

EXECUTIVE NOTE

DRAFT : THE CRIME (INTERNATIONAL CO-OPERATION) ACT 2003 (DESIGNATION OF PARTICIPATING COUNTRIES) (SCOTLAND) (NO. 2) ORDER 2009

1. This Order was made under powers conferred by section 51(2)(b) of the Crime (International Co-operation) Act 2003 (“the 2003 Act”), which provides that the Scottish Ministers may designate certain “participating countries” in relation to any provisions of Part 1 of the 2003 Act. Under section 50(5)(b) of the 2003 Act, this Order was subject to affirmative parliamentary procedure, because it concerns the designation of countries other than EU member States.

POLICY OBJECTIVES

2. Mutual Legal Assistance is the formal way in which countries request and provide assistance in criminal investigations or proceedings (for example, in obtaining evidence located in another country). Part 1 of the 2003 Act deals with various forms of Mutual Legal Assistance concerning criminal matters. It provides statutory powers under which the United Kingdom can both seek and provide Mutual Legal Assistance. Chapter 4 of Part 1 of the Act implements the 2001 Protocol to the European Convention on Mutual Assistance in Criminal Matters 1959 which creates obligations for participating countries to respond to requests for assistance with locating banking accounts and to provide banking information relating to criminal investigations. The purpose of the 2001 Protocol is to assist signatories to tackle serious international crime, in particular economic crime and money laundering.

3. Some of the powers in the 2003 Act can, however, only be exercised where the country in question is a ‘participating country’ as defined in section 51(2) of the 2003 Act. Where a country was a Member State of the European Union on the date on which a provision of the 2003 Act was commenced, that country will be regarded as a ‘participating country’ for the purposes of the commenced provision. Non EU Member States require separate designation as ‘participating countries’ for the purposes of the 2003 Act.

4. This Order designates three non EU Member States as ‘participating countries’ in respect of certain provisions of the 2003 Act. It is necessary to designate these States as participating countries in relation to the specified sections of the 2003 Act because of two agreements that the European Union has concluded: the Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the application of certain provisions of the Convention of 29 May 2000 on the Mutual Assistance in Criminal Matters between the Member States of the European Union and the 2001 Protocol thereto (“the Norway and Iceland Agreement”), and the Cooperation Agreement between the European Community and its Member states, of the one part, and the Swiss Confederation, of the other part, to Combat Fraud and any other Illegal Activity to the Detriment of their Financial Interests (“the Swiss Agreement”). Both of these agreements relate to the provision of mutual legal assistance in criminal matters.

5. The text of both agreements can be accessed at:

Norway and Iceland Agreement

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:026:0003:0009:EN:PDF>

Swiss Agreement

<http://www.official-documents.gov.uk/document/cm66/6688/6688.pdf>

Provisions of the 2003 Act

6. This Order designates Switzerland a participating country in relation to sections 6, 37, 40, 43, 44 and 45 of the 2003 Act. It designates Norway and Iceland as participating countries in relation to sections 31, 37, 40, 43, 44, 45, 47 and 48 of, and paragraph 15 of Schedule 2 to the 2003 Act.

7. Designation of Switzerland in relation to section 6 means that service of a citation or other document must be done in that country by post unless one of the listed exceptions apply. The aim of this direct transmission is to ensure the relevant documents are served as expeditiously as possible.

8. Designation of Norway and Iceland as participating countries for the purpose of section 31 of the 2003 Act will allow for persons in the UK to give evidence via telephone to a court in either of these countries. Paragraph 15 of Schedule 2 to the 2003 Act ensures that the court in the designated country supervises this. In many cases, a witness may not wish to travel to the foreign country and providing evidence by telephone is a method of ensuring that the interests of justice are served without causing distress or inconvenience to a witness.

9. Designation of Switzerland, Norway and Iceland for the purpose of sections 37, 43 and 45 of that Act will allow requests for customer information orders made by these countries to be executed in Scotland for similar such requests to be made to them by certain judicial and prosecuting authorities in Scotland. A customer information order requires a specified financial institution to provide details of any accounts held by a person who is the subject of an investigation into serious criminal conduct as defined in section 46(3).

10. Designation of Switzerland, Norway and Iceland as participating countries for the purposes of section 40 and 44 of the 2003 Act will allow requests for account monitoring orders made by those countries to be executed in Scotland. It will also be possible for similar such requests to be made to these countries by certain judicial and prosecuting authorities in Scotland. An account monitoring order is an order made by a sheriff which requires a specified financial institution to provide account information specified in the order (for example, details of all transactions passing through the account) during a specified period.

11. The designation of Norway and Iceland as participating countries in relation to sections 47 and 48 will mean that Scottish Ministers will be able to facilitate the transfer of prisoners to and from those countries for the purpose of assisting with the investigation of offences.

CONSULTATION

12. This Order has been prepared in consultation with the Home Office. An equivalent Order in respect of the rest of the United Kingdom is due to be laid before the UK Parliament.

FINANCIAL IMPLICATIONS

13. No impact on the private, public or voluntary sector is foreseen.

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