

DIEGO GARCIA MILITARY BASE AND BRITISH INDIAN OCEAN TERRITORY BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Diego Garcia Military Base and British Indian Ocean Territory Bill as brought from the House of Commons on 21 October 2025 (HL Bill 139).

- These Explanatory Notes have been prepared by the Foreign, Commonwealth and Development Office in order to assist the reader of the Bill. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

- 1 The Diego Garcia Military Base and British Indian Ocean Territory Bill makes provision to implement, and makes other provision as a result of, the Treaty between the Government of the Republic of Mauritius and the Government of the United Kingdom of Great Britain and Northern Ireland concerning the Chagos Archipelago including Diego Garcia (“the Treaty”), signed 22 May 2025.
- 2 The Bill terminates UK sovereignty over the British Indian Ocean Territory (“BIOT”) in domestic law. In addition, the Bill amends legislation on nationality to reflect that BIOT will no longer exist as a British overseas territory. It provides for the ongoing administration of Diego Garcia through a general saving of existing law, including the prerogative, and confers a new power to make any provision that is appropriate as a result of the Treaty by Order in Council, as well as consequential, supplementary, incidental, transitional or saving provision.

Policy background

Historical Background

- 3 On 22 May the Treaty was laid before Parliament under the Constitutional Reform and Governance Act 2010, with an accompanying Explanatory Memorandum (“the Explanatory Memorandum”), which sets out the historical background to the Treaty.
- 4 On 8 November 1965, the UK created BIOT by detaching a number of islands from the colony of Mauritius and the colony of the Seychelles. A joint UK-US military base was constructed on the largest of the islands, Diego Garcia. At the time of detachment, the UK committed that the territory would be ceded to Mauritius when it was no longer needed for defence purposes. Those islands detached from the colony of Seychelles were ceded to them on their independence in 1976. The remaining islands in BIOT are all part of the Chagos Archipelago.
- 5 Since the 1980s, Mauritius has undertaken a sustained challenge to UK sovereignty of the Chagos Archipelago, including Diego Garcia. Further details of this, and of the rationale for the Government’s decision to enter into the Treaty, are set out in the Explanatory Memorandum. Following negotiations with Mauritius, the Treaty was signed on 22 May 2025.
- 6 Under the terms of the Treaty, the UK and Mauritius (the “Parties”) agree that Mauritius is sovereign over the Chagos Archipelago in its entirety, including Diego Garcia. The UK is authorised to exercise the rights and authorities of Mauritius with respect to Diego Garcia, in accordance with the terms of the Treaty. Under the Treaty, the UK has the prescriptive, enforcement and adjudicative criminal and civil jurisdiction necessary to administer and operate the Base and related activities on Diego Garcia. This includes the power to make legislation.
- 7 The Treaty will enter into force only after both Parties to it have completed their domestic procedures for its implementation and notified each other that they have done so. This Bill forms part of the UK’s implementation of the Treaty, and also makes provision which results from the Treaty, including in relation to British nationality. The majority of provisions within the Treaty do not require legislation to implement them and therefore are not reflected in the Bill.

Legal background

- 8 BIOT is a British overseas territory. It is not part of the United Kingdom but, together with the UK, the Crown Dependencies and the other Overseas Territories, forms one undivided realm where the King is sovereign. The UK is responsible for the international relations of the Overseas Territories.
- 9 The constitution for BIOT is currently set out in the British Indian Ocean Territory (Constitution) Order 2004. BIOT is a separate jurisdiction, with its own legal system. His Majesty in Council has plenary power to legislate for BIOT by virtue of the Royal prerogative.
- 10 The Bill amends the British Nationality Act 1981. The British Nationality Act 1981, and the British Overseas Territories Act 2002, make provision about British overseas territory citizenship and British citizenship, in connection with individuals who were born in the Chagos Archipelago and their descendants.
- 11 Further information on the effects of this Bill is given in the commentary on the individual clauses of the Bill.

Territorial extent and application

- 12 Provisions in the Act extend, so far as necessary, to the whole of the United Kingdom, the Crown Dependencies and the Overseas Territories.
- 13 The matters to which the provisions of the Bill relate are not within the legislative competence of the Scottish parliament, Senedd Cymru or the Northern Ireland Assembly, and no legislative consent motion is being sought in relation to any provision of the Bill.
- 14 The Bill makes provision for the purposes of international relations, defence of the realm and nationality, all of which are reserved matters (in respect of Scotland and Wales) and excepted in respect of Northern Ireland.
- 15 Clauses 3(2) and 5 make provision:
 - a. for Scotland, making incidental or consequential changes to Scots law on non-reserved matters, but for purposes which are reserved;
 - b. for Wales, having an effect on non-reserved matters, but merely consequential on the provision about reserved matters;
 - c. for Northern Ireland, making provision which applies to Northern Ireland which deals with reserved or excepted matters, but which will impinge on transferred matters.
- 16 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

Commentary on provisions of Bill

Clause 1: Commencement of Treaty and main provisions of this Act

- 17 This clause sets out when the main provisions in the Bill come into force. Clauses 2 to 4, which deal with dissolution of BIOT, the continued administration of Diego Garcia, and citizenship of persons connected to the Chagos Archipelago, will come into force when the Treaty comes into force.
- 18 Entry into force of the Treaty is defined in Article 18 of the Treaty, as being the first day of the first month following the date of receipt of the later note by which Mauritius and the UK notify each other that they have completed their respective internal requirements and procedures necessary.
- 19 Under subsection (4), the Secretary of State will publish in the London Gazette notice of when the Treaty, and therefore clauses 2, 3 and 4, comes into force.
- 20 Clause 6 (described below) deals with the commencement of the other clauses in the Bill.

Clause 2: Dissolution of the British Indian Ocean Territory

- 21 This clause provides for the dissolution of BIOT. It brings to an end His Majesty's sovereignty over the area which currently comprises BIOT. This addresses Article 1 of the Treaty, which states that the Parties agree that Mauritius is sovereign over the Chagos Archipelago, including Diego Garcia.
- 22 Subsection (2)(a) revokes the British Indian Ocean Territory (Constitution) Order 2004, which currently provides the constitution of BIOT.
- 23 As BIOT will no longer exist as a British overseas territory, subsection 2(2)(b) removes reference to BIOT from Schedule 6 to the British Nationality Act 1981. The Interpretation Act 1978 defines the term "British overseas territory" across the statute-book by reference to that Schedule.

Clause 3: Continued administration of Diego Garcia

- 24 This clause provides for the continued administration of Diego Garcia by the United Kingdom, in accordance with the Treaty and its provisions on UK jurisdiction and control, through a partial saving of existing law. Changes to the law will be needed to reflect the new status of Diego Garcia (including to ensure that the law respects the limitations in the Treaty). Through this clause, the Bill establishes a default position of continuity in the law of and relating to Diego Garcia, to avoid legal gaps on entry into force of the Treaty. Necessary changes to the law will then be made under the prerogative, the powers conferred by clause 5, or other existing statutory powers in the relevant jurisdictions.
- 25 Subsection (1) and (2) set out a general saving, preserving all laws of or relating to BIOT as laws of or relating to Diego Garcia.
- 26 Subsection (2) applies to any legislation or rule of law of England, Wales, Scotland, Northern Ireland and any of the Crown Dependencies or the Overseas Territories which currently relates to BIOT.
- 27 His Majesty in Council has "plenary", i.e. full, power to legislate for BIOT. Subsection (3) clarifies that the effect of subsections (1) and (2) is to preserve that power as a prerogative power to legislate for Diego Garcia.
- 28 Subsection (4)(a) relates to Schedule 6 to the British Nationality Act 1981 ("the 1981 Act") which lists the British overseas territories. As noted above, the definition of "British overseas

territory” provided by the Interpretation Act 1978 is by reference to the 1981 Act. While clause 2(2)(b) removes BIOT from this list, the purpose of subsection(4)(a) is to clarify that, where a law currently extends to BIOT because BIOT is an overseas territory listed in Schedule 6 to the 1981 Act, subsection (1) still preserves this law as a law of Diego Garcia. Similarly, where a law relates to BIOT because BIOT is an overseas territory listed in Schedule 6, subsection (2) preserves this as a law relating to Diego Garcia, even though Diego Garcia will not be listed as an overseas territory.

- 29 Subsection (4)(b) has the effect that laws saved by subsection (1) or (2) can be amended at or after commencement in the usual way, notwithstanding that saving.
- 30 Subsection (5) provides that, despite the revocation of the BIOT (Constitution) Order 2004, any legislation made under that Order will continue to have effect by virtue of the saving provision in subsection(1). This includes legislation made by the Commissioner for BIOT under section 3 of that Order, which is therefore preserved as the law of Diego Garcia.
- 31 Subsection (6) provides that, throughout the whole Bill, the term “Diego Garcia” includes the whole area for which the UK can legislate under the Treaty. See in particular Article 19 and Annex 2 of the Treaty in this respect.

Clause 4: Citizenship of persons connected with the Territory

- 32 This clause makes provision about British nationality, specifically about the entitlement to British and British overseas territory citizenship of persons who were born in BIOT and their descendants (“Chagossians”).
- 33 British Overseas Territories citizenship (“BOTC”) is a form of British nationality held through a close and continuing connection with a British overseas territory. A British overseas territories citizen can hold a British passport and get consular assistance and protection from UK diplomatic posts. The difference between British citizenship and BOTC is the right of abode in the UK. All British citizens have the right of abode within the UK, meaning they are completely free from immigration control and can live and work in the UK permanently, without needing to seek official permission from the Home Office. However, BOTC does not directly provide the right of abode.
- 34 The Bill will not affect either British citizenship or BOTC acquired before commencement, nor will it affect current routes to British citizenship, with their existing expiry dates. However, after BIOT ceases to be a British overseas territory, no-one will be entitled to acquire BOTC on the basis of a connection to BIOT or the Chagos Archipelago.
- 35 Section 17H currently entitles a person to BOTC if they are the direct descendant of a person who was a citizen of the UK and Colonies because they were born in BIOT (or were born before 1965 on the islands which subsequently became BIOT). This entitlement applies only to individuals who have never previously held BOTC or a British Dependent Territories citizenship, and is time limited: applications must be made within a certain period from the date on which section 17H came into force, which was 23 November 2022.
- 36 Under section 4K of the 1981 Act, a person who is entitled to hold BOTC under section 17H is entitled to be registered as a British citizen (subject to the exceptions set out in the 1981 Act).
- 37 Subsections (4), (5) and (6) amend the 1981 Act by inserting new sections 4KA and 25A, and omitting section 17H, of that Act.
- 38 The omission of section 17H, combined with the new section 25A, means that after the commencement of this clause, a person will no longer be entitled to claim BOTC on the basis of descent from a person born on the Chagos Archipelago.

- 39 The new section 4KA of the 1981 Act will provide that a Chagossian who was previously eligible for British citizenship by virtue of section 17H of the 1981 Act in combination with section 4K of that Act (“the s. 17H route”) will be eligible to claim such citizenship until the original expiry of the s. 17H route, as applicable to them. This means, for example, that after clause 4 commences, a person who was 18 or over on 23 November 2022, who wishes to apply for British citizenship under section 4KA, must do so before 23 November 2027.
- 40 Any Chagossians who are born between the date of entry into force of the Treaty and the expiry of the s17H route who would have been eligible for that route continue to be eligible to apply for British citizenship (but not BOTC).
- 41 Subsection (8) creates a transitional provision in relation to applications for British citizenship or BOTC which have been made before the day on which commencement of this clause occurs, but have not been determined at that point. These applications will be dealt with on the basis of section 17H and section 4K as they applied before commencement of this clause.
- 42 Subsection (9) provides that British citizenship and BOTC acquired before the entry into force of the Treaty are not affected by anything in the Bill.
- 43 Clause 4(2) makes it clear that, in recognition of the changes made by the remainder of the clause, the general continuity proposition in clause 3(2) does not apply to the 1981 Act itself. It will, however, apply to other legislation that currently applies to BIOT by virtue of its inclusion in the list of British overseas territories in Schedule 6 to the 1981 Act (as explained in relation to clause 3(4)(a)).

Clause 5: Supplementary provision about Orders

- 44 Clause 5 confers a power to implement the Treaty and make provision resulting from it in domestic law.
- 45 Subsection (1) gives His Majesty the power to make an Order in Council making any provision which he considers appropriate as a result of the Treaty. This might include, for example, provision directly implementing the Treaty, or provision which needs to be made as a result of the Treaty, to reflect the fact that BIOT no longer exists as an overseas territory. Orders in Council under clause 5(1) may also make consequential, supplementary, transitional etc. provision.
- 46 This power includes (under subsection (2)) a power to amend, repeal or revoke any existing legislation of any part of the United Kingdom, the Crown Dependencies or the Overseas Territories. Orders in Council under clause 5 may amend legislation which forms part of the law of Diego Garcia pursuant to the general saving made by clause 3.
- 47 The Parliamentary procedures applying to Orders in Council made using this power will depend on their content. Orders in Council under Clause 5 are not subject to any Parliamentary procedure, unless they amend, repeal or revoke any Act of Parliament or provision made under an Act of Parliament by statutory instrument, in which case they will be subject to the negative procedure.
- 48 Subsection (4) and (6) together provide that the statutory power conferred by clause 5 does not limit any of His Majesty’s powers under his prerogative. This includes the prerogative power to legislate for Diego Garcia which is preserved by virtue of clause 3. Subsection (5) explains how the use of those powers after entry into force of the Treaty is to be treated under the Foreign Jurisdiction Act 1890 and the Statutory Instruments Act 1946. Part of the intention is to maintain a clear distinction between prerogative and statutory orders, notwithstanding the fact that the Bill clarifies or confirms certain aspects of the prerogative as forming part of the new legal framework for Diego Garcia.

- 49 Subsection (6) makes it clear that His Majesty's prerogative power to legislate for British Indian Ocean Territory may be used after this clause has come into force, to make laws which take effect at or after entry into force of the Treaty, which will be saved as laws of Diego Garcia. This is to avoid any doubt as to the ability under the prerogative to legislate in a way that anticipates the new status of Diego Garcia and can take effect together with the change in status.

Clause 6: Commencement and short title

- 50 Clause 6 makes provision for clause 4 of the Bill to come into force on the day which the Bill is passed.
- 51 Subsection (2) is self-explanatory.

Commencement

- 52 Clause 1 provides that clauses 2 to 4 come into force when the Treaty comes into force. Clause 6 provides that the remaining provisions come into force on the day the Bill becomes an Act of Parliament.

Financial implications of the Bill

- 53 The Bill does not itself authorise any charges on the public revenue, although the Treaty does include financial commitments on the part of the UK. Those commitments will be approved in principle by Parliament if it approves the ratification of the Treaty under the Constitutional Reform and Governance Act 2010 and will thereafter be funded annually through the supply legislation. There is an exception from the normal practice of bringing forward specific spending powers in legislation where the spending results from binding international commitments.
- 54 The Bill does not regulate business or civil society organisations. As such, the Department has not undertaken an Impact Assessment of the Bill. No public expenditure will be required as a result of the Bill.

Parliamentary approval for financial costs or for charges imposed

- 55 In the light of the explanation in the preceding section, no money resolution or ways and means resolution is needed for the Bill.

Compatibility with the European Convention on Human Rights

- 56 The Rt Hon. Baroness Chapman of Darlington has made a statement under section 19(1)(a) of the Human Right Act 1998 that, in her view, the provisions of the Bill are compatible with the Convention rights.
- 57 The Government will publish a separate memorandum with its assessment of compatibility of the Bill's provisions with the Convention rights.

Compatibility with the Environment Act 2021

- 58 The Rt Hon. Baroness Chapman of Darlington is of the view that the Bill as published does not contain provisions which, if enacted, would be considered environmental law for the purposes of Section 20 of the Environment Act 2021. Accordingly, no statement under that section has been made.

Duty under Section 13C of the European Union (Withdrawal) Act 2018

- 59 The Rt Hon. Baroness Chapman of Darlington is of the view that the Bill as introduced into the House of Lords does not contain provision which, if enacted, would affect trade between Northern Ireland and the rest of the United Kingdom. Accordingly, no statement under section 13C of the European Union (Withdrawal) Act 2018 has been made.

Related documents

- 60 The following documents are relevant to the Bill can be read at the stated locations

- [Diego Garcia Base Treaty](#)
- [Diego Garcia Base Treaty Explanatory Memorandum](#)

Annex A – Territorial extent and application in the United Kingdom

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion process engaged?	Extends and applies to Scotland?	Legislative Consent Motion process engaged?	Extends and applies to Northern Ireland?	Legislative Consent Motion process engaged?
Clause 1	Yes	Yes	No	Yes	No	Yes	No
Clause 2	Yes	Yes	No	Yes	No	Yes	No
Clause 3	Yes	Yes	No	Yes	No	Yes	No
Clause 4	Yes	Yes	No	Yes	No	Yes	No
Clause 5	Yes	Yes	No	Yes	No	Yes	No
Clause 6	Yes	Yes	No	Yes	No	Yes	No

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