

THE MUTUAL RECOGNITION OF CRIMINAL FINANCIAL PENALTIES IN THE EUROPEAN UNION (SCOTLAND) (NO 1) ORDER 2014

TRANSPOSITION NOTE FOR FRAMEWORK DECISION 2005/244/JHA OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE MUTUAL RECOGNITION OF FINANCIAL PENALTIES

The Mutual Recognition of Criminal Financial Penalties in the European Union (Scotland) (No 1) Order 2014 amends the Criminal Procedure (Scotland) Act 1995 (the 1995 Act), to make further provision for the transposition of the European Union Framework Decision on the Application of the Principle of Mutual Recognition to Financial Penalties, in order to reflect more explicitly the terms of the Framework Decision.

In particular, the Order adds a new section to the 1995 Act (section 223FA) which makes clear that when a requesting authority seeks enforcement of a financial penalty in Scotland but has not provided the certificate that requires to accompany a request, the central authority in Scotland (the sheriff clerk at Edinburgh) must notify the requesting authority that the decision will not be enforced unless the required certificate is provided (as per Article 7 of the Framework Decision).

The Order also amends section 223H of the 1995 Act to make clear that the competent authority for Scotland must, when considering a request for recognition, ensure that the competent authority in the issuing State is consulted before refusing recognition of the transfer of a financial penalty on certain grounds and, as appropriate, has been given an opportunity to supply any missing information (as required by Article 7(3) of the Framework Decision). Separately, the grounds for non-recognition set out in Schedule 12 of the 1995 Act now explicitly include transmission of an incomplete certificate (e.g. if not certified as accurate) or a certificate that manifestly does not correspond to the decision (as per Article 7(1)).

This Framework Decision has now been amended, in part, by Council Framework Decision 2009/299/JHA, in order to achieve consistency in the treatment of decisions following a trial at which the accused did not appear in person. A second amending Order will be laid in early course to transpose the requirements of this subsequent Framework Decision.

| Directive Article | Objective(s) of Article | Transposition in Scotland |
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| 7 | Sets out the grounds for non-recognition and non-execution of a financial penalty imposed by another Member State. The Article also establishes a duty to consult in certain circumstances. | This Order amends the 1995 Act to more explicitly transpose the requirements of Article 7(1) and (3) of the Framework Decision, as noted above. |