



Powers of Criminal Courts Act 1973

1973 CHAPTER 62

PART I

POWERS OF COURTS TO DEAL WITH OFFENDERS

Probation and discharge

2 Probation

- (1) Where a court by or before which a person of or over seventeen years of age is convicted of an offence (not being an offence the sentence for which is fixed by law) is of opinion that having regard to the circumstances, including the nature of the offence and the character of the offender, it is expedient to do so, the court may, instead of sentencing him, make a probation order, that is to say, an order requiring him to be under the supervision of a probation officer for a period to be specified in the order of not less than one year nor more than three years.

For the purposes of this subsection the age of a person shall be deemed to be that which it appears to the court to be after considering any available evidence.

- (2) A probation order shall name the petty sessions area in which the offender resides or will reside ; and the offender shall (subject to the provisions of Schedule 1 to this Act relating to probationers who change their residence) be required to be under the supervision of a probation officer appointed for or assigned to that area.

In this Act " supervising court" means, in relation to a probation order, a magistrates' court acting for the petty sessions area for the time being named in the order.

- (3) Subject to the provisions of subsection (4) below and sections 3 and 4 of this Act 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 same offence or the commission of other offences.

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- (4) Without prejudice to the power of the court under section 35 of this Act to make a compensation order, the payment of sums by way of damages for injury or compensation for loss shall not be included among the requirements of a probation order.
- (5) Without prejudice to the generality of subsection (3) above, a probation order may include requirements relating to the residence of the offender, but—
 - (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, the name of the institution 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 order.
- (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 (3) or (5) above or under section 3 or 4 of this Act) and that if he fails to comply with it or commits another offence he will be liable to be sentenced for the original offence; and the court shall not make the order unless he expresses his willingness to comply with its requirements.
- (7) The court by which a probation order is made shall forthwith give copies of the order to a probation officer assigned to the court, and he shall give a copy to the offender, to the probation officer responsible for the supervision of the offender and to the person in charge of any institution in which the probationer is required by the order to reside; and the court shall, except where it is itself the supervising court, send to the clerk to the justices for the petty sessions area named in the order a copy of the order, together with such documents and information relating to the case as it considers likely to be of assistance to the supervising court.
- (8) Where a probation order requires the offender to reside in any institution, 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 section 3(2)(a) of this Act;the court shall forthwith give notice of the terms of the order to the Secretary of State.

3 Probation orders requiring treatment for mental condition

- (1) Where the court is satisfied, on the evidence of a duly qualified medical practitioner approved for the purposes of section 28 of the Mental Health Act 1959, 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, the court may, if it makes a probation order, include in it a requirement that the offender shall submit, during the whole of the probation period or during such part of that period as may be specified in the order, to treatment by or under the direction of a duly qualified 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—

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- (a) treatment as a resident patient in a hospital or mental nursing home within the meaning of the Mental Health Act 1959, not being a special 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 duly qualified medical practitioner as may be specified in the order;

but the nature of the treatment shall not be specified in the order except as mentioned in paragraph (a), (b) or (c) above.

- (3) A court shall not by virtue of this section include in a probation order a requirement that an offender shall submit to treatment for his mental condition unless it is satisfied that arrangements have been made for the treatment intended to be specified in the order (including arrangements for the reception of the offender where he is to be required to submit to treatment as a resident patient).
- (4) While the probationer is under treatment as a resident patient in pursuance of a requirement of the probation order, the probation officer 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 duly qualified 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 for that purpose in the probation order.
- (6) Where any such arrangements as are mentioned in subsection (5) above 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 responsible for the supervision of the probationer, specifying the institution or place in or at which the treatment is to be carried out; 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) and (3) of section 62 of the Mental Health Act 1959 shall have effect with respect to proof for the purposes of subsection (1) above of an offender's mental condition as they have effect with respect to proof of an offender's mental condition for the purposes of section 60(1)(a) of that Act.
- (8) The provisions of this section shall apply in relation to a probation order made or amended by virtue of section 10 of this Act only so far as indicated in subsection (3) of that section, and except as provided by this section or section 10 a court shall not include in a probation order a requirement that the probationer shall submit to treatment for his mental condition.

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4 Probation orders requiring attendance at day training centre

- (1) Where a court makes a probation order in the case of an offender it may, subject to the provisions of this section, include in the order a requirement that he shall during the probation period attend at a day training centre specified in the order.
- (2) A court shall not include such a requirement in a probation order unless—
 - (a) it has been notified by the Secretary of State that a day training centre exists for persons of the offender's class or description who reside in the petty sessions area in which he resides or will reside; and
 - (b) it is satisfied that arrangements can be made for his attendance at that centre; and no such requirement shall be included in a probation order which includes a requirement under section 3 of this Act with respect to treatment of the probationer for his mental condition.
- (3) A requirement included in a probation order by virtue of this section shall operate to require the probationer—
 - (a) in accordance with instructions given by the probation officer responsible for his supervision, to attend on not more than sixty days at the centre specified in the order;
 - (b) while attending there to comply with instructions given by, or under the authority of, the person in charge of the centre.
- (4) References in this section to attendance at a day training centre include references to attendance elsewhere than at the centre for the purpose of receiving training in accordance with instructions given by, or under the authority of, the person in charge of the centre.

5 Discharge and amendment of probation orders

- (1) The provisions of Schedule 1 to this Act shall have effect in relation to the discharge and amendment of probation orders.
- (2) 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.

6 Breach of requirement of probation order

- (1) If at any time during the probation period it appears on information to a justice of the peace on whom jurisdiction is conferred by subsection (2) below that the probationer has failed to comply with any of the requirements of the order, the justice may issue a summons requiring the probationer to appear at the place and time specified therein, or may, if the information is in writing and on oath, issue a warrant for his arrest.
- (2) The following justices shall have jurisdiction for the purposes of subsection (1) above, that is to say:—
 - (a) if the probation order was made by a magistrates' court, any justice acting for the petty sessions area for which that court or the supervising court acts;
 - (b) in any other case, any justice acting for the petty sessions area for which the supervising court acts;

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and any summons or warrant issued under this section shall direct the probationer to appear or be brought before a magistrates' court acting for the petty sessions area for which the justice issuing the summons or warrant acts.

- (3) If it is proved to the satisfaction of the magistrates' court before which a probationer appears or is brought under this section that the probationer has failed to comply with any of the requirements of the probation order, then, subject to the following provisions of this subsection, that court may deal with him in respect of the failure in any one of the following ways, that is to say:—
- (a) it may impose on him a fine not exceeding £50;
 - (b) subject to subsection (10) below, it may make a community service order in respect of him ;
 - (c) in a case to which section 19 of the Criminal Justice Act 1948 applies, it may make an order under that section requiring him to attend at an attendance centre ; or
 - (d) where the probation order was made by a magistrates' court, it may deal with him for the offence in respect of which the probation order was made, in any manner in which it could deal with him if it had just convicted him of that offence.
- (4) Where the probation order was made by the Crown Court, and a magistrates' court has power to deal with the probationer under subsection (3)(a), (b) or (c) above in respect of a failure to comply with any of the requirements of the order, the magistrates' court may instead commit him to custody or release him on bail until he can be brought or appear before the Crown Court.
- (5) A magistrates' court which deals with a probationer's case under subsection (4) above shall send to the Crown Court a certificate signed by a justice of the peace, certifying that the probationer has failed to comply with such of the requirements of the probation order as may be specified in the certificate, together with such other particulars of the case as may be desirable ; and a certificate purporting to be so signed shall be admissible as evidence of the failure before the Crown Court.
- (6) Where by virtue of subsection (4) above the probationer is brought or appears before the Crown Court, and it is proved to the satisfaction of the court that he has failed to comply with any of the requirements of the probation order, the court may deal with him in respect of the failure in any one of the following ways, that is to say:—
- (a) it may impose on him a fine not exceeding £50 ;
 - (b) subject to subsection (10) below, it may make a community service order in respect of him; or
 - (c) it may deal with him for the offence in respect of which the probation order was made in any manner in which it could deal with him if he had just been convicted before the Crown Court of that offence.
- (7) A probationer who is required by the probation order to submit to treatment for his mental condition shall not be treated for the purposes of this section as having 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 ; and without prejudice to the provisions of section 8 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 in respect of a failure to comply with any requirement of the probation order.

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- (8) Any exercise by a court of its powers under subsection (3)(a), (b) or (c) or (6)(a) or (b) above shall be without prejudice to the continuance of the probation order.
- (9) A fine imposed under subsection (3)(a) above 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 a conviction.
- (10) Section 14(2) of this Act and, so far as applicable, the other provisions of this Act relating to community service orders shall have effect in relation to a community service order under this section as they have effect in relation to a community service order in respect of an offender, but as if the power conferred by sections 16 and 17 of this Act to deal with the offender for the offence in respect of which the community service order was made were a power to deal with the probationer for the failure to comply with the requirements of the probation order in respect of which the community service order was made.

7 Absolute and conditional discharge

- (1) Where a court by or before which a person is convicted of an offence (not being an offence the sentence for which is fixed by law) is of opinion, having regard to the circumstances including the nature of the offence and the character of the offender, that it is inexpedient to inflict punishment and that a probation order is not appropriate, the court may make an order discharging him absolutely, or, if the court thinks fit, discharging him subject to the condition that he commits no offence during such period, not exceeding three years from the date of the order, as may be specified therein.
- (2) An order discharging a person subject to such a condition is in this Act referred to as "an order for conditional discharge ", and the period specified in any such order (subject to section 8(1) of this Act) as "the period of conditional discharge ".
- (3) Before making an order for conditional discharge the court shall explain to the offender in ordinary language that if he commits another offence during the period of conditional discharge he will be liable to be sentenced for the original offence.
- (4) Where, under the following provisions of this Part of this Act, a person conditionally discharged under this section is sentenced for the offence in respect of which the order for conditional discharge was made, that order shall cease to have effect.

8 Commission of further offence by probationer or person conditionally discharged

- (1) If it appears to the Crown Court, where that court has jurisdiction in accordance with subsection (2) below, or to a justice of the peace having jurisdiction in accordance with that subsection, that a person in whose case a probation order or an order for conditional discharge has been made has been convicted by a court in any part of Great Britain of an offence committed during the relevant period, and has been dealt with in respect of that offence, that court or justice may, subject to subsection (3) below, issue a summons requiring that person to appear at the place and time specified therein or a warrant for his arrest.

In this section " the relevant period " means, in relation to a probation order, the probation period, and in relation to an order for conditional discharge, the period of conditional discharge.

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- (2) Jurisdiction for the purposes of subsection (1) above may be exercised—
 - (a) if the probation order or order for conditional discharge was made by the Crown Court, by that court;
 - (b) if the order was made by a magistrates' court, by a justice acting for the petty sessions area for which that court acts;
 - (c) in the case of a probation order, by whatever court it was made, by a justice acting for the petty sessions area for which the supervising court acts.
- (3) A justice of the peace shall not issue a summons under this section except on information and shall not issue a warrant under this section except on information in writing and on oath.
- (4) Subject to subsection (5) below, a summons or warrant issued under this section shall direct the person to whom it relates to appear or to be brought before the court by which the probation order or the order for conditional discharge was made.
- (5) In the case of a probation order made by a magistrates' court, a summons or warrant issued by a justice acting for the petty sessions area for which the supervising court acts may specify the supervising court instead of the court which made the order.
- (6) If a person in whose case a probation order or an order for conditional discharge has been made by the Crown Court is convicted by a magistrates' court of an offence committed during the relevant period, the magistrates' court may commit him to custody or release him on bail until he can be brought or appear before the Crown Court; and if it does so the magistrates' court shall send to the Crown Court a copy of the minute or memorandum of the conviction entered in the register, signed by the clerk of the court by whom the register is kept.
- (7) Where it is proved to the satisfaction of the court by which a probation order or an order for conditional discharge was made, or to the satisfaction of that court or the supervising court in the case of a probation order made by a magistrates' court, that the person in whose case the order was made has been convicted of an offence committed during the relevant period, the court may deal with him, for the offence for which the order was made, in any manner in which it could deal with him if he had just been convicted by or before that court of that offence.
- (8) If a person in whose case a probation order or an order for conditional discharge has been made by a magistrates' court is convicted before the Crown Court of an offence committed during the relevant period, or is dealt with by the Crown Court for any such offence in respect of which he was committed for sentence to the Crown Court, the Crown Court may deal with him, for the offence for which the order was made, in any manner in which the magistrates' court could deal with him if it had just convicted him of that offence.
- (9) If a person in whose case a probation order or an order for conditional discharge has been made by a magistrates' court is convicted by another magistrates' court of any offence committed during the relevant period, that court may, with the consent of the court which made the order or, in the case of a probation order, with the consent of that court or of the supervising court, deal with him, for the offence for which the order was made, in any manner in which the court could deal with him if it had just convicted him of that offence.

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9 Breach of conditional discharge by young offenders

- (1) Where an order for conditional discharge has been made by a magistrates' court in the case of an offender under seventeen years of age in respect of an offence not being—
 - (a) a summary offence, or
 - (b) an offence which, in the case of an adult, could have been tried summarily with his consent under section 19 of the Magistrates' Courts Act 1952,any powers exercisable by that or any other court in respect of the offender after he has attained the age of seventeen years under subsection (7), (8) or (9) of section 8 of this Act shall be those which would be exercisable if that offence were such an offence as is mentioned in paragraph (b) above and had been tried summarily with his consent under section 19.
- (2) For the purposes of this section the age of an offender at a particular time shall be deemed to be or to have been that which appears to the court after considering any available evidence to be or to have been his age at that time.

10 Probation orders relating to persons residing in Scotland

- (1) Where the court by which a probation order is made under section 2 of this Act is satisfied that the offender resides or will reside in Scotland, subsection (2) of that section shall not apply to the order, but the order shall specify as the appropriate court for the purposes of this section a court of summary jurisdiction (which, in the case of an offender convicted on indictment, shall be the sheriff court) having jurisdiction in the place in Scotland in which the offender resides or will reside.
- (2) Where a probation order has been made under section 2 of this Act and the supervising court is satisfied that the probationer proposes to reside or is residing in Scotland, the power of that court to amend the order under Schedule 1 to this Act shall include power to amend it by substituting for the provisions required by section 2(2) of this Act the provisions required by subsection (1) above; and the court may so amend the order without summoning the probationer and without his consent.
- (3) A probation order made or amended by virtue of this section may include a requirement that the probationer shall submit to treatment for his mental condition, and—
 - (a) subsections (1), (3) and (7) of section 3 of this Act and subsection (2) of section 3 of the Criminal Justice (Scotland) Act 1949 (which makes equivalent provision to that made by section 3(2) of this Act) 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 3 of this Act and of that Act respectively ; and
 - (b) subsections (4) to (6) of section 3 of that Act (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 Scotland 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 section 3 of that Act.
- (4) Sections 5(1) and 6(1) and (2) of this Act shall not apply to any order made or amended by virtue of this section; but the provisions of the Criminal Justice (Scotland) Act 1949, except sections 5(2)(b) and 6 (sentencing the probationer for the offence for which the order was made), shall apply to the order as if it were a probation order made

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under section 2 of that Act and as if the court specified in the order as the appropriate court had been named as such under subsection (2) of that section.

(5) If in the case of a probation order made or amended by virtue of this section the appropriate court (as defined by the Criminal Justice (Scotland) Act 1949) is satisfied that the probationer has failed to comply with any requirement of the probation order, the court may, instead of dealing with him in any manner authorised by that Act, commit him to custody or release him on bail until he can be brought or appear before the court in England and Wales by which the probation order was made, and, if it so commits him or releases him on bail,—

- (a) the court shall send to the court in England and Wales a certificate certifying that the probationer has failed to comply with such of the requirements of the probation order as may be specified in the certificate, together with such other particulars of the case as may be desirable;
- (b) that court shall have (the same powers as if the probationer had been brought or appeared before it in pursuance of a warrant or summons issued under section 6(1) of this Act;

and a certificate purporting to be signed by the clerk of the appropriate court shall be admissible as evidence of the failure before the court which made the probation order.

(6) In relation to a probation order made or amended by virtue of this section, the appropriate court (as defined by the Criminal Justice (Scotland) Act 1949) shall have jurisdiction for the purposes of section 8(1) of this Act.

(7) The court by which a probation order is made or amended by virtue of this section shall send three copies of the order as made or amended to the clerk of the court specified in the order as the appropriate court, together with such documents and information relating to the case as it considers likely to be of assistance to that court; and section 2(7) of this Act, or paragraph 6 of Schedule 1 to this Act, as the case may be, shall not apply to any such order.

(8) Where a probation order which is amended by virtue of subsection (2) above is an order to which the provisions of this Act apply by virtue of section 7 of the Criminal Justice (Scotland) Act 1949 (probation orders under that Act relating to persons residing in England and Wales) 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 Scotland, and as if the court specified as the appropriate court in the order as so amended had been named as such under subsection (2) of that section.

11 Substitution of conditional discharge for probation

(1) Where on an application made by the probationer or the probation officer it appears to the court having power to discharge a probation order that the order is no longer appropriate in the case of the probationer, the court may make, in substitution for the probation order, an order discharging him in respect of the original offence, subject to the condition that he commits no offence between the making of the order under this section and the expiration of the probation period.

(2) A person in respect of whom an order is made under this section shall so long as the condition mentioned in subsection (1) above continues in force be treated in all respects and in particular for the purposes of section 8 of this Act as if the original order made in his case had been an order for conditional discharge made by the court

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which made the original order and as if the period of conditional discharge were the same as the probation period.

- (3) Where an application under this section is made by the probation officer, it may be heard in the absence of the probationer if the officer produces to the court a statement by him that he understands the effect of an order under this section and consents to the application being made.
- (4) On the making of an order under this section the appropriate officer of the court shall forthwith give copies of the order to the probation officer, who shall give a copy to the person in respect of whom the order is made and to the person in charge of any institution in which that person was required by the probation order to reside.

12 Supplementary provision as to probation and discharge

- (1) Any court may, on making a probation order or an order for conditional discharge under this Part of this Act, if it thinks it expedient for the purpose of the reformation of the offender, allow any person who consents to do so to give security for the good behaviour of the offender.
- (2) For the purposes of this Act, except section 2(7) and paragraph 1 of Schedule 1, where a probation order or an order for conditional discharge has been made on appeal, the order shall be deemed to have been made by the court from which the appeal was brought.
- (3) In proceedings before the Crown Court under the preceding provisions of this Act, any question whether a probationer has failed to comply with the requirements of the probation order, and any question whether any person in whose case a probation order or an order for conditional discharge has been made has been convicted of an offence committed during the probation period or, as the case may be, the period of conditional discharge, shall be determined by the court and not by the verdict of a jury.
- (4) Nothing in section 2 or 7 of this Act shall be construed as taking away any power of the court, on making a probation order in respect of an offender or discharging an offender absolutely or conditionally, to order him to pay costs or compensation.

13 Effects of probation and discharge

- (1) Subject to subsection (2) below, a conviction of an offence for which an order is made under this Part of this Act placing the offender on probation or discharging him absolutely or conditionally 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 under the preceding provisions of this Act.
- (2) Where the offender was of or over seventeen years of age at the time of his conviction of the offence in question and is subsequently sentenced under this Part of this Act for that offence, subsection (1) above shall cease to apply to the conviction.
- (3) Without prejudice to the preceding provisions of this section, the conviction of an offender who is placed on probation or discharged absolutely or conditionally under this Part of this Act shall in any event be disregarded for the purposes of any enactment or instrument which imposes any disqualification or disability upon convicted persons, or authorises or requires the imposition of any such disqualification or disability.

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- (4) The preceding provisions of this section shall not affect—
- (a) any right of any offender placed on probation or discharged absolutely or conditionally under this Part of this Act to appeal against his conviction, or to rely on it in bar of any subsequent proceedings for the same offence;
 - (b) the restoration of any property in consequence of the conviction of any such offender; or
 - (c) the operation, in relation to any such offender, of any enactment or instrument in force at the commencement of this Act which is expressed to extend to persons dealt with under section 1(1) of the Probation of Offenders Act 1907 as well as to convicted persons.
- (5) In this section "enactment" includes an enactment contained in a local Act and "instrument" means an instrument having effect by virtue of an Act.