EXPLANATORY MEMORANDUM TO

THE CRIME (INTERNATIONAL CO-OPERATION) ACT 2003 (DESIGNATION OF PARTICIPATING COUNTRIES)(ENGLAND, WALES AND NORTHERN IRELAND) ORDER 2008

2008 No. [DRAFT]

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This Order designates the United States of America as a participating country for the purposes of sections 32, 35, 43, 44 and 45 of the Crime (International Co-operation) Act 2003.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Background

4.1 This Order reflects the fact that the United Kingdom and the United States of America signed a bilateral Mutual Legal Assistance Treaty on 6 January 1994 (which entered into force on 2 December 1996). This Treaty was amended by an instrument dated 16 December 2004. This amendment was necessary in order to give effect to the provisions of an Agreement on Mutual Legal Assistance between the United States of America and the European Union which was agreed on 25 June 2003.

4.2 In order to implement the amended Treaty the United States of America needs to be designated as a 'participating country' under section 51(2)(b) of the Crime (International Co-operation) Act 2003 ('the Act') for the purpose of sections 32, 43 and 45 of the Act. The Order also designates the United States of America as a 'participating country' for the purpose of sections 35 and 44 of the Act. Designation under sections 35 and 44 is not strictly required in order to implement the amended Treaty, however such designation will allow for a greater flexibility in how requests for assistance can be executed and in what may be requested from the United States by domestic authorities. The execution of incoming requests for assistance under section 35 is subject to the Secretary of States discretion.

4.3 Section 32 of the Act confers on the Secretary of State a discretionary power to direct a senior police or customs officer to apply for a customer information order when a request for such information is received from a participating country. A customer information order is an order made by a judge which requires a financial institution to provide such customer information as is specified in the order in relation to the person in respect of whom the order is made.

4.4 Section 35 of the 2003 Act confers on the Secretary of State discretion to direct a senior police or senior customs officer to apply for, or to arrange respectively for a constable or a customs officer to apply for, an account monitoring order when a request for such information is received from a participating country. An account monitoring order is an order made by a judge that the financial institution specified in the application for the order must, for the period stated in the order, provide account information of the description specified in the order to the applicant in the manner, and at or by the time or times, stated in the order.

4.5 Sections 43 and 44 of the Act enable judicial and prosecuting authorities to make outgoing requests for customer and account information to participating countries. Section 45 of the Act provides that these requests will be forwarded to the participating country by the Secretary of State.

5. Territorial Extent and Application

5.1 This instrument applies to England, Wales and Northern Ireland.

6. European Convention on Human Rights

6.1 Lord West of Spithead, Parliamentary Under-Secretary of State at the Home Office, has made the following statement regarding Human Rights:

6.2 In my view the provisions of the Crime (International Co-Operation) Act 2003 (Designation of Participating Countries) Order 2008 are compatible with the Convention.

7. Policy background

7.1 Chapter 4 of Part 1 of the Crime (International Co-operation) Act 2003 implements the 2001 Protocol to the European Convention on Mutual Assistance in Criminal Matters 1959 which creates obligations for participating countries to respond to requests for assistance with locating banking accounts and to provide banking information relating to criminal investigations. The purpose of the 2001 Protocol is to assist signatories to tackle serious international crime, in particular economic crime and money laundering.

7.2 On the 25 June 2003 an Agreement on Mutual Legal Assistance between the United States of America and the European Union was concluded. As a result of the provisions of this agreement it was necessary for the UK to amend its bilateral mutual legal assistance treaty with the US. The terms of the amended bilateral treaty (which reflect the provisions of the EU-US agreement) make provision for the parties to make and execute requests for assistance in obtaining customer information from financial institutions. The domestic powers to make and receive such requests are found in Chapter 4 Part 1 of the Act.

7.3 Designation of the United States of America under section 52(1)(b) of the Act for the purpose of s 32, 43 and 45 will allow for requests for customer information orders made by the United States of America to be executed in England and Wales and Northern Ireland and for such requests to be made to the United States of America by certain judicial and prosecuting authorities in England and Wales and Northern Ireland.

7.4 The Order also designates the United States of America as a participating country for the purpose of sections 35 and 44 of the Act. This will allow requests for account monitoring orders made by the United States of America to be executed in England and Wales and Northern Ireland and for such requests to be made to the United States of America by certain judicial and prosecuting authorities in England and Wales and Northern Ireland.

8. Impact

8.1 An Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

9. Contact

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