

POLICY NOTE

THE INTERNATIONAL JOINT INVESTIGATION TEAMS (INTERNATIONAL AGREEMENTS) (EU EXIT) (SCOTLAND) ORDER 2019

SSI 2019/149

The above instrument was made in exercise of the powers conferred by section 99(1) of the Police and Fire Reform (Scotland) Act 2012 (“the 2012 Act”). The instrument is subject to negative procedure.

Purpose of the instrument. To specify three specific UN Conventions which allow for the establishment of Joint Investigation Teams offering a legal basis for participation.

Policy Objectives

To provide a legal basis for participation in Joint Investigation Teams (JITs) following the United Kingdom’s departure from the European Union. JITs facilitate coordination of criminal investigations and prosecutions conducted in parallel by two or more countries.

Currently, the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union [2000] and the Council Framework Decision on joint investigation teams [2002/465/JHA] together provide the legal bases in EU law on which competent authorities of two or more Member States may set up a JIT.

Following the UK’s departure from the EU, the legal basis for JITs with EU member states will be provided, in most cases, by the Second Additional Protocol to the Council of Europe Convention on Mutual Assistance in Criminal Matters 1959.

Not all EU member states have ratified the Second Additional Protocol and Scottish Ministers have not specified any international agreements under section 99(1)(e) of the 2012 Act. Accordingly, this instrument will provide the legal basis by specifying the following United Nations Conventions for the purpose of sections 24, 90, 91 and 96 of the 2012 Act:

- United Nations Convention against Transnational Organised Crime 2000;
- United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988; and
- The United Nations Convention against Corruption 2003.

This instrument will ensure that, following the UK’s exit from the European Union, Scotland can continue lawfully to participate in JITs with EU member states that have (i) not incorporated into domestic law the Second Additional Protocol to the Council of Europe Convention on Mutual Assistance in Criminal Matters 1959, but which have (ii) adopted certain relevant UN Conventions described below, and which this instrument will specify for the purposes of the 2012 Act.

This measure does not seek to make changes to powers or introduce new powers, but instead specifies alternative international agreements, for the purposes of the 2012 Act, to ensure that JITs retain the same powers and operational capability that are currently provided by EU legal bases.

A similar Statutory instrument has been made by the UK Government and the Department of Justice in Northern Ireland. These instruments came into force and into operation respectively on 29 March 2019.

Specification under section 24 of the 2012 Act means that the Chief Constable is liable in respect of unlawful conduct on the part a member of a joint investigation team convened under the relevant agreements, in carrying out (or purportedly carrying out) that person's functions.

Specification under section 90 of the 2012 Act means that an assault upon a member of a joint investigation team convened under the relevant agreements will be liable to the penalties set out in that section.

Specification under section 91 of the 2012 Act means that it is an offence for a person to remove a person from custody or to assist the escape of a person in custody, where that person is in the lawful custody of a member of an international joint investigation team convened under the relevant agreements or is in the act of eluding or escaping from such custody.

Specification under section 96 of the 2012 Act means that chapter 16 of the 2012 Act which makes provision in relation to independent custody visits applies to persons in lawful custody of a member of an international investigation team convened under the relevant agreements.

European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

This instrument is not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the United Kingdom from the European Union because it specifies alternative legal bases in the place of an EU Convention that the UK will no longer be party to after EU withdrawal.

Consultation

No consultation has been carried out as the SSI does not introduce any additional burdens on Police Scotland or other public bodies. It prevents the loss of an existing criminal justice measure that is utilised successfully by Police Scotland in investigating transnational organised crime.

Impact Assessments

No business and regulatory impact assessment has been prepared for this Order as no impact upon business, charities or voluntary bodies is foreseen.

Financial Effects

The Cabinet Secretary for Justice confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Safer Communities Directorate

April 2019