

**EXPLANATORY MEMORANDUM TO
THE LIBYA (RESTRICTIVE MEASURES) (OVERSEAS TERRITORIES)
(AMENDMENT) ORDER 2012**

2012 No. 356

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 2012 (“the Order”) amends The Libya (Restrictive Measures) (Overseas Territories) Order 2011 (S.I. 2011 No. 1080) (as amended previously by The Libya (Restrictive Measures) (Overseas Territories) (Amendment) Order 2011 (S. I. 2011 No. 2717)) (“the principal Order”) to give effect in the Overseas Territories to changes to the restrictive measures imposed by the United Nations Security Council in respect of Libya, namely a decision by the Sanctions Committee established by paragraph 24 of UN Security Council resolution 1970 (2011) (“the UN Sanctions Committee”) on 16 December 2011 to lift the asset freeze on the Central Bank of Libya and the Libyan Arab Foreign Bank.

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 15 February 2012 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 under the United Nations Act 1946, the Saint Helena Act 1833, the British Settlement Acts 1887 and 1945 and the legislative power of the royal prerogative (in the absence of statutory powers).

4.2 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 (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 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.

4.3 The principal Order gives effect to the UN measures specified in United Nations Security Council resolutions 1970 (2011), 1973 (2011) and 2009 (2011), implemented in Council Decision 2011/137/CFSP and Council Regulation (EU) No. 204/2011, as amended, in the Overseas Territories. The Order implements changes to the asset freeze measures by amending provisions in the principal Order to lift the measures in relation to the Central Bank of Libya and the Libyan Arab Foreign Bank. Under article 3 of the principal Order the Governor is required to maintain a list of designated persons and persons referred to in paragraph 15 of Security Council resolution 2009 (2011) and cause that list to be published in the Gazette as necessary from time to time.

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”).

5.2 The UN sanctions measures in relation to Libya implemented by the EU are given effect in Gibraltar by Council Regulation (EU) No. 204/2011 of 2 March 2011, as amended (most recently by Council Regulation (EU) No 1360/2011 of 20 December 2011).

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 A number of UN and EU restrictive measures are in place against Libya, which are now being gradually lifted. The UK is fully supportive of UN and EU action. 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 to implement the UN Sanctions Committee’s decision of 16 December 2011 to lift the partial asset freeze on the Central Bank of Libya and the Libyan Arab Foreign Bank.

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 were 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.

7.6 On 16 December 2011 the UN Sanctions Committee decided to lift the asset freeze on the Central Bank of Libya and the Libyan Arab Foreign Bank, in accordance with its mandate from the UN Security Council under paragraph 19 of UN Security Council resolution 2009 (2011). This decision was implemented by the EU in Council Decision 2011/867/CFSP and Council Regulation (EU) No

1360/2011, both of 20 December 2011. A partial asset freeze remains in place in relation to the Libyan Investment Authority and the Libyan Africa Investment Portfolio.

8. Consultation outcome

8.1 The Overseas Territories to which the Order applies have been consulted on the initial draft of this 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 UNSCR 1970 (2011) and UNSCR 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

David Kinna at the Foreign and Commonwealth Office, Tel: 020 7008 3583 or email: david.kinna@fco.gov.uk can answer any queries regarding the instrument.

