



Criminal Procedure (Scotland) Act 1995

1995 CHAPTER 46

PART XI

SENTENCING

^{F1}Breach of community payback order

Textual Amendments

- F1** Ss. 227A-227ZN and cross-headings inserted (1.2.2011 except for the insertion of s. 227ZM, 1.4.2011 in so far as not already in force) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), ss. [14\(1\)](#), [206\(1\)](#); S.S.I. 2010/413, art. 2, sch. (with art. 3(1))

227ZC Breach of community payback order

- (1) This section applies where it appears to the appropriate court that an offender on whom a community payback order has been imposed has failed to comply with a requirement imposed by the order.
- (2) The court may—
 - (a) issue a warrant for the offender's arrest, or
 - (b) issue a citation to the offender requiring the offender to appear before the court.
- (3) If the offender fails to appear as required by a citation issued under subsection (2)(b), the court may issue a warrant for the arrest of the offender.
- (4) The unified citation provisions apply in relation to a citation under subsection (2)(b) as they apply in relation to a citation under section 216(3)(a) of this Act.
- (5) The court must, before considering the alleged failure—
 - (a) provide the offender with written details of the alleged failure,
 - (b) inform the offender that the offender is entitled to be legally represented, and

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- (c) inform the offender that no answer need be given to the allegation before the offender—
- (i) has been given an opportunity to take legal advice, or
 - (ii) has indicated that the offender does not wish to take legal advice.
- (6) Subsection (5) does not apply if the offender has previously been provided with those details and informed about those matters under section 227X(10) of this Act.
- (7) Where the order was imposed under section 227A, if the court is satisfied that the offender has failed without reasonable excuse to comply with a requirement imposed by the order, the court may—
- (a) impose on the offender a fine not exceeding level 3 on the standard scale,
 - (b) where the order was imposed under section 227A(1), revoke the order and deal with the offender in respect of the offence in relation to which the order was imposed as it could have dealt with the offender had the order not been imposed,
 - (c) where the order was imposed under section 227A(4), revoke the order and impose on the offender a sentence of imprisonment for a term not exceeding—
 - (i) where the court is a justice of the peace court, 60 days,
 - (ii) in any other case, 3 months,
 - (d) vary the order so as to impose a new requirement, vary any requirement imposed by the order or revoke or discharge any requirement imposed by the order, or
 - (e) both impose a fine under paragraph (a) and vary the order under paragraph (d).
- (8) Where the order was imposed under section 227M(2), if the court is satisfied that the offender has failed without reasonable excuse to comply with a requirement imposed by the order, the court may—
- (a) revoke the order and impose on the offender a period of imprisonment for a term not exceeding—
 - (i) where the court is a justice of the peace court, 60 days,
 - (ii) in any other case, 3 months, or
 - (b) vary—
 - (i) the number of hours specified in the level 1 unpaid work or other activity requirement imposed by the order, and
 - (ii) where the order also imposes an offender supervision requirement, the specified period under section 227G in relation to the requirement.
- (9) Where the court revokes a community payback order under subsection (7)(b) or (c) and the offender is, in respect of the same offence, also subject to—
- (a) a drug treatment and testing order, by virtue of section 234J, or
 - (b) a restriction of liberty order, by virtue of section 245D(3),
- the court must, before dealing with the offender under subsection (7)(b) or (c), revoke the drug treatment and testing order or, as the case may be, restriction of liberty order.
- [Where under subsection (8)(a) the court revokes the order and imposes on the offender
^{F2}(9A) 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.]
- (10) If the court is satisfied that the offender has failed to comply with a requirement imposed by the order but had a reasonable excuse for the failure, the court may,

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subject to section 227Z(2), vary the order so as to impose a new requirement, vary any requirement imposed by the order or revoke or discharge any requirement imposed by the order.

- (11) Subsections (7)(b) and (c) and (9) are subject to section 42(9) of the Criminal Justice (Scotland) Act 2003 (asp 7) (powers of drugs courts to deal with breach of community payback orders).

Textual Amendments

- F2** S. 227ZC(9A) inserted (1.2.2011) by [The Criminal Justice and Licensing \(Scotland\) Act 2010 \(Consequential and Supplementary Provisions\) Order 2011 \(S.S.I. 2011/25\)](#), art. 1, [sch. para. 1\(3\)](#) (with art. 3)

227ZD Breach of community payback order: further provision

- (1) Evidence of one witness is sufficient for the purpose of establishing that an offender has failed without reasonable excuse to comply with a requirement imposed by a community payback order.
- (2) Subsection (3) applies in relation to a community payback order imposing a compensation requirement.
- (3) A document bearing to be a certificate signed by the clerk of the appropriate court and stating that the compensation, or an instalment of the compensation, has not been paid as required by the requirement is sufficient evidence that the offender has failed to comply with the requirement.
- (4) The appropriate court may, for the purpose of considering whether an offender has failed to comply with a requirement imposed by a community payback order, require the responsible officer to provide a report on the offender's compliance with the requirement.]

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