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 modifies section 109 of the Extradition Act 2003 ("the 2003 Act") (court's powers on appeal under section 108 – appeal against extradition order) in order to ensure the High Court has the power to allow a human rights appeal where it decides that the person's extradition would breach the European Convention on Human Rights ("the ECHR").

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 the Crime and Courts Act 2013 ("the 2013 Act") amended the 2003 Act to prevent the Secretary of State from considering human rights issues in non-EU extradition cases. Previously, people sometimes raised human rights issues with the Secretary of State after the conclusion of the statutory appeals process. The Secretary of State, as a public authority, was obliged to consider them. Part 2 of Schedule 20 sets out that the Secretary of State is not to consider human rights issues. It creates an alternative route for raising such issues after the time has passed for appealing: the person is now able to raise such issues with the High Court, by way of an out-of-time appeal, under section 108 of the 2003 Act.

4.2 The High Court's powers on a section 108 appeal are set out in section 109 (which was not amended by the 2013 Act). It sets out (subsection (2)) that the High Court may only allow an appeal if the conditions in subsection (3) or (4) are satisfied. But those conditions are incapable of being satisfied in a human rights case. That is because:

(i) one of the conditions is that the Secretary of State ought to have decided a question before her (which are set out in section 93 of the 2003 Act) differently or would have done so had the issue or information now at hand been raised before her, but

(ii) human rights issues are not something to which the Secretary of State can have regard in deciding the questions before her (given the prohibition on her considering any human rights issues) and so cannot influence how she decides those questions.

4.3 This Order therefore disapplies subsections (2) to (4) of section 109 in a human rights appeal. This ensures the High Court may allow a human rights appeal where it decides that the person's extradition would breach the ECHR.

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 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. A copy of the review can be found at:

https://www.gov.uk/government/publications/independent-review-of-the-united-kingdoms-extradition-arrangements

7.2 One of the Recommendations the Report made was that the Secretary of State should no longer have responsibility for consideration of human rights matters in extradition matters. As part of her general response to the Baker Review, on 16 October 2012, in a statement to Parliament, the Home Secretary announced that

" I also agree with the Baker review's recommendation that the breadth of the Home Secretary's involvement in extradition cases should be reduced. Matters such as representations on human rights grounds should, in future, be considered by the High Court rather than the Home Secretary. This change, which will significantly reduce delays in certain cases, will require primary legislation."

7.3 It was consequent to this commitment that the Government tabled the amendments to the Crime and Courts Bill which are now Part 2 of Schedule 20 to the 2013 Act.

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

Alexander Fraser at the Home Department (tel: 020 7035 1259 or e-mail: alexander.fraser@homeoffice.gsi.gov.uk) can answer any queries regarding the Order.