

SCHEDULE 3

Regulation 26

Mutual recognition of financial penalties: amendments of Criminal Justice and Immigration Act 2008

1. The Criminal Justice and Immigration Act 2008 is amended as follows.
- 2.—(1) Section 81 (procedure on issue of certificate: England and Wales) is amended as follows.
 - (2) In subsection (2), for the words from “fines” to “other case” substitute “the relevant officer”.
 - (3) After subsection (2) insert—
 - “(2A) The “relevant officer” means—
 - (a) the fines officer (in the case of a certificate issued by the officer), or
 - (b) the designated officer for the magistrates’ court (in any other case).”.
 - (4) For subsection (4) substitute—
 - “(4) Subsections (4A) to (4C) apply where a certified copy of the decision is given to the central authority or competent authority of a member State in accordance with subsection (3).
 - (4A) No further steps to enforce the decision may be taken in England and Wales unless—
 - (a) an event mentioned in Article 15(2)(a) of the Framework Decision on financial penalties occurs in relation to the decision, or
 - (b) the relevant officer or the Lord Chancellor informs the central authority or competent authority as mentioned in subsection (4C)(b).
 - (4B) The relevant officer or the Lord Chancellor must inform the central authority or competent authority without delay if the officer receives any sum of money which the person concerned has paid voluntarily in respect of the decision requiring payment of the financial penalty.
 - (4C) The relevant officer or the Lord Chancellor must inform the central authority or competent authority forthwith of any decision or measure as a result of which the decision requiring payment of the financial penalty—
 - (a) ceases to be enforceable, or
 - (b) is withdrawn from the competent authority for any other reason.”.
- 3.—(1) Section 83 (procedure on issue of certificate: Northern Ireland)(1) is amended as follows.
 - (2) For subsection (4) substitute—
 - “(4) Subsections (4A) to (4C) apply where a certified copy of the decision is given to the central authority or competent authority of a member State in accordance with subsection (3).
 - (4A) No further steps to enforce the decision may be taken in Northern Ireland unless—
 - (a) an event mentioned in Article 15(2)(a) of the Framework Decision on financial penalties occurs in relation to the decision, or
 - (b) the designated officer or the Department of Justice informs the central authority or competent authority as mentioned in subsection (4C)(b).
 - (4B) The designated officer or the Department of Justice must inform the central authority or competent authority without delay if the officer receives any sum of money

(1) Section 83 was amended by [S.I. 2010/976](#).

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which the person concerned has paid voluntarily in respect of the decision requiring payment of the financial penalty.

(4C) The designated officer or the Department of Justice must inform the central authority or competent authority forthwith of any decision or measure as a result of which the decision requiring payment of the financial penalty—

- (a) ceases to be enforceable, or
- (b) is withdrawn from the competent authority for any other reason.”.

4. In section 84 (requests from other member States: England and Wales)(2), in subsection (1) (a), for sub-paragraphs (i) and (ii) substitute—

- “(i) a decision, or a certified copy of a decision, requiring payment of a financial penalty, and
- (ii) a certificate requesting enforcement under the Framework Decision on financial penalties, and”.

5.—(1) Section 85 (procedure on receipt of certificate by designated officer) is amended as follows.

(2) In subsection (1), for paragraphs (a) and (b) substitute—

- “(a) a decision, or a certified copy of a decision, requiring payment of a financial penalty,
- (b) a certificate requesting enforcement under the Framework Decision on financial penalties, and”.

(3) After subsection (4) insert—

“(4A) If the magistrates’ court is of the view that one or more of the grounds for refusal mentioned in paragraphs A1, 2A and 6 of Schedule 19 may apply, the designated officer for the magistrates’ court or the Lord Chancellor must, before the magistrates’ court takes a decision under subsection (3)—

- (a) consult the competent authority or central authority concerned, and
- (b) request the authority to supply without delay any further information required.”.

(4) After subsection (7) insert—

“(7A) But any power of a magistrates’ court to impose a relevant alternative sanction in connection with a default in paying the financial penalty—

- (a) may be exercised only if its exercise is authorised by the certificate, and
- (b) is subject to any provision of the certificate specifying the maximum level of sanction that may be imposed.

(7B) “Any power of a magistrates’ court to impose a relevant alternative sanction” means any of the following powers conferred on a magistrates’ court by virtue of subsection (6)—

- (a) the power under section 76 of the Magistrates’ Courts Act 1980 to issue a warrant committing a person to prison;
- (b) the power under Schedule 6 to the Courts Act 2003 to make an order requiring a person to perform unpaid work;
- (c) the power under section 300 of the Criminal Justice Act 2003 to order a person to comply with an unpaid work requirement, a curfew requirement or an attendance centre requirement;
- (d) the power under section 301 of that Act to order a person to be disqualified for holding or obtaining a driving licence;

(2) Section 84 was amended by [S.I. 2010/976](#).

- (e) the power under section 39 of this Act to order a person aged under 18 to comply with an unpaid work requirement, a curfew requirement or an attendance centre requirement.”.
 - (5) After subsection (7B) (as inserted by sub-paragraph (4) above) insert—
 - “(7C) If the person required to pay the financial penalty to which the certificate relates provides evidence that all or part of the penalty has been paid in any State, the designated officer for the magistrates’ court or the Lord Chancellor must—
 - (a) consult the competent authority or central authority concerned, and
 - (b) request the authority to supply without delay any further information required.”.
 - (6) For subsection (8) substitute—
 - “(8) If—
 - (a) the certificate requesting enforcement under the Framework Decision on financial penalties states that part of the financial penalty has been paid,
 - (b) the Lord Chancellor is informed, in accordance with Article 15(3) of that Decision, that all or part of the financial penalty has been paid, or
 - (c) the magistrates’ court is satisfied, having regard to evidence provided as mentioned in subsection (7C) and following consultation under that subsection, that all or part of the financial penalty has been paid in any State,the references in subsections (6) and (7A) to the financial penalty are to be read as references to so much of the penalty as remains unpaid (and, accordingly, if none of the penalty remains unpaid, subsection (6) ceases to have effect in relation to the penalty).”.
 - (7) In relation to any time before the coming into force of section 61 of the Criminal Justice and Court Services Act 2000 (abolition of sentences of detention in a young offender institution), section 85(7B) of the Criminal Justice and Immigration Act 2008 applies as if after paragraph (a) there were inserted—
 - “(aa) the power under section 108 of the Powers of Criminal Courts (Sentencing) Act 2000 to commit a person to detention;”.
 - (8) In relation to any time before the coming into force of section 303(b)(iii) of the Criminal Justice Act 2003 (repeal of sections 35 and 40 of the Crime (Sentences) Act 1997), section 85(7B) of the Criminal Justice and Immigration Act 2008 applies as if after paragraph (aa), as treated as inserted by sub-paragraph (7) above, there were inserted—
 - “(ab) the power under section 35 of the Crime (Sentences) Act 1997 to make a community service order or a curfew order;
 - (ac) the power under section 40 of that Act to order a person to be disqualified for holding or obtaining a driving licence;”.
 - (9) In relation to any time before the coming into force of section 6(1) of the Criminal Justice and Immigration Act 2008 (abolition of certain youth orders) as respects the abolition of attendance centre orders, section 85(7B) of that Act applies as if after paragraph (ac), as treated as inserted by sub-paragraph (8) above, there were inserted—
 - “(ad) the power under section 60 of the Powers of Criminal Courts (Sentencing) Act 2000 to order a person to attend an attendance centre;”.
- 6.—(1)** Section 86 (modification of Magistrates’ Courts Act 1980) is amended as follows.
- (2) After subsection (2) insert—
 - “(3) Where a transfer of fine order is made under section 90 of the Magistrates’ Courts Act 1980 as applied by section 85(6) of this Act—

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- (a) subsections (6A) to (7) of section 88 of this Act apply in relation to the powers conferred by Article 96 of the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)) (transfer of fines to Northern Ireland) as a result of the order as they apply in relation to the powers conferred on a magistrates' court by virtue of section 88(6) of this Act, and
- (b) for this purpose—
 - (i) references in those subsections to the financial penalty are to be treated as references to the financial penalty to which the order relates, and
 - (ii) references in those subsections to the certificate are to be treated as references to the certificate by virtue of which the order is made.”.

(3) In the heading, at the end insert “etc”.

7. In section 87 (requests from other member States: Northern Ireland)(3), in subsection (1)(a), for sub-paragraphs (i) and (ii) substitute—

- “(i) a decision, or a certified copy of a decision, requiring payment of a financial penalty, and
- (ii) a certificate requesting enforcement under the Framework Decision on financial penalties, and”.

8.—(1) Section 88 (procedure on receipt of certificate by clerk of petty sessions)(4) is amended as follows.

(2) In subsection (1), for paragraphs (a) and (b) substitute—

- “(a) a decision, or a certified copy of a decision, requiring payment of a financial penalty,
- (b) a certificate requesting enforcement under the Framework Decision on financial penalties, and”.

(3) After subsection (4) insert—

“(4A) If the magistrates' court is of the view that one or more of the grounds for refusal mentioned in paragraphs A1, 2A and 6 of Schedule 19 may apply, the designated officer for the magistrates' court or the Department of Justice must, before the magistrates' court takes a decision under subsection (3)—

- (a) consult the competent authority or central authority concerned, and
- (b) request the authority to supply without delay any further information required.”.

(4) After subsection (6) insert—

“(6A) But any power of a magistrates' court to impose a relevant alternative sanction in connection with a default in paying the financial penalty—

- (a) may be exercised only if its exercise is authorised by the certificate, and
- (b) is subject to any provision of the certificate specifying the maximum level of sanction that may be imposed.

(6B) “Any power of a magistrates' court to impose a relevant alternative sanction” means any of the following powers conferred on a magistrates' court by virtue of subsection (6)—

- (a) the power under Article 92(1)(b) or (c) of the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 12)) to issue a warrant committing a person to prison;
- (b) the power under Article 37 of the Criminal Justice (Children) (Northern Ireland) Order 1998 (S.I. 1998/1504 (N.I. 9)) to make an attendance centre order;

(3) Section 87 was amended by S.I. 2010/976.

(4) Section 88 was amended by S.I. 2010/976.

- (c) the power under Article 48 of the Criminal Justice (Children) (Northern Ireland) Order 1998 to commit a person aged 16 to 18 to custody in a young offenders' institution.”
- (5) After subsection (6B) (as inserted by sub-paragraph (4) above) insert—
 - “(6C) If the person required to pay the financial penalty to which the certificate relates provides evidence that all or part of the penalty has been paid in any State, the designated officer for the magistrates' court or the Department of Justice must—
 - (a) consult the competent authority or central authority concerned, and
 - (b) request the authority to supply without delay any further information required.”.
- (6) For subsection (7) substitute—
 - “(7) If—
 - (a) the certificate requesting enforcement under the Framework Decision on financial penalties states that part of the financial penalty has been paid,
 - (b) the Department of Justice is informed, in accordance with Article 15(3) of that Decision, that all or part of the financial penalty has been paid, or
 - (c) the magistrates' court is satisfied, having regard to evidence provided as mentioned in subsection (6C) and following consultation under that subsection, that all or part of the financial penalty has been paid in any State,the references in subsections (6) and (6A) to the financial penalty are to be read as references to so much of the penalty as remains unpaid (and, accordingly, if none of the penalty remains unpaid, subsection (6) ceases to have effect in relation to the penalty).”.
- 9.—(1)** Section 89 (modification of Magistrates' Courts (Northern Ireland) Order 1981)(**5**) is amended as follows.
 - (2) After subsection (5) insert—
 - “(6) Where a transfer of fine order is made under Article 95 of the Magistrates' Courts (Northern Ireland) Order 1981 as applied by section 88(6) of this Act—
 - (a) subsections (7A) to (8) of section 85 of this Act apply in relation to the powers conferred by section 91 of the Magistrates' Courts Act 1980 (transfer of fines from Northern Ireland) as a result of the order as they apply in relation to the powers conferred on a magistrates' court by virtue of section 85(6) of this Act, and
 - (b) for this purpose—
 - (i) references in those subsections to the financial penalty are to be treated as references to the financial penalty to which the order relates, and
 - (ii) references in those subsections to the certificate are to be treated as references to the certificate by virtue of which the order is made.”.
 - (3) In the heading, at the end insert “etc”.
- 10.** In section 90 (transfer of certificates to central authority for Scotland)(**6**), in subsection (1) (a), for sub-paragraphs (i) and (ii) substitute—
 - “(i) a decision, or a certified copy of a decision, requiring payment of a financial penalty, and
 - (ii) a certificate requesting enforcement under the Framework Decision on financial penalties, but”.

(5) Section 89(5) was amended by [S.I. 2010/976](#).

(6) Section 90 was amended by [S.I. 2010/976](#).

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11.—(1) Section 90A (transfer of certificates by Department of Justice to Lord Chancellor and vice versa)(**7**) is amended as follows.

(2) In subsection (1)(a), for sub-paragraphs (i) and (ii) substitute—

“(i) a decision, or a certified copy of a decision, requiring payment of a financial penalty, and
(ii) a certificate requesting enforcement under the Framework Decision on financial penalties,
or”.

(3) In subsection (3)(a), for sub-paragraphs (i) and (ii) substitute—

“(i) a decision, or a certified copy of a decision, requiring payment of a financial penalty, and
(ii) a certificate requesting enforcement under the Framework Decision on financial penalties,
or”.

12.—(1) Section 91 (recognition of financial penalties: general)(**8**) is amended as follows.

(2) In subsection (2), after “85(3)” insert “, (4A)” and after “88(3)” insert “, (4A)”.

(3) In subsection (4), omit “81(4), 83(4)”.

13. In section 92 (interpretation of sections 80 to 91 etc)(**9**), in the definition of “decision” in subsection (2), for “in sections 85(4) and 88(4)” substitute “where the context requires otherwise”.

14. In section 147 (orders, rules and regulations)(**10**), in subsection (5)(d), omit “81(4) or”.

15. In section 152 (extent)—

(a) in subsection (3)(e), for “and (7)” substitute “to (7B)”, and

(b) in subsection (4)(b), for “to 89” substitute “, 88 and 89(1) to (5)”.

16.—(1) Schedule 19 (grounds for refusal to enforce financial penalties)(**11**) is amended as follows.

(2) Before paragraph 1 insert—

“**A1.** The certificate is incomplete or obviously does not correspond to the decision.”.

(3) After paragraph 2 insert—

“**2A.** Enforcement of the financial penalty is statute-barred under the law of the relevant part of the United Kingdom and the decision was made in respect of conduct that, under the law of that part of the United Kingdom, falls within its jurisdiction.”.

(4) In paragraph 3, omit sub-paragraph (2).

(5) After paragraph 3 insert—

“**3A.** The decision was made in respect of conduct—

(a) that occurred in the relevant part of the United Kingdom, and

(b) does not constitute an offence under the law of that part of the United Kingdom.”.

(6) In paragraph 4, omit sub-paragraph (2).

(7) After paragraph 5 insert—

(7) Section 90A was inserted by [S.I. 2010/976](#).

(8) Section 91 was amended by [S.I. 2010/976](#).

(9) Section 92 was amended by [S.I. 2010/976](#).

(10) Section 147 was amended by [S.I. 2010/976](#).

(11) Schedule 19 was amended by [S.I. 2010/976](#).

“**5A.** It appears that the decision was in fact made for the purpose of punishing the liable person on account of the liable person’s race, ethnic origin, religion, nationality, language, gender, sexual orientation or political opinions.”.

(8) For paragraph 6 substitute—

“**6.**—(1) The certificate indicates that the proceedings in which the decision was made were conducted in writing but does not confirm that the liable person was informed of—

- (a) the right to contest the proceedings, and
- (b) the time limits that applied to the exercise of that right.

(2) The certificate indicates that the proceedings in which the decision was made provided for a hearing to take place and that the liable person did not attend but does not contain the statement described in—

- (a) Article 7(2)(i)(i) (liable person summoned in person or by other means actually notified of scheduled date and place of hearing and informed that decision may be made in his or her absence),
- (b) Article 7(2)(i)(ii) (liable person’s defence conducted at hearing by authorised legal representative),
- (c) Article 7(2)(i)(iii) (liable person indicated intention not to contest decision or did not exercise right to further hearing or appeal within time limit), or
- (d) Article 7(2)(j) (liable person expressly waived right to attend and indicated intention not to contest proceedings).

(3) In this paragraph references to Articles are to Articles of the Framework Decision on financial penalties.”.

(9) In paragraph 47, in sub-paragraph (1), after paragraph (b) insert—

- “(c) “relevant part of the United Kingdom” means—
 - (i) England and Wales, in the application of this Schedule to England and Wales, and
 - (ii) Northern Ireland, in the application of this Schedule to Northern Ireland.”