EXPLANATORY MEMORANDUM TO

THE SYRIA (ASSET-FREEZING) REGULATIONS 2011

2011 No. 1244

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

The Regulations put in place criminal penalties for breach of EU financial sanctions in relation to Syria. The financial sanctions are contained in Council Regulation (EU) No. 442/2011 of 9 May 2011 concerning restrictive measures imposed against persons, entities and bodies responsible for violent repression of the civilian population in Syria (the "Council Regulation"). The Council Regulation gives effect to Council Decision 2011/273/CFSP of 9 May 2011.

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 10th May 2011. Given the seriousness of the risks addressed by the Council Regulation, it is important that appropriate penalties are in place for breach of the provisions of the Council Regulation.

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 persons, entities and bodies identified as being responsible for violent repression of the civilian population in Syria. Penalties accordingly need to be put in place as soon as possible following publication of the Council Regulation.

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 in relation to asset freezing regimes.

4. Legislative Context

4.1 The Council Regulation for which these Regulations provide criminal penalties imposes asset freezes on persons, entities and bodies listed in Annex II to the Council Regulation, as that Annex is amended from time to time. Annex II contains a list of persons, entities and bodies who have been identified by the Council as being responsible for violent repression of the civilian population in Syria, and in relation to whom the prohibitions in the Council Regulation are applied. The list may be amended by the Council, to add or remove names, or to alter identifying information.

4.2 It is therefore necessary that the penalties and other provisions in these Regulations should apply in relation to persons, entities and bodies listed in Annex II as amended from time to time. Any changes to the list 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.

4.3 It was not possible for the Foreign and Commonwealth Office to submit the draft Council Decision and 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 9th May as those Committees were not scheduled to sit until after that date. The Minister for Europe wrote to the Committees on 9th May advising that it would be necessary to override the scrutiny process on this occasion and undertook to provide the relevant documents to the Committees.

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

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 considers that such penalties should be criminal, in line with those in place for breaches of other EU sanctions regimes. Criminal

7.3 The Regulations are similar to regulations made in respect of Egypt (the Egypt (Asset-Freezing) Regulations 2011 (S.I. 2011/887)) and Tunisia (the Tunisia (Asset-Freezing) Regulations 2011 (S.I. 2011/888)) which provide penalties for breaches of EU Regulations. These Regulations are broadly similar to regulations made in respect of Libya (the Libya (Asset-Freezing) Regulations 2011 (S.I. 2011/605)) which provide penalties for breach of an EU Regulation which was adopted to give effect to a United Nations resolution.

7.4 The Regulations:

- define a designated person as being listed in Annex II 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 for 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;
- 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.

8. Consultation outcome

No consultation has been carried out in relation to these Regulations.

9. Guidance

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 telephone line and email address are available for the financial sector and any other persons to submit queries on the asset freezing regime. A notice explaining the Council Regulation is available on the Treasury website and has been emailed to subscribers.

10. Impact

10.1 The impact on business, charities and 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 of the Council Regulation.

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 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

The Asset Freezing Unit of HM Treasury Tel: 02072705454 or email: AFU@hmtreasury.gsi.gov.uk can answer any queries regarding the instrument.