EXPLANATORY MEMORANDUM TO

THE BURMA/MYANMAR (FINANCIAL RESTRICTIONS) (SUSPENSION) REGULATIONS 2012

2012 No. 1302

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 suspend Parts 3 and 5 of the Burma/Myanmar (Financial Restrictions) Regulations 2009 (S.I. 2009/1495) ("the 2009 Regulations") from 17th May 2012 until 30th April 2013. Parts 3 and 5 of the 2009 Regulations provide for criminal penalties for breach of financial sanctions imposed by Council Regulation (EC) No. 194/2008 ("the 2008 Council Regulation") of 25 February 2008 renewing and strengthening the restrictive measures in respect of Burma/Myanmar and repealing Regulation (EC) No. 817/2006 (O.J. L 66, 10.3.2008, p.1). Council Regulation (EU) No. 409/2012 of 14 May 2012 (O.J. L 126, 15.5.2012, p.1) ("the 2012 Council Regulation") suspended until 30th April 2013 the financial sanctions measures in the 2008 Council Regulation.

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.

3.2 The 2009 Regulations provide for penalties for breach of the financial sanctions contained in the 2008 Council Regulation. The 2012 Council Regulation has suspended from 17th May 2012 various measures in the 2008 Council Regulation, including the financial sanctions measures. It is important that the penalties put in place by the 2009 Regulations for breach of these measures are removed as soon as possible, otherwise penalties will continue to apply in domestic law, or at least appear to do so, in respect of activities which are not currently prohibited under EU law. (In practice, no prosecution is likely to be brought for anything done from the start of the period of suspension under the 2012 Council Regulation, and if a prosecution were brought it is to be expected that a person would not be convicted.)

4. Legislative Context

4.1 These Regulations suspend until 30th April 2013 Parts 3 and 5 of the 2009 Regulations. The 2009 Regulations provide for criminal penalties for breach of the financial sanctions provisions of the 2008 Council Regulation. The Council of the European Union adopted Council Decision 2012/225/CFSP on 26th April 2012 ("the

2012 Council Decision") which amends Council Decision 2010/232/CFSP concerning restrictive measures against Burma/Myanmar by suspending the operation of various sanctions measures. The 2012 Council Regulation has accordingly suspended the financial sanctions measures contained in the 2008 Council Regulation.

4.2 It was not possible for the Foreign and Commonwealth Office to submit the 2012 Council Decision and the 2012 Council Regulation to the relevant Parliamentary Committees (the Commons EU Scrutiny Committee and the Lords Select Committee on the European Union) for those Committees' approval prior to the documents' adoption on 26th April and 14th May respectively. The Minister for Europe wrote to the Committees on 23rd April advising that it would be necessary to override the scrutiny process on this occasion and provided explanatory memoranda to the Committees in respect of the 2012 Council Decision on 1st May and in respect of the 2012 Council Regulation on 10th May.

5. Territorial Extent and Application

5.1 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

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 These Regulations suspend the effect of Parts 3 and 5 of the 2009 Regulations. The 2009 Regulations provide for criminal penalties for breach of financial sanctions contained in the 2008 Council Regulation.

7.2 The financial sanctions contained in the 2008 Council Regulation have been suspended until 30th April 2013 by the 2012 Council Regulation. These Regulations accordingly suspend the domestic penalties for breach of these measures.

- Consolidation

7.3 Not applicable.

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 Treasury's Asset Freezing Unit operates 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. A notice explaining the suspension of the financial sanctions in the 2008 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 suspend penalties in relation to activities which are not currently prohibited by the directly effective 2008 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 2008 Council Regulation rather than these Regulations.

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 EU asset freezing measures. The Treasury have provided detailed guidance to assist business in complying with these measures.

12. Monitoring & review

12.1 Sanctions against Burma/Myanmar will be reviewed by the EU before the expiry of the suspension period.

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.