EXPLANATORY MEMORANDUM TO

THE CRIME (INTERNATIONAL CO-OPERATION) ACT 2003 (DESIGNATION OF PARTICIPATING COUNTRIES) (ENGLAND, WALES AND NORTHERN IRELAND) ORDER 2013

2013 No. 0000

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

2. Purpose of the instrument

2.1 By virtue of the power conferred by section 51(2)(b) of the Crime (International Co-operation) Act 2003 ('the 2003 Act'), this Order designates the Republic of Armenia, the Republic of Chile and Ukraine as participating countries for the purposes of section 31, 47 and 48 of, and Part 2 of Schedule 2 to, the 2003 Act, following their ratification of the Second Additional Protocol to the 1959 European Convention on Mutual Assistance in Criminal Matters ('the 1959 Convention').

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

3.1 None.

4. Legislative Context

4.1 The UK is a signatory to the 1959 Convention (ratified) and its Second Additional Protocol (ratified). In order to comply with the provisions of the Second Additional Protocol, it is necessary for the UK to make an Order to designate 'participating countries' by virtue of section 51(2)(b) of the 2003 Act.

4.2 Part 1 of 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 under an Order made under section 51(2)(b) so as to be regarded as a participating country for the purpose of the commenced provision.

4. 3 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).

4.4 As the Republic of Armenia, the Republic of Chile and Ukraine are not EU Member States this Order designates them as participating countries for the purposes of section 31 and Schedule 2, and sections 47 and 48 of the 2003 Act, following their ratification of the Second Additional Protocol to the 1959 Convention.

4.5 Section 31 of the 2003 Act enables the Secretary of State, on request, to arrange for a person in the UK to give evidence by telephone in criminal proceedings before a court in a participating country, where that witness gives his consent.

4.6 Part 2 of Schedule 2 of the 2003 Act makes provision for hearing witnesses in the UK under section 31 of the 2003 Act.

4.7 Section 47 of the 2003 Act makes provision for prisoners in the UK to be transferred to another participating country to assist with an investigation if the prisoner has given his consent to the transfer.

4.8 Section 48 of the 2003 Act makes provision for a prisoner in a participating country to be transferred to the UK to assist with investigations if the prisoner has given his consent to such a transfer.

5. Territorial Extent and Application

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

6. European Convention on Human Rights

6. 1 The Immigration Minister has made the following statement regarding Human Rights:

"In my view the provisions of the Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (England, Wales and Northern Ireland) (No 0000) Order 2013 are compatible with the Convention rights."

7. Policy background

7. 1 The UK has signed and ratified the 1959 Convention. This forms the treaty basis for a high number of both incoming and outgoing requests for criminal mutual legal assistance. The UK has also signed and ratified the Second Additional Protocol to the 1959 Convention, which is aimed at

strengthening mutual legal assistance amongst ratifying states and widening the pool of mutual legal assistance.

7.2 In the Second Additional Protocol, Article 10 provides for hearings by teleconference and Article 13 provides for the temporary transfer of detained persons to another country. Sections 31, 47 and 48 of, and Paragraph 15 of Schedule 2 to, the 2003 Act provide the powers in domestic law through which we can comply with these obligations under the Second Additional Protocol.

7.3 These provisions are, however, applicable only in relation to a 'participating country'. As explained in paragraph 4.2 above, countries which were not Member States of the European Union on the date on which a provision of the 2003 Act was commenced must be designated as a participating country by order. So as to comply with the obligations imposed by the Second Additional Protocol it will, therefore, be necessary to designate all those countries which have ratified the Second Additional Protocol but which are not currently deemed to be a 'participating country' for the purpose of the provisions of the 2003 Act which are set out above. These countries are the Republic of Armenia, the Republic of Chile and Ukraine.

7.4 Prior to their ratification of the Protocols to the 1959 Convention there were no mutual legal assistance treaties in place between the UK and the Republic of Armenia, and agreements between the UK and the Republic of Chile and Ukraine were in relation to assistance in regard to investigating narcotic drugs and psychotropic substances and assisting restraint and confiscation of criminal proceeds and instruments.

7.5 The designation of the Republic of Armenia, the Republic of Chile and Ukraine as participating countries for the purposes of section 31, 47 and 48 of, and Part 2 of Schedule 2 to, the 2003 Act will provide for a more comprehensive framework for Mutual Legal Assistance between the UK, the Republic of Armenia, the Republic of Chile and Ukraine in respect of the giving of evidence in criminal proceedings and of the transfer of prisoners to assist with investigations.

8. Consultation outcome

8.1 No concerns have been raised regarding the designation of the Republic of Armenia, the Republic of Chile and Ukraine.

9. Guidance

9.1 None.

10. Impact

10.1 There is unlikely to be any impact on business, charities or voluntary bodies as they are already required to comply with the necessary legislation.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The outcome will be subject to internal review in 12 months to assess whether any unintended outcome has occurred.

13. Contact

Anjuli Old at the Home Office, can answer any queries regarding the instrument.
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