

REPRINT

PROBATION OF OFFENDERS ACT (CAP. 28)

As in force at: 1 October 2009

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For details see Endnotes

**AN ACT TO MAKE PROVISION FOR PROBATION OF OFFENDERS AND FOR
MATTERS INCIDENTAL THERETO AND CONNECTED THEREWITH**

PROBATION OF OFFENDERS ACT (CAP. 28)

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PROBATION OF OFFENDERS ACT (Cap. 28)

As in force at: 1 October 2009

1 Short title

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

2 Application

This Act shall apply within such areas of Solomon Islands as the Minister may in his discretion by order from time to time direct.

3 Interpretation

In this Act, unless the context otherwise requires:

“approved premises” means premises approved under section 13;

“conditional discharge” means a conditional discharge made under section 38 of the *Penal Code*;

“juvenile court” means a court established under any law relating to juvenile offenders;

“principal probation officer” means the person appointed to be the principal probation officer pursuant to section 11;

“probation committee” means a committee appointed by the Minister under section 12;

“probationer” means a person for the time being under supervision by virtue of a probation order;

“probation officer” means a person appointed to be a probation officer pursuant to section 11, and includes the principal probation officer and a voluntary probation officer;

“probation order” has the meaning assigned to it by section 4;

“probation period” means the period for which a probationer is

placed under supervision by a probation order;

“superintendent”, in relation to any approved premises, means a person appointed by the Minister as superintendent of those premises;

“voluntary probation officer” means a voluntary probation officer appointed under section 11.

4 Probation

- (1) Where a court by or before which a person is tried for an offence (not being an offence the sentence for which is fixed by law) 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 do so, the court may, upon proceeding to conviction, make a probation order, that is to say, an order requiring him to be under the supervision of a probation officer for a period to be specified in the order of not less than one year nor more than three years.
- (2) A probation order may in addition 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.
- (3) Without prejudice to the generality of subsection (2), a probation order may include requirements relating to the residence of the offender:

Provided that:

- (a) before making an order containing any such requirements, the court shall consider the home surroundings of the offender; and
- (b) where the order requires the offender to reside in approved premises, the name of the premises and the period for which he is so required to reside shall be specified in the order, and that period shall not extend beyond twelve months from the date of the order; and

- (c) where the order requires the offender to reside in any particular place (not being approved premises) or with any particular person, the name or description of such place or the name of such person, as the case may be, and the period for which the offender is so required to reside shall be specified in the order, and that period shall not extend beyond twelve months from the date of the order.
- (4) No requirement shall be included in any probation order requiring an offender to reside with any particular person, including a parent or guardian, unless such person consents thereto.
- (5) Before making a probation order, the court shall explain, or cause to be explained, to the offender in a language understood by him the effect of the order (including any additional requirements proposed to be inserted therein under subsections (2) or (3)) and that if he fails to comply therewith or commits another offence he will be liable to be sentenced for the original offence; and if the offender is not less than fourteen years of age the court shall not make the order unless he expresses his willingness to comply with the requirements thereof.
- (6) A probationer shall be subject to the supervision of the probation officer appointed or assigned to the area in which such probationer may from time to time reside, or to such other probation officer as the principal probation officer may nominate:

Provided that the probation officer under whose supervision a woman or girl is placed shall be a woman.
- (7) The court by which a probation order is made, or any court by which an order is made under section 5(2) amending any such probation order, shall forthwith give copies of such order, or such amending order, as the case may be, to the probation officer responsible for the supervision of the probationer and he shall give a copy thereof to the probationer, and to the person in charge of any premises in which the probationer is or was by such order or such amending order required to reside.

5 Discharge, amendment and review of probation orders

- (1) Any court may upon application made by a probation officer

responsible for the supervision of an offender or by a probationer discharge a probation order:

Provided that if the probation order was made by the High Court such order shall not be discharged except by that Court.

- (2) Any court may, upon application made by the probation officer responsible for the supervision of an offender or by a probationer, by order amend a probation order by cancelling any of the requirements thereof or by inserting therein (either in addition to or in substitution for any such requirement) any requirement which could be included in the order if it were then being made by that court in accordance with section 4(2):

Provided that:

- (a) a 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 probation order;
 - (b) a court shall not so amend a probation order that the probationer is thereby required to reside in approved premises for any period exceeding twelve months in all;
 - (c) a court shall not so amend a probation order that the probationer is thereby required to reside in any particular place (not being approved premises) or with any particular person for any period exceeding twelve months in all; and
 - (d) where the probation order was made by the High Court, the order shall not be amended except by that Court.
- (3) Where a court proposes to amend a probation order under this section, otherwise than on the application of a probationer, it shall summon him to appear before the court; and if the probationer is not less than fourteen years of age, the court shall not amend the probation order unless the probationer expresses his willingness to comply with the requirements of such probation order as amended:

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

- (4) Where a probation order, whether as originally made or as amended under the provisions of this section, requires a probationer to reside in approved premises or at any particular place or with any particular person 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 responsible for the supervision of the probationer shall, as soon as may be after the expiration of six months after such date, report on the case to a Magistrate's Court or, where the order was made or amended by the High Court, to that Court.
- (5) On receipt of any report made under subsection (4) the court shall review the probation order for the purpose of considering whether to cancel the requirement as to residence or reduce the period thereof, and may, if it thinks fit, amend the order accordingly without the necessity for any application in that behalf.
- (6) Where, under any of the provisions of this Act, a probation order is discharged or amended or the probationer is sentenced for the offence for which he was placed on probation, the court shall send for the record in which the original order of probation appears and shall endorse thereon any order it may make or any sentence it may pass, as the case may be, and where the probationer is sentenced for the offence for which he was placed on probation, the probation order shall cease to have effect.

6 Reports of probation officers

Where pursuant to any regulations made under the provisions of this Act, a report by a probation officer is made to any court (other than a juvenile court) with a view to assisting the court in determining the most suitable method of dealing with any person in respect of an offence, that person, and in the case of a person under the age of eighteen the parent or guardian of that person, or his advocate, shall be entitled upon application to the court therefor to a copy of the report.

7 Breach of requirements of probation orders

- (1) If at any time during the probation period it appears on information to a Magistrate that the probationer has failed to comply with any of the requirements of the order, the Magistrate may issue a summons

requiring the probationer to appear at the place and time specified therein, or may, if the information is in writing and on oath, issue a warrant for his arrest.

- (2) If it is proved to the satisfaction of the Magistrate's Court before which a probationer appears or is brought under this section that the probationer has failed to comply with any of the requirements of the probation order, the court may, without prejudice to the continuance of the probation order, caution him or impose on him a fine not exceeding twenty penalty units, or may:
 - (a) if the probation order was made by a Magistrate's Court, 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 he had just been tried for or convicted of that offence by or before that court or refer the case to the court by which the probation order was made;
 - (b) if the probation order was made by the High Court, commit him to custody or release him on bail (with or without sureties) until he can be brought or appear before that Court.
- (3) Where the Magistrate's Court deals with the case as provided in subsection (2)(b), then:
 - (a) the court shall send to the High Court a certificate signed by the Magistrate, certifying that the probationer has failed to comply with such of the requirements of the probation order as may be specified in the certificate, together with such other particulars of the case as may be desirable; and a certificate purporting to be so signed shall be admissible as evidence before the High Court of the failure so to comply; and
 - (b) where the probationer is brought or appears before the High Court, and it is proved to the satisfaction of that Court that he has failed to comply with any of the requirements of the probation order, the Court may deal with him, for the offence in respect of which the probation order was made, in any manner in which the Court could deal with him if he had just been tried for or convicted of that offence by or before that Court.

8 Commission of further offence

- (1) If it appears to a Judge or Magistrate on whom jurisdiction is hereinafter conferred that a person in whose case a probation order or an order for conditional discharge has been made has been convicted by any court in Solomon Islands of an offence committed during the probation period or during the period of conditional discharge, and has been dealt with in respect of that offence, the Judge or Magistrate 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 Magistrate shall not issue such a warrant except on information in writing and on oath.

- (2) The following persons shall have jurisdiction for the purposes of subsection (1), that is to say:
- (a) if the probation order or the order for conditional discharge was made by the High Court, a Judge of the High Court;
 - (b) if the order was made by a Magistrate's Court or by a juvenile court, the Magistrate of that court.
- (3) A summons or warrant issued under this section shall direct the person so convicted to appear or be brought before the court by which the summons or warrant was issued or before the court by which the probation order or the order for conditional discharge was made:

Provided that if that court is the High Court and he cannot forthwith be brought before that Court a summons or warrant shall have effect as if it directed him to be brought before a Magistrate's Court or juvenile court and such Magistrate's Court or juvenile court shall commit him to custody or release him on bail, with or without sureties, until he can be brought or appear before the High Court.

- (4) If a person in whose case a probation order or an order for conditional discharge has been made by the High Court is convicted and dealt with by a Magistrate's Court in respect of an offence committed during the probation period or during the period of conditional discharge, the court may commit him to custody or release him on

bail, with or without sureties, until he can be brought or appear before the High Court; and if it does so the Magistrate's Court shall send to the High Court a copy of the minute or memorandum of the conviction entered in the register, signed by the Magistrate.

- (5) Where it is proved to the satisfaction of the court before which a probationer or a person subject to an order for conditional discharge appears or is brought pursuant to this section that the person in whose case 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, the court may deal with him, for the offence for which the order was made, in any manner in which the court could deal with him if he had just been tried for or convicted of that offence by or before that court.
- (6) If a person in whose case a probation order or an order for conditional discharge has been made by a Magistrate's Court is convicted before the High Court or another Magistrate's Court of an offence committed during the probation period or during the period of conditional discharge, the High Court or such other Magistrate's Court may deal with him, for the offence for which the order was made, in any manner in which the Magistrate's Court by which the order was made could deal with him if he had just been tried for or convicted of that offence by or before that court.

9 Supplementary provisions as to probation and discharge

- (1) Without prejudice to the provisions of any other law relating to juvenile offenders which enables a court to order the parent or guardian of a child or young person charged with an offence to give security for his good behaviour, any court may, on making a probation order or an order for conditional discharge, 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; and the provisions of section 114 of the *Criminal Procedure Code* shall apply to the forfeiture of such security in like manner as it applies to the forfeiture of a recognisance.
- (2) A court on making a probation order or an order for conditional discharge may, without prejudice to its power of awarding costs against him, order the offender to pay such damages for injury or compensation for loss as such court thinks reasonable:

Provided that, in the case of an order made by a Magistrate's Court, the damages and compensation together shall not exceed one hundred penalty units.

- (3) An order for the payment of damages or compensation as aforesaid may be enforced in like manner as an order for the payment of costs by the offender; and where a court, in addition to making such an order for the payment of damages or compensation to any person, orders the offender to pay to that person any costs, the orders for the payment of damages or compensation and for the payment of costs may be enforced as if they constituted a single order for the payment of costs.
- (4) When a court makes any order under the provisions of this section, then if the offender:
 - (a) is under fourteen years of age, such order shall be enforced against the parent or guardian of the offender;
 - (b) is under eighteen years of age, such order may be enforced either against the parent or guardian of the offender or against the offender as to the court seems just in any particular case.

10 Effects of probation and discharge

- (1) Subject as hereinafter provided, a conviction of an offence for which a probation order or an order for conditional discharge is made 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 foregoing provisions of this Act:

Provided that where an 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, 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 foregoing provisions of this section, the conviction of an offender who is placed on probation or conditionally discharged shall in any event be disregarded for the purposes of any enactment which imposes any disqualification or disability upon

convicted persons, or authorises or requires the imposition of any such disqualification or disability.

- (3) The foregoing provisions of this section shall not affect:
- (a) any right of any such offender as aforesaid to appeal against his conviction, or to rely thereon in bar of any subsequent proceedings for the same offence;
 - (b) the reversioning or restoration of any property in consequence of the conviction of any such offender.

11 Appointment of probation officers

There shall be appointed:

- (a) a principal probation officer; and
- (b) such number of probation officers and voluntary probation officers as are necessary for giving effect to this Act,

and any such appointment shall, if the appointment is to an office in the public service be made pursuant to the *Constitution*, but otherwise may be made by the Minister.

12 Probation committees

The Minister may in his discretion appoint a probation committee or committees consisting of such persons as he shall 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.

13 Approved premises

The Minister may by order approve premises for the reception of persons who may be required to reside therein by a probation order.

14 Charges for food and accommodation

If, with the permission of the superintendent of any approved premises, a probationer who resides in the premises is employed outside the premises under a contract of service or apprenticeship, and is paid wages, the superintendent may require the probationer

to pay such charge in respect of his food and accommodation at the premises as the principal probation officer, with the approval of the Minister, may determine.

15 Regulations

The Minister may make regulations prescribing or providing for:

- (a) the duties of the principal probation officer;
- (b) the duties of probation officers;
- (c) the constitution and duties of probation committees;
- (d) the regulation, management and inspection of approved premises;
- (e) the form of records to be kept under this Act;
- (f) fees and charges to be made for any act, matter or thing to be done or observed under this Act;
- (g) generally, the carrying into effect of the provisions of this Act.

ENDNOTES

1

KEY

amd = amended	Pt = Part
Ch = Chapter	rem = remainder
Div = Division	renum = renumbered
exp = expires/expired	rep = repealed
GN = Gazette Notice	Sch = Schedule
hdg = heading	Sdiv = Subdivision
ins = inserted	SIG = Solomon Islands Gazette
lt = long title	st = short title
LN = Legal Notice	sub = substituted
nc = not commenced	

NOTE

This Reprint comprises the Act and amendments as in force on 1 March 1996 and published as Chapter 28 of the Revised Edition of the Laws of Solomon Islands, together with amendments made to the Act since that date.

2

LIST OF LEGISLATION

Probation of Offenders Act (Cap. 28)

<i>Constituent legislation:</i>	10 of 1971 (Commenced 1 January 1972)
	LN 46A of 1978
	LN 88 of 1978

Penalties Miscellaneous Amendments Act 2009 (No. 14 of 2009)

Assent date	29 July 2009
Gazetted	1 October 2009
Commenced	1 October 2009

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LIST OF AMENDMENTS

s 7	amd by Act No. 14 of 2009
s 9	amd by Act No. 14 of 2009