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SCOTTISH STATUTORY INSTRUMENTS

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**2020 No. 339**

**The Criminal Justice (EU Exit) (Scotland)  
(Amendment etc.) Regulations 2020**

**PART 4**

Council Framework Decision 2008/675/JHA on taking account of convictions in the member States of the European Union in the course of new criminal proceedings

**Amendment of the Criminal Procedure (Scotland) Act 1995**

**13.**—(1) The Criminal Procedure (Scotland) Act 1995(1) is amended as follows.

(2) In section 23C(2)(d)(i)(2) (grounds relevant as to question of bail) for “the European Union” substitute “Scotland”.

(3) In section 23D(5)(b)(3) (restriction on bail in certain solemn cases)—

- (a) at the beginning insert “if the court considers appropriate”, and
- (b) omit “other than the United Kingdom”.

(4) In section 27 (breach of bail conditions: offences) for subsection (3A)(4) substitute—

“(3A) The reference in subsection (3)(b) to any previous conviction of an offence under subsection (1)(b) includes—

- (a) any previous conviction by a court in England and Wales or Northern Ireland, and
- (b) if the court considers appropriate, any previous conviction by a court in a member State of the European Union,

of an offence that is equivalent to an offence under subsection (1)(b).”.

(5) In section 69(5) (notice of previous convictions) after subsection (7) insert—

“(8) Any reference in this section to a previous conviction includes, where relevant, a conviction by a court in any part of the United Kingdom or in any member State of the European Union.”.

(6) In section 101(6) (previous convictions: solemn proceedings) after subsection (11) insert—

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- (1) 1995 c.46.
- (2) Section 23C(2)(d)(i) was added by the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), section 1 and amended by the Criminal Justice and Licensing (Scotland) Act 2010, schedule 4, paragraph 2.
- (3) Section 23D was added by the Criminal Proceedings etc. (Reform) (Scotland) Act 2007, section 1.
- (4) Section 27(3A) was added by the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), schedule 4, paragraph 3.
- (5) Section 69 was amended by the Criminal Justice (Scotland) Act 2003 (asp 7), schedule 1, paragraph 2, the Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), schedule 1, paragraph 19, the Criminal Proceedings etc. Reform (Scotland) Act 2007 (asp 6), section 53(1) and the Wildlife and Natural Environment (Scotland) Act 2011 (asp 6) section 40(3).
- (6) Section 101 was amended by the Crime and Punishment (Scotland) Act 1997 (c.48), schedule 3, paragraph 1, the Sexual Offences (Procedure and Evidence) (Scotland) Act 2002 (asp 9), section 10(1)(a), the Criminal Justice (Scotland) Act 2003, section 57(2) and schedule 1, paragraph 2(3), the Criminal Proceedings etc. (Reform) (Scotland) Act 2007, section 53(2) and the Wildlife and Natural Environment (Scotland) Act 2011, section 40(3).

“(12) Any reference in this section to a previous conviction includes, where relevant, a conviction by a court in any part of the United Kingdom or in any member State of the European Union.”.

(7) In section 101A(5)(7) (post-offence convictions etc.) for “in any other” substitute “, where the court considers appropriate, in any”.

(8) In section 166(8) (previous convictions: summary proceedings) after subsection (11) insert—

“(12) Any reference in this section to a previous conviction includes, where relevant, a conviction by a court in any part of the United Kingdom or in any member State of the European Union.”.

(9) In section 166A(5)(9) (post-offence convictions etc.) for “in any other” substitute “, where the court considers appropriate, in any”.

(10) In section 202(2)(10) (deferred sentence) for “in another” substitute “, where the court which deferred sentence considers appropriate, by a court in any”.

(11) In section 204 (restrictions on passing sentence of imprisonment or detention)—

(a) in subsections (1) and (2)(11) for “in another” substitute “or, where the court passing sentence considers appropriate, by a court in any”, and

(b) in subsection (4A)(12) omit “other than the United Kingdom”.

(12) In section 205B(13) (minimum sentence for third conviction of certain offences relating to drug trafficking)—

(a) in subsection (1A)(b) for “other than the United Kingdom” substitute “which the court passing sentence considers appropriate to take into account”,

(b) after subsection (5) insert—

“(6) Any reference in this section to a previous conviction includes, where relevant, a conviction by a court in any part of the United Kingdom or in any member State of the European Union.”.

(13) In section 210C(1)(14) (risk assessment report) after “convicted person” insert “, including a conviction by a court in any part of the United Kingdom or in any member State of the European Union.”.

(14) In section 271S(2)(e)(15) (relevant considerations) after “of the witness” insert “, including any convictions by a court in any part of the United Kingdom or in any member State of the European Union.”.

(15) In section 275A(16)(disclosure of accused’s previous convictions where court allows questioning or evidence under section 275)—

(a) in subsection (2) for “Any” substitute “Subject to subsection (2A) any”,

(b) after subsection (2) insert—

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(7) Section 101A was added by the Criminal Justice and Licensing (Scotland) Act 2010, section 70(1).

(8) Section 166 was amended by the Sexual Offences (Procedure and Evidence) (Scotland) Act 2002, section 10(2), the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 sections 12(1) and 53(3) and the Wildlife and Natural Environment (Scotland) Act 2011, section 40(3).

(9) Section 166A was substituted by the Criminal Justice and Licensing (Scotland) Act 2010, section 70(2).

(10) Section 202(2) was amended by the Criminal Justice and Licensing (Scotland) Act 2010, schedule 4, paragraph 4.

(11) Section 204(1) and (2) were amended by the Criminal Justice and Licensing (Scotland) Act 2010, schedule 4, paragraph 5(a). Section 204(2) was amended by the Crime and Punishment (Scotland) Act 1997 c.48, schedule 3, paragraph 1.

(12) Section 204(4A) was added by the Criminal Justice and Licensing (Scotland) Act 2010, schedule 4, paragraph 5(b).

(13) Section 205B was added by the Crime and Punishment (Scotland) Act 1997, section 2(1). Subsection (1A) was added by the Criminal Justice and Licensing (Scotland) Act 2010, schedule 4, paragraph 6(b).

(14) Section 210C was added by the Criminal Justice (Scotland) Act 2003 (asp. 7), section 1(1).

(15) Section 271S was added by the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), section 90(1).

(16) Section 275A was added by the Sexual Offences (Procedure and Evidence) (Scotland) Act 2002 (asp. 9), section 10.

- “(2A) Where the conviction is a relevant conviction by virtue of subsection (10)(aa) (ii), subsection (2) applies only if the judge considers it appropriate.”,
- (c) in subsection (3) for “such a conviction” substitute “a conviction referred to in subsection (2)”, and
- (d) for subsection (10)(aa)(17) substitute—
- (aa) “(10) a conviction by a court in—
- (i) England and Wales or Northern Ireland, or
- (ii) a member State of the European Union,
- of an offence that is equivalent to one to which section 288C of this Act applies by virtue of subsection (2) thereof, or”.
- (16) In section 286(18) (previous convictions: proof in support of substantive charge)—
- (a) in subsection (1) after “previous conviction” insert “including a conviction by a court in a member State of the European Union”,
- (b) in subsection (3) for “another” substitute “a”.
- (17) In section 286A(1)(19) (proof of previous conviction by court in other member State) for “another” substitute “a”.
- (18) In section 307(5)(a)(20) (interpretation) omit “or in any other member State of the European Union”.

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(17) Subsection (10)(aa) was added by the Criminal Justice and Licensing (Scotland) Act 2010, schedule 4, paragraph 7(a).

(18) Section 286(3) was added by the Criminal Justice (Scotland) Act 2003, section 57(3).

(19) Section 286A was added by the Criminal Justice (Scotland) Act 2003, section 57(4).

(20) Section 307(5) was amended by the Criminal Justice (Scotland) Act 2003, section 57(5)(b) and by the Criminal Justice and Licensing (Scotland) Act 2010, schedule 4, paragraph 8(b).