

# Guidance on the imposition of community-based orders in Scotland & England/Wales

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# Part 1 Introduction

## Overview

1. This guidance aims to support Probation Service court staff (England & Wales) and Justice Social Work Teams (Scotland) on potential recommendations within pre-sentence reports/ Justice Social Work reports when dealing with cross border cases in accordance with the Memorandum of Understanding “PSR JSWR Allocation between Scotland & England/Wales”. It outlines the legal provisions on imposition of:
  - Community Orders imposed by courts in England and Wales where the offender resides or will reside in Scotland.
  - Suspended Sentence Orders imposed by courts in England and Wales where the offender resides or will reside in Scotland.
  - Community Payback Orders imposed in Scotland where the defendant resides or will reside in England and Wales.
2. This guidance builds on JCS guidance “UK jurisdiction Imposition and enforcement of adult community-based orders (2020)” and HMPPS guidance “UK Jurisdiction Community penalties (2020)” particularly in light of the Sentencing Act 2020 (“The Sentencing Code”).
3. The principal provisions for:
  - community orders and suspended sentence orders are in the [Sentencing Act 2020](#)
  - community payback orders are in the [Criminal Procedure \(Scotland\) Act 1995](#)

## General sentencing guidance for proceedings in England/Wales

4. You can find further information on requirements which can be imposed by courts in England & Wales within a community or suspended sentence here: [The Imposition of Community and Custodial Sentences Guideline: Requirements Table](#). You can also find further information about other sentences and ancillary orders under the supplementary information tab here: <https://sentencingcouncil.org.uk/guidelines/magistrates/>

## General sentencing guidance for proceedings in Scotland

5. You can find further information on requirements which can be imposed by courts in Scotland within a community payback order here: [Community Payback Order: practice guidance - gov.scot](#). You can also find further information on sentences and orders which can be imposed here: [Sentencing information | Scottish Sentencing Council](#)

## Part 2 Scottish Community Orders made in England and Wales

### Overview

6. A court in England and Wales may **make** a community order<sup>1</sup> where the offender resides in Scotland or will reside in Scotland when the order comes into force<sup>2</sup>. This is referred to as a “Scottish community order”<sup>3</sup>. A court in England and Wales may only make a Scottish community order if the court is satisfied that suitable arrangements can be made for the offender’s supervision in Scotland<sup>4</sup>, and may only include “locally based requirements” within the Scottish community order if arrangements exist for compliance with those requirements. Locally based requirements are: an unpaid work requirement; a rehabilitation activity requirement; a programme requirement; a mental health treatment requirement; a drug rehabilitation requirement; an alcohol treatment requirement; and an electronic compliance monitoring requirement.

### Pre-sentence reports

7. Where a court is considering making a Scottish community order it must order a pre-sentence report unless it decides this is unnecessary<sup>5</sup>. Whilst it remains a matter of judicial discretion, the need to be satisfied that suitable arrangements exist, or will exist, in Scotland, means in practice that a court will usually require the preparation of a pre-sentence report. It is also likely, due to the enquiries to be made, that the court will require an adjournment of several weeks; whether the court decides to adjourn, and for what period is a matter of judicial discretion. Pre-sentence reports for Scottish community orders will usually be prepared by the Justice Social Work team where the defendant resides, or will reside, in Scotland – See Memorandum of understanding – PSR Allocation (Scotland & England/Wales).

## Requirements

### Summary

8. Where an offender resides or will reside in Scotland and a court in England and Wales is minded to impose a community order, the court will first need to consider the appropriate requirements of a community order under the

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<sup>1</sup> Section 220 Sentencing Code

<sup>2</sup> Paragraph 1(1), schedule 11 Sentencing Code

<sup>3</sup> Paragraph 27, schedule 11 Sentencing Code

<sup>4</sup> Paragraph 1(2), schedule 11 Sentencing Code

<sup>5</sup> Section 204 Sentencing Code

Sentencing Code. The court then considers whether there is a corresponding requirement, or are corresponding requirements under the Criminal Procedure (Scotland) Act 1995. This ensures that if the court makes the community order there is a corresponding order in Scotland which can be delivered.

#### Table of requirements

9. There is no legislative provision which precisely equates a requirement of a community order to a requirement of a community payback order. It is therefore a matter of interpretation considering the respective legislative provisions how a requirement “corresponds” with another. The following table considers the requirements which may be included within a Scottish community order and, where applicable, suggests the requirement/s of a Community Payback Order which could be said to correspond.

<b>Sentencing Code requirement/s of Community Order</b>	<b>Corresponding requirement/s of Community Payback Order</b>
<b>Unpaid work requirement</b> (only after the court has received a pre-sentence report if the unpaid work hours are more than 100 <sup>6</sup> )	An <b>unpaid work or other activity requirement</b> <sup>7</sup>
<b>Rehabilitation activity requirement</b> (for at least 6 months) with appointments and activity days.	There is no single direct equivalent, though the same may be achieved by a combination of i) a <b>conduct requirement</b> <sup>8</sup> that “the defendant must for a period of X participate in activities for the principal purpose of rehabilitation, for a maximum of Y days, as instructed by the responsible officer” and ii) an <b>offender supervision requirement</b> <sup>9</sup> for at least 6 months.
<b>Programme requirement</b> (generally unavailable)	Generally, a <b>programme requirement</b> <sup>10</sup> is unavailable (see below), unless the accredited programme is also available in Scotland. There are, at this time, no such programme requirements.
<b>Prohibited activity requirement</b> (only in combination with a <b>rehabilitation activity</b> )	A <b>conduct requirement</b> that “the defendant is prohibited from doing X” (& an

<sup>6</sup> Section 227J(2) & (3) Criminal Procedure (Scotland) Act 1995

<sup>7</sup> Sections 227A & 227I Criminal Procedure (Scotland) Act 1995

<sup>8</sup> Section 227W Criminal Procedure (Scotland) Act 1995

<sup>9</sup> Section 227G Criminal Procedure (Scotland) Act 1995

<sup>10</sup> Section 227P Criminal Procedure (Scotland) Act 1995

<b>requirement</b> to attend appointments for at least 6 months).	<b>offender supervision requirement</b> for at least 6 months).
<b>Residence requirement</b> (only in combination with a <b>rehabilitation activity requirement</b> to attend appointments for at least 6 months)	A <b>residence requirement</b> <sup>11</sup> (& an <b>offender supervision requirement</b> for at least 6 months).
<b>Foreign travel prohibition requirement</b> (only in combination with a <b>rehabilitation activity requirement</b> to attend appointments for at least 6 months).	A combination of i) a <b>conduct requirement</b> that “the defendant must not on X days/for Y period travel to Z” & ii) an <b>offender supervision requirement</b> <sup>12</sup> for at least 6 months.
<b>Mental health treatment requirement</b> (only in combination with a <b>rehabilitation activity requirement</b> to attend appointments for at least 6 months)	A <b>mental health treatment requirement</b> <sup>13</sup> (& an <b>offender supervision requirement</b> for at least 6 months).
<b>Drug rehabilitation activity requirement</b> (only in combination with a <b>rehabilitation activity requirement</b> to attend appointments for at least 6 months)	A <b>drug treatment requirement</b> <sup>14</sup> (& an <b>offender supervision requirement</b> for at least 6 months).
<b>Alcohol treatment requirement</b> (only in combination with a <b>rehabilitation activity requirement</b> to attend appointments for at least 6 months).	<b>An alcohol treatment requirement</b> <sup>15</sup> (& an <b>offender supervision requirement</b> for at least 6 months).
<b>Alcohol abstinence and monitoring requirement</b> (unavailable)	n/a - a Scottish community order may not contain an alcohol abstinence and monitoring requirement <sup>16</sup> .
<b>Electronic compliance monitoring requirement</b>	n/a There are currently no contractual arrangements, and therefore no necessary provision, for electronic monitoring in Scotland of requirements transferred from

<sup>11</sup> Section 227Q Criminal Procedure (Scotland) Act 1995

<sup>12</sup> Section 227G Criminal Procedure (Scotland) Act 1995

<sup>13</sup> Section 227R Criminal Procedure (Scotland) Act 1995

<sup>14</sup> Section 227U Criminal Procedure (Scotland) Act 1995

<sup>15</sup> Section 227V Criminal Procedure (Scotland) Act 1995

<sup>16</sup> Paragraph 4, schedule 11 Sentencing Code

	England/Wales. This may be changed following a national review.
<b>Electronic whereabouts monitoring requirement</b> (unavailable)	n/a – a Scottish community order may not contain an electronic whereabouts monitoring requirement <sup>17</sup> .
<b>Electronically monitored curfew Requirement</b>	n/a There are currently no contractual arrangements, and therefore no necessary provision, for electronic monitoring in Scotland of requirements transferred from England/Wales. This may be changed following a national review.
<b>Electronically monitored exclusion Requirement</b>	n/a There are currently no contractual arrangements, and therefore no necessary provision, for electronic monitoring in Scotland of requirements transferred from England/Wales. This may be changed following a national review.

### Rehabilitation activity requirements

10. A court in England and Wales making a rehabilitation activity requirement (with both activity days and appointments) within a Scottish community order will need to specify both an offender supervision requirement and a suitably drafted conduct requirement<sup>18</sup> as the applicable equivalent for this purpose.

11. A Scottish “offender supervision requirement” is the equivalent in practice of a rehabilitation activity requirement with appointments, though does not include activity days. An offender supervision requirement means that during the specified period, the offender must attend appointments with the responsible officer, or another person determined by the responsible officer, at such time and place as may be determined by the responsible officer, for the purpose of promoting the offender's rehabilitation”<sup>19</sup>.

12. A conduct requirement is a requirement that the offender must during the specified period do or refrain from doing specified things. A suitably worded conduct requirement, to correspond with rehabilitation activity requirement

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<sup>17</sup> Paragraph 4, schedule 11 Sentencing Code

<sup>18</sup> Section 227W Criminal Procedure (Scotland) Act 1995

<sup>19</sup>Section 227G(1) Criminal Procedure (Scotland) Act 1995

activity days, would be that “the defendant must for a period of X months participate in activities for the principal purpose of rehabilitation, for a maximum of X days, as instructed by the responsible officer”.

13. The Scottish equivalent of certain requirements e.g. an alcohol treatment requirement can only be made in Scotland if accompanied by an offender supervision requirement<sup>20</sup>. This means that a court in England or Wales wishing to impose certain requirements within a Scottish community order will need to also impose a rehabilitation activity requirement with appointments.

### Programme Requirements

14. A programme requirement element is not generally speaking transferable to Scotland. This is because a court in England & Wales may only make a programme requirement in relation to accredited programmes, that is to say accredited by an accreditation body. Orders will only be transferable to Scotland where the corresponding Scottish accreditation body has accredited the equivalent programme that the court wishes transferred to Scotland. At this time, there are no such requirements.

## Making the order

### Contents of the order

15. Where a court in England and Wales makes a Scottish community order the court must specify:
  - the corresponding order (and impliedly the applicable requirements); this must be the equivalent of a community order which may be made by a court in Scotland<sup>21</sup>. The Scottish Community order is treated as if it were an order made by a court in Scotland, subject to restrictions about amendment and revocation<sup>22</sup>. The court may therefore, if satisfied a community order is appropriate decide to announce that it is:
    - **making** a Scottish community order with [X] requirements
    - **transferring** the order to Scotland;
    - **specifying** that the corresponding Scottish order is a Community Payback Order with [Y] requirements.
  - the locality in Scotland where the offender resides or will reside<sup>23</sup>; this is instead of specifying the home local justice area. This will determine the Justice Social Work team responsible for supervising the order.

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<sup>20</sup>Section 227G(2) Criminal Procedure (Scotland) Act 1995

<sup>21</sup> Paragraph 16(3) & (4)(a), schedule 11 Sentencing Code

<sup>22</sup> Paragraph 20, schedule 11 Sentencing Code

<sup>23</sup> Paragraph 16(1), schedule 11 Sentencing Code

- the appropriate Scottish court for the purposes of any enforcement proceedings. This must be a Sheriff Court in the specified locality<sup>24</sup>.

### Explaining the order

16. Before the court makes a Scottish community order, the court must explain to the defendant<sup>25</sup>:

- the effect of the Scottish Community order being treated as the Community Payback Order; this includes that the offender must keep in touch with the applicable Scottish Justice Social Work team (“local authority officer”)<sup>26</sup> and that failing to do so is enforceable as if it were a requirement imposed by the order<sup>27</sup>.
- the requirements of the Community Payback Order.
- the respective powers of the “the home court”, i.e. the Sheriff Court where the offender resides or will reside when the order is made<sup>28</sup>, and the applicable court in England/Wales. This includes that if the offender fails to comply, the offender will be required to appear before the home court in Scotland which may refer the breach proceedings back to the original court in England & Wales.

### Provision of order copies

17. Where the court makes a Scottish community order, the court in England or Wales must provide a copy<sup>29</sup> of the order to:

- the offender;
- the appropriate Scottish court, with any other case documents which are likely to assist the Scottish court.

18. There is no requirement for the court to provide a copy of the order to the Probation Service as the Probation Service are not the responsible officer<sup>30</sup>. The Sheriff Court to which the order is being transferred will notify the applicable Justice Social Work team of the order.

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<sup>24</sup> Paragraph 16(6), schedule 11 Sentencing Code

<sup>25</sup> Paragraph 15, schedule 11 Sentencing Code

<sup>26</sup> Paragraph 19, schedule 11 Sentencing Code

<sup>27</sup> Paragraph 19(2), schedule 11 Sentencing Code

<sup>28</sup> Paragraph 27, schedule 11 Sentencing Code

<sup>29</sup> Paragraph 17, schedule 11 Sentencing Code

<sup>30</sup> Paragraph 17(4), schedule 11 Sentencing Code

## Part 3 Scottish Suspended Sentence Orders made in England & Wales

### Overview

19. Where a court in England and Wales decides to make a suspended sentence order with one or more requirements (a relevant suspended sentence order<sup>31</sup>) and the offender resides in Scotland, or will reside there when the order comes into force, the court makes a “Scottish Suspended Sentence Order” (SSSO)<sup>32</sup>.
20. By contrast to a Scottish Community Order, schedule 17 Sentencing Code makes no reference to an SSSO being treated as a corresponding order in Scotland. An SSSO therefore remains an order imposed by a court in England and Wales.

### Pre-sentence reports

21. Before imposing an SSSO the court is likely to need a pre-sentence report which is likely to require an adjournment of several weeks; although this remains a matter of judicial discretion. Pre-sentence reports for SSSOs will usually be prepared by the Justice Social Work team where the defendant resides or will reside in Scotland – See Memorandum of understanding – PSR Allocation (Scotland & England/Wales).

### Requirements

22. The court may only impose an SSSO if there are suitable arrangements in place for the offender’s supervision in Scotland<sup>33</sup> and if arrangements exist for compliance with those “locally based requirements”<sup>34</sup>. Locally based requirements are defined as an unpaid work requirement; a rehabilitation activity requirement; a programme requirement; a mental health treatment requirement; a drug rehabilitation requirement; an alcohol treatment requirement; an electronic compliance monitoring requirement.
23. An SSSO may not include an electronic compliance monitoring requirement as there are no suitable arrangements for the offender to comply with electronic monitoring in Scotland. An SSSO is neither, nor treated as, one of the relevant disposals which enable a person to be made subject to an electronic monitoring order in Scotland<sup>35</sup>.

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<sup>31</sup> Paragraph 41, schedule 17 Sentencing Code

<sup>32</sup> Paragraph 41, schedule 17 Sentencing Code

<sup>33</sup> Paragraph 1(2), schedule 17 Sentencing Code

<sup>34</sup> Paragraph 9(2), schedule 17 Sentencing Code

<sup>35</sup> Section 3(2) Management of Offenders (Scotland) Act 2019

24. An SSSO may not include an alcohol abstinence and monitoring requirement, an attendance centre requirement or an electronic whereabouts monitoring requirement<sup>36</sup>. A court making an SSSO may in practice therefore only include requirements in accordance with the “table of requirements” at paragraph 9 above.

## Making the order

25. Where a court in England and Wales makes an SSSO the court must:

- specify the local authority area in Scotland in which the offender resides or will be residing. There is no requirement or power to specify an “offender’s home local justice area”<sup>37</sup>.
- require that local authority to appoint or assign a responsible officer to supervise the order<sup>38</sup>.

26. The court in England and Wales must also provide:

- a copy of the order to the offender.
- a copy of the order, and any other case documents which the court considers to be likely of assistance, to the specified local authority and the “home court”<sup>39</sup>. The home court means the Scottish Sheriff Court having jurisdiction where the offender resides or will reside<sup>40</sup>.
- a copy of the order to specified persons where particular requirements are imposed e.g. to treatment providers.

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<sup>36</sup> Paragraph 8, schedule 17 Sentencing Code

<sup>37</sup> Paragraph 11, schedule 17 Sentencing Code

<sup>38</sup> Paragraph 12, schedule 17 Sentencing Code

<sup>39</sup> Paragraph 13, schedule 17 Sentencing Code

<sup>40</sup> Paragraph 41, schedule 17 Sentencing Code

## Part 4 Community Payback Orders and other relevant disposals made in Scotland

### Overview

27. A court in Scotland may impose a community payback order where the accused resides in England/Wales or will reside in England/Wales when the order comes into force<sup>41</sup>. The order has effect as if it were a corresponding order in England & Wales, namely a community order under the Sentencing Code<sup>42</sup>.
28. A court in Scotland may only make a community payback order if the court is satisfied that arrangements have been made or can be made for:
- the accused to comply with the same or broadly similar requirements imposed by a community order under the Sentencing Code; and
  - the appointment of a responsible officer<sup>43</sup>.
29. A court in Scotland may impose a Restriction of Liberty Orders, Drug Treatment and Testing Orders or Structured Deferred Sentences. These are not transferable outside of Scotland and there are currently no arrangements to deliver these where the accused resides or intends to reside in England/Wales.

### Justice Social Work Reports

30. A Scottish court may not generally impose a community payback order or sentence of imprisonment unless it has obtained, and taken account of, a report about the accused and the offender's circumstances<sup>44</sup>. Whilst it remains a matter of judicial discretion, the need to be satisfied that arrangements exist, or will exist, in England/Wales, means in practice that a court will usually require the preparation of a Justice Social Work Report. It is also likely, due to the enquiries to be made, that the court will require an adjournment of four weeks; whether the court decides to adjourn, and for what period, is a matter of judicial discretion subject to a maximum of 4 weeks, or 8 weeks on cause shown<sup>45</sup>.
31. Justice Social Work reports will usually be prepared by the Probation Service team where the defendant resides, or will reside, in England/Wales– See Memorandum of understanding – JSWR/PSR Allocation (Scotland & England/Wales).

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<sup>41</sup> Paragraph 1(1) Schedule 13 Criminal Procedure (Scotland) Act 1995

<sup>42</sup> Paragraph 6(2) & 7, Schedule 13 Criminal Procedure (Scotland) Act 1995

<sup>43</sup> Paragraph 1(2) Schedule 13 Criminal Procedure (Scotland) Act 1995

<sup>44</sup> Section 227B(4) Criminal Procedure (Scotland) Act 1995

<sup>45</sup> Section 201 Criminal Procedure (Scotland) Act 1995

## Requirements

### Summary

32. Where an accused resides, or will reside, in England/Wales and a court in Scotland is minded to impose a Community Payback Order, the court will first need to consider the appropriate requirements under the Criminal Procedure (Scotland) Act 1995. The court then considers whether the same, or broadly similar requirements, could exist within a community order under the Sentencing Code. This ensures that there is a corresponding order in England/Wales which can be delivered. The JSWR should suggest the requirements that can be supervised as part of the community order.

### Table of requirements

33. There is no legislative provision which precisely equates a requirement of a community payback order to a requirement of a community order. It is therefore a matter of interpretation considering the respective legislative provisions whether a requirement is “the same or broadly similar as” another. The following table considers the requirements which may be included within a community payback order and, where applicable, suggests the requirement/s of a community order which could be said to be the same or broadly similar.

<b>Community Payback Order requirements</b>	<b>Corresponding requirement/s of community order (Sentencing Code)</b>
<b>Offender Supervision requirement<sup>46</sup></b>	<b>Rehabilitation activity requirement with appointments<sup>47</sup></b>
<b>Compensation requirement</b> – this may not be imposed in a community payback order where the order is transferred to England/Wales <sup>48</sup> . The court may impose a compensation order instead <sup>49</sup> .	n/a
<b>Unpaid work or other activity requirement<sup>50</sup></b>	<b>Unpaid work requirement<sup>51</sup></b>

<sup>46</sup> Section 227G Criminal Procedure (Scotland) Act 1995

<sup>47</sup> Paragraph 4, schedule 9 Sentencing Code

<sup>48</sup> Paragraph 4, schedule 13 Criminal Procedure (Scotland) Act 1995

<sup>49</sup> Section 249, Criminal Procedure (Scotland) Act 1995

<sup>50</sup> Section 227I Criminal Procedure (Scotland) Act 1995

<sup>51</sup> Paragraph 1, schedule 9 Sentencing Code

<b>Programme requirement<sup>52</sup></b> (must be combined with an <b>offender supervision requirement</b> )	<b>Programme Requirement<sup>53</sup></b> Generally, a programme requirement is unavailable (see below), unless the accredited programme is also available in England/Wales. There are, at this time, no such programme requirements.
<b>Residence requirement<sup>54</sup></b> (must be combined with an <b>offender supervision requirement</b> ).	<b>Residence Requirement<sup>55</sup></b> (must be combined with a <b>rehabilitation activity requirement</b> to attend appointments)
<b>Mental health treatment requirement<sup>56</sup></b> (must be combined with an <b>offender supervision requirement</b> )	<b>Mental health treatment requirement<sup>57</sup></b> (must be combined with a <b>rehabilitation activity requirement</b> to attend appointments)
<b>Drug treatment requirement<sup>58</sup></b> (must be combined with an <b>offender supervision requirement</b> )	<b>Drug rehabilitation activity requirement<sup>59</sup></b> (must be combined with a <b>rehabilitation activity requirement</b> to attend appointments)
<b>Alcohol treatment requirement<sup>60</sup></b> (must be combined with an <b>offender supervision requirement</b> )	<b>Alcohol treatment requirement<sup>61</sup></b> (must be combined with a <b>rehabilitation activity requirement</b> to attend appointments)
<b>Conduct requirement<sup>62</sup></b> (must be combined with an <b>offender supervision requirement</b> )	There is no direct equivalent of a conduct requirement, however it could be used to replicate a number of other requirements:  <b>Rehabilitation activity requirement</b> with appointments, and to participate in activities for maximum X days, when specified as “the accused must for a period of X months participate in activities for the principal purpose of rehabilitation, for a maximum of X days, as instructed by the responsible officer”.

<sup>52</sup> Section 227P Criminal Procedure (Scotland) Act 1995

<sup>53</sup> Paragraph 6, schedule 9 Sentencing Code

<sup>54</sup> Section 227Q Criminal Procedure (Scotland) Act 1995

<sup>55</sup> Paragraph 13 schedule 9 Sentencing Code

<sup>56</sup> Section 227R Criminal Procedure (Scotland) Act 1995

<sup>57</sup> Paragraph 16, schedule 9 Sentencing Code

<sup>58</sup> Section 227U Criminal Procedure (Scotland) Act 1995

<sup>59</sup> Paragraph 19, schedule 9 Sentencing Code

<sup>60</sup> Section 227V Criminal Procedure (Scotland) Act 1995

<sup>61</sup> Paragraph 23 schedule 9 Sentencing Code

<sup>62</sup> Section 227W Criminal Procedure (Scotland) Act 1995

	<p><b>Foreign travel prohibition requirement</b><sup>63</sup> (must be combined with a <b>rehabilitation activity requirement</b> to attend appointments) when specified as “the defendant must not on X days/for X period travel to X”</p> <p><b>Prohibited activity requirement</b><sup>64</sup> (must be combined with a <b>rehabilitation activity requirement</b> to attend appointments) when specified as “not to do X”.</p>
<p><b>Restricted movement requirement.</b><sup>65</sup></p>	<p>There are currently no arrangements in place for the transfer of electronic monitoring orders from Scotland to England/Wales. This may be changed following a national review.</p>

## Conduct requirements

34. A conduct requirement of community payback order is a requirement that the offender must, during a specified period, do or refrain from doing specified things with a view to securing or promoting good behaviour or preventing further offending. The way in which the conduct requirement is worded, which remains a matter for the court, is fundamental as to which if any requirements of a community order are the same or broadly similar. Depending on the way in which the court decides to word the requirement, a conduct requirement may be the same or broadly similar to a rehabilitation activity requirement to participate in activities, a foreign travel prohibition requirement or a prohibited activity requirement under the Sentencing Code.

## Offender supervision requirement

35. Where a Scottish court imposes a community payback order with certain requirements the court must also impose an offender supervision requirement for at least 6 months. These are: a compensation requirement; a programme requirement; a residence requirement; a mental health treatment requirement; a drug treatment requirement; an alcohol treatment requirement; a conduct requirement; and a restricted movement requirement.

36. The offender supervision requirement means that the accused must attend appointments with the responsible officer, or another person determined by the

<sup>63</sup> Paragraph 15 schedule 9 Sentencing Code

<sup>64</sup> Paragraph 7 schedule 9 Sentencing Code

<sup>65</sup> Section 227ZE Criminal Procedure (Scotland Act 1995)

responsible officer, for the purpose of promoting the accused's rehabilitation. This means that an offender supervision requirement is the same or broadly similar to a rehabilitation activity requirement with **appointments**. As the offender supervision requirement only refers to attending appointments, not participating in activities, it would not be the same or broadly similar to a rehabilitation activity requirement to participate in **activities**. There is no requirement that a rehabilitation activity requirement under the Sentencing Code must include both appointments **and** activities; the requirement may include either or both<sup>66</sup>. An offender supervision requirement with a conduct requirement, worded as proposed above, would however be the same or broadly similar to a rehabilitation activity requirement with appointments **and** activities under the Sentencing Code.

## Unpaid work or other activity

37. An unpaid work or other activity requirement of a community payback order is the same or broadly similar to an unpaid work requirement under the Sentencing Code. Whereas the requirement refers to "other activity" the requirement is still to perform unpaid work, with or without activity as determined by the responsible officer. There is no requirement for it to be combined with a supervision requirement. The minimum number of hours within an unpaid or other activity is 20 hours, whereas the minimum number of hours within an unpaid work requirement under the Sentencing Code is 40 hours. Whilst an unpaid work or other activity requirement made for 20-39 hours would not therefore be the same as an unpaid work requirement under the Sentencing Code, it could be said to be broadly similar. There is therefore no bar to delivering an unpaid work requirement where the order is transferred to England/Wales where the court has made an unpaid or other activity requirement with less than 40 hours.

## Making the order

### Contents of the order

38. Where a Scottish court makes a community payback order and transfers this to England/Wales it must specify:<sup>67</sup>

- the relevant area in which the accused resides or will reside.
- the requirement/s of the community order under the Sentencing Code which the court considers to be the same as or broadly similar to those imposed by the community payback order.

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<sup>66</sup> Paragraph 4(1) schedule 9 Sentencing Code

<sup>67</sup> Paragraph 5, schedule 13 Criminal Procedure (Scotland) Act 1995

- if making a restricted movement requirement with electronic monitoring, the responsible person for the electronic monitoring compliance requirement of the community order.

## Explaining the order

39. The court must explain to the accused, before imposing the community payback order:<sup>68</sup>

- the requirements of the legislation relating to the corresponding order;
- the powers of the home court (the magistrates' court acting for the local justice area in which the accused resides England & Wales<sup>69</sup>); and
- the powers of the Scottish court.

40. The court must not impose the order unless the accused has confirmed that they understand the above and are willing to comply with the requirements of the order.

## Copies of the order

41. The clerk of the court must ensure that a copy of the order, and such other documents and information relating to the case as may be useful, are given to<sup>70</sup>

- the home court.
- the Probation Service team in the area in which the accused resides or will reside.
- where a restricted movement requirement with electronic monitoring is imposed, the person responsible for supervising the electronic monitoring compliance requirement.

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<sup>68</sup> Paragraph 3(2) schedule 13 Criminal Procedure (Scotland) Act 1995

<sup>69</sup> Paragraph 7 schedule 13 Criminal Procedure (Scotland) Act 1995

<sup>70</sup> Paragraph 5(4) schedule 13 Criminal Procedure (Scotland) Act 1995.