

CRIMINAL JUSTICE AND LICENSING (SCOTLAND) ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Schedule 2 – Community Payback Orders: consequential modifications

Part 1 - The 1995 Act

805. [Part 1](#) of Schedule 2 amends the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”).
806. [Paragraphs 2, 3, 7, 8, 12 and 26](#) repeal references to probation order and/or community service order in sections 52H(3) (early termination of an assessment order), 52R(3) (termination of a treatment order), 106(1) (right of appeal), 108(1) and (2) (Lord Advocate’s right of appeal), 175 (right of appeal) and 246 (admonition and absolute discharge) of the 1995 Act as a consequence of section 14 of this Bill which replaces these orders with community payback orders. There is no requirement to replace these references with community payback order as a community payback order is a sentence following conviction and so is covered under other provisions in the specified sections. Paragraphs 7, 9, 12, 13, 14 and 15 insert new subsections, which provides for an appeal against any disposal imposed as a consequence of breaching a CPO, into sections 106(1) (right of appeal), 118(4) (disposal of appeals against sentence), 175 (right of appeal), 186 (appeals against sentence only), 187(1) (leave to appeal against sentence) and 189(5) (disposal of appeal against sentence).
807. [Paragraph 11](#) amends section 173(2) (quorum of High Court in relation to appeals) to provide for the same quorum to apply in appeals against any disposal imposed as a consequence of breaching a CPO.
808. [Paragraphs 4, 5, 6, 10, 16, 19, 24 and 27](#) replace references to probation order, community service order and/or supervised attendance order in sections 53(12) (a) (interim compulsion orders), 57A(15)(a) (compulsion orders), 58(8) (order for hospital admission or guardianship), 121A(4) (suspension of certain sentences pending determination of appeal), 193A(4) (suspension of certain sentences pending determination of appeal), 234J (concurrent drug treatment and testing and probation orders), 245J (breach of certain orders: adjourning hearing and remanding in custody etc) and 249(2) (compensation order against convicted person) of the 1995 Act with references to community payback order and relevant sections as a consequence of section 14 of this Bill.
809. [Paragraphs 4 and 5](#) also add restriction of liberty orders and drug treatment and testing orders to the list of orders in sections 53(12)(a) and 57A(15)(a) which cannot be imposed at the same time as an interim compulsion order or a compulsion order. Paragraph 19 also amends section 234J(3) to ensure that the relevant local authority responsible for supervising the offender is provided with a copy of all concurrent orders.

*These notes relate to the Criminal Justice and Licensing (Scotland)
Act 2010 (asp 13) which received Royal Assent on 6 August 2010*

810. [Paragraph 17](#) repeals sections 228 to 234 of the 1995 Act which relate to probation orders.
811. [Paragraph 18](#) amends a typographical error in section 234H(1) (disposal on revocation of a drug treatment and testing order) of the 1995 Act and amends subsection (3) to replace the reference to probation order with community payback order and to make it clear that in cases where a community payback order or restriction of liberty order have been imposed concurrently with a drug treatment and testing order for the same offence and that drug treatment and testing order has been revoked, the court must also revoke the concurrent community payback order or restriction of liberty order.
812. [Paragraph 20](#) repeals sections 235 to 245 of the 1995 Act which relate to supervised attendance orders and community service orders. [Paragraph 29](#) repeals schedules 6 and 7 of the 1995 Act which relate to probation orders and supervised attendance orders. These provisions are being replaced by the provisions in section 14 of this Bill which introduce the community payback order.
813. [Paragraph 25](#) repeals sections 245K to 245Q of the 1995 Act. These provisions relate to community reparation orders (CROs). CROs were introduced as a court disposal specifically aimed at dealing with low level anti social behaviour such as vandalism by means of requiring offenders to carry out unpaid community work for periods up to 100 hours. The orders were trailed on a pilot basis and an independent evaluation of the pilots determined that for a range of reasons the CRO had not achieved the original objectives. Following a decision by Scottish Ministers provisions for CRO ceased in December 2007. The community payback order, introduced by section 14 of this Bill, replaces the CRO.
814. [Paragraphs 21, 22 and 23](#) amend sections 245A, 245D and 245G of the 1995 Act which relate to restriction of liberty orders (RLOs).
815. [Paragraph 21](#) amends section 245A(2) by inserting subsection (2A) which requires a court, when imposing a RLO, to have due regard to any other relevant order or requirement (either another RLO or a restricted movement requirement imposed as a sanction for breaching a community payback order) already imposed to ensure that the offender is not required, either by the RLO being imposed or the RLO taken together with any other requirement, to be restricted to a specified place or places for more than 12 hours in any day. A definition of other relevant order or requirement is also inserted as section 245A(2B).
816. [Paragraph 22](#) amends section 245D which relates to the combination of RLOs with other orders. References to probation order are replaced with community payback order in sections 245D (1)(b), (2), (3), (4), (7) and (9). Subsection (4)(b) is amended to ensure that the relevant local authority responsible for supervising the offender is provided with a copy of all concurrent orders imposed for the same offence. Subsection (6) is repealed since a court will no longer be able to make a probation order.
817. Section 245D(7) is also amended by [paragraph 22\(7\)](#) to make it clear that a RLO may be imposed concurrently with a community payback order or a drug treatment or testing order but cannot be imposed concurrently with both these orders.
818. [Paragraph 23](#) amends 245G of the 1995 Act to provide that the court, when revoking a restriction of liberty order which has been imposed concurrently with a community payback order or drug treatment and testing order for the same offence, must also revoke the concurrent community payback order or drug treatment and testing order.
819. [Paragraph 28](#) inserts definitions of the various requirements referred to in section 14 of this Bill into section 307 (interpretation) of the 1995 Act. [Paragraph 28](#) also repeals certain definitions which no longer apply as a consequence of section 14.