EXPLANATORY MEMORANDUM TO

THE SYRIA (ASSET-FREEZING) (AMENDMENT) REGULATIONS 2011

2011 No. 2479

1. This explanatory memorandum has been prepared by Her Majesty's 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

2.1 These Regulations amend the Syria (Asset-Freezing) Regulations 2011 (S.I. 2011/1244) ("the principal Regulations"), which enforce provisions of Council Regulation (EU) No. 442/2011 of 9 May 2011 (OJ L 121, 10.5.2011, p.1) concerning restrictive measures in view of the situation in Syria ("the first Council Regulation"). The first Council Regulation has been amended by Council Regulation (EU) No. 1011/2011 of 13 October 2011 (OJ No. L 269, 14.10.2011, p.18) ("the amending Council Regulation"). Amendments to the principal Regulations are necessary to reflect the application of asset-freezing measures to an additional entity, the Commercial Bank of Syria ("CBS").

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 amending Council Regulation came into force on the day of its publication in the Official Journal, on 14th October 2011. Given the seriousness of the situation in Syria, it is important that appropriate penalties are in place for breach of the asset-freezing measures in respect of CBS.

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 or in the transfer of funds to CBS. Penalties accordingly need to be put in place for breach of the provisions as soon as possible following the coming into force of the amending Council Regulation.

3.3 The penalties and other provisions contained in the principal 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 in relation to asset freezing regimes.

4. Legislative Context

4.1 The amending Council Regulation amends the first Council Regulation by providing for any entities listed in a new Annex IIa to be subject to asset-freezing

measures. A derogation permits, on a temporary basis, the use of funds received by any person listed in Annex IIa after the date of listing for the purpose of making a payment under a trade contract.

4.2 It is necessary to amend the principal Regulations to reflect the addition of the new annex and the new derogation. There is currently only one entity listed in Annex IIa (CBS), but the list in Annex IIa may be amended from time to time, to add or remove names, or to alter identifying information. It is therefore necessary that the penalties and other provisions in the principal Regulations should apply to persons listed in Annex IIa as amended from time to time. Any changes to the list of persons in Annex IIa 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.

4.3 It was not possible for the Foreign and Commonwealth Office to submit the draft Council Decision (Council Decision 2011/684/CFSP of 13 October 2011) and draft amending Council Regulation to the relevant Parliamentary Committees (the Commons EU Scrutiny Committee and the Lords Select Committee on the European Union) for their approval prior to the documents' adoption on 13th October. The Minister for Europe wrote to the Committees on 13th October advising that it would be necessary to override the scrutiny process on this occasion.

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 The EU has decided to impose an asset freeze on CBS on the basis of its provision of financial support for the Syrian regime. However, CBS plays an important part in the financing of trade between Syria and the rest of the world. The EU has therefore sought to mitigate the impact on the Syrian population of the asset freeze by allowing CBS, for a period of only two months, to utilise funds that it receives after the date of its listing to make payments due under trade contracts. Any such payment must be determined by a competent authority of the relevant Member State not to be received directly or indirectly by a person who is subject to an asset freeze.

7.2 The principal Regulations provide for penalties for breach of the asset freezing measures. Member States are required by the first Council Regulation to put in place effective, proportionate and dissuasive penalties.

7.3 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.

- 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 Syria is available on the Treasury's website. The Treasury's Asset Freezing Unit operates a free subscription email service alerting subscribers to changes to the asset freezing regime, and to other financial sanctions measures. A dedicated email address is available for the financial sector and any other persons to submit queries on the asset freezing regime. A notice explaining the amending Council Regulation is available on the Treasury website and was emailed to subscribers.

10. Impact

10.1 The impact on business, charities and voluntary bodies is negligible, because the principal Regulations (as amended) 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 the principal Regulations (as amended).

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 asset freezing 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 first Council Regulation if it is further 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.