

EXPLANATORY MEMORANDUM TO
THE EMERGENCY POWERS (OVERSEAS TERRITORIES) ORDER 2017

2017 No. 181

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.

2. Purpose of the instrument

- 2.1 The instrument makes provision for the exercise of emergency powers in the nine British overseas territories listed in paragraph 5.1 below. The instrument revokes and replaces the Emergency Powers Order in Council 1939 (S.I. 1952/2013) and its amending Orders, as well as the Leeward Islands (Emergency Powers) Order in Council 1959 (S.I. 1959/2206), the provisions of which it consolidates and updates. These revocations will also extend to Gibraltar, albeit only once equivalent provision has been made by the Legislature of Gibraltar.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is only required to be laid before Parliament after being made and is not subject to any further procedure, 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 made under the powers pursuant to which Her Majesty may, by Order in Council, make general legislative provision for the ten British overseas territories concerned. These are section 112 of the Saint Helena Act 1833, the British Settlements Acts 1887 and 1945, section 2(1)(b) of the Cyprus Act 1960, section 5 of the West Indies Act 1962 and section 1(2) of the Anguilla Act 1980, together with the powers of the Royal prerogative.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is to the following British overseas territories: Anguilla, British Antarctic Territory, British Indian Ocean Territory, Falkland Islands, 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, and Turks and Caicos Islands. It does not apply to any part of the United Kingdom. The revocation of the Emergency Powers Order in Council 1939 and its amending Orders will also extend to Gibraltar, albeit only once equivalent provision has been made by the Legislature of Gibraltar.
- 5.2 The territorial application of this instrument is the same as in paragraph 5.1.

6. European Convention on Human Rights

- 6.1 As the instrument is only required to be laid before Parliament after being made and is not subject to any further procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

- 7.1 The instrument enables the Governor of any of the nine British overseas territories to proclaim a public emergency and to make regulations as appear to be necessary for the purpose of preventing, controlling or mitigating an aspect or effect of the state of that public emergency. Such regulations can be enacted so long as its provisions are necessary and proportionate and that the need for those provisions is urgent. A Proclamation of Emergency can remain in force for up to 30 days and regulations will be automatically revoked upon the expiration of the Proclamation, unless otherwise directed by the Governor on the grounds of necessity.
- 7.2 Any regulations made under this Order take priority over locally enacted law in that territory, but remain subject to the constitution and, in the case of the Sovereign Base Areas, the local Human Rights Ordinance. The Order further specifies that it is a criminal offence for any person to fail, without reasonable excuse, to comply with such regulations.
- 7.3 The instrument replaces and updates the existing Orders in Council that make similar provision for the proclamation of public emergencies in the specified overseas territories, namely the Emergency Powers Order in Council 1939 (as amended) and the Leeward Islands (Emergency Powers) Order in Council 1959. Those old Orders are out of date and are difficult to find. It is therefore considered advisable to replace them with a more modern and accessible instrument to deal with public emergencies in the overseas territories concerned. This Order in Council is closely aligned with the statutory framework applicable to the UK in case of a public emergency, namely the Civil Contingencies Act 2004.

Consolidation

- 7.4 The instrument does not involve consolidation.

8. Consultation outcome

- 8.1 The governments of the ten 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 in the UK.

12. Monitoring & review

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

13. Contact

13.1 Greg Resiman at the Foreign and Commonwealth Office can answer any queries regarding the instrument. Telephone: 0207 0082553 or email: Greg.Reisman@fco.gov.uk.