EXPLANATORY MEMORANDUM TO

THE ISIL (DA'ESH) AND AL-QAIDA (SANCTIONS) (OVERSEAS TERRITORIES) ORDER 2016

2016 No. 1218

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 Order gives effect in specified Overseas Territories to sanctions imposed on designated individuals by United Nations Security Council Resolutions 1267 (1999), 1333 (2000), 1390 (2002), and 2253 (2015), which was adopted on 17th December 2015. Resolution 2253 (2015) maintains in force the sanctions first imposed by Resolution 1267 (1999) against Al-Qaida and individuals, groups, undertakings and entities associate to it, but expressly extends the sanctions regime to ISIL (Da'esh).

2.2 These measures were implemented in the European Union by Council Decision (CFSP) 2016/1693 concerning restrictive measures against ISIL (Da'esh) and Al-Qaida and persons, groups, undertaking and entities associated with them and repealing Common Position 2002/402/CFSP ("Council Decision 2016/1693"), and Council Regulation (EU) 2016/1686 imposing additional restrictive measures directed against ISIL (Da'esh) and Al-Qaida and natural and legal persons, entities or bodies associated with them ("Council Regulation 2016/1686"), both of 20 September 2016.

2.3 This Order also gives appropriate effect to the European Union's autonomous sanctions regime adopted under Council Decision 2016/1693 and Council Regulation 2016/1686.

2.4 The sanctions imposed include an arms embargo, asset freeze and prohibition on the provision of assistance to persons and entities designated by the United Nations Security Council or European Union as associated with ISIL (Da'esh) and/or Al-Qaida.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The Order comes into force on the day after the day on which it is laid in Parliament. The Order implements changes in the international sanctions regime against Al-Qaida and ISIL (Da'esh) set out in Resolution 2253 (2015) and Council Decision 2016/1693 and Council Regulation 2016/1686. The European Union sanctions took effect on "Implementation Day", 20 September 2016. The changes include the extension of an asset freeze, arms embargo and prohibition of assistance to ISIL (Da'esh) and are intended to combat terrorism. It is therefore consistent with the United Kingdom's international obligations that the Order comes into force as soon as possible.

3.2 It is not expected that any person will be disadvantaged by the departure from the 21 day convention on this occasion. Unfortunately it was not possible for this Order to be made and laid prior to Implementation Day because there was no knowledge in advance of the exact date of Implementation Day. The overriding policy imperative is to ensure that these sanctions are enacted with full coverage in the Overseas Territories as soon as possible, in order to minimise the risk of asset flight. With this in mind, the Foreign and Commonwealth Office is not complying with the 21 day rule on this occasion.

Other matters of interest to the House of Commons

3.3 As this instrument is not subject to any Parliamentary procedure, consideration as to whether there are other matters of interest to the House of Commons does not arise.

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. Extent and Territorial Application

5.1 The extent of this instrument is: 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 ("the Territories").

5.2 The application of this instrument is the Territories and:

(i) any person elsewhere who is a British citizen, a British overseas territories citizen, a British Overseas citizen, a British subject, a British National (Overseas) or a British protected person and is ordinarily resident in a Territory;

(ii) a body incorporated or constituted under the law of a Territory; and

(iii) any person onboard a ship or aircraft that is registered in a Territory.

6. European Convention on Human Rights

6.1 As the instrument is not subject to parliamentary procedure, no statement is required.

7. Policy background

7.1 The UK supports UN and EU sanctions intended to combat terrorism, and has done so specifically in respect of Al-Qaida and ISIL (Da'esh) since these sanctions regimes were first introduced. On 15 October 1999, the United Nations Security Council unanimously adopted Resolution 1267 (1999), and on 28 September 2001, Resolution 1373 (2001). A number of Resolutions have followed over the years (1333 (2000), 1390 (2002), aspects of which remain in the current sanctions regime). The latest UN Resolution (2253/2015), adopted on 17th December 2015, aims to combat the threat imposed by both Al-Qaida and ISIL (Da'esh) to peace and security by preventing and suppressing the financing and support of terrorist acts, by way of an asset freeze, arms embargo, and travel ban on these groups and their affiliates.

7.2 This Order also takes into account the EU instruments implementing UN Resolution 2253/2015 and enacting an autonomous EU sanctions regime, which are Council Decision (CFSP) 2016/1693 and Council Regulation (EU) 2016/1686, adopted on 20th September 2016. They allow for autonomous listing in Annex I to Regulation 2016/1686 under extended criteria, such in relation to individuals or groups that encourage or glorify the acts or activities of Al-Qaida or ISIL (Da'esh).

Consolidation

7.3 The Foreign and Commonwealth Office will keep the need for consolidation under review.

8. Consultation outcome

8.1 The Overseas Territories have been consulted on the Order in draft.

9. Guidance

9.1 No guidance will be issued.

10. Impact

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

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

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

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses in the United Kingdom.

12. Monitoring & review

12.1 United Nations sanctions are monitored and reviewed by the United Nations Security Council, and European Union measures are monitored and reviewed by the Member States of the European Union. This Order will be reviewed and amended as appropriate following any further modifications to the sanctions regime by the United Nations and European Union.

13. Contact

13.1 Ben Brzezicki at the Foreign & Commonwealth Office, telephone: +44 (0)20 7008 0460 or email: ben.brzezicki@fco.gov.uk, can answer any queries regarding the instrument.