**EXPLANATORY MEMORANDUM TO**

**THE SANCTIONS (DAMAGES CAP) REGULATIONS 2022**

**2022 No. 1092**

## 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'). The purpose of this instrument is to specify an amount for damages pursuant to section 39(2A) of the Sanctions Act which cannot be exceeded, as provided for in s64 of the Economic Crime (Transparency and Enforcement) Act 2022 (c. 10) ('the Economic Crime Act').

## 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 affirmative resolution procedure, was laid before Parliament in draft on 20 July 2022 under section 55(5) of the Sanctions Act and has been approved in both Houses.

3.2 This will be the first time the delegated powers under section 39(2A) of the Sanctions Act have been used to make secondary legislation specifying a cap on damages. The powers were introduced by an amendment to the Sanctions Act made by section 64(1)(b) of the Economic Crime Act in March 2022.

## 4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the whole of the United Kingdom.

## 5. European Convention on Human Rights

5.1 Leo Docherty MP, Minister of State at the Foreign, Commonwealth and Development Office has made the following statement regarding human rights:

"In my view the provisions of the Sanctions (Damages Cap) Regulations 2022 are compatible with the Convention rights."

## 6. Legislative Context

6.1 Section 39 of the Sanctions Act makes provision in respect of the availability of damages in particular sanctions-related court proceedings. Section 39(2A), introduced by an amendment to the Sanctions Act made by the Economic Crime Act, provides that damages permitted by subsection (2) must not exceed such amount as may be specified in, or calculated in accordance with, regulations made by an appropriate Minister for the purposes of the subsection.

6.2 This instrument specifies such amount.

## 7. Policy background

***What is being done and why?***

7.1 Section 39 of the Sanctions Act makes provision in respect of the availability of damages in particular sanctions-related court proceedings. Pursuant to s39(2) of the Sanctions Act, where the court would, in the absence of s39(2), have the power to award damages, the court may not award damages unless the court is satisfied that the decision concerned was made in bad faith.

7.2 Section 39(2A) allows a cap to be set on the amount of damages available where a court is satisfied that the decision concerned in the proceedings was made in bad faith, in respect of proceedings to which s39(2) of the Sanctions Act applies that are commenced on or after 4 March 2022. These Regulations specify that cap as £10,000.

7.3 The Regulations further provide that such provision does not apply where the court considers that it is necessary to disapply such provision because failure to do so would be a breach of the appropriate person's1 Convention rights (within the meaning of the Human Rights Act 19982). This provision ensures that the legislation, and any effect on persons, is compatible with the UK's international obligations under the European Convention on Human Rights.

7.4 It is important that the UK has a robust sanctions regime in support of the UK's foreign policy and national security objectives, including in response to Putin's illegal and unprovoked invasion of Ukraine, and that HM Government is able to designate those who undermine UK interests without fear or favour, including removing any chilling effect caused by the risk of large damages payouts in the courts.

7.5 While the possibility of large damages remains, in some cases designated persons may have an incentive to pursue government through the courts, even though their claims may eventually be found to be without merit. This instrument seeks to disincentivise such claims.

7.6 The core right under the Sanctions Act of a designated person to challenge their designation in court, and have it revoked, remains.

## 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.

## 9. Consolidation

9.1 This instrument is the first use of the relevant delegated power, and does not amend any other instrument. The issue of consolidation does not apply.

## 10. Consultation outcome

10.1 No consultation has been carried out on this instrument. HM Government ran a public consultation on the Sanctions Act which was open for nine weeks. Over 30,000

[1] "Appropriate person" is defined in section 38(3) of the Sanctions and Anti-Money Laundering Act 2018.
[2] 1998 c. 42.

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 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 No guidance has been published in relation to this instrument.

## 12. Impact

12.1 An impact assessment has not been produced for these Regulations as no, or no significant impact, on the private, voluntary or public sector is foreseen.

12.2 An impact assessment was, however, produced for the primary legislation which provided for the cap 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.

## 14. Monitoring & review

14.1 If HM Government determined that these regulations were no longer appropriate, the regulations would be revoked or amended accordingly.

## 15. Contact

15.1 The Sanctions Directorate 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 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 Leo Docherty MP, Minister of State at the Foreign, Commonwealth and Development Office, can confirm that this Explanatory Memorandum meets the required standard.