

EXPLANATORY MEMORANDUM TO
THE LIBYA (ASSET-FREEZING) REGULATIONS 2011

2011 No. 605

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**

The Regulations put in place criminal penalties for breach of EU financial sanctions in relation to Libya. The financial sanctions are contained in Council Regulation (EU) No 204/2011 of 3rd March 2011 concerning restrictive measures in view of the situation in Libya ('the Council Regulation'). The Council Regulation implements the asset freezing measures required by UN Security Council Resolution 1970(2011).

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 Council Regulation came into force on the day of its publication in the Official Journal, on 3rd March 2011. Given the seriousness of the risks addressed by the Council Regulation, which imposes restrictions in response to violations of human rights in Libya, it is important that appropriate penalties are in place for breach of the provisions of the Council Regulation. While penalties are already in place for breach of the asset freezing measures imposed by the United Nations Security Council, the Council Regulation imposes an asset freeze on additional persons.

3.2 If no penalties are in place for breach of the EU asset freezing measures, there is a significantly increased risk of breach of the prohibitions, resulting in asset flight or in the transfer of funds to persons or entities involved in serious human rights abuses against persons in Libya. Penalties accordingly need to be put in place as soon as possible following publication of the 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 aware of the nature of the requirements being placed on them. The Treasury has met with banks to raise awareness of and discuss the requirements of the United Nations asset freezing measures, as implemented in the Libya (Financial Sanctions) Order 2011 (S.I. 2011/548), and has issued guidance on the requirements. 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 introduce ambulatory references to the Annexes to the Council Regulation. Annexes II and III to the Council Regulation contain lists of the persons who the UN or EU have decided should be subject to asset freezing measures, and in relation to whom the prohibitions in the Council Regulation are applied. These lists may be amended from time to time by the UN Security Council and the Council of the European Union, to add or remove names, or to alter identifying information.

4.2 It is therefore necessary that the penalties and other provisions in these Regulations should apply to persons listed in the Annexes as amended from time to time. Any changes to the lists 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 Asset Freezing Unit mailing list.

4.3 No Explanatory Memorandum on the Council Regulation has yet been submitted for Parliamentary scrutiny by the Foreign and Commonwealth Office, because of the speed at which the Council Regulation has been negotiated and come into force. We understand that a memorandum will be submitted imminently.

5. Territorial Extent and Application

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

The Chancellor of the Exchequer has made the following statement regarding Human Rights:

In my view the provisions of the Libya (Asset-Freezing) Regulations 2011 are compatible with the Convention rights.

7. Policy background

- What is being done and why

7.1 These Regulations provide for penalties for breach 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 considers 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 sanctions regimes because international financial sanctions are aimed at threats to international peace and security and the abuse of human rights. 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.

7.3 The Regulations:

- define a designated person as being a person listed in Annex II or III 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;
 - amend the Counter-Terrorism Act 2008 so that the court procedure in Part 6 of that Act applies to challenges to a decision by the Treasury under the Regulations – for example the refusal to issue a licence exempting acts from the asset freeze;
 - 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.
- Consolidation

7.4 These Regulations amend the Libya (Financial Sanctions) Order 2011, so that the provisions of that Order do not apply where an act would be prohibited by these Regulations.

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 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 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

The legislation applies to small business. 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

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

Matthew Myers at the Asset Freezing Unit of HM Treasury Tel: 02072705991 or email: matthew.myers@hmtreasury.gsi.gov.uk can answer any queries regarding the instrument.