

CRIMINAL JUSTICE (SCOTLAND) ACT 2003

EXPLANATORY NOTES

THE ACT THE ACT IS IN 12 PARTS.

Part 6 – Non-Custodial Punishments

Section 43 – Restriction of liberty orders

208. **Section 43** makes provision in connection with the powers of the court:
- when making a restriction of liberty order in circumstances where an offender resides or is to reside in another court district; and
 - when considering an application to vary such an order in circumstances where an offender already subject to a restriction of liberty order wishes to reside in another court district; and
 - when considering a breach of a restriction of liberty order.
209. Restriction of liberty orders (RLOs) were introduced in Scotland by section 5 of the Crime and Punishment (Scotland) Act 1997. RLOs require an offender to be restricted as regards his/her being in a specified place for up to 12 hours per day or not being in a specified place for up to 24 hours per day, or both, for a maximum period of 12 months. Compliance with an RLO is monitored by remote monitoring equipment.
210. This section deals with the situation where an offender who has been given an RLO intends to move outwith the jurisdiction of the court which made the order. It provides that the court is to have the power to vary the terms of the order, including the arrangements for monitoring. The court in the area in which the offender is to reside will be given the power to deal with any breach, application for review or variation of the RLO as if it has made the original order.
211. The court is also to have the power to impose an RLO on an offender who resides, or is to reside, outwith the jurisdiction of the court. The court with jurisdiction for the area in which the offender resides or is to reside has the power to vary, review and deal with a breach of the order.
212. Subsection (2) amends section 245A(5)(a) of the Criminal Procedure (Scotland) Act 1995 (the 1995 Act) to provide that, in cases where the offender resides (or is to reside) in a place outwith the jurisdiction of the court, the clerk of the court will send a copy of the RLO both to the person responsible for monitoring the offender's compliance with the order and to the clerk of a court which has jurisdiction over that place where the offender resides (or is to reside).
213. Subsection (3) amends subsection (1) of, and inserts new subsections (5) to (8) into, section 245E of 1995 Act. The amendment to section 245E(1) has the effect that where an offender with an RLO is residing outwith the jurisdiction of the court which made the order and the order has been transferred, under either sections 245A(5)(a)(ii) or 245E(7)(a) of the 1995 Act (as amended by the Act), to a court which has jurisdiction

over the offender's place of residence, any application to review the order should be made to that court to which the order has been transferred.

214. The effect of the new section 245E(5) is to provide that when an RLO is in force in respect of an offender and the offender proposes to change his or her place of residence to one outwith the district of the court which made the order, the offender may make application to the court which made the order to vary it. If the court is satisfied that arrangements can be made to monitor the offender's compliance with the order, by the means of monitoring specified in the order, in the district to which the offender proposes to take up residence, the court will have the power to vary the terms of the order to allow these arrangements to be made. In addition, if the offender's change in residence requires a change in the person responsible for monitoring compliance with the order, the court will have the power to vary the order accordingly.
215. The new section 245E(6) provides that, in cases where the RLO requires the offender to remain in a specified place or places, the court may not vary the order in response to an application by the offender to relocate to a place outwith the jurisdiction of that court without first obtaining and considering information about the place or places, including information about the attitude of any persons likely to be affected by the enforced presence there of the offender.
216. If the court is not satisfied that suitable monitoring arrangements can be put in place in the district in which the offender is to reside, the new section 245E(8) provides that the court may refuse the application or revoke the order.
217. New section 245E(7) provides for notification in cases where the order is varied to allow the offender to relocate to an area outwith the jurisdiction of the court.
218. [Section 43\(4\)](#) of the Act amends the procedures set out in section 245F of the Criminal Procedure (Scotland) Act 1995 for dealing with breach of an RLO to make provision for cases in which the offender resides outwith the jurisdiction of the court which made the order and the order has been transferred, under either section 245A(5)(a)(ii) or 245E(7) (a) of the 1995 Act (as amended by the Act), to a court which has jurisdiction over the offender's place of residence. The effect is to permit the court in which the offender is now resident, which has received a copy of the original order or a copy of the varied order, to issue a citation or warrant for the offender to appear before it for a failure to comply with the order and, at the resulting hearing, to dispose of the case if a failure to comply has been established to the court's satisfaction.