

EXPLANATORY MEMORANDUM TO

THE FALKLAND ISLANDS COURTS (OVERSEAS JURISDICTION) (AMENDMENT) ORDER 2017

2017 No. 777

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Foreign and Commonwealth Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The Order amends the Falkland Islands Courts (Overseas Jurisdiction) Order 1989 (“the 1989 Order”). This amendment to the 1989 Order allows proceedings to be commenced by way of information before the Falkland Island Courts where a person commits an offence under law of South Georgia and the South Sandwich Islands (“SGSSI”) or the British Antarctic Territory (“BAT”) whether that person is in SGSSI, BAT or the Falkland Islands. The person concerned would still have to be served with the information as part of the normal process.
- 2.2 Currently, there is no practical means of charging a person with an offence when they are in SGSSI or BAT. The 1989 Order currently assumes that the court would sit in SGSSI or BAT Territory and would commit a person for trial, and then the case (and the person) could be transferred to the Falkland Islands Courts to hear that trial. It is not practical to convene the courts of SGSSI or BAT to sit in those Territories, and there is no provision for these courts to sit outside of the Territories.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 This entire instrument applies only to the Falkland Islands, SGSSI and BAT.
- 3.3 As this instrument is not subject to parliamentary procedure, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 The 1989 Order gives the Supreme Court of the Falkland Islands jurisdiction to hear and determine any civil or criminal proceedings in respect of matters arising under the law of SGSSI or BAT which would be within the jurisdiction of the Supreme Courts of those Territories. The Order also gives the Magistrate’s Court of the Falkland Islands jurisdiction to hear and determine any civil or criminal proceedings in respect of matters arising under the law of SGSSI or BAT which would be within the jurisdiction of the Magistrates’ Courts of those territories.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is the Falkland Islands, SGSSI and BAT.
- 5.2 The territorial application of this instrument is the Falkland Islands, SGSSI and BAT.

6. European Convention on Human Rights

- 6.1 As the instrument is laid after being made and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

- 7.1 The Falkland Islands Courts when exercising the jurisdiction granted by the 1989 Order have the powers they would have if the matters had arisen under the laws of the Falkland Islands. The 1989 Order provides for criminal proceedings for offences committed in the SGSSI or BAT to be brought before the Falkland Islands Courts.
- 7.2 Whilst it is possible to commence proceedings by information against a person in regard to an offence under the law of SGSSI or BAT law in the Falkland Islands Courts, this is currently only possible when the person is in the Falkland Islands. There is no provision to allow proceedings to be commenced in the Falkland Islands Courts in this way in relation to a person who is not in the Falkland Islands.
- 7.3 This amendment to the 1989 Order ensures that in the event an individual is suspected of committing a criminal offence in SGSSI or BAT, an information can be laid against them for that offence.

8. Consultation outcome

- 8.1 No formal consultation was conducted given the very small impact. The Legal Advisers to the SGSSI and BAT governments have been consulted on this proposal and are in agreement with the amendment.

9. Guidance

- 9.1 No guidance is necessary given the minimal impact.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 There is no impact on the public sector in the United Kingdom.
- 10.3 An Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies in the United Kingdom.

11. Regulating small business

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

- 12.1 Implementation and monitoring of the use of this provision will be a matter for the governments of SGSSI and BAT.

13. Contact

- 13.1 Lowri Mai Griffiths at the Foreign and Commonwealth Office Telephone: 020 7008 3054 or email: lowri.griffiths@fco.gov.uk can answer any queries regarding the instrument.