

Scotland

1) Judgements and, where applicable, probation decisions entering into the scope of this Framework Decision (Article 2)

a) Member States are asked to describe the judgments and, where applicable, probation decisions, as defined in Article 2, which have to be recognised by a Member State.

In this regard, Member States are asked to make a separated table for **each** judgement and **each** probation decision, entering into the scope of the Framework Decision and indicate for each one the following information.

COMMUNITY PAYBACK ORDER	
Name of the judgement or the probation decision	Community Payback Order Note: Community Payback Order will be implemented late 2010/early 2011 and will replace the current suite of community disposals available in Scotland (probation order, community service order, supervised attendance order)
Classification of this judgement or the probation decision	Alternative sanction
Legal basis of this judgement or the probation decision	Sections 227A - 227ZK of the Criminal Procedure (Scotland) Act 1995 (as inserted by section 14 of the Criminal Justice and Licensing (Scotland) Bill - still to be enacted but this is anticipated to happen autumn 2010)
Definition of this judgement or the probation decision	<p>The court imposes a community payback order as an alternative to custody which will include a number of requirements from a total of 9 available (also imposed by the court). (Note - "the court" is a generic term used in this example for all sentencers - judges in the High Court, sheriffs in the Sheriff Court and justices of the peace and stipendiary magistrates in the JP Courts. Each court has different sentencing powers.).</p> <p>There are certain minimum and maximum limits regarding the period of supervision, number of hours of unpaid work/other activity which may be imposed and the time in which the unpaid work/other activity must be completed etc. These limits are also specified by the court as part of the CPO.</p> <p>There is no custodial element to the CPO and failure to comply with the requirements of the CPO will not necessarily result in custody. There are a number of options available as sanctions for failing to comply with the requirements of the CPO and these are also specified in legislation. The court will decide on the most appropriate sanction.</p>

	Committing another offence while subject to a CPO is not considered a breach of this order and would be dealt with separately by the courts.
Legal Conditions of this judgement or the probation decision	<p>CPO is an alternative to custody which specifies a number of requirements the offender must comply with.</p> <p>The offender must consent to the order by agreeing to comply with the requirements in the order.</p> <p>The CPO may be imposed for between 6 months and 3 years (the minimum and maximum duration of the supervision requirement which must be imposed in all cases except unpaid work/other activity which can be imposed on its own).</p> <p>Unpaid work/other activity requirement may be imposed for any number of hours between 20 and 300. The other activity element of an unpaid work/other activity requirement must not exceed 30% of the total number of hours imposed or 30 hours, whichever is the lower.</p>
Type of probation measures	<p>The CPO can include 9 requirements. The decision on what requirements should be imposed is a matter for the sentencer, following consideration of the facts of the case and the social enquiry report submitted by criminal justice social work. The requirements available are:</p> <ul style="list-style-type: none"> - Offender supervision requirement ; - Compensation requirement ; - Unpaid work/other activity requirement ; - Programme requirement ; - Residence requirement ; - Mental health treatment requirement ; - Drug treatment requirement ; - Alcohol treatment requirement ; - Conduct requirement.
Combination of sanctions or measures	CPO is an alternative to custody and cannot be combined with a period of custody as part of the sentence for a single offence. Legislation does provide for a CPO to be imposed concurrently (for the same offence) with other community disposals - a drug treatment and testing order or a restriction of liberty order - or with a fine.
Authority responsible for taking such a decision	The court (the judge, sheriff or justice of the peace) is responsible for taking all decisions in relation to the imposition of sentence.
Authority responsible for supervising	<p>Local authority criminal justice social work. In the case of unpaid work/other activity, where it is imposed as the only requirement of a CPO, a community service officer is responsible for supervising and ensuring compliance.</p> <p>The authority is designated on the basis of residence (ie the local authority area in which the offender lives or intends to live following sentence). The designated authority can be amended by the court following application from the offender or criminal justice social work due to a change of residence.</p> <p>The local authority designated by the court must nominate a responsible officer within 2 days of receiving a copy of the order. The responsible officer is responsible for:</p> <ul style="list-style-type: none"> - making any arrangements necessary to enable the offender to comply with each of the requirements imposed by the order;

	<ul style="list-style-type: none"> - promoting compliance by the offender with those requirements; - taking such steps as necessary to enforce compliance with the requirements of the order or to vary, revoke or discharge the order. <p>Only the court can vary, revoke or discharge the order but legislation provides for social work to make application to the court for any of these.</p> <p>Detailed responsibilities of the responsible officer are included in "National Outcomes and Standards for Criminal Justice Social Work"</p>
Authority responsible in case of infringement	<ul style="list-style-type: none"> - Criminal Justice Social Work - Procurator Fiscal Service - The Court (usually the sentencing court) <p>The responsible officer (criminal justice social work) will submit a breach report to the court providing details of the offender's failure to comply with the requirements of the CPO.</p> <p>The court (the judge, sheriff or justice of the peace) will decide on the most appropriate action - usually issuing a citation for the offender to appear for a breach hearing or a warrant for the police to apprehend the offender.</p> <p>If the offender admits the breach at the breach hearing, the court decides on the most appropriate sanction and the case is then closed. If the offender denies the breach, a proof hearing is set.</p> <p>The procurator fiscal presents the evidence of the breach at the proof hearing. Criminal justice social work may also be called to give evidence, as will the offender. Following this hearing, the court will decide whether the breach is proved. If the breach is proved, the court will then impose an appropriate sanction, as provided for in legislation.</p> <p>The options available to the court are:</p> <ul style="list-style-type: none"> - To impose a fine ; - To revoke the order and re-sentence the offender. The court may impose any sentence which was available to it at the time the original order was imposed. This may include a period of custody ; - To vary the order so as to impose a new requirement (this can include an electronically monitored restricted movement requirement), vary any requirement already imposed or to revoke or discharge any requirement already imposed; - To imposed a fine and vary the order.

RELEASE ON LICENCE	
Name of the judgement or the probation decision	Release on licence (either Parole or Non-Parole Licence)
Classification of this judgement or the probation decision	Conditional release

Legal basis of this judgement or the probation decision	The provisions relating to early release from a custodial sentence can be found in the Prisoners and Criminal Proceedings (Scotland) Act 1993 . Three classes of prisoners will only be released from prison subject to a release licence which contains certain conditions which must be complied with. These are sex offenders, long term prisoners (+4yr custodial sentence) and life prisoners. The provisions relating specifically to these offenders can be found in sections 1, 1AA and 2 of the 1993 Act
Definition of this judgement or the probation decision	This is effectively a conditional release. This may be following a recommendation from the Parole Board or because the prisoner has reached the automatic early release stage of his sentence. In all cases the Parole Board for Scotland will consider the release and will recommend what conditions should be included in the release licence.
Legal Conditions of this judgement or the probation decision	A person who has been sentenced to 4 years or more in prison may be released at the ½ way point of their sentence on the recommendation of the Parole Board for Scotland or, automatically at the 2/3 stage of their sentence. In both cases, the Parole Board considers reports from criminal justice social work (community) and the relevant prison and also takes account of reports into the prisoners risk of reoffending and any public protection issues. In particularly serious cases, a multi-agency public protection arrangements (MAPPA) will apply and reports from this group will also be considered before a decision is taken on the most appropriate conditions to be imposed.
Type of probation measures	<p>The conditions which may be included in a release licence are not specified in law. It is open to the Parole Board for Scotland to impose any condition it considers appropriate in any particular case. A number of conditions are always included however and these are:</p> <ol style="list-style-type: none"> 1. You shall report forthwith to the officer in charge of the office at local authority criminal justice social work address 2. You shall be under the supervision of name of social worker and local authority, or such other officer to be nominated from time to time by the Director of Social Work of that authority. 3. You shall comply with such requirements as that officer may specify for the purposes of supervision. 4. You shall keep in touch with your supervising officer in accordance with that officer's instructions. 5. You shall inform your supervising officer if you change your place of residence or gain employment or change or lose your job. 6. You shall be of good behaviour and shall keep the peace. 7. You shall not travel outside Great Britain without the prior permission of your supervising officer.
Combination of sanctions or measures	No
Authority responsible for taking such a decision	<p>Parole Board for Scotland (on behalf of Scottish Ministers) is responsible for taking the decision to release and dealing with breach.</p> <p>The Parole Board for Scotland (the Board) is a Tribunal Non-departmental Public Body whose members are appointed by the Scottish Ministers. The Board has a number of statutory functions but operates independently from the Scottish Government. Directions made to Scottish Ministers by the Board about early release of an offender are binding, with the exception of deportation cases and applications for compassionate release where the</p>

	<p>Board will offer advice only.</p> <p>The Board has powers to:</p> <ul style="list-style-type: none"> - direct the release of determinate sentence prisoners serving four years or more and it may also make directions as to the licence conditions of such prisoners; - direct the release of prisoners serving extended sentences where the custodial term is 4 years or more, make directions as to the licence conditions of such prisoners and make directions regarding the licence conditions of extended sentence prisoners where the combined custodial and extension period is 4 years or more; - direct the release on life licence of life prisoners; - recommend the recall to custody of those who were sentenced to a determinate sentence of 4 years imprisonment or more, life sentence prisoners who have been released on parole or life licence and extended sentence prisoners in circumstances where such action is considered to be in the public interest. <p>The Board may direct the Scottish Ministers to re-release any prisoner who has been recalled to custody without a recommendation of the Board or any prisoner who has been recalled with such a recommendation. The cases of life prisoners and extended sentence prisoners who are recalled to custody must be considered by a Tribunal of the Board.</p> <p>The Board advises the Scottish Ministers on additional conditions to be attached to prisoners' release licences.</p> <p>The Board also operates as appellate body in the case of alleged breaches of Home Detention Curfew (HDC) conditions.</p>
Authority responsible for supervising	<p>Local authority criminal justice social work.</p> <p>The authority is designated on the basis of residence (ie the local authority area in which the offender lives or intends to live following sentence). The designated authority can be amended by the court following application from the offender or criminal justice social work due to a change of residence.</p> <p>The supervising social worker is responsible for:</p> <ul style="list-style-type: none"> - making any arrangements necessary to enable the offender to comply with each of the requirements imposed by the order; - promoting compliance by the offender with those requirements; - taking such steps as necessary to enforce compliance with the requirements of the order or to vary, revoke or discharge the order. <p>Failures to comply with the conditions of the licence are sent to Scottish Ministers for further action as appropriate.</p> <p>Detailed responsibilities of the responsible officer are included in "National Outcomes and Standards for Criminal Justice Social Work"</p>
Authority responsible in case of infringement	<p>Criminal Justice Social Work supervise the offender's compliance with their licence conditions. If the offender fails to comply, a report is sent to Scottish Ministers where a decision is taken whether to recall the offender to custody or to submit the report to the Parole Board for Scotland for consideration. The Parole Board may decide to recall the offender to custody but may also decide simply to amend the conditions of the licence.</p> <p>Where an offender is recalled to custody, whether by Scottish Ministers or the Parole Board for Scotland, he will be invited to make representations regarding that recall (effectively invited to appeal against the decision).</p>

2) Probation measures and alternative sanctions (Article 4)

In Article 4 of the Framework Decision types of probation measures and alternative sanctions are stated. Member States are asked to describe the probation measures and alternative sanctions attached to those judgements and probation decisions:

a) In the table below please describe how probation measures and alternative sanctions set out in Article 4.1 are reflected in your domestic law and please give a description of each of them.

Legislation provides for the Parole Board for Scotland to impose any condition it considers appropriate as part of a release licence. As such there is no direct condition to condition comparison which can be made in this situation. Providing that the condition falls within domestic legislation (ie in terms of maximum periods etc) all the conditions referred to in Article 4.1 can be imposed in a release licence and supervised.

Note - the following requirements can be imposed by the court as part of a community payback order - an alternative sanction. All are imposed by the court and supervised by criminal justice social work. Breaches of these requirements are reported to the court by criminal justice social work and the court will then decide on the most appropriate sanction.

Different measures can be imposed as part of a release licence - conditional release. These are detailed in a separate table.

(PLEASE DO NOT EXCEED 1 PAGE PER MEASURE OR ALTERNATIVE SANCTION)	
Probation measures / alternative sanctions	Explanation
Obligation for the sentenced person to inform a specific authority of any change of residence or working place	Residence requirement A residence requirement is a requirement that the offender stay at an address specified by the court. Only the court can amend the requirement to specify another address or to remove the requirement to stay at that address. An offender supervision requirement must be imposed if a residence requirement is being imposed. The period of the resident requirement must not exceed the period of supervision specified - maximum 3 years. Conduct requirement A "conduct requirement" is a requirement that the offender must, during a specified period, do or refrain from doing specified things. This could include the specific requirement to notify changes of address or working place in advance of such changes. A conduct requirement may be imposed if the court considers that the requirement is necessary for securing or promoting good behaviour by the offender, or preventing further offending by the offender. A conduct requirement may be imposed for up to 3 years. It is also a general requirement of the community payback order (CPO) that the offender must notify the responsible officer of any change of address.
Obligation not to enter certain localities, places or defined areas in the issuing or executing	Conduct requirement

State	
Obligation containing limitations on leaving the territory of the executing State	Conduct requirement
Instructions relating to behaviour, residence, education and training, leisure activities, or containing limitations on or modalities of carrying out a professional activity	Conduct requirement; programme requirement; residence requirement;
Obligation to report at specified times to a specific authority	<p>Offender supervision requirement</p> <p>During a period specified in the CPO, the offender must attend appointments with the responsible officer or another person determined by the responsible officer. Times and places are at determined by the responsible officer.</p> <p>An offender supervision requirement must be imposed if the offender is under 18 years of age when the order is imposed or if the court imposes:</p> <ul style="list-style-type: none"> - a compensation requirement, - a programme requirement, - a residence requirement, - a mental health requirement, - a drug treatment requirement, - an alcohol treatment requirement, or - a conduct requirement. <p>An offender supervision requirement must be at least 6 months in duration. The maximum period which may be imposed is 3 years.</p> <p>Failure to comply with the offender supervision requirement would be reported to the court by criminal justice social work. It is then for the court to decide whether the breach is proved and what sanction should be applied.</p>
Obligation to avoid contact with specific persons	Conduct requirement
Obligation to avoid contact with specific objects, which have been used or are likely to be used by the sentenced person with a view to committing a criminal offence	Conduct requirement
Obligation to compensate	<p>Compensation requirement</p> <p>A "compensation requirement" is a requirement that the offender</p>

financially for the prejudice caused by the offence and/or an obligation to provide proof of compliance with such an obligation	<p>must pay compensation for any relevant matter of personal injury, loss, damage or other matter in respect of which a compensation order could be made against the offender favour of a relevant person.</p> <p>Compensation may be made in instalments or as a lump sum.</p> <p>A compensation requirement is imposed by the court. Payments are made to the court and failure to comply with the requirement would result in enforcement action taken by the court.</p>
Obligation to carry out community service	<p>Unpaid work and other activity requirement</p> <p>An "unpaid work or other activity requirement" is, a requirement, imposed by the court, that the offender must undertake unpaid work, or unpaid work and other activity for the number of hours specified by the court. The minimum number of hours which may be specified is 20 hours and the maximum is 300 hours.</p> <p>The responsible officer (criminal justice social work) will determine whether the offender must undertake other activity as well as unpaid work. The nature of the unpaid work and any other activity will also be determined by the responsible officer. Where a decision has been taken for the offender to undertake an other activity as well as unpaid work, the hours allocated to the other activity must not exceed 30% of the total hours specified in the order or 30 hours, whichever is the lesser.</p> <p>A court may not impose an unpaid work or other activity requirement on an offender who is under 16 years of age.</p> <p>It is expected that a period of unpaid work will be completed within 6 months but the court may specify a longer period if it considers this appropriate.</p>
Obligation to cooperate with a probation officer or with a representative of a social service having responsibilities in respect of sentenced persons	<p>Offender supervision requirement</p> <p>See details above in respect of obligation to report at specified times to a specific authority</p>
Obligation to undergo therapeutic treatment or treatment for addiction	<p>Drug treatment requirement; alcohol treatment requirement; mental health treatment requirement</p> <p>This measure depends on the prior consent of the sentenced person.</p>

b) In your domestic law are there any probation measures and alternative sanctions which are not covered by Article 4.1?

- If yes, please define them and provide a description for each of them.

Other probation measures/alternative sanctions existing in your domestic law	Explanation
Electronic monitoring	Electronic monitoring is available as a requirement of a

	<p>community payback order but only as a sanction for breaching the CPO. It cannot be imposed as a requirement by the court at first instance.</p> <p>Electronic monitoring can also be imposed as a condition of a release licence (conditional release) where the Parole Board for Scotland (the release authority) considers such a condition appropriate.</p>
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c) Does your domestic law provide for a specific treatment regarding any category of offences (e.g. sexual offences, domestic violence)?

There are a number of specific programmes in Scotland relating to general offending, sex offending and domestic violence.

3) Electronic monitoring

Does your national law provide for the possibility to use Electronic Monitoring?

Yes.

Is Electronic Monitoring part of the classification provided for in Article 2 of this Framework Decision (suspended sentence, conditional sentence, conditional release or alternative sanction)?

Is Electronic Monitoring considered as an execution modality of imprisonment, if other than conditional release?

Is Electronic Monitoring considered a way of applying a probation measure or as a probation measure in itself?

What are the technical means provided for in your Member State that enables the use of the Electronic Monitoring (e.g. GPS)?

Is Electronic Monitoring dependant on particular conditions?

As detailed above - electronic monitoring can be imposed as a condition of a community payback order (CPO) but only as a sanction for breaching the CPO.

Electronic monitoring can also be imposed as a condition of a release licence in conditional release cases.

Electronic monitoring is used as a sanction for breach of CPO and as a condition of a release licence where considered appropriate. It is also used as part of a restriction of liberty order - another alternative sanction.

Electronic monitoring is used as a means of monitoring compliance with a restricted movement requirement - basically a curfew

Basic RF tagging (using GPRS). Scotland does not use GPS satellite tracking

Electronic monitoring is only used as a sanction for breaching a CPO or as a condition of a release licence.

4) Formalities

Member States are invited to sum up the documents that the national competent authorities need in order to take at national level a judgement and, where applicable, a probation decision (e.g. criminal record, social inquiries, medical expertise).

Still waiting for responses from partner agencies but in the very least Scotland will require the judgement detailing the facts and circumstances of the offence and offender, any social work or probation report prepared prior to the judgement being made, any other reports made in advance of the sentence, eg medical reports etc and details of criminal record. Also needed would be any reports considering the release of the offender from prison on conditional release including risk assessments and previous consideration by the release authority where the application for release was unsuccessful.