

**EXPLANATORY MEMORANDUM TO**  
**THE EXTRADITION APPEALS (SCOTLAND) ORDER 2024**

**2024 No. 172**

**1. Introduction**

- 1.1 This Explanatory Memorandum has been prepared by the Home Office and is laid before Parliament by Command of His Majesty.

**2. Declaration**

- 2.1 The Rt Hon Tom Tugendhat, Minister of State for Security at the Home Office confirms that this Explanatory Memorandum meets the required standard.
- 2.2 Julia Labeta, Deputy Director for International Agreements and Judicial Cooperation at the Home Office confirms that this Explanatory Memorandum meets the required standard.

**3. Contact**

- 3.1 Emily Beard at the Home Office, email: [ExtraditionPolicy@homeoffice.gov.uk](mailto:ExtraditionPolicy@homeoffice.gov.uk) can be contacted with any queries regarding the instrument.

**Part One: Explanation, and context, of the Instrument**

**4. Overview of the Instrument**

*What does the legislation do?*

- 4.1 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 in Scotland, as is already the case in the rest of the United Kingdom, the High Court has the power to allow or dismiss an appeal brought on human rights grounds against a Ministerial decision to order 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 Ministerial decision to order extradition brought on human rights grounds.

*Where does the legislation extend to, and apply?*

- 4.2 The extent of this instrument (that is, the jurisdiction which the instrument forms part of the law of) is Scotland.
- 4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is Scotland.

**5. Policy Context**

*What is being done and why?*

- 5.1 In dealing with extradition cases, it is necessary to consider whether extradition would be compatible with a person’s rights under the European Convention on Human Rights (“the Convention”) within the meaning of the Human Rights Act 1998. The 2013 Act amended the 2003 Act to preclude the Secretary of State from considering

the compatibility with Convention rights in relation to extradition requests received under Part 2 of the 2003 Act (which covers requests from outside of the European Union) as these are already considered by the courts in all cases.

- 5.2 Appeals against extradition decisions on human rights grounds can be made to the High Court of the relevant jurisdiction with the requirements for such appeals set out in section 109 of the 2003 Act. These requirements were amended in England, Wales and Northern Ireland (via the Extradition Appeals (England and Wales and Northern Ireland) Order 2013) to reflect the fact that Ministers no longer have a role in considering human rights. This Order makes equivalent provision for Scotland.

*What was the previous policy, how is this different?*

- 5.3 While the changes in the 2013 Act were introduced across the UK, the relevant provisions were not commenced in Scotland at the same time as in England and Wales and Northern Ireland. This was as a result of a commitment made during parliamentary passage that commencement in Scotland would only take place with the consent of the Scottish Government.
- 5.4 Following a ruling by the UK Supreme Court, these changes were brought into force in Scotland in September 2021 (via the Crime and Courts Act 2013 (Commencement No. 19) Order 2021). However, the necessary consequential changes to section 109 were not made at the time. This Order makes that remaining legislative adjustment, ensuring consistency in law across the UK. No new policy or powers are being introduced; rather a potential ambiguity in the Scottish courts' powers to progress appeals will be removed.

## **6. Legislative and Legal Context**

*How has the law changed?*

- 6.1 This Order makes consequential provision to modify the application of subsections (2) to (4) of section 109 of the 2003 Act. Those subsections provide that on an appeal under section 108 of the 2003 Act against a Ministerial decision to order extradition, the High Court is to consider the questions which were, or should have been, before the Minister. Section 70(11) of the 2003 Act (as inserted by Part 2 of Schedule 20 to the 2003 Act) provides that the Minister is not to consider whether the extradition would be compatible with the Convention rights within the meaning of the Human Rights Act 1998. This Order clarifies that the High Court is able to allow or dismiss an appeal brought on human rights grounds, where human rights questions were not considered by the Minister because of the effect of section 70(11). This order applies in Scotland.

*Why was this approach taken to change the law?*

- 6.2 The changes are being made by way of modification rather than textual amendment for consistency with the Extradition Appeals (England and Wales and Northern Ireland) Order 2013 (S.I. 2013/2384), which makes equivalent provision for the rest of the United Kingdom.

## **7. Consultation**

*Summary of consultation outcome and methodology*

- 7.1 Given the nature of these changes, a formal consultation was not considered appropriate. We have consulted with the Scottish Government and relevant operational partners, who support these amendments.

## **8. Applicable Guidance**

- 8.1 There are no plans to issue guidance relating to this instrument.

### **Part Two: Impact and the Better Regulation Framework**

## **9. Impact Assessment**

- 9.1 A full Impact Assessment has not been prepared for this instrument because no or no significant impact, on the private, public or voluntary sector is foreseen.

### *Impact on businesses, charities and voluntary bodies*

- 9.2 There is no, or no significant, impact on business, charities or voluntary bodies.
- 9.3 The legislation does not impact small or micro businesses.
- 9.4 There is no, or no significant, impact on the public sector.

## **10. Monitoring and review**

### *What is the approach to monitoring and reviewing this legislation?*

- 10.1 The effective functioning of the changes made by this Statutory Instrument will be subject to review as part of ongoing wider oversight of the UK's extradition processes.

### **Part Three: Statements and Matters of Particular Interest to Parliament**

## **11. Matters of special interest to Parliament**

- 11.1 None.

## **12. European Convention on Human Rights**

- 12.1 The Minister of State for Security has made the following statement regarding Human Rights:

“In my view the provisions of the Extradition Appeals (Scotland) Order 2024 are compatible with the Convention rights.”

## **13. The Relevant European Union Acts**

- 13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 (“relevant European Union Acts”).