

*Status: Point in time view as at 01/04/2012.*

*Changes to legislation: There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010, Cross Heading: The 1995 Act. (See end of Document for details)*

## SCHEDULE 4 **S** CONVICTIONS BY COURTS IN OTHER EU MEMBER STATES: MODIFICATIONS OF ENACTMENTS

### PART 1 **S**

#### THE 1995 ACT

##### *The 1995 Act*

1 The 1995 Act is amended as follows.

#### Commencement Information

**I1** Sch. 4 para. 1 in force at 13.12.2010 by S.S.I. 2010/413, art. 2, Sch. (with Sch.)

2 In section 23C(2)(d)(i) (previous convictions to be taken into consideration in determining bail), for “outwith Scotland” substitute “ by courts outside the European Union ”.

#### Commencement Information

**I2** Sch. 4 para. 2 in force at 13.12.2010 by S.S.I. 2010/413, art. 2, Sch. (with Sch.)

3 In section 27 (breach of bail conditions: offences), after subsection (3) insert—

“(3A) The reference in subsection (3)(b) to any previous conviction of an offence under subsection (1)(b) includes any previous conviction by a court in England and Wales, Northern Ireland or a member State of the European Union other than the United Kingdom of an offence that is equivalent to an offence under subsection (1)(b).

(3B) The references in subsection (3)(c) to subsection (3) are to be read, in relation to a previous conviction by a court referred to in subsection (3A), as references to any provision that is equivalent to subsection (3).

(3C) Any issue of equivalence arising in pursuance of subsection (3A) or (3B) is for the court to determine.”.

#### Commencement Information

**I3** Sch. 4 para. 3 in force at 13.12.2010 by S.S.I. 2010/413, art. 2, Sch. (with Sch.)

4 In section 202(2) (deferred sentence), for “Great Britain” substitute “ the United Kingdom or in another member State of the European Union ”.

#### Commencement Information

**I4** Sch. 4 para. 4 in force at 13.12.2010 by S.S.I. 2010/413, art. 2, Sch. (with Sch.)

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

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- (a) in each of subsections (1) and (2), after “United Kingdom” insert “ or in another member State of the European Union ”, and
- (b) after subsection (4) insert—
  - “(4A) The court shall, for the purpose of determining whether a person has been previously sentenced to imprisonment or detention by a court in a member State of the European Union other than the United Kingdom—
    - (a) disregard any previous sentence of imprisonment which, being the equivalent of a suspended sentence, has not taken effect;
    - (b) construe detention as meaning an equivalent sentence to any of those mentioned in subsection (4)(b).
  - (4B) Any issue of equivalence arising in pursuance of subsection (4A) is for the court to determine.”.

**Commencement Information**

**I5** Sch. 4 para. 5 in force at 13.12.2010 by S.S.I. 2010/413, art. 2, Sch. (with Sch.)

- 6 In section 205B (minimum sentence for third conviction of certain offences relating to drug trafficking)—
- (a) in subsection (1)(b), for “been convicted in any part of the United Kingdom of two other class A drug trafficking offences” substitute “ two previous convictions for relevant offences ”, and
  - (b) after subsection (1) insert—
    - “(1A) In subsection (1), “relevant offence” means—
      - (a) in relation to a conviction by a court in any part of the United Kingdom, a class A drug trafficking offence;
      - (b) in relation to a conviction by a court in a member State of the European Union other than the United Kingdom, an offence that is equivalent to a class A drug trafficking offence.
    - (1B) Any issue of equivalence arising in pursuance of subsection (1A)(b) is for the court to determine.”.

**Commencement Information**

**I6** Sch. 4 para. 6 in force at 13.12.2010 by S.S.I. 2010/413, art. 2, Sch. (with Sch.)

- 7 In section 275A (disclosure of accused's previous convictions where court allows questioning or evidence under section 275)—
- (a) in subsection (10)—
    - (i) the word “or” immediately following paragraph (a) is repealed, and
    - (ii) after paragraph (a) insert—
      - “(aa) a conviction by a court in England and Wales, Northern Ireland or a member State of the European Union other than the United Kingdom of an offence that is equivalent to one to which section 288C of

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this Act applies by virtue of subsection (2) thereof;  
or”, and

(b) after subsection (10) insert—

“(10A) Any issue of equivalence arising in pursuance of subsection (10)(aa)  
is for the court to determine.”.

#### Commencement Information

**I7** Sch. 4 para. 7 in force at 13.12.2010 by S.S.I. 2010/413, art. 2, Sch. (with Sch.)

8 In section 307 (interpretation)—

(a) in subsection (1), insert the following definition at the appropriate place—

““conviction”, in relation to a previous conviction by a court outside  
Scotland, means a final decision of a criminal court establishing guilt of a  
criminal offence;”, and

(b) for subsection (5) substitute—

“(5) Except where the context requires otherwise—

- (a) any reference in this Act to a previous conviction is to be construed as a reference to a previous conviction by a court in any part of the United Kingdom or in any other member State of the European Union;
- (b) any reference in this Act to a previous sentence is to be construed as a reference to a previous sentence passed by any such court;
- (c) any reference to a previous conviction of a particular offence is to be construed, in relation to a previous conviction by a court outside Scotland, as a reference to a previous conviction of an equivalent offence; and
- (d) any reference to a previous sentence of a particular kind is to be construed, in relation to a previous sentence passed by a court outside Scotland, as a reference to a previous sentence of an equivalent kind.”.

#### Commencement Information

**I8** Sch. 4 para. 8 in force at 13.12.2010 by S.S.I. 2010/413, art. 2, Sch. (with Sch.)

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