Justice Committee

12th Report, 2014 (Session 4)

Mutual Recognition of Criminal Financial Penalties in the European Union (Scotland) (No. 1) Order 2014

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Justice Committee

Remit and membership

Remit:

To consider and report on:
(a) the administration of criminal and civil justice, community safety and other matters falling within the responsibility of the Cabinet Secretary for Justice; and
(b) the functions of the Lord Advocate other than as head of the systems of criminal prosecution and investigation of deaths in Scotland.

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Justice Committee

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The Committee reports to the Parliament as follows—

1. At its meeting on 4 November 2014 the Committee considered the following instrument—

   - Mutual Recognition of Criminal Financial Penalties in the European Union (Scotland) (No. 1) Order 2014 [draft].

2. The instrument was referred to the Justice Committee as lead committee and was subject to affirmative procedure. The Cabinet Secretary for Justice, Kenny MacAskill, gave evidence on the instrument and also moved the relevant motion recommending approval of the instrument.

Mutual Recognition of Criminal Financial Penalties in the European Union (Scotland) (No. 1) Order 2014 [draft]

The draft instrument

3. The draft Order was made under section 56(1) of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 and all other enabling powers. The purpose of the instrument is to amend the Criminal Procedure (Scotland) Act 1995 to make further provision for the transposition of the European Union Framework Decision on the Application of the Principle of Mutual Recognition to Financial Penalties (2005/214/JHA of 24 February 2005), in order to reflect more explicitly the terms of the Framework Decision.

Scrutiny by the Delegated Powers and Law Reform Committee

4. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on 28 October 2014 and agreed that it did not need to draw the attention of the Parliament to it on any grounds within its remit.

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5. The draft Regulations were considered by the Justice Committee on 4 November 2014, when it took evidence from Kenny MacAskill, Cabinet Secretary for Justice².

6. In his opening remarks the Cabinet Secretary stated that the Scottish Government was taking the opportunity to improve the original transposition of the mutual recognition of financial penalties framework decision before implementing the new requirements on 1 December. He explained that the purpose of the 2005 framework decision was to ensure consistency in the way in which financial penalties operate across the EU, enabling Scottish fines and fixed penalties, for example for road traffic offences of €70 or over, to be enforced elsewhere in the EU and vice versa. He added that the aim was to ensure that Scotland was not seen as an attractive destination for criminals because they thought that fines imposed elsewhere in the EU would not be enforced here.

7. Mr MacAskill went on to explain that, since the original transposition, in 2009, a few minor problems had been identified, such as delays caused by incomplete or unsigned requests by other member states. He also added that it was expected that the United Kingdom would opt back into the trials in absentia framework decision on 1 December, which would amend the original 2005 mutual recognition of financial penalties framework decision.

8. In response to a question about how often the provision had been used, a Scottish Government official confirmed that about 100 financial penalties had been dealt with in the last five years, from other EU countries to Scotland and vice versa, the majority of which were for road traffic offences committed by commercial lorry drivers and tourists.

9. Mr MacAskill then moved the motion lodged in his name: S4M-11278—That the Justice Committee recommends that the Mutual Recognition of Criminal Financial Penalties in the European Union (Scotland) (No. 1) Order 2014 [draft] be approved.

10. The motion was agreed to.

11. The Justice Committee therefore recommends to the Parliament that it approve the draft instrument.

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