EXPLANATORY MEMORANDUM TO

THE EUROPEAN UNION FINANCIAL SANCTIONS (ENHANCED PENALTIES) REGULATIONS 2017

2017 No. 560

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 increase the maximum sentences for breach of EU financial sanctions regimes from 2 years to 7 years on conviction on indictment and from 3 months to 6 or 12 months on summary conviction, depending where in the United Kingdom proceedings take place. The Regulations increase the available penalties by amending various pieces of secondary legislation which were made to enforce different EU financial sanctions regimes in the UK.

3. Matters of special interest to Parliament

Matters of interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As these Regulations are subject to the negative procedure and have 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 Section 144 of the Policing and Crime Act 2017 ("the 2017 Act") modifies the application of the European Communities Act 1972 ("the 1972 Act") to enable higher maximum terms of imprisonment for offences relating to EU financial sanctions regimes. Subsections (4) and (5) of section 144 enable the powers in section 2(2) of the 1972 Act to be used to extend the maximum criminal penalties for breaches of EU financial sanctions regimes in respect of criminal offences that have already been created. This instrument is being made to bring the penalties into line with breaches of the UK and EU terrorist asset freezing regimes.

5. Extent and Territorial Application

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

5.2 The instruments these Regulations amend apply to the whole of the United Kingdom, and outside the United Kingdom to any UK national or anybody incorporated in the United Kingdom.

6. European Convention on Human Rights

6.1 As these Regulations are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

7.1 The March 2015 Budget committed Her Majesty's Government to review the structures within HM Treasury for the implementation of financial sanctions and work with law enforcement to ensure they are complied with, robustly enforced and carry appropriate penalties when breaches occur. Alongside the creation of the Office of Financial Sanctions Implementation ("OFSI"), HM Treasury legislated through the 2017 Act to strengthen sanctions enforcement in the UK.

7.2 The financial sanctions provisions included in the 2017 Act allow Her Majesty's Government to increase the maximum sentence for breach of EU financial sanctions regimes to 7 years on conviction on indictment and to 6 or 12 months on summary conviction (depending on the relevant maximum penalty on summary trial in England and Wales, Scotland and Northern Ireland), bringing them in line with the maximum sentences in the Terrorist Asset-Freezing etc. Act 2010. The previous disparity in penalties for breaching near identical asset freezing provisions needed to be resolved in order to prevent uncertainty and promote consistency of sentencing.

7.3 This legislation will bring more consistency to penalties across UK financial sanctions regimes, ensure that the penalties for breaches of financial sanctions have a sufficient deterrent effect and mean that many of the offences can be re-classified as a 'serious crime' as set out in the Regulation of Investigatory Powers Act 2000, allowing law enforcement to use a more comprehensive range of tools to investigate and disrupt sanctions evasion.

8. Consultation outcome

8.1 No consultation was held. No new offences are created by this proposal, only an increased sentencing option for the court in line with other existing financial sanctions sentencing powers (and in the case of Zimbabwe a further amendment to bring the penalties in that regime in line with the others). Informal consultation with key stakeholders was held, including working with the Ministry of Justice and National Crime Agency to consider the impact of this legislation on the criminal justice system. Our assessment is that additional costs for HM Court Service are likely to be minimal.

9. Guidance

9.1 Guidance on asset freezing and other financial sanctions measures can be found on the Treasury's website (https://www.gov.uk/government/publications/financial-sanctions-faqs). The Office of Financial Sanctions Implementation, within the Treasury, operate a free subscription email and Notification 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 new powers contained in the 2017 Act is available on the Treasury website and will be emailed to subscribers.

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible because these Regulations do not impose any new requirements themselves. No additional burdens will be created by this measure.

10.2 The impact on the public sector is also negligible.

10.3 An Impact Assessment has not been prepared for these Regulations. However, an Impact Assessment was carried out for the 2017 Act, under which these Regulations were made. The Impact Assessment found that the increase in the extent and range of enforcement powers for breaches of financial sanctions may increase burdens on law enforcement agencies, the courts and the private sector to a small degree, but this impact is necessary to secure the fullest possible contribution by financial sanctions to foreign policy and national security objectives. That Impact Assessment can be found at:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/533787/PC_Bill_Overarching_IA_for_Lords_intro.pdf.

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 closely with the financial sector on the requirements for complying with asset freezing and financial sanctions.

12. Monitoring & review

12.1 It is not appropriate to make provision for periodic review as contemplated in ss.28-32 of the Small Business Enterprise and Employment Act 2015 because these Regulations do not regulate business.

12.2 The UN and EU monitor and review their financial sanctions measures, which the Treasury is under an obligation to implement. The Treasury will review the penalties for breach of the restrictions imposed by the relevant EU law if they are amended or repealed.

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.