

CROSS BORDER TRANSFER OF ORDERS – CRIMINAL JUSTICE ACT 2003

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INTRODUCTION

1. This paper provides guidance on the cross border transfer of two new court supervision orders introduced by the Criminal Justice Act 2003. They are scheduled for introduction in England and Wales on 4 April 2005.
2. Chapter One provides guidance on the cross border transfer to and supervision in Scotland of **Community Orders**. These Orders replace the existing different and separate community based supervision orders that can currently be made in England (eg: Probation Orders known in England as Community Rehabilitation Orders; Community Service Orders known as Community Punishment Orders; Drug Treatment and Testing Orders etc).
3. Chapter Two provides guidance on the cross border transfer to and supervision in Scotland of **Suspended Sentence Orders**. These are prison sentences that are suspended provided the offender adheres to conditional supervision in the community and refrains from further offending.
4. The Criminal Justice Act 2003 introduces two further new orders – **Custody Plus Orders** and **Intermittent Custody Orders** which in due course will also be transferable to Scotland. No timetable for the implementation of Custody Plus Orders in England & Wales has yet been announced. Pilot projects have commenced in ten English areas with regard to Intermittent Custody Orders but it has been agreed for the time being these will not be transferable to Scotland. Guidance in relation to these Orders will be issued in due course prior to enabling their transfer to Scotland. Chapter Three provides, for information only, a brief description of these additional orders.
5. This Paper replaces current Guidance and National Standards on the cross border transfer to Scotland of the existing range of community based supervision orders made by English courts. However, the old Guidance and National Standards will continue to apply to the transfer of (a) all English supervision orders made prior to 4 April 2005 and (b) all English supervision orders made in relation to offences committed prior to 4 April, 2005. Please note existing Guidance and National Standards relating to cross border transfers from Scotland to England remain in force.
6. This Paper provides guidance. It does not purport to give definitive legal interpretation. In case of doubt, legal opinion should be sought.
7. Throughout this guidance, reference to the terms *England* and *English* should be read as encompassing reference to Wales and Welsh and reference to the term *Probation Officer* should be taken to include reference to a social worker or Youth Offender Team officer in relation to offenders under 18 years of age.
8. This Guidance has been discussed with and endorsed by the Home Office and is produced by the Community Justice Services Division, Justice Department, Scottish Executive at St Andrews House, Edinburgh. For further information, please contact Gareth Brown (regarding Community Orders) on 0131-244-4233 email gareth.brown@scotland.gsi.gov.uk ,Christine Thomson (in relation to Suspended Sentence Orders) on 0131-244-4250 or email christine.thomson@scotland.gsi.gov.uk , or Jackie Knox (regarding electronic monitoring) on 0131-244-3662 email jackie.knox@scotland.gsi.gov.uk

CHAPTER 1. COMMUNITY ORDERS

Criminal Justice Act 2003

1.1 A Community Order made by a court in England & Wales may be transferred to a court (normally the sheriff court, even in indictment cases) in Scotland.

1.2 The term “Community Order” may best be regarded as a generic term which refers to any form of court made (adult) community supervision order. This means that in England & Wales there will no longer be individual, distinctive orders as such (ie: no separate “Probation Order” known in England as a “Community Rehabilitation Order”; or “Community Service Order” known as a “Community Punishment Order”; or “Drug Treatment and Testing Order” etc.) What there is instead is a Community Order the nature of which is entirely dependent upon which requirements a court imposes as part of the order. The nature of the Community Order is thus defined by these requirements. A single Community Order may contain any number of different requirements at the same time.

1.3 Before a Community Order may be transferred to Scotland, it has to be transformed into a distinctive, separate order or orders recognisable in Scotland (eg: Probation or Community Service or Drug Treatment and Testing Order etc.) It is desirable this distinctive order should be as close as possible to the nearest equivalent of the English requirement contained in the Community Order.

1.4 There follows a guide to the range of English requirements in Community Orders and their nearest corresponding Scottish orders. However, the transferring English court cannot transfer any of its Community Order requirements for which there is no corresponding provision in Scotland. The transferring court has a wide discretion, however, to cancel any requirements or to substitute or make any other requirement(s) from the list below. This means the transferring court may be able to make any available Scottish order or combination of Scottish orders even where they do not appear to correspond *directly* to the original requirements.

Community Order Requirement

Corresponding Scottish Order

(a) an unpaid work requirement	Community Service Order
(b) an activity requirement	No corresponding order; <i>not transferable</i>
(c) a programme requirement	No corresponding order; <i>not transferable</i>
(d) a mental health treatment requirement	Probation Order with similar additional requirement
(e) a drug rehabilitation requirement	Drug Treatment and Testing Order
(f) an alcohol treatment requirement	Probation Order with similar additional requirement
(g) a supervision requirement	Probation Order (may include extra requirements)
(h) a prohibited activity requirement	Probation Order with similar additional requirement
(i) a curfew requirement	Restriction of Liberty Order
(j) an exclusion requirement	Restriction of Liberty Order
(k) a residence requirement	Probation Order with similar additional requirement
(l) an attendance centre requirement	No corresponding order; <i>not transferable</i>

Notes

Note 1: Where a Community Order is made with both a supervision requirement (g) and an unpaid work requirement (a), then the nearest corresponding order in Scotland is a Probation Order with additional requirement of unpaid (ie: community service) work.

Note 2: Where a Community Order is made with both a supervision requirement (g) and a drug rehabilitation requirement (e), then the nearest corresponding order in Scotland is a Probation Order and a concurrent Drug Treatment and Testing Order.

Note 3: Where a Community Order is made with either a curfew requirement (i) or an exclusion requirement (j), then the norm is that they will be electronically monitored. The corresponding Scottish Order would be a Restriction of Liberty Order. If, rarely, the Community Order is made with either a curfew or exclusion requirement which is not to be electronically monitored, then the corresponding order in Scotland would be a Probation Order with a similar requirement.

Note 4: Where a Community Order is made with both a supervision requirement (g) and either or both a curfew requirement (i) or an exclusion requirement (j), which are to be supervised by means of electronic monitoring, then the transferring court has two options to choose from in determining the nearest corresponding orders in Scotland: either a Probation Order with additional requirement of electronic monitoring or a Probation Order and a concurrent Restriction of Liberty Order.

Note 5: Where a Community Order is made with both a supervision requirement (g) and an electronic monitoring requirement (i or j) and a drug rehabilitation requirement (e), then the transferring court has the following options in determining which are the nearest corresponding Scottish Orders: concurrent Probation, Restriction of Liberty and Drug Treatment and Testing Orders or concurrent Probation and Drug Treatment and Testing Orders (either or both of which may have an additional condition of electronic monitoring) or, most simply, a Probation Order with additional electronic monitoring & drug treatment requirements (though with this option the drug testing & court review element would have to be dropped.)

Note 6: Where a Community Order is made with both a drug rehabilitation requirement (e) and an electronic monitoring requirement (i or j), then there are two options for the nearest Scottish corresponding order: a Drug Treatment and Testing Order with an additional condition of electronic monitoring or a Drug Treatment and Testing Order and a concurrent Restriction of Liberty Order.

*Note 7: Please note activity requirements under (b) above may **not** be accepted as transfers from England & Wales, since there is no corresponding Scottish order. This prohibition applies equally to the Scottish pilot areas trying out the new Scottish Community Reparation Orders since there is no equivalence between English requirements (given in days) and Scottish orders (given in hours).*

Note 8: It is possible for a court in England & Wales to make a Community Order with a programme requirement (c). However, the programme requirement element is not generally speaking transferable to Scotland. This is because the court South of the Border may only make a programme requirement in relation to accredited programmes, that is to say

accredited by the accreditation body. Orders will be transferable to Scotland where the corresponding Scottish accreditation body has accredited the equivalent programme that the court wishes transferred to Scotland. Probation with an additional requirement would be the corresponding Scottish order.

1.5 Where a Community Order is made with any of the following requirements – unpaid work, activity, programme, prohibited activity, residence, mental health, drug rehabilitation, alcohol treatment, supervision or attendance centre – then the court may *also* impose an electronic monitoring requirement.

1.6 When a Community Order is transferred to Scotland it must conform to the legislation governing the corresponding Scottish order. The length of orders may for example vary between both sides of the Border. Best practice would indicate that where such an order is made or transferred to Scotland, the length of time outstanding on that order should not exceed the maximum amount of time allowed for such an order in England or in Scotland, whichever is the *shorter*. Below is a Table summarising differences of length between the two jurisdictions:

<u>English Requirement</u>	<u>English Length</u>	<u>Scottish Length</u>
Unpaid work (community service)	40 -300 hours (all courts)	80 – 240 hours (but 300 hours on indictment)
Activity Requirement	60 days	No equivalent*
Electronic Monitoring:		
(a) Curfew Requirement	2 to 12 hours per day 6 months maximum	0 to 12 hours per day 12 months maximum
(b) Exclusion Requirement	No limit per day 2 years maximum	No limit per day 12 months maximum
Residence Requirement	3 years maximum	12 months maximum**
Mental Health Treatment	3 years maximum	3 years maximum***
Drug Rehabilitation Requirement - DTTO Review intervals (orders up to 12 months): Any or no intervals (orders longer than 1 year): Not less than one per month	6 months – 3 years	6 months – 3 years At periodic intervals of not less than a month. At periodic intervals of not less than a month.
Alcohol Treatment Requirement	6 months – 3 years	6 months – 3 years
Supervision Requirement	6 months – 3 years	6 months – 3 years

Notes

* Order not transferable ** In relation to residential condition requiring stay in named place

***From October 2005 - Mental Health (Care & Treatment)(Scotland) Act 2003

Transfers to Scotland

Note: There are two statutory circumstances where an English Community Order may be transferred to Scotland: (a) at the time the Order is made, or (b) during the currency of the Order. These procedures apply equally to both sets of circumstances.

1.7 Where the English court considering the **making** of a Community Order or of **amending** a Community Order once made in order to allow transfer to Scotland, the transferring English court must be satisfied of the following criteria before it can transfer the Order:

1.7.1 that the offender resides in Scotland (or will reside there) when the order is made or amended;

1.7.2 that arrangements exist for transferred offenders to comply with such Community Order requirements (or their corresponding Scottish equivalents) *in* the Scottish locality in which the offender resides or intends to reside; and

1.7.3 that the Scottish local authority criminal justice social work service (and or the contracting officer where an electronic monitoring requirement is concerned) is able to supervise the corresponding order. (The supervising officer should be a qualified social worker where the Scottish National Standards governing the equivalent order requires a qualified social worker.)

Note: In 1.7.2, it would be valid if the Scottish locality had access to such a facility or resource even if this was not physically located in the relevant local authority area itself.

1.8 Where the English court is considering **making** a Community Order (as against **amending** an Order once made during the currency of the Order), **and** the offender resides in Scotland, then current procedures will continue in force in the normal way: that is to say, the relevant Scottish criminal justice office will prepare any requested pre-sentence Social Enquiry Report. That part of the SER which comments on possible disposals should at present provide sufficient information to the English court to enable it to (a) make an appropriate Community Order should they wish to do so; (b) convert that Order to an appropriate corresponding Scottish Order, and (c) transfer that Order to Scotland for implementation. There is no need to change existing SER practice as laid down in Scottish National Standards. (*Note: An SER is normally required before a court may impose a Community Order.*)

1.9 In **all other cases** (ie: where 1.8 above does not apply), the following procedures require to be carried out **prior to** any Community Order being transferred:

1.9.1 contact from the local Probation Service where the transferring court is located (or where the offender is being supervised) to the local criminal justice social work service intimating the possibility of a transfer being desired by the English court;

1.9.2 the local Probation service should provide the relevant Scottish criminal justice social work service with:

- * the name & date of birth of the offender
- * details of the offence, previous offences & sentences

- * any available background information or recent reports
- * the intended address that the offender is staying at in Scotland, or intends to stay at
- * details of the community order made or intended (eg: type of requirement & length)
- * record of progress to date if community order already made.

1.9.3 The Scottish criminal justice social work service on receipt of this information (in part or in whole) will:

(a) in relation to the given address:

- * check out the given address to confirm that accommodation arrangements have indeed been made there;
- * confirm the expected stay at the given address is not intended to be of a purely short, temporary or immediate term nature;
- * consider the following questions:
 - + does the offender have close family or residential ties in the jurisdiction and area to which transfer is sought?
 - + does the offender intend to reside in the jurisdiction and area following completion of the community order?
 - + if not, are there strong compassionate or other compelling grounds to support the transfer request?

(b) in relation to the nearest Scottish corresponding order:

- * determine with the referring Probation officer what the nearest corresponding Scottish orders would be to the English community order requirements, and thereafter determine:
 - + is such a service or facility available in (or accessible by) the locality?
 - + is there a place or vacancy available on that service or resource (if not, when is one likely to become available, if at all)?
 - + is the social work service able to provide a supervising officer for the order (or is the contractor able to accommodate any requirement for electronic monitoring)?

(c) in relation to public safety

- * would the transfer have an adverse effect on the protection of the public, prevention of re-offending or the rehabilitation of the offender?

1.9.4 Once all information in 1.9.2 is received and considered and the work required under 1.9.3 has been undertaken, the Scottish local authority will then be in a position to indicate whether it is (a) able and (b) willing to accept the transfer.

1.9.5 Incoming requests for transfer should in principle be accepted where it is:

- * viable to do so
- * appropriate to do so
- * there is an appropriate resource available
- * there is (or soon will be) an ability for that resource or service to receive the offender
- * the offender can be properly supervised

- * the outcome of the professional assessment arising out of 1.9.2 and 1.9.3 is positive
- * the intended move is other than temporary & is not deemed unsatisfactory in nature
- * there is no adverse impact on public safety, re-offending or offender rehabilitation.

1.9.6 Decisions arising out of 1.9.5 above should be intimated to the referring Probation officer within 3 weeks of receipt of the transfer request.

1.9.7 Where the decision is made that the transfer would not fulfil the criteria in 1.9.5 above, no transfer of the order should be accepted.

1.9.8 Before a transfer involving electronic monitoring is accepted, the normal procedures should be carried out by the local authority in obtaining and considering information about any place or places where the offender is to remain during the specified periods, including the attitude of persons likely to be affected by the enforced presence there of the offender. However, social workers and contracting officers should note that there is a higher fence to be jumped before a transfer can take place. Where there is a person (other than the offender) without whose co-operation it will not be practicable to secure the monitoring, the requirement may not be transferred without that person's consent.

NOTE

Arrangements should be made with the sheriff clerk for the court not to accept any incoming transfer unless arrangements for that transfer have first been agreed by the local authority (and or the contracting officer where electronic monitoring is required.) On receipt of the papers from the English court, the sheriff clerk will send a written note to the local criminal justice social work service asking for confirmation that the local authority (and or contracting officer) have agreed to the transfer. A written reply should be returned to the sheriff clerk within two working days intimating agreement to acceptance has or has not been made.

Supervision of Community Orders in Scotland

1.10 Once a Community Order is transferred to Scotland and takes the form of the corresponding Scottish Order, otherwise than as indicated below, the Order is then proceeded with and supervised as if it originated and was made in Scotland.

1.11 The supervision of all orders will proceed by the application of Scottish national standards in the same way as if the order had originated and been made in Scotland.

1.12 In particular, the Scottish national standards in relation to disciplinary warnings are to be applied. They override the English statutory provision of warnings whereby only one formal warning may be permitted prior to breach initiation. However, Scottish supervising officers should take heed of any formal warning issued by the English authorities where that has occurred within the 12 months period prior to any subsequent warning issued by the Scottish authorities. Where this occurs, the Scottish warning should be taken as equivalent to the official second warning noted in our own national standards, unless the serious nature of the new failure to comply suggests immediate breach action. (In cases involving electronic monitoring, there is no change to existing practice or procedures for contractors.)

1.13 It is important to note that in some Scottish supervision orders, *conviction* of a further offence during the currency of the order is breachable (eg: in Probation Orders) whilst in

others it is not (eg: Community Service, Drug Treatment and Testing and Restriction of Liberty Orders). These Scottish legal requirements will apply to all transferred orders and will override English law which makes a Community Order following conviction of a further offence subject to revocation (or revocation and re-sentencing for the original offence) at the discretion of the court.

*Note: The general rule is that Scottish legislation applies to transferred orders and this replaces English requirements. However, the following additional obligations apply to **all** transferred Community Orders to Scotland:*

*(i) The supervising officer (but **not** the contracting officer for electronic monitoring) needs: (a) to make any necessary arrangements in connection with any requirements in orders; (b) to promote the offender's compliance with those requirements; and (c) where appropriate, to take steps to enforce those requirements.*

*(ii) The supervising officer (**including** the contracting officer for electronic monitoring) should, as far as practicable, avoid giving any instruction which (a) conflicts with the offender's religious beliefs (b) conflicts with the requirements of any other order to which the offender is subject (c) interferes with the times (if any) at which the offender normally works or attends school or other educational establishment.*

*(iii) The offender must keep in touch with the supervising (**or** electronic monitoring contracting) officer in accordance with such instructions given by that officer and must notify him or her of any change of address. Failure to do so is enforceable as a breach of the order.*

Court Powers on Breach

1.14 The procedure for processing breach applications to court and the required time frames will adhere to existing Scottish national standards and conform to the fast track breach procedures issued by the Scottish Executive in early 2004, other than where this document amends these arrangements.

1.15 The Scottish court will deal with all breach applications to the point where the grounds of breach are accepted or proved to the satisfaction of the court. The standards of required proof are no different to current Scottish arrangements.

1.16 How the Scottish court considers the breach might be dealt with will now determine what happens next:

- 1.16.1 the Scottish court may **not** (a) revoke or discharge the order, nor (b) deal with the original offence, nor (c) vary, extend or amend an order **beyond the limit** that could have been imposed in England or Scotland whichever is *shorter*.

1.16.2 Where the Scottish court believes that any of the actions outlined in 1.16.1 may be appropriate, it can require the offender to appear before the English court that made or last amended the order. In these circumstances, the English court may then issue a warrant for the arrest of the offender and its power of dealing with the breach reverts to the full range of disposals available for such purposes to the English court.

1.16.3 Where the Scottish court believes it should deal with the breach by any means available to it under normal Scottish law *other than* those actions outlined in 1.16.1 above, it may proceed to do so in the normal fashion as if the original order had been made in Scotland.

Court Powers on Amendment

1.17 Any action instigated by the supervising officer or offender to vary, amend or revoke (ie: in shorthand, review) an order where it appears to be in the interests of justice to do so having regard to circumstances which have arisen since the order was made (or transferred), should proceed in accordance with the criteria and practice laid down in the current Scottish national standards.

1.18 Please note applications for early discharge may only be made in relation to transferred orders as they could have been made in relation to orders originating in Scotland. This overrides English legislation which gives more extensive powers for early discharge for good progress across its range of Community Order requirements. Thus, such a power would exist for a Scottish Probation Order, for example, but not for a Scottish Community Service Order. Always remember the rule: apply normal Scottish practice as if the order had been made in Scotland.

1.19 All review actions will be proceeded with in the normal fashion till the matter falls to be considered by the Scottish court. How the Scottish court believes the review application should be dealt with will now determine what happens next:

- 1.19.1 the Scottish court may ***not*** (a) discharge or revoke the order, nor
(b) deal with the original offence, nor
(c) vary, extend or amend an order ***beyond the limit*** that could have been imposed in England or Scotland, whichever is the *shorter*.

*Note: There is one exception to the rule noted in 1.19.1(a) above. The Scottish court may revoke the order where the offender has been convicted of a further offence for which the court has imposed a custodial sentence. This exception does ***not*** apply to breach cases in 1.16.1(a) above.*

1.19.2 Paragraphs 1.16.2 and 1.16.3 above apply to review actions as they apply to breach actions.

CHAPTER 2. SUSPENDED SENTENCE ORDERS

Definition

2.1 An English court which passes a sentence of imprisonment of between 14 days and 6 months may *substitute for that imprisonment a period of supervision* with one or more of the requirements outlined below.

2.2 The sentence of imprisonment will not then take effect unless:

2.2.1 during the supervision period (which may run from 6 months to two years), the offender fails to comply with any of the supervision requirements, *or*

2.2.2 during a time specified by the court (which may run from 6 months to two years), the offender commits another offence anywhere in the U.K., *and*

2.2.3 the court subsequently orders the original sentence be enforced.

*Note 1: The periods of time mentioned above need not be identical. However, the **supervision period** (2.2.1) must not end later than the **further offence period** (2.2.2.)*

Note 2: Where two or more prison sentences are imposed on the same occasion and are to run consecutively, none of the prison sentences may be suspended unless the total prison term is no greater than 65 weeks.

Note 3: All of the above elements of a suspended sentence order are transferable to the sheriff court in Scotland.

Note 4: Suspended sentence orders are sometimes referred to informally as Custody Minus Orders.

2.3 The **suspended sentence order** may contain one or more of the following requirements (*they are the same as may be contained in Community Orders*):

- (a) an unpaid work (community service) requirement
- (b) an activity requirement
- (c) a programme requirement
- (d) a mental health requirement
- (e) a drug rehabilitation requirement
- (f) an alcohol treatment requirement
- (g) a supervision requirement
- (h) a prohibited activity requirement
- (i) a curfew requirement (normally electronically monitored)
- (j) an exclusion requirement (normally electronically monitored)
- (k) a residence requirement
- (l) an attendance centre requirement.

Note: Where a Suspended Sentence Order contains a requirement or requirements under (a) to (h) and (k) to (l) above, it may also impose an electronic monitoring requirement.

2.4 The English court may only make or transfer an order to Scotland where it is satisfied that:

2.4.1 the offender resides in Scotland, or will reside there, when the order is made or amended;

2.4.2 that equivalent facilities to the requirement(s) contained in the Suspended Sentence Order ***exist in or are accessible from*** the Scottish locality in which the offender resides or intends to reside;

2.4.3 that provision can be made for transferring offenders to ***comply with*** such Suspended Sentence Order requirements (or their Scottish equivalents) in (or accessible from) the new locality; and

2.4.4 that the Scottish local authority criminal justice social work service (and or the contracting officer in relation to any electronic monitoring requirement) is ***able to supervise*** the equivalent Scottish requirement (*note: the supervising officer should be a qualified social worker where the equivalent requirement requires a qualified social worker.*)

2.5 Not all requirements listed in 2.3 above have Scottish equivalents so not all of them are transferable. In particular, activity, programme and attendance centre requirements may not be transferred to Scotland:

2.5.1 In the case of activity requirements, there is no Scottish reparative equivalent. Three areas are piloting the new Scottish Community Reparation Order, but even here our maximum penalty is 100 hours to be completed within 12 months. The English activity requirement is stated in days to be done, maximum 60 days, and so there is no corresponding Scottish structure.

2.5.2 In the case of programme requirements, it is an English statutory requirement that all such programmes are restricted to accredited programmes accredited by the accreditation body. At present, the Scottish Accreditation Body has not accredited any programme in Scotland. When it does so, transfers may be accepted from England for those programmes in the areas so accredited.

2.5.3 In the case of Attendance Centre requirements, there is a statutory ban on transfer – we have no such facility in Scotland.

2.6 In other cases, the locality in Scotland in which the offender resides or intends to reside on transfer must be able to have available (or be able to access) the facilities or resources it needs to be able to accommodate any particular requirement intending to be transferred. Where it cannot, no transfer of these requirements should be accepted.

2.7 It should be borne in mind, however, that the English court has wide discretion at the time it is considering a transfer to Scotland to cancel any existing requirement or to substitute any existing requirement with any other requirement from the list provided in 2.3 above.

Transfers to Scotland

Note: There are two statutory circumstances when an English Suspended Sentence Order may be transferred to Scotland: (a) at the time the Order is made, or (b) during the currency of the order.

2.8 Where an English court wishes to **make** a Suspended Sentence Order (as against **amending** an Order once made during the currency of that order), **and** the offender resides in Scotland, then current procedures will continue in force in the normal way: that is to say, the relevant Scottish criminal justice office will prepare any requested pre-sentence Social Enquiry Report. That part of the SER which comments on possible disposals should at present provide sufficient information to the English Court to enable it to (a) make a Suspended Sentence Order should it wish to do so; (b) impose relevant conditions in that Order which are locally enforceable and able to be supervised, and (c) transfer that Order to Scotland for implementation. There is no need to change existing SER practice as laid down in Scottish National Standards. (*Note: An SER is normally required before a court may impose a Suspended Sentence Order.*)

2.9 In all other cases (ie: where 2.8 above does not apply), **prior to** any Suspended Sentence Order being transferred to Scotland:

2.9.1 there should be contact from the local probation service where the transferring court is located (or where the offender is being supervised) to the local criminal justice social work service intimating the possibility of a transfer being desired by the English court;

2.9.2 the local probation service should provide the relevant Scottish criminal justice social work service with:

- * the name & date of birth of the offender
- * details of the offence(s), previous offences & sentences
- * any available background information or recent reports
- * the intended address the offender is staying at in Scotland or intends to stay at
- * details about *all* aspects of the Suspended Sentence made or intended to be made
- * record of progress to date of any supervision period.

2.9.3 The Scottish criminal justice social work service on receipt of this information (in part or in whole) will:

(a) in relation to the given address:

- * check out the given address to confirm that accommodation arrangements have indeed been made there
- * confirm that the expected stay at the given address is not intended to be of a purely short, temporary or immediate term nature
- * consider the following questions:
 - + does the offender have close family or residential ties in the jurisdiction and area to which transfer is sought?
 - + does the offender intend to reside in the jurisdiction and area following completion of the order?

- + if not, are there strong compassionate or other compelling grounds to support the transfer request?

(b) in relation to the nearest Scottish corresponding requirement:

- * determine with the referring Probation Officer what the nearest equivalent Scottish requirements would be to the English Suspended Sentence Order requirements, and thereafter determine:

- + whether such a service or facility is available in (or accessible by) the locality
- + whether there is a place or vacancy available on that service, resource or facility (if not, when is one likely to become available, if at all)
- + whether the social work service is able to provide a supervising officer for the order (or is the contractor able to accommodate any requirement for electronic monitoring.)

(c) in relation to public safety

- * would the transfer have an adverse effect on the protection of the public, prevention of re-offending or the rehabilitation of the offender?

2.9.4 Once all the information in 2.9.2 is received and considered and the work required under 2.9.3 has been undertaken, the Scottish local authority will then be in a position to indicate whether it is (a) able and (b) willing to accept the transfer.

2.9.5 Incoming requests for transfers should in principle be accepted where it is:

- * viable to do so
- * appropriate to do so
- * there is an appropriate resource or facility available
- * there is (or soon will be) an ability for that resource or service to receive the offender
- * the offender can be properly supervised
- * the outcome of the professional assessment arising out of the information gathered in 2.9.2 and 2.9.3 is positive
- * the intended move or return to that locality is other than temporary *and* is not deemed unsatisfactory in nature, and
- * there is no adverse impact on public safety, re-offending or offender rehabilitation.

2.9.6 Decisions arising out of 2.9.5 above should be intimated to the referring Probation Service within 3 weeks of receipt of the transfer request.

2.9.7 Where the decision is made that the transfer would not fulfil the criteria in 2.9.5 above, no transfer of the order should be accepted.

2.9.8 Before a transfer involving electronic monitoring is accepted, the normal procedures should be carried out by the local authority in obtaining and considering information about any place or places where the offender is to remain during specified periods, including the attitude of persons likely to be affected by the enforced presence there of the offender. However, social workers and contracting officers should note there is a higher fence to be

jumped before a transfer can take place. Where there is a person (other than the offender) without whose co-operation it will not be practicable to secure the monitoring, the requirement may not be transferred without that person's consent.

NOTE

Arrangements should be made with the local sheriff clerk for the court not to accept any transfer of the order unless arrangements for that transfer have first been agreed with the local authority (and or contracting officer in the case of an electronic monitoring requirement). On receipt of papers from the English court, the sheriff clerk will send a written note to the local criminal justice social work service asking for confirmation that the local authority (and or contracting officer) have agreed to the transfer. A written reply should be returned to the sheriff clerk within two working days intimating agreement to acceptance has or has not been made.

Supervision of Transferred Orders

2.10 Once a Suspended Sentence Order is accepted for transfer and is transferred, it is then the responsibility of the local authority concerned to appoint an overall supervising officer who has the following statutory duties:

- “(a) to make any arrangements that are necessary in connection with the requirements imposed by the order,
- (b) to promote the offender's compliance with those requirements, and
- (c) where appropriate, to take steps to enforce those requirements.”

2.11 It is a statutory duty that offenders subject to a suspended sentence order:

- (a) must keep in touch with the supervising officer in accordance with such instructions as (s)he may from time to time be given by that officer, and
- (b) must notify him/her of any change of address.

Note 1: “supervising officer” refers to the overall supervising officer or individual requirement supervisor as outlined in 2.13 below, or to anyone acting on their behalf.

Note 2: The two obligations in this paragraph are enforceable with breach action for failures to comply.

2.12 It is a further statutory duty on supervising officers (**including** contracting officers in relation to electronic monitoring) to ensure, as far as practicable, that any instructions or requirements given by them to offenders avoid (a) any conflict with the offender's religious beliefs (b) any conflict with the requirements of any other relevant court order to which the offender may be subject and (c) any interference with the times at which (s)he normally works or attends school or other educational establishment.

2.13 As noted earlier, the English court can impose any combination of 9 different requirements in a Suspended Sentence Order. It will be in the light of which requirements are imposed that will determine who the appropriate officer is that is to be appointed as the overall supervising officer. It will be the role of that overall supervising officer to be responsible for the overall co-ordination of *the order* and to bring any required court action.

It will be the role of the supervisor of any *individual requirement* to undertake all disciplinary action in relation to that requirement (subject to 2.19 below) and (a) keep the overall supervising officer up to date with developments and progress, and (b) provide written details for any breach report or review application to court that the overall supervising officer may have to submit. The roles of the overall supervising officer and the contracting officer (in the case of any electronic monitoring requirement) will be the same as where electronic monitoring is a condition of Probation. Where only one requirement is made, the supervisor of that requirement will also be the overall supervisor.

2.14 Where a requirement is made for unpaid (community service) work, *the requirement* should be supervised by a member of staff within the structure that normally supervises a community service order or a community service requirement of a Probation Order.

2.15 Where a requirement is made for drug rehabilitation, *the requirement* should be supervised by a member of staff within the structure that normally supervises a Drug Treatment and Testing Order.

2.16 Where a requirement is made for electronic monitoring (whether or not associated with curfew or exclusion requirements), *the requirement* should be supervised by the contractor of the company providing the electronic monitoring. Where the *only* requirement is a curfew and or exclusion requirement which is to be electronically monitored, the contractor will also fulfil the role of overall supervising officer.

2.17 Where a requirement is made for mental health treatment, alcohol treatment, supervision, prohibited activity or residence, *the requirement(s)* should be supervised by a member of staff within the structure that normally supervises a Probation Order or a Through care (eg: parole or non-parole) licence.

2.18 Wherever a member of staff within any of the above structures requires to be a qualified social worker by Scottish national standards for the purpose of supervising offenders within that structure, then a qualified member of staff should be appointed to supervise the relevant Suspended Sentence Order requirement.

Special provisions applicable to all requirements

Disciplinary Warnings

2.19 The national standards in Scotland concerning the issuing of disciplinary warnings prior to the instigation of breach proceedings do *not* apply to any of the requirements of a suspended sentence supervision order. They are replaced by the following legislative provision that should be adhered to:

* Where the overall supervising officer is of the view that an offender has failed to comply with the conditions of the order or requirement, without reasonable excuse, then after consultation with the requirement supervisor and after receiving their advice (which will be binding in the case of the contracting officer in an electronic monitoring requirement), there are two available options:

Either to issue a formal warning (verbal with recorded delivery letter & recorded on file),

Or to proceed with breach action.

* If within 12 months of the issuing of a formal warning it appears to the overall supervising officer that the offender has again failed to comply with the conditions of the order or requirement, without reasonable excuse, then breach action must be instigated.

* If after 12 months of the issuing of a formal warning it appears to the overall supervising officer that the offender has again failed to comply with the conditions of the order or requirement, without reasonable excuse, the two original options are again available.

2.20 In the interpretation of this section, where more than one condition is attached to a Suspended Sentence Order, any formal warning must specify which condition the formal warning applies to and this should be confirmed in any letter sent. In order to instigate breach proceedings under this system, the individual must continue to fail to comply with the condition that the formal warning applies to. In other words, each condition should be treated as a separate entity for the purposes of issuing any necessary formal warnings and the instigation of breach proceedings in the event of continued non-compliance.

2.21 In the further interpretation of this section, where the essence of the requirement is proceeding satisfactorily (eg: that a person is satisfactorily performing their community service work & their attendance is good or their attendance for testing and treatment in a drug rehabilitation requirement is good and they are being co-operative or they are similarly responding well to an alcohol or mental health treatment requirement, etc), then minor infractions (eg: failures to report to supervisor) by themselves may be dealt with by verbal cautions lest their accumulation requires more formal action. (Please note that in relation to electronic monitoring requirements, there is no change to existing practices or procedures for contractors other than they must now take account of the new statutory provisions outlined in paragraph 2.19 above.)

Regular Court Reviews

2.22 Provision for the court to review regularly Suspended Sentence Orders and their requirements (*including* drug rehabilitation requirements) do *not* apply to Scotland.

Notes on Individual Requirements

Unpaid Work (Community Service)

2.23 All such requirements should be of 12 months duration.

2.24 The English courts have power to impose a requirement of between 40 and 300 hours, even in summary procedure cases, and these limits should be accepted on transfer.

2.25 A community service requirement should be proceeded with in accordance with Scottish legislative requirements and should be supervised according to Scottish national standards as if it were a community service order or probation requirement originating in Scotland, with the following exceptions:

2.25.1 Breach, review & transfer applications will adhere to the relevant paragraphs (2.36 to 2.46) below, but will follow normal Scottish process to the point where the court comes to consider the breach, review or transfer application.

2.25.2 Disciplinary warnings will follow 2.19 to 2.21 procedures outlined above.

2.25.3 Care should be taken that any community service requirement transferred as part of an English Suspended Sentence Order that overlaps to any extent with a Community Service Order or community service requirement of a Probation Order does not lead to the cumulative hours to be worked exceeding the 300 hour limit. Transfers from England should be accepted on that basis.

Drug Rehabilitation Requirement

2.26 Drug Rehabilitation requirements must be of at least 6 months duration.

2.27 Drug Rehabilitation requirements should be supervised in the same way as Drug Treatment and Testing Orders. Scottish DTTO legislative requirements and Scottish national DTTO guidelines issued by the Scottish Executive should be followed, with the following exceptions:

2.27.1 Breach, review & transfer applications will adhere to the relevant paragraphs (2.36 to 2.46) below, but will follow normal Scottish process to the point where the court comes to consider the breach, review or transfer application.

2.27.2 Disciplinary warnings will follow 2.19 to 2.21 procedures outlined above.

2.27.3 Court reviews will **not** be held.

2.27.4 Where such a drug rehabilitation requirement runs to any extent at the same time as a Drug Treatment and Testing Order, any court action required under a Suspended Sentence Order drug rehabilitation requirement should be dealt with by the sheriff who hears the reviews of the DTTO.

2.27.5 The cumulative terms of any DTTO and Suspended Sentence Order drug rehabilitation requirement should not exceed 3 years and any transfer from England should be accepted only on these terms.

Alcohol treatment, Mental health treatment, Supervision, Prohibited Activity and Residence Requirements

2.28 Alcohol treatment requirements and supervision requirements should both be of at least 6 months duration; there is no minimum length for the other three requirements in this section. The maximum length of all five of the above requirements is the maximum length of the Suspended Sentence Order which is 2 years.

2.29 Breach, review and transfer applications will adhere to the relevant paragraphs (2.36 to 2.46) outlined below but will follow the normal process of breaching, reviewing or transferring a Probation Order up to the point where the court comes to consider the breach, review or transfer application.

2.30 These requirements will be treated for purposes of supervision in the same way as if they were conditions of a Probation Order and Scottish legislation and national standards will apply accordingly, with the following exceptions:

2.30.1 Paragraph 2.29 above

2.30.2 Disciplinary warnings will follow the procedures outlined in 2.19 to 2.21 above.

2.30.3 Further offences will be dealt with as outlined below.

Electronic Monitoring Requirements

2.31 An electronic monitoring requirement associated with a curfew requirement should not exceed 6 months duration; there is no minimum in relation to exclusion requirements.

2.32 An English curfew requirement can last between 2 and 12 hours per day.

2.33 An English exclusion requirement can last up to 2 years maximum; this should be accepted if the transferring court insists.

2.34 Special attention should be given to 2.19 to 2.21 above regarding disciplinary warnings which *are applicable* to electronic monitoring requirements.

2.35 Current breach, review and transfer applications should adhere to current practice used in relation to Restriction of Liberty Orders *or* electronic monitoring as a condition of a Probation Order or of a Drug Treatment and Testing Order *or* where there are concurrent orders with Probation or DTTO up to the point where the court considers the application, but with the following exceptions:

2.35.1 Paragraph 2.34 above

2.35.2 Paragraphs 2.36 to 2.46 below

2.35.3 the role of the overall supervising officer outlined in paragraphs 2.10, 2.13 & 2.16 above.

Otherwise, the electronic monitoring requirements will be supervised as if they were subject to an order made in Scotland.

COURT POWERS ON BREACH

2.36 The procedure for processing breach applications to court and the required time frames will adhere to existing Scottish national standards and conform to the fast track breach procedures issued by the Scottish Executive in early 2004, other than where this document amends these arrangements.

2.37 The Scottish court will deal with all breach applications to the point where the grounds of breach are accepted or proved to the satisfaction of the court. The standards of required proof are no different to current Scottish arrangements.

2.38 There is a suggestion that the Scottish court *may* have the option of sending the offender down to the originating English court to hear the proof of a contested breach action. It is strongly advised that arrangements are made with the sheriff court and the clerk of that court that such an option should be avoided so as to obviate any need for Scottish staff to travel to English courts to give their evidence.

2.39 Once the grounds of breach are accepted or established, the Scottish court *must* then require the offender to appear before the English court for disposal.

2.39.1 The English court may in turn issue a summons or warrant for apprehension.

2.39.2 The English court has the following powers in dealing with the breach:

* Imposition of its original term and custodial period; or

* Imposition of a shorter custodial period than the original term, on account of either (a) the extent to which the offender had complied with the community requirements of the Suspended Sentence Order, or (b) the facts of any subsequent offence; or

* Imposition of more onerous community supervision requirements (from the list in 2.3 above and subject to 2.4 to 2.7 above, where the court wishes the Order to be resumed in the same location in Scotland); and/or

* Extending the length of the supervision and or further offence period, but not beyond the 2 year allowed maximum.

COURT POWERS ON REVIEW

2.40 Any action instigated by the overall supervising officer, (contracting officer), or offender to vary or amend a requirement need *not* be restricted to cases where it is in the interests of justice to do so having regard to circumstances which have arisen since the order was made (or transferred).

2.41 On receipt of such an application, the Scottish court has two immediate options available to it:

Either refer the matter to the English court and require the offender to appear before that court,

Or consider the matter itself.

2.42 The powers of the Scottish court are as follows:

2.42.1 *Where the application is to amend or vary the requirement(s), cancel the requirement(s) or replace it with another requirement or requirements (as listed in paragraph 2.3 above *except* an activity, programme or attendance centre requirement.)*

2.42.2 *Where the application is to amend or vary the requirement(s), the court may **not** amend or make a mental health, drug rehabilitation or alcohol requirement **without** the offender's consent. If the offender withholds such consent, the Scottish court must refer the*

matter back to the English court for disposal and require the offender to appear before that court. The English court can then deal with the offender in any way it could have dealt with him or her at first instance as if the suspended sentence order had not been made (but influenced by how well the offender had complied with the order's requirements.)

2.43 In relation to a mental health, drug rehabilitation or alcohol requirement, where the medical practitioner by whom or under whose direction an offender is being treated is of the opinion that:

2.43.1 (s)he is for any reason unwilling to continue to treat or direct the treatment of the offender,

2.43.2 the treatment should be continued beyond the period specified in the order,

2.43.3 the offender needs different treatment (eg: in patient or out patient),

2.43.4 the offender is not susceptible to treatment, or

2.43.5 the offender no longer requires treatment,

the medical practitioner must furnish a written report to that effect to the overall supervising officer who **must** then apply to the court to vary or cancel the requirement.

2.44 The twelve months requirement of a community service requirement may be extended by the court on an application by the offender or overall supervising officer on exactly the same basis as such an application may be made in relation to a community service order originating in Scotland.

2.45 The offender need not attend court in relation to an application to cancel, amend or vary a requirement or requirements where:

2.45.1 the application is made by the offender, or

2.45.2 the court cancels any requirement.

2.46 Any action initiated by the supervising officer, (contracting officer) or offender **to cancel** a requirement is restricted to cases where it is in the interests of justice to do so having regard to circumstances that have arisen since the order was made (or transferred). Such a ground may include good progress or responding satisfactorily to supervision. The court's power is to cancel the requirement(s) or to decline to do so.

FURTHER OFFENCES DURING A SUSPENDED SENTENCE ORDER

2.47 The supervising officer and local authority have no direct responsibility in such matters but it is important for working with the offender to know what are the consequences of further offending during the currency of a suspended sentence.

2.48 It will be recalled there are two elements to a suspended prison sentence: the period of supervision and a period specified by court during which if the offender commits an offence

the suspended prison sentence may be activated. Both these terms may be between 6 months and 2 years but the supervision period cannot be longer than the “further offence” period.

2.49 Where an offender is convicted of an offence *in the United Kingdom* committed during the “further offence” period of a suspended sentence, the English court may:

2.49.1 order the suspended prison sentence to take effect, or

2.49.2 order a shorter prison sentence to take effect, or

2.49.3 amend the order by imposing more onerous requirements (from the list in 2.3), *and* *or* extend the supervision period *and or* extend the “further offence” period.

2.50 Where the offender is convicted **in Scotland** of an offence and the Scottish court is informed that it was committed within the “further offence” period of a suspended sentence order, then that court must inform the English court in writing of that conviction.

TRANSFER OF ORDERS FROM SCOTTISH COURTS

2.51 An application may be made to the Scottish court to amend a Suspended Sentence Order where an offender resides or intends to reside (a) in another court or local authority area in Scotland, or (b) in England and Wales.

2.52 Where the court is so satisfied on the matter, it *may* amend the Order requiring it to be complied with in the new locality in which the offender is residing or intending to reside, and it *must* so amend the order where the application is made by the overall supervising officer.

2.53 The court may not amend such an order, however, if it is of the opinion that any of the current requirements could not be complied with in the new locality, unless it:

2.53.1 cancels those requirements, or

2.53.2 substitutes for them different requirements (from the list given in paragraph 2.3) which it is satisfied can be complied with in the new locality.

2.54 The court may not make any activity, programme or attendance centre requirements in relation to transfers within Scotland since there are no arrangements at present to organise or supervise them in Scotland.

2.55 The court may not make a programme requirement in respect of a transfer to England or Wales unless satisfied there is an accredited programme available there. The court may, however, make an attendance centre requirement in respect of south of the border.

2.56 If transferred to England or Wales, the English legislative requirements again apply in full to the order.

2.57 Before submitting an application to court to amend an order to allow for a transfer to a different locality in Great Britain, it is the responsibility of the overall supervising officer to:

2.57.1 contact the relevant Probation Service (in England & Wales) or Local Authority social work service in Scotland, in which the offender is residing or intending to reside, to intimate the possibility of a transfer of the order to their jurisdiction;

2.57.2 provide them with:

- * the name & date of birth of the offender
- * details of the offence(s), previous offences & sentences
- * all available background information & recent reports
- * the address the offender says (s)he's staying at or intends to stay at
- * details of the current Suspended Sentence Supervision Order requirements and order progress to date.

2.57.3 invite them to:

- * check out the given address to confirm the accommodation arrangements have indeed been made and are not unsatisfactory, and
- * confirm that the expected stay at the given address is not intended to be of a purely short, temporary or immediate term nature

2.57.4 determine with them whether:

- * they are able to make arrangements for the offender to comply with the current requirements in their locality (and, if not, what alternative requirements could be complied with which could be suggested to court)
- * there is a place or vacancy available on that service or resource (and, if not, when is one likely to become available, if at all);
- * they are able to make arrangements for the supervision of the offender.

2.57.5 invite them to make their enquiries and considerations within 3 weeks from the request and to discuss their conclusions with you.

2.58 Requests for transfers should in principle be accepted where it is:

- * viable and feasible to do so
- * appropriate to do so
- * there is an appropriate resource available
- * there is (or soon will be) an ability for that resource or service to receive the offender
- * the offender can be properly supervised
- * the intended move is other than temporary and is not deemed unsatisfactory in nature
- * there is no adverse impact on public safety, re-offending or the rehabilitation of the offender.

2.59 Where an area is willing to accept a transfer, an application should then be made to the court to transfer the order to the new area. The report should confirm that (a) the requirements can be supervised in the new area, and if not why not and what alternative requirements (if any) they could accept; (b) that the new address has been confirmed and is deemed as suitable; and (c) that the move is confirmed as not intending to be temporary, short or immediate term in nature.

2.60 Where an area is unwilling or unable to accept transfer, the supervising officer should consider whether it is appropriate to apply to the court for cancellation of the requirements to allow the transfer to take place.

2.61 Where a court is unwilling to cancel requirements and it is not possible to transfer the order, the offender remains obliged to fulfil the order and its requirements and will be subject to breach action for non-compliance.

CHAPTER 3.

PART 1 : CUSTODY PLUS ORDERS

Definition

3.1 Where an English court passing a sentence of imprisonment of less than 12 months does not make a Suspended Sentence Order, it has to make a Custody Plus Order (Part 1 of this Chapter) or an Intermittent Custody Order (Part 2 of this Chapter.)

3.2 The length of the sentence *must*:

3.2.1 be expressed in weeks

3.2.2 be at least 28 weeks

3.2.3 not exceed 51 weeks in respect of any single offence

3.2.4 not exceed the maximum term permitted for that offence.

3.3 The court when passing sentence *must*:

3.3.1 specify the custodial period at the end of which the offender is to be released on licence, and

3.3.2 require the licence to contain one or more requirements.

This licence period is referred to as the Custody Plus Order.

3.4 The custodial period must be at least 2 weeks but not more than 13 weeks in respect of any single offence.

3.5 The licence period must be at least 26 weeks in length.

3.6 Where consecutive sentences of imprisonment are given, the total must not be more than 65 weeks and the aggregate length of the custodial periods must not exceed 26 weeks.

Licence Conditions

3.7 Where more than one requirement is ordered as part of the licence, the court may instruct different time periods in relation to each requirement. (*Of course, the total period of the licence cannot be exceeded.*)

3.8 The different requirements that can be ordered as a condition of licence are as follows:

- (a) unpaid work (community service)
- (b) activity (*not transferable to Scotland*)
- (c) programme (*not transferable to Scotland*)
- (d) prohibited activity
- (e) curfew (normally electronically monitored)
- (f) exclusion (normally electronically monitored)
- (g) supervision

(h) attendance centre (under 25 year olds) (*not transferable to Scotland.*)

3.9 A requirement of electronic monitoring may be made in addition to any other requirement(s) imposed.

3.10 Of the requirements listed above, three may *not* be transferred to Scotland: activity, programme and attendance centre requirements.

3.10.1 In the case of activity requirements, there is no Scottish reparative equivalent. Three areas are piloting the new Scottish Community Reparation Order, but even here our maximum penalty is 100 hours to be completed within 12 months. The English activity requirement is stated in days to be done, maximum 60 days, and so there is no corresponding Scottish structure.

3.10.2 In the case of programme requirements, it is an English statutory requirement that all such programmes are restricted to accredited programmes accredited by the accreditation body. At present, the Scottish Accreditation Body has not accredited any programme in Scotland. When it does so, transfers may be accepted from England for those programmes by the areas so accredited.

3.10.3 In the case of attendance centre requirements, there is a statutory ban on transfer – we have no such facility in Scotland.

PART 2 : INTERMITTENT CUSTODY ORDERS

Definition

4.1 Where an English court passing a sentence of imprisonment of less than 12 months does not make a Suspended Sentence Order, it has to make a Custody Plus Order (Part 1 of this Chapter) or an Intermittent Custody Order (this Part of this Chapter.)

4.2 The length of the sentence *must*:

4.2.1 be expressed in weeks

4.2.2 be at least 28 weeks

4.2.3 not exceed 51 weeks in respect of any single offence, and

4.2.4 not exceed the maximum term permitted for that offence.

4.3 There are three essential elements of an Intermittent Custody Order:

4.3.1 the court specifies the number of days that the offender must serve in prison before being released on licence for the remainder of the term; and

4.3.2 the court specifies periods during which the offender is to be released temporarily on licence *before* (s)he has served that number of days in prison; and

4.3.3 the court may require any licence period to be granted subject to compliance with one or more requirements listed in 4.9 below.

4.4 The number of custodial days must be at least 14 and, in respect of any one offence, must not be more than 90.

4.5 An Intermittent Custody Order may not be given unless the offender consents to serving the custodial days intermittently.

4.6 Where a court wishes to impose an Intermittent Custody Order in respect of two or more terms of imprisonment that are to be served consecutively, then:

4.6.1 the aggregate length must not exceed 65 weeks, and

4.6.2 the aggregate number of custodial days must not exceed 180.

4.7 A court may not make an Intermittent Custody Order unless:

4.7.1 it has consulted with a Probation Officer; and

4.7.2 there is suitable prison accommodation available for the offender during the custodial periods; and

4.7.3 there is suitable accommodation available for the offender during the licence periods.

Licence Conditions

4.8 Where more than one requirement is ordered to be undertaken during the licence period, the court may instruct different time periods for compliance in relation to each requirement.

4.9 The different requirements that can be ordered as a condition of licence are as follows:

- (a) unpaid work (community service)
- (b) activity (*not transferable to Scotland – see paragraph 3.10 above*)
- (c) programme (*not transferable to Scotland – see paragraph 3.10 above*)
- (d) prohibited activity
- (e) curfew (normally electronically monitored)
- (f) exclusion (normally electronically monitored)
- (g) supervision
- (h) attendance centre (under 25's) (*not transferable to Scotland- see paragraph 3.10 above.*)

4.10 A requirement of electronic monitoring maybe made in addition to any other requirement.



SCOTTISH EXECUTIVE

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