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L E G I S L A T I O N

ORDINANCE 14 OF 2006

**THE PROBATION AND OTHER NON-CUSTODIAL
SENTENCES ORDINANCE 2006**

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ORDINANCE 14 OF 2006

AN ORDINANCE TO PROVIDE FOR THE PLACING OF OFFENDERS ON PROBATION AND FOR GIVING OFFENDERS ABSOLUTE OR CONDITIONAL DISCHARGES

R. H. LACEY
ADMINISTRATOR

18th September 2006.

BE it enacted by the Administrator of the Sovereign Base Areas of Akrotiri and Dhekelia as follows:—

1. This Ordinance may be cited as the Probation and Other Non-custodial Sentences Ordinance 2006.

Short title.

2.—(1) In this Ordinance, unless the context otherwise requires —
“community service condition” has the meaning given by section 5(5);

Interpretation.

“corresponding Republican Law” means the Probation and Other Ways of Dealing with Offenders Law of 1996 of the Republic as that Law may be amended or replaced from time to time;

Republican Law
No. 46(I)/1996;
Official Gazette
of the Republic,
Supplement I(I)
No. 3051, 11.4.96,
p.175.

“probationer” means a person who is subject to a probation order;

“probation officer” means a person authorised under section 3 to exercise the powers conferred, or to perform the duties imposed on a probation officer under this Ordinance;

“probation order” has the meaning given by section 5;

“probation period” means the period during which a probationer is subject to a probation order;

“supervising court” in relation to a probation order, means the court named as such in a probation order;

“training condition” has the meaning given by section 5(6).

(2) Any reference in this Ordinance to the probation officer of any person (“the probationer”) is to be construed as a reference to the person who is for the time being responsible for performing, in relation to that probationer, the duties imposed by or under this Ordinance, on the probationer’s probation officer.

(3) Any reference to a probation officer attached to a court is a reference to a probation officer appointed to a court by the Chief Officer under section 3(5) below.

Authorisation
of persons to
exercise powers
and perform
duties of
probation officers.

3.—(1) The Chief Officer may authorise any person whom he considers suitable, to exercise any of the powers conferred, and to perform any of the duties imposed, on a probation officer under this Ordinance.

(2) Without prejudice to the generality of subsection (1) above, any person appointed as a probation officer under section 3 of the corresponding Republican Law is authorised to exercise any of the powers conferred, and to perform any of the duties imposed, on a probation officer under this Ordinance.

(3) Accordingly, any person authorised to exercise any of the powers conferred, or to perform any of the duties imposed on a probation officer by virtue of subsection (1) or (2) above, is a probation officer for the purposes of this Ordinance.

(4) The Chief Officer may withdraw an authorisation conferred by virtue of subsection (2) above.

(5) The Chief Officer shall appoint a probation officer to assist a court of criminal jurisdiction in relation to any probation matter and a probation officer so appointed is referred to in this Ordinance as the probation officer attached to the court.

Duties of a
probation officer.

4. Subject to the directions of the court, a probation officer shall, in relation to a probationer for whom he is responsible—

- (a) visit the probationer, or receive reports from him, at such intervals as may be specified in the probation order relating to the probationer, or if no such intervals are so specified, at reasonable intervals;
- (b) observe whether or not the probationer is complying with the conditions of his probation order;
- (c) submit reports to the court concerning the probationer’s conduct;
- (d) consult, assist and support the probationer generally and in particular in connection with efforts by the probationer to secure suitable employment or in connection with the probationer’s education or training;
- (e) assist the probationer to fulfil effectively any community service condition or training condition attaching to his probation order.

Probation orders.

5.—(1) Where the court before which a person is convicted for an offence for which the penalty is not fixed by law considers that in all the circumstances of the case, including the nature of the offence and the character of the offender, it is appropriate to do so, it may, instead of dealing with the offender in any other way, make the offender the subject of a probation order whereby he is placed

under the supervision of a probation officer for such period (the “probation period”) as shall be specified in the probation order.

(2) Without prejudice to section 9(2) below, the length of a probationer’s probation period shall not normally be shorter than 1 year, and shall be no longer than 3 years.

(3) The court may include in a probation order such conditions as it considers appropriate to ensure the offender’s future good conduct and to prevent his re-offending. Such conditions may apply for the whole of the probationer’s probation period or for only part of it, but the court may not include as a condition under this section that the offender pays any amount that the court may order him to pay under section 12(2) below.

(4) Without prejudice to the generality of subsection (3) above, a probation order may include conditions regarding where or with whom the probationer is to reside, but before including any such conditions, the court shall examine the offender’s family circumstances.

(5) Without prejudice to the generality of subsection (3) above, but subject to section 6 below, the court may include a condition (a “community service condition”) that the probationer is to perform a specified number of hours of service for the community (“community service”) for which he is not to receive any payment.

(6) Without prejudice to the generality of subsection (3) above but subject to section 7 below, the court may include a condition (a “training condition”) that the probationer is to undergo a course of training in a specified field and for a specified period.

(7) Before making a probation order against any offender, the court shall explain to him in ordinary language the effects of the proposed order and the consequences of his breaking any conditions attaching to it or of his re-offending during the probation period, that is to say, that he would thereby become liable (apart from any sentence to which he may be liable for any such further offence) to be sentenced to imprisonment in respect of the offence for which the probation order is being made.

(8) When a court makes a probation order—

(a) it shall –

(i) provide a copy of it to the probation officer attached to the court, and

(ii) if it is not itself the supervising court, send a copy of the probation order and all of relevant particulars to the senior registrar of the supervising court; and

(b) the probation officer attached to the court shall provide a copy of the probation order to the probationer and to his probation officer.

6.—(1) A court shall not impose a community service condition under section 5(5) above unless –

(a) the offender consents to the imposition of such a condition;

(b) the court is satisfied that arrangements are in place which will enable the offender to perform such community service;

Further provisions concerning the imposition of a community service condition.

- (c) the court is satisfied, having regard to a report prepared by the probation officer attached to the court, that the offender is capable of performing the community service in question.

(2) Without prejudice to the generality of section 5(7) above, before a court imposes a community service condition on any person it shall explain to him –

- (a) the purpose of community service and the consequences of a breach of a community service condition, as provided by this section and section 8 below;
- (b) that the court can set aside, modify or review a community service condition under section 9 below.

(3) A probationer subject to a community service condition must –

- (a) present himself to his probation officer at such times as the court may order or as the probation officer may direct;
- (b) notify his probation officer of any change in his home address;
- (c) perform his community service at such times as the court may order or his probation officer may direct.

(4) Subject to section 9(2), a probationer shall perform his community service during his probation period.

(5) A person shall not be required to perform any community service that would conflict with his religious beliefs or interfere with his employment, education or training.

Further provisions concerning the imposition of a training condition.

7.—(1) A court shall not impose a training condition under section 5(6) above unless –

- (a) the offender consents to the imposition of such a condition;
- (b) the court is satisfied that arrangements are in place which will enable the offender to undergo such training;
- (c) the court is satisfied, having regard to a report prepared by a probation officer, that the offender is suited to undergo such training.

(2) Without prejudice to the generality of section 5(7) above, before a court imposes a training condition on any person it shall explain to him –

- (a) the purpose of the training that he is to receive and the consequences of a breach of a training condition, as provided by this section and section 8 below;
- (b) that the court can set aside, modify or review a training condition under section 9 below.

(3) A probationer subject to a training condition shall –

- (a) present himself to his probation officer at such times as the court may order or as the probation officer may direct;
- (b) notify his probation officer of any change in his home address;

(c) attend the training described in his probation order.

(4) If the training described in a probation order takes place over a period, that period must not expire later than the probationer's probation period.

(5) In determining whether any particular description of training is suitable for a probationer, the court shall have regard to the forms of training which are considered as suitable for probationers under subsections (4) and (5) of section 7 of the corresponding Republican Law.

8.—(1) If at any time during a probationer's probation period a judge of the supervising court is satisfied on information furnished to him that the probationer has failed to comply with any of the conditions attaching to his probation order, or has breached any of the provisions of section 6 or 7, the judge may summons the probationer to appear before the supervising court at such time and place as shall be specified in the summons or, if the information produced to the judge is in writing and confirmed on oath, the judge may issue a warrant for the probationer to be arrested and brought before the supervising court.

Breach of
probation order.

(2) Where the supervising court before which a probationer appears or is brought pursuant to subsection (1) above is satisfied that the probationer had failed to comply with any of the conditions attaching to his probation order or had breached any of the provisions of section 6 or 7, the court may –

- (a) without thereby affecting the continuance of the probation order, impose upon the probationer a fine not exceeding £50; or
- (b) regardless as to whether the probation order was made by the Judge's Court or by the Senior Judge's Court, set aside the probation order and deal with the offender in respect of the offence in relation to which the probation order had been made ("the original offence") in any manner in which that court could deal with the offender if he had just then been convicted before it of the original offence.

(3) Any fine imposed under subsection (2)(a) above shall be treated as if it were a fine imposed following a conviction.

9.—(1) A probation order may be set aside, modified or reviewed by the court that made it, whether of the court's own motion or upon the application of the probationer or of his probation officer.

Setting aside,
modification
or review of a
probation order.

(2) Without prejudice to the generality of subsection (1) above, the court may in particular, with respect to a probation order which includes a community service condition –

- (a) extend or reduce the probation period, if the court considers it appropriate to do so by reason of a change in the circumstances of the case and in the interests of justice;
- (b) set aside or modify a community service condition.

(3) Where the setting aside, modification or review of a probation order is done of the court's own motion or upon the application of the probation officer, the court shall, with the appropriate modifications, follow the procedure provided for by section 8 above for bringing the probationer before the court.

(4) Where the court which sets aside or modifies a probation order under this section is not the supervising court in respect of that probation order, the court shall notify the supervising court of the setting aside or modification and furnish the supervising court with all relevant particulars.

Absolute and
conditional
discharges.

10.—(1) Where the court before which a person is convicted for an offence for which the penalty is not fixed by law considers that in all the circumstances of the case, including the nature of the offence and the character of the offender, it is appropriate to do so, it may, instead of dealing with the offender in any other way make an order—

- (a) granting him an absolute discharge; or
- (b) granting him a conditional discharge (a “conditional discharge order”) that is to say an order discharging him on condition that he does not commit any further offence during such period (the “conditional discharge period”) as is specified in the order.

(2) The conditional discharge period for any conditional discharge order shall not be longer than 1 year commencing on the day that the conditional discharge order is made.

(3) Before a court grants an offender a conditional discharge it shall explain to him in ordinary language that if he commits any further offence during the conditional discharge period he will become liable (apart from any sentence to which he may be liable for any such further offence) to a penalty for the offence (the “original offence”) in respect of which he is being granted a conditional discharge.

(4) Where a person is sentenced for his original offence by reason of his being in breach of a conditional discharge order, that conditional discharge order shall cease to have effect.

Commission of
further offences.

11.—(1) Where the court (“the original court”) that has put a person on probation or granted a person a conditional discharge, is informed that he has been convicted and sentenced by any other court of the Areas or the Republic of Cyprus for an offence, or by a military court in the Areas where the offence would also be a breach of criminal law from time to time being enforced in the Areas and the offence was committed during his probation period or, as the case may be, during his conditional discharge period, the original court may summons him to appear at the place and time specified in the summons or, where the information is in writing and confirmed on oath, the original court may issue a warrant for the person to be arrested and brought before it.

(2) Where a person who is subject to a probation order or to a conditional discharge order is convicted of an offence (a “further offence”) committed during his probation period or, as the case may be, during his conditional discharge period, the convicting court may place him on probation or release him on bail, with or without sureties, until he appears or is brought before the original court which shall be notified of the conviction for the further offence by the convicting court.

(3) Where it is proved to the satisfaction of the court before which a person is summoned or brought under this section, or to the satisfaction of the supervising court, that a person has been convicted and has been dealt with for an offence committed during his probation period or, as the case may be, during his conditional discharge period, the court may deal with him for the offence (“the original offence”) for which

he was put on probation, or as the case may be, given a conditional discharge, in any manner in which the court could deal with him if he had just been convicted by that court of the original offence.

(4) Where a person who is subject to a probation order or a conditional discharge order made (in either case) by the Judge's Court is convicted by the Senior Judge's Court for an offence committed during that person's probation period or, as the case may be, during his conditional discharge period, the Senior Judge's Court may deal with him for the original offence in any manner in which the Judge's Court could deal with him if he had just been convicted by the Judge's Court of the original offence.

(5) Where a person who is subject to a probation order or a conditional discharge order made (in either case) by a judge's court ("the first court") is convicted by another judge's court ("the second court") for any offence committed during the person's probation period or conditional discharge period (as the case may be), the second court may, with the consent of the first court, deal with the offender in respect of the original offence, in any manner in which the second court could deal with him if he had just been convicted by the second court of the original offence.

12.—(1) A court making a probation order or conditional discharge order in respect of any person may, if it considers that it will promote the offender's rehabilitation, accept from any other person a recognisance for the offender's future good conduct and sections 158 to 164 of the Criminal Procedure Ordinance shall apply, with appropriate modifications, to any such recognisance.

Further provisions relating to probation.

Cap 155 – Laws of Cyprus as amended by Ordinances 4/60, 19/63, 1/66, 2/72, 2/73, 10/75, 4/78, 11/79, 22/87, 4/92, 8/96, 1/97, 27/99, 17/03, 43/03 and 34/04.

(2) Any court making a probation order or a conditional or absolute discharge order may, without prejudice to its power to order the payment of costs by the offender, order him to pay one or more of the following—

- (a) damages for personal injury;
- (b) compensation for the loss of any property;
- (c) compensation for damage to any property,

in such amount as the court considers reasonable and which does not exceed the amount which the court generally has power to award.

(3) Payment of any amount ordered to be paid by an offender under subsection (2) above may be enforced in the same way as payment of a fine may be enforced against him. Where the court orders an offender to pay any amount under subsection (2) above to any person and in addition orders the offender to pay that person costs, the aggregate of the amount payable by way of compensation or damages (or both) and the amount of the costs may be treated as if it were contained in a single order for the payment of a fine and its payment can be enforced accordingly.

13.—(1) Subject to subsections (2) and (3) below, any conviction for an offence for which an order ("the original order") is made under this Ordinance placing the offender on probation or granting him an absolute or conditional discharge, shall not be treated as a conviction for any purpose other than the purposes of the proceedings which

Effects of probation orders and of absolute or conditional discharge orders.

resulted in the making of the original order and of any subsequent proceedings brought under this Ordinance and arising from the making of the original order.

(2) Without prejudice to subsection (1) above, the conviction of an offender who is placed on probation or who is given an absolute or conditional discharge shall be disregarded for the purposes of any provision which deprives a convicted person of any particular right or which imposes any disqualification on a convicted person or which authorises or requires that a convicted person be deprived of a particular right or be subject to any disqualification.

(3) Subsections (1) and (2) above shall not prejudice –

- (a) the right of an offender to appeal against the decision convicting him or to rely upon that decision as a bar to any subsequent prosecution of him for the same offence;
- (b) the recovery or return of any property as a result of the conviction of an offender;
- (c) the application, in relation to an offender, of any provision brought into force after this Ordinance comes into force and which expressly provides that it applies to convicted persons.

Probation officer's
report.

14. Where a report is submitted to any court by a probation officer for the purpose of assisting the court to decide on the most appropriate method of dealing with an offender, a copy of the report shall be given by the court to the offender or to his legal representative.

Regulations.

15.—(1) The Administrator may make regulations for the more effective application of this Ordinance.

(2) Without prejudice to the generality of subsection (1) above, the Administrator may make regulations—

- (a) prescribing duties to be performed by probation officers additional to the duties imposed upon them under this Ordinance; and
- (b) prescribing the records which probation officers must maintain.

Rules of court.

16. The Senior Judge may make rules of court for regulating any matter arising from, or any proceedings taken under this Ordinance, and such rules may prescribe the forms to be used in relation to any such matter or proceedings and any fees that may be payable.

Repeal.
Cap 162 – Laws
of Cyprus.

17. The Probation of Offenders Ordinance is repealed.

Commencement.

18. This Ordinance comes into force on the day of its publication in the Gazette.

18th September 2006
(SBA/AG/2/CR/183)

P. D. Draycott
Chief Officer.
