

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

**TRANSPOSITION NOTE FOR COUNCIL FRAMEWORK DECISION 2009/299/JHA AMENDING COUNCIL FRAMEWORK DECISION 2005/214/JHA THEREBY ENHANCING THE PROCEDURAL RIGHTS OF PERSONS AND FOSTERING THE PRINCIPLE OF MUTUAL RECOGNITION OF DECISIONS RENDERED IN THE ABSENCE OF THE PERSON CONCERNED AT THE TRIAL**

The Mutual Recognition of Criminal Financial Penalties in the European Union (Scotland) (No. 2) Order transposes amendments made by Article 3 of Council Framework Decision 2009/299/JHA of 26 February 2009 (“the 2009 Framework Decision”) to Council Framework Decision 2005/214/JHA of 24 February 2005 on the mutual recognition of financial penalties (“the 2005 Framework Decision”).

Domestic provision implementing the 2005 Framework Decision is contained in sections 223A to 223T of, and Schedules 11 and 12 to, the Criminal Procedure (Scotland) Act 1995 (the 1995 Act). This Order implements the amendments made by Article 3 of the 2009 Framework Decision by amending the 1995 Act provisions as necessary to modify the grounds on which recognition of a decision imposing a financial penalty may be refused because the decision was not the result of a trial at which the person subject to the penalty appeared in person, to adjust the consultation requirements between Member States and to change the information which must be included in the certificate which is sent to other Member States when Scotland requests recognition of financial penalties imposed here.

<b>Directive Article</b>	<b>Objective(s) of Article</b>	<b>Transposition in Scotland</b>
<b>3(1)</b>	Amends Article 7(2) of the 2005 Framework Decision by modifying the circumstances in which a financial penalty which has been imposed in a person’s absence can be recognised and executed in another Member State.	Regulation 5 amends paragraph 6 of, and inserts a new paragraph 6A into, Schedule 12 to the 1995 Act.
<b>3(2)</b>	Amends Article 7(3) of the 2005 Framework Decision by extending the circumstances in which there is a requirement to consult the competent authority of the issuing state before deciding not to recognise a decision.	Regulation 3 amends section 223H(3B) of the 1995 Act to take account of the Regulation 5 amendment. Section 223H(3B) is to be inserted into the 1995 Act by the Mutual Recognition of Criminal Financial Penalties in the European Union (No. 1) Order 2014 (S.S.I. 2014/322), which will come into force on 1 <sup>st</sup> December 2014.

<p><b>3(3)</b></p>	<p>Amends the form of certificate annexed to the 2005 Framework Decision.</p>	<p>Regulation 4 adjusts a definition in section 223T of the 1995 Act so that reference to “the certificate” will be mean the certificate in the 2005 Framework Decision as amended by the 2009 Framework Decision.</p> <p>In terms of section 223A(1) of the 1995, the form of certificate used is prescribed by Act of Adjournal. By virtue of rule 54.1 of the Act of Adjournal (Criminal Procedure Rules) 1996 (S.I. 1995/513) it is currently set out in Form 54.1 to the rules.</p> <p>Transposition of amendments to the form of certificate required by Article 3(3) of the 2009 Framework Decision is being taken forward with the Criminal Courts Rules Council.</p>
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