

THE MUTUAL RECOGNITION OF SUPERVISION MEASURES IN THE EUROPEAN UNION (SCOTLAND) REGULATIONS 2014

TRANSPOSITION NOTE FOR COUNCIL FRAMEWORK DECISION 2009/829/JHA ON THE APPLICATION BETWEEN MEMBER STATES OF THE EUROPEAN UNION OF THE PRINCIPAL OF MUTUAL RECOGNITION TO DECISIONS ON SUPERVISION MEASURES AS AN ALTERNATIVE TO PROVISIONAL DETENTION

The Mutual Recognition of Supervision Measures in the European Union (Scotland) Regulations 2014 (the Regulations) transpose Council Framework Decision 2009/829/JHA of 23 October 2009 *on the application, between Member States of the European Union, of the principal of mutual recognition to decisions on supervision measures as an alternative to provisional detention.*

This is often referred to as the European Supervision Order (“ESO”) Framework Decision. It promotes mutual recognition within the EU of judicial decisions relating to non-custodial pre-trial supervision measures which may be imposed on accused persons in criminal proceedings. In Scotland the term we use for such supervision measures is bail. 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 in another. The aim of the ESO Framework Decision is to allow, in certain circumstances, a person accused of a crime in one member State to return home to another member State and be supervised there until the person’s trial starts in the member State where the offence took place, or to enable a person accused of a crime at home to move to another member State and be supervised there while awaiting trial.

The policy intention underlying the ESO Framework Decision is to increase the likelihood that non-residents who are prosecuted in a different member State will be granted bail rather than remanded in custody. This is not only to counter the presumption that non-residents are a ‘flight risk’ and avoid the trial state bearing the financial cost of the detention, but also to avoid other adverse impacts associated with lengthy pre-trial detention on individuals with no community ties to the trial state: being cut off from family and friends, the effects of detention on their physical and mental health and the risk of being absent from and consequently losing employment. Equally it is designed to enable accused persons wishing to take up employment or other opportunities in other member State in exercise of their right to freedom of movement within the EU, to do so and still be effectively supervised while awaiting trial.

Accordingly the Regulations transpose the ESO Framework Decision as set out in the table below. Schedule 1 of the Regulations deals with the situation where Scotland is acting as the issuing State; that is, where Scotland is asking for Scottish bail conditions to be recognised in another member State. Schedule 2 refers to situations where Scotland is acting as the executing State; that is, where supervision measures imposed in another member State are being monitored in Scotland.

Directive Article	Objective(s) of Article	Transposition in Scotland
1	Subject matter This Framework Decision lays down	This article sets out the overarching

	<p>rules according to which one Member State recognises a decision on supervision measures issued in another Member State as an alternative to provisional detention, monitors the supervision measures imposed on a natural person and surrenders the person concerned to the issuing State in case of breach of these measures.</p>	<p>purpose of the Framework Decision. It does not require transposition.</p>
2	<p>Objectives</p> <p>1. The objectives of this Framework Decision are:</p> <p>(a) to ensure the due course of justice and, in particular, that the person concerned will be available to stand trial;</p> <p>(b) to promote, where appropriate, the use, in the course of criminal proceedings, of non-custodial measures for persons who are not resident in the Member State where the proceedings are taking place;</p> <p>(c) to improve the protection of victims and of the general public.</p> <p>2. This Framework Decision does not confer any right on a person to the use, in the course of criminal proceedings, of a non-custodial measure as an alternative to custody. This is a matter governed by the law and procedures of the Member State where the criminal proceedings are taking place.</p>	<p>This article sets out the objectives of the Framework Decision and is transposed by the Regulations generally.</p>
3	<p>Protection of law and order and the safeguarding of internal security</p> <p>This Framework Decision is without prejudice to the exercise of the responsibilities incumbent upon Member States with regard to the protection of victims, the general public and the safeguarding of internal security, in accordance with Article 33 of the Treaty on European Union.</p>	<p>This article states that the Framework Decision does not over ride Member States' Article 33 responsibilities. It does not require transposition.</p>
4	<p>Definitions</p> <p>For the purposes of this Framework Decision:</p> <p>(a) 'decision on supervision measures' means an enforceable decision taken in the course of criminal proceedings</p>	<p>This article defines terms as used within the Framework Decision and does not impose an obligation that requires transposition.</p>

	<p>by a competent authority of the issuing State in accordance with its national law and procedures and imposing on a natural person, as an alternative to provisional detention, one or more supervision measures;</p> <p>(b) ‘supervision measures’ means obligations and instructions imposed on a natural person, in accordance with the national law and procedures of the issuing State;</p> <p>(c) ‘issuing State’ means the Member State in which a decision on supervision measures has been issued;</p> <p>(d) ‘executing State’ means the Member State in which the supervision measures are monitored.</p>	
5	<p>Fundamental rights This Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union.</p>	<p>The Regulations have been drafted with Article 6 rights in mind.</p>
6	<p>Designation of competent authorities 1. Each Member State shall inform the General Secretariat of the Council which judicial authority or authorities under its national law are competent to act according to this Framework Decision in the situation where that Member State is the issuing State or the executing State.</p> <p>2. As an exception to paragraph 1 and without prejudice to paragraph 3, Member States may designate non-judicial authorities as the competent authorities for taking decisions under this Framework Decision, provided that such authorities have competence for taking decisions of a similar nature under their national law and procedures.</p>	<p>This article is about informing the Council of the persons and bodies designated as competent authorities, and to that extent does not require transposition.</p> <p>The Regulations reflect the designation that will be made of competent authorities in Scotland.</p> <p>Schedule 1, paragraph 1(1). All Scottish courts involved in trying criminal matters will be competent authorities for the purpose of requesting recognition of supervision measures (i.e. bail conditions). For the recognition of requests received from other member States, sheriff courts will be the competent authority.</p>

	<p>3. Decisions referred to under Article 18(1)(c) shall be taken by a competent judicial authority.</p> <p>4. The General Secretariat of the Council shall make the information received available to all Member States and to the Commission.</p>	<p>No non-judicial authorities have been appointed as competent authorities.</p> <p>This places an obligation on the General Secretariat of the Council and does not require transposition</p>
7	<p>Recourse to a central authority</p> <p>1. Each Member State may designate a central authority or, where its legal system so provides, more than one central authority to assist its competent authorities.</p> <p>2. A Member State may, if it is necessary as a result of the organisation of its internal judicial system, make its central authority(ies) responsible for the administrative transmission and reception of decisions on supervision measures, together with the certificates referred to in Article 10, as well as for all other official correspondence relating thereto. As a consequence, all communications, consultations, exchanges of information, enquiries and notifications between competent authorities may be dealt with, where appropriate, with the assistance of the central authority(ies) of the Member State concerned.</p> <p>3. Member States wishing to make use of the possibilities referred to in this Article shall communicate to the General Secretariat of the Council information relating to the designated central authority or central authorities.</p>	<p>Again, this article is about designating under the Framework Decision and as such does not require transposition per se.</p> <p>For Scotland, the Scottish Court Service will be designated as the central authority for the monitoring of other State's supervision measures in Scotland. This is reflected in the Regulations in Schedule 2, paragraph 1(1).</p> <p>For monitoring Scottish bail conditions in other states, Scottish courts will deal directly with the central and competent authorities of the other State without the involvement of a Scottish central authority.</p> <p>The General Secretariat will be informed of the identity of the central authority in Scotland.</p>

	<p>These indications shall be binding upon all the authorities of the issuing Member State.</p>	
<p>8</p>	<p>Types of supervision measures</p> <p>1. This Framework Decision shall apply to the following supervision measures:</p> <p>(a) an obligation for the person to inform the competent authority in the executing State of any change of residence, in particular for the purpose of receiving a summons to attend a hearing or a trial in the course of criminal proceedings;</p> <p>(b) an obligation not to enter certain localities, places or defined areas in the issuing or executing State;</p> <p>(c) an obligation to remain at a specified place, where applicable during specified times;</p> <p>(d) an obligation containing limitations on leaving the territory of the executing State;</p> <p>(e) an obligation to report at specified times to a specific authority;</p> <p>(f) an obligation to avoid contact with specific persons in relation with the offence(s) allegedly committed.</p> <p>2. Each Member State shall notify the General Secretariat of the Council, when transposing this Framework Decision or at a later stage, which supervision measures, apart from those referred to in paragraph 1, it is prepared to monitor. These measures may include in particular:</p> <p>(a) an obligation not to engage in specified activities in relation with the offence(s) allegedly committed, which may include involvement in a specified profession or field of employment;</p> <p>(b) an obligation not to drive a vehicle;</p> <p>(c) an obligation to deposit a certain sum of money or to give another type of guarantee, which may either be provided through a specified number</p>	<p>This article defines the types of supervision measure Member States are required to recognise and monitor under the Framework Decision.</p> <p>UK Government have advised that only supervision measures referred to in Article 8(1) above will be recognised for incoming orders to the United Kingdom. Accordingly Schedule 2 paragraph 7(1)(a) requires Scottish courts to refuse an application for recognition of supervision measures if it contains measures in terms of Article 8(2).</p>

	<p>of instalments or entirely at once;</p> <p>(d) an obligation to undergo therapeutic treatment or treatment for addiction;</p> <p>(e) an obligation to avoid contact with specific objects in relation with the offence(s) allegedly committed.</p> <p>3. The General Secretariat of the Council shall make the information received under this Article available to all Member States and to the Commission.</p>	<p>This places an obligation on the General Secretariat of the Council. It does not require transposition.</p>
<p>9</p>	<p>Criteria relating to the Member State to which the decision on supervision measures may be forwarded</p> <p>1. A decision on supervision measures may be forwarded to the competent authority of the Member State in which the person is lawfully and ordinarily residing, in cases where the person, having been informed about the measures concerned, consents to return to that State.</p> <p>2. The competent authority in the issuing State may, upon request of the person, forward the decision on supervision measures to the competent authority of a Member State other than the Member State in which the person is lawfully and ordinarily residing, on condition that the latter authority has consented to such forwarding.</p> <p>3. When implementing this Framework Decision, Member States shall determine under which conditions their competent authorities may consent to the forwarding of a decision on supervision measures in cases pursuant to paragraph 2.</p> <p>4. Each Member State shall make a statement to the General Secretariat of the Council of the determination made under paragraph 3. Member States may modify such a statement at any</p>	<p>This Article does not require direct transposition.</p> <p>Paragraphs (1) and (2) of this Article describe conditions which must be met for a recognition request to be valid in terms of the Framework Decision, and as such they are picked up in Article 15(1)(b) as grounds for refusing recognition. In their latter guise, they are dealt with in the Regulations in Schedule 2, paragraph 7(1)(b). Regarding the paragraph (1) reference to informing the person about supervision measures which have been imposed, this is already a requirement of our domestic bail law in terms of section 25 of the Criminal Procedure Act 1995.</p> <p>Paragraphs (3) and (4) of this Article do not require transposition in domestic legislation per se. Conditions set under paragraph (3) are referenced in Schedule 2, paragraph 2.</p> <p>This places obligations on the UK Government and the General Secretariat of the Council. It does not require transposition.</p>

	<p>time. The General Secretariat shall make the information received available to all Member States and to the Commission.</p>	
10	<p>Procedure for forwarding a decision on supervision measures together with the certificate</p> <p>1. When, in application of Article 9(1) or (2), the competent authority of the issuing State forwards a decision on supervision measures to another Member State, it shall ensure that it is accompanied by a certificate, the standard form of which is set out in Annex I.</p> <p>2. The decision on supervision measures or a certified copy of it, together with the certificate, shall be forwarded by the competent authority in the issuing State directly to the competent authority in the executing State by any means which leaves a written record under conditions allowing the executing State to establish their authenticity. The original of the decision on supervision measures, or a certified copy of it, and the original of the certificate, shall be sent to the executing State if it so requires. All official communications shall also be made directly between the said competent authorities.</p> <p>3. The certificate shall be signed, and its content certified as accurate, by the competent authority in the issuing State.</p> <p>4. The certificate referred to in paragraph 1 of this Article shall include, apart from the measures referred to in Article 8(1), only such measures as notified by the executing State in accordance with Article 8(2).</p> <p>5. The competent authority in the issuing State shall specify:</p>	<p>Schedule 1, paragraph 2(3)(b)</p> <p>Schedule 1, paragraph 2(3).</p> <p>Schedule 1, paragraph 2(3)(b)(ii).</p> <p>Schedule 1, paragraph 2(5).</p> <p>This will be specified in the certificate issued in terms of Schedule 1,</p>

	<p>(a) where applicable, the length of time to which the decision on supervision measures applies and whether a renewal of this decision is possible; and</p> <p>(b) on an indicative basis, the provisional length of time for which the monitoring of the supervision measures is likely to be needed, taking into account all the circumstances of the case that are known when the decision on supervision measures is forwarded.</p> <p>6. The competent authority in the issuing State shall forward the decision on supervision measures together with the certificate only to one executing State at any one time.</p> <p>7. If the competent authority in the executing State is not known to the competent authority in the issuing State, the latter shall make all necessary inquiries, including via the contact points of the European Judicial Network set up by Council Joint Action 98/428/JHA of 29 June 1998 on the creation of a European Judicial Network, in order to obtain the information from the executing State.</p> <p>8. When an authority in the executing State which receives a decision on supervision measures together with a certificate has no competence to recognise that decision, this authority shall, ex officio, forward the decision together with the certificate to the competent authority.</p>	<p>paragraph 2(3).</p> <p>This is implicit in Schedule 1, paragraph 2.</p> <p>This will be carried out by the Scottish court and does not require express transposition.</p> <p>Schedule 2, paragraph 3(3).</p>
<p>11</p>	<p>Competence over the monitoring of the supervision measures</p> <p>1. As long as the competent authority of the executing State has not recognised the decision on supervision measures forwarded to it and has not informed the competent authority of the issuing State of such recognition, the competent authority of the issuing</p>	<p>The concept of “competence” invoked in paragraph (1) of this Article has little resonance in Scots law. Certainly, nothing in the Regulations bears to deprive an authority in another country of competence when a Scottish court has not yet recognised a decision</p>

<p>State shall remain competent in relation to the monitoring of the supervision measures imposed.</p>	<p>on supervision measures, nor do the Regulations remove competence from a Scottish court when another country is considering recognising a bail order.</p>
<p>2. If competence for monitoring the supervision measures has been transferred to the competent authority of the executing State, such competence shall revert back to the competent authority of the issuing State:</p> <p>(a) where the person concerned has established his/her lawful and ordinary residence in a State other than the executing State;</p> <p>(b) as soon as the competent authority in the issuing State has notified withdrawal of the certificate referred to in Article 10(1), pursuant to Article 13(3), to the competent authority of the executing State;</p> <p>(c) where the competent authority in the issuing State has modified the supervision measures and the competent authority in the executing State, in application of Article 18(4)(b), has refused to monitor the modified supervision measures because they do not fall within the types of supervision measures referred to in Article 8(1) and/or within those notified by the executing State concerned in accordance with Article 8(2);</p> <p>(d) when the period of time referred to in Article 20(2)(b) has elapsed;</p> <p>(e) where the competent authority in the executing State has decided to stop monitoring the supervision measures and has informed the competent authority in the issuing State thereof, in application of Article 23.</p>	<p>Not transposed directly, but the issuing State will be told if the Scottish central authority believes the person has changed residence (Schedule 2, paragraph 20(3)) and can, in that event, request that monitoring end. Thus the issuing State is left to determine when ordinary and lawful residence changes.</p> <p>Schedule 2, paragraph 10.</p> <p>So far as the modified measures are concerned, competence will not transfer as mentioned in the opening words of Article 11(2) unless and until the modified measures are recognised by a Scottish court (Schedule 2, paragraph 9).</p> <p>Schedule 2, paragraph 11.</p> <p>Schedule 2, paragraph 19.</p>
<p>3. In cases referred to in paragraph 2, the competent authorities of the</p>	<p>Schedule 2, paragraph 20 and the provisions requiring the issuing State</p>

	issuing and executing States shall consult each other so as to avoid, as far as possible, any discontinuance in the monitoring of the supervision measures.	to be told when monitoring in Scotland stops otherwise than as a direct consequence of a request from the issuing State.
12	<p>Decision in the executing State</p> <p>1. The competent authority in the executing State shall, as soon as possible and in any case within 20 working days of receipt of the decision on supervision measures and certificate, recognise the decision on supervision measures forwarded in accordance with Article 9 and following the procedure laid down in Article 10 and without delay take all necessary measures for monitoring the supervision measures, unless it decides to invoke one of the grounds for non-recognition referred to in Article 15.</p> <p>2. If a legal remedy has been introduced against the decision referred to in paragraph 1, the time limit for recognition of the decision on supervision measures shall be extended by another 20 working days.</p> <p>3. If it is not possible, in exceptional circumstances, for the competent authority in the executing State to comply with the time limits laid down in paragraphs 1 and 2, it shall immediately inform the competent authority in the issuing State, by any means of its choosing, giving reasons for the delay and indicating how long it expects to take to issue a final decision.</p> <p>4. The competent authority may postpone the decision on recognition of the decision on supervision measures where the certificate provided for in Article 10 is incomplete or obviously does not correspond to the decision on supervision measures, until such reasonable time limit set for the certificate to be completed or</p>	<p>Schedule 2, paragraph 4.</p> <p>No legal remedy has been introduced against such a decision.</p> <p>Schedule 2, paragraph 4(2)(b).</p> <p>Schedule 2, paragraph 5.</p>

	corrected.	
13	<p>Adaptation of the supervision measures</p> <p>1. If the nature of the supervision measures is incompatible with the law of the executing State, the competent authority in that Member State may adapt them in line with the types of supervision measures which apply, under the law of the executing State, to equivalent offences. The adapted supervision measure shall correspond as far as possible to that imposed in the issuing State.</p> <p>2. The adapted supervision measure shall not be more severe than the supervision measure which was originally imposed.</p> <p>3. Following receipt of information referred to in Article 20(2)(b) or (f), the competent authority in the issuing State may decide to withdraw the certificate as long as monitoring in the executing State has not yet begun. In any case, such a decision shall be taken and communicated as soon as possible and within ten days of the receipt of the relevant notification at the latest.</p>	<p>Schedule 2, paragraph 8.</p> <p>Schedule 2, paragraph 8(b)(iii).</p> <p>Schedule 1, paragraphs 3(3), 4 and 5.</p>
14	<p>Double criminality</p> <p>1. The following offences, if they are punishable in the issuing State by a custodial sentence or a measure involving deprivation of liberty for a maximum period of at least three years, and as they are defined by the law of the issuing State, shall, under the terms of this Framework Decision and without verification of the double criminality of the act, give rise to recognition of the decision on supervision measures:</p> <ul style="list-style-type: none"> — participation in a criminal organisation, — terrorism, — trafficking in human beings,— 	<p>Schedule 2, paragraph 7(1)(b)(v), (3) and (4).</p>

sexual exploitation of children and child pornography,
— illicit trafficking in narcotic drugs and psychotropic substances,
— illicit trafficking in weapons, munitions and explosives,
— corruption,
— fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests (1),
— laundering of the proceeds of crime,
— counterfeiting currency, including of the euro,
— computer-related crime,
— environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties,
— facilitation of unauthorised entry and residence,
— murder, grievous bodily injury,
— illicit trade in human organs and tissue,
— kidnapping, illegal restraint and hostage-taking,
— racism and xenophobia,
— organised or armed robbery,
— illicit trafficking in cultural goods, including antiques and works of art,
— swindling,
— racketeering and extortion,
— counterfeiting and piracy of products,
— forgery of administrative documents and trafficking therein,
— forgery of means of payment,
— illicit trafficking in hormonal substances and other growth promoters,
— illicit trafficking in nuclear or radioactive materials,
— trafficking in stolen vehicles,
— rape,
— arson,
— crimes within the jurisdiction of the

	<p>International Criminal Court, — unlawful seizure of aircraft/ships, — sabotage.</p> <p>2. The Council may decide to add other categories of offences to the list in paragraph 1 at any time, acting unanimously after consultation of the European Parliament under the conditions laid down in Article 39(1) of the Treaty on European Union. The Council shall examine, in the light of the report submitted to it pursuant to Article 27 of this Framework Decision, whether the list should be extended or amended.</p> <p>3. For offences other than those covered by paragraph 1, the executing State may make the recognition of the decision on supervision measures subject to the condition that the decision relates to acts which also constitute an offence under the law of the executing State, whatever the constituent elements or however it is described.</p> <p>4. Member States may, for constitutional reasons, on the adoption of this Framework Decision, by a declaration notified to the General Secretariat of the Council, declare that they will not apply paragraph 1 in respect of some or all of the offences referred to in that paragraph. Any such declaration may be withdrawn at any time. Such declarations or withdrawals of declarations shall be published in the Official Journal of the European Union.</p>	<p>Obligation on the European Council – does not require transposition.</p> <p>Schedule 2, paragraph 7(1)(b)(v), (3) and (4).</p> <p>No such declaration is being made by the UK Government.</p>
<p>15</p>	<p>Grounds for non-recognition</p> <p>1. The competent authority in the executing State may refuse to recognise the decision on supervision measures if:</p> <p>(a) the certificate referred to in Article 10 is incomplete or obviously does not correspond to the decision on supervision measures and is not</p>	<p>Schedule 2, paragraph 7.</p>

completed or corrected within a reasonable period set by the competent authority in the executing State;

(b) the criteria laid down in Article 9(1), 9(2) or 10(4) are not met;

(c) recognition of the decision on supervision measures would contravene the ne bis in idem principle;

(d) the decision on supervision measures relates, in the cases referred to in Article 14(3) and, where the executing State has made a declaration under Article 14(4), in the cases referred to in Article 14(1), to an act which would not constitute an offence under the law of the executing State; in tax, customs and currency matters, however, execution of the decision may not be refused on the grounds that the law of the executing State does not prescribe any taxes of the same kind or does not contain any tax, customs or currency provisions of the same kind as the law of the issuing State;

(e) the criminal prosecution is statute-barred under the law of the executing State and relates to an act which falls within the competence of the executing State under its national law;

(f) there is immunity under the law of the executing State, which makes it impossible to monitor supervision measures;

(g) under the law of the executing State, the person cannot, because of his age, be held criminally responsible for the act on which the decision on supervision measures is based;

(h) it would, in case of breach of the supervision measures, have to refuse to surrender the person concerned in accordance with Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (hereinafter referred to as the 'Framework Decision on the European Arrest Warrant')

	<p>2. In the cases referred to in paragraph 1(a), (b) and (c), before deciding not to recognise the decision on supervision measures, the competent authority in the executing State shall communicate, by appropriate means, with the competent authority in the issuing State and, as necessary, request the latter to supply without delay all additional information required.</p> <p>3. Where the competent authority in the executing State is of the opinion that the recognition of a decision on supervision measures could be refused on the basis of paragraph 1 under (h), but it is nevertheless willing to recognise the decision on supervision measures and monitor the supervision measures contained therein, it shall inform the competent authority in the issuing State thereof providing the reasons for the possible refusal. In such a case, the competent authority in the issuing State may decide to withdraw the certificate in accordance with the second sentence of Article 13(3). If the competent authority in the issuing State does not withdraw the certificate, the competent authority in the executing State may recognise the decision on supervision measures and monitor the supervision measures contained therein, it being understood that the person concerned might not be surrendered on the basis of a European Arrest Warrant.</p>	<p>Schedule 2, paragraph 5.</p> <p>Schedule 2, paragraph 6.</p>
16	<p>Law governing supervision The monitoring of supervision measures shall be governed by the law of the executing State.</p>	<p>Nothing in the Regulations permits supervision measures to be monitored in a way that does not accord with Scots law.</p>
17	<p>Continuation of the monitoring of supervision measures Where the time period referred to in Article 20(2)(b) is due to expire and the supervision measures are still needed, the competent authority in the issuing State may request the</p>	<p>Schedule 1, paragraphs 7 and 8.</p>

	<p>competent authority in the executing State to extend the monitoring of the supervision measures, in view of the circumstances of the case at hand and the foreseeable consequences for the person if Article 11(2)(d) would apply. The competent authority in the issuing State shall indicate the period of time for which such an extension is likely to be needed.</p> <p>The competent authority in the executing State shall decide on this request in accordance with its national law, indicating, where appropriate, the maximum duration of the extension. In these cases, Article 18(3) may apply.</p>	
<p>18</p>	<p>Competence to take all subsequent decisions and governing law</p> <p>1. Without prejudice to Article 3, the competent authority in the issuing State shall have jurisdiction to take all subsequent decisions relating to a decision on supervision measures. Such subsequent decisions include notably:</p> <ul style="list-style-type: none"> (a) renewal, review and withdrawal of the decision on supervision measures; (b) modification of the supervision measures; (c) issuing an arrest warrant or any other enforceable judicial decision having the same effect. <p>2. The law of the issuing State shall apply to decisions taken pursuant to paragraph 1.</p> <p>3. Where required by its national law, a competent authority in the executing State may decide to use the procedure of recognition set out in this Framework Decision in order to give effect to decisions referred to in paragraph 1(a) and (b) in its national legal system. Such a recognition shall not lead to a new examination of the grounds of non-recognition.</p> <p>4. If the competent authority in the</p>	<p>Nothing in the Regulations deprives a Scottish court of the power to take decisions of the types mentioned where recognition has been granted in another State.</p> <p>And nothing in the Regulations affects the powers of the authorities in other States to take those decisions where the supervision measures have been recognised in Scotland.</p> <p>Nothing in the Regulations affects the law governing the taking of the decisions in question.</p> <p>Schedule 2, paragraph 9.</p> <p>Schedule 2, paragraph 9.</p>

	<p>issuing State has modified the supervision measures in accordance with paragraph 1(b), the competent authority in the executing State may:</p> <p>(a) adapt these modified measures in application of Article 13, in case the nature of the modified supervision measures is incompatible with the law of the executing State;</p> <p>or</p> <p>(b) refuse to monitor the modified supervision measures if these measures do not fall within the types of supervision measures referred to in Article 8(1) and/or within those notified by the executing State concerned in accordance with Article 8(2).</p> <p>5. The jurisdiction of the competent authority in the issuing State pursuant to paragraph 1 is without prejudice to proceedings that may be initiated in the executing State against the person concerned in relation with criminal offences committed by him/her other than those on which the decision on supervision measures is based.</p>	<p>Nothing in the Regulations affects the criminal liability of, or ability to initiate criminal proceedings against, a person subject to supervision measures recognised under the Framework Decision.</p>
<p>19</p>	<p>Obligations of the authorities involved</p> <p>1. At any time during the monitoring of the supervision measures, the competent authority in the executing State may invite the competent authority in the issuing State to provide information as to whether the monitoring of the measures is still needed in the circumstances of the particular case at hand. The competent authority in the issuing State shall, without delay, reply to such an invitation, where appropriate by taking a subsequent decision referred to in Article 18(1).</p> <p>2. Before the expiry of the period referred to in Article 10(5), the competent authority in the issuing State shall specify, ex officio or at the request of the competent authority in</p>	<p>Schedule 1, paragraphs 4 and 9. Schedule 2, paragraph 20.</p> <p>Schedule 1, paragraphs 7 and 8.</p>

	<p>the executing State, for which additional period, if any, it expects that the monitoring of the measures is still needed.</p> <p>3. The competent authority in the executing State shall immediately notify the competent authority in the issuing State of any breach of a supervision measure, and any other finding which could result in taking any subsequent decision referred to in Article 18(1). Notice shall be given using the standard form set out in Annex II.</p> <p>4. With a view to hearing the person concerned, the procedure and conditions contained in instruments of international and European Union law that provide for the possibility of using telephone- and videoconferences for hearing persons may be used mutatis mutandis, in particular where the legislation of the issuing State provides that a judicial hearing must be held before a decision referred to in Article 18(1) is taken.</p> <p>5. The competent authority in the issuing State shall immediately inform the competent authority in the executing State of any decision referred to in Article 18(1) and of the fact that a legal remedy has been introduced against a decision on supervision measures.</p> <p>6. If the certificate relating to the decision on supervision measures has been withdrawn, the competent authority of the executing State shall end the measures ordered as soon as it has been duly notified by the competent authority of the issuing State.</p>	<p>Schedule 2, paragraph 19.</p> <p>Nothing in the Regulations affects the operation of either international laws or domestic procedural rules which govern the use of video-conferencing facilities. So far as these facilities are available in Scotland, they may be used and nothing specific to deal with their use in cases covered by the Framework Decision is considered necessary.</p> <p>This does not require transposition at this time. The introduction of any new legal remedy in relation to a bail decision (either generally, or in the context of a bail-order recognised abroad) would itself require legislation and that legislation would be the appropriate place in which to deal with the requirement to inform the authorities executing States.</p> <p>Schedule 2, paragraph 10.</p>
20	Information from the executing State	

<p>1. The authority in the executing State which has received a decision on supervision measures, which it has no competence to recognise, together with a certificate, shall inform the competent authority in the issuing State to which authority it has forwarded this decision, together with the certificate, in accordance with Article 10(8).</p>	<p>Schedule 2, paragraph 3(3).</p>
<p>2. The competent authority in the executing State shall, without delay, inform the competent authority in the issuing State by any means which leaves a written record:</p>	
<p>(a) of any change of residence of the person concerned;</p>	<p>Schedule 2, paragraph 20(3).</p>
<p>(b) of the maximum length of time during which the supervision measures can be monitored in the executing State, in case the law of the executing State provides such a maximum;</p>	<p>There is to be no maximum length of monitoring time in Scotland.</p>
<p>(c) of the fact that it is in practice impossible to monitor the supervision measures for the reason that, after transmission of the decision on supervision measures and the certificate to the executing State, the person cannot be found in the territory of the executing State, in which case there shall be no obligation of the executing State to monitor the supervision measures;</p>	<p>Schedule 2, paragraphs 12(3)(b), 19 and 20(2).</p>
<p>(d) of the fact that a legal remedy has been introduced against a decision to recognise a decision on supervision measures;</p>	<p>Does not require transposition at this time for the same reason as Article 19(5).</p>
<p>(e) of the final decision to recognise the decision on supervision measures and take all necessary measures for the monitoring of the supervision measures;</p>	<p>Schedule 2, paragraph 4(3)(a).</p>
<p>(f) of any decision to adapt the supervision measures in accordance with Article 13;</p>	<p>Schedule 2, paragraph 4(3)(a).</p>
<p>(g) of any decision not to recognise the decision on supervision measures and to assume responsibility for monitoring of the supervision</p>	<p>Schedule 2, paragraphs 4(3)(a) and 6.</p>

	measures in accordance with Article 15, together with the reasons for the decision.	
21	<p>Surrender of the person</p> <p>1. If the competent authority of the issuing State has issued an arrest warrant or any other enforceable judicial decision having the same effect, the person shall be surrendered in accordance with the Framework Decision on the European Arrest Warrant.</p> <p>2. In this context, Article 2(1) of the Framework Decision on the European Arrest Warrant may not be invoked by the competent authority of the executing State to refuse to surrender the person.</p> <p>3. Each Member State may notify the General Secretariat of the Council, when transposing this Framework Decision or at a later stage, that it will also apply Article 2(1) of the Framework Decision on the European Arrest Warrant in deciding on the surrender of the person concerned to the issuing State.</p> <p>4. The General Secretariat of the Council shall make the information received under paragraph 3 available to all Member States and to the Commission.</p>	<p>This is covered by current legislation on the European Arrest Warrant.</p> <p>UK Government has indicated that it intends to invoke Article 2(1) in terms of Article 21(3).</p> <p>As above.</p> <p>Obligation on the General Secretariat of the Council, does not require transposition.</p>
22	<p>Consultations</p> <p>1. Unless impracticable, the competent authorities of the issuing State and of the executing State shall consult each other:</p> <p>(a) during the preparation, or, at least, before forwarding a decision on supervision measures together with the certificate referred to in Article 10;</p> <p>(b) to facilitate the smooth and efficient monitoring of the supervision measures;</p> <p>(c) where the person has committed a serious breach of the supervision measures imposed.</p>	<p>Schedule 1, paragraphs 2(6) and 9. Schedule 2, paragraphs 19 and 20.</p>

	<p>2. The competent authority in the issuing State shall take due account of any indications communicated by the competent authority of the executing State on the risk that the person concerned might pose to victims and to the general public.</p> <p>3. In application of paragraph 1, the competent authorities of the issuing State and of the executing State shall exchange all useful information, including:</p> <p>(a) information allowing verification of the identity and place of residence of the person concerned;</p> <p>(b) relevant information extracted from criminal records in accordance with applicable legislative instruments.</p>	<p>To be covered in guidance to judges about considerations relevant to when requests may be made and the framing of bail conditions for recognition.</p> <p>Schedule 1, paragraph 9 (3) and (4).</p>
<p>23</p>	<p>Unanswered notices</p> <p>1. Where the competent authority in the executing State has transmitted several notices referred to in Article 19(3) in respect of the same person to the competent authority in the issuing State, without this latter authority having taken any subsequent decision referred to in Article 18(1), the competent authority in the executing State may invite the competent authority in the issuing State to take such a decision, giving it a reasonable time limit to do so.</p> <p>2. If the competent authority in the issuing State does not act within the time limit indicated by the competent authority in the executing State, the latter authority may decide to stop monitoring the supervision measures. In such case, it shall inform the competent authority in the issuing State of its decision, and the competence for the monitoring of the supervision measures shall revert back to the competent authority in the issuing State in application of Article 11(2).</p>	<p>Schedule 2, paragraph 19(3).</p> <p>Schedule 2, paragraph 19(4).</p>

	<p>3. Where the law of the executing State requires a periodic confirmation of the necessity to prolong the monitoring of the supervision measures, the competent authority in the executing State may request the competent authority in the issuing State to provide such confirmation, giving it a reasonable time limit to reply to such a request. In case the competent authority in the issuing State does not answer within the time limit concerned, the competent authority in the executing State may send a new request to the competent authority in the issuing State, giving it a reasonable time limit to reply to such a request and indicating that it may decide to stop monitoring the supervision measures if no reply is received within that time limit. Where the competent authority in the executing State does not receive a reply to such a new request within the time limit set, it may act in accordance with paragraph 2.</p>	<p>Periodic confirmation of the necessity to prolong the monitoring of the supervision measures is not required under Scots law.</p>
24	<p>Languages Certificates shall be translated into the official language or one of the official languages of the executing State. Any Member State may, either when this Framework Decision is adopted or at a later date, state in a declaration deposited with the General Secretariat of the Council that it will accept a translation in one or more other official languages of the Institutions of the European Union.</p>	<p>Schedule 1, paragraph 2(4). Applications to the UK will only be accepted in English.</p>
25	<p>Costs Costs resulting from the application of this Framework Decision shall be borne by the executing State, except for costs arising exclusively within the territory of the issuing State.</p>	<p>This Article does not require transposition.</p>
26	<p>Relation to other agreements and arrangements 1. In so far as such agreements or arrangements allow the objectives of</p>	<p>This Article does not require transposition.</p>

	<p>this Framework Decision to be extended or enlarged and help to simplify or facilitate further the mutual recognition of decisions on supervision measures, Member States may:</p> <p>(a) continue to apply bilateral or multilateral agreements or arrangements in force when this Framework Decision enters into force;</p> <p>(b) conclude bilateral or multilateral agreements or arrangements after this Framework Decision has entered into force.</p> <p>2. The agreements and arrangements referred to in paragraph 1 shall in no case affect relations with Member States which are not parties to them.</p> <p>3. Member States shall, by 1 March 2010, notify the Commission and the Council of the existing agreements and arrangements referred to in paragraph 1(a) which they wish to continue applying.</p> <p>4. Member States shall also notify the Commission and the Council of any new agreement or arrangement as referred to in paragraph 1(b), within three months of signing any such arrangement or agreement.</p>	
27	<p>Implementation</p> <p>1. Member States shall take the necessary measures to comply with the provisions of this Framework Decision by 1 December 2012.</p> <p>2. By the same date Member States shall transmit to the Council and to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Framework Decision.</p>	This Article does not require transposition.
28	<p>Report</p> <p>1. By 1 December 2013 the Commission shall draw up a report on the basis of the information received from Member States under Article</p>	This Article does not require transposition.

	<p>27(2).</p> <p>2. On the basis of this report, the Council shall assess:</p> <p>(a) the extent to which the Member States have taken the necessary measures in order to comply with this Framework Decision; and</p> <p>(b) the application of this Framework Decision.</p> <p>3. The report shall be accompanied, if necessary, by legislative proposals.</p>	
<p>29</p>	<p>Entry into force</p> <p>This Framework Decision shall enter into force on the 20th day following its publication in the Official Journal of the European Union.</p>	<p>This Article does not require transposition.</p>