

*Draft Order laid before the Scottish Parliament under section 50(5)(b) of the Crime (International Co-operation) Act 2003, for approval by resolution of the Scottish Parliament.*

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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2023 No.**

**CRIMINAL LAW**

**The Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (Scotland) Order 2023**

<i>Made</i>	- - - -	2023
<i>Coming into force</i>	- -	2023

The Scottish Ministers make the following Order in exercise of the powers conferred on them by section 51(2)(b) of the Crime (International Co-operation) Act 2003<sup>(1)</sup> and all other powers enabling them to do so.

In accordance with section 50(5)(b) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

**Citation and commencement**

1. This Order may be cited as the Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (Scotland) Order 2023 and shall come into force on the day after the day on which it is made.

**Designation of participating countries**

2. Georgia, Liechtenstein, Luxembourg, Moldova, Switzerland, and Turkey are designated as participating countries in relation to the following provisions of the Crime (International Co-operation) Act 2003<sup>(2)</sup>—

- (a) section 31 (hearing witnesses in the UK by telephone);
- (b) section 37 (customer information)<sup>(3)</sup>;
- (c) section 40 (account information);
- (d) section 43 (information about a person's bank account);

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(1) 2003 c. 32, as relevantly amended by S.I. 2019/742.

(2) Chapter 4 of Part 1 of the Crime (International Co-operation) Act 2003, which includes sections 37, 40, 43, 44 and 45 was due to be omitted by regulation 87(11) of S.I. 2019/742. However, by virtue of paragraph 2(2)(a) of schedule 3 of the European Union (Future Relationship) Act 2020 (c. 29), regulation 87(11) of S.I. 2019/742 was revoked before it ever came into force, and Chapter 4 of Part 1 of the Crime (International Co-operation) Act 2003 remains in force.

(3) Section 37 was amended by paragraph 3(3) of schedule 3 of the European Union (Future Relationship) Act 2020 (c. 29).

- (e) section 44 (monitoring banking transactions);
- (f) section 45 (sending requests for assistance);
- (g) section 47 (transfer of UK prisoner to assist investigation abroad)<sup>(4)</sup>;
- (h) section 48 (transfer of EU etc. prisoner to assist UK investigation)<sup>(5)</sup>; and
- (i) paragraph 15 of schedule 2 (evidence given by television link or telephone).

**3.** Armenia, Chile, and Ukraine are designated as participating countries in relation to the following provisions of the Crime (International Co-operation) Act 2003—

- (a) section 31 (hearing witnesses in the UK by telephone);
- (b) section 47 (transfer of UK prisoner to assist investigation abroad);
- (c) section 48 (transfer of EU etc. prisoner to assist UK investigation); and
- (d) paragraph 15 of schedule 2 (evidence given by television link or telephone).

**Amendment of the Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (Scotland) (No. 3) Order 2009**

**4.—(1)** The Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (Scotland) (No. 3) Order 2009<sup>(6)</sup> is amended as follows.

- (2) In article 2, omit “, Switzerland”.

St Andrew’s House,  
Edinburgh  
Date

*Name*  
A member of the Scottish Government

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<sup>(4)</sup> Section 47 was amended by paragraph 237 of schedule 16 of the Armed Forces Act 2006 (c. 52).

<sup>(5)</sup> Section 48 was amended by paragraph 52 of schedule 26 of the Criminal Justice and Immigration Act 2008 (c. 4).

<sup>(6)</sup> S.S.I. 2009/441, as relevantly amended by S.I. 2017/730.

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

Part 1 of the Crime (International Co-operation) Act 2003 (“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. A country must be designated as a participating country for the purpose of the relevant provision.

Those powers which can only be exercised in relation to participating countries include the power—

- for the Lord Advocate 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);
- for the Lord Advocate to direct that an application seeking information about banking transactions in Scotland for use abroad be made (sections 37 and 40);
- for requests to be made to other countries for information about banking transactions for use in the UK (sections 43 to 45);
- for the Scottish Ministers to facilitate the transfer of a UK prisoner to a participating country to assist in an investigation (section 47); and
- for the Scottish Ministers to enable an overseas prisoner to be transferred to the UK in order to assist with an investigation in this country (section 48).

Georgia, Liechtenstein, Luxembourg, Moldova, Switzerland and Turkey have ratified the Second Additional Protocol to the 1959 European Convention on Mutual Legal Assistance in Criminal Matters (Cm 5603 of 2002) (“the Protocol”). Article 2 of this Order designates Georgia, Liechtenstein, Luxembourg, Moldova, Switzerland and Turkey as participating countries for the purposes of the provisions mentioned above.

Article 2 includes designation of Switzerland. Switzerland was previously designated for more limited purposes. Accordingly, article 4 makes a consequential amendment to the Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (Scotland) (No. 3) Order 2009, to remove Switzerland from that limited designation.

Armenia, Chile and Ukraine have all ratified the Protocol. Article 3 of this Order designates Armenia, Chile and Ukraine for the purposes of sections 31, 47 and 48 of, and paragraph 15 of schedule 2 to, the 2003 Act.