

LAWS OF SEYCHELLES

CHAPTER 184

PROBATION OF OFFENDERS ACT

[7th March, 1966]

Act 1 of 1966
S.I. 72 of 1976
Act 23 of 1976
Act 16 of 1982
Act 19 of 2014

ARRANGEMENT OF SECTIONS

PROBATION OF OFFENDERS ACT

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Appointment of probation officers
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Probation
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Absolute and conditional discharge
Commission of further offence
Supplementary provisions as to probation and discharge
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**SUBSIDIARY LEGISLATION: SECTION 12: PROBATION
OF OFFENDERS REGULATIONS**

Citation
Duties of Probation Officers
Appointment of members of probation committees
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Meetings of probation committee and transaction of business
Conduct of proceedings at meetings of probation committee
Duties of probation committees
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SCHEDULE

Short title

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

Interpretation

2. In this Act

“community service” means work performed by a willing offender without remuneration at a place or in a project for a period of not less than 40 hours and not more than 240 hours in terms of an order of the court under this Act.

Definition of “community service” inserted by Act 19 of 2014 with effect from 27 October 2014

"court" means the Supreme Court or the Magistrates' Court and includes a Juvenile Court;

Definition of “court” amended by Act 19 of 2014 with effect from 27 October 2014

"judicial officer" means a Judge, a Magistrate, a Justice of the Peace or the Registrar or Assistant Registrar of the Supreme Court;

“Juvenile Court” means a court sitting under section 93 of the Children Act;

Definition of “Juvenile Court” inserted by Act 19 of 2014 with effect from 27 October 2014

“Minister” means the Minister responsible for social affairs

Definition of “Minister” inserted by Act 19 of 2014 with effect from 27 October 2014

"period of conditional discharge" means the period specified in an order for conditional discharge;

"probation committee" means a group of persons appointed under the provisions of section 4;

"prescribed" means prescribed by regulations made under section 12;

"probation officer" means a person appointed to be a probation officer under section 3;

"probation period" means the period for which a probationer is placed under supervision by a probation order;

"probationer" means a person for the time being under supervision by virtue of a probation order.

Appointment of probation officers

3. (1) The President may appoint such number of probation officers as may be necessary for the purpose of this Act from among persons who are qualified under the regulations to be so appointed.

(2) All persons appointed under the provisions of this section shall be deemed to be persons employed in the public service within the meaning of the Penal Code.

Probation committee

4. (1) The Minister shall appoint a probation committee or probation committees which shall review the work of probation officers in individual cases and perform such other duties in connection with probation as may be prescribed by regulations.

(2) A probation committee shall consist of –

- (a) a representative of the Supreme Court;
- (b) a representative of the Police;
- (c) a representative of the Ministry responsible for Social Affairs;
- (d) a representative of non-governmental organisations; and
- (e) any other suitable person.

Section 4 repealed and substituted by Act 19 of 2014 with effect from 27 October 2014

Probation

5. (1) Where a person is convicted of an offence, not being an offence for which a minimum mandatory penalty is fixed by law, and the court by which he is convicted is of the opinion that, having regard to the circumstances including the nature of the offence and the character of the offender, it is expedient to make a probation order, the court shall call for a probation officer's report on the suitability of the offender to be placed under supervision and having considered the report, may instead of sentencing such person make a probation order.

Section 5(1) amended by Act 19 of 2014 with effect from 27 October 2014

(2) A probation order

- (a) shall require an offender to be under the supervision of a probation officer for such period, not being less than six months nor more than three years, as may be specified in the order;
- (b) shall require the offender to
 - (i) report to the probation officer at such place and at such times as are specified in the order; and
 - (ii) notify the probation officer without delay of any change of his address;
- (c) may also require the offender to comply during the whole or any part of the probation period with such requirements 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 by him of the same offence or the commission of other offences:

Provided that, without prejudice to the power of the court to make an order under subsection (2) of section 10, the payment of sums by way of compensation shall not be included among the requirements of a probation order.

Section 5(2)(b) amended by Act 19 of 2014 with effect from 27 October 2014

(3) Without prejudice to the generality of subsection (2), a probation order may include requirements relating to –

- (a) the residence of the offender, provided that before including such a requirement the court shall consider the home surroundings of the offender;
- (b) undergoing rehabilitation or treatment; and
- (c) attending education programme.

Section 5(3) repealed and substituted by Act 19 of 2014 with effect from 27 October 2014

(4) Before making a probation order the court shall explain to the offender in ordinary language

- (a) the effect of the order including any additional requirements proposed to be inserted therein under subsection (2) or subsection (3); and
- (b) that if he fails to comply therewith or commits another offence he will be liable to be sentenced for the original offence.

(5) If the offender is fourteen years of age or more the court shall not make a probation order unless he expresses his willingness to comply with the requirements thereof.

(6) The probation officer who is to be responsible for the supervision of any probationer shall be selected by the court which makes the probation order, and if the probation officer so selected dies or is unable for any reason to carry out his duties, or if the probation committee dealing with the case considers it is desirable that another officer shall take his place, another probation officer shall be selected by the court.

(6A) The court shall, in selecting a probation officer under subsection (6), have regard to the recommendation that the probation committee shall make.

Section 5(6A) inserted by Act 19 of 2014 with effect from 27 October 2014

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

(8) The court by which a probation order is made shall forthwith transmit a copy of the order to the probationer and to the probation officer responsible for the supervision of the offender.

(9) The Supreme Court may in an appeal or revision from the Magistrates' Court or the Juvenile Court make a probation order as if the offender had been convicted by it.

Community service order

5A. (1) Where a court which has made a probation order under section 5 in respect of an offender is of the opinion that it is expedient to make a community service order, that court may make a community service order requiring the offender to perform community service as part of the probation order.

(2) The offender in respect of whom a community service order is made under subsection (1) shall comply with the requirements of community service as prescribed in regulations.

(3) Before making an order requiring the offender to perform community service as part of probation under subsection (1) the Court shall satisfy itself that the making of such order is in the interest of –

(a) securing the rehabilitation of the offender; and

(b) protecting the public from him or preventing the commission by him of further offences.

(4) The Minister shall in consultation with the Supreme Court and the probation committee, by notice published in the *Gazette*, identify and designate areas or places for community service for the purposes of this section.

(5) An order made under this section shall be deemed to be a probation order for the purposes of this Act.

Section 5A inserted by Act 19 of 2014 with effect from 27 October 2014

Discharge, amendment and review of probation orders

6. (1) The court by which a probation order was made may upon the application of the probation officer or the probationer discharge the order.

(2) The court by which a probation order was made may, upon the application of the probation officer or the probationer, by order amend the probation order

(a) by cancelling any of the requirements thereof; or

(b) by inserting therein (either in addition to or in substitution for the original requirement) any requirement which could be included in the order if it were then being made by that court in accordance with the provisions of section 5;

(c) where the probationer is under 18 years of age and the probation officer so recommends and the court is satisfied that one or more of the grounds in section 5(1) apply, by committing the probationer to the care of the Department or Ministry responsible for social affairs:

Provided that the court shall not amend a probation order by reducing the probation period, or by extending that period beyond the end of three years from the date of the original order.

Section 6(2)(c) amended by Act 19 of 2014 with effect from 27 October 2014

(3) Where the court proposes to amend a probation order under this section, otherwise than on the application of the probationer, it shall summon him to appear before the court, and if the probationer is fourteen years of age or more the court shall not amend a probation order unless the probationer expresses his willingness to comply with the requirements of the order as amended:

Provided that this subsection shall not apply to an order cancelling a requirement of the probation order or reducing the period of any requirement.

(4) On the making of an order discharging or amending a probation order, the court shall forthwith transmit a copy of the discharging or amending order to the probationer and to the probation officer responsible for the supervision of the probationer.

(5) Where a probation order, whether as originally made or as amended under subsection (2), includes requirements relating to the residence of the probationer for a period extending beyond six months from the date of the order as originally made or of the amending order, as the case may be, the probation officer shall as soon as may be after the expiration of six months from the date of such order, make a report to the court on the case.

(6) On the receipt of any such report, the court

(a) shall review the probation order for the purpose of considering whether the requirement as to residence should be revoked or the period thereof reduced; and

(b) may, if it thinks fit, amend the order accordingly without the necessity for any application in that behalf.

(7) Where under the provisions of this Act a probationer is sentenced for the offence for which he was previously placed on probation, the probation order shall cease to have effect.

Action on breach of probation order

7. (1) If at any time during the probation period it appears to a judicial officer that a probationer has failed to comply with any of the requirements of a probation order the judicial officer 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 judicial officer shall not issue such a warrant except on information in writing and on oath.

(2) The probation officer shall report to a judicial officer any failure to comply with the requirements of a probation order.

(3) A summons or warrant issued subsection (1) shall direct the probationer to appear or be brought before the court by which the probation order was made.

(4) If it is proved to the satisfaction of the court before which a probationer appears or is brought under the provisions of this section that the probationer has failed to comply with any of the requirements of the probation order by which he is affected the court may, without prejudice to the continuance of the probation order, impose on him a fine not exceeding one thousand rupees, or may deal with the probationer for the offence in respect of which the probation order was made in any manner in which the court could deal with him if it had just convicted him of the offence.

Absolute and conditional discharge

8. (1) Where a person is convicted of an offence, not being an offence for which there is a minimum mandatory penalty fixed by law, and the court by which he is convicted is of the opinion that, having regard to the circumstances including the nature of the offence and the character of the offender, it is inexpedient to inflict punishment or to make a probation order, the court may make an order discharging the offender absolutely, or, if the court thinks fit, discharging him subject to the condition that he commits no offence during such period not exceeding twelve months from the date of the order as may be specified therein.

Section 8(1) amended by Act 19 of 2014 with effect from 27 October 2014

(2) Before making an order for conditional discharge the court shall explain to the offender in ordinary language that if he commits another offence during the period of conditional discharge he will be liable to be sentenced for the original offence.

(3) The Supreme Court may in an appeal or revision from the Magistrates' Court make an order for the absolute or conditional discharge of the offender as if he had been convicted by it.

(4) Where under the provisions of this Act a person conditionally discharged under this section is sentenced for the offence in respect of which the order for conditional discharge was made, that order shall cease to have effect.

Commission of further offence

9. (1) If it appears to a judicial officer that a probationer or a person in respect of whom an order for conditional discharge has been made has been convicted and dealt with in respect of an offence committed during the probation period or during the period of conditional discharge, the judicial officer may issue a summons requiring that person to appear at the place and time specified therein, or may issue a warrant for his arrest:

Provided that a judicial officer shall not issue such a warrant except on information in writing and on oath.

(2) A summons or warrant issued under subsection (1) shall direct the person so convicted to appear or be brought before the court by which the probation order or the order for conditional discharge was made.

(3) If a person in respect of whom a probation order or an order for conditional discharge has been made by the Supreme Court is convicted and dealt with by a magistrate in respect of an offence committed during the probation period or during the period of conditional discharge the magistrate may commit him to custody or release him on bail, with or without sureties, until he can be brought or appear before the Supreme Court, and if he does so the magistrate shall send to the Registrar of the Supreme Court notice of the conviction.

(4) Where it is proved to the satisfaction of the court by which a probation order or an order for conditional discharge was made that a person in respect of whom such order was made has been convicted and dealt with in respect of an offence committed during the probation period or during the period of conditional discharge, as the case may be, that court may deal with him for the offence for which such order was made in any manner in which that court could deal with him if he had just been

convicted by or before that court of that offence.

(5) If a person in respect of whom a probation order or an order for conditional discharge has been made by the Magistrates' Court is convicted before the Supreme Court of an offence committed during the probation period or during the period of conditional discharge, the Supreme Court may deal with him for the offence for which the order was made in any manner in which the Magistrates' Court could deal with him if it had just convicted him of the offence.

Supplementary provisions as to probation and discharge

10. (1) A court may, on making a probation order or an order for conditional discharge under this Act 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.

(2) A court, on making a probation order or an order for conditional discharge, or on discharging an offender absolutely under this Act may order the offender to pay such compensation as the court thinks reasonable in accordance with the provisions of section 30 of the Penal Code.

(3) An order for compensation may be made without prejudice to the power of the court to award costs against the offender.

Effects of probation and discharge

11. (1) Subject as hereinafter provided, a conviction of an offence for which an order is made under this Act placing the offender on probation or discharging him absolutely or conditionally shall be deemed not to be a conviction for any purpose other than the purposes of the proceedings in which the order is made and of any subsequent proceedings which may be taken against the offender under the provisions of this Act:

Provided that where the offender, being not less than eighteen years of age at the time of his conviction of an offence for which he is placed on probation or conditionally discharged as aforesaid, is subsequently sentenced under this Act for that offence, the provisions of this subsection shall cease to apply to the conviction.

(2) Without prejudice to the provisions of subsection (1), the conviction of an offender who is placed on probation or discharged absolutely or conditionally as aforesaid, shall in any event be disregarded for the purposes of any written law which imposes any disqualification or disability upon convicted persons, or authorises or requires the imposition of any such disqualification or disability.

(3) The provisions of this section shall not affect

(a) the right of any offender to appeal against his conviction or to rely thereon in bar of any subsequent proceedings for the same offence;

(b) the reversion, restoration or forfeiture of any property in consequence of any order made on the conviction of any offender;

(c) the power of the court to make an order for the payment of compensation or costs.

Power to make regulations

12. The Minister may make regulations providing for –

- (a) the duties of probation officers;
- (b) the duties of probation committees;
- (bb) requirement to comply with a community service order;
- (c) the form of records to be kept under this Act;
- (d) the fees to be paid and charges to be made for any act, matter, or thing under this Act to be done or observed;
- (e) the carrying into effect generally of the purposes and provisions of this Act.

Section 12(b) amended by Act 19 of 2014 with effect from 27 October 2014

Functions of probation officers to under 18's

13. Where the probationer is under 18 years of age the probation officer shall while the probation order remains in force, supervise the probationer by visiting, advising and befriending him and if necessary helping him to find suitable training.

LAWS OF SEYCHELLES

CHAPTER 184

PROBATION OF OFFENDERS ACT

SUBSIDIARY LEGISLATION: SECTION 12: PROBATION OF OFFENDERS REGULATIONS

[21st March, 1966]

S.I.23 of 1966
S.I.28 of 1966
S.I.60 of 1967
S.I.22 of 1973
S.I. 9 of 1975
S.I. 12 of 1976

Citation

1. These regulations may be cited as the Probation of Offenders Regulations.

Duties of Probation Officers

2. It shall be the duty of probation officers

- (a) to make such preliminary inquiries, including inquiries into the home surroundings, as the court may direct in respect of any offender in whose case the question of the making of a probation order may arise;
- (b) when selected by a court, to undertake the supervision of a probationer;
- (c) subject to any directions given by the court (whether in the probation order or otherwise), to visit the home of the probationer and make inquiries as to his behaviour, mode of life and employment;
- (d) to keep in close touch with the probationer;
- (e) in the case of a child attending school to make periodical inquiries of the principal of the school concerned as to the child's attendance, conduct and progress, but the child shall not be visited on the school premises;
- (f) to ensure that the probationer understands the terms and conditions of the probation order, and to endeavour by encouragement, persuasion and warning to secure his observance of the same;
- (g) to advise, assist and befriend the probationer and, where necessary, to endeavour to find him suitable employment;
- (h) to keep a record of each case placed under his supervision, including notes of visits and interviews and relevant details as to the conduct and progress of the probationer, and preserve such records for not less than five years from the expiry of the probation orders to which they relate;
- (i) subject to any directions given by the court (whether in the probation order or otherwise) to make quarterly reports to the court which made the probation order regarding the conduct and progress of every probationer for whom he is responsible;
- (j) if the probationer fails to observe any of the terms or conditions of the probation order, to report such failure forthwith to the court which made the probation order;
- (k) to undertake any duties connected with the probation and rehabilitation of offenders which may be assigned to them in any specific case by a judge or magistrate.
- (l) to undertake any duties connected with the probation and rehabilitation of offenders which may be assigned to them either generally or specifically by the Chief Justice;
- (m) to submit oral or written reports or both to the probation committee and to discuss with that committee from time to time the progress of cases under their supervision.

Appointment of members of probation committees

3. (1) The appointment of members to a probation committee may be made by ex officio or personal appointment.

(2) The members of a probation committee shall unless their appointment be sooner revoked, hold office for such time as may be specified on their appointment and shall be eligible for re

appointment.

(3) A member of a probation committee, other than an ex officio member, may at any time resign his office by written notice.

Chairman of probation committee

4. (1) The President shall designate a member of a probation committee to act as Chairman of such committee.

(2) Such Chairman shall act as convenor to such probation committee.

(3) If the Chairman of a probation committee shall be absent from any meeting of such committee at the time appointed for the holding of such meeting, the members present shall elect one of their members to act as Chairman at and for the meeting.

Secretary of probation committee

5. Unless for the purposes of any meeting the Chairman directs otherwise, a probation officer shall attend the meetings of a probation committee and act as secretary to it.

Meetings of probation committee and transaction of business

6. A probation committee shall meet at such times and places and shall make such arrangements as to the transaction and management of its business as, subject to the provisions of these regulations, it may deem proper.

Conduct of proceedings at meetings of probation committee

7. The following provisions shall apply in relation to the conduct of the proceedings of a probation committee

(a) No business shall be transacted at any meeting unless two or more members are present.

(b) Every question at a meeting shall be determined by a majority of the votes of the members present and voting on that question.

(c) In case of an equal division of votes the Chairman shall have a second or casting vote.

(d) The proceedings of a probation committee shall not be invalidated by any vacancy or vacancies among its members or any defect in the mode of appointment of the committee or of any of its members.

Duties of probation committees

8. It shall be the duty of a probation committee to

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

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

make to a court;

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

(d) ensure that probation officers perform their duties in a satisfactory manner.

Forfeiture of recognisance

9. The provisions of section 108 of the Criminal Procedure Code shall apply mutatis mutandis when a bond of security for good behaviour in respect of a probationer taken under section 10(1) of the Act is forfeited.

Forms

10(1) The forms set out in the schedule hereto shall, with such variations as the circumstances of particular cases may require, be used for the purposes of the Act and of these regulations and shall for such purposes be good and sufficient in law.

(2) When a court allows a person who consents to do so to give security for the good behaviour of an offender under the provisions of section 109(1) of the Act, form C in the schedule hereto shall be used with such variations as the circumstances of particular cases may require and when so used shall be good and sufficient in law.

SCHEDULE

FORM A

SEYCHELLES

(Coat of Arms)

IN THE SUPREME COURT/MAGISTRATES' COURT

The Probation of Offenders Act

(Cap. 184)

Case No.....

PROBATION ORDER

Take notice that you are placed under the supervision of, a Probation Officer, hereinafter called the Probation Officer, for the period of from 19..... to 19....., hereinafter called the probation period, by order made this day by the Supreme/Magistrates' Court of which the following are the conditions:-

That during the probation period -

- (1) You be of good behaviour and appear at this Court for sentence when called upon;
- (2) You lead on honest and industrious life.
- (3) You deserve such conditions as the Probation Officer may consider necessary for the purpose of securing such supervision and that in particular you report to him as and when he may direct and that you answer truthfully all questions he may put to you;
- (4) You report forthwith to the Probation Officer any change of your residence or place of employment, and
- (5) (insert any further conditions)

Dated the day of 19....

Judge / Magistrate

FORM B

SEYCHELLES

(Coat of Arms)

IN THE SUPREME COURT/MAGISTRATES' COURT

The Probation of Offenders Act

(Cap 184)

Notice of Change of Probation Officer

To

Take notice that has been substituted by the aforesaid court to perform the duties of Probation Officer in your case in place of

..... and that the name of the said is substituted for that of the said as from this date wherever the name of the said occurs in the order made by the aforesaid court in your case on the day of 19.... and in the recognisance entered into by you thereupon.

Dated the day of 19...

Judge/Magistrate.

FORM C
SEYCHELLES

(Coat of Arms)

The Probation of Offenders Act

(Cap. 184)

Section 10(1)

Bond of Security for Good Behaviour in Respect of a Probationer

..... (hereinafter called the probationer) having appeared before the Supreme/Magistrates' Court on the day of 19....., and a probation order having been made by the said court requiring the probationer for the period of from to 19..... to be under the supervision of a Probation Officer and further requiring the probationer:-

1. That he/she shall be of good behaviour and appear at the said court for sentence when called upon;
2. That he/she shall lead an honest and industrious life;
3. That he/she shall observe such conditions as the Probation Officer may consider necessary for the purpose of securing such supervision and in particular that he/she shall report to the Probation Officer as and when he may direct and that he/she shall answer truthfully all questions the Probation Officer may put to him/her;
4. That he/she shall report forthwith to the Probation Officer any change of his/her residence or place of employment; and
5. (Here insert any further conditions of the probation order)

I/We do hereby acknowledge myself surety/ourselves sureties for the probationer that he/she will comply with the aforesaid requirements and in case of his/her making default therein I bind myself/we bind ourselves jointly and severally to forfeit to the Republic the sum of

Dated this day of19 Signature or mark of surety/sureties

Signed/Marked before me by/ and

Judge/Magistrate

Registrar of the Supreme Court.

FORM D
IN THE SUPREME COURT/MAGISTRATES' COURT
THE PROBATION OF OFFENDERS ACT

(Cap. 184)

SECTION 9(1)

**SUMMONS ON COMMISSION OF FURTHER OFFENCE DURING
PERIOD OF CONDITIONAL DISCHARGE**

To of

HEREAS complaint has been made before me that you have been convicted of
.....

contrary to of the and sentenced to on the
..... day of

19.... by the Court:

AND WHEREAS an order of conditional discharge was made by the Court on the
..... day of 19.....

AND WHEREAS your said conviction of contrary to section of the
took place within the period of the said conditional discharge:

YOU ARE HEREBY summoned to appear before the court at on the day
of 19....

DATED the day of 19....

Judge/Magistrate

Registrar of Supreme Court.
