

CRIMINAL JUSTICE (SCOTLAND) ACT 2016

EXPLANATORY NOTES

OVERVIEW OF THE ACT

Schedule 1 – Breach of Liberation Condition

Paragraph 1 – Offence of breaching condition

301. Paragraph 1(1) sets out the circumstances in which a person breaches a liberation condition and thereby commits an offence. A “liberation condition” includes investigative liberation conditions imposed before charge under section 16 (2) or requirements imposed by an undertaking given after charge under section 26(3).
302. Paragraph 1(2) provides that paragraph 1(1) does not apply when a person breaches a liberation condition by reason of committing an offence. Such breaches are dealt with in accordance with paragraph 3. An example of a breach of condition which may, of itself, not constitute a separate offence is a condition not to enter a particular street. If the person subject to the condition is subsequently found in that street, then a breach of liberation has occurred, but not a separate offence. If the condition was that the person was not to approach a particular witness in the case and the person does contact the witness then not only has a breach of condition occurred, but a more serious offence (attempting to defeat the ends of justice) may have taken place.
303. Paragraph 1(3) provides that a complaint may be amended to add an additional charge of an offence of breaching a liberation condition at any time before the trial of an accused for either the original offence (see paragraph 1(4)) or an offence arising from the same circumstances as that offence.

Paragraph 2 – Sentencing for the offence

304. Paragraph 2(1) sets out the penalties applicable to a person convicted of an offence of breaching a liberation condition under paragraph 1.
305. Sub-paragraphs 2(2) and (3) provide that such a penalty may be imposed in addition to any other penalty that may be imposed, even if the total exceeds the maximum penalty for the original offence. The penalties may run consecutively, subject to section 204A of the 1995 Act which concerns restriction on consecutive sentences for released prisoners. The provisions put beyond doubt that the penalty imposed for breach of the condition can be imposed on top of the penalty for original offence, even where the penalty imposed for the original offence represents the maximum penalty applicable in the circumstances.
306. Sub-paragraphs (5) and (6) provide that where a court finds a person guilty of breaching a liberation condition, or the person pleads guilty to that offence, the person may be sent for sentence at any court which is considering the original offence (as defined in subsection (5)).

Paragraph 3 – Breach by committing offence

307. Paragraph 3 applies where a person breaches a liberation condition by committing an offence and the fact that the offence was committed whilst the person was subject to a liberation condition is specified in the complaint or indictment. This is distinct from failing to comply with a condition and applies where the person is being prosecuted for the offence committed while on liberation conditions.
308. Paragraph 3(2) requires the court, in determining the penalty for the offence, which constituted the breach of condition, to have regard to the matters specified.
309. Paragraphs 3(3) and (4) enable the court to increase the maximum penalty otherwise specified for the offence. This provision effectively displaces the maximum penalty, allowing the court to add to the penalty to take account of the fact that a breach of conditions has occurred as a consequence of the commission of an offence.
310. Paragraph 3(5) requires the court to explain the reasons for the penalty imposed for the offence, whether it imposes an increased penalty or not.

Paragraph 4 – Matters for paragraph 3(2)(b)

311. Where a person breaches an investigative liberation condition by committing an offence, the court must have regard to the matters specified in paragraph 4 in determining the penalty.

Paragraph 5 – Matters for paragraph 3(2)(c)

312. Where a person breaches the terms of an undertaking, as defined in paragraph 7(c), (other than the requirement to appear to court), by committing an offence, the court must have regard to the matters specified in paragraph 5 in determining the penalty.

Paragraph 6 – Evidential presumptions

313. In proceedings relating to an offence under paragraph 1 (breach of liberation conditions), the evidential presumptions set out in paragraph 6 apply.