



Criminal Procedure (Scotland) Act 1975

1975 CHAPTER 21

PART II

SUMMARY PROCEDURE

CONVICTION AND SENTENCE

Probation

384 Probation.

(1) [^{F1}Subject to subsection (1A) below,] where a person is [^{F2}convicted of]an offence (other than an offence the sentence for which is fixed by law) ^{F3}, the court, if it is of opinion having regard to the circumstances, including the nature of the offence and the character of the offender [^{F4}and having obtained a report as to the circumstances and character of the offender], that it is expedient to do so, may, [^{F5}instead of sentencing him] 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 [^{F6}six months] nor more than three years.

[^{F7}(1A) A court shall not make a probation order under subsection (1) above unless it is satisfied that suitable arrangements for the supervision of the offender can be made

[in a case other than that mentioned in paragraph (b) below, by the local ^{F8}(a) authority in whose area he resides or is to reside; or

(b) in a case where, by virtue of section 188(1) of this Act, subsection (2) of this section would not apply, by the probation committee for the area which contains the petty sessions area which would be named in the order]

.]

(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

Changes to legislation: Criminal Procedure (Scotland) Act 1975, Section 384 is up to date with all changes known to be in force on or before 14 August 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

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.
- (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
- [^{F9}(a)] [^{F10}conducive to] securing the good conduct of the offender or [^{F11}to] preventing a repetition by him of the offence or the commission of other offences; [^{F12}or
- (b) where the probation order is to include such a requirement as is mentioned in subsection (5A) [^{F13}or (5B)] below, conducive to securing or preventing the aforesaid matters].
- (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.

[^{F14}(5A) Without prejudice to the generality of subsection (4) above, where [^{F15}an offender has been convicted of an offence punishable by imprisonment and] a court which is considering making a probation order—

- (a) is satisfied that the offender is of or over 16 years of age and ^{F16} that the conditions for the making of a community service order under the ^{M1}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

Changes to legislation: *Criminal Procedure (Scotland) Act 1975, Section 384 is up to date with all changes known to be in force on or before 14 August 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*

order 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 ^[F17], 6 and 6A] 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.]

^[F18](5B) Without prejudice to the generality of subsection (4) above, where a court is considering making a probation order it may include in the probation order, in addition to any other requirement, a requirement that the offender shall pay compensation either in a lump sum or by instalments for any personal injury, loss or damage caused (whether directly or indirectly) by the acts which constituted the offence; and the following provisions of the Criminal Justice (Scotland) Act 1980 shall apply to such a requirement as if any reference in them to a compensation order included a reference to a requirement to pay compensation under this subsection—

- section 58(2) and (3);
- section 59 (except the proviso to subsection (1) and subsection (3));
- section 60;
- section 62;
- section 64 (except paragraph (a));
- section 67.

(5C) Where the court imposes a requirement to pay compensation under subsection (5B) above—

- (a) it shall be a condition of a probation order containing such a requirement that payment of the compensation shall be completed not more than eighteen months after the making of the order or not later than two months before the end of the period of probation whichever first occurs;
- (b) the court, on the application of the offender or the officer of the local authority responsible for supervising the offender, may vary the terms of the requirement, including the amount of any instalments, in consequence of any change which may have occurred in the circumstances of the offender; and
- (c) in any proceedings for breach of a probation order where the breach consists only in the failure to comply with a requirement to pay compensation, a document purporting to be a certificate signed by the clerk of the court for the time being having jurisdiction in relation to the order that the compensation or, where payment by instalments has been allowed, any instalment has not been paid shall be sufficient evidence of such breach.]

(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) ^[F19] or (5) (5A), (5B) or (5C)] 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 ^{F20} 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 ^[F21] cause copies thereof to be given to the officer of the local authority who is to supervise the probationer ^{F22} and to the person in charge of any

Changes to legislation: Criminal Procedure (Scotland) Act 1975, Section 384 is up to date with all changes known to be in force on or before 14 August 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

institution or place in which the probationer is required to reside under the probation order ^{F23}; and.

- (b) cause a copy thereof to be given to the probationer or sent to him by registered post or by the recorded delivery service; and an acknowledgement or certificate of delivery of a letter containing such 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.]

Textual Amendments

- F1** Words in s. 384(1) inserted (1.4.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 39:1), s. 61(1)(a); S.I. 1991/850, art. 3, **Schedule**
- F2** Words in s. 384(1) substituted (31.3.1996 subject to transitional provisions and savings in commencing S.I.) by 1995 c. 20, s. 38(3)(a)(i); S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
- F3** Words in s. 384(1) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, ss. 38(3)(a)(ii), 117(2), **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
- F4** Words inserted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 47(4)(a), 70(1), **Sch. 1 para. 10(a)**
- F5** Words in s. 384(1) substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 38(3)(a)(iii); S.I. 1996/517, art. 3(2)
- F6** Words substituted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 47(4)(a), 70(1), **Sch. 1 para. 10(b)**
- F7** S. 384(1A) inserted (1.4.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 39:1), s. 61(1)(b); S.I. 1991/850, art. 3, **Schedule**
- F8** S. 384(1A)(a)(b) substituted (1.10.1992) for certain words by Criminal Justice Act 1991 (c. 53), s. 16, **Sch. 3, Pt. II, para. 7(2)** (with s. 28); S.I. 1992/333, art. 2(2), **Sch. 2**.
- F9** Word inserted by Community Service by Offenders (Scotland) Act 1978 (c. 49, SIF 39:1), s. 7(a)
- F10** Words in s. 384(4)(a) substituted (1.4.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 39:1), s. 61(1)(c)(i); S.I. 1991/850, art. 3, **Schedule**
- F11** Word in s. 384(4)(a) substituted (1.4.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 39:1), s. 61(1)(c)(ii); S.I. 1991/850, art. 3, **Schedule**
- F12** Words added by Community Service by Offenders (Scotland) Act 1978 (c. 49, SIF 39:1), s. 7(a)
- F13** Words inserted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 47(4)(a), 65(3)
- F14** S. 384(5A) inserted by Community Service by Offenders (Scotland) Act 1978 (c. 49, SIF 39:1), s. 7(b)
- F15** Words in s. 384(5A) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 38(3)(b)(i); S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
- F16** S. 384(5A)(a): by 1995 c. 20, ss. 38(3)(b)(ii), 117(2), **Sch. 7 Pt. I** it is provided that the words “has committed an offence punishable by imprisonment and” shall be repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.); S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
- F17** Words substituted by Criminal Justice Act 1982 (c. 48, SIF 39:1), s. 68(2), **Sch. 13 Pt. II para. 3**
- F18** S. 384(5B)(5C) inserted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 47(4)(a), 65(1)(2)(b)
- F19** Community Service by Offenders (Scotland) Act 1978 (c. 49, SIF 39:1), s.7(e) (substituting “(5) or (5A)” for “or (5)”) is repealed by virtue of the Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 47(4)(a), 70(2), **Sch. 2** and for “or (5A)” there is substituted “(5A), (5B) or (5C)” by virtue of the Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 47(4)(a), 65(4)
- F20** Words in s. 384(6) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 38(b)(ii)(c), 117(2), **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
- F21** Word in s. 384(7) 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. 70(a)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

Changes to legislation: *Criminal Procedure (Scotland) Act 1975, Section 384 is up to date with all changes known to be in force on or before 14 August 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*

F22 Words in s. 384(7) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, Sch. 6 Pt. I para. 70(b), **Sch. 7 Pt. I**; S.I. 1996/517, art. 3(2), 4-6, **Sch. 2**

F23 S. 384(7)(b) 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. 70(c)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

Modifications etc. (not altering text)

C1 S. 384 amended by **Licensed Premises (Exclusion of Certain Persons) Act 1980** (c. 32, SIF 39:1), **s. 1(2)(c)**

Marginal Citations

M1 1978 c. 49**(39:1)**.

Changes to legislation:

Criminal Procedure (Scotland) Act 1975, Section 384 is up to date with all changes known to be in force on or before 14 August 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.

[View outstanding changes](#)

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\(7\)](#)