



# Criminal Procedure (Scotland) Act 1995

## 1995 CHAPTER 46

### PART XI

#### SENTENCING

#### *[<sup>F1</sup>Restriction of liberty orders]*

#### Textual Amendments

**F1** Ss. 245A-245I and preceding cross-heading inserted (20.10.1997 for specified purposes and 1.7.1998 otherwise) by 1997 c. 48, s. 5; S.I. 1997/2323, arts. 3, 5(1), Sch. 1

#### **[<sup>F2</sup>245A Restriction of liberty orders.**

- (1) Without prejudice to section 245D of this Act, where a person <sup>F3</sup> . . . is convicted of an offence [<sup>F4</sup> punishable by imprisonment] (other than an offence the sentence for which is fixed by law) the court, <sup>F5</sup> . . . may [<sup>F6</sup>, instead of imposing on him a sentence of, or including, imprisonment or any other form of detention,] make an order under this section (in this Act referred to as a “restriction of liberty order”) in respect of him. <sup>F7</sup> . . .
- (2) A restriction of liberty order may restrict the offender’s movements to such extent as the court thinks fit and, without prejudice to the generality of the foregoing, may include provision—
  - (a) requiring the offender to be in such place as may be specified for such period or periods in each day or week as may be specified;
  - (b) requiring the offender not to be in such place or places, or such class or classes of place or places, at such time or during such periods, as may be specified,

<sup>F8</sup> . . . .

[ In making a restriction of liberty order containing provision under subsection (2)(a), <sup>F9</sup>(2A) the court must ensure that the offender is not required, either by the order alone or the order taken together with any other relevant order or requirement, to be in any place or places for a period or periods totalling more than 12 hours in any one day.

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- (2B) In subsection (2A), “other relevant order or requirement” means—
- (a) any other restriction of liberty order in effect in respect of the offender at the time the court is making the order referred to in subsection (2A), and
  - (b) any restricted movement requirement under section 227ZF in effect in respect of the offender at that time.]
- (3) A restriction of liberty order may be made for any period up to 12 months.
- (4) Before making a restriction of liberty order, the court shall explain to the offender in ordinary language—
- (a) the effect of the order, including any requirements which are to be included in the order under section 245C of this Act;
  - (b) the consequences which may follow any failure by the offender to comply with the requirements of any order; and
  - (c) that the court has power under section 245E of this Act to review the order on the application either of the offender or of any person responsible for monitoring the order,
- and the court shall not make the order unless the offender agrees to comply with its requirements.
- (5) The clerk of the court by which a restriction of liberty order is made shall—
- (a) cause a copy of the order to be sent—
    - [ to any person who is to be responsible for monitoring the offender’s
    - <sup>F10</sup>(i)] compliance with the order; [<sup>F11</sup> and
    - (ii) if the offender resides (or is to reside) in a place outwith the jurisdiction of the court making the order, to the clerk of a court within whose jurisdiction that place is;] and
  - (b) cause a copy of the order to be given to the offender or sent to him by registered post or by the recorded delivery service; and an acknowledgment or certificate of delivery of a letter containing such copy order issued by the Post Office shall be sufficient evidence of the delivery of the letter on the day specified in such acknowledgment or certificate.
- (6) Before making a restriction of liberty order which will require the offender to remain in a specified place or places the court shall [<sup>F12</sup>—
- (a)] obtain and consider [<sup>F13</sup> a report by an officer of a local authority about—
    - (i) the place or places proposed to be specified; and
    - (ii)] the attitude of persons likely to be affected by the enforced presence there of the offender [<sup>F14</sup>; and
  - (b) if it considers it necessary, hear the officer who prepared the report.]
- (7) A restriction of liberty order shall be taken to be a sentence for the purposes of this Act and of any appeal.
- (8) The Secretary of State may by regulations prescribe—
- (a) which courts, or class or classes of courts, may make restriction of liberty orders;
  - (b) what method or methods of monitoring compliance with such orders may be specified in any such order by any such court; and
  - (c) the class or classes of offenders in respect of which restriction of liberty orders may be made,

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and different provision may be made in relation to the matters mentioned in paragraphs (b) and (c) above in relation to different courts or classes of court.

(9) Without prejudice to the generality of subsection (8) above, in relation to [F15JP courts], regulations under that subsection may make provision as respects such courts by reference to whether the court is constituted by a stipendiary magistrate or by one or more justices.

(10) Regulations under subsection (8) above may make such transitional and consequential provisions, including provision in relation to the continuing effect of any restriction of liberty order in force when new regulations are made, as the Secretary of State considers appropriate.

(11) A court shall not make a restriction of liberty order which requires an offender to be in or, as the case may be, not to be in, a particular place or places unless it is satisfied that his compliance with that requirement can be monitored by the means of monitoring which it intends to specify in the order.

[ A court shall not make a restriction of liberty order in respect of an offender who is F16(11A) under 16 years of age unless, having obtained a report on the offender from the local authority in whose area he resides, it is satisfied as to the services which the authority will provide for his support and rehabilitation during the period when he is subject to the order.]

(12) The Secretary of State may by regulations substitute for the period of—  
(a) hours for the time being mentioned in [F17subsection (2A)] above; or  
(b) months for the time being mentioned in subsection (3) above,  
such period of hours or, as the case may be, months as may be prescribed in the regulations.

(13) Regulations under this section shall be made by statutory instrument.

(14) A statutory instrument containing regulations made under subsection (8) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(15) No regulations shall be made under subsection (12) above unless a draft of the regulations has been laid before, and approved by a resolution of, each House of Parliament.]

#### Textual Amendments

- F2** Ss. 245A-245I and preceding cross-heading inserted (20.10.1997 for specified purposes and 1.7.1998 otherwise) by 1997 c. 48, s. 5; S.I. 1997/2323, arts. 3, 5(1), Sch. 1
- F3** Words in s. 245A(1) repealed (4.4.2005) by Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), ss. 121(2), 145(2); S.S.I. 2004/420, art. 3, Sch. 5
- F4** Words in s. 245A(1) inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 50(3)(a), 89; S.S.I. 2003/288, art. 2, Sch.
- F5** Words in s. 245A(1) repealed (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 50(3)(b), 89; S.S.I. 2003/288, art. 2, Sch.
- F6** Words in s. 245A(1) inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 50(3)(c), 89; S.S.I. 2003/288, art. 2, Sch.
- F7** Words in s. 245A(1) repealed (4.4.2005) by Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), ss. 144(2), 145(2), Sch. 5; S.S.I. 2004/420, art. 3, Sch. 5

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- F8** Words in s. 245A(2) repealed (1.2.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), ss. 14(2), 206(1), **Sch. 2 para. 21(2)**; S.S.I. 2010/413, **art. 2**, Sch. (with art. 3)
- F9** S. 245A(2A)(2B) inserted (1.2.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), ss. 14(2), 206(1), **Sch. 2 para. 21(3)**; S.S.I. 2010/413, **art. 2**, Sch. (with art. 3)
- F10** Words in s. 245A(5)(a) renumbered as s. 245A(5)(a)(i) (27.6.2003) by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#), ss. 43(2)(a), 89; S.S.I. 2003/288, **art. 2**, Sch.
- F11** S. 245A(5)(a)(ii) and preceding word inserted (27.6.2003) by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#), ss. 43(2)(b), 89; S.S.I. 2003/288, **art. 2**, Sch.
- F12** Words in s. 245A(6) renumbered (4.10.2004) as s. 245(6)(a) by virtue of [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), ss. 25, 27(1), **Sch. para. 35(a)**; S.S.I. 2004/405, **art. 2**, Sch. 1 (with savings in arts. 3-5)
- F13** Words in s. 245A(6)(a) substituted (4.10.2004) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), ss. 25, 27(1), {Sch. para. 35(b)}; S.S.I. 2004/405, **art. 2**, Sch. 1 (with savings in arts. 3-5)
- F14** S. 245A(6)(b) and preceding word inserted (4.10.2004) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), ss. 25, 27(1), **Sch. para. 35(c)**; S.S.I. 2004/405, **art. 2**, Sch. 1 (with savings in arts. 3-5)
- F15** Words in s. 245A(9) substituted (10.3.2008, 2.6.2008, 8.12.2008, 23.2.2009 and 14.12.2009 for certain purposes, otherwise 22.2.2010) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), ss. 80, 84, **Sch. para. 26(m)**; S.S.I. 2008/42, **art. 3**, Sch.; S.S.I. 2008/192, **art. 3**, Sch.; S.S.I. 2008/329, **art. 3**, Sch.; S.S.I. 2008/362, **art. 3**, Sch.; S.S.I. 2009/432, **art. 3**, Schs. 1, 2
- F16** S. 245A(11A) inserted (4.4.2005) by [Antisocial Behaviour etc. \(Scotland\) Act 2004 \(asp 8\)](#), ss. 121(3), 145(2); S.S.I. 2004/420, **art. 3**, Sch. 5
- F17** Words in s. 245A(12)(a) substituted (1.2.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), ss. 14(2), 206(1), **Sch. 2 para. 21(4)**; S.S.I. 2010/413, **art. 2**, Sch. (with art. 3)

### [<sup>F18</sup>245B Monitoring of restriction of liberty orders.

- (1) Where the Secretary of State, in regulations made under section 245A(8) of this Act, empowers a court or a class of court to make restriction of liberty orders he shall notify the court or each of the courts concerned of the person or class or description of persons who may be designated by that court for the purpose of monitoring an offender's compliance with any such order.
- (2) A court which makes a restriction of liberty order in respect of an offender shall include provision in the order for making a person notified by the Secretary of State under subsection (1) above, or a class or description of persons so notified, responsible for the monitoring of the offender's compliance with it.
- (3) Where the Secretary of State changes the person or class or description of persons notified by him under subsection (1) above, any court which has made a restriction of liberty order shall, if necessary, vary the order accordingly and shall notify the variation to the offender.]

#### Textual Amendments

- F18** Ss. 245A-245I and preceding cross-heading inserted (20.10.1997 for specified purposes and 1.7.1998 otherwise) by 1997 c. 48, s. 5; S.I. 1997/2323, arts. 3, 5(1), **Sch. 1**

### [<sup>F19</sup>245C Remote monitoring.

- (1) The Secretary of State may make such arrangements, including contractual arrangements, as he considers appropriate with such persons, whether legal or natural,

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as he thinks fit for the remote monitoring of the compliance of offenders with restriction of liberty orders, and different arrangements may be made in relation to different areas or different forms of remote monitoring.

- (2) A court making a restriction of liberty order which is to be monitored remotely may include in the order a requirement that the offender [<sup>F20</sup>—
- (a)] shall, either continuously or for such periods as may be specified, wear or carry a device for the purpose of enabling the remote monitoring of his compliance with the order to be carried out [<sup>F21</sup>, and
  - (b) shall not tamper with or intentionally damage the device or knowingly allow it to be tampered with or intentionally damaged.]
- (3) The Secretary of State shall by regulations specify devices which may be used for the purpose of remotely monitoring the compliance of an offender with the requirements of a restriction of liberty order.
- (4) Regulations under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.]

#### Textual Amendments

- F19** Ss. 245A-245I and preceding cross-heading inserted (20.10.1997 for specified purposes and 1.7.1998 otherwise) by 1997 c. 48, s. 5; S.I. 1997/2323, arts. 3, 5(1), **Sch. 1**
- F20** Words in s. 245C(2) renumbered as s. 245C(2)(a) (4.10.2004) by virtue of [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 8\)](#), ss. 25, 27(1), **Sch. para. 36(a)**; S.S.I. 2004/405, **art. 2**, **Sch. 1** (with savings in arts. 3-5)
- F21** S. 245C(2)(b) and preceding word inserted (4.10.2004) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), ss. 25, 27(1), **Sch. para. 36(b)**; S.S.I. 2004/405, **art. 2**, **Sch. 1** (with savings in arts. 3-5)

#### Modifications etc. (not altering text)

- C1** S. 245C applied (12.1.2004) by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#), **ss. 40(7)**, 89; S.S.I. 2003/475, **art. 2**, **Sch.**
- S. 245C applied (8.2.2006 for certain purposes and 3.7.2006 for certain further purposes, otherwise 21.3.2008) by [Prisoners and Criminal Proceedings \(Scotland\) Act 1993 \(1993 c. 9\)](#), s. 12AB (as inserted by [Management of Offenders etc. \(Scotland\) Act 2005 \(asp 14\)](#), **ss. 15(10)**, 24); S.S.I. 2006/48, **art. 3(1)**, **Sch. Pt. 1** (subject to art. 3(3)); S.S.I. 2006/331, **art. 3(4)** (subject to art. 3(5)); S.S.I. 2008/21, **art. 2**
- C2** S. 245C applied (prosp.) by [Custodial Sentences and Weapons \(Scotland\) Act 2007 \(asp 17\)](#), **ss. 49(2)**, 67
- C3** S. 245C applied by 1997 c. 43, Sch. 1 para. 19B (as inserted (1.2.2015) by [Offender Rehabilitation Act 2014 \(c. 11\)](#), s. 22(1), **Sch. 3 para. 7** (with Sch. 7 para. 2); S.I. 2015/40, art. 2(u))
- C4** S. 245C(1)(3) modified (prosp.) by [Criminal Justice Act 2003 \(c. 44\)](#), ss. 188, 336, **Sch. 11 para. 23**
- S. 245C(1)(3) modified (4.4.2005) by [Criminal Justice Act 2003 \(c. 44\)](#), ss. 188, 336, **Sch. 13 para. 21**; S.I. 2005/950, **art. 2(1)**, **Sch. 1**
- C5** S. 245C(1)(3) modified (prosp.) by [Criminal Justice Act 2003 \(c. 44\)](#), ss. 188, 336, **Sch. 11 para. 23**
- S. 245C(1)(3) modified (4.4.2005) by [Criminal Justice Act 2003 \(c. 44\)](#), ss. 188, 336, **Sch. 13 para. 21**; S.I. 2005/950, **art. 2(1)**, **Sch. 1**

#### [<sup>F22</sup>245D] **Combination of restriction of liberty order with other orders.**

- (1) Subsection (3) applies where the court—

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- (a) intends to make a restriction of liberty order under section 245A(1) of this Act; and
  - (b) considers it expedient that the offender should also be subject to
    - [ in the case of an offender who is under 16 years of age,] a <sup>F23</sup>(i) [<sup>F24</sup>community payback order imposed under section 227A(1)] of this Act
    - <sup>F25</sup>(ii) in the case of an offender who is 16 years of age or more, a [<sup>F26</sup>community payback order imposed under section 227A(1) of this Act or] a drug treatment and testing order made under section 234B(2) of this Act <sup>F27</sup> . . . .
- (2) In deciding whether it is expedient to make a [<sup>F28</sup>community payback order] or a drug treatment and testing order by virtue of paragraph (b) of subsection (1) above, the court shall—
- (a) have regard to the circumstances, including the nature of the offence and the character of the offender; and
  - (b) obtain a report as to the circumstances and character of the offender.
- (3) Where this subsection applies, the court, notwithstanding sections <sup>F29</sup> . . . 234B(2) and 245A(1) of this Act, may make a restriction of liberty order and
- <sup>F30</sup>(a) [ in the case of an offender who is under 16 years of age, a [<sup>F31</sup>community payback order];
  - (b) in the case of an offender who is 16 years of age or more,][<sup>F32</sup>either a community payback order or] a drug treatment and testing order.
- (4) Where the court makes a restriction of liberty order and a [<sup>F33</sup>community payback order] by virtue of subsection (3) above, the clerk of the court shall send a copy of each order to—
- (a) any person responsible for monitoring the offender’s compliance with the restriction of liberty order; and
  - <sup>F34</sup>(b) the local authority within whose area the offender will reside for the duration of each order.]
- (5) Where the court makes a restriction of liberty order and a drug treatment and testing order by virtue of subsection (3) above, the clerk of the court shall send a copy of each order to—
- (a) any person responsible for monitoring the offender’s compliance with the restriction of liberty order;
  - (b) the treatment provider, within the meaning of section 234C(1) of this Act; and
  - (c) the officer of the local authority who is appointed or assigned to be the supervising officer under section 234C(6) of this Act.
- (6) <sup>F35</sup> . . . . .
- (7) Where the offender by an act or omission fails to comply with a requirement of an order made by virtue of subsection (3) above—
- (a) if the failure relates to a requirement [<sup>F36</sup>imposed by a community payback order and is dealt with under section 227ZC(7)(d)] of this Act, the court may, in addition, exercise the powers conferred by section <sup>F37</sup> . . . 245F(2) of this Act in relation to the restriction of liberty order;

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- (b) if the failure relates to a requirement contained in a drug treatment and testing order and is dealt with under section <sup>F38</sup> . . . 245F(2)(b) of this Act in relation to the restriction of liberty order; and
  - (c) if the failure relates to a requirement contained in a restriction of liberty order and is dealt with under section 245F(2)(b) of this Act, the court may, in addition, exercise the powers conferred by section [<sup>F39</sup>227ZC(7)(d) of this Act in relation to a community payback order] and by section 234G(2)(b) of this Act in relation to a drug treatment and testing order to which, in either case, the offender is subject by virtue of subsection (3) above.
- (8) In any case to which this subsection applies, the offender may, without prejudice to subsection (7) above, be dealt with as respects that case under section [<sup>F40</sup>227ZC] or, as the case may be, section 234G or section 245F(2) of this Act but he shall not be liable to be otherwise dealt with as respects that case.
- (9) Subsection (8) applies in a case where—
- (a) the offender by an act or omission fails to comply with both a requirement contained in a restriction of liberty order and in a [<sup>F41</sup>community payback order] to which he is subject by virtue of subsection (3) above;
  - (b) the offender by an act or omission fails to comply with both a requirement contained in a restriction of liberty order and in a drug treatment and testing order to which he is subject by virtue of subsection (3) above;
  - (c) <sup>F42</sup> . . . . . ]

#### Textual Amendments

- F22** S. 245D substituted (30.9.1998) by 1998 c. 37, s. 94(2), **Sch. 6 Pt. I para. 3**; S.I. 1998/2327, **art. 2(1)(s)**
- F23** Words in s. 245D(1)(b) inserted (4.4.2005) by *Antisocial Behaviour etc. (Scotland) Act 2004* (asp 8), ss. 144(1), 145(2), **Sch. 4 para. 5(7)(a)(i)**; S.S.I. 2004/420, **art. 3**, Sch. 5
- F24** Words in s. 245D(1)(b)(i) substituted (1.2.2011) by *Criminal Justice and Licensing (Scotland) Act 2010* (asp 13), ss. 14(2), 206(1), **Sch. 2 para. 22(2)(a)**; S.S.I. 2010/413, **art. 2**, Sch. (with art. 3)
- F25** Words in s. 245D(1)(b) substituted (4.4.2005) for words by *Antisocial Behaviour etc. (Scotland) Act 2004* (asp 8), ss. 144(1), 145(2), **Sch. 4 para. 5(7)(a)(ii)**; S.S.I. 2004/420, **art. 3**, Sch. 5
- F26** Words in s. 245D(1)(b)(ii) substituted (1.2.2011) by *Criminal Justice and Licensing (Scotland) Act 2010* (asp 13), ss. 14(2), 206(1), **Sch. 2 para. 22(2)(b)(i)**; S.S.I. 2010/413, **art. 2**, Sch. (with art. 3)
- F27** Words in s. 245D(1)(b)(ii) repealed (1.2.2011) by *Criminal Justice and Licensing (Scotland) Act 2010* (asp 13), ss. 14(2), 206(1), **Sch. 2 para. 22(2)(b)(ii)**; S.S.I. 2010/413, **art. 2**, Sch. (with arts. 3-8)
- F28** Words in s. 245D(2) substituted (1.2.2011) by *Criminal Justice and Licensing (Scotland) Act 2010* (asp 13), ss. 14(2), 206(1), **Sch. 2 para. 22(3)**; S.S.I. 2010/413, **art. 2**, Sch. (with art. 3)
- F29** Words in s. 245D(3) repealed (1.2.2011) by *Criminal Justice and Licensing (Scotland) Act 2010* (asp 13), ss. 14(2), 206(1), **Sch. 2 para. 22(4)(a)**; S.S.I. 2010/413, **art. 2**, Sch. (with art. 3)
- F30** Words in s. 245D(3) inserted (4.4.2005) by *Antisocial Behaviour etc. (Scotland) Act 2004* (asp 8), ss. 144(1), 145(2), **Sch. 4 para. 5(7)(b)**; S.S.I. 2004/420, **art. 3**, Sch. 5
- F31** Words in s. 245D(3)(a) substituted (1.2.2011) by *Criminal Justice and Licensing (Scotland) Act 2010* (asp 13), ss. 14(2), 206(1), **Sch. 2 para. 22(4)(b)**; S.S.I. 2010/413, **art. 2**, Sch. (with art. 3)
- F32** Words in s. 245D(3)(b) substituted (1.2.2011) by *Criminal Justice and Licensing (Scotland) Act 2010* (asp 13), ss. 14(2), 206(1), **Sch. 2 para. 22(4)(c)**; S.S.I. 2010/413, **art. 2**, Sch. (with art. 3)
- F33** Words in s. 245D(4) substituted (1.2.2011) by *Criminal Justice and Licensing (Scotland) Act 2010* (asp 13), ss. 14(2), 206(1), **Sch. 2 para. 22(5)(a)**; S.S.I. 2010/413, **art. 2**, Sch. (with art. 3)
- F34** S. 245D(4)(b) substituted (1.2.2011) by *Criminal Justice and Licensing (Scotland) Act 2010* (asp 13), ss. 14(2), 206(1), **Sch. 2 para. 22(5)(b)**; S.S.I. 2010/413, **art. 2**, Sch. (with art. 3)



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- F35** S. 245D(6) repealed (1.2.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. 14(2), 206(1), **Sch. 2 para. 22(6)**; S.S.I. 2010/413, **art. 2**, Sch. (with art. 3)
- F36** Words in s. 245D(7)(a) substituted (1.2.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. 14(2), 206(1), **Sch. 2 para. 22(7)(a)(i)**; S.S.I. 2010/413, **art. 2**, Sch. (with art. 3)
- F37** Words in s. 245D(7)(a) repealed (1.2.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. 14(2), 206(1), **Sch. 2 para. 22(7)(a)(ii)**; S.S.I. 2010/413, **art. 2**, Sch. (with art. 3)
- F38** Words in s. 245D(7)(b) repealed (1.2.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. 14(2), 206(1), **Sch. 2 para. 22(7)(b)**; S.S.I. 2010/413, **art. 2**, Sch. (with art. 3)
- F39** Words in s. 245D(7)(c) substituted (1.2.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. 14(2), 206(1), **Sch. 2 para. 22(7)(c)**; S.S.I. 2010/413, **art. 2**, Sch. (with art. 3)
- F40** Words in s. 245D(8) substituted (1.2.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. 14(2), 206(1), **Sch. 2 para. 22(8)**; S.S.I. 2010/413, **art. 2**, Sch. (with art. 3)
- F41** Words in s. 245D(9)(a) substituted (1.2.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. 14(2), 206(1), **Sch. 2 para. 22(9)(a)**; S.S.I. 2010/413, **art. 2**, Sch. (with art. 3)
- F42** S. 245D(9)(c) repealed (1.2.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. 14(2), 206(1), **Sch. 2 para. 22(9)(b)**; S.S.I. 2010/413, **art. 2**, Sch. (with art. 3)

#### <sup>F43</sup>**245E Variation of restriction of liberty order.**

- (1) Where a restriction of liberty order is in force either the offender or any person responsible for monitoring his compliance with the order may
- <sup>F44</sup>(a) [ <sup>F45</sup>except in a case to which paragraph (b) below applies,] apply to the court which made the order <sup>F46</sup>[ or ]
- <sup>F47</sup>(b) [ where a copy of the order was, under section 245A(5)(a)(ii) of this Act or subsection (7)(a) below, sent to the clerk of a different court, <sup>F48</sup>apply] to that different court (or, if there has been more than one such sending, the different court to which such a copy has most recently been so sent,)]
- for a review of it.
- (2) On an application made under subsection (1) above, and after hearing both the offender and any person responsible for monitoring his compliance with the order, the court may by order, if it appears to it to be in the interests of justice to do so—
- (a) vary the order by—
- (i) amending or deleting any of its requirements;
- (ii) inserting further requirements; or
- (iii) subject to subsection (3) of section 245A of this Act, increasing the period for which the order has to run; or
- (b) revoke the order.
- (3) Where the court, on the application of a person other than the offender, proposes to—
- (a) exercise the power conferred by paragraph (a) of subsection (2) above to vary (otherwise than by deleting a requirement) a restriction of liberty order, it shall issue a citation requiring the offender to appear before the court and section 245A(4) shall apply to the variation of such an order as it applies to the making of an order; and
- (b) exercise the power conferred by subsection (2)(b) above to revoke such an order and deal with the offender under section 245G of this Act, it shall issue a citation requiring him to appear before the court.

[ The unified citation provisions apply in relation to a citation under this section as they <sup>F49</sup>(3A) apply in relation to a citation under section 216(3)(a) of this Act.]



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

*Changes to legislation: Criminal Procedure (Scotland) Act 1995, Cross Heading: Restriction of liberty orders is up to date with all changes known to be in force on or before 05 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(4) If an offender fails to appear before the court after having been cited in accordance with subsection (3) above, the court may issue a warrant for his arrest.

[ Before varying a restriction of liberty order so as to require the offender to remain in  
<sup>F50</sup>(4A) a specified place or places or so as to specify a different place or different places in which the offender is to remain, the court shall—

- (a) obtain and consider a report by an officer of a local authority about—
  - (i) the place or places proposed to be specified, and
  - (ii) the attitude of persons likely to be affected by any enforced presence there of the offender; and
- (b) if it considers it necessary, hear the officer who prepared the report.]

[ Where a reason for an application by the offender under subsection (1) above is that  
<sup>F51</sup>(5) he proposes to reside in a place outwith the jurisdiction of the court to which that application is made, and the court is satisfied that suitable arrangements can be made, in the district where that place is, for monitoring his compliance with the order it may—

- (a) vary the order to permit or make practicable such arrangements; and
- (b) where the change in residence necessitates or makes desirable a change in who is designated for the purpose of such monitoring, vary the order accordingly.

(6) Before varying a restriction of liberty order for the reason mentioned in subsection (5) above, the court shall—

- (a) if the order will require the offender to remain in a specified place or in specified places—

[ obtain and consider [<sup>F53</sup>a report by an officer of a local authority  
<sup>F52</sup>(i)] about the place or places proposed to be specified and] the attitude of persons likely to be affected by any enforced presence there of the offender; [<sup>F54</sup> and

(ii) if it considers it necessary, hear the officer who prepared the report;] and

- (b) satisfy itself that his compliance with that requirement can be monitored by the means of monitoring specified, or which it intends to specify, in the order.

(7) Where a restriction of liberty order is varied as is mentioned in subsection (5) above, the clerk of the court shall send a copy of the order as so varied to—

- (a) the clerk of a court within whose jurisdiction the place of proposed residence is;
- (b) the person who, immediately before the order was varied, was responsible for monitoring the person's compliance with it; and
- (c) the person who, in consequence of the variation, is to have that responsibility.

(8) If, in relation to an application made for such reason as is mentioned in subsection (5) above, the court is not satisfied as is mentioned in that subsection, it may—

- (a) refuse the application; or
- (b) revoke the order.]]

#### Textual Amendments

**F43** Ss. 245A-245I and preceding cross-heading inserted (20.10.1997 for specified purposes and 1.7.1998 otherwise) by 1997 c. 48, s. 5; S.I. 1997/2323, arts. 3, 5(1), Sch. 1

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

**Changes to legislation:** Criminal Procedure (Scotland) Act 1995, Cross Heading: Restriction of liberty orders is up to date with all changes known to be in force on or before 05 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- F44** Words in s. 245E(1) renumbered as s. 245E(1)(a) (27.6.2003) by virtue of Criminal Justice (Scotland) Act 2003 (asp 7), **ss. 43(3)(a)(i)**, 89; S.S.I. 2003/288, art. 2, **Sch.**
- F45** Words in s. 245E(1) inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), **ss. 43(3)(a)(i)**, 89; S.S.I. 2003/288, **art. 2, Sch.**
- F46** Word in s. 245E(1) inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), **ss. 43(3)(a)(ii)**, 89; S.S.I. 2003/288, **art. 2, Sch.**
- F47** S. 245E(1)(b) inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), **ss. 43(3)(a)(ii)**, 89; S.S.I. 2003/288, **art. 2, Sch.**
- F48** Word in s. 245E(1)(b) inserted (4.4.2005) by Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), ss. 144(1), 145(2), **Sch. 4 para. 5(8)**; S.S.I. 2004/420, **art. 3, Sch. 5**
- F49** S. 245E(3A) inserted (27.10.2003) by virtue of Criminal Justice (Scotland) Act 2003 (asp 7), **ss. 60(1)(g)**, 89; S.S.I. 2003/475, **art. 2, Sch.**
- F50** S. 245E(4A) inserted (4.10.2004) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 37(a)**; S.S.I. 2004/405, **art. 2, Sch. 1** (with savings in arts. 3-5)
- F51** S. 245E(5)-(8) added (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), **ss. 43(3)(b)**, 89; S.S.I. 2003/288, **art. 2, Sch.**
- F52** Words in s. 245E(6)(a) renumbered (4.10.2004) as s. 245E(6)(a)(i) by virtue of Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 37(b)(i)**; S.S.I. 2004/405, **art. 2, Sch. 1** (with savings in arts. 3-5)
- F53** Words in s. 245E(6)(a)(i) substituted (4.10.2004) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 37(b)(ii)**; S.S.I. 2004/405, **art. 2, Sch. 1** (with savings in arts. 3-5)
- F54** S. 245E(6)(a)(ii) and preceding word inserted (4.10.2004) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 37(b)(iii)**; S.S.I. 2004/405, **art. 2, Sch. 1** (with savings in arts. 3-5)

## **[<sup>F55</sup>245F Breach of restriction of liberty order.**

(1) If at any time when a restriction of liberty order is in force it appears

<sup>F56</sup>(a) [ <sup>F57</sup>except in a case to which paragraph (b) below applies,] to the court which made the order [<sup>F58</sup> or]

<sup>F59</sup>(b) [ where a copy of the order was, under section 245A(5)(a)(ii) or 245E(7)(a) of this Act, sent to the clerk of a different court, to that different court (or, if there has been more than one such sending, the different court to which such a copy has most recently been so sent),]

that the offender has failed to comply with any of the requirements of the order the court [<sup>F60</sup>in question] may issue a citation requiring the offender to appear before [<sup>F61</sup>it] at such time as may be specified in the citation or, if it appears to [<sup>F62</sup>that court] to be appropriate, it may issue a warrant for the arrest of the offender.

[ The unified citation provisions apply in relation to a citation under this section as they <sup>F63</sup>(1A) apply in relation to a citation under section 216(3)(a) of this Act.]

(2) If it is proved to the satisfaction of [<sup>F64</sup>that court] that the offender has failed without reasonable excuse to comply with any of the requirements of the order [<sup>F65</sup>it] may by order—

- (a) without prejudice to the continuance in force of the order, impose a fine not exceeding level 3 on the standard scale;
- (b) vary the restriction of liberty order; or
- (c) revoke that order.

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

*Changes to legislation: Criminal Procedure (Scotland) Act 1995, Cross Heading: Restriction of liberty orders is up to date with all changes known to be in force on or before 05 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

[ For the purposes of subsection (2) above, evidence of one witness shall be sufficient <sup>F66</sup>(2A) evidence.]

- (3) A fine imposed under this section in respect of a failure to comply with the requirements of a restriction of liberty order shall be deemed for the purposes of any enactment to be a sum adjudged to be paid by or in respect of a conviction or a penalty imposed on a person summarily convicted.
- (4) Where [<sup>F67</sup>a court] varies a restriction of liberty order under subsection (2) above it may do so in any of the ways mentioned in paragraph (a) of section 245E(2) of this Act.]

#### Textual Amendments

- F55** Ss. 245A-245I and preceding cross-heading inserted (20.10.1997 for specified purposes and 1.7.1998 otherwise) by 1997 c. 48, s. 5; S.I. 1997/2323, arts. 3, 5(1), Sch. 1
- F56** Words in s. 245F(1) renumbered (27.6.2003) as s. 245F(1)(a) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 43(1)(a)(i), 89; S.S.I. 2003/288, art. 2, Sch.
- F57** Words in s. 245F(1) inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 43(4)(a)(i), 89; S.S.I. 2003/288, art. 2, Sch.
- F58** Word in s. 245F(1) inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 43(4)(a)(ii), 89; S.S.I. 2003/288, art. 2, Sch.
- F59** S. 245F(1)(b) inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 43(4)(a)(ii), 89; S.S.I. 2003/288, art. 2, Sch.
- F60** Words in s. 245F(1) inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 43(4)(a)(iii), 89; S.S.I. 2003/288, art. 2, Sch.
- F61** Words in s. 245F(1) substituted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 43(4)(a)(iv), 89; S.S.I. 2003/288, art. 2, Sch.
- F62** Words in s. 245F(1) substituted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 43(4)(a)(v), 89; S.S.I. 2003/288, art. 2, Sch.
- F63** S. 245F(1A) inserted (27.10.2003) by virtue of Criminal Justice (Scotland) Act 2003 (asp 7), ss. 60(1)(h), 89; S.S.I. 2003/475, art. 2, Sch.
- F64** Words in s. 245F(2) substituted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 43(4)(b)(i), 89; S.S.I. 2003/288, art. 2, Sch.
- F65** Words in s. 245F(2) substituted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 43(4)(b)(ii), 89; S.S.I. 2003/288, art. 2, Sch.
- F66** S. 245F(2A) inserted (10.12.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), ss. 58, 84; S.S.I. 2007/479, art. 3(1), Sch. (subject to art. 13) (as amended by S.S.I. 2007/527)
- F67** Words in s. 245F(4) substituted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 43(4)(c), 89; S.S.I. 2003/288, art. 2, Sch.

#### [<sup>F68</sup>245G] Disposal on revocation of restriction of liberty order.

- (1) Where the court revokes a restriction of liberty order under section 245E(2)(b) or 245F(2) of this Act, it may dispose of the offender in any way which would have been competent at the time when the order was made, but in so doing the court shall have regard to the time for which the order has been in operation.
- (2) Where the court revokes a restriction of liberty order as mentioned in subsection (1) above, and the offender is, [<sup>F69</sup>in respect of the same offence, also subject to a community payback order or a drug treatment and testing order, by virtue of section 245D(3), it shall before disposing of the offender under subsection (1) above, revoke the community payback order or drug treatment and testing order.]

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

**Changes to legislation:** *Criminal Procedure (Scotland) Act 1995, Cross Heading: Restriction of liberty orders is up to date with all changes known to be in force on or before 05 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

[ Where the court orders a <sup>F71</sup>community payback order] or a drug treatment and testing <sup>F70</sup>(3) order revoked the clerk of the court shall forthwith give copies of that order to the persons mentioned in subsection (4) or, as the case may be, (5) of section 245D of this Act.

(4) <sup>F72</sup>.....]]

#### Textual Amendments

- F68** Ss. 245A-245I inserted (20.10.1997 for specified purposes and 1.7.1998 otherwise) by 1997 c. 48, s. 5; S.I. 1997/2323, arts. 3, 5(1), **Sch. 1**
- F69** Words in s. 245G(2) substituted (1.2.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. 14(2), 206(1), **Sch. 2 para. 23(2)**; S.S.I. 2010/413, **art. 2**, Sch. (with art. 3)
- F70** S. 245G(3)(4) added (30.9.1998) by 1998 c. 37, s. 94(2), **Sch. 6 Pt. I para. 4(3)**; S.I. 1998/2327, **art. 2(1)(s)**
- F71** Words in s. 245G(3) substituted (1.2.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. 14(2), 206(1), **Sch. 2 para. 23(3)**; S.S.I. 2010/413, **art. 2**, Sch. (with art. 3)
- F72** S. 245G(4) repealed (1.2.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. 14(2), 206(1), **Sch. 2 para. 23(4)**; S.S.I. 2010/413, **art. 2**, Sch. (with art. 3)

#### <sup>F73</sup>245H Documentary evidence in proceedings under section 245F.

- (1) Evidence of the presence or absence of the offender at a particular place at a particular time may, subject to the provisions of this section, 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 purpose of this paragraph by the Secretary of State that the statement relates to the whereabouts of the <sup>F74</sup>offender] at the dates and times shown in the statement.
- (2) The statement and certificate mentioned in subsection (1) above shall, when produced at a hearing, be sufficient evidence of the facts set out in them.
- (3) Neither the statement nor the certificate mentioned in subsection (1) above shall be admissible in evidence unless a copy of both has been served on the offender prior to the hearing and, without prejudice to the foregoing, where it appears to the court that the offender has had insufficient notice of the statement or certificate, it may adjourn a hearing or make any order which it thinks appropriate in the circumstances.]

#### Textual Amendments

- F73** Ss. 245A-245I and preceding cross-heading inserted (20.10.1997 for specified purposes and 1.7.1998 otherwise) by 1997 c. 48, s. 5; S.I. 1997/2323, arts. 3, 5(1), **Sch. 1**
- F74** Word in s. 245H substituted (4.4.2005) by Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), ss. 144(1), 145(2), **Sch. 4 para. 5(10)**; S.S.I. 2004/420, **art. 3**, Sch. 5

#### Modifications etc. (not altering text)

- C6** S. 245H applied (4.4.2005) by Criminal Justice Act 2003 (c. 44), ss. 194, 336, **Sch. 13 para. 14(5)**; S.I. 2005/950, **art. 2(1)**, Sch. 1

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## [<sup>F75</sup>245I Procedure on variation or revocation of restriction of liberty order.

Where a court exercises any power conferred by sections 232(3A), 245E(2) or 245F(2) (b) or (c) of this Act, the clerk of the court shall forthwith give copies of the order varying or revoking the restriction of liberty order to any person responsible for monitoring the offender's compliance with that order and that person shall give a copy of the order to the offender.]

### Textual Amendments

**F75** Ss. 245A-245I and preceding cross-heading inserted (20.10.1997 for specified purposes and 1.7.1998 otherwise) by 1997 c. 48, s. 5; S.I. 1997/2323, arts. 3, 5(1), **Sch. 1**

## [<sup>F76</sup>245J [<sup>F76</sup>Breach of certain orders: adjourning hearing and remanding in custody etc.]

- (1) Where [<sup>F77</sup>an] offender appears before the court in respect of his apparent failure to comply with a requirement of, as the case may be, a [<sup>F78</sup>community payback order], drug treatment and testing order, <sup>F79</sup> . . . or restriction of liberty order the court may, for the purpose of enabling inquiries to be made or of determining the most suitable method of dealing with him, adjourn the hearing.
- (2) Where, under subsection (1) above, the court adjourns a hearing it shall remand the <sup>F80</sup> . . . offender in custody or on bail or ordain him to appear at the adjourned hearing.
- (3) A court shall not so adjourn a hearing for any single period exceeding four weeks or, on cause shown, eight weeks.
- (4) [<sup>F81</sup>An] offender remanded under this section may appeal against the refusal of bail, or against the conditions imposed, within 24 hours of his remand.
- (5) Any such appeal shall be [<sup>F82</sup>to the High Court by note of appeal, and the High Court] , either in court or in chambers, may after hearing <sup>F83</sup> . . . the appellant—
  - (a) review the order appealed against and either grant bail on such conditions as it thinks fit or ordain the appellant to appear at the adjourned hearing; or
  - (b) confirm the order.

[ A note of appeal under subsection (5) above is to be—

- <sup>F84</sup>(6) (a) lodged with the clerk of the court from which the appeal is to be taken; and  
(b) sent without delay by that clerk (where not the Clerk of Justiciary) to the Clerk of Justiciary.]]

### Textual Amendments

- F76** S. 245J inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 48, 89; S.S.I. 2003/288, **art. 2, Sch.**
- F77** Words in s. 245J(1) substituted (1.2.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. 14(2), 206(1), **Sch. 2 para. 24(a)(i)**; S.S.I. 2010/413, **art. 2, Sch.** (with art. 3)
- F78** Words in s. 245J(1) substituted (1.2.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. 14(2), 206(1), **Sch. 2 para. 24(a)(ii)**; S.S.I. 2010/413, **art. 2, Sch.** (with arts. 3-8)
- F79** Words in s. 245J(1) repealed (1.2.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. 14(2), 206(1), **Sch. 2 para. 24(a)(iii)**; S.S.I. 2010/413, **art. 2, Sch.** (with arts. 3-8)
- F80** Words in s. 245J(2) repealed (1.2.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. 14(2), 206(1), **Sch. 2 para. 24(b)**; S.S.I. 2010/413, **art. 2, Sch.** (with art. 3)

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- F81** Words in s. 245J(4) substituted (1.2.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. 14(2), 206(1), **Sch. 2 para. 24(c)**; S.S.I. 2010/413, **art. 2**, Sch. (with art. 3)
- F82** Words in s. 245J(5) substituted (10.12.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 6(6)(a)**, 84; S.S.I. 2007/479, **art. 3(1)**, Sch. (as amended by S.S.I. 2007/527)
- F83** Words in s. 245J(5) repealed (10.12.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), ss. 80, 84, **Sch. para. 21**; S.S.I. 2007/479, **art. 3(1)**, Sch. (as amended by S.S.I. 2007/527)
- F84** S. 245J(6) added (10.12.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 6(6)(b)**, 84; S.S.I. 2007/479, **art. 3(1)**, Sch. (as amended by S.S.I. 2007/527)



**Status:**

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