

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

2011 No. 2440

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**

This instrument, The Belarus (Restrictive Measures) (Overseas Territories) Order 2011 (“the Order”), gives effect in specified Overseas Territories to EU autonomous measures (“the EU measures”) imposed in the EU by Council Decision 2010/639/CFSP which entered into force on 26 October 2010, as amended by Council Decision 2011/357/CFSP which entered into force on 20 June 2011, and implemented by Council Regulation (EU) No. 765/2006 which entered into force on 20 May 2006, as amended by Council Regulation (EU) No. 588/2011 which entered into force on 20 June 2011. Other relevant measures include Council Implementing Decision 2011/174/CFSP of 21 March 2011, Council Implementing Regulation (EU) No. 271/2011 adopted on 21 March 2011, Council Implementing Decision 2011/301/CFSP of 23 May 2011, Council Implementing Regulation (EU) No. 505/2011 of 23 May 2011. Each of the abovementioned EU measures came into force on the date of its publication.

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

None. The Order will be made at the Privy Council meeting on 12 October 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 in the Overseas Territories immediately.

4. Legislative Context

4.1 This Order is made in exercise of statutory powers and the legislative power of the Royal Prerogative, in the absence of statutory powers, to implement the EU measures against Belarus in certain Overseas Territories. The Order gives effect to the measures adopted by the EU in Council Decision 2010/639/CFSP (“the Council Decision) and implemented by Council Regulation (EU) No. 765/2006, as subsequently amended, which entered into force on 25 October 2010 (“the Council Regulation”).

4.2 The Order gives effect in the specified Overseas Territories to the EU arms embargo against Belarus and related asset freeze. The measures in the Order include a prohibition on the supply and delivery of arms and related materiel. The Order also makes provision to freeze the funds and economic resources of those persons responsible for (i) failure to initiate independent investigation and prosecution concerning the disappearances of four well-known persons in Belarus in 1999/2000, (ii) the fraudulent elections and referendum in Belarus on 17 October 2004 and those who are responsible for severe human rights violations in the repression of peaceful demonstrators in the aftermath of the elections and referendum in Belarus, (iii) the violations of international electoral standards in the presidential elections in Belarus on 19 March 2006, and the crackdown on civil society and democratic opposition, and (iv) the violations of international electoral standards in the Presidential elections in Belarus on 19 December 2010 and the crackdown on civil society and democratic opposition, and those natural or legal persons, entities or bodies associated with them.

4.3 The statutory and prerogative powers to legislate for the Overseas Territories are applicable to them 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

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 adopt its own implementing legislation as the UK is unable to legislate for Bermuda using prerogative powers. The EU measures are given effect to in Gibraltar by the Council Regulation which is directly applicable in Gibraltar.

6. European Convention on Human Rights

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 Council Decision. 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 the EU measures are entitled to challenge the Council Regulation before the General Court of the European Union.

7. Policy background

- *What is being done and why*

7.1 The UK fully supports the EU measures against Belarus. This Order implements the EU measures in the Overseas Territories.

7.2 Following marred and disputed presidential elections on 19 December 2010, the EU re-imposed restrictive measures in January 2011 through Council Decision No

2011/69/CFSP and Council Implementing Regulation (EU) No 84/2011. These had previously been suspended in 2008. On 21 March 2011, the Foreign Affairs Council adopted a Council Implementing Decision 2011/174/CFSP and Council Implementing Regulation (EU) No 271/2011 which extended the restrictive measures to further officials in view of the gravity of the situation in Belarus. An additional 19 Belarus officials were included in the lists of persons subject to these measures such as visa restrictions and assets freeze.

7.3 In view of the continuing gravity of the situation in Belarus the EU adopted Council Decision 2011/357/CFSP of 20 June 2011 which imposed an arms embargo and targeted further persons for a travel ban and asset freeze, judged to meet the designating criteria.

8. Consultation

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

9. Guidance

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

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

12. Monitoring & review

12.1 The EU 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

Paul Smith at the Foreign and Commonwealth Office, Tel: 020 7008 3697 or email: paul.smith@fco.gov.uk can answer any queries regarding the instrument.