EXPLANATORY MEMORANDUM TO

THE AFGHANISTAN (UNITED NATIONS MEASURES) (OVERSEAS TERRITORIES) ORDER 2012

2012 No. 1758

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 Afghanistan (United Nations Measures) (Overseas Territories) Order 2012 ("the Order"), implements an arms embargo and asset freeze in respect of targeted individuals, groups, undertakings and entities associated with the Taliban in constituting a threat to the peace, stability and security of Afghanistan, in the Overseas Territories listed below (in paragraph 5). It gives effect to United Nations Security Council resolution 1988 (2011) adopted on 17th June 2011.

2.2 UN Security Council resolutions 1988 (2011) and 1989 (2011) were adopted by the UN Security Council in parallel, and split the existing Al-Qaida and Taliban sanctions regime, first imposed by UN Security Council resolution 1267 (1999), into two separate sanctions regimes. Resolution 1988 maintains the previous UN Security Council sanctions against the Taliban; and resolution 1989 maintains the previous UN Security Council sanctions against Al-Qaida, which are to be implemented in the Overseas Territories by separate Order (The Al-Qaida (United Nations Measures) (Overseas Territories) Order 2012 ("the Al-Qaida Order")). The Al-Qaida Order is also to be made at the Privy Council meeting on 10 July 2012 and revokes The Al-Qa'ida and Taliban (United Nations Measures) (Overseas Territories) Order 2002 and

the Al-Qa'ida and Taliban (United Nations Measures) (Overseas Territories) (Amendment) Order 2002 (together "the 2002 Order").

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

3.1 The Order is made using a combination of statutory and prerogative powers (detailed below) rather than just the powers under the United Nations Act 1946 which was used for the 2002 Order. We have used this combination of powers following the judgment of the Supreme Court in Ahmed v HMT[1] which struck down the Al-Qaida and Taliban (United Nations Measures) Order 2006 which implemented the Al-Qaida and Taliban sanctions regime in the UK. Whilst that judgment did not apply to, or strike down, the 2002 Order, it casts doubt on the ability to implement UN asset freezing measures applicable to Al Qaida and Taliban solely on the basis of the UN Act 1946. The remaining powers have therefore been used, in addition to the UN Act 1946, so that there could be no question but that the necessary enabling powers exist to make all provisions of the Order.

3.2 The Order will be made at the Privy Council meeting on 10th July 2012 and laid before Parliament on 17th July 2012. The Order will come into force on 7th August 2012.

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).

[1] **[2010] UKSC 2**

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 all Overseas Territories;

(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 This Order applies, in the Overseas Territories specified in Schedule 1 to the Order, restrictive measures equivalent to those adopted by the United Nations Security Council in resolution 1988, which imposed an asset freeze in respect of individuals, groups, undertakings and entities associated with the Taliban in constituting a threat to the peace, stability and security of Afghanistan, as designated by the UN Security Council, and prohibited funds being made available to such persons. It also prohibited the supply of military goods and technical assistance related to military activities to designated persons.

5. Territorial Extent and Application

This Order applies to the following territories: 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. As the UK is unable to legislate for Bermuda using prerogative powers, Bermuda will legislate independently to implement this sanctions regime. The measures are given effect in Gibraltar by Council Regulation 753/2011, as amended, which is directly applicable in Gibraltar.

6. European Convention on Human Rights

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

The UK Government strongly supports the UN Security Council's decision to create separate sanctions regimes focused on Al-Qaida and Afghanistan through resolutions 1988 and 1989 (2011). The changes in both UN Security Council resolutions constitute a significant step forward in ensuring that sanctions respond to current terrorist threats, adapt to the new situation in Afghanistan, and ensure fair, clear and effective procedures.

8. Consultation

The Overseas Territories were consulted about the Order.

9. Guidance

Guidance may be sought from the contact below.

10. Impact

A Regulatory Impact Assessment has not been prepared for this instrument.

11. Regulating small business

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

12. Monitoring and Review

12.1 The United Nations restrictive measures are reviewed by the Security Council. Individuals, groups, undertakings or entities seeking to be removed from the Sanctions Committee List can petition to have their case reviewed. There is also provision for review of all names on the List by the Sanctions Committee on a regular basis.

12.2 This Order implements the UK's international obligations. It will be reviewed when the United Nations Security Council takes a decision which has the effect of modifying the sanctions regime.

13. Contact

Paul Jancar (Tel. 020 7008 2558 and email paul.jancar@fco.gov.uk) or Emily Willmott/Naomi Davey (Tel. 020 7008 6451/020 7008 6120 and email willmott.davey@fco.gov.uk) at the Foreign and Commonwealth Office can answer any queries regarding the instrument.