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Changes to legislation: There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010, SCHEDULE 2. (See end of Document for details)

SCHEDULE 2

(introduced by section 1(2))

COMMUNITY PAYBACK ORDERS: CONSEQUENTIAL MODIFICATIONS

VALID FROM 01/02/2011

PART 1

THE 1995 ACT

The 1995 Act

- 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- 2 In section 52H(3) (early termination of assessment order), the following are repealed—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- 3 In section 52R(3) (termination of treatment order), the following are repealed—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- (a) in subsection (1), paragraphs (d) and (e) are repealed, and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),”.

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- 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)—
 (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—

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“(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,

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Changes to legislation: *There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010, SCHEDULE 2. (See end of Document for details)*

- (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
- (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

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	(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.
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

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	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.

PART 2

OTHER ENACTMENTS

VALID FROM 01/02/2011	
<i>The Firearms Act 1968 (c.27)</i>	
30	<p>(1) The Firearms Act 1968 is amended as follows.</p> <p>(2) In section 21(3ZA) (possession of firearms by persons previously convicted of crime), for paragraph (b) substitute— “(b) a community payback order under section 227A of the Criminal Procedure (Scotland) Act 1995 (c.46).”.</p> <p>(3) In section 52(1A) (forfeiture and disposal of firearms: cancellation of certificate by convicting court), for paragraph (b) substitute— “(b) a community payback order under section 227A of the Criminal Procedure (Scotland) Act 1995 (c.46).”.</p>

VALID FROM 01/02/2011	
<i>The Social Work (Scotland) Act 1968 (c.49)</i>	
31	<p>(1) The Social Work (Scotland) Act 1968 is amended as follows.</p> <p>(2) In section 27 (supervision and care of persons put on probation or released from prisons etc.), in subsection (1)(b)— (a) in paragraph (iii), for the words from “community service order” to the end substitute “community payback order imposed under section 227A or 227M of the Criminal Procedure (Scotland) Act 1995 imposing an unpaid work or other activity requirement”, and (b) sub-paragraphs (iv) and (va) are repealed.</p> <p>(3) In section 86(3) (adjustments between authority providing accommodation etc. and authority of area of residence), after “supervision order” insert “ , community</p>

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Changes to legislation: There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010, SCHEDULE 2. (See end of Document for details)

payback order under section 227A of the Criminal Procedure (Scotland) Act 1995,
”.

VALID FROM 01/02/2011

The Rehabilitation of Offenders Act 1974 (c.53)

- 32 (1) The Rehabilitation of Offenders Act 1974 is amended as follows.
- (2) In section 5(4A)(rehabilitation periods for particular sentences), the words “a probation order or” are repealed.
- (3) In section 6(3)(the rehabilitation period applicable to a conviction), the following are repealed—
- (a) the words “or a probation order was made”,
 - (b) the words “or a breach of the order”, and
 - (c) the words “or probation order”.

VALID FROM 01/02/2011

The Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c.55)

- 33 In Schedule 1 to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1980, in Part 2 (ineligibility for and disqualification and excusal from jury service), in paragraph (bb)—
- (a) for sub-paragraph (i) substitute—
 - “(i) a community payback order under section 227A of the Criminal Procedure (Scotland) Act 1995 (c.46);”, and
 - (b) sub-paragraph (iii) is repealed.

VALID FROM 01/02/2011

The Local Government and Planning (Scotland) Act 1982 (c.43)

- 34 In section 24 of the Local Government and Planning (Scotland) Act 1982 (councils' functions in relation to the provision of gardening assistance for the disabled and the elderly), in subsection (3), for the words from “instruction” to “that Act” substitute “determination that may be made or instruction that may be given, for the purposes of an unpaid work or other activity requirement imposed in a community payback order under section 227A of the Criminal Procedure (Scotland) Act 1995 (c.46), by the responsible officer in relation to the order, ”.

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VALID FROM 01/02/2011

The 1982 Act

- 35 (1) The 1982 Act is amended as follows.
- (2) In section 49(6) (dangerous and annoying creatures), the words “or makes a probation order in relation to him” are repealed.
- (3) In section 58(3) (convicted thief in possession)—
- (a) the words “or makes a probation order in relation to him” are repealed, and
 - (b) for the words from “discharged absolutely,” to the end substitute “discharged absolutely.”

VALID FROM 01/02/2011

The Foster Children (Scotland) Act 1984 (c.56)

- 36 In section 2 of the Foster Children (Scotland) Act 1984 (exceptions to section 1), in subsection (3), for “probation order” substitute “community payback order under section 227A of the Criminal Procedure (Scotland) Act 1995 (c.46)”.

VALID FROM 01/02/2011

The Road Traffic Offenders Act 1988 (c.53)

- 37 In section 46(3)(b) of the Road Traffic Offenders Act 1988 (combination of disqualification and endorsement with probation orders and orders for discharge), the words “section 228 (probation) or” are repealed.

The Jobseekers Act 1995 (c.18)

- 38 In section 20D(5) of the Jobseekers Act 1995 (as inserted by section 25(2) of the Welfare Reform Act 2009 (c.24) (jobseeker's allowance: sanctions for violent conduct etc. in connection with claim)), the words “or a court in Scotland makes a probation order” are repealed.

Commencement Information

- II** Sch. 2 para. 38 coming into force in accordance with [S.S.I. 2010/413](#), [art. 2](#), [Sch.](#) (with [art. 3](#))

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VALID FROM 01/02/2011

The Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c.40)

- 39 In Schedule 3 to the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (transitional provisions, transitory modifications and savings), in Part 2, paragraph 13 is repealed.

VALID FROM 01/02/2011

The Proceeds of Crime (Scotland) Act 1995 (c.43)

- 40 (1) The Proceeds of Crime (Scotland) Act 1995 is amended as follows.
- (2) In section 25(9) (recall or variation of suspended forfeiture order), the words “probation order or” are repealed.
- (3) In section 26(9) (property wrongfully forfeited: return or compensation), the words “probation order or” are repealed.

VALID FROM 01/02/2011

The Crime and Punishment (Scotland) Act 1997 (c.48)

- 41 In the Crime and Punishment (Scotland) Act 1997, the following provisions are repealed—
- (a) section 26 (evidence concerning certain orders), and
- (b) in Schedule 1 (minor and consequential amendments), in paragraph 21, sub-paragraphs (27) to (29).

VALID FROM 01/02/2011

The Crime and Disorder Act 1998 (c.37)

- 42 In the Crime and Disorder Act 1998, in Schedule 6 (drug treatment and testing orders: amendment of the 1995 Act), in Part 1, paragraphs 1 and 2 are repealed.

VALID FROM 01/02/2011

The Powers of Criminal Courts (Sentencing) Act 2000 (c.6)

- 43 In Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (consequential amendments), paragraphs 176 to 178 are repealed.

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VALID FROM 01/02/2011

The Criminal Justice and Court Services Act 2000 (c.43)

- 44 (1) Schedule 7 to the Criminal Justice and Court Services Act 2000 (minor and consequential amendments) is amended as follows.
- (2) In paragraph 4(2), in the entry relating to the Criminal Procedure (Scotland) Act 1995, for “sections 209(3)(a) and 234(1)(a)” substitute “section 209(3)(a)”.
- (3) Paragraphs 122 to 125 are repealed.

VALID FROM 01/02/2011

The Social Security Fraud Act 2001 (c.11)

- 45 (1) The Social Security Fraud Act 2001 is amended as follows.
- (2) In section 6C(5)(b)(i) (provisions supplementary to section 6B), the words “or a court in Scotland makes a probation order” are repealed.
- (3) In section 7(9)(b) (loss of benefit for commission of benefit offences), the words “or a court in Scotland makes a probation order” are repealed.

VALID FROM 01/02/2011

The Justice (Northern Ireland) Act 2002 (c.26)

- 46 In Schedule 4 to the Justice (Northern Ireland) Act 2002 (functions of justices of the peace), paragraph 37 is repealed.

VALID FROM 01/02/2011

The Criminal Justice (Scotland) Act 2003 (asp 7)

- 47 (1) The Criminal Justice (Scotland) Act 2003 is amended as follows.
- (2) In section 42 (drugs courts)—
- (a) in subsection (4)—
- (i) for “probationer with the requirements of a probation order” substitute “community payback order”,
- (ii) in paragraph (b), for the words from “make” to “work” substitute “in the case of a failure to comply with the requirements of a drug treatment and testing order, make a community payback order imposing a level 1 unpaid work or other activity requirement, so however that the total hours of unpaid work or other activity”, and
- (iii) for “probation order” where those words second occur substitute “community payback order”,

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- (b) in subsection (6), for paragraph (b) substitute—
“(b) alleged at—
(i) a progress review carried out by such a court in relation to a community payback order; or
(ii) a diet of such a court to which an offender has been cited under section 227ZC(2) of that Act (breach of community payback order),
that the offender has failed to comply with a requirement imposed by a community payback order,”
- (c) in subsection (7)—
(i) the words “or probationer” are repealed, and
(ii) for “232” substitute “ 227ZC ”,
- (d) for subsection (9) substitute—
“(9) If a community payback order is revoked under section 227ZC(7) (b) of the 1995 Act, the court (whether or not a drugs court) must, in dealing with the offender by virtue of that section, take into account any sentence which has been imposed under paragraph (a) of subsection (4) of this section in relation to a failure to comply with the community payback order.”
- (e) in subsection (10)—
(i) insert at the appropriate places—
““community payback order” means an order imposed under section 227A of the 1995 Act;”
““level 1 unpaid work or other activity requirement” has the meaning given in section 227I(5) of the 1995 Act;”,
and
(ii) the definition of “probation order” is repealed, and
- (f) in subsection (11), paragraphs (a) and (b) are repealed.
- (3) Section 46 (requirement for remote monitoring in probation order) is repealed.
- (4) In section 50 (amendments in relation to certain non-custodial sentences), subsections (1), (2) and (4) are repealed.
- (5) In section 60 (unified citation provisions)—
(a) in subsection (1), paragraphs (a), (b), (e) and (f) are repealed, and
(b) subsections (3) and (4) are repealed.

VALID FROM 01/02/2011

The Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13)

48

In the Mental Health (Care and Treatment) (Scotland) Act 2003, the following provisions are repealed—

- (a) section 135 (amendment of 1995 Act: probation for treatment of mental disorder), and

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- (b) in schedule 4 (minor and consequential amendments), in paragraph 8, sub-paragraph (15).

VALID FROM 01/02/2011

The Criminal Justice Act 2003 (c.44)

- 49 In Schedule 32 to the Criminal Justice Act 2003 (amendments relating to sentencing), paragraphs 69 to 72 are repealed.

VALID FROM 01/02/2011

The Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8)

- 50 In the Antisocial Behaviour etc. (Scotland) Act 2004, the following provisions are repealed—
- (a) section 120 (community reparation orders), and
 - (b) in schedule 4 (minor and consequential amendments), in paragraph 5, sub-paragraphs (3), (5), (6) and (11).

VALID FROM 01/02/2011

The Management of Offenders etc. (Scotland) Act 2005 (asp 14)

- 51 (1) The Management of Offenders etc. (Scotland) Act 2005 is amended as follows.
- (2) In section 10 (arrangements for assessing and managing risks posed by certain offenders), in subsection (1)(b), for sub-paragraph (i) substitute—
- “(i) is subject to a community payback order imposed under section 227A of the Criminal Procedure (Scotland) Act 1995 (c.46) imposing an offender supervision requirement (within the meaning given by section 227G(1) of that Act) whether alone or along with any other requirement, or”.
- (3) Section 12 (probation progress review) is repealed.

VALID FROM 01/02/2011

The Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6)

- 52 In the Criminal Proceedings etc. (Reform) (Scotland) Act 2007, the following provisions are repealed—
- (a) in section 49 (compensation orders), subsection (4),
 - (b) section 57 (probation and community service orders), and

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Changes to legislation: There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010, SCHEDULE 2. (See end of Document for details)

(c) in paragraph 26 of the schedule (modification of enactments), subparagraphs (l) and (n).

VALID FROM 01/02/2011

The Criminal Justice and Immigration Act 2008 (c.4)

53

In Part 1 of Schedule 4 to the Criminal Justice and Immigration Act 2008 (youth rehabilitation orders: consequential amendments), paragraphs 43 to 46 are repealed.

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