

**EXPLANATORY MEMORANDUM TO**  
**THE EXTRADITION ACT 2003 (OVERSEAS TERRITORIES) ORDER 2016**

**2016 No. 990**

**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 The purpose of the instrument is to extend, with modifications, certain provisions of the Extradition Act 2003 (“the 2003 Act”) to the 13 British overseas territories listed in paragraph 5.1 below, and also to make supplementary provision in respect of 12 of those British overseas territories (all save for Bermuda), thereby extending an updated and largely comprehensive extradition regime in those territories.

**3. Matters of special interest to Parliament**

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

- 3.1 See paragraph 4 below for further details as to the complex enabling provisions under which this instrument has been made.

*Other matters of interest to the House of Commons*

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

**4. Legislative Context**

- 4.1 The instrument is the first Order in Council that has been made under sections 177, 178 and 224(2) of the 2003 Act and is also made pursuant to all enabling provisions that permit the UK Government to legislate by Order in Council for the peace, order and good government of the British Overseas Territories.
- 4.2 The enabling provisions contained in sections 177 and 178 of the 2003 Act limit the provisions of the 2003 Act that can be applied to govern extradition to and from the British overseas territories. Additionally, the provisions of the 2003 Act do not govern extradition to the United Kingdom from a country that has been designated under the 2003 Act as a ‘category 2 territory’ (broadly speaking countries that fall outside of the Extradition Arrest Warrant Framework, but with whom the UK has concluded a bilateral or multilateral extradition arrangement), as this process is undertaken in the exercise of Her Majesty’s Royal Prerogative. Broader enabling provisions, both under various enactments and the Royal Prerogative, that permit the United Kingdom to legislate by Order in Council for the peace, order and good government of all British overseas territories (except for Bermuda), have therefore been relied upon in order to

provide a comprehensive framework for extradition to and from the Overseas Territories.

- 4.3 The instrument also replaces 93 Orders in Council that extended to the territories concerned and had been made under former United Kingdom extradition legislation that has since been repealed for the purposes of the United Kingdom, namely the Extradition Act 1870, the Fugitive Offenders Act 1967, and the Extradition Act 1989. The instrument revokes those Orders, except in relation to those Orders that will continue to be of application for Bermuda by reason of the limited application of the instrument thereto (as to which see paragraph 5.2 below).
- 4.4 In applying provisions of the 2003 Act to the British overseas territories, some modifications have been made and not all of its provisions have been applied. This is permitted by sections 177(2) and (4) and 178(2) and (4) of the 2003 Act and is designed to ensure that the instrument is suitable for use in the British overseas territories concerned. Schedule 3 of the instrument specifies the provisions of Parts 2 to 5 of the 2003 Act that are being applied to the British overseas territories, as modified. To assist the user in understanding what the effect of the instrument is, where possible, the same legislative references (section, subsection numbers etc.) from the 2003 Act have been used.

## **5. Extent and Territorial Application**

- 5.1 The extent of this instrument is to all British overseas territories, apart from Gibraltar, namely: Anguilla; Bermuda; 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; Turks and Caicos Islands; Virgin Islands.
- 5.2 However, there is no power to legislate by Order in Council for the peace, order and good government of Bermuda and so the provisions of the instrument that are made under these broader enabling powers (as to the reason for which see paragraph 4 above) do not extend to Bermuda.
- 5.3 The territorial application of this instrument is the same as in paragraphs 5.1 and 5.2.

## **6. European Convention on Human Rights**

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

### *What is being done and why*

- 7.1 The instrument makes provision for extradition to and from each of the 13 British overseas territories concerned, with regard to the following territories (called in the instrument “extradition territories”): the United Kingdom, the Channel Islands, the Isle of Man, all other British overseas territories, and each of the other countries and territories listed in Schedule 2 to the Order. Those other countries and territories are those which are designated as Category 1 and Category 2 territories for the purposes of the 2003 Act. The instrument allows other territories to be automatically added to, or removed from, the list, where the United Kingdom makes a change to the Category 1 and/or Category 2 designations under the 2003 Act.

- 7.2 The instrument was made to bring the extradition legislation in force in the 13 territories up to date and suitable for modern conditions. Before this instrument the territories had to operate a large number of ancient Orders in Council, many dating back to the 19<sup>th</sup> century, together with old United Kingdom extradition legislation and which has been repealed for the purposes of the United Kingdom. This was an unsatisfactory situation in the important field of extradition, involving as it did considerable uncertainty and difficulty in establishing the applicable law.
- 7.3 The reason that this instrument extends to all British overseas territories except Gibraltar is because Gibraltar already has its own extradition legislation.

#### ***Consolidation***

- 7.4 The instrument does not involve consolidation.

### **8. Consultation outcome**

- 8.1 The governments of the 13 British overseas territories were fully consulted in the preparation of the instrument, and all of these territories are content with the instrument.

### **9. Guidance**

- 9.1 No guidance has been prepared.

### **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.

### **12. Monitoring & review**

- 12.1 The operation of the legislation will be kept under constant review by the Foreign and Commonwealth Office, in consultation with the 13 overseas territories concerned.

### **13. Contact**

- 13.1 Sarah Turnock at the Foreign and Commonwealth Office can answer any queries regarding the instrument. Telephone: 0207 0087400 or email: Sarah.Turnock@fco.gov.uk.