EXECUTIVE NOTE

THE CRIME (INTERNATIONAL CO-OPERATION) ACT 2003 (DESIGNATION OF PARTICIPATING COUNTRIES) (SCOTLAND) (NO. 3) ORDER 2009 - SSI/2009/441

1. This Order is made under powers conferred by section 51(2)(b) of the Crime (International Co-operation) Act 2003 ("the 2003 Act"), which provides that the Scottish Ministers may designate certain "participating countries" in relation to any provisions of Part 1 of the 2003 Act. Under section 50(5)(b) of the 2003 Act, this Order was subject to affirmative Parliamentary procedure because it concerns the designation of countries other than EU member states.

Policy Objectives

2. Mutual Legal Assistance is the formal way in which countries request and provide assistance in criminal investigations or proceedings (for example, in obtaining evidence located in another country). Part 1 of the 2003 Act deals with various forms of Mutual Legal Assistance concerning criminal matters. It provides statutory powers under which the United Kingdom can both seek and provide Mutual Legal Assistance.

3. Some of the powers in the 2003 Act can only be exercised where the country in question is a 'participating country' as defined in section 51(2) of the 2003 Act. Those powers include:

- section 6 (effecting Scottish citation etc. otherwise than by post);
- section 31 (hearing witnesses in the UK by telephone);
- section 47 (transfer of UK prisoner to assist investigation abroad);
- section 48 (transfer of EU etc. prisoner to assist UK investigation); and
- paragraph 15 of Schedule 2 (evidence given by television link or telephone).

4. Where a country was a Member State of the European Union on the date on which a provision of the 2003 Act was commenced, that country will be regarded as a 'participating country' for the purposes of the commenced provision. Non EU Member States require separate designation as 'participating countries'.

5. The UK is a signatory to the 1959 European Convention on Mutual Assistance in Criminal Matters (ratified) and its Second Additional Protocol (not ratified). The UK now wishes to ratify the Second Additional Protocol. The designations under this Order are required to implement the Second Additional Protocol to the European Convention on Mutual Legal Assistance in Criminal Matters which, among other things, creates obligations for signatory countries in relation to the service of documents, the hearing of evidence through television links or by telephone and the transfer of prisoners.

Provisions of the 2003 Act

6. **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.

7. Designation as participating countries for the purpose of section 31 of the 2003 Act will facilitate a person in the United Kingdom giving evidence by telephone to a court in these countries. Paragraph 15 of Schedule 2 ensures that the court in the designated country will supervise this. In many cases, a witness may not wish to travel to the foreign country and providing evidence by telephone is a method of ensuring that the interests of justice are served without causing distress or inconvenience to a witness.

8. Designation of these countries as participating countries in relation to sections 47 and 48 will facilitate the transfer of prisoners for the purpose of assisting with the investigation of offences.

9. **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 for the purposes of section 6 of the 2003 Act. Switzerland has already been designated as a participating country for this provision by the Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (Scotland) (No. 2) Order 2009 (SSI 2009/206).

10. Designation of these countries in relation to section 6 means that service of a citation or other document must be done in that country by post unless one of the listed exceptions apply. The aim of this direct transmission is to ensure the relevant documents are served as expeditiously as possible.

CONSULTATION

11. This Order has been prepared in consultation with officials in the Home Office. An equivalent Order in respect of the rest of the United Kingdom is due to be laid before the UK Parliament.

FINANCIAL IMPLICATIONS

12. No impact on the private, public or voluntary sector is foreseen.

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