EXPLANATORY MEMORANDUM TO

THE EXTRADITION ACT 2003 (AMENDMENT TO DESIGNATIONS AND APPEALS) ORDER 2015

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

2. Purpose of the instrument

2.1 This Order amends the Extradition Act 2003 (Designation of Part 2 Territories) Order 2003 (S.I. 2003/3334) ("the Part 2 Order") and the Extradition Act 2003 (c.41) ("the 2003 Act").

2.2 Article 2 of this Order principally designates certain territories for the purposes of Part 2 of the 2003 Act. It also sets the evidential requirements that a judge must take into account for certain territories when they make an extradition request, and changes the timeframes in which documents must be produced in provisional arrest warrant cases for certain territories.

2.3 Article 3 of this Order makes several consequential amendments to the appeals provisions in the 2003 Act. These are necessary bearing in mind section 160 (appeals) of the Anti-social Behaviour, Crime and Policing Act 2014 ("the 2014 Act").

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

3.1 None.

4. Legislative Context

4.1 The 2003 Act provides for two distinct sets of procedures to apply to incoming extradition requests. Part 1 of the 2003 Act provides for a simplified and streamlined system, which does not involve ministers. It is applied to those territories which have implemented the Framework Decision on the European Arrest Warrant (2002/584 JHA) ("the EAW Framework Decision"). Part 2 of the 2003 Act provides a different system, which includes ministerial involvement. It is applied to territories which are not EU Member States but with which the United Kingdom has extradition relations.

4.2 The Part 2 Order (made under section 69 of the 2003 Act) designates territories for the purposes of Part 2. The Part 2 Order also lists those Part 2 territories

which do not need to provide prima facie evidence when making an extradition request to the United Kingdom. In addition, the Part 2 Order lists those territories which are afforded a longer than normal period in which to provide full extradition papers, in cases of provisional arrest. Normally, those papers must be provided to the judge within 45 days of arrest (section 74 of the 2003 Act).

4.3 The Part 2 Order has been amended on several occasions by subsequent orders; for instance, to reflect the fact that States have acceded to the EU and began operating the European Arrest Warrant and the entry into force of new bilateral treaties.

4.4 Section 160 of the 2014 Act (which is yet to be commenced) amends the 2003 Act to the effect that an appeal to the High Court in an extradition case only lies with the leave of that Court.

5. Territorial Extent and Application

5.1 The Order extends to the whole of the United Kingdom.

6. European Convention on Human Rights

James Brokenshire, Minister of State at the Home Office, has made the following statement regarding Human Rights:

"In my view, the provisions of The Extradition Act 2003 (Amendment to Designations and Appeals) Order 2015 are compatible with the Convention Rights."

7. Policy background

Designations of territories (Article 2 of this Order)

7.1 In 2010, the Baker review of UK extradition arrangements**a** ("the Baker Review") recommended that those territories designated under Part 2 of the 2003 Act be intermittently reviewed. This Order now draws on the findings of the first part of a two part internal review of designations. The first part of the review has looked at those territories which are yet to be designated for the purposes of Part 2 of the 2003 Act but are parties to the 1957 European Convention on Extradition ("the ECE") or that have signed a bilateral extradition treaty with the UK, as well as recent case law. In light of this, and in fulfilment of the first part of a two part review of designations, Articles 2(2) and 2(3) of this Order make several amendments to the 2003 Act by designating territories for various purposes.

a https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/117673/extradition-review.pdf

7.2 The second part of the review will focus on UK extradition relations under the (non-binding) Commonwealth scheme for extradition. It will address situations where there has been a deterioration in the human rights situation in a territory, so as to potentially make it undesirable that the territory remain designated for Part 2 purposes. It will also consider whether there has been a disproportionately long period of time since any request has been received from a territory, and what effect that should have on its designation for the purposes of the 2003 Act.

7.3 In conclusion of the first part of the review, the British Overseas Territories (with the exception of Gibraltar) ("the BOTs"), the Dutch and Danish overseas territories, Kosovo and the Philippines were identified as territories requiring designation.

7.4 The BOTs are being designated following the recent case of Patrick Stamp, which called into question the continued applicability of the pre-2003 Act arrangements in relation to requests received from the BOTs. The Philippines is being designated following ratification by both parties of the UK-Philippines bilateral extradition treaty. Kosovo is being designated because the UK's extradition relations with Kosovo are covered by the treaty with Serbia from 1900, which explicitly refers to Kosovo. The Dutch and Danish overseas territories are being designated because we operate the ECE with these territories.

7.5 As a result of the review, the need for other changes to designations were identified. These are as follows:

7.6 This Order removes the requirement for the Dutch and Danish overseas territories, Monaco and San Marino to provide prima facie evidence when submitting an extradition request. This is necessary because the UK now operates the ECE with these territories.

7.7 This Order also specifies that, in provisional arrest cases involving Saint Helena, Ascension and Tristan de Cunha, the period in which the full papers must be provided to the judge is 65 days (rather than the normal 45 days). This is to reflect the fact that Saint Helena, Ascension and Tristan da Cunha is only accessible by sea and, as such, more time is required to send the original papers.

7.8 Serbia and Montenegro had been designated for the purposes of Part 2 of the 2003 Act as a single Part 2 territory, and also as one which did not need to provide prima facie evidence in making extradition requests to the UK. In 2006, when Montenegro became a separate State, this was reflected in the article of the Part 2 Order which designates territories as Part 2 territories, but not in the article which deals with the prima facie evidence requirement. It is that defect which is now being rectified in this Order.

Consequential amendments to 2003 Act in respect of Appeals (Article 3 of this Order)

7.9 Section 160 of the 2014 Act amends the 2003 Act to the effect that an appeal to the High Court in an extradition case (either by the person, where extradition is ordered, or the requesting territory, where the person is discharged) only lies with the leave of that Court. This change was made following the Baker Review, which found that in 2010 only 12.65% of appeals were successful, and concluded that the court system was burdened by unmeritorious appeals and that meritorious appeals were taking longer to be heard as a result.

7.10 Before bringing section 160 of the 2014 Act into force a number of consequential amendments are required to be made to the 2003 Act. These are made by article 3 of this Order.

7.11 These changes to the appeals provisions in the 2014 Act apply to Part 1 and Part 2 cases. Part 1 is applied to those territories which have currently implemented the EAW Framework Decision. The UK continues to participate in the EAW Framework Decision by virtue of the Decision made by the Commission under Article 10(5) of Protocol 36 on 1 December 2014.

8. Consultation

8.1 Article 2 of this Order implements, in part, the recommendations of the 2010 Baker Review.

9. Guidance

9.1 The Home Office will publish any necessary guidance on the effect of these changes.

10. Impact

10.1 An impact assessment has not been produced for this Order as no impact on business, charities, voluntary bodies or the public sector is foreseen.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Home Office will continue to closely monitor the impact of the Part 2 Order and this Order, and will complete the current review of Part 2 designations and thereafter continue to intermittently review Part 2 designations, in line with the Baker Review recommendations.

13. Contact

Hannah Panayiotou at the Extradition Policy Section (International Criminality Unit) of the Home Office (Hannah.panayiotou1@homeoffice.gsi.gov.uk) 020 7035 0340 can answer any queries regarding the instrument.