

POLICY NOTE

THE MUTUAL RECOGNITION OF CRIMINAL FINANCIAL PENALTIES IN THE EUROPEAN UNION (SCOTLAND) (No.. 2) ORDER 2014

SSI 2014/336

1. The Mutual Recognition of Criminal Financial Penalties in the European Union (Scotland) (No. 2) Order 2014 was made in exercise of the power conferred by section 2(2) of the European Communities Act 1972. The Order is subject to the negative procedure.
2. Council Framework Decision 2009/299/JHA ('the 2009 Framework Decision') amends Council Framework Decision 2005/214/JHA on the application of the principle of mutual recognition to financial penalties ('the 2005 Framework Decision'), to enhance procedural rights where financial penalties have been imposed at trial in the absence of the persons concerned. The 2009 Framework Decision was adopted on 26 February 2009.
3. It is one of the chapter of 'third pillar' measures subject to the UK Government's opt-out, and one of the individual measures that the UK Government seeks to participate in from 1 December 2014.

Policy Objectives

4. The purpose of this Order is to transpose the amendments made by the 2009 Framework Decision to the 2005 Framework Decision.
5. Mutual recognition of judicial decisions is the process by which a decision taken by a judicial authority in one Member State is recognised and enforced by another as if it were taken by the judicial authorities of that other Member State¹.
6. The 2005 Framework Decision was transposed by the Mutual Recognition of Criminal Financial Penalties in the European Union (Scotland) Order 2009 (SSI 2009/342)('the 2009 Order'). The 2009 Order introduced a scheme which enables Scottish fines and fixed penalties of a value greater than €70 to be enforced elsewhere in the EU and vice versa. It does so by adding new provisions to the Criminal Procedure (Scotland) Act 1995 ('the 1995 Act'). The 2005 Framework Decision applies to a wide range of offences such as theft, criminal damage or road traffic, listed in article 5, in relation to which financial penalties can be imposed. The 2009 Order came into force on 12 October 2009.
7. The 2009 Framework Decision amends the 2005 Framework Decision by clarifying the circumstances in which a financial penalty which has been made in a person's absence can be recognised and executed in another Member State. This Order transposes the 2009 Framework Decision by amending the 1995 Act.
8. Transposition of the 2009 Framework Decision also requires a consequential amendment to Form 54.1: Form of certificate issued under section 223A(1) of the 1995 Act. A request to have the certificate amended has been made to has been made to the Criminal Courts Rules Council.

¹ See point 36 of the conclusions of the Tampere European Council of 15-16 October 1999

9. A related instrument was laid before the Parliament on 2 October 2014 – the Mutual Recognition of Criminal Financial Penalties in the European Union (Scotland) (No. 1) Order 2014 (“the No. 1 Order”). The No. 1 Order amends the 1995 Act to reflect more explicitly the terms of the 2005 Framework Decision and is not connected with the implementation of the 2009 Framework Decision. The No. 1 Order was laid separately because it is to be made under a domestic power which requires it to be scrutinised under affirmative procedure.

Consultation

10. The Order has been considered by the Scottish Court Service who are the central authority for the administration of the mutual recognition of financial penalties provisions and act as designated officials for the competent authority. The transposition of the 2009 Framework Decision will only affect the courts and the changes are minor and procedural in nature. As their practical impact is limited and there are no financial implications for individuals, business or the third sector, we do not believe there is a requirement for formal public consultation.

Impact Assessment

11. There are no equality impact issues and a Equality Impact Assessment (EQIA) has not been completed. The Order amends the administrative processes to be followed in accepting another Member States’ financial penalty for enforcement. The changes to the process are minor and do not require the central or competent authority to make any decision that may involve, or impact on, protected characteristics.

Financial Effects

12. A final Business and Regulatory Impact Assessment (BRIA) has not been completed. The Order amends the administrative processes to be followed in accepting another Member States’ financial penalty for enforcement. The changes to the administrative processes are minor. The Scottish Court Service, as the central authority, are content that there will be no significant operational impact arising from this Order that cannot be met from existing resources.

Scottish Government
Justice Directorate
1 December 2014