

CRIMINAL JUSTICE (SCOTLAND) ACT 2003

EXPLANATORY NOTES

THE ACT THE ACT IS IN 12 PARTS.

Part 6

– Non-Custodial Punishments

Sections 46

and

47

– Requirement for remote monitoring in probation order and requirement for remote monitoring in drug treatment and testing order

229. *Sections 46
and
47*

amend the Criminal Procedure (Scotland) Act 1995 to allow the court, when it makes a probation order or a drug treatment and testing order (DTTO), to include as a condition of that order that the offender comply with certain restrictions on his or her movements and any requirement to enable remote monitoring of his or her compliance with those restrictions.

230. A probation order is an order made under section 228 of the Criminal Procedure Scotland Act 1995, which requires an offender to be under supervision in the community for a specified period. The principal focus of the order, which requires the offender's consent, is to challenge the offender's criminality and behaviour.

231. A drug treatment and testing order is an order made under section 234B of the Criminal Procedure Scotland Act 1995 (as inserted by section 89 of the Crime and Disorder Act 1998). A DTTO is a disposal targeted on serious offenders with a dependency on drugs who consent to the imposition of the order. The offender is placed on specialist treatment programmes and subject to regular review by the court.

232. Section 245A of the Criminal Procedure (Scotland) Act 1995 contains provisions concerning a Restriction of Liberty Order (RLO). RLOs were introduced in Scotland by section 5 of the Crime and Punishment (Scotland) Act 1997. They require an offender to be restricted to a specified place for up to 12 hours per day or from a specified place for up to 24 hours per day, or both, for a maximum period of 12 months. Compliance with an RLO is monitored by remote monitoring equipment.

233. Subject to the provisions in section 245A of the Criminal Procedure (Scotland) Act 1995, section 47 inserts a new section 234CA into the 1995 Act which provides that a DTTO may include a requirement that an offender comply with restrictions on movement for a specified period of up to 12 months. Section 46 inserts a new section 230A which provides that a probation order may also include a requirement that an offender comply with restrictions on his or her movement for a specified period of up to 12 months. Restrictions may be applied to both provisions as set out in section 245A(2) of the 1995 Act (periods and places).

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which received Royal Assent on 26 March 2003*

234. [Section 47\(2\)](#) amends the 1995 Act by inserting a new section 234CA. Subsection (2) of this new section provides that where such a requirement is made as part of a DTTO a copy of the order shall be sent from the clerk of the court to the person who is responsible for monitoring the offender's compliance with the requirement. Similarly the new section 230A(2) (inserted by section 46(2) of the Act) provides for such a procedure where such a requirement is made as a condition of a probation order.
235. New section 234CA(3) provides that if the person responsible for monitoring the offender's compliance with the remote monitoring conditions of the DTTO finds that they have failed to comply with any of the requirements they should inform the supervising officer, who will inform the court. The supervising officer is the person appointed or assigned by the local authority under section 234C of the 1995 Act.
236. [Section 46\(2\)](#) amends the 1995 Act by inserting a new section 230A. Subsection (3) of new section 230A provides that if the person responsible for monitoring the offender's compliance with the remote monitoring conditions of the probation order finds that they have failed to comply with any of the requirements they should inform the supervising officer, who will inform the court. The supervising officer is the person appointed or assigned by the local authority under section 228(3) of the 1995 Act.
237. New section 234CA(4) provides that where the supervising officer reports an alleged breach of the remote monitoring condition in relation to a DTTO, the court may exercise the existing powers in section 234G of the 1995 Act. The new section 230A(4) inserted by section 46(2) provides that where such a breach is reported in relation to a probation order the court may exercise the existing powers in section 232 of the 1995 Act. The documentary evidence required in proceedings concerning an alleged breach of the remote monitoring condition is to be that prescribed for RLOs in section 245H. Where the court is satisfied that the offender has failed without reasonable excuse to comply with any of the requirements of the remote monitoring condition, the court is to have the powers in section 234G(2) to impose a fine, vary or revoke the order. The DTTO may continue in force notwithstanding that a remote monitoring condition is removed.
238. New sections 234CA(5) and 230A(5) each apply sections 245A(6), (8) to (11), 245B and 245C of the 1995 Act, in relation to the imposition of, or compliance with the requirements of, an RLO, to the arrangements for remote monitoring set out in sections 234CA(1) and 245A(1) respectively.
239. New section 234CA(6) modifies section 234E of the 1995 Act in relation to a drug treatment and testing order with remote monitoring requirements. Section 234E of the 1995 Act sets out the procedures for the variation of the remote monitoring conditions in a drug treatment and testing order.
240. Section 234E(1) provides that where a DTTO is in force either the offender or the supervising officer may apply to the appropriate court for variation or revocation of the order. However, new section 234CA(6) provides that where a remote monitoring condition has been included in a DTTO the monitoring officer is only able to apply for a variation or revocation in relation to the remote monitoring requirement.
241. Section 234E(3) provides that where an application for variation or revocation of a DTTO is made, the offender and the supervising officer should be heard. New section 234CA(6) provides that the responsible person should also be heard if a remote monitoring condition forms part of the DTTO.
242. Section 234E(3)(a) provides that the court may vary the order. New section 234CA(6) (d) provides that this can include increasing or decreasing the period of monitoring as set out in the order.
243. New section 230A(6) provides that where a probation order has such a requirement, a request to amend the order may come from the person responsible for monitoring the

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requirement, but only in respect of that part of the order. New section 230A(7) provides that where such an application is made by the probationer or the supervising officer a copy shall be sent to the person responsible for monitoring compliance with the order. It also provides that where the responsible person applies for an amendment to the order they should copy the application to the probationer and supervising officer.

244. New section 234CA(7) provides that where such a requirement is varied in relation to a DTTO, the clerk of the court shall send a copy of the amended order to the person responsible for monitoring the offenders compliance with the order. New section 230A(7) provides that where such a requirement is varied in relation to a probation order, the clerk of the court shall send a copy of the amended order to the person responsible for monitoring the offenders compliance with the order.
245. [Section 46\(3\)](#) amends section 232 of the Criminal Procedure (Scotland) Act 1995 to provide that the maximum period for an extension to a requirement of a probation order is twelve months as set out in new section 230A(1).