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SCOTTISH STATUTORY INSTRUMENTS

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**2020 No. 339**

**The Criminal Justice (EU Exit) (Scotland)  
(Amendment etc.) Regulations 2020**

**PART 4**

Council Framework Decision 2008/675/JHA on taking account of convictions in the member States of the European Union in the course of new criminal proceedings

**Amendment of the Civic Government (Scotland) Act 1982**

**10.** For section 58(4A) of the Civic Government (Scotland) Act 1982(1) (convicted thief in possession) substitute—

“(4A) In subsection (4), the reference to a conviction for theft includes—

- (a) a reference to a conviction by a court in England and Wales or Northern Ireland, and
- (b) if the court considers appropriate, a reference to a conviction by a court in a member State of the European Union

of an offence that is equivalent to theft.”.

**Amendment of the Prisoners and Criminal Proceedings (Scotland) Act 1993**

**11.** In section 27(1) of the Prisoners and Criminal Proceedings (Scotland) Act 1993(2) (interpretation of Part 1), for the definition of “previous conviction” substitute—

““previous conviction” means—

- (a) a previous conviction by a court in any part of the United Kingdom, or
- (b) if the court considers appropriate, a previous conviction by a court in any member State of the European Union;”.

**Amendment of the Criminal Law (Consolidation) (Scotland) Act 1995**

**12.** In section 9(2A)(aa) of the Criminal Law (Consolidation) (Scotland) Act 1995(3) (permitting girl to use premises for intercourse) after “16” insert “and the court considers it appropriate for the conviction to have that effect”.

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(1) 1982 c.45; section 58(4A) was added by the Criminal Justice and Licensing (Scotland) Act 2010, (asp 13), schedule 4, paragraph 9.

(2) 1993 c.9; the definition of “previous conviction” was inserted by the Criminal Justice and Licensing (Scotland) Act 2010, schedule 4, paragraph 10.

(3) 1995 c.39; section 9(2A) was added by the Sexual Offences (Scotland) Act 2009 (asp 9), schedule 5, paragraph 1(4) and sub-section (aa) was added by the Criminal Justice and Licensing (Scotland) Act 2010, schedule 4, paragraph 11.

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

13.—(1) The Criminal Procedure (Scotland) Act 1995(4) is amended as follows.

(2) In section 23C(2)(d)(i)(5) (grounds relevant as to question of bail) for “the European Union” substitute “Scotland”.

(3) In section 23D(5)(b)(6) (restriction on bail in certain solemn cases)—

- (a) at the beginning insert “if the court considers appropriate”, and
- (b) omit “other than the United Kingdom”.

(4) In section 27 (breach of bail conditions: offences) for subsection (3A)(7) substitute—

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

- (a) any previous conviction by a court in England and Wales or Northern Ireland, and
- (b) if the court considers appropriate, any previous conviction by a court in a member State of the European Union,

of an offence that is equivalent to an offence under subsection (1)(b).”.

(5) In section 69(8) (notice of previous convictions) after subsection (7) insert—

“(8) Any reference in this section to a previous conviction includes, where relevant, a conviction by a court in any part of the United Kingdom or in any member State of the European Union.”.

(6) In section 101(9) (previous convictions: solemn proceedings) after subsection (11) insert—

“(12) Any reference in this section to a previous conviction includes, where relevant, a conviction by a court in any part of the United Kingdom or in any member State of the European Union.”.

(7) In section 101A(5)(10) (post-offence convictions etc.) for “in any other” substitute “, where the court considers appropriate, in any”.

(8) In section 166(11) (previous convictions: summary proceedings) after subsection (11) insert—

“(12) Any reference in this section to a previous conviction includes, where relevant, a conviction by a court in any part of the United Kingdom or in any member State of the European Union.”.

(9) In section 166A(5)(12) (post-offence convictions etc.) for “in any other” substitute “, where the court considers appropriate, in any”.

(10) In section 202(2)(13) (deferred sentence) for “in another” substitute “, where the court which deferred sentence considers appropriate, by a court in any”.

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(4) 1995 c.46.

(5) Section 23C(2)(d)(i) was added by the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), section 1 and amended by the Criminal Justice and Licensing (Scotland) Act 2010, schedule 4, paragraph 2.

(6) Section 23D was added by the Criminal Proceedings etc. (Reform) (Scotland) Act 2007, section 1.

(7) Section 27(3A) was added by the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), schedule 4, paragraph 3.

(8) Section 69 was amended by the Criminal Justice (Scotland) Act 2003 (asp 7), schedule 1, paragraph 2, the Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), schedule 1, paragraph 19, the Criminal Proceedings etc. Reform (Scotland) Act 2007 (asp 6), section 53(1) and the Wildlife and Natural Environment (Scotland) Act 2011 (asp 6) section 40(3).

(9) Section 101 was amended by the Crime and Punishment (Scotland) Act 1997 (c.48), schedule 3, paragraph 1, the Sexual Offences (Procedure and Evidence) (Scotland) Act 2002 (asp 9), section 10(1)(a), the Criminal Justice (Scotland) Act 2003, section 57(2) and schedule 1, paragraph 2(3), the Criminal Proceedings etc. (Reform) (Scotland) Act 2007, section 53(2) and the Wildlife and Natural Environment (Scotland) Act 2011, section 40(3).

(10) Section 101A was added by the Criminal Justice and Licensing (Scotland) Act 2010, section 70(1).

(11) Section 166 was amended by the Sexual Offences (Procedure and Evidence) (Scotland) Act 2002, section 10(2), the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 sections 12(1) and 53(3) and the Wildlife and Natural Environment (Scotland) Act 2011, section 40(3).

(12) Section 166A was substituted by the Criminal Justice and Licensing (Scotland) Act 2010, section 70(2).

(13) Section 202(2) was amended by the Criminal Justice and Licensing (Scotland) Act 2010, schedule 4, paragraph 4.

- (11) In section 204 (restrictions on passing sentence of imprisonment or detention)—
- (a) in subsections (1) and (2)(**14**) for “in another” substitute “or, where the court passing sentence considers appropriate, by a court in any”, and
  - (b) in subsection (4A)(**15**) omit “other than the United Kingdom”.
- (12) In section 205B(**16**) (minimum sentence for third conviction of certain offences relating to drug trafficking)—
- (a) in subsection (1A)(b) for “other than the United Kingdom” substitute “which the court passing sentence considers appropriate to take into account”,
  - (b) after subsection (5) insert—
    - “(6) Any reference in this section to a previous conviction includes, where relevant, a conviction by a court in any part of the United Kingdom or in any member State of the European Union.”.
- (13) In section 210C(1)(**17**) (risk assessment report) after “convicted person” insert “, including a conviction by a court in any part of the United Kingdom or in any member State of the European Union.”.
- (14) In section 271S(2)(e)(**18**) (relevant considerations) after “of the witness” insert “, including any convictions by a court in any part of the United Kingdom or in any member State of the European Union.”.
- (15) In section 275A(**19**)(disclosure of accused’s previous convictions where court allows questioning or evidence under section 275)—
- (a) in subsection (2) for “Any” substitute “Subject to subsection (2A) any”,
  - (b) after subsection (2) insert—
    - “(2A) Where the conviction is a relevant conviction by virtue of subsection (10)(aa) (ii), subsection (2) applies only if the judge considers it appropriate.”.
  - (c) in subsection (3) for “such a conviction” substitute “a conviction referred to in subsection (2)”, and
  - (d) for subsection (10)(aa)(**20**) substitute—
    - (aa) “(10) a conviction by a court in—
      - (i) England and Wales or Northern Ireland, or
      - (ii) a member State of the European Union,of an offence that is equivalent to one to which section 288C of this Act applies by virtue of subsection (2) thereof, or”.
- (16) In section 286(**21**) (previous convictions: proof in support of substantive charge)—
- (a) in subsection (1) after “previous conviction” insert “including a conviction by a court in a member State of the European Union”,
  - (b) in subsection (3) for “another” substitute “a”.

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(14) Section 204(1) and (2) were amended by the Criminal Justice and Licensing (Scotland) Act 2010, schedule 4, paragraph 5(a). Section 204(2) was amended by the Crime and Punishment (Scotland) Act 1997 c.48, schedule 3, paragraph 1.

(15) Section 204(4A) was added by the Criminal Justice and Licensing (Scotland) Act 2010, schedule 4, paragraph 5(b).

(16) Section 205B was added by the Crime and Punishment (Scotland) Act 1997, section 2(1). Subsection (1A) was added by the Criminal Justice and Licensing (Scotland) Act 2010, schedule 4, paragraph 6(b).

(17) Section 210C was added by the Criminal Justice (Scotland) Act 2003 (asp. 7), section 1(1).

(18) Section 271S was added by the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), section 90(1).

(19) Section 275A was added by the Sexual Offences (Procedure and Evidence) (Scotland) Act 2002 (asp. 9), section 10.

(20) Subsection (10)(aa) was added by the Criminal Justice and Licensing (Scotland) Act 2010, schedule 4, paragraph 7(a).

(21) Section 286(3) was added by the Criminal Justice (Scotland) Act 2003, section 57(3).

(17) In section 286A(1)(22) (proof of previous conviction by court in other member State) for “another” substitute “a”.

(18) In section 307(5)(a)(23) (interpretation) omit “or in any other member State of the European Union”.

#### **Amendment of the Sexual Offences (Scotland) Act 2009**

14. Section 39 of the Sexual Offences (Scotland) Act 2009(24) (defences in relation to offences against older children) is amended as follows—

- (a) in subsection (2)(a)(ia) and (b)(ia)(25) after “of 16” insert “and the court before which the charge is brought considers it is appropriate for that conviction to have that effect”, and
- (b) in subsection (5)(aa)(26) omit “other than the United Kingdom”.

#### **Amendment of the Criminal Justice and Licensing (Scotland) Act 2010**

15.—(1) The Criminal Justice and Licensing (Scotland) Act 2010(27) is amended as follows.

(2) In section 71 (convictions by courts in other EU member States) omit subsections (2), (3) and (4).

(3) In section 201 (orders and regulations) omit subsection (4)(b).

(4) In paragraph 12 of schedule 4 in the definition of “previous conviction”—

- (a) after “or” insert “,where the court considers it to be appropriate,”, and
- (b) omit “other”.

#### **Transitional and saving provision: proceedings commenced before IP completion day**

16.—(1) This Part does not apply in relation to criminal proceedings commenced before IP completion day or appellate proceedings arising out of such criminal proceedings(28).

(2) For the purposes of paragraph (1), criminal proceedings are commenced—

- (a) in summary proceedings, on the date of the first calling of the case, and
- (b) in solemn proceedings, on the earliest of—
  - (i) the date of the grant of a warrant to arrest and commit,
  - (ii) the date of the intimation of a petition,
  - (iii) the date of the service of an indictment.

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(22) Section 286A was added by the Criminal Justice (Scotland) Act 2003, section 57(4).

(23) Section 307(5) was amended by the Criminal Justice (Scotland) Act 2003, section 57(5)(b) and by the Criminal Justice and Licensing (Scotland) Act 2010, schedule 4, paragraph 8(b).

(24) 2009 asp 9; section 39 was amended by the Criminal Justice and Licensing (Scotland) Act 2010, section 44 and schedule 4, paragraph 13.

(25) Section 39(2)(a)(ia) and (2)(b)(ia) were added by the Criminal Justice and Licensing (Scotland) Act 2010, schedule 4, paragraphs 13(2)(a) and (b).

(26) Section 39(5)(aa) was added by the Criminal Justice and Licensing (Scotland) Act 2010, schedule 4, paragraph 13(3).

(27) 2010 asp 13.

(28) See Article 62(1)(g) of the withdrawal agreement and sections 7A and 7C of the European Union (Withdrawal) Act 2018.