

EXPLANATORY MEMORANDUM TO
THE DEMOCRATIC PEOPLE’S REPUBLIC OF KOREA (EUROPEAN UNION
FINANCIAL SANCTIONS) REGULATIONS 2013

2013 No. 1877

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 implement Council Regulation (EU) No. 296/2013 of 26 March 2013 (OJ L 90, 28.3.2013, p.4) (“the First 2013 Council Regulation”) and Council Regulation (EU) No. 696/2013 of 22 July 2013 (OJ L 198, 23.7.2013, p.22) (“the Second 2013 Council Regulation”, together “the 2013 Council Regulations”) amending Council Regulation (EC) No. No. 329/2007 dated 27 March 2007 (OJ L 88, 29.3.2007, p.1) concerning restrictive measures against the Democratic People’s Republic of Korea (“DPRK”) (“the Council Regulation”). The 2013 Council Regulations, inter alia, implement measures outlined in a number of UN Security Council Resolutions, including UNSCR 2094 (2013). They replace a number of existing asset freeze provisions in the Council Regulation and impose additional financial sanctions measures relating to the actions of credit and financial institutions and the sale or purchase of bonds.

The Regulations revoke and replace the Democratic People’s Republic of Korea (Asset-Freezing) Regulations 2011 (S.I. 2011/1094) (“the 2011 Regulations”), which put in place criminal penalties for breach of the Council Regulation.

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

3.1 None.

4. **Legislative Context**

4.1 These Regulations implement the 2013 Council Regulations. The First 2013 Regulation amended the asset freeze sanctions contained in the Council Regulation and introduced measures relating to the actions of credit and financial institutions and the sale or purchase of bonds. The Second 2013 Council Regulation made further amendments to the asset freeze provisions, including expanding the basis for listing natural or legal persons, changing the Annexes for listing from Annex IV and V to Annexes IV, V and Va. The Second 2013 Council Regulation also amends the measures relating to the actions of credit and financial institutions.

4.2 The changes made to the Annexes by the Second 2013 Council Regulation affect the preamble to the 2011 Regulations, which refers to Annexes IV and V. Although the preamble does contain an ambulatory reference, the revocation and re-enactment provides certainty on the law applying which is particularly important as the 2011 Regulations impose criminal penalties for breach of the Council Regulation.

4.3 In relation to the First 2013 Regulation, an Explanatory Memorandum on Council Decision 2013/88/CFSP of 18 February 2013 amending Decision 2010/800/CFSP concerning restrictive measures against the Democratic People's Republic of Korea was submitted for Parliamentary Scrutiny on 18 March 2013. The House of Commons European Scrutiny Committee cleared the document as “politically important” on 24 April 2013 (ESC 34774, 40th Report, Session 2012/13). The House of Lords Select Committee on the European Union cleared the document on 26 March 2013 at the Chairman’s Sift. An Explanatory Memorandum on a Joint Proposal for a Council Regulation amending Regulation (EC) No.329/2007 concerning restrictive measures against the Democratic People's Republic of Korea and a Council Regulation (EU) No.296/2013 of 26 March 2013 amending Regulation (EC) No.329/2007 concerning restrictive measures against the Democratic People's Republic of Korea was submitted for Parliamentary Scrutiny on 17 April 2013. The House of Commons European Scrutiny Committee cleared the documents as “politically important” on 24 April 2013 (ESC 34757 & 34841, 40th Report, Session 2012/13). The House of Lords Select Committee on the European Union cleared the documents on 24 April 2013 at the Chairman’s Sift.

4.4 In relation to the Second 2013 Regulation, FCO officials liaised with Clerks to both Parliamentary Scrutiny Committees to agree a scrutiny waiver on this measure, which implemented UN Security Council Resolution 2094 (2013); this was agreed by both Committees, thus this measure was not submitted for scrutiny.

4.5 These Regulations introduce ambulatory references to the Annexes to the Council Regulation. Annexes IV, V and Va 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.

4.6 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 Financial Sanctions mailing list.

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom and, outside the United Kingdom, to British citizens, any UK national and any body incorporated in the UK.

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 The 2013 Council Regulations give effect to a series of financial sanctions measures agreed by the EU as part of a package of additional sanctions measures against DPRK contained in Council Decision 2013/88/CFSP and Council Decision 2013/183/CFSP, reflecting serious concerns over DPRK's threat to regional and international peace and security and implementing measures outlined in a number of UN Security Council Resolutions, including UNSCR 2094 (2013). The financial sanctions measures contained in that package include restrictions on relationships between EU credit and financial institutions and the DPRK financial sector and the sale and purchase of DPRK public or public guaranteed bonds. In addition to the financial sanctions measures, the Council Regulation imposes further non-financial sanctions against DPRK.

7.2 These Regulations replace the Democratic People's Republic of Korea (Asset-Freezing) Regulations 2011, and provide for penalties for breach of the financial sanctions 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.

7.3 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. 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.

7.4 The Regulations:

- define a designated person as being a person listed in Annex IV, V or Va 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;
- impose restrictions on relationships between EU credit and financial institutions and the DRPK financial sector;
- 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; 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.

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 Democratic People's Republic of Korea (Asset-Freezing) Regulations 2011 (S.I. 2011/1094).

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 Democratic People's Republic of Korea (Asset-Freezing) Regulations 2011. Accordingly it was not considered necessary to consult.

9. Guidance

Guidance on the asset freezing and other financial sanctions measures in relation to the Democratic People's Republic of Korea is available on the Treasury's website. Financial Sanctions, within the Treasury, operate 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

Financial Sanctions at the Treasury Tel: 020 7270 5454 or email: financialsanctions@hmtreasury.gsi.gov.uk can answer any queries regarding the instrument.