EXPLANATORY MEMORANDUM TO

THE EXTRADITION ACT 2003 (AMENDMENT TO DESIGNATIONS) ORDER 2025

2025 No. [XXXX]

1. Introduction

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

1.2 This memorandum contains information for the Select Committee on Statutory Instruments.

2. Declaration

2.1 Dan Jarvis MBE MP, Minister for Security at the Home Office confirms that this Explanatory Memorandum meets the required standard.

2.2 Adaeze Igboemeka, Deputy Director for International Agreements and Judicial Cooperation, at the Home Office confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 James Smith at the Home Office Telephone: +44 (0)77 69 423 864 or email: james.smith56@homeoffice.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This Instrument designates Chile, currently a Category B territory, as a Category A territory under Part 2 of the Extradition Act 2003 ("the Act"). This change is being made to reflect that Chile has recently acceded to the European Convention on Extradition Paris, 13.XII.1957 ("the Convention"); which does not require prima facie evidence (evidence that is sufficient to establish a fact or raise a presumption of truth unless it is rebutted or disproved by further evidence) to be provided with the initial extradition request. Chile's current designation as a Part 2 Category B territory mandates that prima facie evidence is provided and as a result it is necessary to amend the designation to align the Act with the UK's international obligations.

4.2 Hong Kong and Zimbabwe will be de-designated from Part 2, to enable cooperation under section 194 of the Act on a case-by-case basis. These changes are being made as Hong Kong and Zimbabwe are no longer party to formal extradition agreements or arrangements with the UK, needed to underpin their existing designations.

Where does the legislation extend to, and apply?

4.3 The extent of this instrument is the United Kingdom.

4.4 The territorial application of this instrument is the United Kingdom.

5. Policy Context

What is being done and why?

5.1 The Statutory Instrument is being laid in order to ensure compatibility between the UK domestic and international legal frameworks governing extradition with these states.

5.2 Territories with which the UK has an extradition treaty or arrangement are designated under the Extradition Act 2003 ('the Act'). A request from a designated territory can be certified, allowing the request to enter the UK judicial system. When a territory that is not designated under the Act makes an extradition request, MOUs are arranged on a case-by-case basis before certification can occur (section 194 of the Act).

5.3 A territory can be designated under Part 1 or Part 2 of the Act. Part 1 concerns warrant-based extradition cooperation with EU member states, and Part 2 concerns requests-based extradition cooperation with all other territories with whom the UK has formal extradition arrangements. Part 2 territories are subdivided into Category A and B territories by means of further designation, enabling the application of specific requirements on the requesting state as set out in the relevant international treaty.

5.4 Chile have recently acceded to the 1957 Council of Europe Convention on Extradition. Chile have previously been designated under the Act based on the UK Chile Extradition Treaty 1887. As our cooperation with Chile will now take place under the Convention, they will need to be designated as a Part 2, Category A territory under the Act to align with all other Council of Europe partners. This designation will ensure consistency with our international legal obligations under the Council of Europe. Previously, Chile was designated as a Part 2, Category B territory. Chile was therefore required to provide prima facie evidence upon making an extradition request. Any request also required approval by the Home Secretary. The UK does not require prima facie evidence from Council of Europe territories, or territories with which the UK has a relevant international agreement.

5.5 Hong Kong is currently designated under the Act as a Part 2 territory, based on the UK Hong Kong Extradition Treaty 1997. However, this treaty was suspended following the imposition by China of National Security Legislation in June 2020 which contained specific provisions incompatible with the UK-Hong Kong Extradition Treaty 1997. We suspended the Extradition Treaty on the UK side, and in response, Hong Kong also suspended the Extradition Treaty on their side. As such there is no formal extradition arrangement or treaty in place to underpin Hong Kong's current designation under the Act.

5.6 Zimbabwe is also designated under the Act as a Part 2 territory based on The London Scheme for Extradition within the Commonwealth (1966). That scheme was the formal framework between the UK and Zimbabwe allowing for the certification of their extradition requests to the UK. However, Zimbabwe left the Commonwealth and as such there is no formal extradition arrangement or treaty in place to underpin Zimbabwe's current designation under the Act.

5.7 Accordingly, there is no international arrangement enabling extradition cooperation with Hong Kong or Zimbabwe, and cooperation under section 194 is precluded for designated Part 2 territories. The UK could not certify an extradition request from either state, even if there were strong operational grounds to do so. The only way to resolve this situation is to de-designate Hong Kong and Zimbabwe from the Act so that we can cooperate with them on the case-by-case basis available for non-treaty partners.

5.8 This SI does not change the considerations made in any individual case as part of extradition proceedings; all extradition requests are processed in accordance with UK domestic law and are subject to safeguards and protections as provided by the Act.

What was the previous policy, how is this different?

5.9 Chile has been a Category B territory, however it has acceded to the European Convention on Extradition. In order to cooperate with Chile in accordance with the European Convention, Chile needs to be designated as a Part 2, Category A territory.

5.10 Hong Kong was designated as a Part 2, Category A territory. However, the UK's Extradition Treaty with Hong Kong was suspended in 2020. Hong Kong is de-designated from Part 2 of the Act which allows the UK to accept extradition requests on a case-by-case basis, pursuant to section 194 of the Act.

5.11 Zimbabwe was designated as a Part 2, Category B territory, as a Commonwealth participant in the London Scheme. However, this membership concluded in 2003, as Zimbabwe made the choice to leave the Commonwealth scheme and there are currently no extradition treaties or formal arrangements in place with Zimbabwe. Accordingly, this instrument removes Zimbabwe's designation as a Part 2, Category B territory, enabling the UK to process extradition requests on a case-by-case basis, under section 194.

6. Legislative and Legal Context

How has the law changed?

6.1 This SI amends the Extradition Act 2003 (Designation of Part 2 Territories) Order 2003 (S.I. 2003/3334) to designate Chile as a Part 2, Category A territory, and to remove Hong Kong and Zimbabwe as designated territories for Part 2.

Why was this approach taken to change the law?

6.2 This is the only approach possible to make the necessary changes. The territories are currently incorrectly designated in the Act, and the only way to amend their designations is through an SI.

7. Consultation

Summary of consultation outcome and methodology

7.1 The Home Office consulted across government before amending the designations relevant to this SI. This included discussions with the Devolved Administrations, law enforcement partners and the Foreign, Commonwealth and Development Office. These consultations have been through governance and working groups with relevant operational stakeholders and Devolved Government counterparts. No formal consultation was required or will be published. There were no objections to this necessary change being made.

8. Applicable Guidance

8.1 There is no guidance needed.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this Statutory Instrument because there are no meaningful direct costs / benefits impacted by the Amendments to Designations Order (2025). An Equality Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website. The Equality Impact Assessment concluded that the proposed action does not subject any person to less favourable treatment than any other person and therefore no direct discrimination arises. There is specific indirect discrimination given the change only applies to specific territories however to the extent that any impact occurs, it is considered proportionate to the legitimate aim of effective extradition cooperation, public safety and alignment between international and domestic law.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because this Statutory Instrument extends to judicial cooperation which is outside of the remit of businesses, charities and voluntary bodies.

9.3 The legislation does not impact small or micro businesses.

9.4 There is no, or no significant, impact on the public sector because this Statutory Instrument impacts judicial cooperation, which enables public sector bodies, such as law enforcement, to better carry out duties of protecting public safety.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is ensuring regular reviews on designations is carried out, in line with government commitments made as part of the Baker Review 2011.

10.2 The instrument does not include a statutory review clause.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 The Minister for Security has made the following statement regarding Human Rights:

"In our view the provisions of the Extradition Act 2003 (Amendment to Designations) Order 2025 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").