

EXPLANATORY MEMORANDUM TO

THE LIBYA (EUROPEAN UNION FINANCIAL SANCTIONS) REGULATIONS 2016

2016 No. 45

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 impose proportionate criminal penalties for breaches of the asset freeze contained in Council Regulation (EU) No. 2016/44 of 18 January 2016 (OJ L12, 19.01.2016, p.1) (“the Council Regulation”) concerning restrictive measures in view of the situation in Libya. The Council Regulation implements measures outlined in UN Security Council Resolution 1970 (2011) (“the UNSCR”) and in Council Decision (CFSP) 2015/1333 of 31.07.2015 and repeals and replaces The Libya (Asset Freezing) Regulations 2011.

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 Council Regulation came into force on the day following its publication in the Official Journal, on 20th January 2016. The Council Regulation has direct effect, but leaves the imposition of penalties for breaches of the asset freeze to each Member State.
- 3.2 If no penalties are in place for breaches of the EU asset freezing measures, there is a significantly increased risk of a breach of the prohibitions, resulting in asset flight. Given the concerns addressed by the UNSCR and the Council Regulation, penalties need to be put in place as soon as possible following publication of the Council Regulation. The drafting of these Regulations could not, however, be completed before the Council Regulation had been finalised and published.
- 3.3 The penalties and other provisions contained in these Regulations are in line with those for other EU asset freezing 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

- 3.4 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. They introduce ambulatory references to any Annexes to the Council Regulation. Annexes II, III and VI to the Council Regulation contains a list of those persons who the UN has decided should be subject to asset freezing measures 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 Annex 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.
- 4.3 This instrument contains separate definitions for two sets of Annexes. This is because those persons listed in Annex VI are subject only to a partial asset freeze. Therefore a designated person is defined as being a person listed in Annex II or Annex III to the Council Regulation and an Annex VI person is defined as being a person listed in Annex VI to the Council Regulation. There is no prohibition on making funds available to an Annex VI person and they are not subject to the same prohibitions on circumvention as designated persons.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is all of the United Kingdom.
- 5.2 The territorial application of this instrument is 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. 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 this sanctions regime because these international financial sanctions are aimed at persons involved in serious human rights abuses against persons in Libya, including by being involved in attacks, in violation of international law, on civilian populations and facilities. 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 II or Annex III to the Council Regulation;
- define an Annex VI person as being a person listed in Annex VI 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 Libya (Asset Freezing) Regulations 2011.

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.

Consolidation

7.5 Not applicable.

8. Consultation outcome

8.1 These Regulations give further effect to the requirements which are imposed by the Council Regulation. 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 Libya 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 Telephone: 020 7270 5454 or email: financialsanctions@hmtreasury.gsi.gov.uk can answer any queries regarding the instrument.