

# CRIMINAL JUSTICE AND LICENSING (SCOTLAND) ACT 2010

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *Schedule 4 – Convictions by Courts in other EU Member States: modifications of enactments*

##### **Part 1 – The 1995 Act**

##### **Part 2 – Other enactments**

850. [Schedule 4](#) outlines a number of amendments to legislation to allow courts to take account of previous convictions in other European Union Member States. The amendments seek to implement the Council of the European Union Framework Decision 2008/675/JHA of 24 July 2008 on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings.
851. The amendments add references to convictions or sentences issued by courts in other Member States of the EU to the following existing provisions:
852. [Part 1](#) of the schedule, comprising paragraphs 1 to 8, makes amendments to the 1995 Act.
853. [Paragraph 2](#) amends section 23C, which concerns grounds for refusing bail. This provision previously permitted previous convictions from courts outside Scotland to be taken into account the amendment simply maintains that position, but it is necessary to ensure this provision is consistent with the change to the general definition of a previous conviction in section 307(5).
854. [Paragraph 3](#) amends section 27 which sets out the consequences where an individual is charged with an offence, granted bail and breaches their bail conditions by committing a further offence. The section provides that the accused will not be charged separately for breaching the bail conditions, but certain factors will be taken into account by the court in determining the sentence/ disposal for the subsequent offence and this includes any previous conviction of the accused for failing to comply with a condition imposed on bail. The amendment allows the court to consider any conviction for an offence committed in another EU Member State which is considered by the court to be equivalent to the offence of failing to comply with a condition imposed on bail.
855. [Paragraph 4](#) amends section 202, which provides that where the accused has been given a deferred sentence and is subsequently convicted of a separate offence during the period of deferment, the court can issue a warrant for the accused's arrest or issue a citation requiring the accused to appear before the court in relation to the deferred sentence. The amendment will ensure that where a person is given a deferred sentence in Scotland and then commits a further offence in another EU Member State, the conviction for the subsequent offence can be taken into account under this provision.

*These notes relate to the Criminal Justice and Licensing (Scotland)  
Act 2010 (asp 13) which received Royal Assent on 6 August 2010*

856. [Paragraph 5](#) amends section 204, which sets out restrictions on imposing a custodial sentence, for example where the accused is not legally represented and has not been previously sentenced, to ensure that the references in that section to a person having been previously sentenced to imprisonment or detention will include equivalent previous sentences from another EU Member State.
857. [Paragraph 6](#) amends section 205B, which provides that where an accused is given a third conviction for certain offences relating to drug trafficking he shall be sentenced to a minimum period of imprisonment unless the court considers it would be unjust to do so in all the circumstances. The amendment requires the court to take into account any conviction for an offence committed in another EU Member State where the offence is considered by the court to be equivalent to an offence of class A drug trafficking.
858. [Paragraph 7](#) amends section 275A, which concerns the disclosure of previous convictions relating to sexual offences in certain circumstances, to ensure that the prosecutor can place before the court a previous conviction from another EU Member State for an offence which is equivalent to the sexual offences listed in section 288C.
859. [Paragraph 8](#) amends section 307 - the interpretation section - to ensure that where the term “previous conviction” or “previous sentence” appears in the 1995 Act, it will include a conviction or sentence handed down by a court in any other Member State of the EU, rather than limiting this definition to disposals within the United Kingdom, unless the context of the provision requires otherwise. The definition of conviction in subsection (1) is taken from Article 2 of the Council Framework Decision (2008/675/JHA).
860. [Part 2](#) of the schedule, comprising paragraphs 9 to 13, make amendments to a range of other enactments that refer to previous convictions or previous sentences.
861. [Paragraph 9](#) amends section 58 of the Civic Government (Scotland) Act 1982. This section provides that a person commits an offence where they possess or have recently possessed a tool or object where it can be reasonably inferred that they intend to commit or have committed an act of theft, the accused cannot demonstrate that possession was not for that purpose, and the accused holds 2 previous convictions for theft. The amendment allows the court to consider any conviction for an offence committed in another EU Member State that is considered by the court to be equivalent to theft.
862. [Paragraph 10](#) amends section 27 - the interpretation section for Part I - of the Prisoners and Criminal Proceedings (Scotland) Act 1993 to ensure that any reference in Part I of that Act to “previous conviction” will include convictions from any part of the UK or another EU Member State.
863. [Paragraph 11](#) amends section 9 of the Criminal Law (Consolidation) (Scotland) Act 1995. This will ensure that the defence to a charge of permitting a girl to use premises for intercourse that the alleged offender considered the victim to be 16 years or more, cannot apply where the offender has a previous conviction from another EU Member State for a sexual offence which is defined in section 39(5)(aa) of the Sexual Offences (Scotland) Act 2009.
864. [Paragraph 12](#) amends section 4 of the Custodial Sentences and Weapons (Scotland) Act 2007 to provide that any reference to “previous conviction” in Part 2 of that Act includes a previous conviction in any part of the UK or another EU Member State.
865. [Paragraph 13](#) amends section 39 of the Sexual Offences (Scotland) Act 2009. This will ensure that the defence to a charge in proceedings, where the offence was allegedly committed against an older child, that the accused reasonably believed that the victim was 16 years or more at the time the conduct took place, cannot be used where the accused has a previous conviction from another EU Member State for a sexual offence which is equivalent to the offences listed in schedule 1 of that Act.