



Criminal Procedure (Scotland) Act 1995

1995 CHAPTER 46

PART XI

SENTENCING

[^{F1}Unpaid work or other activity 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))

227I Unpaid work or other activity requirement

- (1) In this Act, an “unpaid work or other activity requirement” is, in relation to an offender, a requirement that the offender must, for the specified number of hours, undertake—
 - (a) unpaid work, or
 - (b) unpaid work and other activity.
- (2) Whether the offender must undertake other activity as well as unpaid work is for the responsible officer to determine.
- (3) The nature of the unpaid work and any other activity to be undertaken by the offender is to be determined by the responsible officer.
- (4) The number of hours that may be specified in the requirement must be (in total)—
 - (a) at least 20 hours, and
 - (b) not more than 300 hours.
- (5) An unpaid work or other activity requirement which requires the work or activity to be undertaken for a number of hours totalling no more than 100 is referred to in this Act as a “level 1 unpaid work or other activity requirement”.

Status: Point in time view as at 16/08/2013.

Changes to legislation: Criminal Procedure (Scotland) Act 1995, Cross Heading: Unpaid work or other activity requirement is up to date with all changes known to be in force on or before 08 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)

- (6) An unpaid work or other activity requirement which requires the work or activity to be undertaken for a number of hours totalling more than 100 is referred to in this Act as a “level 2 unpaid work or other activity requirement”.
- (7) The Scottish Ministers may by order made by statutory instrument substitute another number of hours for any of the numbers of hours for the time being specified in subsections (4) to (6).
- (8) An order under subsection (7) may only substitute for the number of hours for the time being specified in a provision mentioned in the first column of the following table a number of hours falling within the range set out in the corresponding entry in the second column.

<i>Provision</i>	<i>Range</i>	
	<i>No fewer than</i>	<i>No more than</i>
Subsection (4)(a)	10 hours	40 hours
Subsection (4)(b)	250 hours	350 hours
Subsections (5) and (6)	70 hours	150 hours

- (9) An order under subsection (7) is subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (10) In this section, “specified”, in relation to an unpaid work or other activity requirement, means specified in the requirement.

227J Unpaid work or other activity requirement: further provision

- (1) A court may not impose an unpaid work or other activity requirement on an offender who is under 16 years of age.
- (2) A court may impose such a requirement on an offender only if the court is satisfied, after considering the report mentioned in section 227B(4), that the offender is a suitable person to undertake unpaid work in pursuance of the requirement.
- (3) Subsection (2) does not apply where the court is considering imposing a community payback order—
- imposing only a level 1 unpaid work or other activity requirement, or
 - under section 227M(2).
- (4) A justice of the peace court may impose a level 2 unpaid work or other activity requirement only if—
- the Scottish Ministers by regulations made by statutory instrument so provide, and
 - the requirement is imposed in such circumstances and subject to such conditions as may be specified in the regulations.
- (5) Regulations are not to be made under subsection (4) unless a draft of the statutory instrument containing them has been laid before and approved by resolution of the Scottish Parliament.

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227K Allocation of hours between unpaid work and other activity

- (1) Subject to subsection (2), it is for the responsible officer to determine how many out of the number of hours specified in an unpaid work or other activity requirement are to be allocated to undertaking, respectively—
 - (a) unpaid work, and
 - (b) any other activity to be undertaken.
- (2) The number of hours allocated to undertaking an activity other than unpaid work must not exceed whichever is the lower of—
 - (a) 30% of the number of hours specified in the requirement, and
 - (b) 30 hours.
- (3) The Scottish Ministers may by order made by statutory instrument—
 - (a) substitute another percentage for the percentage for the time being specified in subsection (2)(a),
 - (b) substitute another number of hours for the number of hours for the time being specified in subsection (2)(b).
- (4) An order is not to be made under subsection (3) unless a draft of the statutory instrument containing the order has been laid before and approved by resolution of the Scottish Parliament.

227L Time limit for completion of unpaid work or other activity

- (1) The number of hours of unpaid work and any other activity that the offender is required to undertake in pursuance of an unpaid work or other activity requirement must be completed by the offender before the end of the specified period beginning with the imposition of the requirement.
- (2) The “specified period” is—
 - (a) in relation to a level 1 unpaid work or other activity requirement, 3 months or such longer period as the court may specify in the requirement,
 - (b) in relation to a level 2 unpaid work or other activity requirement, 6 months or such longer period as the court may specify in the requirement.

227M Fine defaulters

- (1) This section applies where—
 - (a) a fine has been imposed on an offender in respect of an offence,
 - (b) the offender fails to pay the fine or an instalment of the fine,
 - (c) the offender is not serving a sentence of imprisonment, and
 - (d) apart from this section, the court would have imposed a period of imprisonment on the offender under section 219(1) of this Act in respect of the failure to pay the fine or instalment.
- (2) Instead of imposing a period of imprisonment under section 219(1) of this Act, the court—
 - (a) where the amount of the fine or the instalment does not exceed level 2 on the standard scale, must impose a community payback order on the offender imposing a level 1 unpaid work or other activity requirement,

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- (b) where the amount of the fine or the instalment exceeds that level, may impose such a community payback order.
- (3) The court, in imposing a community payback order under subsection (2) on a person aged 16 or 17, must also impose an offender supervision requirement.
- (4) Where the amount of the fine or the instalment does not exceed level 1 on the standard scale, the number of hours specified in the requirement must not exceed 50.
- (5) On completion of the hours of unpaid work and any other activity specified in an unpaid work or other activity requirement imposed under this section, the fine in respect of which the requirement was imposed is discharged (or, as the case may be, the outstanding instalments of the fine are discharged).
- (6) If, after a community payback order is imposed on an offender under this section, the offender pays the fine or the full amount of any outstanding instalments, the appropriate court must discharge the order.
- (7) Subsection (2) is subject to sections 227J(1) and 227N(2), (3) and (7).
- (8) In this section, “ court ” does not include the High Court.

227N Offenders subject to more than one unpaid work or other activity requirement

- (1) This section applies where—
 - (a) a court is considering imposing an unpaid work or other activity requirement on an offender (referred to as the “ new requirement ”), and
 - (b) at the time the court is considering imposing the requirement, there is already in effect one or more ^{F2}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.]

[In this section references to an “existing requirement” are—

- ^{F3}(1A) (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.]
- (2) The court may, in imposing the new requirement, direct that it is to be concurrent with any existing requirement.
- (3) Where the court makes a direction under subsection (2), hours of unpaid work or other activity undertaken after the new requirement is imposed count for the purposes of compliance with that requirement and the existing requirement.
- (4) Subsection (5) applies where the court does not make a direction under subsection (2).

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- (5) The maximum number of hours which may be specified in the new requirement is the number of hours specified in section 227I(4)(b) less the aggregate of the number of hours ^{F4}... still to be completed under each existing requirement at the time the new requirement is imposed.
- (6) In calculating that aggregate, if any existing requirement is concurrent with another (by virtue of a direction under subsection (2)), hours that count for the purposes of compliance with both (or, as the case may be, all) are to be counted only once.
- (7) Where that maximum number is less than the minimum number of hours that can be specified by virtue of section 227I(4)(a), the court must not impose the new requirement.

Textual Amendments

- F2** Words in s. 227N(1)(b) substituted (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(2)(a)** (with art. 3)
- F3** S. 227N(1A) 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(2)(b)** (with art. 3)
- F4** Words in s. 227N(5) repealed (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(2)(c)** (with art. 3)

227O Rules about unpaid work and other activity

- (1) The Scottish Ministers may make rules by statutory instrument for or in connection with the undertaking of unpaid work and other activities in pursuance of unpaid work or other activity requirements.
- (2) Rules under subsection (1) may in particular make provision for—
 - (a) limiting the number of hours of work or other activity that an offender may be required to undertake in any one day,
 - (b) reckoning the time spent undertaking unpaid work or other activity,
 - (c) the keeping of records of unpaid work and any other activity undertaken.
- (3) Rules under subsection (1) may—
 - (a) confer functions on responsible officers,
 - (b) contain rules about the way responsible officers are to exercise functions under this Act.
- (4) Rules under subsection (1) are subject to annulment in pursuance of a resolution of the Scottish Parliament.]

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