

PROBATION OF OFFENDERS

CHAPTER 9:01

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CHAPTER 9:01

PROBATION OF OFFENDERS

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An Act to provide for the probation of offenders

10 of 1945
 1 of 1957
 8 of 1963
 5 of 1969
 195/1961
 68/1962
 38/1963

[19TH APRIL, 1945] G.N.

1. This Act may be cited as the Probation of Offenders Act, and shall apply to such areas of Malawi and from such date as the Minister may, by order, *from time to time declare.

Short title and application

2. In this Act, unless the context otherwise requires—

Interpretation

“court” does not include a Traditional Court established under the Traditional Courts Act;

Cap.3:03

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

“probation order” means an order made under section 337 (1) (c) (i) of the Criminal Procedure and Evidence Code;

5 of 1969
 Cap.8:01

*Applied to the Southern Region by G.N. 5/1946 and to the Central Region by G.N. 22/1961.

“probation officer” means a probation officer appointed under section 15.

3. (*Repealed by 5 of 1969*)

Probation
order

4.—(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 for 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 Minister.

(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.

5. 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 Penal Code.

Further provisions where court makes probation order
Cap7:01

6.—(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 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.

Failure by
probationer to
comply with
probation
order

7.—(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 therein 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 impose on the probationer a fine not exceeding £10; 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 paragraph (a) imposed a fine on the probationer, then, on any subsequent sentence being passed upon the probationer under the last preceding section or this section, the imposition of the said fine shall be taken into account in fixing the amount of the said sentence.

8.—(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 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.

9. 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.

Transmission of documents when case is remitted to another court

10.—(1) Subject to 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:

Amendment of probation orders

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 Minister.

Discharge
of probation
orders

11.—(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.

Transmission
of copies of
orders for
amendment or
discharge of
probation
orders

12. 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.

Selection of
probation
officers

13.—(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.

Contributions
towards
institutions

14. Such 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.

15.—(1) There shall be—

Appointments

(a) a principal probation officer who shall organize and supervise the probation service in Malawi in accordance with Rules made under this Act;

(b) a sufficient number of probation officers, qualified by character and experience to be probation officers, 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 shall think fit, who shall review the work of probation officers in individual cases and perform such duties in connexion with probation as may be prescribed by Rules made under this Act.

16. The Minister may make Rules prescribing—

Rules

(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.

[Subsidiary]

*Constitution of Probation Committees/ Probation of Offenders
(Probation Committee) Rules*

SUBSIDIARY LEGISLATION

G.N.
153/1961

CONSTITUTION OF PROBATION COMMITTEES

under s. 15 (2)

ZOMBA DISTRICT

A Probation Committee has been constituted for the Zomba District consisting of the following members—

The Resident Magistrate, Zomba

The District Commissioner, Zomba

All Probation Officers performing their duties in the Zomba District.

G.N. 98/1961

**PROBATION OF OFFENDERS (PROBATION
COMMITTEE) RULES**

under s. 16

Citation

1. These Rules may be cited as the Probation of Offenders (Probation Committee) Rules, and shall apply to every probation committee appointed under section 15 (2) of the Act.

Interpretation

2. In these Rules, unless the context otherwise requires—
“area of jurisdiction” means the area for which a probation committee is appointed;
“committee” means a probation committee appointed under section 15 (2) of the Act.

Appointment
of chairman
and secretary

3. A committee shall elect from amongst its members a chairman and a secretary.

Quorum

4. Three members of a committee including the chairman shall form a quorum.

Probation of Offenders (Probation Committee) Rules

[Subsidiary]

5. The chairman shall in addition to a deliberative vote have a casting vote. Casting vote
6. A committee shall hold a meeting at least once in every three months. Meetings of Committees
7. A meeting of a committee may be summoned at any time at the discretion of the chairman. Special meetings
8. Every committee shall— Duties of Probation Committee
- (a) consider any written or oral reports received from probation officers within its area of jurisdiction;
- (b) discuss from time to time with probation officers the progress of cases under their supervision and afford them such help and advice as it can in carrying out their duties;
- (c) satisfy itself as to the manner in which probation officers within its area of jurisdiction perform their duties;
- (d) at the direction of the principal probation officer exercise general supervision over the making and keeping of records by probation officers within its area of jurisdiction;
- (e) furnish to the principal probation officer and the Secretary for Labour a copy of the minutes of all meetings and business transacted by the committee;
- (f) be responsible for the implementation within the area of its jurisdiction of all directives and policies regarding probation work issued by the principal probation officer.
9. It shall be the duty of the secretary of a committee— Duties of Secretary
- (a) to keep or arrange for the keeping of the minutes of the proceedings of all meetings of the committee. Such minutes shall be signed by the chairman;
- (b) to arrange for the keeping of such records as may be directed by the principal probation officer from time to time under rule 8 (f);
- (c) to arrange for the distribution of copies of all minutes of meetings and business transacted at committee meetings, in accordance with rule 8 (e).

[Subsidiary]

Probation of Offenders Rules

G.N. 3/1946

PROBATION OF OFFENDERS RULES*under s. 16*

Citation

1. These Rules may be cited as the Probation of Offenders Rules.

Duties of principal probation officer

2. The principal probation officer shall—

(a) receive and consider the written and oral reports of probation officers;

(b) make or direct the making of any communication which may be necessary to the court;

(c) discuss from time to time with probation officers the progress of cases under their supervision and afford them such help and advice as he can in carrying out their duties;

(d) satisfy himself as to the manner in which probation officers perform their duties and consider and investigate any complaint against probation officers in the execution of such duties;

(e) exercise a general supervision over the making or keeping of records by probation officers.

Duties of probation officers

3.—(1) A probation officer shall make such preliminary inquiries, including inquiries into the home surroundings, as the court may direct, in respect of any offender in whose case the making of a probation order may arise.

(2) A probation officer shall, when required by a probation order, undertake the supervision of any offender.

(3) A probation officer shall, subject to any directions given to him by the court—

(a) visit from time to time the place of residence of probationers and make inquiry as to their behaviour, mode of life, and employment;

(b) ascertain that probationers understand the conditions of their recognizances, and by warning and persuasion endeavour to secure their observance of them;

(c) advise, assist and befriend probationers and where necessary endeavour to find them employment.

Probation of Offenders Rules

[Subsidiary]

4.—(1) A probation officer shall report to the court in accordance with any directions given by the court in the probation order or otherwise. Reports by probation officers

(2) A probation officer shall report as to the conduct and mode of life of probationers, and generally as to their progress, to the principal probation officer.

(3) If a probationer fails to observe any of the conditions of his recognizance, the probation officer concerned shall report the matter to the court and to the principal probation officer.

5. A probation officer shall keep a separate record of each case placed under his supervision. Records

6. A probation officer shall have free access at all reasonable times to the court records of every case in which a probationer under his supervision is concerned. Court records

7. Probation officers shall be entitled to claim payment on account of expenses incurred by them in the performance of their duties. Expenses of probation officers

8. Such expenses if necessarily incurred shall include—

(a) actual expenses of subsistence and travelling;

(b) where a probation officer uses his own motor car or motor cycle, a mileage allowance at the rate from time to time applicable to Government officials;

(c) the cost of stationery necessary for the proper performance of a probation officer's duties and not otherwise supplied;

(d) the cost of stamps, telephone calls and telegrams actually paid in the discharge of a probation officer's duties.

9. A probation officer shall submit all claims for expenses incurred by him in the performance of his duties to the principal probation officer, who shall, on satisfying himself that claims submitted are in respect of expenses necessarily and properly incurred in the discharge of the duties of the claiming probation officer, pay such claims. Expenses by whom paid

