

SCHEDULE
MODIFICATIONS

PART 3
TRANSFER OF COMMUNITY PAYBACK ORDERS

6. After Schedule 12 insert:—

“SCHEDULE 13

Section 227ZO

TRANSFER OF COMMUNITY PAYBACK ORDERS TO
ENGLAND AND WALES OR NORTHERN IRELAND

PART 1
ENGLAND AND WALES

1.—(1) This paragraph applies where the court is considering imposing a community payback order under section 227A of this Act on an offender who—

- (a) resides in England and Wales, or
- (b) when the order takes effect, will reside in England and Wales.

(2) The court must not impose the order unless—

- (a) the offender has attained the age of 16 years, and
- (b) the court is satisfied that arrangements have been, or can be, made in the relevant area—
 - (i) for the offender to comply with the requirements imposed by the order in accordance with arrangements that exist in the relevant area for offenders to comply with the same or broadly similar requirements imposed by the corresponding order, and
 - (ii) for the appointment of a responsible officer.

2.—(1) This paragraph applies where—

- (a) an offender on whom a community payback order has been imposed under section 227A of this Act proposes to change, or has changed, residence to a locality in England and Wales (“the new locality”), and
- (b) the court is considering varying the order so as to specify the relevant area in which the offender resides or will reside.

(2) The court must not vary the order unless—

- (a) the offender has attained the age of 16 years, and
- (b) the court is satisfied as mentioned in paragraph 1(2)(b).

(3) If the court considers that a requirement (“the requirement concerned”) imposed by the order cannot be complied with if the offender resides in the new locality, the court must not vary the order so as to specify the relevant area unless it also varies the order so as to—

- (a) revoke or discharge the requirement concerned, or

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(b) substitute for the requirement concerned another requirement that can be so complied with.

(4) The court must not make a variation under sub-paragraph (3) unless it is satisfied as mentioned in paragraph 1(2)(b) (reading the reference there to the order as a reference to the order as proposed to be varied).

3.—(1) This paragraph applies where the court is considering—

- (a) imposing a community payback order by virtue of paragraph 1, or
- (b) varying a community payback order by virtue of paragraph 2.

(2) Before imposing or, as the case may be, varying the order, the court must explain to the offender in ordinary language—

- (a) the requirements of the legislation relating to the corresponding order,
- (b) the powers of the home court under that legislation and this Schedule, and
- (c) the court's powers under this Act.

(3) The court must not impose or, as the case may be, vary the order unless the offender has, after the court has explained those matters, confirmed that the offender—

- (a) understands those matters, and
- (b) is willing to comply with the requirements referred to in sub-paragraph (2)(a).

(4) Sub-paragraphs (2) and (3) do not affect sections 227B(8) and (9) and 227ZA(6) and (7) of this Act.

(5) Sections 227B(4), 227ZA(2), 227ZG(2) and 227ZH(2) of this Act have effect as if the references in them to a report by an officer of a local authority or a report by the responsible officer included references to a report by an officer of a relevant service.

(6) Sections 227R and 227S of this Act have effect as if the references in them to an approved medical practitioner (within the meaning of the Mental Health (Care and Treatment) (Scotland) Act 2003⁽¹⁾) included references to a registered medical practitioner approved for the purposes of section 12 of the Mental Health Act 1983⁽²⁾.

4.—(1) The court may not, in a community payback order imposed by virtue of paragraph 1, impose a compensation requirement.

(2) Where the court would, but for sub-paragraph (1), have imposed a compensation requirement, the court must instead make a compensation order under section 249(1) of this Act.

(3) Sub-paragraph (4) applies where—

- (a) the court varies a community payback order by virtue of paragraph 2, and
- (b) the order imposes a compensation requirement.

(4) The court must—

- (a) also vary the order so as to revoke the compensation requirement, and
- (b) make a compensation order under section 249(1) of this Act in respect of the amount remaining to be paid under the compensation requirement.

(5) Sub-paragraphs (2) and (4)(b) are subject to sub-paragraph (8).

(6) Paragraph (ab) of section 249(2) of this Act does not apply to the making of a compensation order by virtue of this paragraph.

(1) 2003 asp 13.

(2) 1983 c.20.

(7) Before making a compensation order by virtue of this paragraph, the court must explain to the offender in ordinary language—

- (a) the purpose and effect of the compensation order, and
- (b) the consequences which may follow if the offender fails to comply with the order in England and Wales.

(8) The court must not make the compensation order unless the offender has, after the court has explained those matters, confirmed that the offender—

- (a) understands those matters, and
- (b) is willing to comply with the order.

5.—(1) This paragraph applies where the court—

- (a) imposes a community payback order by virtue of paragraph 1, or
- (b) varies a community payback order by virtue of paragraph 2.

(2) The court must, in the order—

- (a) specify the relevant area in which the offender resides or will reside,
- (b) specify, in relation to each requirement imposed by the order, the requirement of the corresponding order which the court considers to be the same as or broadly similar to those imposed by the community payback order,

(c) where—

- (i) the order imposes a restricted movement requirement, and
 - (ii) a corresponding order imposing the same or broadly similar requirement would also impose an electronic monitoring requirement,
- specify in accordance with sub-paragraph (3) the person responsible for monitoring compliance with the restricted movement requirement.

(3) The person specified under sub-paragraph (2)(c) must be of a description specified in an order made by the Secretary of State by virtue of section 215(3) of the 2003 Act.

(4) The clerk of the court must ensure that a copy of the order, and such other documents and information relating to the case as may be useful, are given to—

- (a) the clerk of the home court,
- (b) the relevant service in the area in which the offender resides or will reside, and
- (c) if a person is specified under sub-paragraph (2)(c), that person.

(5) Sections 227C and 227D(4)(a)(ii) and (b) of this Act do not apply in relation to a community payback order imposed by virtue of paragraph 1.

6.—(1) This paragraph applies where the court has—

- (a) imposed a community payback order by virtue of paragraph 1, or
- (b) varied a community payback order by virtue of paragraph 2.

(2) The order has effect in England and Wales as if it were a corresponding order made by a court in that jurisdiction.

(3) The home court may exercise in relation to the order any power under the legislation relating to the corresponding order that the home court could exercise, other than—

- (a) a power to discharge or revoke the order (other than in circumstances where the offender is convicted of a further offence and the court imposes a custodial sentence),

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- (b) a power to deal with the offender in respect of the offence in relation to which the order was imposed as the offender could have been dealt with had the order not been imposed,
 - (c) where the order imposes an unpaid work or other activity requirement, a power to vary the order by substituting for the number of hours of work specified in it a greater number than the court which imposed the order could have specified,
 - (d) where the order imposed a restricted movement requirement, a power to vary the order by substituting for the period specified in it a longer period than the court which imposed it could have specified.
- (4) Sub-paragraph (5) applies where it appears to the home court—
- (a) on information from the responsible officer, that the offender has failed to comply with any of the requirements of the order, or
 - (b) on the application of the offender or the responsible officer, that it would be in the interests of justice to—
 - (i) discharge the order, or
 - (ii) revoke the order and deal with the offender as mentioned in sub-paragraph (3)(b).
- (5) The home court may—
- (a) refer the matter to the appropriate Scottish court, and
 - (b) require the offender to appear before that court.
- (6) Where the matter is referred under sub-paragraph (5) to the appropriate Scottish court, that court may—
- (a) if the offender fails to appear as required under sub-paragraph (5)(b), issue a warrant for the offender's arrest, and
 - (b) deal with the matter—
 - (i) where it is referred by virtue of sub-paragraph (4)(a), in accordance with section 227ZC of this Act, or
 - (ii) where it is referred by virtue of sub-paragraph (4)(b), as if it were an application under section 227Y of this Act to vary, revoke or discharge the order.
- (7) Where the matter is referred by virtue of sub-paragraph (4)(a), the home court must also send to the appropriate Scottish court—
- (a) a certificate signed by the clerk of the home court certifying that the offender has failed to comply with such requirements of the order as are specified in the certificate, and
 - (b) such other documents and information relating to the case as may be useful.
- (8) The certificate mentioned in sub-paragraph (7)(a) is, for the purposes of any proceedings before the appropriate Scottish court, sufficient evidence of the failure mentioned in the certificate.
- (9) Where, in dealing with the matter by virtue of sub-paragraph (6)(b), the appropriate Scottish court is considering varying the order (or has varied the order) the provisions of this Part apply in relation to the proposed variation (or the order as varied) as they apply where the court is considering imposing a community payback order (or has imposed a community payback order) by virtue of paragraph 1.
- (10) Section 227G(3) of this Act does not apply where the appropriate Scottish court is considering imposing a restricted movement requirement by virtue of sub-paragraph (6)(b)(i).

7.—(1) In this Part—

“the 2003 Act” means the Criminal Justice Act 2003⁽³⁾;

“the 2008 Act” means the Criminal Justice and Immigration Act 2008⁽⁴⁾;

“the appropriate Scottish court” means, in relation to an order to which paragraph 6 applies—

- (a) the court in Scotland which imposed the order by virtue of paragraph 1, or
- (b) where the order has been varied by virtue of paragraph 2 or 6(6)(b), the court in Scotland which made the last such variation;

“corresponding order” means—

- (a) in relation to an offender who is under the age of 18, a youth rehabilitation order within the meaning of Part 1 of the 2008 Act,
- (b) in relation to any other offender, a community order within the meaning of Part 12 of the 2003 Act;

“the home court” means the magistrates’ court acting for the local justice area in which the offender resides or will reside;

“relevant area” means—

- (a) in relation to an offender who is under the age of 18, the area of the local authority (within the meaning given by section 7(1) of the 2008 Act) where the offender resides or will reside,
- (b) in relation to any other offender, the local justice area where the offender resides or will reside;

“relevant service” means—

- (a) in relation to an offender who is under the age of 18, a youth offending team within the meaning given by section 7(1) of the 2008 Act,
- (b) in relation to any other offender, a provider of a probation service within the meaning of Part 1 of the Offender Management Act 2007⁽⁵⁾;

“responsible officer”—

- (a) in relation to an offender who is under the age of 18, has the meaning given in section 4 of the 2008 Act,
- (b) in relation to any other offender, has the meaning given in section 197 of the 2003 Act.

(2) Subject to sub-paragraph (1), any word or expression used in this Part which is also used in any of sections 227A to 227ZK of this Act has the same meaning as it has for the purposes of those sections.

PART 2

NORTHERN IRELAND

8.—(1) This paragraph applies where the court is considering imposing a community payback order under section 227A of this Act on an offender who—

- (a) resides in Northern Ireland, or
- (b) when the order takes effect, will reside in Northern Ireland.

(3) 2003 c.44.
(4) 2008 c.4.
(5) 2007 c.21.

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- (2) The court must not impose the order unless—
- (a) the offender has attained the age of 16 years, and
 - (b) the court is satisfied that arrangements have been, or can be, made in the relevant area—
 - (i) for the offender to comply with the requirements imposed by the order in accordance with arrangements that exist in the relevant area for offenders to comply with the same or broadly similar requirements imposed by the corresponding order, and
 - (ii) for the supervision of the offender by the relevant service.
- 9.—**(1) This paragraph applies where—
- (a) an offender on whom a community payback order has been imposed under section 227A of this Act proposes to change, or has changed, residence to a locality in Northern Ireland (“the new locality”), and
 - (b) the court is considering varying the order so as to specify the relevant area in which the offender resides or will reside.
- (2) The court must not vary the order unless—
- (a) the offender has attained the age of 16 years, and
 - (b) the court is satisfied as mentioned in paragraph 8(2)(b).
- (3) If the court considers that a requirement (“the requirement concerned”) imposed by the order cannot be complied with if the offender resides in the new locality, the court must not vary the order so as to specify the relevant area unless it also varies the order so as to—
- (a) revoke or discharge the requirement concerned, or
 - (b) substitute for the requirement concerned another requirement that can be so complied with.
- (4) The court must not make a variation under sub-paragraph (3) unless it is satisfied as mentioned in paragraph 8(2)(b) (reading the reference there to the order as a reference to the order as proposed to be varied).
- 10.—**(1) This paragraph applies where the court is considering—
- (a) imposing a community payback order by virtue of paragraph 8, or
 - (b) varying a community payback order by virtue of paragraph 9.
- (2) Before imposing or, as the case may be, varying the order, the court must explain to the offender in ordinary language—
- (a) the requirements of the legislation relating to the corresponding order,
 - (b) the powers of the home court under that legislation and this Schedule, and
 - (c) the court’s powers under this Act.
- (3) The court must not impose or, as the case may be, vary the order unless the offender has, after the court has explained those matters, confirmed that the offender—
- (a) understands those matters, and
 - (b) is willing to comply with the requirements referred to in sub-paragraph (2)(a).
- (4) Sub-paragraphs (2) and (3) do not affect sections 227B(8) and (9) and 227ZA(6) and (7) of this Act.
- (5) Sections 227B(4), 227ZA(2), 227ZG(2) and 227ZH(2) of this Act have effect as if the references in them to a report by an officer of a local authority or a report by the responsible officer included references to a report by a relevant service or an officer of a relevant service.

(6) Sections 227R and 227S of this Act have effect as if the references in them to an approved medical practitioner (within the meaning of the Mental Health (Care and Treatment) (Scotland) Act 2003⁽⁶⁾) included references to a registered medical practitioner approved by the Health and Social Care Regulation and Quality Improvement Authority for the purposes of Part 2 of the Mental Health (Northern Ireland) Order 1986⁽⁷⁾.

11.—(1) The court may not, in a community payback order imposed by virtue of paragraph 8, impose a compensation requirement.

(2) Where the court would, but for sub-paragraph (1), have imposed a compensation requirement, the court must instead make a compensation order under section 249(1) of this Act.

(3) Sub-paragraph (4) applies where—

- (a) the court varies a community payback order by virtue of paragraph 9, and
- (b) the order imposes a compensation requirement.

(4) The court must—

- (a) also vary the order so as to revoke the compensation requirement, and
- (b) make a compensation order under section 249(1) of this Act in respect of the amount remaining to be paid under the compensation requirement.

(5) Sub-paragraphs (2) and (4)(b) are subject to sub-paragraph (8).

(6) Paragraph (ab) of section 249(2) of this Act does not apply to the making of a compensation order by virtue of this paragraph.

(7) Before making a compensation order by virtue of this paragraph, the court must explain to the offender in ordinary language—

- (a) the purpose and effect of the compensation order, and
- (b) the consequences which may follow if the offender fails to comply with the order in Northern Ireland.

(8) The court must not make the compensation order unless the offender has, after the court has explained those matters, confirmed that the offender—

- (a) understands those matters, and
- (b) is willing to comply with the order.

12.—(1) This paragraph applies where the court—

- (a) imposes a community payback order by virtue of paragraph 8, or
- (b) varies a community payback order by virtue of paragraph 9.

(2) The court must, in the order—

- (a) specify the relevant area in which the offender resides or will reside,
- (b) specify, in relation to each requirement imposed by the order, the requirement of the corresponding order which the court considers to be the same as or broadly similar to those imposed by the community payback order,
- (c) where—
 - (i) the order imposes a restricted movement requirement, and
 - (ii) a corresponding order imposing the same or broadly similar requirement would also impose an electronic monitoring requirement,

⁽⁶⁾ 2003 asp 13.

⁽⁷⁾ S.I. 1986/595 (N.I. 4).

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specify in accordance with sub-paragraph (3) the person responsible for monitoring compliance with the restricted movement requirement.

(3) The person specified under sub-paragraph (2)(c) must be of a description specified in an order made by virtue of article 40(3) of the Criminal Justice (Northern Ireland) Order 2008(8).

(4) The clerk of the court must ensure that a copy of the order, and such other documents and information relating to the case as may be useful, are given to—

- (a) the clerk of the home court,
- (b) the relevant service in the area in which the offender resides or will reside, and
- (c) if a person is specified under sub-paragraph (2)(c), that person.

(5) Sections 227C and 227D(4)(a)(ii) and (b) of this Act do not apply in relation to a community payback order imposed by virtue of paragraph 8.

13.—(1) This paragraph applies where the court has—

- (a) imposed a community payback order by virtue of paragraph 8, or
- (b) varied a community payback order by virtue of paragraph 9.

(2) The order has effect in Northern Ireland as if it were a corresponding order made by a court in that jurisdiction.

(3) The home court may exercise in relation to the order any power under the legislation relating to the corresponding order that the home court could exercise, other than—

- (a) a power to discharge or revoke the order (other than in circumstances where the offender is convicted of a further offence and the court imposes a custodial sentence),
- (b) a power to deal with the offender in respect of the offence in relation to which the order was imposed as the offender could have been dealt with had the order not been imposed,
- (c) where the order imposes an unpaid work or other activity requirement, a power to vary the order by substituting for the number of hours of work specified in it a greater number than the court which imposed the order could have specified,
- (d) where the order imposed a restricted movement requirement, a power to vary the order by substituting for the period specified in it a longer period than the court which imposed it could have specified.

(4) Sub-paragraph (5) applies where it appears to the home court—

- (a) on information from the responsible officer, that the offender has failed to comply with any of the requirements of the order, or
- (b) on the application of the offender or the responsible officer, that it would be in the interests of justice to—
 - (i) discharge the order, or
 - (ii) revoke the order and deal with the offender as mentioned in sub-paragraph (3)(b).

(5) The home court may—

- (a) refer the matter to the appropriate Scottish court, and
- (b) require the offender to appear before that court.

(6) Where the matter is referred under sub-paragraph (5) to the appropriate Scottish court, that court may—

- (a) if the offender fails to appear as required under sub-paragraph (5)(b), issue a warrant for the offender's arrest, and

- (b) deal with the matter—
 - (i) where it is referred by virtue of sub-paragraph (4)(a), in accordance with section 227ZC of this Act, or
 - (ii) where it is referred by virtue of sub-paragraph (4)(b), as if it were an application under section 227Y of this Act to vary, revoke or discharge the order.
- (7) Where the matter is referred by virtue of sub-paragraph (4)(a), the home court must also send to the appropriate Scottish court—
 - (a) a certificate signed by the clerk of the home court certifying that the offender has failed to comply with such requirements of the order as are specified in the certificate, and
 - (b) such other documents and information relating to the case as may be useful.
- (8) The certificate mentioned in sub-paragraph (7)(a) is, for the purposes of any proceedings before the appropriate Scottish court, sufficient evidence of the failure mentioned in the certificate.
- (9) Where, in dealing with the matter by virtue of sub-paragraph (6)(b), the appropriate Scottish court is considering varying the order (or has varied the order) the provisions of this Part apply in relation to the proposed variation (or the order as varied) as they apply where the court is considering imposing a community payback order (or has imposed a community payback order) by virtue of paragraph 1.
- (10) Section 227G(3) of this Act does not apply where the appropriate Scottish court is considering imposing a restricted movement requirement by virtue of sub-paragraph (6)(b)(i).

14.—(1) In this Part—

“the 1996 Order” means the Criminal Justice (Northern Ireland) Order 1996(9);

“the appropriate Scottish court” means, in relation to an order to which paragraph 13 applies—

- (a) the court in Scotland which imposed the order by virtue of paragraph 8, or
- (b) where the order has been varied by virtue of paragraph 9 or 13(6)(b), the court in Scotland which made the last such variation;

“corresponding order” means a community order, within the meaning of article 2 of the 1996 Order”;

“the home court” means a court of summary jurisdiction acting for the petty sessions district in which an offender resides or proposes to reside;

“relevant area” means the petty sessions district in Northern Ireland where the offender resides or will reside;

“relevant service” means the Probation Board for Northern Ireland;

“responsible officer” has the meaning given in article 17(3) of the 1996 Order;

(2) Subject to sub-paragraph (1), any word or expression used in this Part which is also used in any of sections 227A to 227ZK of this Act has the same meaning as it has for the purposes of those sections.”.

(9) S.I. 1996/3160 (N.I. 24).