



# Criminal Justice (Scotland) Act 2003

## 2003 asp 7

### PART 5

#### DRUGS COURTS

#### 42 Drugs courts

- (1) It may be prescribed that a court, or class of court, is designated as a “drugs court”; that is to say, as a court especially appropriate to deal with cases involving persons dependent on, or with a propensity to misuse, drugs.
- (2) It may be prescribed that there is to be a drugs court within (either or both)—
  - (a) a sheriffdom or sheriff court district, in which case the sheriff principal is, subject to subsection (1), to nominate a court within that sheriffdom or as the case may be sheriff court district;
  - (b) a commission area, in which case the clerk of the district court is, subject to that subsection, to nominate a district court constituted by a stipendiary magistrate,  
to be a drugs court.
- (3) Any designation under subsection (1) or nomination under subsection (2) is without prejudice to the powers and jurisdiction of any court; but only a drugs court is to have the powers provided for in subsection (4), being powers—
  - (a) additional to any other powers the court may have; and
  - (b) exercisable only as respects such persons as the court is satisfied are persons such as are mentioned in subsection (1).
- (4) The powers are, that where an offender has failed to comply with the requirements of a drug treatment and testing order or a probationer with the requirements of a probation order, the court may, subject to subsections (6) and (7), on one, or more than one, occasion—
  - (a) sentence that person to imprisonment, or as the case may be detention, so however that the total of all periods so imposed in respect of the order is not to exceed twenty-eight days (and accordingly any one such period may be less than any minimum sentence which, but for this paragraph, would fall to be imposed); or

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*Status: This is the original version (as it was originally enacted).*

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- (b) make a community service order within the meaning of section 238(1) of the 1995 Act (power to make such orders), so however that the total of all periods of unpaid work thus required in respect of the order is not to exceed forty hours (and accordingly any one such requirement will be for a period less than that which, but for this paragraph, would fall to be specified),

but the imposition of a sentence under paragraph (a) or making of an order under paragraph (b) does not of itself affect the drug treatment and testing order or probation order.

- (5) The Scottish Ministers may by order amend—

- (a) paragraph (a) of subsection (4) by substituting, for the period of days; or

- (b) paragraph (b) of that subsection, by substituting for the period of hours,

for the time being specified there as a period not to be exceeded, such other period of days, or as the case may be hours, as they think fit.

- (6) Where it is—

- (a) alleged at—

- (i) a review hearing by a drugs court; or

- (ii) a diet of such a court to which an offender has been cited under section 234G(1) of the 1995 Act (court acting in respect of breach of drug treatment and testing order),

that the offender has failed to comply with a requirement of a drug treatment and testing order; or

- (b) alleged at—

- (i) a hearing by such a court, held by virtue of a requirement of a probation order, to review that order; or

- (ii) a diet of such a court to which a probationer has been cited under section 232(1) or 233(1) of that Act (failure to comply with requirement of probation order and commission of further offence during probation period),

that the probationer has failed to comply with a requirement of a probation order,

that person shall forthwith be provided with written details of the alleged failure and informed that there is an entitlement to be legally represented and that no answer need be given as respects that allegation before an opportunity has been afforded the person to take legal advice in that regard or the person has indicated that there is no wish to take such advice.

- (7) If the offender or probationer denies the allegation, then only if, in accordance with section 232 or as the case may be 234G of the 1995 Act, that person's failure to comply is proved is the drugs court entitled to proceed as is mentioned in paragraph (a) or (b) of subsection (4).

- (8) If under section 234H of the 1995 Act (disposal on revocation of drug treatment and testing order) a drug treatment and testing order is revoked, the court (whether or not a drugs court) must, in imposing any sentence by virtue of subsection (1) of that section, take into account any—

- (a) sentence which has been imposed under paragraph (a) of subsection (4); or

- (b) order which has been made under paragraph (b) of that subsection,

in relation to a failure to comply with a requirement of the drug treatment and testing order.

- (9) A court (whether or not a drugs court) must, in imposing any sentence by virtue of section 232(2)(b) of the 1995 Act (power to sentence offender), take into account any—
- (a) sentence which has been imposed under paragraph (a) of subsection (4); or
  - (b) order which has been made under paragraph (b) of that subsection,
- in relation to a failure to comply with a requirement of the probation order in question.
- (10) In this section—
- “drug treatment and testing order” has the meaning given by section 234B(2) of the 1995 Act (power to make drug treatment and testing order);
  - “probation order” has the meaning given by section 228(1) of that Act (power to make probation order); and
  - “review hearing” is to be construed in accordance with section 234F(1)(b) of that Act (periodic review of drug treatment and testing order).
- (11) In the 1995 Act—
- (a) in section 228(5)(b) (explanation to be given to offender of possible consequences of failure to comply with probation order), at the end there is added “or may be dealt with under the powers provided for in section 42(4) of the Criminal Justice (Scotland) Act 2003 (asp 7) (powers of drugs court)”;
  - (b) in section 232 (probation orders: failure to comply with requirement), at the end there is added—
    - “(8) This section is subject to section 42(9) of the Criminal Justice (Scotland) Act 2003 (asp 7) (powers of drugs court).”;
  - (c) in section 234D(1)(b) (explanation to be given to offender of possible consequences of failure to comply with drug treatment and testing order), after the word “Act” there is inserted “or 42(4) of the Criminal Justice (Scotland) Act 2003 (asp 7) (powers of drugs court)”; and
  - (d) in section 234H (disposal on revocation of drug treatment and testing order), at the end there is added—
    - “(4) This section is subject to section 42(8) of the Criminal Justice (Scotland) Act 2003 (asp 7) (powers of drugs court).”.