



Criminal Procedure (Scotland) Act 1975

1975 CHAPTER 21

PART II

SUMMARY PROCEDURE

CONVICTION AND SENTENCE

Probation

384 Probation

- (1) Where a person is charged before a court of summary jurisdiction with an offence (other than an offence the sentence for which is fixed by law) and the court is satisfied that he committed the offence, the court, if it is of opinion having regard to the circumstances, including the nature of the offence and the character of the offender, that it is expedient to do so, may, without proceeding to conviction, make a probation order, that is to say an order requiring the offender to be under supervision for a period to be specified in the order of not less than one nor more than three years.
- (2) A probation order shall be as nearly as may be in the form prescribed by Act of Adjournal, and shall name the local authority area in which the offender resides or is to reside and the order shall make provision for the offender to be under the supervision of an officer of the local authority of that area, or, where the offender resides or is to reside in a local authority area in which the court has no jurisdiction the court shall name the appropriate court (being such a court as could have been named in any amendment of the order in accordance with the provisions of Schedule 5 to this Act) in the area of residence or intended residence, and the court last mentioned shall require the local authority for that area to arrange for the offender to be under the supervision of an officer of that authority.
- (3) Subject to the provisions of Schedule 5 to this Act relating to probationers who change their residence, an offender in respect of whom a probation order is made shall be required to be under the supervision of an officer of the local authority as aforesaid.

Status: This is the original version (as it was originally enacted).

- (4) Subject to the provisions of the next following section, a probation order may in addition require the offender to comply during the whole or any part of the probation period with such requirements as the court having regard to the circumstances of the case, considers necessary for securing the good conduct of the offender or for preventing a repetition by him of the offence or the commission of other offences.
- (5) Without prejudice to the generality of the last foregoing subsection, a probation order may include requirements relating to the residence of the offender:

Provided that—

- (a) before making an order containing any such requirements, the court shall consider the home surroundings of the offender ; and
- (b) where the order requires the offender to reside in any institution or place, the name of the institution or place and the period for which he is so required to reside shall be specified in the order, and that period shall not extend beyond 12 months from the date of the requirement or beyond the date when the order expires.
- (6) Before making a probation order, the court shall explain to the offender in ordinary language the effect of the order (including any additional requirements proposed to be inserted therein under subsection (4) or (5) of this section or under the next following section) and that if he fails to comply therewith or commits another offence during the probation period he will be liable to be convicted of and sentenced for the original offence and the court shall not make the order unless the offender expresses his willingness to comply with the requirements thereof.
- (7) The clerk of the court by which a probation order is made or of the appropriate court, as the case may be, shall cause copies thereof to be given to the officer of the local authority who is to supervise the probationer, to the probationer, and to the person in charge of any institution or place in which the probationer is required to reside under the probation order.

385 Probation orders requiring treatment for mental condition

- (1) Where the court is satisfied, on the evidence of a registered medical practitioner approved for the purposes of section 27 of the Mental Health (Scotland) Act 1960, that the mental condition of an offender is such as requires and may be susceptible to treatment but is not such as to warrant his detention in pursuance of a hospital order under Part V of that Act, or under this Act, the court may, if it makes a probation order, include therein a requirement that the offender shall submit, for such period not extending beyond 12 months from the date of the requirement as may be specified therein, to treatment by or under the direction of a registered medical practitioner with a view to the improvement of the offender's mental condition.
- (2) The treatment required by any such order shall be such one of the following kinds of treatment as may be specified in the order, that is to say—
- (a) treatment as a resident patient in a hospital within the meaning of the Mental Health (Scotland) Act 1960, not being a State hospital within the meaning of that Act;
- (b) treatment as a non-resident patient at such institution or place as may be specified in the order ; or
- (c) treatment by or under the direction of such registered medical practitioner as may be specified in the order;

but except as aforesaid the nature of the treatment shall not be specified in the order.

- (3) A court shall not make a probation order containing such a requirement as aforesaid unless it is satisfied that arrangements have been made for the treatment intended to be specified in the order, and, if the offender is to be treated as a resident patient, for his reception.
- (4) While the probationer is under treatment as a resident patient in pursuance of a requirement of the probation order, any officer responsible for his supervision shall carry out the supervision to such extent only as may be necessary for the purpose of the discharge or amendment of the order.
- (5) Where the medical practitioner by whom or under whose direction a probationer is being treated for his mental condition in pursuance of a probation order is of opinion that part of the treatment can be better or more conveniently given in or at an institution or place not specified in the order, being an institution or place in or at which the treatment of the probationer will be given by or under the direction of a registered medical practitioner, he may, with the consent of the probationer, make arrangements for him to be treated accordingly ; and the arrangements may provide for the probationer to receive part of his treatment as a resident patient in an institution or place notwithstanding that the institution or place is not one which could have been specified in that behalf in the probation order.
- (6) Where any such arrangements as are mentioned in the last foregoing subsection are made for the treatment of a probationer—
 - (a) the medical practitioner by whom the arrangements are made shall give notice in writing to any officer responsible for the supervision of the probationer, specifying the institution or place in or at which the treatment is to be carried out; and
 - (b) the treatment provided for by the arrangements shall be deemed to be treatment to which he is required to submit in pursuance of the probation order.
- (7) Subsections (2), (3) and (4) of section 377 of this Act shall apply for the purposes of this section as if for the reference in the said subsection (2) to section 376(1)(a) of this Act there were substituted a reference to subsection (1) of this section.
- (8) Except as provided by this section, a court shall not make a probation order requiring a probationer to submit to treatment for his mental condition.

386 Discharge and amendment of probation orders

- (1) The provisions of Schedule 5 to this Act shall have effect in relation to the discharge and amendment of probation orders.
- (2) Where, under section 387 of this Act, a probationer is sentenced for the offence for which he was placed on probation, the probation order shall cease to have effect.

387 Failure to comply with requirement of probation order

- (1) If, on information on oath from the officer supervising the probationer, it appears to the court by which the order was made or to the appropriate court that the probationer has failed to comply with any of the requirements of the order, that court may issue a warrant for the arrest of the probationer, or may, if it thinks fit, instead of issuing

such a warrant in the first instance, issue a citation requiring the probationer to appear before the court at such time as may be specified in the citation.

- (2) If it is proved to the satisfaction of the court before which a probationer appears or is brought in pursuance of the foregoing subsection that he has failed to comply with any of the requirements of the probation order, the court may—
 - (a) without prejudice to the continuance in force of the probation order, impose a fine not exceeding £20; or
 - (b)
 - (i) where the probationer has been convicted for the offence for which the order was made, sentence him for that offence;
 - (ii) where the probationer has not been so convicted, convict him and sentence him as aforesaid; or
 - (c) vary any of the requirements of the probation order, so however that any extension of the probation period shall terminate not later than three years from the date of the probation order.
- (3) A fine imposed under this section in respect of a failure to comply with the requirements of a probation order shall be deemed for the purposes of any enactment to be a sum adjudged to be paid by or in respect of a conviction of a penalty imposed on a person summarily convicted.
- (4) A probationer who is required by a probation order to submit to treatment for his mental condition shall not be deemed for the purpose of this section to have failed to comply with that requirement on the ground only that he has refused to undergo any surgical, electrical or other treatment if, in the opinion of the court, his refusal was reasonable having regard to all the circumstances.
- (5) Without prejudice to the provisions of section 388 of this Act, a probationer who is convicted of an offence committed during the probation period shall not on that account be liable to be dealt with under this section for failing to comply with any requirement of the probation order.

388 Commission of further offence

- (1) If it appears to the court by which a probation order has been made (or to the appropriate court) that the probationer to whom the order relates has been convicted by a court in any part of Great Britain of an offence committed during the probation period and has been dealt with for that offence, the first-mentioned court (or the appropriate court) may issue a warrant for the arrest of the probationer, or may, if it thinks fit, instead of issuing such a warrant in the first instance issue a citation requiring the probationer to appear before that court at such time as may be specified in the citation, and on his appearance or on his being brought before the court the court may, if it thinks fit, deal with him under section 387(2)(b) of this Act.
- (2) Where a probationer is convicted by the court which made the probation order (or by the appropriate court) of an offence committed during the probation period, that court may, if it thinks fit, deal with him under section 387(2)(b) of this Act for the offence for which the order was made as well as for the offence committed during the period of probation.

389 Probation orders relating to persons residing in England

- (1) Where the court by which a probation order is made under section 384 of this Act is satisfied that the offender has attained the age of 17 years and resides or will reside in England, subsection (2) of the said section shall not apply to the order, but the order shall contain a requirement that he be under the supervision of a probation officer appointed for or assigned to the petty sessions area in which the offender resides or will reside ; and that area shall be named in the order.
- (2) Where a probation order has been made under section 384 of this Act and the court in Scotland by which the order was made or the appropriate court is satisfied that the probationer has attained the age of 17 years and proposes to reside or is residing in England, the power of that court to amend the order under Schedule 5 to this Act shall include power to insert the provisions required by subsection (1) of this section; and the court may so amend the order without summoning the probationer and without his consent.
- (3) A probation order made or amended by virtue of this section may, notwithstanding section 385(8) of this Act, include a requirement that the probationer shall submit to treatment for his mental condition, and—
 - (a) subsections (1), (3) and (7) of the said section 385 and section 3(2) of the Powers of Criminal Courts Act 1973 (all of which regulate the making of probation orders which include any such requirement) shall apply to the making of an order which includes any such requirement by virtue of this subsection as they apply to the making of an order which includes any such requirement by virtue of section 385 of this Act and section 3 of the said Act of 1973 respectively ; and
 - (b) subsections (4) to (6) of section 3 of the said Act of 1973 (functions of supervising officer and medical practitioner where such a requirement has been imposed) shall apply in relation to a probationer who is undergoing treatment in England in pursuance of a requirement imposed by virtue of this subsection as they apply in relation to a probationer undergoing such treatment in pursuance of a requirement imposed by virtue of that section.
- (4) Sections 386(1) and 387(1) of this Act shall not apply to any order made or amended under this section; but subject as hereinafter provided the provisions of the Powers of Criminal Courts Act 1973 (except section 8 of that Act) shall apply to the order as if it were a probation order made under section 2 of that Act:

Provided that section 6(2)(a), (3)(d) and (6) of that Act shall not apply to any such order and section 6(4) and (5) of that Act shall have effect respectively in relation to any such order as if for the first reference in section 6(4) to the Crown Court there were substituted a reference to a court in Scotland and as if for the second such reference therein and for both such references in section 6(5) there were substituted references to the court in Scotland by which the probation order was made or amended under this section.
- (5) If it appears on information to a justice acting for the petty sessions area for which the supervising court within the meaning of the Powers of Criminal Courts Act 1973 acts that a person in whose case a probation order has been made or amended under this section has been convicted by a court in any part of Great Britain of an offence committed during the period specified in the order, he may issue a summons requiring that person to appear, at the place and time specified therein, before the court in Scotland by which the probation order was made or, if the information is in writing

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

and on oath, may issue a warrant for his arrest, directing that person to be brought before the last-mentioned court.

- (6) If a warrant for the arrest of a probationer issued under section 388 of this Act by a court is executed in England, and the probationer cannot forthwith be brought before that court, the warrant shall have effect as if it directed him to be brought before a magistrates' court for the place where he is arrested; and the magistrates' court shall commit him to custody or release him on bail (with or without sureties) until he can be brought or appear before the court in Scotland.
- (7) The court by which a probation order is made or amended in accordance with the provisions of this section shall send three copies of the order to the clerk to the justices for the petty sessions area named 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.
- (8) Where a probation order which is amended under subsection (2) of this section is an order to which the provisions of this Act apply by virtue of section 10 of the Powers of Criminal Courts Act 1973 (which relates to probation orders under that Act relating to persons residing in Scotland) then, notwithstanding anything in that section or this section, the order shall, as from the date of the amendment, have effect in all respects as if it were an order made under section 2 of that Act in the case of a person residing in England.

390 Further provisions as to probation orders

- (1) Where the court by which a probation order is made under section 384 of this Act or subsection (6) of this section is satisfied that the person to whom the order relates is under the age of 17 years and resides or will reside in England, subsection (2) of the said section 384 shall not apply to the order but the order shall name the petty sessions area in which that person resides or will reside and the court shall send notification of the order to the clerk to the justices for that area.
- (2) Where a probation order has been made under section 384 of this Act or subsection (6) of this section, and the court which made the order or the appropriate court is satisfied that the person to whom the order relates is under the age of 17 years and proposes to reside or is residing in England, the power of that court to amend the order under Schedule 5 to this Act shall include power, without summoning him and without his consent, to insert in the order the name of the petty sessions area aforesaid; and where the court exercises the power conferred on it by virtue of this subsection it shall send notification of the order to the clerk aforesaid.
- (3) A court which sends a notification to a clerk in pursuance of the foregoing provisions of this section shall send to him with it three copies of the probation order in question and such other documents and information relating to the case as it considers likely to be of assistance to the juvenile court mentioned in the following subsection.
- (4) It shall be the duty of the clerk to whom a notification is sent in pursuance of the foregoing provisions of this section to refer the notification to a juvenile court acting for the petty sessions area named in the order, and on such a reference the court—
 - (a) may make a supervision order under the Children and Young Persons Act 1969 in respect of a person to whom the notification relates ; and
 - (b) if it does not make such an order, shall dismiss the case.

- (5) A supervision order made by virtue of the last foregoing subsection shall not include a requirement authorised by section 12 of the said Act of 1969 unless the supervised person is before the court when the supervision order is made, and in relation to a supervision order made by virtue of that subsection—
- (a) section 15 of that Act shall have effect as if, in subsection (4), paragraph (b) and the words following it were omitted; and
 - (b) section 17(a) of that Act shall have effect as if the second reference to the supervision order were a reference to the probation order in consequence of which the supervision order is made;
- and when a juvenile court disposes of a case referred to it in pursuance of the last foregoing subsection, the probation order in consequence of which the reference was made shall cease to have effect.
- (6) The court which, in pursuance of subsection (1) of section 73 of the Social Work (Scotland) Act 1968, considers a case referred to it in consequence of a notification under paragraph (b) of that subsection (which relates to a case in which a person subject to a supervision order made by virtue of this section moves to Scotland)—
- (a) may, if it is of opinion that the person to whom the notification relates should continue to be under supervision, make a probation order in respect of him for a period specified in the order ; and
 - (b) if it does not make such an order, shall dismiss the case;
- and when the court disposes of a case in pursuance of this subsection the supervision order aforesaid shall cease to have effect.
- (7) Notwithstanding any provision to the contrary in section 384 of this Act, a probation order made by virtue of the last foregoing subsection which includes only requirements having the like effect as any requirement or provision of the supervision order to which the notification relates may be made without summoning the person to whom the notification relates and without his consent, and shall specify a period of supervision which shall expire not later than the date on which that supervision order would have ceased to have effect by the effluxion of time; and, except as aforesaid, the provisions of this Act shall apply to that probation order.
- (8) In this and the last foregoing section, " petty sessions area " has the same meaning as in the said Act of 1969.

391 Supplementary provisions as to probation

- (1) Any court, on making a probation order, may, if it thinks that such a course is expedient for the purpose of the order, require the offender to give security for his good behaviour.
- (2) Security may be given under the foregoing subsection by consignment with the clerk of the court or by entering into an undertaking to pay the amount, but not otherwise, and such security may be forfeited and recovered in like manner as caution.

392 Effects of probation and absolute discharge

- (1) Subject as hereinafter provided, a conviction on indictment of an offence for which an order is made under Part I of this Act placing the offender on probation or discharging him absolutely shall be deemed not to be a conviction for any purpose other than the

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

purposes of the proceedings in which the order is made and of laying it before a court as a previous conviction in subsequent proceedings for another offence:

Provided that where an offender, being not less than 16 years of age at the time of his conviction of an offence for which he is placed on probation as aforesaid, is subsequently sentenced under this Act for that offence, the provisions of this subsection shall cease to apply to the conviction.

- (2) Without prejudice to the foregoing provisions of this section, the conviction of an offender who is placed on probation or discharged absolutely as aforesaid shall in any event be disregarded for the purposes of any enactment which imposes any disqualification or disability upon convicted persons, or authorises or requires the imposition of any such disqualification or disability.
- (3) The foregoing provisions of this section shall not affect—
 - (a) any right of any such offender as aforesaid to appeal against his conviction ; or
 - (b) the operation, in relation to any such offender, of any enactment which was in force as at the commencement of section 9(3)(b) of the Criminal Justice (Scotland) Act 1949 and is expressed to extend to persons dealt with under section 1(1) of the Probation of Offenders Act 1907 as well as to convicted persons.
- (4) Where an offender is placed on probation or discharged absolutely by a court of summary jurisdiction, he shall have the like right of appeal against the finding that he committed the offence as if that finding were a conviction.
- (5) Where a person charged with an offence has at any time previously been placed on probation or discharged absolutely in respect of the commission by him of an offence, it shall be competent, in the proceedings for that offence, to bring before the court the probation order or order of absolute discharge in like manner as if the order were a conviction.

393 Probation reports

Where a report by an officer of a local authority is made to any court (other than a court whose procedure is regulated by rules made under section 366(2) of this Act) with a view to assisting the court in determining the most suitable method of dealing with any person in respect of an offence, a copy of the report shall be given by the clerk of the court to the offender or his solicitor:

Provided that if the offender is under 16 years of age and is not represented by counsel or a solicitor, a copy of the report need not be given to him but shall be given to his parent or guardian if present in court.