EXPLANATORY MEMORANDUM TO

THE CRIME (INTERNATIONAL CO-OPERATION) ACT 2003 (DESIGNATION OF PARTICIPATING COUNTRIES) (ENGLAND, WALES AND NORTHERN IRELAND) ORDER 2022

2022 No. [XXXX]

1. Introduction

1.1 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 Georgia, Liechtenstein, Luxembourg, Republic of Moldova, Switzerland and Türkiye as participating countries for the purposes of various provisions of the 2003 Act. This ensures the UK can service relevant mutual legal assistance requests with the referenced countries, who have ratified the 1959 European Convention on Mutual Assistance in Criminal Matters ("the 1959 Convention") and its Second Additional Protocol.

3. Matters of special interest to Parliament

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

3.1 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England, Wales and Northern Ireland.

4.2 The territorial application of this instrument is England, Wales and Northern Ireland.

5. European Convention on Human Rights

5.1 The Secretary of State for the Home Department 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) Order 2022 are compatible with the Convention rights."

6. Legislative Context

6.1 The United Kingdom ("UK") is a signatory to the 1959 Convention (ratified) and its Second Additional Protocol (ratified). In order to fulfil 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.

6.2 Part 1 of the 2003 Act provides statutory powers pursuant to which the UK 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 has been designated as a "participating country" for the purposes of that provision.

6.3 Switzerland was previously designated under The Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (England, Wales and Northern Ireland) (No. 2) Order 2009 ("the 2009 (No. 2) Order") for the purposes of sections 4, 4B, 32, 35, 43, 44 and 45 of the 2003 Act. This designation was on the basis of the Cooperation Agreement between the European Community and its Member States on the one part, and the Swiss Confederation, on the other part, to Combat Fraud and any other Illegal Activity to the Detriment of their Financial Interests ('the Swiss Agreement').

6.4 Switzerland was further designated under the Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (England, Wales and Northern Ireland) Order 2010 ("the 2010 Order"), for the purposes of sections 31, 47, 48 of, and paragraph 15 of Schedule 2 to the 2003 Act, which correspond to express provisions in the Second Additional Protocol to the 1959 Convention. This was in order to secure the UK's ability to ratify the Second Additional Protocol to the 1959 Convention (which was ratified by the UK on 30 June 2010 and entered into force on 1 October 2010) and had already been ratified by Switzerland.

6.5 When the UK left the European Union ("EU"), the obligations that previously applied to the UK as a member of the EU, under the Swiss Agreement, ceased to apply. The Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019 (regulation 89(3)) revoked the Swiss designations made under the 2009 (No. 2) Order. The 2010 designations remained in place. This instrument reinstates designations for relevant provisions for which Switzerland was previously designated under the 2009 (No. 2) Order and the 2010 Order, which is consolidated by this instrument.

6.6 This Order also designates Georgia, Liechtenstein, Luxembourg, Republic of Moldova and Türkiye for the specified provisions of the 2003 Act.

7. Policy background

What is being done and why?

7.1 The UK has signed and ratified the 1959 Convention and its Protocols. This forms the international treaty basis for a high number of both incoming and outgoing requests for mutual legal assistance in criminal matters. The Second Additional Protocol to the 1959 Convention aims to strengthen mutual legal assistance amongst ratifying states and widen the types of mutual legal assistance available.

7.2 Part 1 of the 2003 Act provides the statutory powers pursuant to which the UK can both seek and provide various forms of mutual legal assistance concerning criminal matters. Some of those powers can only be exercised where the country in question is a "participating country" as defined in section 51(2) of the 2003 Act. A country must be designated as a participating country under an Order made under section 51(2)(b). To ensure the UK is able to provide the widest measure of mutual assistance to the countries specified below, who are a party to the 1959 Convention and its Second Additional Protocol, new designations are being made.

7.3 The UK has made a number of previous Orders designating States for the purposes of the 2003 Act. The last such Designation Order was the Crime (International Co-operation) Act 2003 (Designation of Participating Countries), (England, Wales and Northern Ireland) Order 2013.

Switzerland

7.4 The 1959 Convention, and its Protocols, do not contain specific provisions in relation to all types of mutual legal assistance that may be requested. For example, they do not contain express provisions regarding banking information, as were contained in the Swiss Agreement. Despite this, States party to the 1959 Convention are still able to make requests for such assistance and the 1959 Convention obligates parties to provide each other with "the widest measure of mutual assistance".

7.5 It has been determined that, to enable the widest measure of mutual assistance to be provided, as a party to the 1959 Convention and its Protocols Switzerland should be designated for broader purposes than those for which it is currently designated by the 2010 Order. As such, this Order designates Switzerland for the same purposes as the other States referenced below. This includes relevant provisions for which it was previously designated under both the 2009 (No. 2) Order and the 2010 Order, which is revoked by this instrument to consolidate the Swiss designations.

Georgia, Liechtenstein, Luxembourg, Republic of Moldova and Türkiye

7.6 This Order designates Georgia, Liechtenstein, Luxembourg, Republic of Moldova and Türkiye for the specified provisions of the 2003 Act.

Effects of designations

7.7 Since ratification of the Second Additional Protocol to the 1959 Convention by those countries, the UK has been able to both seek and provide various forms of mutual legal assistance concerning criminal matters. This ability to provide assistance does not however extend to those powers under the 2003 Act which can only be exercised where a country in question is a "participating country" as defined in section 51(2) of the 2003 Act. However, the UK may still in certain instances be able to provide assistance, without designation, by an alternative means which does not require a country in question to be a 'participating country' (for example hearing a witness by video-link rather than by telephone).

7.8 Designation of Georgia, Liechtenstein, Luxembourg, Republic of Moldova, Switzerland and Türkiye for the purposes of the provisions of the 2003 Act specified in the Order will provide for a more comprehensive framework for mutual legal assistance between the UK and the aforementioned countries, by ensuring that the UK can both make and facilitate requests for assistance under the 2003 Act provisions referenced in the Order. This will allow for the following types of assistance:

- 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 their consent.
- Part 2 of Schedule 2 of the 2003 Act makes provision for hearing witnesses in the UK under section 31 of the 2003 Act.
- Section 32 of the 2003 Act enables the Secretary of State, on request, to obtain customer information in relation to a person being investigated for serious criminal conduct in a participating country. Section 35 of the 2003 Act enables the Secretary of State, on request, to obtain account information in relation to an investigation into criminal conduct in a participating country.
- Section 43 of the 2003 Act allows for a judicial or prosecuting authority in the UK to make a request to a participating country for information on whether a

person holds any accounts, the details of these accounts and the details of transactions that occurred in a specified period of time. Such a request may only be made if: the person is being investigated in the UK for serious criminal conduct; if it appears that the person holds or may hold an account in the participating country; and, if this information is likely to be of substantial value to the investigation.

- Section 44 of the 2003 Act allows for a judicial or prosecuting authority in the UK to request information from a participating country on the details of banking transactions carried out over a specified period. This information must be relevant to an investigation into criminal conduct in the UK.
- Section 45 of the 2003 Act provides that requests for assistance made under sections 43 and 44 of the 2003 Act must be sent to the Secretary of State to be forwarded to the relevant authority in the participating country. In cases of urgency, however, the request may be sent directly to the court that has jurisdiction in the place where the information is to be obtained.
- 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.
- 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.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 There are no plans to consolidate this instrument; however, it consolidates the Swiss designations by having them all contained in this Order and revoking the Swiss designations under the 2010 Order.

10. Consultation outcome

10.1 Consultation has taken place with relevant stakeholders in the Home Office, the Foreign, Commonwealth and Development Office, Her Majesty's Revenue and Customs, the Crown Office and Procurator Fiscal Services and Northern Ireland Executive. No objections were raised.

11. Guidance

11.1 There are no plans to issue guidance relating to this instrument.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because no or no significant impact, on the private, public or voluntary sector is foreseen. MLA is a form of judicial co-operation between State authorities. Historically the number of MLA requests with the countries covered by this designation for the specific provisions referenced are extremely low in number. This designation will impact on

process relating to MLA requests rather than existing volume and therefore there will be no or no significant impact on business.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is that the objective of this SI will be subject to review within the continuous wider oversight of the UK MLA statutory framework to ensure MLA requests are serviced effectively and swiftly with relevant international partners.

15. Contact

15.1 Veronique Read at the Home Office. Email: Veronique.read3@homeoffice.gov.uk can be contacted with any queries regarding the instrument.

15.2 Julia Labeta, Deputy Director for International Agreements and Judicial Cooperation, at the Home Office, can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Secretary of State for the Home Department, Priti Patel MP, can confirm that this Explanatory Memorandum meets the required standard.