

CRIME (INTERNATIONAL CO-OPERATION) ACT 2003

EXPLANATORY NOTES

BACKGROUND

11. The Crime (International Co-operation) Act 2003 implements several outstanding European Union (“EU”) commitments in the area of police and judicial co-operation.
12. The Act includes the legislation necessary to enable the UK’s partial participation in the Schengen Convention. The Schengen Convention was designed to facilitate the free movement of persons by removing internal border controls. A series of measures to enhance police and judicial co-operation was then agreed to compensate for the lifting of controls. The Schengen Convention was formally integrated into the EU treaty structure by the 1997 Treaty of Amsterdam.
13. In May 1999, the UK formally applied to participate in the provisions on police and judicial co-operation, and the Schengen Information System, a database storing criminal information from all participating countries. The UK’s implementation of the Schengen Convention will be formally evaluated by the other Schengen states before its participation can be approved by the Justice and Home Affairs Ministerial Council. Legislation is required to implement some of the mutual legal assistance measures, the extradition provisions and some of the measures on police co-operation.
14. Furthermore, the Act implements several Framework Decisions of the EU in the field of Justice and Home Affairs policy. Framework Decisions were introduced by the 1997 Treaty of Amsterdam and have:

“the purpose of approximation of the laws and regulations of the Member States. Framework Decisions shall be binding upon the Member States as to the result to be achieved, but shall leave to the national authorities the choice of form and methods”: Article 34(2)(b), Treaty on European Union.
15. The UK government has agreed to the Framework Decisions contained in the Act.

Part 1: Mutual Assistance in Criminal Matters

16. [Part 1](#) of the Act deals with mutual legal assistance and the evidence aspects of the 2003 Framework Decision. It implements both the mutual legal assistance provisions of the Schengen Convention that are not repealed and replaced by the MLAC and those of the MLAC itself. The primary aim of the MLAC is to improve judicial co-operation by developing and modernising the existing provisions governing mutual assistance, mainly by extending the range of circumstances in which mutual assistance may be requested, and by facilitating assistance so that it is quicker, more flexible, and therefore more effective. Part 1 re-enacts and updates the provisions in Part 1 of the Criminal Justice (International Co-operation) Act 1990 to widen the scope of cases in which the UK is able to request and offer assistance, and to introduce the direct transmission of legal process and requests for assistance where possible. Part 1 also implements the 2001 Protocol which extends mutual legal assistance to enable provision of a wider

range of banking information than at present, including tracing any bank accounts and monitoring identified accounts held by an individual or company.

17. **Part 1** of the Act also introduces the mutual recognition of freezing orders on evidence as introduced by the 2003 Framework Decision. The Tampere Council held in October 1999 - a special meeting of the European Council focusing specifically on Justice and Home Affairs matters - agreed that the mutual recognition of judicial decisions should be the “cornerstone” of the future development of judicial co-operation within the EU, rather than harmonisation of legal systems. The Justice and Home Affairs Ministerial Council held in December 2000 adopted a programme of work to implement the principle of mutual recognition. The 2003 Framework Decision, and the Framework Decision of 13th June 2002 on the European Arrest Warrant to be implemented through the Extradition Bill, are the first results of that work programme.
18. The mutual legal assistance provisions in Part 1 apply to all other countries, in line with existing legislation, except for certain new provisions which are specifically restricted to “participating countries”. For the purposes of those provisions, all EU Member States will be “participating countries” (subject to their participation in the relevant instruments). Some arrangements may also be extended to other countries by order if appropriate. In such cases, countries will be designated by an order that will be laid before and approved by both Houses of Parliament, or, in relation to Scotland, the Scottish Parliament.

Part 2: Terrorist Acts and Threats: Jurisdiction

19. The 2002 Framework Decision was drafted in response to the attacks of 11 September 2001, with the purpose of ensuring that all EU Member States had effective terrorist legislation in place. The 2002 Framework Decision defines a range of terrorist offences and requires Member States to introduce “effective, proportionate and dissuasive” criminal penalties for these offences. Much of the substance of the 2002 Framework Decision is already given effect to in existing UK legislation. However, Article 9 which deals with extra-territorial jurisdiction for certain terrorist offences is not for the most part covered. Part 2 of this Act will therefore give effect to Article 9 of the 2002 Framework Decision by allowing the UK to take extra-territorial jurisdiction both over terrorist offences committed by UK residents and nationals anywhere in the world and over attacks on UK residents, nationals and diplomatic premises wherever they occur.

Part 3: Road Traffic

20. **Part 3** provides for the implementation of the Convention. Under the Convention, drivers normally resident in one Member State of the EU who are disqualified from driving in another Member State will also be disqualified in their state of residence. The duties placed on the Secretary of State for Transport under this Part will be administered by the Driver and Vehicle Licensing Agency. The Convention will come into effect when it has been ratified by all the Member States but there is also provision for the Convention to be implemented on a bilateral basis between participating Member States. Part 3 also introduces new measures to prevent drivers banned from driving in Northern Ireland from obtaining a British driving licence or vice versa.

Part 4: Miscellaneous

21. **Part 4** makes various miscellaneous provisions. Section 80 provides for the disclosure of information by the Serious Fraud Office in the context of criminal investigations or proceedings. This Part also covers four different areas of the Schengen Convention. Firstly, section 81 permits the Information Commissioner to inspect any of the three European information systems which are or will be used by the UK. Section 82 provides for driver licensing information to be disclosed for the purposes of the Schengen Information System. In the realm of police co-operation, sections 83 to 85 implement the requirement of the Schengen Convention for officers from one Member State to

*These notes refer to the Crime (International Co-operation) Act
2003 (c.32) which received Royal Assent on 30 October 2003*

conduct unaccompanied surveillance in another Schengen state for up to five hours in exceptional circumstances. The extradition provisions in sections 86 and 87 would allow the UK to apply the Schengen-building provisions of the 1996 Extradition Convention to non-EU Member States such as Iceland and Norway; and to apply the 1995 and 1996 Extradition Conventions to Italy and France.

22. The 2001 Framework Decision, one aspect of which is implemented in Part 4 of the Act, is intended to support the fight against fraud and counterfeiting across the EU. The measure forms part of the Commission's Fraud Prevention Action Plan. It requires Member States to criminalise different types of conduct in relation to non-cash means of payment - for example, the obtaining and possession of false or counterfeit monetary instruments for fraudulent purposes. With the exception of part of one article, the provisions of the 2001 Framework Decision are already covered within UK law.