

EXPLANATORY MEMORANDUM TO

THE IRAN (EUROPEAN UNION FINANCIAL SANCTIONS) REGULATIONS 2016

2016 No. 36

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Treasury 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 The Regulations revoke and replace the Iran (European Financial Sanctions) Regulations 2012 (“the 2012 Regulations”), which impose proportionate criminal penalties for breaches of the asset freezes and restrictions on the provision of financial services contained in Council Regulation (EU) No. 2012/267 of 23 March 2012 (OJ OJ L 88, 24.3.2012, p1) (“the Council Regulation”) concerning restrictive measures in view of the situation in Iran.
- 2.2 On 14th July 2015, in Vienna, Iran signed the Joint Comprehensive Plan of Action (JCPOA), which set out the steps which Iran should take in order for international sanctions to be lifted. The date (then unknown) on which it was confirmed that Iran had taken the necessary steps for the first stage of sanctions to be lifted was to be known as “Implementation Day”. It was confirmed on 16th January 2016 that Iran had taken the necessary steps for the first stage of sanctions to be lifted, and that date became “Implementation Day”. Council Regulations (EU) No 1861/2015 and 1862/2015 of 18 October 2015 (OJ L 274, 18.10.2015, p. 1 and 161), which amend the Council Regulation, came into force on the same day.
- 2.3 The 2012 Regulations accordingly became out of date. While they contain some provisions that accurately reflected the new, reduced, financial sanctions, they also contain provisions in respect of sanctions that have now been lifted and do not contain provisions which cover some aspects of the reduced sanctions regime that are new. Given the extensive revisions to the financial sanctions, it is simpler and clearer to replace them with new and accurate Regulations. The Regulations accordingly contain the necessary provisions to put in place proportionate criminal penalties for breaches of the reduced sanctions regime that remains in place after Implementation Day.

3. Matters of special interest to Parliament

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 lifting of sanctions pursuant to the JCPOA took place on Implementation Day, 16th January 2015. The amendments to the Council Regulation have direct effect, but still leave the imposition of penalties for breaches of the asset freeze and prohibitions on the making available of resources or financial services, to each Member State.

- 3.2 After sanctions were lifted on Implementation Day, the 2012 Regulations contained criminal penalties in respect of actions that were no longer the subject matter of sanctions. They also did not incorporate references to the restructured asset freeze and associated prohibitions, and so did not apply to the full spectrum of actions that were prohibited under sanctions. It was accordingly necessary to put in place more accurate penalties, and the simplest and clearest way of doing so was to revoke and replace the 2012 Regulations with an accurate set of penalties as swiftly as possible.
- 3.3 It was not possible to finalise and lay these Regulations until Implementation Day, because there was no advance knowledge of the exact date of Implementation Day, and no legal certainty as to the position until Implementation Day had actually occurred.
- 3.4 The penalties and other provisions contained in these Regulations are in line with those under the 2012 Regulations and for other EU financial sanctions regimes. The financial sector is accordingly familiar with the nature of the requirements being placed on them. The Treasury provides a dedicated email address and telephone number to deal with queries from the financial sector and other affected persons.

Other matters of interest to the House of Commons

- 3.5 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 These Regulations implement the Council Regulation as amended on Implementation Day. They introduce ambulatory references to any Annexes to the Council Regulation. Annexes VIII, IX, XIII and XIV to the Council Regulation each contains a list of those persons who remain subject to asset freezing measures after Implementation Day and in relation to whom the prohibitions in the Council Regulation are applied. These lists are amended from time to time by the Council of the European Union, to add or remove names, or to alter identifying information, in line with any changes made to the lists published by the UN.
- 4.2 It is necessary that the penalties for breach of the Council Regulation should refer to the Annexes as amended from time to time, so that they properly apply the prohibitions under the Council Regulation. 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 Financial Sanctions mailing list

5. Extent and Territorial Application

- 5.1 The extent of this instrument is to the whole of the United Kingdom.
- 5.2 The territorial application of this instrument is to all of the United Kingdom and, outside the United Kingdom, to any UK national and any body incorporated in the UK.

6. European Convention on Human Rights

- 6.1 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 breaches of the asset freezing measures contained in the Council Regulation as amended after Implementation Day. 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 previously in place for breach of the Council Regulation, and otherwise in place for breaches of other EU sanctions regimes. Criminal penalties are appropriate to enforce this sanctions regime because the remaining international financial sanctions are aimed at persons involved in nuclear proliferation in Iran. 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. The penalties in these Regulations are the same as those contained in the domestic regulations imposing penalties for breaches of other EU asset freezing regimes.
- 7.3 The Regulations:
- define a designated person as being a person listed in Annex VIII, IX, XIII or XIV 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 and create criminal offences for breaching those 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;
 - provide penalties for committing any of these offences; and
 - repeal and replace the Iran (European Financial Sanctions) Regulations 2012.
- 7.4 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 Conduct Authority under the Financial Services and Markets Act 2000.

8. Consultation outcome

- 8.1 These Regulations give further effect to the requirements which are imposed by the Council Regulation as amended after Implementation Day. Accordingly it was not considered necessary to consult.

9. Guidance

- 9.1 Guidance on the asset freezing and other financial sanctions measures in relation to Iran is available on the Treasury's website

(<https://www.gov.uk/government/collections/financial-sanctions-regime-specific-consolidated-lists-and-releases>). Financial Sanctions, within the Treasury, operate 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 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 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 activities that are undertaken by small businesses.
- 11.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the Treasury work with the financial sector on the requirements for complying with the asset freezing and financial sanctions measures set out in the Council Regulation. The Treasury have provided detailed guidance to assist business in complying with these measures.

12. Monitoring & review

- 12.1 The EU monitors and reviews its financial sanctions measures. The Treasury will review the penalties for breaches of the restrictions imposed by the Council Regulation if it is amended or repealed.
- 12.2 It is therefore not appropriate in the circumstances to make provision for further periodic review as contemplated in ss.28-32 of the Small Business Enterprise and Employment Act 2015

13. Contact

- 13.1 Financial Sanctions at the Treasury Tel: 020 7270 5454 or email: financialsanctions@hmtreasury.gsi.gov.uk can answer any queries regarding the instrument.