

CRIMINAL JUSTICE AND LICENSING (SCOTLAND) ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Schedule 2 – Community Payback Orders: consequential modifications

804. [Schedule 2](#) details those amendments to primary legislation as a consequence of the introduction of the community payback order (section 14 of this Act) which will replace probation orders, supervised attendance orders and community service orders.

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.

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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.

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.

Part 2 – Other enactments

Paragraph 30 – The Firearms Act 1968 (c.27)

820. Paragraph 30 replaces references to probation order in sections 21(3ZA) (possession of firearms by persons previously convicted of crime) and 52(1A) (forfeiture and disposal of firearms: cancellation of certificate by convicting court) with references to community payback order as a consequence of section 14 of this Bill.

Paragraph 31 – The Social Work (Scotland) Act 1968 (c.49).

821. Section 27(1)(b)(iii) and (iv) of the Social Work (Scotland) Act 1968 provide that every local authority must supervise, and provide advice, guidance and assistance to offenders subject to: a community service order; a probation order which includes an unpaid work requirement; or a supervised attendance order. Paragraph 31(2) amends section 27(1)(b)(iii) replacing the references to probation order and community service order with community payback order imposing an unpaid work and other activity requirement. Section 27(1)(b)(iv) is repealed. Section 27(1)(b)(va) which refers to community reparation orders, is also repealed since the provisions in the 1995 Act relating to CROs are repealed.
822. Section 86 of the 1968 Act details the process to be followed in respect of the provision of accommodation and when determining the ordinary residence of a person subject to local authority supervision. Paragraph 31(3) inserts a reference to community payback order into subsection (3).

Paragraph 32 – The Rehabilitation of Offenders Act 1974 (c.53).

823. Paragraph 32(2) removes reference to probation order in respect of the rehabilitation period for particular sentences in the Rehabilitation of Offenders Act 1974. A community payback order is designated a sentence (unlike a probation order) and so is covered under the general provisions and does not need to be specifically referred to.
824. Paragraph 32(3) also removes references to probation orders in respect of the rehabilitation period applicable to a conviction in section 6(3) of the 1974 Act.

Paragraph 33 - The Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c.55).

825. Schedule 1, part 2 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 lists those persons who are disqualified from jury service. Paragraph (bb) is amended to substitute community payback order for probation order in sub-paragraph (i). Sub-paragraph (iii) which refers to community service orders is repealed.

Paragraph 34 – The Local Government and Planning (Scotland) Act 1982 (c.43).

826. Section 24 of the Local Government and Planning (Scotland) Act 1982 refers to councils' functions in relation to the provision of gardening assistance for the disabled and the elderly. Subsection (3) is amended to replace references to instructions given under the Community Service by Offenders (Scotland) Act 1978 in respect of community service orders with references to determinations made under section 227A of the Criminal Procedure Scotland Act in respect of community payback orders with unpaid work and other activity requirement.

Paragraph 35 – The 1982 Act

827. Section 49 of the Civic Government (Scotland) Act 1982, which relates to persons found guilty of permitting any creature in his charge to cause danger or injury to any other person who is in a public place or to give such person reasonable cause for alarm or annoyance is amended by paragraph 35 to remove the reference to probation order

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in subsection (6). There is no requirement to replace this reference with community payback order as a community payback order is a sentence following conviction.

828. Section 58(3) of the 1982 Act (convicted thief in possession of a tool or object of which it may reasonably be inferred that he intended to commit theft or has committed theft) is amended to repeal references to probation order. There is no requirement to replace this reference with community payback order as a community payback order is a sentence following conviction.

Paragraph 36 – The Foster Children (Scotland) Act 1984 (c.56).

829. Paragraph 36 replaces references to probation order with community payback order in section 2(3) of the Foster Children (Scotland) Act 1984 which lists the circumstances in which a child is not considered to be a foster child under the terms of section 1 of the 1984 Act.

Paragraph 37 – The Road Traffic Offenders Act 1988 (c.53).

830. References to probation order in section 46(3)(b) of the Road Traffic Offenders Act 1998 are repealed. As a community payback order is considered to be a sentence, following a conviction, there is no requirement to refer specifically to this.

Paragraph 38 – The Jobseekers Act 1995 (c.18).

831. Paragraph 38 repeals the reference to probation order in section 20D(5) of the Jobseekers Act 1995 (as inserted by section 25(2) of the Welfare Reform Act 2009) (jobseeker's allowance: sanctions for violent conduct). There is no requirement to replace this reference with community payback order as a community payback order is a sentence following conviction.

Paragraph 39 – The Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c.40).

832. Paragraph 13 of Schedule 3, Part 2 of the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995, which relates solely to supervised attendance orders, is repealed as a consequence of section 14 of this Bill which replaces supervised attendance orders with community payback orders.

Paragraph 40 – The Proceeds of Crime (Scotland) Act 1995 (c.43).

833. Paragraph 32 repeals references to probation order in sections 25(9) and 26(9) of the Proceeds of Crime (Scotland) Act 1995. As imposition of a community payback order is considered a sentence, and action in respect of sentences is specifically provided for, there is no requirement to replace the references to probation with community payback order.

Paragraph 41 – The Crime and Punishment (Scotland) Act 1997 (c.48).

834. Section 26 of the Crime and Punishment (Scotland) Act 1997 which relates to evidence requirements in respect of offences committed whilst the offender is subject to a probation order or a community service order is repealed.
835. Paragraph 21, sub-paragraphs (27) to (29) of Schedule 1 to the 1997 Act, which also relate to probation orders, are repealed.

Paragraph 42 – The Crime and Disorder Act 1998 (c.37).

836. Paragraphs 1 and 2 of Schedule 6, Part 1 of the Crime and Disorder Act 1998 relate to imposition of drug treatment and testing orders or restriction of liberty orders concurrently with probation orders, and amend the relevant provisions in the Criminal Procedure (Scotland) Act 1995 to enable these combinations to be imposed. Paragraph

42 repeals these provisions as probation orders will be replaced by community payback orders and provisions relating to orders which may be imposed concurrently are contained in section 14 of this Bill.

Paragraph 43 – The Powers of Criminal Courts (Sentencing) Act 2000 (c.6).

837. Paragraphs 176 to 178 of the Powers of Criminal Courts (Sentencing) Act 2000 amend sections 234 (probation orders), 242 and 244 (community service orders) of the Criminal Procedure (Scotland) Act 1995. These sections are repealed as a consequence of section 14 of this Bill which replaces probation orders and community service orders with community payback orders.

Paragraph 44 – The Criminal Justice and Court Services Act 2000 (c.43).

838. Paragraph 36 repeals the reference to 234(1)(a) of the Criminal Procedure (Scotland) Act 1995 in Schedule 7, paragraph 4(2) of the Criminal Justice and Court Services Act 2000. Section 234 of the 1995 Act refers to probation orders and is repealed as a consequence of section 14 of this Bill which replaces probation orders and community service orders with community payback orders.

Paragraph 45 – The Social Security Fraud Act 2001 (c.11).

839. Section 6C of the Social Security Fraud Act 2001 relates to loss of benefit in the case of a conviction. Paragraph 45(2) removes reference to probation order as a consequence of section 14 of this Act. There is no requirement to replace this reference with community payback order as a community payback order is a sentence following conviction.
840. Section 7 relates to loss of benefit as a consequence of benefit offences. Subsection (9) (b) defines conviction as including the imposition of a probation order by a Scottish court. Paragraph 45(3) repeals the reference to probation order. As in the paragraph above, there is no requirement to replace this reference with community payback order.

Paragraph 46 – The Justice (Northern Ireland) Act 2002 (c.26).

841. Paragraph 46 repeals Schedule 4, paragraph 37 of the Justice (Northern Ireland) Act 2002. Paragraph 37 of the 2002 Act amends section 244 of the Criminal Procedure (Scotland) Act 1995 (relating to community service orders). Section 244 is repealed as a consequence of section 14 of this Act which replaces community service orders with community payback orders.

Paragraph 47 – The Criminal Justice (Scotland) Act 2003 (asp 7).

842. Paragraph 47 amends sections 42, 46, 50 and 60 of the Criminal Justice (Scotland) Act 2003. Section 42 relates to drugs courts and the amendments to this section replace references to probation order and community service order with community payback order and replace references in the Criminal Procedure (Scotland) Act 1995 which relate to probation orders with corresponding references relating to community payback orders. Section 46 provides for remote monitoring as a condition of a probation order and this provision is repealed as a consequence of the repeal of probation orders in their entirety. Section 50(1), (2) and (4), which relate solely to supervised attendance orders, are also repealed as a consequence of section 14 of this Bill which replaces the provisions relating to supervised attendance orders. Section 60(1)(a), (b), (e) and (f) and subsections (3) and (4) are repealed. These relate solely to procedures relating probation orders, community service orders and supervised attendance orders, all of which are replaced by community payback orders.

Paragraph 48 – The Mental Health (Care and Treatment) (Scotland) Act 2003 (asp. 13).

843. **Paragraph 48** repeals section 135 of and paragraph 8(15) of Schedule 4 to the Mental Health (Care and Treatment) (Scotland) Act 2003. Section 135 and paragraph 8(15) amend section 230 of the Criminal Procedure (Scotland) Act 1995 in respect of probation for treatment of a mental disorder. Section 230 is repealed as a consequence of section 14 of this Bill which replaces probation orders with community payback orders. Section 14 also provides for mental health treatment requirements as part of a community payback order.

Paragraph 49 – The Criminal Justice Act 2003 (c.44).

844. **Paragraph 49** repeals paragraphs 69 to 27 of Schedule 32 of the Criminal Justice Act 2003. Schedule 32 of the 2003 Act amends primary legislation which relates to sentencing. Paragraphs 69 to 72 amend sections 234, 242 and 244 of the Criminal Procedure (Scotland) Act which relate to probation orders and community service orders. Sections 234, 242 and 244 are repealed as a consequence of section 14 of this Act which replaces probation orders and community service orders with community payback orders.

Paragraph 50 – The Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8).

845. Section 120 of the Antisocial Behaviour etc. (Scotland) Act 2004 relates solely to community reparation orders (CROs). Paragraph 50 repeals section 120 and Schedule 4, paragraph 5, sub-paragraphs (3), (5), (6) and (11) of the 2004 Act (which amend provisions in the Criminal Procedure (Scotland) Act 1995 (the 1995 Act) relating to CROs, supervised attendance orders and community service orders). Provisions in the 1995 Act relating to supervised attendance orders and community service orders are repealed as a consequence of section 14 of this Bill which replaces supervised attendance orders and community service orders with community payback orders.

Paragraph 51 – The Management of Offenders etc. (Scotland) Act 2005 (asp 14).

846. **Paragraph 51** amends section 10 of the Management of Offenders etc (Scotland) Act which deals with the arrangements for assessing and managing risk posed by certain offenders. In subsection (1)(b) references to probation order are replaced by references to community payback order imposing an offender supervision requirement (either alone or with any other requirement). Paragraph 51(3) also repeals section 12 (probation progress review).

Paragraph 52 – The Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6).

847. **Paragraph 52** repeals sections 49(4), 57 and paragraph 26(l) and (n) of the schedule. Section 49(4) provides for a compensation requirement to be imposed as part of a probation order, section 57 relates specifically to breach of probation orders and community service orders and paragraph 26(l) and (n) of the schedule relate to community service orders and community reparation orders respectively. The relevant sections of the Criminal Procedure (Scotland) Act 1995 which provide for probation orders, community service orders and community reparation orders are repealed as a consequence of section 14 of this Act. Section 14 provides for a compensation requirement to be imposed as part of a community payback order and for the process to be followed in the event of breach of a community payback order, replacing those provisions which are being repealed.

Paragraph 53 – The Criminal Justice and Immigration Act 2008 (c.4).

848. **Paragraph 53** repeals paragraphs 43 to 46 of Schedule 4, Part 1 of the Criminal Justice and Immigration Act 2008. These provisions detail the effect of the Criminal Procedure

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(Scotland) Act 1995 in respect of the 2008 Act and relate specifically to sections 234 (probation orders), 242 and 244 (community service orders). These sections are repealed as a consequence of section 14 of this Act which introduces the community payback order which replaces probation orders and community service orders.