

Statutory Instrument No. 27 of 1980

PRISONS ACT, 1979

(28 of 1979)

PRISONS (AMENDMENT) REGULATIONS, 1980

(Published on 29th February, 1980)

ARRANGEMENT OF REGULATIONS

REGULATION

1. Citation
2. Substitution of new regulations 70, 70A, 70B, 70C, 70D, 70E, 70F, 70G, 70H, and 70I of Cap. 21:03 (Sub. Leg.)
3. Insertion of new Part IXA in principal Regulations
4. Addition of new regulations 77 and 78 to principal Regulations

IN EXERCISE of the powers conferred on the Minister of Home Affairs by sections 111 and 137 of the Prisons Act, 1979, the following Regulations are hereby made —

1. These Regulations may be cited as the Prisons (Amendment) Regulations, 1980.
 2. The Prisons Regulations (hereinafter referred to as "the principal Regulations") are amended by substituting for regulation 70 thereof the following new regulations —
 70. (1) The officer in charge of the prison shall ensure that every prisoner under sentence of death is thoroughly searched by a prison officer as soon as is reasonably practicable after sentence of death is passed on him.
 - (2) The officer in charge of the prison —
 - (a) shall ensure that every prisoner under sentence of death is searched twice daily by a prison officer; and
 - (b) shall take every reasonable step to ensure that no article with which he might do himself harm comes into the possession of a prisoner under sentence of death.
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| "Search of prisoner under sentence of death | 70A. The officer in charge of the prison shall ensure that a cell allocated to a prisoner under sentence of death is thoroughly examined and searched by a prison officer immediately before it is first occupied by the prisoner and thereafter — <ol style="list-style-type: none">(a) on every occasion the prisoner leaves the cell, immediately after he leaves the cell; and(b) on every occasion the prisoner re-enters the cell, immediately before the prisoner re-enters the cell. | Substitution of new regulations 70, 70A, 70B, 70C, 70D, 70E, 70F, 70G, 70H, and 70I of Cap. 21:03 (Sub. Leg.) |
| Search of cell occupied by prisoner under sentence of death | 70B. No prison officer shall unlock, enter or remain in a cell in which a prisoner under sentence of death is confined unless he is accompanied at all times by another prison officer:
Provided that, where a prison officer reasonably believes that life or health would otherwise be endangered, he may unlock, enter and remain in a cell in which such a prisoner is confined without being accompanied at all times by another prison officer. | |

Transfer of prisoner under sentence of death to prison where sentence to be executed	<p>70C. (1) Upon sentence of death being passed on a prisoner who is confined in a prison other than the prison at which the sentence is to be executed, the Director shall forthwith cause the prisoner to be removed under sufficient escort to the prison at which the sentence of death is to be executed.</p> <p>(2) Where a prisoner under sentence of death is admitted to the prison at which the sentence is to be executed following his removal to that prison in accordance with this regulation, the officer in charge of the prison shall forthwith report the admission in writing to the Director and the report shall state —</p> <ul style="list-style-type: none"> (a) the date on which the sentence of death was passed; (b) the place at which the sentence of death was passed; and (c) the nature of the offence for which the sentence of death was passed.
Guarding prisoner under sentence of death	<p>70D. (1) A prisoner under sentence of death, once confined in the prison at which the sentence is to be executed, shall not be removed from that prison for any purpose without the permission of the Director, except as provided by standing orders made under section 17 of the Act.</p> <p>(2) Where a prisoner under sentence of death is removed from the prison at which the sentence is to be executed, the officer in charge of the prison shall —</p> <ul style="list-style-type: none"> (a) provide a sufficient escort; (b) take every other reasonable step to prevent the prisoner's escape and to preserve his life and health during his absence from the prison; and (c) ensure that the prisoner does not spend any night outside the prison, except as provided by standing orders made under section 17 of the Act. <p>(3) A prisoner under sentence of death shall not be allowed to work.</p>
Visits to prisoner under sentence of death	<p>70E. (1) The officer in charge of the prison shall ensure that every visit to a prisoner under sentence of death, other than a visit by a minister of religion, takes place in the sight and hearing of at least 2 prison officers.</p> <p>(2) When and as often as a prisoner under sentence of death requests a visit by a minister of religion of his own religious persuasion, the officer in charge of the prison shall make arrangements for such a visit as soon as it is reasonably practicable so to do.</p> <p>(3) Subject to any conditions the Director may impose, the officer in charge of the prison shall permit a prisoner under sentence of death to be visited at any reasonable time by his legal advisers and such of his relatives and friends as he may express a wish to see.</p> <p>(4) The officer in charge of the prison shall ensure that the Minister, the medical officer or other medical practitioner in his place, every minister of religion and every other person</p>

authorized by the Director in that behalf have free and unfettered access at any time to a prisoner under sentence of death.

Correspondence by prisoner under sentence of death

70F. The officer in charge of the prison shall ensure that a prisoner under sentence of death is given every reasonable facility to enable him to correspond with his relatives, friends and legal advisers.

Formal statement to authorities by prisoner under sentence of death

70G. (1) Where a prisoner under sentence of death indicates his wish to make a formal written statement to any authority, including a petition to the President, the officer in charge of the prison shall forthwith make arrangements for the statement to be recorded in accordance with this regulation.

(2) Where the prisoner indicates his wish to write the statement himself, the officer in charge shall provide him with the necessary facilities so to do and, once the prisoner has finished writing the statement, the officer in charge shall invite him to subscribe his signature to the statement and shall subscribe his own signature to the statement.

(3) Where the prisoner indicates his wish that another person write the statement for him, the officer in charge shall cause the prisoner's statement to be taken down in writing in the language in which it is made and, as soon as the prisoner has finished making the statement, shall cause it to be read over to the prisoner in his presence and the officer in charge shall then invite the prisoner to subscribe his signature to the statement or to place his thumbprint beneath the statement and shall subscribe his own signature to the statement.

(4) Upon the statement being signed or thumbprinted by the prisoner and signed by the officer in charge in accordance with this regulation, the officer in charge shall forthwith transmit the statement to the Director who, on receipt of the same, shall forthwith transmit it to the authority to whom it is addressed.

Execution of death sentence

70H. (1) The execution of a sentence of death shall be by hanging and shall be carried out in accordance with such directions as the Director may give to ensure that such sentences are executed efficiently, quickly and humanely.

(2) In good time before a sentence of death is executed, the officer in charge of the prison shall ensure that he is familiar with the provisions of the Act which relate to the execution of sentences of death, with this regulation and with any standing orders and directions made or given by the Director relating to the execution of such sentences.

(3) Immediately before a sentence of death is executed, the officer in charge shall ensure that the person charged with the execution is familiar with this subregulation and with subregulation (4) and both the officer in charge and the person charged with the execution shall together satisfy themselves that the appliances to be used for the execution

are sound and in good working order and that every reasonable precaution has been taken to ensure the efficient, quick and humane execution of the sentence.

(4) During the course of the execution of a sentence of death the officer in charge and the person charged with the execution shall each take every practicable step open to him to ensure that the sentence is executed efficiently, quickly and humanely.

Burial of
body of
executed
prisoner

70I. (1) For the burial of the body of an executed prisoner, the Government shall provide without charge a coffin and such linen material as is necessary to ensure a decent burial.

(2) No relative or friend outside the Prison Service or any other member of the public shall attend the burial of the body of an executed prisoner.

(3) A minister of religion may be permitted to conduct such brief religious rites at the burial of the body of an executed prisoner as the deceased may have requested; but no further or other ceremony shall take place at the burial.”

3. The principal Regulations are amended by inserting therein, immediately before Part X, the following new Part –

Insertion of
new Part
IXA in
principal
Regulations

“PART IXA – *Disciplinary Proceedings against Prison Officers*

Bar on
disciplinary
proceedings
while
criminal
proceedings
pending

70J. Where criminal proceedings are instituted against a prison officer before any court within or outside Botswana, no proceedings under the Act in respect of an offence against discipline based on the same facts or substantially the same facts as any offence charged against the prison officer in those criminal proceedings shall be commenced or continued against the prison officer pending the final determination of his guilt or innocence and, where his guilt is finally determined, of the sentence.

Acquittal or
conviction
no bar to
disciplinary
proceedings
for different
offence

70K. Where a prison officer is acquitted or convicted of an offence in criminal proceedings before any court within or outside Botswana, the acquittal or conviction shall not bar the commencement or continuation of proceedings under the Act in respect of an offence against discipline which is a different offence from the offence of which the prison officer has been acquitted or convicted, notwithstanding that the offences are based on the same or similar facts.

Disciplinary
offences may
be charged
in
alternative

70L. At an enquiry under section 37 or 38 of the Act, different offences against discipline may be charged in the alternative.

Officer
accused to
be given
copy of
charge

70M. An enquiry under section 37 or 38 of the Act shall not commence unless the officer accused has been given a copy of the charge at least 24 hours beforehand.

Defence of
officer
accused

70N. (1) At an enquiry under section 37 or 38 of the Act, the officer accused shall be entitled to defend himself by –

- (a) hearing and questioning every witness who gives evidence against him;
- (b) giving evidence on oath or making an unsworn statement, in which last case he shall not be cross-examined;
- (c) calling any person as a witness whom he thinks necessary:

Provided that the presiding officer or the board, as the case may be, may refuse to permit the officer accused to call a person as a witness and may refuse to summon a person as a witness on the application of the officer accused, unless he or it is satisfied that such person will materially assist in determining whether the officer accused is or is not guilty of an offence with which he is charged; and every such refusal shall be recorded in the record of the proceedings; and

- (d) after all the evidence has been adduced, addressing the presiding officer or the board last.

(2) At an enquiry under section 37 or 38 of the Act, the presiding officer or the board, as the case may be, may permit the officer accused to be represented by another prison officer; but otherwise the officer accused shall not be represented at such an enquiry.

Powers of Director on review in relation to alternative and other offences proved

70P. On receipt of the record of an enquiry or a certified true copy thereof transmitted to him in accordance with section 37 (3) of the Act, the Director may substitute for the finding of guilt recorded and the punishment awarded by the presiding officer in respect of any offence a finding of guilt and such punishment as he considers appropriate in respect of a different offence the commission of which he is satisfied has been proved, whether that different offence was or was not charged.

Appeals to Prisons Council

70Q. (1) When an appeal is considered by the Prisons Council under Part VI of the Act, the Council –

- (a) may give the appellant the opportunity to address the Council; and
- (b) shall, whether the appellant is or is not given the opportunity to address the Council, give him the opportunity to make a written submission to the Council:

Provided that neither opportunity shall be given where the Council summarily dismisses the appeal under subregulation (4).

(2) Where the appellant is given the opportunity to address the Council under subregulation (1) (a), the Council may permit a legal practitioner or another prison officer to address the Council on behalf of the appellant; but otherwise the appellant shall not be represented.

(3) Where the Council permits a legal practitioner to address the Council on behalf of the appellant under subregulation (2) –

- (a) the engagement of a legal practitioner shall be at the appellant's own expense; and

(b) the Attorney-General shall be entitled to address the Council in reply, both on matters of fact and of law, either personally or by an officer subordinate to him acting in accordance with his general or special instructions.

(4) Where the Prisons Council is satisfied that the appellant's grounds of appeal, as indicated in writing to the Council in accordance with section 44 of the Act, are without substance, the Council may summarily dismiss the appeal."

4. The principal Regulations are amended by adding thereto, immediately after regulation 76, the following new regulations —

Dismissal of prison officer from Service 77. (1) The dismissal from the Service of a prison officer under section 13 (d) of the Act on conviction of an offence shall not take effect until the conviction has been finally determined.

(2) Where a prison officer is ordered to be dismissed from the Service under section 13 (d) of the Act on conviction of an offence or as a punishment under section 37 or 38 of the Act, the Permanent Secretary, in the case of a senior officer, or the Director, in the case of a junior or subordinate officer, may thereupon interdict the prison officer from duty, whether he has or has not been earlier interdicted under section 42 of the Act, pending the execution of the order for his dismissal.

(3) Section 42 of the Act shall apply, with all necessary modifications, to interdiction under this regulation:

Provided that a prison officer who has been interdicted following the order for his dismissal from the Service under section 13 (d) of the Act shall receive during the period of his interdiction under this regulation no salary or such proportion of his salary as the Director may in each case determine.

Presumption as to conviction 78. For the purposes of the Act and of these Regulations, upon receipt of a certified true copy of criminal proceedings or of part of such proceedings before any court within or outside Botswana, the Permanent Secretary or the Director, as the case may be, may presume without further proof that any prison officer named therein has been convicted by that court or any conviction of a prison officer named therein has been upheld by that court on appeal, as therein stated, unless the contrary is shown to his satisfaction."

MADE this 21st day of February, 1980.

D.K. DISELE,
Minister of Home Affairs.

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