EXPLANATORY MEMORANDUM TO

THE DEMOCRATIC REPUBLIC OF THE CONGO (ASSET-FREEZING) (AMENDMENT) REGULATIONS 2016

2016 No. 1208

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 Democratic Republic of the Congo (Asset-Freezing) Regulations 2012 ("the 2012 Regulations") to reflect amendments made by Council Regulation (EU) No 2016/2230 of 12th December 2016 (OJ No. L 336I 12.12.2016, p1) to Council Regulation (EU) No 1183/2005 ("the Council Regulation") of 18th July 2005 (OJ No L 193 23.7.2005, p1).

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 12th December 2016. It was not possible to finalise or lay these Regulations before this date as until 12th December 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 to put them into 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 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 The Council Regulation imposes sanctions relating to certain persons and entities acting in violation of the arms embargo with regard to the Democratic Republic of the Congo. These include restrictive measures freezing the funds and economic resources of such persons and entities listed in Annex I to the Council Regulation (as amended from time to time). Criminal penalties for the breach of the restrictive measures imposed by the Council Regulation are imposed by the 2012 Regulations.

4.2 Council Regulation (EU) No 2016/2230 imposes additional restrictive measures freezing the funds and economic resources of persons listed in Annex Ia which is inserted into the Council Regulation.

4.3 These Regulations amend the 2012 Regulations to reflect certain amendments made by Council Regulation (EU) No 2016/2230 to the Council Regulation. They also ensure that the enforcement provisions in the 2012 Regulations apply to the enforcement of Council Regulation (EU) No 2016/2230 as well as the 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 On 12th December 2016 the European Council adopted Council Decision (CFSP) of 12th December 2016 2016/2231 amending Decision 2010/788/CFSP. That Decision includes additional measures in view of the current situation in the Democratic Republic of the Congo, to encourage its government to desist from human rights violations and set a date for Presidential elections to take place as early as possible in 2017. These measures consist of an asset freeze that can be applied to persons who meet new criteria for listing.

7.2 Following that Decision, Council Regulation (EU) No 2016/2230 was agreed to implement these additional measures. It updates the Council Regulation to include a new Annex of designated persons, Annex Ia. The Council Regulation obliges the UK to put enforcement provisions in place for breaches of the financial sanctions contained in that Regulation.

7.3 These Regulations amend the 2012 Regulations to confirm that the definition of 'designated person' includes those persons listed in both Annex I and Annex Ia to the Council Regulation. These Regulations also confirm that the prohibition on dealing with funds or economic resources includes funds or economic resources owned, held or controlled by a third party acting on a designated person's behalf or at their direction. Further, these Regulations insert an additional exception to the prohibition in the 2012 Regulations for payments due to Annex Ia designated persons under judicial, administrative or arbitration decisions rendered in the European Union or enforceable in the United Kingdom. These Regulations also confirm that a frozen account includes an account which is owned, held or controlled by a third party acting on behalf of a designated person or at their direction. In the absence of these amendments, there would be no enforcement consequences in the UK for breach of the additional measures in the Council Regulation.

Consolidation

7.4 The amendments made by these Regulations 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 themselves impose requirements, but only put in place penalties 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 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 Council Regulation and Council Regulation (EU) No 2016/2230, 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 by 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.