



# Criminal Procedure (Scotland) Act 1995

## 1995 CHAPTER 46

### PART XI

#### SENTENCING

##### *Probation*

#### **228 Probation orders**

- (1) Subject to subsection (2) below, where an accused is convicted of an offence (other than an offence the sentence for which is fixed by law) the court if it is of the opinion that it is expedient to do so—
  - (a) having regard to the circumstances, including the nature of the offence and the character of the offender; and
  - (b) having obtained a report as to the circumstances and character of the offender, may, instead of sentencing him, make an order requiring the offender to be under supervision for a period to be specified in the order of not less than six months nor more than three years; and such an order is, in this Act, referred to as a “probation order”.
- (2) 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—
  - (a) in a case other than that mentioned in paragraph (b) below, by the local authority in whose area he resides or is to reside; or
  - (b) in a case where, by virtue of section 234(1) of this Act, subsections (3) and (4) below would not apply, by the probation committee for the area which contains the petty sessions area which would be named in the order.
- (3) A probation order shall be as nearly as may be in the form prescribed by Act of Adjournal, and shall—
  - (a) name the local authority area in which the offender resides or is to reside; and
  - (b) subject to subsection (4) below, make provision for the offender to be under the supervision of an officer of the local authority of that area.

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- (4) Where the offender resides or is to reside in a local authority area in which the court which makes the order 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 Schedule 6 to this Act) in the area of residence or intended residence, and the appropriate court shall require the local authority for that area to arrange for the offender to be under the supervision of an officer of that authority.
- (5) Before making a probation order, the court shall explain to the offender in ordinary language—
  - (a) the effect of the order, including any additional requirements proposed to be inserted under section 229 or 230 of this Act; and
  - (b) that if he fails to comply with the order or commits another offence during the probation period he will be liable to be 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.
- (6) The clerk of the court by which a probation order is made or of the appropriate court, as the case may be, shall—
  - (a) cause copies of the probation order to be given to the officer of the local authority who is to supervise the probationer and to the person in charge of any institution or place in which the probationer is required to reside under the probation order; 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.

## **229 Probation orders: additional requirements**

- (1) Subject to section 230 of this Act, a probation order may 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—
  - (a) conducive to securing the good conduct of the offender or for preventing a repetition by him of the offence or the commission of other offences; or
  - (b) where the probation order is to include such a requirement as is mentioned in subsection (4) or (6) below, conducive to securing or, as the case may be, preventing the matters mentioned in paragraph (a) above.
- (2) Without prejudice to the generality of subsection (1) above, a probation order may, subject to subsection (3) below, include requirements relating to the residence of the offender.
- (3) In relation to a probation order including a requirement such as is mentioned in subsection (2) above—
  - (a) before making the order, the court shall consider the home surroundings of the offender; and
  - (b) if 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.

- (4) Without prejudice to the generality of subsection (1) above, where 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 that the conditions specified in paragraphs (a) and (c) of section 238(2) of this Act for the making of a community service order 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 40 nor more than 240) as may be specified in the probation order.
- (5) Sections 238 (except subsections (1), (2)(b) and (d) and (4)(b)), 239(1) to (3), and 240 of this Act shall apply, subject to any necessary modifications, to a probation order including a requirement such as is mentioned in subsection (4) above as they apply to a community service order, and in the application of subsection (5) of the said section 238 for the words “subsection (1) above” there shall be substituted the words “subsection (4) of section 229 of this Act”.
- (6) Without prejudice to the generality of subsection (1) 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 this Act 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 249(3) to (5), (8) to (10);
  - section 250(2);
  - section 251(1) and (2)(b);
  - section 253.
- (7) Where the court imposes a requirement to pay compensation under subsection (6) 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 18 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.

### **230 Probation orders: requirement of treatment for mental condition**

- (1) Where the court is satisfied, on the evidence of a registered medical practitioner approved for the purposes of section 20 or 39 of the 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 Part V of that Act, or under this Act, the court may, if it makes a probation order, include 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 in the order, to treatment by or under the direction of a registered medical practitioner or chartered psychologist with a view to the improvement of the offender's mental condition.
- (2) The treatment required by virtue of subsection (1) above 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 said Act of 1984, not being a State hospital within the meaning of the 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 or chartered psychologist as may be specified in the order,but otherwise the nature of the treatment shall not be specified in the order.
- (3) A court shall not make a probation order containing a requirement under subsection (1) above 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) Where the registered medical practitioner 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 the 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 (5) below could have been specified in the probation order; or
  - (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 (6) below, make arrangements for the probationer to be treated accordingly.
- (5) Arrangements made under subsection (4) above 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 for that purpose in the probation order.
- (6) Arrangements shall not be made under subsection (4) above 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.
- (7) Where any such arrangements as are mentioned in subsection (4) above are made for the treatment of a probationer—
- (a) 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.
- (8) Subsections (3) to (5) of section 61 of this Act shall apply for the purposes of this section as if for the reference in subsection (3) to section 58(1)(a) of this Act there were substituted a reference to subsection (1) above.
- (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.

### **231 Probation orders: amendment and discharge**

- (1) Schedule 6 to this Act shall have effect in relation to the discharge and amendment of probation orders.
- (2) Where, under section 232 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.

### **232 Probation orders: failure to comply with requirement**

- (1) If, on information from—
- (a) the officer supervising the probationer;
  - (b) the 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 which made the probation order or to the appropriate court that the probationer has failed to comply with any requirement 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 subsection (1) above that he has failed to comply with a requirement of the probation order, the court may—
- (a) 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 level 3 on the standard scale; or
  - (b) sentence the offender for the offence for which the order was made; 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; or

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- (d) without prejudice to the continuance in force of the probation order, in a case where the conditions required by sections 238 to 244 of this Act are satisfied, make a community service order, and those sections 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.
- (3) For the purposes of subsection (2) above, evidence of one witness shall be sufficient evidence.
- (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 section 233 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.
- (7) The citation of a probationer to appear before a court of summary jurisdiction in terms of subsection (1) above or section 233(1) of this Act shall be effected in like manner, *mutatis mutandis*, as the citation of an accused to a sitting or diet of the court under section 141 of this Act.

### **233 Probation orders: commission of further offence**

- (1) If it appears to—
  - (a) the court which made a probation order; or, as the case may be,
  - (b) the appropriate court,
 in this section referred to as “the 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 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, and on his appearance or on his being brought before the court, the court may, if it thinks fit, deal with him under section 232(2)(b) of this Act.
- (2) Where a probationer is convicted by the court of an offence committed during the probation period, the court may, if it thinks fit, deal with him under section 232(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.
- (3) Where—
  - (a) a court has, under section 229(4) 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,

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 labelled in the indictment or, as the case may be, specified in the complaint.

### **234 Probation orders: persons residing in England and Wales**

- (1) Where the court which made a probation order to which this subsection applies is satisfied that the offender has attained the age of 16 years and resides or will reside in England and Wales, subsections (3) and (4) of section 228 of this Act shall not apply to the order, but—
- (a) 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; and
  - (b) that area shall be named in the order,
- and where the order includes a requirement that the probationer performs unpaid work for a number of hours, the number specified shall not exceed one hundred.
- (2) Subsection (1) above applies to a probation order which is made under the said section 228 but does not include a requirement which would, if made, correspond to a requirement mentioned in paragraph 2 or 3 of Schedule 1A to the 1973 Act, but 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.
- (3) Where a probation order has been made under the said section 228 and the court in Scotland which made the order or the appropriate court is satisfied—
- (a) that the probationer has attained the age of 16 years;
  - (b) that he proposes to reside, or is residing, in England and Wales; 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 6 to this Act shall include power to insert the provisions required by subsection (1) above 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.
- (4) A probation order made or amended by virtue of this section may, notwithstanding section 230(9) of this Act, include a requirement that the probationer shall submit to treatment for his mental condition, and—

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- (a) subsections (1), (3) and (8) of the said section 230 and paragraph 5(3) of Schedule 1A to the 1973 Act (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 the said section 230 and paragraph 5 of the said Schedule 1A respectively; and
  - (b) sub-paragraphs (5) to (7) of the said paragraph 5 (functions of supervising officer and registered medical practitioner where such a requirement has been imposed) shall apply in relation to a probationer who is undergoing treatment in England and Wales 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.
- (5) Sections 231(1) and 232(1) of this Act shall not apply to any order made or amended under this section; but subject to subsection (6) below, Schedule 2 to the 1991 Act 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 1973 Act; and
  - (b) in the case of an order which contains a requirement such as is mentioned in section 229(4) of this Act, as if it were a combination order made under section 11 of the 1991 Act.
- (6) Part III of Schedule 2 to the 1991 Act shall not apply as mentioned in subsection (5) above; 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 other references in those sub-paragraphs to the Crown Court there were substituted references to the court in Scotland.
- (7) If it appears on information to a justice acting for the petty sessions area 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) a summons requiring that person to appear, at the place and time specified in the summons, before the court in Scotland which made the probation order; or
  - (b) if the information is in writing and on oath, a warrant for his arrest, directing that person to be brought before the last-mentioned court.
- (8) If a warrant for the arrest of a probationer issued under section 233 of this Act by a court is executed in England and Wales 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.
- (9) 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 in the order, 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 sessions area.
- (10) Where a probation order which is amended under subsection (3) above is an order to which the provisions of this Act apply by virtue of section 10 of the 1973 Act (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 and Wales.

(11) In this section—

“the 1973 Act” means the Powers of Criminal Courts Act 1973; and

“the 1991 Act” means the Criminal Justice Act 1991.