



# Management of Offenders (Scotland) Act 2019 2019 asp 14

## PART 1

### ELECTRONIC MONITORING ETC.

#### *Monitoring in criminal proceedings*

#### **1 Requirement when disposing of case**

- (1) When making a person subject to a disposal listed in section 3(2), a court may additionally require the person to submit to monitoring by means of an approved device.
- (2) Section 8(1) describes what an approved device is in relation to a requirement under subsection (1).
- (3) A requirement under subsection (1) means that the person—
  - (a) is to be monitored by a person designated under section 11(1)(a), and
  - (b) is bound by the obligations set out in section 12(2) and (3).
- (4) Monitoring by virtue of a requirement under subsection (1) is for the purpose of ascertaining whether the person—
  - (a) is complying with the specified aspects of the disposal, and
  - (b) is fulfilling the obligations set out in section 12(2) and (3).
- (5) The court must—
  - (a) explain to the person the purpose mentioned in subsection (4), and
  - (b) warn the person of the consequences of failing to fulfil the obligations set out in section 12(2) and (3).
- (6) A requirement under subsection (1) is to be made by means of an order of the court (the form of which is to be prescribed by Act of Adjournal).
- (7) In subsection (4)(a), the reference to the specified aspects is to the particular aspects specified by the court when disposing of the person's case.

## **2 Particular rules regarding disposals**

- (1) If a person's agreement to a disposal mentioned in a particular paragraph of section 3(2) is necessary before the person can become subject to the disposal, the person's agreement to becoming subject to a requirement under section 1(1) is necessary before the requirement can be made in addition to the disposal.
- (2) A requirement made under section 1(1) lasts for as long as the person is subject to the associated disposal, but a court which makes a requirement under section 1(1) may vary or revoke the requirement in conjunction with the variation or revocation by it under an enactment of the associated disposal.
- (3) In subsection (1), the reference to agreement to a disposal includes agreement, consent or willingness to becoming subject to the disposal.

## **3 List of the relevant disposals**

- (1) Subsection (2) contains the list referred to in section 1(1).
- (2) This is the list—
  - (a) making an order under, or in any way altering an order made under, section 209(1) of the Criminal Procedure (Scotland) Act 1995 (relating to supervised release in certain cases under Part 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993),
  - (b) making an order under, or varying an order made under, section 245A of the Criminal Procedure (Scotland) Act 1995 (in that Act called a restriction of liberty order),
  - (c) imposing a requirement restricting movements by virtue of, or varying such a requirement imposed by virtue of, section 234CA(1) of the Criminal Procedure (Scotland) Act 1995 (relating to a drug treatment and testing order within the meaning given by section 234B(2) of that Act),
  - (d) imposing a restricted movement requirement by virtue of, or varying such a requirement imposed by virtue of, section 227A(2)(j) of the Criminal Procedure (Scotland) Act 1995 (relating to a community payback order under section 227A(1) of that Act),
  - (e) making an order by virtue of, or varying or renewing an order made by virtue of, section 104(1)(b) as read with section 104(2) and (3) of the Sexual Offences Act 2003 (relating to sexual offences prevention),
  - (f) making an order under, or varying or renewing an order made under, section 11 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016 (relating to sexual risk or harm).

## **4 More about the list of disposals**

- (1) The Scottish Ministers may by regulations modify the list in section 3(2) so as to—
  - (a) add, alter or remove an entry,
  - (b) limit an entry so as to specify a certain aspect of what a court may do.
- (2) An entry included in section 3(2) may relate to anything, at any stage in criminal proceedings—
  - (a) which can be made or imposed by a court with respect to a person, or
  - (b) to which a person can otherwise be made subject by a court,

except something under which a person is to be detained in custody.

- (3) A general or specific reference to a disposal mentioned in section 3(2) is, in relation to a requirement under section 1(1), to be construed as being to the relevant order or other measure so far as concerning—
  - (a) a person's whereabouts in some way (including being at, or not being at, a particular place), or
  - (b) a person's consumption, taking or ingesting of alcohol, drugs or other substances.
- (4) For the avoidance of doubt, anything listed in section 3(2) is to be regarded as a disposal for the purposes of this Part (whether or not it is the final disposal of a case).