EXPLANATORY MEMORANDUM TO

THE RUSSIA (SANCTIONS) (EU EXIT) (AMENDMENT) (NO. 4) REGULATIONS 2022

2022 No. 203

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 Her 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 introduce new shipping sanctions measures, 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 1 March 2022 under section 55(3) of the Sanctions Act and comes into force on the same day that it is laid. Bringing the instrument into force on the same day is necessary given the international situation and it is appropriate for these measures to enter into force as soon as possible.

3.2 The territorial application of this instrument includes Scotland and Northern Ireland.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the same as the territorial extent of the instrument which it amends: that is, the whole of the United Kingdom ('UK').

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 The Secretary of State for Foreign, Commonwealth and Development Affairs, has made the following statement regarding human rights:

"In my view the provisions of the Russia (Sanctions) (EU Exit) (Amendment) (No. 4) Regulations 2022 are compatible with the Convention rights."

6. Legislative Context

6.1 The Sanctions Act establishes a legal framework which enables Her Majesty's Government to impose sanctions for a number of purposes, which include that it is in the interests of international peace and security and furthering a foreign policy objective of the government of the UK.

6.2 This instrument is made in exercise of powers conferred by sections 1, 7(1) to (5) and (8), 10(2) to (4), 11, 14, 15(2) and (3), 16, 17(2) to (5), 21(1), 26, 45, 54(1) and (2), and 62(6) of the Sanctions Act. It 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 and amend prohibitions and requirements in relation to sanctions measures.

7.2 Following its illegal annexation of Crimea in 2014 Russia has continued to pursue a pattern of aggressive action towards Ukraine. This has included use of military force to invade Ukraine, announced by President Putin on 24 February 2022 as a "special military operation", and the recognition of the 'Donetsk People's Republic' and 'Luhansk People's Republic' as independent states, and the deployment of Russian military to those regions.

7.3 The UK has called on Russia to cease its military activity, withdraw its forces from Ukraine and Crimea and fulfil its international commitments including under the 1975 Helsinki Final Act, the 2014 & 2015 Minsk Protocols and 1994 Budapest memorandum. The UK continues to reiterate its support for Ukraine and has called on Russia to withdraw its troops, end its support for the separatists, and enable the restoration of security along the Ukraine-Russia border under effective and credible international monitoring.

7.4 UK policy is focused on ending the crisis in Ukraine and on assisting Ukraine to secure its borders against Russia's aggressive actions, ensuring a stable, prosperous and democratic future for all its citizens. The UK has been unwavering in its support for the country's territorial integrity and sovereignty.

7.5 These sanctions are part of a broader policy of measures which includes: diplomatic pressure; trade sanctions; economic and financial sanctions and designations. Change will therefore be sought through diplomatic pressure, and other measures, supported by implementing sanctions in respect of actions undermining the territorial integrity, sovereignty and independence of Ukraine.

7.6 This instrument amends regulation 5 (power to designate persons) of the 2019 Regulations to provide that persons (including vessels and/or ships) may be designated for the purposes of regulations 57A and 57C to 57E (ships: prohibition on port entry etc.).

7.7 To prevent obfuscation and target the ultimate beneficiary owners, who may hide behind shell companies or similar, these measures may be taken against those who:

- possess the legal title to the ship, or to any share in the ship, or
- have a beneficial interest in the ship or in any share in the ship; or

- are able to take decisions about its operation, including (but not limited to) decisions about the route the ship may take and the appointment of master or crew.

7.8 This instrument amends Part 6 (Ships) of the 2019 Regulations which contains shipping sanctions in relation to Crimean ports. The instrument adds several measures to these sanctions including:

(i) Prohibiting Russian ships, and other ships specified by the Secretary of State, from entering ports in the United Kingdom.

(ii) Conferring powers on the Secretary of State and harbour authorities to detain Russian ships or specified ships at ports or anchorages.

(iii) Conferring powers on the Secretary of State to control the movement of Russian ships or specified ships by requiring them to leave or enter specified ports, proceed to a specified place or remain where they are.

(iv) Prohibiting the registration of ships on the UK Ship Register where they are owned, controlled, chartered or operated by a designated person or persons connected with Russia, or where they are a specified ship.

7.9 This instrument provides for an exception to the prohibition on port entry where access is necessary in cases of emergency. The instrument also provides for the creation of criminal offences. The Regulations make it a criminal offence to contravene any of the prohibitions in these Regulations.

7.10 This instrument is accompanied by two statutory reports that are required to be published under the Sanctions Act in relation to the 2019 Regulations.

7.11 First, and in accordance with section 46(2) of the Sanctions Act, the report explains why the Minister considers that the carrying out of the stated purposes of the regulations being amended would meet one or more of the discretionary purposes (i.e. purposes other than implementing UN obligations) set out in the Sanctions Act; why there are good reasons to pursue those purposes; and why the Minister considers that the imposition of sanctions is a reasonable course of action for pursuing those purposes.

7.12 Secondly, and in accordance with section 18 of the Sanctions Act, a report has been produced that identifies the offences contained in this instrument and the prohibitions and requirements to which they relate; explains why there are good reasons for those prohibitions and requirements to be enforceable by criminal proceedings; and explains why there are good reasons for the prescribed penalties in relation to those offences. Offences include, for example, contravening the principal prohibitions in the Regulations (e.g. breaching one of the shipping sanctions prohibitions) or trying to circumvent those principal prohibitions

8. European Union Withdrawal and Future Relationship

8.1 This instrument itself does not relate to withdrawal from the European Union / 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; 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. HMG 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 An impact assessment has not been produced for these Regulations. The FCDO have completed a De Minimis self-certification as the costs to UK businesses of the Regulations are expected to sit under the threshold of £5m per annum.

12.2 The FCDO and DfT assess that the direct impacts and costs to business resulting from these sanctions can be reduced to the following:

(i) reduced revenues for ship registries caused by the deregistration of Russian-owned vessels; and

(ii) reduced revenue for ports caused by losses in port fees as a result of the banning of Russian-flagged ships and vessels from entry into UK ports.

12.3 Following internal analysis the FCDO and DfT assess the cost to UK ports would be less than £5m per year, with the best quantifiable estimate available being £3.9m. However, due to potential offsetting impacts such as provision by alternative non-Russian vessels, it is probable that direct impact on ports will be less than £3.9m.

12.4 UK businesses must already comply with sanctions against individuals and entities appearing on a regularly updated gov.uk list. The process for notifying businesses about sanctions and designated persons remains unchanged, so we do not expect significant changes to IT systems or administrative changes. Therefore, costs will be limited to familiarisation costs, opportunity costs of travel bans and asset freezes, and costs related to compliance, legal advice and other professional services.

12.5 As noted in paragraph 12.1, an impact assessment has not been conducted for this instrument. An impact assessment was produced for the primary legislation and can be found here.

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 Section 30 of the Sanctions Act requires regular reviews of the 2019 Regulations which are amended by this instrument. Standalone reviews of this instrument are not required. However, reviews of the 2019 Regulations which take place after this instrument enters into force will include a review of 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 Legislation and Policy Team at the Foreign, Commonwealth and Development Office, 0207 008 8553 or email: Sanctions.SIs@fcdo.gov.uk, can be contacted with any queries regarding the instrument.

15.2 Daniel Drake, Deputy Director for Multilateral, Sanctions and Strategic Engagement at the Foreign, Commonwealth and Development Office, can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Rt. Hon. James Cleverly MP, Minister of State for Foreign, Commonwealth and Development Affairs can confirm that this Explanatory Memorandum meets the required standard.