



Enforcement of adult community-based orders between Scotland & England/Wales

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Background

This guidance has been produced to support Probation Service court teams and Justice Social Work teams in the cross border enforcement of community-based orders between Scotland & England/Wales. It has been produced by a working group, including JCS, HMCTS, SCTS, the Probation Service, Social Work Scotland and Scottish Government, to build on previous JCS guidance produced in 2020. The guidance deals with the jurisdictional issues encountered with the breach, revocation and variation of community-based orders imposed in Scotland where the adult offender resides in England or Wales, and those orders imposed in England or Wales where the adult offender resides in Scotland.

Enforcement of Community Payback Orders made in Scotland (resident in England/Wales)

Community Payback Orders treated as community orders

Where a Scottish court imposes a community payback order upon a defendant who resides in England or Wales¹, the order has effect in England or Wales as if it were a corresponding order made by a court in that jurisdiction². The order is therefore treated as if it were a community order under section 200 Sentencing Act 2020 ('the Sentencing Code') but with some matters which can only be dealt with by the Scottish court³.

Breach proceedings

Commencement of proceedings

Any breach proceedings must be commenced by the Probation Service, **not** in Scotland, but before a magistrates' court in England or Wales in the usual manner⁴. This will usually be where the defendant resides as only the home court⁵ has power to deal with the breach. As the home court is a court of summary jurisdiction there is no power to commence proceedings in the Crown Court. Any summons or warrant issued must direct the offender to appear to be brought before the home court. The home court must take a plea to the breach allegation and if denied determine whether the order has been breached.

Referring the case to the Scottish court

Once satisfied that the order has been breached, the home court 'may' refer the case to the appropriate court in Scotland⁶ and require the defendant to attend there; the appropriate court in Scotland is the court which imposed, or last varied, the order⁷. The home court must then certify to the Scottish court that the offender has failed to comply with the requirement/s of the order and must supply any information relating to the case as may be useful to the

¹ Section 227A & paragraph 1(1) Schedule 13, Criminal Procedure (Scotland) Act 1995

² Paragraph 6(2) schedule 13, Criminal Procedure (Scotland) Act 1995

³ Paragraph 6(3), schedule 13, Criminal Procedure (Scotland) Act 1995

⁴ Paragraph 6 & 7, schedule 10 Sentencing Code

⁵ Paragraph 14, schedule 13, Criminal Procedure (Scotland) Act 1995

⁶ Paragraph 6(5) schedule 13, Criminal Procedure (Scotland) Act 1995

⁷ Paragraph 7, schedule 13, Criminal Procedure (Scotland) Act 1995

Scottish court⁸. The Scottish court may then issue a warrant for arrest if the defendant fails to appear, and deal with the matter in the usual manner⁹.

Dealing with the case in the home court

Alternatively, the home court may deal with the case in one of the permissible ways¹⁰. The home court may deal with the case as if it were a community order imposed in England or Wales except that it may **not**:

- discharge or revoke the order,
- resentence the offender as if the order had not been imposed,
- increase the number of unpaid work or other activity hours or restricted movement period above the maximum which the Scottish court could have imposed. An unpaid work requirement may be imposed at Level 1 (up to 100 hours) or Level 2 (100 – 300 hours)¹¹. A restricted movement requirement may be imposed up to 12 months¹².

Variation

The Probation Service, or the offender, may apply in the usual way to vary the order¹³, as if it were a corresponding order¹⁴ imposed in England or Wales i.e. a community order. Any application must be made to the home court, which may deal with the application as if it were a community order imposed in England & Wales in one of the permissible ways¹⁵. The home court may grant the application, or refuse the application, but may not refer the application to the appropriate Scottish Court.

Revocation

An application may be made to the home court¹⁶, by the responsible officer or the offender, to discharge the order, or revoke and resentence¹⁷. The home court may refuse the application. Where the home court is satisfied however that it would be in the interests of justice to discharge or revoke and resentence the order, the effect of the legislation¹⁸ means that the home court cannot do so; it will need to refer the case to the appropriate Scottish Court and may require the offender to appear in Scotland¹⁹. The appropriate Scottish court may then deal with the application in the usual way²⁰.

⁸ Paragraph 6(7), schedule 13, Criminal Procedure (Scotland) Act 1995

⁹ Paragraph 6(6)(b), schedule 13 and section 227ZC Criminal Procedure (Scotland) Act 1995

¹⁰ Paragraph 6(3), schedule 13, Criminal Procedure (Scotland) Act 1995

¹¹ Section 227I Criminal Procedure (Scotland) Act 1995

¹² Sections 227ZF Criminal Procedure (Scotland) Act 1995

¹³ Part 4, schedule, 10 Sentencing Code

¹⁴ Paragraph 6(2), schedule 13, Criminal Procedure (Scotland) Act 1995

¹⁵ Paragraph 6(3), schedule 13, Criminal Procedure (Scotland) Act 1995.

¹⁶ Paragraph 6(4), schedule 13, Criminal Procedure (Scotland) Act 1995

¹⁷ Part 3, schedule 10, Sentencing Code

¹⁸ Paragraphs 6(3)(a), 6(3)(b) & 6(4)(b), schedule 13, Criminal Procedure (Scotland) Act 1995

¹⁹ Paragraph 6(4)(b) & (5), schedule 13, Criminal Procedure (Scotland) Act 1995

²⁰ Paragraph 6(6)(b), schedule 13 & s.227Y Criminal Procedure (Scotland) Act 1995

Commission of further offences

Where the offender is convicted of a further offence, and the home court imposes a custodial sentence in respect of that further offence, the home court may, if it decides it is in the interests of justice²¹, then revoke, but not resentence, the order²². Where an offender appears before another magistrates' court in England & Wales that court will not have the power to revoke the order. As there is no specified mechanism to refer the case to the home court, the court may decide to sit as if the home court to exercise the power²³.

Change of residence

Change within England & Wales

Where a community payback order has been transferred to England & Wales and the offender proposes to change residence, they must first seek permission from the responsible officer in the usual manner, as the order is treated as if a community order²⁴. If the responsible officer refuses the offender may seek permission from the home court²⁵, as this court may exercise any power which it could have exercised were the order a community order.

Transfer to England & Wales

Where a court in Scotland has made a community payback order when the offender resided in Scotland²⁶, and the offender proposes to reside in England and Wales, the court in Scotland will have power to vary the order²⁷. The court must be satisfied that arrangements have or can be made in the area where the offender will reside to comply with the same or broadly similar requirements of the community order, and that arrangements had been or can be made for the appointment of a responsible officer²⁸. The court must specify the area where the offender will reside and the corresponding order and requirements which are the same as or broadly similar to the community payback order.²⁹

Responsible officer powers

As the order is treated as if the corresponding order i.e. a community order in England & Wales, the termination of order provisions will apply³⁰. In summary the order will terminate where the offender has completed the requirements of the order and, where there is a sentence plan, all objectives have been met and no further objectives are necessary.

²¹ Part 5, schedule 10, Sentencing Code

²² Paragraph 6(3)(a) & (b), schedule 13, Criminal Procedure (Scotland) Act 1995

²³ Sections 10 & 30 Courts Act 2003

²⁴ Section 216(2)(a) Sentencing Code

²⁵ Section 216(2)(b) Sentencing Code

²⁶ Section 227A Criminal Procedure (Scotland) Act 1995

²⁷ Paragraph 2, schedule 13, Criminal Procedure (Scotland) Act 1995

²⁸ Paragraphs 1(2)(b) & 2(2) schedule 13, Criminal Procedure (Scotland) Act 1995

²⁹ Paragraph 5(2), schedule 13, Criminal Procedure (Scotland) Act 1995

³⁰ Part 3A, schedule 10, Sentencing Code

With the consent of the offender, the Probation Service may, subject to certain restrictions³¹, in the usual manner, vary the start time and address for a curfew requirement if satisfied that it is appropriate having regard to a change in the offender's circumstances³². The Probation Service issues a notice to this effect to the magistrates' court where the offender resides³³, which has the effect of varying the order³⁴. This is as the order has effect as if it were a community order made in England & Wales³⁵.

Unpaid work completion period

Where a community payback order includes an unpaid work requirement or other activity requirement, on an offender resident in England, this is treated as if it were a corresponding community order³⁶ i.e. a community order with an unpaid work requirement. The community order therefore remains in force, where there are outstanding unpaid work hours until the hours have been completed, even if this is past the order end date³⁷. This overrides the time limits for completion of unpaid work which would otherwise be applicable to a Community Payback Order imposed in Scotland³⁸.

Enforcement of Community Order imposed in England or Wales (resident in Scotland)

Community orders treated as community payback orders

Where a court in England & Wales imposes a community order upon a defendant who resides in Scotland ('a Scottish community order'³⁹), the order is treated as if it were a 'corresponding order' made by a court in Scotland⁴⁰. This means it has effect as if it were a community payback order under s.227 Criminal Procedure (Scotland) Act 1995 but with some matters which can only be dealt with by the courts in England and Wales⁴¹.

Breach

Commencement

Any breach proceedings must be commenced, **not** before a court in England & Wales, but in the usual manner⁴², before the appropriate court⁴³ in Scotland. This should be the home court⁴⁴ i.e. the Sheriff court in the locality where the offender resides as this is the only court

³¹ Paragraph 10A (8) and (9), schedule 9, Sentencing Code

³² Paragraph 10A (2), schedule 9, Sentencing Code

³³ Paragraph 10A (10), schedule 9, & 1(1), schedule 10 Sentencing Code

³⁴ Paragraph 10A (4), schedule 9, Sentencing Code

³⁵ Paragraph 6(2), schedule 13, Criminal Procedure (Scotland) Act 1995

³⁶ Paragraphs 1(1) & 6(2), schedule 13, Criminal Procedure (Scotland) Act 1995

³⁷ Section 220(1)(b) Sentencing Code

³⁸ Section 227L Criminal Procedure (Scotland) Act 1995

³⁹ Paragraph 27, schedule 11, Sentencing Code

⁴⁰ Paragraph 20, Schedule 11, Sentencing Code

⁴¹ Paragraph 21, schedule 11, Sentencing Code

⁴² Section 227ZC Criminal Procedure (Scotland) Act 1995

⁴³ Section 227ZN Criminal Procedure (Scotland) Act 1995

⁴⁴ Paragraph 27, schedule 11, Sentencing Code

which has power to deal with the breach⁴⁵. Any citation or warrant issued by the court must direct the offender to appear or be brought before the home court⁴⁶. The home court then decides, in the usual manner, whether the offender has failed to comply with the order.

Referring the case to the English or Welsh court

Once satisfied that the order has been breached, the home court may require the offender to appear before the court in England & Wales which made, or last amended, the order⁴⁷. The home court must then certify to the court in England & Wales that the offender has failed to comply with the requirement/s of the order and must supply any information relating to the case as may be desirable to that court⁴⁸. The court in England & Wales may then issue a warrant for arrest if the defendant fails to appear⁴⁹. The court may then exercise any power which it could have exercised had the offender resided in England & Wales, subject to ensuring that there are arrangements to deliver in Scotland any requirements it proposes, and subject to some exceptions⁵⁰.

Dealing with the case in the home court

Alternatively, the home court may deal with the case in any way it could have, had the community order been imposed in Scotland⁵¹, except that it may **not**:

- discharge or revoke and resentence the order.
- increase the number of unpaid work hours or specify curfew periods to vary the order above the maximum which the original court could have specified. A court in England & Wales may only impose a maximum of 300 hours unpaid work⁵²; a curfew requirement may not be imposed for longer than 20 hours on any day and not more than 112 hours in any seven day period⁵³.

Variation

The applicable Justice Social Work team or the offender⁵⁴, may apply in the usual way⁵⁵, to vary the order as if it were a corresponding order⁵⁶ imposed in Scotland i.e. a community payback order. Any application must be made to the home court, which may deal with the application as if it were a community payback order imposed in Scotland, subject to exceptions about increasing the number of unpaid work hours or curfew period⁵⁷. The home court may grant the application, or refuse the application, but may not refer the application to the appropriate court in England & Wales.

⁴⁵ Paragraph 21, schedule 11, Sentencing code

⁴⁶ Section 227ZC (2) Criminal Procedure (Scotland) Act 1995

⁴⁷ Paragraph 22(1), schedule 11, Sentencing Code

⁴⁸ Paragraph 23, schedule 11, Sentencing Code

⁴⁹ Paragraph 24(2), schedule 11, Sentencing Code

⁵⁰ Paragraphs 25 & 26, schedule 11, Sentencing Code

⁵¹ Paragraph 21, schedule 11, Sentencing Code

⁵² Paragraph 2, schedule 9, Sentencing Code

⁵³ Paragraph 9, schedule 9, Sentencing Code

⁵⁴ Section 227Y Criminal Procedure (Scotland) Act 1995

⁵⁵ Section 227Z Criminal Procedure (Scotland) Act 1995

⁵⁶ Paragraph 20, schedule 11, Sentencing Code

⁵⁷ Paragraph 21, schedule 11, Sentencing Code

Revocation

An application may be made to the home court, by the responsible officer or the offender, to discharge the order, or revoke and resentence⁵⁸. The home court may refuse the application. Where the home court is satisfied however that it would be in the interests of justice to discharge or revoke and resentence the order, the effect of the legislation means that the home court cannot do so⁵⁹. It will need to refer the case to the court in England & Wales which made, or last amended, the order, and may require the offender to appear there. If the offender does not attend, the court in England & Wales may issue a warrant for the offender's arrest. The court may then exercise any power which it could have exercised had the offender resided in England & Wales, subject to ensuring that there are arrangements to deliver in Scotland any requirements it proposes, and subject to some exceptions⁶⁰.

Commission of further offences

Where the offender is convicted of a further offence, and the home court imposes a custodial sentence in respect of that further offence, the home court may then revoke, but not resentence, the order⁶¹. Where an offender appears before another court in Scotland that court will not have the power to revoke the order. It is open to the offender (or their legal representative) or the responsible officer to apply to the home court to revoke the order. The home court may refuse the application, though may not revoke the order⁶². If the home court decides that the order should be revoked in the interests of justice the home court may require the offender to appear before the court in England & Wales which made or last amended the order⁶³, which may then revoke the order⁶⁴.

Change of residence to Scotland

Where a court in England & Wales has made a community order when the offender resided in England & Wales, and the offender proposes to reside in Scotland, the appropriate court in England & Wales may vary the order to require that the order is supervised in Scotland⁶⁵. The court must be satisfied that arrangements can be made, in the area where the offender will reside, to comply with the requirements of the order. There are currently no arrangements to electronically monitor requirements imposed in England & Wales where the defendant will be residing in Scotland; electronic monitoring would have to be removed were the court to agree to vary the order to be supervised in Scotland. If the court agrees to the change of residence the court must specify the area where the offender will reside, the home court and the corresponding order i.e. a community payback order and requirements⁶⁶.

⁵⁸ Sections 227Y & 227Z Criminal Procedure (Scotland) Act 1995

⁵⁹ Paragraph 21, schedule 11, Sentencing Code

⁶⁰ Paragraphs 25 & 26, schedule 11, Sentencing Code

⁶¹ Paragraph 21, schedule 11, Sentencing Code

⁶² Paragraph 21(3), schedule 11, Sentencing Code

⁶³ Paragraph 22(1)(b), schedule 11, Sentencing Code

⁶⁴ Paragraph 24(3), schedule 11, Sentencing Code

⁶⁵ Paragraph 2, schedule 11, Sentencing Code

⁶⁶ Paragraph 16, schedule 11, Sentencing Code

Enforcement of a Suspended Sentence Order imposed in England & Wales (resident in Scotland)

Overview

Where a court in England & Wales makes a suspended sentence order with one or more requirements, subject to certain restrictions⁶⁷, and the defendant resides in Scotland, it transfers the order to Scotland and makes a Scottish Suspended Sentence Order⁶⁸. Whilst the suspended sentence order is supervised in Scotland⁶⁹ it remains an order imposed by the original court in England & Wales; it is not treated as a corresponding order like community orders. Breach proceedings of, and applications to amend, suspended sentence orders made in England and Wales must be commenced before a Scottish court.

Breach

Where an offender fails to comply with the community requirement of the order, breach proceedings are commenced by the supervising officer providing an information to the home court in Scotland⁷⁰. The home court is the sheriff court having jurisdiction in the locality in which the offender resides or proposes to reside; the home court may issue a citation or a warrant that the offender appears before the home court⁷¹.

The home court may determine whether the offender has failed to comply with the order without reasonable excuse,⁷². If the home court is satisfied that the offender has breached the order, the home court must though refer the case back to the original court in England & Wales⁷³. The court in England & Wales then considers how to deal with the proven breach⁷⁴.

Alternatively, the home court may decide not to consider the breach and refer the matter directly to the original court in England & Wales⁷⁵. The court in England & Wales must then consider whether the order has been breached.

Following a referral, the original court may exercise any of its standard powers in relation to the breach⁷⁶, except where it decides to amend the order. The original court may not impose a requirement unless there are suitable arrangements for the offender's supervision in Scotland⁷⁷.

⁶⁷ Paragraphs 8 and 9, schedule 17, Sentencing Code

⁶⁸ Paragraph 41, schedule 17, Sentencing Code

⁶⁹ Paragraph 12, schedule 17, Sentencing Code

⁷⁰ Paragraph 19, schedule 17, Sentencing Code

⁷¹ Paragraph 19, schedule 17, Sentencing Code

⁷² Paragraph 20(1), schedule 17, Sentencing Code

⁷³ Paragraph 20(2) and (3), schedule 17, Sentencing Code

⁷⁴ Paragraph 20(5), schedule 17, Sentencing Code

⁷⁵ Paragraph 20(1)(b), schedule 17, Sentencing Code

⁷⁶ Paragraph 23, schedule 17, Sentencing Code

⁷⁷ Paragraph 32, schedule 17, Sentencing Code

Commission of further offences

Where an offender is convicted before a magistrates' court or Crown Court for an offence committed during the operational period of a suspended sentence order (and the suspended sentence has not already taken effect) the magistrates' court or Crown Court, as applicable in England and Wales must deal with the breach⁷⁸. Where the defendant is convicted of an offence before the Scottish court, committed during the operational period of a suspended sentence passed in England and Wales (and the suspended sentence has not already taken effect) the Scottish court has no power to deal with the breach. The Scottish court must provide written notice of the conviction to the court in England & Wales which imposed the order⁷⁹. The court in England & Wales may then issue a summons or warrant for the offender to appear to be brought before that court which must then deal with the breach⁸⁰.

Amendment

An application by the offender or supervising officer to amend the order must be made to the home court⁸¹. Where the application is made by the supervising officer, the home court must issue a citation for the offender to appear before the home court, failing which the court may issue a warrant for their arrest⁸² otherwise it will have no power to amend the order. Where the application is to cancel a community requirement, there is no power to issue a citation or a warrant. The offender may also make an amendment application to the home court.

The home court has the same powers as if the original court except that it may not revoke the order where the offender is unwilling to comply with a treatment requirement⁸³; in that excepted case it must refer the matter to the original court. Instead of exercising any of its powers the home court may alternatively decide to refer the application to the original court and require the offender to attend there⁸⁴.

Following a referral, the original court may exercise any of its standard powers in relation to the application⁸⁵, except that it may not impose a requirement unless there are suitable arrangements for the offender's supervision in Scotland⁸⁶.

Relevant officer powers & obligations

Where a court in England & Wales makes an SSSO, the applicable Justice Social Work team has the same roles as the Probation would have had had the defendant resided in England & Wales⁸⁷; the exception is that there will be no power to terminate the supervision period early⁸⁸. The relevant officer has a duty to make any arrangements to promote the

⁷⁸ Paragraphs 11 & 12, schedule 16, Sentencing Code

⁷⁹ Paragraph 18, schedule 16, Sentencing Code

⁸⁰ Paragraphs 11 & 12, schedule 16, Sentencing Code

⁸¹ Paragraph 25, schedule 17, Sentencing Code

⁸² Paragraph 27, schedule 17, Sentencing Code

⁸³ Paragraph 26, schedule 17, Sentencing Code

⁸⁴ Paragraph 29(2), schedule 17, Sentencing Code

⁸⁵ Paragraph 23, schedule 17, Sentencing Code

⁸⁶ Paragraph 32, schedule 17, Sentencing Code

⁸⁷ Paragraph 28, schedule 17, Sentencing Code

⁸⁸ Paragraph 25 (da), schedule 17, Sentencing Code.

offender's compliance with the order⁸⁹. The relevant officer has the power to issue such instructions from time to time that the offender must keep in touch with the relevant officer; the offender has an obligation to comply which is enforceable as if a requirement of the order⁹⁰. The offender also has the duty to obtain permission from the responsible officer before changing residence where there is no residence requirement; this is also enforceable as if a requirement of the order⁹¹. Where the relevant officer grants permission the officer must give notice to the appropriate court which must amend the order⁹²; the appropriate court is the original court, not the home court⁹³. Similarly, the offender may apply to the court for permission⁹⁴ if the relevant officer refuses permission; this will be to the appropriate court⁹⁵ in England & Wales⁹⁶ i.e. the original court.

Transferring supervision to England & Wales

Where an offender applies to the home court, the home court may amend the order to require it to be complied with in England & Wales where the offender resides, or proposes to reside, in England & Wales; if it amends the order the home court must specify the local justice area in which the offender resides or proposes to reside⁹⁷. The home court must so amend the order where the application is made by the supervising officer⁹⁸. If the home court is of the opinion that requirements could not be complied with where the offender resides, or proposes to reside in England & Wales, the home court must cancel those requirements or replace them with requirements with which the offender can comply⁹⁹.

Transferring supervision to Scotland

Where a court in England & Wales has made a suspended sentence order with requirements order when the offender resided in England & Wales, and the offender proposes to reside in Scotland, the appropriate court in England & Wales may vary the order to require that the order is supervised in Scotland. The court must be satisfied that suitable arrangements can be made for the order, as amended, to be supervised in Scotland¹⁰⁰. There are currently no arrangements to electronically monitor requirements imposed in England & Wales where the defendant will be residing in Scotland; electronic monitoring would have to be removed were the court to agree to vary the order to be supervised in Scotland. If the court agrees to the order being supervised in Scotland, the court must specify the local authority area in Scotland and must require that authority to appoint a relevant officer to supervise the order¹⁰¹.

⁸⁹ Section 300 Sentencing Code

⁹⁰ Section 301 Sentencing Code

⁹¹ Section 302 Sentencing Code

⁹² Paragraph 23(3), schedule 16, Sentencing Code

⁹³ Paragraph 25(d), schedule 17, Sentencing Code

⁹⁴ Section 302(4) Sentencing Code

⁹⁵ Paragraph 1(1), schedule 16, Sentencing Code

⁹⁶ Paragraph 25 (b), schedule 17, Sentencing Code

⁹⁷ Paragraph 38(2), schedule 17, Sentencing Code

⁹⁸ Paragraph 35, schedule 17, Sentencing Code

⁹⁹ Paragraphs 36 & 37, schedule 17, Sentencing Code

¹⁰⁰ Paragraph 2, schedule 17, Sentencing Code

¹⁰¹ Paragraphs 11 & 12, schedule 17, Sentencing Code

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