

Please note that most Acts are published in English and another South African official language. Currently we only have capacity to publish the English versions. This means that this document will only contain even numbered pages as the other language is printed on uneven numbered pages.



REPUBLIC OF SOUTH AFRICA

GOVERNMENT GAZETTE

STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

Registered at the Post Office as a Newspaper

As 'n Nuusblad by die Poskantoor Geregistreer

**PRICE (GST included) 30c PRYS (AVB ingesluit)
ABROAD 40c BUITELANDS
POST FREE · POSVRY**

Vol. 218

CAPE TOWN, 26 AUGUST 1983

No. 8870

KAAPSTAD, 26 AUGUSTUS 1983

OFFICE OF THE PRIME MINISTER

KANTOOR VAN DIE EERSTE MINISTER

No. 1888.

26 August 1983

No. 1888.

26 Augustus 1983

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:—

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 104 of 1983: Prisons Amendment Act, 1983.

No. 104 van 1983: Wysigingswet op Gevangnisse, 1983.

Act No. 104, 1983

PRISONS AMENDMENT ACT, 1983

GENERAL EXPLANATORY NOTE:

[Words in bold type in square brackets indicate omissions from existing enactments.

 Words underlined with solid line indicate insertions in existing enactments.

ACT

To amend the Prisons Act, 1959, so as to extend the definition of "prisoner" to include certain mentally ill persons; to provide for the establishment of a Prisons Service Reserve Force; to extend the composition of the Prisons Service by the inclusion of the Prisons Service Reserve Force; to delete a reference to the Senate and to replace the words "Consolidated Revenue Fund" with the words "State Revenue Fund"; to extend the circumstances in which members of the Prisons Service may be discharged without an enquiry; to define more fully the requirements for the reception of unconvicted persons at prisons; to prohibit the unauthorized presence of persons at a prison; to increase the penalties for certain offences; to do away with the prohibition in connection with tobacco in a prison; to make other provision relating to the determination of the prices at which goods manufactured by the Prisons Service may be sold; to make further and other provision relating to the detention of certain unconvicted persons, and to the holding of inquests in respect of the deaths of prisoners who presumably died from other than natural causes; to extend the power of the State President to make regulations; and to delete the provision that the said Act may be applied to the territory of South West Africa; and to provide for incidental matters.

(English text signed by the State President.)
(Assented to 18 August 1983.)

BE IT ENACTED by the State President and the House of Assembly of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 8 of 1959, as amended by section 1 of Act 75 of 1965, section 46 of Act 70 of 1968, section 1 of Act 88 of 1977, section 1 of Act 58 of 1978, section 1 of Act 22 of 1980, section 1 of Act 43 of 1981 and section 1 of Act 65 of 1982.

1. Section 1 of the Prisons Act, 1959 (hereinafter referred to as the principal Act), is hereby amended—

(a) by the substitution for paragraph (a) of the definition of "prisoner" of the following paragraph: 5

"(a) any person who is being detained in custody within or outside any prison—

(i) to serve a sentence of imprisonment; 10

(ii) for the carrying out of a sentence of death imposed upon him;

(iii) as a President's patient;

(iv) as a mentally ill prisoner on expiry of his sentence under section 34 of the Mental Health Act, 1973 (Act No. 18 of 1973), or under an order by a judge;" 15

(b) by the insertion after the definition of "release on probation" of the following definition:

"reserve force" means the Prisons Service Reserve Force referred to in section 9B;" 20

Act No. 104, 1983

PRISONS AMENDMENT ACT, 1983

Amendment of section 2 of Act 8 of 1959, as amended by section 2 of Act 43 of 1981.

2. Section 2 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) There shall be in the Department of Justice a service, known as the Prisons Service, which shall consist of—
- (a) officers appointed under section 4;
 - (b) members of the Prisons Service, other than officers, appointed under section 8;
 - (c) members of the reserve force.”.

5

Amendment of section 6 of Act 8 of 1959.

3. Section 6 of the principal Act is hereby amended by the substitution in subsection (3) for the expression “Secretary for Health” of the expression “Director-General: Health and Welfare”.

Insertion of sections 9B, 9C, 9D, 9E and 9F in Act 8 of 1959.

4. The following sections are hereby inserted in the principal Act after section 9A:

“Prisons Service Reserve Force.

9B. (1) Every person who has served in a full-time capacity for a period of not less than four years in a post on the fixed establishment of the Prisons Service, and who has resigned or who resigns from the service of the Prisons Service on or after 1 January 1983, becomes at the commencement of this Act or upon his resignation a member of the Prisons Service Reserve Force, and, subject to the provisions of this Act, remains a member thereof until he attains the age of 55 years.

15

20

(2) (a) A person contemplated in subsection (1) shall, within three months after the commencement of this Act or within three months after he has so resigned, by registered post notify an officer designated by the Commissioner of his postal and residential address, and shall within 14 days after any change in such postal or residential address by registered post notify the said officer of his new postal or residential address.

25

30

(b) In any prosecution of such a person for a contravention of paragraph (a) he shall be deemed not to have notified the said officer of his postal and residential address or of his new postal or residential address, as the case may be, unless proof to the satisfaction of the court is adduced that he did in fact do so or that he took all reasonable steps to do so.

35

40

(3) The Minister or an officer acting under his authority may order any member of the reserve force by notice in writing, served upon him by post or delivered to him, to report to the officer and at the place and time specified in the notice to serve for the period so specified: Provided that the Minister or such an officer may exempt such a member from any obligation imposed upon him in terms of this section, or may grant him an extension of time to comply therewith, or may discharge him from the reserve force.

45

50

(4) No member of the reserve force shall be compelled to serve in the Prisons Service in a rank inferior to the rank in which he served upon his resignation from the Prisons Service.

55

(5) The period contemplated in subsection (3) shall not exceed 60 days per year and in the aggregate not 720 days: Provided that where a member of the reserve force has rendered more than four years' continuous service in a full-time capacity in a post on the fixed establishment of the Prisons Service, his obligation so to serve shall be reduced by 120 days for every completed year of such continuous service in excess of four years.

60

65

(6) If the Minister is of the opinion that the public safety, the maintenance of public order, or life or property is seriously endangered, he may, notwith-

Act No. 104, 1983

PRISONS AMENDMENT ACT, 1983

standing the provisions of subsection (5), order any member of the reserve force to serve in the Prisons Service for such period as he thinks fit.

(7) Any member of the reserve force who contravenes any provision of this section or fails to comply with an order issued thereunder, shall be guilty of an offence and liable on conviction to a fine not exceeding R300 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

Duties of employers.

9C. (1) An employer shall afford any person in his employment who is ordered in terms of section 9B to report for service all reasonable facilities to enable him to report for and render that service.

(2) Subject to the provisions of subsection (4) an employer who—

(a) fails to afford facilities as aforesaid;

(b) dismisses an employer or reduces his salary or wages or alters his position to his disadvantage or in any other manner penalizes that employee because he has been ordered under section 9B to report for service or has reported for that service or is rendering or has rendered that service; or

(c) by words, conduct or in any other manner directly or indirectly compels, induces or prevails upon, or attempts to compel, induce or prevail upon, any person in or seeking to enter his employment to evade the service contemplated in subsection (1), or not to report for or render that service,

shall be guilty of an offence and liable on conviction to a fine not exceeding R300 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(3) When in any proceedings in terms of subsection (2) (b) it is proved that an employer has dismissed the employee concerned or has reduced his salary or wages or has altered his position to his disadvantage or has in any other manner penalized that employee, that employer shall be deemed, unless the contrary is proved, to have dismissed that employee or to have reduced his salary or wages or to have so altered his position or to have so penalized him, as the case may be, because that employee has been ordered under section 9B to report for service or because he has reported for that service or because he is rendering or has rendered that service.

(4) (a) Nothing in this section shall be construed as requiring any employer to pay any person in his employment any salary or wages in respect of any period during which he is absent from his work in order to render the service contemplated in subsection (1).

(b) Notwithstanding the provisions of subsections (1) and (2) or of any law no employee who is rendering the service contemplated in subsection (1) and who is by law or in terms of any condition of his employment entitled to increased remuneration, paid sick leave or other paid leave of absence, or any similar benefit upon completion of a fixed period or successive fixed periods of employment, shall—

(i) be entitled to reckon in respect of any one unbroken period of service contemplated in subsection (1) more than 60 days of the absence from his employment occasioned by that service as employment in the determi-

Act No. 104, 1983

PRISONS AMENDMENT ACT, 1983

nation of that increased remuneration, paid sick leave or other paid leave of absence or similar benefit which may accrue to him in respect of that employment: Provided that this subparagraph shall not be construed as limiting any longer period which may be determined or fixed by or under any law relating to his employment; 5

(ii) be entitled to the grant to him by his employer of paid sick leave in respect of a period falling within the limits of any period of the service contemplated in subsection (1) during which he is incapacitated as a result of any injury or illness; 10

(iii) be entitled to claim any such paid sick leave or other paid leave of absence or any other benefit before he has, in accordance with the provisions of this Act, been permitted to resume his employment, and has so resumed his employment. 15 20

Employment of members of reserve force.

9D. Notwithstanding the provisions of section 9B the Commissioner or an officer acting under his authority may employ any member of the reserve force in the Prisons Service, and may at any time terminate the services of such a member so employed. 25

Voluntary service in reserve force.

9E. Notwithstanding the provisions of section 9B any person who has been exempted from service in the reserve force may, with the approval of the Commissioner, voluntarily serve in the reserve force: Provided that the provisions of section 9C (1) shall not apply to the employer of any person so serving. 30

Remuneration of members of reserve force.

9F. (1) A member of the reserve force shall be paid the salary and allowances determined by the Minister on the recommendation of the Commission for Administration and after consultation with the Minister of Finance: Provided that any other remuneration paid by the State to such a member shall not be affected by this provision. 35

(2) The Commissioner may, on the recommendation of the Commission for Administration and with the approval of the Treasury, prescribe conditions of service in respect of the reserve force." 40

Amendment of section 12 of Act 8 of 1959, as amended by section 4 of Act 75 of 1965, section 10 of Act 62 of 1966, section 2 of Act 9 of 1971 and section 3 of Act 58 of 1978.

5. Section 12 of the principal Act is hereby amended by the substitution for paragraph (b) of subsection (3)ter of the following paragraph: 45

"(b) with the approval, by resolution, of [the Senate and of] the House of Assembly, after the expiry of the said three years, for further periods which shall not exceed in the aggregate two years."

Amendment of section 13 of Act 8 of 1959.

6. Section 13 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 50

"(1) (a) A member of the Prisons Service who is not a commissioned officer, may be discharged from the service of the Prisons Service or be reduced in rank or in seniority in rank if, after enquiry in the manner prescribed by 55 regulation, the Commissioner is of opinion that he is unfit to remain in the service of the Prisons Service or to retain his rank or seniority in rank, as the case may be [Provided that such a member of the Prisons Service who is convicted of any of the offences mentioned in sec- 60

Act No. 104, 1983

PRISONS AMENDMENT ACT, 1983

tion *twelve, fourteen, forty-three, forty-four, forty-five, forty-six or forty-seven* may, in addition to any other penalty imposed therefor, be discharged from the service of the Prisons Service without an enquiry being held].

- (b) Notwithstanding the provisions of paragraph (a) the Commissioner may discharge such a member from the service of the Prisons Service without such an enquiry if—
- (i) that member is serving a sentence of imprisonment;
 - (ii) that member is convicted of any offence referred to in section 12, 14, 43, 44, 45, 46 or 47;
 - (iii) within a period of 12 months after the appointment of that member it appears to the Commissioner that he is unfit to remain in the service of the Prisons Service.”

Substitution of section 14 of Act 8 of 1959, as amended by section 5 of Act 75 of 1965.

7. The following section is hereby substituted for section 14 of the principal Act:

“Members of Prisons Service other than officers may be discharged for assaulting prisoners. 14. Any member of the Prisons Service other than 20 a commissioned officer who is convicted of assaulting any prisoner may, in addition to any other penalty imposed therefor, be discharged from the service of the Prisons Service and if he [has been sentenced for such offence to a fine exceeding ten rand or to any 25 period of imprisonment without the option of a fine and] has been so discharged, he shall [in no circumstances] not be reappointed as a member of the Prisons Service.”

Amendment of section 27 of Act 8 of 1959, as amended by section 4 of Act 88 of 1977 and section 6 of Act 58 of 1978.

8. Section 27 of the principal Act is hereby amended by the 30 substitution for paragraph (e) of subsection (2) of the following paragraph:

“(e) in any other case, upon production to him of a warrant or order under the hand of any person authorized thereto by any law or any order, rule or regulation having the force of law;”

Amendment of section 29 of Act 8 of 1959, as amended by section 104 of Act 33 of 1960 and section 8 of Act 75 of 1965.

9. Section 29 of the principal Act is hereby amended by the deletion of subsection (5).

Amendment of section 44 of Act 8 of 1959, as substituted by section 6 of Act 88 of 1977.

10. Section 44 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (1) of the following 40 paragraph:

- “(a) (i) without the permission of the Commissioner enters upon or enters, or is upon or in, any land, building, premises or that portion of the sea or the seashore forming part of a prison; 45
- (ii) is found loitering [on any prison reserve or on any prison property or] within one hundred metres of any prison or any other place where prisoners may be for the purpose of imprisonment or labour or within one hundred metres of any burial referred to in section 35 (4) 50
- (b) and who fails to depart therefrom upon being ordered so to do by any member of the Prisons Service or of the South African Police Force;”

Substitution of section 45 of Act 8 of 1959, as amended by section 13 of Act 75 of 1965.

11. The following section is hereby substituted for section 45 of the principal Act: 55

“Penalty for receiving or demanding money or other con- 45. No money or other consideration shall, on any pretext whatsoever, be payable, paid, given or promised by or on behalf of any prisoner, either on his entrance into, commitment to, continuance in or dis-

Act No. 104, 1983

PRISONS AMENDMENT ACT, 1983

sideration from a prisoner. charge from any prison, to any member of the Prisons Service or other person in the service of the Prisons Service, and any member of the Prisons Service or other person in the service of the Prisons Service receiving or demanding any such money or other consideration, or undertaking any service in consideration of receiving or the promise of any such money or other consideration, shall be guilty of an offence and liable on conviction to a fine not exceeding **[two hundred rand] R1 000** or, in default of payment, to imprisonment for a period not exceeding one year, or to such imprisonment without the option of a fine, or to both such fine and such imprisonment.”

Amendment of section 46 of Act 8 of 1959, as amended by section 14 of Act 75 of 1965 and section 5 of Act 43 of 1981.

12. Section 46 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) Any person who contravenes any provision of this section shall be guilty of an offence and liable on conviction to a fine not exceeding **[two hundred rand] R1 000** or, in default of payment, to imprisonment for a period not exceeding one year, or to such imprisonment without the option of a fine, or to both such fine and such imprisonment.”

Substitution of section 47 of Act 8 of 1959, as amended by section 15 of Act 75 of 1965.

13. The following section is hereby substituted for section 47 of the principal Act:

“Penalty for supplying certain articles to prisoners. 47. (a) Any person who without lawful authority— 25
 (i) supplies, conveys or causes to be supplied or conveyed to any prisoner, or hides or places for his use any letter, document, intoxicating liquor, **[tobacco]** dagga, drug, opiate, money, clothing, provisions or any other article; or 30
 (ii) brings or attempts in any manner whatever to introduce into any prison, or places or attempts to place where prisoners shall labour, any letter, document, intoxicating liquor, **[tobacco]** dagga, drug, opiate, money, clothing, provisions or any other article to be sold or used therein; or 35
 (iii) brings or attempts to bring out of any prison, or conveys from any prisoner any letter, document or other article; and 40
 (b) any member of the Prisons Service or other person in the service of the Prisons Service who, without lawful authority—
 (i) allows any letter, document, intoxicating liquor, **[tobacco]** dagga, drug, opiate, money, clothing, provisions or any other article to be supplied or conveyed to any prisoner or to be hidden or placed for his use; or 45
 (ii) allows any letter, document, intoxicating liquor, **[tobacco]** dagga, drug, opiate, money, clothing, provisions or any other article intended to be sold or used therein to be brought or conveyed into a prison or to be placed where prisoners shall labour; or 50
 (iii) allows any letter, document or other article to be brought out of any prison or to be conveyed from any prisoner; or 55
 (iv) enters into or attempts to enter into any business transaction with a prisoner; and
 (c) any prisoner who, without lawful authority— 60
 (i) receives, directly or indirectly, for his own use or on behalf of any other prisoner or person

Act No. 104, 1983

PRISONS AMENDMENT ACT, 1983

any letter, document, intoxicating liquor, **[tobacco]** dagga, drug, opiate, money, clothing, provisions or any other article; or

- (ii) enters into or attempts to enter into any business transaction with any member of the Prisons Service or any other person in the service of the Prisons Service; or
- (iii) arranges, or attempts to arrange, with any member of the Prisons Service or any other person for any letter, document, intoxicating liquor, **[tobacco]** dagga, drug, opiate, money, clothing, provisions or any other article to be sent or passed into any prison for his use or on his behalf; or
- (iv) directly or indirectly gives or sends, or attempts to give or send, or promises to give or send, any money or any other article to any member of the Prisons Service or any other person in the service of the Prisons Service as a reward for any service rendered or to be rendered to him or on his behalf within or outside any prison; or
- (v) hands or attempts to hand to any member of the Prisons Service or any other person any letter, document or other article for the purpose of being hidden or placed by such member or person for eventual use by or delivery to any other prisoner or person,

shall be guilty of an offence and liable on conviction to a fine not exceeding **[four hundred rand] R2 000** or, in default of payment, to imprisonment for a period not exceeding two years, or to such imprisonment without the option of a fine, or to both such fine and such imprisonment."

Amendment of section 54 of Act 8 of 1959, as amended by section 18 of Act 75 of 1965, section 5 of Act 9 of 1971, section 12 of Act 58 of 1978 and section 5 of Act 22 of 1980.

14. Section 54 of the principal Act is hereby amended by the deletion of paragraph (f) of subsection (2).

Amendment of section 73 of Act 8 of 1959, as amended by section 16 of Act 101 of 1969.

15. Section 73 of the principal Act is hereby amended by the deletion of subsection (5).

Amendment of section 74 of Act 8 of 1959, as amended by section 22 of Act 75 of 1965.

16. Section 74 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) A person transferred to a prison in terms of subsection (1) shall for all purposes be deemed to have been released from the provisions of the Children's Act, 1960, and to be subject, *mutatis mutandis*, to all the provisions of this Act as if he had on the date of his transfer been sentenced to **[imprisonment for corrective training] two years' imprisonment**: Provided that he shall not under this section be detained under this Act for a period beyond the date upon which he would normally have been released from the reformatory had he not been so transferred."

Amendment of section 75 of Act 8 of 1959.

17. Section 75 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) As far as practicable, all departments of the Public Service shall purchase from the Prisons Service, at such

Act No. 104, 1983

PRISONS AMENDMENT ACT, 1983

prices as may from time to time be determined by the **[Republic Tender and Supplies Board] Minister of Finance** to be fair and reasonable, such articles and supplies as may be required by those departments and as may be manufactured or produced and can be supplied by the Prisons Service.” 5

Amendment of section 86 of Act 8 of 1959.

18. Section 86 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) Where a prisoner dies and a medical practitioner is unable to certify that his death is due to natural causes, the member of the Prisons Service in charge of the prison in question shall furnish the report required by section 2 of the Inquests Act, 1959 (Act No. 58 of 1959).”; and 10

(b) by the deletion of subsections (2) and (3). 15

Amendment of section 87 of Act 8 of 1959, as amended by section 22 of Act 58 of 1978.

19. Section 87 of the principal Act is hereby amended by the substitution in paragraph (d) of subsection (4) for the words “Consolidated Revenue Fund” of the words “State Revenue Fund”.

Amendment of section 94 of Act 8 of 1959, as amended by section 37 of Act 80 of 1964, section 24 of Act 75 of 1965, section 17 of Act 101 of 1969, section 8 of Act 92 of 1970, section 17 of Act 62 of 1973 and section 6 of Act 43 of 1981.

20. Section 94 of the principal Act is hereby amended— 20

(a) by the substitution in subsection (1) for subparagraph (i) of paragraph (b) of the following subparagraph:

“(i) the mode of appointment, the conditions of service, the promotion, the retention of rank on retirement, the supply of uniforms, the prohibition of the disposal of any article of kit or equipment, the conduct, the medical examination and the medical, dental and hospital treatment of members of the Prisons Service, including temporary warders, and the rates of remuneration or allowances, if any, payable to ministers of religion appointed under section 7.”; 25

(b) by the addition to paragraph (b) of subsection (1) of the following subparagraph:

“(iii) all matters which he considers necessary or expedient to prescribe for the efficient functioning of the reserve force.”; 35

(c) by the substitution for paragraph (j) of subsection (1) of the following paragraph:

“(j) the confiscation or destruction of all articles illicitly introduced into any prison or found in or near any prison, and of all clothing or other articles belonging to prisoners which by reason of their condition or for any other **[valid] cause that the Commissioner may deem sufficient [it is undesirable to keep] ought to be destroyed;**”; and 40

(d) by the substitution in paragraph (t) of subsection (1) for the words “Consolidated Revenue Fund” of the words, “State Revenue Fund”.

Repeal of section 96 of Act 8 of 1959, as substituted by section 52 of Act 70 of 1968.

21. Section 96 of the principal Act is hereby repealed. 50

Short title.

22. This Act shall be called the Prisons Amendment Act, 1983.