

LAWS OF PITCAIRN, HENDERSON, DUCIE
AND OENO ISLANDS

Revised Edition 2010

CHAPTER VII

PRISONS ORDINANCE

An ordinance to make provisions for prisons

[1 April 2001]

Ordinance:
No. 5 of 1999
No. 11 of 2002
No. 4 of 2010

1. This ordinance may be cited as the Prisons Ordinance.

Citation.

[2. The Governor may by order declare that any place or building in the Islands, or in any other place where a court established under [section 43(4) of the Constitution of Pitcairn] may sit, shall be a prison, or that any place or building shall be part of a prison, although such place or building may be locally separate from such prison.]

Governor may declare prisons.

**(Replaced by Ordinance No. 11 of 2002)
(Amended by Ordinance No. 4 of 2010)**

3. Pending the declaration of a prison under section 1 any place or building which has been used, or is at the commencement of this ordinance being used, as a place of detention for persons in custody in consequence of arrest or the order of a court, may continue to be so used and shall be deemed, unless the Governor otherwise directs, to be a place of lawful custody in respect of any period whether before or after the commencement of this ordinance and while being so used shall be deemed to be a prison.

Temporary arrangements.

4.—(1) Any judgment of imprisonment or warrant or order for the remand in custody or the committal to prison of any person, given or issued by any Court, Judge or Magistrate in the Islands, may be executed by imprisonment in any prison, anything in such judgment, warrant or order to the contrary notwithstanding.

Judgment may be executed in any prison.

(2) Persons arrested in execution of a warrant of arrest or without warrant may be detained in a prison until they are brought before a Magistrate.

5.—(1) The Governor may appoint a person to be a Superintendent and to have the direction and management of all or any of the prisons in the Islands. The Superintendent shall be responsible for the well-being and proper treatment of prisoners and for carrying out any regulations made under

Management of prisons.

this ordinance.

(2) The Governor may appoint persons to act as prison officers. Every police officer shall be a prison officer *ex officio*.

Treatment of prisoners.

6.—(1) Male and female prisoners shall be confined separately in any prison or in separate prisons. Female prisoners shall be segregated from male prisoners at all times and shall be managed and supervised only by a female prison officer.

(2) Prisoners shall receive suitable and adequate bedding, food and drink and shall be allowed out of prison for not less than one hour per day for exercise and also, if necessary, for meals.

(3) Any written representations from prisoners about their treatment whilst in lawful custody shall be promptly brought to the attention of the Governor.

Legal custody.

7. A prisoner shall be deemed to be in legal custody whenever he or she is in a prison or being taken to or from any prison in which he or she may lawfully be confined or whenever he or she is beyond the limits of any such prison in the custody or under the control of a prison officer,

Regulations.

8.—(1) The Governor may make regulations for the effective administration of this ordinance and for the good management and government of prisons and the discipline and safe custody of prisoners both when within a prison and when outside a prison for any purpose.

(2) Regulations made under this section may provide that contravention of or failure to comply with any such regulations shall be an offence and may prescribe penalties for such offences not exceeding imprisonment for three months or a fine of two hundred dollars or both such fine and imprisonment.

**PITCAIRN, HENDERSON, DUCIE
AND OENO ISLANDS**

ORDER DECLARING PRISON

In exercise of the powers conferred by section 2 of the Prisons Ordinance 2001 Revised Edition (cap.7)

I hereby declare that the land and buildings described in the Schedule hereto shall be a prison.

Made this 18th day of December 2002

L.S.

M. Forbes
Acting Governor

SCHEDULE

All that land comprising 1370 square metres more or less being Section No. 76 Block 1, Adamstown, Pitcairn Island situate at Coffee Valley and registered in the ownership of the Land Court

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Made this 18th day of December 2002

L.S.

M. Forbes
Acting Governor

SCHEDULE

Mt. Eden Prison
Newmarket
Auckland
New Zealand

PITCAIRN, HENDERSON, DUCIE AND OENO
ISLANDS

PRISONS REGULATIONS

Made by the Governor in exercise of the powers conferred by section 8 of the Prisons Ordinance (cap. 7)

[3 July 2003]

PART I—PRELIMINARY

1. These regulations may be cited as the Prisons Regulations. Citation and commencement

2. In these regulations— Interpretation

adjudged term means the length of imprisonment by a Court on passing sentence and, where it passes two or more sentences of imprisonment to be served consecutively by a prisoner, means the aggregate length of all those sentences;

Committee means the Visiting Committee established under Part VII;

Medical Officer, in relation to prisons, means a medical practitioner or other health professional appointed by the Governor for the purposes of these regulations;

ordinance means the Prisons Ordinance; cap. 7

Pitcairn Court has the same meaning it bears in the Judicature Amendment Ordinance; cap.38

prison means any place declared pursuant to section 2 of the ordinance to be a prison for the confinement in the Islands of prisoners sentenced by any Pitcairn Court;

sentence means the sentence of imprisonment being served in the Islands by a prisoner pursuant to an order of a Pitcairn Court made upon his or her conviction for a criminal offence, and includes any such sentence being served in default of payment of a fine or other monetary penalty imposed by the court upon his or her conviction;

Superintendent means the Superintendent of Prisons appointed in accordance with section 5 of the ordinance;

unconvicted prisoner means a prisoner awaiting a trial, a prisoner on remand, a prisoner committed for contempt of court, a prisoner convicted but not sentenced or a prisoner under lawful temporary

detention without charge but does not include a prisoner detained for an indeterminate term at the pleasure of the Governor and **convicted prisoner** shall be construed accordingly.

Application

3. These regulations shall apply for the good management and governance of any prison, the discipline and safe custody of prisoners both within and outside any prison and generally for the implementation of the ordinance.

Official Visitors

4. The Chief Justice and other Judges of the Supreme Court, the Governor or his or her nominated representative, every Magistrate and the Members of the Island Council shall be official visitors to all prisons.

Release

5.—(1) In any sentence of imprisonment the word **month** shall, unless the contrary is expressed, be construed as meaning a calendar month.

(2) A prisoner whose sentence expires on the Sabbath, Christmas Day, New Year's Day, the Sovereign's Birthday or Bounty Day shall be discharged on the preceding day.

Death

6. The Superintendent of Prisons shall give immediate notice of the death of any prisoner to the Registrar of the Magistrate's Court, and a Magistrate shall hold an inquiry thereon pursuant to section 55 of the Justice Ordinance as though the death were not due to natural causes.

cap. 3

Sickness

7. If a certificate signed by the Medical Officer is delivered to the Superintendent of Prisons stating that the removal of a prisoner for medical treatment is necessary, the prisoner shall be so removed after notification to the Island Magistrate and the Governor or his or her nominated representative.

PART II—OFFENCES

Escape

8. Any prisoner who escapes or is unlawfully absent from a prison, or who escapes from or leaves any prison officer under whose charge he or she may be shall be guilty of an offence and shall be liable to imprisonment for a term not exceeding three months or a fine not exceeding \$200.00 or both.

Aiding escape

9. Any person who—

- (i) aids a prisoner in escaping or attempting to escape from prison; or
- (ii) conveys anything into a prison or to a prisoner with intent to facilitate the escape of any prisoner; or
- (iii) places anything outside a prison with a view to its

coming into the possession of a prisoner; or
 (iv) harbours or conceals or assists in harbouring or
 concealing any prisoner
 shall be liable to imprisonment for a term not exceeding three
 months or a fine not exceeding \$200.00 or both.

10. Any prison officer who knowingly and wilfully allows
 a prisoner to escape shall be liable to imprisonment for a term
 not exceeding three months or a fine not exceeding \$200.00
 or both.

Allowing escape

11. Any person who unlawfully conveys or attempts to
 convey into a prison or to a prisoner any article shall be liable
 to imprisonment for a term not exceeding three months or a
 fine not exceeding \$200.00 or both.

Forbidden articles

12. Where any person sentenced to imprisonment is
 unlawfully at large during the period for which he or she is
 liable to be detained in pursuance of a sentence, no account
 shall be taken, in calculating the period for which he or she
 is liable to be so detained, of the period of being unlawfully
 at large.

Unlawful absence

13. Any person who resists or assaults or aids or incites
 any other person to resist or assault any prison officer in the
 execution of his or her duty shall be liable to imprisonment for
 a term not exceeding three months or to a fine not exceeding
 \$200.00 or both.

Violence

PART III—RELEASE OF YOUNG PERSONS

14. The Governor may release on conditional licence
 any prisoner serving a term of imprisonment who was under
 twenty-one years of age at the commencement of his or her
 sentence:

Young prisoners

Provided that—

- (a) such licence shall not have effect until the prisoner
 has become eligible for parole under the Parole
 Ordinance;
- (b) a person so licensed shall until the expiration of his
 or her sentence be under the supervision of another
 person who shall be specified in the licence, and
 shall comply with such requirements as may be
 stated in the licence;
- (c) the Governor may at any time vary or cancel any
 requirement stated in such licence;
- (d) if the Governor is satisfied that a person so licensed
 has failed to comply with any requirement specified
 in the licence, such person may be recalled and

cap.34

detained in a prison until the expiration of the sentence or his or her release on parole.

PART IV—GENERAL PROVISIONS FOR ADMINISTRATION OF PRISONS

Admission, search and briefing of prisoners

15.—(1) Immediately upon the admission of a prisoner into a prison, the Superintendent shall cause to be entered—

- (a) in the Prisoners Admission Book the name of the prisoner, whether he or she is convicted, and, if so, the date of commencement and expiration of the sentence, the age, height, weight and other details relevant to the identification of the prisoner;
- (b) in the Reconviction Book the name of every prisoner admitted into prison on a second or subsequent conviction; and
- (c) in the Prisoners' Property Book any property found upon the prisoner at the time of admission into prison.

(2) Immediately upon the admission of a prisoner into prison the prisoner shall be searched by a prison officer of the same gender as the prisoner concerned, in as seemly a manner (out of sight of other prisoners) as is appropriate for the discovery of anything concealed.

(3) Every prisoner shall be provided, within 24 hours of admission into prison, with sufficient information about these regulations and any other matters which it is necessary for him or her to know, including the proper method of making requests and complaints.

(4) The Superintendent may require that any prisoner admitted into prison be photographed or fingerprinted or both.

(5) A copy of these regulations shall be made available to any prisoner who requests it.

Classification and separation of prisoners

16.—(1) The Superintendent shall, at intervals of not more than three months, assess prisoners according to their age, temperament and record, with a view to classifying them in accordance with the security ratings set out in the First Schedule.

(2) In pursuance of subregulation (1), the Superintendent shall keep, maintain and make available for inspection by the Governor or the Committee at their request a Prisoners Classification Book.

(3) As far as reasonably possible, unconvicted prisoners shall be kept apart from convicted prisoners, unless any unconvicted prisoner consents to associating with convicted prisoners.

17.—(1) Female prisoners shall be kept entirely separate from male prisoners.

Female prisoners

(2) The Superintendent may, subject to any conditions he or she thinks fit, permit a female prisoner to nurse or tend her infant child in prison, in which case everything necessary for the child's maintenance and care shall be provided there.

18.—(1) For the encouragement of the good conduct, industry and rehabilitation of prisoners the Superintendent shall, subject to the approval of the Governor, establish a system of privileges for the prison, including schemes for the employment of prisoners.

Privileges

(2) The Governor shall determine how money earned under any approved scheme for the employment of prisoners shall be used, including the percentage payable to prisoners participating in the scheme.

19.—(1) The Superintendent may, subject to any conditions he sees fit to impose, authorise the temporary unsupervised release of a convicted prisoner, to enable him or her to engage in employment, to receive training, or to participate in any special activity, which would be of assistance in the prisoner's transition to freedom.

Temporary release

(2) Subregulation (1) shall apply to any prisoner serving an adjudged sentence of 9 months or more.

- (a) if the prisoner has served at least fifty percent of his adjudged sentence and has demonstrated satisfactory behaviour as a prisoner; and he or she has obtained or arranged, as the case may be, paid employment, self employment, training, or a special activity, which is consistent with his or her being required to spend evenings and nights at the prison; and the prisoner has demonstrated that such employment, training or special activity would assist in his or her rehabilitation; or

- (b) otherwise at the discretion of the Superintendent .

(3) Subregulation (1) shall also apply to any convicted prisoner or class of convicted prisoners exempted by order of the Governor in the public interest.

(4) Any unauthorised absence by any prisoner from any employment, training or special activity permitted under this regulation, may lead to the immediate withdrawal of such prisoner's temporary release privileges.

(5) During any period of temporary release under subregulation (1), a prisoner shall return to prison immediately at the conclusion of the session of work, training or special

activity, for which such release is authorised under this regulation.

(6) The Governor shall determine how any money earned by a prisoner under this regulation shall be disposed of, including the proportions to be applied towards his or her upkeep, retained to be available for his or her other benefit upon release and be available for personal use.

(7) A prisoner temporarily released under subregulation (1) may be recalled to prison at any time, whether the conditions of release have been broken or not.

Requests by prisoners
to see certain
authorities

20.—(1) Every request by a prisoner to see the Superintendent or the Committee shall be recorded in the Application Book by the prison officer to whom it is made and promptly communicated to the Superintendent.

(2) The Superintendent, as soon as practicable after being informed of a request under subregulation (1), shall—

- (a) if the request is addressed to the Superintendent, be available to hear it on any day other than Saturday, Sunday, or a public holiday;
- (b) if the request is addressed to the Committee, inform a member of the Committee of the request.

Religious ministrations

21.—(1) A prisoner shall be treated as being of the religious denomination (if any) stated on his or her record upon admission into prison or otherwise disclosed to a prison officer.

(2) The Superintendent shall approve the choice by any recognised religious denomination of a pastor to a prison or any minister of religion and shall also approve the nomination of any substitute for the pastor or minister if absent.

(3) A pastor or minister of religion may—

- (a) interview every prisoner individually as soon as practicable after the prisoner's admission into and release from prison;
- (b) unless other arrangements are made, read the burial service at the funeral of any prisoner of that denomination who dies in prison;
- (c) visit prisoners of that denomination as regularly as practicable; and
- (d) conduct divine service for the prisoners of that denomination at such intervals as may be approved by the Superintendent and on the special days of religious observance pertaining to the denomination.

(4) Where a prisoner belongs to a denomination for which no minister has been appointed, the Superintendent shall do what he reasonably can, if so requested by the prisoner, to arrange that he or she be visited by a minister or representative

of that denomination.

(5) The Superintendent shall not require prisoners to do non-essential work on the Sabbath Day.

(6) So far as is reasonably practicable, there shall be available for the personal use of every prisoner such religious books as are approved by the Superintendent for use in prisons.

22.—(1) The Medical Officer shall have the responsibility for the care of the mental and physical (including dental) health of the prisoners.

Illness and death of
prisoners

(2) Every request by a prisoner to see the Medical Officer shall be recorded in the Medical Book by the prison officer to whom it is made and promptly communicated to the Medical Officer.

(3) The Medical Officer may by any means available call another medical or dental practitioner into consultation, and shall do so, if time permits, before instituting any significant treatment.

(4) If an unconvicted prisoner desires the attendance of a private medical or dental practitioner and will pay any expense incurred, the Superintendent shall, if satisfied that there are reasonable grounds for the request, allow the prisoner to be attended by such medical practitioner or dentist.

(5) The Medical Officer shall report in writing immediately to the Superintendent in the case of any prisoner—

- (a) suffering from a contagious disease; or
- (b) whose health is likely to be injuriously affected by continued imprisonment or any conditions of imprisonment,

and the Superintendent shall thereupon without delay send a copy of the report to the Governor with his recommendation as to what should be done.

(6) The Medical Officer shall report in writing to the Superintendent in the case of any prisoner whose mental condition appears to require that special arrangements be made for the prisoner's supervision or care and the Superintendent may approve any such arrangements.

(7) The Medical Officer shall inform the Superintendent if he or she suspects any prisoner of having suicidal intentions and such prisoner shall thereupon be placed under special observation.

(8) If a prisoner dies, becomes seriously ill, sustains any severe injury or is removed to a hospital on account of mental or physical disorder, the Superintendent shall, if the address concerned is known, inform the prisoner's spouse or next of kin and also any person who the prisoner may reasonably have asked should be informed.

Clothing of prisoners

23.—(1) An unconvicted prisoner may wear his or her own clothing and arrange for it to be supplied from outside the prison, if such clothing is adequate, clean and tidy, but this regulation shall otherwise apply to him or her as to a convicted prisoner.

(2) A convicted prisoner shall be provided with clothing adequate for the climate and consistent with good health in accordance with a scale approved by the Superintendent.

(3) The clothing referred to in subregulation (2) includes protective clothing for use at work where it is needed.

(4) Subject to subregulation (5), a convicted prisoner shall wear only the clothing provided under this regulation unless the Superintendent directs otherwise.

(5) A prisoner required to be taken in custody to any court shall wear his or her own clothing or clothing different from that worn in prison.

Food

24.—(1) Subject to any directions of the Governor, an unconvicted prisoner may arrange at his own expense for food to be supplied to him or her from outside the prison.

(2) Subject to any directions of the Governor, or as advised by the Medical Officer, no convicted prisoner shall—

(a) be allowed to have any food other than that ordinarily provided;

(b) be given less food than is ordinarily provided:

Provided that the Superintendent in his discretion may permit a prisoner to receive prepared food.

(3) The food provided shall be wholesome, nutritious, well prepared and served, reasonably varied and sufficient in quantity.

(4) The Medical Officer shall whenever practicable inspect the food both before and after it is prepared, and shall report any deficiency or defect to the Superintendent.

Alcohol and tobacco

25.—(1) No prisoner shall be allowed to have any intoxicating liquor except under a written order of the Medical Officer specifying the quantity permitted and the name of the prisoner.

(2) No prisoner shall be allowed to smoke or have any tobacco except as a privilege under regulation 18 and in accordance with any directions of the Superintendent.

Accommodation and hygiene

26.—(1) No room or cell shall be used as sleeping accommodation unless certified by the Governor—

(a) as being capable of accommodating a specified maximum number of prisoners who may sleep or be confined at one time therein, which number shall not be exceeded without the authority of the

Governor; and

- (b) as being otherwise suitable for the confinement of any prisoner.

(2) Each prisoner shall be provided with a separate bed and with separate bedding adequate for warmth and health.

(3) Every prisoner shall be provided with toilet articles necessary for his or her health and cleanliness, which shall be replaced as necessary.

(4) Every prisoner shall be required to wash at proper times, have a shower on admission into prison and thereafter at regular intervals consistent with his or her personal hygiene and, in the case of a male prisoner not exempted by the Superintendent, to shave or be shaved daily and to have his hair cut as may be necessary for neatness:

Provided that a male prisoner shall not be required to have his hair cut or any beard or moustache usually worn by him shaved off if he keeps the same tidy, unless the Medical Officer directs this to be done for the sake of health or cleanliness.

(5) A female prisoner's hair shall not be cut without her consent except where the Medical Officer certifies in writing that this is necessary for the sake of her health or cleanliness.

27.—(1) A prison officer shall have the power to search—

Power of search

- (a) any prisoner; or
(b) the cell occupied by any prisoner,

for the purpose of ascertaining whether a prisoner has possession of any prohibited or unauthorised article.

(2) A prison officer searching a prisoner or cell by virtue of this regulation—

- (a) shall have every regard for decency and if conducting a strip search shall do so out of sight of other prisoners;
(b) may use reasonable force where necessary; and
(c) may seize and detain any prohibited or unauthorised article found on the prisoner or in his or her cell during the course of the search.

(3) In this regulation prohibited or unauthorised article, in relation to a prison, means any article which the prisoner is not authorised by these regulations or by the Superintendent to have in his or her possession or, as the case may be, in his or her possession in any particular part of the prison.

(4) The Superintendent may direct the Medical Officer, or deputy being of the same gender as the prisoner concerned,—

- (a) to conduct, with or without the consent of the prisoner, an intrusive bodily search of him or her for the purpose of discovering any prohibited or unauthorised article; and

- (b) to obtain samples from a prisoner of such bodily samples as may be necessary to detect illness or drug abuse:

Provided that no sample other than urine or saliva may be obtained from the prisoner without his or her consent.

(5) Every search of a person authorised by this regulation shall be conducted by a prison officer of the same gender as the prisoner.

[Rules for strip searches.

27A. On any occasion when a strip search is conducted of a prisoner that search shall be conducted in accordance with the provisions of the Second Schedule.]

(Inserted by Regulations 13.10.04)

Daily exercise

28.—(1) Subject to section 6(2) of the ordinance, a prisoner not engaged in outdoor work shall be given exercise in the open air for not less than one hour each day, if health permits:

Provided that exercise consisting of physical training may be given indoors instead of in the open air.

(2) The period of exercise referred to in subregulation (1) may be reduced in special circumstances by the Superintendent.

(3) The Medical Officer shall decide upon the fitness of every prisoner for exercise and physical training and may excuse a prisoner from or modify any activity on medical grounds.

Work

29.—(1) A convicted prisoner may be required to do useful work for not more than the whole of the morning on any weekday and arrangements shall be made to allow prisoners to work where possible outside the cells and in association with one another.

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

(3) No prisoner shall work in the service of another prisoner or a prison officer, or for the private benefit of any person, without the authority of the Governor.

(4) An unconvicted prisoner may, if he or she wishes, with the approval of the Superintendent, perform work as if he or she were a convicted prisoner.

(5) Prisoners may be paid for their work at rates approved by the Governor, either generally or in relation to particular cases.

(6) Every prisoner shall be searched immediately on return from outside work.

(7) Prisoners at work outside the prison shall at all times be

under supervision of a prison officer or of a person approved by the Superintendent as being responsible for the supervision of any prisoner.

(8) No prisoner classified as a Category A or B prisoner in the Schedule shall be permitted to work outside the prison except with the consent of the Governor.

30.—(1) Every prisoner able to benefit from any educational facilities at a prison shall be encouraged to do so.

Education and social welfare

(2) Programmes of daytime and evening educational classes may be arranged and, subject to the directions of the Superintendent, reasonable facilities may be afforded to prisoners who wish to do so at their own expense to improve their education by correspondence courses or private study, or to practise handicrafts in their spare time.

(3) Special attention shall be paid to the education of illiterate prisoners and if necessary they shall be taught to read and write within the hours normally allotted to work.

(4) Subject to the direction of the Superintendent, every prisoner shall be allowed to have library books and exchange them at the Public Library.

31.—(1) The Superintendent shall endeavour to facilitate such relations between a prisoner and his or her family as are desirable in the best interests of both.

Outside contacts and aftercare

(2) A prisoner shall be encouraged and assisted to establish and maintain such relations with persons and agencies in the prison as may, in the opinion of the Superintendent, best promote the interests of his or her family and his or her own social rehabilitation.

(3) From the beginning of a prisoner's sentence, consideration shall be given, whenever possible, in consultation with the appropriate agencies, to the prisoner's future and the assistance to be given to him or her after release.

32.—(1) The Superintendent may with a view to securing discipline or the prevention of crime or in the interests of any persons impose restrictions, either generally or in a particular case, upon the communications to be permitted between a prisoner and other persons.

Letters and visits

(2) Except as provided by this regulation a prisoner shall not be permitted to communicate with any person outside the prison, or that person with the prisoner, without the leave of the Superintendent.

(3) Except as provided by this regulation every letter or communication to and from a prisoner may be read or examined by the Superintendent or a prison officer deputed by him or her, and the Superintendent may, at his or her

discretion, stop any letter or communication on the ground that its contents are objectionable or could lead to a breach of prison security.

(4) Every visit to a prisoner shall take place within the sight and, except as provided by regulation 33, the hearing of a prison officer unless the Superintendent otherwise directs.

(5) The Superintendent may give directions, generally or in relation to any visit or class of visit, concerning the days and times when prisoners may be visited.

(6) An unconvicted prisoner may send and receive as many letters and receive as many visits as he or she wishes within such limits and subject to such conditions as the Superintendent may direct either generally or in a particular case.

(7) A convicted prisoner shall be entitled—

- (a) to send and receive a letter on admission into prison and thereafter once a week; and
- (b) to receive a visit every Sunday between the hours of 1pm and 4pm.

(8) The Superintendent may allow a prisoner an additional letter or visit where necessary for the welfare of the prisoner or his or her family.

(9) The Superintendent may allow a prisoner entitled to a visit to send and receive a letter instead.

(10) The Superintendent may defer the right of a prisoner to a visit until the expiration of any period of cellular confinement.

(11) The Committee may allow a prisoner an additional letter or visit in special circumstances and may direct that a visit may extend beyond the normal duration.

(12) The Superintendent may allow additional letters and visits in relation to any class of prisoner.

(13) A prisoner shall not be entitled under this regulation to receive a visit from any person other than a relative or friend except with the leave of the Superintendent.

33.—(1) A police officer may, with the consent of the Superintendent, interview any prisoner willing to see him.

(2) A person detained in prison in default of payment of a sum of money may communicate with and be visited at any reasonable time on a weekday by any relative or friend to arrange for payment in order to secure his release from prison.

(3) The legal adviser of a prisoner in any legal proceedings, civil or criminal, to which the prisoner is a party shall be afforded reasonable facilities for interviewing him or her in connection with those proceedings out of hearing but in the sight of a prison officer.

(4) A prisoner's legal adviser may, with the leave of the Superintendent, interview the prisoner in connection with any legal business in the sight and hearing of a prison officer.

(5) A prisoner who is a party to any legal proceedings may correspond with his legal adviser in connection with the proceedings and unless the Superintendent has reason to suppose that any such correspondence contains matter not relating to the proceedings it shall not be read or stopped under regulation 32 (3).

(6) A prisoner shall on request be provided with any writing materials necessary for the purpose of subregulation (5).

(7) Subject to any directions given in the particular case by the Superintendent, a medical practitioner selected by or on behalf of a prisoner who is a party to legal proceedings shall be afforded reasonable facilities for examining him or her in connection with the proceedings and may do so out of hearing but in the sight of a prison officer who shall be of the same gender as the prisoner.

(8) Subject to any directions of the Superintendent, a prisoner may correspond with a lawyer for the purpose of obtaining legal advice concerning any cause of action in relation to which the prisoner may become a party to civil proceedings or for the purpose of instructing the lawyer to issue such proceedings.

34.—(1) A person being taken to or from a prison in custody shall be exposed as little as possible to public observation and proper care shall be taken to protect him or her from curiosity and insult.

Custody outside
prison

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

35.—(1) Subject to any directions of the Superintendent, an unconvicted prisoner may be supplied at his or her own expense with books, newspapers, writing material and any other means of occupation except any that appear objectionable to the Visiting Committee or, pending consideration by them, to the Superintendent.

Prisoners' property

(2) Anything other than cash or other property which a prisoner is allowed to retain shall be taken into the Superintendent's custody. An inventory of the prisoner's property shall be kept and he or she shall be required to sign it after having a proper opportunity to see that it is correct.

(3) Any cash which a prisoner has at a prison shall be paid to the Government Treasurer for safe keeping during the term of imprisonment or, if the prisoner so requests, to the spouse or dependants of the prisoner.

(4) Any article belonging to a prisoner which remains unclaimed for a period of more than three years after he or she leaves prison or dies may be sold or otherwise disposed of and the nett proceeds of any sale shall be paid into the general revenues of the Islands.

(5) The Superintendent may confiscate any unauthorised article found in the possession of a prisoner after his or her admission into prison or concealed or deposited anywhere within the prison.

Money and articles
received by post

36.—(1) Any money or other article (other than a letter or other communication) sent to a convicted prisoner through the post office shall be dealt with in accordance with the provisions of this regulation, and the prisoner shall be informed of the manner in which it is dealt with.

(2) Any cash shall, at the discretion of the Superintendent be—

- (a) dealt with in accordance with regulation 35(3); or
- (b) returned to the sender; or
- (c) in a case where the sender's name and address are not known paid into the general revenue of the Islands:

Provided that in relation to a prisoner committed to prison in default of payment of any sum of money, the prisoner shall be informed of the cash and, unless he or she objects to it being so applied, it shall be applied in or towards the satisfaction of the amount due to the judgment creditor.

(3) Any security for money shall at the discretion of the Superintendent—

- (a) be delivered to the prisoner or placed with his or her property at the prison; or
- (b) be returned to the sender; or
- (c) in a case where the sender's name and address are not known or the article is of such a nature that it would be unreasonable to return it be sold or otherwise disposed of and the nett proceeds of any sale applied in accordance with subregulation (2).

PART V—DISCIPLINE

Removal from
association

37.—(1) Where it appears desirable for the maintenance of good order and discipline or in his or her own interests that a prisoner should not associate with other prisoners, either generally or for particular purposes, the Superintendent may arrange for such prisoner's removal from association accordingly.

(2) A prisoner shall not be removed under this regulation for a period of more than 24 hours without the authority of

a member of the Committee. An authority given under this subregulation shall be for a period not exceeding one month but may be renewed from month to month.

(3) The Superintendent may arrange at his or her discretion for such a prisoner to resume association with other prisoners and shall do so if in any case the Medical Officer so advises on medical grounds.

38.—(1) A prison officer in dealing with a prisoner shall not use force unnecessarily and when the application of force to a prisoner is necessary no more force than is necessary shall be used.

Use of force

(2) No prison officer shall act deliberately in a manner calculated to provoke a prisoner towards indiscipline.

39. The Superintendent may order a refractory or violent prisoner to be confined temporarily in a special cell (if available) but a prisoner shall not be so confined as a punishment or after he or she ceases to be refractory or violent.

Temporary confinement

40.—(1) The Superintendent may order a prisoner to be put under restraint where this is necessary to prevent the prisoner from causing injury, damaging property or creating a disturbance.

Restraints

(2) Notice of such an order shall be given without delay to a member of the Committee and to the Medical Officer.

(3) On receipt of the notice the Medical Officer shall inform the Superintendent whether or not he or she concurs in the order. The Superintendent shall give effect to any recommendations which the Medical Officer may make.

(4) A prisoner shall not be kept under restraint longer than is necessary nor be so kept for longer than 24 hours without a direction in writing given by a member of the Committee. Such a direction shall state the grounds for the restraint and the time during which it may continue.

(5) Particulars of every case of restraint under the foregoing provisions of this regulation shall be forthwith recorded.

(6) Except as provided by this regulation no prisoner shall be kept under restraint otherwise than for safe custody during removal or on medical grounds by direction of the Medical Officer. No prisoner shall be put under restraint as a punishment.

41. A prisoner commits an offence against discipline if he or she

Offences against discipline

- (a) mutinies or incites another prisoner to mutiny;
- (b) commits an assault;
- (c) detains any person against his or her will;

- (d) denies access to any part of the prison to any prison officer;
- (e) fights with any person;
- (f) intentionally endangers the health or personal effects of others or by his or her conduct is reckless whether such health or personal safety is endangered;
- (g) intentionally obstructs an officer in the execution of his or her duty;
- (h) escapes from prison or legal custody;
- (i) fails
 - (i) to return to prison when he or she should return after being temporarily released under regulation 19;
 - (ii) to comply with any condition upon which he or she is so released;
- (j) has in his or her possession—
 - (i) any prohibited article; or
 - (ii) a greater quantity of any article than he or she is authorised to have;
- (k) sells or delivers to any person any prohibited article;
- (l) sells or without permission delivers to any person any article which he or she is allowed to have only for personal use;
- (m) takes improperly any article belonging to any other person or to the prison;
- (n) intentionally or recklessly sets fire to any part of the prison or any other property, whether or not his or her own;
- (o) destroys or damages any part of the prison or any other property other than his or her own;
- (p) is absent from any place where he or she is required to be or is present at any place where he or she is not authorised to be;
- (q) is disrespectful to the Superintendent or to any prison officer or to any person visiting the prison;
- (r) uses threatening, abusive or insulting words or behaviour;
- (s) intentionally fails to work properly or, being required to work, refuses to do so;
- (t) disobeys any lawful order;
- (u) disobeys or fails to comply with any rule or regulation applying to him or her;
- (v) makes any false and malicious allegation against a prison officer;
- (w) repeatedly makes groundless complaints;
- (x) in any way offends against good order and discipline;

- (y) attempts to commit, or incites another prisoner to commit, or assists another prisoner to commit, any of the foregoing disciplinary offences.

42.—(1) Where a prisoner is to be charged with an offence against discipline, the charge shall be laid as soon as possible and, save in exceptional circumstances, within 48 hours of the discovery of the offence.

Disciplinary charges

(2) A prisoner who is to be charged with an offence against discipline may be kept apart from other prisoners pending adjudication of the case.

(3) Every charge shall be inquired into by the Superintendent.

(4) Save in exceptional circumstances every charge shall be first inquired into not later than the next day, not being a Saturday, Sunday or public holiday, after it is laid.

43.—(1) Where a prisoner is charged with an offence against discipline, he or she shall be informed of the charge as soon as possible and, in any case, before the time when it is inquired into by the Superintendent.

Rights of prisoners charged

(2) At any enquiry into a charge against a prisoner, he or she shall be given a full opportunity of hearing what is alleged and of presenting his or her own case.

44.—(1) If the Superintendent finds a prisoner guilty of an offence against discipline, he or she may, subject to regulation 46, impose one or more of the following punishments—

Punishments

- (a) a caution;
- (b) forfeiture for a period not exceeding 28 days of any privileges under regulation 18;
- (c) exclusion from associated work for a period not exceeding 14 days;
- (d) stoppage of earnings for a period not exceeding 28 days;
- (e) cellular confinement for a period not exceeding 3 days;
- (f) in the case of an unconvicted prisoner, forfeiture for any period of the right under regulation 35(1) to have the articles there mentioned;
- (g) in the case of an unconvicted prisoner guilty of escaping or attempting to escape, forfeiture of the right to wear his or her own clothing under regulation 23(1).

(2) If a prisoner is found guilty of more than one offence, punishments may be ordered to run consecutively.

(3) In the case of an offence against discipline committed by a prisoner who was under the age of 21 years when it was

committed, subregulation (1) shall have effect but—

- (a) the maximum period of forfeiture of privileges shall be 14 days; and
- (b) the maximum period of stoppage of earnings shall be 14 days.

[Regulation 45 repealed by Prisons (Amendment) Regulations 2007 on 6 July 2007]

Particular
punishments

46.—(1) A punishment of stoppage of earnings may, instead of forfeiting all a prisoner's earnings for a specified period not exceeding 28 days, be expressed to forfeit a proportion (being not less than one half) of such earnings for that period.

(2) No punishment of cellular confinement shall be imposed unless the Medical Officer has certified that the prisoner is in a fit state of health to be so dealt with.

Suspension, remission
and mitigation of
punishments

47.—(1) Subject to any directions of the Governor, the power to impose a punishment (other than a caution) under this Part, shall include the power to suspend up to six months the operation of the punishment unless within the period of the suspension the prisoner commits another offence against discipline.

(2) Where a prisoner upon whom a suspended punishment is imposed commits another offence against discipline the Superintendent may—

- (a) direct that the suspended punishment take effect;
- (b) direct that it take effect subject to a specified reduction of its period or amount;
- (c) suspend the operation of the suspended punishment for a further period of up to six months; or
- (d) give no directions with respect to the suspended punishment.

(3) The Governor may quash any finding of guilt and may remit any punishment or mitigate it either by reducing it or by substituting another which is in his or her opinion less severe.

[Subsection 4 deleted by Prisons (Amendment) Regulations 2007 on 6 July 2007]

**PART VI—FUNCTIONS AND CONDUCT OF
PRISON OFFICERS**

General conduct of
prison officers

48.—(1) It shall be the duty of every prison officer to conform to these regulations, to assist and support the Superintendent in their observance and to obey the lawful instructions of the Superintendent.

(2) A prison officer shall inform the Superintendent promptly of any abuse or impropriety which comes to his or her knowledge.

49. A prison officer shall submit to being searched in the prison by a person of the same gender if so required by the Superintendent.

Search of prison officers

50.—(1) No prison officer shall take part in any business or pecuniary transaction with or on behalf of a prisoner without leave of the Superintendent.

Dealings with prisoners

(2) No prison officer shall without the knowledge of the Superintendent communicate with any person whom he knows to be a relative or friend of a prisoner.

51.—(1) No prison officer shall make directly or indirectly any unauthorised communication to a representative of the press or any other news media concerning matters that have become known to him or her in the course of duty.

Communications to the press etc.

(2) No prison officer shall without authority publish any matter or make any public pronouncement relating to the prison administration.

52. The Governor may approve a code of discipline which shall have effect in relation to the conduct of all prison officers.

Code of discipline

PART VII—VISITING COMMITTEE

53.—(1) For the purpose of exercising the functions conferred upon it by these regulations, there shall be a body to be known as the Visiting Committee which shall consist of a chairperson and no fewer than two or more than six other members appointed by the Governor.

Constitution and proceedings of Visiting Committee

(2) A person appointed to be a member of the Committee shall hold office for such term, not exceeding two years, as may be determined by the Governor at the time of appointment but any member shall be eligible for reappointment and may at any time resign his office by notice in writing to the Governor.

(3) At any meeting of the Committee any three members shall constitute a quorum.

(4) The chairperson shall preside at meetings of the Committee but in the event of his or her absence from any meeting the members present shall appoint any other member to preside at that meeting.

(5) No person interested in any contract for the supply of goods or services to a prison shall be a member of the Committee.

(6) The Committee shall meet at the prison once each month or, if it resolves for reasons specified in the resolution that less frequent meetings are sufficient, not fewer than eight times over a period of 12 months. A member unable to be present on the Island may, if necessary, attend any meeting by

appropriate means of communication from beyond the Island if the Governor so approves.

(7) The proceedings of the Committee shall not be invalidated by any vacancy in the membership or any defect in the appointment of a member.

(8) Decisions of the Committee shall be reached by a majority of the members present and voting and, in the case of an equality of votes, the chairperson or member presiding shall have a casting vote.

(9) The Committee shall otherwise regulate its procedure as it thinks fit.

Duties of committee

54.—(1) The Committee shall satisfy itself as to the state of prisons and the treatment of prisoners and in particular it shall—

- (a) hear any complaint or request that a prisoner wishes to make to it or any member;
- (b) arrange for the food of the prisoners to be inspected by a member of the Committee at frequent intervals;
- (c) inquire into any report made to it that a prisoner's health, mental or physical, is likely to be injuriously affected by any conditions of imprisonment;
- (d) inquire into and report upon any matter into which the Governor may ask them to inquire;
- (e) direct the attention of the Superintendent to any matter which calls for consideration and report to the Governor on any matter expedient to report upon;
- (f) inform the Governor immediately of any abuse that comes to its knowledge.

(2) The Committee shall, in a case of any abuse or neglect by a prison officer of his or her functions involving any prisoner, immediately report the matter to the Superintendent who shall have power to suspend the officer until such time as an enquiry into the matter has been completed.

Visiting of prisons

55.—(1) The members of the Committee shall arrange a roster whereby at least one member visits a prison at least once in every three months.

(2) A member of the Committee shall have access to the records of any prisoner.

Annual report

56. The Committee shall make an annual report to the Governor at the end of each year concerning the state of prisons and their administration and including any recommendations it considers appropriate.

PART VIII—SUPPLEMENTARY

57.—(1) Any person entering or leaving a prison may be stopped, examined and searched.

Control of access
to and viewing of
prisons

(2) The Superintendent may direct the removal from a prison of any person who does not leave upon being required to do so.

(3) No person outside a prison shall be permitted to view it unless authorised by the Superintendent.

(4) No person shall be permitted to take a photograph or make a sketch of the prison nor to communicate with a prisoner unless authorised by the Superintendent.

58. Where by these regulations powers and duties are conferred or imposed upon the Superintendent he or she may, unless expressly prohibited from so doing, depute any subordinate officer to exercise such powers and perform such duties on his or her behalf subject to such conditions, exceptions and qualifications as may be prescribed.

Delegation by
Superintendent

[FIRST] SCHEDULE
SECURITY CLASSIFICATION

(Regulation (16)(1))

Category A

A prisoner who must be held in accommodation to the highest level of security available and whose escape would be a danger to the public or the police.

Category B

A prisoner who needs to be held in accommodation to the highest level of security available but whose escape should be prevented if possible.

Category C

A prisoner who does not have the resources or inclination to escape but who cannot be held in open accommodation.

Category D

A prisoner who is not considered to be a security risk and who can serve his or her sentence in open accommodation.

**[SECOND SCHEDULE
RULES GOVERNING STRIP SEARCH OF
PRISONERS**

(Regulation 27A)

- | | |
|---|-----------------------------|
| 1. A strip search means search where the person conducting the search may require the person being searched to remove, raise, lower or open all or any of his or her clothing. | Definition |
| 2. For the purpose of carrying out a strip search the prisoner may be required to: <ul style="list-style-type: none"> open his or her mouth show the open palms of his or her hands lift or ruffle his or her hair show the soles of his or her feet raise his or her arms to show his or her armpits with his or her legs apart bend his or her knees. | Powers of searching officer |
| 3. The person conducting the search may make a visual examination and, if necessary, may use an illuminating or magnifying instrument to inspect the mouth, nose and ears but may not insert it into such place. No other body cavity may be searched | Means of search |
| 4. A strip search may be made only <ul style="list-style-type: none"> (i) for the purpose of detecting any unauthorised item; and (ii) if it is necessary, in place of a scanner or rubdown search, in the particular circumstances involved. | Authority for strip search |
| 5. Subject to paragraph 3, a prisoner must be required to undergo a strip search <ul style="list-style-type: none"> (i) when first admitted to a prison; (ii) immediately before transfer to another prison (iii) on being received in a prison on transfer from another prison. | Mandatory searches |
| 6. Subject to paragraph 3, a prisoner may be required to undergo a strip search <ul style="list-style-type: none"> (i) when any prison officer has reasonable grounds to believe that the prisoner has any unauthorised item in his or her possession; (ii) when any prisoner is locked in a cell under report or punishment, or for observation; (iii) on return of the prisoner to the prison from work or otherwise; (iv) on return from any part of the prison that is not supervised; (v) immediately before the prisoner leaves the prison; (vi) at any time while the prisoner is being transferred to another prison; (vii) at any time while the prisoner is away from the prison in the custody of a prison officer; (viii) immediately before the prisoner is brought before any officer of the prison for any disciplinary hearing or appeal; (ix) immediately before and/or after any person visits the prisoner. | Discretionary searches |
| 7. Every strip search must comply with the following conditions— <ul style="list-style-type: none"> (i) it must be carried out by a prison officer of the same gender as the person being searched; (ii) a second officer, who may be a police officer or an authorised security officer must be present as the witnessing officer; | Conditions of strip search |

- (iii) the searching officer shall be visible to the witness at all times;
- (iv) the search shall not be carried out in the view of any person of the opposite gender;
- (v) the search shall not be carried out in the view of another prisoner.

Search procedure

8. The procedure for any strip search shall be as follows—
- (i) as each article of clothing is removed, lowered, raised or opened by the person being searched, it shall be checked to establish whether or not it contains an unauthorised item and it may be searched;
 - (ii) the person being searched is not to be required to have more than half of his or her body naked, unless good reason so requires;
 - (iii) as each article of clothing is removed and when an area is unclothed, a visual scan is to ensure whether or not any unauthorised article is disclosed;
 - (iv) any item carried by, or in the possession of, the prisoner may be searched.]

(Inserted by Regulations 13.10.04)