POLICY NOTE

THE MUTUAL RECOGNITION OF CRIMINAL FINANCIAL PENALTIES IN THE EUROPEAN UNION (SCOTLAND) (No. 1) ORDER 2014

SSI 2014/

1. The Mutual Recognition of Criminal Financial Penalties in the European Union (Scotland) (No. 1) Order 2014 was made in exercise of the powers conferred by sections 56 and 82 of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007. It is subject to affirmative procedure.

Policy Objectives

2. The purpose of this Order is to amend the Criminal Procedure (Scotland) Act 1995 ('the 1995 Act') to make further provision for the transposition of the European Union Framework Decision on the Application of the Principle of Mutual Recognition to Financial Penalties (2005/214/JHA of 24 February 2005) ('the 2005 Framework Decision'), in order to reflect more explicitly the terms of the Framework Decision.

3. By way of background, the 2005 Framework Decision was transposed by the Mutual Recognition of Criminal Financial Penalties in the European Union (Scotland) Order 2009 (SSI 2009/342)('the 2009 Order'). The 2009 Order introduced a scheme which enables Scottish fines and fixed penalties such as for Road Traffic Act offences or assault, of a value greater than €70, to be enforced elsewhere in the EU and vice versa. It did so by adding provisions to the 1995 Act. The 2005 Framework Decision applies to a wide range of offences such as theft, criminal damage or road traffic, fully listed in article 5 of the Decision, in relation to which financial penalties can be imposed. The 2009 Order came into force on 12 October 2009.

4. The 2005 Framework Decision has since been amended by the European Union Framework Decision on the Application of the Principle of Mutual Recognition to Decisions Rendered in the Absence of the Person Concerned at Trial (2009/299/JHA of 26 February 2009)('the 2009 Framework Decision'). An Order will be laid in early course to transpose its provisions and the amendments made by this Order will provide a solid foundation for that.

5. The Order makes it clear that when a requesting authority seeks enforcement of a financial penalty in Scotland, but has not provided the certificate that requires to accompany a request, the central authority in Scotland (the sheriff clerk at Edinburgh) must notify the requesting authority that the decision will not be enforced unless the required certificate is provided (article 7).

6. It also makes it clear that the competent authority for Scotland must, when considering a request for recognition, consult the competent authority in the issuing State before refusing recognition of the transfer of a financial penalty on certain grounds (article 7 (3)). Separately, the grounds for non-recognition now explicitly include transmission of an incomplete certificate (e.g. if not certified as accurate) or a certificate that manifestly does not correspond to the decision (article 7(1)).

Consultation

7. The Order has been considered by the Scottish Court Service who are the central authority for the administration of the mutual recognition of financial penalties provisions and act as designated officials for the competent authority. The amendment to the 2005 Framework Decision will only affect the courts and the changes are minor and procedural in nature. As their practical impact is limited and there are no financial implications for individuals, business or the third sector, we do not believe there is a requirement for formal public consultation.

Impact Assessment

8. There are no equality impact issues and a Equality Impact Assessment (EQIA) has not been completed. The Order makes further provision for the administrative processes to be followed in accepting another Member States' financial penalty for enforcement. The changes to the process are minor and do not require the central or competent authority to make any decision that may involve, or impact on, protected characteristics.

Financial Effects

9. A final Business and Regulatory Impact Assessment (BRIA) has not been completed. The Order makes further provision for the administrative processes to be followed in accepting another Member States' financial penalty for enforcement. The changes to the administrative processes are minor. The Scottish Court Service (as the central authority) are content that there will be no significant operational impact arising from this Order.

Scottish Government
Justice Directorate
30 September 2014