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GOVERNMENT GAZETTE

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DEPARTMENT OF THE PRIME MINISTER

DEPARTEMENT VAN DIE EERSTE MINISTER

No. 957. 17 May 1978.

No. 957. 17 Mei 1978.

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. 58 of 1978: Prisons Amendment Act, 1978.

No. 58 van 1978: Wysigingswet op Gevangenis, 1978.

PRISONS AMENDMENT ACT, 1978.

Act No. 58, 1978.

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 provisions of the Prisons Act, 1959, relating to definitions; the appointment of members, other than commissioned officers, of the Prisons Service; and the date applicable to the retirement of members of the Prisons Service on pension; to authorize the Commissioner of Prisons to determine security measures at prisons, to grant privileges and indulgences to prisoners and to withdraw such privileges and indulgences; to repeal the powers of commissioned officers of the Prisons Service to inspect police cells and lock-ups; to repeal the powers and duties relating to civil debtors; to authorize the Minister of Prisons to enter into agreements with governments of territories in Africa in terms of which persons who in the Republic have been sentenced or referred to prisons for detention therein, may be detained in prisons in such territories; to reduce the number of strokes which may be inflicted by way of corporal punishment; and to reduce the minimum period of detention of an habitual criminal; to provide for the payment of monetary rewards to persons giving certain information or performing certain acts in the interest of the Department of Prisons; and for the imposition of further penalties on members of the Prisons Service contravening certain provisions of the said Prisons Act and to increase certain fines which may be imposed on such members contravening such provisions; to reduce the maximum age at which corporal punishment may be inflicted on a prisoner; relating to the review of certain sentences; to provide for the taking into consideration by prison boards exercising their powers of comments made in respect of sentences by the persons imposing such sentences; to authorize the Minister of Prisons to release prisoners, sentenced to more than two years' imprisonment, on probation; to increase the period of special remission which may be granted in respect of imprisonment; to authorize the Commissioner of Prisons to exempt completely segregated prisoners from certain labour; and to authorize magistrates to order the presence of any prisoner before a court over which they are presiding; to provide for the establishment and conduct of canteens at prisons; to exempt the State from liability for loss or damages connected with the use of certain property or the rendering of certain services; and to provide for incidental matters.

(Afrikaans text signed by the State President.)
(Assented to 2 May 1978.)

PRISONS AMENDMENT ACT, 1978.

Act No. 58, 1978

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

1. Section 1 of the Prisons Act, 1959 (hereinafter referred to as the principal Act), is hereby amended by the substitution for the definition of "member of the Prisons Service" of the following definition:
- 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 and section 1 of Act 88 of 1977.
- "member of the Prisons Service" means any commissioned officer, warrant-officer, **[non-commissioned officer]** sergeant or warder serving in the Prisons Department;".
2. Section 8 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:
- Amendment of section 8 of Act 8 of 1959.
- "(1) Every member of the Prisons Service other than a commissioned officer, shall be appointed by the Commissioner **[with the approval of the Minister]** under an agreement in writing incorporating the period and the conditions of his service."
3. Section 12 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:
- Amendment of section 12 of Act 8 of 1959, as amended by section 10 of Act 62 of 1966, section 4 of Act 75 of 1966 and section 2 of Act 9 of 1971.
- "(1) In this section 'fixed date' means **[the fixed date as defined in section 1 of the Government Service Pensions Act, 1965]** 1 January 1966."
4. The following section is hereby substituted for section 22 of the principal Act:
- Substitution of section 22 of Act 8 of 1959.
22. (1) The Commissioner shall determine—
- "Security measures, privileges and indulgences.
- (a) the security measures applicable at prisons, and may determine different security measures in respect of different prisons;
- (b) the groups into which prisoners are to be classified.
- (2) The Commissioner may in his discretion—
- (a) grant such privileges and indulgences as he may think fit to any prisoner;
- (b) notwithstanding anything to the contrary contained in any law, withdraw any privilege or indulgence granted in terms of paragraph (a) to any prisoner without furnishing any reasons and without hearing such prisoner or any other person."
5. Section 25 of the principal Act is hereby amended by the deletion of subsection (3).
- Amendment of section 25 of Act 8 of 1959.
6. Section 27 of the principal Act is hereby amended by the substitution for paragraph (c) of subsection (2) of the following paragraph:
- Amendment of section 27 of Act 8 of 1959, as amended by section 4 of Act 88 of 1977.
- "(c) in the case of a person committed for detention under **[a decree of civil imprisonment or]** any **[other]** order or judgment of a competent court in civil proceedings, upon production to him of the warrant of the court sued out upon such **[decree]** order or judgment and the deposit with him of a certified copy thereof;".
7. Section 30 of the principal Act is hereby amended—
- Amendment of section 30 of Act 8 of 1959, as amended by section 11 of Act 62 of 1966 and section 13 of Act 101 of 1969.
- (a) by the substitution for subsection (1) of the following subsection:
- "(1) The Minister may enter into an agreement with the government of any territory in Africa on terms and conditions set out in the agreement, providing for the reception in the Republic or such territory and detention in any prison **[therein]** in the Republic or such territory

PRISONS AMENDMENT ACT, 1978

Act No. 58, 1978

5 of any person sentenced or referred to any prison for detention therein **[in]** by a competent court of or person in such territory or the Republic according to the law in force **[therein to imprisonment with or without compulsory labour]** in such territory or the Republic.”;

(b) by the substitution for subsection (3) of the following subsection:

10 “(3) After the publication of any such notice in the Gazette in respect of any such territory aforesaid, a person who in such territory has been sentenced **[to imprisonment]** or referred to a prison for detention therein as described in subsection (1) **[and is still liable to serve the sentence imposed]** may be lawfully received into custody in the Republic and may be lawfully detained in any prison thereof until the carrying out of the sentence or until the expiry of the sentence or period of detention or during such portion thereof as may be deemed necessary, and thereupon such person while so detained shall be treated and be subject to the same laws and regulations in every respect as if he **[were undergoing the sentence of]** had been sentenced or referred to any prison for detention therein by a competent court of or person in the Republic: Provided
15 that no such person shall be received into custody in the Republic under the provisions of this subsection unless the original warrant of commitment to or order for detention in a prison accompanies the escort in charge of such person.”

30 8. Section 36 of the principal Act is hereby amended by the substitution for subsection (8) of the following subsection:

Amendment of section 36 of Act 8 of 1959.

35 “(8) The number of strokes inflicted at one and the same time in terms of subsection (7) shall in no instance exceed **[ten]** seven and the remainder of the strokes, if any, ordered in the said sentences shall lapse.”

9. The following section is hereby substituted for section 38 of the principal Act:

Substitution of section 38 of Act 8 of 1959.

40 ^{“Indeterminate sentences on habitual criminals.”} 38. Subject to the provisions of section 66 any person who has been declared an habitual criminal under the provisions of any law, shall be detained in a prison during the State President’s pleasure: Provided that any person who has received an indeterminate sentence in consequence of being so declared an habitual criminal after the commencement of this Act,
45 shall be detained in a prison for a period of at least **[nine]** seven years.”

10. Section 49 of the principal Act is hereby amended by the substitution for subsection (2A) of the following subsection:

Amendment of section 49 of Act 8 of 1959, as amended by section 4 of Act 9 of 1971.

50 (2A) The Commissioner may pay monetary rewards to persons—

(a) giving information relating to any planned escape from custody by any prisoner;

55 (b) giving information or performing any act which in the opinion of the Commissioner is of such nature that the interests of the Department of Prisons have been furthered thereby and that the payment of a monetary reward to such persons in the circumstances in question will be fair and desirable.”

PRISONS AMENDMENT ACT, 1978.

Act No. 58, 1978

11. Section 53 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:
 “(2) Subject to the provisions of subsection (8) a commissioned officer shall, upon conviction of such member or temporary warder in respect of any such contravention or non-compliance, have jurisdiction—
 (a) to reprimand him;
 (b) to deprive him in respect of any month of not more than two of his off-days; or
 (c) to impose a fine not exceeding **[thirty] sixty** rand, which fine may be recovered by deduction from his accrued or future pay in such instalments as may be determined by the Commissioner.”
- Amendment of section 53 of Act 8 of 1959, as amended by section 17 of Act 75 of 1965 and section 4 of Act 4 of 1972.
12. Section 54 of the principal Act is hereby amended—
 (a) by the deletion of paragraph (b) of subsection (2);
 (b) by the substitution for paragraph (d) of subsection (2) of the following paragraph:
 “(d) corporal punishment, not exceeding six strokes, if the prisoner is a convicted male prisoner apparently under the age of **[fifty] forty** years and no other punishment **[other than a punishment referred to in paragraph (b)]** is imposed upon him in respect of the same contravention or non-compliance;”
- Amendment of section 54 of Act 8 of 1959, as amended by section 18 of Act 75 of 1965 and section 5 of Act 9 of 1971.
13. Section 55 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection:
 “(4) At the investigation of any charge in terms of this section the law as to admissibility of evidence and the competency and compellability of witnesses as applicable in connection with criminal proceedings in a magistrate’s court, shall, with the exception of the provisions of the first proviso to **[subsection (1) of] section [244] 217 (1)** of the Criminal Procedure Act, **[1955] 1977** (Act No. **[56] 51** of **[1955] 1977**), be observed.”
- Amendment of section 55 of Act 8 of 1959, as amended by section 49 of Act 70 of 1968.
14. Section 56 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:
 “(1) The record of the trial of every case in which a sentence of corporal punishment is imposed in terms of section 51 (2) or 54 (2) or in which any period of imprisonment of more than three months **[or a fine of more than fifty pounds]** is imposed in terms of section 50 (2) or 51 (2) shall, within seven days of the sentence, be transmitted to the registrar of the division of the Supreme Court having jurisdiction to review criminal cases tried before the magistrate of the district in which the prison or place where the trial took place is situated.”
- Amendment of section 56 of Act 8 of 1959, as amended by section 12 of Act 62 of 1966, section 15 of Act 101 of 1969 and section 15 of Act 62 of 1973.
15. Section 61 of the principal Act is hereby amended by the substitution in paragraph (b) for the words preceding subparagraph (i) of the following words:
 “with due regard to any remarks made by the court in question at the time of the imposition of the sentence, make recommendations as to—”
- Amendment of section 61 of Act 8 of 1959.
16. Section 63 of the principal Act is hereby amended—
 (a) by the substitution for paragraph (b) of subsection (2) of the following paragraph:
 “(b) The Minister may authorize the release of the prisoner on probation or on parole **[or submit the report, together with such recommendation as he may think fit, for the consideration of the State President] as he may direct.**”;
 (b) by the deletion of paragraph (c) of subsection (2).
- Amendment of section 63 of Act 8 of 1959.
17. Section 70 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:
- Amendment of section 70 of Act 8 of 1959.

PRISONS AMENDMENT ACT, 1978.

Act No. 58, 1978

“(2) The Minister may, if he deems fit, grant to such prisoner special remission of sentence not exceeding **[ninety days]** one year, either unconditionally or on such conditions as he may determine.”

5 18. Section 78 of the principal Act is hereby amended by the insertion after subsection (2) of the following subsection: Amendment of section 78 of Act 8 of 1959.

“(2A) The Commissioner may exempt convicted prisoners completely segregated in terms of subsection (2), in respect of any day or period of such complete segregation, from such
10 labour as he may determine.”

19. The following heading is hereby substituted for the heading preceding section 81 of the principal Act: Substitution of heading preceding section 81 of Act 8 of 1959.

“CHAPTER VIII

15 DETENTION AND TREATMENT OF
[CIVIL DEBTORS AND] CERTAIN OTHER
CLASSES OF PRISONERS”

20. The following section is hereby substituted for section 81 of the principal Act: Substitution of section 81 of Act 8 of 1959, as amended by section 9 of Act 88 of 1977.

“Employment of certain other classes of prisoners.”
20 81. (1) **[Civil debtors]** Persons detained pending arrangements for their removal from the Republic, and other persons received into a prison in accordance with the provisions of section 27, shall perform such duties as may be necessary to maintain the good order and cleanliness of any room or other place occupied by them within the prison, and of any premises adjoining or in any way subserving, or any articles or things subserving, that room or place or the occupants thereof, and may be permitted to perform other labour.
25 (2) Alleged mentally ill or epileptic prisoners received into a prison as aforesaid shall only be compelled to do such work as the medical officer may prescribe.
30 (3) A President's patient detained in a hospital prison for psychopaths shall receive such treatment and may be compelled to perform such work as the Commissioner may prescribe, unless the medical officer has certified that such treatment or the performance of such work is injurious to the health of
35 such President's patient.”
40

21. Section 84 of the principal Act is hereby repealed. Repeal of section 84 of Act 8 of 1959.

22. Section 87 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection: Amendment of section 87 of Act 8 of 1959.

45 “(2) A judge of a superior court or a magistrate may at any time order any prisoner to be brought before a court over which he is presiding in a criminal case.”

23. The following section is hereby substituted for section 88 of the principal Act: Substitution of section 88 of Act 8 of 1959, as amended by section 5 of Act 4 of 1972.

50 “Establishment and conduct and exemption from certain moneys of canteens at prisons.”
88. (1) Canteens for the exclusive use or benefit of members of the Department of Prisons, the families of such members and other persons or categories of persons prescribed by regulation, may be established and conducted on such conditions and in such manner as may be prescribed by regulation.

PRISONS AMENDMENT ACT, 1978.

Act No. 58, 1978

(2) No licence moneys, tax, duty or fee (other than customs, excise or sales duties leviable by law) shall be payable by any person under any law or bye-law in respect of any canteen established in terms of subsection (1).

(3) The production of an official document bearing the signature of the Minister or of a person authorized by him to sign any such document and indicating that he has certified the canteen shall be conclusive proof that it is a canteen as contemplated in subsection (1).

(4) For the purposes of this section—

- (a) 'canteen' includes any mess for members of the Prisons Service or any Prisons Department institution or any premises temporarily or permanently used for providing recreation, refreshment or necessaries for the exclusive use or benefit of members of the Department of Prisons, the families of such members and other persons or categories of persons prescribed by regulation;
- (b) any canteen which before the date of commencement of section 23 of the Prisons Amendment Act, 1978, has been certified by the Minister or any person authorized by him as contemplated in subsection (3), shall be deemed to be a canteen established on the conditions and in the manner referred to in subsection (1).

24. The following section is hereby inserted in the principal Act after section 89:

Insertion of section 89A in Act 8 of 1959.

“Non-liability of State for certain losses or damages.

89A. The Government or any person in the service of the State shall not be liable (except in the case of any wilful act or omission on the part of any such person) to any person (except any person who is a member of the Prisons Service or temporary warder or employee of the State acting in the execution of his duty as such or any person expressly authorized by the State) who makes use of any vehicle or vessel which is the property of the State in its Department of Prisons or to whom services are rendered by the said Department or who makes use of any other property of the State in its Prisons Department, or to the spouse, or any parent, child or dependant of any such person, for any loss or damage resulting from any bodily injury, loss of life or loss of or damage to property caused by or arising out of or in any way connected with the use of any such vehicle, vessel or the said services or the use of any such other property.”

25. This Act shall be called the Prisons Amendment Act, 1978, and the provisions of section 23 shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.

Short title and commencement.