EXPLANATORY MEMORANDUM TO THE

Criminal Justice Act 1988 (Designated Countries and Territories) (Amendment) Order 2004

2004 No.1981

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

This memorandum contains information for the Joint Committee on Statutory Instruments and the Lords' Merits Committee.

2. Description

2.1 This Order amends the Criminal Justice Act 1988 (Designated Countries and Territories) Order 1991. It adds South Africa to the list of designated countries and territories in Schedule 1 to that Order.

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

3.1 This instrument breaches the 21-day rule. The rule is breached under special circumstances but is generally to be avoided. The Order is being made to accommodate a particular request from South Africa regarding considerable funds located in the United Kingdom in respect of which urgent restraint action is likely to be necessary.

3.2 Sections 71 to 102 of the Criminal Justice Act 1988 were repealed by Schedule 12 to the Proceeds of Crime Act 2002 (c.29). However the repeal of section 96 and 97 is not in force and there is saving for the provisions of the Criminal Justice Act 1988 in respect of the Criminal Justice Act 1988 (Designated Countries and Territories) Order 1991 in article 13(a) of the Proceeds of Crime Act 2002 (Commencement No. 5, Transitional Provisions, Savings and Amendment) Order 2003 (S.I.2003/333 (C.20)).

4. Legislative Background

4.1 The instrument is being made to enable the UK to assist South Africa in freezing and confiscating the proceeds of serious crime. It adds South Africa to the list of designated countries in Schedule 1 to the Criminal Justice Act 1988 (Designated Countries and Territories) Order 1991. The countries specified in Schedule 1 to this Order are designated for the purposes of Sections 96 and 97 of the Criminal Justice Act 1988.

5. Extent

5.1 This instrument applies to England and Wales

6. Policy background

6.1 The Criminal Justice Act 1998 (Designated Countries and Territories) 1991 provides that Part VI (Confiscation of the Proceeds of an Offence) of the Criminal Justice Act 1988 applies to an order made by a court of a designated country or territory for the purposes of recovering property obtained as a result of or in connection with conduct corresponding to an offence to which Part VI of the Act applies, recovering the value of property so obtained, or depriving a person of a pecuniary advantage so obtained. Article 3 of the Order designates the countries and territories listed in Schedule 1 for the purposes of enforcement of confiscation orders. It applies the provisions of Part VI of the Criminal Justice Act 1988, with modifications, to confiscation orders of courts of those countries and territories and proceedings, which may lead to an order being made. This instrument adds South Africa to the list of designated countries in Schedule 1 to this order.

6.2 Part 11 of the Proceeds of Crime Act 2002 enables the United Kingdom to assist all countries for assistance with freezing and confiscation with no need for designation, even when there is no reciprocity. However, Part 11 the Proceeds of Crime Act 2002 has not yet entered into force and therefore it is necessary to designate South Africa under old legislation to enable assistance.

6.3 The change resulting from this instrument is politically important. South African confiscation legislation is similar to that of the United Kingdom and South Africa is able to reciprocate assistance with United Kingdom restraint and confiscation orders. South Africa is also party to the UN Convention against Transnational Organised Crime, which provides for international co-operation on the confiscation of the proceeds of crime. The United Kingdom intends to ratify it as soon as we are in a position to comply with all legislative requirements. It is therefore be of operational and foreign relations benefit to designate South Africa.

7. Impact

7.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies

8. Contact

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