

SCHEDULE 2

Monitoring of another State's supervision measures in Scotland

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;
 - (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).

(1) 2003 c.41.

Status: This is the original version (as it was originally made).

(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.