

EXPLANATORY MEMORANDUM TO
THE CYBER-ATTACKS (ASSET-FREEZING) REGULATIONS 2019
2019 No. 956

1. Introduction

- 1.1 This explanatory memorandum has been prepared by HM 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 This instrument puts in place the UK's domestic enforcement regime for a new sanctions regime. Restrictive measures, including financial sanctions provisions, will be adopted in Council Regulation (EU) 2019/796 with effect from 17 May 2019.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 In the Joint Committee on Statutory Instruments' Seventh Report of Session 2016–17, the Committee invited HM Treasury to reconsider its approach to the repetition of EU provisions in UK statutory instruments if the Democratic People's Republic of Korea (European Union Financial Sanctions) Regulations 2013 came to be revoked and replaced. HM Treasury wrote to the Clerk of the Joint Committee on Statutory Instruments on 21st December 2016 in response to those comments explaining why HM Treasury intends to continue with its current approach in relation to financial sanctions Regulations. This instrument adopts the same approach to the issue as that taken in other similar financial sanctions Regulations.
- 3.2 Annex I to the Council Regulation does not currently contain any designated persons to whom the new financial sanctions provisions apply. The EU will designate persons by including them in Annex I in due course. In that situation, if these Regulations were not in force, persons within the UK who breach the measures would not face enforcement consequences for such breaches. Given that financial sanctions are a matter of international and domestic security, and that the UK has obligations under EU law to put them in place and enforce them, it is necessary to ensure that the sanctions can be enforced against any designated persons who are added to Annex I after these Regulations are made.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.3 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the whole of the United Kingdom.

4.2 The territorial application of this instrument is the whole of the United Kingdom, and outside the United Kingdom to any UK national or any body incorporated in the United Kingdom.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 These Regulations have been made under section 2(2) of the European Communities Act 1972. They put in place the enforcement provisions which apply to the financial sanctions provisions in the Council Regulation.

6.2 The penalty for contravention of Regulation 8(3) (reporting without delay the crediting of a frozen account to the Treasury) is found in the Policing and Crime Act 2017, section 146, which enables the Treasury to impose a monetary penalty where a person has breached a requirement or prohibition of any “financial sanctions legislation”. This instrument falls within the meaning of financial sanctions legislation with that Act.

7. Policy background

What is being done and why?

7.1 The EU has agreed to adopt new restrictive measures to deter and respond to cyber-attacks threatening the Union or its Member States. These include the freezing of funds and economic resources of persons responsible for, or otherwise providing financial, technical or material support to cyber-attacks or attempted cyber-attacks. The Council Regulation will come into force on the same day that it is published in the EU’s Official Journal, which will be on 17 May. There will be no listings immediately.

7.2 This regime contributes to the European Union’s efforts to protect the integrity and security of the EU against cyber threats and malicious cyber activities.

7.3 The UK is obliged to put enforcement provisions in place for breaches of the financial sanctions contained in the Council Regulation.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 Not applicable

10. Consultation outcome

10.1 No consultation has been carried out in relation to these Regulations, which provide for enforcement of financial sanctions that have been imposed by the Council Regulation.

11. Guidance

- 11.1 Guidance on asset freezing and other financial sanctions measures is available on HM Treasury's website (<https://www.gov.uk/government/publications/financial-sanctions-consolidated-list-of-targets>).
- 11.2 The Office of Financial Sanctions Implementation, within HM 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.

12. Impact

- 12.1 The impact on business, charities or voluntary bodies is negligible, because these Regulations do not impose substantive requirements themselves.
- 12.2 The impact on the public sector is also negligible.
- 12.3 An Impact Assessment has not been prepared for this instrument because any impact results from the Council Regulation rather than these Regulations which only relate to enforcement powers

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), HM Treasury works with the financial sector on the requirements for complying with the asset freezing and financial sanctions measures set out in the Council Regulation. HM Treasury have provided detailed guidance to assist business in complying with these measures.

14. Monitoring & review

- 14.1 It is not appropriate to make provision for periodic review as contemplated in sections 28-32 of the Small Business Enterprise and Employment Act 2015 because these Regulations do not regulate business.
- 14.2 The EU monitors and reviews its financial sanctions measures, which HM Treasury is under an obligation to implement.

15. Contact

- 15.1 Please contact sanctionslegislation@hmtreasury.gov.uk for any queries regarding the instrument.
- 15.2 Giles Thomson, Deputy Director for Sanctions and Illicit Finance, at HM Treasury can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Economic Secretary to HM Treasury, John Glen MP, can confirm that this Explanatory Memorandum meets the required standard.