EXPLANATORY MEMORANDUM TO

THE SUDAN (ASSET-FREEZING) REGULATIONS 2012

2012 No. 1507

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 provide for criminal penalties for breach of EU financial sanctions contained in Council Regulation (EC) No. 1184/2005 of 18 July 2005 imposing certain specific restrictive measures directed against certain persons impeding the peace process and breaking international law in the conflict in the Darfur region in Sudan ('the Council Regulation'). The Council Regulation gives effect to United Nations Security Council Resolution 1591 (2005). The Sudan (United Nations Measures) Order 2006 (S.I. 2006/1454), which made provision for financial sanctions under the UN Security Council Resolution, is revoked.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 The Treasury are in the process of creating and updating enforcement frameworks for various EU sanctions regimes. These Regulations are made as part of this exercise, and are laid at the same time as Regulations putting in place penalties for breach of EU sanctions regimes in relation to other countries (Belarus, Democratic Republic of Congo, Eritrea, Iraq, Lebanon and Syria, Liberia and Republic of Guinea).

4.2 In 2005 the United Nations Security Council adopted Resolution 1591 which required Member States to freeze the funds, other financial assets and economic resources of those identified by the UN Sanctions Committee as persons who impede the peace process, constitute a threat to stability in Darfur and the region or commit violations of international humanitarian or human rights law or other atrocities. Four persons have been identified by the Committee so far.

4.3 Annex I to the Council Regulation contains a list of persons who are designated by the UN Sanctions Committee in relation to whom the prohibitions in the Council Regulation are to be applied. The list may be amended from time to time by the European Commission so as to reflect changes in the persons so designated.

4.4 Accordingly, it is necessary that these Regulations include ambulatory references to ensure that at such time as names are included in, or omitted from, Annex I the penalties and other provisions in these Regulations apply or cease to apply to such persons. 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.

4.5 Council Common Position 2005/411/CFSP, concerning restrictive measures against Sudan and the draft Council Regulation imposing certain specific measures directed against certain persons impeding the peace process and breaking international law in the conflict in the Darfur region of Sudan were submitted for Parliamentary Scrutiny by the Foreign and Commonwealth Office. The House of Commons European Scrutiny Committee cleared the documents as "not raising questions of sufficient legal or political importance" in their report published on 4th August 2005.

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

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 These Regulations provide for penalties for breach of the asset freezing measures contained in the Council Regulation. The Treasury consider 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 and the abuse of human rights. 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.

7.2 The Regulations:

- define a designated person as being a person listed in Annex I 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;

- 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 a condition of a licence;

- 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;

- revoke the Sudan (United Nations Measures) Order 2006.

7.3 No criminal penalty is included for breach of the requirement in regulation 8(3) for financial institutions to inform the Treasury when they credit a frozen account. The Treasury consider that any such breaches are appropriately dealt with in the context of the supervision of financial institutions by the Financial Services Authority, which has a range of enforcement powers under the Financial Services and Markets Act 2000 (c.8).

- Consolidation

7.4 There are currently no plans to consolidate the relevant legislation.

8. Consultation outcome

8.1 No consultation has been carried out in relation to this instrument.

9. Guidance

9.1 Guidance on the asset freezing measures in relation to Sudan 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 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 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 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

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 the asset freezing measures set out in the Council Regulation and similar EU legislation. 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 if it is amended or repealed.

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.