



Criminal Procedure (Scotland) Act 1995

1995 CHAPTER 46

PART XI

SENTENCING

[^{F1}Community payback orders

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))

227A Community payback orders

- (1) Where a person (the “offender”) is convicted of an offence punishable by imprisonment, the court may, instead of imposing a sentence of imprisonment, impose a community payback order on the offender.
- (2) A community payback order is an order imposing one or more of the following requirements—
 - (a) an offender supervision requirement,
 - (b) a compensation requirement,
 - (c) an unpaid work or other activity requirement,
 - (d) a programme requirement,
 - (e) a residence requirement,
 - (f) a mental health treatment requirement,
 - (g) a drug treatment requirement,
 - (h) an alcohol treatment requirement,
 - (i) a conduct requirement.
- (3) Subsection (4) applies where—

Status: Point in time view as at 16/08/2013.

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- (a) a person (the “offender”) is convicted of an offence punishable by a fine (whether or not it is also punishable by imprisonment), and
- (b) where the offence is also punishable by imprisonment, the court decides not to impose—
 - (i) a sentence of imprisonment, or
 - (ii) a community payback order under subsection (1) instead of a sentence of imprisonment.
- (4) The court may, instead of or as well as imposing a fine, impose a community payback order on the offender imposing one or more of the following requirements—
 - (a) an offender supervision requirement,
 - (b) a level 1 unpaid work or other activity requirement,
 - (c) a conduct requirement.
- (5) A justice of the peace court may only impose a community payback order imposing one or more of the following requirements—
 - (a) an offender supervision requirement,
 - (b) a compensation requirement,
 - (c) an unpaid work or other activity requirement,
 - (d) a residence requirement,
 - (e) a conduct requirement.
- (6) Subsection (5)(c) is subject to section 227J(4).
- (7) The Scottish Ministers may by order made by statutory instrument amend subsection (5) so as to add to or omit requirements that may be imposed by a community payback order imposed by a justice of the peace court.
- (8) An order is not to be made under subsection (7) unless a draft of the statutory instrument containing the order has been laid before and approved by resolution of the Scottish Parliament.
- (9) In this section and sections 227B to 227ZK, except where the context requires otherwise—
 - “ court ” means the High Court, the sheriff or a justice of the peace court,
 - “ imprisonment ” includes detention.

227B Community payback order: procedure prior to imposition

- (1) This section applies where a court is considering imposing a community payback order on an offender.
- (2) The court must not impose the order unless it is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was serious enough to warrant the imposition of such an order.
- (3) Before imposing a community payback order imposing two or more requirements, the court must consider whether, in the circumstances of the case, the requirements are compatible with each other.
- (4) The court must not impose the order unless it has obtained, and taken account of, a report from an officer of a local authority containing information about the offender and the offender's circumstances.

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- (5) An Act of Adjournal may prescribe—
 - (a) the form of a report under subsection (4), and
 - (b) the particular information to be contained in it.
- (6) Subsection (4) does not apply where the court is considering imposing a community payback order—
 - (a) imposing only a level 1 unpaid work or other activity requirement, or
 - (b) under section 227M(2).
- (7) The clerk of the court must give a copy of any report obtained under subsection (4) to—
 - (a) the offender,
 - (b) the offender's solicitor (if any), and
 - (c) the prosecutor.
- (8) Before imposing the order, the court must explain to the offender in ordinary language—
 - (a) the purpose and effect of each of the requirements to be imposed by the order,
 - (b) the consequences which may follow if the offender fails to comply with any of the requirements imposed by the order, and
 - (c) where the court proposes to include in the order provision under section 227X for it to be reviewed, the arrangements for such a review.
- (9) The court must not impose the order unless the offender has, after the court has explained those matters, confirmed that the offender—
 - (a) understands those matters, and
 - (b) is willing to comply with each of the requirements to be imposed by the order.
- (10) Subsection (9)(b) does not apply where the court is considering imposing a community payback order under section 227M(2).

227C Community payback order: responsible officer

- (1) This section applies where a court imposes a community payback order on an offender.
- (2) The court must, in imposing the order—
 - (a) specify the locality in which the offender resides or will reside for the duration of the order,
 - (b) require the local authority within whose area that locality is situated to nominate, within two days of its receiving a copy of the order, an officer of the authority as the responsible officer for the purposes of the order,
 - (c) require the offender to comply with any instructions given by the responsible officer—
 - (i) about keeping in touch with the responsible officer, or
 - (ii) for the purposes of subsection (3),
 - (d) require the offender to report to the responsible officer in accordance with instructions given by that officer,
 - (e) require the offender to notify the responsible officer without delay of—
 - (i) any change of the offender's address, and

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- (ii) the times, if any, at which the offender usually works (or carries out voluntary work) or attends school or any other educational establishment, and
 - (f) where the order imposes an unpaid work or other activity requirement, require the offender to undertake for the number of hours specified in the requirement such work or activity as the responsible officer may instruct, and at such times as may be so instructed.
- (3) The responsible officer is responsible for—
- (a) making any arrangements necessary to enable the offender to comply with each of the requirements imposed by the order,
 - (b) promoting compliance with those requirements by the offender,
 - (c) taking such steps as may be necessary to enforce compliance with the requirements of the order or to vary, revoke or discharge the order.
- (4) References in this Act to the responsible officer are, in relation to an offender on whom a community payback order has been imposed, the officer for the time being nominated in pursuance of subsection (2)(b).
- (5) In reckoning the period of two days for the purposes of subsection (2)(b), no account is to be taken of a Saturday or Sunday or any day which is a local or public holiday in the area of the local authority concerned.

227D Community payback order: further provision

- (1) Where a community payback order is imposed on an offender, the order is to be taken for all purposes to be a sentence imposed on the offender.
- (2) On imposing a community payback order, the court must state in open court the reasons for imposing the order.
- (3) The imposition by a court of a community payback order on an offender does not prevent the court imposing a fine or any other sentence (other than imprisonment), or making any other order, that it would be entitled to impose or make in respect of the offence.
- (4) Where a court imposes a community payback order on an offender, the clerk of the court must ensure that—
- (a) a copy of the order is given to—
 - (i) the offender, and
 - (ii) the local authority within whose area the offender resides or will reside, and
 - (b) a copy of the order and such other documents and information relating to the case as may be useful are given to the clerk of the appropriate court (unless the court imposing the order is that court).
- (5) A copy of the order may be given to the offender—
- (a) by being delivered personally to the offender, or
 - (b) by being sent—
 - (i) by a registered post service (as defined in section 125(1) of the Postal Services Act 2000 (c.26)), or
 - (ii) by a postal service which provides for the delivery of the document to be recorded.

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- (6) A community payback order is to be in such form, or as nearly as may be in such form, as may be prescribed by Act of Adjournal.

227E Requirement to avoid conflict with religious beliefs, work etc.

- (1) In imposing a community payback order on an offender, the court must ensure, so far as practicable, that any requirement imposed by the order avoids—
- (a) a conflict with the offender's religious beliefs,
 - (b) interference with the times, if any, at which the offender normally works (or carries out voluntary work) or attends school or any other educational establishment.
- (2) The responsible officer must ensure, so far as practicable, that any instruction given to the offender avoids such a conflict or interference.

227F Payment of offenders' travelling and other expenses

- (1) The Scottish Ministers may by order made by statutory instrument provide for the payment to offenders of travelling or other expenses in connection with their compliance with requirements imposed on them by community payback orders.
- (2) An order under subsection (1) may—
- (a) specify expenses or provide for them to be determined under the order,
 - (b) provide for the payments to be made by or on behalf of local authorities,
 - (c) make different provision for different purposes.
- (3) An order under subsection (1) is subject to annulment in pursuance of a resolution of the Scottish Parliament.]

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