

No. 18 of 2019.

Probation (Amendment) Act 2019.

Certified on : 13 FEB 2020



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No. 18 of 2019.

AN ACT

entitled,

Probation (Amendment) Act 2019,

Being an Act to amend the *Probation Act 1979*, and for related purposes,

MADE by the National Parliament.

1. INTERPRETATION (AMENDMENT OF SECTION 2).

Section 2 of the Principal Act is amended -

- (a) in the definition of “Chief Probation Officer” by deleting the figure “(1)” in between “5” and “(a)”; and
- (b) by repealing the definition of “court” and replacing it with the following new definition:

““Court” in relation to an application or other matter, connected with a probation order, means a Court exercising the same jurisdiction as the Court that made the order except a Village Court;” and

- (c) by inserting after the definition of “declared area” the following new definition:

““offender” means a person who commits a crime;” and

- (d) in the definition of “probationer” by deleting the words “in relation”; and
- (e) by repealing the definition of “relevant court”; and
- (f) by repealing the definition of “this Act”.

2. APPOINTMENT OF OFFICERS (AMENDMENT OF SECTION 5).

Section 5 of the Principal Act is amended in the heading by deleting the letter “S” in the word “OFFICERS”.

3. APPOINTMENT OF VOLUNTARY PROBATION OFFICERS (AMENDMENT OF SECTION 6).

Section 6 of the Principal Act is amended -

- (a) in the heading by deleting the letter “S” in the word “OFFICERS”; and

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(b) by repealing Subsection (3) and replacing it with the following new subsection:

“(3) The Chief Probation Officer may delegate his power of appointment in writing under Subsection (1), including the power to revoke an appointment to a Senior Probation Officer; and”; and

(c) by repealing Subsection (4) and replacing it with the following new subsection:

“(4) An appeal against a revocation of appointment by a delegate under Subsection (3) lies with the Chief Probation Officer who may confirm, vary or rescind the revocation.”.

4. TERMS AND CONDITIONS OF VOLUNTARY PROBATION OFFICERS (AMENDMENT OF SECTION 7).

Section 7 of the Principal Act is amended in the heading by deleting the letter “S” in the word “OFFICERS”.

5. DUTIES OF THE CHIEF PROBATION OFFICER (AMENDMENT OF SECTION 8).

Section 8 of the Principal Act is amended -

- (a) by deleting the full stop after Paragraph (f) and inserting “; and”; and
- (b) by inserting a new paragraph after Paragraph (f) as follows:

“(g) have such other functions, powers, duties and responsibilities prescribed under this Act or any other law.”.

6. DUTIES OF SENIOR PROBATION OFFICER (AMENDMENT OF SECTION 9).

Section 9 of the Principal Act is amended by repealing Paragraph (b) and replacing it with the following new paragraph:

“(b) to perform such other duties as the Chief Probation Officer directs under this Act or any other law.”.

7. DUTIES OF VOLUNTARY PROBATION OFFICER (AMENDMENT OF SECTION 11).

Section 11 of the Principal Act is amended by repealing Paragraph (a) and replacing it with the following new paragraph:

“(a) to advise, assist and supervise where possible, to befriend a probationer as directed by a Probation Officer.”.

8. POWERS OF PROBATION OFFICER (AMENDMENT OF SECTION 13).

Section 13 of the Principal Act is amended by repealing Subsection (3) and replacing it with the following new subsection:

“(3) Where a Probation Officer is unable to dispense with his duties, the Chief Probation Officer may delegate to another Probation Officer to commence, appear in or continue any proceedings in any Court on behalf of the officer concerned.”.

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9. REPEAL OF SECTION 14.

Section 14 of the Principal Act is repealed.

10. PROBATION ORDER (AMENDMENT OF SECTION 16).

Section 16 of the Principal Act is amended by repealing Subsection (2) and replacing it with the following new subsection:

“(2) Where a person is convicted of an offence punishable by imprisonment, or a fine or both imprisonment and a fine, the Court convicting him may, by probation order -
 (a) impose a sentence but suspend committing him to imprisonment; or
 (b) defer sentencing him to imprisonment,
and release him on probation for a period specified in the order, being a period of not less than six months and not more than five years.”.

11. REPEAL AND REPLACEMENT OF SECTION 17.

Section 17 of the Principal Act is repealed and replaced with the following new section:

“17. CONDITIONS OF PROBATION ORDER.

(1) A probation order shall -

- (a) specify the address and the exact place of residence to which the probationer is to go and remain on release until he is contacted by a Probation Officer; and
- (b) require the probationer to report to a Probation Officer as and when he is required by the Probation Officer to do so; and
- (c) require the probationer to keep the peace and to be of good behaviour; and
- (d) direct that -
 - (i) the probationer shall not change his address, other than the address referred to in Paragraph (a), unless he has given to a Probation Officer reasonable notice of his intention to do so and the reasons for the proposed change; and
 - (ii) the Probation Officer gives permission for the probationer to change his address; and
 - (iii) where, by virtue of the change of address, the probationer has moved to another declared area, he shall, within 48 hours of arrival, report to a Probation Officer in that area and advise that officer of the nature and place of his employment and of his new address in that area; and
- (e) direct that the probationer shall give to a Probation Officer reasonable notice of his intention to change his employment and advise him of the nature and place of his proposed employment; and
- (f) require that the probationer shall, for the purposes of this Act, allow a Probation Officer to enter his home during reasonable hours.

(2) In Subsection (1)(a), (b), (e) and (f), “Probation Officer” includes a Voluntary Probation Officer.”.

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12. ADDITIONAL CONDITIONS (AMENDMENT OF SECTION 18).

Section 18 of the Principal Act is amended by repealing Subsection (1) and replacing it with the following new subsection:

“(1) In addition to the conditions set out in Section 17(1), the Court may impose all or any of the following conditions where necessary:

- (a) that a probationer shall not, except with the permission of a Probation Officer and in accordance with such directions as the Probation Officer may give, leave any specified area; and
- (b) that a probationer shall pay, within such period and by such instalments as the Court determines, damages for inquiry or compensation for loss under the provisions of this Act or any other law, suffered by any person by virtue of the offence for which the probationer is convicted or shall carry out work in restitution for such injury, compensation or loss; and
- (c) that a probationer shall travel to and reside in a specific area; and
- (d) that a probationer shall perform community work under the provisions of any law; and
- (e) that a probationer shall pay, within such period and by such instalments as the Court determines, compensation according to custom to any person under the provisions of this Act or any other law.”.

13. VARIATION AND DISCHARGE OF PROBATION ORDERS (AMENDMENT OF SECTION 19).

Section 19 of the Principal Act is amended -

- (a) in the heading, by deleting the letter “S” in the word “**ORDERS**”; and
- (b) by repealing Subsection (6) and replacing it with the following new subsection:

“(6) Except with the written consent of the Chief Probation Officer, an application under Subsections (1), (2) and (3) shall not be made to a Court.”.

14. BREACH OF CONDITIONS OF PROBATION (AMENDMENT OF SECTION 20).

Section 20 of the Principal Act is amended -

- (a) in the heading, by adding the word “**ORDER**” immediately after the word “**PROBATION**”; and
- (b) by repealing Subsection (2) and replacing it with the following new subsection:

“(2) An offence under Subsection (1) may be heard by a Court and the Court may, on conviction of the probationer -

- (a) extend the period of probation where that period is less than five years; or
- (b) vary any condition of the probation order; or
- (c) impose additional conditions; or
- (d) where, in accordance with Section 16(2)(a), sentence to imprisonment was suspended, commit the probationer to imprisonment for the whole or part of that sentence; or

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- (e) where, in accordance with Section 16(2)(b), sentence was deferred, sentence the probationer to imprisonment for the offence for which he was originally convicted; or
- (f) impose the penalty of a fine not exceeding K1,000.00; or
- (g) imprisonment for a term not exceeding three months.”.

15. ARREST OF PROBATIONERS (AMENDMENT OF SECTION 21).

Section 21 of the Principal Act is amended in the heading by deleting the letter “S” in the word “PROBATIONERS”.

16. NOTICE OF PROCEEDINGS RELATING TO PROBATION ORDER (AMENDMENT OF SECTION 23).

Section 23 of the Principal Act is amended -

- (a) in Subsection (2), by deleting the words “either before, or”; and
- (b) in Subsection (4), by repealing Paragraph (b) and replacing it with the following new paragraph:

“(b) a Court, including a Village Court in respect of any other offence, the Court before which he is brought shall, before the matter is determined, notify the Chief Probation Officer and the Probation Officer under whose supervision that probationer is, of the fact that the probationer has been brought before it in respect of the matter.”.

17. DISTRIBUTION OF ORDER (AMENDMENT OF SECTION 24).

Section 24 of the Principal Act is amended -

- (a) in the heading by inserting the word “PROBATION” after the word “OF”; and
- (b) by repealing Paragraph (b) and replacing it with the following new paragraph:

“(b) to the Chief Probation Officer, Probation Officer and to the Voluntary Probation Officer under whose supervision the probationer is to be or has been placed.”.

18. PRE-SENTENCE AND OTHER REPORTS (AMENDMENT OF SECTION 25).

Section 25 of the Principal Act is amended -

- (a) by repealing Subsection (1) and replacing it with the following new subsection:

“(1) A report under Section 13 or any other report that a Probation Officer may make to a court in relation to a probationer or an offender is not a public record and shall be kept by the Court receiving it as a separate record.”; and

- (b) by repealing Subsection (2) and replacing it with the following new subsection:

“(2) A report referred to in Subsection (1) shall be available for inspection or use -

- (a) by a Court where the proceedings before it relate to the person the subject of the report; and

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- (b) by a person assisting the Court in his professional capacity in relation to those proceedings; and
 - (c) by an official of a corrective institution acting in his official capacity in relation to those proceedings; and
 - (d) by the person's legal representative within the precincts of the Court; and
 - (e) where applicable, by the prosecution within the precincts of the Court; and
 - (f) by the Departmental Head or a person authorised by him in writing for that purpose; and
 - (g) by a Probation Officer in the course of his duties; and
 - (h) by a person authorised in writing by the Chief Probation Officer for the purposes of research, study or statistical data and on such conditions as the Chief Probation Officer specifies."; and
- (c) by repealing Subsection (3) and replacing it with the following new subsection:

“(3) A person who publishes or discloses the contents of, or makes available a copy of a report or any part of a report to any person otherwise than in accordance with Subsection (2), is guilty of an offence.

Penalty: A fine not exceeding K1,000.00 or imprisonment for a term not exceeding three months.”.

19. ASSISTANCE AND INFORMATION TO BE GIVEN TO OFFICERS (AMENDMENT OF SECTION 28).

Section 28 of the Principal Act is amended -

- (a) by repealing Subsection (1) and replacing it with the following new subsection:

“(1) Subject to any other law, the Chief Probation Officer, a Senior Probation Officer, a Probation Officer and a Voluntary Probation Officer has the right to receive assistance and information from the State or Provincial Government, an individual or other body, for the proper performance of his duties and functions under this Act.”; and

- (b) in Subsection (2), in the penalty provision by deleting the figure “K50.00” and replacing it with “K1,000.00”.

20. NEW SECTION 30A.

The Principal Act is amended by inserting immediately after Section 30, the following new section:

“30A. LIABILITY.

The State shall not be liable for the livelihood and demise of a probationer or an offender.”.

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I hereby certify that the above is a fair print of the *Probation (Amendment) Act 2019*, which has been made by the National Parliament.



Acting Clerk of the National Parliament.

13 FEB 2020

I hereby certify that the *Probation (Amendment) Act 2019*, was made by the National Parliament on 5 September 2019.



Speaker of the National Parliament.

13 FEB 2020