

Criminal Justice Committee

**8th Meeting, 2022 (Session 6), Wednesday, 8
March 2023**

Subordinate legislation

Note by the clerk

Purpose of the paper

1. This paper invites the Committee to consider the following affirmative instrument:
 - [The Crime \(International Co-operation\) Act 2003 \(Designation of Participating Countries\) \(Scotland\) Order 2023 \[draft\]](#)

Introduction

2. The above instrument is proposed to be made in exercise of the powers conferred by section 51(2)(b) of the Crime (International Co-operation) Act 2003 (the “2003 Act”).
3. The Instrument is subject to affirmative parliamentary procedure under section 50(5)(b) of the 2003 Act which provides that the Scottish Ministers may designate certain “participating countries” in relation to any provisions of Part 1 of the 2003 Act.
4. This Instrument is required to implement Scotland’s international obligations as detailed below. An instrument in similar terms has been made by the Secretary of State with respect to the rest of the UK.
5. Mutual Legal Assistance is the formal way by which countries request and provide assistance in criminal investigations or proceedings (for example, in obtaining evidence held in another country). Part 1 of the Crime (International Co-operation) Act 2003 (‘the 2003 Act’) provides statutory powers pursuant to which Scotland and the wider United Kingdom can both seek and provide various forms of mutual legal assistance concerning criminal matters.
6. Some of those powers can only be exercised where the country in question is a ‘participating country’ as defined in section 51(2) of the 2003 Act. A country must be designated as a participating country for the purpose of the relevant provision.
7. Chapter 4 of Part 1 of the 2003 Act implements the 2001 Protocol to the European Convention on Mutual Assistance in Criminal Matters 1959, which

creates obligations for participating countries to respond to requests for assistance in finding banking accounts and to provide banking information relating to criminal investigations. The purpose of the 2001 Protocol is to assist signatories to tackle serious international crime, in particular economic crime and money laundering.

8. This Order designates nine countries as 'participating countries' for certain provisions of the 2003 Act. Designating these countries for purposes of the provisions of the 2003 Act specified in the Order will provide a more complete framework for mutual legal assistance between the UK and these countries, by ensuring that the UK can both make and facilitate requests for assistance under the 2003 Act provisions referenced in the Order.
9. Further details on the purpose of the instrument can be found in the policy note attached in the **Annex**.

Delegated Powers and Law Reform Committee Consideration

7. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on 28 February 2023.
8. The DPLR Committee agreed that it did not need to draw it to the attention of the Parliament on any grounds within its remit.

Criminal Justice Committee Consideration

9. **The Committee is required to report to the Parliament by 31 March 2023.**
10. Motion S6M-07936 has been lodged proposing that the Committee recommends approval of the instrument. The Cabinet Secretary for Justice and Veterans is due to attend the meeting on 8 March to answer any questions on the instrument and to move the motion for approval.
11. **It is for the Committee to decide whether to agree to the motion, and then to report to the Parliament. Thereafter, the Parliament will be invited to approve the instrument based on the Committee's recommendation.**
12. **The Committee is asked to delegate to the Convener authority to approve the report on the instrument for publication.**

**Clerks to the Committee
March 2023**

Annex

Policy Note

The Crime (International Co-Operation) Act 2003 (Designation of Participating Countries) (Scotland) Order 2023

SSI 2022/XXX

The above Order was made in exercise of the powers conferred by section 51(2)(b) of the Crime (International Co-operation) Act 2003 (the “2003 Act”). The Instrument was subject to affirmative parliamentary procedure under section 50(5)(b) of the 2003 Act which provides that the Scottish Ministers may designate certain “participating countries” in relation to any provisions of Part 1 of the 2003 Act.

Purpose of the instrument

This Instrument is required to implement Scotland’s international obligations as detailed below. An instrument in similar terms has been made by the Secretary of State with respect to the rest of the UK.

Policy Objectives

Mutual Legal Assistance is the formal way by which countries request and provide assistance in criminal investigations or proceedings (for example, in obtaining evidence held in another country). Part 1 of the Crime (International Co-operation) Act 2003 (‘the 2003 Act’) provides statutory powers pursuant to which Scotland and the wider United Kingdom can both seek and provide various forms of mutual legal assistance concerning criminal matters.

Some of those powers can only be exercised where the country in question is a ‘participating country’ as defined in section 51(2) of the 2003 Act. A country must be designated as a participating country for the purpose of the relevant provision.

Chapter 4 of Part 1 of the 2003 Act implements the 2001 Protocol to the European Convention on Mutual Assistance in Criminal Matters 1959, which creates obligations for participating countries to respond to requests for assistance in finding banking accounts and to provide banking information relating to criminal investigations. The purpose of the 2001 Protocol is to assist signatories to tackle serious international crime, in particular economic crime and money laundering.

Provisions of the 2003 Act

This Order designates nine countries as ‘participating countries’ for certain provisions of the 2003 Act.

Designating these countries for purposes of the provisions of the 2003 Act specified in the Order will provide a more complete framework for mutual legal assistance between the UK and these countries, by ensuring that the UK can both make and facilitate requests for assistance under the 2003 Act provisions referenced in the Order.

Switzerland

Switzerland was previously designated under The Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (Scotland) (No 2) Order 2009 (‘the No. 2 Order’) for the purposes of sections 6, 37, 40, 43, 44 and 45 of the 2003 Act. This designation was on the basis of the Cooperation Agreement between the European Community and its Member States on the one part, and the Swiss Confederation, on the other part, to Combat Fraud and any other Illegal Activity to the Detriment of their Financial Interests (‘the Swiss Agreement’).

Switzerland was further designated under the Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (Scotland) (No. 3) Order (‘the No. 3 Order’), for the purposes of sections 31, 47, 48 of, and paragraph 15 of Schedule 2 to the 2003 Act, which correspond to express provisions in the Second Additional Protocol to the 1959 Convention.

This was in order to secure the UK’s ability to ratify the Second Additional Protocol to the 1959 Convention (which was ratified by the UK on 30 June 2010 and entered into force on 1 October 2010) and had already been ratified by Switzerland.

When the UK left the European Union (‘EU’), the obligations which applied previously to the UK as a member of the EU, under the Swiss Agreement, ceased to apply.

The Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019 (regulation 91 revoked the Swiss designations made under the No. 2 Order. The designations in the No. 3 Order remained in place. This instrument reinstates designations for relevant provisions for which Switzerland was previously designated under the 2009 (No. 2) and (No. 3) Orders which are consolidated by this instrument.

The 1959 Convention, and its Protocols, do not contain specific provisions in relation to all types of mutual legal assistance that may be requested. For example, they do not contain express provisions regarding banking information, as were contained in the Swiss Agreement. Despite this, States party to the 1959 Convention are still able to make requests for such assistance and the 1959 Convention obligates parties to provide each other with “the widest measure of mutual assistance”.

It has been determined that, to enable the widest measure of mutual assistance to be provided, as a party to the 1959 Convention and its Protocols Switzerland should be designated for broader purposes than those for which it is currently designated by SSI 2009/441, as amended.

As such, this Order designates Switzerland for the same purposes as the other States mentioned below. This includes relevant provisions for which it was previously designated under that order which is now amended to allow the Swiss designations to be consolidated in this Instrument.

The Principality of Liechtenstein, The Grand Duchy of Luxemburg, Republic of Moldova and the Republic of Türkiye¹

It designates The Principality of Liechtenstein, The Grand Duchy of Luxemburg, Republic of Moldova and The Republic of Türkiye as participating countries in relation to sections 31, 37, 40, 43, 44, 45, 47 and 48 and paragraph 15 of Schedule 2 to the 2003 Act.

Designating The Principality of Liechtenstein, The Grand Duchy of Luxemburg, Republic of Moldova and The Republic of Türkiye as participating countries for the purpose of section 31 of the Act will allow persons in the UK to give evidence via telephone to a court in any of these countries. Paragraph 15 of Schedule 2 to the Act ensures that the court in the designated country supervises that procedure. In many cases, a witness may not wish to travel to a foreign country and providing evidence by telephone is a method of ensuring that the interests of justice are served without causing distress or inconvenience to a witness.

Designating The Principality of Liechtenstein, The Grand Duchy of Luxemburg, Republic of Moldova and The Republic of Türkiye for the purposes of sections 37, 43 and 45 of the Act will allow requests for customer information orders made by these countries to be executed in Scotland and for similar such requests to be made to them by certain judicial and prosecuting authorities in Scotland. A customer information order requires a specified financial institution to provide details of any accounts held by a person who is the subject of an investigation into serious criminal conduct as defined by section 46(3).

Designating The Principality of Liechtenstein, The Grand Duchy of Luxemburg, Republic of Moldova and The Republic of Türkiye as participating countries for the purposes of section 40 and 44 of the 2003 Act will allow requests for account monitoring orders made by those countries to be executed in Scotland. It will also be possible for similar such requests to be made to these countries by certain judicial and prosecuting authorities in Scotland. An account monitoring order is an order made by a Sheriff, which requires a specified financial institution to provide account

¹ On 1 June, the UN accepted the Turkish formal request that Turkey be referred to as Türkiye.

information specified in the order (for example, details of all transactions passing through the account) during a specified period.

Designating The Principality of Liechtenstein, The Grand Duchy of Luxemburg, Republic of Moldova) and The Republic of Türkiye as participating countries in relation to sections 47 and 48 will mean that Scottish Ministers will be able to facilitate the transfer of prisoners to and from these countries for assisting with the investigation of offences.

Three further countries, The Republic of Armenia, The Republic of Chile and Ukraine are designated as participating countries for the purpose of sections 31, 47, 48 and Paragraph 15 of Schedule 2 to the 2003 Act.

Designating The Republic of Armenia, The Republic of Chile and Ukraine as participating countries for the purpose of section 31 of the Act will allow persons in the UK to give evidence via telephone to a court in any of these countries. Paragraph 15 of Schedule 2 to the Act ensures that the court in the designated country supervises that procedure. In many cases, a witness may not wish to travel to a foreign country and providing evidence by telephone is a method of ensuring that the interests of justice are served without causing distress or inconvenience to a witness.

Designating The Republic of Armenia, The Republic of Chile and Ukraine as participating countries in relation to sections 47 and 48 will mean that Scottish Ministers will be able to facilitate the transfer of prisoners to and from these countries for assisting with the investigation of offences.

Impact Assessments

Full impact assessments have not been prepared for this instrument because:

It does not alter Scottish Government's current environmental policies and priorities and therefore, does not have a significant impact on the environment.

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

There are no equality or privacy issues with this instrument.

Financial Effects

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

Safer Communities Directorate
February 2023