

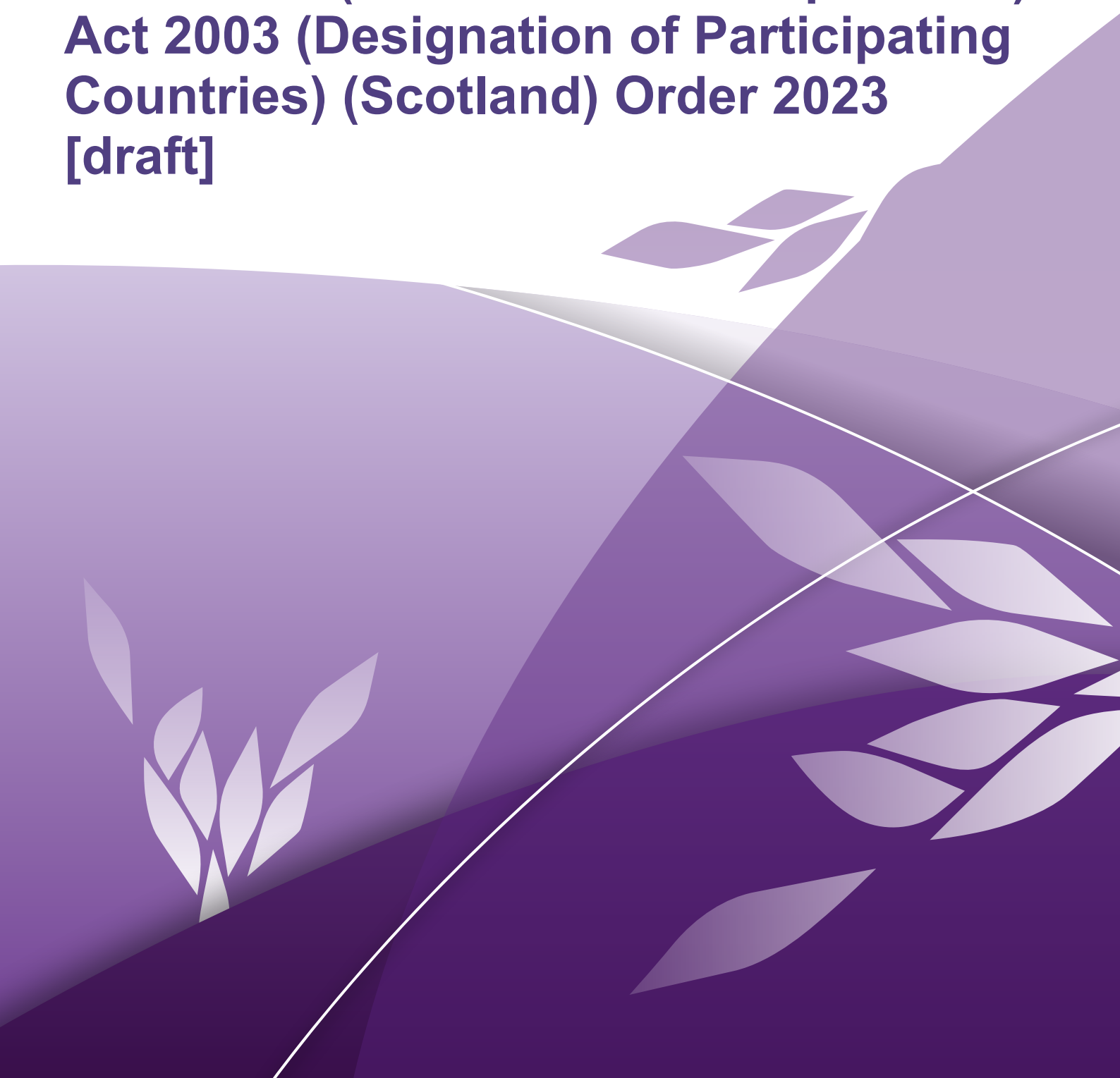


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Criminal Justice Committee

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



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Criminal Justice Committee

To consider and report on matters relating to criminal justice falling within the responsibility of the Cabinet Secretary for Justice and Veterans, and functions of the Lord Advocate other than as head of the systems of criminal prosecution and investigation of deaths in Scotland.



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Introduction

1. At its meeting on Wednesday 8 March 2023, the Criminal Justice Committee considered the [Crime \(International Co-operation\) Act 2003 \(Designation of Participating Countries\) \(Scotland\) Order 2023 \[draft\]](#).
2. The instrument is subject to the affirmative procedure and was laid before the Scottish Parliament on 15 February 2023.
3. The instrument is proposed to be made in exercise of the powers conferred by section 51(2)(b) of the Crime (International Co-operation) Act 2003 (the “2003 Act”).
4. The instrument is required to implement Scotland’s international obligations as detailed below. An instrument in similar terms has been made by the Secretary of State with respect to the rest of the UK.
5. Mutual Legal Assistance is the formal way by which countries request and provide assistance in criminal investigations or proceedings (for example, in obtaining evidence held in another country). Part 1 of the 2003 Act provides statutory powers pursuant to which Scotland and the wider United Kingdom can both seek and provide various forms of mutual legal assistance concerning criminal matters.
6. 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 for the purpose of the relevant provision.
7. Chapter 4 of Part 1 of the 2003 Act 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 in finding 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.
8. The draft order designates nine countries as ‘participating countries’ for certain provisions of the 2003 Act. Designating these countries for purposes of the provisions of the 2003 Act specified in the order will provide a more complete framework for mutual legal assistance between the UK and these countries, by ensuring that the UK can both make and facilitate requests for assistance under the 2003 Act provisions referenced in the order.

Consideration by the Delegated Powers and Law Reform Committee

9. The Delegated Powers and Law Reform Committee ("DPLR Committee") considered the instrument at its meeting on 28 February 2023.
10. The DPLR Committee raised no points on the instrument.

Consideration by the Criminal Justice Committee

11. Motion S6M-07936 was lodged proposing that the Committee recommends approval of the instrument. At its meeting on Wednesday 8 March 2023 the Committee took oral evidence from the Cabinet Secretary for Justice and Veterans, Keith Brown ("the Cabinet Secretary") and Vivienne McColl, Policy Manager, International Justice Cooperation Unit, Scottish Government.
12. During the evidence session, the Cabinet Secretary outlined the purpose of the order to the Committee, as set out above.
13. The Cabinet Secretary informed the Committee that the Russian Federation has not been included in the nine "participating countries" designated by the order following the invasion of Ukraine and its exclusion from membership of the Council of Europe.
14. In response to questions from members regarding the level of crime the instrument covers, the Cabinet Secretary advised that he is not aware of any area of crime not covered by the order. However, he stated that there would have to be a different process for international war crimes.
15. When questioned on sections 47 and 48 of the 2003 Act (which relate to the transfer of prisoners for assisting with the investigation of offences) Vivienne McColl advised that the order covers mutual legal assistance rather than extradition. As such, any transfer of prisoners would only be temporary, in order to give evidence and would require the consent of the prisoner.
16. The Cabinet Secretary went on to advise that there are no tangible differences between the Scottish instrument and the one for the rest of the United Kingdom and confirmed that the order specifies evidence can be given by individuals to a court via telephone.
17. There being no further questions from Members, the Cabinet Secretary moved the motion in his name:
 - S6M-07936—That the Criminal Justice Committee recommends that the Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (Scotland) Order 2023 [draft] be approved.
18. Motion S6M-07936 was agreed to without debate or dissent.
19. The Criminal Justice Committee recommends to the Scottish Parliament that it approve the the Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (Scotland) Order 2023 [draft].

