

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. 3) Order 2009

Made - - - - 2009

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. 3) Order 2009 and comes into force on the first day of the month following the expiry of a period of 3 months after the date on which the United Kingdom deposits an instrument of ratification in respect of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters⁽²⁾ with the Secretary General of the Council of Europe⁽³⁾.

Designation of participating countries

2. Albania, Bosnia and Herzegovina, Croatia, Israel, Montenegro, Serbia, Switzerland and the former Yugoslav Republic of Macedonia 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 47 (transfer of UK prisoner to assist investigation abroad);

(1) 2003 c.32.

(2) Cmnd 5603.

(3) The Council of Europe provides notification as to the ratification of Council of Europe instruments on its Treaty Office website at <http://conventions.coe.int>.

(c) section 48 (transfer of EU etc. prisoner to assist UK investigation)⁽⁴⁾; and

(d) paragraph 15 of Schedule 2 (evidence given by television link or telephone).

3. Albania, Bosnia and Herzegovina, Croatia, Israel, Montenegro, Serbia and the former Yugoslav Republic of Macedonia are designated as participating countries in relation to section 6 (effecting Scottish citation etc. otherwise than by post) of the Crime (International Co-operation) Act 2003.

St Andrew's House,
Edinburgh
Date

A member of the Scottish Executive

⁽⁴⁾ 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 in 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 in respect of the commenced provision. Where a country is 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).

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 of, and paragraph 15 of Schedule 2 to, the 2003 Act), the power for the Scottish Ministers to facilitate the transfer of a UK prisoner to a participating country to assist in an 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). Section 6 also places limits on the circumstances in which the Lord Advocate can arrange for criminal process to be served overseas otherwise than by post where the country in question is a participating country.

Article 2 of this Order designates Albania, Bosnia and Herzegovina, Croatia, Israel, Montenegro, Serbia, Switzerland and the former Yugoslav Republic of Macedonia as participating countries in relation to sections 31, 47 and 48 of, and paragraph 15 of Schedule 2 to, the 2003 Act.

Article 3 of this Order also designates Albania, Bosnia and Herzegovina, Croatia, Israel, Montenegro, Serbia and the former Yugoslav Republic of Macedonia as participating countries in relation to section 6 of the 2003 Act. Switzerland has already been designated as a participating country in respect of this provision and sections 37, 40, 43, 44 and 45 of the 2003 Act by the Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (Scotland) (No 2) Order 2009 ([SSI 2009/206](#)).

The designation of Albania, Bosnia and Herzegovina, Croatia, Israel, Montenegro, Serbia, Switzerland and the former Yugoslav Republic of Macedonia as participating countries for the purposes of certain provisions of the 2003 Act is necessary in order to enable the UK to implement the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (Cmnd 5603). This Order will accordingly come into force on the date on which the Protocol enters into force in respect of the UK, which is on the first day of the month following the expiry of a period of 3 months after the date on which the UK deposits an instrument of ratification with the Secretary General of the Council of Europe.