EXPLANATORY MEMORANDUM TO

THE SUDAN AND SOUTH SUDAN (RESTRICTIVE MEASURES) (OVERSEAS TERRITORIES) ORDER 2012

2012 No. 361

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 Sudan and South Sudan (Restrictive Measures) (Overseas Territories) Order 2012 ("the Order"), gives effect in the Overseas Territories to restrictive measures imposed by Council Decision 2011/423CFSP adopted on 18 July 2011 and implemented in Council Regulation 131/2004, as amended (including by amendments introduced following adoption of Council Regulation 1215/2011 on 24 November 2011).

2.2 The Order revokes The Sudan (Restrictive Measures) (Overseas Territories) Order 2004.

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

3.1 None. The Order will be made at the Privy Council meeting on 15 February 2012. The Order will be laid before Parliament on the 22 February 2012 and will come into force on 14 March 2012.

4. Legislative Context

4.1 This Order is made in exercise of statutory powers and legislative power of the royal prerogative, in the absence of statutory powers to implement an autonomous or stand-alone EU measure in certain Overseas Territories. The Order gives effect to measures adopted by the European Union in Council Decision 2011/423/CFSP dated 18 July 2011 and implemented in Council Regulation 131/2004 ("the Regulation"). The Regulation has been amended, most recently by adoption of Council Regulation 1215/2011 on 24 November 2011 which came into force on 25 November 2011.

4.2 Council Decision 2011/423/CFSP repealed Common Position 2005/411/CFSP, and extended the existing European Union arms embargo against Sudan to both Sudan and South Sudan, which became a separate and independent State on 9 July 2011. The Order revokes The Sudan (Restrictive Measures) (Overseas Territories) Order 2004 which only imposed the arms embargo on Sudan.

4.3 The statutory and prerogative powers to legislate for the Overseas Territories are applicable to the territories as follows:

- The Saint Helena Act 1833 applies to Saint Helena;

- The British Settlement Acts 1887 and 1945 are applicable to Ascension, Tristan da Cunha, British Antarctic Territory, 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, Turks and Caicos Islands, and the Virgin Islands.

5. Territorial Extent

5.1 This Order extends to the following Overseas Territories: Anguilla, British Antarctic Territory, British Indian Ocean Territory, Cayman Islands, Falkland Islands, Montserrat, Pitcairn, 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 in the Island of Cyprus, Turks and Caicos Islands and the Virgin Islands ("the territories"). All the territories were consulted.

6. European Convention on Human Rights

6.1 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

7.1 The UK was among the first countries to recognise South Sudan's independence, which was overwhelmingly voted for by its people in the January 2011

referendum. The UK supported the extension of the European Union arms embargo to South Sudan, as an appropriate measure to limit and control the supply of arms into the region. Without an embargo there is a risk that arms imported into South Sudan could further fuel conflict in the South, in Darfur, Blue Nile and Southern Kordofan, or with the North.

7.2 Council Decision 2011/423/CFSP created one additional exemption to the embargo concerning non-lethal military equipment solely for the support of the process of security sector reform in South Sudan. We supported this exemption, which will allow for the legitimate supply of non-lethal military equipment to support security sector reform efforts in the South, an urgent requirement for the new Government as it pursues its transition from a highly militarised rebel movement to a fully accountable Government.

8. Consultation

8.1 The Overseas Territories to which the Order applies have been consulted on the initial draft Order.

9. Guidance

9.1 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

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

12. Monitoring & review

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

12.2 If the EU measures are amended or lifted, this Order will be reviewed and amended or revoked as necessary.

13. Contact

Andrew Murdoch at the Foreign and Commonwealth Office, Tel: 020 7008 1692 or email: andrew.murdoch@fco.gov.uk can answer any queries regarding the instrument.