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# Criminal Procedure (Scotland) Act 1995

## 1995 CHAPTER 46

### PART XI

#### SENTENCING

VALID FROM 01/02/2011

*<sup>F1</sup>Community payback orders: review, variation etc.*

#### Textual Amendments

**F1** Ss. 227A-227ZN and cross-headings inserted (1.2.2011 except for the insertion of s. 227ZM, 1.4.2011 in so far as not already in force) by [Criminal Justice and Licensing \(Scotland\) Act 2010](#) (asp 13), **ss. 14(1)**, 206(1); S.S.I. 2010/413, art. 2, sch. (with art. 3(1))

#### **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.

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- (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
  - (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.

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- (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,
  - (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.

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- (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.
- (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).

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- (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.
- (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.]

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