

CHAPTER 24

PROBATION OF OFFENDERS

Ordinances
Nos. 42 of 1944,
21 of 1947,
Act
No. 10 of 1948.

AN ORDINANCE TO AMEND THE LAW RELATING TO THE RELEASE OF OFFENDERS ON PROBATION AND TO THE SUPERVISION OF SUCH OFFENDERS, AND TO PROVIDE FOR THE ESTABLISHMENT AND ADMINISTRATION OF A PROBATION SERVICE.

[16th November, 1944.]

Short title.

1. This Ordinance may be cited as the Probation of Offenders Ordinance.

Application
of Ordinance.

2. The Minister of Justice¹ may from time to time by Order¹ published in the Gazette, declare that the provisions of this Ordinance shall be applicable in the case of persons convicted of offences committed within the limits of any judicial division specified in the Order¹

Every judicial division specified in any Proclamation or Order¹ for the time being in force under this section is hereinafter in this Ordinance referred to as a "proclaimed judicial division".*

Power to
make
probation
order.

3. (1) Where any person is convicted by any court of any offence committed in a proclaimed judicial division and punishable by that court, and it appears to

* Made applicable in the case of persons convicted of offences committed in the judicial divisions of—
Colombo, Kandy, Galle, and Kalutara—Gazette 9378/9-3-1945;
Kegalla, Jaffna, Negombo, and
Dumbara —Gazette 9661/31-1-1947;
Panadure —Gazette 9737/18-7-1947;
Gampola, Point Pedro, and Chavakachcheri —Gazette 9820/23-1-1948;
Gampaha —Gazette 9853/16-4-1948;
Balapitiya, Batticaloa, Chilaw, Puttalam, Kurunegala, Matara, Ratnapura, and Avissawella . . . —Gazette 10119/7-7-1950;
Mannar, Tangalla, Trincomalee, Anuradhapura, Nuwara-Eliya, Badulla, Matale, Kayts, Mullaitivu, and Hambantota . . . —Gazette 10310/19-10-1951.

the court, having regard to all the circumstances of the case, including the nature of the offence and the age, sex and condition of the offender, that it is expedient that the offender should be released on probation, the court may, subject to the provisions of section 4, make a probation order in respect of the offender in lieu of sentencing him to any other punishment which the court may have power to impose :

Provided that, where the offender is a child or young person within the meaning of the Children and Young Persons Ordinance, the preceding provisions of this subsection shall not affect the power of the court to make an order under section 28 (1) or 29 (1) of that Ordinance.

(2) The court which makes a probation order shall cause a certified copy of the order to be transmitted to the Commissioner, and cause certified copies of the order to be delivered respectively to the offender and to the probation officer named in the order.

4. (1) A court, before making a probation order in respect of any offender, shall—

(a) consider all such information relating to the character, antecedents, environment and mental or physical condition of the offender as may, at the instance of the court, be furnished orally or in writing by a probation officer of the probation unit for the judicial division in which the offence was committed ;

(b) call for through such probation officer, and consider, a report from the Commissioner as to the suitability of the case for supervision under probation and as to the question whether the supervision of the offender can be undertaken by the probation officers of the division, having regard to the number of offenders for the time being under the supervision of such officers.

(2) No probation order shall be made by a court unless—

(a) the court has in simple language communicated to the offender the effect of the proposed order and of the conditions to be included therein,

Circumstances in which probation order may be made.

and explained that, if he fails to observe any such condition or commits another offence, he will be liable to be sentenced for the original offence ; and

- (b) the offender has given his written consent to the making of the order and agreed to observe the conditions thereof.

(3) For the purpose of enabling any information or report to be furnished under subsection (1) in respect of any offender, the court may postpone the determination of the case for any period not exceeding twenty-eight days, and may make order remanding the offender during such period to custody in the nearest prison established under the Prisons Ordinance or in such other place as may be appointed in that behalf by the Minister of Justice¹ and notified in the Gazette.

Where the offender is in any such case released on bail, it shall be a condition of the bail bond that the offender shall report in person to a probation officer named in the bond within twenty-four hours of the release and at such other times as such officer may require.

(4) The report required under paragraph (b) of subsection (1) may be furnished by the Commissioner or by any other officer authorized by him to act on his behalf.

(5) The court may, in any case where written representations are made by a probation officer under paragraph (a) of subsection (1) in respect of any offender, direct that a copy of such representations be furnished to the offender, and hear any such evidence as may be tendered by the offender or the probation officer in relation to any matter referred to in such representations.

Conditions in probation order.

5. (1) Every probation order shall contain conditions requiring that the offender—

- (a) shall, within twenty-four hours of the making of the order, present himself before the probation officer appointed to undertake the supervision of the offender, at such place as may be specified in the order ;

- (b) shall present himself before such probation officer at such place and at such times (not being less than once in each month) as may from time to time be specified by that officer, or shall, if required so to do by that officer in relation to any particular occasion, make a report in writing to that officer in lieu of presenting himself before him on that occasion ;
- (c) shall reside at premises approved in writing by such probation officer, and shall not sleep at any other premises except with the prior written approval of that officer ;
- (d) shall not change his place of residence or his employment, if any, except with the prior written approval of such probation officer ;
- (e) shall not undertake any regular employment except with the prior written approval of such probation officer ;
- (f) shall not associate with any such person or with persons of any such class, as such probation officer may specify in writing in that behalf ;
- (g) shall obey all such orders or directions as may be issued to him by such probation officer for the purpose of securing the good conduct and welfare of the offender.

(2) Without prejudice to the provisions of subsection (1), the court may insert in any probation order such conditions as the court may consider necessary, including a condition that the offender shall reside, during a specified period, in a household, home or institution approved by the Commissioner for the purpose. The period so specified shall not exceed six months, except in a case where the court considers residence for a longer period to be necessary for the purposes of the employment of the offender or of enabling the offender to seek employment.

6. The court which makes a probation order in respect of any offender may require the offender to enter into a recognizance, with or without sureties, to observe the conditions of the order and to appear before the court whenever required so to do under the provisions of this Ordinance. ...

Power of court to require recognizance by offender.

Payment of costs or damages and compensation.

7. (1) The court making a probation order may in addition, either as a condition of the order or otherwise, order the offender to pay, within such time or in such instalments as the court may direct, such damages for injury or compensation for loss (not exceeding in the case of a Magistrate's Court one hundred and fifty rupees, or if a higher limit is fixed by any written law relating to the offence that higher limit), and to pay such costs of the proceedings, as the court thinks reasonable :

Provided that the court may, on application made by the offender or a probation officer, extend for such period as it may think fit the time allowed for the payment of any moneys due from the offender or vary the instalments specified under the preceding provisions of this subsection.

(2) If it is proved to the satisfaction of the court that the offender has not attained the age of sixteen years and that a parent or guardian of the offender has, by neglect or otherwise, conduced to the commission of the offence, the court may order payment by the parent or guardian of any damages and costs referred to in subsection (1).

(3) Where an order has been made under subsection (1) requiring the payment of any moneys by any offender the operation of such order shall not be affected by the expiration, before such moneys are paid, of the probation order made in respect of that offender ; and such moneys shall be payable by, and may be recovered from, the offender, notwithstanding the expiration of the probation order.

(4) All moneys payable by virtue of any order made under this section shall be recoverable in like manner as a fine imposed by the court.

Duration of probation order.

8. Subject to the provisions of sections 9, 10 and 12, a probation order shall be in force for such period as may be specified by the court in the order, not being less than one year or more than three years from the date on which the order is made.

9. Where any probation order has been expressed to be in force for any period less than three years, the court by which the order was made may, if it considers it expedient so to do, whether on application made to the court for the purpose by the Commissioner or a probation officer or otherwise, summon the offender and his surety or sureties, if any, and extend the period specified in the order, so, however, that the duration of the order shall not in any case be extended beyond a period of three years from the date on which the order was made.

Extension of period of probation.

10. (1) Upon written application made for the purpose by the offender or by or on behalf of the Commissioner, and after consideration of such representations as may be made by the offender and by or on behalf of the Commissioner, the court by which a probation order was made or the Magistrate's Court having jurisdiction in the place where the offender resides—

Modification or cancellation of probation order.
[§ 2, 21 of 1947.]

- (a) may, at any time while such probation order is in force, make an order amending the probation order by the deletion or modification of any condition specified in that order or by the insertion of a new condition therein; and
- (b) may, after the expiry of a period which is not less than one half of the period for which the probation order is expressed to be in force, make an order cancelling such probation order or reducing the period of the duration of such order.

(2) A certified copy of any order made by the court under subsection (1) in relation to any probation order shall be transmitted to the probation officer for delivery to the offender, and where given otherwise than by the court by which the probation order had originally been made, to that court for the purpose of being filed of record in the proceedings of the case.

(3) Where an order is made under subsection (1) cancelling any probation order or reducing the period of the duration of any such order, the probation order shall cease to be in force on the date specified in that behalf in the order of cancellation or reduction.

Sinhalese
and Tamil
translations
of orders to
be provided
to offenders.
[§ 3, 21 of 1947.]

11. The court which makes a probation order or order under section 10 (1), in respect of any offence shall inquire from such offender whether he desires have a translation of such order in the Sinhalese language or in the Tamil language ; and if on inquiry made, the offender states that he desires to have such translation, the court shall cause such a translation prepared by a sworn translator or interpreter of the court, to be delivered to such offender.

Provision for
cases where
probation
order is not
complied
with.

12. (1) If the court by which a probation order was made, or the Magistrate's Court having jurisdiction in the place in which the offender resides, is satisfied, on information on oath or on the written report of a Commissioner or of a probation officer, that the offender has been convicted of any offence committed while the probation order was in force or has failed to observe any condition inserted in the order, the court may issue a warrant for the arrest of the offender, or may, if it thinks fit, instead of issuing a warrant in the first instance, issue a summons on him and his surety or sureties, if any, requiring him or them to attend before the court at such time as may be specified in the summons.

(2) Where a warrant has been issued in the first instance under subsection (1) for the arrest of an offender, he shall when arrested, if not brought forthwith before the court by which the warrant was issued, be brought before any Magistrate's Court.

(3) The court before which any offender is so brought on arrest or before which he appears in pursuance of such summons as aforesaid may, if it is not the court by which the warrant or summons was issued, remand him to custody or release him on bail until he can be brought before such court.

(4) Any offender so remanded to custody may be committed during remand to any prison to which the court before which he is to be brought has power to commit prisoners. If the offender is a person who has not attained the age of sixteen years he shall, if remanded, be dealt with wherever practicable in accordance with the provisions of section 15 (1) of the Children and Young Persons Ordinance.

(5) If it is proved to the satisfaction of the court by which a probation order was made, or of the Magistrate's Court having jurisdiction in the place in which the offender resides, that the offender has been convicted of any offence committed while the order was in force, the court may, subject to the provisions of subsection (7), cancel the probation order and pass or make any such sentence or order which it could pass or make under any other written law if the offender had just been convicted before that court of the original offence upon his conviction of which the probation order was made.

(6) If it is proved to the satisfaction of the court by which a probation order was made, or of the Magistrate's Court having jurisdiction in the place in which the offender resides, that the offender has failed to observe any condition of the order, the court may, subject to the provisions of subsection (7)—

- (a) without prejudice to the continuance in force of the probation order, impose on the offender a fine not exceeding one hundred and fifty rupees ; or
- (b) cancel the probation order and pass or make any such sentence or order which it could pass or make under any other written law if the offender had just been convicted before that court of the original offence upon his conviction of which the probation order was made.

(7) The powers conferred by subsection (5) or subsection (6) on the Magistrate's Court having jurisdiction in the place in which the offender resides shall not be exercised by that court unless—

- (a) the probation order in respect of that offender had originally been made by that Magistrate's Court ; or
- (b) the court by which the probation order had originally been made, by writing under the hand of any Judge or Magistrate thereof, consents to the exercise of such powers by that Magistrate's Court.

(8) In any case where any sentence or order is passed or made in respect of any offender under subsection (5) or subsection (6), the court may, instead of condemning his surety or sureties, if any, to pay the sums for which they are respectively bound, condemn him or them or any of them to pay a part only of such sums or discharge him or them or any of them from the liability to make any such payment.

Appeals.

13. Any person in respect of whom a probation order is made upon his conviction of any offence by a District Court or a Magistrate's Court, may, if he appeals against the conviction, appeal to the Supreme Court against the order ; and the provisions of Chapter XXX of the Criminal Procedure Code shall apply in the case of any such appeal.

Probation order :
disqualification or
disability.

14. Where a probation order is made in respect of any person upon his conviction of any offence, such conviction shall be disregarded for the purposes of any written law by or under which any disqualification or disability is imposed upon convicted persons, or by or under which provision is made for a different punishment in respect of a second or subsequent offence or in respect of an offence committed after previous conviction :

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

Functions of
Commissioner
and Deputy
Commissioner.

15. (1) The Commissioner shall be in charge of the probation service and shall, subject to the general direction and control of the Minister,¹ be responsible for the general administration and management of that service.

(2) Any power, duty or function conferred or imposed upon or assigned to the Commissioner by any of the provisions of this Ordinance or by any rule made thereunder may, unless the Commissioner otherwise directs, be exercised, performed or discharged by the Deputy Commissioner.

[§ 5, 10 of 1948.]

16. (1) The Minister¹ may establish for the purposes of this Ordinance an advisory board, to be known as the "Central Probation Board", consisting of the Commissioner as chairman and of not more than seven other persons appointed by the Minister.¹

Central
Probation
Board.

(2) Of the persons appointed to be members of the Central Probation Board, four at least must be persons who do not hold any office of emolument under the Crown.

(3) The Deputy Commissioner shall be the secretary of the Board.

[§ 5, 10 of 1948.]

17. (1) The probation service for the purposes of this Ordinance shall consist of—

Appointment
of probation
officers.

(a) such number of salaried probation officers of either sex, appointed in accordance with the Public Service Commission Rules for the time being in force, as the Minister with the concurrence of the Minister of Finance¹ may from time to time determine; and

(b) such unsalaried probation officers of either sex as may from time to time be appointed by the Minister.¹

(2) The appointment of any unsalaried probation officer may at any time be terminated by the Minister.¹

18. (1) There shall be, for each proclaimed judicial division, a probation unit consisting of at least one salaried probation officer, and of such other probation officers, whether salaried or unsalaried, as may be necessary for the purposes of this Ordinance:

Probation
units, &c.

Provided that one probation unit may, if the Minister considers it expedient, be established for two or more proclaimed judicial divisions.

(2) The Commissioner may transfer any salaried probation officer from any probation unit to any other probation unit.

(3) Upon the appointment of any probation officer to any probation unit or the transfer of any such officer to or from any such unit or the termination of the

appointment of any probation officer appointed to any such unit, the Commissioner shall cause notice of such appointment, transfer or termination to be published in the Gazette, and to be given to the Fiscal of the province and to every court having jurisdiction in the division for which the probation unit is established.

(4) The probation officer appointed by the court to undertake the supervision of an offender who is convicted of any offence shall, unless the court in the special circumstances of the case otherwise directs, be an officer appointed to the probation unit of the judicial division in which the offence was committed :

Provided, however, that the Commissioner may, if he considers it expedient or necessary so to do, direct any other probation officer, whether appointed to the same probation unit or not, to undertake the supervision of the offender in respect of whom the order was made.

(5) Where the Commissioner has, under the proviso to subsection (4), directed any probation officer, other than the officer appointed by the probation order, to undertake the supervision of the offender, the Commissioner shall cause notice of such directions to be given to the offender and to the court by which the order was made ; and in any such case the officer so directed by the Commissioner shall, for the purposes of this Ordinance, be deemed to be the probation officer appointed by the order.

(6) The Commissioner shall, where practicable, make such arrangements as may be necessary to secure that the supervision of any female offender is undertaken by a female probation officer.

Duties of
probation
officers, &c.

19. (1) It shall be the duty of every probation officer to undertake such preliminary investigations, as he may from time to time be required by general or special directions of the Commissioner to undertake, for the purpose of furnishing information to any court under section 4 in relation to any offender and of enabling reports to be made to any court under that section.

(2) It shall be the duty of the probation officer who is or is deemed to be appointed by any probation order made in respect of any offender—

- (a) to undertake the supervision of the offender and to see that the conditions inserted in the order are fully and strictly observed ;
- (b) to visit or receive reports from the offender at such intervals as may be specified in the order, or, subject thereto, as the officer may think fit ;
- (c) to make such periodical reports to the Commissioner as the Commissioner may require relating to the behaviour and progress of the offender ;
- (d) to advise, assist and befriend the offender under his supervision, and where necessary, to endeavour to secure employment and lodging accommodation for him.

(3) Every probation officer shall perform all such duties as may be imposed on him by special or general directions given by the Commissioner in that behalf, or as may be prescribed by rules made under this Ordinance or by any other written law.

(4) Every probation officer shall, in the performance or discharge of the functions or duties assigned to or imposed on him by or under this Ordinance or any other written law, be subject to the general direction and control of the Commissioner.

20. All expenses incurred in the administration of this Ordinance shall be paid out of the Consolidated Fund¹ from moneys provided by Parliament¹ for the purpose. Expenses.

21. (1) The Minister¹ may make rules for all matters connected with or incidental to the supervision of offenders in respect of whom probation orders are made under this Ordinance, and to the discharge and performance of the functions and duties conferred or imposed upon the Commissioner and upon probation officers by this Ordinance. Rules.

(2) Without prejudice to the generality of the powers conferred by subsection (1), any rules made under that subsection may prescribe—

- (a) the allowances to be paid to unsalaried probation officers in respect of expenses incurred by them in the discharge or performance of their functions or duties under this Ordinance, and the rates, if any, according to which such allowances shall be paid ;
- (b) the rates of payment to be made for the maintenance of offenders in respect of whom probation orders are made ;
- (c) the records and registers to be maintained for the purposes of this Ordinance and the inspection of such records or registers ; and
- (d) the functions and duties of the Central Probation Board.

(3) No rule made by the Minister¹ under this section shall have effect until it has been approved by the Senate and the House of Representatives,¹ nor until notification of such approval has been published in the Gazette.

Interpretation.

22. In this Ordinance, unless the context otherwise requires—

[§ 5, 10 of 1948.]

“ Commissioner ” means the person for the time being appointed to be or to act as Commissioner of Prison and Probation Services ; and “ Deputy Commissioner ” has a corresponding meaning ;

“ court ” includes the court of a Municipal Magistrate, and any Magistrate’s Court sitting as a Juvenile Court ;

“ judicial division ” has the same meaning as in the Courts Ordinance ;

“ prescribed ” means prescribed by rules made by the Minister¹ under this Ordinance ;

“ probation officer ” means any probation officer, whether salaried or unsalaried, appointed under this Ordinance ;

“ probation order ” means an order made under section 3 of this Ordinance.