

**EXPLANATORY MEMORANDUM TO
THE EXTRADITION ACT 2003 (SPECIFICATION OF CATEGORY 1
TERRITORIES) ORDER 2009**

2009 No. 2768

1. This explanatory memorandum has been prepared by The Home Office and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the Instrument**

- 2.1 This Order specifies those EU Member States that have made statements under Article 32 of the Framework Decision on the European Arrest Warrant (EAW FD).

- 2.2 Article 32 of the EAW FD allows EU Member States to make a declaration at the time they adopt the EAW FD stating that requests for extradition concerning offences committed before a specified date will continue to be dealt with under the extradition regime applicable before the entry into force of the EAW FD in the Member State in question. A number of Member States have made statements to this effect. These are Austria, the Czech Republic, France, Italy, Luxembourg and Slovenia.

- 2.3 The EAW FD was given effect to in the UK by the Extradition Act 2003 ('the 2003 Act'), which came into force on 1 January 2004. Member States which apply the EAW FD are designated as category 1 territories for the purpose of the 2003 Act. Section 155A of the 2003 Act (which was inserted into the 2003 Act by section 42 of, and paragraph 24 of Schedule 13 to, the Police and Justice Act 2006) allows the Secretary of State to specify by order those category 1 territories which deal with requests for extradition for offences committed before a particular date otherwise than in accordance with the EAW FD. This Order specifies Austria, Czech Republic, France, Italy, Luxembourg and Slovenia for the purpose of section 155A of the Extradition Act 2003.

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

- 3.1 The Joint Committee on Statutory Instruments may wish to note that the relevant date referred to in relation to requests made to the Czech Republic (the 1st November 2004) is later than that permitted under article 32 of the EAW FD. The enabling power (section 155A(1)) does not, however, require that the relevant date in respect of which a category 1 territory considers requests for extradition concerning offences committed before that date otherwise than in accordance with the EAW FD is one which is permitted under the EAW FD, simply that the relevant date is the date in respect of which a Member State *as a matter of fact* deals with extradition requests which relate to offences committed before that date otherwise than in accordance with the EAW FD.

4. Legislative Context

4.1 This Order is necessary in light of the statements made under Article 32 of the Framework Decision on the EAW FD by Austria; Czech Republic; France; Italy, Luxembourg and Slovenia.

4.2 The EAW FD was incorporated into English law by the 2003 Act. Member States which apply the EAW FD are designated as Category 1 territories under Part 1 of the 2003 Act with the practical consequence that the UK can deal with incoming requests made by those territories. In accordance with the terms of the EAW FD, outgoing requests for extradition from the UK to other Member States are made by judicial authorities; this contrasts with the position for all other outgoing extradition requests which are made by the Secretary of State.

4.3 In order to ensure that the UK is able to make outgoing requests for extradition to the countries listed in paragraph 4.1 above in respect of offences committed prior to the date from which they began to apply the EAW FD, it is necessary to specify them for the purpose of section 155A of the 2003 Act. Specification under section 155A means that where an outgoing request for extradition is made to a country which considers requests for extradition in respect of offences committed before a certain date in accordance with a system other than that provided in the EAW FD that territory will fall to be regarded as a Category 2 rather than a Category 1 territory. The practical significance of this is that it will enable such requests to be made by the Secretary of State rather than by a judicial authority; this will enable the countries listed in paragraph 4.1 above to execute these requests. If the requests were made by a judicial authority they could not be executed in view of the mechanisms for extradition which the Member States in question applied prior to the introduction of EAW FD system.

5. Territorial Extent and Application

5.1 This instrument applies throughout the United Kingdom.

6. European Convention on Human Rights

6.1 Lord West of Spithead, Parliamentary Under-Secretary of State, has made the following statement regarding Human Rights:

In my view the provisions of the Extradition Act 2003 (Specification of Category 1 Territories) Order 2009 are compatible with the Convention rights.

7. Policy background

7.1 Although all the territories listed in Article 2(2) of the Order have been designated as category 1 territories under Part 1 of the 2003 Act, this Order will allow the UK to make extradition requests to these territories for offences that occurred before the dates specified in column 2 of the Schedule to the Order. Currently there is no provision in UK extradition legislation that would enable the UK to successfully make such requests.

8. Consultation Outcome

8.1 This Order concerns a minor amendment to the UK's extradition legislation, so no formal consultation process was undertaken.

9. Guidance

9.1 None.

10. Impact

10.1 There is likely to be no impact on business, charities or voluntary bodies as they are already required to be compliant with the necessary legislation.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument as no impact on the private, public or voluntary sector is foreseen.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 Although it is likely this Order will apply to only a very small number of potential extradition requests, the Judicial Co-operation Unit in the Home Office will be responsible for dealing with all extradition requests made in accordance with this Order and will monitor its effectiveness.

13. Contact

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