

# **CRIMINAL JUSTICE AND LICENSING (SCOTLAND) ACT 2010**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### *Schedule 2*

#### *– Community Payback Orders: consequential modifications*

#### **Part 2**

#### **– Other enactments**

#### *Paragraph 30*

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#### *The Firearms Act 1968 (c.27)*

820. *Paragraph 30*  
replaces references to probation order in sections 21(3ZA) (possession of firearms by persons previously convicted of crime) and 52(1A) (forfeiture and disposal of firearms: cancellation of certificate by convicting court) with references to community payback order as a consequence of section 14 of this Bill.

#### *Paragraph 31*

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#### *The Social Work (Scotland) Act 1968 (c.49)*

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821. Section 27(1)(b)(iii) and (iv) of the Social Work (Scotland) Act 1968 provide that every local authority must supervise, and provide advice, guidance and assistance to offenders subject to: a community service order; a probation order which includes an unpaid work requirement; or a supervised attendance order. Paragraph 31(2) amends section 27(1)(b)(iii) replacing the references to probation order and community service order with community payback order imposing an unpaid work and other activity requirement. Section 27(1)(b)(iv) is repealed. Section 27(1)(b)(va) which refers to community reparation orders, is also repealed since the provisions in the 1995 Act relating to CROs are repealed.
822. Section 86 of the 1968 Act details the process to be followed in respect of the provision of accommodation and when determining the ordinary residence of a person subject to local authority supervision. Paragraph 31(3) inserts a reference to community payback order into subsection (3).

#### *Paragraph 32*

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#### *The Rehabilitation of Offenders Act 1974 (c.53)*

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which received Royal Assent on 6 August 2010*

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- 823. Paragraph 32(2) removes reference to probation order in respect of the rehabilitation period for particular sentences in the Rehabilitation of Offenders Act 1974. A community payback order is designated a sentence (unlike a probation order) and so is covered under the general provisions and does not need to be specifically referred to.
- 824. Paragraph 32(3) also removes references to probation orders in respect of the rehabilitation period applicable to a conviction in section 6(3) of the 1974 Act.

### ***Paragraph 33***

#### ***- The Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c.55)***

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- 825. Schedule 1, part 2 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 lists those persons who are disqualified from jury service. Paragraph (bb) is amended to substitute community payback order for probation order in sub-paragraph (i). Sub-paragraph (iii) which refers to community service orders is repealed.

### ***Paragraph 34***

#### ***- The Local Government and Planning (Scotland) Act 1982 (c.43)***

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- 826. Section 24 of the Local Government and Planning (Scotland) Act 1982 refers to councils' functions in relation to the provision of gardening assistance for the disabled and the elderly. Subsection (3) is amended to replace references to instructions given under the Community Service by Offenders (Scotland) Act 1978 in respect of community service orders with references to determinations made under section 227A of the Criminal Procedure Scotland Act in respect of community payback orders with unpaid work and other activity requirement.

### ***Paragraph 35***

#### ***- The 1982 Act***

- 827. Section 49 of the Civic Government (Scotland) Act 1982, which relates to persons found guilty of permitting any creature in his charge to cause danger or injury to any other person who is in a public place or to give such person reasonable cause for alarm or annoyance is amended by paragraph 35 to remove the reference to probation order in subsection (6). There is no requirement to replace this reference with community payback order as a community payback order is a sentence following conviction.
- 828. Section 58(3) of the 1982 Act (convicted thief in possession of a tool or object of which it may reasonably be inferred that he intended to commit theft or has committed theft) is amended to repeal references to probation order. There is no requirement to replace this reference with community payback order as a community payback order is a sentence following conviction.

### ***Paragraph 36***

#### ***- The Foster Children (Scotland) Act 1984 (c.56)***

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- 829. Paragraph 36 replaces references to probation order with community payback order in section 2(3) of the Foster Children (Scotland) Act 1984 which lists the circumstances in which a child is not considered to be a foster child under the terms of section 1 of the 1984 Act.

### ***Paragraph 37***

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***The Road Traffic Offenders Act 1988 (c.53)***

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830. References to probation order in section 46(3)(b) of the Road Traffic Offenders Act 1998 are repealed. As a community payback order is considered to be a sentence, following a conviction, there is no requirement to refer specifically to this.

***Paragraph 38***

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***The Jobseekers Act 1995 (c.18)***

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831. **Paragraph 38** repeals the reference to probation order in section 20D(5) of the Jobseekers Act 1995 (as inserted by section 25(2) of the Welfare Reform Act 2009) (jobseeker’s allowance: sanctions for violent conduct). There is no requirement to replace this reference with community payback order as a community payback order is a sentence following conviction.

***Paragraph 39***

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***The Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c.40)***

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832. Paragraph 13 of Schedule 3, Part 2 of the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995, which relates solely to supervised attendance orders, is repealed as a consequence of section 14 of this Bill which replaces supervised attendance orders with community payback orders.

***Paragraph 40***

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***The Proceeds of Crime (Scotland) Act 1995 (c.43)***

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833. Paragraph 32 repeals references to probation order in sections 25(9) and 26(9) of the Proceeds of Crime (Scotland) Act 1995. As imposition of a community payback order is considered a sentence, and action in respect of sentences is specifically provided for, there is no requirement to replace the references to probation with community payback order.

***Paragraph 41***

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***The Crime and Punishment (Scotland) Act 1997 (c.48)***

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834. Section 26 of the Crime and Punishment (Scotland) Act 1997 which relates to evidence requirements in respect of offences committed whilst the offender is subject to a probation order or a community service order is repealed.
835. Paragraph 21, sub-paragraphs (27) to (29) of Schedule 1 to the 1997 Act, which also relate to probation orders, are repealed.

***Paragraph 42***

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***The Crime and Disorder Act 1998 (c.37)***

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836. Paragraphs 1 and 2 of Schedule 6, Part 1 of the Crime and Disorder Act 1998 relate to imposition of drug treatment and testing orders or restriction of liberty orders

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concurrently with probation orders, and amend the relevant provisions in the Criminal Procedure (Scotland) Act 1995 to enable these combinations to be imposed. Paragraph 42 repeals these provisions as probation orders will be replaced by community payback orders and provisions relating to orders which may be imposed concurrently are contained in section 14 of this Bill.

### ***Paragraph 43***

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#### ***The Powers of Criminal Courts (Sentencing) Act 2000 (c.6)***

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837. Paragraphs 176 to 178 of the Powers of Criminal Courts (Sentencing) Act 2000 amend sections 234 (probation orders), 242 and 244 (community service orders) of the Criminal Procedure (Scotland) Act 1995. These sections are repealed as a consequence of section 14 of this Bill which replaces probation orders and community service orders with community payback orders.

### ***Paragraph 44***

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#### ***The Criminal Justice and Court Services Act 2000 (c.43)***

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838. Paragraph 36 repeals the reference to 234(1)(a) of the Criminal Procedure (Scotland) Act 1995 in Schedule 7, paragraph 4(2) of the Criminal Justice and Court Services Act 2000. Section 234 of the 1995 Act refers to probation orders and is repealed as a consequence of section 14 of this Bill which replaces probation orders and community service orders with community payback orders.

### ***Paragraph 45***

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#### ***The Social Security Fraud Act 2001 (c.11)***

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839. Section 6C of the Social Security Fraud Act 2001 relates to loss of benefit in the case of a conviction. Paragraph 45(2) removes reference to probation order as a consequence of section 14 of this Act. There is no requirement to replace this reference with community payback order as a community payback order is a sentence following conviction.
840. Section 7 relates to loss of benefit as a consequence of benefit offences. Subsection (9) (b) defines conviction as including the imposition of a probation order by a Scottish court. Paragraph 45(3) repeals the reference to probation order. As in the paragraph above, there is no requirement to replace this reference with community payback order.

### ***Paragraph 46***

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#### ***The Justice (Northern Ireland) Act 2002 (c.26)***

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841. Paragraph 46 repeals Schedule 4, paragraph 37 of the Justice (Northern Ireland) Act 2002. Paragraph 37 of the 2002 Act amends section 244 of the Criminal Procedure (Scotland) Act 1995 (relating to community service orders). Section 244 is repealed as a consequence of section 14 of this Act which replaces community service orders with community payback orders.

### ***Paragraph 47***

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#### ***The Criminal Justice (Scotland) Act 2003 (asp 7)***

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842. **Paragraph 47**  
amends sections 42, 46, 50 and 60 of the Criminal Justice (Scotland) Act 2003. Section 42 relates to drugs courts and the amendments to this section replace references to probation order and community service order with community payback order and replace references in the Criminal Procedure (Scotland) Act 1995 which relate to probation orders with corresponding references relating to community payback orders. Section 46 provides for remote monitoring as a condition of a probation order and this provision is repealed as a consequence of the repeal of probation orders in their entirety. Section 50(1), (2) and (4), which relate solely to supervised attendance orders, are also repealed as a consequence of section 14 of this Bill which replaces the provisions relating to supervised attendance orders. Section 60(1)(a), (b), (e) and (f) and subsections (3) and (4) are repealed. These relate solely to procedures relating probation orders, community service orders and supervised attendance orders, all of which are replaced by community payback orders.

**Paragraph 48**

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***The Mental Health (Care and Treatment) (Scotland) Act 2003 (asp. 13)***

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843. **Paragraph 48**  
repeals section 135 of and paragraph 8(15) of Schedule 4 to the Mental Health (Care and Treatment) (Scotland) Act 2003. Section 135 and paragraph 8(15) amend section 230 of the Criminal Procedure (Scotland) Act 1995 in respect of probation for treatment of a mental disorder. Section 230 is repealed as a consequence of section 14 of this Bill which replaces probation orders with community payback orders. Section 14 also provides for mental health treatment requirements as part of a community payback order.

**Paragraph 49**

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***The Criminal Justice Act 2003 (c.44)***

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844. **Paragraph 49**  
repeals paragraphs 69 to 72 of Schedule 32 of the Criminal Justice Act 2003. Schedule 32 of the 2003 Act amends primary legislation which relates to sentencing. Paragraphs 69 to 72 amend sections 234, 242 and 244 of the Criminal Procedure (Scotland) Act which relate to probation orders and community service orders. Sections 234, 242 and 244 are repealed as a consequence of section 14 of this Act which replaces probation orders and community service orders with community payback orders.

**Paragraph 50**

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***The Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8)***

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845. Section 120 of the Antisocial Behaviour etc. (Scotland) Act 2004 relates solely to community reparation orders (CROs). Paragraph 50 repeals section 120 and Schedule 4, paragraph 5, sub-paragraphs (3), (5), (6) and (11) of the 2004 Act (which amend provisions in the Criminal Procedure (Scotland) Act 1995 (the 1995 Act) relating to CROs, supervised attendance orders and community service orders). Provisions in the 1995 Act relating to supervised attendance orders and community service orders are repealed as a consequence of section 14 of this Bill which replaces supervised attendance orders and community service orders with community payback orders.

**Paragraph 51**

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***The Management of Offenders etc. (Scotland) Act 2005 (asp 14)***

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846. **Paragraph 51**  
amends section 10 of the Management of Offenders etc (Scotland) Act which deals with the arrangements for assessing and managing risk posed by certain offenders. In subsection (1)(b) references to probation order are replaced by references to community payback order imposing an offender supervision requirement (either alone or with any other requirement). Paragraph 51(3) also repeals section 12 (probation progress review).

***Paragraph 52***

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***The Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6)***

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847. **Paragraph 52**  
repeals sections 49(4), 57 and paragraph 26(l) and (n) of the schedule. Section 49(4) provides for a compensation requirement to be imposed as part of a probation order, section 57 relates specifically to breach of probation orders and community service orders and paragraph 26(l) and (n) of the schedule relate to community service orders and community reparation orders respectively. The relevant sections of the Criminal Procedure (Scotland) Act 1995 which provide for probation orders, community service orders and community reparation orders are repealed as a consequence of section 14 of this Act. Section 14 provides for a compensation requirement to be imposed as part of a community payback order and for the process to be followed in the event of breach of a community payback order, replacing those provisions which are being repealed.

***Paragraph 53***

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***The Criminal Justice and Immigration Act 2008 (c.4)***

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848. **Paragraph 53**  
repeals paragraphs 43 to 46 of Schedule 4, Part 1 of the Criminal Justice and Immigration Act 2008. These provisions detail the effect of the Criminal Procedure (Scotland) Act 1995 in respect of the 2008 Act and relate specifically to sections 234 (probation orders), 242 and 244 (community service orders). These sections are repealed as a consequence of section 14 of this Act which introduces the community payback order which replaces probation orders and community service orders.