

EXPLANATORY MEMORANDUM TO
THE AFGHANISTAN (ASSET-FREEZING) REGULATIONS 2011

2011 No. 1893

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**

2.1 These Regulations put in place criminal penalties for breach of EU financial sanctions in relation to Afghanistan. The financial sanctions are contained in Council Regulation (EU) No. 753/2011 of 1 August 2011 concerning restrictive measures directed against certain individuals, groups, undertakings and entities in view of the situation in Afghanistan (“the Council Regulation”).

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

3.1 These Regulations are laid before Parliament less than 21 days before they come into force. The Council Regulation comes into force on the day of its publication in the Official Journal. Given the seriousness of the risks addressed by the Council Regulation, concerning the threat to international peace and security posed by the situation in Afghanistan, 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 asset freezing measures, there is a significantly increased risk of breach of the prohibitions, resulting in asset flight or in the transfer of funds to designated persons or entities in Afghanistan. The Regulations could not be made and laid before the Council Regulation had been finalised and published, so it has not been possible to provide the Committees with the opportunity to consider the Regulations before they come into force. However, the prohibitions in the Council Regulation reflect those that were previously contained in Council Regulation EC No. 881/2002 in relation to the Taliban (see further below). Penalties for breach of those prohibitions were contained in the Al-Qaida and Taliban (Asset-Freezing) Regulations 2010 (S.I. 2010/1197), so these Regulations effectively maintain the status quo.

4. **Legislative Context**

4.1 EU financial sanctions in relation to Afghanistan were previously contained in 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 (“the 2002 Regulation”). The 2002

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 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). Penalties for breach of the 2002 Regulation are contained in the Al-Qaeda and Taliban (Asset-Freezing) Regulations 2010, which are drafted by reference to the Annexes to the 2002 Regulation. These Annexes will no longer contain individuals, groups, entities and bodies listed because of their association with the Taliban, and it is accordingly necessary to put in place penalties for breach of the financial restrictions in relation to the Taliban. The Al-Qaida and Taliban (Asset-Freezing) Regulations 2010 will also be amended.

4.2 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.

4.3 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.

4.4 The Foreign and Commonwealth Office have submitted an Explanatory Memorandum on the Council Decision and Joint Proposal for a Council Regulation concerning restrictive measures directed against certain individuals, groups, undertakings and entities in view of the situation in Afghanistan for Parliamentary Scrutiny.

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 Afghanistan (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 Afghanistan 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.