

**EXPLANATORY MEMORANDUM TO
THE EXTRADITION ACT 2003 (DESIGNATION OF PROSECUTORS) (ENGLAND
AND WALES AND NORTHERN IRELAND) ORDER 2013**

2013 No. 2388

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 designates prosecutors and descriptions of prosecutors as “designated prosecutors” for the purposes of sections 19F(2) and 83E(2) of the Extradition Act 2003 (“the 2003 Act”), as inserted by paragraphs 3 and 6 of Schedule 20 to the Crime and Courts Act 2013 (“the 2013 Act”). The effect of this will be that the prosecutors and descriptions of prosecutors listed in the Order will be able to give a prosecutor’s certificate in “forum proceedings” conducted pursuant to the amended 2003 Act. The prosecutors and descriptions of prosecutors designated are those most likely to have to consider whether to prosecute a person in the UK, and as such ought to be designated for the purposes of the forum provisions.

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

3.1 None.

4. Legislative Context

4.1 Part 1 (Forum) of Schedule 20 (Extradition) to the 2013 Act amends the 2003 Act, to deal with the issue of forum. Forum concerns the place where a person ought to be prosecuted for an offence he or she is alleged to have committed.

4.2 The amendments require the judge, at the extradition hearing, to consider the issue of forum in cases where the person is wanted to face prosecution in another jurisdiction.

4.3 Extradition will be barred by reason of forum if the judge decides that; (i) a substantial measure of the relevant activity was performed in the UK, and (ii) having regard to a list of specified matters relating to the interests of justice, the extradition should not take place.

4.4 The specified matters relating to the interests of justice are (i) where most of the harm or loss occurred, (ii) the interests of any victims, (iii) any belief of a UK prosecutor that the UK is not the most appropriate place to prosecute the person, (iv) whether evidence needed to prosecute the person is or could be made available in the UK, (v) any delay that may result in proceeding in one country rather than another, (vi) the desirability and practicality of all prosecutions relating to the offence taking place in one place, and (vii) the person’s connections with the UK.

4.5 A designated prosecutor may issue a certificate that he or she has: (i) considered the offences for which the person could be prosecuted in the UK, and (ii) decided that there are one or more such offences which correspond to the extradition offence, and either (iii) decided that the person should not be prosecuted in the UK for a corresponding offence because the prosecutor believes that there is insufficient admissible evidence or it would not be in the public interest, or (iv) believes that the person should not be prosecuted in the UK because of concerns about disclosure of material. A designated prosecutor may apply for an adjournment in the proceedings in order to consider whether to give a certificate. Sections 19C(1) and 83B(1) of the 2003 Act, as amended, state that, if a designated prosecutor issues a certificate, the judge, at the extradition hearing, must decide that extradition is not barred by reason of forum.

4.6 However, sections 19C(2) and 83B(2) are clear that this duty to decide the forum proceedings in this way is subject to sections 19E and 83D of the 2003 Act, as amended. These sections set out that a certificate may be challenged, but only as part of an appeal to the High Court under the 2003 Act. The High Court must apply the procedures and principles of judicial review when reviewing a certificate. If the High Court quashes a certificate, it must then consider the issue of forum itself.

4.7 This Order designates those prosecutors and descriptions of prosecutors which the Secretary of State wishes to designate at this time for the purposes of the forum provisions. It is not necessary to designate the Director of Public Prosecutions as a designated prosecutor as any member of the Crown Prosecution Service is designated by sections 19F(2) and 83E(2) of the 2013 Act.

4.8 Paragraph 9 of Schedule 20 to the 2013 Act repeals the forum provisions contained in Schedule 13 to the Police Act Justice Act 2006. Those provisions were never commenced.

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 2013 Act:

“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 whether the existing forum bar to extradition (in the Police and Justice Act 2006) should be brought into force; and 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 Home Secretary announced her intention to legislate for a new forum bar that would “better balance the safeguards for defendants and delays to the extradition process which were predicted by [the Baker review].””

7.2 The Baker review can be found at:

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

The Home Secretary’s statement on extradition of 16 October 2012 can be found at

<http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm121016/debtext/121016-0001.htm>

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 email:

alexander.fraser@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.