EXPLANATORY MEMORANDUM TO THE

DEMOCRATIC REPUBLIC OF THE CONGO (RESTRICTIVE

MEASURES) (OVERSEAS TERRITORIES) (AMENDMENT) ORDER 2005

2005 No.1988

1. This Explanatory Memorandum has been prepared by the Foreign and Commonwealth Office and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This instrument (the Amendment Order) amends the Democratic Republic of the Congo (Restrictive Measures) (Overseas Territories) Order 2003 (Statutory Instrument 2003 No. 2627) (the Order) to ensure that the offences created by Articles 3 and 4 of the Order do not overlap. The Amendment Order also gives effect to a Common Position adopted by the Council of the European Union; defines the term "assistance"; and updates the definition of "restricted goods".

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

3.1 The Amendment Order deals with points raised by the Joint Committee on Statutory Instruments in its Twenty-Eighth Report.

4. Legislative Background

4.1 The Order gives effect to Resolution 1493, adopted by the Security Council of the United Nations on 28th July 2003, which imposed an arms embargo on the territory of North and South Kivu and Ituri in the Democratic Republic of the Congo (the DRC) and to Common Position 2002/829 adopted by the Council of the European Union on 17th September 2003 which applied the measures in Resolution 1493 to the whole of the territory of the DRC.

4.2 The Joint Committee on Statutory Instruments in its Twenty-Eighth Report reported the Order for an unexpected use of an enabling power on the basis that at present the offences created by Articles 3 and 4 of the Order overlap to a certain extent in that both make it an offence for a person knowingly to export restricted goods (without the authority of a licence) from an Overseas Territory to the DRC. The Amendment Order corrects this by re-drafting Article 4 (in line with the Liberia (Restrictive Measures) (Overseas Territories) Order 2004 (S.I. 2004/347)) so that it does not overlap with Article 3.

4.3 On 13 June 2005 the Council of the European Union adopted Council Common Position 2005/440 to integrate the arms embargo imposed by Common Position 2002/829 with new measures imposed following the adoption of Resolution 1596 by the Security Council of the United Nations on 18 April 2005. To give effect to the precise wording of the arms embargo wording in Common Position 2005/440 the Amendment Order amends Article 5 of the Order to make it clear that it is prohibited to provide assistance, advice or training related to the provision, manufacture, maintenance and use of arms and related matériel and that the prohibition also applies where advice, assistance or training is provided to any person, entity or body in, or for use in, the Democratic Republic of the Congo.

4.4 The opportunity has also been taken to define "assistance" and to update the definition of "restricted goods" to refer to the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) (Overseas Territories) Order 2004.

5. Extent

5.1 The Amendment Order 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, St Helena Dependencies, 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.

6. European Convention on Human Rights

Not applicable.

7. Policy background

7.1 Given the continuing conflict in the region the Security Council of the United Nations and the Council of the European Union have maintained and strengthened the restrictive measures against the Democratic Republic of the Congo.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this Order as it has no impact on business, charities or voluntary bodies.

9. Contact

John Evans at the Foreign and Commonwealth Office Tel: 020 7008 3981 or e-mail: john.evans2@fco.gov.uk can answer any queries regarding the instrument.