

EXPLANATORY MEMORANDUM TO
THE BURMA (RESTRICTIVE MEASURES) (OVERSEAS TERRITORIES) ORDER
2009

2009 No. 3008

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 Burma (Restrictive Measures) (Overseas Territories) Order 2009 (“the Order”), gives effect in Overseas Territories to additional restrictive measures imposed by Council Common Position 2007/750/CFSP adopted on 19th November 2007 and implemented in Council Regulation (EC) No 194/2008 adopted on 25th January 2008, which came into force on 10th March 2008, the date of its publication. Existing restrictive measures against Burma contained in the Burma (Restrictive Measures) (Overseas Territories) Order 2004 (S.I. 2004/1979), as amended by the Burma (Restrictive Measures) (Overseas Territories) (Amendment) Order 2004 (S.I. 2004/3333), (together referred to as “the 2004 Order”), are maintained in the Order which replaces the 2004 Order.

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 17th November 2009 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, like the 2004 Order, is made in exercise of statutory powers and the legislative power of the royal prerogative, in the absence of statutory powers to implement an autonomous or stand-alone EU measure in certain Overseas Territories. The 2004 Order gave effect to measures adopted by the EU in Council Common Position 2004/423/CFSP and implemented by Council Regulation (EC) No 798/2004

of 26th April 2004. Council Common Position 2004/423/CFSP was replaced by Council Common Position 2006/318/CFSP of 27th April 2006, which was amended by Council Common Position 2007/750/CFSP. Council Common Position 2006/318/CFSP, as amended, is now implemented in Council Regulation (EC) No 194/2008.

4.2 The 2004 Order prohibited the supply or export to Burma of arms and restricted material, and equipment which might be used for internal repression, described as “restricted goods”. The provision of any form of assistance, advice or training related to restricted goods was also prohibited. An asset freeze on members of the Government of Burma, and associated persons and entities, listed in Council Common Position 2004/423/CFSP, was also imposed by the 2004 Order, which in addition prohibited investment in Burmese state-owned enterprises listed in Council Regulation (EC) No 798/2004.

4.3 The Order retains the prohibitions mentioned above and adds new restrictive measures. The additional measures are as follows. There is a ban on the supply of relevant goods and technology to Burmese enterprises engaged in specific industries which provide revenue to the military regime. The list of persons and entities subject to the asset freeze is extended. Specified goods originating in Burma are prohibited to be imported. The scope of the investment ban is expanded to include a wider range of Burmese enterprises.

4.4 The additional EU measures were further implemented in the UK by The Burma/Myanmar (Financial Sanctions) Regulations 2009 (S.I. 2009/1495) which came into force on 18th June 2009, and by The Export Control (Burma) Order 2008 (S.I. 2008/1098) which came into force on 23rd April 2008. The present draft Order is consistent with these provisions.

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

- 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 requires to make its own provision as the UK is unable to legislate for Bermuda using prerogative powers. The asset freeze is given effect in Gibraltar by the EC Regulation.

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.

6.2 The procedures for designating individuals are fully compliant with fundamental rights. Individuals may only be listed where evidence exists that they meet the criteria for listing in the Common Position. Details of persons listed are published in the Official Journal of the European Union and those listed are given the opportunity to make representations. Furthermore, individuals subject to restrictive measures are entitled to challenge the Regulation before the Court of First Instance.

7. Policy background

- *What is being done and why*

7.1 The UK fully supports the EU measures against the Burma military regime responsible for the continuing violations of human rights in Burma and for their

failure to enter into substantive discussions with the democratic movement concerning a process leading to national reconciliation, respect for rights and democracy.

- ***Consolidation***

7.2 This Order represents the UK's compliance in respect of the applicable Overseas Territories with the commitment to implement the EU sanctions.

8. Consultation outcome

8.1 The Overseas Territories to which the Order applies were consulted and have no objections to the Order being made.

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.

11.2 The impact on small business is negligible.

12. Monitoring & review

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

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

13. Contact

David Ballantyne at the Foreign and Commonwealth Office, Tel: 020 7008 2131 or email: david.ballantyne@fco.gov.uk, can answer any queries regarding the instrument.