
EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made in consequence of the Criminal Justice and Licensing (Scotland) Act 2010 (“the 2010 Act”). The Order has UK wide extent, except as provided for in paragraphs (2) to (6) of article 2.

Article 4 contains savings and transitional provisions.

The Schedule contains modifications of primary and secondary legislation. Part 1 of the Schedule amends the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”) and the Criminal Justice (Scotland) Act 2003 (“the 2003 Act”) in consequence of section 82 of the 2010 Act.

Section 82(1) of the 2010 Act inserts new section 19C into the 1995 Act, which sets out the general purposes for which relevant physical data, samples and information derived from samples which fall within the scope of new section 19C(1) can be used. Paragraph 1(a) of the Schedule amends new section 19C(1)(a) and (b) to clarify that the references to any relevant physical data, sample or any information derived from a sample which is taken or provided under section 18 of the 1995 Act includes any relevant physical data, sample or information derived from a sample which is taken or provided by virtue of paragraph 20 of Schedule 8 to the Terrorism Act 2000. Paragraph 20 of Schedule 8 to the Terrorism Act 2000 applies section 18 of the 1995 Act as modified to persons who are detained under Schedule 7 to or section 41 of the Terrorism Act 2000 at a police station in Scotland as it applies to a person arrested or a person detained under section 14 of the 1995 Act. Paragraph 1(b) of the Schedule extends new section 19C(2) to allow relevant physical data, samples and information derived from a sample to be used in the interests of national security and for the purposes of a terrorist investigation.

Section 82(2) of the 2010 Act amends section 56 of the 2003 Act, which makes provision in respect of the retention and use of relevant physical data, samples and information derived from samples which are given voluntarily. Paragraph 2 of the Schedule amends section 56 of the 2003 Act to allow such data, samples and information to be used in the interests of national security and for the purposes of a terrorist investigation.

Part 2 of the Schedule amends the Sexual Offences Act 2003. Section 101(6) of the 2010 Act inserted section 122(1B) into the Sexual Offences Act 2003 to make it an offence to breach a foreign travel order. Paragraph 3(1) of the Schedule extends section 122(1B) of the Sexual Offences Act 2003 to England and Wales and Northern Ireland.

Section 42(3) of the 2010 Act inserted paragraph 44A into Schedule 3 to the Sexual Offences Act 2003 so that a person convicted of the offence of possession of extreme pornography may be made subject to sex offender notification requirements. Paragraph 3(2) extends paragraph 44A of Schedule 3 to the Sexual Offences Act 2003 to England and Wales and Northern Ireland.

Part 3 of the Schedule amends the 1995 Act in consequence of section 14 of the 2010 Act. Section 14 of the 2010 Act amended the 1995 Act by inserting new sections 227A to 227ZN, which set out the framework for a new type of community disposal called a community payback order (“CPO”). CPOs replace probation orders and community service orders.

Paragraph 5 of the Schedule inserts new section 227ZO and Schedule 13 into the 1995 Act. Section 227ZO introduces Schedule 13. Part 1 of inserted Schedule 13 makes provision to allow for the transfer of a CPO to England and Wales. Paragraph 1 applies where the court is considering imposing a CPO under section 227A of the 1995 Act on an offender who resides, or will reside in England and Wales. The court may not impose the order unless: the offender is aged 16 or older; the

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

court is satisfied that arrangements have been or can be made for the offender to comply with the requirements imposed by the CPO in the area in England and Wales where the offender will reside; and that a responsible officer has been or can be appointed.

Paragraph 2 applies where a CPO has been imposed under section 227A of the 1995 Act and the offender proposes to move or has moved to England and Wales. The court must not vary the order to specify the new locality in England and Wales unless: the offender is aged 16 or older; and the court is satisfied as set out in paragraph 1(2)(b). If the court considers that a requirement cannot be complied with it must not vary the order to specify the new locality unless it revokes or discharges that requirement or substitutes another requirement. The court must be satisfied as set out in paragraph 1(2)(b) if it is to make such a variation.

Paragraph 3 applies where the court is considering imposing a CPO by virtue of paragraph 1 or varying a CPO by virtue of paragraph 2. Before imposing or varying the order the court must explain to the offender in ordinary language the requirements of the legislation relating to the corresponding order in England and Wales; the powers of the court in England and Wales under that legislation and Schedule 13 to the 1995 Act; and the Scottish court's powers under the 1995 Act. The court may not impose or vary the order unless the offender has confirmed that the offender understands those matters and is willing to comply.

Paragraph 4 provides that the court may not impose a compensation requirement in a CPO imposed by virtue of paragraph 1, instead the court must impose a compensation order under section 249(1) of the 1995 Act. Where the court varies a CPO by virtue of paragraph 2 and that order imposes a compensation requirement, the court must revoke the compensation requirement and impose a compensation order for the outstanding amount. Before making a compensation order the court must explain to the offender in ordinary language the purpose and effect of the compensation order and the consequences which may follow if the offender fails to comply with it in England and Wales. The court may not make the compensation order unless the offender has confirmed the offender understands those matters and is willing to comply.

Paragraph 5 applies where the court imposes a CPO by virtue of paragraph 1 or varies a CPO by virtue of paragraph 2. In the order the court must: specify the area where the offender resides or will reside; specify for each requirement what the court considers is an equivalent requirement of a corresponding order in England and Wales; and where the order imposes a restricted movement requirement and the equivalent requirement would impose electronic monitoring, specify the person responsible for monitoring compliance with that requirement.

Paragraph 6 applies where the court imposes a CPO by virtue of paragraph 1 or varies a CPO by virtue of paragraph 2. The order has effect in England and Wales as if it were a corresponding order made by a court there.

Paragraph 6(3) provides that the court in England and Wales may exercise any power in relation to the order which it could exercise in relation to a corresponding order, apart from: a power to discharge or revoke the order (unless the offender is convicted of a further offence and a custodial sentence imposed); a power to deal with the offender for the original offence as if the order had not been imposed; substitute a greater number of hours of unpaid work than the court which imposed the order could have specified; and substitute a longer period in a restricted movement requirement than the court which imposed the order could have specified.

Paragraph 6(4) to (11) makes provision for the home court to refer a breach of the order to the appropriate Scottish court; and to refer the order to the appropriate Scottish court where it would be in the interests of justice to discharge the order or revoke the order and deal with the offender as mentioned in sub-paragraph (3)(b).

Part 2 of inserted Schedule 13 makes almost identical provision in relation to offenders who reside or will reside in Northern Ireland, with a number of necessary modifications.

Status: *This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

Parts 4 and 5 of the Schedule make a number of consequential amendments to update references in both primary and secondary legislation to reflect the introduction of the new community payback order.