EXPLANATORY MEMORANDUM TO

THE AL-QAIDA (ASSET-FREEZING) (AMENDMENT) REGULATIONS 2016

2016 No. 937

1. Introduction

1.1 This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Command of Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 These Regulations amend the Al-Qaida (Asset-Freezing) Regulations 2011 ("the 2011 Regulations") to reflect certain amendments made by Council Regulation (EU) No 363/2016 of 14th March 2016 (OJ No L 68, 15.3.2016, p.1) ("Council Regulation 363/2016") to Council Regulation (EC) No 881/2002 ("the 2002 Council Regulation") of 27th May 2002 (OJ No L 139 29.5.2002, p.9), following the adoption of United Nations Security Council Resolution ("UNSCR") 2253 (2015). These Regulations also ensure that the enforcement provisions in the 2011 Regulations apply to the enforcement of Council Regulation No 1686/2016 of 20 September 2016 (OJ No L 255, 21.9.2016, p.1) ("the 2016 Council Regulation") as well as the 2002 Council Regulation.

3. Matters of special interest to Parliament

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. This is necessary to ensure that HM Treasury is able to enforce the additional financial sanctions measures which came into force on 22 September 2016. It was not possible to finalise or lay these regulations before that date as until 21 September 2016, it was not certain what the additional financial sanctions measures would be. If these regulations were not to come into force until 21 days after having been laid before Parliament, persons within the UK who breach the additional measures would not face enforcement consequences for such breaches. Given that financial sanctions are a matter of international peace and security, and that the UK has obligations under EU law and the UN Charter to put them in place and enforce them, it is necessary to do so as swiftly as possible.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 The 2002 Council Regulation imposes sanctions relating to certain persons and entities associated with the Al-Qaida network, implementing obligations set out in UNSCR 1390(2002). These include restrictive measures freezing the funds and

economic resources of such persons and entities listed in Annex I to the 2002 Council Regulation (as amended from time to time). Criminal penalties for the breach of the restrictive measures imposed by the 2002 Council Regulation are imposed by the 2011 Regulations.

4.2 Council Regulation 363/2016 amended the 2002 Council Regulation to reflect changes adopted by UNSCR 2253 (2015) to the obligations set out in UNSCR 1390(2002).

4.3 The 2016 Council Regulation imposes additional restrictive measures against ISIL (Da'esh) and Al-Qaida and natural and legal persons, entities or bodies associated with them. These include restrictive measures freezing the funds and economic resources of persons and entities listed in Annex I to the 2016 Regulation.

These Regulations amend the 2011 Regulations to reflect certain amendments made by the Council Regulation 363/2016 to the 2002 Regulation. They also ensure that the enforcement provisions in the 2011 Regulations apply to the enforcement of the 2016 Council Regulation as well as the 2002 Council Regulation.

5. Extent and Territorial Application

5.1 The extent of this instrument is all of the United Kingdom.

5.2 The territorial application of this instrument is all of the United Kingdom, and outside the United Kingdom to any UK national or any body incorporated in the United Kingdom.

6. European Convention on Human Rights

6.1 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 Following the adoption of UNSCR 2253 (2015), which ensured, amongst other things, that persons or entities supporting ISIL (Da'esh) are eligible for listing by the United Nations, the EU amended its legislation to accommodate these changes. Amongst other changes, the title of the regulation was amended, and references to Al-Qaida were extended to also refer to ISIL (Da'esh).

7.2 These Regulations implement these changes insofar as they apply to the 2011 Regulations.

7.3 Additionally, on 20 September 2016 the European Council adopted Decision (CFSP 2016/1693 repealing and replacing Common Position 2002/402/CFSP. That Decision includes additional measures to further fight the international terrorist threat posed by ISIL (Da'esh) and Al Qaida in the form of a power for the EU to autonomously impose an asset freeze in specified circumstances. Following that Decision the 2016 Council Regulation was agreed to implement these additional measures. The 2016 Council Regulation has direct effect. The 2016 Council Regulation obliges the UK to put enforcement provisions in place for breaches of the financial sanctions contained in that Regulation. These Regulations amend the 2011 Regulations to ensure that they provide for enforcement of the 2016 Council Regulation as well as for the 2002

Council Regulation. In the absence of these amendments, there would be no enforcement consequences in the UK for breach of the 2016 Council Regulations.

Consolidation

7.4 The amendments made by this Regulation are not so extensive as to require consolidation at this time.

8. Consultation outcome

8.1 No consultation has been carried out in relation to these Regulations.

9. Guidance

9.1 Guidance on current and lifted asset freezing regimes is available on the Treasury's website. The Office of Financial Sanctions Implementation, within the Treasury, operate a free subscription email service alerting subscribers on changes to the asset freezing regimes, 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 impose requirements themselves, but only ensure that there are enforcement provisions in relation to activities which are prohibited by the directly effective Council Regulations.

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 Regulations rather than these regulations which only amend the regulations which provide for enforcement powers.

11. Regulating small business

11.1 The legislation applies to activities that are undertaken by small businesses.

11.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the Treasury work with the financial sector on the requirements for complying with asset freezing and financial sanctions measures. 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 2002 Council Regulation and the 2016 Council Regulation, if either of them are amended or repealed.

12.2 It is therefore not appropriate in the circumstances to make provision for further periodic review as contemplated in ss.28-32 of the Small Business Enterprise and Employment Act 2015.

13. Contact

13.1 The Office of Financial Sanctions Implementation at the Treasury (email: OFSI@hmtreasury.gsi.gov.uk) can answer any queries regarding the instrument.