

**EXPLANATORY MEMORANDUM TO
THE IRAQ (ASSET-FREEZING) REGULATIONS 2012**

2012 No. 1489

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

2. Purpose of the instrument

2.1 These Regulations provide for criminal penalties for breach of EU financial sanctions contained in Council Regulation (EC) No. 1210/2003 of 7 July 2003 concerning certain specific restrictions on economic and financial relations with Iraq (“the Council Regulation”). The Council Regulation gives effect to United Nations Security Council Resolution 1483 (2003) which has been renewed by subsequent Security Council Resolutions. The Iraq (United Nations Sanctions) Order 2000, which provided for financial sanctions under the Security Council Resolutions, is revoked.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 The Treasury are in the process of creating and updating enforcement frameworks for various existing EU sanctions regimes. These Regulations are made as part of this exercise, and are laid at the same time as Regulations putting in place penalties for breach of EU sanctions regimes in relation to other countries (Belarus, the Democratic Republic of the Congo, Eritrea, Lebanon and Syria, Liberia, Republic of Guinea and Sudan).

4.2 In 2003 the United Nations Security Council adopted Resolution 1483, which required Member States to freeze the funds and economic resources of the former Government of Iraq (headed by Saddam Hussein) and state entities held as at the date of the Resolution outside Iraq, and to freeze the funds and economic resources of Saddam Hussein and other senior officials of the former Iraqi regime and their immediate family members. The Resolution also established a mechanism by which frozen funds could be repaid to the Government of Iraq via the Development Fund for Iraq and established certain privileges and immunities in respect of the Fund.

- 4.3 Annexes III and IV to the Council Regulation contain lists of persons who are identified by the UN Sanctions Committee in relation to whom the prohibitions in the Council Regulation are applied. The lists may be amended from time to time by the European Commission, so as to reflect changes in the persons so designated.
- 4.4 Accordingly, it is necessary that these Regulations include ambulatory references to ensure that at such time as names are included in or omitted from Annex III or IV the penalties and other provisions in these Regulations apply or cease to apply to those persons. 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.
- 4.5 Records do not indicate that an Explanatory Memorandum in relation to the Council Regulation was submitted for Parliamentary Scrutiny.

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 provide for penalties for breach of the asset freezing measures contained in the Council Regulation. 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 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.

- 7.2 The Regulations:

- define a designated person as being a person listed in Annex IV 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;
- make provision for funds and economic resources held by the former Government of Iraq outside Iraq as at 22nd May 2003;
- 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;
- 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;
- revoke the Iraq (United Nations Sanctions) Order 2000, together with other provisions amending that Order; and
- revoke measures in the Iraq (United Nations Sanctions) Order 2003 so as to remove certain privileges and immunities which no longer apply under the Council Regulation.

7.3 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 Services Authority, which has a range of enforcement powers under the Financial Services and Markets Act 2000 (c.8).

- Consolidation

7.4 There are currently no plans to consolidate the relevant legislation.

8. Consultation outcome

8.1 No consultation has been carried out in relation to this instrument.

9. Guidance

9.1 Guidance on the asset freezing measures in relation to Iraq 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.

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 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 and similar EU legislation. The Treasury have provided guidance to assist business in complying with these measures.

12. Monitoring and 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 the Council Regulation 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.