EXECUTIVE NOTE

DRAFT : THE MUTUAL RECOGNITION OF CRIMINAL FINANCIAL PENALTIES IN THE EUROPEAN UNION (SCOTLAND) ORDER 2009

1. The Mutual Recognition of Criminal Financial Penalties in the European Union (Scotland) Order was made in exercise of the powers conferred by sections 56 and 82 of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 ("the 2007 Act") and all other powers enabling them to do so. It is subject to affirmative resolution procedure.

Policy Objectives

2. The purpose of this Order is to implement in Scotland the European Union Framework Decision ("FD") on the Application of the Principle of Mutual Recognition to Financial Penalties (2005/214/JHA of 24 February 2005). The Order will provide a widely applicable scheme which will enable Scottish fines and fixed penalties to be enforced elsewhere in the EU and vice versa. It does so by adding new provisions to the Criminal Procedure (Scotland) Act 1995 along with consequential amendments. The Framework Decision applies to a wide range of offences, listed in article 5, in relation to which financial penalties can be imposed.

3. Implementation is overdue in 14 Member States including the UK. Although the 2007 Act contained the necessary order-making power to permit implementation, it was considered impractical for Scotland to implement ahead of the rest of the UK. The Westminster Government included implementing provisions in the Criminal Justice and Immigration Act 2008. They intend to implement the FD by bringing provisions into force on 1 October 2009. The Scottish Order will come into force on 12 October 2009, allowing 40 days for the affirmative procedure.

4. England & Wales, Scotland and Northern Ireland will each operate Mutual Recognition of Financial Penalties in accordance with their own systems. Central authorities, in London, Edinburgh and Belfast will manage and co-ordinate the work. The law of the executing state governs the enforcement of financial penalties under the FD. Any fine income will normally be retained by the executing state, with the exception of compensation or where agreement is reached between the states concerned to return monies collected (for example, in the case of high value fines).

5. The Order sets out the process for outgoing and incoming fines and penalties. Enforcement will follow the rules of the jurisdiction where it is taking place subject to certain restrictions that may be specified in a certificate. Incoming penalties will generally be enforced in accordance with Scottish criminal procedure. The certificate will be translated by the state sending the fine or penalty and will provide minimum specified information to enable collection.

6. The certificate will also specify the methods of enforcement permissible in the state sending the penalty. For example, where imprisonment is not permissible as an alternative in the originating state the Scottish court would require to respect that restriction.

7. In certain circumstances penalties are not recoverable under the Order, e.g. if the penalty was imposed before 1 October 2008 or was for an amount less than 70 Euros.

8. The Sheriff and Justice of the Peace ("JP") courts in each Sheriffdom will be the competent authorities for enforcing incoming penalties and for issuing certificates to be transmitted to other Member States. The Order confers functions on clerks and fines enforcement officers. Remaining district courts in Sheriffdoms where unification is still to take place will not be competent authorities.

Consultation

9. As the principal stakeholder, the Scottish Court Service has been closely engaged in the preparation of the Order and on a number of issues during the preparation of the instrument. These include:

- Timescales
- The date from which the order would take effect
- Working Arrangements and Protocols
- IT systems.

10. The order has been prepared following extensive consultation with Her Majesty's Court Service for England and Wales and the Northern Ireland Court Service.

11. The Government has also consulted with the councils that continue to maintain district courts: West Dunbartonshire, East Dunbartonshire, Renfrewshire, East Renfrewshire, Inverclyde, North Ayrshire, East Ayrshire, Argyll and Bute, Dumfries & Galloway, North Lanarkshire, South Ayrshire and South Lanarkshire. This was to explain that we did not propose to include district courts within the Order as they are intended to be replaced in a relatively short time by JP courts. If district courts were to be included within the scheme, local authorities would be likely to incur costs in relation to training and IT which they would be very unlikely to be able to recover in the short time period involved. Of the authorities consulted, South Lanarkshire, South Ayrshire, Renfrewshire and West Dunbartonshire replied; all indicating their agreement with that proposed course.

Financial Effects

12. It is difficult to estimate with great precision the costs or income involved in implementation until the volume of cases is known, but the Scottish Court Service are satisfied that any initial costs will be met from within existing resources. Westminster colleagues have attempted to make estimates of the numbers of cases affecting the UK as a whole. These estimates are based on limited information but would indicate that Scotland might expect that around a thousand cases may be incoming and outgoing in a year once the scheme is established but there are likely to be less cases in the early years with around half of member states still to implement the Framework Decision.

13. Where compensation is to be paid to victims that sum will be passed on as appropriate, following recovery. Unless otherwise agreed, income from fines and penalties transferred will be retained by the member state collecting the penalty. Scottish Court Service retain certain income from fines and will reach agreement with HM Treasury as to the amounts to be retained from penalties collected in terms of the provisions of this Order.