
EXPLANATORY NOTE

(This note is not part of the Order)

This Order, which extends only to Scotland, makes further provision for the implementation of the Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties (OJ L 76, 22.03.2005, p.16-30) (“the Framework Decision”). The Order amends the existing implementing provisions in sections 223A to 223T of, and Schedules 11 and 12 to, the Criminal Procedure (Scotland) Act 1995 as inserted by the Mutual Recognition of Criminal Financial Penalties in the European Union (Scotland) Order 2009 ([S.S.I. 2009/342](#)). The amendments are made in order to reflect more explicitly the terms of the Framework Decision.

Article 4 inserts a new section 223FA after section 223F. The section applies when a requesting authority seeking enforcement of a financial penalty has not provided the certificate that requires to accompany the request, and when the central authority for Scotland is in consequence unable to allocate the request to a competent authority. The section requires the central authority for Scotland to notify the requesting authority that the decision will not be enforced in Scotland unless a certificate is provided.

Article 5 repeals section 223G, which currently requires the central authority for Scotland to return a decision and certificate to the requesting authority when the certificate is not signed or certified, or does not correspond with the decision.

Article 6 amends section 223H so as to require a competent authority considering a request for recognition to consult with the requesting authority before refusing recognition on certain grounds.

Article 8(b) amends the grounds for non-recognition specified in Schedule 12 so as to include as a ground for non-recognition by the competent authority the fact that a certificate is incomplete, or does not correspond to the decision.

Taken together, Articles 4, 5, 6 and 8(b) give effect to the scheme of the Framework Decision, in terms of which the decision whether to refuse recognition of a decision on the basis that the accompanying certificate is incomplete, or does not correspond to the decision, falls to be made by the competent authority, and in terms of which the requesting authority requires to be consulted before recognition is refused on certain grounds.

The Framework Decision has now been amended by Council Framework Decision 2009/299/JHA of 26 February 2009 (OJ L 81, 27.03.2009, p.24) and an Order is proposed to be laid in early course to transpose its requirements.