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# Criminal Procedure (Scotland) Act 1975

## 1975 CHAPTER 21

### PART II

#### SUMMARY PROCEDURE

#### <sup>F1</sup> CONVICTION AND SENTENCE

#### <sup>F1</sup> Probation

#### Textual Amendments

<sup>F1</sup> Act repealed (S.) (1.4.1996) by [Criminal Procedure \(Consequential Provisions\) \(Scotland\) Act 1995](#) (c. 40), s. 6(1), [Sch. 5](#) (with ss. 4, 6(2), [Sch. 3](#) paras. 3, 16, [Sch. 6](#))

<sup>F1</sup>**384** Probation.

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<sup>F1</sup>**385** Probation orders requiring treatment for mental condition.

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<sup>F1</sup>**386** Discharge and amendment of probation orders.

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<sup>F1</sup>**387** Failure to comply with requirement of probation order.

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## <sup>F1</sup>388 Commission of further offence.

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## <sup>F1</sup>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>F2</sup>(not being a probation order including a requirement [<sup>F3</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>F4</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>F5</sup> that area shall be named in the order [<sup>F6</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>F7</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>F8</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.
- (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 [<sup>F9</sup>paragraph 5(3) of Schedule 1A to] the <sup>M1</sup>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 [<sup>F9</sup>paragraph 5 of Schedule 1A to] the said Act of 1973 respectively; and
  - (b) [<sup>F10</sup>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 [<sup>F11</sup>Schedule 2 to the Criminal Justice Act 1991 shall apply to the order—

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- (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 [<sup>F12</sup>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 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>M1</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.]

#### Textual Amendments

- F2** Words inserted by Community Service by [Offenders \(Scotland\) Act 1978 \(c. 49, SIF 39:1\)](#), [Sch. 2 para. 3](#)
- F3** 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](#).
- F4** 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](#).
- F5** 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](#).

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- F6** 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**.
- F7** 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**.
- F8** 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**.
- F9** 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**.
- F10** 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**.
- F11** 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**.
- F12** 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**

- M1** 1973 c. 62(39:1).

**F1390** .....

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**F1391** .....

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**F1392** **Effects of probation and absolute discharge.**

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**F1393** **Probation reports.**

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