

Draft Order laid before the Scottish Parliament under section 50(5)(b) of the Crime (International Co-operation) Act 2003, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2008 No.

CRIMINAL LAW

**The Crime (International Co-operation) Act 2003 (Designation
of Participating Countries) (Scotland) Order 2008**

Made - - - - 2008

Coming into force in accordance with article 1

The Scottish Ministers make the following Order in exercise of the powers conferred by section 51(2) (b) of the Crime (International Co operation) Act 2003⁽¹⁾ and all other powers enabling them to do so.

In accordance with section 50(5)(b) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation and commencement

1. This Order may be cited as the Crime (International Co operation) Act 2003 (Designation of Participating Countries) (Scotland) Order 2008 and comes into force on the day after the day on which it is made.

Designation of participating country

2. The United State of America is hereby designated as a participating country for the purposes of sections 37 (customer information), 40 (account information), 43 (information about a person's bank account), 44 (monitoring banking transactions) and 45 (sending requests for assistance) of the Crime (International Co operation) Act 2003.

St Andrew's House,
Edinburgh
2008

A member of the Scottish Executive

EXPLANATORY NOTE

(This note is not part of the Order)

This Order designates the United States of America as a participating country for the purposes of sections 37, 40, 43, 44 and 45 of the Crime (International Co-operation) Act 2003 (“the 2003 Act”).

Section 37 applies where the Lord Advocate receives a request for customer information in relation to a person who appears to be the subject of an investigation in a participating country into serious criminal conduct. “Serious criminal conduct” is defined in section 46(3) of the 2003 Act. Section 37(3) confers on the Lord Advocate the power to direct a procurator fiscal to apply for a customer information order. A customer information order is an order made by a sheriff which requires a financial institution to provide the applicant with the customer information specified in the order about the person specified in the order. Section 37(6) defines what is meant by “customer information” by reference to section 398 of the Proceeds of Crime Act 2002 (c. 29) with certain exceptions.

Section 40 makes similar provision in relation to account monitoring orders which are orders compelling, for a specified period, the provision of account information to the applicant from a financial institution. “Account information” is defined in section 40(5) of the 2003 Act.

Sections 43, 44 and 45 enable judicial and prosecuting authorities to make requests for customer and account information to participating countries.