

**EXPLANATORY MEMORANDUM TO  
THE DEMOCRATIC PEOPLE’S REPUBLIC OF KOREA (ASSET-FREEZING)  
REGULATIONS**

**2011 No. 1094**

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**

The Regulations put in place criminal penalties for breach of EU financial sanctions in relation to the Democratic People’s Republic of Korea (“North Korea”). The financial sanctions are contained in Council Regulation (EC) No. 329/2007 of 27 March 2007 concerning restrictive measures against North Korea (“the Council Regulation”).

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

None

**4. Legislative Context**

4.1 On 14 October 2006 the United Nations Security Council adopted Resolution 1718 (2006) which, amongst other matters, required Member States to freeze the assets of those identified by the competent UN Security Council Sanctions Committee or by the Security Council as persons who engage in or provide support for North Korea’s nuclear-related, other weapons of mass destruction-related and ballistic missile-related programmes. It also prohibited anyone from making funds, financial assets or economic resources available to, or for the benefit of, such persons. The Council Regulation implemented the requirements of the Resolution in the European Union.

4.2 Resolution 1718 (2006) was amended on 12 June 2009 by Resolution 1874 (2009). The later Resolution strengthened and extended the measures in Resolution 1718 (2006), in response to North Korea conducting a nuclear test on 25 May 2009 in violation of the 2006 Resolution. Council Regulation (EU) No. 1283/2009 of 22 December 2009 amended the Council Regulation and provided amongst other matters for the EU to identify persons to be subject to an asset freeze, as well as those listed by the UN.

4.3 The North Korea (United Nations Measures) Order 2006 (S.I. 2958/2006) implements the asset freezing provisions required by UN Security Council Resolution 1718 (2006). However, the Order does not extend to the persons and entities identified by the EU itself, and it is necessary to legislate so that breaches of the Council Regulation are subject to penalties in the UK.

4.4 These Regulations introduce ambulatory references to Annexes IV and V to the Council Regulation. Annex IV to the Council Regulation contains a list of persons who have been identified by the UN Security Council as being engaged in or providing support for North Korea's nuclear-related, other weapons of mass destruction-related and ballistic missile-related programmes. Annex V contains a list of persons who have been identified by the Council of the European Union as responsible for, or as having provided financial support to, such programmes. The prohibitions in the Council Regulation are applied to the persons listed in Annex IV and Annex V. The lists may be amended from time to time by the Council, to add or remove names, or to alter identifying information.

4.5 It is therefore necessary that the penalties and other provisions in these Regulations should apply to persons listed in Annex IV and V 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.

4.6 An Explanatory Memorandum on a Common Position concerning restrictive measures against North Korea was submitted for Parliamentary Scrutiny on 26 October 2006. The House of Commons European Scrutiny Committee cleared the document as "not politically or legally important" on 1 November 2006 (ESC 27941, 40th Report, Session 2005/06). The House of Lords Select Committee on the European Union cleared the document on 31 October 2006 at the Chairman's sift.

4.7 An Explanatory Memorandum on Common Position 2009/573/CFSP amending Common Position 2006/795/CFSP concerning restrictive measures against North Korea was submitted for Parliamentary Scrutiny on 14 September 2009. The House of Commons European Scrutiny Committee cleared the document as "politically important" on 14 October 2009 (ESC 30901, 29th Report, Session 2008/09). The House of Lords Select Committee on the European Union cleared the document on 22 October 2009 after referral to Sub-Committee C. By agreement of the Clerks of the Committees, Council Regulation (EU) No 567/2010 of 30/6/2010 was not passed to the Committees for scrutiny, because the amendments it contains were limited to updates to the Annexes.

## **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**

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 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 listed in Annex IV or V 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 breach of the prohibitions;
- provide a mechanism for the Treasury to grant 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; and
- 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.

## **8. Consultation outcome**

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

## **9. Guidance**

Guidance on the asset freezing measures in relation to North Korea 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 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 measure 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: 020 7270 5991 or email: [matthew.myers@hmtreasury.gsi.gov.uk](mailto:matthew.myers@hmtreasury.gsi.gov.uk) can answer any queries regarding the instrument.