

EXPLANATORY MEMORANDUM TO
THE REPUBLIC OF GUINEA (ASSET-FREEZING) REGULATIONS 2012

2012 No. 1508

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

2. Purpose of the instrument

The Regulations put in place criminal penalties for breach of EU financial restrictions in relation to the Republic of Guinea. The financial sanctions are contained in Council Regulation (EU) No. 1284/2009 of 22 December 2009 imposing certain specific restrictive measures in respect of the Republic of Guinea (“the Council Regulation”).

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

3.1 None.

4. Legislative Context

4.1 The Treasury are in the process of creating and updating enforcement frameworks for various EU sanctions regimes. These Regulations are made as part of this exercise, and are laid at the same time as Regulations in respect of EU sanctions regimes in relation to other countries (Belarus, the Democratic Republic of Congo, Eritrea, Iraq, Lebanon and Syria, Liberia and Sudan).

4.2 The Council Regulation provided for restrictive measures concerning members of the National Council for Democracy and Development and persons associated with them. By the adoption of Council Regulation (EU) No. 269/2011 of 21 March 2011, the European Union revised the scope of the measures to apply to persons identified by the International Commission of Inquiry as responsible for the violent crackdown by security forces on political demonstrations in Conakry on 28th September 2009.

4.3 Annex II to the Council Regulation contains a list of the persons who the EU has decided should be subject to asset freezing measures, and in relation to whom the prohibitions in the Council Regulation are applied. This list may be amended from time to time to add or remove names, or to alter identifying information. Accordingly it is necessary that these Regulations include ambulatory references to ensure that at such times as names are included in, or are deleted from, Annex II the penalties and other provisions in these Regulations apply, or cease to apply, to those persons. Any changes to the lists 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.

4.4 The Foreign and Commonwealth Office submitted an Explanatory Memorandum on the Council Regulation on 27th November 2009. It was cleared by the House of Lords European Union Committee on 3rd December 2009 after referral to Sub-Committee C. The House of Commons European Scrutiny Committee cleared the document on 9th December 2009.

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 contained in the Council Regulation. 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.

7.2 The Regulations:

- define a designated person as being a person listed in Annex II 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;
- provide 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 or documents 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 or obstructing the Treasury's exercise of these powers.

7.3 No criminal penalty is included for breach of the requirement in regulation 8(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, which has a range of enforcement powers under the Financial Services and Markets Act 2000 (c.8).

- Consolidation

7.4 There are currently no plans to consolidate the relevant legislation.

8. Consultation outcome

No consultation has been carried out in relation to these Regulations.

9. Guidance

Guidance on the asset freezing measures in relation to the Republic of Guinea is available on the Treasury's website. The Treasury's Asset Freezing Unit operates a free subscription email service updating subscribers on changes to the asset freezing regime, and on other financial sanctions measures. A dedicated telephone line and email address are available for the financial sector and other persons to submit queries on the asset freezing regime.

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible, because these Regulations do not themselves impose significant 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 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 set out in the Council Regulation and similar EU legislation. The Treasury have provided 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 if the Council Regulation is amended or repealed.

13. Contact

The Asset Freezing Unit at the Treasury Tel: 020 7270 5454 or email: AFU@hmtreasury.gsi.gov.uk can answer any queries regarding the instrument.