

EXPLANATORY MEMORANDUM TO
THE LIBYA (RESTRICTIVE MEASURES) (OVERSEAS TERRITORIES) ORDER

2011 No. 1080

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

2. Purpose of the instrument

2.1 This instrument, The Libya (Restrictive Measures) (Overseas Territories) Order 2011 (“the Order”), gives effect in Overseas Territories to:

(i) restrictive measures imposed by the United Nations Security Council in UN Security Council Resolution 1970 (2011) of 26 February 2011 and UN Security Council Resolution 1973 (2011) of 17 March 2011, which came into effect on the dates of their adoption by the UN Security Council (“the UN measures”); and

(ii) EU autonomous measures (“the EU measures”) imposed in the EU by Council Decision 2011/137/CFSP of 28 February 2011 implemented by Council Regulation (EU) No. 204/2011 adopted on 2 March 2011, Council Implementing Decision 2011/156/CFSP of 10 March implemented by Council Implementing Regulation (EU) No. 233/2011 adopted on 10 March, Council Implementing Decision 2011/175/CFSP of 21 March 2011 implemented in Council Implementing Regulation (EU) No. 272/2011 of 21 March, Council Decision 2011/178/CFSP of 23 March 2011 implemented by Council Implementing Regulation (EU) No. 288/2011 adopted on 23 March 2011 and Council Regulation 296/2011 adopted on 25 March 2011 (“the Council Regulations”). The EU measures came into force on the date of their publication.

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

3.1 None. The Order will be made at the Privy Council meeting on 7th April 2011 and laid before Parliament on the following day. The Order will come into force the day after it is laid so that the sanctions can be enforced immediately.

4. Legislative Context

4.1 This Order is made in exercise of statutory powers in respect of the UN measures and in respect of the autonomous EU measures in some of the Overseas Territories; and is made in exercise of the legislative power of the royal prerogative, in the absence of statutory powers to implement autonomous EU measures in certain Overseas Territories.

4.2 The Order implements aspects of the UN and EU measures against Libya. In particular it gives effect to an arms embargo and asset freezing measures. Part 1 of the Order gives effect in the Overseas Territories listed in Schedule 1 (which include Bermuda) to the UN measures. The measures include a prohibition on the supply or export of arms and related material and equipment and armed mercenary personnel to Libya, and a prohibition on making available funds, financial assets or economic resources to designated persons and entities, who are those listed in Annex II to UN Security Council resolution 1970 (2011) and Annex II to UN Security Council resolution 1973 (2011) or designated by the UN Sanctions Committee as subject to the asset freeze pursuant to paragraph 22 of UNSCR 1970 (2011) and paragraphs 19, 22 or 23 of UNSCR 1973 (2011)) (“UN listed persons”).

4.3 Part 2 of the Order gives effect in the Overseas Territories listed in Schedule 2 (which do not include Bermuda) to autonomous EU measures. The autonomous EU measures involve the imposition of the asset freezing measures on persons and entities listed in Annex III of Council Implementing Regulation (EU) No 204/2011, as amended from time to time (“EU listed persons”). An additional exemption, for payments for humanitarian purposes, is also inserted into the asset freezing measures that apply to EU listed persons.

4.4 The statutory and prerogative powers to legislate for the Overseas Territories are applicable to the territories as follows:

- The United Nations Act 1946 applies to Anguilla, Bermuda, British Antarctic Territory, British Indian Ocean Territory, Cayman Islands, Falkland Islands,

Montserrat, Pitcairn, Henderson, Ducie and Oeno Islands, St Helena, Ascension and Tristan da Cunha, South Georgia and the South Sandwich Islands, the Sovereign Base Areas of Akrotiri and Dhekelia in the Island of Cyprus, Turks and Caicos Islands and the Virgin Islands;

- The Saint Helena Act 1833 applies to Saint Helena;

- The British Settlement Acts 1887 and 1945 are applicable to Ascension and Tristan da Cunha, British Antarctic Territory, the Falkland Islands, Pitcairn (including Henderson, Ducie and Oeno Islands), and South Georgia and the South Sandwich Islands;

- The prerogative legislative power is applicable to Anguilla, British Indian Ocean Territory, Cayman Islands, Montserrat, the Sovereign Base Areas of Akrotiri and Dhekelia, Turks and Caicos Islands, and the Virgin Islands.

5. Territorial Extent and Application

5.1 This instrument applies to the following territories: Anguilla, British Antarctic Territory, British Indian Ocean Territory, Cayman Islands, Falkland Islands, Montserrat, Pitcairn, Henderson, Ducie and Oeno Islands, St Helena, Ascension and Tristan da Cunha, South Georgia and the South Sandwich Islands, the Sovereign Base Areas of Akrotiri and Dhekelia in the Island of Cyprus, Turks and Caicos Islands and the Virgin Islands. All the territories were consulted. Bermuda will make its own provision, in order to implement the autonomous EU measures in Part 2 of the Order, as the UK is unable to legislate for Bermuda using prerogative powers. The asset freeze is given effect in Gibraltar by the Council Regulations and Gibraltar will legislate itself to implement the UN measures.

6. European Convention on Human Rights

6.1 This Order is made under statutory powers and under the Royal Prerogative and although laid is not subject to any Parliamentary procedure. As the instrument is not subject to Parliamentary procedure and does not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

7.1 The UK fully supports the UN and EU restrictive measures against Libya. This Order assists the UK's compliance with its UN obligations to implement UN Security Council restrictive measures and its commitment to implement autonomous EU restrictive measures in the Overseas Territories.

7.2 On 26 February 2011, the UN Security Council adopted a resolution to respond to the situation in Libya. UNSCR 1970 (2011) imposed immediate measures with the aim of stopping the violence, ensuring accountability and facilitating humanitarian aid. The restrictive measures imposed by the UNSCR 1970 (2011) include an arms embargo and asset freeze on six named individuals.

7.3 Council Decision 2011/137/CFSP) of 28 February 2011 and Council Regulation (EU) No. 204/2011 implement measures in UNSCR 1970 (2011) and introduce certain EU autonomous measures, including extending the scope of the asset freeze, and the scope of the arms embargo to cover equipment which could be used for internal repression.

7.4 Council Implementing Decision 2011/156/CFSP of 19 March, implemented by Council Implementing Regulation (EU) No. 233/2011 of 10 March, added to the list of persons and entities covered by the EU asset freeze ("EU listed persons"). Council Implementing Decision 2011/175/CFSP of 21 March, implemented by Council Implementing Regulation (EU) No. 272/2011 of 21 March, added further persons and entities to the EU listed persons.

7.5 On 17 March 2011, the UN Security Council adopted resolution 1973 (2011). In addition, to authorising a no-fly zone for Libya and calling for an immediate cease-fire, measures in UNSCR 1973 (2011) include an additional asset freeze measure and new list of persons and entities covered by the asset freeze. Council Decision 2011/178/CFSP of 23 March 2011, implemented by Council Implementing Regulation (EU) No. 288/2011 of 23 March and Council Regulation (EU) No. 296/2011 of 25 March 2011, give effect to the measures in UNSCR 1973 (2011),

make changes to the EU autonomous measures and consolidate the lists of EU and UN listed persons.

8. Consultation

8.1 The Overseas Territories to which the Order applies have been consulted on the initial draft Order.

9. Guidance

9.1 Guidance may be sought from the contact below.

10. Impact

10.1 A Regulatory Impact Assessment has not been prepared for this instrument, as it has no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is negligible.

11. Regulating small business

11.1 The legislation applies to small business, as it does to all persons and businesses in the Territories.

12. Monitoring & review

12.1 EU restrictive measures are monitored and reviewed by the Council of the European Union. UN restrictive measures are monitored and reviewed by the UN Security Council, and by a Sanctions Committee and Panel of Experts mandated by UNSR 1970 (2011) and UNSR 1973 (2011) respectively.

12.2 If the UN or EU measures are suspended or lifted, this Order will be reviewed and suspended or revoked as necessary.

13. Contact

Kevin Lockwood at the Foreign and Commonwealth Office, Tel: 020 7008 3830 or email: kevin.lockwood@fco.gov.uk can answer any queries regarding the instrument.