

*Status: This version of this part contains provisions that are prospective.**Changes to legislation: There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010, PART 2. (See end of Document for details)*

SCHEDULE 4 CONVICTIONS BY COURTS IN OTHER EU MEMBER STATES: MODIFICATIONS OF ENACTMENTS

PART 2

OTHER ENACTMENTS

The 1982 Act

9 In section 58 of the 1982 Act, after subsection (4) insert—

“(4A) In subsection (4), the reference to a conviction for theft includes a reference to a conviction by a court in England and Wales, Northern Ireland or a member State of the European Union other than the United Kingdom of an offence that is equivalent to theft.

(4B) Any issue of equivalence arising in pursuance of subsection (4A) is for the court to determine.”.

Commencement Information

I1 Sch. 4 para. 9 in force at 13.12.2010 by S.S.I. 2010/413, art. 2, Sch. (with Sch.)

The Prisoners and Criminal Proceedings (Scotland) Act 1993 (c.9)

10 In section 27(1) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (interpretation of Part 1), insert at the appropriate place—

““previous conviction” means a previous conviction by a court in any part of the United Kingdom or in any other member State of the European Union;”.

Commencement Information

I2 Sch. 4 para. 10 in force at 13.12.2010 by S.S.I. 2010/413, art. 2, Sch. (with Sch.)

The Criminal Law (Consolidation) (Scotland) Act 1995 (c.39)

11 (1) Section 9 of the Criminal Law (Consolidation) (Scotland) Act 1995 (permitting girl to use premises for intercourse) is amended as follows.

(2) In subsection (2A)—

(a) the word “or” immediately following paragraph (a) is repealed, and

(b) after paragraph (a) insert—

“(aa) that person has a previous conviction for a relevant foreign offence committed against a person under the age of 16; or”.

(3) In subsection (3)—

(a) the word “and” immediately following paragraph (a) is repealed, and

(b) after paragraph (a) insert—

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“(aa) “a previous conviction for a relevant foreign offence” has the same meaning as in section 39(5)(aa) of that Act; and”.

Commencement Information

I3 Sch. 4 para. 11 in force at 13.12.2010 by S.S.I. 2010/413, art. 2, Sch. (with Sch.)

PROSPECTIVE

- 12 *The Custodial Sentences and Weapons (Scotland) Act 2007 (asp 17)*
- In section 4(1) of the Custodial Sentences and Weapons (Scotland) Act 2007 (basic definitions for purposes of Part 2), insert at the appropriate place—
- ““previous conviction” means a previous conviction by a court in any part of the United Kingdom or [^{F1}, where the court considers it to be appropriate,] in any ^{F2}... member State of the European Union,”.

Textual Amendments

- F1** Words in sch. 4 para. 12 inserted (31.12.2020) by The Criminal Justice (EU Exit) (Scotland) (Amendment etc.) Regulations 2020 (S.S.I. 2020/339), regs. 1(3), 15(4)(a) (with reg. 16)
- F2** Word in sch. 4 para. 12 omitted (31.12.2020) by virtue of The Criminal Justice (EU Exit) (Scotland) (Amendment etc.) Regulations 2020 (S.S.I. 2020/339), regs. 1(3), 15(4)(b) (with reg. 16)

The Sexual Offences (Scotland) Act 2009 (asp 9)

- 13 (1) Section 39 of the Sexual Offences (Scotland) Act 2009 (defences in relation to offences against older children) is amended as follows.
- (2) In subsection (2)—
- (a) in paragraph (a)—
- (i) the word “or” immediately following sub-paragraph (i) is repealed, and
- (ii) after sub-paragraph (i) insert—
- “(ia) if A has a previous conviction for a relevant foreign offence committed against a person under the age of 16, or”, and
- (b) in paragraph (b)—
- (i) the word “or” immediately following sub-paragraph (i) is repealed, and
- (ii) after sub-paragraph (i) insert—
- “(ia) if B has a previous conviction for a relevant foreign offence committed against a person under the age of 16, or”.
- (3) In subsection (5), after paragraph (a) insert—
- “(aa) “a previous conviction for a relevant foreign offence” means a previous conviction by a court in a member State of the European

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Union other than the United Kingdom for an offence that is equivalent to one listed in paragraph 1, 4, 7, 10, 13 (so far as applying to an offence listed in paragraph 1, 4, 7 or 10) or 14 of schedule 1.”.

(4) After subsection (5) insert—

“(5A) Any issue of equivalence arising in pursuance of subsection (5)(aa) is for the court to determine.

(5B) For that purpose, an offence may be equivalent to one listed in paragraph 1, 4, 7, 10, 13 (so far as applying to an offence listed in paragraph 1, 4, 7 or 10) or 14 of schedule 1 even though, under the law of the member State (or part of the member State) in question, it is an offence—

- (a) regardless of the age of the victim, or
- (b) only if committed against a person under an age other than 16 years.”.

Commencement Information

I4 Sch. 4 para. 13 in force at 13.12.2010 by S.S.I. 2010/413, art. 2, Sch. (with Sch.)

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