

EXPLANATORY MEMORANDUM TO
THE BURMA AND SOMALIA (SANCTIONS) (OVERSEAS TERRITORIES)
(AMENDMENT) ORDER 2018

2018 No. 1351

1. Introduction

- 1.1 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 Order gives effect in specified Overseas Territories to restrictive measures adopted by the Council of the European Union on 26 April 2018 in respect of Burma, and a minor textual amendment made by resolution 2385 (2017) of the Security Council of the United Nations on 14 November 2017 in respect of Somalia.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is not subject to parliamentary procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business.

4. Extent and Territorial Application

- 4.1 The extent of this instrument is: Anguilla, British Antarctic Territory, British Indian Ocean Territory, Cayman Islands, the Falkland Islands, Montserrat, Pitcairn (including 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, the Turks and Caicos Islands and the Virgin Islands (“the Territories”).

- 4.2 The application of this instrument is the Territories and:

- (a) any person in the Territories,
- (b) any person elsewhere who is–
 - (i) British overseas territories citizen, a British overseas citizen, a British subject, a British national (overseas) or a British protected person and is ordinarily resident in a Territory, or
 - (ii) a body incorporated or constituted under the law of a Territory, and
- (c) any person onboard a ship or aircraft that is registered in a Territory.

5. European Convention on Human Rights

5.1 As the instrument is not subject to parliamentary procedure, no statement is required.

6. Legislative Context

6.1 This Order is made in exercise of statutory powers under the United Nations Act 1946, the Saint Helena Act 1833, the British Settlements Acts 1887 and 1945, and the legislative power of the Royal prerogative.

6.2 The statutory and prerogative powers to legislate for the Territories to implement enforcement measures associated with the application of sanctions are applicable to the Territories as follows:

- (i) the United Nations Act 1946 applies to all Overseas Territories;
- (ii) the Saint Helena Act 1833 applies to St Helena;
- (iii) the British Settlements 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.

7. Policy background

What is being done and why?

7.1 With respect to Burma, on 26 February 2018, the Council of the European Union adopted conclusions condemning the ongoing, widespread, systematic, grave human rights violations committed by the Burmese military and security forces in Rakhine, Kachin, and Shan states in Burma. It also called for the strengthening of the restrictive measures already in place in respect of Burma, under Council Decision 2013/184/CFSP, adopted on 22 April 2013.

7.2 On 26 April 2018, the Council of the European Union adopted Council Decision (CFSP) 2018/655 and Council Regulation (EU) 2018/647, imposing further restrictive measures against Burma in the form of an embargo on dual-use equipment for military use in Burma, or to any military end-user, or to the Burmese Border Guard Police, and an embargo on specific communication equipment and measures to prevent the misuse of communication equipment. The Council also decided to impose targeted restrictive measures against persons from the Burmese military or Border Guard Police responsible for serious human rights violations in Burma, obstructing the provisions of humanitarian assistance to civilians in need, or obstructing conduct of independent investigations into alleged serious human rights violations or abuses, and persons, entities, or bodies associated with them. On 25 June 2018, the Council decided to subject seven named individuals to the measures.

7.3 The restrictive measures include an asset freeze, which requires that all funds and economic resources belonging to, owned, held or controlled by the designated person are frozen, and prohibits funds or economic resources from being made available directly or indirectly to or for the benefit of the designated person. As at the date of this memorandum, the Council has not yet subjected any persons to the measures.

- 7.4 There is no international or European law obligation to implement in the Territories restrictive measures adopted by the European Union. However, it is the policy of Her Majesty's Government to give effect to these measures in the Territories in order to make sanctions as effective as possible. In accordance with usual practice, this Order provides for the relevant criminal offences and enforcement powers in the Territories.
- 7.5 With respect to Somalia, this Order also ensures that a minor textual amendment made by the United Nations Security Council to the United Nations Somalia sanctions regime in resolution 2385 (2017), adopted on 14 November 2017, is enacted in the Territories. This amendment reflects a change in terminology in respect of an exemption from asset-freezing measures for humanitarian purposes, replacing a reference to "UN Consolidated Appeal for Somalia" to "United Nations Humanitarian Response Plan for Somalia".
- 8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**
- 8.1 This instrument does not relate to withdrawal from the European Union.
- 9. Consolidation**
- 9.1 The Foreign and Commonwealth Office will keep the need for consolidation under review.
- 10. Consultation outcome**
- 10.1 The Territories have been consulted on the Order in draft.
- 11. Guidance**
- 11.1 No guidance will be issued.
- 12. Impact**
- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies in the United Kingdom.
- 12.2 There is no, or no significant, impact on the public sector in the United Kingdom.
- 12.3 An Impact Assessment has not been prepared for this instrument.
- 13. Regulating small business**
- 13.1 The legislation does not apply to activities that are undertaken by small businesses in the United Kingdom.
- 14. Monitoring & review**
- 14.1 European Union measures are monitored and reviewed by the Member States of the European Union. This Order will be reviewed and amended as appropriate following any modifications to the sanctions regime by the European Union.
- 15. Contact**
- 15.1 Ben Brzezicki at the Foreign and Commonwealth Office Telephone: 0207 008 0460 or email: ben.brzezicki@fco.gov.uk can be contacted with any queries regarding the instrument.

- 15.2 Alison Williams, Legal Counsellor at the Foreign and Commonwealth Office, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Rt Hon Mark Field MP, Minister of State at the Foreign and Commonwealth Office, can confirm that this Explanatory Memorandum meets the required standard.