

PRISONS ACT, 1979

No. 28



of 1979

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SCHEDULE

An Act to repeal and replace the Prisons Act to provide for the modernization of the Prison Service and generally for the bringing up to date and rationalization of the law governing prisons and prisoners and for matters connected therewith

Date of Assent: 10.9.79.

Date of Commencement: On notice. *1st March 1980*

ENACTED by the Parliament of Botswana.

PART I Preliminary

1. This Act may be cited as the Prisons Act, 1979, and shall come into operation on such date as the Minister may, by notice published in the Gazette, appoint.

Short title
and
commence
ment

2. In this Act, unless the context otherwise requires, —
“appellant prisoner” means a convicted prisoner who is detained in a prison as a result of a conviction which is the subject matter of an appeal which has been entered or lodged but the decision in regard to which has not been given;

Inter-
pretation

“convicted prisoner” means a prisoner under sentence of a court or who has been convicted by a court and is awaiting sentence or upon whom sentence has, for any reason, been respited;

“Director” means the Director of Prisons appointed by the Minister in accordance with section 7;

“earnings” means earnings earned in a prescribed earnings scheme instituted under section 87;

“judge” means a judge of the High Court of Botswana and includes the Chief Justice;

“junior officer” means a prison officer of one of the ranks set out in the Schedule in respect of junior officers;

“major prison offence” means an offence declared to be a major prison offence by section 96;

“mechanical restraint” means restraint by the use of handcuffs, leg irons, strait jacket, body belt or any other form of restraint approved by the Minister in writing for the purposes of this Act;

“medical officer” means a person appointed to be the medical officer responsible for a prison in accordance with section 46;

“minister of religion” means an accredited representative of any religious body;

“minor prison offence” means an offence declared to be a minor prison offence by section 97;

“mutiny” means a combination between prison officers or a combination between prisoners or a combination between prison officers and prisoners to overthrow or resist or attempt to overthrow or resist lawful authority in the Prison Service or any part thereof;

- “offence against discipline” means an offence declared to be an offence against discipline by section 36;
- “officer in charge” means a prison officer appointed to be the officer in charge of a prison under section 14;
- “official visitor” means a person who is an official visitor by virtue of section 122;
- “peace officer” has the same meaning as in the Criminal Procedure and Evidence Act;
- “prison” means any building, enclosure or place or any part thereof declared to be a prison or temporary prison under section 3 or 4 and includes an open prison;
- “prisoner” means any person, whether convicted or not, under detention in a prison;
- “prison offence” means a major or minor prison offence;
- “prison officer” means any senior, junior or subordinate officer, whether permanent or temporary;
- “prohibited article” means any article which is not issued to a prisoner by authority of the officer in charge with the approval of the Director or in accordance with this Act;
- “public authority” means the Government or an agency thereof, a local authority or statutory corporation;
- “reduced diet” means a reduced diet awarded as a punishment under section 100 or 101;
- “release on parole” means conditional release from prison, before he has completed his term of imprisonment, of a prisoner under section 76;
- “remission” means remission granted or restored to a prisoner under section 80;
- “senior officer” means a prison officer of one of the ranks set out in the Schedule in respect of senior officers;
- “Service” means the Prison Service referred to in section 5;
- “subordinate officer” means a prison officer of one of the ranks set out in the Schedule in respect of subordinate officers;
- “temporary officer” means any person recruited temporarily to serve as a prison officer;
- “unconvicted prisoner” means a person, not being a convicted prisoner, duly committed to prison custody under a writ, warrant or order of any court or an order of detention issued by any person authorized in that behalf by any law;
- “visiting committee” means a visiting committee prescribed by section 125;
- “weapon” means a baton, riot stick, shield, tear gas grenade or firearm or any other article approved by the Minister in writing for use as a weapon by prison officers.

PART II *Establishment of Prisons*

3. The Minister may, by notice published in the Gazette, declare any building, enclosure or place or any part thereof to be a prison.

Declaration of prisons

4. The Director may, by notice published in the Gazette, with the approval of the Minister, declare any building, enclosure or place or any part thereof to be a temporary prison for the detention of such number of prisoners as the Director may, with the approval of the Minister, determine.

Declaration of temporary prisons

PART III *Constitution and Administration of Prison Service*

5. There shall be a Prison Service for Botswana.

Prison Service

6. Every prison officer shall be subject to the Botswana Public Service General Orders in so far as the same are not inconsistent with this Act.

Application of General Orders to prison officers

7. The Minister shall appoint a Director of Prisons who shall, subject to the general or specific directions of the Minister, be responsible to the Minister for the general supervision and control of all prisons, prison officers and prisoners and do all such acts as may be necessary for the efficient administration and management of the Prison Service in accordance with this Act and for the maintenance of prisons and prisoners.

Director of Prisons

8. (1) The Prison Service shall consist of officers of the ranks set out in the Schedule.

Composition of Prison Service

(2) The Minister may, by order published in the Gazette, amend the Schedule.

9. (1) There shall be a scheme of service for the Prison Service approved by the Director of Personnel in consultation with the Director of Prisons.

Scheme of service for Prison Service

(2) The scheme of service for the Prison Service shall –

- (a) prescribe the qualifications for entry into the Service and the criteria for promotion within the Service;
- (b) define the duties and responsibilities of each rank and grade within the Service; and
- (c) indicate the provision for training to assist prison officers to perform their duties efficiently and to progress within the Service.

10. (1) Except with the approval of the Minister, every appointment of a person to be a prison officer shall be to the basic grade of Warder.

General requirement in respect of first appointment of prison officers

(2) No person shall be appointed to be a prison officer unless he satisfies such general conditions as to age, physique, health, intelligence, education and personal qualities as the Director of Prisons may require.

Appointment of prison officers	<p>11. (1) The Permanent Secretary shall, after consultation with the Director, appoint fit and proper persons to hold the ranks of senior officers (other than the Director).</p> <p>(2) The Director shall appoint fit and proper persons to hold the ranks of junior and subordinate officers.</p>
Training of prison officers	<p>12. The Director shall appoint a senior officer to be responsible to the Director for the organization and administration of such training of prison officers as the Director may require in order to equip such officers to perform their duties efficiently or to prepare them to undertake the duties of officers of higher rank or grade within the Service.</p>
Termination of appointment, dismissal and retirement of prison officers	<p>13. Without prejudice to the powers conferred by sections 37 and 38, the Permanent Secretary, in the case of a senior officer (other than the Director) or the Director, in the case of a junior or subordinate officer, may at any time —</p> <ul style="list-style-type: none"> (a) terminate the appointment of such an officer who is on probation if the Permanent Secretary or the Director, as the case may be, considers that he is unlikely to become an efficient member of the Service; (b) retire such an officer on reduction of establishment; (c) retire such an officer if a board of Government medical officers, appointed by the Permanent Secretary to the Minister for the time being responsible for health, finds that he is mentally or physically unfit for service and that such unfitness is likely to be permanent; (d) dismiss such an officer on conviction of an offence other than an offence under this Act; (e) retire in the public interest any such officer who displays an habitual inattention to orders or general incompetence or fails to obey orders or to co-operate with other officers of the Service or manifests a quarrelsome disposition or want of courage, ability or zeal, although he may not be guilty of a specified offence; or (f) accept the immediate resignation of any such officer if he considers it to be in the public interest to do so.
Officers in charge of prisons	<p>14. The Director shall, in respect of every prison, appoint a prison officer to be the officer in charge of that prison and control of that prison shall be vested in the officer so appointed.</p>
Minister may direct retention of prison officer in Service in certain circumstances	<p>15. Where the period of engagement in the Service of any prison officer is about to expire during any period when Botswana is at war or when a declaration under section 17 of the Constitution that a state of public emergency exists is in force or at a time when, in the Minister's opinion, war or such a declaration is imminent, the Minister may, in writing, direct that the prison officer shall remain in the Service for such period as the Minister shall specify.</p>

PART IV Powers and Duties of Prison Officers

16. (1) Every prison officer shall exercise such powers and perform such duties as may be assigned to him in accordance with this Act or any other law and shall obey all lawful orders in respect of the performance of his duties which he may from time to time receive from a prison officer senior to him in the Service.

Powers and duties of prison officers

(2) A prison officer shall immediately report to his superior officer any contravention of this Act which may come to his notice.

17. (1) The Director may, with the approval of the Minister, make standing orders to be observed by all prison officers.

Standing Orders

(2) In this Act, unless the context otherwise requires, every reference to the Act shall be deemed to include a reference to any standing orders made under this section.

18. (1) The officer in charge of a prison shall supervise and control all matters in connexion with the prison in accordance with this Act and shall be responsible to the Director for the conduct and treatment of the prison officers and prisoners under his control and for the due observance by the prison officers and prisoners of this Act and of all instructions issued thereunder.

Duties of officers in charge

(2) The officer in charge of a prison shall keep or cause to be kept such records as the Director may require.

(3) The officer in charge of a prison shall forthwith report to the Director any unusual incident or circumstances involving the good order and discipline of the prison or damage or injury to any building, equipment, prison officer, prisoner or other person under his charge.

(4) The officer in charge of a prison shall visit every part of the prison daily during working hours and at least once every week at night.

19. Every prison officer shall be liable for duty at all times and may at any time be detailed for duty in any part of Botswana.

Prison officers always liable for duty

20. For the purpose of apprehending any prisoner who may have escaped or is attempting to escape from a prison or while being conveyed to or from a prison or for the purpose of preventing the rescue of or an attack on a prisoner, every prison officer shall have all the powers, authority, protection and privileges of a peace officer.

Powers of prison officers in respect of escaped prisoners, etc.

21. The officer in charge of a prison may order the person or the quarters occupied by a prison officer to be searched at any time by a prison officer senior to that officer in the Service.

Officers in charge may order search of prison officers' persons or quarters

Powers of
officers in
charge to
arrest and
remand in
custody
other
prison
officers

22. (1) Where he is satisfied that such arrest is necessary in the interests of justice or for the maintenance of good order and discipline, the officer in charge of a prison may arrest without warrant or order the arrest without warrant of any junior or subordinate officer junior to him in the Service whom he suspects on reasonable grounds of having committed an offence under this Act (including an offence against discipline) or any other law.

(2) Where a prison officer is arrested under this section, the officer in charge shall forthwith determine whether —

(a) there is to be an enquiry into an alleged offence against discipline under section 37; or

(b) the arrested officer is to be delivered over to the police authorities to be dealt with according to law.

(3) Where a prison officer is arrested under this section and the officer in charge determines that there is to be an enquiry under section 37 or it is not reasonably practicable for him immediately to deliver the arrested officer, or cause him to be delivered, over to the police authorities and it would not, in the opinion of the officer in charge, be in the interests of justice or of the maintenance of good order and discipline to release the arrested officer from custody, he may order the remand or the further remand of the arrested officer in custody for such period or periods as do not exceed in the aggregate 24 hours.

(4) Where the officer in charge is of the opinion, on the grounds prescribed by subsection (3), that the arrested officer should be further remanded in custody beyond the period of 24 hours therein prescribed, he shall forthwith report the circumstances to the Director who may, if he is of the opinion that it would not be in the interests of justice or of the maintenance of good order and discipline to release the arrested officer from custody, order the further remand of the arrested officer in custody for such period or periods as do not exceed in the aggregate 24 hours:

Provided that where the officer in charge is unable to communicate with the Director in order to make a report in accordance with this section, he may, after consultation with the District Commissioner, himself order the further remand of the arrested officer in custody for such period or periods as do not exceed in the aggregate 24 hours.

(5) Where an arrested officer is remanded or further remanded in custody under this section because it is not reasonably practicable for the officer in charge immediately to deliver him, or cause him to be delivered, over to the police authorities, the officer in charge shall deliver him, or cause him to be delivered, over to the police authorities as soon as it is reasonably practicable to do so.

(6) The officer in charge of a prison shall forthwith transmit in writing to the Director particulars of every arrest under this section and of every remand or further remand in custody ordered by him under this section.

23. (1) A prison officer shall not use force against a prisoner unless, in all the circumstances, —

(a) the use of force and the degree of force used are necessary;

and

(b) the degree of force used is reasonable.

(2) When and as often as a prison officer uses force against a prisoner, he shall make an immediate report to the officer in charge of the prison.

(3) When and as often as the officer in charge of a prison uses force against a prisoner, he shall transmit to the Director a detailed written report of all the material circumstances.

(4) When and as often as the use of force by a prison officer against a prisoner is witnessed by, reported to or otherwise comes to the notice of the officer in charge of a prison, he shall enquire into all the material circumstances and thereafter transmit to the Director a detailed written report of those circumstances.

(5) The Director may in writing authorize any prison officer to carry such weapons as the Director may specify whilst on duty:

Provided that —

(i) a prison officer performing duties which bring him into direct contact with prisoners shall in normal circumstances carry only a small baton for his self-defence; and

(ii) a prison officer shall not carry a weapon unless he has been trained in the use of that weapon.

(6) The Director shall make standing orders prescribing —

(a) the circumstances in which weapons may be used by prison officers and the precautions to be taken to prevent their misuse; and

(b) in particular, the manner and circumstances in which anti-riot weapons and equipment, namely, anti-gas respirators, batons, helmets, shields and tear gas grenades, may be used by prison officers.

(7) Prison officers shall receive such physical training as is necessary to enable them to restrain aggressive prisoners.

24. No prison officer shall, without the permission of the Minister in writing, be concerned in any employment other than the duties assigned to him in accordance with this Act.

25. (1) No prison officer shall become a member of —

(a) a trade union or any body affiliated to a trade union; or

(b) a body the object or one of the objects of which is to control or influence conditions of employment in any trade or profession or the salaries, pensions or other conditions of the Service.

Use of
force and
weapons by
prison
officers

Prison
officers
not to
engage in
employment
outside
Service

Prison
officers
not to be
members
of trade
unions, etc.

(2) If any question arises as to whether a body is a trade union or a body such as is referred to in subsection (1), that question shall be decided by the Minister, whose decision shall be final.

(3) A prison officer may become a member of an association established by the Minister for members of the Service alone and regulated in the manner prescribed, notwithstanding that the association is a body such as is referred to in subsection (1)(b).

Immunity for acts done under authority of warrants

26. (1) Where the defence to a suit instituted against a prison officer is that the act complained of was done in obedience to a warrant purporting to be issued by a court or other competent authority, the court shall, upon production of the warrant and upon proof that the act complained of was done in obedience to the warrant, enter judgment in favour of the prison officer.

(2) No proof of the signature on a warrant shall be required unless the court has reason to doubt the genuineness thereof; and, where it is proved that such signature is not genuine, judgment shall nevertheless be given in favour of the prison officer if it is proved that at the time the act complained of was committed he believed on reasonable grounds that the signature was genuine.

Appointment of police officers to perform duties of prison officers

27. (1) Where, in any prison, the number of prison officers detailed for duty therein is insufficient to secure the good management and administration thereof, the Director may, with the consent of the Commissioner of Police, appoint temporarily such number of police officers as he considers necessary to perform the duties of prison officers in that prison.

(2) Every police officer appointed under subsection (1) shall thereupon have all the powers and perform in the prison concerned all the duties of a prison officer of the class to which the Director shall appoint him and shall be deemed to be a prison officer for the purposes of this Act.

(3) Where, on the removal of a prisoner from any prison, the prison staff is insufficient to provide escort for the prisoner, the officer in charge of the prison from which the prisoner is to be removed may deliver the prisoner to a police officer detailed for such duty.

(4) The officer in charge of a prison may deliver any prisoner to a police officer detailed for such duty to escort the prisoner to or from any court before which the prisoner is required to appear.

Director to make standing orders governing escort duties by prison officers

28. The Director shall make standing orders governing the conduct of prison officers whilst performing escort duties.

Mutiny and related offences

PART V *Offences by Prison Officers*

29. Any prison officer who mutinies and any prison officer or other person who, directly or indirectly, instigates, commits, counsels or solicits any mutiny among any prison officers or

prisoners or disobedience of any lawful order given by any prison officer or who attempts to seduce any prison officer from his allegiance or duty shall be guilty of an offence and liable to the penalties prescribed by section 136 (d).

30. Any prison officer who absents himself from duty without reasonable cause for a period exceeding 21 days shall be deemed to be a deserter and shall be guilty of an offence and liable to the penalties prescribed by section 136 (c). Desertion

31. Any person who by any means, directly or indirectly, procures or persuades or attempts to procure or persuade any prison officer to desert or who aids, abets or is accessory to the desertion of any prison officer or who, having reason to believe that any person is a deserter, shelters him or aids him in concealing himself or, if he is under arrest, rescues him or assists in his rescue shall be guilty of an offence and liable to the penalties prescribed by section 136 (c). Inciting prison officers to desert

32. Any prison officer who resigns from the Service or withdraws himself from his official duties without the permission in writing of the person by whom he was appointed shall be guilty of an offence and liable to the penalties prescribed by section 136 (b). Resignation without permission

33. (1) Any prison officer who solicits, receives or obtains or agrees or attempts to receive or obtain any bribe, fee, gratuity or reward from or, without the permission in writing of the Director, has any business dealings with any prisoner or relative of any prisoner shall be guilty of an offence and liable to the penalties prescribed by section 136 (c). Prohibited activities by prison officers

(2) Any prison officer who unlawfully sells or supplies or receives, directly or indirectly, any benefit or advantage from the sale or supply of any article to or for the use of any prisoner or for use in any prison shall be guilty of an offence and liable to the penalties prescribed by section 136 (c).

34. Any prison officer who assaults, threatens or insults any other prison officer senior to him in the Service when that other officer is on duty or when such assault, threat or insult relates to or is consequent upon the performance of duty by that other officer shall be guilty of an offence and liable to the penalties prescribed by section 136 (c). Assault on officer senior in Service

35. (1) Any male prison officer who enters or remains in a cell in which a female prisoner is confined without being accompanied at all times by a female prison officer shall be guilty of an offence and liable to the penalties prescribed by section 136 (a). Male prison officers not to enter or remain in cells of female prisoners without female prison officer except in emergency

(2) Notwithstanding subsection (1), a male prison officer may enter and remain in a cell in which a female prisoner is confined without being accompanied at all times by a female prison officer when he reasonably believes that life, health or good order and discipline would otherwise be endangered:

Offences
against
discipline
by prison
officers

Provided that this subsection shall not apply where it is reasonably practicable for the prison officer to be accompanied by another male prison officer or by a female person who is not a prison officer and he is not so accompanied.

36. (1) Any prison officer shall be guilty of an offence against discipline who —

- (a) disobeys or, without good and sufficient cause, omits or neglects to carry out any lawful order, written or otherwise;
- (b) is disrespectful in word, act or demeanour to any other prison officer senior to him in the Service;
- (c) uses obscene, abusive or insulting language to any other prison officer;
- (d) is slovenly, inattentive, uncivil or quarrelsome in the performance of his duties;
- (e) while on or off duty in uniform, is, without reasonable cause, improperly dressed or dirty or untidy in person, dress, clothing or accoutrements;
- (f) while on duty in plain clothes, is, without reasonable cause, dirty, or untidy in clothing or appearance;
- (g) while on duty, contravenes the standards which may from time to time be established with regard to the length of hair or beard;
- (h) while on parade, under instruction or receiving orders, talks or is inattentive or otherwise misbehaves;
- (i) having a duty to attend to or take action on any matter, neglects to do so or, without good and sufficient cause, fails to do so promptly and diligently;
- (j) while on duty, idles, gossips, sits or lies down without authority or reasonable cause;
- (k) sleeps at his post or leaves it, otherwise than in fresh pursuit of an offender whom it is his duty to apprehend, before being lawfully relieved;
- (l) offers or uses unwarranted personal violence to or against any person in his custody;
- (m) otherwise than in compliance with a lawful order, uses any weapon without just cause;
- (n) being under arrest or confinement, leaves or escapes from his arrest or confinement before he is set at liberty by proper authority;
- (o) being liable to arrest or confinement, puts up resistance to such arrest or confinement;
- (p) whilst on or warned for duty or at any time in a public place, renders himself unfit for duty through the consumption of intoxicating liquor or drugs;
- (q) whilst on or warned for duty partakes of any intoxicating liquor without authority;

- (*gg*) fails to report any complaint or report made against any prison officer;
- (*hh*) without reasonable cause, omits to make any necessary entry in or erases, obliterates or defaces any entry in any official document;
- (*ii*) without good and sufficient cause, destroys or mutilates any official document;
- (*jj*) prevaricates before any person or board conducting an enquiry under this Act into any alleged offence against discipline;
- (*kk*) makes or signs any official document which contains a statement which he knows to be false or does not believe to be true;
- (*ll*) fails to account for or to make a true and prompt return of any money or property received in an official capacity;
- (*mm*) without the authority of the Director, accepts any fee or reward for any service performed in the course of his duties;
- (*nn*) without the authority of the Director, accepts or knowingly permits a member of his family to accept from any company, organization or individual other than a personal friend any gift, entertainment or other advantage;
- (*oo*) fails to return as soon as possible to the donor any gift received by him or a member of his family which, by virtue of paragraph (*nn*), may not be accepted or fails immediately to reject the offer of any gift, entertainment or other advantage which similarly may not be accepted;
- (*pp*) solicits any gift, entertainment or other advantage for himself or his family which, by virtue of paragraph (*nn*), may not be accepted;
- (*qq*) without due authority, shows to any person outside the Service any document, item or equipment or any other thing whatsoever the property of or in the possession of the Service or discloses or conveys to any person outside the Service any information relating to the Service;
- (*rr*) malingers or feigns or wilfully produces any disease or infirmity or fails to report any disease or accident which may interfere with the proper performance of his duties;
- (*ss*) disobeys, whether in hospital or elsewhere, any orders or medical instructions or is otherwise guilty of misconduct whereby any disease or infirmity is produced or aggravated or its cure is delayed;
- (*tt*) communicates with any prisoner in an improper way or for an improper purpose;
- (*uu*) assists or connives with any prisoner in having, obtaining or disposing of any prohibited article;
- (*vv*) is uncivil or lacking in courtesy to any member of the public; or

- (r) habitually uses to excess intoxicating liquor or habit-forming drugs;
- (s) without reasonable cause or excuse, is absent from or appears late at any duty, patrol, place of duty, parade, court or any other duty without official leave or permission;
- (t) without reasonable cause or excuse, leaves the area immediately adjacent to the prison where he is required to be available for duty without official permission;
- (u) without reasonable cause or excuse, fails to work any beat or patrol in accordance with orders or leaves any beat or beat point or other place of duty without official permission;
- (v) refuses or neglects to arrest or to assist in the arrest of any other prison officer, prisoner or other person whom it is his duty to arrest;
- (w) by his negligence or default aids the escape of any prisoner committed to his charge or whom it is his duty to keep or guard;
- (x) sells, loses by neglect, makes away with, wilfully spoils, pawns or fails to report any damage to any weapon, ammunition, accoutrement, clothing, equipment, medal or decoration granted to him for services or good conduct or any other public property;
- (y) steals, destroys or damages any property belonging to or issued to a prison or any prisoner;
- (z) lends money or offers any present to any other prison officer senior to him in the Service or borrows money or accepts any present from any other prison officer junior to him in the Service;
- (aa) incurs debt in or out of the Service without reasonable prospect or intention of paying the same or, having incurred any debt, makes no reasonable effort to pay the same;
- (bb) having a duty to report any matter, fails to do so;
- (cc) refuses or, without good and sufficient cause, omits to make or send a report, return or message which it is his duty to make or send;
- (dd) knowing any evidence or other matter relating to a criminal or disciplinary charge or investigation against any other person or knowing or having a reasonable belief that some other person has knowledge of such matters, fails or refuses to disclose such information to the proper authority;
- (ee) makes any frivolous, vexatious or anonymous complaint or makes a complaint in an irregular manner on any matter concerning the Service;
- (ff) makes a complaint or allegation against any other prison officer or any prisoner which he knows to be false or does not believe to be true or which wilfully suppresses any material facts;

(ww) is guilty of any neglect of duty, of acting in a disorderly manner or of any act or conduct to the prejudice of good order or discipline or likely to bring discredit on the reputation of the Service.

(2) Nothing in this section shall be construed to exempt any prison officer from being proceeded against for an offence under any other law; but no such officer shall be punished twice for the same offence.

37.(1) The Director, any senior officer authorized by him in writing in that behalf or any officer in charge of a prison (hereinafter referred to as "the presiding officer") may enquire into any alleged offence against discipline committed by a junior or subordinate officer (who shall, in the case of an alleged offence enquired into by an officer in charge of a prison, be junior to such officer in the Service) and, if satisfied after such an enquiry that the officer is guilty of the offence, may award any one or more of the punishments following —

Disciplinary proceedings against junior and subordinate officers

- (a) extra duties for a period not exceeding 7 days;
- (b) reprimand;
- (c) a fine not exceeding one third of one month's salary;
- (d) where there has been absence without leave, stoppage of salary equivalent to the salary accrued during the period of absence;
- (e) where there has been theft, disposal, loss by neglect, wilful spoiling or destruction of or damage or injury to property, stoppage of salary not in excess of the value of the loss involved;
- (f) withholding or deferment of any increment of salary for which the officer may be eligible;
- (g) reduction in rank;
- (h) dismissal from the Service.

(2) The presiding officer may, instead of awarding a punishment under subsection (1), dismiss the charge or admonish the officer concerned.

(3) Where the presiding officer is an officer other than the Director and the officer charged is found to be guilty and awarded any punishment under subsection (1), other than extra duties or a reprimand, the presiding officer shall transmit the record of the enquiry or a certified true copy thereof to the Director and the punishment shall remain in abeyance until the Director has signified his decision thereon under this section.

(4) On receipt of the record of the enquiry or a certified true copy thereof, the Director shall —

- (a) confirm, amend or set aside the findings of the presiding officer, in which last case he shall also set aside the punishment awarded by the presiding officer; and

(b) confirm the punishment awarded by the presiding officer, substitute for that punishment such punishment as he considers appropriate (whether more or less severe than or of a different kind from the punishment awarded by the presiding officer) or set aside that punishment.

(5) Where the Director sets aside the findings and punishment under subsection (4), he may direct that a fresh enquiry be made into the alleged offence, in which case the provisions of this section shall apply to the fresh enquiry.

(6) Any punishment awarded under subsection (1) shall remain in abeyance until —

(a) the time prescribed for appeal by section 44 has elapsed; or

(b) where an appeal has been duly lodged, the decision on such appeal has been delivered or the appeal has been withdrawn.

38. (1) The Permanent Secretary may appoint a board of enquiry to enquire into any alleged offence against discipline committed by a senior officer.

(2) Every board of enquiry appointed under subsection (1) shall consist of 3 members each of whom shall be a public officer of a rank not less senior than that of the officer into whose conduct the board is to enquire.

(3) The Permanent Secretary shall appoint a member of every board of enquiry appointed under subsection (1) to be the chairman of the board.

(4) Every board of enquiry appointed under subsection (1) shall enquire into the alleged offence against discipline and, after completing the enquiry to its satisfaction, shall transmit a record of the enquiry or a certified true copy thereof to the Permanent Secretary together with a written report stating whether or not the board is of the opinion that the senior officer in question is guilty of the alleged offence against discipline and setting out the reasons for that opinion and, where the board is of the opinion that the senior officer is guilty of the alleged offence against discipline, recommending the punishment, if any, to be awarded.

(5) The Permanent Secretary shall consider the record of the enquiry or the certified true copy thereof together with the written report transmitted to him in accordance with subsection (4) and, if satisfied that the senior officer in question is guilty of the alleged offence against discipline, may award any one or more of the punishments following —

(a) reprimand;

(b) a fine not exceeding one third of one month's salary;

(c) reduction in rank;

(d) dismissal from the Service.

(6) The Permanent Secretary may, instead of awarding a punishment under subsection (5), dismiss the charge or admonish the officer concerned.

(7) Any punishment awarded under subsection (5) shall remain in abeyance until –

- (a) the time prescribed for appeal by section 44 has elapsed; or
- (b) where an appeal has been duly lodged, the decision on such appeal has been delivered or the appeal has been withdrawn.

39. Every prison officer charged with an offence against discipline shall be entitled to be present throughout an enquiry held under section 37 or 38 and to defend himself.

Prison officers to be allowed to make their own defence Powers at disciplinary enquiries

40.(1) The presiding officer at an enquiry held under section 37 or a board of enquiry appointed under section 38 may summon and examine witnesses on oath and require the production of all documents and records relevant to the enquiry and adjourn any hearing from time to time.

(2) Any person summoned as a witness under subsection (1) who, without reasonable excuse, fails to attend at the time and place specified in the summons or on adjournment or refuses to answer any question lawfully put to him shall be guilty of an offence and liable to the penalties prescribed by section 136 (c):

Provided that no witness shall be obliged to answer any question which may tend to incriminate him or render him liable to any forfeiture or penalty.

(3) Witnesses attending an enquiry held under section 37 or 38 shall, where the presiding officer or chairman of the board of enquiry so directs, be paid allowances in accordance with the tariff payable to witnesses in civil proceedings in a magistrate's court.

41. Any fine or stoppage of salary shall be recovered from the offender's salary due or thereafter accruing, either as a single sum or in instalments; but so much only of his salary shall be stopped as shall leave him a residue of at least two-thirds of his monthly salary.

Fines and stoppage of salaries

42. (1) The Permanent Secretary or the Director may at any time in the interests of the Service interdict from duty any prison officer who is charged with an offence under this Act (including an offence against discipline) or any other law.

Interdiction

(2) A prison officer interdicted under subsection (1) shall receive during the period of his interdiction such portion of his salary, being not less than one-half, as the Director shall in each case determine.

(3) If such prison officer is not thereafter dismissed from the Service, he shall, subject to section 41, receive his full salary for the period of his interdiction.

(4) Subject to subsection (5), a prison officer shall not by reason of being interdicted from duty cease to be a prison officer.

(5) During the term of any interdiction from duty, the powers, functions and privileges vested in the officer interdicted, by virtue

of his being a prison officer, shall be in abeyance, but he shall continue subject to the same responsibilities, discipline and penalties and to the same authorities as if he had not been interdicted.

Prisons
Rewards
and Fines
Fund

43. (1) Any moneys received in payment of fines imposed under this Act for offences against discipline shall be paid into the Prisons Rewards and Fines Fund (in this section referred to as "the Fund").

(2) The Fund shall be administered by an officer of the Service of or above the rank of Assistant Superintendent who shall be appointed by the Director and shall be responsible, under the supervision of the Director, for the management of the Fund and shall prepare and submit annual accounts of the Fund as required by law.

(3) No payment shall be made out of the Fund unless the payment is authorized in writing by the Director.

(4) The Director may authorize payments out of the Fund for any of the purposes following –

- (a) assistance to the wives or families of deceased junior or subordinate officers or to junior or subordinate officers retired from the Service as mentally or physically unfit for service;
- (b) payments to junior or subordinate officers as rewards for meritorious service or acts in the performance of duty if such service or acts are not rewarded by payments made out of the Consolidated Fund;
- (c) the procurement of any comforts, conveniences or advantages to members of the Service which are not chargeable on the Consolidated Fund;
- (d) the grant of small loans in special circumstances to members of the Service repayable by instalments from their salaries;
- (e) the provision of prizes for competitions limited to members of the Service.

PART VI *Appeals*

Appeals

44. (1) Any prison officer whose appointment has been terminated or who has been dismissed or retired under section 13 or who has been found guilty and awarded any punishment under section 37 or 38 or who has been interdicted under section 42 may appeal against the termination of his appointment or the dismissal or retirement or against the punishment or the finding of guilt and the punishment or the interdiction to the Prisons Council.

(2) The Prisons Council may dismiss an appeal under subsection (1) or allow it in whole or in part.

(3) Notice of intention to appeal against any finding of guilt under section 37 or against any punishment awarded under that section shall be given in writing within 7 days immediately after the termination of the enquiry:

Provided that, where the record of the enquiry or a certified true copy thereof has been transmitted to the Director in accordance with section 37 (3), notice of intention to appeal shall be given in writing within 7 days immediately after the junior or subordinate officer concerned has been notified of the Director's decision under section 37 (4).

(4) Every notice of intention to appeal under subsection (3) shall be given to the officer in charge who shall forthwith transmit it to the Prisons Council and a copy thereof to the Director.

(5) Where a notice of intention to appeal has been given in accordance with subsections (3) and (4), the appellant shall, within 14 days immediately after the termination of the enquiry or within 14 days immediately after he has been notified of the Director's decision under section 37 (4), as the case may be, indicate the grounds of his appeal in writing to the Prisons Council and to the Director.

(6) Notice of intention to appeal against any finding of guilt under section 38 or against any punishment awarded under that section shall be given in writing within 7 days immediately after the senior officer concerned has been notified of the Permanent Secretary's decision under section 38 (5).

(7) Every notice of intention to appeal under subsection (6) shall be given to the Director who shall forthwith transmit it to the Prisons Council.

(8) Where a notice of intention to appeal has been given in accordance with subsections (6) and (7), the appellant shall, within 14 days immediately after he has been notified of the Permanent Secretary's decision under section 38 (5), indicate the grounds of his appeal in writing to the Prisons Council, to the Permanent Secretary and to the Director.

(9) The Prisons Council shall notify in writing to the appellant the result of every appeal.

45. The Prisons Council may, when considering an appeal under this Part, require the appearance of any witness or any additional witness and may require the production of such evidence as it may think it necessary to have in order to determine the appeal.

Procedure on appeal

Part VII *Medical*

46. (1) The Permanent Secretary to the Minister for the time being responsible for health shall, in respect of every prison, appoint a person from among medical practitioners (including Government medical officers) to be the medical officer responsible for that prison.

Medical officers

(2) The medical officer shall be responsible for the health of all prisoners in the prison and shall cause all prisoners to be medically examined at such times as shall be prescribed.

(3) The medical officer shall report to the officer in charge of the prison and to the Permanent Secretary to the Minister for the time being responsible for health any circumstances connected with the prison or the treatment of prisoners which at any time appear to him to require consideration on health or medical grounds.

Powers of
medical
officers

47. (1) A medical officer may, whether or not a prisoner consents thereto, take or cause to be taken or direct to be taken such action (including the forcible feeding, inoculation, vaccination and any other treatment of the prisoner whether of the like nature or otherwise) as he considers necessary to safeguard or restore the health of the prisoner or to prevent the spread of disease.

(2) All actions of a medical officer in exercise of the powers conferred by this section and all actions of a prison officer, medical orderly or other person acting under and in accordance with the directions or instructions of a medical officer given under this section shall be deemed to be lawful.

Mentally
disordered
prisoners

48. (1) The medical officer shall devote special attention to and examine regularly with reference to his mental state any person detained in the prison —

(a) by order of a court for observation and report on his mental condition; or

(b) pending an application or the result of an application for his certification and removal to an institution under any law relating to mental disorders.

(2) The medical officer shall record in writing his findings at every examination under subsection (1) and those findings shall be kept in the file of documents relating to the person concerned.

(3) The medical officer shall prepare such reports of examinations under this section and submit them to such persons as the Director or the Permanent Secretary to the Minister for the time being responsible for health may require or designate.

(4) The medical officer shall call for any previous reports when and as often as he conducts an examination under this section.

(5) When, in the opinion of the medical officer, the mental state of any prisoner, other than a prisoner under sentence of death, is such as to require further observation or treatment in a mental hospital, he shall, if circumstances so permit, order the removal of the prisoner to a mental hospital.

(6) Where any prisoner removed to a mental hospital is, in the opinion of the person in charge of the mental hospital, no longer of unsound mind, the person in charge as aforesaid shall notify the officer in charge of the prison from which the prisoner was removed and the prisoner, if still liable to be confined in prison, shall then be delivered into the custody of the officer in charge of that prison or, if not so liable, shall be discharged.

(7) The period during which a prisoner is kept detained in a mental hospital under this section shall be reckoned as part of his term of imprisonment.

49. (1) The medical officer shall, on every day on which he visits the prison, visit every prisoner under sentence of death or charged with a capital offence or in solitary confinement and shall ensure that every such prisoner is medically examined at least once every week.

Visiting and medical examination of prisoners under sentence of death, etc.

(2) The medical officer shall prepare and submit to the officer in charge of the prison a report of every medical examination made in accordance with this section, in such form as the Director may require.

50. The officer in charge of a prison may order any prisoner to submit himself to medical examination when and as often as that officer considers it necessary.

Officers in charge may order prisoners to be medically examined

51. (1) Upon the death of a prisoner, the officer in charge of the prison shall forthwith notify the District Commissioner of the district in which the prisoner died, the medical officer responsible for the prison, the Director and the next-of-kin of the deceased.

Death of prisoner

(2) The medical officer shall on the death of a prisoner, otherwise than by lawful execution, record in a register to be kept for that purpose the following particulars so far as they can be ascertained —

- (a) the date on which the deceased was sentenced;
- (b) the date on which he was admitted to prison;
- (c) the date on which he first complained of illness or was observed to be ill;
- (d) the labour, if any, on which he was engaged on the date referred to in paragraph (c);
- (e) the scale of his diet on the date referred to in paragraph (c);
- (f) the date on which he was admitted to hospital;
- (g) the date on which the medical officer was first informed of the illness;
- (h) the nature of the illness;
- (i) the date on which the deceased was last seen before death by the medical officer;
- (j) the date on which he died; and
- (k) the medical officer's opinion as to the cause of death.

(3) Upon the death of a prisoner otherwise than from what appear to be natural causes (except where the death is by lawful execution), the medical officer shall hold or cause to be held a post-mortem examination and thereafter shall record in the register prescribed by subsection (2), in addition to the matters required by that subsection, an account of the deceased prisoner's appearance after death together with any special remarks which may appear to the medical officer to be required.

(4) Upon the death of a prisoner the officer in charge shall inform the next-of-kin of the deceased that he may make his own

arrangements for the funeral; where the next-of-kin chooses to make his own arrangements for the funeral, the funeral shall not be at the public expense except that a decent coffin shall be provided at the public expense.

(5) Where the next-of-kin declines to make his own arrangements for the funeral, the deceased shall be decently buried at the public expense in the vicinity of the prison.

Other duties
of medical
officers

52. Medical officers shall perform such other duties not specifically prescribed by this Act as the Director may, in consultation with the Permanent Secretary to the Minister for the time being responsible for health, require them to perform.

Inquest on
deceased
prisoners

53. (1) Upon the death of a prisoner while detained in prison, the officer in charge shall take every reasonable step to facilitate the holding of any inquest into the death required by law as soon as practicable.

(2) At the conclusion of any inquest held into the death of a prisoner, the officer in charge shall forthwith take steps to obtain a copy of the record of the presiding officer recording his opinion as to the cause of death and any other matters relevant thereto and shall, on receipt of the copy, forthwith transmit it to the Director.

PART VIII *Admission, Control, Discharge and Temporary Release
of Prisoners, Compensation for Prisoners' Death or Incapacity and
Privileges*

Prisoners to
be subject to
Act at all
times

54. Every prisoner shall be subject to this Act during the whole time of his imprisonment whether he is or is not within the precincts of a prison.

Admission of
prisoners to
custody

55. (1) Every prisoner detained in a prison shall be deemed to be in the lawful custody of the officer in charge.

(2) No person shall be admitted into a prison as a prisoner unless accompanied by –

(a) a remand warrant, order of detention, warrant of conviction or of committal under the hand of any person authorized to sign or counter-sign such warrant or order;

(b) a requisition signed by an immigration officer in pursuance of any law relating to immigration;

(c) an order in writing signed by a peace officer consequent on his having arrested that person without warrant.

(3) Section 36 of the Criminal Procedure and Evidence Act shall apply to any person admitted to prison by virtue of an order such as is referred to in subsection (2) (c).

(4) The officer in charge or another prison officer authorized by him in that behalf shall satisfy himself before the admission of a prisoner that the prisoner is the person named in the warrant, order or requisition accompanying him and that the document bears the signature of a proper authority lawfully authorized to issue it and that it is in all respects in order.

(5) The officer in charge or other prison officer authorized under subsection (4) shall not refuse to accept a prisoner solely on the ground that there is an error on the face of any warrant, order or requisition accompanying the prisoner but shall forthwith take steps to have such error corrected.

(6) A prisoner who is being removed or transferred from one prison to another shall, whilst outside prison, be kept in the custody of the officer directed to convey him and shall be deemed to be in the lawful custody of the officer in charge of the prison at which that officer is serving.

(7) Subject to such conditions as may be specified by the Director, an unweaned infant child of a female prisoner may be received into prison with its mother and may be supplied with clothing and necessaries at the public expense.

(8) When an infant child received into prison under subsection (7) has been weaned, the officer in charge, if he is satisfied that there is a relative or friend of the mother able and willing properly to support and look after the child and that the mother agrees to the arrangements made, shall cause the child to be handed over to that relative or friend or, if he is not so satisfied, may hand over the child to the care of such person or organization as may be approved for the purpose by the Minister.

56. Every person remanded to a prison by any court or other competent authority, being a person charged with any offence, shall be delivered to the officer in charge together with the warrant of commitment and the officer in charge shall detain that person according to the terms of the warrant and shall cause that person to be delivered to the court or other competent authority at the time named in and according to the terms of the warrant or shall discharge that person at the expiry of the period of validity of the warrant in accordance with the terms thereof.

Remand
prisoners

57. Upon the admission to a prison as a prisoner of any person, the officer in charge shall cause to be recorded such particulars regarding that person as the Director may require.

Particulars
of prisoners
to be
recorded

58. (1) On his first and every subsequent reception into prison every prisoner shall be searched and any property found in his possession dealt with in accordance with section 59.

Search of
prisoners and
prisons and
confiscation
of
prohibited
articles

(2) There shall be such routine searches, at regular and irregular intervals, of prisons and their precincts and of prisoners to discover and seize prohibited articles as the Director may direct and such other searches of a prison and its precincts and of prisoners as the officer in charge may determine.

(3) A prisoner shall be searched in as seemly a manner as is consistent with discovering anything concealed on or about the person of the prisoner.

(4) No prisoner shall be stripped of his clothing in the sight of another prisoner or be searched whilst unclothed in the sight of another prisoner.

(5) Any search of a prisoner shall be carried out by a prison officer of the same sex and no person of the opposite sex shall be present during the search; if no prison officer of the same sex is available the search shall be postponed until it may be carried out by a prison officer of the same sex, who may be a temporary officer recruited for that purpose alone.

(6) Any prohibited article found in the possession of a prisoner at any time shall be confiscated and disposed of in such manner as the Director shall direct:

Provided that where the prohibited article is a dangerous or habit-forming drug it shall be destroyed if it is not required or as soon as it is no longer required as evidence in any proceedings.

Prisoner's
property

59. (1) All money, clothing and other property brought into a prison by any prisoner or sent to a prison for the use of a prisoner which he is not permitted to retain shall be placed in safe custody and an inventory made of the same and all such money, clothing and other property shall be returned to the prisoner when he is released from prison unless otherwise lawfully disposed of.

(2) All clothing to be placed in safe custody under subsection (1) shall, where appropriate, be washed and carefully folded before it is stored.

(3) Where any clothing of a prisoner is so old, worn out, dirty or tattered as to be, in the opinion of the officer in charge, unsuitable for further use, the officer in charge may order the same to be destroyed and, in such a case, on the release of the prisoner from prison, the officer in charge shall, at the public expense, provide the prisoner with such suitable clothing as he considers adequate to meet the prisoner's immediate need for clothing.

Statements
to and
investigations
by police
officers

60. (1) The officer in charge of a prison may, on production to him of a request in writing signed by a police officer in charge of a police station, permit a police officer, in the sight and hearing of a prison officer, to interview within the prison and take a statement from any prisoner for purposes connected with the investigation of any offence whatsoever:

Provided that, if the officer in charge is satisfied that the prisoner is willing to be interviewed by a police officer out of the sight and hearing of a prison officer, the officer in charge may permit the prisoner to be so interviewed within the prison by not less than 2 police officers.

(2) A prisoner may be temporarily removed from a prison in the custody of a police officer for the purpose of the investigation of any offence whatsoever if such removal is authorized by the court which sentenced or committed him to prison and takes place in accordance with such directions as the court may give:

Provided that the officer in charge may himself authorize such removal on production to him of a request in writing signed by a police officer in charge of a police station stating that, in the

opinion of the police officer signing the request, to obtain the authority of the court for the removal would not be in the interests of justice by reason of the delay that would thereby be caused.

(3) The officer in charge shall not himself authorize the removal of a prisoner under this section unless —

(a) he is satisfied that the prisoner is willing to be so removed; and

(b) not less than 2 police officers are present into whose custody the prisoner is to be delivered.

(4) Where the removal of a prisoner from a prison takes place under this section, the officer in charge shall cease to be responsible for compliance with this Act in respect of the prisoner until such time as the prisoner is received back into prison and —

(a) where the removal is authorized by a court, such police officer as the court shall designate for the purpose shall be so responsible; or

(b) where the removal is authorized by the officer in charge, the police officer who signed the request for the removal shall be so responsible.

(5) Where the removal of a prisoner from a prison takes place under this section, he shall, at the time he is received back into prison, be asked in the presence of the officer in charge and of the police officer or officers by whom he has been delivered to the prison whether he has any complaint to make as to the manner in which he has been treated during the period of his absence from prison.

61. (1) An unconvicted prisoner, an appellant prisoner or a prisoner under a decree of civil imprisonment may be permitted to maintain himself and arrange for the purchase of or receive from private sources at proper hours food, clothing, bedding or other necessities, but subject to examination and to such other conditions as may be prescribed for the purposes of this section.

Maintenance
of certain
prisoners
from private
sources

(2) No food, clothing, bedding or other necessities permitted under subsection (1) shall be given, hired, loaned or sold to any other prisoner and any prisoner such as is referred to in subsection (1) who contravenes this section or any condition which may be prescribed for the purposes of this section shall be liable to loss of all privileges permitted under this section, for such time as the officer in charge may determine, in addition to any punishment which may be awarded such prisoner for an offence under section 97.

(3) If a prisoner such as is referred to in subsection (1) does not provide himself with food, clothing or bedding or if such food, clothing or bedding is, in the opinion of the officer in charge, unsatisfactory, the prisoner shall receive the prescribed food, clothing or bedding.

Responsibility for female prisoners

62.(1) The officer in charge of any prison in which female prisoners alone are detained shall be a female prison officer.

(2) In any prison in which both male and female prisoners are detained there shall be a female prison officer who shall be responsible, subject to the supervision and control of the officer in charge and without prejudice to his responsibility for discipline, for the care, superintendence and welfare of all female prisoners.

Segregation of male and female prisoners

63. (1) Male and female prisoners shall be detained in separate prisons or in separate parts of the same prison in such manner as to prevent, as far as it is reasonably practicable to do so, their seeing or conversing or holding any communication with each other.

(2) Where male and female prisoners are detained in separate parts of the same prison, that part allocated to female prisoners shall be secured by locks different from those used to secure the part allocated to male prisoners.

Location of prisoners

64. A prisoner may be removed from any prison to any other prison at the Director's discretion.

Removal of sick prisoners to hospital

65. (1) In the case of the illness of a prisoner the officer in charge, on the advice of the medical officer, may order his removal to a hospital and in the case of an emergency or in the absence of the medical officer, the officer in charge may order the prisoner's removal to a hospital at his own discretion.

(2) Any prisoner removed to a hospital under this section shall be deemed to be under detention in the prison from which he was so removed.

(3) Where the medical practitioner in charge of a hospital considers that the health of a prisoner removed to the hospital under this section no longer requires his detention therein, he shall notify the officer in charge of the prison from which the prisoner was removed and the prisoner, if still liable to be confined in prison, shall then be delivered into the custody of the officer in charge of that prison or, if not so liable, shall be discharged.

(4) Every reasonable precaution shall be taken to prevent the escape of any prisoner under treatment in a hospital and any prison officer or the medical practitioner in charge of the hospital may take such measures for the prevention of the escape of the prisoner as he may consider necessary; but nothing shall be done under this section which, in the opinion of the medical practitioner in charge of the hospital, is likely to be prejudicial to the health of the prisoner.

(5) The period during which a prisoner is kept detained in a hospital under this section shall be reckoned as part of his term of imprisonment.

(6) If any prisoner escapes during such time as he is in any hospital (including a mental hospital), no prison officer shall be held answerable therefor unless the prisoner was, at the time of his escape, in the personal custody of that prison officer and no

medical practitioner or other person shall be held answerable therefor unless it is shown that he aided the prisoner to escape.

66. (1) When the officer in charge of a prison is required to remove any prisoner from one place to another and he considers it necessary for the safe removal of the prisoner that he should be confined by means of mechanical restraint, he may order him to be so confined in the prescribed manner. Mechanical restraints

(2) When handcuffs are used as a means of mechanical restraint under this section, they shall not be applied behind the prisoner's back unless he is violent or threatens violence.

(3) The officer in charge may order any prisoner to be confined at any time by means of mechanical restraint if he is of the opinion that such confinement is necessary to prevent the prisoner from injuring himself or others, damaging property or creating a disturbance.

67. (1) The officer in charge of a prison shall be responsible for the due discharge of all prisoners immediately upon their becoming entitled to be discharged. Discharge of prisoners

(2) No prisoner under treatment by the medical officer shall be discharged from prison except at his own request until, in the opinion of the medical officer, such discharge may be effected without danger to the health of the prisoner.

(3) All prisoners shall be discharged before noon on the day on which they are entitled to be discharged; but if that day falls on a Sunday or public holiday they shall be discharged before noon on the day next preceding that Sunday or public holiday which is not a Sunday or public holiday.

(4) A prisoner discharged from a prison situated in an area in which he does not normally reside shall, if he so desires, be returned at the public expense to such place as the officer in charge may determine.

68. (1) The Director may order that any prisoner be temporarily released from prison, for such period as he shall specify, in order to Temporary release of prisoners

- (a) visit a dying relative; or
- (b) attend the funeral of a relative.

(2) If, in the opinion of the officer in charge, a prisoner ought immediately to be released for a purpose specified in subsection (1) and it is not reasonably practicable for the officer in charge immediately to contact the Director, he may, after consultation with the District Commissioner, temporarily release the prisoner, for such period as he shall specify, for that purpose and shall report the circumstances to the Director as soon as it is reasonably practicable to do so.

(3) Where a prisoner is released under this section, the Director or the officer in charge, as the case may be, may order the prisoner

to observe such conditions during the period of his release as the Director or the officer in charge may in each case specify.

(4) A prisoner temporarily released from prison under this section may be recalled to prison at any time by the Director, or, where the prisoner was released under subsection (2), by the officer in charge, whether or not the prisoner has failed to observe any conditions he was ordered to observe during the period of his release, and for this purpose the Director or the officer in charge, as the case may be, may in writing authorize any peace officer to seize the prisoner and to surrender him into the custody of the officer in charge of any prison.

(5) A prisoner charged with murder, or an offence against the person for which the maximum punishment prescribed by law is imprisonment for 14 years or some greater punishment, shall not be temporarily released from prison under this section without the consent of the Attorney-General and during the period of any such temporary release shall at all times be under the escort of a prison officer.

(6) In subsection (1) "relative" means the father, mother, husband, wife, son, daughter, brother, sister or guardian of the prisoner or a person who would, in ordinary circumstances, be the immediate dependent of the prisoner.

Compensation for prisoner's death or incapacity

69. (1) If personal injury arising out of and in the course of work with which he is provided under this Act is caused to a prisoner, the Government may, as hereafter in this section provided, pay compensation to the prisoner or to his potential dependents.

(2) The Minister shall in every case determine whether or not compensation is to be under this section and the amount of compensation to be paid:

Provided that compensation shall not be paid under this section unless the Minister is satisfied that —

- (i) the injury in question has resulted in death or in such incapacity as will permanently incapacitate the prisoner for or from earning full wages in any employment he was capable of undertaking at the time of the accident resulting in such incapacity;
- (ii) the death or incapacity did not result from a deliberate self-injury; and
- (iii) the accident is not attributable to the prisoner's own serious and wilful misconduct.

Report to be made to Director where prisoners suffer personal injuries

70. When a prisoner suffers personal injury, whether or not that injury arises out of and in the course of work with which he is provided under this Act, the officer in charge shall forthwith submit to the Director a written report of the material circumstances and after considering the same the Director may order an enquiry into those circumstances by a senior officer and may, either after consideration of the findings of the senior officer charged with the

enquiry or at any time before then, submit the case to the Minister with a recommendation that compensation be paid under section 69.

71. The officer in charge of every prison shall keep an accident book and shall enter or cause to be entered therein, in such form as the Director may require, detailed particulars of any accident whereby personal injury is caused to a prisoner.

Accident books to be kept by all officers in charge

72. (1) Prisoners shall enjoy such privileges as the Director may direct.

Privileges

(2) The officer in charge of a prison may award to any prisoner or class of prisoners in his opinion deserving of the same such additional privileges as the Director may permit.

PART IX *Parole*

73. (1) The Minister may, by order published in the Gazette, establish such number of parole boards as he thinks appropriate for the purposes of this Act.

Establishment and constitution of parole boards

(2) Every parole board shall consist of at least one judge or magistrate, one medical practitioner (who may be a Government medical officer), one welfare officer (who may be a Government welfare officer) and 2 other persons who are not public officers and may, in addition to these persons, consist of such other persons as the Minister may determine.

(3) Every member of a parole board shall be appointed by the Minister by notice published in the Gazette and shall hold office for such period as the Minister may determine.

(4) Where one judge is a member of a parole board, he shall be chairman of the board and where 2 or more judges are members of a parole board, the senior in precedence shall be chairman of the board.

(5) Where no judge is a member of a parole board and —

(a) one magistrate is a member of the board, the magistrate shall be chairman of the board; or

(b) 2 or more magistrates are members of the board, the senior in grade shall be chairman of the board; and where 2 or more such magistrates share seniority in grade the Minister shall, after consulting the Chief Justice, designate the chairman of the board from among them.

(6) The Minister may give directions to a parole board or to parole boards generally as to the carrying out of its or their functions under this Act and every parole board to whom such directions have been given shall comply with those directions.

74. Subject to the other provisions of this Part, a prisoner shall be eligible for release from prison on parole if he is serving —

Eligibility of prisoners for release on parole

(a) a determinate term of imprisonment of not less than 4 years (whether that term consists of a single punishment or punishments running concurrently or consecutively), neither

the whole nor part of which was imposed for stealing stock or for unlawful dealing in or possession of precious stones, and he has served one half of that term or 3 years' imprisonment, whichever is the longer;

- (b) a determinate term of imprisonment of more than 5 years (whether that term consists of a single punishment or punishments running concurrently or consecutively), the whole or part of which was imposed for stealing stock or for unlawful dealing in or possession of precious stones, and he has served one half of that term or 5 years' imprisonment, whichever is the longer; or
- (c) a term of imprisonment for life or is confined during the President's pleasure and has served 7 years' imprisonment.

Parole boards to consider cases of prisoners eligible for release on parole and may make recommendations to Minister

75. (1) Shortly before a prisoner becomes eligible for release on parole a parole board shall consider his case and shall do so thereafter at least once every year.

(2) After considering a prisoner's case under this section, a parole board shall either —

- (a) recommend to the Minister in writing the release on parole of the prisoner, subject to such conditions as the board may in each case recommend:

Provided that no such recommendation shall be made unless the board has taken into consideration reports from the medical officer and the officer in charge of the prison in which the prisoner is detained; or

- (b) inform the Minister in writing of its decision not to recommend the release on parole of the prisoner.

(3) A parole board shall transmit to the Director a copy of every document submitted to the Minister under subsection (2).

Release on parole

76. After considering any recommendation made by a parole board under section 75 that a prisoner be released on parole, the Minister may in writing order the release on parole of the prisoner concerned, subject to such conditions as may be generally prescribed and as the Minister may in each case specify, which conditions the prisoner shall, for the purposes of this Act, be deemed to have been lawfully ordered to observe by a prison officer:

Provided that, where the prisoner concerned is serving a term of imprisonment the whole or part of which was imposed for stealing stock or for unlawful dealing in or possession of precious stones or a term of imprisonment for life or is confined during the President's pleasure, no order under this section shall have effect unless it is confirmed by the President in writing.

Breaches of parole

77. (1) Where the Minister is satisfied that a prisoner, after his release on parole, has contravened any condition subject to which his release on parole was ordered, he may order the recall of the prisoner to prison and for this purpose the Minister may in

writing authorize any peace officer to seize the prisoner and to surrender him into the custody of the officer in charge of any prison to complete his term of imprisonment.

(2) Where a prisoner is re-admitted to prison in consequence of his recall to prison under this section, the period for which he was at liberty after his release on parole shall not be reckoned as part of his term of imprisonment:

Provided that the Minister may in writing direct that the whole or part of that period shall be reckoned as part of the prisoner's term of imprisonment.

78. Subject to section 77 (2), when a prisoner is released from prison on parole he shall be deemed to continue to serve his term of imprisonment.

Period of parole to count as part of term of imprisonment

PART X Training and Rehabilitation of Prisoners, Remission, Prison Advisory Committee and Long-term Prisoners

79. (1) The training and treatment of convicted prisoners shall be directed towards encouraging and assisting them to lead good and useful lives.

Training and rehabilitation of prisoners

(2) Every prisoner able to profit from whatever educational and vocational facilities are provided at any prison shall be encouraged to do so.

(3) Special attention shall be given to the education of illiterate prisoners and, where the officer in charge considers it necessary to do so, they shall be taught during the hours normally allocated to work.

(4) Every prison shall be provided with a library where it is reasonably practicable to do so and every prisoner shall be permitted to have and exchange books from the library.

(5) Every prisoner shall be encouraged and assisted to establish and maintain such relations with persons and agencies outside prison as may, in the opinion of the officer in charge, best promote the interests of his family and his own social rehabilitation.

80. (1) Subject to subsection (2), every prisoner under sentence of imprisonment for more than one month shall, on admission to prison, be granted remission of one third of his sentence and may thereafter forfeit that remission or part thereof as provided by this Act.

Remission

(2) No remission shall be granted —

(a) to prisoners under sentence of imprisonment for life or confined during the President's pleasure; or

(b) which would result in the discharge of any prisoner before he has served a term of imprisonment of one month.

(3) The Director may restore forfeited remission in whole or in part.

81. (1) There shall be a Prison Advisory Committee to consider reports made under section 82, to advise the Minister thereon and to make recommendations to him in accordance with that section.

Prison Advisory Committee

- (2) The Prison Advisory Committee —
- (a) shall consist of —
- (i) a senior Government medical officer nominated from time to time by the Permanent Secretary to the Minister for the time being responsible for health; and
 - (ii) at least 3 other persons who are not medical practitioners; and
- (b) may, in addition to the persons referred to in paragraph (a), consist of such other persons as the Minister may determine.
- (3) Every member of the Prison Advisory Committee, other than the senior Government medical officer referred to in subsection (2) (a) (i), shall be appointed by the Minister by notice published in the Gazette and shall hold office for such period, not being less than 3 years, as the Minister considers will best facilitate continuity of policy and experience.

(4) The Minister shall appoint a member of the Prison Advisory Committee to be the Chairman thereof.

(5) An Assistant Secretary or a Principal in the Ministry of the Minister shall be the Secretary of the Prison Advisory Committee.

(6) The Minister may require the Prison Advisory Committee to consider and report to him on any matter connected with the administration, management or organization of the Service.

(7) Members of the Prison Advisory Committee may be paid such subsistence and travelling allowances as may be prescribed.

Long-term
prisoners

82. (1) The Director shall, at the intervals hereinafter prescribed, submit a report to the Minister —

- (a) on every prisoner serving a term of imprisonment for life or confined during the President's pleasure, the first such report to be submitted in the January immediately after he has served 5 years' imprisonment and thereafter such a report to be submitted in every third January; and
- (b) on every prisoner serving a determinate term of imprisonment of not less than 6 years, the first such report to be submitted in the January immediately after he has served one half of that term and thereafter such a report to be submitted in every third January:

Provided that, where the Minister is of the opinion that special circumstances exist, he may, in a particular case, direct that such a report shall be submitted earlier or at more frequent intervals.

(2) Every report submitted under this section shall include a medical report on the prisoner concerned in such form as the Minister may require and shall describe the prisoner's response to treatment and training and his progress towards rehabilitation.

(3) The Prison Advisory Committee referred to in section 81 shall consider every report submitted to the Minister under this section and advise the Minister thereon and may recommend to the Minister that —

- (a) any prisoner serving a determinate term of imprisonment of not less than 6 years be granted special remission on the ground –
 - (i) of his meritorious conduct;
 - (ii) that his mental or physical condition warrants such remission;
 - (iii) that special circumstances exist which, in the opinion of the Committee, warrant such remission; or
 - (iv) that his rehabilitation is complete; or
 - (b) any prisoner serving a term of imprisonment for life or confined during the President's pleasure be released on any ground specified in paragraph (a).
- (4) The Minister shall consider every recommendation made to him under this section and then submit it to the President together with his own recommendation.

PART XI *Employment of Prisoners*

83. (1) Prison labour shall not be afflictive. Employment
of prisoners
- (2) Sufficient work of a useful nature shall be provided to keep every prisoner who is required to work actively employed for a normal working day.
- (3) So far as is reasonably practicable, the work provided shall be such as will maintain or increase the ability of the prisoner to earn an honest living after his release from prison.
- (4) Wherever it is reasonably practicable to do so, vocational training for a useful trade shall be provided for every prisoner able to profit thereby and especially for every young prisoner.
- (5) Within the normal limits of discipline, the wishes of the prisoner shall be taken into account in deciding the type of work to which he is allocated.
- (6) In order to prepare prisoners for the conditions of normal occupational employment, the organization and methods of work shall resemble, as nearly as is reasonable, those of similar work outside prison.
- (7) Prison industries shall aim to be profitable; but that aim shall not be pursued so as to exclude the legitimate interests of prisoners and their proper vocational training.
- (8) Every convicted prisoner shall be given, within or without the precincts of the prison, such employment as the Director may direct:
- Provided that the medical officer may, after the examination of a prisoner, order on medical grounds that the prisoner shall be exempt from such employment for such period of time as the medical officer shall specify.
84. (1) Where it appears to the officer in charge of a prison Non-associated
labour that it is desirable for the maintenance of good order and discipline or in the interests of the prisoner that a prisoner should

not work in association with other prisoners, the officer in charge may order that the prisoner shall work in a cell or elsewhere not in association with other prisoners.

(2) No order shall be made under subsection (1) for the purpose of punishment.

(3) The officer in charge shall forthwith arrange for the prisoner to work in association with other prisoners as soon as it no longer appears to him desirable for the maintenance of good order and discipline or in the interests of the prisoner that the prisoner should not work in association with other prisoners or at the expiry of one month immediately after the order under subsection (1) is made, whichever is the earlier:

Provided that the Director may order that the period of one month prescribed by this section shall be extended by a further period of one month.

(4) The medical officer shall be consulted before any order is made under subsection (1) or the proviso to subsection (3).

Employment
of unconvicted
prisoners,
appellant
prisoners and
prisoners
under decree
of civil
imprisonment

85. Unconvicted prisoners, appellant prisoners and prisoners under a decree of civil imprisonment shall be required to keep their cells, furniture, clothing and utensils clean and may elect to perform such employment as the Director may permit for the purposes of this section.

Employment
of prisoners
outside
prison
other than
by public
authorities

86. (1) A prisoner may be employed outside a prison under the immediate order and for the benefit of a person other than a public authority; but no prisoner shall be so employed except in accordance with this section.

(2) Due account being taken of the productivity and quality of workmanship of a prisoner employed under this section, the person for whose benefit the prisoner is so employed shall pay to the Government such rates of pay as are currently paid to an employee doing the same or similar work under a contract of employment.

(3) A prisoner employed under this section shall be paid for his work in accordance with any prescribed earnings scheme instituted in the prison under section 87.

(4) Where a prisoner is employed under this section, the officer in charge shall forthwith submit to the Director written notification of the same in such form and containing such particulars of the prisoner and his employment as the Minister may require.

(5) The Director shall consider every notification submitted to him under subsection (4) and then transmit it to the Minister together with his advice thereon.

(6) The Minister shall consider every notification transmitted to him under subsection (5) together with the Director's advice thereon and may, in consultation with the Minister for the time

being responsible for labour (if other than himself), direct that the prisoner concerned shall cease to be employed under this section.

87. The Director may in any prison institute a prescribed earnings scheme in which prisoners employed under or in accordance with section 83, 85 or 86 may participate.

Prisoners' earnings

PART XII *Extra-Mural Labour*

88. Notwithstanding the other provisions of this Act or any other law, an offender who has been sentenced by any court to a term of imprisonment not exceeding 6 months (whether that term consists of a single punishment or punishments running concurrently or consecutively) or who has been committed by any court for non-payment of a fine not exceeding P400 may, by order of the court and with the consent of the offender, be employed under the immediate control and supervision of a public authority on public work or service carried on outside a prison.

Courts may order extra-mural labour for offenders

89. Notwithstanding the other provisions of this Act or any other law, where the Director or an official visitor is satisfied that an offender serving a term of imprisonment not exceeding 6 months (whether that term consists of a single punishment or punishments running concurrently or consecutively) may be usefully employed on any public work or service carried on outside a prison, he may, with the consent of the offender, order his release from prison and his employment under the immediate control and supervision of a public authority on such public work or service carried on outside a prison as the officer in charge of the prison shall approve.

Director and official visitors may order extra-mural labour for prisoners

90. (1) Where the employment of an offender under the immediate control and supervision of a public authority is ordered—

Officers in charge to have ultimate control of offenders doing extra-mural labour

- (a) by a court under section 88, the officer in charge of the prison situated within the district within which the court is situated shall have ultimate control of the offender or, where 2 or more prisons are so situated, the officer in charge designated by the Director shall have such control; or
- (b) by the Director or an official visitor under section 89, the officer in charge of the prison from which the offender is released shall have ultimate control of the offender.

(2) The officer in charge having ultimate control of an offender by virtue of subsection (1) shall designate the public authority which is to have the immediate control and supervision of the offender.

91. (1) The public authority under the immediate control and supervision of which an offender is employed under this Part shall —

Conditions of extra-mural labour

- (a) determine the number of hours the offender shall work each day:

Provided that no offender shall be required to work more than 8 hours a day; and

- (b) require the offender to report daily at such time and place as the authority or its duly authorized servant or agent shall specify.

(2) Section 80 shall apply, *mutatis mutandis*, in the case of an offender in respect of whom steps have been taken under this Part.

(3) No offender shall be employed under this Part on land other than land owned and occupied by a public authority.

(4) Every offender employed under this Part shall receive from the officer in charge having ultimate control of him food on the same dietary scale as the food he would have received in prison:

Provided that where, in the opinion of the officer in charge, it is not reasonably practicable for such an offender to draw rations from the prison, the officer in charge shall cause the offender to be supplied with food on a dietary scale approximating as nearly as is reasonably practicable to the dietary scale on which he would have received food in prison.

(5) Where the place of employment of an offender employed under this Part is situated at an unreasonable distance from his normal place of abode, suitable accommodation shall be provided for him.

Procedure where offender doing extra-mural labour found to be unfit

92. Where any offender is found by a medical practitioner to be medically unfit to perform the work or service on which he is or is to be employed under this Part, the medical practitioner shall forthwith make a written report to that effect to the relevant court, if the offender is or is to be employed by order of a court under section 88, or to the Director, if the offender is or is to be employed by order of the Director or an official visitor under section 89, and the court or the Director, as the case may be, may in writing authorize any peace officer to seize the offender and to surrender him into the custody of the officer in charge of any prison or to remove the offender direct to a hospital to serve the whole or the unexpired portion of his term of imprisonment as if he were a prisoner in respect of whom no steps had been taken under this Part.

Procedure where offender doing extra-mural labour under order of court is recalcitrant

93. (1) A public authority under whose immediate control and supervision an offender is or is to be employed by order of a court under section 88 may make a complaint in writing to the court that the offender, without reasonable excuse, —

- (a) has failed to present himself at the time and place specified under section 91 (1) (b);
- (b) has absented himself from his work without permission; or
- (c) does not work or conduct himself properly.

(2) Where a complaint is made under subsection (1), the court may in writing authorize any peace officer to seize the offender and to produce him before the court when the court shall enquire into the complaint and, if satisfied of the truth thereof, order the offender to be removed to prison to serve the whole or the unexpired portion of his term of imprisonment as if he were a prisoner in respect of whom no steps had been taken under this Part:

Provided that the court, instead of ordering the offender to be removed to prison, may, if it considers that special circumstances exist which justify that course, order that the offender be employed under the immediate control and supervision of some other public authority on public work or service carried on outside a prison, in which case the order shall, for the purposes of this Part, be deemed to have been made under section 88.

(3) Where a court orders an offender to be removed to prison under subsection (2), it may order forfeiture of remission not exceeding 30 days.

94. (1) Where the Director is satisfied that an offender employed or to be employed by order of the Director or an official visitor under section 89, without reasonable excuse, —

- (a) has failed to present himself at the time and place specified under section 91 (1) (b);
- (b) has absented himself from his work without permission; or
- (c) does not work or conduct himself properly,

the Director shall order the recall of the offender to prison and for this purpose may in writing authorize any peace officer to seize the prisoner and to surrender him into the custody of the officer in charge of any prison to serve the whole or the unexpired portion of his term of imprisonment as if he were a prisoner in respect of whom no steps had been taken under this Part:

Procedure where offender doing extra-mural labour under order of Director or official visitor is recalcitrant

Provided that the Director, instead of ordering the recall of the offender to prison, may, if he considers that special circumstances exist which justify that course, order that the offender be employed under the immediate control and supervision of some other public authority on such public work or service carried on outside a prison as the officer in charge having ultimate control of the prisoner shall approve, in which case the order shall, for the purpose of this Part, be deemed to have been made under section 89.

(2) Where the Director orders the recall of an offender to prison under subsection (2) he may order forfeiture of remission not exceeding 30 days.

Public
authorities
to maintain
records of
offenders
doing extra-
mural labour

95. Every public authority shall maintain, in such form and containing such particulars as the Director may require, a record of all offenders employed under its immediate control and supervision under this Part and shall make that register available for inspection at any reasonable time by the Director or the officer in charge of the prison.

PART XIII *Offences by Prisoners*

Major prison
offences

96. The following acts shall be major prison offences when committed by a prisoner —

- (a) mutiny or inciting any prison officer or other prisoner to mutiny;
- (b) escaping, attempting to escape or conspiring with any person to procure his own escape or that of another prisoner;
- (c) assisting or inciting any other prisoner to escape from the prison in which he is detained or from any post, place or conveyance where or wherein he may be for the purpose of labour or detention or from hospital or while in the course of removal from one place to another or from any lawful custody;
- (d) taking part in an assault on a prison officer;
- (e) taking any prison officer, other prisoner or person hostage, that is to say, unlawfully confining or detaining him for the purpose of inducing anyone to do or omit to do anything;
- (f) being in possession of any weapon, tool, instrument or other thing with intent to procure his own escape or that of another prisoner;
- (g) taking part in an aggravated or repeated assault on or unlawfully doing or attempting to do grievous harm to another prisoner; or
- (h) any prison offence committed by a prisoner who has already been convicted of 3 or more minor prison offences during his current term of imprisonment.

Minor prison
offences

97. The following acts shall be minor prison offences when committed by a prisoner —

- (a) disobeying or inciting any other prisoner to disobey any lawful order of the Director, the officer in charge of any prison or any other prison officer;
- (b) treating with disrespect or inciting any other prisoner to treat with disrespect any prison officer or any person authorized to visit the prison;
- (c) being idle, careless or negligent at work or refusing to work or inciting any other prisoner to refuse to work;
- (d) using any abusive, insolent, threatening or other improper language;

- (e) being indecent in language, act or gesture;
- (f) committing an assault on another prisoner, other than an assault referred to in section 96 (g);
- (g) communicating or attempting to communicate with another prisoner or any other person without authority;
- (h) leaving, attempting to leave or inciting any other prisoner to leave without permission any place where he ought to be;
- (i) wilfully disfiguring or damaging, attempting wilfully to disfigure or damage or inciting any other person wilfully to disfigure or damage any part of the prison or any property which is not his own;
- (j) having in his cell or ward or having in his possession or secreted within or without the precincts of the prison any prohibited articles;
- (k) giving or attempting to give to or receiving from any person any prohibited article;
- (l) making or inciting any other prisoner to make a groundless complaint;
- (m) malingering or feigning any illness, disease or infirmity or inciting any other prisoner to malingering or to feign any illness, disease or infirmity;
- (n) engaging in or inciting any other prisoner to engage in a hunger strike;
- (o) in any way offending against good order or discipline; or
- (p) any other act which the Minister, by order published in the Gazette, declares to be a minor prison offence for the purposes of this section.

98. (1) Every prison offence shall be reported forthwith to the officer in charge of the prison who shall, if he charges the prisoner, inform him of the offence with which he is charged. Charging of prisoners

(2) The officer in charge may order any prisoner so charged to be kept apart from other prisoners.

(3) When a prisoner is charged with a major prison offence the officer in charge shall forthwith inform the Director.

99. Every prisoner charged with a prison offence shall be entitled to defend himself by — Charged prisoners to be allowed to make own defence, etc.

(a) hearing and questioning any witness giving evidence against him;

(b) making a statement himself; and

(c) calling any witness whom he thinks necessary and who the person trying the charge is satisfied will materially assist in determining whether or not the prisoner is guilty of the offence with which he is charged:

Provided that a prisoner brought before a magistrate's court for trial in accordance with section 100 may elect to be represented by a legal practitioner.

100. (1) A prisoner charged with a major prison offence contrary to section 96 (a), (b), (other than attempting to escape), (c) or (e) shall be brought before a magistrate's court for trial and on conviction shall be liable to imprisonment for 2 years and to corporal punishment.

(2) The Director or other senior officer designated by the Director in that behalf may, within the prison in which the prisoner is detained, hear and determine a charge against a prisoner charged with attempting to escape, contrary to section 96 (b), or with any other major prison offence contrary to section 96 (d), (f), (g) or (h) and on conviction the prisoner may be awarded any one or more of the punishments following —

- (a) solitary confinement not exceeding 14 days;
- (b) reduced diet not exceeding 14 days;
- (c) forfeiture of remission not exceeding 60 days;
- (d) forfeiture of privileges not exceeding 6 months;
- (e) forfeiture of earnings not exceeding the amount earned in the preceding 6 months and removal from the prescribed earnings scheme for a period not exceeding 6 months.

(3) A prisoner charged with a major prison offence under section 96 (d) or (g) may, in addition to the punishments set out in subsection (2), be awarded corporal punishment.

(4) Where the officer trying a charge under subsection (2) is an officer other than the Director and the prisoner charged is convicted and awarded any punishment under that subsection or under subsection (3), the officer trying the charge shall transmit the record of the hearing or a certified true copy thereof to the Director and the punishment shall remain in abeyance until the Director has signified his decision thereon under this section.

(5) On receipt of the record of the hearing or a certified true copy thereof the Director shall —

- (a) confirm, amend or set aside the findings, in which last case he shall also set aside the punishment awarded; or
- (b) confirm the punishment awarded, substitute for that punishment such punishment as he considers appropriate (whether more or less severe than or of a different kind from the punishment originally awarded) or set aside that punishment.

(6) Where the Director sets aside the findings and punishment under subsection (5), he may direct a fresh hearing and determination of the charge, in which case the provisions of this section shall apply to the fresh hearing and determination.

(7) Notwithstanding subsection (2), a prisoner charged with attempting to escape, contrary to section 96 (b), or with any other major prison offence contrary to section 96 (d), (f), (g) or (h) may be brought before a magistrate's court for trial and on conviction of attempting to escape, contrary to section 96 (b), or of an offence contrary to section 96 (f) or (h) shall be liable to imprisonment for

2 years, and on conviction of an offence contrary to section 96 (d) or (g) shall be liable to imprisonment for 2 years and to corporal punishment.

(8) Any sentence or imprisonment awarded by a magistrate's court under subsection (1) or (7) shall run from the expiration of any other sentence then being served by the prisoner concerned.

101.(1) The Director, any other senior officer designated by the Director in that behalf or any officer in charge of a prison (in this section referred to as "the determining officer") may, within the prison in which the prisoner is detained, hear and determine a charge against a prisoner charged with a minor prison offence and on conviction the prisoner may be awarded any one or more of the punishments following —

Power to try
minor prison
offences

- (a) where the determining officer is the Director or other senior officer designated by the Director under this section —
 - (i) solitary confinement not exceeding 7 days;
 - (ii) reduced diet not exceeding 7 days;
 - (iii) forfeiture of remission not exceeding 14 days;
 - (iv) forfeiture of privileges not exceeding 3 months;
 - (v) forfeiture of earnings not exceeding the amount earned in the preceding 3 months and removal from the prescribed earning scheme for a period not exceeding 3 months;
- (b) where the determining officer is an officer in charge —
 - (i) solitary confinement not exceeding 3 days;
 - (ii) reduced diet not exceeding 3 days;
 - (iii) forfeiture of remission not exceeding 7 days;
 - (iv) forfeiture of privileges not exceeding one month;
 - (v) forfeiture of earnings not exceeding the amount earned in the preceding month and removal from the prescribed earnings scheme for a period not exceeding one month.

(2) Where a prisoner is convicted and awarded any punishment under subsection (1) (b) (i), (ii) or (iii) the determining officer shall transmit the record of the hearing or a certified true copy thereof to the Director and the punishment shall remain in abeyance until the Director has signified his decision thereon under this section.

(3) On receipt of the record of the hearing or a certified true copy thereof the Director shall —

- (a) confirm, amend or set aside the findings, in which last case he shall also set aside the punishment awarded; or
- (b) confirm the punishment awarded, substitute for that punishment such punishment as he considers appropriate (whether more or less severe than or of a different kind from the punishment originally awarded) or set aside that punishment.

(4) Where the Director sets aside the findings and punishment under subsection (3) he may direct a fresh hearing and determination of the charge, in which case the provisions of this section shall apply to the fresh hearing and determination.

Solitary
confinement
and reduced
diet

102. (1) No prisoner shall suffer solitary confinement or a reduced diet unless the medical officer has after examination certified his opinion that the prisoner is physically and mentally fit to undergo solitary confinement or to receive a reduced diet for the period awarded.

(2) No prisoner shall continue to suffer solitary confinement or a reduced diet where the medical officer has after examination certified his opinion that the prisoner is physically or mentally unfit to continue to undergo solitary confinement or to receive a reduced diet.

(3) Where a prisoner is punished with solitary confinement together with a reduced diet the period of the reduced diet awarded shall in no case exceed the period of solitary confinement awarded.

(4) No prisoner punished with solitary confinement or a reduced diet shall be put to any form of manual labour during the period of solitary confinement or the reduced diet:

Provided that such a prisoner may, at his own request, be given light manual labour during that period.

Offences
under this
Act in
relation to
other laws

103. Nothing contained in this Act shall be construed to exempt any prisoner from prosecution in respect of any offence under any other law; but no prisoner shall be punished twice or the same offence.

Register of
punishments

104. (1) The officer in charge of every prison shall keep a register of punishments and shall enter or cause to be entered therein a record of all punishments awarded prisoners showing, in respect of each prisoner punished, his name, the offence committed by the prisoner, the punishment awarded and the date of completion of the punishment awarded or, if the punishment was not completed, the reasons therefor.

(2) Every register such as is referred to in subsection (1) shall be available for inspection at any reasonable time by any official visitor to or the visiting committee for the prison concerned.

PART XIV *Corporal Punishment*

Laws to be
applied to
corporal
punishment
Cap. 08:01

105. Section 30 of the Penal Code and section 301 of the Criminal Procedure and Evidence Act shall, so far as they are applicable, apply to any sentence of corporal punishment awarded under section 100.

106. (1) Where the Director or other senior officer proposes to pass a sentence of corporal punishment for a major prison offence under section 100 (3) he shall adjourn the case without announcing any sentence and, in the case of the Director, shall submit the proposed sentence to the Minister or, in the case of an officer other than the Director, shall submit the proposed sentence to the Director who shall consider the same and then transmit it to the Minister together with his advice thereon.

Procedure where corporal punishment awarded by Director or other senior officer for major prison offence

(2) If a proposed sentence submitted or transmitted to the Minister under subsection (1) is not confirmed by the Minister or is not carried out for medical reasons, the Director or other senior officer trying the charge concerned may substitute for that proposed sentence any punishment prescribed by section 100 (2).

PART XV *Capital Punishment*

107. Every prisoner sentenced to death shall be confined in some safe place within a prison, kept apart from other prisoners and placed under constant supervision by a prison officer both by day and night.

Confinement, segregation and supervision of condemned prisoners
Persons permitted access to condemned prisoners

108. (1) No person other than the Minister, a prison officer, the medical officer or other medical practitioner in his place, a minister of religion or other person authorized by the Director shall have access to a prisoner under sentence of death:

Provided that such prisoner may, subject to any reasonable conditions the Director may impose, be visited by his legal advisers and such of his relatives and friends as he may express a wish to see.

(2) Any prisoner under sentence of death aggrieved by any decision of or condition imposed by the Director under this section may appeal to the Minister, whose decision shall be final.

109. No execution shall be carried out unless the officer in charge of the prison where the execution is to be carried out has received a warrant signed by the President in his own hand ordering that the sentence of death on the prisoner specified in the warrant shall be carried out within the prison at such time and by such person as are specified in the warrant.

Authority for executions

110. As soon as the time of the execution is appointed and in any case not less than 24 hours immediately before that time the officer in charge shall notify the prisoner under sentence of death that the execution is to be carried out at that time and shall advise him to give instructions regarding the disposal of his property.

Information of executions and prisoners' instructions in connexion therewith

111. (1) The execution of a prisoner under sentence of death shall be carried out in accordance with such regulations as the Minister shall make for that purpose.

Procedure at executions

(2) The execution of a prisoner under sentence of death shall be attended by the person charged with the execution, the officer in

charge of the prison, the medical officer or other medical practitioner in his place and such other prison officers, as the Director or the officer in charge may require to attend and may be attended by a minister of religion and such other persons as the Minister may authorize to attend.

(3) When sentence of death has been executed on a prisoner the medical officer or other medical practitioner who attended the execution in his place shall examine the body and shall ascertain the fact of death and shall sign a certificate thereof and deliver the certificate to the officer in charge who shall also sign the certificate and then transmit it to the Minister.

(4) The body of the executed prisoner shall be buried in the grounds of the prison in such manner as the Minister may require.

Saving

112. The omission to comply with any provision of this Part shall not make the execution of judgment of death illegal in any case where such execution would otherwise have been legal.

PART XVI *Prohibited Articles and Areas*

Proscription
of prohibited
articles and
powers of
examination
and search in
connexion
therewith

113. (1) No prisoner shall be in possession, either on his person or in any other place within or without the precincts of a prison, of any prohibited article unless such article has come into his possession in consequence of his work and he is not retaining it unlawfully.

(2) Any prison officer may examine anything being brought into or being taken out of a prison and may stop and search or cause to be stopped and searched any vehicle or person suspected by him of bringing into or taking out of a prison any prohibited article or of unlawfully removing or being used to remove anything from a prison.

(3) If, on searching any vehicle or person under subsection (2), a prison officer finds any prohibited article or anything being unlawfully removed from a prison, he may, without warrant, arrest the person who appears to him to have charge of the article or thing and seize and dispose of the article or thing in accordance with the Director's instructions.

(4) The search of a female person under this section shall be made with due regard to decency by a female prison officer or, if a female prison officer is not available, by a female person who is not a prison officer.

Seizure and
disposal of
prohibited
articles

114. Any prohibited article found to be unlawfully in a prison may be seized by any prison officer and thereafter shall be disposed of by the officer in charge in accordance with the Director's instructions.

115. Save as is provided by this Act, any person who brings, throws, carries or by any means whatsoever introduces or attempts to introduce into or removes or attempts to remove from any prison or gives, sells or lends to a prisoner any prohibited article shall be guilty of an offence and liable to the penalties prescribed by section 136 (b).

Penalty for unlawful introduction or removal of prohibited articles into and from prison

116. Save as is provided by this Act, any person who communicates verbally or otherwise with a prisoner shall be guilty of an offence and liable to the penalties prescribed by section 136 (b).

Penalty for unlawful communication with prisoners

117. (1) Any prison officer may, without warrant, arrest any person who –

Prison officers' powers of arrest

- (a) commits or attempts to commit an offence contrary to section 115 or 116;
- (b) when suspected by him of committing an offence contrary to section 115 or 116, refuses on demand of the prison officer to give his name and address; or
- (c) on demand of a prison officer gives a name or an address which the prison officer knows or has reason to believe to be false or which subsequently proves to be false.

(2) A prison officer effecting an arrest under subsection (1) shall forthwith deliver the person arrested into the custody of a police officer who shall thereupon proceed as if the offence had been committed by the person arrested in his presence.

118. Any person who –

- (a) is found loitering within 100 m of a prison or other place where prisoners may be for the purpose of imprisonment or labour and who fails immediately to depart therefrom upon being required so to do by a prison officer or police officer;
 - or
 - (b) in any manner wilfully interferes with a prisoner,
- shall be guilty of an offence and liable to the penalties prescribed by section 136 (a).

Persons loitering near prisons or prisoners to depart when required so to do

119. (1) Any person who, without authority from the Director
- (a) takes a photograph or makes a sketch of any prisoner; or
 - (b) takes a photograph or makes a sketch, plan or other representation of a prison or any part of a prison or any object within the precincts of a prison,

Prohibition of photographing or sketching of prisoners and prisons

shall be guilty of an offence and liable to the penalties prescribed by section 136 (a).

(2) A prison officer may seize any film, sketch, plan or other representation exposed or made in his presence in the circumstances described in subsection (1) and shall deliver the same to the officer in charge who shall dispose of it in accordance with the Director's instructions.

Removal of certain offenders

120. Any person found committing an offence contrary to section 118 or 119 may be removed from the place where he is committing the offence by a prison officer or police officer and, if the offence is repeated by that person after he has once been so removed, he may be arrested without warrant by a prison officer who shall forthwith deliver that person into the custody of a police officer who shall thereupon proceed as if the offence had been committed by that person in his presence.

Notices to be displayed in respect of certain offences

121. The Director shall cause to be affixed in a conspicuous place outside every prison, near the main gate of the prison, a notice in English and Setswana setting forth the acts prohibited by sections 115, 116, 118 and 119 and the penalties which may be incurred by their commission.

PART XVII *Official Visitors, Visiting Committees and Ministers of Religion*

Judges, magistrates and persons appointed by Minister to be official visitors to all prisons

122. The judges, all magistrates and such other persons as the Minister may, by notice published in the Gazette, appoint for that purpose shall be official visitors to all prisons.

Powers of official visitors

123. (1) Subject to subsection (2), an official visitor may at any time visit any prison and may —

- (a) call for all books, papers and records relating to the management and discipline of the prison;
- (b) visit every part of the prison and see every prisoner, including any in confinement;
- (c) inspect and test the quality and quantity of the prisoners' food;
- (d) do all such things as are reasonable and necessary to ascertain that the provisions of this Act are being observed; and
- (e) enquire into any complaint or request made by a prisoner.

(2) A male official visitor shall not visit any prison in which female prisoners alone are detained or any part of a prison set aside for the detention of female prisoners unless he is accompanied at all times by a female prison officer.

Record of visits by official visitors

124. (1) On completion of each visit to a prison an official visitor shall enter in a book to be kept by the officer in charge for that purpose such remarks, suggestions or recommendations as he may think fit.

(2) The officer in charge shall forthwith submit direct to the Minister a copy of every entry made under subsection (1) and transmit a further copy of every such entry to the Director.

Appointment of visiting committees

125. (1) There shall be a visiting committee for each prison which shall consist of such persons as the Minister shall, by notice

published in the Gazette, appoint, each of whom shall hold office for such period as the Minister may determine.

(2) The Minister shall appoint one member of each visiting committee to be chairman thereof.

(3) No person who has an interest in any contract for the supply of goods or services to any prison shall be appointed or remain a member of a visiting committee.

126. (1) Subject to subsection (2), a visiting committee shall have all the powers conferred on an official visitor by section 123 (1) and shall –

Powers and
duties of
visiting
committees

- (a) from time to time make recommendations to the Director and to the officer in charge on any matters relating to the good order and discipline and efficient management of the prison and the treatment of prisoners;
- (b) at least once every 3 months visit every part of the prison during such hours as may be prescribed and see every prisoner including any in confinement;
- (c) at least once every 3 months inspect and test the quality and quantity of the prisoners' food;
- (d) do all such things as are reasonable and necessary to ascertain that the provisions of this Act are being observed;
- (e) enquire into any complaint or request made by a prisoner which appears on the face of it to be reasonable, having regard to the requirements of this Act, and thereafter consult the officer in charge in respect of any such complaint or request which the committee finds to be justified; and
- (f) discharge all such other duties of a visiting committee which may be prescribed.

(2) A visiting committee the members of which visiting a prison under this Act are not all female persons shall not visit any prison in which female prisoners alone are detained or any part of a prison set aside for the detention of female prisoners unless the members of the committee are accompanied at all times by a female prison officer.

(3) A visiting committee may exercise all such other powers of a visiting committee which may be prescribed.

(4) The Minister or the Director may require a visiting committee to enquire into any matter he refers to it and thereafter submit a written report to him on its findings.

(5) Where one or more members of a visiting committee consider it necessary or expedient to do so and are of the opinion that the delay likely to be incurred by convening a quorum of the committee would not be justified, he or they may immediately perform any of the duties imposed or exercise any of the powers conferred on the committee; but such member or members shall forthwith make a report to the chairman of the committee of the

action taken under this subsection and that action shall be reviewed by the committee at its next meeting.

Records of visits by visiting committees or members thereof

127. (1) On completion of each visit to a prison by the visiting committee or by a member or members thereof under section 126, a member of the committee shall enter in a book to be kept by the officer in charge for that purpose such remarks, suggestions or recommendations as the committee or the member or members thereof, as the case may be, wish to be so recorded.

(2) The officer in charge shall forthwith submit to the Minister a copy of every entry made under subsection (1) and transmit a further copy of every such entry to the Director.

Ministers of religion

128. Ministers of religion may at such hours and in such places as may be prescribed or as the officer in charge of a prison may permit —

(a) be admitted to the prison to visit prisoners who may be desirous of their services; and

(b) be permitted to hold religious services within the prison.

Religious services

129. (1) Every prisoner, other than a prisoner in solitary confinement, shall be allowed to attend such religious services of his denomination as are held in prison.

(2) A prisoner in solitary confinement may, with the approval of the officer in charge, be visited by a minister of religion.

PART XVIII *Prisons Council*

Prisons Council

130. (1) There shall be a Prisons Council which shall consist of not less than 3 or more than 5 members appointed by the President.

(2) The President shall appoint a member of the Prisons Council to be the chairman of the Council.

Functions of Prisons Council

131. In addition to the powers conferred and the duties imposed on the Prisons Council by Part VI, the Prisons Council may exercise such powers and shall perform such duties with regard to the Service —

(a) as the President may, without derogating from the responsibilities and authority of the Director under section 7, direct; or

(b) as may be prescribed.

Procedure of Prisons Council

132. Subject to this Act, the Prisons Council shall regulate its own procedure, including its procedure in respect of appeals under Part VI.

PART XIX *Miscellaneous*

Convicted prisoners unlawfully at large

133. When any convicted prisoner is unlawfully at large at any time during the period for which he is liable to be detained in pursuance of his sentence, 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 unlawfully at large.

134. Any person who knowingly shelters, employs or gives succour to any prisoner who is unlawfully at large shall be guilty of an offence and liable to the penalties prescribed by section 136 (c). Sheltering prisoners

135. (1) The Director, with the approval of the Minister, may offer rewards to persons who give information leading to the apprehension of prisoners who have escaped from custody and any person giving such information, whether or not any such offer has previously been made, and any person who apprehends, secures or hands over or causes to be handed over to any officer in charge or his representative any prisoner who has escaped may be paid his just and reasonable expenses and, in addition, such sum by way of reward as the Minister may determine. Reward for apprehension of escaped prisoners

(2) No payment of any sum as a reward shall be made under this section to any prison officer or police officer unless, in the opinion of the Minister, such exceptional circumstances exist as to justify such a payment being made.

136. Any person convicted of an offence under this Act in respect of which it is provided that he shall be liable to the penalties prescribed by — Penalties for offences under this Act

- (a) this paragraph, shall be liable to a fine of P100, or in default of payment to imprisonment for one month;
- (b) this paragraph, shall be liable to a fine of P200, or in default of payment to imprisonment for 3 months, and to imprisonment for 3 months;
- (c) this paragraph, shall be liable to a fine of P400, or in default of payment to imprisonment for 6 months, and to imprisonment for 2 years; or
- (d) this paragraph, shall be liable to imprisonment for 10 years.

PART XX *Regulations*

137. (1) The Minister shall make regulations prescribing the matters which are required by this Act to be prescribed, except where it is provided that a matter shall be otherwise prescribed. Regulations

(2) The Minister may make regulations prescribing any of the matters which may by the other sections of this Act be prescribed, except where it is provided that a matter may be otherwise prescribed.

(3) The Minister may make regulations generally for the better carrying into effect of the purposes and provisions of this Act and, without prejudice to the generality of the foregoing, may make regulations in respect of all or any of the following matters —

- (a) the inspection of prisons;
- (b) the conduct of prison officers and the conduct and treatment of prisoners;
- (c) the classification of prisoners;
- (d) the duties and responsibilities of prison officers;

- (e) the procedure to be followed at an enquiry under section 37 or 38 or in relation to any matter arising out of such enquiry;
- (f) the medical inspection of prisons and prisoners and the prevention of disease in prisons;
- (g) the safe custody, management, organization, clothing, discipline, education, rehabilitation and discharge of prisoners;
- (h) the provision of a suitable diet and dietary scales for prisoners and the conditions under which such diet and scales may be varied;
- (i) the construction, description, equipment and supervision of cells and wards;
- (j) the employment of prisoners outside prison under section 86;
- (k) the manner in which an earnings scheme shall be conducted;
- (l) the use of mechanical restraints on prisoners;
- (m) a progressive stage system for prisoners;
- (n) the photographing, finger printing, foot printing, palm printing and measuring of prisoners;
- (o) the sending and receiving of letters by prisoners;
- (p) the regulation of visits to prisoners by relatives and other persons;
- (q) the manner in which visiting committees shall undertake their duties;
- (r) release on parole including the procedure of parole boards;
- (s) the recording of religious denominations of prisoners;
- (t) prisoners' aid societies and the after care of prisoners;
- (u) temporary release;
- (v) the manner in which prison offences shall be tried;
- (w) the organization or prison industries and the disposal of their products;
- (x) petitions to the Minister;
- (y) executions;
- (z) the powers and duties and terms and conditions of engagement and service of prison officers and other persons employed by the Service.

PART XXI *Repeal*

Repeal of
Cap. 21:03

138. The Prisons Act is repealed.

SCHEDULE

(s. 8)

RANKS OF PRISON SERVICE

Senior Officers

Director of Prisons
Deputy Director of Prisons
Assistant Director of Prisons
Senior Superintendent of Prisons
Superintendent of Prisons
Assistant Superintendent of Prisons

Junior Officers

Principal Warder
Head Warder

Subordinate Officers

Sergeant Warder
Warder

PASSED by the National Assembly this 16th day of August, 1979.

I.P. GONTSE,
Clerk of the National Assembly.