



# Community Service by Offenders (Scotland) Act 1978

## 1978 CHAPTER 49

An Act to make provision as respects the performance of unpaid work by persons convicted or placed on probation in Scotland; and for connected purposes. [31st July 1978]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### 1 Community service orders

- (1) Subject to the provisions of this Act, where a person of or over 16 years of age is convicted of an offence punishable by imprisonment, other than an offence the sentence for which is fixed by law, the court may, instead of dealing with him in any other way, make an order (in this Act referred to as " a community service order") requiring him to perform unpaid work for such number of hours (being in total not less than forty nor more than two hundred and forty) as may be specified in the order.
- (2) A court shall not make a community service order in respect of any offender unless—
  - (a) the offender consents;
  - (b) the court has been notified by the Secretary of State that arrangements exist for persons who reside in the locality in which the offender resides, or will be residing when the order comes into force, to perform work under such an order ;
  - (c) the court is satisfied, after considering a report by an officer of a local authority about the offender and his circumstances, and, if the court thinks it necessary, hearing that officer, that the offender is a suitable person to perform work under such an order; and

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- (d) the court is satisfied that provision can be made under the arrangements mentioned in paragraph (b) above for the offender to perform work under such an order.
- (3) A copy of the report mentioned in subsection (2)(c) above shall be supplied to the offender or his solicitor.
- (4) Before making a community service order the court shall explain to the offender in ordinary language—
  - (a) the purpose and effect of the order and in particular the obligations on the offender as specified in section 3 of this Act;
  - (b) the consequences which may follow under section 4 of this Act if he fails to comply with any of those requirements; and
  - (c) that the court has under section 5 of this Act the power to review the order on the application either of the offender or of an officer of the local authority in whose area the offender for the time being resides.
- (5) The Secretary of State may by order direct that subsection (1) above shall be amended by substituting, for the maximum or minimum number of hours specified in that subsection as originally enacted or as subsequently amended under this subsection, such number of hours as may be specified in the order; and an order under this subsection may specify a different maximum or minimum number of hours for different classes of case.
- (6) An order under subsection (5) above shall be made by statutory instrument, but no such order shall be made unless a draft of it has been laid before, and approved by a resolution of, each House of Parliament; and any such order may be varied or revoked by a subsequent order under that subsection.
- (7) Nothing in subsection (1) above shall be construed as preventing a court which makes a community service order in respect of any offence from—
  - (a) imposing any disqualification on the offender;
  - (b) making an order for forfeiture in respect of the offence ;
  - (c) ordering the offender to find caution for good behaviour.

## **2 Further provisions about community service orders**

- (1) A community service order shall—
  - (a) specify the locality in which the offender resides or will be residing when the order comes into force;
  - (b) require the local authority in whose area the locality specified under paragraph (a) above is situated to appoint or assign an officer (referred to in this Act as " the local authority officer") who will discharge the functions assigned to him by this Act; and
  - (c) state the number of hours of work which the offender is required to perform.
- (2) Where, whether on the same occasion or on separate occasions, an offender is made subject to more than one community service order, or to both a community service order and a probation order which includes a requirement that that offender shall perform any unpaid work, the court may direct that the hours of work specified in any of those orders shall be concurrent with or additional to those specified in any other of those orders, but so that at no time shall the offender have an outstanding number

of hours of work to perform in excess of the maximum provided for in section 1(1) of this Act.

- (3) Upon making a community service order the court shall—
- (a) give a copy of the order to the offender;
  - (b) send a copy of the order to the director of social work of the local authority in whose area the offender resides or will be residing when the order comes into force; and
  - (c) where it is not the appropriate court, send a copy of the order (together with such documents and information relating to the case as are considered useful) to the clerk of the appropriate court.

### **3 Obligations of persons subject to community service orders**

- (1) An offender in respect of whom a community service order is in force shall—
- (a) report to the local authority officer and notify him without delay of any change of address or in the times, if any, at which he usually works ; and
  - (b) perform for the number of hours specified in the order such work at such times as the local authority officer may instruct.
- (2) Subject to section 5(1) of this Act, the work required to be performed under a community service order shall be performed during the period of twelve months beginning with the date of the order; but, unless revoked, the order shall remain in force until the offender has worked under it for the number of hours specified in it.
- (3) The instructions given by the local authority officer under this section shall, so far as practicable, be such as to avoid any conflict with the offender's religious beliefs and any interference with the times, if any, at which he normally works or attends a school or other educational establishment.

### **4 Failure to comply with requirements of community service orders**

- (1) If at any time while a community service order is in force in respect of any offender it appears to the appropriate court, on evidence on oath from the local authority officer, that that offender has failed to comply with any of the requirements of section 3 of this Act (including any failure satisfactorily to perform the work which he has been instructed to do), that court may issue a warrant for the arrest of that offender, or may, if it thinks fit, instead of issuing a warrant in the first instance issue a citation requiring that offender to appear before that court at such time as may be specified in the citation.
- (2) If it is proved to the satisfaction of the court before which an offender appears or is brought in pursuance of subsection (1) above that he has failed without reasonable excuse to comply with any of the requirements of the said section 3, that court may—
- (a) without prejudice to the continuance in force of the order, impose on him a fine not exceeding £50 ;
  - (b) revoke the order and deal with that offender in any manner in which he could have been dealt with for the original offence by the court which made the order if the order had not been made; or
  - (c) subject to section 1(1) of this Act, vary the number of hours specified in the order.

## **5 Amendment and revocation of community service orders, and substitution of other sentences**

- (1) Where a community service order is in force in respect of any offender and, on the application of that offender or of the local authority officer, it appears to the appropriate court that it would be in the interests of justice to do so having regard to circumstances which have arisen since the order was made, that court may—
- (a) extend, in relation to the order, the period of twelve months specified in section 3(2) of this Act;
  - (b) subject to section 1(1) of this Act, vary the number of hours specified in the order;
  - (c) revoke the order; or
  - (d) revoke the order and deal with the offender for the original offence in any manner in which he could have been dealt with for that offence by the court which made the order if the order had not been made.
- (2) If the appropriate court is satisfied that the offender proposes to change, or has changed, his residence from the locality for the time being specified under section 2(1) (a) of this Act to another locality and—
- (a) that court has been notified by the Secretary of State that arrangements exist for persons who reside in that other locality to perform work under community service orders; and
  - (b) it appears to that court that provision can be made under those arrangements for him to perform work under the order;
- that court may, and on the application of the local authority officer shall, amend the order by substituting that other locality for the locality for the time being specified in the order; and the provisions of this Act shall apply to the order as amended.
- (3) Where the court proposes to exercise its powers under subsection(1)(a), (b) or (d) above otherwise than on the application of the offender, it shall issue a citation requiring him to appear before the court and, if he fails to appear, may issue a warrant for his arrest.

## **6 Community service orders relating to persons residing in England or Wales**

- (1) Where a court is considering the making of a community service order under section 1(1) of this Act and it is satisfied that the offender has attained the age of 17 years and resides, or will be residing when the order comes into force, in England or Wales, then—
- (a) the said section 1 shall have effect as if for paragraphs (b) and (d) of subsection (2) there were substituted the following paragraphs—
    - “(b) the court has been notified by the Secretary of State that arrangements exist for persons who reside in the petty sessions area in which the offender resides, or will be residing when the order comes into force, to perform work under community service orders made under section 14 of the Powers of Criminal Courts Act 1973 ;
    - (d) it appears to that court that provision can be made under the arrangements mentioned in paragraph (b) above for him to perform work under the order made under subsection (1) above;”;

- (b) the order shall specify that the unpaid work required to be performed by the order shall be performed under the arrangements mentioned in section 1(2) (b) of this Act as substituted by paragraph (a) above.
- (2) Where a community service order has been made under the said section 1(1) and—
- (a) the appropriate court is satisfied that the offender has attained the age of 17 years and proposes to reside or is residing in England or Wales ;
  - (b) that court has been notified by the Secretary of State that arrangements exist for persons who reside in the petty sessions area in which the offender proposes to reside or is residing to perform work under community service orders made under section 14 of the Powers of Criminal Courts Act 1973 ; and
  - (c) it appears to that court that provision can be made under those arrangements for him to perform work under the order made under the said section 1(1),
- it may amend the order by specifying that the unpaid work required to be performed by the order shall be performed under the arrangements mentioned in paragraph (b) of this subsection.
- (3) Schedule 1 to this Act shall have effect in relation to a community service order made or amended by virtue of this section.

## **7 Requirement that probationer shall perform unpaid work**

In each of sections 183 and 384 of the 1975 Act (probation)—

- (a) in subsection (4) after the word " considers " there shall be inserted " (a) " and at the end of the subsection there shall be added the words " or (b) where the probation order is to include such a requirement as is mentioned in subsection (5A) below, conducive to securing or preventing the aforesaid matters ";
- (b) after subsection (5) there shall be inserted the following subsection—

“(5A) Without prejudice to the generality of subsection (4) above, where a court which is considering making a probation order—

- (a) is satisfied that the offender is of or over 16 years of age and has committed an offence punishable with imprisonment and that the conditions for the making of a community service order under the Community Service by Offenders (Scotland) Act 1978 specified in paragraphs (a) and (c) of section 1(2) of that Act have been met;
- (b) has been notified by the Secretary of State that arrangements exist for persons who reside in the locality where the offender resides, or will be residing when the probation order comes into force, to perform unpaid work as a requirement of a probation order; and
- (c) is satisfied that provision can be made under the arrangements mentioned in paragraph (b) above for the offender to perform unpaid work under the probation order,

it may include in the probation order, in addition to any other requirement, a requirement that the offender shall perform unpaid work for such number of hours (being in total not less than forty nor more than two hundred and forty) as may be specified in the probation order; and the said Act of 1978 shall apply to a probation order

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including such a requirement as it applies to a community service order, but as if—

- (i) subsections (1), (2)(b) and (d) and (4)(b) of section 1 and sections 4 and 6 were omitted;
  - (ii) in section 1(5) for the words "subsection (1) above " there were substituted the words " subsection (5A) of section 183 or, as the case may be, 384 of the 1975 Act " ; and
  - (iii) any other necessary modifications were made.”;
- (c) in subsection (6) for " or (5) " there shall be substituted " (5) or (5A) ".

## **8 Community service order may be made after failure to comply with requirement of probation order**

In each of sections 186(2) and 387(2) of the 1975 Act (failure to comply with requirement of probation order), at the end there shall be added—

“; or

- (d) without prejudice to the continuance in force of the probation order, in a case where the conditions required by the Community Service by Offenders (Scotland) Act 1978 are satisfied, make a community service order, and the provisions of that Act shall apply to such an order as if the failure to comply with the requirement of the probation order were the offence in respect of which the order had been made.”.

## **9 Grants in respect of community service facilities**

After section 27 of the Social Work (Scotland) Act 1968 there shall be inserted the following section—

### **“27A Grants in respect of community service facilities**

The Secretary of State may make to a local authority grants of such amount and subject to such conditions as he may with the consent of the Treasury determine in respect of expenditure incurred by the authority in providing a service for the purposes mentioned in paragraph (b) of section 27(1) of this Act in relation to persons mentioned in sub-paragraph (iii) of that paragraph.”.

## **10 Rules**

- (1) The Secretary of State may make rules for regulating the performance of work under community service orders or probation orders which include a requirement that the offender shall perform unpaid work.
- (2) Without prejudice to the generality of subsection (1) above, rules under this section may—
  - (a) limit the number of hours' work to be done by a person under such an order on any one day;
  - (b) make provision as to the reckoning of time worked under such orders;
  - (c) make provision for the payment of travelling and other expenses in connection with the performance of work under such orders;

- (d) provide for records to be kept of the work done by any person under such an order.
- (3) Rules under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

## **11 Annual reports to be laid before Parliament**

The Secretary of State shall lay before Parliament each year, or incorporate in annual reports he already makes, a report of the working of community service orders.

## **12 Interpretation**

- (1) In this Act—
  - " the 1975 Act " means the Criminal Procedure (Scotland) Act 1975;
  - " the appropriate court " means—
    - (a) where the relevant community service order has been made by the High Court, the High Court;
    - (b) in any other case, the court having jurisdiction in the locality for the time being specified in the order under section 2(1)(a) of this Act, being a sheriff or district court according to whether the order has been made by a sheriff or a district court, but in a case where the order has been made by a district court and there is no district court in that locality, the sheriff court;
  - " local authority " means a regional or islands council.
- (2) Except where the context otherwise requires, expressions used in this Act and in the 1975 Act shall have the same meanings in this Act as in that Act.
- (3) Except where the context otherwise requires, any reference in this Act to any enactment is a reference to it as amended, and includes a reference to it as extended or applied, by or under any other enactment, including this Act.

## **13 Financial provisions**

There shall be defrayed out of money provided by Parliament any increase attributable to the provisions of this Act in the sums payable out of such money under any other Act.

## **14 Minor and consequential amendments**

The enactments specified in Schedule 2 to this Act shall have effect subject to the amendments there specified, being minor amendments and amendments consequential on the provisions of this Act.

## **15 Short title, commencement and extent**

- (1) This Act may be cited as the Community Service by Offenders (Scotland) Act 1978.
- (2) This Act shall come into force on such a day as the Secretary of State may appoint by order made by statutory instrument; and different days may be appointed under

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this subsection for different provisions of this Act or for different purposes, or for the purposes of the same provision in relation to different classes of case.

- (3) Any order under subsection (2) above may make such transitional provision as appears to the Secretary of State to be expedient in connection with the provisions thereby brought into force.
- (4) Subject to subsection (5) below, this Act extends to Scotland only.
- (5) Section 6(3) and this section and paragraphs 2, 3 and 5 of Schedule 1 extend to England and Wales.



## SCHEDULES

### SCHEDULE 1

Section 6(3).

#### COMMUNITY SERVICE ORDERS MADE OR AMENDED BY VIRTUE OF SECTION 6

- 1 Section 1(4) of this Act shall apply to a community service order made by virtue of section 6 of this Act as if—
- (a) in paragraph (a) for the reference to section 3 of this Act there were substituted a reference to section 15 of the Powers of Criminal Courts Act 1973 ;
  - (b) in paragraph (b) for the reference to section 4 of this Act there were substituted a reference to section 16 of the said Act of 1973 as applied by paragraph 3 below and to paragraph 4 below;
  - (c) for paragraph (c) there were substituted the following paragraph—
    - “(c) the powers of the magistrates' court under section 17 of the said Act of 1973 as applied by paragraph 5 of Schedule 1 to this Act and of the court in Scotland under paragraph 6 of that Schedule.”.
- 2 Subsection (1)(a) and (b) and (3)(6) and (c) of section 2 and sections 3 to 5 of this Act shall not apply to a community service order made or amended by virtue of the said section 6 ; but, subject to paragraphs 3 and 5 below, section 14(4) and sections 15 to 17 of the said Act of 1973 shall apply to the order as if it were a community service order made under the said section 14.
- 3 Section 16 of the said Act of 1973 shall have effect in relation to an order made or amended by virtue of the said section 6 as if for subsections (3) to (7) there were substituted the following subsection—
- “(3) If it is proved to the satisfaction of the magistrates' court before which an offender appears or is brought under this section that he has failed without reasonable excuse to comply with any of the requirements of section 15 of this Act, the court may, without prejudice to the continuance of the order, impose on him a fine not exceeding £50 or issue a summons requiring him to appear before the court in Scotland by which the order was made.”.
- 4 A court in Scotland before which an offender has been required under section 16(3) of the said Act of 1973 (as substituted by paragraph 3 above) to appear may—
- (a) if he fails to so appear, issue a warrant for his arrest;
  - (b) in relation to the community service order, exercise the powers conferred on an appropriate court by section 4(2) of this Act.
- 5 Section 17 of the said Act of 1973 shall have effect in relation to an order made or amended by virtue of the said section 6 as if—
- (a) for subsections (2) to (4) there were substituted the following subsection—
    - “(2) Where, on the application of the offender or the relevant officer, it appears to a magistrates' court acting for the petty sessions area for the time being specified in the order that it would be in the interests

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of justice (having regard to circumstances which have arisen since the order was made or amended, as the case may be, by virtue of section 6 of the Community Service by Offenders (Scotland) Act 1978) that the order should be revoked or that the offender should be dealt with in some other manner for the offence in respect of which the order was made, the magistrates' court shall refer the case to the court in Scotland by which the order was made.”;

(b) in subsection (7), the words " or (2) " were omitted.

6 A court in Scotland to which a case relating to a community service order has been referred under section 17(2) of the said Act of 1973 (as substituted by paragraph 5 above) may, in relation to that order, exercise the powers conferred on an appropriate court by section 5(1)(b), (c) or (d) of this Act:

Provided that, where the court proposes to exercise the powers conferred on an appropriate court by paragraph (b) or (d) of the said section 5(1), it shall issue a citation requiring the offender to appear before it.

7 Where an offender who has been required under the proviso to paragraph 6 above to appear before a court in Scotland fails to do so, that court may issue a warrant for his arrest.

8 The court by which a community service order is made or amended by virtue of the said section 6 shall send three copies of the order to the clerk to the justices for the petty sessions area specified therein, together with such documents and information relating to the case as it considers likely to be of assistance to the court acting for that petty sessions area.

## SCHEDULE 2

Section 14.

### MINOR AND CONSEQUENTIAL AMENDMENTS

#### *The Social Work (Scotland) Act 1968 (c. 49)*

1 In section 27 (supervision of persons put on probation or released from prisons etc.)

- (a) at the end of subsection (1)(b)(ii) add " and (iii) without prejudice to sub-paragraphs (i) and (ii) above, persons in the area who are subject to a community service order under the Community Service by Offenders (Scotland) Act 1978 or a probation order which includes a requirement that the offender shall perform unpaid work ";
- (b) for the words " probation scheme" wherever they occur substitute " probation and community service scheme ".

#### *The Criminal Procedure (Scotland) Act 1975 (c. 21)*

2 In section 188(1) (probation orders relating to persons residing in England or Wales), after " Act" insert " (not being a probation order including a requirement that the offender shall perform unpaid work) ".

3 In section 389(1) (probation orders relating to persons residing in England or Wales), after " Act" insert " (not being a probation order including a requirement that the offender shall perform unpaid work) ".