

THE PROBATION OF OFFENDERS ACT

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SCHEDULE

THE PROBATION OF OFFENDERS ACT

[12th November, 1948.]

Cap. 310.
Laws
7 of 1955,
23 of 1961.
Acts
10 of 1970,
37 of 1975,
Sch.,
9 of 1985
S. 85,
19 of 2000
S. 23.

1. This Act may be cited as the Probation of Offenders Act. Short title.

2. In this Act—

Interpre-
tation.

“the Commissioner” has the meaning assigned thereto by section 2 of the Corrections Act; 9/1985
S. 85.

“inspector” has the meaning assigned thereto by section 2 of the Corrections Act;

“magistrate” includes Resident Magistrate and Justice of the Peace;

“probation order” means an order made under this Act placing a person under the supervision of a probation and after-care officer;

“probation and after-care officer” means a person appointed under the Corrections Act to be a probation and after-care officer;

“probationer” means a person placed under supervision by a probation order.

3. [Deleted by Act 9 of 1985, S. 85.]

4. [Deleted by Act 9 of 1985, S. 85.]

Power of
court to
permit
conditional
release of
offenders.

5.—(1) Where any person is charged with an offence which is punishable on summary conviction, and the court thinks that the charge is proved but is of opinion that having regard to the circumstances, including the nature of the offence and the character and home surroundings of the offender, it is expedient to release the offender on probation, the court may—

(a) convict the offender and make a probation order; or

(b) without proceeding to conviction, make a probation order:

Provided that before making a probation order the court shall explain to the offender in ordinary language the effect of the order and that, if he fails in any way to comply therewith or commits another offence, he will be liable to be sentenced or to be convicted and sentenced for the original offence, and if the offender is not less than fourteen years of age the court shall not make a probation order unless the offender expresses his willingness to comply with the provisions of the order.

23/1961
S. 4.

(2) Where any person is convicted of an offence which is not punishable on summary conviction, and the court is of opinion that, having regard to the circumstances, including the nature of the offence and the character and home surroundings of the offender, it is expedient to release the offender on probation, the court may in lieu of imposing a sentence of imprisonment, make a probation order:

Provided that before making a probation order the court shall explain to the offender in ordinary language the effect of the order and that, if he fails in any respect to comply therewith or commits another offence, he will be liable to be sentenced for the original offence, and the court shall not

make a probation order unless the offender expresses his willingness to comply with the provisions of the order.

6.—(1) A probation order shall have effect for such period not less than one year and not more than three years from the date of the order as may be specified therein, and shall require the probationer to submit during that period to the supervision of a probation and after-care officer appointed for or assigned to the parish in which the probationer will reside after the making of the order, and shall contain such requirements as the court considers necessary for securing the supervision of the offender, and such additional requirements as to residence and other matters (including submission by the probationer to medical treatment) 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 of the same offence or the commission of other offences:

Probation
order.

23/1961
S. 5.

9/1985
S. 85

Provided that (without prejudice to the power of the court to make an order under subsection (1) of section 7) 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.

(2) Where a probation order contains a requirement as to residence, the place at which and the period for which the probationer is to reside shall be specified in the order, and where by any such order the probationer is required to reside in an institution, the institution shall be one which is subject to inspection by an inspector and a Government Department and the period for which the probationer is

9/1985
S. 85

PROBATION OF OFFENDERS

required so to reside shall not extend beyond twenty-four months from the date of the order.

7/1955
S. 2.

(3) The court by which a probation order is made shall—

9/1985
S. 85

(a) furnish two copies of the order, one copy to be given to the probationer and the other to the probation office for the parish in which the probationer is to be supervised;

(b) in any case where the place specified in the order (at which the probationer is to reside) is situated within another parish, transmit to the court for such parish all the documents and information relating to the case, and thereupon the last mentioned court shall be deemed to be the court by which the probation order was made unless or until such order is varied in accordance with the provisions of subsection (3) of section 12.

Further provisions where court makes probation order.

23/1961
S. 6 (a).

7.—(1) Where a person is placed by a probation order under the supervision of a probation and after-care officer, the court may, without prejudice to its powers of awarding costs against the offender, order the offender to pay such damages for injury or compensation for loss as the court thinks reasonable, but not, in the case of an order made by a court of summary jurisdiction, exceeding in the aggregate two hundred dollars or such greater sum as may be allowed by any enactment relating to the offence.

(2) Where a court makes any such order for the payment of damages or compensation as aforesaid, the order may be enforced in like manner as an order for the payment of costs by the offender, and where the court, in

addition to making such an order for the payment of damages or compensation to any person, orders the offender to pay to that person any costs, the orders for the payment of damages or compensation and for the payment of costs may be enforced as if they constituted a single order for the payment of costs.

(3) Without prejudice to the provisions of paragraph (h) of subsection (1) of section 76 of the Child Care and Protection Act (which enables a court to order the parent or guardian of a child or young person charged with an offence to enter into recognizance for the good behaviour of such offender) a court may, on making a probation order, 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

23/1961
S 6(b)

8.—(1) If it appears to a judge or any magistrate that a probationer has been convicted of an offence committed while the probation order was in force, he may issue a summons requiring the probationer to appear at the place and time specified therein or may issue a warrant for his arrest:

Commission
of further
offences by
probationers

Provided that a magistrate shall not issue such a summons or warrant except on information in writing and on oath.

(2) A magistrate may issue a summons or warrant under subsection (1) notwithstanding that the probation order was made by the Supreme Court.

23/1961
S. 7(a)

(3) A summons or warrant issued under this section shall direct the probationer to appear or to be brought before the court by which the probation order was made:

Provided that if a warrant is issued requiring him to be brought before the Supreme Court and he cannot forthwith be brought before that court because that court is not sitting, the warrant shall have effect as if it permitted him

23/1961
S 7(b)

19/2000
S. 23.

to be brought before a Resident Magistrate's Court for the parish where he is arrested; and the Resident Magistrate's Court shall commit him to custody or release him on bail in accordance with the Bail Act (with or without sureties) until he can be brought or appear before the Supreme Court.

(4) Where a probationer is convicted by a magistrate of an offence committed while the probation order was in force, the magistrate may commit the probationer to custody or release him on bail, in accordance with the Bail Act, with or without sureties, until he can be brought or appear before the court by which the probation order was made.

(5) Where it is proved to the satisfaction of the court by which the probation order was made that the probationer has been convicted of an offence while the probation order was in force, then—

- (a) if the probationer was not convicted of the original offence in respect of which the probation order was made, the court may convict him of that offence and pass any sentence which it could pass if the probationer had just been convicted before that court of that offence; or
- (b) if the probationer was convicted of the original offence in respect of which the probation order was made, the court may pass any sentence which it could pass if the probationer had just been convicted before that court of that offence.

(6) Where a probationer in respect of whom a probation order has been made by a magistrate is convicted before the Supreme Court of an offence committed while the probation order was in force, then—

- (a) if the probationer was not convicted of the original offence in respect of which the probation order was made, the Supreme Court may convict him of that offence and may pass any sentence which

the court which made the probation order could pass if the probationer had just been convicted before that court of that offence; or

- (b) if the probationer was convicted of the original offence in respect of which the probation order was made, the Supreme Court may pass any sentence which the court which made the probation order could pass if the probationer had just been convicted before that court of that offence.

(7) A probationer who is required by the probation order to submit to treatment for his mental condition, shall not for the purpose of this section be treated as having failed to comply with that requirement on the ground 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.

23/1961
S. 7(c).

9.—(1) If it appears to a judge or any magistrate that a probationer has failed to comply with any of the provisions of the probation order, he may issue a summons to the probationer requiring him to appear at the place and time specified therein or may issue a warrant for his arrest:

Failure by
probationer
to comply
with
probation
order.

Provided that a magistrate shall not issue such a summons except on information, and shall not issue such a warrant except on information in writing and on oath.

(2) A magistrate may issue a summons or warrant under subsection (1) notwithstanding that the probation order was made by the Supreme Court.

23/1961
S. 8(a).

(3) A summons or warrant under this section shall direct the probationer to appear or to be brought before the court by which the probation order was made:

23/1961
S. 8(b).

Provided that if a warrant is issued requiring him to be brought before the Supreme Court and he cannot forthwith be brought before that Court because that Court is not sitting, the warrant shall have effect as if it permitted him to be brought before a Resident Magistrate's Court for the parish where he is arrested; and the Resident Magistrate's Court shall commit him to custody or release him on bail in accordance with the Bail Act (with or without sureties) until he can be brought or appear before the Supreme Court.

19/2000
S. 23.

(4) If it is proved to the satisfaction of the court by which the probation was made that the probationer has failed to comply with any of the provisions of the probation order, then—

(a) without prejudice to the continuance in force of the probation order, the court may impose on the probationer a fine not exceeding twenty dollars; or

(b)(i) if the probationer was not convicted of the original offence in respect of which the probation order was made, the court may convict him and pass any sentence which it could pass if the probationer had just been convicted before that court of that offence; or

(ii) if the probationer was convicted of the original offence in respect of which the probation order was made, the court may pass any sentence which it could pass if the probationer had just been convicted before that court of that offence:

Provided that where a court has under the provisions of sub-paragraph (a) imposed a fine on the probationer, then, on any subsequent sentence being passed upon the probationer under the provisions of section 8 or of this section, the imposition of the said fine shall be taken into account in fixing the amount of the said sentence.

(5) Without prejudice to the provisions of section 8 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.

23/1961
S. 8 (c).

10.—(1) Where a person is convicted of an offence and is released under a probation order, his conviction for that offence shall be disregarded for the purposes of any enactment by or under which any disqualification or disability is imposed upon convicted persons or by or under which provision is made for a different penalty in respect of a second or subsequent offence or in respect of an offence committed after previous conviction:

Probation order; disqualification or disability.

Provided that if the probationer is subsequently sentenced for the original offence, this section shall cease to apply in respect of that offence, and he shall be deemed, for the purposes of any such enactment imposing a disqualification or disability, to have been convicted on the date of sentence.

(2) Where a person is released on probation without the court having proceeded to conviction, and he is subsequently convicted and sentenced for the original offence, then he shall be deemed, for the purposes of any enactment by or under which any disqualification is imposed upon convicted persons or by or under which provision is made for a different penalty in respect of a second or subsequent offence or in respect of an offence committed after a previous conviction, to have been convicted on the date of such conviction and sentence.

11. Where a probationer is committed to custody or released on bail by a magistrate until he can be brought or appear before the court which made the probation order, the magistrate shall transmit to the said court such particulars of the case as he thinks desirable, and where

Transmission of documents when case is remitted to another court.

the probationer has been convicted of a subsequent offence by a magistrate, the magistrate shall transmit to the said court a certificate to that effect, signed by him, and for the purposes of proceedings in the court to which it is transmitted any such certificate, if purporting to be so signed, shall be admissible as evidence of the conviction.

Amend-
ment of
probation
orders.
9/1985
S. 85

12.—(1) Subject to the provisions of this section, where, on the application of a probationer or of the probation and after-care officer responsible for his supervision, the court which made the probation order is satisfied that the provisions of the probation order should be varied, or that any provisions should be inserted or cancelled, the court may by order amend the probation order accordingly:

Provided that no order shall be made under this section reducing the period of duration of the probation order, or extending that period beyond a period of three years from the date of the probation order.

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S. 85

(2) An order under subsection (1) may require a probationer to reside in an institution for any period not extending beyond twenty-four months from the date of that order, if the total period or the aggregate of the periods for which he is required to reside in any institution or institutions under the probation order does not exceed twenty-four months.

9/1985
S. 85

(3) The court shall, if it is satisfied, on the application of the probation and after-care officer responsible for the supervision of the probationer, that the probationer has changed, or is about to change, his residence from the parish named in the order to another parish, by order vary the probation order by substituting for the reference to the parish named therein a reference to the parish where the probationer is residing or is about to reside, and shall transmit to the court for the new parish all documents and information relating to the case, and thereupon the last

mentioned court shall be deemed for all the purposes of this Act to be the court by which the probation order was made.

(4) An order under this section cancelling a provision of a probation order or substituting a new parish for the parish named therein may be made without summoning the probationer, but no other order under this section shall be made except on the application or in the presence of the probationer.

(5) Where an order is made under this section for the variation, insertion, or cancellation of a provision requiring a probationer to reside in an institution, the court shall forthwith give notice of the terms of the order to the Minister.

13.—(1) The court by which a probation order was made may, on the application of the probationer or of the probation and after-care officer responsible for his supervision, discharge the probation order, and, where the application is made by the probation and after-care officer, the court may deal with it without summoning the probationer.

Discharge
of proba-
tioners.
9/1985
S. 85

(2) Where an offender in respect of whom a probation order has been made is subsequently sentenced for the offence in respect of which the probation order was made, the probation order shall cease to have effect.

14. Where an order is made for the amendment or discharge of a probation order, the clerk of the court by which the order is made shall furnish two copies of the order to the probation and after-care officer responsible for the supervision of the probationer, or in the case of an order for the discharge of a probation order, to the probation and after-care officer who was so responsible before the making of the order, one copy to be given by him to the probationer.

Transmission
of copies of
orders for
amend-
ment or
discharge
of
probation
orders.
9/1985
S. 85

Power to
release
offenders
condition-
ally upon
entering
into recog-
nizances.

9/1985
S. 85

15.—(1) Subject to the provisions of subsections (3) and (4), in any case where a court might make a probation order under paragraph (a) of subsection (1) of section 5 or under subsection (2) of section 5, if the court is of opinion that it is expedient to release the offender on probation and that by reason of the special circumstances of the case no useful purpose would be served by placing the offender under the supervision of a probation and after-care officer, the court may convict the offender and make an order discharging the offender conditionally upon his entering into a recognizance, with or without surety, to be of good behaviour and to appear for sentence when called upon at any time during such period not exceeding three years as may be specified in the recognizance.

9/1985
S. 85

(2) Subject to the provisions of subsections (3) and (4), in any case where a court might make a probation order (under paragraph (b) of subsection (1) of section 5), if the court is satisfied that it is expedient to release the offender on probation and that by reason of the special circumstances of the case no useful purpose would be served by placing the offender under the supervision of a probation and after-care officer, the court may, without proceeding to conviction, make an order discharging the offender conditionally by upon his entering into a recognizance, with or without a surety, to be of good behaviour and to appear for conviction and sentence when called upon at any time during such period not exceeding three years as may be specified in the recognizance.

(3) Before making any order under this section the court shall explain to the offender in ordinary language the effect of the recognizance into which he is to be required to enter and that if he fails in any respect to comply therewith or commits another offence, he will be liable in the case of an offender who is required to enter into a recognizance under subsection (2) to be convicted and sentenced for the original offence and in the case of an

offender who is required to enter into a recognizance under subsection (1) to be sentenced for the original offence and in either case, his recognizance will be liable to be estreated.

(4) No order shall be made under this section unless the offender if he is not less than fourteen years of age expresses his willingness to comply with the conditions of the recognizance into which he is required by such order to enter.

23/1961
S. 9.

16.—(1) Every recognizance entered into pursuant to an order under section 15 shall contain such conditions (being conditions which might be contained in a probation order under this Act) as may be specified in such order.

Recognizances.

(2) Where a recognizance contains a condition as to residence, the place at which and the period for which the person who enters into the recognizance is to reside shall be specified in the recognizance, and where any such condition requires such person to reside in an institution the institution shall be one which is subject to inspection by an inspector and a Government Department and the period for which such person is required so to reside shall not extend beyond twenty-four months from the date of the recognizance.

9/1985
S. 85.

(3) The court by which any order under section 15 is made shall furnish a copy of the recognizance entered into pursuant to such order to the person who enters into such recognizance.

17. The provisions of sections 7 to 14, both inclusive, shall apply to any person required under section 15 to enter into a recognizance as they apply to a probationer, subject to the modification specified in the Schedule.

Application of certain provisions of this Act to persons entering into recognizances under section 15. Schedule. 23/1961 S. 11.

18. *[Deleted by Act 9 of 1985, S. 85.]*

19. *[Deleted by Act 9 of 1985, S. 85.]*

19A. *[Deleted by Act 9 of 1985, S. 85.]*

20. *[Deleted by Act 9 of 1985, S. 85.]*

21. *[Deleted by Act 9 of 1985, S. 85.]*

Reports of
probation and
aftercare
officers.
10/1970
S. 2.
9/1985
S. 85.

22. Where a report by a probation and after-care officer is made to any court (other than a Children's Court) 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 such report shall be given by the court to the offender or his attorney-at-law:

9/1985
S. 85.

Provided that if the offender appears to the court to be under seventeen years of age and is not represented by an attorney-at-law, a copy of the report shall be given to him and to his parent or guardian if present in court.

SCHEDULE

(Section 17) 23/1961
S. 14.

Sections to be modified

Nature of Modification

Sections 7 to 11, both inclusive,
and section 13.

- (1) The substitution for references to a probationer of references to a person required under section 15 to enter into a recognizance.
- (2) The substitution for references to the court by which a probation order was made of references to the court by which an order was made under section 15 requiring an offender to enter into a recognizance.
- (3) The substitution for references to a probation order of references to a recognizance required to be entered into under section 15.

- (4) The deletion of all references to a probation and after-care officer.

9/1985
S. 85

Section 12.

- (1) The substitution for all references to a probationer of references to a person required under section 15 to enter into a recognizance.
- (2) The substitution for all references to a probation order of references to a recognizance.
- (3) The substitution for all references to the terms of a probation order of references to the conditions of a recognizance.
- (4) The deletion from subsection (1) of the reference to a probation and after-care officer.
- (5) The insertion of the following proviso as a further proviso to subsection (1)—

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S. 85

“Further provided that no order shall be made under this section varying a recognizance entered into with a surety

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SCHEDULE (contd.)

Sections to be modified	Nature of Modification
Section 12 (contd.)	<p>unless the surety consents to the variation of such recognizance, so, however, that where the court is satisfied that it is expedient to vary any recognizance entered into with a surety and the surety does not consent to such variation, the court may discharge the surety from all liability under the recognizance and thereupon may vary the recognizance by order under this section".</p>
9/1985 S. 85	<p>(6) The deletion from subsection (3) of the section of the words "probation and after-care officer responsible for the supervision of the probationer, that the probationer" and the substitution therefor of the words "person required to enter into a recognizance under section 15 or his surety that the person first referred to in this subsection".</p>
Section 14.	<p>(1) The substitution for the reference to a probation order of a reference to a recognizance.</p> <p>(2) The deletion of all the words coming after the word "furnish" in the section and the substitution therefor of the following words— "one copy of the order to the person required to enter into the recognizance and one copy to each of his sureties (if any)".</p>