EXPLANATORY MEMORANDUM TO

THE SUDAN (EUROPEAN UNION FINANCIAL SANCTIONS) REGULATIONS 2014

2014 No. 1826

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 impose proportionate criminal penalties for breach of the asset freeze contained in Council Regulation (EU) No. 747/2014 of 10 July 2014 (OJ L 203, 11.7.2014, p.1) ("the Council Regulation") concerning restrictive measures in view of the situation in Sudan and repealing Regulations (EC) No. 131/2004 and (EC) No. 1184/2005. The Council Regulation implements measures outlined in UN Security Council Resolutions 1556 (2004) and 1591 (2005) ("the UNSCRs"). .

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 11 July 2014. The Council Regulation has direct effect, but given the concerns addressed by the UNSCRs and the Council Regulation, it is important that appropriate penalties are in place for breach of the EU asset freeze.

3.2 If no penalties are in place for breach of the EU asset freezing measures, there is a significantly increased risk of breach of the prohibitions, resulting in asset flight. Penalties accordingly need to be put in place as soon as possible following publication of the Council Regulation. The drafting of these Regulations could not, however, be completed until the Council Regulation had been finalised and published.

3.3 The penalties and other provisions contained in these Regulations are in line with those for other EU asset freezing regimes. The financial sector is accordingly aware of the nature of the requirements being placed on them. The Treasury 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 implement the Council Regulation. They introduce ambulatory references to any Annexes to the Council Regulation. Annex I to the Council Regulation

will contain a list of the persons whom the UN has 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, to add or remove names, or to alter identifying information.

4.2 It is necessary that the penalties for breach of the Council Regulation should refer to Annex I as amended from time to time, so that they properly apply 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 Financial Sanctions mailing list. Correspondence with the House of Lords Secondary Legislation Scrutiny Committee concerning the importance of the ambulatory reference is published at Appendix IV to the Committee's 42nd Report of Session 2013–14.

4.3 No Explanatory Memorandum on the Council Decision or Council Regulation for Sudan will be submitted for Parliamentary scrutiny by the Foreign and Commonwealth Office because both documents have been exempted from scrutiny by the Parliamentary Committees.

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom and, outside the United Kingdom, to any UK national and any body incorporated in the UK.

6. European Convention on Human Rights

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 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 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. 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. The penalties in these Regulations are the same as those contained in the domestic regulations imposing penalties for breach of other EU asset freezing regimes.

7.3 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 and create criminal offences for breaching those 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;
- 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;
- provide penalties for committing any of these offences.

7.4 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 Conduct Authority under the Financial Services and Markets Act 2000.

- Consolidation

7.5 These Regulations replace and revoke the Sudan (Asset-Freezing) Regulations 2012 (S.I. 2012/1507).

8. Consultation outcome

These Regulations give further effect to the requirements which are imposed by the Council Regulation. Accordingly it was not considered necessary to consult.

9. Guidance

Guidance on the asset freezing and other financial sanctions measures in relation to Sudan is available on the Treasury's website. Financial Sanctions, within the 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 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. 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. The Treasury has 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

Financial Sanctions at the Treasury Tel: 020 7270 5454 or email: financialsanctions@hmtreasury.gsi.gov.uk can answer any queries regarding the instrument.