



# Criminal Justice (Scotland) Act 1949

## 1949 CHAPTER 94

### PART I

#### POWERS AND PROCEEDINGS OF COURTS

##### *Probation*

## 2 Probation

### (1) Where—

- (a) a person is convicted on indictment of an offence (other than an offence the sentence for which is fixed by law), or
- (b) 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, instead of sentencing him, and, in the case of a court of summary jurisdiction 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 in the form as nearly as may be of the First Schedule to this Act and shall name the probation area in which the offender resides or is to reside, and the court making the order shall nominate a salaried or a voluntary probation officer, or a salaried and a voluntary probation officer to act jointly:

Provided that where the offender resides or is to reside in a probation area in which the court has no jurisdiction, the court, in lieu of nominating a probation officer or officers, 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 the Second Schedule to this Act, and that court shall nominate the probation officer or officers.

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- (3) Any salaried probation officer nominated in pursuance of the last foregoing subsection shall be selected from among the salaried probation officers for the area named in the probation order.
- (4) Subject to the provisions of the Second Schedule 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 the probation officer or officers nominated as aforesaid.
- (5) 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.
- (6) 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 an approved probation hostel, an approved probation home or any other 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 twelve months from the date of the requirement or beyond the date when the order expires.
- (7) 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 (5) or subsection (6) 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 or, if that offence was tried on indictment, to be sentenced therefor, and the court shall not make the order unless the offender expresses his willingness to comply with the requirements thereof.
- (8) 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 probation officer or officers nominated in pursuance of subsection (2) of this section, to the probationer, to the probation committee for the probation area in which the probationer resides or is to reside and to the person in charge of any institution or place in which the probationer is required by the order to reside.
- (9) Where a probation order requires the probationer to reside in any institution or other place, not being—
  - (a) an approved probation hostel or approved probation home; or
  - (b) an institution in which he is required to reside for the purposes of any such treatment as is mentioned in paragraph (a) or paragraph (b) of subsection (2) of the next following section,the court shall forthwith give notice of the terms of the order to the Secretary of State.

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### **3 Probation orders requiring treatment for mental condition**

- (1) Where the court is satisfied, on the evidence of a registered medical practitioner appearing to the court to be experienced in the diagnosis of mental disorders, that the mental condition of an offender is such as requires and as may be susceptible to treatment but is not such as to justify his being certified as a lunatic under the Lunacy (Scotland) Act, 1862, or as a defective under the Mental Deficiency and Lunacy (Scotland) Act, 1913, the court may, if it makes a probation order, include therein a requirement that the offender shall submit, for such period not extending beyond twelve 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 voluntary boarder under section fifteen of the Lunacy (Scotland) Act, 1866;
  - (b) treatment as a resident patient in such institution or place approved for the purposes of this section by the Secretary of State as may be specified in the order;
  - (c) treatment as a non-resident patient at such institution or place as may be specified in the order; or
  - (d) 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 or can be made for the treatment intended to be specified in the order, and, if the offender is to be treated as a voluntary boarder or as a resident patient, for his reception.
- (4) While the probationer is under treatment as a voluntary boarder or as a resident patient in pursuance of a requirement of the probation order, the probation officer or officers 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 the probation officer or officers responsible for the supervision of the probationer, specifying the institution or place in or at which the treatment is to be carried out; and

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- (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) For the purposes of subsection (1) of this section, and subject as hereinafter provided, a report in writing as to the mental condition of an offender purporting to be signed by a registered medical practitioner experienced in the diagnosis of mental disorders may be received in evidence without proof of the signature, qualifications or experience of the practitioner and shall be deemed to apply to such offender:
- Provided that such a report shall not be so received unless the offender consents or, where he is under seventeen years of age, unless his parent or guardian consents or, if no parent or guardian can be found, unless he himself or his counsel or solicitor consents.
- (8) Where a person of whose mental condition evidence is received for the purposes of subsection (1) of this section (or, where that person is under seventeen years of age, his parent or guardian or, if no parent or guardian can be found, he or his counsel or solicitor) desires to call rebutting evidence, the court shall not make a probation order in his case containing any such requirement as is authorised by this section unless he, or his parent or guardian, or his counsel or solicitor, as the case may be, has been afforded an opportunity of calling such evidence.
- (9) 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.

#### **4 Discharge, amendment and review of probation orders**

- (1) The provisions of the Second Schedule to this Act shall have effect in relation to the discharge and amendment of probation orders.
- (2) Where a probation order, whether as originally made or amended under the said Schedule, requires the probationer to reside in an approved probation hostel or home or other institution or place (otherwise than for the purpose of submitting to treatment for his mental condition as a voluntary boarder or resident patient) for a period extending beyond six months from the date of the requirement, the probation officer shall, as soon as may be after the expiration of six months after that date, report on the case to the court by which the probation order was made or to the appropriate court.
- (3) On receipt of any such report, the court shall review the probation order for the purpose of considering whether to cancel the requirement as to residence or reduce the period thereof, and may, if it thinks fit, amend the order accordingly without the necessity for any application in that behalf.
- (4) Where, under the following provisions of this Part 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.

#### **5 Failure to comply with requirement of probation orders**

- (1) If on information on oath from the probation officer named in a probation order 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.

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- (2) If it is proved to the satisfaction of the court before which a probationer appears or is brought in pursuance of the last 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 ten pounds; 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) Where a court imposes a fine under this section, it shall, if the probationer is a child, and may, if the probationer is a young person, order that the fine be paid by the parent or guardian of the child or young person.
- (4) 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 or a penalty imposed on a person summarily convicted.
- (5) 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.
- (6) Without prejudice to the provisions of section six 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.

## **6 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 of his appearance or on his being brought before the court, may, if it thinks fit, deal with him in accordance with the provisions of paragraph (b) of subsection (2) of the last foregoing section.
- (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 shall have the like power to deal at the same time with him for the offence for which the order was made as is conferred by the last foregoing subsection, as well as for the offence committed during the period of probation.

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## **7 Probation orders relating to persons residing in England**

- (1) Where the court by which a probation order is made under section two of this Act is satisfied that the offender 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 sessional division in which the offender resides or will reside ; and that division shall be named in the order.
- (2) Where a probation order has been made under section two of this Act and the court in Scotland by which the order was made or the appropriate court is satisfied that the probationer proposes to reside or is residing in England, the power of that court to amend the order under the Second Schedule to this Act shall include power to omit therefrom the name of the probation officer named therein and 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) Notwithstanding anything in the foregoing provisions of this Part of this Act an order as made or amended under this section shall not require the offender to reside in any institution, or to submit to treatment for his mental condition, but without prejudice to any power of a court in England to impose any such requirements under the next following subsection.
- (4) Subsections (1) to (3) of section four and subsection (1) of section five of this Act shall not apply to any order made or amended under this section ; but subject as hereinafter provided the provisions of the Criminal Justice Act, 1948 (except section eight of that Act) shall apply to the order as if it were a probation order made under section three of that Act:

Provided that in the application to any such order of section six of the said Act (which relates to breach of a requirement of a probation order) paragraph (a) of subsection (2), paragraph (a) of subsection (3) and paragraph (b) of subsection (4). of that section shall not apply, and paragraph (b) of subsection (3) and paragraph (a) of subsection (4) of that section shall have effect as if for references therein to a court of assize or quarter sessions and the court of assize or quarter sessions there were substituted references to a court in Scotland and 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 sessional division or place for which the supervising court (as defined in the Criminal Justice Act, 1948) 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 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 six 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 court of summary jurisdiction for the place where he is arrested ; and the court of summary jurisdiction 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.

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- (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 sessional division 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 sessional division.
- (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 nine of the Criminal Justice Act, 1948 (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 three of that Act in the case of a person residing in England.

## **8 Supplementary provisions as to probation**

- (1) Without prejudice to the provisions of subsection (2) of section fifty-nine of the Children and Young Persons (Scotland) Act, 1937 (which enables a court to order the parent or guardian of a child or young person to give security for his good behaviour) any court may, on making a probation order under this Part of this Act, if it thinks it expedient for the purpose of the reformation of the offender, require the offender, or if the offender is a child, his parent or guardian, or if the offender is a young person, the offender or his parent or guardian to give security for the good behaviour of the offender.
- (2) Security may be given under the last 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.

## **9 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 this Part 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 purposes of the proceedings in which the order is made and of any subsequent proceedings which may be taken against the offender for an offence of which the first mentioned offence constitutes an aggravation:

Provided that where an offender, being not less than seventeen 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 Part of 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 in force at the commencement of this Act which is expressed to extend to persons dealt

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with under subsection (1) of section one 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 which constitutes an aggravation of the first mentioned 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.

## **10 Reports of probation officers**

Where a report by a probation officer is made to any court (other than a juvenile court) 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 seventeen 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.

## **11 Probation areas, probation committees and probation officers**

The provisions of the Third Schedule to this Act shall have effect with respect to—

- (a) the constitution of probation areas, and of probation committees and of case committees for those areas;
- (b) the functions of probation committees and case committees ; and
- (c) the appointment, functions, remuneration and conditions of service of probation officers.

## **12 Approved probation hostels and homes**

- (1) The Secretary of State may approve premises for the reception of persons who may be required to reside therein by a probation order or a supervision order, and such premises shall be known—
  - (a) if the persons so residing are employed outside the premises, or are awaiting such employment, as " approved probation hostels " ;
  - (b) in any other case, as " approved probation homes " .
- (2) The Secretary of State may make rules for the regulation, management and inspection of approved probation hostels and of approved probation homes; and such rules may in particular provide that no person shall be appointed to be in charge of an approved probation hostel or home unless the Secretary of State has consented to his appointment :

Provided that the rules shall not prohibit the making of such an appointment in case of emergency without the previous consent of the Secretary of State, but may, in that case, require notice of the appointment to be given immediately to the Secretary of State, and enable him, if he thinks fit, to require the appointment to be terminated.



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### **13 Inspection of institutions for residence of probationers**

- (1) Any institution, not being an approved probation hostel or an approved probation home, in which a person is required by a probation order or a supervision order to reside otherwise than for the purpose of his submitting to treatment for his mental condition as a voluntary boarder or resident patient shall, so long as he resides there, be subject to inspection by the Secretary of State unless it is, as a whole, otherwise subject to inspection by a Government department.
- (2) A person appointed by the Secretary of State to inspect any such institution as aforesaid shall have power to enter the institution and to make such investigation of the treatment of any persons residing there as he thinks fit; and any person who obstructs him in the exercise of the power aforesaid shall be liable on summary conviction to a fine not exceeding five pounds.