

EXPLANATORY MEMORANDUM TO

THE SANCTIONS (OVERSEAS TERRITORIES) (AMENDMENT) ORDER 2019

2019 No. 185

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.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument makes provision to amend a number of other sanctions-related instruments. In particular, it amends the Sanctions (Overseas Territories) (Amendment of Information Provisions) Order 2018 (S.I. 2018/1076) to remove a defectively drafted provision in that Order, which cannot be effected, and amends the Libya (Restrictive Measures) (Overseas Territories) Order 2011 (S.I. 2011/1080) in lieu of that defective provision.
- 2.2 The instrument also provides that the Lebanon and Syria (United Nations Measures) (Overseas Territories) Order 2006 (S.I. 2006/311), the Lebanon (United Nations Sanctions) (Overseas Territories) Order 2007 (S.I. 2007/283) and Part 1 of S.I. 2011/1080 will no longer extend to Bermuda.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 In its Thirty-eighth Report of Session 2017-19 (“Report”), the Joint Committee on Statutory Instruments drew special attention to S.I. 2018/1076 on the grounds that it was defectively drafted in one respect and that it required elucidation in one respect (a more detailed summary of the issues identified by the Joint Committee is set out at paragraphs 7.2 and 7.3 of this explanatory memorandum).
- 3.2 In a memorandum to the Joint Committee, which was appended at Appendix 3 to the Report, the Foreign and Commonwealth Office undertook to correct the defective drafting in article 8 of S.I. 2018/1076 and, further, to make provision that certain sanctions-related instruments should no longer extend to Bermuda where those instruments already have the force of law in Bermuda through the International Sanctions Regulations 2013 (BR 14/2013).
- 3.3 Given that article 5 of this instrument makes provision in consequence of a defect in S.I. 2018/1076, it is being issued free of charge to all known recipients of that Statutory Instrument. However, the amendments described in paragraphs 2.2 and 7.3 of this explanatory memorandum are new provisions and so free replacement copies of the three Statutory Instruments being amended will not be provided. This approach has been agreed in principle with the SI Registrar.

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)

- 3.4 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, Bermuda, 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”); except for article 2 of this instrument, which extends to all the Territories, except Bermuda.

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 instrument is made in exercise of statutory powers under section 1 of 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 the 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 Paragraphs 3.1 and 3.2 of this explanatory memorandum set out the relevant background and correspondence with the Joint Committee on Statutory Instruments. Paragraphs 7.2 and 7.3 below explain in detail the reasons for the amendments to be effected by this instrument.

- 7.2 Article 8(3) of S.I. 2018/1076 purports to amend article 30(5) of S.I. 2011/1080 to create two definitions of “relevant person”—one in respect of a relevant financial

institution and one in respect of a relevant business or profession. The amendment purported to substitute text, but due to a drafting error the substitution could not be effected – this was because the drafter had used ‘paragraph’ instead of ‘article’ which meant that the text to be substituted could not be identified. Therefore, this instrument makes provision to remove the defective paragraph in S.I. 2018/1076 and to make an amendment to S.I. 2011/1080, as the principal order, in order that the policy intention may be effected.

- 7.3 In recent years it has been standard practice that the instruments giving effect to sanctions regimes in the UK’s Overseas Territories apply to all the other territories, but not to Bermuda or Gibraltar. This is because Bermuda and Gibraltar make their own domestic legislation. However, S.I. 2006/311, S.I 2007/283 and Part 1 of S.I. 2011/1080 are expressed still to extend to Bermuda, despite those instruments having the force of law in Bermuda through the International Sanctions Regulations 2013 (BR 14/2013) made by the Minister of Legal Affairs of Bermuda on 21 March 2013, as amended. Therefore, this instrument will remove that duplication by providing that those three instruments will not extend to Bermuda.

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 This instrument will make minor amendments to existing sanctions orders. Therefore there is no need for consolidation. 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 The Foreign and Commonwealth Office will review this and other relevant orders as appropriate following any modifications to existing sanctions regimes.

15. Contact

- 15.1 George Howe at the Foreign and Commonwealth Office Telephone: 0207 008 1585 or email: george.howe@fco.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Nicola Smith, Legal Counsellor at the Foreign and Commonwealth Office, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Rt Hon Sir Alan Duncan KCMG MP, Minister of State at the Foreign and Commonwealth Office, can confirm that this Explanatory Memorandum meets the required standard.