



Criminal Justice (Scotland) Act 2003

2003 asp 7

PART 6

NON-CUSTODIAL PUNISHMENTS

43 Restriction of liberty orders

- (1) The 1995 Act is amended as follows.
- (2) In section 245A(5)(a) (duty of clerk of court by which restriction of liberty order is made)—
 - (a) the existing words “to any person who is to be responsible for monitoring the offender’s compliance with the order” become sub-paragraph (i); and
 - (b) after that sub-paragraph there is inserted the word “ and ” and the following sub-paragraph—
 - “(ii) if the offender resides (or is to reside) in a place outwith the jurisdiction of the court making the order, to the clerk of a court within whose jurisdiction that place is;”.
- (3) In section 245E (variation of restriction of liberty order)—
 - (a) in subsection (1)—
 - (i) after the word “may” there are inserted the words “ except in a case to which paragraph (b) below applies, ” and those words together with the existing words “apply to the court which made the order” become paragraph (a); and
 - (ii) after that paragraph there is inserted the word “ or ” and the following paragraph—
 - “(b) where a copy of the order was, under section 245A(5) (a)(ii) of this Act or subsection (7)(a) below, sent to the clerk of a different court, to that different court (or, if there has been more than one such sending, the different court to which such a copy has most recently been so sent);” and
 - (b) at the end there is added—

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- “(5) Where a reason for an application by the offender under subsection (1) above is that he proposes to reside in a place outwith the jurisdiction of the court to which that application is made, and the court is satisfied that suitable arrangements can be made, in the district where that place is, for monitoring his compliance with the order it may—
- (a) vary the order to permit or make practicable such arrangements; and
 - (b) where the change in residence necessitates or makes desirable a change in who is designated for the purpose of such monitoring, vary the order accordingly.
- (6) Before varying a restriction of liberty order for the reason mentioned in subsection (5) above, the court shall—
- (a) if the order will require the offender to remain in a specified place or in specified places, obtain and consider information about that place, or those places, including information as to the attitude of persons likely to be affected by any enforced presence there of the offender; and
 - (b) satisfy itself that his compliance with that requirement can be monitored by the means of monitoring specified, or which it intends to specify, in the order.
- (7) Where a restriction of liberty order is varied as is mentioned in subsection (5) above, the clerk of the court shall send a copy of the order as so varied to—
- (a) the clerk of a court within whose jurisdiction the place of proposed residence is;
 - (b) the person who, immediately before the order was varied, was responsible for monitoring the person’s compliance with it; and
 - (c) the person who, in consequence of the variation, is to have that responsibility.
- (8) If, in relation to an application made for such reason as is mentioned in subsection (5) above, the court is not satisfied as is mentioned in that subsection, it may—
- (a) refuse the application; or
 - (b) revoke the order.”.
- (4) In section 245F (breach of restriction of liberty order)—
- (a) in subsection (1)—
 - (i) after the words “force it appears”, there is inserted “ except in a case to which paragraph (b) below applies, ” and those words together with the existing words “to the court which made the order” become paragraph (a);
 - (ii) after that paragraph there is inserted the word “ or ” and the following paragraph—
 - “(b) where a copy of the order was, under section 245A(5)(a)(ii) or 245E(7)(a) of this Act, sent to the clerk of a different court, to that different court (or, if there has been more than one such sending, the different

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- court to which such a copy has most recently been so sent);”;
- (iii) after the words “order the court” there is inserted “ in question ”;
 - (iv) for the words “the court”, where they occur for the third time, there is substituted “ it ”; and
 - (v) for the words “the court”, where they occur for the fourth time, there is substituted “ that court ”;
- (b) in subsection (2), for the words—
- (i) “the court”, where they occur for the first time, there is substituted “ that court ”; and
 - (ii) “the court”, where they occur for the second time, there is substituted “ it ”; and
- (c) in subsection (4), for the words “the court” there is substituted “ a court ”.

44
F1

Textual Amendments

F1 S. 44 repealed (28.10.2004) by [Antisocial Behaviour etc. \(Scotland\) Act 2004 \(asp 8\)](#), ss. 144(2), 145(2), [Sch. 5](#); S.S.I. 2004/420, [art. 3](#), Sch. 1

45
F2

Textual Amendments

F2 S. 45 repealed (28.10.2004) by [Antisocial Behaviour etc. \(Scotland\) Act 2004 \(asp 8\)](#), ss. 144(2), 145(2), [Sch. 5](#); S.S.I. 2004/420, [art. 3](#), Sch. 1

46 Requirement for remote monitoring in probation order

- (1) The 1995 Act is amended as follows.
- (2) After section 230 there is inserted—

“230A Requirement for remote monitoring in probation order

- (1) Without prejudice to section 245D of this Act, a probation order may include a requirement that during such period as may be specified in the requirement, being a period not exceeding twelve months, the probationer comply with such restrictions as to his movements as the court thinks fit; and paragraphs (a) and (b) of subsection (2) of section 245A of this Act (with the qualification of paragraph (a) which that subsection contains) shall apply in relation to any such requirement as they apply in relation to a restriction of liberty order.

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- (2) The clerk of the court shall cause a copy of a probation order which includes such a requirement to be sent to the person who is to be responsible for monitoring the probationer's compliance with the requirement.
 - (3) If, within the period last specified by virtue of subsection (1) above or section 231(1) of this Act, it appears to the person so responsible that the probationer has failed to comply with the requirement the person shall so inform the supervising officer appointed by virtue of section 228(3) of this Act, who shall report the matter to the court.
 - (4) Section 245H shall apply in relation to proceedings under section 232 of this Act as respects a probation order which includes such a requirement as it applies in relation to proceedings under section 245F of this Act.
 - (5) Sections 245A(6) and (8) to (11), 245B and 245C of this Act shall apply in relation to the imposition of, or as the case may be compliance with, requirements included by virtue of subsection (1) above in a probation order as those sections apply in relation to the making of, or as the case may be compliance with, a restriction of liberty order.
 - (6) In relation to a probation order which includes such a requirement—
 - (a) the persons who may make an application under paragraph 3(1) of Schedule 6 to this Act shall include the person responsible for monitoring the probationer's compliance with the requirement, but only in so far as the application relates to the requirement; and
 - (b) a copy of any application under that paragraph by—
 - (i) the probationer or the supervising officer shall be sent by the applicant to the person so responsible; or
 - (ii) the person so responsible shall be sent by the applicant to the probationer and the supervising officer.
 - (7) Where under section 232(2)(c) of, or Schedule 6 to, this Act the court varies such a requirement, the clerk of court shall cause a copy of the amended probation order to be sent—
 - (a) to the person so responsible; and
 - (b) where the variation comprises a change in who is designated for the purposes of such monitoring, to the person who, immediately before the order was varied, was so responsible.”.
- (3) In section 232 (probation orders: failure to comply with requirement)—
- (a) in subsection (2)(c), at the end there is added “ and any extension to the period of a requirement imposed by virtue of section 230A of this Act shall not increase that period above the maximum mentioned in subsection (1) of that section ”; and
 - (b) after subsection (2) there is inserted—

“(2A) Subsections (6) and (11) of section 245A of this Act apply to the variation, under paragraph (c) of subsection (2) above, of a requirement such as is mentioned in that paragraph as they apply to the making of a restriction of liberty order.”.
- (4) In Schedule 6 (discharge of and amendment to probation orders), in paragraph 3—
- (a) in sub-paragraph (1), for the words “230” there is substituted “ 230A ”; and

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(b) at the end there is added—

“(3) This paragraph is subject to section 230A(6)(a) of this Act.”.

47 Requirement for remote monitoring in drug treatment and testing order

(1) The 1995 Act is amended as follows.

(2) After section 234C there is inserted—

“234CA Requirement for remote monitoring in drug treatment and testing order

- (1) A drug treatment and testing order may include a requirement that during such period as may be specified in the requirement, being a period not exceeding twelve months, the offender comply with such restrictions as to his movements as the court thinks fit; and paragraphs (a) and (b) of subsection (2) of section 245A of this Act (with the qualification of paragraph (a) which that subsection contains) shall apply in relation to any such requirement as they apply in relation to a restriction of liberty order.
- (2) The clerk of the court shall cause a copy of a drug treatment and testing order which includes such a requirement to be sent to the person who is to be responsible for monitoring the offender’s compliance with the requirement.
- (3) If, within the period last specified by virtue of subsection (1) above or (6) (d) below, it appears to the person so responsible that the offender has failed to comply with the requirement the person shall so inform the supervising officer appointed by virtue of section 234C(6) of this Act, who shall report the matter to the court.
- (4) Section 245H shall apply in relation to proceedings under section 234G of this Act as respects a drug treatment and testing order which includes such a requirement as it applies in relation to proceedings under section 245F of this Act.
- (5) Sections 245A(6) and (8) to (11), 245B and 245C of this Act shall apply in relation to the imposition of, or as the case may be compliance with, requirements included by virtue of subsection (1) above in a drug treatment and testing order as those sections apply in relation to the making of, or as the case may be compliance with, a restriction of liberty order.
- (6) In relation to a drug testing order which includes such a requirement, section 234E of this Act shall apply with the following modifications—
 - (a) the persons who may make an application under subsection (1) of that section shall include the person responsible for monitoring the offender’s compliance with the requirement, but only in so far as the application relates to the requirement;
 - (b) the reference in subsection (2) of that section to the supervising officer shall be construed as a reference to either that officer or the person so responsible;
 - (c) where an application is made under subsection (1) of that section and relates to the requirement, the persons to be heard under subsection (3) of that section shall include the person so responsible;

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- (d) the ways of varying the order which are mentioned in subsection (3) (a) of that section shall include increasing or decreasing the period specified by virtue of subsection (1) above (or last specified by virtue of this paragraph) but not so as to increase that period above the maximum mentioned in subsection (1) above; and
 - (e) the reference in subsection (5) of that section—
 - (i) to the supervising officer shall be construed as a reference to either that officer or the person so responsible; and
 - (ii) to sections 234B(5) and 234D(1) shall be construed as including a reference to section 245A(6) and (11).
- (7) Where under section 234E or 234G(2)(b) of this Act the court varies such a requirement, the clerk of court shall cause a copy of the amended drug treatment and testing order to be sent—
- (a) to the person responsible for monitoring the offender’s compliance with the requirement; and
 - (b) where the variation comprises a change in who is designated for the purposes of such monitoring, to the person who, immediately before the order was varied, was so responsible.”.
- (3) In section 234E (amendment of drug treatment and testing order), at the end there is added—
- “(7) This section is subject to section 234CA(6) of this Act.”.
- (4) In section 234G (breach of drug treatment and testing order)—
- (a) in subsection (2)(b), at the end there is added “ so however that any extension of the period of a requirement imposed by virtue of section 234CA of this Act shall not increase that period above the maximum mentioned in subsection (1) of that section ”; and
 - (b) after subsection (2) there is inserted—
- “(2A) Subsections (6) and (11) of section 245A of this Act apply to the variation, under paragraph (b) of subsection (2) above, of a requirement imposed as is mentioned in that paragraph as they apply to the making of a restriction of liberty order.”.

48 Breach of certain orders: adjourning hearing and remanding in custody etc.

After section 245I of the 1995 Act there is inserted—

“245J Breach of certain orders: adjourning hearing and remanding in custody etc.

- (1) Where a probationer or offender appears before the court in respect of his apparent failure to comply with a requirement of, as the case may be, a probation order, drug treatment and testing order, supervised attendance order, community service order or restriction of liberty order the court may, for the purpose of enabling inquiries to be made or of determining the most suitable method of dealing with him, adjourn the hearing.

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- (2) Where, under subsection (1) above, the court adjourns a hearing it shall remand the probationer or offender in custody or on bail or ordain him to appear at the adjourned hearing.
- (3) A court shall not so adjourn a hearing for any single period exceeding four weeks or, on cause shown, eight weeks.
- (4) A probationer or offender remanded under this section may appeal against the refusal of bail, or against the conditions imposed, within 24 hours of his remand.
- (5) Any such appeal shall be by note of appeal presented to the High Court, who, either in court or in chambers, may after hearing the prosecutor and the appellant—
 - (a) review the order appealed against and either grant bail on such conditions as it thinks fit or ordain the appellant to appear at the adjourned hearing; or
 - (b) confirm the order.”.

49 Power of arrest where breach of non-harassment order

- (1) In section 234A (non-harassment orders) of the 1995 Act—
 - (a) in subsection (4), the words “found to be” are repealed;
 - (b) after that subsection there is inserted—

“(4A) A constable may arrest without warrant any person he reasonably believes is committing or has committed an offence under subsection (4) above.

(4B) Subsection (4A) above is without prejudice to any power of arrest conferred by law apart from that subsection.”.
- (2) In section 9 (breach of non-harassment order) of the Protection from Harassment Act 1997 (c. 40)—
 - (a) in subsection (1), the words “found to be” are repealed;
 - (b) after subsection (2) there is inserted—

“(3) A constable may arrest without warrant any person he reasonably believes is committing or has committed an offence under subsection (1).

(4) Subsection (3) is without prejudice to any power of arrest conferred by law apart from that subsection.”.

50 Amendments in relation to certain non-custodial sentences

- (1) In section 235 (supervised attendance orders) of the 1995 Act—
 - (a) in subsection (3)(a); and
 - (b) in subsection (4)(b),for the word “18” there is in each case substituted “ 16 ”.
- (2) In section 236 (supervised attendance orders in place of fines) of that Act—
 - (a) in subsection (1), for the words “16 or 17” there is substituted “ or over 16 ”;
 - (b) in subsection (6), after “shall” there is inserted—

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- “(a) if it considers that the person is likely to pay the fine within a reasonable period of more than 28 days, impose the fine;
 - (b) in any other case”.
- (3) In section 245A (restriction of liberty orders) of that Act, in subsection (1)—
 - (a) after “offence” in the first place where it appears there is inserted “punishable by imprisonment”;
 - (b) the words from “, if” to “disposal,” are repealed;
 - (c) after “may” there is inserted “, instead of imposing on him a sentence of, or including, imprisonment or any other form of detention,”.
- (4) In Schedule 7 (which makes further provision in respect of supervised attendance orders) to that Act—
 - (a) in paragraph 4(2)(a)—
 - (i) for the words “three months” there is substituted “ 30 days ”;
 - (ii) for the words “60 days” there is substituted “ 20 days ”;
 - (b) in paragraph 5(1)(d)—
 - (i) for the words “three months” there is substituted “ 30 days ”;
 - (ii) for the words “60 days” there is substituted “ 20 days ”.

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