

CHAPTER 247

THE PROBATION OF OFFENDERS ACT

[PRINCIPAL LEGISLATION]

ARRANGEMENT OF SECTIONS

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CHAPTER 247

THE PROBATION OF OFFENDERS ACT

An Act to provide for the probation of offenders.

[5th September, 1947]

Ords. Nos.

17 of 1947

16 of 1948

31 of 1952

55 of 1963

Acts Nos.

15 of 1980

9 of 1985

G.N. No. 478 of 1962

R.L. Cap. 247

[PCh247s1]1. Short title and application

This Act may be cited as the Probation of Offenders Act and shall apply to such areas of Mainland Tanzania and from such dates as the Minister may, by proclamation, declare.

[PCh247s2]2. Interpretation Ords. Nos. 31 of 1952 s. 2; 55 of 1963 Sch.

In this Act, unless the context otherwise requires—

"magistrate" includes a primary court magistrate;

"Minister" means the Minister responsible for home affairs;

"probation officer" means a probation officer appointed under the provisions of section 15 of this Act and includes assistant probation officers appointed under that section;

"probation order" means an order made under this Act placing a person under the supervision of a probation officer;

"probationer" means a person placed under supervision by a probation order.

[PCh247s3]3. Power of court to permit conditional release of offenders Acts Nos. 55 of 1963 sch.; 15 of 1980 Sch.; 9 of 1985 s. 398

(1) Where any person is charged with an offence which is triable by a primary court, a district court or a court of a resident magistrate and the court thinks that the charge is proved but is of the opinion that, having regard to the youth, character, antecedents, home surroundings, health or mental condition of the offender, or the nature of the offence, or to any extenuating circumstances in which the offence was committed, 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 the court shall not make a probation order unless the offender express his willingness to comply with the provisions of the order.

(2) Where any person is convicted of an offence by the High Court and the court is of the opinion that, having regard to the youth, character, antecedents, home surroundings, health or mental condition of the offender, or to the nature of the offence, or to any extenuating circumstances in which the offence was committed, it is expedient to release the offender on probation, the court may, in lieu of sentencing him to any punishment, 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.

(3) No probation order shall be made under this section in respect of any person who is charged with or convicted of any offence prescribed under the Minimum Sentences Act *.

[PCh247s4]4. Probation order Ord. No. 31 of 1952 s. 3; Act No. 55 of 1963 Sch.

(1) A probation order shall have effect for such period of not less than one year and of 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 officer to be named in the order, and shall contain such provisions as the court considers necessary for, securing the supervision of the offender, and such additional conditions as to residence and other matters as the court, having regard to the circumstances of the case, considers necessary for securing the good conduct of the offender or of preventing a repetition of the same offence or the commission of other offences.

(2) Where a probation order contains a provision 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 any such provision requires the probationer to reside in an institution, the period for which the probationer is required so to reside shall not extend beyond twelve months from the date of the order, and the court shall forthwith give notice of the terms of the order to the principal probation officer:

Provided that no order shall be made requiring a probationer to reside in an institution unless the manager of the institution consents to receive him.

(3) The court by which a probation order is made shall furnish two copies of the order, one copy to be given to the probationer and the other to the probation officer under whose supervision he is placed.

(4) A probation order may contain a provision requiring the offender to accept and remain in such employment as may, from time to time, be approved by the probation officer; and where the offender is dissatisfied with any decision of the probation officer given in the exercise of the powers hereby conferred, the offender shall have the right,

within thirty days after being notified of such decision, to appeal to a subordinate court, which may on any such appeal give any such directions in the matter as it thinks fit.

(5) Where a court makes a probation order which contains a provision of the kind mentioned in subsection (4), the court shall inform the offender of his right of appeal under that subsection and shall forthwith give notice of the terms of the order to the principal probation officer.

[PCh247s5]5. Further provisions where court makes probation order Act No. 55 of 1963 Sch.

Where a person is placed by a probation order under the supervision of a probation officer, the court may in addition order such person to pay costs and compensation in accordance with the provisions of the Penal Code *, or the Primary Courts Criminal Procedure Code, as the case may be.

[PCh247s6]6. Commission of further offences by probationers

(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:

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

(2) 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.

(3) 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, with or without sureties, until he can be brought or appear before the court by which the probation order was made.

(4) 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.

(5) Where a probationer in respect of whom a probation order has been made by a magistrate is convicted before the High 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 High 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 High 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.

[PCh247s7]7. Failure by probationer to comply with probation order Ord. No. 16 of 1948 s. 2

(1) If it appears to a judge or a 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 or may issue a warrant for his arrest:

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

(2) 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.

(3) If it is proved to the satisfaction of the court by which the probation order 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 subject as hereinafter provided impose on the probationer a fine not exceeding two hundred shillings; 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 the fine prescribed in paragraph (a) of this subsection shall not be imposed where the provision of the probation order with which the probationer has failed to comply was a provision relating to the employment of the probationer imposed under subsection (4) of section 4 of this Act:

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

[PCh247s8]8. Probation order; disqualification or disability

(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:

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.

[PCh247s9]9. Transmission of documents when case is remitted to another court

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 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.

[PCh247s10]10. Amendment of probation orders Ord. No. 31 of 1952 s. 4

(1) Subject to the provisions of this section, where on the application of a probationer or of the principal probation officer, 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 to less than one year, or extending that period beyond a period of three years from the date of the probation order.

(2) An order under the foregoing subsection may require a probationer to reside in an institution for any period not extending beyond twelve 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 twelve months.

(3) The court shall if it is satisfied on the application of the principal probation officer that the probationer has changed, or is about to change, his residence from one district to another, by order vary the probation order by substituting for the probation officer named therein another probation officer belonging to the district where the probationer is residing or is about to reside, and shall transmit to the court for the new district or area 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 another probation officer for the probation officer 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 principal probation officer.

[PCh247s11]11. Discharge of probation orders

(1) The court by which a probation order was made may, on the application of the probationer or of the principal probation officer, discharge the probation order, and where the application is made by the principal probation officer, the court may deal with it without summoning the probationer.

(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.

[PCh247s12]12. Transmission of copies of orders for amendment or discharge of probation orders

Where an order is made for the amendment or discharge of a probation order the clerk or other officer of the court by which the order is made shall furnish two copies of the order to the principal probation officer, one copy of which shall be given by the principal probation officer to the probationer.

[PCh247s13]13. Selection of probation officers

(1) The probation officer who is to be responsible for the supervision of any probationer shall be selected by the court.

(2) Where a woman or girl is placed under the supervision of a probation officer the probation officer shall be a woman.

[PCh247s14]14. Contributions towards institutions G.N. No. 478 of 1962

Contributions may be made towards the establishment or maintenance of institutions for the reception of persons placed under the supervision of probation officers as the Minister may approve.

[PCh247s15]15. Appointments Ord. No. 31 of 1952 s. 5; G.N. No. 478 of 1962

(1) The Minister shall appoint—

(a) a principal probation officer who shall organise and supervise the probation service in Mainland Tanzania in accordance with rules made under this Act;

(b) a sufficient number of probation officers and assistant probation officers, qualified by character and experience to be probation officers or assistant probation officers, as the case may, who shall perform such duties as may be prescribed by rules made under this Act;

(2) The Minister may appoint a probation committee or probation committees, consisting of such persons as the Minister think fit, who shall review the work of probation officers in individual cases and perform such duties in connection with probation as may be prescribed by rules made under this Act.

[PCh247s16]16. Rules

The Minister may make rules prescribing—

(a) the duties of the principal probation officer;

- (b) the duties of probation officers;
- (c) the constitution and duties of a probation committee or probation committees;
- (d) the form of records to be kept under this Act;
- (e) what shall be an institution for the purposes of this Act;
- (f) the remuneration of any person appointed to carry out any duties under this Act, and the fees and charges to be made for any act, matter or thing under this Act to be done or observed;
- (g) generally for carrying out the purposes and provisions of this Act.