

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

DRAFT STATUTORY INSTRUMENTS

2009 No.

**CRIMINAL LAW, ENGLAND AND WALES
CRIMINAL LAW, NORTHERN IRELAND**

**The Crime (International Co-operation) Act 2003
(Designation of Participating Countries) (England,
Wales and Northern Ireland) (No. 3) Order 2009**

Made - - - -

Coming into force in accordance with article 1

A draft of this Order has been approved by each House of Parliament in accordance with section 50(5)(a) of the Crime (International Co-operation) Act 2003(1).

The Secretary of State, in exercise of the powers conferred by section 51(2)(b) of the Crime (International Co-operation) Act 2003 ('the 2003 Act'), makes the following Order:

1. This Order may be cited as the Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (England, Wales and Northern Ireland) (No. 3) Order 2009 and shall come into force on the first day of the month following the expiry of three months from 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 Legal Assistance in Criminal Matters(2) with the Secretary General of the Council of Europe(3).

2. This Order extends to England and Wales and Northern Ireland.

3. Albania, Bosnia and Herzegovina, Croatia, the Former Yugoslav Republic of Macedonia, Israel, Montenegro, Serbia and Switzerland are designated as participating countries under section 51(2)(b) of the 2003 Act for the purposes of sections 31, 47 and 48 of, and paragraph 15 of Schedule 2 to, the 2003 Act.

(1) 2003 c.32.

(2) Cmnd 5603 of 2002.

(3) The Council of Europe provides notification as to the ratification of Council of Europe instruments on the following page of its website: <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=182&CM=8&DF=1/28/2009&CL=ENG>.

4. Albania, Bosnia and Herzegovina, Croatia, the Former Yugoslav Republic of Macedonia, Israel, Montenegro and Serbia are also designated as participating countries under section 51(2)(b) of the 2003 Act for the purposes of sections 4 and 4B(4) of that Act.

Home Office
Date

Name
Parliamentary Under Secretary of State

(4) Section 4B was inserted by section 331 of, and paragraph 16 of Schedule 36 to, the Criminal Justice Act 2003 (c.44).

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 is commenced, that country will, by virtue of 51(2)(a), fall to be regarded as a participating country for the purpose of the commenced provision. Where, however, 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 an order made under section 51(2)(b) in order to be regarded as a participating country for the purpose of the commenced provision.

Those powers which can only be exercised in relation to participating countries include the power for the Secretary of State 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 Secretary of State to facilitate the transfer of a UK prisoner to a participating country to assist with an investigation (section 47), and the power for the Secretary of State to facilitate the transfer of an overseas prisoner to the UK in order to assist with an investigation (section 48). Sections 4 and 4B (which was inserted into the 2003 Act by section 331 of, and paragraph 16 of Schedule 36 to the Criminal Justice Act 2003) also place limits on the circumstances in which the Secretary of State can arrange for criminal process to be served overseas otherwise than by post where the country in question is a participating country.

Article 3 of this Order designates Albania, Bosnia and Herzegovina, Croatia, the Former Yugoslav Republic of Macedonia, Israel, Montenegro, Serbia and Switzerland as participating countries for the purposes of sections 31, 47 and 48 of, and paragraph 15 of Schedule 2 to, the 2003 Act.

Article 4 of this Order also designates Albania, Bosnia and Herzegovina, Croatia, the Former Yugoslav Republic of Macedonia, Israel, Montenegro and Serbia as participating countries for the purposes of sections 4 and 4B of the 2003 Act. Switzerland has already been designated as a participating country for the purpose of these provisions.

The designation of Albania, Bosnia and Herzegovina, Croatia, the Former Yugoslav Republic of Macedonia, Israel, Montenegro, Serbia and Switzerland as participating countries for the purposes of certain provisions of the 2003 Act is necessary in order to enable the UK to ratify the Second Additional Protocol to the European Convention on Mutual Legal Assistance in Criminal Matters (Cmnd 5603 of 2002). 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 three months after the date on which the UK deposits an instrument of ratification with the Secretary General of the Council of Europe.