

PROJET DE LOI

ENTITLED

The Prison Administration (Guernsey) Law, 1949 *

[CONSOLIDATED TEXT]

NOTE

This consolidated version of the enactment incorporates all amendments listed in the footnote below. However, while it is believed to be accurate and up to date, it is not authoritative and has no legal effect, having been prepared in-house for the assistance of the Law Officers. No warranty is given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use. The authoritative text of the enactment and of the amending instruments may be obtained from Her Majesty's Greffier, Royal Court House, Guernsey, GY1 2PB.

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* Ordres en Conseil Vol. XIV, p. 159; as amended by the Prison Administration (Guernsey) Law, 1957 (Ordres en Conseil Vol. XVII, p. 234); the States Civil Service Board (Implementation) Law, 1964 (Ordres en Conseil Vol. XIX, p. 213); the Prison Administration (Amendment) (Guernsey) Law, 1999 (No. I of 1999, Ordres en Conseil Vol. XXXIX, p. 13); the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003, Recueil d'Ordonnances Tome XXIX, p. 406). See also the Deputy Bailiff (Guernsey) Law, 1969 (Ordres en Conseil Vol. XXII, p. 122); the Appointments to the States Established Staff (Guernsey) Law, 1985 (Ordres en Conseil Vol. XXIX, p. 130); the Appointments Board (Repeal) (Guernsey) Law, 2000 (No. XIII of 2000, Ordres en Conseil Vol. XL, p. 382); the Appointments to the States Established Staff (Guernsey) (Repeal) Law, 2004 (No. XI of 2004); the Criminal Justice (Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2006 (No. XIII of 2006); the Resolution of the States of Guernsey of 24th April, 1991 (Billet XI, proposition 1(2)). This Law has been repealed by the Prison (Guernsey) Ordinance, 2013 (No. XXIX of 2013).

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ARRANGEMENT OF SECTIONS

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3. Power to Board to make Regulations.
- 3A. Testing prisoners for drugs.
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6. Constitution of Panel of Visitors.
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SCHEDULE Release of Young Offenders from the Prison on Licence.

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The Prison Administration (Guernsey) Law, 1949

WHEREAS His Majesty's Government of the United Kingdom have relinquished the control and administration of His Majesty's Prison in this Island, and the States, by Resolution dated the 26th day of March, 1947, have accepted the responsibility for such control and administration:

WHEREAS Regulations for the said Prison have heretofore been made by Ordinance of the Royal Court:

WHEREAS the States have on the 4th day of June, 1948, resolved in the exercise of such control to set up a Prison Board and a Panel of Visitors, as is hereinafter provided, in respect of the said Prison:

WHEREAS, in consequence thereof, it is necessary and expedient that the functions heretofore respectively exercised by His Excellency the Lieutenant Governor and Commander in Chief and by the Royal Court and the Jurats thereof in relation to the control and administration of the said Prison shall be transferred to the said Prison Board, and that the functions heretofore exercised by the said Jurats in relation to the periodic inspection of the said Prison shall be transferred to the said Panel of Visitors:

THE STATES, in pursuance of their said Resolutions have approved the following provisions which subject to the Sanction of His Most Excellent Majesty in Council, shall have force of law in this Island.

Constitution of States Prison Board.

1. There shall be set up a Board, to be known as "**the States Prison Board**", which Board shall be constituted in accordance with the provisions of any States Resolution in that behalf for the time being in force.

NOTE

In accordance with their Resolution of 24th April, 1991, concerning Billet d'État No. XI, dated 12th April, 1991, the States directed that the Board established as the States Prison Board under this section should be the States Committee for Home Affairs. The functions, rights and liabilities of the States Committee for Home Affairs and of its President arising under or by virtue of this Law were subsequently transferred to and vested in, respectively, the Home Department and its Minister by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 9, with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance.¹

Transfer of powers to the Board.

2. The functions in relation to the control and administration of the Prison heretofore respectively exercised by His Excellency the Lieutenant Governor and Commander in Chief and the Royal Court and the Jurats thereof are hereby transferred to the States Prison Board.

Power to Board to make Regulations.

[3. (1) Subject to the provisions of this section, the States may from time to time by Ordinance make provision for the government, control and administration of the Prison and, in particular but without prejudice to the generality of the foregoing, for all or any of the following purposes, that is to say, the classification, treatment, employment, discipline and control of persons required to be detained therein.

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

(3) An Ordinance made under this section shall provide for the special treatment of the following persons whilst required to be detained in the Prison, that is to say –

- (a) any person who is detained in the Prison pending the determination of an appeal by him against conviction or sentence or against both conviction and sentence,

- (b) any other person detained in the prison, not being a person serving a sentence or a person imprisoned in default of payment of a sum adjudged to be paid by him on his conviction.

(4) An Ordinance made under this section may make provision whereby, in such circumstances as may be prescribed by the Ordinance, a person serving a sentence of imprisonment in the Prison for such a term as may be so prescribed may be granted remission of such part of that sentence as may be so prescribed on the ground of his industry and good conduct; and on the discharge of a person from the Prison in pursuance of any such remission as aforesaid his sentence shall expire.

(5) If it appears to the States Prison Board that a person serving a sentence of imprisonment was under the age of twenty-one years at the commencement of his sentence, it may direct that instead of being granted remission of his sentence under any Ordinance made under this section he shall, at any time on or after the day on which he could have been discharged if the remission had been granted, be released on licence under the provisions of the Schedule to this Law.

(6) Except as provided by subsections (7) to (11), both subsections inclusive, of this section, an Ordinance made under this section shall not authorise the infliction of corporal punishment in the Prison.

(7) Subject to the succeeding provisions of this section, an Ordinance made under this section may authorise the infliction of corporal punishment for mutiny, incitement to mutiny or gross personal violence to an officer of the Prison when committed by a male person serving a sentence of imprisonment and detained in the Prison in consequence thereof.

(8) An Ordinance made under this section shall not authorise the infliction of corporal punishment except by order of the States Prison Board made after an inquiry by a meeting thereof at which not less than three members are present and at which the evidence is given on oath, the person who is performing the duties of chairman at that meeting being hereby authorised to administer that

oath; throughout every such meeting a Law Officer of the Crown shall be present to assist in the proper conduct of the proceedings.

(9) The rules of evidence to be adopted at an inquiry held in pursuance of the last preceding subsection shall be those for the time being followed in the Royal Court.

(10) The punishment which may be inflicted under an order made by the States Prison Board as aforesaid shall not exceed –

- (a) in the case of a person appearing to the said Board to be not less than eighteen years of age, twenty-four strokes of a cat-o'-nine-tails or birch rod, or
- (b) in the case of a person appearing to the said Board to be under that age, twelve strokes of a birch rod,

and if corporal punishment is inflicted, no further punishment by way of confinement in cells or restricted diet shall be imposed.

(11) Where an order for the infliction of corporal punishment has been made under this section, a copy of the notes of the evidence given at the inquiry, a copy of the order and a statement of the grounds on which it was made shall forthwith be given to the Bailiff; and the order shall be carried into effect only after confirmation by the Bailiff, and, if the Bailiff confirms the order but reduces the sentence, in accordance with the order as so modified.

(12) A refusal by the Bailiff to confirm such an order as aforesaid shall not prejudice any power of the States Prison Board to impose another punishment for the offence for which the order was made.

(13) For the purposes of this section, a person committed to prison in default of payment of a sum adjudged to be paid by a conviction shall be treated as undergoing a sentence of imprisonment for the term for which he is committed, and consecutive terms of imprisonment shall be treated as one term.]

NOTES

Section 3 was substituted by the Prison Administration (Guernsey) Law, 1957, section 1, with effect from 26th October, 1957.

The following Ordinances have been made under section 3:

*Prison Administration (Guernsey) Ordinance, 1998;
Prison Administration (Amendment) Ordinance, 2002;
Prison Administration (Guernsey) (Amendment) Ordinance, 2006.*

In accordance with the provisions of the Criminal Justice (Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2006, section 11, with effect from 28th March, 2007 and pursuant to the repeal thereby of the Corporal Punishment (Guernsey) Law, 1957, judicial corporal punishment has been abolished.

In accordance with the provisions of the Deputy Bailiff (Guernsey) Law, 1969, section 5(4), with effect from 9th September, 1969, in the event of the Deputy Bailiff discharging any functions or exercising any powers appertaining to the office of Bailiff which he is authorised to discharge or exercise under or by virtue of the 1969 Law, the provisions contained herein relating to the discharge of such functions or the exercise of such powers shall have effect as if the references herein to the Bailiff included a reference to the Deputy Bailiff.

[Testing prisoners for drugs.]

3A. (1) The States may by Ordinance make provision for the testing of any prisoner to ascertain whether he has alcohol or any drug in his body.

(2) In this section "**drug**" means any drug which is a controlled drug for the purposes of the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974^a.]

NOTES

Section 3A was inserted by the Prison Administration (Amendment) (Guernsey) Law, 1999, section 1, with effect from 16th March, 1999.

The following Ordinance has been made under section 3A:

Prison Administration (Alcohol and Drug Testing) Ordinance, 1999.

Governor.

^a Ordres en Conseil, Vol. XXIV, p. 273.

4. The States [Policy Council] shall from time to time appoint a person to be Governor of the Prison for such period and on such terms and conditions as [the States] [Policy Council] shall specify, who shall be responsible to and shall obey the orders of the States Prison Board in respect of the maintenance of discipline in the Prison and generally in respect of the operation of the Regulations from time to time in force for the government thereof, save that he shall not be dismissed from his appointment as such Governor except by the States [Home Department].

NOTES

In section 4,

the words in the first pair of square brackets were substituted by the States Civil Service Board (Implementation) Law, 1964, section 1, Schedule, Part I, paragraph (g), with effect from 28th May, 1964;

the words in the second pair of square brackets were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 12(a), with effect from 6th May, 2004;

the words in the third pair of square brackets were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 3(a), with effect from 6th May, 2004.

In accordance with the provisions of the Appointments to the States Established Staff (Guernsey) Law, 1985, as first amended and subsequently repealed by, respectively, the Appointments Board (Repeal) (Guernsey) Law, 2000 and the Appointments to the States Established Staff (Guernsey) (Repeal) Law, 2004, the functions of the States Appointment Board in respect of all appointments to the Established Staff of the States (other than to the post of Senior Deputy Greffier) were transferred to the States Civil Service Board, the reference to which was substituted by a reference to the States Policy Council by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 12(a), with effect from 6th May, 2004.

The functions, rights and liabilities of the Civil Service Board and of its President arising under or by virtue of this Law were transferred to and vested in, respectively, the Policy Council and its Minister by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 1, Schedule 1, paragraph 12(a), with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance.

The functions, rights and liabilities of the Board of Administration and of its President arising under or by virtue of this Law were transferred to and vested in, respectively, the Home Department and its Minister by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance,

2003, section 1, Schedule 1, paragraph 3(a), with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance.

Consequential provisions.

5. (1) All property and rights held or enjoyed immediately before the coming into force of this Law in connection with any of the functions hereby transferred, and all liabilities to which any of them was then subject in connection therewith, are hereby transferred to the States of Guernsey.

(2) In the construction and for the purposes of any judgment, order, deed, contract or other document given or made before the coming into force of this Law, any reference to His Excellency the Lieutenant Governor and Commander in Chief, to His Majesty's Sheriff or to His Majesty's Receiver General shall so far only as may be necessary for or in consequence of the transfer of functions effected by this Law, be constructed as a reference to the States Prison Board.

(3) The transfer of functions effected by this Law shall not prejudice the operation of any order, appointment, direction, instruction, approval, requirement or other thing made, given or done by His Excellency the Lieutenant Governor and Commander in Chief, His Majesty's Sheriff or by His Majesty's Receiver General or by any person acting on behalf of the States of Guernsey in relation to the functions transferred by this Law and before the coming into force thereof, but any such matter shall, if then in force, continue in force to the like extent and subject to the like provisions as if it had been duly made, given or done by the States Prison Board.

(4) Anything commenced before the coming into operation of this Law by or under the authority of His Excellency the Lieutenant Governor and Commander in Chief, His Majesty's Sheriff or His Majesty's Receiver General or by any person acting on behalf of the States of Guernsey may, so far as it relates to the functions transferred by this Law, be carried on by or under the authority of the States Prison Board.

(5) Where at the coming into force of this Law any legal proceeding is pending to which His Excellency the Lieutenant Governor and Commander in Chief, His Majesty's Sheriff or His Majesty's Receiver General is a party and the proceeding has reference to any of the functions transferred by this Law, the States Prison Board shall be substituted in the proceeding for His said Excellency, the said Sheriff or the said Receiver General, as the case may be, and the proceeding shall not abate by reason of the substitution.

Constitution of Panel of Visitors.

6. There shall be set up a Panel, to be known as "**the Panel of Visitors**", which Panel shall be constituted in accordance with the provisions of any States Resolution in that behalf for the time being in force.

Transfer of powers to the Panel.

7. There shall be transferred to the Panel of Visitors the powers and duties in respect of the inspection of the Prison heretofore exercisable by and devolving upon the said Jurats of the Royal Court.

Saving of powers of inspection of the Lieutenant Governor and Commander in Chief and the Bailiff.

8. His Excellency the Lieutenant Governor and Commander in Chief and the Bailiff shall each be entitled at all times to visit and inspect the Prison.

NOTE

In accordance with the provisions of the Deputy Bailiff (Guernsey) Law, 1969, section 5(4), with effect from 9th September, 1969, in the event of the Deputy Bailiff discharging any functions or exercising any powers appertaining to the office of Bailiff which he is authorised to discharge or exercise under or by virtue of the 1969 Law, the provisions contained herein relating to the discharge of such functions or the exercise of such powers shall have effect as if the reference herein to the Bailiff included a reference to the Deputy Bailiff.

Operation of this Law.

9. This Law shall come into force on such day as the States may by Resolution appoint.

NOTE

The Law was brought into force on 27th July, 1949 by Resolution XXVIII/49.

REPEALED

[SCHEDULE

Section 3(5)

Release of Young Offenders from the Prison on Licence

1. A person released on licence under subsection (5) of section three of this Law shall until the expiration of his sentence be under the supervision of such person or persons as may be specified in the licence and shall comply with such other requirements as may be so specified:

PROVIDED that the States Prison Board may at any time modify or cancel any such requirements.

2. If before the expiration of his sentence the States Prison Board is satisfied that a person released as aforesaid has failed to comply with any requirement for the time being specified in the licence, it may by order recall him to the Prison; and thereupon he shall be liable to be detained in the Prison until the expiration of his sentence and, if at large, shall be deemed to be unlawfully at large.

3. The States Prison Board may release on licence a person detained in the Prison under the last foregoing paragraph at any time before the expiration of his sentence; and the foregoing provisions of this Schedule shall apply in the case of a person released under this paragraph as they apply in the case of a person released under subsection (5) of section three of this Law.

4. Where the unexpired part of the sentence of a person released under subsection (5) of the said section three is less than six months, the provisions of this Schedule shall apply to him subject to the following modifications –

- (a) the period for which he is under supervision under paragraph 1 of this Schedule and is liable to recall under paragraph 2 of this Schedule shall be a period of six months from the date of his release under the said subsection (5),
- (b) if he is recalled under paragraph 2 of this Schedule the period for which he may be detained thereunder shall

be whichever is the shorter of the following, that is to say –

- (i) the remainder of the said period of six months,
or
- (ii) the part of his sentence which was unexpired
on the date of his release under the said
subsection (5), reduced by any time during
which he has been so detained since that date,

and he may be released on licence under paragraph 3 of this Schedule at any time before the expiration of that period.]

NOTE

The Schedule was inserted by the Prison Administration (Guernsey) Law, 1957, section 2, Schedule, with effect from 26th October, 1957.

¹ The States also Resolved, in accordance with that same Resolution (Billet XI, Proposition 1(3)), that the States Prison Board as constituted by Resolutions of the States dated 4th June, 1948, 26th March, 1975, 25th April, 1979 and 28th May, 1986, shall be abolished.