

Draft Order laid before the Scottish Parliament under sections 81(3)(a) and 82(3)(a) of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2009 No.

CRIMINAL LAW

The Mutual Recognition of Criminal Financial Penalties in the European Union (Scotland) Order 2009

Made - - - - - *2009*

Coming into force - - - - - *12th October 2009*

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 56 and 82 of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007^(a) and all other powers enabling them to do so.

In accordance with sections 81(3)(a) and 82(3)(a) of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

PART I

GENERAL

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Mutual Recognition of Criminal Financial Penalties in the European Union (Scotland) Order 2009 and comes into force on 12th October 2009.

(2) In this Order “the Framework Decision on financial penalties” is Council Framework Decision 2005/214/JHA of 24th February 2005 on the application of the principle of mutual recognition to financial penalties^(b).

Application

2.—(1) The amendments to the Criminal Procedure (Scotland) Act 1995 made by this Order apply only in relation to financial penalties—

- (a) which were imposed by a court on conviction; or
- (b) accrued otherwise than on conviction of an offence and, on default, enforced in the same manner as fines imposed by a court,

(a) 2007 asp 6; section 56 was amended by S.I. 2007/1655, Schedule 1(1), paragraph 19(2).

(b) O.J. L 76, 22.3.05, p.16.

on or after 1st October 2008.

- (2) In this article, “financial penalty” where—
- (a) that penalty is one to which section 223A of the Criminal Procedure (Scotland) Act 1995(a) applies, has the meaning given in subsection (5) of that section;
 - (b) that penalty is one to which section 223F of the Criminal Procedure (Scotland) Act 1995(b) applies, has the meaning given in Article 1(b) of the Framework Decision on financial penalties.

PART II

AMENDMENT OF THE CRIMINAL PROCEDURE (SCOTLAND) ACT 1995

The mutual recognition of criminal financial penalties

3. After section 223 of the Criminal Procedure (Scotland) Act 1995, insert—

“The mutual recognition of criminal financial penalties

223A Recognition of financial penalties: requests to other member States

(1) The designated officer of the competent authority for Scotland may issue a certificate, in a form prescribed by Act of Adjournal, requesting enforcement under the Framework Decision on financial penalties where—

- (a) a person is required to pay a financial penalty;
- (b) the financial penalty is not paid in full within the time allowed for payment;
- (c) there is no appeal outstanding in relation to the financial penalty; and
- (d) it appears to the designated officer of the competent authority for Scotland that the person is normally resident, or has property or income, in a member State other than the United Kingdom.

(2) For the purposes of subsection (1)(c), there is no appeal outstanding in relation to a financial penalty if—

- (a) no appeal has been brought in relation to the imposition of the financial penalty within the time allowed for making such an appeal; or
- (b) such an appeal has been brought but the proceedings on appeal have been concluded.

(3) In subsections (1)(c) and (2) “appeal” in respect of financial penalties mentioned in subsection (5)(b) and (c) includes a request made under section 302C of this Act that such a penalty be recalled.

(4) Where the person required to pay the financial penalty is a body corporate or a partnership (including a Scottish partnership) subsection (1)(d) applies as if the reference to the member State in which the person appears to be normally resident were a reference to the member State in which the person appears to have its registered office or, as the case may be, its principal office of the partnership.

(5) In this section “financial penalty” means—

- (a) any sum payable under a compensation order imposed under section 249 of this Act;
- (b) any sum payable as a fixed penalty in a conditional offer made under section 302(1) of this Act and accepted, or deemed to be accepted, in accordance with that section;

(a) 1995 c.46; section 223A is inserted by article 3 of this Order.

(b) 1995 c.46; section 223F is inserted by article 3 of this Order.

- (c) any sum payable under a compensation offer made under section 302A(1) of this Act and accepted, or deemed to be accepted, in accordance with that section;
- (d) a fine, which is to be construed in accordance with section 307 of this Act, imposed by a court in Scotland on a person's conviction of an offence;
- (e) a fine or other sum imposed by a court in England and Wales, or Northern Ireland, on a person's conviction of an offence which, following a transfer of fine order by virtue of section 90 of the Magistrates' Courts Act 1980(a) or Article 95 of the Magistrates' Courts (Northern Ireland) Order 1981(b), respectively, is enforceable in Scotland;
- (f) a penalty in respect of which a fixed penalty notice is given under section 54 (giving notices for fixed penalty offences), or section 62 (fixing notices to vehicles) of the Road Traffic Offenders Act 1988(c), which has been registered in Scotland for enforcement as a fine by virtue of section 71 of that Act;
- (g) a fixed penalty notice given under section 129 (fixed penalty notices) of the Antisocial Behaviour etc. (Scotland) Act 2004(d) in respect of which section 131(5) of that Act applies; and
- (h) expenses imposed in connection with proceedings relating to a conviction as mentioned in paragraphs (d) and (e).

223B Requests to other member States: procedure on issue of certificate

(1) This section applies where the designated officer of the competent authority for Scotland issues a certificate under section 223A(1) of this Act requesting enforcement under the Framework Decision on financial penalties.

(2) The designated officer of the competent authority for Scotland must give the central authority for Scotland the certificate, together with a certified copy, or extract, of the decision requiring payment of the financial penalty.

(3) On receipt of the documents mentioned in subsection (2), the central authority for Scotland must give those documents to the central authority, or the competent authority, of the member State other than the United Kingdom in which the person appears to be normally resident or, as the case may be, has property or income.

(4) Where the documents mentioned in subsection (2) are given to the central authority, or the competent authority, of the member State other than the United Kingdom in accordance with subsection (3)—

- (a) no further steps to enforce the financial penalty may be taken in Scotland; and
- (b) no further such documents may be given under subsection (2);

unless subsection (5) applies.

(5) This subsection applies where any of the events mentioned in Article 15(2) of the Framework Decision on financial penalties occurs; and accordingly the right to enforce the financial penalty reverts to the appropriate competent authority for Scotland.

(6) Where the person required to pay the financial penalty is a body corporate or a partnership (including a Scottish partnership) subsection (3) applies as if the reference to the member State in which the person appears to be normally resident were a reference to the member State in which the person appears to have its registered office or, as the case may be, its principal office of the partnership.

(a) 1980 c.43; section 90 was amended by the Criminal Justice and Public Order Act 1994 (c.33), section 47(2); the Access to Justice Act 1999 (c.22), section 90, Schedule 13, paragraphs 95, 108 (with section 107, Schedule 14, paragraph 7(2)); S.I. 1995/127 and S.I. 2001/916.

(b) S.I. 1981/1675 (N.I. 26).

(c) 1988 c.53; section 54 was amended by the Road Traffic Act 1991 (c.40), sections 48 and 83, Schedule 4, paragraph 103(2) and (3) and Schedule 8; the Police Reform Act 2002 (c.30), sections 38, 41, 76(2), 108(2) to (5), Schedule 4, paragraph 1(2)(b) and Schedule 5, paragraph 1(2)(a); S.I. 1990/144; S.I. 1992/1286; S.I. 2002/2750; S.I. 2002/2306 and section 62 was amended by the Road Safety Act 2006 (c.49), section 5, Schedule 1, paragraph 7.

(d) 2004 asp 8.

223C Requests to other member States: application of provisions relating to fines

Where the designated officer of the competent authority for Scotland has issued a certificate under section 223A(1) of this Act in respect of a financial penalty mentioned in—

- (a) section 223A(5)(d) or (h) of this Act;
- (b) section 223A(5)(e) of this Act (in terms of the application of section 222(6) of this Act); or
- (c) section 223A(5)(f) of this Act,

the provisions of section 217(3) of this Act (supervision pending payment of fine) shall apply except that the reference to the making of a transfer of fine order under section 222 of this Act shall instead be a reference to the issuing of a certificate under sections 223A(1) or 226HA(4) of this Act.

223D Requests to other member States: application of provisions relating to compensation orders

(1) This section applies where the designated officer of the competent authority for Scotland has issued a certificate under section 223A(1) of this Act in respect of a financial penalty mentioned in section 223A(5)(a).

(2) Section 252 of this Act shall apply, but the reference in subsection (2) of that section to section 217 is to be construed as a reference to that section modified as mentioned in section 223C(2)(b) of this Act.

223E Requests to other member States: application of provisions relating to fixed penalties

(1) This section applies where the designated officer of the competent authority for Scotland has issued a certificate under section 223A(1) of this Act in respect of a financial penalty mentioned in section 223A(5)(b) or (c).

(2) Section 303 of this Act shall apply, but in the application of this Act to the outstanding amounts mentioned in subsection (1) of that section (which fall to be treated as fines by virtue of that subsection), the provisions mentioned in section 223C(2) of this Act apply modified as mentioned in that section.

223F Recognition of financial penalties: requests from other member States

(1) This section applies where—

- (a) the competent authority, or central authority, of a member State (“the issuing State”) other than the United Kingdom gives the central authority for Scotland—
 - (i) a certificate requesting enforcement under the Framework Decision on financial penalties; and
 - (ii) the decision, or a certified copy of the decision, requiring payment of the financial penalty to which the certificate relates; and
- (b) the penalty is suitable for enforcement in Scotland.

(2) If the certificate states that the person against whom the decision has been made is normally resident in Scotland, the central authority for Scotland must give the documents mentioned in subsection (1)(a) to the designated officer of the competent authority for Scotland based upon the person’s residence.

(3) If the certificate states otherwise than as mentioned in subsection (2), the central authority for Scotland must, subject to section 223P(2) and (3) of this Act, give those documents to the designated officer of such competent authority for Scotland as appears appropriate based on the terms of the certificate.

(4) Where the central authority for Scotland acts under subsection (2) or (3), the central authority for Scotland must also give the designated officer of the competent authority for Scotland mentioned in those subsections a notice—

- (a) stating whether the central authority thinks that any of the grounds for refusal specified in Schedule 12 apply; and
- (b) giving reasons for that opinion.

(5) Where the person required to pay the financial penalty is a body corporate or a partnership (including a Scottish partnership), subsection (2) applies as if the reference to the competent authority for Scotland were a reference to the competent authority for Scotland within whose jurisdiction it appears that the person has its registered office or, as the case may be, its principal office of the partnership.

(6) Where—

- (a) the competent authority, or central authority, of the issuing State gives the central authority for England and Wales, or the central authority for Northern Ireland, the documents mentioned in subsection (1)(a); and
- (b) without taking any action to enforce the financial penalty in England and Wales, or Northern Ireland, the central authority for England and Wales or, as the case may be, the central authority for Northern Ireland gives those documents to the central authority for Scotland;

this section applies as if the competent authority, or central authority, of the issuing state gave the documents to the central authority for Scotland.

(7) Schedule 11 to this Act, which specifies when a financial penalty is suitable for enforcement in Scotland for the purposes of subsection (1)(b), has effect.

223G Requests from other member States: return of certificate

(1) This section applies where—

- (a) the certificate mentioned in section 223F is not signed, or its contents are not certified as accurate, by the competent authority, or central authority, of a member State (“the issuing State”) other than the United Kingdom; or
- (b) it is immediately apparent from the terms of the certificate that the financial penalty to which the certificate relates is not one in respect of which a competent authority for Scotland would have jurisdiction.

(2) The request shall immediately be returned by the central authority for Scotland to the central authority, or the competent authority, of the issuing State and no enforcement action shall be carried out thereon in Scotland.

223H Requests from other member States: procedure on receipt of certificate

(1) This section applies where the central authority for Scotland gives the designated officer of the competent authority for Scotland—

- (a) a certificate, as mentioned in section 223F, requesting enforcement under the Framework Decision on financial penalties;
- (b) the decision, or a certified copy of the decision, requiring payment of the financial penalty to which the certificate relates; and
- (c) a notice under section 223F(4).

(2) The designated officer of the competent authority for Scotland must refer the matter to the competent authority for Scotland mentioned in section 223Q(2).

(3) The competent authority for Scotland must decide whether it is satisfied that any of the grounds for refusal, as mentioned in Schedule 12, apply.

(4) The designated officer of the competent authority for Scotland must inform the central authority for Scotland of the decision.

(5) Schedule 12 to this Act, which specifies the grounds for refusal to enforce financial penalties for the purposes of subsection (3) and section 223F(4), has effect.

223I Requests from other member States: action undertaken under certificate

(1) Where the competent authority for Scotland to whom a matter has been referred under section 223H(2) of this Act is satisfied that none of the grounds for refusal to enforce the financial penalty, as mentioned in Schedule 12, apply then the competent authority for Scotland shall forthwith, and without any further formality being required, seek the enforcement in Scotland of the financial penalty.

(2) Where the competent authority for Scotland to whom a matter has been referred under section 223H(2) of this Act is satisfied that one or more of the grounds for refusal to enforce the financial penalty as mentioned in Schedule 12 applies—

- (a) the designated officer of the competent authority for Scotland shall return the documents mentioned in section 223H(1) to the central authority for Scotland; and
- (b) subsection (3) shall apply.

(3) Where the documents have been given to the central authority for Scotland by virtue of subsection (2) the central authority for Scotland shall act in the same manner as if section 223G applies.

223J Requests from other member States: application of provisions in relation to fines

Where section 223I(1) applies, the provisions of this Act specified in section 223K shall, subject to any necessary modifications and to the qualifications mentioned in that section, apply in relation to—

- (a) the financial penalties as they apply in relation to—
 - (i) fines imposed by the High Court;
 - (ii) sentences or decrees for fines or expenses pronounced by a sheriff court or JP court;
 - (iii) fines adjudged to be paid by offenders; and
- (b) persons liable to pay financial penalties as they apply in relation to persons or offenders in relation to whom a fine has been imposed.

223K Requests from other member States: supplementary provisions in relation to fines

(1) The provisions mentioned in section 223J are—

- (a) section 199 (power to mitigate penalties), except that in subsection (2) the reference to the court shall be construed as a reference to the competent authority for Scotland;
- (b) section 211(3) and (4) (enforcement of fines), except that—
 - (i) in paragraph (a) of subsection (3) the reference to the district in which the sentence or decree was pronounced shall be construed as a reference to the district in which the person required to pay the fine or expenses appears to be normally resident or have property or income or, in the case where that person is a body corporate or partnership (including a Scottish partnership), the district in which that person has its registered office or, as the case may be, its principal office of the partnership; and
 - (ii) in subsection (4) the reference to the district in which the person resides shall be construed as a reference to the district in which the person required to pay the fine appears to be normally resident or have property or income or, in the case where that person is a body corporate or partnership (including a Scottish partnership), the district in which that person has its registered office or, as the case may be, its principal office of the partnership;
- (c) section 213 (power to remit fines), except that in paragraph (b) of subsection (1) the references to the court which imposed the fine and the court by which payment

was first enforceable shall be construed as a reference to the competent authority for Scotland and subsection (2) shall be construed accordingly;

- (d) section 215 (further time for payment), except that, in its application to financial penalties, the references in subsection (2) to the court specified in the transfer order (or, where relevant, the last transfer order) shall be construed as references to the competent authority for Scotland;
- (e) section 216 (reasons for default), except that the court may only impose imprisonment on a person in default of payment of a financial penalty where section 223L applies;
- (f) section 217 (supervision pending payment of fine), except that the court mentioned in that section may, in relation to the person who is liable to pay the financial penalty—
 - (i) place such a person under supervision by virtue of subsection (1) of that section; or
 - (ii) order the detention of such a person under 21 years of age as mentioned in subsection (5) of that section,
only where section 223L applies;
- (g) section 219 (maximum period of imprisonment for non-payment of fine), but subject to the modification that the references to the maximum periods of imprisonment specified in the table in subsection (2) shall be construed as references to the maximum period as stated in the certificate;
- (h) section 220 (payment of fine in part by prisoner), except that in subsection (3) the reference to the court in which the conviction was obtained shall be construed as a reference to the competent authority for Scotland;
- (i) section 221 (recovery by civil diligence);
- (j) section 224 (discharge from imprisonment to be specified); and
- (k) sections 235 to 237 (supervised attendance).

(2) The competent authority for Scotland, and the designated officer of the competent authority, shall have all the like functions under this Act in respect of the financial penalty as if it were a penalty imposed by that competent authority.

223L Requests from other member States: action for enforcement where financial penalty not recovered

This section applies where—

- (a) a member State other than the United Kingdom has allowed for—
 - (i) supervision pending payment of the financial penalty;
 - (ii) the imposition of a supervised attendance order, or detention or imprisonment in default of payment of the financial penalty,
within the certificate referred to in section 223F; and
- (b) that measure does not exceed any maximum level for such disposal as specified in that certificate.

223M Requests from other member States: application of provisions relating to orders for compensation

Where section 223I(1) applies, the provisions of this Act specified in section 223N shall, subject to any necessary modifications and to the qualifications mentioned in that section, apply in relation to financial penalties as they apply in relation to any sum payable under compensation orders imposed under section 249 of this Act.

223N Requests from other member States: supplementary provisions in relation to orders for compensation

The provisions mentioned in section 223M are—

- (a) section 249(9) (payment of sum payable under compensation order), but that section is subject to section 223S of this Act;
- (b) section 250(2) to (4) (compensation orders: supplementary provisions);
- (c) section 251 (review of compensation order), except that in paragraph (b) of subsection (2) the reference to the court which made the compensation order, or by which the order was first enforceable, shall be construed as a reference to the competent authority for Scotland in respect of which the financial penalty was referred under section 223H(2);
- (d) section 252 (enforcement of compensation orders), except that the provisions listed in subsection (2), as modified and qualified, shall be construed as if the modifications and qualifications made to the provisions which are listed in section 223K have been so made; and
- (e) section 253(3) (award of damages in civil proceedings subsequent to imposition of compensation order).

223O Requests from other member States: application of provisions relating to fixed penalties

(1) Where section 223I(1) applies, the provision of this Act specified in subsection (2) shall, subject to any necessary modifications and to the qualifications mentioned in that subsection, apply in relation to the financial penalties as it applies in relation to any sums payable under fixed penalties issued under this Act.

(2) The provision mentioned in subsection (1) is section 303(1) to (3) (fixed penalty: enforcement) of this Act, except that—

- (a) the references to fixed penalty offers and compensation offers shall be construed as references to financial penalties; and
- (b) the modifications and qualifications made by section 223K to the provisions as specified there shall be applicable where those provisions of this Act apply by virtue of section 303 of this Act.

223P Transfer of certificates to central authority for England and Wales, or to central authority for Northern Ireland

(1) This section applies where—

- (a) the competent authority, or central authority, of a member State other than the United Kingdom gives the central authority for Scotland—
 - (i) a certificate requesting enforcement under the Framework Decision on financial penalties; and
 - (ii) the decision, or a certified copy of the decision, requiring payment of the financial penalty to which the certificate relates; but
- (b) the central authority for Scotland is not required by section 223F(2) or (3) to give the documents to the competent authority for Scotland.

(2) If the certificate states that the person to whom the certificate relates is normally resident or has property or income in England or Wales only or, in the case of a body corporate or partnership, has its registered office or its principal office of the partnership there, the central authority for Scotland may give the documents to the central authority for England and Wales.

(3) If the certificate states that the person is normally resident or has property or income in Northern Ireland only or, in the case of a body corporate or partnership, has its registered

office or its principal office of the partnership there, the central authority for Scotland may give the documents to the central authority for Northern Ireland.

223Q The competent authority for Scotland

- (1) In sections 223A to 223E of this Act “the competent authority for Scotland” is—
- (a) in respect of a financial penalty mentioned in—
 - (i) section 223A(5)(a) or (d) of this Act;
 - (ii) paragraph (h) of subsection (5) of section 223A of this Act, where that financial penalty is imposed in connection with proceedings relating to a conviction mentioned in paragraph (d) of that subsection,
the court in respect of which the financial penalty was imposed or pronounced;
 - (b) in respect of a financial penalty mentioned in section 223A(5)(b) or (c) of this Act, the court the clerk of which is specified in the notice issued under section 302 or, as the case may be, 302A of this Act;
 - (c) in respect of a financial penalty mentioned in—
 - (i) section 223A(5)(e); or
 - (ii) paragraph (h) of subsection (5) of section 223A, where that financial penalty is imposed in connection with proceedings relating to a conviction as mentioned in paragraph (e) of that subsection,
the court specified in the transfer of fine order made under section 90 of the Magistrates’ Courts Act 1980 or Article 95 of the Magistrates’ Courts (Northern Ireland) Order 1981 as being the court by which the financial penalty is enforceable;
 - (d) in respect of a financial penalty mentioned in section 223A(5)(f) of this Act—
 - (i) the court in which the financial penalty has been registered for enforcement by virtue of section 71(2)(a) of the Road Traffic Offenders Act 1988(a); or
 - (ii) the court in respect of which the registration certificate, as mentioned in section 71(2) of the Road Traffic Offenders Act 1988, has been sent by virtue of section 71(2)(b) of that Act; and
 - (e) in respect of a financial penalty mentioned in section 223A(5)(g) of this Act, the JP court specified in the fixed penalty notice which has been issued by virtue of section 129 of the Antisocial Behaviour (Scotland) Act 2004.

(2) In sections 223F, 223H, 223I, 223K, 223P and 223S “the competent authority for Scotland” is—

- (a) the sheriff; or
- (b) the JP court;

having jurisdiction for the area in respect of which the person to whom the certificate is issued under section 223F(1) relates appears to normally reside or have property or income, or in the case of a body corporate or a partnership (including a Scottish partnership) the area in respect of which the person has its registered office or, as the case may be, its principal office of the partnership.

223R Accrual of monies obtained from the enforcement of financial penalties

(1) Subject to subsection (4), where a certificate requesting enforcement under the Framework Decision on financial penalties has been—

- (a) issued under sections 223A or 226HA(4) of this Act, subsection (2) shall apply; or
- (b) received under section 223F of this Act, subsection (3) shall apply.

(a) 1988 c.53; section 71(1) to (2A) were substituted for section 71(1) and (2) by the Access to Justice Act 1999 (c.22), section 90, Schedule 13, paragraph 150(2).

(2) Where this subsection applies the sum in respect of which the financial penalty relates shall be paid and treated as if that penalty were a penalty imposed in the member State other than the United Kingdom to which the certificate was issued.

(3) Where this subsection applies the sum in respect of which the financial penalty relates shall be paid and treated as if that penalty had been imposed or pronounced on the liable person or otherwise adjudged to be paid by that person under this Act.

(4) This section shall not apply where—

(a) an agreement has been made between the United Kingdom and the member State other than the United Kingdom in respect of the treatment of the financial penalty, and that agreement provides for payment otherwise than as provided for in subsection (2) or (3); or

(b) the financial penalty is one in respect of which section 223S applies.

223S Treatment of compensation monies

(1) This section applies to those financial penalties mentioned in—

(a) section 223A(5)(a) and (c) of this Act; and

(b) Article 1(b)(ii) and (iv) of the Framework Decision on financial penalties.

(2) Payment of any sum under a financial penalty mentioned in subsection (1) shall be made by the central authority for Scotland or, as the case may be, by the competent authority for Scotland—

(a) to the victim; or

(b) in cases where the victim resides outwith Scotland, to the central authority of the member State, other than the United Kingdom, in which the victim of the offence to which the financial penalty relates resides.

(3) In this section “victim” has the same meaning as given in section 249(1A) of this Act.

223T Interpretation of sections 223A to 223S

(1) In sections 223A to 223S of this Act—

“central authority”, in relation to a member State other than the United Kingdom, means an authority designated by that member State as a central authority for the purposes of the Framework Decision on financial penalties;

“central authority for England and Wales” means the authority designated for England and Wales as the central authority for the purposes of the Framework Decision on financial penalties;

“central authority for Northern Ireland” means the authority designated for Northern Ireland as the central authority for the purposes of the Framework Decision on financial penalties;

“central authority for Scotland” means the sheriff clerk of Lothian and Borders at Edinburgh;

“certificate” means the certificate as is provided for by Article 4 of the Framework Decision on financial penalties;

“decision” shall have the meaning given in Article 1 of the Framework Decision on financial penalties;

“Framework Decision on financial penalties” means Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties; and

“member State” means a member State of the European Union.

(2) Unless the context otherwise requires, in sections 223F to 223P, 223R and 223S of this Act “financial penalty” has the same meaning as given in Article 1(b) of the Framework Decision on financial penalties.

(3) In sections 223A to 223C of this Act, “designated officer” of the competent authority for Scotland—

- (a) in the case of financial penalties mentioned in—
 - (i) section 223A(5)(a) or (d) of this Act; and
 - (ii) paragraph (h) of subsection (5) of section 223A of this Act, where that financial penalty is imposed in connection with proceedings relating to a conviction mentioned in paragraph (d) of that subsection,
means the clerk of court in respect of which the financial penalty was imposed or pronounced;
- (b) in the case of financial penalties mentioned in section 223A(5)(b) or (c) of this Act means the clerk of court specified in the notice, issued under section 302 or 302A, respectively, of this Act;
- (c) in the case of financial penalties mentioned in—
 - (i) section 223A(5)(e) of this Act; and
 - (ii) paragraph (h) of subsection (5) of section 223A of this Act, where that financial penalty is imposed in connection with proceedings relating to a conviction as mentioned in paragraph (e) of that subsection,
means the clerk of the court specified in the transfer of fine order made under section 90 of the Magistrates’ Courts Act 1980 or Article 95 of the Magistrates’ Courts (Northern Ireland) Order 1981 to which the financial penalty has been transferred for enforcement;
- (d) in the case of financial penalties mentioned in section 223A(5)(f) of this Act means—
 - (i) the clerk of the court in which the financial penalty has been registered for enforcement by virtue of section 71(2)(a) of the Road Traffic Offenders Act 1988; or
 - (ii) the clerk of the court in respect of which the registration certificate, as mentioned in section 71(2) of the Road Traffic Offenders Act 1988, has been sent by virtue of section 71(2)(b) of that Act;
- (e) in the case of financial penalties mentioned in section 223A(5)(g) of this Act, means the clerk of the JP court specified in the fixed penalty notice which has been issued by virtue of section 129 of the Antisocial Behaviour (Scotland) Act 2004; and
- (f) in the case of a FEO acting in accordance with section 226HA of this Act, is to be construed as if references to such an officer were references to a FEO.

(4) In sections 223F, 223H, 223I and 223K of this Act, “designated officer” of the competent authority for Scotland means the clerk of the court mentioned in section 223Q(2) of this Act or, as the case may be, a FEO acting in accordance with section 226A to 226G of this Act in respect of a financial penalty.

Fines: discharge from imprisonment and penalties”.

Requests for recognition of financial penalties to other member States: fines enforcement officers and their functions

4. After section 226H of the Criminal Procedure (Scotland) Act 1995, insert—

“226HA Judicial co-operation in criminal matters: mutual recognition of financial penalties: requests to other member States

(1) Subsection (4) applies where—

- (a) an offender is subject to a relevant penalty (including such a penalty in relation to the payment of which an enforcement order has been made);
- (b) the relevant penalty is not paid (or, where relevant, has not been paid in accordance with the enforcement order);
- (c) there is no appeal outstanding in relation to the relevant penalty;
- (d) a FEO is exercising (or intends to exercise) the function conferred—
 - (i) by paragraph (a) of section 226A(2) of this Act in respect of the relevant penalty; or
 - (ii) by paragraph (b) of that section in respect of any enforcement order relating to the relevant penalty; and
- (e) it appears to the FEO that the offender is normally resident, or has property or income, in a member State of the European Union other than the United Kingdom.

(2) For the purposes of subsection (1)(c), there is no appeal outstanding in relation to a financial penalty if—

- (a) no appeal has been brought in relation to the imposition of the financial penalty within the time allowed for making such an appeal; or
- (b) such an appeal has been brought but the proceedings on appeal have been concluded.

(3) In subsections (1)(c) and (2) “appeal” in respect of financial penalties mentioned in section 223A(5)(b) and (c) includes a request made under section 302C of this Act that such a penalty be recalled.

(4) The FEO may issue a certificate as mentioned in section 223A(1) of this Act.

(5) Subsection (4) does not apply where the designated officer of the competent authority for Scotland has issued such a certificate in respect of the financial penalty.

(6) The FEO must give the central authority for Scotland any certificate issued under subsection (4), together with a copy, or extract, of the decision requiring payment of the relevant penalty.

(7) Where the central authority for Scotland receives the documents mentioned in subsection (6) above, subsections (3) to (6) of section 223B of this Act apply as if the documents had been given under subsection (2) of that section.”.

Requests for recognition of financial penalties from other member States: fines enforcement officers and their functions

5. In section 226B of the Criminal Procedure (Scotland) Act 1995 (enforcement orders)—

(a) after subsection (6), insert—

“(6A) Where—

- (a) a certificate requesting enforcement under the Framework Decision on financial penalties and a decision, or a certified copy of the decision, requiring payment of the financial penalty to which the certificate relates has been referred to the competent authority for Scotland by virtue of section 223H(2) of this Act; and

- (b) by virtue of section 223I(1) the competent authority for Scotland is satisfied that none of the grounds for refusal to enforce the financial penalty as specified in Schedule 12 to this Act apply,

the relevant court may make an enforcement order under this subsection in relation to payment of the financial penalty (which, for the purposes of this subsection, is deemed to be a relevant penalty).”; and

- (b) in subsection (7), for “or (6)” substitute “, (6) or (6A)”.

Consequential amendment: fines enforcement officers and their functions

6. In section 226I of the Criminal Procedure (Scotland) Act 1995 (enforcement of fines etc.: interpretation)—

- (a) in subsection (1)—

- (i) for “In” substitute “Subject to subsection (1A), in”;

- (ii) for “226H” substitute “226HA”;

- (iii) at the appropriate place, insert—

- ““central authority for Scotland” means the sheriff clerk of Lothian and Borders at Edinburgh;

- “certificate” has the meaning given in section 223T(1) of this Act;

- “competent authority for Scotland” is to be construed in accordance with section 223Q of this Act;

- “decision” has the meaning given in section 223T(1) of this Act;”;

- (iv) in the definition of “enforcement order”, for “(6)” substitute “(6A)”;

- (v) after the definition of “FEO”, insert—

- ““financial penalty” has the meaning given in Article 1(b) of the Framework Decision on financial penalties;

- “Framework Decision on financial penalties” has the meaning given in section 223T(1) of this Act;”;

- (vi) in the definition of “relevant court”, at the end, insert—

- “(d) in the case of a penalty in respect of which subsection (6A) applies, means the competent authority for Scotland to which the documents mentioned in that subsection have been referred in accordance with section 223H(2) of this Act.”;
 - and

- (b) after subsection (1), insert—

- “(1A) Unless the context otherwise requires, in this section and in sections 226A to 226H of this Act “relevant penalty”, where a FEO is acting in a case in respect of which section 226B(6A) applies, has the same meaning as “financial penalty.”.

Amendment of the Criminal Procedure (Scotland) Act 1995: supplementary provisions

7. In section 211(6) of the Criminal Procedure (Scotland) Act 1995 at the beginning insert—

“Except where the provisions of section 223R(2) apply,”.

8. After Schedule 10 to the Criminal Procedure (Scotland) Act 1995, insert—

“SCHEDULE 11

Section 223F(7)

FINANCIAL PENALTIES SUITABLE FOR ENFORCEMENT IN
SCOTLAND

Person residing in Scotland

1. The financial penalty is suitable for enforcement in Scotland if the certificate states that the person required to pay the penalty is normally resident in Scotland.

Person having property etc. in Scotland

2. The financial penalty is suitable for enforcement in Scotland if—
- (a) the certificate states that the person required to pay the penalty has property or a source of income in Scotland, and
 - (b) the certificate does not state—
 - (i) that the person has property or a source of income in England and Wales, or Northern Ireland, or
 - (ii) that the person is normally resident in the United Kingdom.

Person having property etc. in Scotland and England and Wales

- 3.—(1) This paragraph applies if—
- (a) the certificate states that the person required to pay the financial penalty has property or a source of income in Scotland,
 - (b) the certificate also states that the person has property or a source of income in England and Wales, and
 - (c) the certificate does not state—
 - (i) that the person has property or a source of income in Northern Ireland, or
 - (ii) that the person is normally resident in the United Kingdom.
- (2) The financial penalty is suitable for enforcement in Scotland unless sub-paragraph (3) applies.
- (3) This sub-paragraph applies if—
- (a) the central authority was given the certificate by the competent authority or central authority of another member State (and not by the authority designated as the central authority for England and Wales, or the central authority for Northern Ireland), and
 - (b) the central authority thinks that it is more appropriate for the financial penalty to be enforced in England and Wales than in Scotland.

Person having property etc. in Scotland and Northern Ireland

- 4.—(1) This paragraph applies if—
- (a) the certificate states that the person required to pay the financial penalty has property or a source of income in Scotland,
 - (b) the certificate also states that the person has property or a source of income in Northern Ireland, and
 - (c) the certificate does not state—
 - (i) that the person has property or a source of income in England and Wales, or

(ii) that the person is normally resident in the United Kingdom.

(2) The financial penalty is suitable for enforcement in Scotland unless sub-paragraph (3) applies.

(3) This sub-paragraph applies if—

- (a) the central authority was given the certificate by the competent authority or central authority of another member State (and not by the authority designated as the central authority for England and Wales, or the central authority for Northern Ireland), and
- (b) the central authority thinks that it is more appropriate for the financial penalty to be enforced in Northern Ireland than in Scotland.

Person having property etc. in Scotland and England and Wales and Northern Ireland

5.—(1) This paragraph applies if—

- (a) the certificate states that the person required to pay the financial penalty has property or a source of income in Scotland,
- (b) the certificate also states that the person has property or a source of income in England and Wales, and Northern Ireland, and
- (c) the certificate does not state that the person is normally resident in the United Kingdom.

(2) The financial penalty is suitable for enforcement in Scotland unless the penalty is suitable for enforcement in England and Wales, or in Northern Ireland by virtue of sub-paragraph (3).

(3) The financial penalty is suitable for enforcement in England and Wales, or in Northern Ireland for the purposes of sub-paragraph (2) if—

- (a) the central authority was given the certificate by the central authority or, as the case may be, the competent authority of another member State (and not by the authority designated as the central authority for England and Wales, or the central authority for Northern Ireland), and
- (b) the central authority thinks that it is more appropriate for the financial penalty to be enforced in England and Wales, or in Northern Ireland, than in Scotland.

Interpretation

6. Where the person required to pay the financial penalty is a body corporate or a partnership (including a Scottish partnership), this Schedule applies as if—

- (a) the reference in paragraph 1 to the person being normally resident in Scotland were a reference to the person having its registered office or, as the case may be, its principal office of the partnership in Scotland, and
- (b) any reference to the person being normally resident in the United Kingdom were a reference to the person having its registered office or, as the case may be, its principal office of the partnership in the United Kingdom.

7. In this Schedule, unless the context otherwise requires, references to the central authority are to the central authority for Scotland.

GROUNDS FOR REFUSAL TO ENFORCE FINANCIAL PENALTIES

PART 1

THE GROUNDS FOR REFUSAL

1. A penalty (of any kind) has been imposed on the liable person in respect of the conduct to which the certificate relates under the law of any part of the United Kingdom (whether or not the penalty has been enforced).
2. A penalty (of any kind) has been imposed on the liable person in respect of that conduct under the law of any member State, other than the United Kingdom and the issuing State, and that penalty has been enforced.
3. The decision was made in respect of conduct—
 - (a) that is not specified in Part 2 of this Schedule, and
 - (b) would not constitute an offence under the law of Scotland if it occurred there.
4. The decision to which the financial penalty relates was made in respect of conduct—
 - (a) that occurred outside the territory of the issuing State, and
 - (b) would not constitute an offence under the law of Scotland if it occurred outwith Scotland.
5. The decision to which the financial penalty relates was made in respect of conduct by a person who, at the time the conduct took place, was under the age of criminal responsibility under the law of Scotland.
6. The certificate does not confirm that—
 - (a) if the proceedings in which the decision was made were conducted in writing, the liable person was informed of the right to contest the proceedings and of the time limits that applied to the exercise of that right;
 - (b) if those proceedings provided for a hearing to take place and the liable person did not attend, the liable person was informed of the proceedings or indicated an intention not to contest them.
- 7.—(1) The financial penalty is for an amount of less than 70 euros.
(2) For the purposes of sub-paragraph (1), if the amount of a financial penalty is specified in a currency other than the euro, that amount must be converted to euros by reference to the London closing exchange rate on the date on which the decision was made.

PART 2

EUROPEAN FRAMEWORK LIST (FINANCIAL PENALTIES)

8. Participation in a criminal organisation.
9. Terrorism.
10. Trafficking in human beings.
11. Sexual exploitation of children and child pornography.
12. Illicit trafficking in narcotic drugs and psychotropic substances.

13. Illicit trafficking in weapons, munitions and explosives.
14. Corruption.
15. Fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26th July 1995 on the protection of the European Communities' financial interests.
16. Laundering of the proceeds of crime.
17. Counterfeiting currency, including of the euro.
18. Computer-related crime.
19. Environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties.
20. Facilitation of unauthorised entry and residence.
21. Murder, grievous bodily injury.
22. Illicit trade in human organs and tissue.
23. Kidnapping, illegal restraint and hostage-taking.
24. Racism and xenophobia.
25. Organised or armed robbery.
26. Illicit trafficking in cultural goods, including antiques and works of art.
27. Swindling.
28. Racketeering and extortion.
29. Counterfeiting and piracy of products.
30. Forgery of administrative documents and trafficking therein.
31. Forgery of means of payment.
32. Illicit trafficking in hormonal substances and other growth promoters.
33. Illicit trafficking in nuclear or radioactive materials.
34. Trafficking in stolen vehicles.
35. Rape.
36. Arson.
37. Crimes within the jurisdiction of the International Criminal Court.
38. Unlawful seizure of aircraft or ships.
39. Sabotage.
40. Conduct which infringes road traffic regulations, including breaches of regulations pertaining to driving hours and rest periods and regulations on hazardous goods.
41. Smuggling of goods.
42. Infringements of intellectual property rights.
43. Threats and acts of violence against persons, including violence during sporting events.
44. Criminal damage.

45. Theft.

46. Offences created by the issuing State and serving the purpose of implementing obligations arising from instruments adopted under the EC Treaty or under Title VI of the EU Treaty.

PART 3

INTERPRETATION

47.—(1) In this Schedule—

- (a) “conduct” includes any act or omission;
- (b) “liable person” means the person required to pay the financial penalty to which the certificate relates.

(2) If the decision was made in respect of conduct by a person other than the liable person, the references in paragraphs 6 to the liable person are to be read as references to that other person.”.

A member of the Scottish Executive

St Andrew’s House,
Edinburgh
Date

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, which extends only to Scotland, implements in Scotland the European Union Framework Decision on the Application of the Principle of Mutual Recognition to Financial Penalties (2005/214/JHA) (“the Framework Decision”). It does so by the amendment of the Criminal Procedure (Scotland) Act 1995 and the Antisocial Behaviour etc. (Scotland) Act 2004.

The Framework Decision applies the principle of mutual recognition of financial penalties imposed by the judicial or administrative authorities of the Member States to recognise and enforce judgements without any further formality being required by the member State of the European Union to which the request has been passed for the purposes of the enforcement of the financial penalty. It is available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:076:0016:0030:EN:PDF>

Article 2 specifies that the financial penalties in respect of which the provisions contained within the Order apply are those financial penalties which on or after 1 October 2008 were imposed by a court on conviction of an offence, or accrued otherwise than on conviction and which, on default, are enforced in the same manner as fines imposed by a court.

Article 3 amends the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”) by the insertion of sections 223A to 223T. Sections 223A to 223E make provision in respect of financial penalties imposed, or otherwise accrued, in Scotland which are transferred for enforcement to other member States of the European Union. Sections 223F to 223O make provision in respect of such financial penalties from member States, other than the United Kingdom (“other member States”), which have been given to Scotland for enforcement. Section 223P makes provision in respect of the transfer of such cases between Scotland, England and Wales, and Northern Ireland. Sections 223Q to 223T make general provision regarding the enforcement scheme providing for the mutual recognition of financial penalties and apply both to outgoing financial penalties from, and those penalties incoming to, Scotland.

Section 223A specifies the circumstances which must exist before a financial penalty may be issued for enforcement from Scotland to a member State, other than the United Kingdom. The meaning of financial penalty is given in subsection (5).

Section 223B prescribes the procedure by which financial penalties imposed, or otherwise accrued, in Scotland are issued to the member State, other than the United Kingdom, in which the penalty is to be enforced. The designated officer of the competent authority for Scotland issues a certificate and gives it to the central authority for Scotland for onward transfer to that member State for enforcement. Definitions for “designated officer” and “central authority for Scotland” are given in section 223T and for “the competent authority for Scotland” in section 223Q. Subsection (4) of section 223B provides that on the transfer of the financial penalty to that member State no further enforcement action may be taken in Scotland and no further requests for enforcement may be given by Scotland for enforcement unless subsection (5) applies. Subsection (5) provides that where any of the events mentioned in Article 15(2) of the Framework Decision occurs then the right to enforce the financial penalty reverts to Scotland.

Section 223C provides that where the designated officer of the competent authority for Scotland has issued a certificate to a member State, other than the United Kingdom, for enforcement of a fine, or expenses imposed in connection with proceedings relating to a conviction of a fine, the application of provisions of the 1995 Act shall be modified and qualified.

Section 223D provides that where the designated officer of the competent authority for Scotland has issued a certificate in relation to a compensation order imposed under section 249 of the 1995 Act the application of section 252 of that Act (enforcement of compensation orders) shall be modified.

Section 223E provides that where the designated officer of the competent authority for Scotland has issued a certificate in respect of certain fixed penalty offers issued under sections 302(1) and 302A(1) of the 1995 Act and both having been accepted, or deemed to have been accepted,

that the application of section 303 (fixed penalty: enforcement) of that Act applies with modification. Section 303(1) of the 1995 Act provides that where a fixed penalty offer or a compensation offer under section 302 or 302A, respectively, of the 1995 Act is accepted by the alleged offender then outstanding sums shall be treated as if the penalty or offer were a fine imposed by the court. The modification to the application of section 303 of the 1995 Act provides that section 217(3) (supervision pending payment of fine) of the 1995 Act which, by section 223C(2)(b) of that Act, applies modified in respect of outgoing fines also applies, so modified, in respect of those specified fixed penalties to which sections 302 and 302A make provision and which are issued by Scotland for enforcement in a member State, other than the United Kingdom.

Section 223F, and Schedule 11 specify when a financial penalty issued by the other member State is suitable for enforcement in Scotland. Section 223F sets out the procedures to be followed when the certificate is issued by the competent authority, or central authority of that other member State. Subsection (6) makes provision regarding the application of the section where a certificate is received initially by the central authority of England and Wales or, as the case may be, Northern Ireland and is subsequently passed to Scotland for enforcement.

Section 223G makes provision for the return of requests for enforcement to the other member State in certain specified circumstances. In such cases no enforcement action will be carried out in Scotland following the return of the enforcement request.

Section 223H sets out the procedures to be followed following the receipt by Scotland of a certificate seeking the enforcement of the financial penalty from the other member State. Schedule 12 specifies grounds by which the enforcement of the financial penalty may be refused. It provides that the competent authority is to decide whether it is satisfied that any grounds for refusal apply.

Section 223I specifies the procedure to be followed subsequent to the competent authority for Scotland being satisfied that none of the grounds for refusal to enforce the financial penalty apply. In such cases the competent authority for Scotland shall seek the enforcement in Scotland of the financial penalty. Where one or more of the grounds for refusal apply then, by subsections (2) and (3), the request for enforcement shall be returned to the other member State and no enforcement action shall be carried out in Scotland.

Section 223J provides that the provisions specified in section 223K will apply to certain financial penalties which are given to Scotland for enforcement as they apply in relation to fines in respect of which the 1995 Act makes provision, but subject to certain modifications and qualifications.

Section 223K lists those provisions mentioned in section 223J, the application of which are necessarily modified and qualified. Certain specified modifications and qualifications listed in the section apply only where section 223L applies.

Section 223L provides that the enforcement action which may be undertaken by Scotland on the failure to recover the financial penalty may not exceed any maximum level for such disposal as specified by the other member State which made the request for enforcement to Scotland.

Section 223M provides that the provisions of the 1995 Act specified in section 223N apply to certain financial penalties received by Scotland from other member States as they apply in relation to any sum payable under compensation orders imposed under section 249 of the 1995 Act but subject to those necessary modifications and qualifications which are set out in section 223N.

Section 223N specifies those provisions for which section 223M makes provision. Modifications and qualifications to the application of certain specified provisions of the 1995 Act are made by the provision.

Section 223O provides that certain provisions of the 1995 Act apply to certain financial penalties which are received by Scotland from other member States as they apply in relation to fixed penalties issued under the 1995 Act. Subsection (2) specifies the provision of the 1995 Act which is modified and qualified for the purposes of enforcing such financial penalties in Scotland.

Section 223P makes provision regarding the transfer of certificates received by Scotland from other member States to the central authority for England and Wales, or to the central authority for Northern Ireland, in those cases in which it is clear that the enforcement action should be undertaken there rather than in Scotland.

Section 223Q defines “the competent authority for Scotland”.

Section 223R makes provision for the treatment of the monies obtained following the enforcement of financial penalties in respect of which the Order applies.

Section 223S provides that those financial penalties which are payments of compensation and which have been issued for enforcement by Scotland to a member State, other than the United Kingdom, shall be paid by the central authority for Scotland or, as the case may be, the competent authority for Scotland to the central authority of that member State where the victim of the offence to which the financial penalty relates, resides.

Section 223T is an interpretation provision.

Article 4 of the Order amends the 1995 Act by inserting section 226HA after section 226H of that Act. The provision specifies the circumstances in which a fines enforcement officer may issue a certificate to a member State, other than the United Kingdom, for enforcement action of a relevant penalty (as defined in section 226I). By subsection (5) a fines enforcement officer may not issue such a certificate where the designated officer of the competent authority for Scotland has already done so. Procedural requirements are set down by the provision.

Article 5 of the Order amends section 226B by the insertion of subsection (6A) and the amendment of subsection (7) of that provision. Subsection (6A) of section 226B provides that in relation to a request from the other member State seeking enforcement of a financial penalty in Scotland, the relevant court (which is defined in section 226I) may make an enforcement order in relation to the enforcement of the financial penalty. The amendment made to subsection (7) of section 226B allows an enforcement order under subsection (6A) to be made on the oral or written application of the clerk of court and without the offender being present.

Article 6 of the Order makes consequential amendments to section 226I. Section 226I is the interpretation provision for those provisions concerning the enforcement of fines and fines enforcement officers.

Article 7 of the Order amends section 211(6) of the 1995 Act to make it clear that that subsection does not apply where a financial penalty is enforced by virtue of a certificate issued under sections 223A or 226HA(4).

Article 8 of the Order makes a number of amendments to the 1995 Act. In particular, it inserts Schedules 11 and 12 to that Act. Schedule 11 makes provision concerning financial penalties which are suitable for enforcement in Scotland and sets out the procedure to be followed where the person to whom a financial penalty relates has property not only in Scotland but in other parts of the United Kingdom too. Schedule 12 makes provision concerning the grounds for refusal to enforce financial penalties in Scotland.

2009 No.

CRIMINAL LAW

The Mutual Recognition of Criminal Financial Penalties in the
European Union (Scotland) Order 2009