



FALKLAND ISLANDS

Prisons Ordinance 2017

(No: 3 of 2017)

Section

PART 1 – PRELIMINARY

1. Short title and commencement
2. Interpretation
3. Declaration of prisons
4. General principles
5. Engagement with post release support agencies

PART 2 – PRISON STAFF

6. Designation of Director of Prisons and appointment of prison staff
7. Duties of the Officer in Charge
8. General duties of prison staff
9. Search of prison staff
10. Transaction with prisoners
11. Qualifications and training of prison officers and prison staff
12. Training programmes for prison staff

PART 3 – PRISON MONITORING BOARD

13. Prison Monitoring Board
14. Members of Board
15. Record of visits by Board
16. Annual report of Board

PART 4 – ADMISSION, SEARCH AND ACCOMMODATION OF PRISONERS; CONDUCT AND WORK

17. Admission of prisoners
18. Records of prisoners' particulars

19. Confiscation and safeguarding of prisoners' property
20. Information to be given to prisoners on admission
21. Cells and prison accommodation
22. Classification or categorisation of prisoners
23. Separation of prisoners
24. Work by prisoners and remuneration
25. Behavioural requirements and discipline of prisoners
26. Legal representation
27. Unauthorised articles
28. Powers to search prisoners
29. Samples and testing of prisoners for drugs and alcohol
30. Privileges and incentives
31. Powers to punish prisoners and additional days
32. Special Accommodation
33. Communication

PART 5 – PRISONERS' WELFARE

34. Nutrition
35. Clothing
36. Exercise and recreation
37. Education
38. Health care
39. Register of religious affiliation
40. Visiting ministers of religion
41. Religious services
42. Visits
43. Female prisoner with child

PART 6 – ROLE OF MEDICAL OFFICER

44. Functions of medical officer
45. Removal of prisoner to hospital
46. Death of prisoner

PART 7 – RELEASE AND TEMPORARY REMOVAL OF PRISONER

47. Release of prisoner under licence
48. Temporary release of prisoner
49. Special removal of prisoners

PART 8 - MISCELLANEOUS

50. Appellants and pardon
51. Monitoring and security
52. Offences: aiding escape
53. Subsidiary legislation
54. Savings and transitional provisions

55. Repeal

Schedule (section 13(1))



FALKLAND ISLANDS

PRISONS ORDINANCE 2017

(assented to: 6 April 2017)
(commencement: in accordance with section 1)
(published: 13 April 2017)

AN ORDINANCE To provide for the custody of prisoners and the regulation of prisons; to provide for the staffing and operation of prisons; to incorporate best practice principles of relevant international human rights conventions and to repeal the Prison Ordinance (No. 5 of 1966) and to provide for connected matters.

ENACTED by the Legislature of the Falkland Islands —

PART 1 – PRELIMINARY

1. Short title and commencement

(1) This Ordinance may be cited as the Prisons Ordinance 2017.

(2) This Ordinance comes into operation on a day appointed by the Governor by notice published in the *Gazette*.

2. Interpretation

In this Ordinance, unless otherwise stated or the context otherwise requires —

“Board” means the Prison Monitoring Board established under section 13;

“civil prisoner” means any prisoner other than a convicted prisoner or a remand prisoner;

“communication” includes communication by means of a letter, telecommunications, computer system or any other media;

“convicted prisoner” means any person convicted of a crime or offence or ordered to pay a fine or penalty or other penal sum or to enter into a recognizance, who is committed to prison;

“detainee” means a person detained —

(a) by the police under Part 5 of the Criminal Procedure and Evidence Ordinance 2014; or

(b) under the Immigration Ordinance 1999 and is awaiting deportation;

“drug” means a controlled drug for purposes of the Misuse of Drugs Ordinance 1987;

“hospital” means the King Edward VII Memorial Hospital in Stanley or any other hospital approved by the Governor by order for the purposes of this Ordinance;

“illicit enclosure” includes an unauthorised article or information that would compromise security and safety that is contained within any communication to or from a prisoner;

“independent adjudicator” means the Senior Magistrate or a justice of the peace;

“intimate search” means a search which involves a physical examination which is more than a visual examination of a person’s body orifices;

“justice of the peace” means a justice of the peace appointed under the Administration of Justice Ordinance 1949;

“medical officer” means the Chief Medical Officer and any other Government medical officer assigned to perform the duties of the medical officer under section 44;

“misconduct” means conduct by a prisoner which amounts to a breach of prescribed prison instructions or offences against discipline;

“Officer in Charge” means the person appointed or deemed to have been appointed by the Governor under section 6(1) to be in charge of a prison;

“pardon” means a pardon granted by the Governor in terms of section 71 of the Constitution;

“police officer” means a member of the Royal Falkland Islands Police appointed under the Police Ordinance 2000;

“prescribed” means prescribed in regulations or by order;

“prison” means a place which the Governor declares under section 3 as —

(a) a prison or young offender detention centre; or

(b) a part of a prison or a part of a young offender detention centre;

“prisoner” means a civil prisoner, convicted prisoner or a remand prisoner confined or detained in a prison and excludes a detainee;

“prison instructions” means instructions issued under section 7(4);

“prison staff” means the Officer in Charge, prison officers and other prison staff appointed under section 6;

“privilege” means a privilege earned by a prisoner for good behaviour in prison;

“regulations” means regulations made in terms of this Ordinance;

“remand prisoner” means an accused person who is committed to prison on remand or to await trial;

“strip search” means a search which is not an intimate search but which involves the systematic removal of all clothing on a person;

“suitably qualified person” means a medical officer or a person who is specified as suitably qualified under section 28(9);

“unauthorised articles” means —

(a) intoxicating liquor of any kind, tobacco, any drug and any other thing of any kind which a prisoner is not authorised in the prison instructions or by the Officer in Charge to have in the prisoner’s possession or, as the case may be, for the prisoner to have in his or her possession in a particular part of a prison; or

(b) any other article that may be prescribed;

“young offender” means an adult under the age of 21 who is convicted of an offence and sentenced to prison under Part 33 of the Criminal Procedure and Evidence Ordinance 2014;

“young person” means a person who has attained the age of 14 years and is under the age of 18 years; and

“young offender detention centre” means an institution which the Governor declares as a young offender detention centre under section 3.

3. Declaration of prisons

(1) The Governor may by order published in the Gazette declare a place to be —

(a) a prison or part of a prison; or

(b) a young offender detention centre or part of a young offender detention centre, for the purposes of this Ordinance.

(2) The prison adjoining the police station on Ross Road in Stanley continues to be a prison and rooms that are occasionally used as a young offender institution will be regarded as a young offender detention centre, for purposes of subsection (1).

(3) A prison must be known as Her Majesty’s Prison or Her Majesty’s young offender detention centre.

4. General principles

(1) Prison staff must hold prisoners safely and securely in line with a prisoner's warrant of committal or warrant of detention by —

(a) ensuring the safety of the public and in terms of the order of the court, by keeping prisoners in custody and preventing their escape; and

(b) ensuring compliance with the prison security and searching strategy in order to provide a safe and secure custodial environment.

(2) Prison staff must aim to reduce the risk of re-offending by a prisoner and must treat prisoners in such a way as to —

(a) influence them through their own good example and leadership;

(b) enlist their willing co-operation; and

(c) build their self-respect and a sense of personal responsibility.

(3) Prison staff must —

(a) look after prisoners in a humane manner and with respect for the dignity of the human person;

(b) treat all prisoners equally and without distinction of any kind on the basis of —

(i) race, colour, or language;

(ii) subject to subsection (4), gender, sexual orientation, age, health status or physical or mental impairment;

(iii) religion or religious belief;

(iv) political or other opinion;

(v) national, ethnic or social origin or association with a national minority;

(vi) birth or other status; or

(vii) ownership or other interest in or association with property (or lack of the ownership, interest or association);

(c) obey the lawful orders of the Officer in Charge, aimed to protect and promote the rights of all persons deprived of their liberty to be treated with humanity and with respect for the dignity of the person, in compliance with section 7 of the Constitution;

(d) help prisoners to lead law-abiding and useful lives in custody; and

(e) help prepare prisoners to lead law-abiding and useful lives after release.

(4) The Officer in Charge may put in place measures designed solely to protect the rights and special status of women, especially pregnant women and nursing mothers, children and young offenders, or other vulnerable groups referred to in subsection (5) and those measures must not be considered to be discriminatory, but the measures must be subject to constant review by the Officer in Charge.

(5) Vulnerable groups include a prisoner with special and particular needs on account of age, a prisoner who has a physical disability or mental condition as to require special care or any other vulnerable groups as may be prescribed.

(6) A prisoner must not be subjected to torture or to cruel, inhuman or degrading treatment or punishment as provided in section 3 of the Constitution.

(7) The Officer in Charge, in managing a prison and the prison staff, must have regard to the different needs of the following categories or classes of prisoners —

(a) civil prisoners, convicted prisoners and remand prisoners;

(b) male and female prisoners; and

(c) adult, or young persons.

(8) A prisoner may not be engaged in a disciplinary position in relation to another prisoner.

(9) A female prison officer must supervise and attend to female prisoners when on duty but when a male officer is supervising the female prisoners alone, the Officer in Charge must take all reasonable steps to ensure that there is, at the same time a permanent recording of the male officer's actions.

5. Engagement with post release support agencies

The Officer in Charge must ensure that at all times there are arrangements for collaboration with agencies that provide support to prisoners who are soon to be released and at the point of release.

PART 2 – PRISON STAFF

6. Designation of Director of Prisons and appointment of prison staff

(1) The Governor may designate a public officer as a Director of Prisons who is responsible for—

(a) the oversight of all prisons;

(b) ensuring that prisons operate in line with Government policy; and

(c) preparation of an annual report for the Governor,

and the position of Director may be held together with an appointment in another position in the public service.

(2) The Governor must appoint a suitably qualified person as an Officer in Charge of a prison to control and manage the prison.

(3) Subject to section 11, the Governor must appoint prison officers and other prison staff as are necessary for the proper running of a prison.

(4) The Officers in Charge and prison officers, while performing their duties have all the powers and immunities of a police officer which are necessary for them to effectively perform their functions under this Ordinance and sections 54, 55 and 58 of the Police Ordinance 2000 applies to prison staff with the necessary changes.

7. Duties of the Officer in Charge

(1) Subject to the orders and directions of the Governor, the Officer in Charge must —

(a) exercise control and superintendence over a prison;

(b) supervise the prison staff in the performance of their duties;

(c) comply with lawful directions given by the Director of Prisons; and

(d) prepare a report for submission to the Director of Prisons to form part of the Director's annual report.

(2) The Officer in Charge may delegate to a member of the prison staff duties as appropriate for the effective and efficient management of a prison.

(3) The Officer in Charge is the legal custodian of all prisoners and a prisoner is in legal custody while —

(a) confined in, being taken to or from a prison;

(b) outside a prison under the control of a prison officer or police officer;

(c) released under licence in terms of section 47 or on temporary release under section 48.

(4) The Director of Prisons may, with the approval of the Governor acting in his or her discretion, issue prison instructions, not incompatible with this Ordinance or any regulations —

(a) to assist prison staff in the discharge of their duties; and

(b) to be observed by prisoners.

8. General duties of prison staff

(1) Prison staff must —

(a) comply with and implement this Ordinance, regulations and any prison instructions issued by the Officer in Charge;

(b) assist and support the Officer in Charge; and

(c) obey the lawful instructions given by the Governor and Officer in Charge.

(2) Prison staff must immediately inform the Officer in Charge of any abuse or impropriety in prison which comes to their knowledge.

(3) Prison staff may not receive a fee, gratuity or other consideration in connection with their office (apart from salary, allowances and pension).

(4) A prison officer may not make a communication to the press or to any other person concerning matters which have become known to the prison officer in the course of duty (except if done in the course of the officer's functions or under a court order).

(5) A prison officer may not publish a matter or make a public pronouncement relating to the administration of a prison or a prisoner.

9. Search of prison staff

(1) The Officer in Charge may direct that prison staff be searched in a prison.

(2) A search must be conducted in accordance with section 28.

10. Transaction with prisoners

(1) Prison staff may not take part in business or financial transactions with or on behalf of prisoners without the permission of the Governor.

(2) Prison staff may not, without the authority of the Officer in Charge —

(a) bring or attempt to bring an article into a prison;

(b) take or attempt to take an article out of a prison;

(c) knowingly allow an article to be brought into a prison or taken out of a prison for a prisoner; or

(d) deposit an article in any place intending it to come into the possession of a prisoner.

11. Qualifications and training of prison officers and prison staff

(1) Subject to subsection (2), prison officers must be appointed specifically to work in a prison and must undergo mandatory training before or after appointment as determined by the Officer in Charge in respect of —

(a) prison officer education and orientation;

(b) the use of force, control and restraining techniques; and

(c) dealing appropriately with the category or class of prisoners with whom it is intended that they will work.

(2) Prison staff other than prison officers may undergo training referred to in subsection (1) as may be determined by the Officer in Charge before or after appointment.

(3) The Governor may by order, for a specified period, authorise a number of police officers to perform the functions ordinarily performed by prison officers and the performance by police officers of these functions may be either —

(a) in conjunction with prison officers ; or

(b) by themselves, only in the most exceptional circumstances and only when so expressly stated by the Governor in the order.

12. Training programmes for prison staff

(1) The Officer in Charge must specify a list of training programmes and courses required to enable the prison staff to work with the categories of prisoners that exist in the Falkland Islands and submit it to the Governor for information.

(2) The Officer in Charge must annually review the training programmes and courses and advise the Governor of any amendments to the list that are required given the change or expected change in the demographics of the prison population in the Falkland Islands.

PART 3 – PRISON MONITORING BOARD

13. Prison Monitoring Board

(1) The Governor acting in his or her discretion must —

(a) establish a Prison Monitoring Board for each prison declared under section 3; and

(b) appoint members of the Board.

(2) The specific provisions relating to the appointment of members of the Board and proceedings and procedures of the Board are set out in the Schedule.

(3) The functions of the Board are to —

(a) assess prison premises, the accommodation and the treatment of prisoners so as to satisfy itself as to the state of the premises and the accommodation and the treatment of prisoners;

(b) hear any complaint or request that a prisoner wishes to make to it or to any member of the Board;

- (c) monitor the handling of appeals lodged by prisoners under this Ordinance;
- (d) inspect or arrange for the food of prisoners to be inspected at frequent intervals and this inspection may be done by any member of the Board;
- (e) inquire into and report upon any matter which the Governor acting in his or her discretion asks and report to the Governor on that matter or on any other matter the Board considers appropriate to report;
- (f) direct the attention of the Officer in Charge to any matter it considers requires the attention of the Officer in Charge;
- (g) inquire into any report made to it that a prisoner's mental or physical health is likely to be negatively affected by conditions of imprisonment;
- (h) monitor prisoners removed from association under section 31(2) and prisoners subject to use of force; and
- (i) inform the Governor immediately of any abuse or neglect of prisoners which comes to its knowledge.

(4) The Board may, in a case of neglect by prison staff of their functions or abuse of a prisoner—

- (a) recommend to the Officer in Charge for the prison staff's immediate suspension by the Director of Emergency Services; and
- (b) refer the matter for disciplinary proceedings.

(5) Before exercising a power under this section the Board or a member of the Board must consult the Officer in Charge in respect of any matter which may affect discipline.

(6) No action lies against a member of the Board or the secretary to the Board in respect of an act or omission done in good faith in the execution of the member or the secretary's duty.

14. Members of Board

(1) Members of the Board must visit a prison frequently and may visit either during a meeting or in between meetings and the Board must arrange a rota whereby at least one member visits the prison in between meetings of the Board.

(2) Members of the Board must have access at any time, as long as it is safe, to every part of a prison and to every prisoner, and may interview a prisoner out of the sight and hearing of prison staff.

(3) Members of the Board must have access to the records of a prison.

15. Record of visits by Board

(1) The Board may examine the condition of a prison and the prisoners and may inspect the prison records and record any remarks which a member has regarding the condition of the prison or the prisoners.

(2) The record made by a member of the Board who visits a prison alone must be available for perusal by all other members of the Board at the next meeting of the Board following that visit.

16. Annual report of Board

The Board must, at the request of the Governor and annually, submit a written report to the Governor on the state of a prison and its administration, and may include in the report any advice and suggestions it considers appropriate.

PART 4 – ADMISSION, SEARCH AND ACCOMMODATION OF PRISONERS; CONDUCT AND WORK

17. Admission of prisoners

(1) A person may only be admitted in prison on the basis of a warrant of committal or other lawful detention order issued by a person or authority having the power in law to issue the detention order.

(1A) The person may be admitted to prison as soon as the sentence is imposed or detention is ordered (even if the warrant of committal or signed order has not yet been issued).

[Sch. Pt. D/Ord. 10/2024/w.e.f. 14/08/2024]

(2) Every prisoner must be searched by a prison officer or a police officer on admission into prison and when taken into custody by a prison officer.

(3) A search under subsection (2) must comply with section 28 and any unauthorised articles found on a prisoner must be dealt with as provided in section 19.

(4) The Officer in Charge must adopt an electronic or manual file management system in respect of each prisoner on admission and record into each prisoner's file information as may be prescribed.

(5) The Officer in Charge must ensure that accurate information is recorded in respect of a prisoner on admission.

(6) A medical officer must examine every prisoner as soon as reasonably practicable after admission and at any time as may be necessary after admission, for such purposes as may be prescribed.

(7) The medical officer must record the results of an examination carried out under subsection (6).

18. Records of prisoners' particulars

- (1) Records of a prisoner kept under section 17(4) or other provision of this Ordinance are confidential and may only be made available to a person whose professional responsibilities require access to those records.
- (2) A prisoner may be photographed on admission or during confinement and this forms part of a record of a prisoner.
- (3) Prison staff must keep the records and information providing identification of a prisoner as directed by the Officer in Charge.

19. Confiscation and safeguarding of prisoners' property

- (1) Unauthorised articles that are found on a prisoner at the time of admission into a prison must be confiscated by prison staff.
- (2) Property confiscated under subsection (1) which a prisoner can lawfully possess is considered to be in the possession of the Officer in Charge and, subject to subsection (4), the Officer in Charge must take measures as prescribed to ensure that —
 - (a) an accurate record of all property confiscated from each prisoner is kept and maintained; and
 - (b) the property which a prisoner can lawfully possess is safeguarded so as to be returned to the prisoner on release in substantially the same condition as it was when it was confiscated.
- (3) A prisoner may possess a reasonable amount of personal property while in custody subject to limits set by the Officer in Charge or set in regulations or prison instructions.
- (4) The Officer in Charge —
 - (a) must dispose of unauthorised articles which cannot lawfully be possessed by a prisoner and perishable property confiscated from a prisoner, and regarding perishable property, must take into account the reasonable wishes of a prisoner; and
 - (b) will not be held to account for natural deterioration of confiscated property which a prisoner can lawfully possess where the deterioration is to be expected from property of that type.

20. Information to be given to prisoners on admission

Upon admission, the Officer in Charge must provide a prisoner —

- (a) with a summary of this Ordinance, regulations and prison instructions;
- (b) on request, access to a copy of the full text of the Ordinance, regulations and prison instructions;
- (c) with information on the prisoner's rights, and methods of seeking information, access to legal advice and procedures for making requests or complaints;

(d) a prisoner's obligations, including applicable disciplinary offences and sanctions; and

(e) any other information necessary to enable a prisoner to adapt to prison life.

21. Cells and prison accommodation

(1) The Officer in Charge must make every attempt to provide a separate cell for each prisoner and where a cell is designed for occupation by more than one prisoner, it must comply with the requirements of subsection (3).

(2) A cell or prison accommodation must meet such standards as may be prescribed.

(3) Before a cell is used, it must —

(a) be certified as suitable by the Director of Public Works in relation to air cubic capacity, sleeping space, ventilation, natural light and artificial light and heating and generally meeting the prescribed standard;

(b) have clean and adequate sanitary installations which are decent and easily accessible to a prisoner; and

(c) be fitted with a means of enabling a prisoner at any time to call for the attendance of prison staff.

(4) The certification referred to in subsection (3) must be —

(a) in such form as may be prescribed; and

(b) submitted to the Governor, who must, in writing authorise the Officer in Charge to accommodate prisoners in the cell so certified.

(5) Certification of a cell must be renewed after 12 months or sooner if concerns as to the condition of the cell are raised by a member of the Board or the Officer in Charge.

22. Classification or categorisation of prisoners

(1) The Governor must prescribe the categories of prisoners according to sex, age, health and the security risk they pose, and the categories must be reviewed annually.

(2) Regulations may provide for the classification or categorisation of prisoners and how they must be accommodated.

23. Separation of prisoners

(1) The following classes of prisoners of each sex must, as reasonably practicable, be separated from one another —

(a) young persons aged seventeen years and under from prisoners over that age;

(b) convicted and remand prisoners from civil prisoners; and

(c) remand prisoners from convicted prisoners.

(2) Subsection (1)(c) does not prevent a remand prisoner from having contact, or sharing a cell, with a convicted prisoner if the remand prisoner wishes or consents.

(3) Male prisoners must be accommodated separately from female prisoners and may only interact with each other for rehabilitative purposes mentioned in subsection (5) or for any other purpose as may be prescribed.

(4) The Officer in Charge must make all reasonable adjustments to ensure that prisoners with physical, mental or other vulnerability have effective access to prison life on an equitable basis.

(5) The Officer in Charge may permit specific educational and rehabilitative activities and supervised association between male and female prisoners.

24. Work by prisoners and remuneration

(1) Subject to this section, a prisoner is required to do work that is reasonably necessary for hygiene or the maintenance of the prison unless the prisoner is certified by the medical officer to be unfit for the work.

(2) Subject to a declaration made by a prisoner under section 39, the prisoner must not work on a day or during a part of a day if it would be contrary to the prisoner's religion, or any denomination of that religion.

(3) Subject to subsection (5), the Officer in Charge may allow a prisoner to perform work other than that mentioned in subsection (1) and the Officer in Charge may permit a prisoner to perform work outside the walls of a prison.

(4) Prisoners may be remunerated for work done and the remuneration must be at a rate as approved by the Governor by order and the remuneration may be dealt with as prescribed.

(5) Work done by a prisoner may include necessary services of a prison but must not include any personal services for prison staff.

25. Behavioural requirements and discipline of prisoners

(1) A prisoner who commits an act of misconduct must go through a disciplinary process as may be prescribed.

(2) The regulations and prison instructions must provide for —

(a) conduct constituting acts of misconduct;

(b) types and duration of punishment that may be imposed; and

(c) the authority competent to impose the punishment.

(3) A prisoner who is prosecuted for a criminal offence under section 31(4) is entitled to a fair hearing within a reasonable time by an independent and impartial court established by law and must also have unimpeded access to a legal practitioner.

(4) The Officer in Charge must maintain discipline and order with no more restriction than is necessary to ensure safe custody and the operation of a well ordered prison community.

(5) The Officer in Charge must put in place a strategy for the management of prisoners who are difficult or disruptive, to ensure an acceptable level of behaviour.

26. Legal representation

(1) A prisoner is entitled to be visited and to communicate with a legal practitioner of their own choice.

(2) The legal practitioner in any legal proceedings to which a prisoner is a party, must be afforded reasonable facilities for interview in connection with those proceedings.

(3) A prisoner's legal practitioner may, subject to any directions given by the Officer in Charge, interview the prisoner in connection with any other legal problem.

(4) An interview must take place out of hearing, but not out of sight, of prison staff.

(5) Correspondence between a prisoner and legal practitioner must not be intercepted, opened or read, except with permission of the Officer in Charge on the basis of information that the communication might contain an illicit enclosure.

27. Unauthorised articles

A person, including prison staff who, without lawful excuse introduces into a prison or delivers to a prisoner any unauthorised article, to be sold or used in a prison, commits an offence and is liable, on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the maximum of level 5 on the standard scale or to both.

28. Powers to search prisoners

(1) Subject to this section, only a prison officer or police officer may search a prisoner as authorised by the Officer in Charge to ascertain whether the prisoner has any unauthorised property on their person.

(2) Subject to subsection (4), the prison officer may require a prisoner to submit to the following searches of his or her person —

(a) rub-down;

(b) pat-down;

(c) strip; or

(d) intimate; and,

prison instructions may make further provision on how the search must be done.

(3) The searching of a prisoner must be done in a manner that is proportionate and consistent with the need to discover a concealed article and a strip search must only be carried out by a prison officer of the same sex as the prisoner.

(4) If a prisoner is required to submit to an intimate search, the search must be carried out by a suitably qualified person.

(5) A prison officer must not strip search a prisoner in the sight or presence of another prisoner.

(6) A person who searches a prisoner without authority under this Ordinance commits an offence and is liable on summary conviction to a fine not exceeding the maximum of level 5 on the standard scale or to imprisonment for a term not exceeding 6 months, or to both.

(7) A prison officer searching a prisoner under this section may use reasonable force where necessary and may seize unauthorised articles found on the prisoner's person in the course of the search.

(8) Any unauthorised article found on a prisoner as a result of a search must be dealt with in accordance with section 19.

(9) The Governor may, by notice in the Gazette specify suitably qualified persons for purposes of carrying out an intimate search under subsection (4).

29. Samples and testing of prisoners for drugs and alcohol

(1) The Officer in Charge may require a prisoner to provide a sample of urine for the purpose of ascertaining whether the prisoner has any drugs in his or her body.

(2) The Officer in Charge may, also require a sample of urine or breath in order to determine whether there is alcohol in the prisoner's body or any other sample excluding an intimate sample.

(3) The Governor may prescribe the procedure for obtaining an intimate sample for any purpose from a prisoner.

(4) In this section —

“intimate sample” means a sample of blood, semen or any other tissue, fluid, pubic hair or a swab taken from a person's orifice.

30. Privileges and incentives

(1) The Officer in Charge must set out in prison instructions a system of privileges under which, as a result of or in return for continuous periods of satisfactory behaviour, prisoners can earn or maintain privileges.

(2) The Governor may prescribe the procedure for earning the privileges and incentives under subsection (1).

(3) The Officer in Charge must ensure that —

(a) all prisoners are kept informed of the system of privileges and of any changes made to it;

(b) the system of privileges is fairly and consistently applied in respect to all prisoners; and

(c) prisoners are given reasons for privileges that they are either afforded or denied and a prisoner must get a fair opportunity to make representations on their behalf.

31. Powers to punish prisoners and additional days

(1) The Governor may, in regulations empower the Officer in Charge to punish prisoners for acts of misconduct.

(2) Punishment referred to in subsection (1) may include imposition of additional days, withdrawal of privileges, removal from association, and confinement in a cell, or any other form of punishment as may be included in those regulations.

(3) Restraints may not be used as a form of punishment.

(4) Where a prisoner is alleged to have committed a criminal offence the Officer in Charge may refer the matter to the police for investigation.

(5) Additional days may only be awarded by an independent adjudicator.

(6) Regulations made under this section must provide further for the procedures for imposition of additional days.

(7) A prisoner who is subject to the possible imposition of additional days must be afforded access to legal representation.

32. Special Accommodation

The Officer in Charge may provide separate cells —

(a) as Special Accommodation for the temporary confinement of a prisoner who is a risk to themselves or others, is uncooperative or is violent; or

(b) for solitary confinement of a prisoner undergoing punishment.

33. Communication

(1) Prisoners must be allowed to communicate with persons outside a prison as may be prescribed and regulations made under this subsection may impose limitations to communication.

(2) Subject to subsection (3), and section 26(5), the Officer in Charge may intercept communication between a prisoner and any other person.

(3) The Governor may make regulations to provide for the carrying out of interception of communications.

(4) A person who, without the permission of the Officer in Charge, communicates or attempts to communicate with a prisoner, commits an offence and is liable on summary conviction to a fine not exceeding the maximum of level 4 on the standard scale.

PART 5 – PRISONERS’ WELFARE

34. Nutrition

(1) Prisoners must have three meals per day, served in such a manner as may be prescribed and the meals must be of a nutritional value required to maintain a prisoner’s health.

(2) Intervals at which meals are served and the nutritional requirements of meal menus must be determined with the input of the Chief Medical Officer and other health professionals as appropriate.

(3) The Chief Medical Officer may instruct that a prisoner be provided with a specific diet, and the Officer in Charge must ensure that there is compliance with that instruction.

35. Clothing

(1) Prisoners who are not allowed their own clothing must be provided with clothing of such quantity and standard as is appropriate to the climate and the reasonable needs of the prisoner.

(2) The Governor may make regulations to provide for details of the clothing and factors to be considered as required under subsection (1).

36. Exercise and recreation

(1) Subject to subsection (2), a prisoner must have time for exercise as may be prescribed.

(2) Prison staff must encourage all prisoners to exercise and exercise time must not be less than 2 hours per week for each prisoner.

(3) The Officer in Charge must afford prisoners time for recreation as may be prescribed.

37. Education

(1) The Officer in Charge must ensure that opportunities as are prescribed are made available to prisoners to further their education through self-study or organised instruction.

(2) Education of prisoners under the age of 16 years is mandatory and must be consistent with the curriculum approved for children of that prisoner’s age who are enrolled in secondary education.

(3) The Officer in Charge must make arrangements as are reasonably possible for the educational assessment of each prisoner to ensure that there is an opportunity for each prisoner’s educational needs to be met.

38. Health care

(1) The Officer in Charge must ensure that prisoners are seen by a medical practitioner and a dentist at prescribed regular intervals and on such unscheduled occasions as the circumstances of each prisoner may require.

(2) The Officer in Charge must take seriously a request by a prisoner to be seen by a medical practitioner or dentist and, unless there reasonable grounds to think that the request is motivated by mischief, must grant the prisoner's request within a reasonable time.

39. Register of religious affiliation

(1) The Officer in Charge must keep in the records information about the religion to which a prisoner declares himself or herself to belong, and must, on the request of any minister of religion who is authorised to visit prisoners, supply the minister with a list of the prisoners who have declared themselves to belong to the religion of that minister.

(2) A prisoner must be treated as being of a religion or specific religious denomination stated in the prisoner's record under subsection (1).

(3) Following a request by a prisoner who changes religion, the Officer in Charge may, after due enquiry, direct the prisoner's record to be amended.

40. Visiting ministers of religion

Subject to this Ordinance and to any other conditions which may be prescribed, the Officer in Charge may authorise a minister of religion to visit any prisoner belonging to the same religion who consents to the visit, and to celebrate religious services in the presence of that prisoner.

41. Religious services

(1) A minister of any religion may, with the consent of the Officer in Charge, which must not be unreasonably withheld, hold religious services within a prison, at which a prisoner who wishes may attend, on such days and at such times as the Officer in Charge of the prison may approve.

(2) The Officer in Charge may permit a prisoner of good behaviour to attend a religious service at a church or other place of worship in Stanley, subject to conditions as may be imposed by the Officer in Charge.

42. Visits

(1) A prisoner is entitled to receive visits as may be prescribed.

(2) Regulations made under subsection (1) may provide for the number of visits for every prisoner, the duration of the visit, deferment of a visit and other matters necessary to regulate visitors.

(3) A visitor to a prisoner may be searched on entry to a prison and the search must comply with section 28 and a visitor who refuses to be searched must be denied entry.

(4) The Officer in Charge may prohibit visits by a person to a prison or to a prisoner for periods considered necessary to secure discipline, good order and to prevent commission of an offence or in the public interest.

(5) Subsection (4) does not apply to a visit by a class of persons as may be prescribed.

(6) The Officer in Charge may require a visit, or class of visits, to be held in facilities which include special features restricting or preventing physical contact between a prisoner and a visitor.

(7) The Officer in Charge may remove or cause to be removed from a prison any visitor to the prison whose conduct is improper.

(8) The Governor may make regulations prescribing the proper conduct of visitors.

43. Female prisoners with child

(1) Subject to subsection (2), the child of a female prisoner may be admitted into a prison with its mother if the court which committed the female prisoner has authorised the admission, and the child must not be taken from its mother unless the court so orders, based on recommendations from a medical officer and social services, on the basis of what is in the best interests of the child.

(2) A child retained in prison under subsections (1) must, if necessary, be supported at public expense.

(3) The medical officer may make recommendations for the diet of a child retained in prison.

PART 6 – ROLE OF MEDICAL OFFICER

44. Functions of medical officer

(1) The Chief Medical Officer is responsible for the proper performance of the functions that a medical officer is assigned under this Ordinance but may assign the performance of the whole or any part of those functions to any other medical officer.

(2) A medical officer assigned to perform any functions under this Ordinance has the general care of the physical and mental health of prisoners, and must make known to the Officer in Charge any circumstances connected with the prison or the treatment of a prisoner which require consideration on medical grounds.

45. Removal of prisoner to hospital

(1) The medical officer or, in urgent cases, the Officer in Charge, may direct that a prisoner be removed to a hospital and while proceeding to and from a hospital a prisoner will be considered for all purposes to be in prison custody.

(2) The Officer in Charge will determine whether a prison officer is required to remain with a prisoner for any period that a prisoner is within a hospital.

(3) A prisoner must be returned to prison when the medical officer certifies that the prisoner is fit.

(4) The Governor may prescribe further provisions regarding the procedures for medical attention of prisoners and reporting responsibilities of the medical officer.

46. Death of prisoner

Where a prisoner dies, the Officer in Charge must give immediate notice of the death to the Governor, the Board and to the Coroner.

PART 7 – RELEASE AND TEMPORARY REMOVAL OF PRISONER

47. Release of prisoner under licence

(1) Subject to this section and section 31, a prisoner sentenced to a period of imprisonment may, in such manner as may be prescribed, and subject to good conduct, be released on licence after expiry of not less than two-thirds of the time which they are sentenced to spend in prison.

(2) Reduction in sentence under subsection (1) cannot under any circumstances reduce the time spent in prison to less than thirty-one days.

(3) A prisoner who is a subject of deportation procedures under the Immigration Ordinance may, on the authority of the Director of Prisons, be released not more than 14 days earlier than his or her release date in order to facilitate removal from the Falkland Islands.

(4) The Officer in Charge may specify in the release licence conditions about behaviour, residence, and regularity of reporting to a specified authority subject to reasonable and proportionate consideration by the Officer in Charge of public protection and post release support.

(5) Conditions may be imposed under subsection (4) —

(a) in accordance with decisions made during the period in custody;

(b) on the Officer in Charge's own risk assessment; and

(c) must be informed by specialist advice and reports as the Officer in Charge considers necessary.

(6) Regulations may provide for the consequences of breach of conditions imposed by the Officer in Charge under this section.

(7) A condition may be imposed only if the Officer in Charge thinks it necessary, reasonable, proportionate or desirable for the purpose of —

(a) protecting the public;

(b) preventing re-offending; or

(c) securing the successful re-integration of a prisoner into the community.

(8) Prison instructions must include a policy to direct the Officer in Charge in making a risk assessment and procedures to be followed when imposing conditions for release on licence.

(9) A condition imposed by the Officer in Charge may be appealed by the prisoner to the independent adjudicator and the independent adjudicator may remove, add to or substitute the conditions provided the conditions imposed by the Officer in Charge remain in place until removed, added to or substituted.

48. Temporary release of prisoner

(1) A convicted prisoner may be released under this section, as prescribed or stated in prison instructions —

- (a) on compassionate grounds;
- (b) for the purpose of receiving medical treatment or any therapy;
- (c) to engage in employment or voluntary work;
- (d) to receive instruction or training which cannot reasonably be provided in prison;
- (e) to enable participation in proceedings before a court, tribunal or inquiry;
- (f) to consult with a legal practitioner where it is not possible, in the opinion of the Officer in Charge, for the consultation to take place in a prison; or
- (g) to maintain family ties or to facilitate transition from prison life to freedom.

(2) The Officer in Charge may authorise the release of a prisoner under this section for one or more specified periods, subject to specified conditions.

(3) Prison instructions must include directions to the Officer in Charge regarding procedures to be followed when approving and facilitating temporary release.

49. Special removal of prisoners

(1) Subject to subsection (2), every prisoner confined in a prison is considered to be in the legal custody of the Officer in Charge and must not be removed from a prison before he or she becomes lawfully entitled to release under section 47, under the regulations or in the following cases —

- (a) in pursuance of an order of a court;
- (b) in case of fire or sudden or urgent necessity;
- (c) for the purpose of work or recreation; or
- (d) in a case in which a prisoner is removed to hospital under section 45(1);
- (e) in pursuance of approved temporary release authorisation.

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

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

- (b) in the case of a contagious or infectious disease breaking out in a prison;
- (c) for a prisoner to appear before a court of examination, trial or as a witness; or
- (d) for any other reasonable cause,

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

(3) A prisoner who has been removed from a prison under this section is considered to be confined within a prison, despite such removal.

PART 8 – MISCELLANEOUS

50. Appellants and pardon

- (1) The Officer in Charge must ensure that a convicted prisoner who has a right of appeal against conviction or against sentence is, on admission informed of that right and of conditions governing the exercise of the right.
- (2) A prisoner who notifies the Officer in Charge of his or her intention to appeal must be given all necessary facilities for pursuing the appeal.
- (3) The Officer in Charge must also make a prisoner aware of the Governor's power to pardon prisoners under section 71 of the Constitution and the procedures for accessing a pardon.

51. Monitoring and security

The Officer in Charge may employ any technology in any media such as closed circuit television, video or audio surveillance systems, both covert and overt, metal detector scanners, mobile phone detecting and blocking systems to ensure security, safety and the detection of crime and breaches of discipline in prison.

52. Offences: aiding escape

- (1) It is an offence for a person, without the authority of the Officer in Charge —
 - (a) to take or throw an article into a prison;
 - (b) to take or throw an article out of a prison;
 - (c) to provide an article to a prisoner; or
 - (d) to deposit an article in any place,

with the intention that it comes into the possession of a prisoner.

(2) In this section article includes money, food, clothing, drink, tobacco, letters, paper, books, tools, drugs, firearms, explosives, weapons and any other article.

(3) A person who commits an offence under subsection (1) is liable on conviction to a term of imprisonment not exceeding 6 months or to a fine of the maximum of level 6 on the standard scale; or to both.

(4) The Officer in Charge may confiscate an article which is in a prison as a result of an offence under subsection (1).

(5) It is an offence to aid a prisoner to escape from a prison or, facilitating an escape or to take or send anything (by post or otherwise) into a prison or to a prisoner or to place anywhere outside a prison intending it to come into the possession of a prisoner for purposes of aiding escape.

(6) A person who commits an offence under subsection (5) is liable to a term of imprisonment not exceeding 10 years.

53. Subsidiary legislation

(1) The Governor may, subject to subsection (2) make regulations or orders generally for giving effect to the provisions of this Ordinance, and in particular regulations for —

(a) the administration, management and discipline;

(b) visits to and communications with prisoners;

(c) the working of prisoners outside the prison walls;

(d) the acts or omissions which constitute acts of misconduct and disciplinary procedures;

(e) appointment of independent adjudicator and procedures to be followed in appointment;

(f) appeal procedures for prisoners under this Ordinance;

(g) the powers, duties and conduct of prison officers;

(h) the admission and discharge of prisoners;

(i) the classification, clothing, maintenance, employment, discipline, instruction and rehabilitation of prisoners;

(j) early release of prisoners and the manner in which and conditions under which such release is done;

(k) the application of money in the possession of a prisoner committed for non-payment of a fine towards the fine adjudged to be paid;

(l) the remuneration of prisoners for work done and the manner in which and conditions under which the remuneration is to be paid;

(m) the supply of money, food or clothing to prisoners, and the means of travel to be afforded to them, on their discharge;

(n) the conditions under which visitors are to be allowed in prison; or

(o) the medical inspection of prisons and prisoners and the prevention of contagious diseases in prisons.

(2) Nothing in this section permits the making of regulations or orders which authorise the corporal punishment of a prisoner.

54. Savings and transitional provisions

(1) Subject to their instrument of appointment, the prison officers appointed under section 3 of the repealed Ordinance who are in office immediately before the date of commencement of this Ordinance will continue in office as if they have been appointed under section 6 of this Ordinance.

(2) The Prison Visitors Board established and appointed under section 7 of the repealed Ordinance will continue to operate as if established and appointed under section 13 and will be known as the Prison Monitoring Board.

(3) In this section, “repealed Ordinance” means the Prison Ordinance repealed under section 55.

55. Repeal

The Prison Ordinance 1966 is repealed.

SCHEDULE

section 13(1)

Appointment and Proceedings of a Prison Monitoring Board

1. Appointment of the Board

(1) On appointing members to the Prison Monitoring Board, the Governor must appoint one of the members as chairperson of the Board.

(2) The chairperson is responsible for the proper functioning of the Board in the execution of its duties and the Board may delegate to the chairperson its functions when the Board is not meeting.

(3) The Governor, in his or her own discretion must appoint at least two and not more than four other persons to be members of the board each of whom must, unless the member’s appointment is earlier revoked or comes to an end under subparagraph (4), hold office for such period, not exceeding three years, as is specified in the instrument appointing the member.

(4) Every appointment under this section, as well as the period for which the appointment is to have effect, must be notified in the Gazette.

(5) A member of the Legislative Assembly, Judiciary, a police officer, a prison officer, the Attorney General, any person authorised to prosecute on behalf of the Attorney General and any

person who is or who is concerned in a contract for supplies to a prison is not eligible for appointment under subparagraph (3).

(6) A person appointed as a member of the Board under subparagraph (3) ceases to hold office as such on —

(a) tendering his or her resignation in writing to the Governor;

(b) taking his or her seat as a member of the Legislative Assembly;

(c) being sentenced by any court of the Falkland Islands to a period of imprisonment; or

(d) occupying or becoming employed in any position referred to in subparagraph (5) or being concerned in any contract for supplies to a prison.

(7) Members of the Board must undertake such training as may be required by the Governor.

(8) The Governor may terminate the appointment of a member if satisfied that —

(a) the member has failed to satisfactorily perform the duties of the office;

(b) the member has failed to undertake required training;

(c) the member is by reason of physical or mental illness, or for any other reason, incapable of carrying out the duties of the office;

(d) the member should not remain in office, by reason of a conviction or other conduct; or

(e) there is, or appears to be or could appear to be, any conflict of interest between the member's duties and any of the member's interests, whether personal, financial or otherwise.

(9) The Governor may suspend a member pending a decision on whether or not subparagraph (8) applies.

(10) The Governor must —

(a) upon the constitution of the Board for the first time, appoint a chairperson to hold office for a period not exceeding twelve months;

(b) thereafter appoint, before the date of the first meeting of the Board in any year of office of the Board, a chairman for that year, having first consulted the Board; and

(c) promptly fill, after first having consulted the Board, any casual vacancy in the office of chairperson.

(11) The Board must visit any prison at intervals not greater than 3 months, but otherwise on such dates and at such times as the Board decides and on the occasion of each visit by the board, prisoners or other persons detained in a prison may be interviewed by a member of the Board.

(12) After each visit the chairperson of the Board must make or cause to be made a report in writing to the Governor, of any areas of concern raised during the visit.

2. Proceedings of Board

(1) The Board must endeavour to meet once a month but —

(a) may meet no less than four times in any calendar year; and

(b) may only meet less frequently than once per month if they resolve for reasons specified in the resolution that less frequent meetings are sufficient.

(2) The Board may determine procedures and a quorum for meetings.

(3) The Board must keep a record of its proceedings.

(4) The proceedings of the Board are not invalidated by a vacancy in membership or a defect in the appointment of a member.

(5) The Board may determine rules and procedures for bringing matters before it by prisoners or any other person.

(6) The Governor must appoint a public officer to be Secretary to the Board and the Secretary must attend meetings of the Board to take and prepare minutes of its proceedings and to have custody of the Board's papers.

(7) A copy of the minutes of every meeting of the Board must be forwarded as soon as practicable after the meeting to the Governor.

3. Disqualification of Board as to contracts

(1) A member of the Board must immediately tender his or her resignation in writing to the Governor if —

(a) the member becomes a contractor or bids to become a supplier, for supplies to a prison; or

(b) to his or her knowledge the member becomes concerned in a contract for supplies to a prison.

(2) A person who wilfully contravenes subparagraph (1) commits an offence and is liable on conviction to a fine not exceeding the maximum of level 4 on the standard scale.