Prison Act 2011

Principal Act

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[1] *Notice of Commencement LN. 2019/142*

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AN ACT TO MAKE PROVISION FOR THE REGULATION AND MANAGEMENT OF PRISONS AND PRISONERS; AND FOR CONNECTED PURPOSES.

INTRODUCTION

Title and commencement.

1. This Act may be cited as the Prison Act 2011 and comes into operation on the day appointed by the Minister by notice in the Gazette and different days may be appointed for different provisions.

Interpretation.

2.(1) In this Act, unless the context otherwise requires–

"ammunition" has the meaning assigned to it by section 2 of the Firearms Act;

"authorisation" means a written authorisation issued by the Superintendent for the purposes of sections 48 and 49;

"Board" or "Prison Board" means the Prison Board established under section 7;

"Chief Officer" means the Chief Officer appointed under section 4;

"controlled drug" has the meaning assigned to it by section 2(1) of the Drugs (Misuse) Act;

"firearm" has the meaning assigned to it by section 2 of the Firearms Act;

"intimate sample" means–

(a) a sample of blood, semen or any other tissue fluid, urine or pubic hair;

(b) a dental impression;

(c) a swab taken from any part of a person's genitals (including pubic hair) or from a person's body orifice other than the mouth;

"medical officer" means a medical officer appointed under section 4;

"Minister" means the Minister with responsibility for prisons;

"offensive weapon" means any article–

(a) made or adapted for use for causing injury to persons; or

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(b) intended by the person having it with him for such use by him or by some other person;

"Parole Board" means the Parole Board established under section 52;

"prescribed" means prescribed in regulations made under section 71;

"prison" means any place declared by order under section 3 to be a prison or part of a prison, but does not include any place appointed or set apart for the detention or punishment exclusively of persons in the armed forces of Her Majesty;

"prison officer" includes the Superintendent and Chief Officer and any other officer appointed under section 4;

"specified offence" means an offence listed in Schedule 3;

"standing orders" means any orders made under section 6;

"Superintendent" means the Prison Superintendent appointed under section 4.

(2) For the purposes of this Act the maintenance of a prisoner shall include all necessary expenses incurred in respect of the prisoner for food, clothing, custody and removal from one place to another, from the period of his committal to prison until his death or discharge from prison.

Declaration relating to prison.

3. The Government may by Order published in the Gazette–

(a) declare any place, whether established as a prison before or after the coming into operation of this Act, to be a prison or part of a prison for the purposes of this Act;

(b) declare that any such place shall cease to be a prison or a part of a prison for the purposes of this Act.

ADMINISTRATION

Appointment of prison staff.

4.(1) There shall be appointed for the purposes of this Act, in accordance with section 54 of the Constitution, a Superintendent, a Chief Officer, a chaplain, a medical officer and such other officers as the Government may deem necessary.

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(2) The prison in which women are received shall have a sufficient number of women officers.

(3) Every person appointed as a prison officer under subsection (1) shall–

(a) take the oath prescribed by section 6 of the Oaths Act; and

(b) after taking such oath and before entry on his duties, take an oath of secrecy under section 7 of the Oaths Act.

Powers.

5. The Superintendent and all prison officers shall, while engaged in the duties of the office to which they have been appointed, have all the powers, protection and privileges of a police officer.

Superintendent's standing orders.

6. Subject to the orders and directions of the Minister and any code of discipline approved under section 69, the Superintendent shall exercise control and superintendence over the prison and prison officers and may, with the approval of the Minister, issue standing orders, not repugnant to this Act or any regulation or code of discipline made or approved thereunder, for the observance of prison officers in the discharge of their duties.

PRISON BOARD AND OFFICIAL VISITORS

Establishment of Board.

7.(1) There shall be established a Prison Board which shall consist of such persons or the holders of such offices as the Minister may from time to time appoint.

(2) The Minister may likewise appoint a chairman to the Board.

(3) The chairman and every member of the Board shall be appointed for a renewable term of three years.

(4) The Board shall consist of not less than five members, and three shall constitute a quorum.

(5) The Board may appoint one member to be vice-chairman of the Board and subject to subsection (3) such vice-chairman shall hold office for the remainder of the period for which the chairman was appointed.

(6) The Prison Board shall include among its members–

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(a) a solicitor or barrister of at least 7 years' post-qualification experience; and

(b) a registered medical practitioner.

(7) The Minister may not terminate the appointment of a member of the Board unless–

(a) the Minister is satisfied that the member has grossly misconducted himself whilst performing his functions under this Act; and

(b) a resolution has been passed by a majority of the members of Parliament present and voting approving such termination.

(8) A member of the Board may resign by notice in writing to the Minister.

(9) Without prejudice to the jurisdiction of the courts, in the exercise of their functions the Board and its members shall not be subject to the direction or control of any person or authority.

Meetings of Board.

8.(1) The Board shall meet at the prison once a month or, if they resolve for reasons specified in a resolution of the Board that less frequent meetings are sufficient, not fewer than eight times in twelve months.

(2) The Board shall keep minutes of their proceedings.

General duties of Board.

9.(1) The Board shall–

(a) satisfy themselves as to the state of the prison premises, the administration of the prison, and the treatment of prisoners;

(b) inquire into and report upon any matter into which the Minister asks them to inquire;

(c) direct the attention of the Superintendent to any matter which calls for his attention;

(d) report to the Minister any matter which they consider it expedient to report;

(e) inform the Minister immediately of any abuse which comes to their knowledge;

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(f) where it considers such action necessary, to recommend the referral to the Public Service Commission of the suspension of any prison officer pending consideration of the removal of such officer;

(g) have power to make recommendations to the Minister with the aim of improving the treatment of prisoners;

(h) have power to submit to the Minister proposals and observations concerning existing or draft legislation relating to prisons and the treatment of prisoners; and

(i) exercise such other powers and functions as may be prescribed.

(2) Before exercising any power under subsection (1) the Board shall consult the Superintendent in relation to any matter which may affect discipline.

Particular duties of Board.

10. Without prejudice to the provisions of section 9, the Board shall–

(a) arrange for the food of prisoners to be inspected by a member at frequent intervals;

(b) hear any complaint or request which a prisoner wishes to make to the Board;

(c) inquire into any report made to them, whether or not by a member of the Board, that a prisoner's mental or physical health is likely to be injuriously affected by any conditions of his imprisonment; and

(d) arrange a rota whereby at least one of its members visits the prison monthly.

Members visiting prison.

11.(1) A member of the Board shall–

(a) have free access at any time to every part of the prison;

(b) have free access to every prisoner; and

(c) have free access to the records of the prison.

(2) A member of the Board may interview any prisoner out of sight and out of hearing of any prison officer, and hear any complaint or request which a prisoner wishes to make to him.

Record book.

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12.(1) A member of the Board shall record, in a book to be provided and kept by the Superintendent for that purpose, any remark which he may think fit to make in regard to the condition of the prison or of any prisoner or inmate thereof.

(2) It shall be the duty of the Superintendent to make the book provided and kept under subsection (1) available for perusal–

(a) by every member of the Board who visits the prison; and

(b) at every meeting of the Board.

Prison visitors.

13. The Board may, with the approval of the Minister–

(a) appoint persons other than members of the Board to be Prison Visitors; and

(b) frame rules for their guidance and direction.

Disqualification relating to contracts.

14. No member of the Board, and no Prison Visitor, may be in any way concerned with any contract for supplies for use in the prison.

Annual report.

15.(1) The Board shall make an annual report to the Minister at the end of each year concerning the prison and its administration, and shall include in such report any advice and suggestions they consider appropriate.

(2) The Minister shall, as soon as practicable, lay every such report before Parliament.

Visiting ministers.

16. Subject to the provisions of this Act and to any conditions that may be prescribed, the Minister may authorise a minister of any religious denomination to–

(a) visit a prisoner belonging to the same denomination who consents to the visit; and

(b) to celebrate religious services in the presence of that prisoner.

Right of a judge of the Supreme Court, the Stipendiary Magistrate and justice of the peace to visit prison.

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17. A judge of the Supreme Court, the Stipendiary Magistrate and any justice of the peace may at any time–

(a) visit the prison and examine the condition of the prison and of prisoners;

(b) enter in the record book kept by the Superintendent under section 12 any observations on the condition of the prison or any abuses.

GENERAL PRINCIPLES

Objectives of training and treatment, etc.

18. In the administration of this Act and of any subsidiary legislation made under it the following principles and policies shall be observed–

(a) the purpose of the training and treatment of convicted prisoners shall be to encourage and assist them to lead a good and useful life;

(b) order and discipline shall be maintained with firmness, but with no more restriction than is required for the safe custody of and the maintenance of a well-ordered community life for prisoners;

(c) in the control of prisoners, prison officers shall seek to influence them through their own example and leadership, and to enlist their willing cooperation;

(d) at all time, the treatment of prisoners shall be such as to encourage their self-respect and a sense of personal responsibility;

(e) special attention shall be paid to the maintenance of such relations between a prisoner and his family as are desirable in the best interests of both;

(f) every prisoner shall be encouraged and assisted to establish and maintain such relations with persons and agencies outside prison as may most properly promote the interest of his family and his own social rehabilitation;

(g) from the beginning of a prisoner's sentence consideration shall be given, in consultation with any appropriate after-care organisation, to the prisoner's future and the assistance to be given or available to him on and after his release;

(h) due regard shall be given to the spiritual welfare of prisoners; and

(i) every prisoner able to profit from educational facilities provided at the prison shall be encouraged to do so.

CONFINEMENT OF PRISONERS

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Place of confinement.

19. A prisoner, whether sentenced to imprisonment or committed to prison on remand or pending trial or otherwise, may be lawfully confined in any prison.

Legal custody of prisoner.

20.(1) Every prisoner shall be deemed to be in the legal custody of the Superintendent.

(2) A prisoner shall be deemed to be in legal custody–

(a) while he is confined in or is being taken to or from prison; and

(b) while he is working, or is for any other reason outside the prison in the custody or under the control of a prison officer.

(3) A prisoner required to be taken in custody anywhere outside a prison shall be kept in the custody of a prison officer or a police officer.

Cells.

21.(1) The Minister shall satisfy himself from time to time that sufficient and adequate accommodation is provided for all prisoners.

(2) Every cell shall be provided with a separate bed for each prisoner and separate bedding adequate for warmth and comfort.

(3) Special cells shall be provided for the temporary confinement of refractory or violent prisoners.

Marking of cells.

22. Every cell shall be clearly marked by a number or mark placed in a conspicuous position, and such number or mark shall not be changed without the consent of the Minister.

Certificate relating to cells.

23.(1) No cell shall be used for the confinement of a prisoner unless it is certified by the Chief Environmental Health Officer–

(a) that its size, lighting, heating, ventilation and fittings are adequate for health; and

(b) that it allows the prisoner to communicate at any time with a prison officer.

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(2) A certificate given under subsection (1) in respect of any cell may limit–

(a) the period for which a prisoner may be separately confined in a cell; and

(b) the number of hours a day during which a prisoner may be employed therein.

(3) When a certificate has been given under subsection (1) in respect of any cell and the number or mark of such cell is changed without the consent required by section 22, the certificate shall cease to have effect.

(4) The Chief Environmental Health Officer may withdraw a certificate given under subsection (1) in respect of any cell if in his opinion the conditions of the cell are no longer those stated in the certificate.

Men and women.

24.(1) Women prisoners shall be kept entirely separate from men prisoners.

(2) When the prison is used for both men and women, a separate building or part of a building shall be used for women.

Classification of prisoners.

25.(1) So far as accommodation in prison renders it practicable, the following classes of prisoners of each sex shall be separated from one another namely–

(a) prisoners aged below 18 years from prisoners aged 18 years and over;

(b) unconvicted prisoners from convicted prisoners;

and any such class may be separated into such groups or divisions as may, subject to the provisions of this section, be prescribed.

(2) Any separation made under subsection (1) shall have regard to the age, temperament and record of each prisoner, and shall be made with a view to maintaining good order and in the case of convicted prisoners, to facilitating their training and treatment in order to encourage and assist them to lead a good and useful life.

(3) Nothing in this section shall require a prisoner to be deprived unduly of the society of other persons.

Custody outside prison.

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26.(1) A prisoner being taken to or from the prison in custody shall be exposed as little as possible to public observation, and proper care shall be taken to protect him from curiosity and insult.

(2) A prisoner required to be taken in custody to any court shall wear his own clothing, or clothing different from the dress worn in the prison.

Special removal of prisoners.

27.(1) Subject to the provisions of this Act, a prisoner shall not be removed from prison before he becomes lawfully entitled to release, save in the following cases–

(a) in pursuance of any order or process of a court of justice;

(b) in case of fire or sudden or urgent necessity;

(c) for the purpose of work or recreation; or

(d) in any case in which the medical officer or, in cases of emergency and in the absence of the medical officer, the Superintendent, may direct his removal to a hospital for the purposes of examination or treatment.

(2) The Minister may order the removal of a prisoner to such other place of confinement as may be specified in the order–

(a) for the purpose of enabling the prison to be altered, enlarged, repaired or rebuilt;

(b) in the case of a contagious or infectious disease breaking out in the prison;

(c) for the prisoner to appear before a court for examination, trial or as a witness; or

(d) for any other reasonable cause,

and may at any time order that any such prisoner be returned to the prison.

(3) A prisoner who has been removed from the prison in pursuance of the provisions of this section shall, notwithstanding such removal, be deemed for the purposes of this Act to be confined within the prison.

Persons unlawfully at large.

28.(1) Any person who, having been sentenced to imprisonment, or having been committed to prison, is unlawfully at large, may be arrested by a police officer without warrant and taken to the place in which he is required in accordance with law to be detained.

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(2) Where any person sentenced to imprisonment is unlawfully at large at any time during the period for which he is liable to be detained in pursuance of the sentence, then, unless the Minister otherwise directs, no account shall be taken, in calculating the period for which he is liable to be so detained, of any time during which he is absent from the prison.

(3) The provisions of subsection (2) shall apply to a person who is detained in custody in default of payment of any sum of money as if he were sentenced to imprisonment.

ADMISSION OF PRISONERS

Receipt for prisoner.

29. The Chief Officer shall, upon receiving a prisoner into custody, give to the police officer or other person delivering the prisoner a receipt setting forth the condition of the prisoner when delivered by such officer or person to the Chief Officer; and a copy of such receipt shall be kept in the records of the prison.

Search.

30.(1) Every prisoner shall be searched on reception into prison, when taken into custody by a prison officer, and at such subsequent times as the Superintendent may order, and all unauthorised articles shall be taken from him.

(2) A prisoner shall be searched in as seemly a manner as is consistent with discovering anything concealed.

(3) No prisoner shall be stripped and searched in the presence of another prisoner.

(4) A prisoner shall be searched only by prison officers of the same sex as the prisoner.

Expenses of conveyance to prison.

31. A prisoner shall not in any case be liable to pay the cost of his conveyance to prison.

Personal record.

32. A personal record of each prisoner shall be prepared and maintained during the duration of his sentence.

Weighing etc.

33. On the admission to prison of any prisoner, he shall be weighed and his personal particulars recorded.

Photographs, fingerprints etc.

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34.(1) Convicted prisoners may be photographed, and prints may be taken of their hands and feet.

(2) No copy of any photograph taken under subsection (1) shall be given to any person not authorised to receive it.

Register relating to religion.

35.(1) The Superintendent shall keep a register in which he shall record the religious denomination of prisoners admitted to the prison.

(2) A prisoner may, on admission to the prison, declare himself to belong to any religious denomination, and the Superintendent shall make a record of such fact in the register kept under subsection (1).

(3) A prisoner shall be treated as being of the religious denomination stated in the register kept under subsection (1), but the Superintendent may, after due enquiry, amend such register in relation to such prisoner, as may be appropriate.

Right of minister in respect of register.

36. On the request of any minister authorised under section 16 to visit prisoners, the Superintendent shall supply such minister with a list of the prisoners declared to belong to the religious denomination of that minister.

Children of women prisoners.

37.(1) The child of a woman prisoner may be admitted into the prison with its mother if the court which committed the prisoner shall have authorised such admission; and such child shall not be taken from its mother unless the medical officer of the prison shall so direct.

(2) No child shall be received into or detained in prison after it has attained the age of twelve months unless–

(a) the medical officer of the prison shall certify such detention as highly desirable; or

(b) there is no suitable person who is willing and able to care for the child.

(3) Any child detained in prison under this section shall, if necessary, be fed and clothed at the public expense.

(4) The medical officer of the prison may make such recommendations regarding the diet of such child as he may think fit.

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Appellants.

38.(1) Immediately on admission every convicted prisoner shall, if he has a right of appeal, be informed thereof and of conditions governing such appeal.

(2) Any prisoner who properly notifies the Superintendent of his intention to appeal shall be given all necessary facilities for prosecuting such appeal.

HEALTH

Medical attendance.

39.(1) The medical officer of the prison shall have the care of the health, mental and physical, of all prisoners.

(2) Every request by a prisoner to see the medical officer shall be recorded by the officer to whom it is made and promptly passed on to the medical officer.

(3) The medical officer may call another medical practitioner into consultation, at his discretion.

Directions of medical officer.

40. The medical officer shall make known to the Superintendent any circumstances connected with the prison or the treatment of prisoners which at any time appears to him to require consideration on medical grounds, and the Superintendent shall put into effect any directions which the medical officer may give for preventing injury to health.

Examination of prisoners.

41. The medical officer shall examine every prisoner as soon as possible after admission and immediately prior to discharge and on such other occasions and for such other purposes as may be prescribed, and shall record the results of such examination in the appropriate record.

Medical treatment of unconvicted prisoner.

42. If an unconvicted prisoner desires the attendance of a registered medical practitioner or dentist, and will pay any expense incurred, the Superintendent shall, if he is satisfied that there are reasonable grounds for the request, allow him to be visited and treated by that practitioner or dentist in consultation with the medical officer.

Removal to hospital.

43.(1) A prisoner may, by the direction of the medical officer or, in an urgent case, of the Superintendent, be removed to any hospital approved by the Minister.

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(2) Save as otherwise expressly provided, a prisoner shall be deemed for all purposes to be in prison custody while he is in or proceeding to or from hospital, provided that a prison guard need not be provided unless the Superintendent thinks necessary.

(3) A prisoner shall be returned from the hospital to the prison when the medical officer certifies that he is fit to return.

Special illnesses and conditions.

44.(1) The medical officer shall report to the Superintendent on the case of any prisoner whose health is likely to be injuriously affected by continued imprisonment or any conditions of imprisonment and the Superintendent shall send the report to the Minister without delay, together with his own recommendations thereon.

(2) The medical officer shall pay special attention to any prisoner whose mental condition appears to require it, and make special arrangements which appear necessary for his supervision or care.

(3) The medical officer shall inform the Superintendent if he suspects any prisoner of having suicidal intentions, and the prisoner shall be placed under special observation.

Inspection of prison.

45. The Chief Environmental Health Officer, or an officer appointed by him, shall at intervals of not less than once a fortnight–

(a) inspect the prison for the purposes of public health and hygiene; and

(b) in particular, inspect the drains, lavatories, washing facilities, cooking facilities, food, bedding and sleeping accommodation.

Notification of illness or death.

46.(1) If a prisoner dies, becomes seriously ill, sustains any severe injury or is removed to hospital, the Superintendent shall at once inform the prisoner's spouse or next of kin, and also any person who the prisoner may reasonably have asked should be informed.

(2) If a prisoner dies, the Superintendent shall–

(a) give immediate notice thereof to the Minister;

(b) immediately inform the Coroner, pursuant to section 4 of the Coroner Act, that such person has died.

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Power to discharge prisoner temporarily on account of ill health.

47.(1) If the Minister is satisfied that by reason of the condition of a prisoner's health it is undesirable to detain him in prison, but that, such condition of health being due in whole or in part to the prisoner's own conduct in prison, it is desirable that his release should be temporary and conditional only, the Minister may, if he thinks fit, having regard to all the circumstances of the case by order authorise the temporary discharge of the prisoner for such period and subject to such conditions as may be stated in the order.

(2) Where an order of temporary discharge is made in the case of a prisoner not under sentence, the order shall contain conditions requiring the attendance of the prisoner at any further proceedings on his case at which his presence may be required.

(3) Any prisoner discharged under this section–

(a) shall comply with any conditions stated in the order of temporary discharge; and

(b) shall return to prison at the expiration of the period stated in the order, or of such extended period as may be fixed by any subsequent order of the Minister,

and if the prisoner fails so to comply or return, he may be arrested without warrant and taken back to prison.

(4) Where a prisoner under sentence is discharged in pursuance of an order of temporary discharge, the currency of the sentence shall be suspended from the day on which he is discharged from prison under the order to the day on which he is received back into prison, so that the former day shall be reckoned and the latter day shall not be reckoned as part of the sentence.

(5) Nothing in this section shall affect the duties of the medical officer of a prison in respect of a prisoner whom the Minister does not think fit to discharge under this section.

Power to test prisoners for controlled drugs.

48.(1) If an authorisation is in force for the prison, any prison officer may, at the prison, require any prisoner who is detained in the prison to provide a sample of urine for the purpose of ascertaining whether he has any controlled drug in his body.

(2) If the authorisation so provides, the power conferred by subsection (1) shall include power to require a prisoner to provide a sample of any other description specified in the authorisation, not being an intimate sample, whether instead of or in addition to a sample of urine.

Power to test prisoners for alcohol.

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49.(1) If an authorisation is in force for the prison, any prison officer may, at the prison, require any prisoner who is detained in the prison to provide a sample of breath for the purpose of ascertaining whether he has any alcohol in his body.

(2) If the authorisation so provides, the power conferred by subsection (1) shall include power to require a prisoner to provide–

(a) a sample of urine, whether instead of or in addition to a sample of breath; and

(b) a sample of any other description specified in the authorisation, not being an intimate sample, whether instead of or in addition to a sample of breath, a sample of urine or both.

WORK

Work.

50.(1) All prisoners over the age of eighteen years and under the age of sixty years who are undergoing a sentence of imprisonment shall, subject to the provisions of this section, be required to work inside or outside the prison, on such work and at such times and in such manner as may be prescribed by regulations or standing orders.

(2) Provision shall be made for the technical training of suitable inmates in skilled trades.

(3) The medical officer may excuse a prisoner from work on medical grounds, and no prisoner shall be set to do work which is not of a class for which he has been passed by the medical officer as being fit.

(4) No prisoner shall work in the service of another prisoner or a prison officer, or for the private benefit of any person.

(5) An unconvicted prisoner shall be permitted, if he wishes, to work as if he were a convicted prisoner.

(6) Prisoners may be paid for their work as may be prescribed and may spend money on such articles and subject to such conditions as the Superintendent may direct.

ADDITIONAL DAYS

Additional days for disciplinary offences.

51.(1) Regulations made under section 71 ("prison regulations"), may in addition to anything provided for under that section include provision for the award of additional days-

(a) to fixed-term prisoners; or

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(b) conditionally on their subsequently becoming such prisoners, to persons on remand,

who (in either case) are guilty of disciplinary offences.

(2) Where additional days are awarded to a fixed-term prisoner, or to a person on remand who subsequently becomes such a prisoner, and are not remitted in accordance with prison regulations-

(a) any period which that prisoner must serve before becoming entitled to or eligible for release; and

(b) any period for which a licence granted to that prisoner remains in force,

is extended by the aggregate of those additional days.

(3) In this section "fixed-term prisoner" means-

(a) a person serving a sentence of imprisonment for a determinate term; or

(b) a person serving a determinate sentence of detention,

and "fixed-term sentence" means a sentence falling within paragraph (a) or (b).

AUTOMATIC RELEASE

Duty to release prisoners.

51A.(1) A person serving a sentence of imprisonment or detention for a determinate period-

(a) of 12 months or less; or

(b) exceeding 12 months, up to a period of 4 years,

shall be released automatically after such person has served the greater of-

(i) five days imprisonment, or

(ii) half of his sentence.

(2) A person to whom subsection (1)(a) applies is released unconditionally.

(3) A person to whom subsection (1)(b) applies is released on licence.

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(4) Subsection (1) shall not apply to a person-

(a) serving a sentence of imprisonment or detention for a determinate period exceeding 12 months for a specified offence; and

(b) who was aged 18 or over at the time of the offence (see section 54(1)(za)).

APPLICATION TO PRISONERS IN DEFAULT OF PAYMENT

Application of sections 51, 51A and 54.

51B.(1) A person committed to prison in default of payment of a sum adjudged to be paid by a conviction is to be treated-

(a) as a fixed-term prisoner for the purposes of section 51; and

(b) as a person serving a sentence of imprisonment for a determinate period for the purposes of section 51A and section 54.

(2) For the purposes of subsection (1) a person serving consecutive terms of imprisonment shall be treated as serving one term.

PAROLE BOARD AND RELEASE ON LICENCE

Parole Board.

52.(1) There shall be established a Parole Board which shall consist of at least five members appointed by the Minister, acting with the consent of the Chief Minister, and one of such members shall be so appointed as chairman.

(2) The Parole Board shall include among its members–

(a) a probation officer; and

(b) a solicitor or barrister of at least 7 years' post-qualification experience.

(3) No person who is serving, or who at any time has served, as a prison officer shall be a member of the Parole Board.

(4) If a member appointed under subsection (1) is for any reason unable to discharge the functions of his office the Minister, acting with the consent of the Chief Minister, may appoint a temporary member of the Parole Board.

(5) A quorum of the Parole Board shall consist of three members.

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(6) Subject to the provisions of subsection (5), the Parole Board may regulate its own procedure.

(7) The Parole Board shall as soon as possible after the end of each year make to the Minister a report of its functions during that year and every such report shall be laid before Parliament.

(8) A member shall be appointed for a renewable term of 3 years.

(9) The Minister may not terminate the appointment of a member of the Board unless–

(a) the Minister is satisfied that the member has grossly misconducted himself whilst performing his functions under this Act; and

(b) a resolution has been passed by a majority of the members of Parliament present and voting approving such termination.

(10) A member of the Parole Board may resign by notice in writing to the Minister.

(11) Without prejudice to the jurisdiction of the courts, in the exercise of their functions the Parole Board and its members shall not be subject to the direction or control of any other person or authority.

Functions of Parole Board.

53.(1) It shall be the duty of the Parole Board to advise the Minister with respect to–

(a) the release on licence under section 54, and the recall under section 59, of persons whose cases have been referred to the Parole Board by the Minister; and

(b) the conditions of such licences and the variation or cancellation of such conditions; or

(c) the conditions of licences and the variation or cancellation of such conditions for those prisoners released under section 51A(3); and

(d) such other matters as may be prescribed.

(2) The Parole Board shall deal with each case on consideration of any documents given to it by the Superintendent and of any reports it has called for and any information, whether oral or in writing, that it has obtained.

(3) If in any particular case the Parole Board thinks it necessary to interview the person to whom the case relates before reaching a decision, the Parole Board may itself interview such person or request one of its members to interview him, and shall take into account the report of that interview.

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(4) The person to whom a case being dealt with by the Parole Board relates shall have the right–

(a) to be legally represented and to make any representations to the Board about his case that he wishes to make; and

(b) to receive information relevant to the case,

under such conditions as may be prescribed.

(5) In deciding whether to advise the Minister to release a prisoner on licence under section 54, the Parole Board shall take into account the matters set out in–

(a) paragraph 1 of Schedule 1, if the person is serving a sentence for a determinate period; and

(b) paragraph 2 of Schedule 1, if the person is serving a term of imprisonment for life or detention during Her Majesty's pleasure.

(6) The Parole Board shall consider each case on its own merits without discrimination on any grounds.

Release on licence.

54.(1) Subject to subsections (2) to (8), the Minister shall act on the advice of the Parole Board and may release on licence–

(za) a person serving a sentence of imprisonment or detention for a determinate period exceeding 12 months-

(i) for a specified offence; and

(ii) who was aged 18 or over at the time of the offence,

after such person has served not less than three-quarters of his sentence;

(a) a person serving a sentence of imprisonment or detention for a determinate period of more than 4 years, not falling within paragraph (za), after such person has served not less than half of his sentence;

(b) a person detained during Her Majesty's pleasure;

(c) after consultation with the Chief Justice or trial judge, a person serving a term of imprisonment for life.

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(1A) *Deleted*

(2) Notwithstanding anything contained in subsection (1), the Minister may at any time release a person on licence if he is satisfied that exceptional circumstances exist which justify the person's release on compassionate grounds and, before releasing such a person, the Minister must consult the Parole Board unless the circumstances are such as to render such consultation impracticable.

(3) The Minister may, if he thinks it appropriate in a particular case, upon receipt of advice from the Parole Board that a prisoner be released, ask the Parole Board to reconsider their decision within 14 days, setting out the reasons why he believes the Parole Board should reconsider their decision.

(4) The Parole Board must give a final advice to the Minister within 14 days of the Minister's request under subsection (3).

(5) If the Parole Board's final advice is for release, the Minister may make an application to the Supreme Court within 7 days of receipt by him of the Parole Board's final advice.

(6) The Parole Board and the prisoner shall both be served with the application as interested parties and shall have the right to make representations before the Court.

(7) On an application by the Minister under subsection (5), the Court shall–

(a) consider the matter on its merits;

(b) take into account the matters set out in Schedule 1; and

(c) exercise its own discretion

in considering whether or not to direct the release of the prisoner.

(8) If the Court directs the release of the prisoner, the Minister shall give effect to that direction.

(9) For the purposes of subsection (1)(za) and section 51A(4), where a person has been sentenced to two or more sentences of imprisonment and at least one of the sentences is for a specified offence, subsection (1)(za) shall apply to that person.

Determination of sentence.

55. For the purposes of determining whether-

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(a) under sections 51A(1) and 54(1)(a) a person has served one half of his sentence; or

(b) under section 54(1)(za), a person has served three-quarters of his sentence,

any period spent in custody under an order of a court made in connection with the proceedings for the offence to which the sentence relates is to be treated as if he had served that period as part of the sentence.

Duration of licence.

56.(1) Subject to subsections (1A) and (1B) where a person is released on licence under 51A(1)(b) or 54(1)(a), the licence shall, subject to any revocation under section 59, remain in force for three-quarters of his sentence.

(1A) For the purposes of calculating the expiry of a licence under subsection (1) any additional days awarded under section 51 are added to the three-quarters of the sentence.

(1B) Where a person is released on licence after having served at least three-quarters of his sentence the licence, subject to any revocation under section 59, remains in force until the expiry of his sentence.

(1C) Where a person is released on licence under section 54(1)(za), the licence shall, subject to any revocation under section 59, remain in force for the remainder of his sentence.

(2) When a person is released on licence under section 54(1) (b) or (c), the licence shall, subject to any revocation under section 59, remain in force until his death.

Licence conditions.

57.(1) Subject to subsection (2), a licence granted under sections 51A(3) and 54–

(a) must include the standard conditions set out in paragraph 1 of Schedule 2; and

(b) may include–

(i) one or more of the conditions set out in paragraph 2 of Schedule 2;

(ii) any other condition which the Parole Board deems necessary for the purpose of giving effect to the matters it has considered pursuant to Schedule 1.

(2) The licence of a person–

(a) released under sections 51A(3) and 54; and

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(b) who has been given permission by the Government to leave Gibraltar for the purpose of residing permanently outside Gibraltar;

may contain such of the standard conditions as the Minister, in consultation with the Parole Board, considers appropriate.

(3) The Minister may, acting on the advice of the Parole Board, vary or cancel any of the conditions of any licence.

Duty to comply with licence.

58. A person released on licence must comply with such conditions as may be specified in the licence.

Recall of prisoners while on licence.

59.(1) Subject to subsection (2), the Minister may, acting on the advice of the Parole Board, revoke the licence of any person released on licence and recall him to prison.

(2) The Minister may revoke the licence of any person and recall him to prison without consulting the Parole Board, where it appears to him that it is expedient in the public interest to recall that person before such consultation is practicable.

(3) Where the Minister has revoked the licence of any person and recalled him to prison without consulting the Parole Board, the Parole Board shall review the decision as soon as reasonably practicable but after that person has been returned to prison and shall advise the Minister as to whether that person should be re-released.

(4) In determining whether to advise the Minister to re-release a person on licence, the Parole Board shall be entitled to take into account the information available at the time the recall decision was taken by the Minister, together with any subsequent information, including representations made by the prisoner.

(5) In respect of a person serving a sentence for a determinate period, when deciding whether to advise the Minister to revoke a licence under subsection (1) or to re-release under subsection (3) the Parole Board shall consider whether–

(a) the prisoner's continued liberty presents an unacceptable risk of a further offence being committed taking into account that a risk of sexual or violent offending is more serious than a risk of other types of offences; or

(b) the prisoner has failed to comply with one or more of his licence conditions and that failure suggests that the objectives of probation supervision have been undermined.

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(6) In respect of a person serving a term of imprisonment for life or detention during Her Majesty's pleasure, when deciding whether or not to advise the Minister to revoke a licence under subsection (1) or to re-release under subsection (3) the Parole Board shall consider whether the person's continued liberty would present an unacceptable risk of harm to other persons or be otherwise inconsistent with the requirements of his licence and the objectives of supervision in the community.

(7) In assessing the level of risk presented by the person under subsection (6), the Parole Board must address the following factors–

(a) the extent to which the person's continued liberty presents a risk of harm to a specific individual or individuals, or members of the public generally;

(b) the immediacy and level of such risk which the person presents and the extent to which this is manageable in the community;

(c) the extent to which the person has failed previously to comply with licence conditions or the objectives of supervision, or is likely to do so in future, and the effect of this on the immediacy and level of risk presented by him; and

(d) any similarity between the person's behaviour and that which preceded the offence or offences for which he was convicted.

(8) On the revocation of the licence of any person under this section, he shall be liable to be detained in pursuance of his sentence and, if at large, is to be treated as unlawfully at large.

(9) Subject to the procedure set out in subsections (3) to (8) of section 54, the Minister may, acting on the advice of the Parole Board, at any time after the person is returned to prison, release him again on licence.

Date of review.

60.(1) If the Parole Board advises the Minister under section 54 or section 59, not to release a prisoner on licence, and that prisoner is not so released, the Parole Board shall set the earliest date by which that decision can be re-considered.

(2) The earliest date for review of a decision under subsection (1) shall be no later than a year from the date of that decision.

Release on licence: drug testing requirements.

61.(1) When a person aged 14 or over is released on licence and a probation officer is of the opinion that–

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(a) the offender has a propensity to misuse any controlled drug; and

(b) the misuse by the offender of any controlled drug caused or contributed to any offence of which he was convicted, or is likely to cause or contribute to the commission of further offences,

the licence may include the condition that the person comply with the requirement of subsection (2).

(2) For the purpose of subsection (1), the requirement is that when instructed to do so by a probation officer the person must provide any sample mentioned in the instruction for the purpose of ascertaining whether he has any controlled drug in his body.

(3) A person under the age of 18 years may not be required by virtue of this section to provide a sample otherwise than in the presence of–

(a) a person with parental responsibility for him or his guardian;

(b) a social worker of the Care Agency; or

(c) if no person falling within paragraph (a) or (b) is available any responsible person aged 18 or over who is not a police officer or a person employed by the police.

Consecutive and concurrent terms.

61ZA. For the purposes of section 51A(1) and 54(1), consecutive terms and terms which are wholly or partly concurrent are to be treated as a single term if-

(a) the sentences were passed on the same occasion; or

(b) where they were passed on different occasions, the person has not been released at any time during the period beginning with the first and ending with the last of those occasions.

EXPIRATION OF SENTENCE

Expiration of sentence.

61A. A persons sentence expires-

(a) in a case where a person is released under section 51A(1)(a), and in appropriate cases after having served any additional days awarded under section 51, on the day that person is released;

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(b) in a case where a person has been released on licence under section 51A(1)(b) or 54(1)(a), (and the licence has not been revoked pursuant to section 59) on the expiration of the licence.

OFFENCES

Removal of visitors.

62. The Superintendent may remove or cause to be removed from prison any visitor to the prison whose conduct is improper.

Conveyance of prohibited articles into or out of prison.

63.(1) Any person who without lawful authority or excuse–

(a) brings, throws or otherwise conveys a List A article into or out of prison;

(b) causes another person to bring, throw or otherwise convey a List A article into or out of prison;

(c) leaves a List A article in any place (whether inside or outside a prison) intending it to come into the possession of a prisoner; or

(d) knowing a person to be a prisoner, gives a List A article to him,

is guilty of an offence and is liable on conviction on indictment to imprisonment for a maximum of ten years or to a fine (or both).

(2) Any person who without lawful authority or excuse–

(a) brings, throws or otherwise conveys a List B article into or out of prison;

(b) causes another person to bring, throw or otherwise convey a List B article into or out of prison;

(c) leaves a List B article in any place (whether inside or outside a prison) intending it to come into the possession of a prisoner; or

(d) knowing a person to be a prisoner, gives a List B article to him,

is guilty of an offence.

(3) A person guilty of an offence under subsection (2) is liable–

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(a) on conviction on indictment to imprisonment for a maximum of two years or to a fine (or both);

(b) on summary conviction to imprisonment for a maximum of six months or to a fine not exceeding level 3 on the standard scale (or both).

(4) Any person who without lawful authority or excuse–

(a) brings, throws or otherwise conveys a List C article into the prison intending it to come into the possession of a prisoner;

(b) causes another person to bring, throw or otherwise convey a List C article into the prison intending it to come into the possession of a prisoner;

(c) brings throws or otherwise conveys a List C article out of the prison on behalf of a prisoner;

(d) causes another person to bring, throw or otherwise convey a List C article out of the prison on behalf of a prisoner;

(e) leaves a List C article in any place (whether inside or outside the prison) intending it to come into the possession of a prisoner; or

(f) while inside a prison, gives a List C article to a prisoner,

is guilty of an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(5) A person who attempts to commit an offence under subsection (4) is guilty of that offence.

(6) For the purposes of this section–

(a) a List A article is any article or substance in the following list ("List A")–

(i) a controlled drug,

(ii) an explosive,

(iii) any firearm or ammunition,

(iv) any other offensive weapon;

(b) A List B article is any article or substance in the following list ("List B")–

(i) alcohol;

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(ii) a mobile telephone;

(iii) a camera;

(iv) a sound-recording device; and

(c) A List C article is any article or substance prescribed for the purposes of this paragraph.

(7) The reference in paragraph (ii), (iii) or (iv) of subsection (6)(b) (List B) to a device of any description includes a reference to–

(a) a component part of a device of that description; or

(b) an article designed or adapted for use with a device of that description (including any disk, film or other separate article on which images, sounds or information may be recorded).

Other offences relating to prison security.

64.(1) A person who without lawful authority or excuse–

(a) takes a photograph, or makes a sound-recording, inside the prison, or

(b) transmits, or causes to be transmitted, any image, sound or information from inside a prison by electronic communications for simultaneous reception outside the prison,

is guilty of an offence.

(2) A person who without lawful authority or excuse–

(a) brings or otherwise conveys a restricted document out of a prison or causes such a document to be brought or conveyed out of a prison;

(b) *Deleted*

is guilty of an offence.

(3) A person guilty of an offence under this section is liable–

(a) on conviction on indictment to imprisonment for a maximum of two years or to a fine (or both); or

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(b) on summary conviction to imprisonment for a maximum of six months or to a fine not exceeding level 5 on the standard scale (or both).

(3A) A person who, without lawful authority or excuse, is in possession of any of the items specified in subsection (3B) inside a prison is guilty of an offence.

(3B) The items referred to in subsection (3A) are–

(a) a device capable of transmitting or receiving images, sounds or information by electronic communications (including a mobile telephone);

(b) a component part of such a device;

(c) an article designed or adapted for use with such a device (including any disk, film or other separate article on which images, sounds or information may be recorded).

(3C) It is immaterial for the purposes of subsection (1)(a) where the recording medium is located.

(3D) In proceedings for an offence under this section it is a defence for the accused to show that he reasonably believed that he had lawful authority or excuse to do the act in respect of which the proceedings are brought.

(4) In subsection (2) "restricted document" means the whole or any part of–

(a) a photograph taken inside the prison;

(b) a sound-recording made inside the prison;

(c) a personal record (or a document containing information derived from a personal record);

(d) any other document which contains–

(i) information relating to an identified or identifiable relevant individual, if the disclosure of that information would or might prejudicially affect the interests of that individual; or

(ii) information relating to any matter connected with the prison or its operation, if the disclosure of that information would or might prejudicially affect the security or operation of the prison.

(5) In this section–

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"document" means anything in which information is recorded (by whatever means);

"personal record" means any record which is required by this Act or regulations made under it to be prepared and maintained in relation to any prisoner (and it is immaterial whether or not the individual concerned is still a prisoner at the time of any alleged offence);

"photograph" means a recording on any medium on which an image is produced or from which an image (including a moving image) may by any means be produced;

"relevant individual" means an individual who is or has at any time been–

(a) a prisoner or person working at the prison; or

(b) a member of such person's family or household.

"sound-recording" means a recording of sounds on any medium from which the sounds may by any means be reproduced.

Escape.

65. A prisoner who breaks or escapes from prison or escapes from any person having lawful custody of him is guilty of an offence and is liable on conviction on indictment to imprisonment for a maximum of ten years.

Attempts to escape.

66. A prisoner who–

(a) attempts to break or escape from prison; or

(b) forcibly breaks out of his cell; or

(c) makes any break therein with intent to escape therefrom,

is guilty of an offence and is liable on conviction on indictment to imprisonment for a maximum of five years.

Assisting a prisoner to escape.

67.(1) A person who–

(a) assists a prisoner in escaping or attempting to escape from a prison; or

(b) intending to facilitate the escape of a prisoner–

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(i) brings, throws or otherwise conveys anything into a prison,

(ii) causes another person to bring, throw or otherwise convey anything into a prison, or

(iii) gives anything to a prisoner or leaves anything in any place (whether inside or outside a prison),

is guilty of an offence and liable on conviction on indictment to imprisonment for a maximum of ten years.

Notice of offences.

68. The Superintendent shall cause to be fixed in a conspicuous place outside the entrance to the prison a notice summarising the offences against this Act and the punishment to which offenders are liable.

GENERAL

Code of discipline.

69. The Minister may approve a code of discipline to have effect subject to the provisions of this Act in relation to prison officers, or to such classes of prison officers as it may specify, setting out offences against discipline, the penalties which may be imposed in respect of them and the procedure for dealing with alleged offences.

Powers of punishment.

70.(1) Subject to subsection (2), the Superintendent may impose punishments on prisoners, of such nature and in respect of such offences and in such manner as may be prescribed.

(2) Only a justice of the peace may impose a punishment of additional days for an offence against discipline.

(3) A prisoner shall have the right to legal representation before a justice of the peace at any disciplinary hearing at which a punishment of additional days might be imposed.

(4) A prisoner shall, unless he is legally represented, have the right to such other representation as a justice of the peace may consider appropriate in any case in which he would have been entitled to legal representation under subsection (3).

Regulations.

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71.(1) The Minister may make regulations generally for giving effect to the provisions of this Act, and in particular, and without prejudice to the generality of the foregoing, providing for–

(a) the regulation, management and discipline of the prison;

(b) the functions of the Prison Board, the visits of members of the Board to the prison and the hearing by the Board of any complaints made by prisoners;

(c) the treatment, conduct and discipline of prisoners, including the measuring and photographing of prisoners, the times at which and the manner and dress in which prisoners shall be measured and photographed, the number of copies of the measurements and photographs of each prisoner which may be made, and the persons to whom they shall be sent;

(d) the manner in which a prisoner is to be taken to, kept in custody at and brought back from any place at which he is entitled to be present for the purposes of any legal proceedings;

(e) *Deleted*;

(f) the imposition of punishments on prisoners, the nature of such punishment and the manner in which such punishment shall be imposed;

(g) the training of particular classes of prisoners and the working of prisoners outside the prison;

(h) the temporary release of persons detained in prison, not being persons committed in custody for trial or committed to be sentenced or otherwise dealt with or remanded in custody by any court;

(i) the application of regulations to persons committed to prison in default of payment of any sum adjudged to be paid by a conviction;

(j) payments to discharged prisoners;

(k) procedures for drug and alcohol testing including the conduct of testing, the type of samples which may be taken and the information to be given to prisoners;

(l) the procedures for any appointments made under this Act;

(m) acting with the consent of the Chief Minister, the implementation of obligations imposed by any international agreement that is applicable to Gibraltar; and

(n) the appointment and functions of the Parole Board, including their independence in the exercise of those functions;

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(o) in consultation with the Parole Board, the proceedings of the Parole Board.

(2) Regulations made under this section shall make provision for ensuring that a person who is charged with any offence under the regulations shall be given a proper opportunity of presenting his case.

Power to amend Schedules.

72.(1) The Minister may by Order amend Schedules 1 and 2.

(2) The Minister may, after consultation with the Leader of the Opposition, make regulations amending Schedule 3.

Governor's constitutional responsibilities.

73.(1) Nothing in this Act or in any regulations made under this Act shall derogate from the responsibility of the Governor under the Constitution for defence, internal security or any other matter for which the Governor may have responsibility under the Constitution.

(2) The Government shall consult the Governor in relation to any matter for which the Governor has responsibility under the Constitution.

Repeal and savings.

74.(1) The Prison Act, 1986 is repealed.

(2) All prison officers appointed under section 4 of the repealed Act and holding office immediately before the appointed day shall be deemed to have been appointed under section 4 of this Act.

(3) The Prison Board and the Parole Board established under the repealed Act shall continue and have effect as if they had been established under this Act.

(4) Any appointment made to the Prison Board or Parole Board under the repealed Act shall continue and have effect as if such appointment had been made under this Act for such term as the appointment under the repealed Act was made.

(5) Subject to subsections (2) to (4), nothing in this section shall affect any order, rule, regulation, certificate, warrant or other instrument made or given under the repealed Act, and every such order, rule, regulation, certificate, warrant or other instrument shall, unless the circumstances or context otherwise require, continue in force on and after the appointed day and be deemed to have been made, given or done under the corresponding provisions of this Act.

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(6) In this section–

"appointed day" means the date of the coming into operation of this Act;

"repealed Act" means the Prison Act, 1986 repealed by subsection (1).

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SCHEDULE 1

Section 53(5)(a) and (b)

Matters to be taken into consideration by the Parole Board.

Prisoners serving a sentence for a determinate period.

1.(1) The Parole Board cannot advise the Minister to release a person serving a sentence for a determinate period on licence unless it is satisfied that it is no longer necessary for the protection of the public that the prisoner be confined.

(1A) The test to be applied by the Parole Board in satisfying itself that it is no longer necessary for the protection of the public that the prisoner should be confined, is whether the risk to the public of a further offence being committed at a time when the prisoner would otherwise be in prison is considered to be more than minimal.

(2) Before advising the Minister to release a prisoner on licence, the Parole Board shall consider the following factors and information, where relevant and available, recognising that the weight and relevance attached to particular information may vary according to circumstances–

(a) whether the safety of the public would be placed at risk and in assessing such risk the Board shall take into account–

(i) the nature and circumstances of the offence including any information provided in relation to its impact on the victim or victim's family;

(ii) the prisoner's background, including the nature, circumstances and pattern of any previous offending;

(iii) whether the prisoner has made positive and successful efforts to address the attitudes and behavioural problems which led to the commission of the offence;

(iv) the prisoner's attitude and behaviour to other prisoners and staff;

(v) the prisoner's awareness of the impact of the offence, particularly in relation to the victim or victim's family, and the extent of any demonstrable insight into his attitude and behavioural problems;

(vi) behaviour during any temporary release or other outside activities;

(vii) any risk to other persons, including the victim, their family and friends;

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(viii) any medical, psychiatric or psychological considerations relevant to risk (particularly where there is a history of mental instability); and

(iv) that a risk of violent or sexual offending is more serious than a risk of other types of offending;

(b) whether the longer period of supervision that the release on licence would provide is likely to reduce the risk of further offences being committed taking into consideration the potential benefit, both to the public and the prisoner, of early release back into the community under a degree of supervision which might help rehabilitation and so lessen the risk of re-offending in the future;

(c) whether the person released on licence is likely to comply with the conditions of his licence and the requirements of supervision, taking into account occasions where he has breached trust in the past or in considering re-release any previous breaches of licence conditions;

(d) the suitability of home circumstances;

(e) the relationship with the supervising probation officer;

(f) the attitude of the local community in cases where it may have a detrimental effect upon compliance; and

(g) representations on behalf of the victim in respect of licence conditions.

Prisoners serving a term of imprisonment for life or detention during Her Majesty's pleasure.

2.(1) The Parole Board cannot advise the Minister to release a person serving a term of imprisonment for life or detention during Her Majesty's pleasure on licence unless it is satisfied that it is no longer necessary for the protection of the public that the prisoner be confined.

(2) The test to be applied by the Parole Board in satisfying itself that it is no longer necessary for the protection of the public that the prisoner should be confined, is whether the prisoner's level of risk to the life and limb of others is considered to be more than minimal.

(3) In assessing the level of risk to life and limb presented by the prisoner, the Parole Board shall consider the following information, where relevant and where available, before recommending release under section 54, recognizing that the weight and relevance attached to particular information may vary according to the circumstances of each case–

(a) the prisoner's background, including the nature, circumstances and pattern of any previous offending;

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(b) the nature and circumstances of the offence, including any information provided in relation to its impact on the victim or victim's family;

(c) the trial judge's sentencing comments or report to the Minister, and any probation, medical, or other relevant reports or material prepared for the court;

(d) whether the prisoner has made positive and successful efforts to address the attitudes and behavioural problems which led to the commission of the offence;

(e) the nature of any offences against the prison discipline committed by the prisoner;

(f) the prisoner's attitude and behaviour to other prisoners and staff;

(g) the prisoner's awareness of the impact of the offence, particularly in relation to the victim or victim's family, and the extent of any demonstrable insight into his attitude and behavioural problems;

(h) the prisoner's response when placed in positions of trust, including any absconds, escapes and past breaches of temporary release;

(i) whether the prisoner is likely to comply with the conditions attached to his licence and the requirements of supervision, including any non-standard conditions; and

(j) any risk to other persons, including the victim, their family and friends.

(4) Before advising that a prisoner be released on licence the Board shall also consider–

(a) the prisoner's relationship with probation staff and other outside support such as family and friends;

(b) the attitude of the community in cases where it may have a detrimental effect upon compliance; and

(c) representations on behalf of the victim or victim's relatives in relation to licence conditions.

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SCHEDULE 2

Licence conditions

Section 57

Standard conditions.

1. A person released on licence shall–

(a) report to the probation officer upon release;

(b) keep in touch with the probation officer as instructed by him;

(c) receive visits from the probation officer as instructed by him;

(d) permanently reside at an address approved by the probation officer and obtain the prior permission of the probation officer for any stay of one or more nights at a different address;

(e) undertake work only with the approval of the probation officer and obtain his prior approval in relation to any change in the nature of the work;

(f) not travel outside Gibraltar except with the prior written permission of the probation officer;

(g) be of good behaviour, and not behave in a way which undermines the purposes of the release on licence, which are to protect the public, prevent re-offending and promote successful re-integration into the community; and

(h) not commit any offence.

Other conditions.

2. The conditions are those which impose on a person released on licence–

(a) a requirement that he reside at a certain place;

(b) a requirement relating to his making or maintaining contact with a person;

(c) a restriction relating to his making or maintaining contact with a person;

(d) a restriction on his participation in, or undertaking of, an activity;

(e) a requirement that he participate in, or co-operate with, a programme or set of activities designed to further one or more of the following purposes–

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(i) the protection of the public,

(ii) the prevention of re-offending, and

(ii) securing the successful re-integration of the prisoner into the community;

(f) not to administer or allow anyone to administer to him any controlled drug unless prescribed to him by a registered medical practitioner;

(g) a restriction on his entering any specified premises licensed to sell alcohol without the prior written permission of the probation officer;

(h) if section 61 applies, a drug testing requirement.

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SCHEDULE 3

SPECIFIED OFFENCES

Section 2

Crimes Act 2011

1. Any offence under any of the following provisions of the Crimes Act 2011-

section 167A (Strangulation or suffocation);
section 213 (Rape);
section 214 (Assault by penetration);
section 215 (Sexual assault);
section 216 (Causing a person to engage in sexual activity without consent);
section 217 (Rape of a child under 13);
section 218 (Assault of a child under 13 by penetration);
section 219 (Sexual assault of a child under 13);
section 220 (Causing or encouraging or assisting a child under 13 to engage in sexual activity);
section 221(Sexual activity with a child);
section 222 (Causing or encouraging or assisting a child to engage in sexual activity);
section 223 (Engaging in sexual activity in the presence of a child);
section 224 (Causing a child to watch a sexual act);
section 226 (Arranging or facilitating commission of a child sex offence);
section 227 (Meeting a child following sexual grooming etc.);
section 227A (Sexual communication with a child);
section 228 (Abuse of position of trust: Sexual activity with a child);
section 229 (Abuse of position of trust: Causing or encouraging or assisting a child to engage in sexual activity);
section 230 (Abuse of position of trust: Sexual activity in the presence of a child);
section 231 (Abuse of position of trust: Causing a child to watch a sexual act);
section 236 (Sexual activity with a child family member);
section 237 (Encouraging or assisting a child family member to engage in sexual activity);
section 241 (Sexual activity with a person with a mental disorder impeding choice);
section 242 (Causing or encouraging or assisting a person with a mental disorder impeding choice to engage in sexual activity);
section 243 (Engaging in sexual activity in the presence of a person with a mental disorder impeding choice);
section 244 (Causing a person with a mental disorder impeding choice to watch a sexual act);
section 245 (Inducement etc. to procure sexual activity with a person with a mental disorder);
section 246 (Causing a person with a mental disorder to engage in or agree to engage in sexual activity by inducement etc.);
section 247 (Engaging in sexual activity in the presence, procured by inducement etc., of a person with a mental disorder);
section 248 (Causing a person with a mental disorder to watch a sexual act by inducement, etc.);

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section 249 (Care workers: Sexual activity with a person with a mental disorder);
section 250 (Care workers: Causing or encouraging or assisting sexual activity);
section 251 (Care workers: Sexual activity in the presence of a person with a mental disorder);
section 252 (Care workers: Causing a person with a mental disorder to watch a sexual act);
section 256 (Simple possession of indecent photograph of a child);
section 257 (Taking and publishing indecent photographs of children);
section 262 (Paying for sexual services of a child);
section 263 (Causing or encouraging or assisting child prostitution or pornography);
section 264 (Controlling a child prostitute or a child involved in pornography);
section 265 (Arranging or facilitating child prostitution or pornography);
section 266A (Pornographic performances involving children);
section 267 (Causing or encouraging or assisting prostitution or gain);
section 275 (Keeping a brothel);
section 292A (Sending etc. photograph or film of genitals);
section 287 (Administering a substance with intent);
section 288 (Committing an offence with intent to commit a sexual offence);
section 289 (Trespass with intent to commit a sexual offence);
section 290 (Sex with an adult relative: Penetration);
section 291 (Sex with an adult relative: Consenting to penetration);
section 292 (Genital exposure);
section 293 (voyeurism);
section 293A (Voyeurism: additional offences);
section 295 (Intercourse with an animal);
section 296 (Sexual penetration with a corpse);
section 499A (possession of extreme pornographic images).

Imports and Exports Act, 1986

2. Section 14(1)(b) of the Imports and Exports Act, 1986 (Prohibited imports) in relation to indecent or obscene articles), if the prohibited articles included indecent photographs of persons under 16.

Inchoate Offences

3. A reference to an offence in the preceding paragraphs includes-

(a) a reference to an attempt, conspiracy or encouraging or assisting to commit that offence; and

(b) a reference to aiding, abetting, counselling or procuring the commission of that offence.

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