
Changes to legislation: Criminal Procedure (Scotland) Act 1975, SCHEDULE 5 is up to date with all changes known to be in force on or before 23 May 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

SCHEDULES

SCHEDULE 5

DISCHARGE AND AMENDMENT OF PROBATION ORDERS

Discharge

- 1 A probation order may on the application of the officer supervising the probationer or of the probationer be discharged—
- (a) by the appropriate court, or
 - (b) if no appropriate court has been named in the original or in any amending order, by the court which made the order.

Amendment

- 2 (1) If the court by which a probation order was made, or the appropriate court is satisfied that the probationer proposes to change or has changed his residence from the area of a local authority named in the order to another area of a local authority, the court may, and if application is made in that behalf by the officer supervising the probationer shall, by order, amend the probation order by—
- (a) substituting for the area named therein that other area, and
 - (b) naming the appropriate court to which all the powers of the court by which the order was made shall be transferred and shall require the local authority for that other area to arrange for the probationer to be under the supervision of an officer of that authority.
- (2) The court to be named as the appropriate court in any amendment of a probation order in pursuance of the last foregoing subparagraph shall be a court exercising jurisdiction in the place where the probationer resides or is to reside and shall be a sheriff court or district court according to whether the probation order was made by a sheriff court or district court:
- Provided that—
- (i) if there is no district court exercising jurisdiction in the said place the court to be so named shall be the sheriff court; and
 - (ii) if the probation order contains requirements which in the opinion of the court cannot be complied with unless the probationer continues to reside in the local authority area named in the order, the court shall not amend the order as aforesaid, unless in accordance with the following provisions of this Schedule, it cancels those requirements or substitutes therefor other requirements which can be so complied with.
- (3) Where a probation order is amended under this paragraph, the clerk of the court amending it shall send to the clerk of the appropriate court four copies of the order together with such documents and information relating to the case as the court amending the order considers likely to be of assistance to the appropriate court, and the clerk of that court shall send one copy of the probation order to the local authority

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of the substituted local authority area and two copies to the officer supervising the probationer one of which the supervising officer shall give to the probationer.

- (4) The foregoing provisions of this paragraph shall, in a case where the probation order was made by the High Court, have effect subject to the following modifications—
- (a) the court shall not name an appropriate court, but may substitute for the local authority named in the order, the local authority for the area in which the probationer is to reside;
 - (b) the Clerk of Justiciary shall send to the [F1chief social work officer]of that area in which the probationer is to reside three copies of the amending order together with such documents and information relating to the case as is likely to be of assistance to the [F1chiefsocial work officer], and the [F1chief social work officer] shall send two copies of the amending order to the officer supervising the probationer, one of which the supervising officer shall give to the probationer.

Textual Amendments

F1 Words in *Sch. 5 para. 2(4)(b)* substituted (31.3.1996) by 1994 c. 39, s. 180(1), *Sch. 13 para. 97(7)* (with ss. 74(4), 127); S.I. 1996/323, *art. 4(1)(c)*

- 3 Without prejudice to the provisions of the last foregoing paragraph, the court by which a probation order was made or the appropriate court may, upon application made by the officer supervising the probationer or by the probationer, by order amend a probation order by cancelling any of the requirements thereof or by inserting therein (either in addition to or in substitution for any such requirement) any requirement which could be included in the order if it were then being made by that court in accordance with the provisions of sections 183, 184, 384 and 385 of this Act:

Provided that—

- (a) the court shall not amend a probation order by reducing the probation period, or by extending that period beyond the end of three years from the date of the original order;
- (b) the court shall not so amend a probation order that the probationer is thereby required to reside in any institution or place, or to submit to treatment for his mental condition, for any period or periods exceeding 12 months in all;
- (c) the court shall not amend a probation order by inserting therein a requirement that the probationer shall submit to treatment for his mental condition unless the amending order is made within three months after the date of the original order.

- 4 Where the medical practitioner [F2or chartered psychologist]by whom or under whose direction a probationer is being treated for his mental condition in pursuance of any requirement of the probation order is of opinion—

- (a) that the treatment of the probationer should be continued beyond the period specified in that behalf in the order; or
- (b) that the probationer needs [F3a different kind of treatment (whether in whole or in part) from that which he has been receiving in pursuance of the probation order, being treatment of a kind which could have been specified in the probation order but to which the probationer or his supervising officer

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has not agreed under subsection (5B) of section 184 or, as the case may be, 385 of this Act]; or

- (c) that the probationer is not susceptible to treatment; or
- (d) that the probationer does not require further treatment,

or where the practitioner [^{F4}or psychologist] is for any reason unwilling to continue to treat or direct the treatment of the probationer, he shall make a report in writing to the effect to the officer supervising the probationer and the supervising officer shall apply to the court which made the order or to the appropriate court for the variation or cancellation of the requirement.

Textual Amendments

- F2** Words in [Sch. 5 para. 4](#) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by [1995 c. 20, s. 117\(1\)](#), [Sch. 6 Pt. I para. 158\(a\)](#); [S.I. 1996/517, arts. 3\(2\), 4-6, Sch. 2](#)
- F3** Words from “needs” to the end of [para. 4\(b\)](#) substituted by virtue of [Mental Health \(Amendment\) \(Scotland\) Act 1983 \(c. 39\), s. 36\(4\)](#) and [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\), s. 126\(2\)\(b\)](#)
- F4** Words in [Sch. 5 para. 4](#) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by [1995 c. 20, s. 117\(1\)](#), [Sch. 6 Pt. I para. 158\(b\)](#); [S.I. 1996/517, arts. 3\(2\), 4-6, Sch. 2](#)

General

- 5 Where the court which made the order or the appropriate court proposes to amend a probation order under this Schedule, otherwise than on the application of the probationer, it shall cite him to appear before the court; and the court shall not amend the probation order unless the probationer expresses his willingness to comply with the requirements of the order as amended:

Provided that this paragraph shall not apply to an order cancelling a requirement of the probation order or reducing the period of any requirement, or substituting a new area of a local authority for the area named in the probation order.

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

- Act certain function transferred. by [1994 c. 39 s. 127\(1\)128](#)

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 168(c)(ii) amended (prosp.) by [1995 c. 36 s. 105\(4\)Sch. 4 para. 24\(6\)\(b\)](#)
- s. 364(c)(ii) amended (prosp.) by [1995 c. 36 s. 105\(4\)Sch. 4 para. 24\(14\)\(b\)](#)
- s. 413(3) (defn. of "the appropriate local authority") para. (a)(b) amended by [1994 c. 39 Sch. 13 para. 97\(5\)](#)
- s. 413(3) (defns. of "care" and "the 1968 Act") repealed (prosp.) by [1995 c. 36 s. 105\(4\)\(5\)Sch. 4 para. 24\(17\)\(b\)\(i\)Sch. 5](#)
- s. 462 (defns. of "child" "children's hearing" "place of safety" "residential establishment" and "supervision requirement") amended (prosp.) by [1995 c. 36 s. 105\(4\)Sch. 4 para. 24\(18\)](#)
- s. 462 (defns. of "crime" and "prosecutor") applied (prosp.) by [1995 c. 36 s. 53\(7\)](#)