

EXPLANATORY MEMORANDUM TO
THE BELARUS (ASSET-FREEZING) REGULATIONS 2013

2013 No. 164

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

2. Purpose of the instrument

The Regulations implement Council Regulation (EU) No. 1014/2012 of 6 November 2012 ("the amending Council Regulation"), amending Council Regulation (EC) No. 765/2006 of 18 May 2006 ("the Council Regulation"), concerning restrictive measures against President Lukashenko and certain officials of Belarus. The amending Council Regulation clarifies and consolidates the criteria for listing natural or legal persons, entities or bodies under the Council Regulation. The Regulations revoke and replace the Belarus (Asset-Freezing) Regulations 2012 (S.I. 2012/1509) ("the 2012 Regulations"), which put in place criminal penalties for breach of the Council Regulation.

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

3.1 None.

4. Legislative Context

4.1 These Regulations implement the amending Council Regulation. The Council clarified and consolidated the criteria for listing natural or legal persons, entities and bodies in the Annexes I, IA and IB to Council Decision 2010/639/CFSP by adopting a new Council Decision, 2012/642/CFSP, consolidating those Annexes into a single Annex, Annex I. Council Decision 2012/642/CFSP was adopted on 16 October 2012. This was followed by the amending Council Regulation.

4.2 The changes made to the Annexes affect the preamble to the 2012 Regulations, which refers to Annexes I, IA and IB. Although the preamble does contain an ambulatory reference, the revocation and re-enactment provides certainty on the law applying which is particularly important as the 2012 Regulations impose criminal penalties for breach of the Council Regulation.

4.3 An Explanatory Memorandum on a Joint Proposal for a Council Regulation amending Regulation (EC) No.765/2006 concerning restrictive measures in respect of Belarus was submitted for Parliamentary Scrutiny on 25 October 2012. The

House of Commons European Scrutiny Committee cleared the document as “not legally or politically important” on 31 October 2012 (ESC 34340, 18th report, Session 2012/13). The House of Lords Select Committee on the European Union cleared the document on 30 October 2012 at the Chairman’s sif.

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom and, outside the United Kingdom, to British citizens and any UK national or body incorporated in the UK

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 implement the amending Council Regulation and in so doing revoke and replace the 2012 Regulations, which provided for penalties for breach of the asset freezing measures contained in the Council Regulation, imposed in view of the situation in Belarus. 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. On 16 October 2012 the EU agreed a consolidation of restrictive measures against Belarus, contained in Council Decision 2012/642/CFSP. The amending Council Regulation gives effect to those measures and also has direct effect.

7.2 The Regulations:

- define a designated person as being a person listed in Annex I 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.

- reflect the consolidation of Annexes I, IA and IB to the Council Regulation following the adoption of the amending Council Regulation, consolidating those annexes into a single annex.
- 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 Belarus is available on the Treasury's website. The Treasury's Asset Freezing Unit operates a free subscription email service alerting 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 any other persons to submit queries on the asset freezing and financial sanctions regimes. A Notice explaining the Council Regulation is available on the Treasury website and was emailed to subscribers.

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible, because this instrument does not itself impose significant requirements, but only puts 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 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 Regulation if it 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.