

CRIMINAL JUSTICE (SCOTLAND) ACT 2003

EXPLANATORY NOTES

THE ACT THE ACT IS IN 12 PARTS.

Part 5 – Drugs Courts

Section 42 – Drugs courts

198. *Section 42* provides for a court to be designated a drugs court and confers certain powers upon a judge when sitting as a drugs court.
199. Subsection (1) gives the Scottish Ministers the power to prescribe courts as “drugs courts”. Given the provisions of section 88 of the Act this power is exercised by subordinate legislation subject to negative procedure. Drugs courts are defined as those especially appropriate to deal with cases involving persons dependent on, or with a propensity to misuse, drugs.
200. Subsection (2) allows Ministers to prescribe that there is to be a drugs court within a sheriffdom or sheriff court district or a commission area in which there is a district court constituted by a stipendiary magistrate. Where a sheriffdom or sheriff court district is prescribed, it is for the sheriff principal to nominate the particular sheriff court within that sheriffdom or sheriff court district that may sit as a drugs court. Similarly, where a commission area is prescribed, it is for the clerk of the relevant district court to nominate the particular district court, constituted by a stipendiary magistrate, that may sit as a drugs court.
201. Subsection (3) provides that a court is to have the powers specified in subsection (4) when sitting as a drug court. These powers are in addition to existing powers of the court.
202. Subsection (4) sets out the additional powers that are available to the drug court and provides that it has extended powers to deal with a breach by an offender of a drug treatment and testing order and a probation order. A drug treatment and testing order (DTTO) is an order made under section 234B of the Criminal Procedure (Scotland) Act 1995 (as inserted by section 89 of the Crime and Disorder Act 1998). It is a disposal targeted on serious offenders with a dependency on drugs who consent to the imposition of the order. The offender is placed on specialist treatment programmes and is subject to regular review by the court. A probation order is an order made under section 228 of the Criminal Procedure (Scotland) Act 1995, which requires an offender to be under supervision in the community for a specified period. The principal focus of the order, which requires the offender’s consent, is to challenge the offender’s criminality and behaviour. It is likely that the majority of probation orders imposed by a drugs court will have additional conditions of drug treatment and regular review by the court.
203. Where the drugs court is satisfied that a failure to comply with a condition of a DTTO or a probation order has occurred, it may impose one of two sanctions:

- a sentence of imprisonment of up to 28 days (including a period of custody of less than five days – currently the minimum period that may be imposed is 5 days under section 206 of the 1995 Act); or
 - a community service order of up to 40 hours (including a period of community service of less than 80 hours - currently the minimum hours of CSO that may be imposed is 80 hours under section 238 of the 1995 Act).
204. The drugs court is given the power to impose these sanctions and to permit the DTTO or probation order to continue. There is no necessity for the drugs court to revoke the DTTO or probation order when it imposes one of the sanctions under subsection (4).
205. The effect of subsection (4) is to permit the drugs court to deal with repeated failures of the offender to comply with conditions of a DTTO or probation order by imposing short periods of detention or community service without revoking the DTTO or probation order. The drugs court may therefore impose periods of imprisonment until the cumulative limit of 28 days of imprisonment is reached and periods of community service until the cumulative limit of 40 hours is reached. Subsection (5) permits the Scottish Ministers to amend by subordinate legislation the period of imprisonment or community service that may be imposed by the drugs court under subsection (4).
206. Subsection (6) makes provision for the procedure to be followed where there is an allegation that the offender has failed to comply with his or her DTTO or probation order. This procedure is in addition to the existing procedure for such allegations, namely 234G of the 1995 Act in respect of DTTOs, and sections 232 and 233 of the 1995 Act in respect of probation orders. Subsection (7) provides that the offender may be provided with details of the alleged breach when that person attends a review hearing of a DTTO or a diet of review fixed as a condition of a probation order. This provision will enable the drugs court to deal more speedily with allegations of failure to comply.
207. Subsections (8) and (9) make provision that any court, when revoking a DTTO or probation order and imposing a sentence on the offender, must take into account any sentence of imprisonment or community service order imposed by the drugs court under subsection (4)(a) and (b).