

SCHEDULE 2

Regulation 4

Monitoring of another State's supervision measures in Scotland

Interpretation of this Schedule

1.—(1) In this Schedule—

“decision on supervision measures” means an enforceable decision issued in the course of criminal proceedings by a competent authority in 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;

“issuing State” means the member State in which the decision on supervision measures in question was issued;

“Scottish central authority” means the Scottish Court Service;

“supervision measure” means an obligation or instruction imposed on a natural person, in accordance with the national law and procedures of the issuing State.

(2) For the purposes of this Schedule, the Scottish central authority is to be regarded as having received a thing from the central authority or competent authority in a member State whether the Scottish central authority receives the thing from the State's authority directly or indirectly.

Receipt of a request to forward a decision on supervision measures

2.—(1) Sub-paragraph (2) applies when the Scottish central authority receives a request under Article 9(2) of the Framework Decision for consent to the forwarding of a decision on supervision measures from the central authority or competent authority in a member State other than the United Kingdom.

(2) The Scottish central authority must send the request to a sheriff.

(3) The sheriff may consent to a request received under sub-paragraph (2) only if the sheriff is satisfied that the conditions for consenting are met.

(4) The conditions for consenting are the conditions set out in the statement most recently made by the UK Government under Article 9(4) of the Framework Decision.

(5) The central authority or competent authority which made the request must be informed of the sheriff's decision by the Scottish central authority.

Receipt of a request for recognition of a decision on supervision measures

3.—(1) This paragraph applies when the Scottish central authority receives a request for recognition by a competent authority in Scotland of a decision on supervision measures from the central authority or competent authority in a member State other than the United Kingdom.

(2) If the request is not accompanied by the required documents, the Scottish central authority must advise the central authority or competent authority in the issuing State that the request will not be dealt with in Scotland unless the required documents accompany it.

(3) If the request is accompanied by the required documents but it relates to a part of the United Kingdom other than Scotland, the Scottish central authority must—

(a) send those documents to—

(i) the Lord Chancellor, if the request relates to England and Wales; or

(ii) the Department of Justice in Northern Ireland, if the request relates to Northern Ireland; and

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- (b) inform the central authority or competent authority in the issuing State what has been done under head (a).
- (4) If the request is accompanied by the required documents and it relates to Scotland, the Scottish central authority must send copies of those documents to the appropriate sheriff court.
- (5) For the purposes of sub-paragraphs (3) and (4)—
 - (a) the part of the United Kingdom to which a request relates is the part of the United Kingdom in which lies—
 - (i) if one of the supervision measures contained in the decision is an obligation to inform a person in the United Kingdom should the person to whom the decision relates cease to reside at a specified United Kingdom address, that specified address;
 - (ii) if no address is specified as mentioned in sub-head (i), the address specified in the certificate mentioned in sub-paragraph (7)(b) as being the United Kingdom address or residence of the person to whom the decision on supervision measures relates;
 - (b) if more than one address or residence is specified as mentioned in head (a)(ii), only the one which appears first in the certificate is to be taken into account.
- (6) For the purpose of sub-paragraph (4), the appropriate sheriff court is any sheriff court in the sheriffdom which encompasses the address that is identified in accordance with sub-paragraph (5) for the purpose of determining the part of the United Kingdom to which the request relates.
- (7) The required documents referred to in sub-paragraphs (2) to (4) are—
 - (a) either—
 - (i) the original of the decision on supervision measures; or
 - (ii) a copy of it;
 - (b) a certificate in the form set out in Annex I to the Framework Decision that is signed, and the contents of which are certified as accurate, by the competent authority in the issuing State; and
 - (c) if the certificate is not in English, a copy of it translated into English.

Recognition of a decision on supervision measures

- 4.—(1) After a decision on supervision measures is received by a sheriff court in accordance with paragraph 3(4), a sheriff of the court must decide whether to—
- (a) recognise the decision on supervision measures (with or without adapting the supervision measures in accordance with paragraph 8); or
 - (b) refuse to recognise it (which can be done only on a ground specified in paragraph 7 and, where paragraph 5 applies, only after complying with its requirements).
- (2) The sheriff must—
- (a) endeavour to make a decision under sub-paragraph (1) within 20 working days of the decision on supervision measures being received by the sheriff court; or
 - (b) if it is not possible to make a decision within that period, request that the Scottish central authority inform the central authority or competent authority in the issuing State of—
 - (i) the reason a decision under sub-paragraph (1) cannot be made sooner; and
 - (ii) when the sheriff expects to make a decision under that sub-paragraph.
- (3) After the sheriff makes a decision under sub-paragraph (1)—
- (a) the Scottish central authority must inform the central authority or competent authority in the issuing State of the sheriff's decision; and

- (b) if the sheriff's decision is to recognise the decision on supervision measures, the Scottish central authority must also inform the Police Service of Scotland of the sheriff's decision.

Further procedure where recognition may be refused

5.—(1) Before refusing to recognise a decision on supervision measures on a ground specified in sub-head (i) to (iv) of paragraph 7(1)(b), the sheriff must—

- (a) request that the Scottish central authority seek from the competent authority in the issuing State—
 - (i) if the ground for refusing recognition being considered by the sheriff is sub-head (i) of paragraph 7(1)(b), a suitably corrected certificate;
 - (ii) in any other case, additional information to satisfy the sheriff about the matter specified in the sub-head of paragraph 7(1)(b) in question; and
- (b) have regard to anything received in response to that request.

(2) Where the sheriff makes a request under sub-paragraph (1)(a)—

- (a) paragraph 4(2) ceases to apply;
- (b) if no response has been received by the end of the day falling 21 working days after the making of the request, the sheriff may make a decision under paragraph 4(1) on the next working day.

6.—(1) Sub-paragraph (2) applies where the sheriff—

- (a) is of the opinion that recognition of a decision on supervision measures may be refused on the ground specified in sub-head (ix) of paragraph 7(1)(b); but
- (b) is nevertheless willing to recognise the decision.

(2) The sheriff must request that the Scottish central authority inform the competent authority in the issuing State—

- (a) that the sheriff is of the opinion mentioned in sub-paragraph (1)(a); and
- (b) of the reasons for that opinion.

Grounds on which recognition may be refused

7.—(1) Under paragraph 4(1), the sheriff—

- (a) must refuse to recognise a decision on supervision measures if the certificate referred to in paragraph 3(7)(b) includes a measure which is not of a type mentioned in Article 8(1) of the Framework Decision; and
- (b) may refuse to recognise a decision on supervision measures (in a case where refusal is not required by head (a)) only if—
 - (i) the certificate referred to in paragraph 3(7)(b) is incomplete or obviously does not correspond to the decision;
 - (ii) the sheriff is not satisfied that the person to whom the decision relates is ordinarily and lawfully resident in the United Kingdom (but see sub-paragraph (2));
 - (iii) the sheriff is not satisfied that the person to whom the decision relates has—
 - (aa) been informed about the supervision measures contained in the decision; and
 - (bb) consented to come to the United Kingdom;

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- (iv) the sheriff is not satisfied that the proceedings in which the decision was issued do not contravene the *ne bis in idem* principle;
- (v) the double criminality exception set out in sub-paragraph (3) applies;
- (vi) the decision has been issued in proceedings in respect of an alleged act or omission—
 - (aa) that constitutes an offence in Scots law; and
 - (bb) for which the person to whom the decision relates could not, by virtue of an enactment, be prosecuted in Scotland;
- (vii) the decision has been issued in proceedings in respect of an alleged act committed or omission made by the person to whom the decision relates when that person was under the age mentioned in section 41 (age of criminal responsibility) of the Criminal Procedure (Scotland) Act 1995;
- (viii) the person to whom the decision relates enjoys a legal immunity that would make monitoring the person's compliance with the supervision measures impossible;
- (ix) the person to whom the decision relates could not be extradited under Part 1 of the Extradition Act 2003⁽¹⁾ for breaching the supervision measures contained in the decision;
- (x) the sheriff has cause to believe that the supervision measures contained in the decision were imposed to punish the person to whom the decision relates on account of the person's gender, race, religion, ethnic origin, nationality, language, political convictions or sexual orientation or will disadvantage the person due to one of those characteristics.

(2) Recognition of a decision on supervision measures may not be refused on the ground mentioned in sub-paragraph (1)(b)(ii) if the forwarding of the decision was consented to under paragraph 2(3).

(3) The double criminality exception mentioned in sub-paragraph (1)(b)(v) applies in relation to a decision on supervision measures only if the proceedings in which the decision was issued relate to neither—

- (a) an offence covered by Article 14(1) of the Framework Decision; nor
- (b) an act or omission which would constitute an offence in Scots law were it to occur in Scotland.

(4) For the purpose of sub-paragraph (3)(b), an act or omission may be regarded as constituting an offence in Scots law despite the fact that—

- (a) the act or omission in question concerns a tax, or a customs or currency matter; and
- (b) there is no tax of the same kind in Scotland or (as the case may be) there is no rule of the same kind in Scots law about the customs or currency matter.

Adaptation of supervision measure in Scotland

8. The sheriff may adapt a supervision measure in accordance with this paragraph—

- (a) only if the measure is incompatible with Scots law; and
- (b) only in a way that—
 - (i) is, so far as possible, consistent with the measure;
 - (ii) is consistent with the type of condition that a court in Scotland may impose under section 24(4) of the Criminal Procedure (Scotland) Act 1995 in proceedings that

(1) 2003 c.41.

- relate to an offence of the same type as that in relation to which the supervision measure was imposed; and
- (iii) does not make the measure more severe.

Modification of recognised supervision measure by issuing State

9.—(1) Sub-paragraph (2) applies when—

- (a) a decision on supervision measures has been recognised under paragraph 4(1); and
- (b) the Scottish central authority receives information from the central authority or competent authority in the issuing State that a supervision measure contained in the decision has been modified.

(2) The Scottish central authority must notify the court to which it sent the decision on supervision measures for recognition.

(3) When notice is received at a sheriff court under sub-paragraph (2), a sheriff of that court must—

- (a) if the supervision measure as modified is no longer a measure of a type mentioned in Article 8(1) of the Framework Decision, refuse to recognise it;
- (b) otherwise, recognise the modified supervision measure (with or without adapting it in accordance with paragraph 8).

(4) When the sheriff makes a decision under sub-paragraph (3), the Scottish central authority must inform the central authority or competent authority in the issuing State of the sheriff's decision.

(5) If the sheriff's decision is to recognise the modified supervision measure (with or without adapting it), the Scottish central authority must also inform the Police Service of Scotland of the decision.

Withdrawal of recognised supervision measures

10.—(1) Where—

- (a) a decision on supervision measures has been recognised under paragraph 4(1); and
- (b) the Scottish central authority receives notice from the central authority or competent authority in the issuing State that—
 - (i) the decision has been withdrawn;
 - (ii) the certificate relating to the decision has been withdrawn; or
 - (iii) monitoring of the supervision measures contained in the decision is no longer required,

the Scottish central authority must tell the Police Service of Scotland that monitoring of the supervision measures is no longer required.

(2) Where—

- (a) a decision on supervision measures has been recognised under paragraph 4(1); and
- (b) the Scottish central authority receives notice from the central authority or competent authority in the issuing State that monitoring of a supervision measure contained in the decision is no longer required,

the Scottish central authority must tell the Police Service of Scotland that monitoring of that supervision measure is no longer required.

End of period for monitoring supervision measures

- 11.**—(1) Sub-paragraph (2) applies when—
- (a) a decision on supervision measures has been recognised under paragraph 4(1);
 - (b) the Scottish central authority has not told the Police Service of Scotland that monitoring of the supervision measures is no longer required; and
 - (c) the relevant period has expired.
- (2) The Scottish central authority must—
- (a) tell the Police Service of Scotland that monitoring of the supervision measures is no longer required; and
 - (b) inform the central authority or competent authority in the issuing State that monitoring of the supervision measures has stopped.
- (3) The relevant period referred to in sub-paragraph (1)(c) is—
- (a) the length of time specified by the competent authority in the issuing State in accordance with Article 10(5) of the Framework Decision; or
 - (b) if the central authority or competent authority in the executing State has advised the Scottish central authority that monitoring of the supervision measures is needed for an additional length of time beyond that mentioned in head (a) or (as the case may be) beyond that most recently advised under this head, that additional length of time.

Police responsibilities

- 12.**—(1) If a constable has reasonable grounds to suspect that a person has breached or is breaching a supervision measure which a court in the United Kingdom is responsible for monitoring, the Police Service of Scotland must notify the relevant body.
- (2) For the purpose of sub-paragraph (1), the relevant body is—
- (a) if a sheriff court is responsible for monitoring the supervision measure in question, the Scottish central authority;
 - (b) if a magistrates' court in England or Wales is responsible for monitoring the supervision measure in question, the police force for the area in which that court sits;
 - (c) if a magistrates' court in Northern Ireland is responsible for monitoring the supervision measure in question, the Police Service of Northern Ireland.
- (3) The Police Service of Scotland must notify the Scottish central authority if—
- (a) it is informed by a police force of England and Wales or the Police Service of Northern Ireland that a person has breached a supervision measure which a sheriff court is responsible for monitoring; or
 - (b) it cannot find a person who is subject to supervision measures which a sheriff court is responsible for monitoring.

Arrest on suspicion of supervision measure breach

- 13.**—(1) A constable may arrest a person without warrant if—
- (a) the constable has reasonable grounds to suspect that person is breaching or has breached a supervision measure which a court in the United Kingdom is responsible for monitoring; and
 - (b) the constable considers it necessary to arrest the person in order to protect an individual, the public or a section of the public.

(2) For the avoidance of doubt, sub-paragraph (1) is without prejudice to any other power of arrest without warrant which may be exercised by a constable.

Interpretation of paragraphs 12 and 13

14.—(1) For the purposes of paragraphs 12 and 13—

- (a) a sheriff court is responsible for monitoring a supervision measure if—
 - (i) under paragraph 4(1), a sheriff of the court has recognised the decision containing the supervision measure; and
 - (ii) the Scottish central authority has not told the Police Service of Scotland that monitoring of the supervision measure is no longer required;
- (b) a magistrates' court in England, Wales or Northern Ireland is responsible for monitoring a supervision measure if the court—
 - (i) has become responsible for monitoring the measure under regulation 88 or 107 of the Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014; and
 - (ii) has not yet ceased to be responsible for monitoring it in accordance with those Regulations.

(2) References in paragraphs 12 and 13 to a supervision measure, in a case where the measure is contained in a decision that has been recognised under paragraph 4(1), are to the measure subject to any—

- (a) adaptation under paragraph 8; and
- (b) modification recognised under paragraph 9.

Procedure following arrest

15.—(1) A person who is arrested under paragraph 13(1) must be—

- (a) informed of the reason for the arrest;
- (b) taken to a police station as quickly as is reasonable practicable; and
- (c) detained until the person can be brought before a court under sub-paragraph (3).

(2) A person who is detained under sub-paragraph (1)(c) is entitled—

- (a) to be informed immediately of the rights given by heads (b) to (e);
- (b) to have, on request, intimation of the detention and of the place of detention sent, without delay, to a solicitor and to one other person reasonably named by the detained person;
- (c) to have, on request, intimation given to a solicitor that the solicitor's professional assistance is required;
- (d) to have, on request, the solicitor informed, as soon as the information is available, of—
 - (i) the court which the detained person is to be brought before under sub-paragraph (3); and
 - (ii) the date when that is to happen; and
- (e) to have, on request, a private interview with the solicitor before being brought before a court under sub-paragraph (3).

(3) A person arrested under paragraph 13(1) must be brought before a sheriff court—

- (a) in the course of the first working day after the arrest; or
- (b) if it is not practicable to bring the person before a sheriff court in accordance with head (a), as soon as it is practicable to do so.

- (4) The following are to be recorded in relation to any arrest under paragraph 13(1)—
- (a) the time of arrest;
 - (b) the name of the police station to which the person was taken in accordance with sub-paragraph (1)(b);
 - (c) the time at which the person arrived at that police station;
 - (d) the address (or details of the location of) any other place to which the person was taken after the arrest and before being brought before a court under sub-paragraph (3);
 - (e) the time the person was informed of the rights given by sub-paragraph (2);
 - (f) the time and details of any request under sub-paragraph (2);
 - (g) the time and details of action taken in response to any request under sub-paragraph (2);
 - (h) where applicable, the time and details of action taken in accordance with paragraph 16.

Detention of arrested children

- 16.**—(1) This paragraph applies where a person detained under paragraph 15(1)(c)—
- (a) is believed by a constable to be under 16 years of age; or
 - (b) is subject to a compulsory supervision order, or an interim compulsory supervision order, made under the Children’s Hearings (Scotland) Act 2011(2).
- (2) The detained person—
- (a) may not be liberated under subsection (1) of section 43 of the Criminal Procedure (Scotland) Act 1995; and
 - (b) is to be kept in accordance with subsection (4) of that section.
- (3) A constable must send to a person known to have parental rights and responsibilities in relation to the detained person, or to have care of that person, intimation of—
- (a) the fact that the detained person is in detention; and
 - (b) the place where the detained person is being held.
- (4) A person to whom intimation is sent under sub-paragraph (3) must be permitted reasonable access to the detained person.

Court’s power to order detention

- 17.**—(1) Sub-paragraphs (2) and (3) apply where a person is brought before a sheriff in accordance with paragraph 15(3).
- (2) The procurator fiscal must present to the sheriff a petition—
- (a) giving particulars of the person;
 - (b) stating the facts and circumstances which gave rise to the person’s arrest;
 - (c) giving any information known to the procurator fiscal about the circumstances which gave rise to the decision on supervision measures;
 - (d) giving any other information known to the procurator fiscal that is relevant to an assessment of the risk the person poses to an individual, the public at large or a section of the public.
- (3) The sheriff may order that the person be detained if, on the basis of the information presented—

(2) 2011 asp 1.

- (a) it appears to the sheriff more likely than not that the person has breached a supervision measure; and
- (b) in the sheriff's opinion, detaining the person is necessary for the purpose mentioned in sub-paragraph (4).

(4) The purpose is protecting an individual, the public or a section of the public until a response is received from the competent authority in the issuing State to the notice informing it of the breach of the supervision measure sent by the Scottish central authority or (as the case may be) a magistrates' court in England, Wales or Northern Ireland.

(5) Under sub-paragraph (3), the sheriff may not order a person's detention for more than—

- (a) 28 days, if the person is 18 years of age or over; or
- (b) 21 days, if the person is under 18 years of age.

(6) A person may not be detained by virtue of an order under sub-paragraph (3) beyond the end of the day on which the Scottish central authority receives from the competent authority in the issuing State a response to the notice mentioned in sub-paragraph (4) which confirms either—

- (a) that the competent authority in the issuing State has, in light of the reported breach, taken a decision of a type mentioned in Article 18(1) of the Framework Decision; or
- (b) that the competent authority in the issuing State is not going to take such a decision in light of the reported breach.

Court-ordered detention of children and young persons

18.—(1) Where the detention of a person under 21 years of age is ordered under paragraph 17(3), section 51 of the Criminal Procedure (Scotland) Act 1995 (“section 51”) applies as if the person were being remanded for trial.

(2) Where section 51 applies by virtue of sub-paragraph (1), references in it to a person being liberated in due course of law are to be read as references to the person being entitled to liberation under paragraph 17(6).

Reporting breach to issuing State

19.—(1) On receiving notice from the Police Service of Scotland under paragraph 12, the Scottish central authority must notify the competent authority or central authority in the issuing State.

(2) Where the notice received by the Scottish central authority in accordance with sub-paragraph (1) relates to a breach of a supervision measure, the notice to be given by the Scottish central authority in accordance with that sub-paragraph is to be given using the form set out in Annex II to the Framework Decision.

(3) If the Scottish central authority—

- (a) has sent to the central authority or competent authority in the issuing State 6 or more notices relating to a person's breach of a supervision measure (whether or not the notices relate to the same measure); and
- (b) has not received in response to any of the 6 notices most recently sent confirmation that the competent authority in the issuing State has taken in relation to the person a decision of a type mentioned in Article 18(1) of the Framework Decision,

the Scottish central authority must send to the central authority or competent authority in the issuing State a request that the competent authority in that State take a decision of a type mentioned in Article 18(1) in relation to the person within 28 days of the request being sent.

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(4) If, 29 days after sending the request mentioned in sub-paragraph (3), the Scottish central authority has not received confirmation that the competent authority in the issuing State has complied with the request, the Scottish central authority must—

- (a) tell the Police Service of Scotland that monitoring of the supervision measures is no longer required; and
- (b) inform the central authority or competent authority in the issuing State that monitoring of the supervision measures has stopped.

Dialogue with the issuing State, police and others

20.—(1) The Scottish central authority is to assist the courts and the Police Service of Scotland in discharging their responsibilities under this Schedule.

(2) In particular, the Scottish central authority is to—

- (a) engage with any central authority or competent authority in a member State which consults it under Article 22(1)(a) of the Framework Decision; and
- (b) consult and liaise with the central authority or competent authority in the issuing State and the Police Service of Scotland where appropriate—
 - (i) to assist the court in considering whether to recognise a decision on supervision measures under paragraph 4(1); and
 - (ii) to facilitate the smooth and efficient monitoring of the supervision measures contained in a decision which has been recognised under that paragraph.

(3) Where—

- (a) a decision on supervision measures has been recognised under paragraph 4(1);
- (b) the Scottish central authority has not told the Police Service of Scotland that monitoring of the supervision measures is no longer required; and
- (c) the Scottish central authority becomes aware that the person subject to the supervision measures has changed residence,

the Scottish central authority must inform the central authority or competent authority in the issuing State of the person's change of residence.