



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.

[^{F1}(2) It may be prescribed that there is to be a drugs court within 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 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 [^{F2}community payback 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
- (b) [^{F3}in the case of a failure to comply with the requirements of a drug treatment and testing order, make a community payback order imposing a level 1 unpaid work or other activity requirement, so however that the total hours of unpaid work or other activity] 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),

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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 [F4community payback 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

[F5(b) alleged at—

(i) a progress review carried out by such a court in relation to a community payback order; or

(ii) a diet of such a court to which an offender has been cited under section 227ZC(2) of that Act (breach of community payback order),

that the offender has failed to comply with a requirement imposed by a community payback 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 ^{F6}... denies the allegation, then only if, in accordance with section [F7227ZC] 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.

[F8(9) If a community payback order is revoked under section 227ZC(7)(b) of the 1995 Act, the court (whether or not a drugs court) must, in dealing with the offender by virtue of that section, take into account any sentence which has been imposed under paragraph (a) of subsection (4) of this section in relation to a failure to comply with the community payback order.]

(10) In this section—

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[^{F9}“community payback order” means an order imposed under section 227A of the 1995 Act;]

“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);

[^{F9}“level 1 unpaid work or other activity requirement” has the meaning given in section 227I(5) of the 1995 Act;]

^{F10}
...

“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—

^{F11}(a)

^{F11}(b)

(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).”.

Textual Amendments

- F1** S. 42(2) substituted (1.4.2016) by [The Courts Reform \(Scotland\) Act 2014 \(Consequential Provisions\) Order 2016 \(S.S.I. 2016/142\)](#), art. 1, [sch. para. 3](#)
- F2** Words in s. 42(4) substituted (1.2.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), s. 206(1), [sch. 2 para. 47\(2\)\(a\)\(i\)](#); S.S.I. 2010/413, art. 2, sch. (with art. 3(1))
- F3** Words in s. 42(4)(b) substituted (1.2.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), s. 206(1), [sch. 2 para. 47\(2\)\(a\)\(ii\)](#); S.S.I. 2010/413, art. 2, sch. (with art. 3(1))
- F4** Words in s. 42(4) substituted (1.2.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), s. 206(1), [sch. 2 para. 47\(2\)\(a\)\(iii\)](#); S.S.I. 2010/413, art. 2, sch. (with art. 3(1))
- F5** S. 42(6)(b) substituted (1.2.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), s. 206(1), [sch. 2 para. 47\(2\)\(b\)](#); S.S.I. 2010/413, art. 2, sch. (with art. 3(1))
- F6** Words in s. 42(7) repealed (1.2.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), s. 206(1), [sch. 2 para. 47\(2\)\(c\)\(i\)](#); S.S.I. 2010/413, art. 2, sch. (with art. 3(1))
- F7** Word in s. 42(7) substituted (1.2.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), s. 206(1), [sch. 2 para. 47\(2\)\(c\)\(ii\)](#); S.S.I. 2010/413, art. 2, sch. (with art. 3(1))
- F8** S. 42(9) substituted (1.2.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), s. 206(1), [sch. 2 para. 47\(2\)\(d\)](#); S.S.I. 2010/413, art. 2, sch. (with art. 3(1))
- F9** Words in s. 42(10) inserted (1.2.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), s. 206(1), [sch. 2 para. 47\(2\)\(e\)\(i\)](#); S.S.I. 2010/413, art. 2, sch. (with art. 3(1))
- F10** Words in s. 42(10) repealed (1.2.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), s. 206(1), [sch. 2 para. 47\(2\)\(e\)\(ii\)](#); S.S.I. 2010/413, art. 2, sch. (with art. 3(1))
- F11** S. 42(11)(a)(b) repealed (1.2.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), s. 206(1), [sch. 2 para. 47\(2\)\(f\)](#); S.S.I. 2010/413, art. 2, sch. (with art. 3(1))

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