

MANAGEMENT OF OFFENDERS ETC. (SCOTLAND) ACT 2005

EXPLANATORY NOTES

INTRODUCTION

Integrated Management Of Offenders

Section 12 – Probation Progress Reviews

92. **Section 12** inserts a new section 229A into the Criminal Procedure (Scotland) Act 1995 and makes a minor amendment to section 232 of that Act. The broad aim is to provide courts with the power to hold progress review hearings for those with a probation order, should they consider that to be appropriate in a particular case. The amendment is in response to a High Court decision in August 2005, *James McLaughlin v Procurator Fiscal, Stirling*, which held that the court had no power to order a review hearing.
93. If a court orders a probation review hearing the officer responsible for the probationer's supervision must submit a written report on the probationer's progress to the court in advance of the hearing. The probationer is required to attend, on pain of arrest, and the supervising officer and prosecutor are entitled to take part. If, having considered all the information presented to it, the court is minded to amend the probation order it must explain the proposed amendment to the probationer in ordinary language and may only make the change if the probationer agrees to comply. Further review hearings may be set, if thought appropriate.
94. Subsection (3) applies the powers of sanction set out in section 232(2) of the 1995 Act to probation review hearings. The effect is to apply the existing powers of the court where a probationer has failed to comply with the terms of the order, namely the power to impose a fine, to sentence the offender, to vary a requirement of the order and to make a community service order, to the review hearing situation.