
SCOTTISH STATUTORY INSTRUMENTS

2022 No. 94 (C. 7)

OFFENDER MANAGEMENT

The Management of Offenders (Scotland)
Act 2019 (Commencement No. 6 and
Saving Provisions) Regulations 2022

<i>Made</i>	- - - -	<i>16th March 2022</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>18th March 2022</i>
<i>Coming into force</i>	- -	<i>17th May 2022</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred on them by section 63(2) of the Management of Offenders (Scotland) Act 2019(1).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Management of Offenders (Scotland) Act 2019 (Commencement No. 6 and Saving Provisions) Regulations 2022 and come into force on 17 May 2022.

(2) In these Regulations—

“the 1995 Act” means the Criminal Procedure (Scotland) Act 1995(2),

“the 2019 Act” means the Management of Offenders (Scotland) Act 2019,

“community payback order” means an order made under section 227A of the 1995 Act(3),

“drug treatment and testing order” means an order made under section 234B(2) of the 1995 Act(4),

“the appointed day” means the day appointed by regulation 2(1).

Appointed day

2.—(1) Subject to paragraph (3) and regulation 3, the day appointed for the coming into force of the provisions of the 2019 Act specified in paragraph (2) is 17 May 2022.

(1) 2019 asp 14.

(2) 1995 c. 46.

(3) Section 227A was inserted into the 1995 Act by the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), section 14.

(4) Section 234B was inserted into the 1995 Act by the Crime and Disorder Act 1998 (c. 37), section 89.

(2) The provisions are—

- (a) section 1 (requirement when disposing of case),
- (b) section 2 (particular rules regarding disposals),
- (c) section 5 (requirement with licence conditions),
- (d) section 6 (particular rules regarding conditions),
- (e) section 7 (list of the relevant conditions),
- (f) section 10 (arrangements for monitoring system),
- (g) section 11 (designation of person to do monitoring),
- (h) section 12 (standard obligations put on offenders),
- (i) section 13 (deemed breach of disposal or conditions),
- (j) section 14 (documentary evidence at breach hearings),
- (k) section 16 (additional and consequential provisions), in so far as not already in force,
- (l) schedule 1 (court orders and electronic monitoring), in so far as not already in force.

(3) Section 1 of the 2019 Act comes into force only for the purpose of the disposals listed at section 3(2)(b), (c), (d), (g) and (h) of that Act.

Saving provisions

3.—(1) Section 1 of the 2019 Act is of no effect in relation to a disposal listed at section 3(2)(b) of the 2019 Act, a community payback order or a drug treatment and testing order made before the appointed day.

(2) Paragraph 2 of schedule 1 of the 2019 Act is of no effect in relation to a community payback order made before the appointed day.

(3) Paragraph 6 of schedule 1 of the 2019 Act is of no effect in relation to a condition of a sort mentioned in section 7(1)(a) of the 2019 Act imposed before the appointed day.

(4) Paragraph 7 of schedule 1 of the 2019 Act is of no effect in relation to a disposal listed at section 3(2)(b) of the 2019 Act, a community payback order or a drug treatment and testing order made or imposed before the appointed day.

(5) Paragraph 8 of schedule 1 of the 2019 Act is of no effect in relation to a disposal listed at section 3(2)(b) of the 2019 Act, a community payback order or a drug treatment and testing order made before the appointed day.

(6) Paragraph 9 of schedule 1 of the 2019 Act is of no effect in relation to a condition of a sort mentioned in section 7(1)(b) or (c) of the 2019 Act imposed before the appointed day.

St Andrew's House,
Edinburgh
16th March 2022

KEITH BROWN
A member of the Scottish Government

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations bring further provisions of Part 1 and the remainder of schedule 1 of the Management of Offenders (Scotland) Act 2019 (“the 2019 Act”) into force. Part 1 of the 2019 Act introduces a new regime for the electronic monitoring (“EM”) of court disposals and licence conditions. Schedule 1 of the 2019 Act amends the law relating to Community Payback Orders (“CPOs”) to enable the imposition of a restricted movement requirement when the CPO is first imposed on an individual. Schedule 1 also repeals the existing law on EM which is no longer required following the introduction of the new EM regime in Part 1 of the 2019 Act.

Regulation 2(1) provides that, subject to regulations 2(3) and 3, the provisions of the 2019 Act listed in regulation 2(2) will commence on 17 May 2022 (“the appointed day”).

Regulation 2(3) provides that section 1 of the 2019 Act is only commenced in relation to:

- a restriction of liberty order (“RLO”) made or varied under section 245A of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”),
- a restricted movement requirement (“RMR”) imposed or varied by virtue of section 234CA(1) of the 1995 Act, in relation to a drug treatment and testing order (“DTTO”) within the meaning of section 234B(2) of that Act or imposed or varied by virtue of section 227A(2)(j) of the 1995 Act, in relation to a community payback order (“CPO”) under section 227A(1) of that Act, and
- the imposition of bail conditions under section 24(1) of the 1995 Act or the variation of such conditions under various sections of that Act.

Regulation 3 makes saving provision in relation to the commencement of certain provisions of Part 1 and schedule 1 of the 2019 Act.

Regulation 3(1) provides that section 1 of the 2019 Act has no effect in relation to a RLO or a CPO made before the appointed day. This means that the courts will only be able to impose an EM requirement under the 2019 Act on a RLO, or on a RMR imposed as part of a CPO, made on or after the appointed day. Regulation 3(1) also provides that it shall have no effect in relation to a DTTO made before the appointed day. This means that the court may only impose an EM requirement under the 2019 Act alongside a RMR imposed as part of a DTTO made on or after the appointed day.

Regulation 3(2) provides that the amendments made by paragraph 2 of schedule 1 of the 2019 Act (to enable a restricted movement requirement to form part of a CPO when it is first imposed) will have no effect in relation to a CPO imposed by the court prior to the appointed day. A CPO imposed by the court prior to the appointed day will continue to be subject to the existing law on CPOs until the expiry of that CPO.

Regulation 3(3) provides that the amendments made by paragraph 6 of schedule 1 of the 2019 Act (to repeal the existing law on the EM of curfew conditions) have no effect in relation to a curfew condition imposed as part of a home detention curfew licence by the Scottish Ministers prior to the appointed day. Before the appointed day, EM of compliance with curfew condition imposed as part of a home detention curfew licence is a requirement. Curfew conditions imposed prior to the appointed day will therefore remain in force and will continue to be subject to the existing law on EM. If the curfew condition is varied then it will become subject to the new law on EM.

Regulation 3(4) provides that the amendments made by paragraph 7 of schedule 1 of the 2019 Act (to repeal the existing law on EM in the 1995 Act in relation to RLOs and RMRs imposed as part of a CPO, and to make amendments to the provisions in that Act in relation to RLOs, DTTOs and

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CPOs) have no effect in relation to a RLO, DTTO or CPO made by the court prior to the appointed day. This means the EM of RLOs and RMRs in CPOs and DTTOs made before the appointed day will remain in effect and those orders will continue to be subject to the existing law on EM.

Regulation 3(5) provides that the amendment made by paragraph 8 of schedule 1 of the 2019 Act (to repeal the reference to the existing law on EM in the 1995 Act as that was inserted by the Crime and Punishment (Scotland) Act 1997) has no effect in relation to a RLO, a CPO or a DTTO made by the court before the appointed day. In addition to the saving provision at regulation 3(4) this preserves the current system of EM of an existing RLO, and RMRs in a CPO or DTTO, with those orders continuing to be subject to the existing law on EM.

Regulation 3(6) provides that the amendment made by paragraph 9 of schedule 1 of the 2019 Act (to repeal the existing law on EM in the Criminal Justice (Scotland) Act 2003 (“the 2003 Act”)) has no effect in relation to a licence condition imposed on an individual released on licence under section 12(1) of the 1993 Act or section 22 of the Prisons (Scotland) Act 1989 prior to the appointed day. This provision will ensure that a remote monitoring condition imposed under section 40 of the 2003 Act prior to the appointed day will remain in force until that condition is varied, revoked or otherwise expires. Where a licence imposed before the appointed day is varied after the appointed day, it will be possible for a condition subject to the EM legislation in force before the appointed day (section 40 of the 2003 Act) to be switched to being subject to EM under the 2019 Act. It will also be possible to vary such licences so as to add a condition which can be made subject to EM under the 2019 Act.

NOTE AS TO EARLIER COMMENCEMENT REGULATIONS

(This note is not part of the Regulations)

The following provisions of the Management of Offenders (Scotland) Act 2019 have been brought into force by commencement Regulations made before the date of these Regulations.

<i>Provision</i>	<i>Date of Commencement</i>	<i>Instrument No.</i>
Section 3	1 October 2020	S.S.I. 2020/283
Section 4	1 October 2020	S.S.I. 2020/283
Section 8	1 October 2020	S.S.I. 2020/283
Section 9	1 October 2020	S.S.I. 2020/283
Section 15	1 October 2020	S.S.I. 2020/283
Section 16(1) (in part)	11 October 2019	S.S.I. 2019/309
Section 17	30 November 2020	S.S.I. 2020/245
Section 18	30 November 2020	S.S.I. 2020/245
Section 19	30 November 2020	S.S.I. 2020/245
Section 20	30 November 2020	S.S.I. 2020/245
Section 21	30 November 2020	S.S.I. 2020/245
Section 22	30 November 2020	S.S.I. 2020/245
Section 23	30 November 2020	S.S.I. 2020/245
Section 24	30 November 2020	S.S.I. 2020/245
Section 25	30 November 2020	S.S.I. 2020/245

<i>Provision</i>	<i>Date of Commencement</i>	<i>Instrument No.</i>
Section 26	30 November 2020	S.S.I. 2020/245
Section 27	30 November 2020	S.S.I. 2020/245
Section 28	30 November 2020	S.S.I. 2020/245
Section 29	30 November 2020	S.S.I. 2020/245
Section 30	30 November 2020	S.S.I. 2020/245
Section 31	30 November 2020	S.S.I. 2020/245
Section 32	21 December 2019	S.S.I. 2019/413
Section 33	30 November 2020	S.S.I. 2020/245
Section 34	30 November 2020	S.S.I. 2020/245
Section 35	30 November 2020	S.S.I. 2020/245
Section 36	30 November 2020	S.S.I. 2020/245
Section 37	30 November 2020	S.S.I. 2020/245
Section 38	30 November 2020	S.S.I. 2020/245
Section 39	21 December 2019	S.S.I. 2019/413
Section 40	1 October 2020	S.S.I. 2020/283
Section 41	1 October 2020	S.S.I. 2020/283
Section 42	1 October 2020	S.S.I. 2020/283
Section 43	1 October 2020	S.S.I. 2020/283
Section 44	31 December 2019	S.S.I. 2019/417
Section 45	1 October 2020	S.S.I. 2020/283
Section 46	1 October 2020	S.S.I. 2020/283
Section 47	1 October 2020	S.S.I. 2020/283
Section 48	11 October 2019	S.S.I. 2019/309
Section 49	11 October 2019	S.S.I. 2019/309
Section 50(1), (2) and (4)	11 October 2019	S.S.I. 2019/309
Section 50(3)	1 October 2020	S.S.I. 2020/283
Section 52	1 October 2020	S.S.I. 2020/283
Section 53(1) and (3)(a)	11 October 2019	S.S.I. 2019/309
Section 53(2) and (3)(b)	1 October 2020	S.S.I. 2020/283
Section 54	1 October 2020	S.S.I. 2020/283
Section 55	11 October 2019	S.S.I. 2019/309
Section 56	11 October 2019	S.S.I. 2019/309
Section 57	11 October 2019	S.S.I. 2019/309
Section 59	11 October 2019	S.S.I. 2019/309

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<i>Provision</i>	<i>Date of Commencement</i>	<i>Instrument No.</i>
Section 60	11 October 2019	S.S.I. 2019/309
Section 61	11 October 2019	S.S.I. 2019/309
Schedule 1, paragraph 1	11 October 2019	S.S.I. 2019/309
Schedule 1, paragraph 3	11 October 2019	S.S.I. 2019/309
Schedule 1, paragraph 4	11 October 2019	S.S.I. 2019/309
Schedule 1, paragraph 5	11 October 2019	S.S.I. 2019/309
Schedule 2	30 November 2020	S.S.I. 2020/245