**EXPLANATORY MEMORANDUM TO**

**THE EXTRADITION ACT 2003 (AMENDMENT TO DESIGNATIONS) ORDER 2010**

**2010 No. [XXXX]**

**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 designates Libya as a 'category 2' territory for the purposes of the Extradition Act 2003 ('the 2003 Act'). This means that once the Order comes into force any extradition request received from Libya will be considered in accordance with the provisions of Part 2 of the 2003 Act.

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

3.1 None.

## 4. Legislative Context

4.1 Under the 2003 Act there are two different regimes under which requests for extradition received by the UK are considered. Part 1 of the 2003 Act applies to requests received from territories which the UK has designated as category 1 territories (at present only Member States of the European Union and Gibraltar, all of which operate the European Arrest Warrant, have been designated as category 1 territories) and Part 2 of the 2003 Act applies to requests received from territories which the UK has designated as category 2 territories (the UK designates all non-EU countries with which the UK has full extradition relations as category 2 territories).

4.2 As part of a package of judicial co-operation measures, an extradition treaty between the UK and Libya ('the Treaty') was signed on 17 November 2008. Instruments of ratification with respect to the Treaty were exchanged on 29 April 2009. The treaty entered into force upon the exchange of the instruments of ratification.

4.3 In order to give effect to the terms of the Treaty it is necessary to designate Libya as a category 2 territory for the purpose of the 2003 Act. This will mean that any extradition request from Libya received after the date of their designation as a category 2 territory will fall to be considered in accordance with Part 2 of the 2003 Act.

## 5. Territorial Extent and Application

5.1 This instrument applies to all of 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 (Amendment to Designations) Order 2010 are compatible with the Convention rights.

## 7. Policy background

- ***What is being done and why***

7.1 The Treaty between the UK and Libya is a bilateral agreement concerning extradition. The Treaty allows extradition to be requested for any offence which attracts a maximum penalty of at least 12 months in both the UK and Libya and, when the person sought has been convicted, where a sentence of at least 4 months' imprisonment has been imposed. The evidential requirements set out in the Treaty mean that both the United Kingdom and Libya must provide evidence establishing a prima facie case against any person whom they wish to extradite. Extradition may be refused if (among other things) it would breach a person's human rights or where extradition could lead to the imposition and execution of a sentence of death. The Treaty also contains a provision which allows for the refusal of an extradition request on the grounds of nationality. This provision can only be used, however, if the requested state agrees to take over the prosecution of the person for the offences for which their extradition was sought. The Treaty will therefore provide an efficient and effective system for the transmission and execution of extradition requests between the UK and Libya. It also contains full and robust safeguards to ensure that the rights of those sought under the treaty are protected.

7.2 The Treaty was negotiated as part of a package of judicial co-operation measures which also included agreements on mutual legal assistance in criminal matters, prisoner transfer, and mutual legal assistance in civil and commercial matters. The Treaty was signed on 17 November 2008 and instruments of ratification with respect to the Treaty were exchanged on 29 April 2009. The Treaty entered into force upon exchange of the instruments. Regrettably, due to an administrative oversight the Home Office was not informed until 12 January 2010 that the instruments of ratification had been exchanged which is why this Order is being laid before Parliament now.

7.3 There were previously no bi-lateral extradition arrangements between the UK and Libya; although there are a number of international conventions which both countries are party to that establish extradition arrangements for conduct covered by the convention in question. The provisions of section 194 of the 2003 Act also allow a one-off extradition arrangement to be entered into by the UK and any state not designated under either Part 1 or Part 2 of the 2003 Act. The designation of Libya by Order will, however, provide a comprehensive framework for extradition between the two countries and ensure that requests are dealt with more efficiently and effectively.

7.4 In order to give effect to the terms of the Treaty it is necessary to designate Libya as a category 2 territory for the purpose of the 2003 Act. This will mean that

any extradition request from Libya received after the date of their designation as a category 2 territory will fall to be considered in accordance with Part 2 of the 2003 Act. Part 2 of the 2003 Act provides a comprehensive framework through which requests for extradition from non-EU Member States with which the UK has full extradition relations are considered. The 2003 Act contains numerous procedural safeguards to ensure that extradition only takes place where appropriate. The 2003 Act, for example, contains provisions barring extradition where it would lead to a breach of human rights and where it would expose someone to the death penalty.

## 8. Consultation outcome

8.1 Consultation between Government Departments on the Treaty took place in 2007.

## 9. Guidance

9.1 The Home Office will inform stakeholders, notably the Crown Prosecution Service and Crown Office and Procurator Fiscal Service once Libya is designated as a category 2 territory.

## 10. Impact

10.1 We do not envisage there being any impact on business, charities or voluntary bodies.

10.2 We do not envisage any additional burden on the public sector. Establishing treaty relations on extradition with Libya and designating it for the purposes of Part 2 of the 2003 Act will result in extradition requests being considered in a more efficient and effective manner by the relevant Departments, Services and Agencies in the UK.

10.3 An Impact Assessment has not been prepared for this instrument.

## 11. Regulating small business

11.1 The legislation does not apply to small business.

## 12. Monitoring & review

12.1 The Home Office keeps its extradition arrangements with all countries under review and discusses the effectiveness of treaties with its stakeholders on a regular basis.

## 13. Contact

Stuart Ison at the Home Office (Tel: 0207 035 1261 or email: stuart.ison@homeoffice.gsi.gov.uk) can answer any queries regarding the instrument.