

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

2009 No.

CRIMINAL LAW

The Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (Scotland) (No. 2) Order 2009

*Made - - - -
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) (No. 2) Order 2009 and shall come into force on the expiry of one week beginning with the day on which it is made.

Designation of participating countries

2. Iceland and Norway are designated as participating countries in relation to the following provisions of the Crime (International Co-operation) Act 2003—

- (a) section 31 (hearing witnesses in the UK by telephone);
- (b) section 37 (customer information);
- (c) section 40 (account information);
- (d) section 43 (information about a person's bank account);
- (e) section 44 (monitoring banking transactions);
- (f) section 45 (sending requests for assistance);
- (g) section 47 (transfer of UK prisoner to assist investigation abroad);

(1) 2003 c. 32.

- (h) section 48 (transfer of EU etc. prisoner to assist UK investigation)⁽²⁾; and
- (i) paragraph 15 of Schedule 2 (evidence given by television link or telephone).

3. Switzerland is designated as a participating country in relation to the following provisions of the Crime (International Co-operation) Act 2003—

- (a) section 6 (effecting Scottish citation etc. otherwise than by post);
- (b) section 37 (customer information);
- (c) section 40 (account information);
- (d) section 43 (information about a person's bank account);
- (e) section 44 (monitoring banking transactions); and
- (f) section 45 (sending requests for assistance).

St Andrew's House,
Edinburgh
2009

A member of the Scottish Executive

(2) Section 48 was amended by paragraph 52 of Schedule 26 to the Criminal Justice and Immigration Act 2008 (c. 4).

EXPLANATORY NOTE

(This note is not part of the Order)

Part 1 of the Crime (International Co-operation) Act 2003 (“the 2003 Act”) provides statutory powers pursuant to which the United Kingdom can both seek and provide various forms of mutual legal assistance concerning criminal matters. Some of those statutory powers can, however, only be exercised where the country in question is a “participating country” as defined by section 51(2) of the 2003 Act. Where a country is a Member State of the European Union on the date on which a provision of Part 1 of the 2003 Act is commenced, that country will, by virtue of section 51(2)(a), fall to be regarded as a participating country for the purpose of the commenced provision. Where a country was not a Member State on the date on which a provision is commenced, that country must be designated as a participating country in relation to that commenced provision by an Order made under section 51(2)(b). Section 50(5)(b) provides that where (as in the case of this Order) the country or countries to be designated are not Member States the Order making the designations must be approved by a resolution of the Scottish Parliament.

Those powers which can only be exercised in relation to participating countries include the power for the Lord Advocate to facilitate a witness in the UK giving evidence in overseas proceedings by telephone (section 31 and paragraph 15 of Schedule 2), the power for the Lord Advocate to direct that an application seeking information about banking transactions in Scotland for use abroad be made (sections 37 and 40), the power for requests to be made to other countries for information about banking transactions for use in the UK (sections 43 to 45), the power for the Scottish Ministers to facilitate the transfer of a UK prisoner to assist in an overseas investigation (section 47) and the power for the Scottish Ministers to enable an overseas prisoner to be transferred to the UK in order to assist with an investigation in this country (section 48). Further, section 6 limits the circumstances in which the Lord Advocate can arrange for a criminal process to be served overseas otherwise than by post where the country in question is a participating country.

Article 2 of the Order designates Iceland and Norway as participating countries in relation to sections 31, 37, 40, 43, 44, 45, 47 and 48 of, and paragraph 15 of Schedule 2 to the 2003 Act.

Article 3 of the Order designates Switzerland as a participating country in relation to sections 6, 37, 40, 43, 44 and 45 of the 2003 Act.