

## **EXECUTIVE NOTE TO**

### **DRAFT : THE CRIME (INTERNATIONAL CO-OPERATION) ACT 2003 (DESIGNATION OF PARTICIPATING COUNTRIES) (SCOTLAND) ORDER 2008**

1. The above Order is being 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 is subject to affirmative resolution procedure under section 50(5)(b) of the 2003 Act.

#### **Policy Objectives**

2. The purpose of the instrument is to designate the US as a ‘participating country’ under section 51(2)(b) of the Crime (International co-operation) Act 2003 for the purposes of sections 37, 40 and 43 to 45.

3. The UK and the US signed a bilateral Mutual Legal Assistance Treaty on 6 January 1994 (which entered into force on 2 December 1996). This Treaty was amended by an exchange of notes and an instrument dated 16 December 2004. This amendment was necessary in order to give effect to the provisions of an Agreement on Mutual Legal Assistance between the US and the EU which was agreed on 25 June 2003. This Order requires to made so that domestic law in the United Kingdom reflects the terms of these international agreements.

#### **Background**

4. 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 with locating 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.

5. On the 25 June 2003 an Agreement on Mutual Legal Assistance between the US and the EU was concluded. As a result of the provisions of this agreement it was necessary for the UK to amend its bilateral mutual legal assistance treaty with the US. The terms of the amended bilateral treaty (which reflect the provisions of the EU/US agreement), among other things, make provision for the parties to make and execute requests for assistance in obtaining banking information. The domestic powers to make and receive such requests are in Chapter 4 Part 1 of the 2003 Act, however, they only apply in respect of “participating countries” as defined in section 51(2) of the 2003 Act.

6. In order for the US to be designated as a participating country under the 2003 Act secondary legislation is required. The relevant sections, relating to Scotland, under which the US requires to be designated as a participating country are:-

- s37 - customer information;
- s40 – account information; and
- s43 to 45 – requests for information about banking transactions for use in the UK.

These come under chapter 4 of the 2003 Act – ‘Information about Banking Transactions’.

7. Section 37(3) of the 2003 Act confers on the Lord Advocate a discretionary power to direct a procurator fiscal to apply for a customer information order when a request for such information is received from a participating country. A customer information order is an order made by a sheriff which requires a financial institution to provide such customer information as is specified in the order in relation to the person in respect of whom the order is made.

8. Section 40 of the 2003 Act confers on the Lord Advocate a discretionary power to direct a procurator fiscal to apply for an account monitoring order when a request for such information is received from a participating country. An account monitoring order is an order made by a sheriff that the financial institution specified in the application for the order must, for the period stated in the order, provide account information of the description specified in the order to the applicant in the manner, and at or by the time or times, stated in the order.

9. Sections 43 and 44 of the Act enable judicial and prosecuting authorities to make outgoing requests for customer and account information to participating countries. Section 45 of the Act provides that these requests will be forwarded to the participating country by the Lord Advocate.

10. The Treaty creates a framework for the exchange of customer information rather than account information. This is covered in section 37 of the 2003 Act. However, there are further provisions giving powers to monitor bank accounts and transactions in section 40. Sections 43 to 45 mirror the provisions in sections 37 and 40. They allow the relevant UK authorities to make outgoing requests to participating countries and it would be appropriate to give the Scottish prosecuting authorities equivalent powers to ask the US for such information.

### **Financial Effects**

11. A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.