

EXECUTIVE NOTE

THE CRIMINAL JUSTICE AND LICENSING (SCOTLAND) ACT 2010 (CONSEQUENTIAL AND SUPPLEMENTARY PROVISIONS) ORDER 2011

SSI 2011/25

Section 14 of the Criminal Justice and Licensing (Scotland) Act 2010 inserts new sections 227A to 227ZN into the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”) to establish community payback orders (“CPOs”). CPOs will replace probation orders, community service orders and supervised attendance orders. This Order makes provision for consequential and supplementary amendments to be made as a consequence of the coming into force of community payback orders on 1 February 2011. It also makes savings provisions to ensure that the amendments made in the order do not apply to offences committed before 1 February 2011.

This order is made in exercise of the powers conferred by sections 201(2)(a) and 204(1) and (2) of the Criminal Justice and Licensing (Scotland) Act 2010. The instrument is subject to the affirmative resolution procedure.

Policy Objectives

The amendments are set out in the schedule to the order. Part 1 of the schedule sets out amendments to primary legislation and Part 2 sets out amendments to secondary legislation. The overall intent is to ensure that the legislative framework reflects the creation of CPOs.

Paragraph 1 of the schedule amends the 1995 Act. Sub-paragraph (2) applies where a court is considering imposing an unpaid work or other activity requirement on an offender already subject to one or more existing such requirements under a community payback order (under section 227N of the 1995 Act). The effect of the amendment is to enable the court to also consider an “existing requirement” imposed on the offender under any probation order, supervised attendance order or community service order made under the 1995 Act. This amendment is necessary to ensure that where a community payback order is to be imposed consecutively with a probation order, supervised attendance order or community service order (or orders) the maximum number of hours of unpaid work or other activity that can be imposed as part of the community payback order is 300 less the net balance of actual hours outstanding on existing unpaid work requirements.

Paragraph 1(3) of the schedule amends section 227ZC of the 1995 Act. The effect is to make clear that where a CPO imposed under section 227M is breached, resulting in the offender being imprisoned, the fine which gave rise to the imposition of a CPO is discharged.

Paragraph 2 of the schedule makes a number of amendments to the Sexual Offences Act 2003. In particular, to ensure that persons convicted of a sexual offence who are sentenced to a CPO imposing an offender supervision requirement are required to comply with the sex offender notification requirements for the specified period of the

offender supervision requirement. Other amendments largely replicate current requirements by substituting existing references to probation orders and community service orders with references to CPOs.

Part 2 of the schedule sets out a number of consequential amendments to secondary legislation to remove redundant references to probation orders, supervised attendance orders and community service orders and, where necessary, replace these with a reference to the community payback order.

A business and regulatory impact assessment has not been produced in relation to this Order as it has no direct impact on businesses, charities or the voluntary sector.

Scottish Government
Community Justice Division