EXPLANATORY MEMORANDUM TO

THE LIBYA (ASSET-FREEZING) (AMENDMENT) REGULATIONS 2011

2011 No. 2390

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

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 These Regulations amend the Libya (Asset-Freezing) Regulations 2011 (S.I. 2011/605), which put in place penalties for breach of EU financial sanctions in relation to Libya. The Regulations implement Council Regulation (EU) No. 965/2011 of 28 September 2011 ("the amending Council Regulation"), amending Regulation (EU) No. 204/2011 concerning restrictive measures in view of the situation in Libya (OJ L No. 253 29.9.2011, p.8). The amending Council Regulation provides for modified asset-freezing measures in respect of four entities: Central Bank of Libya, Libyan Arab Foreign Bank (also known as Libyan Foreign Bank), Libyan Investment Authority, and Libyan African Investment Portfolio.

3. 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 amending Council Regulation came into force on the day of its publication in the Official Journal, on 29th September 2011. It is important that appropriate penalties are in place for breach of the provisions of Regulation (EU) No. 204/2011. While the amending Council Regulation removes some of the effects of the asset freeze in relation to the four entities, their assets held outside Libya on 16th September remain frozen. After the coming into force of the amending Council Regulation, and until these Regulations come into force, there are no penalties in place in the UK in respect of the frozen assets of those four entities.

3.2 If no penalties are in place for breach of the EU asset freezing measures in this regard, there is a significantly increased risk of breach of the prohibitions, resulting in dispersal of funds frozen for the benefit of the Libyan people. Penalties accordingly need to be put in place as soon as possible following publication of the amending Council Regulation. The drafting of these Regulations could not, however, be completed before the amending Council Regulation had been finalised and published.

3.3 The Treasury has issued guidance on the requirements of the Libya (Asset-Freezing) Regulations 2011, and the effect of the amending Council Regulation. The

Treasury also provides a dedicated email address and telephone number to deal with queries from the financial sector and other affected persons.

4. Legislative Context

4.1 These Regulations amend the Libya (Asset-Freezing) Regulations 2011 (S.I. 2011/605). They reflect amendments made by the amending Council Regulation to Council Regulation (EU) No. 204/2011 of 2 March 2011 concerning restrictive measures in view of the situation in Libya.

4.2 An explanatory memorandum on Council Decision 2011/625/CFSP of 22 September 2011, Council Implementing Regulation (EU) No. 941/2011 of 22 September 2011 and the amending Council Regulation, has been submitted for Parliamentary Scrutiny by the Foreign and Commonwealth Office. However, due to the speed at which these have been adopted, an override has been necessary.

5. Territorial Extent and Application

5.1 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 amend the Libya (Asset-Freezing) Regulations 2011, which provide for penalties for breach of the asset freezing measures contained in Council Regulation (EU) No. 204/2011. 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 Council Regulation has been amended so that four entities (the Central Bank of Libya, Libyan Arab Foreign Bank (also known as the Libyan Foreign Bank), Libyan Investment Authority and Libyan Arab Investment Portfolio) are no longer listed in Annex II to the Council Regulation, and accordingly they are no longer “designated persons” for the purposes of the Libya (Asset-Freezing) Regulations 2011. However, any funds and economic resources of these four entities which were located outside Libya on 16th September 2011 remain subject to a modified asset freeze.

7.3 These Regulations provide that the penalties contained in the Libya (Asset-Freezing) Regulations 2011 will apply in respect of breaches of the modified asset freeze in respect of those four entities.

7.4 These Regulations also provide that the reporting requirements and information gathering provisions in the Schedule to the Libya (Asset-Freezing) Regulations 2011 apply in respect of the four entities.

- Consolidation

7.5 There are no plans to consolidate the relevant legislation.

8. Consultation outcome

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

9. Guidance

9.1 Guidance on the asset freezing measures in relation to Libya 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 regime. A notice explaining the amending 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 amending 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. 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 breach of the restrictions imposed by Regulation (EU) No. 204/2011 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.