

Criminal Justice Committee

14th Meeting, 2022 (Session 6), Wednesday,
20 April 2022

Subordinate legislation

Note by the clerk

Purpose of the paper

1. This paper invites the Committee to consider the following negative instrument:
 - [The Crime \(International Co-operation\) Act 2003 \(Freezing Order\) \(EU Exit\) \(Scotland\) Regulations 2022](#) (SSI 2022/95) [see **Annexe A**];
2. This instrument, which is made under the European Union (Withdrawal) Act 2018, engages the SSI Protocol; see below.
3. If the Committee agrees to report to the Parliament on the instrument, it is required to do so by **9 May 2022**.

Delegated Powers and Law Reform Committee Consideration

4. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on 29 March 2022 under the SSI Protocol agreed between the Scottish Government and the Scottish Parliament in respect of SSIs made using the powers under the European Union (Withdrawal) Act 2018.
5. In its [report](#), the DPLR Committee indicated it is content that the appropriate scrutiny procedure and categorisation have been applied to the instrument.
6. The full extract from the DPLR Committee's report can be found in **Annexe B**.

Procedure for negative instruments

7. Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. This

means they become law unless they are annulled by the Parliament. The annulment process would require a motion to be agreed in the Chamber.

8. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds).
9. Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument.
10. If the motion is agreed to by the lead committee, the Parliamentary Bureau must then lodge a motion to annul the instrument to be considered by the Parliament as a whole. If that motion is also agreed to, the Scottish Ministers must revoke the instrument.
11. If the Parliament resolves to annul an SSI then what has been done under authority of the instrument remains valid but it can have no further legal effect. Following a resolution to annul an SSI the Scottish Ministers (or other responsible authority) must revoke the SSI (make another SSI which removes the original SSI from the statute book.) Ministers are not prevented from making another instrument in the same terms and seeking to persuade the Parliament that the second instrument should not be annulled.
12. Each negative instrument appears on the Criminal Justice Committee's agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow the Committee to gather more information or to invite a Minister to give evidence on the instrument. Members should however note that, for scheduling reasons, it is not *always* possible to continue an instrument to the following week. For this reason, if any Member has significant concerns about a negative instrument, they are encouraged to make this known to the clerks in advance of the meeting.
13. In many cases, the Committee may be content simply to note the instrument and agree to make no recommendations on it.

Guidance on subordinate legislation

14. Further guidance on subordinate legislation is available on the Delegated Powers and Law Reform Committee's web page at:

<https://www.parliament.scot/chamber-and-committees/committees/current-and-previous-committees/session-6-delegated-powers-and-law-reform-committee>

15. **The Committee is invited to:**

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- **Decide if they agree with the DPLR Committee that the use of the negative procedure is appropriate.**
- **Decide if it agrees with the DPLR Committee that the Scottish Government is correct to assess this instrument as being of low significance for the reason that the instrument contains minor and technical changes and relates to continuity of law without any change to policy.**
- **Consider whether they have any further comments to make.**

Clerks to the Committee
11 April 2022

Annexe A

Policy Note

The Crime (International Co-operation) Act 2003 (Freezing Order) (EU Exit) (Scotland) Regulations 2022

SSI 2022/95

This instrument was made in exercise of the powers conferred by paragraph 1(1) and (3) of Schedule 2 to the European Union (Withdrawal) Act 2018. The instrument is subject to negative procedure.

Purpose of the instrument

These Regulations relate to deficiencies in EU law and in particular, address EU references, which are no longer appropriate arising from the withdrawal of the UK from the European Union. They do so in relation to the following EU measure:

- **Framework Decision [2003/577/JHA](#)** on the execution in the European Union of orders freezing property or evidence in the Crime (International Co-operation) Act 2003 (“CICA”).
- These Regulations also insert two new Schedules to the 2003 Act to ensure continuity of effect in relation to the freezing order provisions now the EU Framework Decision no longer applies in domestic law.

Policy Objectives

1. When an EU member state, Council Framework Decision [2003/577/JHA](#) established the rules under which European Union (“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.
2. That 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, to which Scottish Ministers consented.
3. Now that the UK has left the European Union, these Regulations will both reverse the domestic law implementation of these Framework Decisions and remove inoperable provisions from the statute book. These Regulations therefore remove references to the 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.

Explanation of the law being amended by the regulations

- **Council Framework Decision 2003/557/JHA on the execution in the European Union of orders freezing property or evidence**
4. The Crime (International Co-operation) Act 2003 (“CICA”) implemented the requirements of **Framework Decision 2003/557/JHA** in relation to orders to freeze evidence. Framework Decision 2003/557/JHA 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).
 5. The effect of the relevant provisions under CICA is not changed by these Regulations. 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 the Framework Decision with only technical revisions being made.
 6. 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.
 7. The power to add to the “listed offences” and “specified information” in future will remain with Scottish Ministers to be exercised by order under section 28(5) or (7).
 8. 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 Framework Decision.
 9. 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.
 10. 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.

11. 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”.
12. In relation to the freezing of property provisions within the 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.
13. The 1959 European Convention on Mutual Assistance in Criminal Matters and its protocols, which the UK has ratified, requires parties to afford each other the widest measure of mutual assistance. Freezing orders could be applied under that Convention.
14. 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.
15. 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 Framework Decision, or an offence prescribed or of a description prescribed by an order made by the Scottish Ministers.
16. 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 Framework Decision, or an offence prescribed or of a description prescribed by an order made by the Scottish Ministers.

Reasons for and effect of the proposed change or changes

17. These Regulations will ensure that redundant references are removed, thus reducing the potential for future operational confusion following the UK’s exit from the European Union.
18. These Regulations replace those references to the Framework Decision with a list of offences set out in a new Schedule 1A to CICA and a list of information required in the certificate set out in a new Schedule 1B.
19. 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.

20. 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.

Statements required by European Union (Withdrawal) Act 2018

Statement that in their opinion Scottish Ministers consider that the regulations do no more than is appropriate

The Cabinet Secretary for Justice and Veterans has made the following statement: “In my view The Crime (International Co-operation) Act 2003 (Freezing Order) (EU Exit) (Scotland) Regulations 2022 do no more than is appropriate”.

This is the case because the changes remove references to redundant legislation as a result of the UK’s exit from the European Union and replace those references to the 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.

Statement as to why the Scottish Ministers consider that there are good reasons for the regulations and that this is a reasonable course of action

The Cabinet Secretary for Justice and Veterans has made the following statement: “In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.

In addition to removing references to redundant legislation, the aim of these Regulations is to retain the same scope and effect as the Framework Decision, allowing for continuity of procedure.

Statement as to whether the SSI amends, repeals or revokes any provision of equalities legislation, and, if it does, an explanation of that amendment, repeal or revocation

The Cabinet Secretary for Justice and Veterans has made the following statement: “In my view The Crime (International Co-operation) Act 2003 (Freezing Order) (EU Exit) (Scotland) Regulations 2022 do 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.”

Statement that Scottish Ministers have, in preparing the regulations, 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

The Cabinet Secretary for Justice and Veterans has made the following statement: “In my view The Crime (International Co-operation) Act 2003 (Freezing Order) (EU Exit) (Scotland) Regulations 2022 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.”

ADDITIONAL INFORMATION PROVIDED FOR EU EXIT INSTRUMENTS IN TERMS OF THE PROTOCOL AGREED BETWEEN THE SCOTTISH GOVERNMENT AND THE SCOTTISH PARLIAMENT

Statement that Scottish Ministers have, in preparing the regulations, had due regard to the guidance principles on the environment and animal welfare

Not applicable.

Statement explaining the effect (if any) of the regulations on rights and duties relating to employment and health and safety and matters relating to consumer protection (so far as is within devolved competence)

Not applicable.

An indication of how the regulations should be categorised in relation to the significance of the change proposed

Categorisation is Low. This instrument contains minor and technical changes and relate to continuity of law without any change to policy. There are therefore no significant decisions for Ministers to make.

Statement setting out the Scottish Ministers’ reasons for their choice of procedure

Negative procedure. These changes are minor and technical and will allow for continuity of law.

FURTHER INFORMATION

The UK Government has made a similar change through [The Crime \(International Co-operation\) Act 2003 \(Freezing Order\) \(England and Wales and Northern Ireland\) Regulations 2021](#). Scottish Government and UK Government officials have worked together in relation to the content of the respective instruments.

Impact Assessments

Full impact assessments have not been prepared for this instrument because the amendments made are minor and technical in nature and are designed to allow for continuity of procedure.

The amendments do not alter Scottish Government’s current environmental policies and priorities and, therefore, do not have a significant impact on the environment.

The impact on business, charities or voluntary bodies is expected to be minimal.

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Financial Effects

The Cabinet Secretary for Justice and Veterans confirms that a BRIA is not necessary, as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Safer Communities Directorate

16 March 2022

Annexe B

Extract from the Delegated Powers and Law Reform Committee's 23rd report, 2022

**Instruments considered under the European Union (Withdrawal) Act 2018
Committee consideration of the scrutiny procedure under which an instrument
has been laid and the categorisation applied by the Scottish Government**

**Crime (International Co-operation) Act 2003 (Freezing Order) (EU Exit)
(Scotland) Regulations 2022 (SSI 2022/95)**

The instrument relates to orders to preserve evidence. When the UK was a member of the EU, Council Framework Decision 2003/577/JHA 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 context of criminal proceedings. This was implemented in UK domestic law by the Crime (International Co-operation) Act 2003.

The instrument is made under the power to correct deficiencies in retained EU law in the European Union (Withdrawal) Act 2018. It removes references in the 2003 Act to the EU Council Framework Decision, inserts definitions of “executing State”, “freezing order” and “issuing State”, and adds two new schedules replicating from the EU Council Framework Decision the list of offences and specified information.

The Committee is content that the appropriate scrutiny procedure and categorisation have been applied to the instrument.