

EXPLANATORY MEMORANDUM TO
THE CRIME (INTERNATIONAL CO-OPERATION) ACT 2003
(DESIGNATION OF PROSECUTING AUTHORITIES) (AMENDMENT)
ORDER 2012

2012 No. 146

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the Instrument

2.1 This Order designates the Environment Agency ('EA'), the Secretary of State for Health ('DH'), the Secretary of State for Transport ('DFT') and the Secretary of State for Work and Pensions ('DWP'), as prosecuting authorities for the purposes of section 7(5) of the Crime (International Co-operation) Act 2003 ('the 2003 Act').

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 The 2003 Act is the domestic legislation which provides the framework pursuant to which the United Kingdom can both make and execute requests for Mutual Legal Assistance (MLA) in respect of criminal proceedings and investigations. Section 7(1) of the Act provides for any judicial authority listed in section 7(4) to issue a request for MLA in order to obtain evidence located overseas for use in criminal proceedings or investigations in the UK. Section 7(5) provides that, in relation to England and Wales or Northern Ireland, a designated prosecuting authority may itself request such assistance. This avoids the need for prosecuting authorities to apply to a court when they require MLA from overseas. This Order is made in exercise of powers conferred on the Secretary of State by virtue of section 7(5) of the Act.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales and Northern Ireland.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The DWP, DH, DFT and EA are seeking assistance from overseas in an increasing number of their criminal prosecutions. They currently have to apply to a court to issue MLA requests on their behalf.

7.2 Having the status of designated prosecuting authority under section 7(5) of the 2003 Act will allow these authorities to issue MLA requests without making an application to a court. In addition, with countries in the Schengen area, they will be able to send MLA requests directly to overseas authorities for the majority of MLA requests rather than having to send them via the Home Office. This will reduce bureaucracy and expedite the process through which MLA can be obtained.

8. Consultation Outcome

8.1 Submissions were received from DWP, DH, DFT and EA putting forward their business cases to be designated as prosecuting authorities. No objections to these were raised at official or Ministerial level.

9. Guidance

9.1 None.

10. Impact

10.1 The designation of DWP, DH, DFT and EA as prosecuting authorities will impose no regulatory burden on business, charities or voluntary bodies. Designation will speed up the process of obtaining evidence, but does not alter the existing criminal law.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument as no impact on the private, public or voluntary sector is foreseen.

11. Regulating small business

11.1 For the reasons set out in paragraph 10.1 the legislation will not have an impact on small business.

12. Monitoring & review

12.1 The outcome will be subject to internal review after twelve months to assess if any unexpected impact has occurred.

13. Contact

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instrument.