

EXPLANATORY MEMORANDUM TO
THE IRAN (EUROPEAN UNION FINANCIAL SANCTIONS) REGULATIONS 2012

2012 No. 925

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 against Iran. The financial sanctions are contained in Council Regulation (EU) No. 267/2012 of 23 March 2012 concerning restrictive measures against Iran ('the Council Regulation') and relate to both asset freezing and other financial restrictions.

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 24 March 2012. As a consequence of the adoption of the Council Regulation, which revokes and replaces Council Regulation (EU) No. 961/2010, the Iran (European Union Financial Sanctions) Regulations 2010 (S.I. 2010/2937) cease to have effect in relation to the asset-freezing measures in the Council Regulation and need to be replaced in order to ensure those measures are enforced. Given the seriousness of the risks addressed by the Council Regulation, which imposes restrictions in relation to Iran's proliferation-related nuclear activities, it is important that appropriate penalties are in place for breach of the provisions of the Council Regulation.

3.2 If no penalties are in place for breach of the EU financial restrictions, there is a significantly increased risk of breach of the restrictions. Penalties accordingly need to be put in place as soon as possible following publication of the Council Regulation.

3.3 There have been penalties in UK law for breach of the asset freezing measures previously contained in Council Regulation (EU) No. 423/2007 since 2007, and for breach of the other financial sanctions measures contained in the Council Regulation since 2010. The Treasury works with the financial sector to ensure awareness of the financial restrictions 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 revoke the Iran (European Union Financial Sanctions) Regulations 2010. The 2010 Regulations imposed penalties in relation to breach of the financial sanctions imposed by Council Regulation (EU) No. 961/2010.

4.2 An Explanatory Memorandum on the Council Regulation on restrictive measures against Iran and repealing Council Regulation (EU) No 921/2010 will be submitted for Parliamentary scrutiny by the Foreign and Commonwealth Office. However, due to the speed at which the Regulation has been adopted, an override of scrutiny has been necessary.

4.3 These Regulations introduce ambulatory references to the Annexes to the Council Regulation. Annexes VIII and IX 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 are amended from time to time by the Council of the European Union, to add or remove names, or to alter identifying information. Other Annexes contain lists of goods and technology, and may also be amended by the Council from time to time.

4.4 It is necessary that the penalties for breach of the Council Regulation should refer to the Annexes as amended from time to time, so that they properly apply to the prohibitions under the Council Regulation. 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.

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

In my view the provisions of the Iran (European Union Financial Sanctions) Regulations 2012 are compatible with the Convention rights.

7. Policy background

- What is being done and why

7.1 On 23 January 2012 the EU agreed a new package of additional sanctions measures against Iran, contained in Council Decision 2012/35/CFSP, reflecting serious concerns over the nature of Iran's nuclear programme. The Council Regulation gives effect to the financial sanctions measures contained in that package. These include a ban on the provision of specialised messaging services to the sanctioned Iranian banks, restrictions on non-electronic payment transfers and a ban on brokering insurance or reinsurance for Iranian persons, entities or bodies. In addition to the financial sanctions measures, the Council Regulation imposes further non-financial sanctions against Iran including a ban on the import of Iranian oil.

7.2 These Regulations replace the Iran (European Union Financial Sanctions) Regulations 2010, and provide for penalties for breach of the financial sanctions measures contained in the Council Regulation, imposed in response to ongoing concerns over Iran's nuclear programme. 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 (in the case of Iran, through the financing of nuclear proliferation) 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. The penalties in these Regulations are the same as those contained in the domestic regulations imposing penalties for breach of other EU financial sanctions regimes.

7.3 The Regulations:

- define a designated person as being a person listed in Annex VIII or IX 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;
- define the scope of the prohibitions that apply to financial dealings with Iran;
- 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;
- provide a mechanism for authorising the transfer of funds and create an offence where a person knowingly or recklessly provides false information or documents to obtain an authorisation or fails to comply with the conditions of an authorisation;
- 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 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 The Regulations include penalties for breach of additional prohibitions contained in the Council Regulation which were not contained in Regulation 961/2010:

- a prohibition on providing financial messaging services to Iranian banks who are designated persons;
- a prohibition on providing brokering services in respect of insurance or reinsurance provided to Iranian persons;
- restrictions on the transfer of funds by non-electronic means.

7.5 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 under the Financial Services and Markets Act 2000 (c.8).

- Consolidation

7.6 These Regulations replace and revoke the Iran (European Union Financial Sanctions) Regulations 2010, as amended by the Iran (European Union Financial Sanctions) (Amendment) Regulations 2012 (S.I. 2012/190).

8. Consultation outcome

These Regulations give further effect to the requirements which are imposed by the Council Regulation. The penalties for breach of the EU provisions replicate those which were already in place under the Iran (European Union Financial Sanctions) Regulations 2010. Accordingly it was not considered necessary to consult.

9. Guidance

Guidance on the asset freezing and other financial sanctions measures in relation to Iran is available on the Treasury's website. The Treasury's Asset Freezing Unit operates a free subscription email services alerting subscribers to changes to the asset freezing regime, and to 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 and financial sanctions regimes. 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. 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 and other financial sanctions 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

The Asset Freezing Unit of the Treasury Tel: 020 7270 5454 or email: AFU@hmtreasury.gsi.gov.uk can answer any queries regarding the instrument.