EXPLANATORY MEMORANDUM TO

THE TUNISIA (RESTRICTIVE MEASURES) (OVERSEAS TERRITORIES) ORDER 2011

2011 No. 748

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 Tunisia (Restrictive Measures) (Overseas Territories) Order 2011("the Order"), gives effect in Overseas Territories to restrictive measures imposed by Council Decision 2011/72/CFSP adopted on 2nd February 2011 and implemented in Council Regulation (EU) No 101/2011 adopted on 5th February 2011, which came into force on the date of its publication.

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 16th March 2011 and laid before Parliament on the following day. The Order will come into force the day after it is laid so that the sanctions can be enforced immediately.

4. Legislative Context

4.1 This Order is made in exercise of statutory powers and the 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 the measures adopted by the EU in Council Decision 2011/72/CFSP and implemented by Council Regulation (EU) No 101/2011 ("the Regulation") which entered into force on 5 February 2011 and is directly applicable in the UK.

4.2 The Order places restrictive measures on certain persons, entities and bodies responsible for the misappropriation of Tunisian state funds and persons associated with them. Specifically, the Order imposes an assets freeze on the individuals listed in Annex I of the Regulation.

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 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, Turks and Caicos Islands, and the Virgin Islands.

5. Territorial Extent and Application

5.1 This instrument 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, 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. All the territories were consulted. Bermuda will make its own provision as the UK is unable to legislate for Bermuda using prerogative powers. The asset freeze is given effect in Gibraltar by the Regulation.

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.

6.2 The procedures for designating individuals are fully compliant with fundamental rights. Individuals may only be listed where evidence 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 restrictive measures are entitled to challenge the Regulation before the General Court.

7. Policy background

- ***What is being done and why***

7.1 The new Tunisian Government has formally requested that EU Member States instigate an asset freeze against 48 individuals. These include the former President, his wife, family members and others, whilst investigations into the alleged corruption of the former regime are pending.

7.2 The priorities of the new Tunisian transition government are to re-establish order, to set the base for the democratisation of society and of the political system, and to address the economic and social problems which were at the root of the popular uprising. It is of strategic importance that the UK supports that emerging democratisation process from the outset. One of the ways in which we can do this is by supporting the anti-corruption activities of the transitional Government.

7.3 The UK supported the adoption of EU restrictive measures taken to freeze misappropriated assets. The effect of this will send a positive message to the interim Tunisian Government of support, whilst ensuring the uniform and consistent application of the asset freeze across the EU.

7.4 This Order represents the UK's compliance in respect of the applicable Overseas Territories with the commitment to implement the EU sanctions.

8. Consultation outcome

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

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 suspended or lifted, this Order will be reviewed and suspended or revoked as necessary.

13. Contact

Ann Swampillai at the Foreign and Commonwealth Office, Tel: 020 7008 3644 or email: ann.swampillai@fco.gov.uk can answer any queries regarding the instrument.