EXPLANATORY MEMORANDUM TO

THE DEMOCRATIC REPUBLIC OF THE CONGO (RESTRICTIVE MEASURES) (OVERSEAS TERRITORIES) (AMENDMENT) ORDER 2012

2012 No. 2750

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 Order further amends the Democratic Republic of the Congo (Restrictive Measures) (Overseas Territories) Order 2003 (S.I. 2003 No.2627) to give effect in specified Overseas Territories to the modified arms embargo applicable in respect of the Democratic Republic of the Congo ("DRC"), as provided for in United Nations Security Council resolution (UNSCR) 1807 (2008). UNSCR 1807 modified the scope of the embargo to apply only to non-governmental entities and individuals in the DRC.

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

None.

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 Settlements Acts 1887 and 1945 and the legislative power of the Royal Prerogative.

4.2 The statutory and prerogative powers to legislate for the Overseas Territories to implement sanctions measures 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 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.

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. Bermuda legislated independently to impose the restrictive measures introduced in 2003 and amendments to that legislation are also made independently. These measures are implemented in Gibraltar by Council Regulation (EU) 36/2012 and local legislation.

6. European Convention on Human Rights

As this Order is not subject to Parliamentary procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The UN Security Council first imposed an arms embargo on all foreign and Congolese armed groups and militias operating in the territory of North and South Kivu and Ituri, and on groups not party to the Global and All-inclusive Agreement in the DRC in 2003 (UNSCR 1493 (2003)). The sanctions regime was subsequently modified and strengthened. Inter alia, the Security Council extended the scope of the arms embargo to the entire DRC territory, imposed targeted sanctions measures (travel ban and an assets freeze), and broadened the criteria under which individuals and entities could be designated as subject to those measures.

7.2 In March 2008, with the adoption of UNSCR 1807 (2008), the arms embargo was further modified such that it only applies to non-governmental entities and

individuals operating in DRC. However, subject to a few exceptions, States are under an obligation to notify in advance to the Sanctions Committee any shipment of arms and related materiel for the DRC, or any provision of assistance, advice or training related to military activities in the DRC. The modification to the arms embargo was made in response to calls to allow member states to provide equipment, advice and training to the Government of DRC for the purpose of security sector reform.

8. Consultation outcome

The Overseas Territories to which the Order applies were consulted about the Order.

9. Guidance

Guidance may be sought from the contact below.

10. Impact

10.1 There is no impact on business, charities or the voluntary sector in the United Kingdom.

10.2 There is no impact on the public sector in the United Kingdom.

10.3 An Impact Assessment has therefore not been prepared for this instrument.

11. Regulating small business

The legislation does not apply to small business in the United Kingdom.

12. Monitoring and Review

12.1 UN restrictive measures are monitored and reviewed by the UN Security Council, and by a Sanctions Committee and a Group of Experts mandated by UNSCR 1533 (2004).

12.2 If the UN measures are suspended or lifted by the Security Council, the 2003 Order, as amended by this Order, will be reviewed and suspended or revoked as necessary.

13. Contact

Emily Willmott or Naomi Davey at the Foreign and Commonwealth Office can answer any queries regarding the instrument. Telephone: 020 7008 6451 or 020 7008 6120. E-mail: willmott.davey@fco.gov.uk.