

SCHEDULE 2 COMMUNITY PAYBACK ORDERS: CONSEQUENTIAL MODIFICATIONS

PART 1

THE 1995 ACT

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- 1 The 1995 Act is amended as follows.
- 2 In section 52H(3) (early termination of assessment order), the following are repealed—
 - (a) the word “or” immediately following paragraph (e), and
 - (b) paragraph (f).
- 3 In section 52R(3) (termination of treatment order), the following are repealed—
 - (a) the word “or” immediately following paragraph (e), and
 - (b) paragraph (f).
- 4 In section 53(12)(a) (interim compulsion orders), for sub-paragraphs (vi) and (vii) substitute—
 - “(vi) impose a community payback order;
 - (vii) make a drug treatment and testing order; or
 - (viii) make a restriction of liberty order.”.
- 5 In section 57A(15)(a) (compulsion order), for sub-paragraphs (vi) and (vii) substitute—
 - “(vi) impose a community payback order;
 - (vii) make a drug treatment and testing order; or
 - (viii) make a restriction of liberty order.”.
- 6 In section 58(8) (order for hospital admission or guardianship), for “make a probation order or a community service order” substitute “impose a community payback order or make a drug treatment and testing order”.
- 7 In section 106(1) (right of appeal), for paragraph (d) substitute—
 - “(d) against any drug treatment and testing order;
 - (dza) against any disposal under section 227ZC(7)(a) to (c) or (e) or (8) (a) of this Act;”.
- 8 In section 108 (Lord Advocate’s right of appeal against disposal)—
 - (a) in subsection (1), paragraphs (d) and (e) are repealed, and
 - (b) in subsection (2)(b)(iii), for “(d) to (e)” substitute “(dd)”.
- 9 In section 118(4) (disposal of appeals against sentence), after “(d),” insert “(dza),”.
- 10 In section 121A(4) (suspension of certain sentences pending determination of appeal), for paragraphs (a) to (c) substitute—
 - “(aa) a community payback order;”.
- 11 In section 173(2) (quorum of High Court in relation to appeals), for “175(2)(b) or (c)” substitute “175(2)(b), (c) or (cza)”.
- 12 In section 175 (right of appeal)—

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- (a) in subsection (2)—
 - (i) in paragraph (c), for “probation order, drug treatment and testing order or any community service order” substitute “drug treatment and testing order”, and
 - (ii) after paragraph (c), insert—
 - “(cza) against any disposal under section 227ZC(7)(a) to (c) or (e) or (8)(a) of this Act;”,
 - (b) in subsection (4), paragraphs (d) and (e) are repealed, and
 - (c) in subsection (4A)(b)(iii), for “(d) to (e)” substitute “(dd)”.
- 13 In section 186 (appeals against sentence only), in each of subsections (1), (2)(a), (9) and (10), for “175(2)(b) or (c)” substitute “175(2)(b), (c) or (cza)”.
- 14 In section 187(1) (leave to appeal against sentence), for “175(2)(b) or (c)” substitute “175(2)(b), (c) or (cza)”.
- 15 In section 189(5) (disposal of appeal against sentence), after “175(2)(c)” insert “or (cza)”.
- 16 In section 193A(4) (suspension of certain sentences pending determination of appeal)—
 - (a) for paragraphs (a) to (c) substitute—
 - “(aa) a community payback order;”, and
 - (b) paragraph (e) is repealed.
- 17 Sections 228 to 234 (probation) are repealed.
- 18 In section 234H (disposal on revocation of drug treatment and testing order)—
 - (a) in subsection (1), for “drugs” substitute “drug”, and
 - (b) in subsection (3), for the words from “subject to” where they first occur to the end substitute “, in respect of the same offence, also subject to a community payback order, by virtue of section 234J, or a restriction of liberty order, by virtue of section 245D, the court shall, before disposing of the offender under subsection (1) above, revoke the community payback order or restriction of liberty order (as the case may be).”.
- 19 (1) Section 234J (concurrent drug treatment and testing and probation orders) is amended as follows.
 - (2) In subsection (1)—
 - (a) for “sections 228(1) and” substitute “section”, and
 - (b) for “probation order” substitute “community payback order”.
 - (3) In subsection (3)—
 - (a) for “probation order” substitute “community payback order”, and
 - (b) for paragraphs (b) and (c) substitute—
 - “(ba) the local authority within whose area the offender will reside for the duration of each order.”.
 - (4) In subsection (4)—
 - (a) in paragraph (a), for “probation order and is dealt with under section 232(2)(c)” substitute “community payback order and is dealt with under section 227ZC(7)(d)”, and

- (b) in paragraph (b), for “232(2)(c) of this Act in relation to the probation order” substitute “227ZC(7)(d) of this Act in relation to the community payback order”.
- (5) In subsection (5)—
- (a) for “probation order” substitute “community payback order”, and
 - (b) for “232(2)” substitute “227ZC(7)”.
- 20 Sections 235 to 245 (supervised attendance orders and community service orders) are repealed.
- 21 (1) Section 245A (restriction of liberty orders) is amended as follows.
- (2) In subsection (2), the words from “but” to the end are repealed.
 - (3) After subsection (2) insert—
 - “(2A) In making a restriction of liberty order containing provision under subsection (2)(a), the court must ensure that the offender is not required, either by the order alone or the order taken together with any other relevant order or requirement, to be in any place or places for a period or periods totalling more than 12 hours in any one day.
 - (2B) In subsection (2A), “other relevant order or requirement” means—
 - (a) any other restriction of liberty order in effect in respect of the offender at the time the court is making the order referred to in subsection (2A), and
 - (b) any restricted movement requirement under section 227ZF in effect in respect of the offender at that time.”.
 - (4) In subsection (12)(a), for “subsection (2)” substitute “subsection (2A)”.
- 22 (1) Section 245D (combination of restriction of liberty orders with other orders) is amended as follows.
- (2) In subsection (1)(b)—
 - (a) in sub-paragraph (i), for “probation order made under section 228(1)” substitute “community payback order imposed under section 227A(1)”, and
 - (b) in sub-paragraph (ii)—
 - (i) for “probation order made under section 228(1) of this Act,” substitute “community payback order imposed under section 227A(1) of this Act or”, and
 - (ii) the words “or both such orders” are repealed.
 - (3) In subsection (2), for “probation order” substitute “community payback order”.
 - (4) In subsection (3)—
 - (a) the word “228(1),” is repealed,
 - (b) in paragraph (a), for “probation order” substitute “community payback order”, and
 - (c) in paragraph (b), for “either or both of a probation order and” substitute “either a community payback order or”.
 - (5) In subsection (4)—
 - (a) for “probation order” substitute “community payback order”, and

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- (b) for paragraph (b) substitute—
 - “(b) the local authority within whose area the offender will reside for the duration of each order.”.
- (6) Subsection (6) is repealed.
- (7) In subsection (7)—
 - (a) in paragraph (a)—
 - (i) for “contained in a probation order and is dealt with under section 232(2)(c)” substitute “imposed by a community payback order and is dealt with under section 227ZC(7)(d)”, and
 - (ii) the words from “234G(2)(b)” to “section” where it third occurs are repealed,
 - (b) in paragraph (b), the words from “232(2)(c)” to “section” where it third occurs are repealed, and
 - (c) in paragraph (c), for “232(2)(c) of this Act in relation to a probation order” substitute “227ZC(7)(d) of this Act in relation to a community payback order”.
- (8) In subsection (8), for “232(2)” substitute “227ZC”.
- (9) In subsection (9)—
 - (a) in paragraph (a), for “probation order” substitute “community payback order”, and
 - (b) paragraph (c) is repealed.
- 23 (1) Section 245G (disposal on revocation of restriction of liberty order) is amended as follows.
 - (2) In subsection (2), for the words from “by virtue” to the end substitute “in respect of the same offence, also subject to a community payback order or a drug treatment and testing order, by virtue of section 245D(3), it shall before disposing of the offender under subsection (1) above, revoke the community payback order or drug treatment and testing order.”.
 - (3) In subsection (3), for “probation order discharged” substitute “community payback order”.
 - (4) Subsection (4) is repealed.
- 24 In section 245J (breach of certain orders: adjourning hearing and remanding in custody etc.)—
 - (a) in subsection (1)—
 - (i) for “a probationer or” substitute “an”,
 - (ii) for “probation order” substitute “community payback order”, and
 - (iii) the words “supervised attendance order, community service order” are repealed,
 - (b) in subsection (2), the words “probationer or” are repealed, and
 - (c) in subsection (4), for “A probationer or” substitute “An”.
- 25 Sections 245K to 245Q (community reparation orders) are repealed.
- 26 In section 246 (admonition and absolute discharge), in each of subsections (2) and (3), the words “and that a probation order is not appropriate” are repealed.

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- 27 In section 249(2) (compensation order against convicted person), for paragraph (b) substitute—
- “(ab) where, under section 227A of this Act, it imposes a community payback order;”.
- 28 In section 307 (interpretation)—
- (a) in subsection (1)—
- (i) insert at the appropriate places—
- ““alcohol treatment requirement” has the meaning given in section 227V(1);”
- ““community payback order” means a community payback order (within the meaning of section 227A(2)) imposed under section 227A(1) or (4) or 227M(2);”
- ““compensation requirement” has the meaning given in section 227H(1);”
- ““conduct requirement” has the meaning given in section 227W(1);”
- ““drug treatment requirement” has the meaning given in section 227U(1);”
- ““mental health treatment requirement” has the meaning given in section 227R(1);”
- ““offender supervision requirement” has the meaning given in section 227G(1);”
- ““programme requirement” has the meaning given in section 227P(1);”
- ““residence requirement” has the meaning given in section 227Q(1);”
- ““responsible officer”, in relation to a community payback order, is to be construed in accordance with section 227C;”
- ““restricted movement requirement” has the meaning given in section 227ZF(1);”
- ““unpaid work or other activity requirement” has the meaning given in section 227I(1), and “level 1 unpaid work or other activity requirement” and “level 2 unpaid work or other activity requirement” are to be construed in accordance with section 227I(5) and (6) respectively;”, and
- (ii) the definitions of the following terms are repealed—
- “appropriate court”
- “community service order”
- “probationer”
- “probation order”
- “probation period”, and
- (b) subsection (3) is repealed.
- 29 Schedules 6 and 7 are repealed.