

No. 75, 1965.]

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ACT

To amend the Prisons Act, 1959.

(Afrikaans text signed by the State President.)
(Assented to 16th June, 1965.)

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

Amendment of section 1 of Act 8 of 1959.

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

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

"'prisoner' means any person, whether convicted or not, who is detained in custody in any prison or who is being transferred in custody or is en route in custody from one prison to another prison, and for the purposes of the provisions of paragraph (e) of section *forty-four* includes any person who—

(a) has been arrested and is in lawful custody; or

(b) is a fugitive after he has escaped from lawful custody; or

(c) was executed, or who died while he was being detained in custody in a prison or while he was being transferred in custody or was en route in custody from one prison to another prison;"; and

(b) by the substitution for the definition of "prison" of the following definition:

"'prison' means any place established or deemed to have been established under this Act as a place for the reception, detention, confinement, training or treatment of persons liable to detention in custody, and includes the seashore, the sea within a distance of one nautical mile from low-water mark and all land, outbuildings and premises adjacent to any such place and used in connection therewith and all land, branches, outstations, camps, buildings, premises or places to which any such persons have been sent for the purpose of imprisonment, detention, labour, treatment or otherwise, and all quarters of members of the Prisons Service used in connection with any such prison; and for the purposes of any offence under this Act or any contravention of or failure to comply with any provision of this Act, further includes every place used as a police cell or lock-up;";

Substitution in Act 8 of 1959 for "Governor-General" and "Union" of "State President" and "Republic", respectively.

2. The principal Act is hereby amended by the substitution for the word "Governor-General", wherever it occurs, of the words "State President" and for the word "Union", wherever it occurs, of the word "Republic".

Insertion of section 9bis in Act 8 of 1959.

3. (1) The following section is hereby inserted in the principal Act after section *nine*:

"Remuneration of members of the Prisons Service and special warders. 9bis. All members of the Prisons Service and special warders shall be paid salaries or wages and allowances in accordance with the provisions of the Public Service Act, 1957 (Act No. 54 of 1957)."

(2) The salaries, wages and allowances which immediately prior to the commencement of this Act were payable to persons employed under the principal Act, shall be deemed to be payable to such persons in accordance with the provisions of the Public Service Act, 1957 (Act No. 54 of 1957).

Amendment of section 12 of Act 8 of 1959.

4. (1) Section *twelve* of the principal Act is hereby amended by the substitution for sub-sections (1), (2) and (3) of the following sub-sections:

"(1) In this section 'fixed date' means the fixed date as defined in section *one* of the Government Service Pensions Act, 1965.

(2) Subject to the provisions of this section, a member of the Prisons Service (including a member of the Prisons Service who, prior to the fixed date, was retained in his office or post in terms of sub-section (2) of this section as it existed immediately prior to the substitution thereof by section *four* of the Prisons Amendment Act, 1965), shall have the right to retire on pension and shall be retired on pension—

- (a) on the day on which he attains the age of sixty years, if he attains that age on the first day of any month in the year;
- (b) on the first day of the month immediately following the month in which he attains the age of sixty years, if he attains that age after the first day of any month in the year.

(3) A member of the Prisons Service who was appointed prior to the fixed date shall have the right at any time to give written notification to the Commissioner of his wish to be retired on pension, and if he gives such notification he shall—

- (a) if he was so appointed prior to the twenty-fourth day of June, 1955, and such notification is given at least three months prior to the date on which he attains the age of fifty-five years, be retired on pension—
 - (i) on the day on which he attains that age, if he attains the said age on the first day of any month in the year;
 - (ii) on the first day of the month immediately following the month in which he attains that age, if he attains the said age after the first day of any month in the year; or
- (b) if he was so appointed prior to the twenty-fourth day of June, 1955, and such notification is not given at least three months prior to the date on which he attains the age of fifty-five years, be retired on pension on the first day of the fourth month following the month in which such notification is received; or
- (c) if he was so appointed on or after the twenty-fourth day of June, 1955, and such notification is given at least three months prior to the date on which he attains the age of fifty-eight years, be retired on pension—
 - (i) on the day on which he attains that age, if he attains the said age on the first day of any month in the year;
 - (ii) on the first day of the month immediately following the month in which he attains that age, if he attains the said age after the first day of any month in the year; or
- (d) if he was so appointed on or after the twenty-fourth day of June, 1955, and such notification is not given at least three months prior to the date on which he attains the age of fifty-eight years, be retired on pension on the first day of the fourth month following the month in which such notification is received.

(3)bis If a member of the Prisons Service who attains the age of fifty-eight years on or within four months after the fixed date, had the right, immediately prior to that

date, to retire on pension on the day on which he attains the age of fifty-eight years or on the first day of the month immediately following the month in which he attains that age, then, notwithstanding anything to the contrary contained in sub-section (2) or (3), such member of the Prisons Service shall retain the right to retire on pension on that day and shall, subject to the provisions of sub-section (3)ter, be retired on pension on that day: Provided that such a member of the Prisons Service may, at any time prior to the day on which he shall be so retired, elect in writing to be subject to the provisions of sub-sections (2) and (3), and if he makes such an election the provisions of this sub-section shall cease to apply to him.

(3)ter If it is in the public interest to retain a member of the Prisons Service in the service after the day immediately preceding the day on which, in accordance with sub-section (2) or (3)bis, he shall be retired on pension, he may be so retained from time to time—

- (a) on the recommendation of the Public Service Commission, for periods which shall not exceed in the aggregate three years; and
- (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.

(3)quat Notwithstanding anything to the contrary contained in this section, a member of the Prisons Service who has attained the age of fifty years may, subject in every case to the recommendation of the Public Service Commission, be retired on pension.

(3)quin If any member of the Prisons Service to whom the provisions of sub-section (1) of this section, as it existed immediately prior to the substitution thereof by section four of the Prisons Amendment Act, 1965, applied immediately prior to the fixed date, has, prior to the fixed date, given notification in terms of that sub-section of his wish to be retired on pension, he shall be retired on pension on the day on which, but for the substitution of the said sub-section by section four of the Prisons Amendment Act, 1965, he would, subject to the provisions of sub-section (1) of section thirty-one of the Pension Laws Amendment Act, 1964 (Act No. 84 of 1964), have been so retired in terms of the said sub-section.”

(2) Sub-section (1) shall come into operation on the fixed date as defined in section one of the Government Service Pensions Act, 1965.

Amendment of section 14 of Act 8 of 1959.

5. Section *fourteen* of the principal Act is hereby amended by the substitution for the words “five pounds” of the words “ten rand”.

Amendment of section 16 of Act 8 of 1959.

6. Section *sixteen* of the principal Act is hereby amended—

- (a) by the substitution in sub-section (1) for the word “pay” where it occurs for the first time of the words “salary, wages,”; and by the substitution in the said sub-section for the word “pay” where it occurs for the second time of the words “salary or wages”; and
- (b) by the substitution in sub-section (2) for the word “pay” wherever it occurs of the words “salary or wages”.

Amendment of section 17 of Act 8 of 1959.

7. Section *seventeen* of the principal Act is hereby amended by the substitution in sub-section (3) for the words “twenty-five pounds” of the words “fifty rand”.

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

8. Section *twenty-nine* of the principal Act is hereby amended by the substitution in sub-section (1) for the words “*thirty-seven* of the Children’s Act, 1937 (Act No. 31 of 1937)” of the words “*thirty-eight* of the Children’s Act, 1960 (Act No. 33 of 1960)”.

Amendment of section 35 of Act 8 of 1959.

9. Section *thirty-five* of the principal Act is hereby amended by the substitution in paragraph (a) of sub-section (4) for the words “Anatomy Act, 1911 (Act No. 32 of 1911)” of the words “Anatomy Act, 1959 (Act No. 20 of 1959)”.

Amendment of section 41 of Act 8 of 1959.

10. Section *forty-one* of the principal Act is hereby amended by the substitution for the words “twenty-five pounds” of the words “fifty rand”.

Amendment of
section 42 of
Act 8 of 1959.

11. Section *forty-two* of the principal Act is hereby amended by the substitution for the words "fifty pounds" of the words "one hundred rand".

Amendment of
section 44 of
Act 8 of 1959.

12. Section *forty-four* of the principal Act is hereby amended—

(a) by the substitution for sub-paragraph (ii) of paragraph (e) of the following sub-paragraph:

"(ii) publishes or causes to be published in any manner whatsoever any sketch or photograph of any prisoner or group of prisoners, whether such sketch or photograph was made or taken before or after the arrest of the prisoner or group of prisoners, or of any prison, portion of a prison, or of any burial referred to in paragraph (b) of sub-section (4) of section *thirty-five*; or";

(b) by the substitution for paragraph (f) of the following paragraph:

"(f) publishes or causes to be published in any manner whatsoever any false information concerning the behaviour or experience in prison of any prisoner or ex-prisoner or concerning the administration of any prison, knowing the same to be false, or without taking reasonable steps to verify such information (the onus of proving that reasonable steps were taken to verify such information being upon the accused);" and

(c) by the substitution for the words "one hundred pounds" of the words "two hundred rand".

Amendment of
section 45 of
Act 8 of 1959.

13. Section *forty-five* of the principal Act is hereby amended by the substitution for the words "one hundred pounds" of the words "two hundred rand".

Amendment of
section 46 of
Act 8 of 1959.

14. Section *forty-six* of the principal Act is hereby amended by the substitution for the words "one hundred pounds" of the words "two hundred rand".

Amendment of
section 47 of
Act 8 of 1959.

15. Section *forty-seven* of the principal Act is hereby amended by the substitution for the words "two hundred pounds" of the words "four hundred rand".

Amendment of
section 50 of
Act 8 of 1959.

16. Section *fifty* of the principal Act is hereby amended by the substitution in sub-section (2) for the words "fifty pounds" of the words "one hundred rand".

Amendment of
section 53 of
Act 8 of 1959.

17. Section *fifty-three* of the principal Act is hereby amended by the substitution in sub-section (2) for the words "fifteen pounds" of the words "thirty rand".

Amendment of
section 54 of
Act 8 of 1959.

18. Section *fifty-four* of the principal Act is hereby amended by the addition to sub-section (2) of the following proviso:

"Provided that if corporal punishment is imposed in terms of paragraph (d), no punishment other than a punishment referred to in paragraph (b) may be imposed in respect of the same contravention or non-compliance."

Amendment of
section 67 of
Act 8 of 1959.

19. Section *sixty-seven* of the principal Act is hereby amended by the substitution for sub-section (3) of the following sub-section:

"(3) If the Commissioner is satisfied that any such prisoner has, before the expiration of the period of release on probation, failed to observe any condition of such release on probation, he may cause him to be arrested and recommitted to any prison by a warrant under the hand of the Minister and thereupon such prisoner shall be detained in a prison as if he had not been so released, and the period of detention shall in such event, unless the Minister specially determines otherwise, be equal to the portion of the sentence which was unexpired at the date of the release on probation."

Amendment of section 68 of Act 8 of 1959.

20. Section *sixty-eight* of the principal Act is hereby amended by the substitution for sub-section (2) of the following sub-section:

“(2) If the Commissioner is satisfied that any such prisoner has, before the expiration of the period of release on parole, failed to observe any condition of such release on parole he may by order recall him to a prison and thereupon he shall be liable to be detained in prison until lawfully discharged or released therefrom and if at large he shall be deemed to be unlawfully at large.”

Substitution of section 72 of Act 8 of 1959.

21. The following section is hereby substituted for section *seventy-two* of the principal Act:

“Saving of State President’s power to pardon or relieve offenders. 72. Nothing in this Act shall affect the power of the State President to pardon or relieve offenders.”

Amendment of section 74 of Act 8 of 1959.

22. Section *seventy-four* of the principal Act is hereby amended—

(a) by the substitution in sub-section (1) for the words “Children’s Act, 1937 (Act No. 31 of 1937)” of the words “Children’s Act, 1960 (Act No. 33 of 1960),”; and

(b) by the substitution in sub-section (2) for the words “Children’s Act, 1937” of the words “Children’s Act, 1960,”.

Amendment of section 93 of Act 8 of 1959.

23. Section *ninety-three* of the principal Act is hereby amended by the substitution for sub-section (3) of the following sub-section:

“(3) The Commissioner may delegate any of the powers delegated to him under sub-section (1), to the Deputy-Commissioner of Prisons and to any Assistant-Commissioner of Prisons.”

Amendment of section 94 of Act 8 of 1959, as amended by section 37 of Act 80 of 1964.

24. Section *ninety-four* of the principal Act is hereby amended—

(a) by the substitution for paragraph (b) of sub-section (1) of the following paragraph:

“(b) the mode of appointment, the conditions of service, the retention of rank on retirement, the supply of uniforms, the prohibition of the disposal of any article of kit or equipment, the occupation of official quarters, the conduct, the medical examination and the medical, dental and hospital treatment of members of the Prisons Service including special warders, and the rates of remuneration or allowances, if any, payable to ministers of religion appointed under section *seven*,”;

(b) by the substitution in paragraphs (a) and (c) of sub-section (2) for the words “fifty pounds” of the words “one hundred rand”;

(c) by the deletion in paragraph (b) of sub-section (2) of the word “one” and the substitution in the said paragraph for the words “set out” of the words “referred to”; and

(d) by the insertion after sub-section (3) of the following sub-section:

“(4) A regulation which prescribes improved conditions of service for members of the Prisons Service may be made with retrospective effect.”

Short title.

25. This Act shall be called the Prisons Amendment Act, 1965.