EXPLANATORY MEMORANDUM TO

THE BELARUS (RESTRICTIVE MEASURES) (OVERSEAS TERRITORIES) (AMENDMENT) ORDER 2011

2011 No. 2988

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) (Amendment) Order 2011 ("the Order"), makes two amendments to the Belarus (Restrictive Measures) (Overseas Territories) Order 2011 ("the principal Order"). The first amendment is to remove the redundant definition "Council Regulations" from article 2(1) in the principal Order. The second amendment is to amend the cross reference in article 21(3) of the principal Order from article 17(2) to article 17(3).

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

None. The Order will be made at the Privy Council meeting on 14 December 2011 and laid before Parliament on the following day. The Order will come into force the day after it is laid so that the principal Order is thereby amended in the Overseas Territories specified in the Order.

4. Legislative Context

4.1 This Order is made in exercise of statutory powers and, in the absence of statutory powers, the legislative power of the Royal Prerogative to apply EU restrictive measures against Belarus to certain Overseas Territories. The Order amends the principal Order which applies the restrictive measures adopted by the EU in Council Decision 2010/639/CFSP ("the Council Decision") and implemented by Council Regulation (EU) No. 765/2006 ("the Council Regulation").

4.2 The principal Order applies in the specified Overseas Territories certain restrictive measures imposed by the EU against Belarus including an arms embargo and asset freeze.

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 in the Island of Cyprus, Turks and Caicos Islands, and the Virgin Islands.

5. Territorial Extent and Application

The 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. Bermuda will adopt its own implementing legislation as the UK is unable to legislate for Bermuda using prerogative powers. The EU restrictive measures are given effect 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 information 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 restrictive

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***

The UK fully supports the EU restrictive measures against Belarus. This Order amends the principal Order which applies the EU restrictive measures in the Overseas Territories.

8. Consultation outcome

The Overseas Territories to which the Order applies were consulted on the principal Order and informed about the Order which makes minor amendments to the principal 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 Order applies to small business, as it does to all persons and businesses in the Overseas Territories.

12. Monitoring & review

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

12.2 If the EU restrictive 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.