



# Criminal Procedure (Scotland) Act 1995

## 1995 CHAPTER 46

### PART XI

#### SENTENCING

##### *Community service by offenders*

#### **238 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 imposing on him a sentence of, or including, imprisonment or any other form of detention, 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 40 nor more than 240) 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
  - (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.

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- (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 subsections (1) to (3) of section 239 of this Act;
  - (b) the consequences which may follow under subsections (4) to (6) of that section if he fails to comply with any of those requirements; and
  - (c) that the court has under section 240 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 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.
- (8) 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 section and sections 239 to 245 of this Act as “the local authority officer”) who will discharge the functions assigned to him by those sections; and
  - (c) state the number of hours of work which the offender is required to perform.
- (9) 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 subsection (1) above.
- (10) Upon making a community service order the court shall—
- (a) give, or send by registered post or the recorded delivery service, a copy of the order to the offender;
  - (b) send a copy of the order to the chief social work officer 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.
- (11) Where a copy of a community service order has, under subsection (10)(a) above, been sent by registered post or by the recorded delivery service, an acknowledgement or certificate of delivery of a letter containing the copy order issued by the Post Office shall be sufficient evidence of the delivery of the letter on the day specified in such acknowledgement or certificate.

### **239 Community service orders: requirements**

- (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 240(1) of this Act, the work required to be performed under a community service order shall be performed during the period of 12 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) If at any time while a community service order is in force in respect of any offender it appears to the appropriate court, on information from the local authority officer, that that offender has failed to comply with any of the requirements of subsections (1) to (3) above (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.
- (5) If it is proved to the satisfaction of the court before which an offender appears or is brought in pursuance of subsection (4) above that he has failed without reasonable excuse to comply with any of the requirements of the said subsections (1) to (3), that court may—
- (a) without prejudice to the continuance in force of the order, impose on him a fine not exceeding level 3 on the standard scale;
  - (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 238(1) of this Act, vary the number of hours specified in the order.
- (6) The evidence of one witness shall, for the purposes of subsection (5) above, be sufficient evidence.

**240 Community service orders: amendment and revocation etc**

- (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 12 months specified in section 239(2) of this Act;
  - (b) subject to section 238(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 238(8)(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 sections 238 to 245 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.

**241 Community service order: commission of offence while order in force**

- (1) Where—
- (a) a court has made a community service order in respect of an offender; and
  - (b) the offender is convicted of an offence committed in the circumstances mentioned in subsection (2) below,
- the court which sentences him for that offence shall, in determining the appropriate sentence for that offence, have regard to the fact that the offence was committed in those circumstances.
- (2) The circumstances referred to in subsection (1) above are that the offence was committed—
- (a) during the period when the community service order was in force or within the period of three months following the expiry of that order; and
  - (b) in any place where unpaid work under the order was being or had previously been performed.
- (3) The court shall not, under subsection (1) above, have regard to the fact that the offence was committed in the circumstances mentioned in subsection (2) above unless that fact is libelled in the indictment or, as the case may be, specified in the complaint.

## **242 Community service orders: persons residing in England and Wales**

- (1) Where a court is considering the making of a community service order and it is satisfied that the offender has attained the age of 16 years and resides, or will be residing when the order comes into force, in England or Wales, then—
- (a) section 238 of this Act shall have effect as if subsection (2) were amended as follows—
    - (i) paragraph (b) shall be omitted;
    - (ii) in paragraph (c) for the words “such an order” there shall be substituted the words “a community service order”; and
    - (iii) for paragraph (d) there shall be substituted the following paragraph—
      - “(d) it appears to that court that provision can be made for the offender to perform work under the order made under subsection (1) above under the arrangements which exist in the petty sessions area in which he resides or will be residing for persons to perform work under community service orders made under section 14 of the Powers of Criminal Courts Act 1973;” and
  - (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 238(2) (d) of this Act as substituted by paragraph (a) above.
- (2) Where a community service order has been made and—
- (a) the appropriate court is satisfied that the offender has attained the age of 16 years and proposes to reside or is residing in England or Wales; and
  - (b) it appears to that court that provision can be made for the offender to perform work under the order made under the arrangements which exist in the petty sessions area in which he proposes to reside or is residing for persons to perform work under community service orders made under section 14 of the Powers of Criminal Courts Act 1973,
- 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) A community service order made under section 238(1) as amended by or in accordance with this section shall—
- (a) specify the petty sessions area in England or Wales in which the offender resides or will be residing when the order or the amendment comes into force; and
  - (b) require the probation committee for that area to appoint or assign a probation officer who will discharge in respect of the order the functions in respect of community service orders conferred on relevant officers by the Powers of Criminal Courts Act 1973.

## **243 Community service orders: persons residing in Northern Ireland**

- (1) Where a court is considering the making of a community service order and it is satisfied that the offender resides, or will be residing when the order comes into force, in Northern Ireland, then—
- (a) section 238 of this Act shall have effect as if subsection (2) were amended as follows—

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- (i) paragraph (b) shall be omitted;
  - (ii) for paragraph (d) there shall be substituted the following paragraph—
    - “(d) it appears to the court that provision can be made by the Probation Board for Northern Ireland for him to perform work under such an order;”;
  - (b) the order shall specify that the unpaid work required to be performed by the order shall be performed under the provision made by the Probation Board for Northern Ireland and referred to in section 238(2)(d) of this Act as substituted by paragraph (a) above.
- (2) Where a community service order has been made and—
- (a) the appropriate court is satisfied that the offender proposes to reside or is residing in Northern Ireland; and
  - (b) it appears to that court that provision can be made by the Probation Board for Northern Ireland for him to perform work under the order,
- it may amend the order by specifying that the unpaid work required to be performed by the order shall be performed under the provision made by the Probation Board for Northern Ireland and referred to in paragraph (b) of this subsection.
- (3) A community service order made under section 238(1) of this Act as amended by or in accordance with this section shall—
- (a) specify the petty sessions district in Northern Ireland in which the offender resides or will be residing when the order or the amendment comes into force; and
  - (b) require the Probation Board for Northern Ireland to select an officer who will discharge in respect of the order the functions in respect of community service orders conferred on the relevant officer by the Treatment of Offenders (Northern Ireland) Order 1976.

#### **244 Community service orders: general provisions relating to persons living in England and Wales or Northern Ireland**

- (1) Where a community service order is made or amended in the circumstances specified in section 242 or 243 of this Act, the court which makes or amends the order shall send three copies of it as made or amended to the home court, together with such documents and information relating to the case as it considers likely to be of assistance to that court.
- (2) In this section—
- “home court” means—
    - (a) if the offender resides in England or Wales, or will be residing in England or Wales at the relevant time, the magistrates' court acting for the petty sessions area in which he resides or proposes to reside; and
    - (b) if he resides in Northern Ireland, or will be residing in Northern Ireland, at the relevant time, the court of summary jurisdiction acting for the petty sessions district in which he resides or proposes to reside; and
  - “the relevant time” means the time when the order or the amendment to it comes into force.
- (3) A community service order made or amended in the circumstances specified in section 242 or 243 of this Act shall be treated, subject to the following provisions of this section, as if it were a community service order made in the part of the United

Kingdom in which the offender resides, or will be residing at the relevant time; and the legislation relating to community service orders which has effect in that part of the United Kingdom shall apply accordingly.

(4) Before making or amending a community service order in those circumstances the court shall explain to the offender in ordinary language—

- (a) the requirements of the legislation relating to community service orders which has effect in the part of the United Kingdom in which he resides or will be residing at the relevant time;
- (b) the powers of the home court under that legislation, as modified by this section; and
- (c) its own powers under this section,

and an explanation given in accordance with this section shall be sufficient without the addition of an explanation under section 238(4) of this Act.

(5) The home court may exercise in relation to the community service order any power which it could exercise in relation to a community service order made by a court in the part of the United Kingdom in which the home court exercises jurisdiction, by virtue of the legislation relating to such orders which has effect in that part of the United Kingdom, except—

- (a) a power to vary the order by substituting for the number of hours' work specified in it any greater number than the court which made the order could have specified;
- (b) a power to revoke the order; and
- (c) a power to revoke the order and deal with the offender for the offence in respect of which it was made 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.

(6) If at any time while legislation relating to community service orders which has effect in one part of the United Kingdom applies by virtue of subsection (3) above to a community service order made in another part—

- (a) it appears to the home court—
  - (i) if that court is in England or Wales, on information to a justice of the peace acting for the petty sessions area for the time being specified in the order; or
  - (ii) if it is in Northern Ireland, upon a complaint being made to a justice of the peace acting for the petty sessions district for the time being specified in the order,

that the offender has failed to comply with any of the requirements of the legislation applicable to the order; or

- (b) it appears to the home court on the application of—
  - (i) the offender; or
  - (ii) if that court is in England and Wales, the relevant officer under the Powers of Criminal Courts Act 1973; or
  - (iii) if that court is in Northern Ireland, the relevant officer under the Treatment of Offenders (Northern Ireland) Order 1976,

that it would be in the interests of justice to exercise a power mentioned in subsection (5)(b) or (c) above,

the home court may require the offender to appear before the court by which the order was made.

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

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- (7) Where an offender is required by virtue of subsection (6) above to appear before the court which made a community service order, that court—
- (a) may issue a warrant for his arrest; and
  - (b) may exercise any power which it could exercise in respect of the community service order if the offender resided in the part of the United Kingdom where the court has jurisdiction,
- and any enactment relating to the exercise of such powers shall have effect accordingly.

#### **245 Community service orders: rules, annual report and interpretation**

- (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.
- (4) 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.
- (5) In sections 238 to 243 of this Act, “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 238(8)(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.