EXPLANATORY MEMORANDUM TO

THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA (EUROPEAN UNION FINANCIAL SANCTIONS) (AMENDMENT) (NO. 3) REGULATIONS 2016

2016 No. 1214

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 This amendment is to correct some drafting errors in the Democratic People's Republic of Korea (European Union Financial Sanctions) Regulations 2013 ("the 2013 Regulations") and set out more clearly the content of the financial sanctions.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 In their Seventh Report of Session 2016-17, the JCSI reported the drafting error in regulation 13D(3)(a) of the 2013 Regulations, and requested to be notified when it was corrected. These Regulations now do so.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to the negative 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 These Regulations have been made under section 2(2) of the European Communities Act 1972, in order to correct drafting errors and clarify prohibitions in the 2013 Regulations.

5. Extent and Territorial Application

5.1 These Regulations extend to the whole of the United Kingdom.

5.2 These Regulations apply across the whole of 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 The 2013 Regulations provide for the enforcement of the sanctions regime in respect of the Democratic People's Republic of Korea ("DPRK") contained in Council Regulation (EC) No 329/2007 dated 27th March 2007, ("the Council Regulation").

7.2 The Council Regulation was amended on 3rd May 2016 and again on 28th May 2016. The 2013 Regulations were amended to capture the changes to the sanctions regime.

7.3 On 6th July 2016, the JCSI identified a drafting error in regulation 13D of the 2013 Regulations, namely that the text "[date]" appears instead of the actual date. HM Treasury accepted on 12th July that this was done in error and indicated that it would rectify the error. HM Treasury had intended to do so in tandem with other changes anticipated to the Council Regulation. However, in light of the continued delay, HM Treasury has decided to move forward with this correction separately.

7.4 HM Treasury has also carried out a review of the 2013 Regulations and identified a further drafting error that requires correction, namely that in regulation 9 of the 2013 Regulations, the ability to licence relationships between UK and DPRK financial institutions should be in respect of joint ventures, continued ownership interests, and correspondent banking relationships.

7.5 As part of that review, HM Treasury has also identified some modifications that further clarify the prohibitions of the sanctions regime, namely:

(a) the removal of some duplicated text from regulation 13(4)(c), and a clarification that the sanctions also apply to branches and subsidiaries of DPRK institutions;

(b) a clarification that the prohibition on opening branches and offices in regulation 13A includes the operation of such branches or offices and facilitating of such operations; and

(c) a clarification that regulation 13D applies to trade with North Korea.

Consolidation

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

8. Consultation outcome

8.1 These Regulations make only minor corrections to the 2013 Regulations. Accordingly it was not considered necessary to consult.

9. Guidance

9.1 Guidance on the asset freezing and other financial sanctions measures in relation to DPRK is available on HM Treasury's website (https://www.gov.uk/government/collections/financial-sanctions-regime-specific-consolidated-lists-and-releases). The Office of Financial Sanctions Implementation, within HM Treasury, operate a free subscription email service 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 HM Treasury's 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 impose substantive requirements themselves.

10.2 The impact on the public sector is also negligible.

10.3 An Impact Assessment has not been prepared for These Regulations, because any impact results from the Council Regulation rather than These Regulations which only relate to 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), HM Treasury works with the financial sector on the requirements for complying with the asset freezing and financial sanctions measures set out in the Council Regulation. HM 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. HM Treasury will review the penalties for breaches of the restrictions imposed by the Council Regulation if it is 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.