
SCOTTISH STATUTORY INSTRUMENTS

2009 No. 342

The Mutual Recognition of Criminal Financial Penalties in the European Union (Scotland) Order 2009

PART II

AMENDMENT OF THE CRIMINAL PROCEDURE (SCOTLAND) ACT 1995

Amendment of the Criminal Procedure (Scotland) Act 1995: supplementary provisions

8. After Schedule 10 to the Criminal Procedure (Scotland) Act 1995, insert—

“SCHEDULE 11

Section 223F(7)

FINANCIAL PENALTIES SUITABLE FOR ENFORCEMENT IN SCOTLAND

Person residing in Scotland

1. The financial penalty is suitable for enforcement in Scotland if the certificate states that the person required to pay the penalty is normally resident in Scotland.

Person having property etc. in Scotland

- 2.** The financial penalty is suitable for enforcement in Scotland if—
- (a) the certificate states that the person required to pay the penalty has property or a source of income in Scotland, and
 - (b) the certificate does not state—
 - (i) that the person has property or a source of income in England and Wales, or Northern Ireland, or
 - (ii) that the person is normally resident in the United Kingdom.

Person having property etc. in Scotland and England and Wales

- (1) This paragraph applies if—
- (a) the certificate states that the person required to pay the financial penalty has property or a source of income in Scotland,
 - (b) the certificate also states that the person has property or a source of income in England and Wales, and
 - (c) the certificate does not state—
 - (i) that the person has property or a source of income in Northern Ireland, or
 - (ii) that the person is normally resident in the United Kingdom.

(2) The financial penalty is suitable for enforcement in Scotland unless sub-paragraph (3) applies.

(3) This sub-paragraph applies if—

- (a) the central authority was given the certificate by the competent authority or central authority of another member State (and not by the authority designated as the central authority for England and Wales, or the central authority for Northern Ireland), and
- (b) the central authority thinks that it is more appropriate for the financial penalty to be enforced in England and Wales than in Scotland.

Person having property etc. in Scotland and Northern Ireland

(1) This paragraph applies if—

- (a) the certificate states that the person required to pay the financial penalty has property or a source of income in Scotland,
- (b) the certificate also states that the person has property or a source of income in Northern Ireland, and
- (c) the certificate does not state—
 - (i) that the person has property or a source of income in England and Wales, or
 - (ii) that the person is normally resident in the United Kingdom.

(2) The financial penalty is suitable for enforcement in Scotland unless sub-paragraph (3) applies.

(3) This sub-paragraph applies if—

- (a) the central authority was given the certificate by the competent authority or central authority of another member State (and not by the authority designated as the central authority for England and Wales, or the central authority for Northern Ireland), and
- (b) the central authority thinks that it is more appropriate for the financial penalty to be enforced in Northern Ireland than in Scotland.

Person having property etc. in Scotland and England and Wales and Northern Ireland

(1) This paragraph applies if—

- (a) the certificate states that the person required to pay the financial penalty has property or a source of income in Scotland,
- (b) the certificate also states that the person has property or a source of income in England and Wales, and Northern Ireland, and
- (c) the certificate does not state that the person is normally resident in the United Kingdom.

(2) The financial penalty is suitable for enforcement in Scotland unless the penalty is suitable for enforcement in England and Wales, or in Northern Ireland by virtue of sub-paragraph (3).

(3) The financial penalty is suitable for enforcement in England and Wales, or in Northern Ireland for the purposes of sub-paragraph (2) if—

- (a) the central authority was given the certificate by the central authority or, as the case may be, the competent authority of another member State (and not by the authority designated as the central authority for England and Wales, or the central authority for Northern Ireland), and
- (b) the central authority thinks that it is more appropriate for the financial penalty to be enforced in England and Wales, or in Northern Ireland, than in Scotland.

Interpretation

6. Where the person required to pay the financial penalty is a body corporate or a partnership (including a Scottish partnership), this Schedule applies as if—
- (a) the reference in paragraph 1 to the person being normally resident in Scotland were a reference to the person having its registered office or, as the case may be, its principal office of the partnership in Scotland, and
 - (b) any reference to the person being normally resident in the United Kingdom were a reference to the person having its registered office or, as the case may be, its principal office of the partnership in the United Kingdom.
7. In this Schedule, unless the context otherwise requires, references to the central authority are to the central authority for Scotland.

SCHEDULE 12

Section 223H(5)

GROUND S FOR REFUSAL TO ENFORCE FINANCIAL PENALTIES

PART 1

THE GROUND S FOR REFUSAL

1. A penalty (of any kind) has been imposed on the liable person in respect of the conduct to which the certificate relates under the law of any part of the United Kingdom (whether or not the penalty has been enforced).
2. A penalty (of any kind) has been imposed on the liable person in respect of that conduct under the law of any member State, other than the United Kingdom and the issuing State, and that penalty has been enforced.
3. The decision was made in respect of conduct—
 - (a) that is not specified in Part 2 of this Schedule, and
 - (b) would not constitute an offence under the law of Scotland if it occurred there.
4. The decision to which the financial penalty relates was made in respect of conduct—
 - (a) that occurred outside the territory of the issuing State, and
 - (b) would not constitute an offence under the law of Scotland if it occurred outwith Scotland.
5. The decision to which the financial penalty relates was made in respect of conduct by a person who, at the time the conduct took place, was under the age of criminal responsibility under the law of Scotland.
6. The certificate does not confirm that—
 - (a) if the proceedings in which the decision was made were conducted in writing, the liable person was informed of the right to contest the proceedings and of the time limits that applied to the exercise of that right;
 - (b) if those proceedings provided for a hearing to take place and the liable person did not attend, the liable person was informed of the proceedings or indicated an intention not to contest them.

(1) The financial penalty is for an amount of less than 70 euros.

(2) For the purposes of sub-paragraph (1), if the amount of a financial penalty is specified in a currency other than the euro, that amount must be converted to euros by reference to the London closing exchange rate on the date on which the decision was made.

PART 2

EUROPEAN FRAMEWORK LIST (FINANCIAL PENALTIES)

8. Participation in a criminal organisation.
9. Terrorism.
10. Trafficking in human beings.
11. Sexual exploitation of children and child pornography.
12. Illicit trafficking in narcotic drugs and psychotropic substances.
13. Illicit trafficking in weapons, munitions and explosives.
14. Corruption.
15. Fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26th July 1995 on the protection of the European Communities' financial interests.
16. Laundering of the proceeds of crime.
17. Counterfeiting currency, including of the euro.
18. Computer-related crime.
19. Environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties.
20. Facilitation of unauthorised entry and residence.
21. Murder, grievous bodily injury.
22. Illicit trade in human organs and tissue.
23. Kidnapping, illegal restraint and hostage-taking.
24. Racism and xenophobia.
25. Organised or armed robbery.
26. Illicit trafficking in cultural goods, including antiques and works of art.
27. Swindling.
28. Racketeering and extortion.
29. Counterfeiting and piracy of products.
30. Forgery of administrative documents and trafficking therein.
31. Forgery of means of payment.
32. Illicit trafficking in hormonal substances and other growth promoters.
33. Illicit trafficking in nuclear or radioactive materials.
34. Trafficking in stolen vehicles.

35. Rape.
36. Arson.
37. Crimes within the jurisdiction of the International Criminal Court.
38. Unlawful seizure of aircraft or ships.
39. Sabotage.
40. Conduct which infringes road traffic regulations, including breaches of regulations pertaining to driving hours and rest periods and regulations on hazardous goods.
41. Smuggling of goods.
42. Infringements of intellectual property rights.
43. Threats and acts of violence against persons, including violence during sporting events.
44. Criminal damage.
45. Theft.
46. Offences created by the issuing State and serving the purpose of implementing obligations arising from instruments adopted under the EC Treaty or under Title VI of the EU Treaty.

PART 3

INTERPRETATION

- (1) In this Schedule—
 - (a) “conduct” includes any act or omission;
 - (b) “liable person” means the person required to pay the financial penalty to which the certificate relates.
- (2) If the decision was made in respect of conduct by a person other than the liable person, the references in paragraphs 6 to the liable person are to be read as references to that other person.”.