
EXPLANATORY NOTE

(This note is not part of the Order)

This Order, which extends only to Scotland, implements in Scotland the European Union Framework Decision on the Application of the Principle of Mutual Recognition to Financial Penalties (2005/214/JHA) (“the Framework Decision”). It does so by the amendment of the Criminal Procedure (Scotland) Act 1995.

The Framework Decision applies the principle of mutual recognition of financial penalties imposed by the judicial or administrative authorities of the Member States to recognise and enforce judgements without any further formality being required by the member State of the European Union to which the request has been passed for the purposes of the enforcement of the financial penalty. It is available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:076:0016:0030:EN:PDF>

Article 2 specifies that the financial penalties in respect of which the provisions contained within the Order apply are those financial penalties which on or after 1 October 2008 were imposed by a court on conviction of an offence, or accrued otherwise than on conviction and which, on default, are enforced in the same manner as fines imposed by a court.

Article 3 amends the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”) by the insertion of sections 223A to 223T. Sections 223A to 223E make provision in respect of financial penalties imposed, or otherwise accrued, in Scotland which are transferred for enforcement to other member States of the European Union. Sections 223F to 223O make provision in respect of such financial penalties from member States, other than the United Kingdom (“other member States”), which have been given to Scotland for enforcement. Section 223P makes provision in respect of the transfer of such cases between Scotland, England and Wales, and Northern Ireland. Sections 223Q to 223T make general provision regarding the enforcement scheme providing for the mutual recognition of financial penalties and apply both to outgoing financial penalties from, and those penalties incoming to, Scotland.

Section 223A specifies the circumstances which must exist before a financial penalty may be issued for enforcement from Scotland to a member State, other than the United Kingdom. The meaning of financial penalty is given in subsection (5).

Section 223B prescribes the procedure by which financial penalties imposed, or otherwise accrued, in Scotland are issued to the member State, other than the United Kingdom, in which the penalty is to be enforced. The designated officer of the competent authority for Scotland issues a certificate and gives it to the central authority for Scotland for onward transfer to that member State for enforcement. Definitions for “designated officer” and “central authority for Scotland” are given in section 223T and for “the competent authority for Scotland” in section 223Q. Subsection (4) of section 223B provides that on the transfer of the financial penalty to that member State no further enforcement action may be taken in Scotland and no further requests for enforcement may be given by Scotland for enforcement unless subsection (5) applies. Subsection (5) provides that where any of the events mentioned in Article 15(2) of the Framework Decision occurs then the right to enforce the financial penalty reverts to Scotland.

Section 223C provides that where the designated officer of the competent authority for Scotland has issued a certificate to a member State, other than the United Kingdom, for enforcement of a fine, or expenses imposed in connection with proceedings relating to a conviction of a fine, the application of section 217(3) of the 1995 Act shall be modified and qualified.

Status: Point in time view as at 12/10/2009.

Changes to legislation: There are currently no known outstanding effects for the The Mutual Recognition of Criminal Financial Penalties in the European Union (Scotland) Order 2009. (See end of Document for details)

Section 223D provides that where the designated officer of the competent authority for Scotland has issued a certificate in relation to a compensation order imposed under section 249 of the 1995 Act the application of section 252 of that Act (enforcement of compensation orders) shall be modified.

Section 223E provides that where the designated officer of the competent authority for Scotland has issued a certificate in respect of certain fixed penalty offers issued under sections 302(1) and 302A(1) of the 1995 Act and both having been accepted, or deemed to have been accepted, that the application of section 303 (fixed penalty: enforcement) of that Act applies with modification. Section 303(1) of the 1995 Act provides that where a fixed penalty offer or a compensation offer under section 302 or 302A, respectively, of the 1995 Act is accepted by the alleged offender then outstanding sums shall be treated as if the penalty or offer were a fine imposed by the court. The modification to the application of section 303 of the 1995 Act provides that section 217(3) (supervision pending payment of fine) of the 1995 Act which, by section 223C(2)(b) of that Act, applies modified in respect of outgoing fines also applies, so modified, in respect of those specified fixed penalties to which sections 302 and 302A make provision and which are issued by Scotland for enforcement in a member State, other than the United Kingdom.

Section 223F, and Schedule 11, specify when a financial penalty issued by the other member State is suitable for enforcement in Scotland. Section 223F sets out the procedures to be followed when the certificate is issued by the competent authority, or central authority of that other member State. Subsection (6) makes provision regarding the application of the section where a certificate is received initially by the central authority of England and Wales or, as the case may be, Northern Ireland and is subsequently passed to Scotland for enforcement.

Section 223G makes provision for the return of requests for enforcement to the other member State in certain specified circumstances. In such cases no enforcement action will be carried out in Scotland following the return of the enforcement request.

Section 223H sets out the procedures to be followed following the receipt by Scotland of a certificate seeking the enforcement of the financial penalty from the other member State. Schedule 12 specifies grounds by which the enforcement of the financial penalty may be refused. It provides that the competent authority is to decide whether it is satisfied that any grounds for refusal apply.

Section 223I specifies the procedure to be followed subsequent to the competent authority for Scotland being satisfied that none of the grounds for refusal to enforce the financial penalty apply. In such cases the competent authority for Scotland shall seek the enforcement in Scotland of the financial penalty. Where one or more of the grounds for refusal apply then, by subsections (2) and (3), the request for enforcement shall be returned to the other member State and no enforcement action shall be carried out in Scotland.

Section 223J provides that the provisions specified in section 223K will apply to certain financial penalties which are given to Scotland for enforcement as they apply in relation to fines in respect of which the 1995 Act makes provision, but subject to certain modifications and qualifications.

Section 223K lists those provisions mentioned in section 223J, the application of which are necessarily modified and qualified. Certain specified modifications and qualifications listed in the section apply only where section 223L applies.

Section 223L provides that the enforcement action which may be undertaken by Scotland on the failure to recover the financial penalty may not exceed any maximum level for such disposal as specified by the other member State which made the request for enforcement to Scotland.

Section 223M provides that the provisions of the 1995 Act specified in section 223N apply to certain financial penalties received by Scotland from other member States as they apply in relation to any sum payable under compensation orders imposed under section 249 of the 1995 Act but subject to those necessary modifications and qualifications which are set out in section 223N.

Section 223N specifies those provisions for which section 223M makes provision. Modifications and qualifications to the application of certain specified provisions of the 1995 Act are made by the provision.

Section 223O provides that certain provisions of the 1995 Act apply to certain financial penalties which are received by Scotland from other member States as they apply in relation to fixed penalties issued under the 1995 Act. Subsection (2) specifies the provision of the 1995 Act which is modified and qualified for the purposes of enforcing such financial penalties in Scotland.

Section 223P makes provision regarding the transfer of certificates received by Scotland from other member States to the central authority for England and Wales, or to the central authority for Northern Ireland, in those cases in which it is clear that the enforcement action should be undertaken there rather than in Scotland.

Section 223Q defines “the competent authority for Scotland”.

Section 223R makes provision for the treatment of the monies obtained following the enforcement of financial penalties in respect of which the Order applies.

Section 223S provides that those financial penalties which are payments of compensation and which have been issued for enforcement by Scotland to a member State, other than the United Kingdom, shall be paid by the central authority for Scotland or, as the case may be, the competent authority for Scotland to the central authority of that member State where the victim of the offence to which the financial penalty relates, resides.

Section 223T is an interpretation provision.

Article 4 of the Order amends the 1995 Act by inserting section 226HA after section 226H of that Act. The provision specifies the circumstances in which a fines enforcement officer may issue a certificate to a member State, other than the United Kingdom, for enforcement action of a relevant penalty (as defined in section 226I). By subsection (5) a fines enforcement officer may not issue such a certificate where the designated officer of the competent authority for Scotland has already done so. Procedural requirements are set down by the provision.

Article 5 of the Order amends section 226B by the insertion of subsection (6A) and the amendment of subsection (7) of that provision. Subsection (6A) of section 226B provides that in relation to a request from the other member State seeking enforcement of a financial penalty in Scotland, the relevant court (which is defined in section 226I) may make an enforcement order in relation to the enforcement of the financial penalty. The amendment made to subsection (7) of section 226B allows an enforcement order under subsection (6A) to be made on the oral or written application of the clerk of court and without the offender being present.

Article 6 of the Order makes consequential amendments to section 226I. Section 226I is the interpretation provision for those provisions concerning the enforcement of fines and fines enforcement officers.

Article 7 of the Order amends section 211(6) of the 1995 Act to make it clear that that sub-section does not apply where a financial penalty is enforced by virtue of a certificate issued under sections 223A or 226HA(4).

Article 8 of the Order makes a number of amendments to the 1995 Act. In particular, it inserts Schedules 11 and 12 to that Act. Schedule 11 makes provision concerning financial penalties which are suitable for enforcement in Scotland and sets out the procedure to be followed where the person to whom a financial penalty relates has property not only in Scotland but in other parts of the United Kingdom too. Schedule 12 makes provision concerning the grounds for refusal to enforce financial penalties in Scotland.

Status:

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Changes to legislation:

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