EXPLANATORY MEMORANDUM TO

THE RUSSIA (SANCTIONS) (EU EXIT) REGULATIONS 2019

2019 No. 855

1. Introduction

1.1 This explanatory memorandum has been prepared by the Foreign and Commonwealth 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 These Regulations are intended to ensure that the UK can operate an effective sanctions regime in relation to Russia after the UK leaves the EU. When these Regulations come into force they will replace, with substantially the same effect, the EU sanctions regimes relating to Russia's actions in relation to Ukraine that are currently in force under EU legislation and related UK regulations. This sanctions regime is aimed at encouraging Russia to cease actions destabilising Ukraine or undermining or threatening the territorial integrity, sovereignty and independence of Ukraine.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The instrument is being laid before Parliament under section 55(3) of the Sanctions and Anti-Money Laundering Act 2018 ("the Sanctions Act") and appoints different days for the purpose of commencing different provisions of this instrument. In particular, these Regulations will come into force on exit day with the exception of Chapters 1 and 2 of this instrument (which set out the purposes of this sanctions regime and contain the power to designate), which will come into force on the day after the day on which the Regulations are laid before Parliament. These provisions will be brought into force prior to exit day in order to ensure that there is no gap in the implementation of this sanctions regime following the UK's withdrawal from the EU.

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 includes Scotland and Northern Ireland.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the whole of the UK.

4.2 Subject to paragraph 4.3, the territorial application of this instrument is the UK.

4.3 This instrument also applies to conduct by UK persons outside the UK. In addition, the maritime enforcement powers contained in Part 10 of this instrument apply in relation to British ships in international or foreign waters, ships without nationality in international waters and foreign ships in international waters.

5. European Convention on Human Rights

5.1 The Minister of State for Europe and the Americas at the Foreign and Commonwealth Office, the Rt Hon Sir Alan Duncan MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Russia (Sanctions) (EU Exit) Regulations 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 The UK's implementation of UN and other multilateral sanctions currently relies largely on the European Communities Act 1972. Each sanctions regime generally consists of an EU Council Decision, a corresponding directly-applicable EU Council Regulation, and related UK regulations made under section 2(2) of the European Communities Act 1972 and other domestic legislation. There are currently around 35 sanctions regimes that take effect in the UK under EU law and associated UK secondary legislation. These include country-specific sanctions regimes, including in relation to Syria and Iran, as well as regimes targeting Da'esh, Al Qaida and other terrorist groups.

6.2 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, that Act does not provide powers to substantially amend that retained EU law and it does not provide powers to lift sanctions or impose new sanctions. In addition, that 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 Sanctions Act was introduced to address these issues by providing the UK with the legal framework necessary to allow the UK to implement sanctions autonomously.

6.3 Section 1 of the Sanctions Act enables sanctions regulations to be made for the purposes of compliance with United Nations obligations and other international obligations, as well as for a number of other purposes which include: furthering the prevention of terrorism; national security; promoting international peace and security; promoting compliance with international human rights law and respect for human rights; or furthering foreign policy objectives.

6.4 There are three separate EU sanctions regimes relating to Russia's actions in relation to Ukraine, each dealt with under an EU Regulation: Council Regulation (EU) No 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (which contains measures in relation to named individuals and entities); Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (which contain various trade and financial sectoral measures); and Council Regulation (EU) No 692/2014 of 23 June 2014 concerning restrictive measures in response to the illegal annexation of Crimea and Sevastopol (which contain additional trade and investment measures relating to Crimea). Those EU regulations will all be revoked and replaced by these Regulations.

6.5 In addition, these Regulations will also revoke and replace the UK legislation which currently gives effect to the EU sanctions regimes: the Ukraine (European Union

Financial Sanctions) (No.2) Regulations 2014 (S.I. 2014/693); the Ukraine (European Union Financial Sanctions) (No.3) Regulations 2014 (S.I. 2014/2054); and the Export Control (Russia, Crimea and Sevastopol Sanctions) Order 2014 (S.I. 2014/2357).

7. Policy background

What is being done and why?

7.1 In 2014, Russia illegally annexed Crimea and Sevastopol from Ukraine. Since then Russia has sustained a campaign of destabilisation of Ukrainian sovereignty, including supporting separatist destabilisation in the Donbas. Russia's intervention in eastern Ukraine and its illegal annexation of Crimea and Sevastopol are a flagrant violation of a number of Russia's international commitments, including under the UN Charter, the OSCE Helsinki Final Act, the Budapest Memorandum and the 1997 Russia/Ukraine Treaty of Friendship, Co-operation and Partnership.

7.2 Russia must fully respect Ukraine's independence and territorial integrity; Crimea and the Donbas are part of Ukraine. What Russia has done and continues to do there breaches its obligations under international law and presents a serious challenge to the international rules-based order. Russia's aggression towards Ukraine is not limited to the Donbas and Crimea. We know that covertly and overtly Russia seeks to undermine Ukraine at every opportunity. The most recent example was Russia firing on Ukrainian vessels in the Black Sea. The Kremlin persistently uses disinformation as a tool to destabilise perceived enemies.

7.3 The UK has been unwavering in its support for Ukraine's territorial integrity and sovereignty. Her Majesty's Government's policy on Russia includes the use of sanctions to encourage a change in behaviour in its Ukraine policy; looking for Russian de-escalation, the end of Russia's illegal annexation of Crimea and Sevastopol to Ukraine; and withdrawal from eastern Ukraine.

7.4 The EU (and other international partners) introduced restrictive measures in 2014 following Russia's illegal annexation of Crimea and Sevastopol and continued destabilisation of Ukraine. The current EU sanctions regulations consist of sectoral measures (on finance, defence industry and energy), individual asset freezes and travel bans, as well as trade and investment measures in respect of Crimea and Sevastopol. The three EU regimes are reviewed regularly (two on a six monthly basis, and one on an annual basis). Since 2014, all three sanctions regimes have continued to be renewed and maintained, due to a lack of change of Russian behaviour. These Regulations are intended to substantially deliver the same policy effects as the existing EU sanctions.

7.5 Bringing this sanctions regime into UK law will enable all the sanctions measures to continue to operate effectively in the UK after the UK leaves the EU, as well as enabling HMG to amend and lift the sanctions, or impose further sanctions, autonomously.

7.6 This instrument is accompanied by two statutory reports that are required to be published under the Sanctions Act.

7.7 Firstly, and in accordance with section 2(4) of the Sanctions Act, a report has been produced to explain why the Minister considers that the carrying out of the stated purposes of this instrument would fall within 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 those purposes. The stated purposes of these regulations are to encourage Russia to cease actions destabilising Ukraine or undermining or threatening the territorial integrity, sovereignty and independence of Ukraine

7.8 Secondly, and in accordance with section 18 of the Sanctions Act, a report has been produced that identifies the offences contained in this instrument; explains why there are good reasons for those offences; and explains why there are good reasons for the prescribed penalties in relation to those offences. Offences include, for example, breaching the prohibitions on exporting certain goods to Russia.

7.9 Part 2 of this instrument deals with the designation of persons (including individuals, entities and organisations) under the sanctions regime. It lists 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 persons"),

7.10 The names of designated persons are not included in this instrument. These will be held on a separate administrative list on gov.uk to enable immediate publication following a decision to make or amend a designation. This limits the opportunity for designated persons to remove assets from the UK.

7.11 Chapter 1 of Part 3 of the instrument sets out financial sanctions measures that can be imposed on designated persons. Financial sanctions include freezing a designated person's funds and economic resources (non-monetary assets, such as property or vehicles) and ensuring that funds and economic resources are not made available to or for the benefit of a designated person, either directly or indirectly. There are also sectoral financial sanctions in Chapter 2 of Part 3 which prohibit and restrict specified activities. These include prohibitions on dealing with transferable securities and money-market instruments if they have a maturity exceeding 30 days and are issued after certain dates by specified persons. These also prohibit making new loans and credit to specified persons and entering into any arrangement to make new loans or credit to specified persons. There are also prohibitions on certain investment activities in relation to Crimea and Sevastopol. The instrument sets out exceptions and licensing derogations from these sanctions that will be applicable or available, as the case may be, under certain prescribed circumstances, such as to enable those designated to have access to funds, for example, to satisfy their basic needs.

7.12 Part 4 of the instrument sets out the effect of immigration measures made under this instrument. A designation under regulation 4 of the instrument means that section 8B of the Immigration Act 1971 then applies to the person: a designated person is banned from travelling to or via the UK and any permission to stay in the UK that they may have is cancelled. The Secretary of State may direct, on an individual basis, that the travel ban does not apply, for example for the purposes of attending UN meetings.

7.13 Part 5 of the instrument sets out trade sanctions. These sanctions include restrictions on the trade of certain goods and technology, namely military goods (e.g. arms), and dual-use goods (i.e. goods that can be used for both a military and a civil purpose), and energy-related goods. There are also prohibitions on the provision of services related to those goods and technology. This Part also imposes a prohibition on the provision of

military-related services. In addition there are restrictive measures on the import of goods from Crimea or Sevastopol, the export of goods related to infrastructure to, or for use in, Crimea or Sevastopol, and the provision of services related to infrastructure and tourism. There are also measures that curtail Russian access to certain specified energy-related equipment and services.

7.14 Part 6 of the instrument provides that the Secretary of State may give a direction to the master or pilot of a British cruise ship which prohibits it from travelling to a port situated in Crimea or Sevastopol and it shall be an offence not to comply with that direction. The direction may be of a defined or indefinite duration, and may be given to the master or pilot of a specific British cruise ship or to the masters or pilots of British cruise ships generally. Such a direction can be varied, revoked or suspended at any time by the Secretary of State.

7.15 Part 7 of the instrument makes provision in respect of exceptions and licences that may apply or be available, as the case may be, in respect of prohibitions in this regime. For example, in relation to Treasury licences, a designated person can apply for a licence to allow frozen funds to be released in order to pay for goods or services to meet their basic needs, such as food. It states that the Treasury may issue licences to permit certain activity prohibited by Part 3 (Finance) where it is appropriate for a purpose set out in Schedule 2 of the instrument, as applicable. Part 7 also details exceptions to trade prohibitions and requirements. It states that licences provided by the Secretary of State may permit activity prohibited by Part 5 (Trade). Guidance will provide further detail about licencing.

7.16 Part 10 of the instrument confers powers on maritime enforcement officers. These powers are analogous to maritime enforcement powers contained in existing legislation, such as Chapter 5 of the Policing and Crime Act 2017. The key distinction is that those powers are contingent on there being reasonable grounds to suspect that a criminal offence has been committed, whereas the purpose of these powers is to identify, seize and dispose of goods which are being dealt with in contravention, or deemed contravention, of certain trade sanctions.

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 it relates to the withdrawal of the UK from the EU. This is because this instrument replaces, with substantially the same effect, the existing EU Russia sanctions regimes in respect of Ukraine.

9. Consolidation

9.1 This instrument does not consolidate previous instruments.

10. Consultation outcome

10.1 HMG ran a public consultation on the Sanctions Act which was open for nine weeks. 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, trade bodies, the legal profession, NGOs and industry professionals and regulators. The main areas of concern

raised in consultation responses were around the legal threshold for sanctions designations, the rights of designated persons to challenge their designations, and licensing procedures. All of these concerns were taken into account in the drafting of the Act.

10.2 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 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 Act, guidance will be published in relation to the prohibitions and requirements under these Regulations. This guidance will be available on gov.uk before these regulations come into force.

12. Impact

12.1 As this instrument maintains existing sanctions measures that are already applicable to UK business, charities and voluntary bodies through EU law, we assess that there is no new substantial impact. Businesses and charities will need to ensure that they are referring to and complying with the relevant UK law once the UK leaves the EU.

12.2 There is no significant impact on the public sector.

12.3 An Impact Assessment has not been produced for these Regulations, as the instrument is intended to ensure existing sanctions remain in place following EU exit. This instrument is intended to substantially deliver the same policy effects as the existing EU sanctions. An impact assessment was, however, produced for the primary legislation and can be found at https://publications.parliament.uk/pa/bills/lbill/2017-2019/0069/sanctions-and-anti-money-laundering-IA.pdf. That assessment concluded that the introduction of the Act, and statutory instruments under it to transfer existing regimes into UK law, would overall reduce uncertainty for business and would not result in significant costs or impact, apart from some familiarisation costs for businesses associated with adapting to the new legislative framework.

13. Regulating small business

13.1 These Regulations apply to activities that are undertaken by small businesses.

13.2 These Regulations are intended to continue the regulatory requirements under the existing EU sanctions regime. The Foreign and Commonwealth Office does not believe it is possible to exempt smaller businesses from the requirements to comply with these Regulations as this could provide a route for circumvention and evasion of sanctions.

14. Monitoring & review

14.1 The Sanctions Act requires regular reviews of these Regulations. Under section 30 of the Act, the Secretary of State must consider whether or not these Regulations are still appropriate for their stated purpose and lay an annual report before Parliament, confirming either that is the case or explaining what action has or will be taken in consequence of that review. As such, the Minister does not consider that a review clause in these Regulations is appropriate.

15. Contact

15.1 Debbie Ratcliffe at the Foreign and Commonwealth Office telephone: 020 7008 0605 or email: Sanctions.SIs@fco.gov.uk can be contacted with any queries regarding the instrument.

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

15.3 The Rt Hon Sir Alan Duncan MP, Minister of State at the Foreign and Commonwealth Office, can confirm that this Explanatory Memorandum meets the required standard.