

EXPLANATORY MEMORANDUM TO
THE GENEVA CONVENTIONS (OVERSEAS TERRITORIES) ORDER 2010

2010 No. 2963

1. This Explanatory Memorandum has been prepared by Foreign and Commonwealth Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The purpose of this instrument is:

(a) to apply in the Overseas Territories the amendments to the Geneva Conventions Act 1957 made by the Geneva Conventions and United Nations Personnel (Protocols) Act 2009. This will enable the Third Protocol Additional to the Geneva Conventions of 12 August 1949 to be extended to the Overseas Territories;

(b) to apply in the Overseas Territories certain amendments the Geneva Conventions Act 1957 which were made by the International Criminal Court Act 2001; and

(c) to consolidate the Orders applying the Geneva Conventions Act 1957 to the Overseas Territories.

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

3.1 None.

4. Legislative Context

4.1 The instrument gives effect in the law of the Overseas Territories to the provisions of the Third Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem, which was concluded on 8 December 2005 (Command Paper 6917). This Protocol sanctions the use of a third humanitarian symbol, a Red Crystal, in order to give added and internationally recognised protection rights to humanitarian workers and other military medical personnel working in countries where the currently used symbols (the Red Cross and the Red Crescent) are not recognised. It will assist the ICRC and National Red Cross Society humanitarian workers in the field, as well as national military and medical personnel (for example British Armed Forces medical personnel) when operating in countries which do not recognise the existing humanitarian symbols but which do accept and support the new symbol.

4.2 The instrument also gives effect in the Overseas Territories to certain amendments to the Geneva Conventions Act 1957 made by Sections 70 and 83 of, and Schedule 10 to, the International Criminal Court Act 2001.

4.3 The instrument also consolidates previous Orders applying the Geneva Conventions Act 1957 in the Overseas Territories.

5. Territorial Extent and Application

5.1 This instrument applies to the Overseas Territories specified in Schedule 1.

6. European Convention on Human Rights

As this instrument is only required to be laid and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The purpose of the Geneva Conventions Act 1957 was to enable the United Kingdom to become party to the four Geneva Conventions of 1949 relating to the Protection of the Victims of War. The provisions of that legislation were extended to the Overseas Territories by the Geneva Conventions Act (Colonial Territories) Order in Council 1959 (No 1301). The Geneva Conventions and United Nations Personnel (Protocols) Act 2009 amended the Geneva Conventions Act 1957 to give effect to the Third Additional Protocol to the Geneva Conventions which was adopted on 8th December 2005.

7.2 This instrument gives effect in the Overseas Territories to the 2009 Act by extending to the Overseas Territories the Geneva Conventions Act 1957 as amended by the 2009 Act. In so doing, the instrument also gives effect in the Overseas Territories to further amendments made to the Geneva Conventions Act 1957 which were made by the International Criminal Court Act 2001. The Order revokes previous Orders which extended the 1957 Act to the Overseas Territories, including SI 1959/1301.

7.3 The Territories to which this instrument applies are set out in Schedule 1. The exceptions and modifications to be made in the extension of the Geneva Conventions Act 1957, to make it applicable in the domestic law of the Overseas Territories, are set out in Schedule 2 to this instrument.

7.4 This legislation is necessary in particular as the new provisions introduced by the Third Additional Protocol to the Geneva Conventions require action under domestic criminal law to prevent the misuse of the new emblem which the Protocol introduces.

7.5 The instrument consolidates provisions on the application of the Geneva Conventions Act 1957 in the Overseas Territories that were made by previous Orders.

8. Consultation outcome

8.1 The governments of the Overseas Territories have been consulted on the principle of extending the Third Additional Protocol to the Geneva Conventions, and on the terms of this instrument, and are content. The British Red Cross Society (BCRS) has also been consulted, and is strongly supportive.

9. Guidance

9.1 The instrument is not complex and the department is not intending to issue guidance.

10. Impact

10.1 No impact on business, charities or voluntary bodies is expected, unless one of them should attempt to misuse the new humanitarian symbol introduced by the Third Additional Protocol.

10.2 The impact on the public sector in the Overseas Territories will be minimal. The authorities in those territories already have power to monitor and authorise the use of, and prosecute the misuse of, the Red Cross and Red Crescent symbols. No additional financial or personal resources are expected to be required through the addition of the new Red Crystal to this remit.

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

11. Regulating small business

11.1 The legislation applies to small businesses only to the extent that it applies to the general population, in that they will not be permitted to misuse the new Red Crystal symbol.

12. Monitoring & review

12.1 This will be undertaken as necessary by the relevant authorities in the Overseas Territories.

13. Contact

John Grainger at the Foreign and Commonwealth Office Legal Advisers, telephone number 0207 008 6189 or email: John.Grainger@fco.gov.uk can answer any queries regarding the instrument.