



# Criminal Justice and Licensing (Scotland) Act 2010

2010 asp 13

## PART 1

### SENTENCING

#### *The Scottish Sentencing Council*

#### **1 The Scottish Sentencing Council**

- (1) There is established a body corporate to be known as the “Scottish Sentencing Council” (referred to in this Part as the “Council”).
- (2) Schedule 1 makes further provision about the Council.

#### **Commencement Information**

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| <b>11</b> | S. 1(1) in force at 7.5.2015 by <a href="#">S.S.I. 2015/177, art. 2(a)</a>                                     |
| <b>12</b> | S. 1(2) in force at 7.5.2015 for specified purposes by <a href="#">S.S.I. 2015/177, art. 2(b)</a>              |
| <b>13</b> | S. 1(2) in force at 19.10.2015 in so far as not already in force by <a href="#">S.S.I. 2015/336, art. 2(a)</a> |

#### **2 The Council's objectives**

The Council must, in carrying out its functions, seek to—

- (a) promote consistency in sentencing practice,
- (b) assist the development of policy in relation to sentencing,
- (c) promote greater awareness and understanding of sentencing policy and practice.

#### **Commencement Information**

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| <b>14</b> | S. 2 in force at 19.10.2015 by <a href="#">S.S.I. 2015/336, art. 2(a)</a> |
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*Status: Point in time view as at 19/10/2015. This version of this part contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010, PART 1. (See end of Document for details)*

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### 3 Sentencing guidelines

- (1) The Council is from time to time to prepare, for the approval of the High Court of Justiciary, guidelines relating to the sentencing of offenders.
- (2) Such guidelines are to be known as “sentencing guidelines”.
- (3) Sentencing guidelines may in particular relate to—
  - (a) the principles and purposes of sentencing,
  - (b) sentencing levels,
  - (c) the particular types of sentence that are appropriate for particular types of offence or offender,
  - (d) the circumstances in which the guidelines may be departed from.
- (4) Sentencing guidelines may be general in nature or may relate to a particular category of offence or offender or a particular matter relating to sentencing.
- (5) The Council must, on preparing any sentencing guidelines, also prepare—
  - (a) an assessment of the costs and benefits to which the implementation of the guidelines would be likely to give rise,
  - (b) an assessment of the likely effect of the guidelines on the criminal justice system generally.
- (6) The Council—
  - (a) must from time to time review any sentencing guidelines published by it, and
  - (b) may prepare, for the approval of the High Court of Justiciary, revised guidelines.
- (7) In this section and sections 4 to 13, references to sentencing guidelines include references to revised sentencing guidelines.

#### Commencement Information

**I5** S. 3 in force at 19.10.2015 by [S.S.I. 2015/336](#), [art. 2\(a\)](#)

### 4 Consultation on proposed sentencing guidelines

- (1) The Council must, before submitting any sentencing guidelines to the High Court of Justiciary for approval—
  - (a) publish a draft of the proposed guidelines together with a draft of the assessments referred to in section 3(5), and
  - (b) consult the following persons about the drafts—
    - (i) the Scottish Ministers,
    - (ii) the Lord Advocate,
    - (iii) such other persons as the Council considers appropriate.
- (2) The Council must, in finalising the guidelines and assessments for submission to the High Court of Justiciary, have regard to any comments made on the drafts following publication and consultation under subsection (1).

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*Changes to legislation: There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010, PART 1. (See end of Document for details)*

#### Commencement Information

**I6** S. 4 in force at 19.10.2015 by [S.S.I. 2015/336](#), **art. 2(a)**

### 5 Approval of sentencing guidelines by High Court

- (1) Sentencing guidelines have no effect unless approved by the High Court of Justiciary.
- (2) On submitting sentencing guidelines to the High Court for approval, the Council must also provide the High Court with the assessments referred to in section 3(5).
- (3) Where the Council submits sentencing guidelines to the High Court for approval, the Court may—
  - (a) approve the proposed guidelines—
    - (i) in whole or in part,
    - (ii) with or without modifications, or
  - (b) reject the proposed guidelines, in whole or in part.
- (4) Where the High Court—
  - (a) rejects any of the proposed guidelines, or
  - (b) modifies any of them,the Court must state its reasons for doing so.
- (5) Sentencing guidelines approved by the High Court take effect on such date as the Court may determine.
- (6) Different dates may be determined in relation to—
  - (a) different provisions of the guidelines, or
  - (b) different purposes.
- (7) As soon as possible after the approval of sentencing guidelines by the High Court, the Council must publish—
  - (a) the guidelines as approved (including the date on which they take effect), and
  - (b) the assessments referred to in section 3(5) (revised as necessary to take account of any modifications of the guidelines prior to their approval).
- (8) The guidelines and assessments are to be published in such manner as the Council considers appropriate.

#### Commencement Information

**I7** S. 5 in force at 19.10.2015 by [S.S.I. 2015/336](#), **art. 2(a)**

### 6 Effect of sentencing guidelines

- (1) A court (whether at first instance or on appeal) must—
  - (a) in sentencing an offender in respect of an offence, have regard to any sentencing guidelines which are applicable in relation to the case,
  - (b) in carrying out any other function relating to the sentencing of offenders, have regard to any sentencing guidelines applicable to the carrying out of the function.

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- (2) If the court decides not to follow the guidelines, or to depart from them in accordance with provision contained in them under section 3(3)(d), it must state the reasons for its decision.
- (3) The sentencing guidelines to which the court must have regard under subsection (1) are those applicable to the case at the time the court is sentencing the offender or, as the case may be, carrying out the function.
- [<sup>F1</sup>(4) Subsection (5) applies where, on an appeal in any case—
- (a) the High Court of Justiciary passes another sentence under one of the following provisions of the 1995 Act—
- (i) section 118(3),
  - (ii) section 118(4)(b),
  - (iii) section 118(4A)(b),
  - (iv) section 118(4A)(c)(ii), or
- (b) the Sheriff Appeal Court or the High Court passes another sentence under section 189(1)(b) of that Act.]
- (5) The sentencing guidelines which the High Court [<sup>F2</sup>or, as the case may be, the Sheriff Appeal Court] must have regard to under subsection (1) in passing that other sentence are those applicable to the case at the time it is passed.
- (6) A revision of the sentencing guidelines after an offender is sentenced in respect of an offence is not a ground for the referral of the case to the High Court of Justiciary under section 194B of the 1995 Act (references to the High Court of cases dealt with on indictment).
- (7) In section 108 of the 1995 Act (Lord Advocate's right of appeal against disposal where conviction on indictment), after subsection (2) insert—
- “(2A) In deciding whether to appeal under subsection (1) in any case, the Lord Advocate must have regard to any sentencing guidelines which are applicable in relation to the case.”.
- (8) In section 175 of the 1995 Act (prosecutor's right of appeal against disposal in summary proceedings), after subsection (4B) insert—
- “(4C) In deciding whether to appeal under subsection (4) in any case, the prosecutor must have regard to any sentencing guidelines which are applicable in relation to the case.”.

#### Textual Amendments

- F1** S. 6(4) substituted (19.10.2015) by [Courts Reform \(Scotland\) Act 2014 \(asp 18\)](#), s. 138(2), [Sch. 5 para. 17\(2\)\(a\)](#); S.S.I. 2015/336, art. 2(d)
- F2** Words in s. 6(5) inserted (19.10.2015) by [Courts Reform \(Scotland\) Act 2014 \(asp 18\)](#), s. 138(2), [Sch. 5 para. 17\(2\)\(b\)](#); S.S.I. 2015/336, art. 2(d)

#### Commencement Information

- I8** S. 6 in force at 19.10.2015 by [S.S.I. 2015/336](#), [art. 2\(a\)](#)

*Status: Point in time view as at 19/10/2015. This version of this part contains provisions that are prospective.*

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## **7 Ministers' power to request that sentencing guidelines be prepared or reviewed**

- (1) The Scottish Ministers may request that the Council consider—
  - (a) preparing, for the approval of the High Court of Justiciary, sentencing guidelines on any matter, or
  - (b) reviewing any sentencing guidelines published by the Council.
- (2) The Council must have regard to any request made by the Scottish Ministers.
- (3) If the Council decides not to comply with a request made by the Scottish Ministers, it must provide the Scottish Ministers with reasons for its decision.

### **Commencement Information**

**I9** S. 7 in force at 19.10.2015 by [S.S.I. 2015/336, art. 2\(a\)](#)

## **8 High Court's power to require preparation or review of sentencing guidelines**

- (1) Where the High Court of Justiciary pronounces an opinion under section 118(7) or 189(7) of the 1995 Act, the Court may require the Council to—
  - (a) prepare, for the Court's approval, sentencing guidelines on any matter, or
  - (b) review any sentencing guidelines published by the Council on any matter.
- (2) On making a requirement under subsection (1), the High Court must state its reasons for doing so.
- (3) The Council must comply with a requirement made under subsection (1) and, in doing so, must have regard to the High Court's reasons for making the requirement.

### **Commencement Information**

**I10** S. 8 in force at 19.10.2015 by [S.S.I. 2015/336, art. 2\(a\)](#)

## **[<sup>F3</sup>8A Sheriff Appeal Court's power to require preparation or review of sentencing guidelines**

- (1) Where the Sheriff Appeal Court pronounces an opinion under section 189(7) of the 1995 Act, the Court may require the Council to—
  - (a) prepare, for the approval of the High Court of Justiciary, sentencing guidelines on any matter, or
  - (b) review any sentencing guidelines published by the Council on any matter.
- (2) On making a requirement under subsection (1), the Sheriff Appeal Court must state its reasons for doing so.
- (3) The Council must comply with a requirement made under subsection (1) and, in doing so, must have regard to the Sheriff Appeal Court's reasons for making the requirement.]

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#### Textual Amendments

- F3** S. 8A inserted (19.10.2015) by [Courts Reform \(Scotland\) Act 2014 \(asp 18\)](#), s. 138(2), **Sch. 5 para. 17(3)**; S.S.I. 2015/336, art. 2(d)

### 9 <sup>[F4]</sup> **Publication of High Court and Sheriff Appeal Court guideline judgments]**

- (1) The Council must publish the opinions of the High Court of Justiciary pronounced under section 118(7) <sup>[F5]</sup> of the 1995 Act and opinions of the Sheriff Appeal Court or the High Court pronounced under section 189(7) of that Act].
- (2) As soon as possible after the High Court <sup>[F6]</sup> or the Sheriff Appeal Court] pronounces such an opinion, the Scottish Court Service must provide the Council with a copy of the opinion.
- (3) The copy opinion is to be provided in such form and by such means as the Council may require.
- (4) The opinions are to be published in such manner, and at such times, as the Council considers appropriate.
- (5) This section does not affect any power or responsibility of the Scottish Court Service in relation to the publication of opinions of the High Court.

#### Textual Amendments

- F4** S. 9 title substituted (19.10.2015) by [Courts Reform \(Scotland\) Act 2014 \(asp 18\)](#), s. 138(2), **Sch. 5 para. 17(4)(c)**; S.S.I. 2015/336, art. 2(d)
- F5** Words in s. 9(1) substituted (19.10.2015) by [Courts Reform \(Scotland\) Act 2014 \(asp 18\)](#), s. 138(2), **Sch. 5 para. 17(4)(a)**; S.S.I. 2015/336, art. 2(d)
- F6** Words in s. 9(2) inserted (19.10.2015) by [Courts Reform \(Scotland\) Act 2014 \(asp 18\)](#), s. 138(2), **Sch. 5 para. 17(4)(b)**; S.S.I. 2015/336, art. 2(d)

#### Commencement Information

- I11** S. 9 in force at 19.10.2015 by [S.S.I. 2015/336](#), art. 2(a)

### 10 **Scottish Court Service to provide sentencing information to the Council**

- (1) The Scottish Court Service must provide the Council with such information relating to the sentences imposed by courts as the Council may reasonably require for the purposes of its functions.
- (2) The information must be provided in such form and by such means as the Council may require.
- (3) The Council must from time to time publish information about the sentences imposed by courts.

#### Commencement Information

- I12** S. 10 in force at 19.10.2015 by [S.S.I. 2015/336](#), art. 2(a)

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## 11 The Council's power to provide information, advice etc.

- (1) The Council may—
  - (a) publish or otherwise disseminate information about sentencing matters,
  - (b) provide advice or guidance of a general nature about such matters,
  - (c) conduct research into such matters.
- (2) In this section, “sentencing matters” means—
  - (a) sentencing guidelines,
  - (b) the practice of the courts in relation to sentencing, and
  - (c) any other matter relating to sentencing.

### Commencement Information

**113** S. 11 in force at 19.10.2015 by [S.S.I. 2015/336](#), [art. 2\(a\)](#)

## 12 Business plan

- (1) The Council must, before the submission day for each period of 3 years, prepare and submit to the Scottish Ministers a plan (a “business plan”) describing how the Council proposes to carry out its functions during the period.
- (2) The “submission day” is—
  - (a) for the period of 3 years beginning on the day on which this section comes into force, the day specified by order made by the Scottish Ministers,
  - (b) for each succeeding period of 3 years, the first day of the period.
- (3) A business plan must—
  - (a) be prepared in such form as the Scottish Ministers may direct,
  - (b) contain the information specified in subsection (4) and such other information as they may direct, and
  - (c) be submitted by such time as they may direct.
- (4) The information referred to in subsection (3)(b) is details of the matters in relation to which the Council proposes to prepare sentencing guidelines.
- (5) The Council may include in a business plan such other information as it considers appropriate.
- (6) In preparing a business plan, the Council must consult—
  - (a) the Scottish Ministers,
  - (b) the Lord Advocate,
  - (c) the Lord Justice General, and
  - (d) such other persons as it considers appropriate.
- (7) The Scottish Ministers must lay before the Scottish Parliament each business plan submitted to them.
- (8) The Council must, as soon as practicable after a business plan has been laid before the Parliament, publish it in such manner as it considers appropriate.
- (9) The Council may at any time during a period covered by a business plan review the plan for the period and submit to the Scottish Ministers a revised plan.

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(10) Subsections (3) to (8) apply to a revised plan as they apply to a business plan.

#### Commencement Information

**I14** S. 12 in force at 19.10.2015 by [S.S.I. 2015/336, art. 2\(a\)](#)

### 13 Annual report

- (1) The Council must, as soon as practicable after the end of each financial year, prepare and submit to the Scottish Ministers a report on the carrying out of its functions during the year.
- (2) The report must—
  - (a) be prepared in such form as the Scottish Ministers may direct,
  - (b) contain the information specified in subsection (3) and such other information as they may direct, and
  - (c) be submitted by such time as they may direct.
- (3) The information referred to in subsection (2)(b) is details of—
  - (a) the sentencing guidelines published or revised during the year (if any),
  - (b) any sentencing guidelines submitted during the year to the High Court of Justiciary for approval and of the Court's response to them,
  - (c) any draft sentencing guidelines being consulted upon,
  - (d) requests made by the Scottish Ministers under section 7 and of the Council's response to them, <sup>F7</sup>...
  - (e) requirements made by the High Court of Justiciary under section 8 and of the Council's response to them <sup>F8</sup>, and
  - (f) requirements made by the Sheriff Appeal Court under section 8A and of the Council's response to them.]
- (4) The Council may include in the report such other information as it considers appropriate.
- (5) The Scottish Ministers must lay before the Scottish Parliament each report submitted to them.
- (6) The Council must, as soon as practicable after the report has been laid before the Parliament, publish it in such manner as it considers appropriate.

#### Textual Amendments

**F7** Word in s. 13(3) repealed (19.10.2015) by [Courts Reform \(Scotland\) Act 2014 \(asp 18\), s. 138\(2\), Sch. 5 para. 17\(5\)\(a\)](#); [S.S.I. 2015/336, art. 2\(d\)](#)

**F8** S. 13(3)(f) and word inserted (19.10.2015) by [Courts Reform \(Scotland\) Act 2014 \(asp 18\), s. 138\(2\), Sch. 5 para. 17\(5\)\(b\)](#); [S.S.I. 2015/336, art. 2\(d\)](#)

#### Commencement Information

**I15** S. 13 in force at 19.10.2015 by [S.S.I. 2015/336, art. 2\(a\)](#)



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### *Community payback orders*

## **14 Community payback orders**

(1) After section 227 of the 1995 Act insert—

### *“Community payback orders*

#### **227A Community payback orders**

- (1) Where a person (the “offender”) is convicted of an offence punishable by imprisonment, the court may, instead of imposing a sentence of imprisonment, impose a community payback order on the offender.
- (2) A community payback order is an order imposing one or more of the following requirements—
  - (a) an offender supervision requirement,
  - (b) a compensation requirement,
  - (c) an unpaid work or other activity requirement,
  - (d) a programme requirement,
  - (e) a residence requirement,
  - (f) a mental health treatment requirement,
  - (g) a drug treatment requirement,
  - (h) an alcohol treatment requirement,
  - (i) a conduct requirement.
- (3) Subsection (4) applies where—
  - (a) a person (the “offender”) is convicted of an offence punishable by a fine (whether or not it is also punishable by imprisonment), and
  - (b) where the offence is also punishable by imprisonment, the court decides not to impose—
    - (i) a sentence of imprisonment, or
    - (ii) a community payback order under subsection (1) instead of a sentence of imprisonment.
- (4) The court may, instead of or as well as imposing a fine, impose a community payback order on the offender imposing one or more of the following requirements—
  - (a) an offender supervision requirement,
  - (b) a level 1 unpaid work or other activity requirement,
  - (c) a conduct requirement.
- (5) A justice of the peace court may only impose a community payback order imposing one or more of the following requirements—
  - (a) an offender supervision requirement,
  - (b) a compensation requirement,
  - (c) an unpaid work or other activity requirement,
  - (d) a residence requirement,
  - (e) a conduct requirement.

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- (6) Subsection (5)(c) is subject to section 227J(4).
- (7) The Scottish Ministers may by order made by statutory instrument amend subsection (5) so as to add to or omit requirements that may be imposed by a community payback order imposed by a justice of the peace court.
- (8) An order is not to be made under subsection (7) unless a draft of the statutory instrument containing the order has been laid before and approved by resolution of the Scottish Parliament.
- (9) In this section and sections 227B to 227ZK, except where the context requires otherwise—
  - “court” means the High Court, the sheriff or a justice of the peace court,
  - “imprisonment” includes detention.

### **227B Community payback order: procedure prior to imposition**

- (1) This section applies where a court is considering imposing a community payback order on an offender.
- (2) The court must not impose the order unless it is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was serious enough to warrant the imposition of such an order.
- (3) Before imposing a community payback order imposing two or more requirements, the court must consider whether, in the circumstances of the case, the requirements are compatible with each other.
- (4) The court must not impose the order unless it has obtained, and taken account of, a report from an officer of a local authority containing information about the offender and the offender's circumstances.
- (5) An Act of Adjournal may prescribe—
  - (a) the form of a report under subsection (4), and
  - (b) the particular information to be contained in it.
- (6) Subsection (4) does not apply where the court is considering imposing a community payback order—
  - (a) imposing only a level 1 unpaid work or other activity requirement, or
  - (b) under section 227M(2).
- (7) The clerk of the court must give a copy of any report obtained under subsection (4) to—
  - (a) the offender,
  - (b) the offender's solicitor (if any), and
  - (c) the prosecutor.
- (8) Before imposing the order, the court must explain to the offender in ordinary language—
  - (a) the purpose and effect of each of the requirements to be imposed by the order,
  - (b) the consequences which may follow if the offender fails to comply with any of the requirements imposed by the order, and

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- (c) where the court proposes to include in the order provision under section 227X for it to be reviewed, the arrangements for such a review.
- (9) The court must not impose 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 each of the requirements to be imposed by the order.
- (10) Subsection (9)(b) does not apply where the court is considering imposing a community payback order under section 227M(2).

### **227C Community payback order: responsible officer**

- (1) This section applies where a court imposes a community payback order on an offender.
- (2) The court must, in imposing the order—
  - (a) specify the locality in which the offender resides or will reside for the duration of the order,
  - (b) require the local authority within whose area that locality is situated to nominate, within two days of its receiving a copy of the order, an officer of the authority as the responsible officer for the purposes of the order,
  - (c) require the offender to comply with any instructions given by the responsible officer—
    - (i) about keeping in touch with the responsible officer, or
    - (ii) for the purposes of subsection (3),
  - (d) require the offender to report to the responsible officer in accordance with instructions given by that officer,
  - (e) require the offender to notify the responsible officer without delay of—
    - (i) any change of the offender's address, and
    - (ii) the times, if any, at which the offender usually works (or carries out voluntary work) or attends school or any other educational establishment, and
  - (f) where the order imposes an unpaid work or other activity requirement, require the offender to undertake for the number of hours specified in the requirement such work or activity as the responsible officer may instruct, and at such times as may be so instructed.
- (3) The responsible officer is responsible for—
  - (a) making any arrangements necessary to enable the offender to comply with each of the requirements imposed by the order,
  - (b) promoting compliance with those requirements by the offender,
  - (c) taking such steps as may be necessary to enforce compliance with the requirements of the order or to vary, revoke or discharge the order.
- (4) References in this Act to the responsible officer are, in relation to an offender on whom a community payback order has been imposed, the officer for the time being nominated in pursuance of subsection (2)(b).

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- (5) In reckoning the period of two days for the purposes of subsection (2)(b), no account is to be taken of a Saturday or Sunday or any day which is a local or public holiday in the area of the local authority concerned.

#### **227D Community payback order: further provision**

- (1) Where a community payback order is imposed on an offender, the order is to be taken for all purposes to be a sentence imposed on the offender.
- (2) On imposing a community payback order, the court must state in open court the reasons for imposing the order.
- (3) The imposition by a court of a community payback order on an offender does not prevent the court imposing a fine or any other sentence (other than imprisonment), or making any other order, that it would be entitled to impose or make in respect of the offence.
- (4) Where a court imposes a community payback order on an offender, the clerk of the court must ensure that—
- (a) a copy of the order is given to—
    - (i) the offender, and
    - (ii) the local authority within whose area the offender resides or will reside, and
  - (b) a copy of the order and such other documents and information relating to the case as may be useful are given to the clerk of the appropriate court (unless the court imposing the order is that court).
- (5) A copy of the order may be given to the offender—
- (a) by being delivered personally to the offender, or
  - (b) by being sent—
    - (i) by a registered post service (as defined in section 125(1) of the Postal Services Act 2000 (c.26)), or
    - (ii) by a postal service which provides for the delivery of the document to be recorded.
- (6) A community payback order is to be in such form, or as nearly as may be in such form, as may be prescribed by Act of Adjournal.

#### **227E Requirement to avoid conflict with religious beliefs, work etc.**

- (1) In imposing a community payback order on an offender, the court must ensure, so far as practicable, that any requirement imposed by the order avoids—
- (a) a conflict with the offender's religious beliefs,
  - (b) interference with the times, if any, at which the offender normally works (or carries out voluntary work) or attends school or any other educational establishment.
- (2) The responsible officer must ensure, so far as practicable, that any instruction given to the offender avoids such a conflict or interference.

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### **227F Payment of offenders' travelling and other expenses**

- (1) The Scottish Ministers may by order made by statutory instrument provide for the payment to offenders of travelling or other expenses in connection with their compliance with requirements imposed on them by community payback orders.
- (2) An order under subsection (1) may—
  - (a) specify expenses or provide for them to be determined under the order,
  - (b) provide for the payments to be made by or on behalf of local authorities,
  - (c) make different provision for different purposes.
- (3) An order under subsection (1) is subject to annulment in pursuance of a resolution of the Scottish Parliament.

### *Offender supervision requirement*

### **227G Offender supervision requirement**

- (1) In this Act, an “offender supervision requirement” is, in relation to an offender, a requirement that, during the specified period, the offender must attend appointments with the responsible officer or another person determined by the responsible officer, at such time and place as may be determined by the responsible officer, for the purpose of promoting the offender's rehabilitation.
- (2) On imposing a community payback order, the court must impose an offender supervision requirement if—
  - (a) the offender is under 18 years of age at the time the order is imposed, or
  - (b) the court, in the order, imposes—
    - (i) a compensation requirement,
    - (ii) a programme requirement,
    - (iii) a residence requirement,
    - (iv) a mental health requirement,
    - (v) a drug treatment requirement,
    - (vi) an alcohol treatment requirement, or
    - (vii) a conduct requirement.
- (3) The specified period must be at least 6 months and not more than 3 years.
- (4) Subsection (3) is subject to subsection (5) and section 227ZE(4).
- (5) In the case of an offender supervision requirement imposed on a person aged 16 or 17 along with only a level 1 unpaid work or other activity requirement, the specified period must be no more than whichever is the greater of—
  - (a) the specified period under section 227L in relation to the level 1 unpaid work or other activity requirement, and
  - (b) 3 months.

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- (6) In this section, “specified”, in relation to an offender supervision requirement, means specified in the requirement.

### *Compensation requirement*

#### **227H Compensation requirement**

- (1) In this Act, a “compensation requirement” is, in relation to an offender, a requirement that the offender must pay compensation for any relevant matter in favour of a relevant person.
- (2) In subsection (1)—
- “relevant matter” means any personal injury, loss, damage or other matter in respect of which a compensation order could be made against the offender under section 249 of this Act, and
- “relevant person” means a person in whose favour the compensation could be awarded by such a compensation order.
- (3) A compensation requirement may require the compensation to be paid in a lump sum or in instalments.
- (4) The offender must complete payment of the compensation before the earlier of the following—
- the end of the period of 18 months beginning with the day on which the compensation requirement is imposed,
  - the beginning of the period of 2 months ending with the day on which the offender supervision requirement imposed under section 227G(2) ends.
- (5) The following provisions of this Act apply in relation to a compensation requirement as they apply in relation to a compensation order, and as if the references in them to a compensation order included a compensation requirement—
- section 249(3), (4), (5) and (8) to (10),
  - section 250(2),
  - section 251(1), (1A) and (2)(b), and
  - section 253.

### *Unpaid work or other activity requirement*

#### **227I Unpaid work or other activity requirement**

- (1) In this Act, an “unpaid work or other activity requirement” is, in relation to an offender, a requirement that the offender must, for the specified number of hours, undertake—
- unpaid work, or
  - unpaid work and other activity.
- (2) Whether the offender must undertake other activity as well as unpaid work is for the responsible officer to determine.

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- (3) The nature of the unpaid work and any other activity to be undertaken by the offender is to be determined by the responsible officer.
- (4) The number of hours that may be specified in the requirement must be (in total)—
  - (a) at least 20 hours, and
  - (b) not more than 300 hours.
- (5) An unpaid work or other activity requirement which requires the work or activity to be undertaken for a number of hours totalling no more than 100 is referred to in this Act as a “level 1 unpaid work or other activity requirement”.
- (6) An unpaid work or other activity requirement which requires the work or activity to be undertaken for a number of hours totalling more than 100 is referred to in this Act as a “level 2 unpaid work or other activity requirement”.
- (7) The Scottish Ministers may by order made by statutory instrument substitute another number of hours for any of the numbers of hours for the time being specified in subsections (4) to (6).
- (8) An order under subsection (7) may only substitute for the number of hours for the time being specified in a provision mentioned in the first column of the following table a number of hours falling within the range set out in the corresponding entry in the second column.

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<i>Provision</i>	<i>Range</i>	
	<i>No fewer than</i>	<i>No more than</i>
Subsection (4)(a)	10 hours	40 hours
Subsection (4)(b)	250 hours	350 hours
Subsections (5) and (6)	70 hours	150 hours

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- (9) An order under subsection (7) is subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (10) In this section, “specified”, in relation to an unpaid work or other activity requirement, means specified in the requirement.

### **227J Unpaid work or other activity requirement: further provision**

- (1) A court may not impose an unpaid work or other activity requirement on an offender who is under 16 years of age.
- (2) A court may impose such a requirement on an offender only if the court is satisfied, after considering the report mentioned in section 227B(4), that the offender is a suitable person to undertake unpaid work in pursuance of the requirement.
- (3) Subsection (2) does not apply where the court is considering imposing a community payback order—
  - (a) imposing only a level 1 unpaid work or other activity requirement, or
  - (b) under section 227M(2).

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- (4) A justice of the peace court may impose a level 2 unpaid work or other activity requirement only if—
  - (a) the Scottish Ministers by regulations made by statutory instrument so provide, and
  - (b) the requirement is imposed in such circumstances and subject to such conditions as may be specified in the regulations.
- (5) Regulations are not to be made under subsection (4) unless a draft of the statutory instrument containing them has been laid before and approved by resolution of the Scottish Parliament.

#### **227K Allocation of hours between unpaid work and other activity**

- (1) Subject to subsection (2), it is for the responsible officer to determine how many out of the number of hours specified in an unpaid work or other activity requirement are to be allocated to undertaking, respectively—
  - (a) unpaid work, and
  - (b) any other activity to be undertaken.
- (2) The number of hours allocated to undertaking an activity other than unpaid work must not exceed whichever is the lower of—
  - (a) 30% of the number of hours specified in the requirement, and
  - (b) 30 hours.
- (3) The Scottish Ministers may by order made by statutory instrument—
  - (a) substitute another percentage for the percentage for the time being specified in subsection (2)(a),
  - (b) substitute another number of hours for the number of hours for the time being specified in subsection (2)(b).
- (4) An order is not to be made under subsection (3) unless a draft of the statutory instrument containing the order has been laid before and approved by resolution of the Scottish Parliament.

#### **227L Time limit for completion of unpaid work or other activity**

- (1) The number of hours of unpaid work and any other activity that the offender is required to undertake in pursuance of an unpaid work or other activity requirement must be completed by the offender before the end of the specified period beginning with the imposition of the requirement.
- (2) The “specified period” is—
  - (a) in relation to a level 1 unpaid work or other activity requirement, 3 months or such longer period as the court may specify in the requirement,
  - (b) in relation to a level 2 unpaid work or other activity requirement, 6 months or such longer period as the court may specify in the requirement.

#### **227M Fine defaulters**

- (1) This section applies where—



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- (a) a fine has been imposed on an offender in respect of an offence,
  - (b) the offender fails to pay the fine or an instalment of the fine,
  - (c) the offender is not serving a sentence of imprisonment, and
  - (d) apart from this section, the court would have imposed a period of imprisonment on the offender under section 219(1) of this Act in respect of the failure to pay the fine or instalment.
- (2) Instead of imposing a period of imprisonment under section 219(1) of this Act, the court—
  - (a) where the amount of the fine or the instalment does not exceed level 2 on the standard scale, must impose a community payback order on the offender imposing a level 1 unpaid work or other activity requirement,
  - (b) where the amount of the fine or the instalment exceeds that level, may impose such a community payback order.
- (3) The court, in imposing a community payback order under subsection (2) on a person aged 16 or 17, must also impose an offender supervision requirement.
- (4) Where the amount of the fine or the instalment does not exceed level 1 on the standard scale, the number of hours specified in the requirement must not exceed 50.
- (5) On completion of the hours of unpaid work and any other activity specified in an unpaid work or other activity requirement imposed under this section, the fine in respect of which the requirement was imposed is discharged (or, as the case may be, the outstanding instalments of the fine are discharged).
- (6) If, after a community payback order is imposed on an offender under this section, the offender pays the fine or the full amount of any outstanding instalments, the appropriate court must discharge the order.
- (7) Subsection (2) is subject to sections 227J(1) and 227N(2), (3) and (7).
- (8) In this section, “court” does not include the High Court.

#### **227N Offenders subject to more than one unpaid work or other activity requirement**

- (1) This section applies where—
  - (a) a court is considering imposing an unpaid work or other activity requirement on an offender (referred to as the “new requirement”), and
  - (b) at the time the court is considering imposing the requirement, there is already in effect one or more community payback orders imposing such a requirement on the same offender (each referred to as an “existing requirement”).
- (2) The court may, in imposing the new requirement, direct that it is to be concurrent with any existing requirement.
- (3) Where the court makes a direction under subsection (2), hours of unpaid work or other activity undertaken after the new requirement is imposed count for the purposes of compliance with that requirement and the existing requirement.

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- (4) Subsection (5) applies where the court does not make a direction under subsection (2).
- (5) The maximum number of hours which may be specified in the new requirement is the number of hours specified in section 227I(4)(b) less the aggregate of the number of hours of unpaid work or activity still to be completed under each existing requirement at the time the new requirement is imposed.
- (6) In calculating that aggregate, if any existing requirement is concurrent with another (by virtue of a direction under subsection (2)), hours that count for the purposes of compliance with both (or, as the case may be, all) are to be counted only once.
- (7) Where that maximum number is less than the minimum number of hours that can be specified by virtue of section 227I(4)(a), the court must not impose the new requirement.

#### **227O Rules about unpaid work and other activity**

- (1) The Scottish Ministers may make rules by statutory instrument for or in connection with the undertaking of unpaid work and other activities in pursuance of unpaid work or other activity requirements.
- (2) Rules under subsection (1) may in particular make provision for—
  - (a) limiting the number of hours of work or other activity that an offender may be required to undertake in any one day,
  - (b) reckoning the time spent undertaking unpaid work or other activity,
  - (c) the keeping of records of unpaid work and any other activity undertaken.
- (3) Rules under subsection (1) may—
  - (a) confer functions on responsible officers,
  - (b) contain rules about the way responsible officers are to exercise functions under this Act.
- (4) Rules under subsection (1) are subject to annulment in pursuance of a resolution of the Scottish Parliament.

#### *Programme requirement*

#### **227P Programme requirement**

- (1) In this Act, a “programme requirement” is, in relation to an offender, a requirement that the offender must participate in a specified programme, at the specified place and on the specified number of days.
- (2) In this section, “programme” means a course or other planned set of activities, taking place over a period of time, and provided to individuals or groups of individuals for the purpose of addressing offending behavioural needs.

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- (3) A court may impose a programme requirement on an offender only if the specified programme is one which has been recommended by an officer of a local authority as being suitable for the offender to participate in.
- (4) If an offender's compliance with a proposed programme requirement would involve the co-operation of a person other than the offender, the court may impose the requirement only if the other person consents.
- (5) A court may not impose a programme requirement that would require an offender to participate in a specified programme after the expiry of the period specified in the offender supervision requirement to be imposed at the same time as the programme requirement (by virtue of section 227G(2)(b)).
- (6) Where the court imposes a programme requirement on an offender, the requirement is to be taken to include a requirement that the offender, while attending the specified programme, complies with any instructions given by or on behalf of the person in charge of the programme.
- (7) In this section, “specified”, in relation to a programme requirement, means specified in the requirement.

#### *Residence requirement*

##### **227Q Residence requirement**

- (1) In this Act, a “residence requirement” is, in relation to an offender, a requirement that, during the specified period, the offender must reside at a specified place.
- (2) The court may, in a residence requirement, require an offender to reside at a hostel or other institution only if the hostel or institution has been recommended as a suitable place for the offender to reside in by an officer of a local authority.
- (3) The specified period must not be longer than the period specified in the offender supervision requirement to be imposed at the same time as the residence requirement (by virtue of section 227G(2)(b)).
- (4) In this section, “specified”, in relation to a residence requirement, means specified in the requirement.

#### *Mental health treatment requirement*

##### **227R Mental health treatment requirement**

- (1) In this Act, a “mental health treatment requirement” is, in relation to an offender, a requirement that the offender must submit, during the specified period, to treatment by or under the direction of a registered medical practitioner or a registered psychologist (or both) with a view to improving the offender's mental condition.
- (2) The treatment to which an offender may be required to submit under a mental health treatment requirement is such of the kinds of treatment described in

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subsection (3) as is specified; but otherwise the nature of the treatment is not to be specified.

- (3) Those kinds of treatment are—
- (a) treatment as a resident patient in a hospital (other than a State hospital) within the meaning of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) (“the 2003 Act”),
  - (b) treatment as a non-resident patient at such institution or other place as may be specified, or
  - (c) treatment by or under the direction of such registered medical practitioner or registered psychologist as may be specified.
- (4) A court may impose a mental health treatment requirement on an offender only if the court is satisfied—
- (a) on the written or oral evidence of an approved medical practitioner (within the meaning of the 2003 Act), that Condition A is met,
  - (b) on the written or oral evidence of the registered medical practitioner or registered psychologist by whom or under whose direction the treatment is to be provided, that Condition B is met, and
  - (c) that Condition C is met.
- (5) Condition A is that—
- (a) the offender suffers from a mental condition,
  - (b) the condition requires, and may be susceptible to, treatment, and
  - (c) the condition is not such as to warrant the offender's being subject to—
    - (i) a compulsory treatment order under section 64 of the 2003 Act, or
    - (ii) a compulsion order under section 57A of this Act.
- (6) Condition B is that the treatment proposed to be specified is appropriate for the offender.
- (7) Condition C is that arrangements have been made for the proposed treatment including, where the treatment is to be of the kind mentioned in subsection (3) (a), arrangements for the offender's reception in the hospital proposed to be specified in the requirement.
- (8) The specified period must not be longer than the period specified in the offender supervision requirement to be imposed at the same time as the mental health treatment requirement (by virtue of section 227G(2)(b)).
- (9) In this section, “specified”, in relation to a mental health treatment requirement, means specified in the requirement.

### **227S Mental health treatment requirements: medical evidence**

- (1) For the purposes of section 227R(4)(a) or (b), a written report purporting to be signed by an approved medical practitioner (within the meaning of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13)) may be received in evidence without the need for proof of the signature or qualifications of the practitioner.

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- (2) Where such a report is lodged in evidence otherwise than by or on behalf of the offender, a copy of the report must be given to—
  - (a) the offender, and
  - (b) the offender's solicitor (if any).
- (3) The court may adjourn the case if it considers it necessary to do so to give the offender further time to consider the report.
- (4) Subsection (5) applies where the offender is—
  - (a) detained in a hospital under this Act, or
  - (b) remanded in custody.
- (5) For the purpose of calling evidence to rebut any evidence contained in a report lodged as mentioned in subsection (2), arrangements may be made by or on behalf of the offender for an examination of the offender by a registered medical practitioner.
- (6) Such an examination is to be carried out in private.

#### **227T Power to change treatment**

- (1) This section applies where—
  - (a) a mental health treatment requirement has been imposed on an offender, and
  - (b) the registered medical practitioner or registered psychologist by whom or under whose direction the offender is receiving the treatment to which the offender is required to submit in pursuance of the requirement is of the opinion mentioned in subsection (2).
- (2) That opinion is—
  - (a) that the offender requires, or that it would be appropriate for the offender to receive, a different kind of treatment (whether in whole or in part) from that which the offender has been receiving, or
  - (b) that the treatment (whether in whole or in part) can be more appropriately given in or at a different hospital or other institution or place from that where the offender has been receiving treatment.
- (3) The practitioner or, as the case may be, psychologist may make arrangements for the offender to be treated accordingly.
- (4) Subject to subsection (5), the treatment provided under the arrangements must be of a kind which could have been specified in the mental health treatment requirement.
- (5) The arrangements may provide for the offender to receive treatment (in whole or in part) as a resident patient in an institution or place even though it is one that could not have been specified for that purpose in the mental health treatment requirement.
- (6) Arrangements may be made under subsection (3) only if—
  - (a) the offender and the responsible officer agree to the arrangements,

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- (b) the treatment will be given by or under the direction of a registered medical practitioner or registered psychologist who has agreed to accept the offender as a patient, and
  - (c) where the treatment requires the offender to be a resident patient, the offender will be received as such.
- (7) Where arrangements are made under subsection (3)—
- (a) the responsible officer must notify the court of the arrangements, and
  - (b) the treatment provided under the arrangements is to be taken to be treatment to which the offender is required to submit under the mental health treatment requirement.

### *Drug treatment requirement*

#### **227U Drug treatment requirement**

- (1) In this Act, a “drug treatment requirement” is, in relation to an offender, a requirement that the offender must submit, during the specified period, to treatment by or under the direction of a specified person with a view to reducing or eliminating the offender's dependency on, or propensity to misuse, drugs.
- (2) The treatment to which an offender may be required to submit under a drug treatment requirement is such of the kinds of treatment described in subsection (3) as is specified (but otherwise the nature of the treatment is not to be specified).
- (3) Those kinds of treatment are—
  - (a) treatment as a resident in such institution or other place as is specified,
  - (b) treatment as a non-resident at such institution or other place, and at such intervals, as is specified.
- (4) The specified person must be a person who has the necessary qualifications or experience in relation to the treatment to be provided.
- (5) The specified period must not be longer than the period specified in the offender supervision requirement to be imposed at the same time as the drug treatment requirement (by virtue of section 227G(2)(b)).
- (6) A court may impose a drug treatment requirement on an offender only if the court is satisfied that—
  - (a) the offender is dependent on, or has a propensity to misuse, any controlled drug (as defined in section 2(1)(a) of the Misuse of Drugs Act 1971 (c.38)),
  - (b) the dependency or propensity requires, and may be susceptible to, treatment, and
  - (c) arrangements have been, or can be, made for the proposed treatment including, where the treatment is to be of the kind mentioned in subsection (3)(a), arrangements for the offender's reception in the institution or other place to be specified.
- (7) In this section, “specified”, in relation to a drug treatment requirement, means specified in the requirement.

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### *Alcohol treatment requirement*

#### **227V Alcohol treatment requirement**

- (1) In this Act, an “alcohol treatment requirement” is, in relation to an offender, a requirement that the offender must submit, during the specified period, to treatment by or under the direction of a specified person with a view to the reduction or elimination of the offender's dependency on alcohol.
- (2) The treatment to which an offender may be required to submit under an alcohol treatment requirement is such of the kinds of treatment described in subsection (3) as is specified (but otherwise the nature of the treatment is not to be specified).
- (3) Those kinds of treatment are—
  - (a) treatment as a resident in such institution or other place as is specified,
  - (b) treatment as a non-resident at such institution or other place, and at such intervals, as is specified,
  - (c) treatment by or under the direction of such person as is specified.
- (4) The person specified under subsection (1) or (3)(c) must be a person who has the necessary qualifications or experience in relation to the treatment to be provided.
- (5) The specified period must not be longer than the period specified in the offender supervision requirement to be imposed at the same time as the alcohol treatment requirement (by virtue of section 227G(2)(b)).
- (6) A court may impose an alcohol treatment requirement on an offender only if the court is satisfied that—
  - (a) the offender is dependent on alcohol,
  - (b) the dependency requires, and may be susceptible to, treatment, and
  - (c) arrangements have been, or can be, made for the proposed treatment, including, where the treatment is to be of the kind mentioned in subsection (3)(a), arrangements for the offender's reception in the institution or other place to be specified.
- (7) In this section, “specified”, in relation to an alcohol treatment requirement, means specified in the requirement.

### *Conduct requirement*

#### **227W Conduct requirement**

- (1) In this Act, a “conduct requirement” is, in relation to an offender, a requirement that the offender must, during the specified period, do or refrain from doing specified things.
- (2) A court may impose a conduct requirement on an offender only if the court is satisfied that the requirement is necessary with a view to—
  - (a) securing or promoting good behaviour by the offender, or

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- (b) preventing further offending by the offender.
- (3) The specified period must be not more than 3 years.
- (4) The specified things must not include anything that—
  - (a) could be required by imposing one of the other requirements listed in section 227A(2), or
  - (b) would be inconsistent with the provisions of this Act relating to such other requirements.
- (5) In this section, “specified”, in relation to a conduct requirement, means specified in the requirement.

*Community payback orders: review, variation etc.*

### **227X Periodic review of community payback orders**

- (1) On imposing a community payback order on an offender, the court may include in the order provision for the order to be reviewed at such time or times as may be specified in the order.
- (2) A review carried out in pursuance of such provision is referred to in this section as a “progress review”.
- (3) A progress review may be carried out by the court which imposed the community payback order or (if different) the appropriate court, and, where those courts are different, the court must specify in the order which of those courts is to carry out the reviews.
- (4) A progress review is to be carried out in such manner as the court carrying out the review may determine.
- (5) Before each progress review, the responsible officer must give the court a written report on the offender's compliance with the requirements imposed by the community payback order in the period to which the review relates.
- (6) The offender must attend each progress review.
- (7) If the offender fails to attend a progress review, the court may—
  - (a) issue a citation requiring the offender's attendance, or
  - (b) issue a warrant for the offender's arrest.
- (8) The unified citation provisions apply in relation to a citation under subsection (7)(a) as they apply in relation to a citation under section 216(3)(a) of this Act.
- (9) Subsections (10) and (11) apply where, in the course of carrying out a progress review in respect of a community payback order, it appears to the court that the offender has failed to comply with a requirement imposed by the order.
- (10) The court must—
  - (a) provide the offender with written details of the alleged failure,
  - (b) inform the offender that the offender is entitled to be legally represented, and



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- (c) inform the offender that no answer need be given to the allegation before the offender—
  - (i) has been given an opportunity to take legal advice, or
  - (ii) has indicated that the offender does not wish to take legal advice.
- (11) The court must then—
  - (a) if it is the appropriate court, appoint another hearing for consideration of the alleged failure in accordance with section 227ZC, or
  - (b) if it is not the appropriate court, refer the alleged failure to that court for consideration in accordance with that section.
- (12) On conclusion of a progress review in respect of a community payback order, the court may vary, revoke or discharge the order in accordance with section 227Z.

#### **227Y Applications to vary, revoke and discharge community payback orders**

- (1) The appropriate court may, on the application of either of the persons mentioned in subsection (2), vary, revoke or discharge a community payback order in accordance with section 227Z.
- (2) Those persons are—
  - (a) the offender on whom the order was imposed,
  - (b) the responsible officer in relation to the offender.

#### **227Z Variation, revocation and discharge: court's powers**

- (1) This section applies where a court is considering varying, revoking or discharging a community payback order imposed on an offender.
- (2) The court may vary, revoke or discharge the order only if satisfied that it is in the interests of justice to do so having regard to circumstances which have arisen since the order was imposed.
- (3) Subsection (2) does not apply where the court is considering varying the order under section 227ZC(7)(d).
- (4) In varying an order, the court may, in particular—
  - (a) add to the requirements imposed by the order,
  - (b) revoke or discharge any requirement imposed by the order,
  - (c) vary any requirement imposed by the order,
  - (d) include provision for progress reviews under section 227X,
  - (e) where the order already includes such provision, vary that provision.
- (5) In varying a requirement imposed by the order, the court may, in particular—
  - (a) extend or shorten any period or other time limit specified in the requirement,
  - (b) in the case of an unpaid work or other activity requirement, increase or decrease the number of hours specified in the requirement,

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- (c) in the case of a compensation requirement, vary the amount of compensation or any instalment.
- (6) The court may not, under subsection (5)(b), increase the number of hours beyond the appropriate maximum.
- (7) The appropriate maximum is the number of hours specified in section 227I(4)(b) at the time the unpaid work or other activity requirement being varied was imposed less the aggregate of the number of hours of unpaid work or other activity still to be completed under each other unpaid work or other activity requirement (if any) in effect in respect of the offender at the time of the variation (a “current requirement”).
- (8) In calculating that aggregate, if any current requirement is concurrent with another (by virtue of a direction under section 227N(2)), hours that count for the purposes of compliance with both (or, as the case may be, all) are to be counted only once.
- (9) The court may not, under subsection (5)(c), increase the amount of compensation beyond the maximum that could have been awarded at the time the requirement was imposed.
- (10) Where the court varies a restricted movement requirement imposed by a community payback order, the court must give a copy of the order making the variation to the person responsible for monitoring the offender's compliance with the requirement.
- (11) Where the court revokes a community payback order, the court may deal with the offender in respect of the offence in relation to which the order was imposed as it could have dealt with the offender had the order not been imposed.
- (12) Subsection (11) applies in relation to a community payback order imposed under section 227M(2) as if the reference to the offence in relation to which the order was imposed were a reference to the failure to pay in respect of which the order was imposed.
- (13) Where the court is considering varying, revoking or discharging the order otherwise than on the application of the offender, the court must issue a citation to the offender requiring the offender to appear before the court (except where the offender is required to appear by section 227X(6)) or 227ZC(2)(b).
- (14) If the offender fails to appear as required by the citation, the court may issue a warrant for the arrest of the offender.
- (15) The unified citation provisions apply in relation to a citation under subsection (13) as they apply in relation to a citation under section 216(3)(a) of this Act.

### **227ZA Variation of community payback orders: further provision**

- (1) This section applies where a court is considering varying a community payback order imposed on an offender.

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- (2) The court must not make the variation unless it has obtained, and taken account of, a report from the responsible officer containing information about the offender and the offender's circumstances.
- (3) An Act of Adjournment may prescribe—
  - (a) the form of a report under subsection (2), and
  - (b) the particular information to be contained in it.
- (4) Subsection (2) does not apply where the court is considering varying a community payback order—
  - (a) so that it imposes only a level 1 unpaid work or other activity requirement, or
  - (b) imposed under section 227M(2).
- (5) The clerk of the court must give a copy of any report obtained under subsection (2) to—
  - (a) the offender,
  - (b) the offender's solicitor (if any).
- (6) Before making the variation, the court must explain to the offender in ordinary language—
  - (a) the purpose and effect of each of the requirements to be imposed by the order as proposed to be varied,
  - (b) the consequences which may follow if the offender fails to comply with any of the requirements imposed by the order as proposed to be varied, and
  - (c) where the court proposes to include in the order as proposed to be varied provision for a progress review under section 227X, or to vary any such provision already included in the order, the arrangements for such a review.
- (7) The court must not make the variation 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 each of the requirements to be imposed by the order as proposed to be amended.
- (8) Where the variation would impose a new requirement—
  - (a) the court must not make the variation if the new requirement is not a requirement that could have been imposed by the order when it was imposed,
  - (b) if the new requirement is one which could have been so imposed, the court must, before making the variation take whatever steps the court would have been required to take before imposing the requirement had it been imposed by the order when it was imposed.
- (9) Subsection (8)(a) does not prevent the imposition of a restricted movement requirement under section 227ZC(7)(d).
- (10) In determining for the purpose of subsection (8)(a) whether an unpaid work or other activity requirement is a requirement that could have been imposed by the order when the order was imposed, the effect of section 227N(7) is to be ignored.

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- (11) Where the variation would vary any requirement imposed by the order, the court must not make the variation if the requirement as proposed to be varied could not have been imposed, or imposed in that way, by the order when it was imposed.
- (12) Subsections (4) and (5) of section 227D apply, with the necessary modifications, where a community payback order is varied as they apply where such an order is imposed.

### **227ZB Change of offender's residence to new local authority area**

- (1) The section applies where—
  - (a) the offender on whom a community payback order has been imposed proposes to change, or has changed, residence to a locality (“the new locality”) situated in the area of a different local authority from that in which the locality currently specified in the order is situated, and
  - (b) the court is considering varying the order so as to specify the new local authority area in which the offender resides or will reside.
- (2) The court may vary the order only if satisfied that arrangements have been, or can be, made in the local authority area in which the new locality is situated for the offender to comply with the requirements imposed by the order.
- (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 new local authority 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) Where the court varies the order, the court must also vary the order so as to require the local authority for the area in which the new locality is situated to nominate an officer of the authority to be the responsible officer for the purposes of the order.

### *Breach of community payback order*

#### **227ZC Breach of community payback order**

- (1) This section applies where it appears to the appropriate court that an offender on whom a community payback order has been imposed has failed to comply with a requirement imposed by the order.
- (2) The court may—
  - (a) issue a warrant for the offender's arrest, or
  - (b) issue a citation to the offender requiring the offender to appear before the court.
- (3) If the offender fails to appear as required by a citation issued under subsection (2)(b), the court may issue a warrant for the arrest of the offender.

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- (4) The unified citation provisions apply in relation to a citation under subsection (2)(b) as they apply in relation to a citation under section 216(3)(a) of this Act.
- (5) The court must, before considering the alleged failure—
  - (a) provide the offender with written details of the alleged failure,
  - (b) inform the offender that the offender is entitled to be legally represented, and
  - (c) inform the offender that no answer need be given to the allegation before the offender—
    - (i) has been given an opportunity to take legal advice, or
    - (ii) has indicated that the offender does not wish to take legal advice.
- (6) Subsection (5) does not apply if the offender has previously been provided with those details and informed about those matters under section 227X(10) of this Act.
- (7) Where the order was imposed under section 227A, if the court is satisfied that the offender has failed without reasonable excuse to comply with a requirement imposed by the order, the court may—
  - (a) impose on the offender a fine not exceeding level 3 on the standard scale,
  - (b) where the order was imposed under section 227A(1), revoke the order and deal with the offender in respect of the offence in relation to which the order was imposed as it could have dealt with the offender had the order not been imposed,
  - (c) where the order was imposed under section 227A(4), revoke the order and impose on the offender a sentence of imprisonment for a term not exceeding—
    - (i) where the court is a justice of the peace court, 60 days,
    - (ii) in any other case, 3 months,
  - (d) vary the order so as to impose a new requirement, vary any requirement imposed by the order or revoke or discharge any requirement imposed by the order, or
  - (e) both impose a fine under paragraph (a) and vary the order under paragraph (d).
- (8) Where the order was imposed under section 227M(2), if the court is satisfied that the offender has failed without reasonable excuse to comply with a requirement imposed by the order, the court may—
  - (a) revoke the order and impose on the offender a period of imprisonment for a term not exceeding—
    - (i) where the court is a justice of the peace court, 60 days,
    - (ii) in any other case, 3 months, or
  - (b) vary—
    - (i) the number of hours specified in the level 1 unpaid work or other activity requirement imposed by the order, and

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- (ii) where the order also imposes an offender supervision requirement, the specified period under section 227G in relation to the requirement.
- (9) Where the court revokes a community payback order under subsection (7)(b) or (c) and the offender is, in respect of the same offence, also subject to—
- (a) a drug treatment and testing order, by virtue of section 234J, or
  - (b) a restriction of liberty order, by virtue of section 245D(3),
- the court must, before dealing with the offender under subsection (7)(b) or (c), revoke the drug treatment and testing order or, as the case may be, restriction of liberty order.
- (10) If the court is satisfied that the offender has failed to comply with a requirement imposed by the order but had a reasonable excuse for the failure, the court may, subject to section 227Z(2), vary the order so as to impose a new requirement, vary any requirement imposed by the order or revoke or discharge any requirement imposed by the order.
- (11) Subsections (7)(b) and (c) and (9) are subject to section 42(9) of the Criminal Justice (Scotland) Act 2003 (asp 7) (powers of drugs courts to deal with breach of community payback orders).

#### **227ZD Breach of community payback order: further provision**

- (1) Evidence of one witness is sufficient for the purpose of establishing that an offender has failed without reasonable excuse to comply with a requirement imposed by a community payback order.
- (2) Subsection (3) applies in relation to a community payback order imposing a compensation requirement.
- (3) A document bearing to be a certificate signed by the clerk of the appropriate court and stating that the compensation, or an instalment of the compensation, has not been paid as required by the requirement is sufficient evidence that the offender has failed to comply with the requirement.
- (4) The appropriate court may, for the purpose of considering whether an offender has failed to comply with a requirement imposed by a community payback order, require the responsible officer to provide a report on the offender's compliance with the requirement.

#### *Restricted movement requirement*

#### **227ZE Restricted movement requirement**

- (1) The requirements which the court may impose under section 227ZC(7)(d) include a restricted movement requirement.
- (2) If the court varies a community payback order under section 227ZC(7)(d) so as to impose a restricted movement requirement, the court must also vary the order so as to impose an offender supervision requirement, unless an offender supervision requirement is already imposed by the order.

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- (3) The court must ensure that the specified period under section 227G in relation to the offender supervision requirement is at least as long as the period for which the restricted movement requirement has effect and, where the community payback order already imposes an offender supervision requirement, must vary it accordingly, if necessary.
- (4) The minimum period of 6 months in section 227G(3) does not apply in relation to an offender supervision requirement imposed under subsection (2).
- (5) Where the court varies the order so as to impose a restricted movement requirement, the court must give a copy of the order making the variation to the person responsible for monitoring the offender's compliance with the requirement.
- (6) If during the period for which the restricted movement requirement is in effect it appears to the person responsible for monitoring the offender's compliance with the requirement that the offender has failed to comply with the requirement, the person must report the matter to the offender's responsible officer.
- (7) On receiving a report under subsection (6), the responsible officer must report the matter to the court.

#### **227ZF Restricted movement requirement: effect**

- (1) In this Act, a “restricted movement requirement” is, in relation to an offender, a requirement restricting the offender's movements to such extent as is specified.
- (2) A restricted movement requirement may in particular require the offender—
  - (a) to be in a specified place at a specified time or during specified periods, or
  - (b) not to be in a specified place, or a specified class of place, at a specified time or during specified periods.
- (3) In imposing a restricted movement requirement containing provision under subsection (2)(a), the court must ensure that the offender is not required, either by the requirement alone or the requirement taken together with any other relevant requirement or order, to be at any place for periods totalling more than 12 hours in any one day.
- (4) In subsection (3), “other relevant requirement or order” means—
  - (a) any other restricted movement requirement in effect in respect of the offender at the time the court is imposing the requirement referred to in subsection (3), and
  - (b) any restriction of liberty order under section 245A in effect in respect of the offender at that time.
- (5) A restricted movement requirement—
  - (a) takes effect from the specified day, and
  - (b) has effect for such period as is specified.
- (6) The period specified under subsection (5)(b) must be—
  - (a) not less than 14 days, and

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- (b) subject to subsections (7) and (8), not more than 12 months.
- (7) Subsection (8) applies in the case of a restricted movement requirement imposed for failure to comply with a requirement of a community payback order—
  - (a) where the offender was under 18 years of age at the time the order was imposed, or
  - (b) where the only requirement imposed by the order is a level 1 unpaid work or other activity requirement.
- (8) The period specified under subsection (5)(b) must be not more than—
  - (a) where the order was imposed by a justice of the peace court, 60 days, or
  - (b) in any other case, 3 months.
- (9) A court imposing a restricted movement requirement must specify in it—
  - (a) the method by which the offender's compliance with the requirement is to be monitored, and
  - (b) the person who is to be responsible for monitoring that compliance.
- (10) The Scottish Ministers may by regulations made by statutory instrument substitute—
  - (a) for the number of hours for the time being specified in subsection (3) another number of hours,
  - (b) for the number of months for the time being specified in subsection (6) another number of months.
- (11) Regulations are not to be made under subsection (10) unless a draft of the statutory instrument containing the regulations has been laid before and approved by resolution of the Scottish Parliament.
- (12) In this section, “specified”, in relation to a restricted movement requirement, means specified in the requirement.

### **227ZG Restricted movement requirements: further provision**

- (1) A court may not impose a restricted movement requirement requiring the offender to be, or not to be, in a specified place unless it is satisfied that the offender's compliance with the requirement can be monitored by the method specified in the requirement.
- (2) Before imposing a restricted movement requirement requiring the offender to be in a specified place, the appropriate court must obtain and consider a report by an officer of the local authority in whose area the place is situated on—
  - (a) the place, and
  - (b) the attitude of any person (other than the offender) likely to be affected by the enforced presence of the offender at the place.
- (3) The court may, before imposing the requirement, hear the officer who prepared the report.



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### **227ZH Variation of restricted movement requirement**

- (1) This section applies where—
  - (a) a community payback order which is in force in respect of an offender imposes a restricted movement requirement requiring the offender to be at a particular place specified in the requirement for any period, and
  - (b) the court is considering varying the requirement so as to require the offender to be at a different place (“the new place”).
- (2) Before making the variation, the appropriate court must obtain and consider a report by an officer of the local authority in whose area the new place is situated on—
  - (a) the new place, and
  - (b) the attitude of any person (other than the offender) likely to be affected by the enforced presence of the offender at the new place.
- (3) The court may, before making the variation, hear the officer who prepared the report.

### **227ZI Remote monitoring**

Section 245C of this Act, and regulations made under that section, apply in relation to the imposition of, and compliance with, restricted movement requirements as they apply in relation to the imposition of, and compliance with, restriction of liberty orders.

### **227ZJ Restricted movement requirements: Scottish Ministers' functions**

- (1) The Scottish Ministers may by regulations made by statutory instrument prescribe—
  - (a) which courts, or class or classes of courts, may impose restricted movement requirements,
  - (b) the method or methods of monitoring compliance with a restricted movement requirement which may be specified in such a requirement,
  - (c) the class or classes of offender on whom such a requirement may be imposed.
- (2) Regulations under subsection (1) may make different provision about the matters mentioned in paragraphs (b) and (c) of that subsection in relation to different courts or classes of court.
- (3) Regulations under subsection (1) are subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (4) The Scottish Ministers must determine the person, or class or description of person, who may be specified in a restricted movement requirement as the person to be responsible for monitoring the offender's compliance with the requirement (referred to in this section as the “monitor”).
- (5) The Scottish Ministers may determine different persons, or different classes or descriptions of person, in relation to different methods of monitoring.

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- (6) The Scottish Ministers must notify each court having power to impose a restricted movement requirement of their determination.
- (7) Subsection (8) applies where—
  - (a) the Scottish Ministers make a determination under subsection (4) changing a previous determination made by them, and
  - (b) a person specified in a restricted movement requirement in effect at the date the determination takes effect as the monitor is not a person, or is not of a class or description of person, mentioned in the determination as changed.
- (8) The appropriate court must—
  - (a) vary the restricted movement requirement so as to specify a different person as the monitor,
  - (b) send a copy of the requirement as varied to that person and to the responsible officer, and
  - (c) notify the offender of the variation.

#### **227ZK Documentary evidence in proceedings for breach of restricted movement requirement**

- (1) This section applies for the purposes of establishing in any proceedings whether an offender on whom a restricted movement requirement has been imposed has complied with the requirement.
- (2) Evidence of the presence or absence of the offender at a particular place at a particular time may 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 purposes of this paragraph by the Scottish Ministers that the statement relates to the whereabouts of the offender at the dates and times shown in the statement.
- (3) The statement and certificate are, when produced in evidence, sufficient evidence of the facts stated in them.
- (4) The statement and certificate are not admissible in evidence at any hearing unless a copy of them has been served on the offender before the hearing.
- (5) Where it appears to any court before which the hearing is taking place that the offender has not had sufficient notice of the statement or certificate, the court may adjourn the hearing or make any order that it considers appropriate.

*Local authorities: annual consultation about unpaid work*

#### **227ZL Local authorities: annual consultations about unpaid work**

- (1) Each local authority must, for each year, consult prescribed persons about the nature of unpaid work and other activities to be undertaken by offenders

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residing in the local authority's area on whom community payback orders are imposed.

- (2) In subsection (1), “prescribed persons” means such persons, or class or classes of person, as may be prescribed by the Scottish Ministers by regulations made by statutory instrument.
- (3) A statutory instrument containing regulations under subsection (2) is to be subject to annulment in pursuance of a resolution of the Scottish Parliament.

#### *Annual reports on community payback orders*

#### **227ZM Annual reports on community payback orders**

- (1) Each local authority must, as soon as practicable after the end of each reporting year, prepare a report on the operation of community payback orders within their area during that reporting year, and send a copy of the report to the Scottish Ministers.
- (2) The Scottish Ministers may issue directions to local authorities about the content of their reports under subsection (1); and local authorities must comply with any such directions.
- (3) The Scottish Ministers must, as soon as practicable after the end of each reporting year, lay before the Scottish Parliament and publish a report that collates and summarises the data included in the various reports under subsection (1).
- (4) In this section, “reporting year” means—
  - (a) the period of 12 months beginning on the day this section comes into force, or
  - (b) any subsequent period of 12 months beginning on an anniversary of that day.

#### *Community payback order: meaning of “the appropriate court”*

#### **227ZN Meaning of “the appropriate court”**

- (1) In sections 227A to 227ZK, “the appropriate court” means, in relation to a community payback order—
  - (a) where the order was imposed by the High Court of Justiciary, that Court,
  - (b) where the order was imposed by a sheriff, a sheriff having jurisdiction in the locality mentioned in subsection (2),
  - (c) where the order was imposed by a justice of the peace court—
    - (i) the justice of the peace court having jurisdiction in that locality, or
    - (ii) if there is no justice of the peace court having jurisdiction in that locality, a sheriff having such jurisdiction.
- (2) The locality referred to in subsection (1) is the locality for the time being specified in the community payback order under section 227C(2)(a).”.

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(2) Schedule 2 modifies enactments in consequence of this section.

#### Commencement Information

- I16** S. 14(1) in force at 1.2.2011 for specified purposes and 1.4.2011 in so far as not already in force by S.S.I. 2010/413, art. 2, Sch. (with art. 3)
- I17** S. 14(2) in force at 1.2.2011 by S.S.I. 2010/413, art. 2, Sch. (with art. 3)

#### Non-harassment orders

### 15 Non-harassment orders

In section 234A of the 1995 Act (non-harassment orders)—

- (a) in subsection (1), for “harassment of” substitute “misconduct towards”,
- (b) in subsection (2), for “further harassment” substitute “harassment (or further harassment)”,
- (c) after subsection (2) insert—

“(2A) The court may, for the purpose of subsection (2) above, have regard to any information given to it for that purpose by the prosecutor—

- (a) about any other offence involving misconduct towards the victim—
  - (i) of which the offender has been convicted, or
  - (ii) as regards which the offender has accepted (or has been deemed to have accepted) a fixed penalty or compensation offer under section 302(1) or 302A(1) or as regards which a work order has been made under section 303ZA(6),
- (b) in particular, by way of—
  - (i) an extract of the conviction along with a copy of the complaint or indictment containing the charge to which the conviction relates, or
  - (ii) a note of the terms of the charge to which the fixed penalty offer, compensation offer or work order relates.

(2B) But the court may do so only if the court may, under section 101 or 101A (in a solemn case) or section 166 or 166A (in a summary case), have regard to the conviction or the offer or order.

(2C) The court must give the offender an opportunity to make representations in response to the application.”, and

- (d) for subsection (7) substitute—

“(7) For the purposes of this section—

“harassment” and “conduct” are to be construed in accordance with section 8 of the Protection from Harassment Act 1997 (c.40), “misconduct” includes conduct that causes alarm or distress.”.

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#### Commencement Information

**I18** S. 15 in force at 28.3.2011 by S.S.I. 2011/178, art. 2, Sch. (with Sch.)

### *Short sentences*

## **16 Short periods of detention**

- (1) The 1995 Act is amended as follows.
- (2) Section 169 (detention in precincts of court) is repealed.
- (3) In section 206 (minimum periods of detention)—
  - (a) in subsection (1), for “five” substitute “ 15 ”, and
  - (b) subsections (2) to (6) are repealed.

#### Commencement Information

**I19** S. 16 in force at 13.12.2011 by S.S.I. 2010/413, art. 2, Sch. (with Sch.)

## **17 Presumption against short periods of imprisonment**

In section 204 of the 1995 Act (restrictions on passing sentence of imprisonment or detention), after subsection (3) insert—

- “(3A) A court must not pass a sentence of imprisonment for a term of 3 months or less on a person unless the court considers that no other method of dealing with the person is appropriate.
- (3B) Where a court passes such a sentence, the court must—
  - (a) state its reasons for the opinion that no other method of dealing with the person is appropriate, and
  - (b) have those reasons entered in the record of the proceedings.
- (3C) The Scottish Ministers may by order made by statutory instrument substitute for the number of months for the time being specified in subsection (3A) another number of months.
- (3D) An order under subsection (3C) is not to be made unless a draft of the statutory instrument containing the order has been laid before and approved by resolution of the Scottish Parliament.”.

#### Commencement Information

**I20** S. 17 in force at 1.2.2011 by S.S.I. 2010/413, art. 2, Sch. (with Sch.)

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PROSPECTIVE

## 18 Amendments of Custodial Sentences and Weapons (Scotland) Act 2007

- (1) The Custodial Sentences and Weapons (Scotland) Act 2007 (asp 17) is amended as follows.
- (2) In section 4 (basic definitions)—
- (a) in subsection (1)—
- (i) the definitions of “custody-only prisoner” and “custody-only sentence” are repealed,
- (ii) in the definition of “custody and community sentence” for “15 days or more” substitute “ at least the prescribed period ”,
- (iii) after the definition of “Parole Board” insert—
- ““prescribed period” means such period as the Scottish Ministers may by order specify,” and
- (iv) after the definition of “punishment part” insert—
- ““short-term custody and community prisoner” means a person serving a short-term custody and community sentence,
- “short-term custody and community sentence” means a sentence of imprisonment for an offence for a term of less than the prescribed period,” and
- (b) subsection (2) is repealed.
- (3) For section 5 (release of custody-only prisoners on completion of sentence) substitute—

*“Short-term custody and community prisoners*

### 5 Release of short-term custody and community prisoners

As soon as a short-term custody and community prisoner has served one-half of the prisoner's short-term custody and community sentence the Scottish Ministers must release the prisoner on short-term community licence.”.

- (4) In Chapter 3 of Part 2, in the chapter title, for “Community” substitute “ Short-term community, community ”.
- (5) In section 29 (release on licence of certain prisoners: the supervision conditions), in subsection (2)(a)—
- (a) in sub-paragraph (ii), the words from “serving” to the end are repealed,
- (b) sub-paragraph (iii) is repealed,
- (c) in sub-paragraphs (iv) and (v), for “person” substitute “ short-term custody and community prisoner ”,
- (d) in sub-paragraph (vi), for “person” substitute “ short-term custody and community prisoner serving a sentence of imprisonment of 6 months or more and ”, and

*Status: Point in time view as at 19/10/2015. This version of this part contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010, PART 1. (See end of Document for details)*

- (e) in sub-paragraph (vii), at the beginning insert “ a short-term custody and community prisoner who is ”.

- (6) After section 29 insert—

*“Short-term community licences*

**29A Release on short-term community licence: conditions**

- (1) This section applies where, by virtue of section 5, the Scottish Ministers release a prisoner on short-term community licence.
- (2) The Scottish Ministers must include in the prisoner's short-term community licence—
  - (a) the standard conditions, and
  - (b) where the prisoner falls within section 29(2), the supervision conditions.
- (3) The Scottish Ministers may include in the prisoner's short-term community licence—
  - (a) where the prisoner does not fall within section 29(2), any of the supervision conditions,
  - (b) such other conditions as they consider appropriate.
- (4) The Scottish Ministers may—
  - (a) vary any condition mentioned in subsection (2) or (3),
  - (b) cancel any condition mentioned in subsection (3),
  - (c) include any further conditions in the licence.
- (5) The Scottish Ministers may not cancel any condition mentioned in subsection (2).
- (6) Before exercising any of the powers conferred by subsection (3) or (4), the Scottish Ministers must, in pursuance of arrangements established under section 46A(1), co-operate with the appropriate local authority.
- (7) In this section, “appropriate local authority”, in relation to a short-term custody and community prisoner, means the local authority for the area in which the prisoner—
  - (a) resided immediately before the imposition of the short-term custody and community sentence, or
  - (b) intends to reside on release on short-term community licence.
- (8) If, by virtue of subsection (7), two or more local authorities are the appropriate local authority in relation to a short-term custody and community prisoner, those authorities may agree that the functions conferred on them by subsection (5) and section 46A(2) may be carried out by only one of them.”.

- (7) After section 46 insert—

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*“Assessment of conditions for short-term community licences*

**46A Joint arrangements between Scottish Ministers and local authorities**

- (1) The Scottish Ministers and each local authority must jointly establish arrangements for the assessment and management of the risk posed in the local authority's area by short-term custody and community prisoners released on licence subject to the supervision conditions.
  - (2) For the purposes of assisting the Scottish Ministers in deciding whether, under section 29A(3)(a), to include any of the supervision conditions in a prisoner's short-term community licence, the Scottish Ministers and the appropriate local authority must, during the first half of a short-term custody and community prisoner's sentence, assess, in accordance with arrangements established under subsection (1), whether any of those conditions are appropriate.
  - (3) In this section, “appropriate local authority” is to be construed in accordance with section 29A(7) and (8).”.
- (8) In section 47 (curfew licences)—
- (a) in subsection (1), after “to” insert “ a short-term custody and community prisoner or ”,
  - (b) in subsection (2) for “the custody part of the prisoner's sentence” substitute—
    - “(a) in the case of a short-term custody and community prisoner, the first half of the prisoner's sentence,
    - (b) in the case of a custody and community prisoner, the custody part of the prisoner's sentence”,
  - (c) after subsection (3) insert—
 

“(3A) The Scottish Ministers may release a short-term custody and community prisoner on curfew licence only—

    - (a) after the later of—
      - (i) the day on which the prisoner has served the greater of one-quarter or four weeks of the prisoner's sentence, or
      - (ii) the day falling 166 days before the expiry of one-half of the prisoner's sentence, and
    - (b) before the day falling 14 days before the expiry of one-half of the prisoner's sentence.”,
  - (d) in subsection (4)—
    - (i) after “a” insert “ custody and community ”, and
    - (ii) in paragraph (a)(ii), for “135” substitute “ 166 ”, and
  - (e) in subsection (8), for “the custody part of the prisoner's sentence” substitute—
    - “(a) in the case of a short-term custody and community prisoner, the first half of the prisoner's sentence,
    - (b) in the case of a custody and community prisoner, the custody part of the prisoner's sentence”.



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- (9) Schedule 3 amends the Custodial Sentences and Weapons (Scotland) Act (asp 17) and the 1995 Act in consequence of amendments made by this section.

## **19 Early removal of certain short-term prisoners from the United Kingdom**

For schedule 6 to the Custodial Sentences and Weapons (Scotland) Act 2007 (asp 17) (transitory amendments of the Prisoners and Criminal Proceedings (Scotland) Act 1993) substitute—

### “SCHEDULE 6

*(introduced by section 66(3))*

#### TRANSITORY AMENDMENTS

- 1 Until the coming into force of the repeal by this Act of Part 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c.9), that Part has effect in accordance with paragraphs 2 to 4.
- 2 In section 1 (release of short-term and long-term prisoners), subsection (3) has effect as if for paragraphs (a) and (b) there were substituted “ must, ”
- 3 Section 9 (persons liable to removal from the United Kingdom) has effect as if—
  - (a) subsection (1) were repealed, and
  - (b) in subsection (3), after “section”, where it first occurs, there were inserted “ and sections 9A and 9B ”.
- 4 That Part has effect as if after section 9 there were inserted—

#### **“9A Persons eligible for removal from the United Kingdom**

- (1) For the purposes of this Part, to be “eligible for removal from the United Kingdom” a person must show, to the satisfaction of the Scottish Ministers, that the condition in subsection (2) is met.
- (2) The condition is that the person has the settled intention of residing permanently outside the United Kingdom if removed from prison under section 9B.
- (3) The person must not be one who is liable to removal from the United Kingdom.

#### **9B Early removal of certain short-term prisoners from the United Kingdom**

- (1) Subject to subsection (2), where a short-term prisoner is liable to, or eligible for, removal from the United Kingdom, the Scottish Ministers may remove the prisoner from prison under this section at any time during the period of 180 days ending with the day on which the prisoner will have served one-half of the prisoner's sentence.
- (2) Subsection (1) does not apply in relation to a prisoner unless the prisoner has served one-quarter of the sentence.

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- (3) A prisoner removed from prison under this section—
- (a) if liable to removal from the United Kingdom, is so removed only for the purpose of enabling the Secretary of State to remove the prisoner from the United Kingdom under powers conferred by—
    - (i) Schedule 2 or 3 to the Immigration Act 1971 (c.77), or
    - (ii) section 10 of the Immigration and Asylum Act 1999 (c.33),
  - (b) if eligible for removal from the United Kingdom, is so removed only for the purpose of enabling the prisoner to leave the United Kingdom in order to reside permanently outside the United Kingdom, and
  - (c) in either case, so long as remaining in the United Kingdom, remains liable to be detained in pursuance of the prisoner's sentence until the prisoner has served one-half of the sentence.
- (4) So long as a prisoner removed from prison under this section remains in the United Kingdom but has not been returned to prison, any duty or power of the Scottish Ministers under section 1(1), 1AA or 3 is exercisable in relation to the prisoner as if the prisoner were in prison.
- (5) The Scottish Ministers may by order amend the number of days for the time being specified in subsection (1).
- (6) A statutory instrument containing an order under subsection (5) may not be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.

### **9C Re-entry into United Kingdom of prisoner removed from prison early**

- (1) This section applies in relation to a person (referred to in this section as “the removed person”) who, after being removed from prison under section 9B, has been removed from the United Kingdom before serving one-half of the sentence.
- (2) Where the removed person re-enters the United Kingdom at any time before the date on which the person would have served the person's sentence in full (but for the person's removal from prison under section 9B), the person is liable to be detained in pursuance of the person's sentence until the earlier of the following—
  - (a) the date of the expiry of the outstanding custodial period,
  - (b) the date on which the person would have served the person's sentence in full (but for the person's removal from prison under section 9B).
- (3) In the case of a person liable to be detained under subsection (2), the duty to release the person under section 1(1) or 1AA(1) applies only after the expiry of the outstanding custodial period.
- (4) A person who is liable to be detained by virtue of subsection (2) is, if at large, to be taken for the purposes of section 40 of the Prisons (Scotland) Act 1989 (c.45) (persons unlawfully at large) to be unlawfully at large.

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- (5) Subsection (2) does not prevent—
- (a) the further removal from prison under section 9B(1) of a person falling within that subsection, or
  - (b) the further removal from the United Kingdom of such a person.
- (6) In this section, the “outstanding custodial period” means, in relation to a removed person, a period of time equal to the period beginning with the date of removal from the United Kingdom and ending with the date on which the person would, but for the removal, have served one-half of the sentence.”.
- 5 Until the coming into force of the repeal by this Act of Part 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c.9), paragraph (c) of section 24 of the International Criminal Court (Scotland) Act 2001 (asp 13) (limited disapplication of certain provisions relating to sentences) has effect as if—
- (a) after “9” there were inserted “ , 9A, 9B, 9C ”, and
  - (b) after “transfer” there were inserted “ , removal ”.”.

#### Commencement Information

I21 S. 19 in force at 28.3.2011 by S.S.I. 2011/178, art. 2, Sch.

### *Other sentencing measures*

## 20 Reports about supervised persons

- (1) Section 203 of the 1995 Act (reports) is amended as follows.
- (2) In subsection (3), for the words from “the offender” to the end substitute—
- “(a) the offender,
  - (b) the offender's solicitor (if any), and
  - (c) the prosecutor.”.

#### Commencement Information

I22 S. 20 in force at 1.2.2011 by S.S.I. 2010/413, art. 2, Sch. (with art. 3)

## 21 Detention of children convicted on indictment

- (1) Section 208 of the 1995 Act (detention of children convicted on indictment) is amended as follows.
- (2) After subsection (1), insert—
- “(1A) Where the court imposes a sentence of detention on a child, the court must—
- (a) state its reasons for the opinion that no other method of dealing with the child is appropriate, and
  - (b) have those reasons entered in the record of the proceedings.”.

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*Changes to legislation: There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010, PART 1. (See end of Document for details)*

- (3) In subsection (2), for “Subsection (1) above is” substitute “ Subsections (1) and (1A) above are ”.

#### Commencement Information

**I23** S. 21 in force at 1.2.2011 by S.S.I. 2010/413, art. 2, Sch. (with Sch.)

## 22 Pre-sentencing reports about organisations

After section 203 of the 1995 Act (reports), insert—

### “203A Reports about organisations

- (1) This section applies where an organisation is convicted of an offence.
- (2) Before dealing with the organisation in respect of the offence, the court may obtain a report into the organisation's financial affairs and structural arrangements.
- (3) The report is to be prepared by a person appointed by the court.
- (4) The person appointed to prepare the report is referred to in this section as the “reporter”.
- (5) The court may issue directions to the reporter about—
  - (a) the information to be contained in the report,
  - (b) the particular matters to be covered by the report,
  - (c) the time by which the report is to be submitted to the court.
- (6) The court may order the organisation to give the reporter and any person acting on the reporter's behalf—
  - (a) access at all reasonable times to the organisation's books, documents and other records,
  - (b) such information or explanation as the reporter thinks necessary.
- (7) The reporter's costs in preparing the report are to be paid by the clerk of court, but the court may order the organisation to reimburse to the clerk all or a part of those costs.
- (8) An order under subsection (7) may be enforced by civil diligence as if it were a fine.
- (9) On submission of the report to the court, the clerk of court must provide a copy of the report to—
  - (a) the organisation,
  - (b) the organisation's solicitor (if any), and
  - (c) the prosecutor.
- (10) The court must have regard to the report in deciding how to deal with the organisation in respect of the offence.
- (11) If the court decides to impose a fine, the court must, in determining the amount of the fine, have regard to—

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- (a) the report, and
  - (b) if the court makes an order under subsection (7), the amount of costs that the organisation is required to reimburse under the order.
- (12) Where the court—
- (a) makes an order under subsection (7), and
  - (b) imposes a fine on the organisation,
- any payment by the organisation is first to be applied in satisfaction of the order under subsection (7).
- (13) Where the court also makes a compensation order in respect of the offence, any payment by the organisation is first to be applied in satisfaction of the compensation order before being applied in accordance with subsection (12).”.

**Commencement Information**

**I24** S. 22 in force at 28.3.2011 by S.S.I. 2011/178, art. 2, Sch. (with Sch.)

**23 Extended sentences for certain sexual offences**

In section 210A of the 1995 Act (extended sentences for sex and violent offenders)—

- (a) in subsection (10), at the end of the definition of “sexual offence” add—
  - “(xxviii) an offence (other than one mentioned in the preceding paragraphs) where the court determines for the purposes of this paragraph that there was a significant sexual aspect to the offender's behaviour in committing the offence;”, and
- (b) after subsection (11) add—
  - “(12) An extended sentence may be passed by reference to paragraph (xxviii) only if the offender is or is to become, by virtue of Schedule 3 to the Sexual Offences Act 2003 (c.42), subject to the notification requirements of Part 2 of that Act.”.

**Commencement Information**

**I25** S. 23 in force at 13.12.2010 by S.S.I. 2010/413, art. 2, Sch. (with Sch.)

**24 Effect of probation and absolute discharge**

- (1) In section 1(4) of the Rehabilitation of Offenders Act 1974 (c.53) (construction of references in Act to “conviction”), for “section 9 of the Criminal Justice (Scotland) Act 1949” substitute “section 247 of the Criminal Procedure (Scotland) Act 1995 (c.46)”.
- (2) In section 49(6) of the 1982 Act (offences relating to dangerous and annoying creatures: power to order disposal of creature), the words “or makes a probation order in relation to him” are repealed.
- (3) In section 58(3) of the 1982 Act (convicted thief in possession: power to order forfeiture of tools etc.)—
  - (a) the words “or makes a probation order in relation to him” are repealed, and

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- (b) for the words from “discharged absolutely” to the end substitute “, as the case may be, discharged absolutely.”.
- (4) In section 96 of the 2005 Act (exclusion orders: supplementary provision), after subsection (2) insert—
  - “(2A) For the purposes of section 94, section 247(1) of the Criminal Procedure (Scotland) Act 1995 (c.46) (convictions deemed not be convictions where offender placed on probation or discharged absolutely) does not apply to a conviction for a violent offence within the meaning of section 94.”.
- (5) In section 129 of the 2005 Act (relevant and foreign offences), after subsection (4) add—
  - “(5) For the purposes of the provisions of this Act specified in subsection (6), section 247(1) and (2) of the Criminal Procedure (Scotland) Act 1995 (c.46) (convictions deemed not to be convictions where offender placed on probation or discharged absolutely) does not apply to a conviction for a relevant offence.
  - (6) Those provisions are—
    - (a) section 21(4),
    - (b) section 23(6),
    - (c) section 24,
    - (d) section 33(6),
    - (e) sections 41 to 44,
    - (f) section 73(3),
    - (g) section 75,
    - (h) sections 80 to 83,
    - (i) section 89(4) and (5),
    - (j) subsection (3) of this section, and
    - (k) section 130.”.

#### Commencement Information

I26 S. 24 in force at 28.3.2011 by S.S.I. 2011/178, art. 2, Sch. (with Sch.)

## 25 Offences aggravated by racial or religious prejudice

- (1) In section 96 of the Crime and Disorder Act 1998 (c.37) (racially aggravated offences), for subsection (5) substitute—
  - “(5) The court must—
    - (a) state on conviction that the offence was racially aggravated,
    - (b) record the conviction in a way that shows that the offence was so aggravated,
    - (c) take the aggravation into account in determining the appropriate sentence, and
    - (d) state—
      - (i) where the sentence in respect of the offence is different from that which the court would have imposed if the offence were

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not so aggravated, the extent of and the reasons for that difference, or

(ii) otherwise, the reasons for there being no such difference.”.

(2) In section 74 of the Criminal Justice (Scotland) Act 2003 (asp 7) (offences aggravated by religious prejudice)—

(a) after subsection (2) insert—

“(2A) It is immaterial whether or not the offender's malice and ill-will is also based (to any extent) on any other factor.”,

(b) subsections (3) and (4) are repealed, and

(c) after subsection (4) insert—

“(4A) The court must—

(a) state on conviction that the offence was aggravated by religious prejudice,

(b) record the conviction in a way that shows that the offence was so aggravated,

(c) take the aggravation into account in determining the appropriate sentence, and

(d) state—

(i) where the sentence in respect of the offence is different from that which the court would have imposed if the offence were not so aggravated, the extent of and the reasons for that difference, or

(ii) otherwise, the reasons for there being no such difference.”.

#### Commencement Information

I27 S. 25 in force at 13.12.2010 by S.S.I. 2010/413, art. 2, Sch. (with Sch.)

## 26 Voluntary intoxication by alcohol: effect in sentencing

(1) Subsection (2) applies in relation to an offender who was, at the time of the offence, under the influence of alcohol as a result of having voluntarily consumed alcohol.

(2) A court, in sentencing the offender in respect of the offence, must not take that fact into account by way of mitigation.

#### Commencement Information

I28 S. 26 in force at 13.12.2010 by S.S.I. 2010/413, art. 2, Sch. (with Sch.)

## 27 Mutual recognition of judgments and probation decisions

(1) The Scottish Ministers may by order make provision for the purposes of and in connection with implementing any obligations of the United Kingdom created by or arising under the Framework Decision (so far as they have effect in or as regards Scotland).

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*Status: Point in time view as at 19/10/2015. This version of this part contains provisions that are prospective.*

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- (2) The provision may, in particular, confer functions—
  - (a) on the Scottish Ministers,
  - (b) on other persons.
- (3) An order under subsection (1) may modify any enactment.
- (4) In this section, the “Framework Decision” means Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions.

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**Commencement Information**

**I29** [S. 27](#) in force at 28.3.2011 by [S.S.I. 2011/178](#), art. 2, [Sch.](#)



**Status:**

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**Changes to legislation:**

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