



Criminal Justice (Scotland) Act 1949

1949 CHAPTER 94

PART I

POWERS AND PROCEEDINGS OF COURTS

Probation

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(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.

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

- (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.