

**EXPLANATORY MEMORANDUM TO
THE AL-QAIDA (ASSET-FREEZING) REGULATIONS 2011**

2011 No. 2742

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 put in place criminal penalties for breach of EU financial sanctions in relation to Al-Qaida. The financial sanctions are contained in Council Regulation (EC) No. 881/2002 of 27 May 2002 imposing certain restrictive measures directed against certain persons and entities associated with Al-Qaida (“the Council Regulation”). They revoke and replace in part the Al-Qaida and Taliban (Asset-Freezing) Regulations 2010 (S.I. 2010/1197).

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

3.1 None

4. Legislative Context

4.1 The Council Regulation has been amended by Council Regulation (EU) No. 754/2011 so that it now imposes restrictive measures only in relation to Al-Qaida. The Council Regulation previously also contained EU sanctions measures in respect of Usama Bin Laden and the Taliban. The restrictive measures in relation to the Taliban are now contained in Council Regulation (EU) No. 753/2011. This reflects the approach taken by the UN, in Security Council Resolutions 1988 (2011) and 1989 (2011).

4.2 These Regulations revoke and replace the Al-Qaida and Taliban (Asset-Freezing) Regulations 2010, to provide penalties for breach of the asset freezing measures in relation to persons associated with Al-Qaida listed in Annex I to the Council Regulation. Penalties for breach of Regulation (EU) No. 753/2011 are now contained in the Afghanistan (Asset-Freezing) Regulations 2011 (S.I. 2011/1983).

4.3 These Regulations introduce ambulatory references to Annex I to the Council Regulation. Annex I contains a list of the persons and entities who the UN Security Council or Sanctions Committee have decided should be subject to asset freezing measures, and in relation to whom the prohibitions in the Council Regulation are applied. The list may be amended from time to time, to add or remove names, or to alter identifying information.

4.4 It is therefore necessary that the penalties and other provisions in these Regulations should apply to persons listed in the Annex as amended from time to time.

Any changes to the list 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 The Foreign and Commonwealth Office submitted in July 2011 for Parliamentary Scrutiny an Explanatory Memorandum on the Council Decision amending Council Common Position 2002/402/CFSP concerning restrictive measures directed against Usama bin Laden, members of the Al-Qaida organisation and the Taliban and other individuals, groups, undertakings and entities associated with them, and on the Joint Proposal for a Council Regulation amending Council Regulation (EC) No.881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The Financial Secretary to the Treasury has made the following statement regarding Human Rights:

In my view the provisions of the Al-Qaida (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 I 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.

7.4 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 considers 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

7.5 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 Al-Qaida 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 email address is 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

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 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.