EXPLANATORY MEMORANDUM TO

THE EXTRADITION APPEALS (ENGLAND AND WALES AND NORTHERN IRELAND) ORDER 2013

2013 No. 2384

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

2. Purpose of the instrument

2.1 This Order makes consequential provision to modify the application of subsections (2) to (4) of section 109 of the Extradition Act 2003 ("the 2003 Act") (court's powers on appeal under section 108 – appeal against extradition order). This is to clarify that the High Court has the power to allow or dismiss appeals brought on human rights grounds against a decision of the Secretary of State to order a person's extradition under the 2003 Act, as amended by the Crime and Courts Act 2013 ("the 2013 Act"). This is achieved by providing that subsections (2) to (4) of section 109 of the 2003 Act do not apply to certain appeals against the decision of the Secretary of State to order extradition brought on human rights grounds.

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

3.1 None.

4. Legislative Context

4.1 Part 2 of Schedule 20 to 2013 Act amended the 2003 Act to preclude the Secretary of State for the Home Department from considering human rights issues in Part 2 (non European Arrest Warrant) extradition cases: see section 70(11) of the 2003 Act. The amendments also provide a new way for people to raise such issues after the time period for appealing has passed: an out-of-time appeal to the High Court, pursuant to amendments to section 108 of the 2003 Act (appeal against extradition order).

4.2 The 2013 Act did not make provision to govern the role of the High Court when an appeal is brought on human rights grounds pursuant to subsection (4) or subsections (5) and (6) of section 108 of the 2003 Act. The High Court's role upon hearing such an appeal appears to be limited by section 109 of the 2003 Act to considering questions that were, or should have been, before the Secretary of State. By definition, where the Secretary of State is unable to consider human rights issues because of the effect of section 70(11) of the 2003 Act, the High Court appears to be left without the power to

allow or dismiss an appeal on human rights grounds, whether an appeal brought in time (section 108(4)) or out of time (section 108(5) and (6)).

4.3 Section 59(1) of 2003 Act allows the Secretary of State to make provision to modify the operation of any enactment in consequence of the 2013 Act. This Order provides that, to the extent that a person's grounds of appeal are based on human rights, subsections (2) to (4) of section 109 of the 2003 Act do not apply. The Order will therefore put beyond doubt that the High Court may dismiss or allow such an appeal.

5. Territorial Extent and Application

5.1 England and Wales and Northern Ireland.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The policy background is set out in paragraphs 63 and 64 of the Explanatory Note to the Crime and Courts Act 2013:

> "On 8 September 2010 the Government commissioned a review of the UK's extradition arrangements. The review was tasked to consider a number of specific issues, including…the breadth of the Secretary of State's discretion in an extradition case. "A Review of the United Kingdom's Extradition Arrangements" ("the Baker review") was presented to the Home Secretary on 30 September 2011.
>
> In October 2012, the Government published its response to the Baker review. Not only taking into account the recommendations made by the review panel, but also the concerns of Parliament and the public that enhanced protections were needed with regards to extradition… the Government… took the view that the discretion to consider final human rights representations in Part 2 extradition cases should be transferred from the Secretary of State to the courts."

8. Consultation outcome

8.1 No formal consultation process has taken place.

9. Guidance

9.1 None.

10. Impact

10.1 There is likely to be no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is nil.

10.3 An Impact Assessment has not been prepared for this instrument as no impact on the private, public or voluntary sector is foreseen.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The legislation will be subject to internal review in 12 months to assess whether any unintended outcome has occurred.

13. Contact

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