

Draft Order laid before the Scottish Parliament under section 201(4) of the Criminal Justice and Licensing (Scotland) Act 2010, for approval by resolution of the Scottish Parliament

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2011 No.

CRIMINAL LAW

**The Criminal Justice and Licensing (Scotland) Act 2010
(Consequential and Supplementary Provisions) Order 2011**

Made - - - -

Coming into force - - *1st February 2011*

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 201(2)(a) and 204(1) and (2) of the Criminal Justice and Licensing (Scotland) Act 2010⁽¹⁾ and of all other powers enabling them to do so.

In accordance with section 201(4) of that Act, a draft of this Order has been laid before, and approved by resolution of, the Scottish Parliament.

Citation and commencement

1. This Order may be cited as the Criminal Justice and Licensing (Scotland) Act 2010 (Consequential and Supplementary Provisions) Order 2011 and comes into force on 1st February 2011.

Consequential and supplementary provisions

2. Subject to article 3, the amendments specified in the Schedule have effect.

Savings provision

3.—(1) The amendments specified in the Schedule do not apply in relation to offences committed before 1st February 2011.

(2) Where an offence is found to have been committed over a period of two or more days, or at some time during a period of two or more days, it shall be taken for the purposes of this Order to have been committed on the first of those days.

Draft Legislation: This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument:
The Criminal Justice and Licensing (Scotland) Act 2010 (Consequential and Supplementary Provisions) Order 2011 No. 25

St Andrew's House,
Edinburgh
Date

A member of the Scottish Executive

SCHEDULE

Article 2

PART 1

Primary legislation

The Criminal Procedure (Scotland) Act 1995

1.—(1) The Criminal Procedure (Scotland) Act 1995(2) is amended as follows.

(2) In section 227N(3) (Offenders subject to more than one unpaid work or other activity requirement)—

(a) in subsection (1)(b), for the words from “community” to the end substitute—

“of the following orders—

- (i) a community payback order imposing such a requirement on the same offender;
- (ii) a community service order under this Act in relation to the same offender;
- (iii) a probation order under this Act imposing an unpaid work requirement on the same offender;
- (iv) a supervised attendance order under this Act in relation to the same offender.”;

(b) after subsection (1) insert—

“(1A) In this section references to an “existing requirement” are—

- (a) in relation to a community payback order, to the unpaid work or other activity requirement imposed on the offender by the order;
- (b) in relation to a community service order or a probation order, to the unpaid work requirement imposed on the offender by the order;
- (c) in relation to a supervised attendance order, to the requirement imposed on the offender by the order by virtue of section 235(2) of this Act.”; and

(c) in subsection (5), the words “of unpaid work or activity” are repealed.

(3) In section 227ZC(4) (Breach of community payback order) after subsection (9) insert—

“(9A) Where under subsection (8)(a) the court revokes the order and imposes on the offender a period of imprisonment, liability to pay the fine in respect of which the order was imposed (or, as the case may be, any instalments of the fine that are unpaid on the date that the period of imprisonment is imposed) is discharged.”.

The Sexual Offences Act 2003

2.—(1) The Sexual Offences Act 2003(5) is amended as follows—

(2) In section 82(1) (The notification period), in the Table, in the entry relating to a person in whose case an order for conditional discharge is made—

(a) in the first column, for “a probation order” substitute “a community payback order imposing an offender supervision requirement”; and

(2) 1995 c.46.

(3) Section 227N was inserted by section 14 of the [Criminal Justice and Licensing \(Scotland\) Act 2010 asp 13](#).

(4) Section 227ZC was inserted by section 14 of the [Criminal Justice and Licensing \(Scotland\) Act 2010 asp 13](#).

(5) 2003 c.42.

- (b) in the second column for “the probation period” substitute “the specified period for the offender supervision requirement”.
- (3) In section 111(c) (Appeals in relation to SOPOs and interim SOPOs: Scotland)—
 - (a) in sub-paragraph (i)(6), for “section 106(1)(d) of the Criminal Procedure (Scotland) Act 1995 (c.46) (appeal against probation and community service orders)” substitute “section 106(1)(dza) of the Criminal Procedure (Scotland) Act 1995 (c.46) (appeal against community payback order)”; and
 - (b) in sub-paragraph (ii), for “section 175(2)(c) of that Act (appeal against probation, community service and other orders)” substitute “section 175(2)(cza) of that Act (appeal against community payback order)”.
- (4) In section 113(3) (Offence: breach of SOPO or interim SOPO), for “probation order” substitute “community payback order”.
- (5) In section 122(3) (Offence: breach of foreign travel order), for “probation order” substitute “community payback order”.
- (6) In section 133(1) (Part 2: general interpretation)—
 - (a) in the definition of “community order”, for paragraph (b) substitute—
 - “(b) a community payback order made under the Criminal Procedure (Scotland) Act 1995 (c.46);”;
 - (b) the definitions of “probation order” and “probation period” are repealed; and
 - (c) at the appropriate place, insert:—
 - ““specified”, in relation to an offender supervision requirement, means specified in the requirement.”.
- (7) In section 134(1) (Conditional discharges and probation orders)—
 - (a) the words “or, in Scotland, a probation order” are repealed; and
 - (b) in paragraph (c), the words “probation order or” are repealed.

PART 2

Secondary legislation

The National Health Service (Charges to Overseas Visitors) (Scotland) Regulations 1989

3. In regulation 3(f) (Services exempted from charges) of the National Health Service (Charges to Overseas Visitors) (Scotland) Regulations 1989(7), for “section 184(1)” to the end, substitute “section 227R of the Criminal Procedure (Scotland) Act 1995 (c.46), included by the Court as a requirement in a community payback order.”.

The Community Service by Offenders (Hours of Work) (Scotland) Order 1996

4. The Community Service by Offenders (Hours of Work) (Scotland) Order 1996(8) is revoked.

(6) Paragraph (c) of section 111 was inserted by section 17(2)(c) of the [Protection of Children and Prevention of Sexual Offences \(Scotland\) Act 2005 asp 9](#).

(7) [S.I. 1989/364](#).

(8) [S.I. 1996/1938](#).

The Prosecutor’s Right of Appeal in Summary Proceedings (Scotland) Order 1996

5. In article 2(b) of the Prosecutor’s Right of Appeal in Summary Proceedings (Scotland) Order 1996(9) for “a probation order, community service order or order” substitute “an order”.

The Postal Services Act 2000 (Consequential Modifications No. 1) Order 2001

6. In Schedule 1 (Amendments) to the Postal Services Act 2000 (Consequential Modifications No. 1) Order 2001(10), paragraphs 104(4) and (6) (relating to the Criminal Procedure (Scotland) Act 1995) are omitted.

The Community Care (Direct Payments) (Scotland) Regulations 2003

7. In regulation 2(g) (Description of persons specified for the purposes of section 12B(1) of the Act) of the Community Care (Direct Payments) (Scotland) Regulations 2003(11), for “probation order in terms of sections 228 to 230” substitute “community payback order imposed under section 227A”.

The Community Reparation Orders (Requirements for Consultation and Prescribed Activities) (Scotland) Regulations 2005

8. Regulation 3 (Prescribed activities) of the Community Reparation Orders (Requirements for Consultation and Prescribed Activities) (Scotland) Regulations 2005(12) is omitted.

The Courts Act 2003 (Consequential Provisions) Order 2005

9. Paragraph 52 (relating to the Criminal Procedure (Scotland) Act 1995) of the Schedule (Consequential Amendments) to the Courts Act 2003 (Consequential Provisions) Order 2005(13) is omitted.

The Management of Offenders etc. (Scotland) Act 2005 (Specification of Persons) Order 2007

10. In the Schedule (Persons specified for the purposes of section 10(3) of the Management of Offenders etc. (Scotland) Act 2005) to the Management of Offenders etc. (Scotland) Act 2005 (Specification of Persons) Order 2007(14) for “section 230A(5) (Requirement for remote monitoring in probation order)” substitute “section 227ZI (Remote monitoring)”.

The Offender Management Act 2007 (Consequential Amendments) Order 2008

11. In Schedule 1 (Amendments of Acts) to the Offender Management Act 2007 (Consequential Amendments) Order 2008(15), paragraphs 11(3), (4) and (5) (relating to the Criminal Procedure (Scotland) Act 1995) are omitted.

(9) S.I. 1996/2548.

(10) S.I. 2001/1149.

(11) S.S.I. 2003/243, regulation 2(g) was amended by Schedule 1 paragraph 45(2)(c) of the [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Subordinate Legislation\) Order S.S.I. 2005/445](#).

(12) S.S.I. 2005/18.

(13) S.I. 2005/886.

(14) S.S.I. 2007/92.

(15) S.I. 2008/912.

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The Health Care and Associated Professions (Miscellaneous Amendments and Practitioner Psychologists) Order 2009

12. In Schedule 5 (Amendments to Acts of Parliament, Acts of the Scottish Parliament and Northern Ireland legislation) to the Health Care and Associated Professions (Miscellaneous Amendments and Practitioner Psychologists) Order 2009(16), paragraph 3 (Amendment of the Criminal Procedure (Scotland) Act 1995) is omitted.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision in consequence of the Criminal Justice and Licensing (Scotland) Act 2010 which amongst other things, replaced community reparation orders, probation orders, supervised attendance orders and community service orders with community payback orders.

Article 2 and the Schedule sets out various consequential and supplementary amendments to primary and secondary legislation. These amendments apply only in relation to offences committed on or after 1st February 2011 (article 3).