EXPLANATORY MEMORANDUM TO

THE IRAN (EUROPEAN UNION FINANCIAL SANCTIONS) REGULATIONS 2010

2010 No. 2937

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

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

2. Purpose of the instrument

The Regulations put in place criminal penalties for breach of EU financial sanctions against Iran. The financial sanctions are contained in Council Regulation (EU) No 961/2010 of 25 October 2010 on restrictive measures against Iran and repealing Council Regulation EC 423/2007 ('the Council Regulation') and relate to both asset freezing and other financial restrictions.

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. The Council Regulation came into force on the day of its publication in the Official Journal, on 27 October 2010. Given the seriousness of the risks addressed by the Council Regulation, which imposes restrictions in relation to Iran's proliferation-related nuclear activities, it is important that appropriate penalties are in place for breach of the provisions of the Council Regulation. While penalties are already in place for breach of the asset freezing measures, the Council Regulation imposes additional financial restrictions, including restrictions on the transfer of funds to and from Iran and a prohibition on the provision of insurance to Iranian persons.

3.2 It is important that penalties are put in place for breach of the financial restrictions contained in the Council Regulation as soon as possible. Without such provision, there is an increased risk of breach of the restrictions, potentially assisting Iran's proliferation-related nuclear activities. The drafting of these Regulations could not, however, be completed before the Council Regulation had been finalised and published, and it was then necessary to consult other Government departments.

3.3 The Council Regulation implements Council Decision 2010/413/CFSP of 26 July 2010, and the financial sector has therefore been aware of the new financial restrictions for some time. There have been penalties in UK law for breach of the asset freezing measures now contained in the Council Regulation, and previously contained in Council Regulation (EC) 423/2007, since 2007. The Treasury has worked with the financial sector to raise awareness of the new financial restrictions imposed by the Council Regulation

since it came into force, and has issued guidance on the requirements. The Treasury also provides a dedicated email address and telephone number to deal with queries from the financial sector and other affected persons.

4. Legislative Context

4.1 These Regulations revoke the Iran (European Community Financial Sanctions) Regulations 2007 (S.I. 2007/1374). The 2007 Regulations imposed penalties in relation to breach of the asset freezing measures imposed by Council Regulation (EC) 423/2007. They were amended by the Iran (European Community Financial Sanctions) (Amendment) Regulations 2010 (S.I.2010/2613) so that the penalties would apply to the asset freezing provisions of the Council Regulation.

4.2 An Explanatory Memorandum on Draft Council Regulation on restrictive measures against Iran and repealing Council Regulation (EC) No 423/2007 was submitted for Parliamentary scrutiny by the Foreign and Commonwealth Office on 9 September 2010. The House of Commons European Scrutiny Committee cleared the document on 15 September 2010. The House of Lords Select Committee on the European Union cleared the document on 7 October 2010 after referral to Sub-Committee C.

4.3 These Regulations introduce ambulatory references to the Annexes to the Council Regulation. Annexes VII and VIII to the Council Regulation contain lists of the persons who the UN or EU have decided should be subject to asset freezing measures, and in relation to whom the prohibitions in the Council Regulation are applied. These lists are amended from time to time by the UN Security Council and the Council of the European Union, to add or remove names, or to alter identifying information. Annexes I, II, III, IV and VI contain lists of goods and technology relating to the nuclear industry. The Treasury may issue licences to exempt certain acts from the asset freezing measures, but not in circumstances where the payment relates to the goods and technology listed in Annexes I, II, III, or VI. Those Annexes, and Annex IV, are also relevant to the information which must be provided to the Treasury in a notification of a transfer of funds to Iran. The Annexes may be amended by the Council from time to time. Annex V contains a list of websites detailing the competent authorities of each Member State for the purposes of making decisions under the Council Regulation, which may also be updated from time to time.

4.4 It is necessary that the penalties for breach of the Council Regulation should refer to the Annexes as amended from time to time, so that they properly apply to the prohibitions under the Council Regulation. Any changes to the lists of designated persons will be published in the Official Journal, and will also appear on the Treasury's website and in a notice sent out electronically to subscribers to the Treasury's Asset Freezing Unit mailing list.

5. Territorial Extent and Application

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

The Commercial Secretary to the Treasury has made the following statement regarding Human Rights:

In my view the provisions of the Iran (European Union Financial Sanctions) Regulations 2010 are compatible with the Convention rights.

7. Policy background

- What is being done and why

7.1 These Regulations provide for penalties for breach of the asset freezing and other financial sanctions measures contained in the Council Regulation. The Council Regulation has direct effect, and requires Member States to put in place effective, proportionate and dissuasive penalties for infringements of the Council Regulation.

7.2 The Treasury considers that such penalties should be criminal, in line with those in place for breaches of other EU sanctions regimes. Criminal penalties are appropriate to enforce sanctions regimes because international financial sanctions are aimed at threats to international peace and security (through, for example, terrorism or the abuse of human rights or, as in the case of Iran, the financing of nuclear proliferation,). The consequences of a breach of any sanctions regime may be very serious and criminal penalties provide a better, more dissuasive, deterrent than civil penalties.

7.3 The Regulations:

- define a designated person as being a person listed in Annex VII or VIII to the Council Regulation;

- define the scope of the prohibitions that apply to the freezing of funds and economic resources and also to the making available of funds and economic resources to, or for the benefit of, a designated person;

- define the scope of the prohibitions that apply to financial dealings with Iran;

- provide penalties for breaches of the prohibitions;

- provide a mechanism for granting licences and create an offence where a person knowingly or recklessly provides false information or documents to obtain a licence or fails to comply with the conditions of a licence;

- provide a mechanism for authorising the transfer of funds and create an offence where a person knowingly or recklessly provides false information or documents to obtain a licence or fails to comply with the conditions of a licence;

- amend the Counter-Terrorism Act 2008 so that the court procedure in Part 6 of that Act applies to challenges to a decision by the Treasury under the Regulations – for example to issue a licence exempting acts from the asset freeze;

- include provisions for the gathering and sharing of information and create an offence for failing to comply with or obstructing the Treasury's exercise of these powers.

- Consolidation

7.4 These Regulations replace and revoke the Iran (European Community Financial Sanctions) Regulations 2007, as amended by the Iran (European Community Financial Sanctions) (Amendment) Regulations 2010.

8. Consultation outcome

These Regulations give further effect to the requirements which are imposed by the Council Regulation. The penalties for breach of the asset freezing provisions replicate those which were already in place under the Iran (European Community Financial Sanctions) Regulations 2007, as amended. Accordingly it was not considered necessary to consult.

9. Guidance

Guidance on the asset freezing and other financial sanctions measures in relation to Iran is available on the Treasury's website. The Treasury's Asset Freezing Unit and Counter Illicit Finance Team operate free subscription email services alerting subscribers on changes to the asset freezing regime, 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 and financial sanctions regimes. A notice explaining the 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 put in place penalties in relation to activities which are prohibited by the directly effective 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 Council Regulation rather than these Regulations which only provide for enforcement powers.

11. Regulating small business

The legislation applies to small business. The Treasury work with the financial sector on the requirements for complying with the asset freezing and other financial sanctions measures set out in the Council Regulation. The Treasury have provided detailed guidance to assist business in complying with these measures.

12. Monitoring & review

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 if it is amended or repealed.

13. Contact

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