

Diego Garcia Military Base and British Indian Ocean Territory Bill

Memorandum from the Foreign, Commonwealth and Development Office to the Delegated Powers and Regulatory Reform Committee (on moving to the House of Lords)

A. INTRODUCTION

1. This memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Diego Garcia Military Base and British Indian Ocean Territory Bill (“the Bill”). The Bill was introduced in the House of Commons on 17 July 2025 and transferred to the House of Lords after having completed its Commons stages on 21 October 2025. This memorandum identifies the provisions of the Bill that confer powers to make delegated legislation. It explains in each case why the power has been taken and explains the nature of, and the reason for, the procedure selected.

B. PURPOSE AND EFFECT OF THE BILL

2. The Bill implements the bilateral Treaty¹ between the UK and the Republic of Mauritius concerning the exercise of sovereignty over the Chagos Archipelago, while ensuring the security and continued effective operation of the strategically important military base on Diego Garcia (“the Base”).
3. The provisions in the Bill are as follows:
 - **Sovereignty** – termination of UK sovereignty over the Chagos Archipelago; dissolution of the British Indian Ocean Territory (“BIOT”);
 - **Nationality** – effecting necessary changes to UK domestic law on nationality to reflect that BIOT is no longer an Overseas Territory;
 - **Ongoing administration of Diego Garcia** – general saving of the existing law of BIOT and all laws of the UK, Crown Dependencies and Overseas Territories which relate to BIOT as laws of, or relating to, Diego Garcia.
 - **Delegated power** – a new power to make secondary legislation which is appropriate as a result of the Treaty and consequential, supplementary, incidental, transitional or saving provision, to be made by Order in Council.

C. DELEGATED POWER

4. Clause 3(1) preserves the law of BIOT as law of Diego Garcia, and clause 3(2) preserves any legislation or rule of law of any of His Majesty’s dominions (i.e. the UK, the Crown Dependencies or the Overseas Territories) which relates to BIOT, as law relating to Diego Garcia. Clause 3(3) confirms that this includes the existing prerogative power to legislate for BIOT, which becomes a power to legislate for Diego Garcia. That power is exercisable by Order in Council. This prerogative power is not a delegated power but is referred to in this Memorandum for context.
5. The delegated power in the Bill is:

¹Agreement 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

- I. **Clause 5: Supplementary provision about Orders:** This power allows for provision, which is appropriate as a result of the Treaty, and consequential, supplementary, incidental, transitional or saving provision to be made by Order in Council. This includes a power to amend any legislation of any of His Majesty's dominions. It is expressly provided that the powers conferred by this clause does not limit any prerogative power.

D. ANALYSIS OF DELEGATED POWERS BY CLAUSE

Clause 5(1) and (2): Supplementary provision about Orders

Powers conferred on: His Majesty the King

Power exercised by: Order in Council

Parliamentary Procedure: negative (where amending Acts of Parliament or provision made under an Act by statutory instrument); none for other uses of the power

Context and Purpose

6. Clause 5(1) confers a power, exercisable by Order in Council, to make any provision that is appropriate as a result of the Treaty. Consequential, supplementary, incidental, transitional or saving provision in connection with the Act or any Order made under it may also be made. Pursuant to clause (2), this includes a power to amend legislation of any of His Majesty's dominions. Clause 5(4) provides that the new statutory power conferred by clause 5 does not limit His Majesty's powers under the prerogative.
7. The purposes of this power are to enable the implementation of the Treaty, and allow the long-term, secure and effective operation of the Base on Diego Garcia. It will also allow for any appropriate amendments to be made to the law of His Majesty's Dominions to reflect the dissolution of BIOT and the end of UK sovereignty over the Chagos Archipelago.

Justification for taking the power

8. The Treaty provides for the UK to exercise jurisdiction and control in respect of Diego Garcia, and specifically that the UK will have the prescriptive, enforcement and adjudicative criminal and civil jurisdiction necessary to administer and operate the Base and related activities on Diego Garcia. The broad power conferred by clause 5, combined with the preserved prerogative, will allow for the exercise of this jurisdiction and control. The Government intends that the prerogative power should be used where it is available, including to make provision for the administrative and governance structures needed for Diego Garcia. However, the statutory power conferred by clause 5 is required in addition, in particular in order to make amendments to Acts of Parliament and statutory instruments which currently extend to BIOT.
9. For example, the current court system for BIOT is constituted through a mixture of Orders in Council made under the prerogative, and statutory Orders in Council made under the Judicial Committee Act 1844, the Supreme Court Act 1981, and

the Colonial Courts of Admiralty Act 1890. It is likely that amendments will be needed to all the current legislation, in order to establish a suitable court system for Diego Garcia reflecting the UK's jurisdiction under the Treaty.

10. A further example: regulations under the Sanctions and Anti-Money Laundering Act 2018 have been extended to most of the Overseas Territories (including BIOT) by Order in Council under the same Act. Most UN sanctions regimes only require States to impose restrictions on their own nationals, and activities in their own territory. Provision will need to be made to amend the application of the relevant regulations in line with the UK's rights to exercise control and jurisdiction under the Treaty.
11. The breadth of the power conferred by clause 5 is necessary to allow flexibility and adaptation in the future – particularly important since the Treaty provides for an initial period of 99 years with a possibility of extension. It is not possible to foresee, at this point, what laws, judicial or administrative structures will be needed over such a long period. Laws for Diego Garcia will need to reflect the specific and unusual circumstances of an island set aside for defence purposes, with no permanent population, and also to implement the arrangements agreed with the US under the Exchange of Notes, for example as to security and jurisdiction over military personnel.
12. In addition, the termination of His Majesty's sovereignty and the dissolution of BIOT will need to be reflected in the domestic law of the rest of His Majesty's Dominions. Laws relating to BIOT which are preserved under clause 3 as laws relating to Diego Garcia will need to be amended to reflect the fact that Diego Garcia will not be a British Overseas Territory. The power provided for this is broad (though bounded by reference to the Treaty). This is necessary to enable all the necessary amendments to be made, across the statute book. This will require detailed technical work, in consultation with the Devolved Administrations and Governments of the Crown Dependencies and Overseas Territories. For example, it may be desirable to make amendments to the Colonial Marriages Validity Act 1865, and the Adoption and Children Act 2002, as saved under clause 3(2) of the Bill, to clarify that the recognition of marriages, or of adoption authorisations, does not apply to marriages or adoptions under Mauritian law.

Justification for the procedure

13. The Government considers that the negative procedure is appropriate in relation to this power when it is used to amend Acts of Parliament and provision made under an Act by statutory instrument. Many of the amendments that will be made using this power will be of a technical nature, and purely consequential on the change in status of the Chagos Archipelago, which itself will be subject to extensive Parliamentary scrutiny through this Bill. It is proportionate that the negative, rather than the affirmative procedure, is applied.
14. The application of the negative procedure is consistent with the level of Parliamentary scrutiny provided for in both the Hong Kong Act 1985 and the Cyprus Act 1960, both of which conferred powers to amend Acts of Parliament by Order in Council, subject to annulment in pursuance of a resolution of either House of Parliament. The lack of more recent precedents reflects the rarity of legislation on issues of territory and sovereignty.

15. The Government considers that it is appropriate that no Parliamentary procedure is applied where the power conferred by clause 5(1) is used otherwise than to amend Acts of Parliament and statutory instruments made under them. Provision of this nature which is appropriate as a result of the Treaty is most likely to be made in respect of Diego Garcia and related activities, and the proposed approach is consistent with the level of scrutiny which applies to the use of the prerogative to legislate for BIOT at present. Many statutory Orders in Council which deal with matters outside the UK (for example, Orders which extend an Act to the Crown Dependencies or Overseas Territories, or which make provision for the governance of an Overseas Territory) are subject to the negative, or no procedure.

Department Name: Foreign, Commonwealth and Development Office
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