

Draft Order laid before the Scottish Parliament under section 81(3)(a) of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2014 No.

CRIMINAL PROCEDURE

The Mutual Recognition of Criminal Financial Penalties in the European Union (Scotland) (No. 1) Order 2014

Made - - - -

Coming into force - - *1st December 2014*

The Scottish Ministers make the following Order in exercise of the powers conferred by section 56(1) of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007(a) and all other powers enabling them to do so.

In accordance with section 81(3)(a) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation and commencement

1. This Order may be cited as the Mutual Recognition of Criminal Financial Penalties in the European Union (Scotland) (No. 1) Order 2014 and comes into force on 1st December 2014.

Amendment of the Criminal Procedure (Scotland) Act 1995

2. The Criminal Procedure (Scotland) Act 1995(b) is amended in accordance with regulations 3-8.

3. In section 223E(2), for “223C(2)” substitute “223C”(c).

4. After section 223F insert—

“223FA Requests from other member States: procedure where no certificate

(1) Subsection (2) applies where—

(a) a requesting authority has—

(i) given the central authority for Scotland a decision, or a certified copy of a decision, requiring payment of a financial penalty; and

(a) 2007 asp 6: section 56 was amended by S.I. 2007/1655, Schedule 1(1), paragraph 19(2).

(b) 1995 c.46.

(c) Sections 223A to 223T were inserted by the Mutual Recognition of Criminal Financial Penalties in the European Union (Scotland) Order 2009 (S.S.I. 2009/342).

(ii) asked that the decision be enforced in any part of the United Kingdom under the Framework Decision on financial penalties; and

(b) the central authority for Scotland has not been given anything purporting to be a certificate relating to the decision.

(2) The central authority for Scotland must immediately notify the requesting authority that the decision will not be enforced in Scotland unless a certificate relating to the decision is given to the central authority for Scotland.

(3) For the purpose of this section, a requesting authority is to be treated as having given a decision, or a certified copy of a decision, requiring payment of a financial penalty to the central authority for Scotland if—

(a) the requesting authority gave the decision, or the certified copy, to—

(i) the central authority for England and Wales; or

(ii) the central authority for Northern Ireland; and

(b) the central authority given the decision, or the certified copy, by the requesting authority—

(i) has not taken any action to enforce the financial penalty; and

(ii) has given the decision, or the certified copy, to the central authority for Scotland.

(4) In this section, “requesting authority” means the competent authority, or central authority, of a member State other than the United Kingdom.”.

5. Section 223G is repealed.

6. In section 223H—

(a) after subsection (3) insert—

“(3A) The competent authority for Scotland may not decide that a ground for refusal specified in subsection (3B) applies unless the authority which signed the certificate referred to in subsection (1)(a) has—

(a) been informed that the competent authority for Scotland may be minded to make that decision;

(b) been consulted; and

(c) where appropriate, been given an opportunity to supply any information that is necessary if the financial penalty is to be enforced in Scotland.

(3B) The specified grounds for refusal referred to in subsection (3A) are the grounds for refusal mentioned in paragraphs 5A and 6 of Schedule 12.”; and

(b) subsection (4) is repealed.

7. In subsection (3) of section 223I, for the words from “act” to the end substitute “immediately return any of them which are of a type mentioned in subsection (1)(a) of section 223F to the authority which signed the certificate referred to in that subsection.”.

8. In Schedule 12(a)—

(a) in paragraphs 4 and 5, omit the words “to which the financial penalty relates”;

(b) after paragraph 5 insert—

“**5A.** The certificate—

(a) is incomplete (including by reason of not being signed, or its contents not being certified as accurate); or

(a) Schedule 12 was inserted by the Mutual Recognition of Criminal Financial Penalties in the European Union (Scotland) Order 2009 (S.S.I. 2009/342).

- (b) manifestly does not correspond to the decision.”; and
- (c) in paragraph 47(1)—
 - (i) before paragraph (a) insert—
 - “(za) “certificate” means the certificate referred to in section 223F(1)(a)(i);”;
 - (ii) after paragraph (a) insert—
 - “(aa) “decision” means the decision to which the certificate relates;”.

St Andrew’s House,
Edinburgh
Date

Name
A member of the Scottish Government

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, which extends only to Scotland, makes further provision for the implementation of the Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties (OJ L 76, 22.03.2005, p.16-30) (“the Framework Decision”). The Order amends the existing implementing provisions in sections 223A to 223T of, and Schedules 11 and 12 to, the Criminal Procedure (Scotland) Act 1995 as inserted by the Mutual Recognition of Criminal Financial Penalties in the European Union (Scotland) Order 2009 (S.S.I. 2009/342). The amendments are made in order to reflect more explicitly the terms of the Framework Decision.

Article 4 inserts a new section 223FA after section 223F. The section applies when a requesting authority seeking enforcement of a financial penalty has not provided the certificate that requires to accompany the request, and when the central authority for Scotland is in consequence unable to allocate the request to a competent authority. The section requires the central authority for Scotland to notify the requesting authority that the decision will not be enforced in Scotland unless a certificate is provided.

Article 5 repeals section 223G, which currently requires the central authority for Scotland to return a decision and certificate to the requesting authority when the certificate is not signed or certified, or does not correspond with the decision.

Article 6 amends section 223H so as to require a competent authority considering a request for recognition to consult with the requesting authority before refusing recognition on certain grounds.

Article 8(b) amends the grounds for non-recognition specified in Schedule 12 so as to include as a ground for non-recognition by the competent authority the fact that a certificate is incomplete, or does not correspond to the decision.

Taken together, Articles 4, 5, 6 and 8(b) give effect to the scheme of the Framework Decision, in terms of which the decision whether to refuse recognition of a decision on the basis that the accompanying certificate is incomplete, or does not correspond to the decision, falls to be made by the competent authority, and in terms of which the requesting authority requires to be consulted before recognition is refused on certain grounds.

The Framework Decision has now been amended by Council Framework Decision 2009/299/JHA of 26 February 2009 (OJ L 81, 27.03.2009, p.24) and an Order is proposed to be laid in early course to transpose its requirements.

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