



Criminal Procedure (Scotland) Act 1995

1995 CHAPTER 46

PART XI

SENTENCING

[^{F1}Restriction of liberty orders]

[^{F1}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
 - [^{F2}(a)] [^{F3}except in a case to which paragraph (b) below applies,] apply to the court which made the order [^{F4} or]
 - [^{F5}(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, [^{F6}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

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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
^{F7}(3A) apply in relation to a citation under section 216(3)(a) of this Act.]

- (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
^{F8}(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
^{F9}(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 [^{F11}a report by an officer of a local authority
^{F10}(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; [^{F12} 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—

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

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**
- F2** 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.**
- F3** 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.**
- F4** 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.**
- F5** 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.**
- F6** 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**
- F7** 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.**
- F8** 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)
- F9** 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.**
- F10** 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)
- F11** 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)
- F12** 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)

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