

Malawi

## Probation of Offenders Act

### Chapter 9:01

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## Probation of Offenders Act

### Chapter 9:01

Commenced on 19 April 1945

*[This is the version of this document at 31 December 2014.]*

*[Note: This version of the Act was revised and consolidated in the Forth Revised Edition of the Laws of Malawi (L.R.O. 1/2015), by the Solicitor General and Secretary for Justice under the authority of the Revision of the Laws Act.]*

#### An Act to provide for the probation of offenders

#### 1. Short title and application

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.

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

#### 2. Interpretation

In this Act, unless the context otherwise requires—

“**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]*

“**probation officer**” means a probation officer appointed under [section 15](#).

#### 3. \*\*\*

*[Repealed by 5 of 1969]*

#### 4. Probation order

- (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. Further provisions where court makes probation order

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.

*[Cap. 7:01]*

## 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 (he 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 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 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.

## 7. Failure by probationer to comply with probation order

- (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. Probation order: disqualification or disability

- (1) Where a person is convicted of an offence 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:

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 and sentenced 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. 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.

## 10. Amendment of probation orders

- (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:

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 there upon 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.

## 11. Discharge of probation orders

- (1) The court by which a probation order was made may, on the application of 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 in subsequently sentenced for the offence in respect of which the probation order was made the probation order shall cease to have effect.

## 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.

### 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.

### 14. Contributions towards institutions

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. Appointments

- (1) There shall be—
  - (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. 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.