

**EXPLANATORY MEMORANDUM TO**  
**THE CRIME (INTERNATIONAL CO-OPERATION) ACT 2003 (FREEZING ORDER) (ENGLAND AND WALES AND NORTHERN IRELAND) REGULATIONS 2021**

**2021 No. 987**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

**2. Purpose of the instrument**

- 2.1 This instrument removes references in the Crime (International Co-operation) Act 2003 (“CICA”) to the Framework Decision on the execution in the European Union of orders freezing property or evidence adopted by the Council of the European Union on 22 July 2003 (“the EU Framework Decision”), to reflect changes required by the United Kingdom leaving the European Union. It also inserts references to two new Schedules to CICA, which are added by virtue of this instrument and replicate what was in the EU Framework Decision.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 The instrument was submitted for sifting by the European Statutory Instruments Committee and the Secondary Legislation Scrutiny Committee under Schedule 7 to the European Union (Withdrawal) Act 2018 (c.16). It was submitted under the name: The Crime (International Co-Operation) Act 2003 (Freezing Order) (England and Wales and Northern Ireland) Regulations 2021. It was considered on 20 April 2021 by the Secondary Legislation Scrutiny Committee and on 27 April by the European Statutory Instruments Committee. No recommendation to upgrade to the affirmative procedure was made and therefore the instrument will be made in accordance with the negative procedure.

**4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is England and Wales and Northern Ireland.
- 4.2 The territorial application of this instrument is England, Wales and Northern Ireland.

**5. European Convention on Human Rights**

- 5.1 The Minister of State, Baroness Williams of Trafford, has made the following statement regarding Human Rights:

“In my view the provisions of the Crime (International Co-operation) Act 2003 (Freezing Order) (England and Wales and Northern Ireland) Regulations 2021 are compatible with the Convention rights.”

## **6. Legislative Context**

- 6.1 Chapter 2 (mutual provision of evidence) of Part 1 (mutual assistance in criminal matters) of CICA deals with requests for assistance in obtaining evidence abroad. Section 28 contains definitions which refer to the EU Framework Decision.
- 6.2 Sections 10, 11 and 12 of CICA relate to domestic freezing orders which are orders for protecting evidence which is in a participating country pending the transfer of the evidence to the United Kingdom. Section 11 requires that freezing orders must be accompanied by a certificate, and lists requirements relating to the certificate.
- 6.3 Sections 20 to 25 of CICA relate to overseas freezing orders; orders made by a court or authority in a participating country for protecting, pending its transfer to the participating country, evidence which is in the United Kingdom and may be used in any proceedings or investigation in the participating country. These provisions set out certain requirements that the order must meet. Section 20 requires that the order must relate to criminal proceedings or a criminal investigation in respect of a “listed offence” and be accompanied by a certificate giving the “specified information”.
- 6.4 The EU Framework Decision, in relation to its evidence freezing provisions, was replaced by Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters; this Directive was given effect by the Criminal Justice (European Investigation Order) Regulations 2017. In relation to the freezing of property provisions within the EU Framework Decision, a new EU Regulation, the Regulation on mutual recognition of freezing orders and confiscation orders (Regulation EU 2018/1805) came into force on 19 December 2020.
- 6.5 The 1959 European Convention on Mutual Assistance in Criminal Matters and its protocols, which the United Kingdom has ratified, requires parties to afford each other the widest measure of mutual assistance. Freezing orders can be applied under this Convention.

## **7. Policy background**

### *What is being done and why?*

- 7.1 The United Kingdom (“UK”) left the European Union (“EU”) on 31 January 2020. In January 2020, prior to the UK’s departure from the EU, the UK ratified the UK - EU Withdrawal Agreement. Under the terms of the Withdrawal Agreement, the body of EU law relating to law enforcement and criminal justice cooperation continued to apply in the UK during the Transition Period (until the end of 2020). Following the end of the Transition Period, it has become necessary to amend UK legislation to reflect our new relationship with the EU and remove references to EU legislation which could cause uncertainty in future.
- 7.2 Sections 10 to 12 of the Crime (International Co-operation) Act 2003 (“CICA”) currently provide for a judicial authority in the United Kingdom to make a domestic freezing order protecting evidence in a participating country pending its transfer to the United Kingdom. Sections 20 to 25 of CICA contain provisions regarding overseas freezing orders made by a court or authority in a participating country to protect evidence in the United Kingdom pending its transfer to the participating country.
- 7.3 Those provisions apply in relation to “listed offences” as defined by section 28(5) of CICA. Section 28(5) defines a “listed offence” as an offence described in Article 3(2)

of the EU Framework Decision, or an offence prescribed or of a description prescribed by an order made by the Secretary of State (or Scottish Ministers, in Scotland).

- 7.4 The freezing order provisions of CICA also contain requirements in relation to what information needs to be contained within the certificates required by sections 11(4) and 20(5), namely “specified information” as defined by section 28(7). Section 28(7) defines “specified information” as an offence described in Article 3(2) of the EU Framework Decision, or an offence prescribed or of a description prescribed by an order made by the Secretary of State (or Scottish Ministers, in Scotland).
- 7.5 These Regulations (which extend to England and Wales and Northern Ireland only) replace those references to the EU Framework Decision with a list of offences set out in a new Schedule 1A to CICA and a new a list of information required set out in a new Schedule 1B.
- 7.6 Removing references to the EU Framework Decision will ensure that the “listed offences” and “specified information” can only be added to by an order made by the Secretary of State. Removing the reference will ensure greater certainty in future about what is required under these provisions.
- 7.7 Where it has been necessary, changes to the text have been made to ensure that the effect of the legislation is maintained. Specific changes made include but are not limited to, removing EU specific references from the “listed offences” in Schedule 1A and changing the format of “specified information” in Schedule 1B to be clear that a prescribed form is not required to be completed. Within Schedule 1B references which would duplicate or conflict with the scope and requirements of CICA have also been removed. For example, references to information regarding property (CICA does not cover freezing orders in relation to property, only in relation to evidence) and in relation to the transfer of evidence (CICA already contains provisions in this respect). Changes have also been made to sections relating to contact information to match that found in the UK - EU Trade and Cooperation Agreement.

## **Explanations**

### *What did any relevant EU law do before exit day?*

- 7.8 The EU Framework Decision established the rules under which EU Member States would recognise and execute in their territory a freezing order issued by a judicial authority of another Member State in the framework of criminal proceedings. The Crime (International Co-operation) Act 2003 (“CICA”) implemented the requirements of the EU Framework Decision in relation to orders to freeze evidence. The EU Framework Decision is expressly referenced in CICA at sections 28(5) and 28(7), which define the terms “listed offences” and “specified information” as referred to in the freezing order provisions of CICA (specifically sections 10, 11 and 20).

### *Why is it being changed?*

- 7.9 The EU Framework Decision has no formal effect in the UK and although its provisions can still be found and viewed online, the cross reference, within the defined terms, is no longer appropriate following the UK’s withdrawal from the EU. As a result, it is necessary to remove references to the EU Framework Decision and incorporate relevant provisions into UK law. This instrument removes references to

the EU Framework Decision and incorporates into CICA a list of offences set out in a new Schedule 1A and a new set of specified information set out in new Schedule 1B.

*What will it now do?*

- 7.10 The effect of the relevant provisions under CICA is not changed by these Regulations as the “listed offences” set out in Schedule 1A of this instrument have been incorporated with the aim of retaining the same scope and effect as under the current EU Framework Decision with only technical revisions being made to take account of UK specific terminology. The “specified information” is also to be carried over as now in these Regulations. The way in which “specified information” is described will change from information required to be given “by a form of certificate” to information “specified in” the new Schedule 1B; this is to clarify that it is the information itself which is relevant rather than the form. The power to add to the “listed offences” and “specified information” in future will remain with the Secretary of State in relation to England, Wales and Northern Ireland, to be exercised by order under section 28(5) or (7).

**8. European Union Withdrawal and Future Relationship**

- 8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

**9. Consolidation**

- 9.1 There are no plans to consolidate the provisions in this instrument.

**10. Consultation outcome**

- 10.1 No public consultation was conducted. This is because it was not considered to be appropriate in light of the nature of the amendments made by this instrument, which are technical amendments to ensure that the current operational effect is maintained. Any changes in the text carried over from the EU Framework Decision do not change the effect of the Regulations and instead correct deficiencies in retained EU law.
- 10.2 The Devolved Administrations were consulted in the drafting of the instrument. The instrument presented here ensures regulations are made for England and Wales and Northern Ireland. A mirroring instrument will be laid before the Scottish Parliament to ensure consistency across the UK.

**11. Guidance**

- 11.1 There are no plans to provide guidance on this instrument.

**12. Impact**

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because no significant impact on the private, voluntary or public sector is foreseen. The list of

offences and specified information previously referred to in the EU Framework Decision have been substantially replicated by these Regulations.

**13. Regulating small business**

13.1 The legislation does not apply to activities that are undertaken by small businesses.

**14. Monitoring & review**

14.1 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

**15. Contact**

15.1 James Smith at the Home Office Telephone: 07769 423864 or email: James.Smith56@homeoffice.gov.uk can be contacted with any queries regarding the instrument.

15.2 Julia Labeta, Deputy Director at the Home Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 Baroness Williams of Trafford at the Home Office can confirm that this Explanatory Memorandum meets the required standard.

# Annex

## Statements under the European Union (Withdrawal) Act 2018 and the European Union (Future Relationship) Act 2020

### Part 1 A

#### Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriateness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), or 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	<p>Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them.</p> <p>State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.</p>
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	<p>Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2</p> <p>In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs</p>	Explain the instrument, identify the relevant law before IP completion day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.

Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	Set out the ‘good reasons’ for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising section 8 or ), part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 5 or 19, Schedule 7.	Statement of the reasons for the Minister’s opinion that the SI is urgent.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 14, Schedule 8	Anybody making an SI after IP completion day under powers conferred before the start of the 2017-19 session of Parliament which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority’s response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 15, Schedule 8	Anybody making an SI after IP completion day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before IP completion day, and explaining the instrument’s effect on retained EU law.

## Part 1 B

### Table of Statements under the 2020 Act

This table sets out the statements that may be required under the 2020 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraph 8 Schedule 5	Ministers of the Crown exercising sections 31 to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees.



## Part 2

### Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act or the European Union (Future Relationship) Act 2020

#### 1. Sifting statement(s)

- 1.1 The Minister of State for the Lords, Baroness Williams of Trafford has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Crime (International Co-operation) Act 2003 (Freezing Order) (England and Wales and Northern Ireland) Regulations 2021 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)”.

- 1.2 This is the case because the Regulations have been drafted to maintain the effect of current legislation. Changes merely replace and replicate the list of offences and specified information contained in the EU Framework Decision. Minor changes have been made to reflect the UK’s exit from the EU. In the case of changes to the format of the requested specified information, the new Schedules have been drafted to maintain effect while reflecting the requirements of CICA.

#### 2. Appropriateness statement

- 2.1 The Minister of State for the Lords, Baroness Williams of Trafford has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Crime (International Co-operation) Act 2003 (Freezing Order) (England and Wales and Northern Ireland) Regulations 2021 do no more than is appropriate”.

- 2.2 This is the case because they will make no changes in practice to the domestic procedures for requesting a freezing order or for dealing with requests from overseas and will simply mean that the relevant definitions can be found within the same piece of UK legislation rather than in the EU Framework Decision made in 2003.

#### 3. Good reasons

- 3.1 The Minister of State for the Lords, Baroness Williams of Trafford has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.

- 3.2 These are that the relevant definitions in section 28 of CICA can in future be found within that Act and without referral to the EU Framework Decision. This will improve clarity and certainty around those provisions and remove outdated text.

#### **4. Equalities**

4.1 The Minister of State for the Lords, Baroness Williams of Trafford has made the following statement(s):

“The instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.”.

4.2 The Minister of State for the Lords, Baroness Williams of Trafford has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I, Baroness Williams of Trafford have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.”.

#### **5. Explanations**

5.1 The explanations statement has been made in section 7 of the main body of this explanatory memorandum.