

**EXPLANATORY MEMORANDUM TO
THE LIBYA (RESTRICTIVE MEASURES) (OVERSEAS TERRITORIES)
(AMENDMENT) ORDER 2011**

2011 No. 2717

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) (Amendment) Order 2011 (“the Order”) makes minor corrections to The Libya (Restrictive Measures) (Overseas Territories) Order 2011 (S.I. 2011 No. 1080) (“the principal Order”), and amends the principal Order to give effect in the Overseas Territories to:

(i) changes to the restrictive measures imposed by the United Nations Security Council in respect of Libya, specified in UN Security Council resolution 2009 (2011) of 16 September 2011 which came into effect on the date of its adoption by the UN Security Council (“the UN measures”); and

(ii) a change to the EU autonomous restrictive measures in respect of Libya, imposed in the EU by Council Regulation (EU) No. 572/2011 adopted by the Council of the European Union on 16 June 2011 which came into effect on the date of its publication in the Official Journal of the European Union, 17 June 2011.

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 16 November 2011 and laid before Parliament on the following day. The Order will come into force the day after it is laid so that the modifications to the sanctions can take effect quickly.

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 the autonomous EU measures in certain Overseas Territories. The statutory and prerogative powers to legislate for the Overseas Territories are applicable to the Overseas Territories as follows:

(i) 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;

(ii) The Saint Helena Act 1833 applies to St Helena;

(iii) 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;

(iv) 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.

4.2 Part 1 of the principal Order gives effect to the UN measures specified in United Nations Security Council resolutions 1970 (2011) and 1973 (2011) in the Overseas Territories listed in Schedule 1 which include Bermuda. Part 2 of the principal Order gives effect to autonomous EU measures in the Overseas Territories listed in Schedule 2 which do not include Bermuda.

4.3 The Order implements aspects of the changes to the UN asset freeze and arms embargo measures specified in UN Security Council resolution 2009 (2011), by amending provisions in Part 1 of the principal Order. The Order implements changes to the autonomous EU restrictive measures by amending provisions in Part 2 of the principal Order. In particular:

(i) in relation to the UN asset freeze, it lifts the asset freeze measures in relation to the Libyan National Oil Corporation and Zueitina Oil Company; and it partially

lifts the asset freeze measures in relation to the Central Bank of Libya, the Libya Arab Foreign Bank, the Libyan Investment Authority and the Libyan Africa Investment Portfolio, while providing for a new basis for licensing exemptions to the remaining asset freeze in relation to those entities;

(ii) in relation to the EU autonomous asset freeze provisions it modifies the humanitarian exemption;

(iii) it retains the UN arms embargo provisions, but adds two new bases for licensing exemptions to the embargo: first, for the supply, sale or transfer to Libya of arms and related materiel, including assistance, intended solely for security or disarmament assistance to the Libya authorities; secondly, where small arms, light weapons and related materiel are temporarily exported to Libya for the sole use of United Nations personnel, representatives of the media and humanitarian and development workers and associated personnel; and

(iv) it ensures that the EU autonomous arms embargo in relation to items that could be used for internal repression is fully implemented.

5. Territorial Extent and Application

5.1 This Order extends to the following Overseas Territories: 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 territories”), apart from paragraphs 14 and 15 of article 2 of the Order which extend to all the territories except Bermuda. All the territories were consulted. Bermuda will make its own provision in order to implement the change to the autonomous EU measures in Part 2 of the Order, as the UK is unable to legislate for Bermuda using prerogative powers. The changes to the asset freeze and arms embargo provided for by the EU are given effect in Gibraltar by Council Regulation (EU) No. 204/2011 of 2 March 2011, as amended, and Gibraltar will legislate itself to implement other aspects of 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, which are now being gradually lifted by the UN and the EU. The principal Order assisted 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. This Order is required in order to implement changes to the UN and EU restrictive measures specified by the UN Security Council and the Council of the European Union. Any relevant future changes to the UN and EU measures will be reflected in further amending legislation as required.

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 UNSCR 1970 (2011) included an arms embargo and asset freeze in relation to listed persons and entities. Council Decision 2011/137/CFSP) of 28 February 2011 and Council Regulation (EU) No. 204/2011 implemented measures in UNSCR 1970 (2011) and introduced 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.

7.3 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) included 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, gave effect to the measures in UNSCR 1973 (2011), made changes to the EU autonomous measures and consolidated the lists of EU and UN listed persons. Council Regulation (EU) No 572/2011 of 16 June 2011 modified the humanitarian exemption applicable in relation to the EU autonomous asset freeze.

7.4 On 16 September 2011, in light of changes on the ground resulting from the conflict in Libya including the control of Tripoli by the National Transitional Council, the UN Security Council adopted resolution 2009 (2011). The measures in UNSCR 2009 included changes to the list of entities covered by the asset freeze, the imposition of a partial asset freeze in relation to four financial entities and a new exemption in respect of that partial freeze, two new exemptions to the arms embargo and lifting of the flight ban. Equivalent changes have been made to the EU implementing measures by Council Decision 2011/625/CFSP of 22 September 2011 and Council Regulation (EU) No 965/2011 of 28 September 2011.

7.5 On 27 October 2011, the UN Security Council adopted resolution 2016 (2011), which lifted the provision in UNSCR 1973 authorising the use of all necessary measures to protect civilians and civilian populated areas under threat of attack in Libya, and terminated the no-fly zone. UNSCR 2016 retained the arms embargo and asset freeze provisions as amended by UNSCR 2009.

8. Consultation outcome

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 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. EU restrictive measures are monitored and reviewed by the Council of the European Union.

12.2 If the UN or EU measures are suspended or lifted, the principal Order, as amended by 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.