

No. 8, 1959.]

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.

ACT

To consolidate and amend the laws relating to prisons.

(Afrikaans text signed by the Governor-General.)
(Assented to 20th March, 1959.)

BE IT ENACTED by the Queen's Most Excellent Majesty, the Senate and the House of Assembly of the Union of South Africa, as follows:—

PRELIMINARY PROVISIONS.

Interpretation
of terms.

1. In this Act, unless the context otherwise indicates—

- (i) "bury" includes cremate; and "burial" has a corresponding meaning; (i)
- (ii) "commissioned officer" means any Commissioner of Prisons appointed under sub-section (3) of section *three*, any Deputy-Commissioner of Prisons, any assistant Commissioner of Prisons and any other member of the Prisons Service holding the rank of brigadier, colonel, lieutenant-colonel, major, captain or lieutenant; (xv)
- (iii) "Commissioner" means the Commissioner of Prisons appointed or deemed to have been appointed under this Act; (xi)
- (iv) "farm colony" means a prison of the type referred to in paragraph (e) of sub-section (1) of section *twenty*; (iii)
- (v) "juvenile" means any person under the age of twenty-one years; (x)
- (vi) "medical officer" means the medical officer referred to in sub-section (2) of section *six* or the district surgeon or other medical practitioner referred to in sub-section (3) of the said section; (v)
- (vii) "member of the Prisons Service" means any commissioned officer, warrant-officer, non-commissioned officer or warder serving in the Prisons Department; (xii)
- (viii) "Minister" means the Minister of Justice; (xiii)
- (ix) "non-white prisoner" means a prisoner who is not a white prisoner; (xiv)
- (x) "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 all land, outbuildings and premises adjacent thereto 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 committed under this Act by or in respect of prisoners further includes every place used as a police cell or lock-up; (vii)
- (xi) "prison board" means a prison board referred to in section *five*; (viii)
- (xii) "prisoner" means any person, whether convicted or not, who is detained in custody in any prison; (vi)
- (xiii) "Public Service" means the public service as defined in section *three* of the Public Service Act, 1957 (Act No. 54 of 1957); (xviii)
- (xiv) "Public Service Commission" means the Public Service Commission referred to in section *four* of the Public Service Act, 1957 (Act No. 54 of 1957); (xix)
- (xv) "race" includes any ethnic or other group as defined in section *one* of the Population Registration Act, 1950 (Act No. 30 of 1950); (xvi)
- (xvi) "regulation" means any regulation made or otherwise in force under this Act; (xvii)

- (xvii) "release on parole" means the release of any prisoner on parole in terms of section *sixty-eight*; (xx)
- (xviii) "release on probation" means the release of any prisoner on probation in terms of section *sixty-seven*; (xxi)
- (xix) "the Prisons Service" means the commissioned officers, warrant-officers, non-commissioned officers and warders serving in the Prisons Department; (iv)
- (xx) "this Act" includes the regulations; (ix)
- (xxi) "white prisoner" means a prisoner who is a white person as defined in section *one* of the Population Registration Act, 1950 (Act No. 30 of 1950). (ii)

CHAPTER I.

ESTABLISHMENT, ADMINISTRATION AND FUNCTIONS OF THE PRISONS DEPARTMENT, AND APPOINTMENT, POWERS, DISCIPLINE AND REMOVAL OF PERSONNEL.

(i) *Establishment and functions of the Prisons Department.*

Establishment and functions of the Prisons Department.

2. (1) There shall be a department to be known as the Prisons Department.

(2) The functions of the Prisons Department shall be—

- (a) to ensure that every prisoner lawfully detained in any prison be kept therein in safe custody until lawfully discharged or removed therefrom;
- (b) as far as practicable, to apply such treatment to convicted prisoners as may lead to their reformation and rehabilitation and to train them in habits of industry and labour;
- (c) the performance of all work necessary for, arising from, or incidental to, the effective administration of prisons; and
- (d) to perform such other duties as the Minister may from time to time assign to the Department.

(ii) *Appointment and powers of personnel.*

Commissioner of Prisons.

3. (1) The Prisons Department shall, under the direction and control of the Minister, be in charge of the Commissioner of Prisons.

(2) Subject to the provisions of sub-section (3), the Commissioner of Prisons shall be an officer who holds a post classified in the administrative division of the fixed establishment of the Prisons Department, to be appointed by the Minister, subject to the laws governing the Public Service.

(3) The Minister may at any time subject to the laws governing the Public Service, convert the post of Commissioner of Prisons into, and by notice in the *Gazette* designate it as, a post to be held by a member of the Prisons Service, and thereafter the incumbent of that post shall be appointed by the Governor-General by commission, subject to the provisions of this Act.

Deputy and Assistant Commissioners of Prisons and other commissioned officers.

4. (1) The Governor-General may from time to time appoint by commission a commissioned officer, to be styled Deputy-Commissioner of Prisons, one or more commissioned officers, to be styled Assistant Commissioners of Prisons, and such other commissioned officers as he may deem necessary, subject to the provisions of this Act.

(2) The Governor-General may, subject to the provisions of this Act, suspend, reprimand, discharge or retire any such commissioned officer or reduce him in rank or in seniority in rank.

Prison boards.

5. (1) The Minister shall appoint one or more boards, to be styled prison boards, to perform the functions and duties entrusted to or imposed upon a prison board by or under this Act.

(2) The period of office of members of a prison board shall be determined by the Minister.

(3) A prison board shall consist of so many commissioned officers as official members (one of whom shall be designated by the Minister as chairman) and so many non-official members, as the Minister thinks fit.

(4) The non-official members of a prison board shall receive such remuneration as the Minister may determine in consultation with the Minister of Finance.

Medical officers.

6. (1) For every prison there shall be a medical officer who shall perform such duties as are assigned to him by or under this Act.

(2) The Minister may, subject to the laws governing the Public Service, appoint for any prison or group of prisons a medical officer who shall be a resident medical officer whose whole time shall be given to the duties of the post to which he has been appointed.

(3) If no medical officer has been appointed for any prison as provided in sub-section (2), or if the post of medical officer at any prison is temporarily vacant, the duties assigned to the medical officer of such prison by or under this Act shall be performed by the district surgeon for the area in which the prison is situated, or by such other medical practitioner as has been approved for the purpose by the Secretary for Health.

Ministers of religion.

7. (1) The Minister may appoint for any prison or group of prisons one or more ministers of religion or other persons as he may deem fit, to render such services and to perform such functions as may be specified in their letters of appointment.

(2) Any appointment made by the Minister under the provisions of this section may at any time be revoked by him.

Non-commissioned members of the Prisons Service.

8. (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.

(2) The Commissioner may, subject to the provisions of this Act, suspend, reprimand, discharge or retire any such member or reduce him in rank or in seniority in rank.

(3) Any member of the Prisons Service who in or in connection with his application for employment in the Prisons Department wilfully made any false statement, shall be liable to dismissal without notice.

Special warders.

9. (1) Whenever it is necessary for the safe custody or transport of any prisoner or for any other purpose, the Commissioner or, subject to the approval of the Commissioner, any member of the Prisons Service in charge of any prison, may appoint so many fit and proper persons as may be deemed expedient to act as special warders upon such conditions as may be prescribed by regulation.

(2) Every such person shall, while so acting, be vested with the same powers, functions and responsibilities, perform the same duties and be subject to the same discipline and authority as a warder appointed under sub-section (1) of section eight.

Members of Prisons Service to have powers of policemen.

10. (1) Every member of the Prisons Service shall be, by virtue of his office, a policeman.

(2) All such policemen as aforesaid are authorized and required to use all lawful means in their power to detain in safe custody the prisoners under their charge and for securing the recapture of any prisoner who has escaped from custody.

Firearms.

11. (1) The Commissioner may authorize any member of the Prisons Service or person or class of members of the Prisons Service or persons employed in or about any prison to be armed with loaded firearms.

(2) If any prisoner attempts to escape or attacks or threatens to attack any member of the Prisons Service or any other person, or in concert with others commits any act of violence, any member of the Prisons Service or person so authorized to be armed with firearms may, whenever it is necessary to prevent the escape or for the defence of himself or any other person, fire upon any such prisoner.

(3) The Commissioner may authorize any member of the Prisons Service or person or class of members of the Prisons Service or persons employed in or about any prison to be

armed with any particular weapon or weapons, other than firearms, for use in the circumstances described in sub-section (2), and in those circumstances any member of the Prisons Service or person so authorized may use such weapon or weapons for any of the purposes mentioned in the said sub-section.

(4) If any member of the Prisons Service or person so authorized to be armed with firearms or other weapons and acting under the necessity aforesaid, kills or wounds any prisoner he shall not be deemed to have committed any offence.

(iii) *Retirement, resignation, discharge and suspension.*

Retirement,
resignation or
discharge of
members of the
Prisons Service.

12. (1) A member of the Prisons Service shall have the right to retire from the service of the Prisons Department on attaining the age of fifty-eight years and shall, subject to the provisions of sub-section (2), be so retired on reaching the said age: Provided that if a member of the Prisons Service was appointed with effect from a date prior to the twenty-fourth day of June, 1955, he shall have the right at any time before or after he attains the age of fifty-five years, to give written notification to the Commissioner of his wish to be retired from the service of the Prisons Department, and if he gives such notification he shall—

- (a) if such notification is given at least three months prior to the date on which he attains the age of fifty-five years, be so retired on attaining that age; or
- (b) if such notification is not given at least three months prior to the date on which he attains the age of fifty-five years, be so retired on the first day of the fourth month following the month in which such notification is received.

(2) A member of the Prisons Service may, if the Public Service Commission recommends that it is in the public interest to retain him in his office or post beyond the age of fifty-eight years, be retained from time to time until he attains the age of sixty years and may be further so retained with the approval, by resolution, of both Houses of Parliament, beyond the age of sixty years and until he reaches the age of sixty-three years.

(3) A member of the Prisons Service who has reached the age of fifty years, may be retired from the service of the Prisons Department.

(4) A member of the Prisons Service may be discharged from the service of the Prisons Department—

- (a) on account of continued ill-health;
- (b) owing to the abolition of his post or any reduction in or reorganization or readjustment of the Department or any office or division of the Department or any prison in which he is employed;
- (c) if, for reasons other than his own unfitness or incapacity, his discharge will promote efficiency or economy in the Department, office or division of the Department or any prison in which he is employed;
- (d) on account of unfitness for his duties, or incapacity to carry them out efficiently; or
- (e) on account of misconduct.

(5) A woman member of the Prisons Service who marries shall be deemed to have retired voluntarily from the service of the Prisons Department in contemplation of marriage with effect from the date of her marriage, or if she has discharged her duties on that day, with effect from the day following the date of her marriage, unless the Commissioner approves that she be retained in the service of the Prisons Department.

(6) The Commissioner may discharge any member of the Prisons Service, who is not a commissioned officer, at the expiration of the period for which he has agreed to serve, on one month's prior notice to that effect.

(7) Subject to the provisions of sub-section (9), a commissioned officer may resign from the service of the Prisons Department at any time with or without prior notice of such resignation.

(8) (a) No member of the Prisons Service, who is not a commissioned officer, shall, except with the permission of the Commissioner, be at liberty to resign or withdraw himself from the service of the Prisons Depart-

ment before the expiration of the period for which he has agreed to serve.

- (b) The Commissioner may, with the approval of the Minister, determine the conditions under which such a member may be permitted to resign or withdraw himself from the said service.

(9) In time of war, disturbance of the public peace, riot or other emergency or apprehended emergency, no member of the Prisons Service shall be at liberty to resign or withdraw himself from the service of the Prisons Department notwithstanding that the period for which he has agreed to serve has expired, unless expressly authorized in writing so to do by the Commissioner.

(10) If any member of the Prisons Service deserts or withdraws himself from the service of the Prisons Department in contravention of the provisions of this section, he shall be guilty of an offence and liable on conviction to a fine not exceeding fifty pounds or, in default of payment, to imprisonment for a period not exceeding six months or to such imprisonment without the option of a fine.

Discharge or reduction in rank of non-commissioned members of the Prisons Service.

13. (1) A member of the Prisons Service who is not a commissioned officer, may be discharged from the service of the Prisons Department or be reduced in rank or in seniority in rank, if after enquiry in the manner prescribed by regulation, the Commissioner is of opinion that he is unfit to remain in the service of the Prisons Department 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 section *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 Department without an enquiry being held.

(2) Any such member of the Prisons Service may, in the manner and within the period prescribed by regulation, appeal to the Minister against any order discharging him or reducing him in rank or in seniority in rank, and in such event the Minister may confirm, set aside, or alter such order or make such other order as to him seems just.

Non-commissioned members of the Prisons Service liable to dismissal for assaulting prisoners.

14. Any member of the Prisons Service other than 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 Department; and if he has been sentenced for such offence to a fine exceeding five pounds or to any period of imprisonment without the option of a fine and has been so discharged, he shall in no circumstances be reappointed as a member of the Prisons Service.

Suspension of members of the Prisons Service.

15. (1) A member of the Prisons Service may be suspended from office pending his trial for, or after his conviction of, any offence, whether under this Act or otherwise, or pending any enquiry at which a charge of misconduct against him or his fitness to remain in the service of the Prisons Department or retain his rank or seniority in rank is being investigated, and shall be so suspended for any period during which he is under arrest or detention or is serving a term of imprisonment, but shall not, by reason of such suspension, cease to be a member of the Prisons Service.

(2) During the period of suspension of a member of the Prisons Service the powers, functions and authority vested in him by virtue of his office shall be in abeyance, but he shall continue to be subject to the same responsibilities, discipline and penalties as if he had not been suspended.

(3) The suspension of a member of the Prisons Service may be terminated at any time.

Pay, allowances, privileges and benefits of suspended members of the Prisons Service.

16. (1) A member of the Prisons Service who has been suspended from office shall not, in respect of the period of his suspension, be entitled to any pay, allowance, privilege or benefit to which he would otherwise have been entitled as such member, but the Minister may, in his discretion, direct that during the period of suspension of such member, not being a period of suspension during which he is serving a term of imprisonment, he be paid the whole or a portion of his pay and allowances or be granted such privileges and benefits as the Minister may direct.

(2) If it is decided not to discharge a member of the Prisons Service who has been suspended from office, such member shall, in respect of the period of his suspension, not being a period of suspension during which he was serving a term of imprisonment, be paid his full pay and allowances and be granted all the privileges and benefits to which, but for his suspension, he would have been entitled as a member of the Prisons Service: Provided that if such member is not discharged but is reduced in rank, he shall in respect of such period be paid the pay and allowances applicable to the rank to which he is reduced, but if in respect of such period he was in terms of sub-section (1) paid any pay or allowances in excess of the pay and allowances applicable to the rank to which he is reduced, he shall not be obliged to refund the excess.

Vacation of
official
quarters.

17. (1) Whenever any member of the Prisons Service is suspended or discharged or resigns from the service of the Prisons Department, or dies, the member of the Prisons Service so suspended, discharged or resigning and the members of his family, and the members of the family of the member of the Prisons Service who dies, shall, when required so to do by notice under the hand of the Commissioner, vacate the quarters occupied by such member or the members of his family by virtue of his employment in the Prisons Department.

(2) If such member and the members of his family, or the members of the family of the member of the Prisons Service who died, fail to vacate such quarters within forty-eight hours after the service of the notice aforesaid, the member of the Prisons Service in charge of the prison where such member is or was employed, may by order in writing under his hand direct a member of the Prisons Service serving under him and named in that order (and the member of the Prisons Service named in that order shall have the power) to—

- (a) enter such quarters, if necessary by force;
- (b) eject any persons wrongfully retaining occupation;
- (c) remove therefrom any goods or articles there found which are not State property; and
- (d) take possession of such articles as are the property of the State.

(3) Any person who hinders or obstructs any member of the Prisons Service named in any such order in the exercise of his powers or the execution of his duties shall be guilty of an offence and liable on conviction to a fine not exceeding twenty-five pounds or in default of payment to imprisonment for a period not exceeding three months.

(iv) *General.*

Salary and
allowances
not to be
assigned or
attached.

18. No member of the Prisons Service shall, without the approval of the Commissioner, assign the whole or any part of any salary or allowances payable to him under this Act, nor shall the whole or any part of such salary or allowances be capable of being seized or attached under or by virtue of any judgment or order of any court, other than a garnishee order, nor shall the same pass under or by virtue of any order made for the sequestration of the estate of any such member of the Prisons Service.

Decorations,
medals and
rewards for
extraordinary
diligence or
exertion.

19. (1) The Governor-General may institute, constitute and create decorations and medals, as well as bars, clasps and ribbons in respect of such decorations and medals, which may be awarded by him or by the Minister subject to such conditions as may be prescribed by regulation to any person who is or was a member of the Prisons Service, in respect of his services as such member.

(2) The Commissioner may, with the approval of the Minister, award to any person who is or was a member of the Prisons Service such monetary or other reward for exceptional ability or possessing special qualifications or rendering meritorious service, as is, in his opinion, a fitting reward therefor.

CHAPTER II.

ESTABLISHMENT AND ADMINISTRATION OF PRISONS.

Establishment
of prisons
and the meaning
of "gaol" and
"farm colony" in
other laws.

20. (1) The Minister may, by notice in the *Gazette*, establish prisons—

- (a) for the reception, detention, confinement, training and treatment of persons liable to detention in custody, whether under sentence of court, or prior

to sentence, or otherwise requiring by law to be detained, confined or treated;

(b) for the detention, treatment and training of—

(i) juveniles liable to detention in custody and such prisoners over the age of twenty-one years as, by reason of their immaturity, may in the opinion of the Commissioner more appropriately be classified as juveniles; and

(ii) convicted prisoners other than those referred to in sub-paragraph (i);

(c) to serve as observation centres for determining the age, health, mental condition, character traits, social background, previous conduct, ability to work, aptitude and training of selected prisoners with a view to their classification and training;

(d) for the detention and medical treatment of chronic sick or infirm prisoners who for any reason cannot be treated in an ordinary prison;

(e) of the type known as farm colonies to which persons declared to be idle persons in terms of the Natives (Urban Areas) Consolidation Act, 1945 (Act No. 25 of 1945), may be sent to learn habits of industry and labour; and

(f) of such other types as he may from time to time deem necessary to establish in pursuance of any scheme for the reformation and rehabilitation of persons convicted of any offence and sentenced to any period of imprisonment or detention.

(2) Any prison established under paragraph (a) of sub-section (1) may serve one or more districts as circumstances may require; and for the purposes of any law relating to magistrate's courts any prison established to serve more than one district shall be deemed to be the prison of each district served by that prison.

(3) Any reference in any law to a "gaol" or to a "prison or gaol" or to a "prison and gaol" shall be read as referring to a prison as defined in this Act; and any reference in any law to a "farm colony" shall be read as referring to a farm colony as defined in this Act.

Use of any prison or portion thereof for particular purposes.

21. Subject to the provisions of sub-section (1) of section *twenty-seven*, any prison established or deemed to have been established under any paragraph of sub-section (1) of section *twenty*, or any portion of any such prison, may be used for the purposes envisaged in any of the other paragraphs of the said sub-section.

Determination of security measures, privileges, etc., at prisons.

22. The Minister shall determine—

(a) which of the prisons or which portions thereof shall be classified as maximum or medium security prisons, or as open prisons;

(b) the groups of classified prisoners which shall be sent to the different types of prisons; and

(c) the privileges and indulgences applicable to each of the various types of prisons.

Classification and separation of prisoners.

23. (1) In every prison—

(a) men and women prisoners shall be detained in separate parts thereof and in such manner, as far as possible, as to prevent those of one sex from seeing, conversing or holding any communication with those of the other sex;

(b) as far as possible, white and non-white prisoners shall be detained in separate parts thereof and in such manner as to prevent white and non-white prisoners from being within view of each other; and

(c) wherever practicable, non-white prisoners of different races shall be separated.

(2) Any prison or any portion thereof may be restricted to the detention, training or treatment therein of a specified race or class of prisoners.

Women members of Prisons Service at prisons for women.

24. A prison or any portion of a prison established or used for the reception, detention, training and treatment of women prisoners shall have a sufficient number of women members of the Prisons Service, and the Commissioner shall determine

whether a woman member of the Prisons Service shall be in charge thereof.

Inspection of prisons.

25. (1) Every prison within the Union shall, periodically and at such other times as the Commissioner may determine, be inspected by commissioned officers authorized thereto by the Commissioner.

(2) Such commissioned officers shall perform the duties assigned to them by this Act or by administrative instruction.

(3) Such commissioned officers shall also periodically inspect and report in writing to the Commissioner on any police cells or lock-ups not controlled by the Prisons Department where sentenced persons or prisoners are detained under the authority contained in section *twenty-eight*.

CHAPTER III.

DUTIES OF MEMBERS OF THE PRISONS SERVICE IN RELATION TO THE RECEPTION OF PRISONERS AND THE CARRYING OUT OF SENTENCES IN PRISONS.

(i) *Reception of prisoners.*

Convicted persons to be received at prisons only upon production of warrant.

26. (1) No member of the Prisons Service in charge of a prison shall receive into his custody at any prison any convicted person except upon production to him of the warrant of the court by which sentence was passed upon that convicted person or a warrant under the hand of the Minister.

(2) Such member shall keep the warrant throughout the period during which that convicted person is in his custody.

Reception of unconvicted persons at prisons.

27. (1) Unconvicted persons shall be received only at a prison established or deemed to have been established under paragraph (a) of sub-section (1) of section *twenty*.

(2) No member of the Prisons Service in charge of a prison referred to in sub-section (1) shall receive any unconvicted person into his custody except—

(a) in the case of a person accused of an offence, upon production to him of the warrant of commitment of that person to prison or an order in writing signed by a member of the South African Police Force;

(b) in the case of a person committed for detention under the provisions of any law authorizing the committal of any witness for detention, upon production to him of the warrant of commitment;

(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;

(d) in the case of an alleged mentally defective person, upon production to him of an order authorizing or commanding the detention of that person at a prison and issued under the provisions of any law for the detention of mentally defective persons: Provided that, anything to the contrary notwithstanding in any law relating to mentally defective persons, no such person shall be received at any prison by reason only that he is alleged to be a mentally defective person, if there is a mental hospital or a public hospital (other than a hospital used exclusively for infectious diseases) in the district in which such prison is situated;

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

and every such member of the Prisons Service shall keep every such warrant or order or certified copy thereof throughout the period during which any person referred to therein is in his custody.

Detention of prisoners in police cells or lock-ups.

28. There may be detained in any police cell or lock-up—

(a) any person sentenced in a district where no prison has been established or at a place where no prison exists; and

- (b) any prisoner who, under the authority of the Commissioner, is temporarily removed to a police cell or lock-up:

Provided that no such person or prisoner shall be so detained unless his detention in a prison is not practicable, or so detained without the authority of the Commissioner for a longer period than one month.

Detention of
unconvicted
young persons
and women.

29. (1) A person under the age of nineteen years who is accused of having committed an offence shall before his conviction, not be detained in a prison or a police cell or lock-up unless his detention is necessary and no suitable place of detention mentioned in section *thirty-seven* of the Children's Act, 1937 (Act No. 31 of 1937), is available for his detention.

(2) In deciding as to the suitability of any place for the detention of a person referred to in sub-section (1) regard may be had to the nature of the offence with which he is charged and to his age, sex, race and character.

(3) A person referred to in sub-section (1) who is detained in a prison or a police cell or lock-up or who is being removed in custody to or from a court or who, while in custody, attends a court or a preparatory examination, shall not be permitted to associate with a person over the age of twenty-one years who is in custody: Provided that he may be permitted to associate with such a person in custody who has been or is to be charged jointly with him, if the member of the Prisons Service in charge of the prison or the member of the South African Police Force in charge of the police cell or lock-up in which he is detained, is of the opinion that such association will not be detrimental to him.

(4) When a woman under the age of nineteen years is detained or in custody as aforesaid, she shall be under the care of a woman.

- (5) (a) When a woman prisoner of or over the age of nineteen years is awaiting trial in any prison or police cell or lock-up on any charge other than murder, the Commissioner may, after consultation with the Commissioner of the South African Police, direct—

(i) that she be detained at any place determined by the Commissioner; or

(ii) that she be detained by a temporary custodian approved of by the magistrate of the district in which she is detained; or

(iii) that she be released from custody on a recognizance with or without sureties, as the Commissioner may determine, for her appearance in a court or before a judicial officer at a time and place stipulated in the recognizance or whenever called upon to do so.

- (b) In this sub-section the term "murder" shall not include the murder of the prisoner's newly-born child.

(c) If a woman released under a recognizance in terms of sub-paragraph (iii) of paragraph (a) does not appear in a court or before a judicial officer at a time and place stipulated in the recognizance or when she is called upon to do so, or if she absconds before she can be so called upon, the court in which or the judicial officer before whom she should have appeared, may declare the bail money specified in the recognizance forfeited and issue a warrant for her arrest; and any such declaration of forfeiture shall have the effect of a judgment on the recognizance for the amounts therein specified against such person and her sureties respectively.

- (d) The Minister or any person acting under his authority, may in his discretion remit any portion of any amount declared forfeited under paragraph (c) and enforce payment in part only.

Reception and
detention in
Union of
prisoners
from adjacent
territories.

30. (1) The Minister may enter into an agreement with the government of any British territory in Africa south of the equator on terms and conditions set out in the agreement, for the reception in the Union and detention in any prison therein of

any person sentenced by a competent court of such territory according to the law in force therein to imprisonment with or without compulsory labour.

(2) The fact that such agreement has been entered into with the government of any such territory and a summary of the terms and conditions of the agreement shall be notified by the Minister in the *Gazette*.

(3) After the publication of any such notice in the *Gazette* in respect of any such territory aforesaid, a person who has been sentenced to imprisonment as described in sub-section (1) and is still liable to serve the sentence imposed, may be lawfully received into custody in the Union and may be lawfully detained in any prison thereof until the expiry of the sentence 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 a competent court of the Union: Provided that no such person shall be received into custody in the Union under the provisions of this sub-section unless the original warrant of commitment to prison accompanies the escort in charge of such person.

(4) A certificate under the hand of the Minister setting forth that from documents laid before him it appears that the person named in the certificate has been sentenced or ordered to be detained as described in this section and for a period specified in the certificate shall be accepted as conclusive evidence at all times during the continuance of such period that such person is lawfully under detention or is being dealt with in accordance with this section.

(5) The provisions of sub-sections (3) and (4) shall apply in respect of persons sentenced to imprisonment by competent courts of the Territory of South-West Africa including that portion of the said Territory known as the "Rehoboth Gebiet" and defined in the First Schedule to Proclamation No. 28 of 1923 of the said Territory and that portion of the said Territory known as the "Eastern Caprivi Zipfel" referred to in section *three* of the South-West Africa Affairs Amendment Act of 1951 (Act No. 55 of 1951), notwithstanding that no such agreement as is mentioned in sub-section (1) exists as regards that Territory and no notice has been published in the *Gazette* in respect thereof.

(ii) *Carrying out of sentences.*

Sentence to be served as directed by court.

31. Subject to the provisions of this Act, every member of the Prisons Service who is in charge of any prison and every other member of the Prisons Service who is in charge of prisoners shall cause every prisoner who has been sentenced by any court, to undergo that sentence in the manner directed in the warrant by the court, or if the sentence has been commuted by the Governor-General, in the manner directed by the Governor-General in the order of the Minister and for so doing the warrant or order, or a certified copy thereof, shall be sufficient authority to every such member.

Commencement, termination and computation of sentences.

32. (1) Subject to the provisions of sub-section (2) of this section, paragraph (a) of section *thirty-nine* and sub-section (2) of section *forty-eight*, a sentence of imprisonment upon a conviction at common law or under any statute shall take effect from the day on which that sentence is passed, unless it is suspended under the provisions of any law or unless the offender is released on bail pending the decision of the division of the Supreme Court having jurisdiction on a question reserved, in which case the sentence shall take effect from the day on which he surrenders himself or is taken into custody to undergo his sentence.

(2) When a person receives more than one sentence of imprisonment or receives additional sentences while serving a term of imprisonment, each such sentence shall be served the one after the expiration, setting aside or remission of the other in such order as the Commissioner may determine, unless the court specifically directs otherwise, or unless the court directs that such sentences shall run concurrently: Provided that any such sentence of imprisonment or additional sentence of imprisonment in which solitary confinement with or without spare diet is imposed, shall be served first: Provided further that any determinate sentence of imprisonment to be served by any

person shall run concurrently with a life sentence or with an indeterminate sentence of imprisonment to be served by such person in consequence of being declared an habitual criminal; and that one or more life sentences and one or more such indeterminate sentences, or two or more life sentences, or two or more such indeterminate sentences, shall also run concurrently.

(3) Subject to the provisions of the second proviso to sub-section (2), the date of expiry of any sentence of imprisonment being served by a prisoner who escapes from lawful custody or who is unlawfully discharged shall upon his recapture or re-arrest, be postponed for a period equal to the period by which such sentence was interrupted by reason of such escape or discharge.

(4) Any prisoner whose term of imprisonment expires on a Sunday or a public holiday, may be discharged on the authority of the Commissioner at any hour on the day preceding such Sunday or public holiday as the Commissioner may think fit.

Imprisonment
in default of
payment of fine

33. (1) Any imprisonment which is imposed by any court in default of payment of a fine shall, prior to the expiration thereof, terminate whenever that fine is paid or is lawfully levied under the process of any law authorizing the levy of the fine.

(2) (a) If any part of the fine is paid or levied before the expiry of any imprisonment such as referred to in sub-section (1), the period of imprisonment shall be reduced by a number of days bearing as nearly as possible the same proportion to the period of imprisonment as the sum so paid and levied bears to the amount of the fine.

(b) An amount which would reduce the imprisonment by a fractional part of a day shall not be received.

(3) No payment of any sum under this section need be accepted otherwise than during the ordinary office hours.

Mental cases.

34. (1) A prisoner who, while serving a sentence of imprisonment, is removed to a mental hospital shall, as soon as he is fit for discharge therefrom, be returned by the authorities of such hospital to a prison to complete the sentence which was interrupted by his removal to the hospital.

(2) The period during which such prisoner was detained in a mental hospital may, on the authority of the Minister, be reckoned as part of his sentence of imprisonment.

Execution of
death
sentence.

35. (1) Sentences of death shall be carried out in or in the precincts of a prison appointed by the Governor-General for the carrying out of sentences of death.

(2) The officials required to carry out the sentence of death, the commissioned officer in charge of the prison, the medical officer and such members of the Prisons Service as may be necessary, shall be present at an execution. No other person shall be permitted to be present without an order from the Minister.

(3) As soon as possible after the sentence of death has been carried out, the medical officer shall examine the body to ascertain the fact of death, and shall sign a certificate to that effect which shall be delivered to the sheriff or deputy sheriff. Such certificate shall be signed by the sheriff or deputy sheriff and the executioner and be transmitted by the sheriff to the registrar of the division of the Supreme Court in which the sentence of death was passed.

(4) (a) The body of an executed person may, in the discretion of the Commissioner, be placed under the control of an inspector of anatomy to be dealt with in accordance with the provisions of the Anatomy Act, 1911 (Act No. 32 of 1911), or be handed over to a medical school which is legally entitled to be in possession of human corpses.

(b) If such body is not disposed of under paragraph (a) it shall in the discretion of the Commissioner be buried in private, either by the authorities of the prison where the execution took place, or by the near

relatives of the deceased under the supervision of the said authorities, and in either case the Commissioner may in his discretion permit near relatives of the deceased to be present at the burial.

Infliction of corporal punishment.

36. (1) Corporal punishment shall not be inflicted before the medical officer has examined the prisoner and has certified that he is in a fit state of health to undergo such punishment.

(2) If it appears to the medical officer that the prisoner is not in a fit state of health to undergo corporal punishment, he shall certify that fact in writing.

(3) After the prisoner has been certified by the medical officer to be fit for corporal punishment, the punishment shall be inflicted in private in a prison in the presence of the medical officer.

(4) The medical officer shall immediately stop the infliction of any further punishment if it appears to him during the infliction of the corporal punishment that the prisoner is not in a fit state of health to undergo the remainder thereof, and shall certify that fact in writing.

(5) Whenever under the provisions of sub-section (2) or (4) any medical officer has certified that any person sentenced to undergo corporal punishment is not in a fit state of health to undergo the whole or the remainder thereof, the certificate shall immediately be transmitted to the Commissioner and, if urgently necessary, the fact shall be reported to him by telegraph.

(6) (a) Upon receipt of any such certificate or telegraphic advice, the Commissioner shall report the matter to the court which passed the sentence or, in the case of a superior court, if that court is not sitting, to the provincial division of the Supreme Court concerned, and such court or provincial division may, subject to the provisions of any relevant law, either remit the sentence of corporal punishment or substitute another penalty in lieu of the sentence of corporal punishment.

(b) If no remission or substitution as aforesaid is made by the court or provincial division, the Minister may remit the whole or the remainder of the corporal punishment, as the case may be.

(7) Where corporal punishment has been ordered in more than one sentence passed at or at approximately the same time on the same person, that punishment shall not be inflicted at intervals, but shall be inflicted at one and the same time as early as possible after the sentences were passed, subject to the provisions of this section and of any law relating to the review of such sentences by a judge.

(8) The number of strokes inflicted at one and the same time in terms of sub-section (7) shall in no instance exceed ten and the remainder of the strokes, if any, ordered in the said sentences shall lapse.

Woman prisoner not to be whipped.

37. No woman prisoner shall under any circumstances be subjected to corporal punishment.

Indeterminate sentences on habitual criminals.

38. Subject to the provisions of section *sixty-six*, any person who has been declared an habitual criminal under the provisions of any law, shall be detained in a prison during the Governor-General'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, shall be detained in a prison for a period of at least nine years.

Periodical imprisonment, imprisonment for corrective training and imprisonment for the prevention of crime.

39. A person who has, under the provisions of any law, been sentenced to—

(a) periodical imprisonment, shall be periodically detained in a prison in the manner prescribed by regulation;

(b) imprisonment for corrective training, shall be detained in a prison for a period of at least two years but not exceeding four years, to be determined by the Minister after a prison board has made a recommendation;

(c) imprisonment for the prevention of crime, shall be detained in a prison for a period of at least five years but not exceeding eight years, to be determined

by the Minister after a prison board has made a recommendation.

Persons detained in a farm colony.

40. Any person declared to be an idle person and ordered to be detained in a farm colony in terms of the Natives (Urban Areas) Consolidation Act, 1945 (Act No. 25 of 1945), shall be detained thereat for the period ordered by the native commissioner or magistrate unless released prior to the expiration of such period on the recommendation of a prison board.

CHAPTER IV.

PENALTIES FOR CERTAIN SPECIFIC OFFENCES AND REWARDS FOR THE RECAPTURE OF ESCAPED PRISONERS.

(i) Penalties for specific offences.

Penalty for unauthorized use of decorations.

41. Any person who—

- (a) wears or uses any decoration or medal instituted, constituted or created under this Act, or the distinctive bar, clasp or ribbon thereof; or
 - (b) represents himself to be a person who is or has been entitled to wear or use any such decoration, medal, bar, clasp or ribbon; and
 - (c) is not a person to whom such decoration, medal, bar, clasp or ribbon has been awarded or who has been authorized by competent authority to wear or use such decoration, medal, bar, clasp or ribbon,
- shall be guilty of an offence and liable on conviction to a fine not exceeding twenty-five pounds or, in default of payment, to imprisonment for a period not exceeding three months.

Penalty for unauthorized wearing of uniforms, etc.

42. Any person who—

- (a) wears any uniform or distinctive badge or button of the Prisons Service, or anything so closely resembling any such uniform, badge or button as to be calculated to deceive; and
 - (b) is not a member of the Prisons Service entitled by reason of his appointment, rank or designation to wear such uniform, badge or button; or
 - (c) has not been granted permission by the Commissioner to wear such uniform, badge or button,
- shall be guilty of an offence and liable on conviction to a fine not exceeding fifty pounds or, in default of payment, to imprisonment for a period not exceeding six months.

Penalty for aiding escapes.

43. Any person who—

- (a) aids any prisoner in escaping or attempting to escape from any prison; or
 - (b) for the purpose of facilitating the escape of any prisoner, supplies or agrees or attempts to supply or aids, incites or encourages any other person in supplying a prisoner with any mask, dress, disguise or any other article, instrument, matter or thing; or
 - (c) conveys or causes to be conveyed into or out of any prison or any place where prisoners may come to work, any letter or token encouraging or inciting any prisoner to escape or to contravene a regulation or showing a desire to aid any prisoner to escape or to contravene any regulation; or
 - (d) harbours or conceals or assists in harbouring or concealing an escaped prisoner,
- shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding five years.

Penalty for loitering in vicinity of a prison, etc.

44. Any person who—

- (a) is found loitering on any prison reserve or on any prison property or within one hundred yards of any prison or any other place where prisoners may be for the purpose of imprisonment or labour or within one hundred yards of any burial referred to in paragraph (b) of sub-section (4) of section *thirty-five* and who fails to depart therefrom upon being warned so to do by any member of the Prisons Service or of the South African Police Force; or
- (b) without lawful authority holds or attempts to hold any communication with any prisoner; or
- (c) wilfully rides, drives, or leads any animal or vehicle through any group of prisoners outside a prison; or

- (d) in any manner wilfully interferes with any prisoner or group of prisoners; or
- (e) without the authority in writing of the Commissioner—
 - (i) sketches or photographs any prison, portion of a prison, prisoner or group of prisoners, whether within or outside any prison, or any burial referred to in paragraph (b) of sub-section (4) of section *thirty-five*; or
 - (ii) causes any sketch or photograph of any prison, portion of a prison, prisoner or group of prisoners or of any burial referred to in paragraph (b) of sub-section (4) of section *thirty-five* to be published in any manner; or

(f) publishes 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), shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred pounds or, in default of payment, to imprisonment for a period not exceeding one year or to such imprisonment without the option of a fine, and the court convicting any person of an offence under sub-paragraph (i) of paragraph (e) may, if it thinks fit, declare the sketches or photographs and the negatives from which such photographs were taken to be forfeited to the State.

Penalty for receiving or demanding money or other consideration from a prisoner.

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 discharge from any prison, to any member of the Prisons Service or other person in the service of the Prisons Department and any member of the Prisons Service or other person in the service of the Prisons Department 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 one hundred pounds 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.

Penalty for selling or supplying articles to prisoners.

46. (1) No member of the Prisons Service and no person acting for or employed by him shall—

- (a) sell or supply or receive, directly or indirectly, any benefit or advantage from the sale or supply of any article to or for the use of any prisoner or for the use of the Prisons Department; or
- (b) directly or indirectly, have any interest in any contract or agreement for the sale or supply of any such article.

(2) No member of the Prisons Service shall, directly or indirectly—

- (a) have any pecuniary interest in the purchase of any supplies for the use of the Prisons Department or receive any discounts, gifts or other consideration from contractors for or sellers of such supplies; or
- (b) have any pecuniary dealing with prisoners or with their friends with regard to them; or
- (c) on behalf of any prisoner, hold any unauthorized communication with any person.

(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 one hundred pounds, 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.

Penalty for trafficking in tobacco, etc., with prisoners.

47. (a) Any person who, without lawful authority—

- (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
- (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
 - (iii) brings or attempts to bring out of any prison, or conveys from any prisoner any letter, document or other article; and
- (b) any member of the Prisons Service or other person in the service of the Prisons Department 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
 - (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
 - (iii) allows any letter, document or other article to be brought out of any prison or to be conveyed from any prisoner; or
 - (iv) enters into or attempts to enter into any business transaction with a prisoner; and
- (c) any prisoner who, without lawful authority—
- (i) receives, directly or indirectly, for his own use or on behalf of any other prisoner or person 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 Department; 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 Department 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 two hundred pounds 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.

Penalty on prisoners for escape or attempting to escape.

48. (1) Any prisoner who—

- (a) escapes or conspires with any person to procure the escape of any prisoner, or who assists or incites any other prisoner to escape from the prison in which he is placed, or from any post or place where or wherein he may be for the purpose of labour or detention, or from hospital, or while in course of removal in custody from one place to another; or
- (b) makes any attempt to escape from custody; or
- (c) is in possession of any instrument or other thing with intent to procure his own escape or that of another prisoner,

shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding five years, and, in addition, where the escape or attempt to escape was accompanied by any act of violence, such prisoner may be sentenced to undergo corporal punishment not exceeding ten strokes.

(2) Any sentence of imprisonment imposed under sub-section (1) shall commence after the expiry of any sentence the prisoner was then undergoing, but subject to the provisions of the provisos to sub-section (2) of section *thirty-two*.

(3) Nothing in this section contained shall be construed as exempting the prisoner from prosecution or punishment for any offence under the common law or the provisions of this Act or any other law.

(ii) *Rewards for apprehension of escaped prisoners.*

Rewards for apprehension of escaped prisoners.

49. (1) The Commissioner may offer monetary rewards to persons who give information leading to the tracing and apprehension of any prisoner who has escaped from custody.

(2) Any person who gives such information or who apprehends, secures and hands over or causes to be handed over to any member of the Prisons Service or of the South African Police Force any such prisoner, and has incurred any expense in connection with the giving of such information or such apprehension, securing or handing over, may be paid his just and reasonable expenses and in addition such sum as a reward as the Commissioner may determine.

(3) No payment of any sum as a reward shall be made under the authority of this section to any member of the Prisons Service or of the South African Police Force, unless, in the opinion of the Minister, such exceptional circumstances exist as to justify such payment being made.

CHAPTER V.

TRIAL OF OFFENCES UNDER THIS ACT.

(i) *Trial by magistrates.*

Trial by magistrates of contraventions of this Act by members of the Prisons Service and special warders.

50. (1) A magistrate shall have jurisdiction to try at a prison or at a place designated by the Commissioner for the purpose, any member of the Prisons Service or special warder for any alleged contravention of or failure to comply with any provision of this Act, whether such contravention or non-compliance is alleged to have taken place within or outside a prison.

(2) A magistrate shall, upon conviction of such member or special warder in respect of any such contravention or non-compliance, have jurisdiction, except where a penalty has been specifically prescribed by this Act, to impose a fine not exceeding fifty pounds or, in default of payment, imprisonment for a period not exceeding six months, or such imprisonment without the option of a fine, or both such fine and such imprisonment.

Trial by magistrates of contraventions of this Act by prisoners.

51. (1) A magistrate shall have jurisdiction to try at a prison or at a place designated by the Commissioner for the purpose, any prisoner for any alleged contravention of or failure to comply with any provision of this Act, whether such contravention or non-compliance is alleged to have taken place within or outside a prison.

(2) A magistrate shall, upon conviction of such prisoner in respect of any such contravention or non-compliance, have jurisdiction to impose any penalty specifically prescribed by this Act or any punishment which any commissioned officer might lawfully have imposed under sub-section (2) of section *fifty-four*, and shall have special jurisdiction to sentence the offender in lieu of or in addition to any such punishment—

(a) to undergo imprisonment for a period not exceeding six months; or

(b) to be kept in solitary confinement in an isolation cell with or without light labour for a period not exceeding forty-two days, twenty-eight days of which may be ordered to be passed on reduced diet: Provided that no continuous period passed on reduced diet shall exceed fourteen days, and that at least fourteen

days shall elapse between one period passed on reduced diet and another such period.

Special jurisdiction of magistrates to try offences under this Act.

52. Anything to the contrary notwithstanding in any law relating to magistrate's courts, a magistrate shall have jurisdiction to try any offence under this Act and to impose any penalty prescribed by this Act.

(ii) *Trial by commissioned officers.*

Trial by commissioned officers of contraventions of this Act by non-commissioned members of the Prisons Service and special warders.

53. (1) Subject to the provisions of sub-sections (3) and (8), a commissioned officer shall have jurisdiction to try at a prison or at a place designated by the Commissioner for the purpose, any member of the Prisons Service (except a commissioned officer) or any special warder for any alleged contravention of or failure to comply with any provision of this Act (except any alleged contravention or non-compliance which is expressly declared to be an offence under this Act), whether such contravention or non-compliance is alleged to have taken place within or outside a prison.

(2) Subject to the provisions of sub-section (8), a commissioned officer shall, upon conviction of such member or special warder in respect of any such contravention or non-compliance, have jurisdiction to reprimand him or to impose a fine not exceeding fifteen pounds, which fine may be recovered by deduction from his accrued or future pay in such instalments as may be determined by the Commissioner.

(3) Any such member of the Prisons Service or special warder who is alleged to have contravened or failed to comply with any provision of this Act, may be tried by the commissioned officer under whose command that member or special warder is, or by any commissioned officer deputed generally or specially thereto by the Commissioner.

(4) The trial referred to in sub-section (1) shall be conducted in accordance with the provisions of section *fifty-eight* and the commissioned officer presiding over any such trial may summon witnesses to give evidence thereat and may administer an oath to or accept an affirmation from any such witness.

(5) Any such member or special warder who has been convicted by a commissioned officer may in the manner and within the period prescribed by regulation, appeal to the Commissioner against the conviction and sentence, and thereupon the Commissioner may confirm or quash the conviction and sentence or confirm or alter the conviction and set aside, increase, reduce or otherwise alter the sentence as he deems necessary in the interests of justice.

(6) In the event of an appeal under sub-section (5), the execution of the sentence imposed in respect of the conviction which is the subject of the appeal, shall be suspended pending the Commissioner's decision on the appeal.

(7) Whenever any such member or special warder has been convicted and sentenced under this section, the Commissioner may, if he thinks fit, direct that the record of the proceedings in the case be submitted to him for review, and may thereupon confirm or quash the conviction and sentence or confirm or alter the conviction and set aside, increase, reduce or otherwise alter the sentence as he deems necessary in the interests of justice.

(8) The Commissioner may, if he deems it necessary, restrict in respect of any commissioned officer the jurisdiction conferred on a commissioned officer by any provision of this Act.

Trials by commissioned officers of contraventions of regulations by prisoners.

54. (1) Any commissioned officer deputed generally or specially thereto by the Commissioner, shall have jurisdiction to try at a prison or at a place designated by the Commissioner for the purpose, any prisoner for any alleged contravention or failure to comply with any provision of any regulation, whether such contravention or non-compliance is alleged to have taken place within or outside a prison.

(2) Upon conviction of any prisoner in respect of any such contravention or non-compliance, such commissioned officer shall have jurisdiction to impose any one or more of the following punishments:

- (a) A reprimand;
- (b) the deprivation of all privileges, gratuities or indulgences for a period not exceeding one month;
- (c) the deprivation of one or more meals on any one day;
- (d) corporal punishment, not exceeding six strokes, if the prisoner is a convicted male prisoner apparently under the age of fifty years;

- (e) solitary confinement in an isolation cell with or without spare diet for a period not exceeding six days in all: Provided that if spare diet is ordered for more than three days, there shall be an intermission of one day upon full diet after the third day of spare diet;
- (f) solitary confinement in an isolation cell with or without light labour for a period not exceeding fifteen days, ten days of which may be ordered to be passed on reduced diet.

(3) The commissioned officer presiding over any trial such as is referred to in sub-section (1) may summon witnesses to give evidence thereat and may administer an oath to or accept an affirmation from any such witness.

(4) Nothing in this section contained shall be construed as preventing the imposition by any member of the Prisons Service in charge of a prison of any such punishment as is mentioned in paragraph (a), (b) or (c) of sub-section (2) without a trial such as is referred to in sub-section (1), but in accordance with regulation.

(iii) *Boards of enquiry.*

Procedure
in case of
alleged
misconduct
of commissioned
officers.

55. (1) Whenever any commissioned officer who is charged with misconduct in the manner prescribed by regulation—

- (a) admits that he is guilty of the misconduct with which he is charged, the Governor-General may take any of the steps provided for in sub-section (2) of section *four*;
- (b) denies that he is guilty of the misconduct with which he is charged, the Governor-General may appoint three or more fit and proper persons (at least one of whom shall be a commissioned officer) to constitute a board of enquiry for the investigation of the charge.

(2) Any person appointed under paragraph (b) of sub-section (1), who is in the service of the State, shall, if practicable, be a person in receipt of emoluments higher than the emoluments of the commissioned officer charged.

(3) The board of enquiry may summon any person as a witness, administer an oath to or accept an affirmation from any person so summoned, and investigate the charge in question in such manner as may be prescribed by regulation.

(4) At the investigation of any charge in terms of this section the law as to the 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 sub-section (1) of section *two hundred and forty-four* of the Criminal Procedure Act, 1955 (Act No. 56 of 1955), be observed.

(5) Where a commissioned officer is charged with misconduct which constitutes an offence in respect of which he has been convicted by a court of law, a certified copy of the record of the trial in question shall, on its mere production by any person, be admissible in evidence before the board of enquiry investigating the charge, and a certified copy of the charge and conviction in question shall, on its mere production by any person to such board, be *prima facie* proof of the commission of such offence by such officer.

(6) The board of enquiry shall in writing report its finding and submit a recommendation to the Governor-General, who may direct that no further action be taken in the matter or take any of the steps provided for in sub-section (2) of section *four*.

(7) For the purposes of this section "misconduct" means—

- (a) any contravention of or failure to comply with any provision of this Act; or
- (b) the commission of any other offence.

(iv) *Review of sentences.*

Review of
sentences
for prison
offences.

56. (1) The record of the trial of every case in which a sentence of corporal punishment is imposed in terms of sub-section (2) of section *fifty-one* or *fifty-four* 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 sub-section (2) of section *fifty* or *fifty-one* 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.

(2) The registrar shall, as soon as practicable, lay the record of the trial before a judge of the said division, and such judge

may, upon consideration thereof, confirm, set aside, alter or reduce the sentence or correct the proceedings as justice may require.

(3) No sentence, other than a sentence imposing corporal punishment, shall be suspended pending the decision of the said judge.

(4) No appeal shall lie against any conviction or sentence imposed under the provisions of section *fifty-four*.

(v) *General.*

Witnesses
at trials
at prisons.

57. (1) Any person summoned as a witness at a trial under section *fifty*, *fifty-one*, *fifty-three* or *fifty-four* or at an enquiry or investigation under section *thirteen* or *fifty-five* to give evidence or to produce any document or thing which in criminal proceedings in a magistrate's court he could be compelled to produce, and who fails to attend such trial or such enquiry or investigation or to produce such document or thing or to answer any question lawfully put to him thereat, shall be guilty of an offence and liable on conviction before a magistrate's court to such penalty as he would have been liable to if he had failed upon lawful summons to attend any trial at the magistrate's court of the district in which the trial or enquiry or investigation is held, or being a witness at a trial before a magistrate's court, had refused to answer any question lawfully put to him thereat.

(2) If at any such trial or enquiry or investigation any witness makes any false statement under oath knowing the same to be false, he shall be guilty of an offence and liable on conviction to the penalties prescribed by law for the crime of perjury.

Trial
procedure at
prisons.

58. (1) Save as is provided in sub-sections (2) and (3), the proceedings at any trial under this Act at a prison or at a place designated by the Commissioner for the trial of any offence or other contravention shall be in the manner and form, as nearly as practicable, as in summary proceedings in a magistrate's court at the hearing and determination of criminal cases.

(2) No person shall be permitted to attend any court held at a prison or at a place so designated for the trial of any offence or other contravention, unless he is a witness summoned to attend the trial thereat or is specially authorized to attend by the commissioned officer or magistrate presiding over that court, or has received a special authority to attend from the Commissioner: Provided that the accused shall in all cases at any hearing be entitled to have present, and to be represented by, his legal adviser.

(3) Failure of the accused to attend the hearing, either personally or through his legal adviser, shall not invalidate the proceedings.

Place of
trial.

59. Any alleged contravention of or failure to comply with—

- (a) any provision of this Act by a member of the Prisons Service or a special warder or a prisoner, shall be tried at a prison or at a place designated by the Commissioner for the purpose;
- (b) any provision of any law, other than of this Act, by a member of the Prisons Service or a special warder or a prisoner shall be tried by a competent court at its ordinary place of sitting; and
- (c) any provision of this Act by any person, other than a member of the Prisons Service or a special warder or a prisoner, shall be tried by a competent court at its ordinary place of sitting.

Members of the
Prisons Service
and special
warders
absolved from
prosecution
under other
laws after
trial under
this Act.

60. Nothing in this Act contained shall be construed as preventing any person from being prosecuted in a court of law otherwise than under the provisions of this Act in all cases in which he would be liable to be so prosecuted, but no member of the Prisons Service or special warder who has been acquitted or convicted of any offence under this Act shall be liable to be again tried for any offence arising from the same facts and circumstances.

CHAPTER VI.

FUNCTIONS AND DUTIES OF PRISON BOARDS AND RELEASES OF PRISONERS.

(i) *Functions and duties of prison boards.*

Functions and duties of prison boards.

61. A prison board shall at such times and intervals (which intervals shall not be longer than one year) as may be determined by the Commissioner or when otherwise required by the Commissioner to do so—

- (a) submit reports in the prescribed form to the Commissioner on, *inter alia*, the conduct, training, aptitude and industry of every prisoner who is detained in any prison situated within the area for which the prison board has been appointed and—
 - (i) upon whom a sentence of imprisonment for corrective training has been imposed;
 - (ii) upon whom a sentence of imprisonment for the prevention of crime has been imposed;
 - (iii) upon whom a sentence of imprisonment of two years or more has been imposed;
 - (iv) upon whom a life sentence has been imposed;
 - (v) who has been declared to be an idle person in terms of the Natives (Urban Areas) Consolidation Act, 1945 (Act No. 25 of 1945);
 - (vi) who has been declared an habitual criminal; or
 - (vii) with regard to whom a special report is required by the Commissioner;
- (b) make recommendations as to—
 - (i) the training and treatment to be applied to any prisoner referred to in paragraph (a);
 - (ii) the release of any prisoner referred to in paragraph (a);
 - (iii) the period and conditions for or upon which any prisoner referred to in paragraph (a) may be released on probation;
 - (iv) the period, supervision and conditions for, under or upon which any prisoner referred to in paragraph (a) may be released on parole;
 - (v) the remission of portion of the sentence imposed upon any prisoner referred to in sub-paragraph (iii) of paragraph (a); and
 - (vi) any matter affecting any prisoner with regard to whom a special report is required in terms of sub-paragraph (vii) of paragraph (a); and
- (c) perform such other functions and duties as may be prescribed by regulation.

(ii) *Releases of prisoners and remissions of sentence.*

Release of prisoners sentenced to imprisonment for corrective training or imprisonment for the prevention of crime.

62. (1) Upon receipt of a report from a prison board regarding a prisoner who has been sentenced to imprisonment for corrective training or to imprisonment for the prevention of crime and containing a recommendation for the release of such prisoner on a date falling within the relevant period of detention prescribed by section *thirty-nine*, the Commissioner shall submit such report to the Minister.

(2) The Minister may authorize the release of such prisoner on the date recommended by the prison board or on any other date within the said period, either unconditionally or on probation or on parole as he may direct.

Remissions of sentence of prisoners sentenced to two years or more.

63. (1) Upon receipt of a report from a prison board regarding a prisoner serving a sentence of imprisonment of two years or more and containing a recommendation for a remission of sentence within the limits prescribed by the Governor-General by regulation, the Commissioner may remit such portion of the sentence, either unconditionally or on such conditions as he, on the recommendation of the board, may determine.

- (2) (a) If the report referred to in sub-section (1) contains a recommendation by the prison board for the grant of remission in excess of the limits prescribed by the Governor-General by regulation, or if no remission of sentence is granted by the Commissioner under sub-section (1), the Commissioner shall submit such report to the Minister with such recommendation as he may think fit.
- (b) The Minister may authorize the release of the prisoner on parole or submit the report together with such

recommendation as he may think fit, for the consideration of the Governor-General.

- (c) The Governor-General may grant remission of such portion of the sentence as he may deem fit or authorize the release of the prisoner on probation or on parole as he may direct.

Release of a prisoner serving a life sentence.

64. (1) Upon receipt of a report from a prison board regarding a prisoner upon whom a life sentence has been imposed and containing a recommendation for the release of such prisoner, the Commissioner shall submit such report to the Minister.

(2) The Minister may authorize the release of the prisoner on parole or submit the report, together with such recommendation as he may think fit, for the consideration of the Governor-General.

(3) The Governor-General may authorize the release of such prisoner on the date recommended by the prison board or on any other date, either unconditionally or on probation or on parole as he may direct.

Release of prisoners detained in a farm colony.

65. (1) Upon receipt of a report from a prison board regarding a prisoner who has been declared to be an idle person in terms of the Natives (Urban Areas) Consolidation Act, 1945 (Act No. 25 of 1945), and containing a recommendation for the release of such prisoner, the Commissioner shall submit such report to the Minister.

(2) The Minister may authorize the release of such prisoner on the date recommended by the prison board or on any other date, either unconditionally or on probation or on parole as he may direct.

Release of habitual criminals.

66. (1) Subject to the provisions of the proviso to section *thirty-eight*, no person who has been declared an habitual criminal under the provisions of any law shall be released until a prison board has reported to the Commissioner—

- (a) that there is a reasonable probability that the habitual criminal will in future abstain from crime and lead a useful and industrious life; or
 (b) that he is no longer capable of engaging in crime; or
 (c) that for any other reason it is desirable to release him.

(2) Upon receipt of a report from a prison board regarding a prisoner such as is referred to in sub-section (1) and containing a recommendation for the release of such prisoner, the Commissioner shall submit such report to the Minister.

(3) The Minister may authorize the release of the prisoner or parole or submit the report, together with such recommendation as he may think fit, for the consideration of the Governor-General.

(4) The Governor-General may authorize the release of the habitual criminal on the date recommended by the prison board or on any other date, either unconditionally or on probation or on parole as he may direct.

Release on probation.

67. (1) The Commissioner may, on the authority of the Governor-General or of the Minister granted under any provision of any law, release any prisoner before the expiration of his sentence of imprisonment on probation for such period and on such conditions as shall be specified in the warrant of release: Provided that the Commissioner may at any time on the authority of the Minister alter or cancel any such conditions.

(2) In the case of any such release on probation there may be included a condition that the person released shall not reside in or visit the Union or any defined portion thereof for a specified time: Provided that if the person released is a South African citizen or a citizen of a Commonwealth Country or of the Republic of Ireland, there shall not be included a condition that he be banished or absent himself from the Union.

(3) If before the expiration of the period of release on probation, the Commissioner is satisfied that any such prisoner has 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.

(4) If any prisoner so released on probation completes the period thereof without breaking any condition of the release, he shall no longer be deemed to be an habitual criminal or, as the case may be, liable to any punishment in respect of the conviction upon which he was sentenced.

Release on parole.

68. (1) The Commissioner may—

- (a) on the recommendation of a prison board and in the circumstances prescribed by regulation; or
- (b) on the authority of the Governor-General or of the Minister granted under any provision of any law,

release any prisoner before the expiration of his sentence of imprisonment on parole for such period and under such supervision and on such conditions as shall be specified in the warrant of release: Provided that the Commissioner may at any time on the authority of the Minister alter the provision in such warrant as to supervision and alter or cancel any such conditions.

(2) If before the expiration of the period of release on parole the Commissioner is satisfied that any such prisoner has 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 shall be deemed to be unlawfully at large.

(3) If any prisoner so released on parole completes the period thereof without breaking any condition of the release, he shall no longer be deemed to be an habitual criminal or, as the case may be, liable to any punishment in respect of the conviction upon which he was sentenced.

Special releases and remissions of sentence by the Governor-General.

69. (1) Notwithstanding anything to the contrary in any law contained, if at any time it appears to him to be expedient, the Governor-General may authorize the release of any prisoner either unconditionally or on probation or on parole as he may direct, and may grant remission of a portion of the sentence of any prisoner.

(2) In any case where a release of any prisoner referred to in sub-section (1) is in the opinion of the Minister justified and urgent, he may authorize the immediate release of the prisoner concerned in anticipation of the Governor-General's approval.

Special remissions of sentence by the Minister.

70. (1) Notwithstanding the provisions of this Chapter and the provisions of the regulations governing the grant of remission of sentence, the Commissioner may, when in his opinion any prisoner has rendered highly meritorious service, submit the case with a recommendation for special remission of sentence to the Minister.

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

Release on medical grounds.

71. Any prisoner who is detained in any prison under sentence of court and—

- (a) who is suffering from a dangerous infectious or contagious disease; or
- (b) whose life is endangered by his detention in a prison; or
- (c) whose release is expedient on grounds of advanced pregnancy,

may, on the recommendation of the medical officer, be released by the Minister either unconditionally or on probation or on parole as the Minister may direct.

Saving of royal prerogative of mercy.

72. Nothing in this Act shall affect Her Majesty's Royal prerogative of mercy.

CHAPTER VII.

REMOVAL, TRAINING AND TREATMENT OF PRISONERS.

Removal of prisoners.

73. (1) Any prisoner detained in any prison may, on the authority of the Commissioner, be removed to any other prison or to a police cell or lock-up, or in the case of serious illness or of a woman who is about to give birth to a child and if adequate

facilities do not exist for the treatment of such prisoner in such prison, to any other place.

(2) If any person is arrested and is liable to be detained in the prison of the district in which the arrest takes place and it is in the opinion of the Commissioner not practicable or expedient to receive and detain him in that prison, such person may on the authority of the Commissioner be sent direct to any other prison.

(3) Any convicted person or class of convicted persons may on the authority of the Commissioner be sent direct from the court passing the sentence to any prison notwithstanding that such prison is situated outside the area of jurisdiction of the court passing the sentence.

(4) On an order signed by the officer charged with the prosecution of crimes or offences in any province or portion of a province, or on a warrant issued by any court or judicial officer in terms of any law, the Commissioner shall immediately cause any person referred to in the order or warrant who is awaiting trial in any prison on a criminal charge, to be removed to such other prison as may be specified in the order or warrant, to be there detained for further examination, trial or sentence, or until liberated or removed therefrom in due course of law.

Transfer of persons from a reformatory to a prison.

74. (1) Notwithstanding anything contained in the Children's Act, 1937 (Act No. 31 of 1937), or any other law, the Minister as defined in the said Act may, in consultation with the Minister, by order in writing transfer to a prison designated by the Minister any person detained in a reformatory governed by that Act, if, in his opinion, such person is a type of person who is not amenable to training in a reformatory.

(2) A person transferred to a prison in terms of sub-section (1) shall for all purposes be deemed to have been released from the provisions of the Children's Act, 1937, 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: 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.

Agreements for labour of prisoners.

75. (1) Subject to the employment of prisoners upon public works as far as possible, the Commissioner may contract with any authority or divisional council or municipal council or other public body or with any person or body of persons for the employment of prisoners who are under sentence of imprisonment, upon such terms and conditions as may be agreed between such parties.

(2) As far as practicable, all departments of the Public Service shall purchase from the Prisons Department, at such prices as may from time to time be determined by the Union Tender and Supplies Board 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 Department.

(3) The products of labour in any prison may from time to time be sold to any person under such conditions as may be prescribed by the Minister, who shall prescribe such conditions as will, as far as possible, prevent competition with industries carried on in the neighbourhood of that prison.

(4) The Minister may authorize specific services necessary or expedient in the public interest or in the interest of any deserving charity to be rendered gratuitously.

(5) A woman prisoner undergoing a sentence of imprisonment at any prison shall not under any circumstances be permitted to work outside the prescribed boundaries of the prison in which she is detained, and such a prisoner shall at all times be under the charge of a woman member of the Prisons Service.

Gratuities.

76. Prisoners may be paid gratuities in accordance with rates approved by the Commissioner in consultation with the Secretary to the Treasury.

Training, treatment and labour of prisoners.

77. Every prisoner sentenced to imprisonment and detained in a prison shall, subject to the provisions of this Act and subject also to any special order of the court, be employed, trained and treated in such manner as the Commissioner may determine, and for that purpose such a prisoner shall at all times perform such labour, tasks and other duties as may be assigned to him by the member of the Prisons Service in charge of such prison or by any other member of the Prisons Service in whose charge he may be.

Rules as to segregation of prisoners.

78. (1) In the administration of prisons the rule for convicted prisoners shall, as far as possible and depending on the type of prison, be association at work and segregation at rest.

(2) The Commissioner may order—

- (a) the complete segregation of convicted prisoners at work as well as at rest for any period in pursuance of any scheme of classification or treatment or otherwise;
- (b) the complete segregation of a convicted prisoner at work as well as at rest for any period upon the written request of such prisoner.

(3) Complete segregation at work as well as at rest shall not be ordered or enforced if in any particular case or at any time the medical officer certifies that any such complete segregation would be or is dangerous to the prisoner's physical or mental health.

(4) The complete segregation described in this section shall not be deemed to be solitary confinement for the purposes of any provision of this Act whereby solitary confinement for a limited period is or may be ordered as a punishment.

Isolation cells.

79. In addition to the segregation described in section *seventy-eight*, there shall be provided, where practicable and necessary, in every prison sufficient isolation cells of a pattern approved by the Commissioner and such cells shall be used for the following purposes only:

- (a) To confine a prisoner sentenced for any offence referred to in Chapter V in accordance with the tenor of that sentence;
- (b) to confine a prisoner in accordance with the provisions of section *eighty*; or
- (c) to segregate any prisoner if desirable in the interests of the administration of justice and no ordinary single cell is available for the purpose.

Application of solitary confinement and mechanical restraint.

80. (1) As often and for as long as it is urgently and absolutely necessary to secure or restrain any prisoner—

- (a) who has displayed or is threatening violence; or
- (b) who has been recaptured after escape or who there is good reason to believe is contemplating escape,

the member of the Prisons Service in charge of the prison may order that prisoner to be confined in an isolation cell, and, in addition or in the alternative, if necessary, to be placed in irons or subjected to some other approved means of mechanical restraint for such period as may be considered absolutely necessary, but not exceeding one month.

(2) The powers conferred upon a member of the Prisons Service by sub-section (1) may likewise be exercised by him upon the written order of the medical officer recommending any such restraint or confinement in an isolation cell for medical reasons.

(3) A member of the Prisons Service in charge of a prison may order any prisoner to be confined in an isolation cell and, if necessary, subjected to mechanical restraint if such confinement or restraint is requested by the police authorities in the interests of the administration of justice, but the period of any such confinement or restraint shall not be longer than is necessary for the purpose required.

- (4) (a) The member of the Prisons Service who issues an order under this section shall immediately make an entry in a book to be kept for the purpose, recording the particulars thereof and if such member is not a commissioned officer, he shall without delay send notice of his action to the commissioned officer under whose

command he falls, stating the facts and making his recommendation.

- (b) Such commissioned officer shall at the earliest opportunity visit the prison and confirm or set aside such member's order.
- (5) (a) If it is considered absolutely necessary to continue such restraint or confinement in an isolation cell for a period exceeding one month, the member of the Prisons Service in charge of the prison shall report to the Commissioner stating the facts and making his recommendation.
- (b) Upon receipt of the said report and recommendation the Commissioner may order the extension of the period of restraint or confinement in an isolation cell for two additional months, but no such restraint or confinement shall exceed a period of three months without an order under the hand of the Minister.
- (6) Save as is provided in section *seventy-nine* and in this section, no prisoner, other than a person under sentence of death or in the course of transfer or while temporarily outside the precincts of the prison, shall, unless sentenced to solitary confinement by a court of law, be confined in any isolation cell or subjected to mechanical restraint.

CHAPTER VIII.

DETENTION AND TREATMENT OF CIVIL DEBTORS AND CERTAIN OTHER CLASSES OF PRISONERS.

Employment of civil debtors and certain other classes of prisoners.

81. (1) Civil debtors, persons detained pending arrangements for their removal from the Union, and other persons received into a prison in accordance with the provisions of section *twenty-seven*, 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.

(2) Alleged mentally defective, feeble-minded or epileptic prisoners received into a prison as aforesaid shall only be compelled to do such work as the medical officer may prescribe.

Procurement of necessaries.

82. (a) Prisoners detained under any warrant sued out upon any decree, order or judgment of any court made, issued or given in civil proceedings;

(b) unconvicted prisoners awaiting trial for an alleged offence;

(c) alleged mentally defective prisoners; and

(d) persons committed for detention as witnesses,

may, subject to such limitations and restrictions as may be prescribed by the Commissioner, be allowed—

(i) to write and receive letters;

(ii) to receive visits; and

(iii) to procure for themselves from outside the prison and to receive at prescribed hours therein such food, unfermented drink, bedding, clothing, literature and other articles as may be approved by the Commissioner, subject to a strict examination thereof:

Provided that—

- (aa) all letters written and received as well as all literature must be read and censored by the member of the Prisons Service in charge of the prison, excluding documents handed over by a prisoner to his legal adviser if such member is satisfied that such documents are intended solely for the defence of the prisoner;
- (bb) no article of food or drink which, in the opinion of the member of the Prisons Service in charge of the prison, is not clean, wholesome, sound and free from disease, infection or contamination, shall be accepted and no food or drink shall be accepted for delivery to any prisoner unless it is in such a container or so wrapped that it is reasonably protected from contamination during handling within the prison; and

(cc) the member of the Prisons Service in charge of the prison may, in his discretion and with due regard to the nutritional needs of the prisoner for whom food or drink is delivered, limit the quantity of such food or drink that may be supplied in any one day to such prisoner.

Wearing of
prison dress.

83. No prisoner such as is referred to in section *eighty-two* shall be given or compelled to wear prison dress unless—

- (a) that prisoner's dress is deemed insufficient or improper or in an insanitary condition;
- (b) it is necessary to preserve that dress in the interests of the administration of justice; or
- (c) he is unable to procure other suitable clothing from any other source.

Maintenance
of civil
debtors.

84. (1) The member of the Prisons Service in charge of any prison receiving into his custody any person by virtue of the warrant of any court sued out upon a decree of civil imprisonment shall receive from the plaintiff who has sued out that warrant, payment in advance by weekly instalments of such amount per diem as may be determined by the Commissioner, in consultation with the Secretary to the Treasury, as and for the maintenance, throughout the period of his detention, of the person so received.

(2) All payments received in terms of sub-section (1) shall be paid into the Consolidated Revenue Fund.

(3) If any sum payable in accordance with this section to any member of the Prisons Service in charge of any prison in respect of any day's detention after the first day's detention is not paid before ten o'clock in the forenoon of that day, that member of the Prisons Service shall forthwith discharge the person in respect of whose maintenance the sum is payable.

(4) Every period of detention under this section shall be deemed to commence at ten o'clock in the forenoon.

CHAPTER IX.

GENERAL PROVISIONS.

Provisions of
this Act as to
the treatment
and conduct of
prisoners to
be made
available to
prisoners.

85. The provisions of this Act relating to the treatment and conduct of prisoners shall be printed in the English and Afrikaans languages, and in any other language which may be prescribed by the Commissioner, and shall be made available to every prisoner immediately after admission to a prison or if a prisoner is unable to read and understand any of the languages in which the said provisions have been made available, the contents of the said provisions shall be conveyed to him orally.

Medical
certificate on
death of
prisoner.

86. (1) The magistrate of the district in which a prison is situated shall require the medical officer of such prison, or if for any cause such medical officer is unable to furnish such certificate, then some other qualified medical practitioner, to furnish him with a certificate showing the cause of death of every prisoner who dies at such prison, whether from natural causes or violence or pursuant to a sentence of a court of law.

(2) If the magistrate deems it necessary he shall hold an inquest upon the body of such prisoner in accordance, as far as possible, with the provisions of any law for the holding of inquests as to the cause of death.

(3) The magistrate shall report every such death to the Commissioner with whatsoever he shall have done thereon.

(4) The Commissioner shall, save where death has occurred pursuant to a judicial sentence, also cause an enquiry to be held as to any death in any prison from other than natural causes, and report thereon to the Minister.

Service of
court process.

87. (1) When a summons or subpoena in any criminal proceedings is addressed to and served upon any member of the Prisons Service or other person having the custody of prisoners, requiring him to cause any prisoner named in the summons or subpoena to be brought before any court, such member of the Prisons Service or other person shall comply in all respects with the terms of that summons or subpoena.

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

(3) Whenever it becomes necessary to serve the civil process of any court upon any prisoner, the person charged with the service of the process shall, before serving such process, hand a copy thereof to the member of the Prisons Service in charge of the prison in which the prisoner is detained, and such member shall thereupon permit and facilitate the service of the process upon the prisoner personally.

(4) (a) Whenever at the instance of any party (other than the State) to civil or criminal proceedings any prisoner is subpoenaed to attend any court in order to give evidence thereat, there shall, unless—

(i) the party who sued out the subpoena has been allowed to proceed *in forma pauperis*; or

(ii) the accused in a criminal case requires the attendance of a witness whose evidence is deemed material to his defence by the attorney-general, in cases tried by a superior court, or by a magistrate, in cases tried before any inferior court, and has not sufficient means to make the deposit,

be deposited with the member of the Prisons Service in charge of the prison where the prisoner is detained, such sum as may be necessary to cover the expenses to be occasioned by the conveyance of the prisoner and his necessary escort to and from the court and by their maintenance during such period as the prisoner and his escort are likely by reason of their attendance to be detained outside the prison.

(b) No person shall be required or allowed to obey any such subpoena unless the sum required to be deposited in terms of paragraph (a) has been previously deposited.

(c) The expenses referred to in this sub-section shall be determined in accordance with a scale prescribed by the Commissioner.

(d) The amount of the expenses determined in accordance with the provisions of this sub-section shall be recovered from the amount deposited in terms of paragraph (a) and shall be paid into the Consolidated Revenue Fund, the balance, if any, of the amount so deposited being refunded to the party by whom the deposit was made.

**Canteens
at prisons
to be exempt
from licence
duties and fees.**

88. (1) No licence money, tax, duty or fee (other than customs or excise duties leviable by law) shall be payable by any person under any law or bye-law in respect of any certified canteen of members of the Prisons Department or in respect of any article on sale at such a canteen.

(2) The production of an official document bearing the signature of the Minister or of a person authorized by the Minister to sign any such document and indicating that he has certified the canteen, shall be sufficient evidence that it is a canteen falling under this section.

(3) For the purposes of this section "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 necessities solely for members or pensioners or civilian employees of the Prisons Department or for the families of such members, pensioners or civilian employees or for civilians employed in any work in or in connection with any such mess, institution or premises.

**Non-liability
for acts done
under irregular
warrants.**

89. If any legal proceedings are brought against the State or any member of the Prisons Service or any special warder for any act done in compliance with a warrant purporting to be issued by a magistrate, justice of the peace, or other officer authorized by law to issue warrants, the State or the member of the Prisons Service or special warder concerned shall not be liable for any irregularity in the issuing of the warrant or for want of jurisdiction in the person issuing such warrant; and upon producing the warrant purporting to be signed by a

magistrate or justice of the peace or other such officer as aforesaid and upon proof that the acts complained of were done in compliance with the warrant, judgment shall be given in favour of the State or such member or special warder, as the case may be.

Limitation of actions.

90. (1) No civil action against the State or any person for anything done or omitted in pursuance of any provision of this Act shall be commenced after the expiration of six months immediately succeeding the act or omission complained of, or in the case of a prisoner, after the expiration of six months immediately succeeding the date of his release from prison, but in no case shall any such action be commenced after the expiration of one year from the date of the act or omission complained of.

(2) Notice in writing of every such action, stating the cause thereof and the details of the claim, shall be given to the defendant one month at least before the commencement of the action.

Evidence of age.

91. Whenever under this Act the age of any person is in question, his detention in any prison or place, when he is under or over the age prescribed by this Act, shall not be deemed to have been unlawful if, when the detention order was made, he appeared to be within the limits of age prescribed by this Act.

Leave of absence under special circumstances to persons detained.

92. Under special circumstances the Minister may, by warrant under his hand, permit a person confined or detained in any prison to leave such prison temporarily under escort or otherwise for any special purpose, on such conditions as the Minister may determine.

Delegation of powers.

93. (1) The Minister may delegate any of the powers vested in him by this Act (except sub-section (3) of section *three*, sub-section (2) of section *six*, sub-section (1) of section *sixteen*, sub-section (2) of section *nineteen* and section *twenty*) to the Commissioner.

(2) The Commissioner may delegate any of the powers vested in him by this Act to any member of the Prisons Service or other person employed in the Prisons Department.

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

Power of Governor-General to make regulations.

94. (1) The Governor-General may make regulations, not inconsistent with this Act, as to—

- (a) the duties and powers of members of the Prisons Service;
- (b) the mode of appointment, the conditions of service, the rates of pay, 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 and the conduct 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*;
- (c) the general government and management of prisons, the maintenance of good order and discipline therein, and the acts or omissions which shall be deemed to be offences against discipline;
- (d) the functions and duties of prison boards, quorum and procedure at meetings and the form of reports of such boards;
- (e) the mode of supplying food and the scales of diet and the quantity of clothing and necessaries for prisoners;
- (f) the safe custody of prisoners when at labour or otherwise, including the taking of such steps as the medical officer may think necessary for the preservation of the health of prisoners;
- (g) the receipt and safe custody by members of the Prisons Service at prisons of money, valuables, or other articles belonging to any prisoner, and the conditions and circumstances under which payment, deposit, or delivery of such money, valuables, or other articles shall be made during the period of detention of any prisoner;

- (h) the introduction into or conveyance out of any prison of any food, drink, bedding, clothing, books, newspapers, letters, documents or any other articles;
- (i) the searching of prisoners and of non-commissioned members of the Prisons Service and of special warders and of all quarters and other places within any prison occupied or frequented by such members and special warders and the seizure and examination of any letter or communication addressed to or received by any such member or special warder;
- (j) the confiscation or destruction of all articles illicitly introduced into any prison or found in or near any prison and of all clothing belonging to prisoners which by reason of its condition or for any other valid cause it is undesirable to keep;
- (k) the admission to any prison of any persons other than members of the Prisons Service, special warders and persons who are or may be detained therein;
- (l) the right to petition for and the procedure for obtaining mitigation or remission of sentence or the conditional release of prisoners, the grant of remission of sentence in particular classes of cases, the obtaining and recording of information regarding the behaviour of prisoners on discharge and their re-employment, and the supply of money, food, clothing, or means of travelling, to prisoners on their discharge;
- (m) the days and hours during which work or labour by prisoners may be suspended;
- (n) the medical examination, measuring, photographing, and taking of finger-print impressions or other records of persons confined in any prison or otherwise detained in custody, including detailed personal statistics and histories, and the requisition of full and truthful answers to all questions put to such persons with the object of obtaining such statistics and histories;
- (o) the provision and equipment of the necessary workshops for the training of prisoners and the supply of any plant, tools or material, necessary for that purpose;
- (p) the manner in which sentences of imprisonment, spare diet, corporal punishment, solitary confinement, or any other sentences are to be carried out;
- (q) the application of approved means of mechanical restraint to any prisoner under sentence of death or in the course of removal or while temporarily outside the precincts of a prison;
- (r) the release of persons serving sentences of imprisonment;
- (s) the treatment of persons condemned to death; and the disposal of the bodies of prisoners who have died in prison;
- (t) the disposal by sale or otherwise of the effects of any prisoner who has escaped, died, or failed to claim or receive such effects, or of the private effects of any member of the Prisons Service or special warder who has deserted the service, and the payment into the Consolidated Revenue Fund of any proceeds of any such sale to the extent of any debt owing to the State;
- (u) the temporary detention of any sick prisoner whose sentence has expired but whose discharge or release is certified by the medical officer to be likely to result in his death or in serious injury to his health or to be a source of infection to others;
- (v) the care and maintenance of indigents or destitute persons or any other persons temporarily received into a prison;
- (w) the subsidizing and encouragement of institutions, societies, and individuals approved by the Minister as furthering the objects of this Act;
- (x) the charging of commissioned officers with misconduct and the procedure at investigations by boards of enquiry into charges of misconduct against such officers;

- (y) the attendance of witnesses at trials or enquiries or investigations by commissioned officers and boards of enquiry under this Act and the payment of witness fees and travelling expenses;
- (z) appeals in terms of this Act;
- (aa) the payment of monetary compensation to prisoners whose earning capacity is affected as a result of an accident or injury received in prison;
- (bb) all matters which under this Act are required or permitted to be prescribed by regulation; and
- (cc) generally all matters which he considers it necessary or expedient to prescribe in order that the purposes of this Act may be achieved;

and such regulations may prescribe the powers of the Commissioner to issue Prisons Service orders which shall not be inconsistent with this Act and which shall be obeyed by all members of the Prisons Service and other persons in the service of the Prisons Department to whom such Prison Service Orders are applicable.

(2) Any such regulation may provide penalties for any contravention thereof or failure to comply therewith and different penalties in case of any second or subsequent contravention or non-compliance, but no such penalty shall exceed—

- (a) for a contravention or non-compliance by a member of the Prisons Service or a special warder, a fine of fifty pounds or, in default of payment, imprisonment for a period of six months, or such imprisonment without the option of a fine, or both such fine and such imprisonment;
- (b) for a contravention or non-compliance by a prisoner, any one of the penalties set out in sub-section (2) of sections *fifty-one* and *fifty-four*;
- (c) for a contravention or non-compliance by any person other than a person referred to in paragraph (a) or (b), a fine of fifty pounds or, in default of payment, imprisonment for a period of six months.

(3) If, in the opinion of the Minister, any regulation is not suited to the circumstances of any particular prison, the Minister may apply in respect of that prison such modification of the regulation as he may think fit.

Repeal of laws and savings.

95. The laws mentioned in the Schedule to this Act are hereby repealed to the extent set out in the fourth column of that Schedule: Provided that notwithstanding the repeal of the said laws—

- (a) every person who immediately prior to the commencement of this Act held any office or post under any such law shall be deemed to have been appointed under this Act, and to hold the office or post corresponding with the first-mentioned office or post notwithstanding that the name thereof is altered by this Act;
- (b) every proclamation, regulation, rule, or order issued, made or given under any such law shall, in the area in which it was in force immediately prior to the commencement of this Act and so far as it is not inconsistent with the provisions thereof, continue in force until rescinded under this Act by the proper authority;
- (c) every convict prison, gaol, farm colony or other institution established under any provision of any such law shall be deemed to have been established as a prison under the corresponding provision of this Act, notwithstanding that the name thereof is altered by this Act.

Application of Act to South-West Africa.

96. The Governor-General may, by proclamation in the *Gazette* and subject to such conditions, modifications and exceptions as he may specify in such proclamation, apply the provisions of this Act to the Territory of South-West Africa including that portion of the said Territory known as the "Rehoboth Gebiet" and defined in the First Schedule to Proclamation No. 28 of 1923 of the said Territory and also that portion of the said Territory known as the "Eastern Caprivi Zipfel" referred to in section *three* of the South-West Africa Amendment Act of 1951 (Act No. 55 of 1951).

Short title and commencement.

97. (1) This Act shall be called the Prisons Act, 1959, and shall come into operation on a date to be fixed by the Governor-General by proclamation in the *Gazette*: Provided that the Governor-General may from time to time by proclamation in the *Gazette* bring into operation only such portions of this Act as he may specify in such proclamation.

(2) This Act or any portion thereof as may be specified in any proclamation issued in terms of sub-section (1) shall apply also to all sentences passed before the date on which this Act or the said portion thereof comes into operation.

Schedule.

LAWS REPEALED.

Province or Territory.	Number and Year of Law.	Short Title of Law.	Extent of Repeal.
Cape of Good Hope.	Act No. 24 of 1886.	Native Territories Penal Code.	Chapter VIII.
Union.	Act No. 13 of 1911.	Prisons and Reformatories Act, 1911.	The whole.
"	Act No. 46 of 1920.	Prisons and Reformatories Act Amendment Act, 1920.	The whole.
"	Act No. 38 of 1922.	Financial Adjustments Act, 1922.	Section <i>fourteen</i> .
"	Act No. 8 of 1924.	Prisons and Reformatories Act Further Amendment Act, 1924.	The whole.
"	Act No. 26 of 1935.	Prisons and Reformatories Amendment Act, 1935.	The whole.
"	Act No. 31 of 1937.	Children's Act, 1937.	Section <i>eighty-nine</i> .
"	Act No. 18 of 1953.	Prisons and Reformatories Amendment Act, 1953.	The whole.
"	Act No. 11 of 1955.	Prisons and Reformatories Amendment Act, 1955.	The whole.
"	Act No. 56 of 1955.	The Criminal Procedure Act, 1955.	Section <i>three hundred and seventy-five</i> .
"	Act No. 50 of 1956.	General Law Amendment Act, 1956.	Sections <i>nine and thirty</i> .
"	Act No. 4 of 1957.	Prisons and Reformatories Amendment Act, 1957.	The whole.