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SCHEDULE 4

(introduced by section 71(1))

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

PART 1

THE 1995 ACT

The 1995 Act

1 The 1995 Act is amended as follows.

Commencement Information

I1 Sch. 4 para. 1 in force at 13.12.2010 by S.S.I. 2010/413, art. 2, Sch. (with Sch.)

2 In section 23C(2)(d)(i) (previous convictions to be taken into consideration in determining bail), for “outwith Scotland” substitute “ by courts outside the European Union ”.

Commencement Information

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

3 In section 27 (breach of bail conditions: offences), after subsection (3) insert—

“(3A) The reference in subsection (3)(b) to any previous conviction of an offence under subsection (1)(b) includes any previous 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 an offence under subsection (1)(b).

(3B) The references in subsection (3)(c) to subsection (3) are to be read, in relation to a previous conviction by a court referred to in subsection (3A), as references to any provision that is equivalent to subsection (3).

(3C) Any issue of equivalence arising in pursuance of subsection (3A) or (3B) is for the court to determine.”.

Commencement Information

I3 Sch. 4 para. 3 in force at 13.12.2010 by S.S.I. 2010/413, art. 2, Sch. (with Sch.)

4 In section 202(2) (deferred sentence), for “Great Britain” substitute “ the United Kingdom or in another member State of the European Union ”.

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

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- 5 In section 204 (restrictions on passing sentence of imprisonment or detention)—
- (a) in each of subsections (1) and (2), after “United Kingdom” insert “ or in another member State of the European Union ”, and
 - (b) after subsection (4) insert—
 - “(4A) The court shall, for the purpose of determining whether a person has been previously sentenced to imprisonment or detention by a court in a member State of the European Union other than the United Kingdom—
 - (a) disregard any previous sentence of imprisonment which, being the equivalent of a suspended sentence, has not taken effect;
 - (b) construe detention as meaning an equivalent sentence to any of those mentioned in subsection (4)(b).
 - (4B) Any issue of equivalence arising in pursuance of subsection (4A) is for the court to determine.”.

Commencement Information

I5 Sch. 4 para. 5 in force at 13.12.2010 by S.S.I. 2010/413, art. 2, Sch. (with Sch.)

- 6 In section 205B (minimum sentence for third conviction of certain offences relating to drug trafficking)—
- (a) in subsection (1)(b), for “been convicted in any part of the United Kingdom of two other class A drug trafficking offences” substitute “ two previous convictions for relevant offences ”, and
 - (b) after subsection (1) insert—
 - “(1A) In subsection (1), “relevant offence” means—
 - (a) in relation to a conviction by a court in any part of the United Kingdom, a class A drug trafficking offence;
 - (b) in relation to a conviction by a court in a member State of the European Union other than the United Kingdom, an offence that is equivalent to a class A drug trafficking offence.
 - (1B) Any issue of equivalence arising in pursuance of subsection (1A)(b) is for the court to determine.”.

Commencement Information

I6 Sch. 4 para. 6 in force at 13.12.2010 by S.S.I. 2010/413, art. 2, Sch. (with Sch.)

- 7 In section 275A (disclosure of accused's previous convictions where court allows questioning or evidence under section 275)—
- (a) in subsection (10)—
 - (i) the word “or” immediately following paragraph (a) is repealed, and
 - (ii) after paragraph (a) insert—
 - “(aa) 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

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that is equivalent to one to which section 288C of this Act applies by virtue of subsection (2) thereof; or”, and

(b) after subsection (10) insert—

“(10A) Any issue of equivalence arising in pursuance of subsection (10)(aa) is for the court to determine.”.

Commencement Information

I7 Sch. 4 para. 7 in force at 13.12.2010 by S.S.I. 2010/413, art. 2, Sch. (with Sch.)

8 In section 307 (interpretation)—

(a) in subsection (1), insert the following definition at the appropriate place—

““conviction”, in relation to a previous conviction by a court outside Scotland, means a final decision of a criminal court establishing guilt of a criminal offence;”, and

(b) for subsection (5) substitute—

“(5) Except where the context requires otherwise—

- (a) any reference in this Act to a previous conviction is to be construed as a reference to a previous conviction by a court in any part of the United Kingdom or in any other member State of the European Union;
- (b) any reference in this Act to a previous sentence is to be construed as a reference to a previous sentence passed by any such court;
- (c) any reference to a previous conviction of a particular offence is to be construed, in relation to a previous conviction by a court outside Scotland, as a reference to a previous conviction of an equivalent offence; and
- (d) any reference to a previous sentence of a particular kind is to be construed, in relation to a previous sentence passed by a court outside Scotland, as a reference to a previous sentence of an equivalent kind.”.

Commencement Information

I8 Sch. 4 para. 8 in force at 13.12.2010 by S.S.I. 2010/413, art. 2, Sch. (with Sch.)

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

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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

I9 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

I10 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—

“(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

I11 Sch. 4 para. 11 in force at 13.12.2010 by S.S.I. 2010/413, art. 2, Sch. (with Sch.)

PROSPECTIVE

The Custodial Sentences and Weapons (Scotland) Act 2007 (asp 17)

12 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—

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““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 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

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- (b) only if committed against a person under an age other than 16 years.”.

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I12 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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