



Crime and Punishment (Scotland) Act 1997

1997 CHAPTER 48

PART I

SENTENCING

Restriction of liberty orders

5 Restriction of liberty orders.

After section 245 of the 1995 Act there shall be inserted the following sections—

“ Restriction of liberty orders

245A Restriction of liberty orders.

- (1) Without prejudice to section 245D of this Act, where a person of 16 years of age or more is convicted of an offence (other than an offence the sentence for which is fixed by law) the court, if it is of opinion that it is the most appropriate method of disposal, may make an order under this section (in this Act referred to as a “restriction of liberty order”) in respect of him; and in this section and sections 245B to 245I of this Act any reference to an “offender” is a reference to a person in respect of whom an order has been made under this subsection.
- (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;

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- (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,

but the court may not, under paragraph (a) above, require the offender to be in any place or places for a period or periods totalling more than 12 hours in any one day.
- (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 compliance with the order; 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 obtain and consider information about that place or those places, including information as to the attitude of persons likely to be affected by the enforced presence there of the offender.
- (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,

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 district courts, regulations under that subsection may make provision as respects

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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.
- (12) The Secretary of State may by regulations substitute for the period of—
 - (a) hours for the time being mentioned in subsection (2) 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.

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.

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, 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.

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- (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 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.
- (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.

245D Concurrent probation and restriction of liberty orders.

- (1) Notwithstanding sections 228(1) and 245A(1) of this Act, where the court—
 - (a) intends to make a restriction of liberty order under section 245A(1); and
 - (b) considers it expedient—
 - (i) having regard to the circumstances, including the nature of the offence and the character of the offender; and
 - (ii) having obtained a report as to the circumstances and character of the offender,
 that the offender should also be subject to a probation order made under section 228(1) of this Act,

it may make both such orders in respect of the offender.
- (2) Where the court makes both a restriction of liberty order and a probation order by virtue of subsection (1) above, the clerk of the court shall send a copy of each order to both—
 - (a) any person responsible for monitoring the offender's compliance with the restriction of liberty order; and
 - (b) the officer of the local authority who is to supervise the probationer.
- (3) Where the offender by an act or omission fails to comply with a requirement of an order made by virtue of subsection (1) above—
 - (a) if the failure relates to a requirement contained in a probation order and is dealt with under section 232(2)(c) of this Act, the court may, in addition, exercise the power conferred by section 245F(2)(b) of this Act in relation to the restriction of liberty order; and
 - (b) 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 power conferred by section 232(2)(c) in relation to the probation order.
- (4) Where the offender by an act or omission fails to comply with both a requirement contained in a probation order and a requirement contained in a restriction of liberty order to which he is subject by virtue of subsection (1) above, he may, without prejudice to subsection (3) above, be dealt with as respects that act or omission either under section 232(2) of this Act or under section 245F(2) of this Act but he shall not be liable to be otherwise dealt with in respect of that act or omission.

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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 apply to the court which made the order 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.
- (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.

245F Breach of restriction of liberty order.

- (1) If at any time when a restriction of liberty order is in force it appears to the court which made the order that the offender has failed to comply with any of the requirements of the order the court may issue a citation requiring the offender to appear before the court at such time as may be specified in the citation or, if it appears to the court to be appropriate, it may issue a warrant for the arrest of the offender.
- (2) If it is proved to the satisfaction of the court that the offender has failed without reasonable excuse to comply with any of the requirements of the order the court 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.
- (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

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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 the 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.

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, by virtue of section 245D(1) of this Act, subject to a probation order, it shall, before disposing of the offender under subsection (1) above, discharge the probation order.

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 person subject to the order 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.

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.”.

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Commencement Information

- II** [S. 5](#) wholly in force at 1.7.1998; [s. 5](#) not in force at Royal Assent see [s. 65\(2\)](#); [s. 5](#) in force for certain purposes at 20.10.1997 by [S.I. 1997/2323](#), [art. 3](#), [Sch. 1](#); [s. 5](#) in force insofar as not already in force at 1.7.1998 by [S.I. 1997/2323](#), [art. 5\(1\)](#)

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