



# Criminal Justice (Scotland) Act 2003

## 2003 asp 7

### PART 6

#### NON-CUSTODIAL PUNISHMENTS

#### 43 Restriction of liberty orders

- (1) The 1995 Act is amended as follows.
- (2) In section 245A(5)(a) (duty of clerk of court by which restriction of liberty order is made)—
  - (a) the existing words “to any person who is to be responsible for monitoring the offender’s compliance with the order” become sub-paragraph (i); and
  - (b) after that sub-paragraph there is inserted the word “ and ” and the following sub-paragraph—
    - “(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;”.
- (3) In section 245E (variation of restriction of liberty order)—
  - (a) in subsection (1)—
    - (i) after the word “may” there are inserted the words “ except in a case to which paragraph (b) below applies, ” and those words together with the existing words “apply to the court which made the order” become paragraph (a); and
    - (ii) after that paragraph there is inserted the word “ or ” and the following paragraph—
      - “(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, 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);” and
  - (b) at the end there is added—

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**Changes to legislation:** *Criminal Justice (Scotland) Act 2003, Section 43 is up to date with all changes known to be in force on or before 29 March 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) View outstanding changes*

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- “(5) Where a reason for an application by the offender under subsection (1) above is that 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 information about that place, or those places, including information as to the attitude of persons likely to be affected by any enforced presence there of the offender; 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.”.
- (4) In section 245F (breach of restriction of liberty order)—
- (a) in subsection (1)—
    - (i) after the words “force it appears”, there is inserted “ except in a case to which paragraph (b) below applies, ” and those words together with the existing words “to the court which made the order” become paragraph (a);
    - (ii) after that paragraph there is inserted the word “ or ” and the following paragraph—
      - “(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

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- court to which such a copy has most recently been so sent);”;
- (iii) after the words “order the court” there is inserted “ in question ”;
  - (iv) for the words “the court”, where they occur for the third time, there is substituted “ it ”; and
  - (v) for the words “the court”, where they occur for the fourth time, there is substituted “ that court ”;
- (b) in subsection (2), for the words—
- (i) “the court”, where they occur for the first time, there is substituted “ that court ”; and
  - (ii) “the court”, where they occur for the second time, there is substituted “ it ”; and
- (c) in subsection (4), for the words “the court” there is substituted “ a court ”.

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**Changes and effects yet to be applied to :**

- specified provision(s) and purposes Appointed Day(s) by [S.S.I. 2003/439 art. 23Sch.](#) (Effect not applied to [legislation.gov.uk](#). This S.S.I. is revoked (1.10.2003) by S.S.I. 2003/475, art. 4)

**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 16D inserted by [2023 asp 4 s. 14\(3\)](#)
- s. 16ZA inserted by [2023 asp 4 s. 14\(2\)](#)
- s. 17E(6) inserted by [2023 asp 4 s. 14\(7\)\(d\)](#)
- s. 17DA inserted by [2023 asp 4 s. 14\(6\)](#)
- s. 17ZA inserted by [2023 asp 4 s. 14\(4\)](#)
- s. 18A(5) inserted by [2023 asp 4 s. 14\(8\)\(b\)](#)