



# Criminal Procedure (Scotland) Act 1995

## 1995 CHAPTER 46

### PART XI

#### SENTENCING

#### *f<sup>1</sup> Restricted movement requirement*

##### 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))

#### **227ZE Restricted movement requirement**

- (1) The requirements which the court may impose under section 227ZC(7)(d) include a restricted movement requirement.
- (2) If the court varies a community payback order under section 227ZC(7)(d) so as to impose a restricted movement requirement, the court must also vary the order so as to impose an offender supervision requirement, unless an offender supervision requirement is already imposed by the order.
- (3) The court must ensure that the specified period under section 227G in relation to the offender supervision requirement is at least as long as the period for which the restricted movement requirement has effect and, where the community payback order already imposes an offender supervision requirement, must vary it accordingly, if necessary.
- (4) The minimum period of 6 months in section 227G(3) does not apply in relation to an offender supervision requirement imposed under subsection (2).

*Status: Point in time view as at 01/09/2015.*

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- (5) Where the court varies the order so as to impose a restricted movement requirement, the court must give a copy of the order making the variation to the person responsible for monitoring the offender's compliance with the requirement.
- (6) If during the period for which the restricted movement requirement is in effect it appears to the person responsible for monitoring the offender's compliance with the requirement that the offender has failed to comply with the requirement, the person must report the matter to the offender's responsible officer.
- (7) On receiving a report under subsection (6), the responsible officer must report the matter to the court.

### **227ZF Restricted movement requirement: effect**

- (1) In this Act, a “restricted movement requirement” is, in relation to an offender, a requirement restricting the offender's movements to such extent as is specified.
- (2) A restricted movement requirement may in particular require the offender—
  - (a) to be in a specified place at a specified time or during specified periods, or
  - (b) not to be in a specified place, or a specified class of place, at a specified time or during specified periods.
- (3) In imposing a restricted movement requirement containing provision under subsection (2)(a), the court must ensure that the offender is not required, either by the requirement alone or the requirement taken together with any other relevant requirement or order, to be at any place for periods totalling more than 12 hours in any one day.
- (4) In subsection (3), “ other relevant requirement or order ” means—
  - (a) any other restricted movement requirement in effect in respect of the offender at the time the court is imposing the requirement referred to in subsection (3), and
  - (b) any restriction of liberty order under section 245A in effect in respect of the offender at that time.
- (5) A restricted movement requirement—
  - (a) takes effect from the specified day, and
  - (b) has effect for such period as is specified.
- (6) The period specified under subsection (5)(b) must be—
  - (a) not less than 14 days, and
  - (b) subject to subsections (7) and (8), not more than 12 months.
- (7) Subsection (8) applies in the case of a restricted movement requirement imposed for failure to comply with a requirement of a community payback order—
  - (a) where the offender was under 18 years of age at the time the order was imposed, or
  - (b) where the only requirement imposed by the order is a level 1 unpaid work or other activity requirement.
- (8) The period specified under subsection (5)(b) must be not more than—
  - (a) where the order was imposed by a justice of the peace court, 60 days, or
  - (b) in any other case, 3 months.

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- (9) A court imposing a restricted movement requirement must specify in it—
  - (a) the method by which the offender's compliance with the requirement is to be monitored, and
  - (b) the person who is to be responsible for monitoring that compliance.
- (10) The Scottish Ministers may by regulations made by statutory instrument substitute—
  - (a) for the number of hours for the time being specified in subsection (3) another number of hours,
  - (b) for the number of months for the time being specified in subsection (6)(b) another number of months.
- (11) Regulations are not to be made under subsection (10) unless a draft of the statutory instrument containing the regulations has been laid before and approved by resolution of the Scottish Parliament.
- (12) In this section, “ specified ”, in relation to a restricted movement requirement, means specified in the requirement.

#### **227ZG Restricted movement requirements: further provision**

- (1) A court may not impose a restricted movement requirement requiring the offender to be, or not to be, in a specified place unless it is satisfied that the offender's compliance with the requirement can be monitored by the method specified in the requirement.
- (2) Before imposing a restricted movement requirement requiring the offender to be in a specified place, the appropriate court must obtain and consider a report by an officer of the local authority in whose area the place is situated on—
  - (a) the place, and
  - (b) the attitude of any person (other than the offender) likely to be affected by the enforced presence of the offender at the place.
- (3) The court may, before imposing the requirement, hear the officer who prepared the report.

#### **227ZH Variation of restricted movement requirement**

- (1) This section applies where—
  - (a) a community payback order which is in force in respect of an offender imposes a restricted movement requirement requiring the offender to be at a particular place specified in the requirement for any period, and
  - (b) the court is considering varying the requirement so as to require the offender to be at a different place (“the new place”).
- (2) Before making the variation, the appropriate court must obtain and consider a report by an officer of the local authority in whose area the new place is situated on—
  - (a) the new place, and
  - (b) the attitude of any person (other than the offender) likely to be affected by the enforced presence of the offender at the new place.
- (3) The court may, before making the variation, hear the officer who prepared the report.

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### **227ZI Remote monitoring**

Section 245C of this Act, and regulations made under that section, apply in relation to the imposition of, and compliance with, restricted movement requirements as they apply in relation to the imposition of, and compliance with, restriction of liberty orders.

### **227ZJ Restricted movement requirements: Scottish Ministers' functions**

- (1) The Scottish Ministers may by regulations made by statutory instrument prescribe—
  - (a) which courts, or class or classes of courts, may impose restricted movement requirements,
  - (b) the method or methods of monitoring compliance with a restricted movement requirement which may be specified in such a requirement,
  - (c) the class or classes of offender on whom such a requirement may be imposed.
- (2) Regulations under subsection (1) may make different provision about the matters mentioned in paragraphs (b) and (c) of that subsection in relation to different courts or classes of court.
- (3) Regulations under subsection (1) are subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (4) The Scottish Ministers must determine the person, or class or description of person, who may be specified in a restricted movement requirement as the person to be responsible for monitoring the offender's compliance with the requirement (referred to in this section as the “monitor”).
- (5) The Scottish Ministers may determine different persons, or different classes or descriptions of person, in relation to different methods of monitoring.
- (6) The Scottish Ministers must notify each court having power to impose a restricted movement requirement of their determination.
- (7) Subsection (8) applies where—
  - (a) the Scottish Ministers make a determination under subsection (4) changing a previous determination made by them, and
  - (b) a person specified in a restricted movement requirement in effect at the date the determination takes effect as the monitor is not a person, or is not of a class or description of person, mentioned in the determination as changed.
- (8) The appropriate court must—
  - (a) vary the restricted movement requirement so as to specify a different person as the monitor,
  - (b) send a copy of the requirement as varied to that person and to the responsible officer, and
  - (c) notify the offender of the variation.

### **227ZK Documentary evidence in proceedings for breach of restricted movement requirement**

- (1) This section applies for the purposes of establishing in any proceedings whether an offender on whom a restricted movement requirement has been imposed has complied with the requirement.

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- (2) Evidence of the presence or absence of the offender at a particular place at a particular time may be given by the production of a document or documents bearing to be—
  - (a) a statement automatically produced by a device specified in regulations made under section 245C of this Act, by which the offender's whereabouts were remotely monitored, and
  - (b) a certificate signed by a person nominated for the purposes of this paragraph by the Scottish Ministers that the statement relates to the whereabouts of the offender at the dates and times shown in the statement.
- (3) The statement and certificate are, when produced in evidence, sufficient evidence of the facts stated in them.
- (4) The statement and certificate are not admissible in evidence at any hearing unless a copy of them has been served on the offender before the hearing.
- (5) Where it appears to any court before which the hearing is taking place that the offender has not had sufficient notice of the statement or certificate, the court may adjourn the hearing or make any order that it considers appropriate.]

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