

---

## EXPLANATORY NOTE

*(This note is not part of the Order)*

Part 1 of the Crime (International Co-operation) Act 2003 (“the 2003 Act”) provides statutory powers pursuant to which the United Kingdom can both seek and provide various forms of mutual legal assistance concerning criminal matters. Some of those statutory powers can, however, only be exercised where the country in question is a “participating country” as defined by section 51(2) of the 2003 Act. Where a country is a Member State of the European Union on the date on which a provision of Part 1 of the 2003 Act is commenced, that country will, by virtue of section 51(2)(a), fall to be regarded as a participating country for the purpose of the commenced provision. Where a country was not a Member State on the date on which a provision is commenced, that country must be designated as a participating country in relation to that commenced provision by an Order made under section 51(2)(b). Section 50(5)(b) provides that where (as in the case of this Order) the country or countries to be designated are not Member States the Order making the designations must be approved by a resolution of the Scottish Parliament.

Those powers which can only be exercised in relation to participating countries include the power for the Lord Advocate to facilitate a witness in the UK giving evidence in overseas proceedings by telephone (section 31 and paragraph 15 of Schedule 2), the power for the Lord Advocate to direct that an application seeking information about banking transactions in Scotland for use abroad be made (sections 37 and 40), the power for requests to be made to other countries for information about banking transactions for use in the UK (sections 43 to 45), the power for the Scottish Ministers to facilitate the transfer of a UK prisoner to assist in an overseas investigation (section 47) and the power for the Scottish Ministers to enable an overseas prisoner to be transferred to the UK in order to assist with an investigation in this country (section 48). Further, section 6 limits the circumstances in which the Lord Advocate can arrange for a criminal process to be served overseas otherwise than by post where the country in question is a participating country.

Article 2 of the Order designates Iceland and Norway 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.

Article 3 of the Order designates Switzerland as a participating country in relation to sections 6, 37, 40, 43, 44 and 45 of the 2003 Act.

**Changes to legislation:**

There are currently no known outstanding effects for the The Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (Scotland) (No. 2) Order 2009.