanctions relies largely on the European Communities Act 1972. The European Union (Withdrawal) Act 2018 will repeal the European Communities Act 1972 and provides for some EU sanctions law to form part of domestic law after the UK has left the EU. However, the European Union (Withdrawal) Act does not provide powers to amend substantially that retained EU law and it does not provide powers to lift sanctions or impose new sanctions. In addition, the European Union (Withdrawal) Act does not retain the effect of certain sanctions (travel bans) which are in force by virtue of EU Council Decisions (rather than under EU Regulations). The Act was introduced to address these issues by providing the UK with the legal framework necessary to allow the UK to implement sanctions autonomously.

6.6 The Act enables sanctions to be imposed for the purposes of compliance with United Nations obligations; compliance with other international obligations; furthering the prevention of terrorism; national security; promoting international peace and security; or furthering foreign policy objectives.

6.7 The purpose of the provision in section 40, which allows for sections 66 to 68 of the Counter Terrorism Act 2010 to apply in relation to challenges against sanctions decisions, is so that the closed material procedure referred to above can be used for legal challenges to sanctions decisions under the Act. The Act allows the Lord Chancellor to make these rules on the first occasion after the passing of the Act that rules are to be made (after which the power will revert, in Northern Ireland, to the Northern Ireland Court of Judicature Rules Committee). This instrument therefore amends Order 116B of the existing rules of court to allow the government to apply to the court for sensitive material to be disclosed only to special advocates and the court on the basis of this being in the public interest.

7. Policy background

What is being done and why?

7.1 Sanctions are an important foreign policy and national security tool. They are restrictive measures which are designed to be temporary and can be used to coerce a

change in behaviour, to constrain behaviour, or to communicate a clear political message to other countries or persons.

7.2 The UK currently implements over 30 sanctions regimes as an EU member state. The Prime Minister has committed that the UK will look to carry over all EU sanctions into EU law after the UK's departure from the EU. These include country-specific sanctions regimes, including in relation to Russia, North Korea and Iran, as well as regimes targeting Da'esh, Al Qaida and other terrorist groups. There are currently around 2,000 individuals and entities subject to sanctions implemented by the UK. These sanctions include asset freezes, travel bans and other financial and trade restrictions. Sanctions regimes will be brought into UK law through further regulations made under the Act. The regime specific regulations list the criteria against which a Minister may make a decision to designate a person as being subject to a travel ban or asset freeze ("designated person"). Regulations may also specify ships if imposing certain shipping sanctions ("specified ships").

7.3 All decisions to designate a person will be taken on the basis of the evidence that is held, and whether it is considered to meet the legal tests in the Act and the criteria set out in regulations.

7.4 A designated person may apply under section 38 of the Act to the High Court in Northern Ireland for a sanctions decision made against them to be set aside. This route of challenge is only available after an administrative review of the designation has been sought and refused (under Chapter 2 of the Act), the procedure for which is set out in the Sanctions Review Procedure (EU Exit) Regulations 2018.

7.5 Section 40 of the Act enables the Lord Chancellor to make rules of court to allow for the closed material procedure to be used in relation to challenges to sanctions decisions under the Act. The procedure would enable the government to use sensitive information to support the imposition of sanctions on persons without the additional risks posed by open disclosure of the material.

7.6 This statutory instrument makes technical amendments to Order 116B of the Rules of the Court of Judicature (Northern Ireland) 1980. The amendment extends existing procedures applicable to legal challenges in relation to financial restriction proceedings to challenges to sanctions decisions made under the Act. It makes no new substantive provisions and specifies that challenges against sanctions decisions under the Act should be treated in the same way as challenges against financial restriction decisions made under the Counter-Terrorism Act 2008.

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

8.1 This instrument is not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the United Kingdom from the European Union. This is because the Act under which it was made was introduced to provide a basis in UK law for the existing sanctions regimes implemented via the EU. This instrument makes provision for court procedures in respect of challenges made by designated and affected persons under the Act.

9. Consolidation

9.1 This instrument amends the Rules of the Court of Judicature (Northern Ireland) 1980.

9.2 This instrument does not consolidate previous instruments.

10. Consultation outcome

10.1 There is neither a requirement in the Act for public consultation on instruments made under the Act, nor is there any other legal obligation to consult publicly in respect of this instrument. HMG will continue engagement with stakeholders on the implementation of UK sanctions. As required by section 40(5)(b) of the Act, the Lord Chancellor has consulted the Lord Chief Justice of Northern Ireland before the making of these Rules.

10.2 HMG ran a public consultation on the Act itself. Over 30,000 individuals and companies received a copy of the White Paper, and 34 individuals provided written responses. Government officials held a number of roundtables with key sectors, including financial services, the legal profession, NGOs and industry professionals and regulators. The main areas of concern were procedural and surrounded the legal threshold for sanctions designations, rights of the designated person to challenge their designation and licensing procedures. These were addressed during the passage of the Act. As this instrument implements the powers in the Act, already a product of significant consultation, we have not run a separate public consultation on it.

11. Guidance

11.1 Guidance on the procedure for challenging sanctions decisions will be published on gov.uk.

12. Impact

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

12.2 There is no, or no significant, impact on the public sector.

12.3 An impact assessment has not been produced for this instrument. An impact assessment was produced for the Act and can be found on Parliament's web pages on https://publications.parliament.uk/pa/bills/lbill/2017-2019/0069/sanctions-and-anti-money-laundering-IA.pdf. A hard copy is attached.

13. Regulating small business

13.1 This instrument does not specifically apply to activities that are undertaken by small business. It sets out the procedure for court reviews in Northern Ireland against sanctions decisions made under the Act.

14. Monitoring & review

14.1 There are no reporting or review requirements for this instrument under the Act.

15. Contact

15.1 Jennifer Budniak at the Foreign and Commonwealth Office: Telephone: 0207 008 5013 or email: Sanctions.SIs@fco.gov.uk can be contacted with any queries regarding the instrument.

15.2 Qudsi Rasheed, Deputy Director for the Sanctions Unit at the Foreign and Commonwealth Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Rt. Hon. David Gauke M.P., Lord Chancellor and Secretary of State for Justice, can confirm that this Explanatory Memorandum meets the required standard.