

**2014 No. 336**

**CRIMINAL PROCEDURE**

**The Mutual Recognition of Criminal Financial Penalties in the  
European Union (Scotland) (No. 2) Order 2014**

<i>Made</i>	- - - -	<i>1st December 2014</i>
<i>Laid before the Scottish Parliament</i>		<i>1st December 2014</i>
<i>Coming into force</i>	- -	<i>1st December 2014</i>

The Scottish Ministers make the following Order in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a) and all other powers enabling them to do so.

**Citation and commencement**

1. This Order may be cited as the Mutual Recognition of Criminal Financial Penalties in the European Union (Scotland) (No. 2) Order 2014 and comes into force on 1st December 2014.

**Amendment of the Criminal Procedure (Scotland) Act 1995**

2. The Criminal Procedure (Scotland) Act 1995(b) is amended in accordance with articles 3 to 5.

3. In section 223H(3B)(c), for “paragraphs 5A and 6” substitute “paragraphs 5A, 6 and 6A”.

4. In section 223T(1)(d), at the end of the definition of “Framework Decision on financial penalties”, insert “as amended by Council Framework Decision 2009/299/JHA”(e).

5. In Schedule 12(f), for paragraph 6 substitute—

“6. Where the proceedings in which the decision was made were conducted in writing, the certificate does not confirm that the liable person was informed of the right to contest the proceedings and of the time limits that applied to the exercise of that right.

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(a) 1972 c.68; Section 2(2) was amended by the Scotland Act 1998 (c.46) (“the 1998 Act”), Schedule 8, paragraph 15(3) (which was amended by section 27(4) of the Legislative and Regulatory Reform Act 2006 (c.51) (“the 2006 Act”). Section 2(2) was also amended by section 27(1)(a) of the 2006 Act and by the European Union (Amendment) Act 2008 (c.7), Schedule, Part 1. The functions conferred upon the Minister of the Crown under section 2(2), insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act.

(b) 1995 c.46.

(c) Section 223H was inserted by the Mutual Recognition of Criminal Financial Penalties in the European Union (Scotland) Order 2009 (S.S.I. 2009/342). Subsection (3B) was inserted into section 223H by the Mutual Recognition of Criminal Financial Penalties in the European Union (Scotland) (No. 1) Order 2014 (S.S.I. 2014/322).

(d) Section 223T was inserted by the Mutual Recognition of Criminal Financial Penalties in the European Union (Scotland) Order 2009 (S.S.I. 2009/342).

(e) OJ L 81, 27.03.2009, p.24.

(f) Schedule 12 was inserted by the Mutual Recognition of Criminal Financial Penalties in the European Union (Scotland) Order 2009 (S.S.I. 2009/342).

**6A.—(1) The certificate—**

- (a) indicates that the decision is neither the result of—
  - (i) proceedings conducted in writing; nor
  - (ii) a trial at which the liable person appeared in person; and
- (b) does not state that something which is described in paragraph (i) or (j) of Article 7(2) of the Framework Decision happened.

(2) In sub-paragraph (1), “the Framework Decision” means Council Framework Decision 2005/214/JHA on the application of the principle of mutual recognition to financial penalties as amended by Council Framework Decision 2009/299/JHA.”.

*MICHAEL MATHESON*  
A member of the Scottish Government

St Andrew’s House,  
Edinburgh  
1st December 2014

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order makes provision for the implementation in Scotland of amendments to the Council Framework Decision 2005/214/JHA of 24th February 2005 on the application of the principle of mutual recognition to financial penalties (OJ L 76, 22.03.2005, p.16). The amendments were effected by Council Framework Decision 2009/299/JHA of 26th February 2009 (OJ L 81, 27.03.2009, p.24).

Council Framework Decision 2009/299/JHA amends the grounds on which recognition of a decision imposing a financial penalty may be refused because the decision was not the result of a trial at which the person subject to the penalty appeared in person.

Article 5 makes corresponding amendments to the grounds for non-recognition specified in Schedule 12 to the Criminal Procedure (Scotland) Act 1995.

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