



# Criminal Procedure (Scotland) Act 1975

## 1975 CHAPTER 21

### PART II

#### SUMMARY PROCEDURE

#### CONVICTION AND SENTENCE

#### *Probation*

#### 384 Probation.

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

[<sup>F7</sup>(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  
<sup>F8</sup>(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, Cross Heading: Probation is up to date with all changes known to be in force on or before 27 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

---

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
  - [<sup>F9</sup>(a)] [<sup>F10</sup>conducive to] securing the good conduct of the offender or [<sup>F11</sup>to] preventing a repetition by him of the offence or the commission of other offences; [<sup>F12</sup>or
  - (b) where the probation order is to include such a requirement as is mentioned in subsection (5A) [<sup>F13</sup>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.

[<sup>F14</sup>(5A) Without prejudice to the generality of subsection (4) above, where [<sup>F15</sup>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 <sup>F16</sup>. that the conditions for the making of a community service order under the <sup>M1</sup>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, Cross Heading: Probation is up to date with all changes known to be in force on or before 27 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

---

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 [<sup>F17</sup>, 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.]

[<sup>F18</sup>(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) [<sup>F19</sup> 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 <sup>F20</sup> 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 [<sup>F21</sup>(a)] cause copies thereof to be given to the officer of the local authority who is to supervise the probationer <sup>F22</sup> and to the person in charge of any

**Changes to legislation:** Criminal Procedure (Scotland) Act 1975, Cross Heading: Probation is up to date with all changes known to be in force on or before 27 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

institution or place in which the probationer is required to reside under the probation order <sup>F23</sup>; 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(c) (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, Cross Heading: Probation is up to date with all changes known to be in force on or before 27 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

- 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).

**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 [<sup>F24</sup>section 20 or 39 of the <sup>M2</sup>Mental Health (Scotland) Act 1984], 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 [<sup>F24</sup>Part VI 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 [<sup>F25</sup>or chartered psychologist] 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 [<sup>F26</sup><sup>M3</sup>Mental Health (Scotland) Act 1984], 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 [<sup>F27</sup>or chartered psychologist] 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) ..... <sup>F28</sup>
- [<sup>F29</sup>(5) Where the medical practitioner [<sup>F27</sup>or chartered psychologist] by whom or under whose direction a probationer is receiving any of the kinds of treatment to which he is required to submit in pursuance of a probation order is of opinion—
- (a) that the probationer requires, or that it would be more appropriate for him to receive, a different kind of treatment (whether in whole or in part) from that which he has been receiving, being treatment of a kind which subject to subsection (5A) of this section could have been specified in the probation order; or

---

**Changes to legislation:** Criminal Procedure (Scotland) Act 1975, Cross Heading: Probation is up to date with all changes known to be in force on or before 27 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

---

- (b) that the treatment (whether in whole or in part) can be more appropriately given in or at a different institution or place from that where he has been receiving treatment in pursuance of the probation order,
- he may, subject to subsection (5B) of this section, make arrangements for the probationer to be treated accordingly.
- (5A) Arrangements made under subsection (5) of this section may provide for the probationer to receive his treatment (in whole or in part) as a resident patient in an institution or place notwithstanding that it is not one which could have been specified in that behalf in the probation order.
- (5B) Arrangements shall not be made under subsection (5) of this section unless—
- (a) the probationer and any officer responsible for his supervision agree;
  - (b) the treatment will be given by or under the direction of a registered medical practitioner [or chartered psychologist] who has agreed to accept the probationer as his patient; and
  - (c) where such treatment entails the probationer's being a resident patient, he will be received as such.]
- (6) Where any such arrangements as are mentioned in [F30 subsection (5) of this section] are made for the treatment of a probationer—
- (a) the [F31 any officer responsible for the probationer's supervision shall notify the appropriate court of the arrangements;] 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.

#### Textual Amendments

- F24** Words substituted by [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\)](#), s. 127(1), **Sch. 3 para. 36(a)**
- F25** Words in [s. 385\(1\)](#) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by [1995 c. 20, s. 39\(1\)\(a\)](#); S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
- F26** Words substituted by [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\)](#), s. 127(1), **Sch. 3 para. 36(b)**
- F27** Words in [s. 385\(2\)\(c\)\(5\)\(5B\)\(b\)](#) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by [1995 c. 20, s. 39\(1\)\(b\)](#); S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
- F28** [S. 385\(4\)](#) repealed by [Mental Health \(Amendment\) \(Scotland\) Act 1983 \(c. 39, SIF 85\)](#), **Sch. 3**
- F29** [S. 385\(5\)\(5A\)\(5B\)](#) substituted for [s. 385\(5\)](#) by virtue of [Mental Health \(Amendment\) \(Scotland\) Act 1983 \(c. 39\)](#), **s. 36(2)** and [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\)](#), **s. 126(2)(b)**
- F30** Words substituted by virtue of [Mental Health \(Amendment\) \(Scotland\) Act 1983 \(c. 39\)](#), **s. 36(3)(a)** and [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\)](#), **s. 126(2)(b)**
- F31** Words substituted by virtue of [Mental Health \(Amendment\) \(Scotland\) Act 1983 \(c. 39\)](#), **s. 36(3)(b)** and [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\)](#), **s. 126(2)(b)**

#### Marginal Citations

- M2** [1984 c. 36\(85\)](#).
- M3** [1984 c. 36\(85\)](#).

---

**Changes to legislation:** Criminal Procedure (Scotland) Act 1975, Cross Heading: Probation is up to date with all changes known to be in force on or before 27 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

---

### **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 <sup>F32</sup>. from
  - [<sup>F33</sup>(a)] the officer supervising the probationer
  - [<sup>F34</sup>(b)] the [<sup>F35</sup>chief social work officer]of the local authority whose officer is supervising the probationer; or
  - (c) an officer appointed by the [chief social work officer]to act on his behalf for the purposes of this subsection,]

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) [<sup>F36</sup>except in the case of a failure to comply with a requirement to pay compensation and] without prejudice to the continuance in force of the probation order, impose a fine not exceeding [<sup>F37</sup>level 3 on the standard scale], or
  - [<sup>F38</sup>(b)] sentence the offender for the offence for which the order was made;]
  - (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 [<sup>F39</sup>; or
  - (d) without prejudice to the continuance in force of the probation order, in a case where the conditions required by the <sup>M4</sup>Community Service by Offenders (Scotland) Act 1978 are satisfied, make a community service order, and the provisions of that Act shall apply to such an order as if the failure to comply with the requirement of the probation order were the offence in respect of which the order had been made.]

[<sup>F40</sup>(2A) for the purposes of subsection (2) above, evidence of one witness shall be sufficient evidence.]

- (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.

**Changes to legislation:** Criminal Procedure (Scotland) Act 1975, Cross Heading: Probation is up to date with all changes known to be in force on or before 27 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

- (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.

#### Textual Amendments

- F32** Words in s. 387(1) 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. 71, **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, Sch. 2
- F33** S. 387 “(a)” inserted (1.4.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 39:1), s. 61(2)(a); S.I. 1991/850, art. 3, **Schedule**
- F34** S. 387(1)(b)(c) inserted (1.4.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 39:1), s. 61(2)(b); S.I. 1991/850, art. 3, **Schedule**
- F35** Words in s. 387(1)(b)(c) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 97(3)**; S.I. 1996/323, **art. 4(1)(b)(c)**
- F36** Words inserted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 47(4)(a), 65(5)
- F37** Words substituted by Criminal Justice Act 1982 (c. 48, SIF 39:1), s. 56, **Sch. 7**
- F38** S. 387(2)(b) substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 38(2); S.I. 1996/517, arts. 3(2), 4-6, Sch. 2
- F39** Word and s. 387(2)(d) added by Community Service by Offenders (Scotland) Act 1978 (c. 49, SIF 39:1), s. 8
- F40** S. 387(2A) inserted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(7)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4), 4(1)(c)**

#### Marginal Citations

- M4** 1978 c. 49(39:1).

### 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.

[<sup>F41</sup>(3) Where—

- (a) a court has, under section 384(5A) of this Act, included in a probation order a requirement that an offender shall perform unpaid work; and
- (b) the offender is convicted of an offence committed in the circumstances mentioned in subsection (4) below,



---

**Changes to legislation:** Criminal Procedure (Scotland) Act 1975, Cross Heading: Probation is up to date with all changes known to be in force on or before 27 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](#)

---

the court which sentences him for the offence shall, in determining the appropriate sentence for that offence, have regard to the fact that the offence was committed in those circumstances.

- (4) The circumstances referred to in subsection (3) above are that the offence was committed—
- (a) during the period that the offender was subject to a requirement to perform unpaid work or within the period of three months following the expiry of that period; and
  - (b) in any place where the unpaid work was being or had previously been performed.
- (5) The court shall not, under subsection (3) above, have regard to the fact that the offence was committed in the circumstances mentioned in subsection (4) above unless that fact is libelled in the indictment or, as the case may be, specified in the complaint.]

#### Textual Amendments

**F41** S. 388(3)-(5) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 40(2); S.I. 1996/517, arts. 3(2), 4-6, [Sch. 2](#)

### 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 [<sup>F42</sup>(not being a probation order including a requirement [<sup>F43</sup>which, while corresponding to a requirement mentioned in paragraph 2 or 3 of Schedule 1A to the Powers of Criminal Courts Act 1973, would if included in a probation order made under that Act fail to accord with a restriction as to days of presentation, participation or attendance mentioned in paragraph 2(4)(a) or (6)(a), or as the case may be 3(3)(a), of that Schedule)]) is satisfied that the offender has attained the age of [<sup>F44</sup>16] 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; <sup>F45</sup>. that area shall be named in the order [<sup>F46</sup>; and where the order includes a requirement that the probationer perform unpaid work for a number of hours, the number specified shall not exceed one hundred.].
- (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
- [<sup>F47</sup>(a) that the probationer has attained the age of 16 years;
  - (b) that he proposes to reside, or is residing, in England; and
  - (c) that suitable arrangements for his supervision can be made by the probation committee for the area which contains the petty sessions area in which he resides or will reside]
- , 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 [<sup>F48</sup>or to vary any requirement for performance of unpaid work so that such hours as remain to be worked do not exceed one hundred]; and the court may so amend the order without summoning the probationer and without his consent.

---

**Changes to legislation:** Criminal Procedure (Scotland) Act 1975, Cross Heading: Probation is up to date with all changes known to be in force on or before 27 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

---

- (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 [F49] paragraph 5(3) of Schedule 1A to] the M5 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 [F49] paragraph 5 of Schedule 1A to] the said Act of 1973 respectively; and
  - (b) [F50] sub-paragraphs (5) to (7) of paragraph 5 of Schedule 1A to] 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 [F51] Schedule 2 to the Criminal Justice Act 1991 shall apply to the order—
- (a) except in the case mentioned in paragraph (b) below, as if that order were a probation order made under section 2 of the Powers of Criminal Courts Act 1973; and
  - (b) in the case of an order which contains a requirement such as is mentioned in subsection (5A) of section 183 or 384 of this Act, as if it were a combination order made under section 11 of the said Act of 1991:

Provided that Part III of that Schedule shall not so apply; and sub-paragraphs (3) and (4) of paragraph 3 of that Schedule shall so apply as if for the first reference in the said sub-paragraph (3) to the Crown Court there were substituted a reference to a court in Scotland and for the other references in those sub-paragraphs to the Crown Court there were substituted references to the court in Scotland.]

- (5) If it appears on information to a justice acting for the petty sessions area [F52] named in a probation order made or amended under this section that the person to whom the order relates] 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 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

**Changes to legislation:** Criminal Procedure (Scotland) Act 1975, Cross Heading: Probation is up to date with all changes known to be in force on or before 27 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

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 <sup>M5</sup>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.

#### Extent Information

- E1** [S. 389\(3\)-\(8\)](#) extends also to England and Wales see [s. 463\(1\)\(b\)](#)

#### Textual Amendments

- F42** Words inserted by Community Service by [Offenders \(Scotland\) Act 1978 \(c. 49, SIF 39:1\)](#), [Sch. 2 para. 3](#)
- F43** Words in [s. 389\(1\)](#) substituted (1.10.1992) by [Criminal Justice Act 1991 \(c. 53\)](#), s. 16, [Sch. 3](#), Pt. II, para. 7(3)(a)(i) (with s. 28); [S.I. 1992/333](#), art. 2(2), [Sch. 2](#).
- F44** Word in [s. 389\(1\)](#) substituted (1.10.1992) by [Criminal Justice Act 1991 \(c. 53\)](#), s. 16, [Sch. 3](#), Pt. II, para. 7(3)(a)(ii) (with s. 28); [S.I. 1992/333](#), art. 2(2), [Sch. 2](#).
- F45** Word in [s. 389\(1\)](#) ceased to have effect (1.10.1992) by virtue of [Criminal Justice Act 1991 \(c. 53\)](#), s. 16, [Sch. 3](#), Pt. II, para. 7(3)(a)(iii) (with s. 28); [S.I. 1992/333](#), art. 2(2), [Sch. 2](#).
- F46** Words at the end of [s. 389\(1\)](#) added (1.10.1992) by [Criminal Justice Act 1991 \(c. 53\)](#), s. 16, [Sch. 3](#), Pt. II, para. 7(3)(a)(iv) (with s. 28); [S.I. 1992/333](#), art. 2(2), [Sch. 2](#).
- F47** [S. 389\(2\)\(a\)\(b\)\(c\)](#) substituted (1.10.1992) for certain words by [Criminal Justice Act 1991 \(c. 53\)](#), s. 16, [Sch. 3](#), Pt. II, para. 7(3)(b)(i) (with s. 28); [S.I. 1992/333](#), art. 2(2), [Sch. 2](#).
- F48** Words in [s. 389\(2\)](#) inserted (1.10.1992) by [Criminal Justice Act 1991 \(c. 53\)](#), s. 16, [Sch. 3](#), Pt. II, para. 7(3)(b)(ii) (with s. 28); [S.I. 1992/333](#), art. 2(2), [Sch. 2](#).
- F49** Words in [s. 389\(3\)](#) substituted (1.10.1992) by [Criminal Justice Act 1991 \(c. 53\)](#), s. 16, [Sch. 3](#), Pt. II, para. 7(3)(c)(i) (with s. 28); [S.I. 1992/333](#), art. 2(2), [Sch. 2](#).
- F50** Words in [s. 389\(3\)](#) substituted (1.10.1992) by [Criminal Justice Act 1991 \(c. 53\)](#), s. 16, [Sch. 3](#), Pt. II, para. 7(3)(c)(ii) (with s. 28); [S.I. 1992/333](#), art. 2(2), [Sch. 2](#).
- F51** [S. 389\(4\)\(a\)\(b\)](#) and words substituted (1.10.1992) for certain words by [Criminal Justice Act 1991 \(c. 53\)](#), s. 16, [Sch. 3](#), Pt. II, para. 7(3)(d) (with s. 28); [S.I. 1992/333](#), art. 2(2), [Sch. 2](#).
- F52** Words in [s. 389\(5\)](#) substituted (1.10.1992) by [Criminal Justice Act 1991 \(c. 53\)](#), s. 16, [Sch. 3](#), Pt. II, para. 7(3)(e) (with s. 28); [S.I. 1992/333](#), art. 2(2), [Sch. 2](#).

#### Marginal Citations

- M5** [1973 c. 62\(39:1\)](#).

<sup>F53</sup>**390** .....

#### Textual Amendments

- F53** [S. 390](#) ceased to have effect (1.10.1992) by virtue of [Criminal Justice Act 1991 \(c. 53\)](#), s. 16, [Sch. 3](#), Pt. II, para. 7(4) (with s. 28); [S.I. 1992/333](#), art. 2(2), [Sch. 2](#).

**Changes to legislation:** Criminal Procedure (Scotland) Act 1975, Cross Heading: Probation is up to date with all changes known to be in force on or before 27 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

<sup>F54</sup>**391** .....

#### Textual Amendments

**F54** S. 391 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. 72, **Sch. 7 Pt. I** (with ss. 74(4), 127); S.I. 1996/517, arts. 3(2), 4-6, Sch. 2

### **392 Effects of probation and absolute discharge.**

- (1) Subject as hereinafter provided, a conviction . . . <sup>F55</sup> of an offence for which an order is made . . . <sup>F55</sup> 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 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—
- [<sup>F56</sup>(a) any right to appeal;]
  - (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 <sup>M6</sup>Criminal Justice (Scotland) Act 1949 and is expressed to extend to persons dealt with under section 1(1) of the <sup>M7</sup>Probation of Offenders Act 1907 as well as to convicted persons.
- (4) Where an offender is <sup>F57</sup> 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 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 order of absolute discharge in like manner as if the order were a conviction.

#### Textual Amendments

**F55** Words repealed by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 63:1), Sch. 6 para. 1, **Sch. 8**

**F56** S. 392(3)(a) substituted (27.7.1993) by 1993 c. 36, s. 79(13), **Sch. 5 Pt. I para. 2(9)**

**F57** Words in s. 392(4)(5) 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. 136, **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

---

**Changes to legislation:** Criminal Procedure (Scotland) Act 1975, Cross Heading: Probation is up to date with all changes known to be in force on or before 27 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

---

---

**Modifications etc. (not altering text)**

- C2** S. 392 amended by [Licensed Premises \(Exclusion of Certain Persons\) Act 1980](#) (c. 32, SIF 68A:1, 2), [s. 1\(2\)\(c\)](#)
- C3** S. 392 excluded by [Road Traffic Act 1972](#) (c. 20, SIF 107:1), [ss. 93\(8\), 101\(8\)](#) (as added by [Criminal Justice Act 1980](#) (c. 62, SIF 39:1), [s. 55](#)) and [Police and Criminal Evidence Act 1984](#) (c. 60, SIF 95), [s. 75\(3\)\(b\)](#)
- C4** S. 392 excluded by [Road Traffic Offenders Act 1988](#) (c. 53, SIF 107:1), [s.46\(3\)](#) and by [S.I. 1989/1341](#) (N.I. 12), [art. 73\(3\)\(c\)](#)
- 

**Marginal Citations**

- M6** [1949 c. 94.\(39:1\)](#).
- M7** [1907 c. 17](#).

**393 Probation reports.**

Where a report by an officer of a local authority is made to any court<sup>F58</sup>, 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:

<sup>F58</sup>

---

**Textual Amendments**

- F58** Words in [s. 393](#), and the proviso, 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. 74, Sch. 7 Pt. I](#); [S.I. 1996/517, arts. 3\(2\), 4-6, Sch. 2](#)

**Changes to legislation:**

Criminal Procedure (Scotland) Act 1975, Cross Heading: Probation is up to date with all changes known to be in force on or before 27 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.

[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\(7\)](#)