EXPLANATORY MEMORANDUM TO

THE RUSSIA (SANCTIONS) (EU EXIT) (AMENDMENT) (NO. 5) REGULATIONS 2023

2023 No. 1367

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 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') to make amendments to the Russia (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/855) ('the 2019 Regulations'). These amendments will introduce a prohibition on the import, acquisition, and supply and delivery of the import of diamonds originating or consigned from Russia including related ancillary services for the purposes set out in regulation 4 of the 2019 Regulations. We continue to implement sanctions at an unprecedented pace, tightening the screws against Russian aggression in Ukraine.

2.2 The sanctions brought into effect by this statutory instrument deliver on commitments made by the Prime Minister at the G7 summit in May 2023 to ban imports of Russian origin diamonds. We continue to implement sanctions at an unprecedented pace, tightening the screws against Russian aggression in Ukraine.

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 14th December 2023 under section 55(3) of the Sanctions Act and comes into force on the 1st January 2024. Bringing the instrument into force on this date is required to ensure alignment with international partners and will also 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 Rt Hon Anne Marie Trevelyan MP, Minister of State for the Indo Pacific and Sanctions at the Foreign, Commonwealth and Development Office has made the following statement regarding Human Rights:

"In my view the provisions of the Russia (Sanctions) (EU Exit) (Amendment) (No. 5) 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 and 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 introduce and amend trade sanctions measures.

7.2 Following its illegal annexation of Crimea in 2014, Russia continued a pattern of aggressive action towards Ukraine until 24 February 2022 when it invaded Ukraine's sovereign territory, announced by President Putin as a "special military operation", and recognised the 'Donetsk People's Republic' and 'Luhansk People's Republic' as independent states and deployed Russian military to those regions.

7.3 In September 2022, Russian-installed officials in four temporarily-controlled regions of Ukraine, namely Donetsk, Luhansk, Kherson and Zaporizhzhia, conducted sham referendums in an attempt to justify their illegal seizure of Ukrainian land. The Russian regime announced the illegal annexation of these regions against the will of the Ukrainian people and in flagrant breach of international law.

7.4 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. UK policy remains 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 At the G7 summit in May 2023, the Prime Minister committed to banning the import of Russian-origin diamonds by the end of 2023. The UK has already taken strong actions against Russian diamonds by designating Russia's mining conglomerate Alrosa, and its CEO. Russian diamonds have also been subject to an additional 35 percentage point import tariff.

7.6 This instrument is the first step in implementing a broader ban, coordinated with the G7. The UK and its G7 partners are working on further measures capturing Russian diamonds subsequently processed in third countries, targeting 1st March for entry into force, as set out in the G7 Leaders' statement of 6 December 2023.

7.7 These sanctions are part of a broader policy of measures which includes: diplomatic pressure; other 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.

Explanations

What did any law do before the changes to be made by this instrument?

7.8 This instrument amends Part 5 (Trade) of the 2019 Regulations, which contains trade sanctions measures, and makes related consequential amendments. Previous trade sanctions include wide-ranging prohibitions on the export of goods and services, including defence and security goods and technology, goods used for Russia's energy sector, and services for which Russia depends on the West; and import prohibitions on iron and steel products, gold, oil, coal, and key revenue creating goods that originate or are consigned from Russia.

What will it now do?

7.9 These Regulations create prohibitions on the import, acquisition and supply and delivery of diamonds and diamond jewellery (as defined in regulation 3 and in the Schedule inserted by regulation 8) which are imported from Russia and on the provision of ancillary services relating to those prohibitions (regulation 4). Regulations 5 and 6 create certain exceptions to those prohibitions.

7.10 Regulation 7 makes consequential amendments to the list of Schedule 3DA revenue generating goods.

8. European Union Withdrawal and Future Relationship

8.1 This instrument itself does not relate to withdrawal from the European Union ('EU') or 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, S.I. 2022/203, S.I. 2022/205, S.I. 2022/241, S.I. 2022/395, S.I. 2022/452, S.I. 2022/477, S.I 2022/792, S.I 2022/801,S.I 2022/814, S.I 2022/850, S.I 2022/1110; S.I. 2022/1122; S.I. 2022/1331; S.I. 2023/440; S.I. 2023/665; and S.I. 2023/713 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. 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 There is no impact on business, charities or voluntary bodies.

12.2 There is no impact on the public sector.

12.3 The FCDO has undertaken a de minimis impact assessment to estimate costs to UK businesses and wider impacts resulting from these Regulations. We have estimated the costs to be beneath the threshold of £5m per annum for a full impact assessment.

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 remains unchanged, so we do not expect significant changes to IT systems or administrative changes.

12.5 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 If His Majesty's Government 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 The Sanctions Directorate at the Foreign, Commonwealth and Development Office Telephone: 0207 008 8553 or email: Sanctions.SIs@fcdo.gov.uk can be contacted with any queries regarding the instrument.

15.2 Abigail Culank, Deputy Director, Sanctions Directorate at the Foreign, Commonwealth and Development Office, can confirm that this Explanatory Memorandum meets the required standard.

15.3 Rt Hon Anne Marie Trevelyan MP, Minister of State for the Indo Pacific and Sanctions at the Foreign, Commonwealth and Development Office can confirm that this Explanatory Memorandum meets the required standard.