

EXPLANATORY MEMORANDUM TO
THE SYRIA (EUROPEAN UNION FINANCIAL SANCTIONS)
REGULATIONS 2012

2012 No. 129

1. This explanatory memorandum has been prepared by the Treasury and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

These Regulations put in place criminal penalties for breach of EU financial sanctions in relation to Syria. The financial sanctions are contained in Council Regulation (EU) No. 36/2012 of 18 January 2012 concerning restrictive measures in view of the situation in Syria (the “Council Regulation”) and relate to both asset freezing and other financial restrictions.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 These Regulations have been laid before Parliament less than 21 days before they come into force. The Council Regulation came into force on the day of its publication in the Official Journal, on 19 January 2012. As a consequence of the adoption of the Council Regulation, which revokes and replaces Council Regulation (EU) 442/2011, the Syria (Asset-Freezing) Regulations 2011 (S.I. 2011/1244) cease to have effect and need to be replaced in order to ensure the asset-freezing measures in the Council Regulation are enforced. The Council Regulation also imposes additional financial restrictions, including a prohibition on the sale of Syrian public bonds, which require enforcement. Given the seriousness of the risks addressed by the Council Regulation, which imposes restrictions in response to the violent repression and violation of human rights by the Government of Syria, it is important that appropriate penalties are in place for breach of the provisions of the Council Regulation.

3.2 If no penalties are in place for breach of the EU financial restrictions, there is a significantly increased risk of breach of the restrictions. Penalties accordingly need to be put in place as soon as possible following publication of the Council Regulation.

3.3 There have been penalties in UK law for breach of the asset freezing measures now contained in the Council Regulation, and previously contained in Council Regulation (EU) 442/2011, since 10th May 2011. The Treasury is working with the financial sector to ensure awareness of the new financial

restrictions. The Treasury provides a dedicated email address and telephone number to deal with queries from the financial sector and other affected persons.

4. Legislative Context

4.1 These Regulations revoke the Syria (Asset-Freezing) Regulations 2011 (S.I. 2011/1244). The 2011 Regulations imposed penalties in relation to breach of the asset freezing measures in Council Regulation (EU) 442/2011.

4.2 The Council Regulation imposes asset freezes on persons, entities and bodies listed in Annexes II and IIa to the Council Regulation. A temporary, limited exception from the asset freeze applies to an entity when first listed in Annex IIa. The lists in the Annexes may be amended by the Council, to add or remove names, or to alter identifying information.

4.2 It is therefore necessary that the penalties and other provisions in these Regulations should apply in relation to persons, entities and bodies listed in Annexes II and IIa as amended from time to time. Any changes to the list of designated persons will be published in the Official Journal, and will also appear on the Treasury's website and in a notice sent out electronically to subscribers to the Treasury's Asset Freezing Unit mailing list.

4.3 It was not possible for the Foreign and Commonwealth Office to submit the draft Council Regulation to the relevant Parliamentary Committees (the Commons EU Scrutiny Committee and the Lords Select Committee on the European Union) for their approval prior to the document's adoption on 18 January due to the urgency to agree further measures in view of the situation in Syria. The Minister for Europe wrote to the Committees on 18 January advising that it would be necessary to override the scrutiny process on this occasion and undertook to provide an explanatory memorandum to the Committees.

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom and, outside the United Kingdom, to British citizens and those with a UK connection.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

7.1 These Regulations provide for penalties for breach of the asset freezing measures and other financial restrictions contained in the Council Regulation. The Council Regulation has direct effect, and requires Member States to put in

place effective, proportionate and dissuasive penalties for infringements of the Council Regulation.

7.2 The Treasury consider that such penalties should be criminal, in line with those in place for breaches of other EU sanctions regimes. Criminal penalties are appropriate to enforce sanctions regimes because international financial sanctions are aimed at threats to international peace and security and the abuse of human rights. The consequences of a breach of any sanctions regime may be very serious and criminal penalties provide a better, more dissuasive, deterrent than civil penalties.

7.3 The Regulations:

- define a designated person as being listed in Annex II or IIa to the Council Regulation;
- define the scope of the prohibitions that apply to the freezing of funds and economic resources and also to the making available of funds and economic resources to, or for the benefit of, a designated person;
- define the scope of the prohibitions that apply to financial dealings with Syria;
- provide for penalties for breaches of the prohibitions;
- provide a mechanism for granting licences and create an offence where a person knowingly or recklessly provides false information to obtain a licence or fails to comply with the conditions of a licence;
- include provisions for the gathering and sharing of information and create an offence for failing to comply with requests for information.

7.4 No criminal penalty is included for breach of the requirement in regulation 9(3) for financial institutions to inform the Treasury when they credit a frozen account. The Treasury consider that any such breaches are appropriately dealt with in the context of the supervision of financial institutions by the Financial Services Authority under the Financial Services and Markets Act 2000 (c.8).

- Consolidation

7.5 These Regulations replace and revoke the Syria (Asset-Freezing) Regulations 2011, as amended by the Syria (Asset-Freezing) (Amendment) Regulations 2011 (S.I. 2011/2479).

8. Consultation outcome

These Regulations give effect to the requirements which are imposed by the Council Regulation. The penalties for breach of the asset freezing provisions

replicate those which were already in place under the Syria (Asset-Freezing) Regulations 2011. Accordingly it was not considered necessary to consult.

9. Guidance

Guidance on the asset freezing measures in relation to Syria is available on the Treasury's website. The Treasury's Asset Freezing Unit operates a free subscription email service alerting subscribers to changes to the asset freezing regime, and to other financial sanctions measures. A dedicated telephone line and email address are available for the financial sector and any other persons to submit queries on the asset freezing regime and other financial restrictions. A notice explaining the Council Regulation is available on the Treasury website and has been emailed to subscribers.

10. Impact

10.1 The impact on business, charities and voluntary bodies is negligible, because these Regulations do not themselves impose requirements, but only put in place penalties in relation to activities which are prohibited by the directly effective Council Regulation.

10.2 The impact on the public sector is also negligible.

10.3 An Impact Assessment has not been prepared for this instrument, because any impact results from the Council Regulation rather than these Regulations which only provide for enforcement powers.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the Treasury work with the financial sector on the requirements for complying with the asset freezing measures and other financial restrictions set out in the Council Regulation. The Treasury have provided detailed guidance to assist business in complying with these measures.

12. Monitoring & review

The EU monitors and reviews its financial sanctions measures. The Treasury will review the penalties for breach of the restrictions imposed by the Council Regulation if it is amended or repealed.

13. Contact

The Asset Freezing Unit of the Treasury Tel: 02072705454 or email: AFU@hmtreasury.gsi.gov.uk can answer any queries regarding the instrument.