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Guernsey

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The Prison (Guernsey) Ordinance, 2013

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The Prison (Guernsey) Ordinance, 2013

THE STATES, in pursuance of their Resolution of the 30th January, 2008^a and in exercise of the powers conferred on them by sections 4, 5, 6, 7, 8 and 9 of the Prison (Enabling Provisions) (Guernsey) Law, 2010^b, hereby order:-

PART I

THE DEPARTMENT, THE GOVERNOR AND FUNCTIONARIES

The Department

Department's functions.

1. (1) In addition to its functions under section 4 of the Law, the Department must –

- (a) meet the costs and expenses and do all other acts necessary for the maintenance of the prison and all prisoners, and
- (b) as soon as practicable after the end of each calendar year, submit to the States the Governor's annual report together with the annual report of the Panel (as required under Schedule 3) for that calendar year.

(2) Any of the following persons may, on behalf of the Department, visit the prison and any prisoner at any reasonable time to enable or

^a Article XVI of Billet d'État No. I of 2008.

^b Order in Council No. XIII of 2012.

assist the Department to discharge any of its functions under the Law –

- (a) the Minister or any other member of the Department,
 - (b) any employee of the States of Guernsey who is responsible to the Department, or
 - (c) any other person authorised in writing by the Department.
- (3) For the avoidance of doubt –
- (a) the Department may arrange for any of its functions under the Law to be performed by an officer responsible to the Department, under section 4 of the Public Functions Law, and
 - (b) despite anything to the contrary in section 4(4) of the Public Functions Law, the functions referred to in paragraph (a) include any functions of the Department in relation to –
 - (i) hearing or determining complaints or appeals by prisoners,
 - (ii) reviewing any decision or action of the Governor or any authorised person, or

- (iii) any disciplinary or conduct matter involving the Governor or any authorised person.

Department to allocate sufficient personnel and facilities.

2. (1) The Department must make available to the Governor and assign to the prison –

- (a) the number and description of authorised persons, and
- (b) the accommodation, equipment and other facilities,

that the Governor reasonably requires for the proper and effectual discharge of the Governor's functions.

(2) In discharging its duty under subsection (1)(a), the Department must pay due regard to the need to assign –

- (a) sufficient female authorised persons to meet the needs of female prisoners, and
- (b) sufficient male authorised persons to meet the needs of male prisoners.

(3) The Department must pay the costs of meeting the requirements of this section, and the salary and expenses of the Governor, from the general revenue account of the States.

*The Governor***Governor's appointment and functions.**

3. (1) Schedule 1 has effect in relation to the Governor.

(2) The Governor must establish procedures at the prison, including by issuing Prison Orders, making or issuing directions and orders and providing or arranging for training as necessary, in order to ensure –

(a) that where a duty is imposed on an authorised person under the Law, the duty is properly and effectually discharged, and

(b) that authorised persons are able to properly and effectually discharge their functions under the Law.

(3) For the avoidance of doubt –

(a) the Governor may arrange for any of the Governor's functions under the Law to be performed by an officer responsible to the Governor under section 4 of the Public Functions Law, and

(b) despite anything to the contrary in section 4(4) of the Public Functions Law, the functions referred to in paragraph (a) include any functions of the Governor in relation to –

(i) hearing or determining complaints or appeals by prisoners, or

- (ii) any disciplinary or conduct matter involving an authorised person.

Authorised persons

General duties of authorised persons.

4. (1) Subject to subsection (2), each authorised person is responsible to the Governor and must obey all lawful directions and lawful orders of the Governor.

(2) An authorised person must comply with –

- (a) this Ordinance, the regulations and Prison Orders, and
- (b) all standards of conduct issued by the Department under section 6(1).

Other functions of authorised persons.

5. The Department may make regulations prescribing the functions of any authorised person other than the Governor.

Standards of conduct and disciplinary guidance for authorised persons.

6. (1) The Department may by public notice issue (and from time to time amend or revoke) –

- (a) standards of conduct for authorised persons, and
- (b) guidance on disciplinary matters for authorised persons.

(2) Without limiting the generality of subsection (1)(b), any guidance issued may include the following –

- (a) principles and good practice to be taken into account, where authorised persons are suspected of misconduct or gross misconduct,
- (b) disciplinary or other action (including dismissal from employment or service or other penalties and sanctions) which may be taken against authorised persons who are found guilty of misconduct or gross misconduct, and
- (c) provision for appeals against findings or decisions made in connection with any disciplinary matter.

(3) For the avoidance of doubt, any standards of conduct or guidance issued under subsection (1) have effect despite any provision to the contrary in a contract or any other agreement (whether made or signed before, on or after the commencement date).

Authorised officers to have special powers and privileges.

7. (1) The Governor may in writing appoint any authorised person as an authorised officer for the purposes of the Law generally or any specified provision of the Law.

(2) An authorised officer acting in the course of the officer's duties has all the powers, authority, protection and privileges of a police officer.

Members of the healthcare team

Department to appoint healthcare team.

8. (1) The Department must appoint a healthcare team for the prison consisting of the following members –

- (a) one or more recognised medical practitioners, as medical officers,
- (b) one or more registered nurses, and
- (c) from amongst those medical officers and registered nurses, a Healthcare Manager.

(2) The Department must appoint at least one authorised nurse within the meaning of section 99(1) of the Mental Health (Bailiwick of Guernsey) Law, 2010^c, as a member of the healthcare team under subsection (1)(b).

(3) A person may be appointed to the healthcare team to work in the prison or with prisoners either on a full-time or part-time basis.

(4) Any person appointed to the healthcare team –

- (a) if not already an authorised person prior to the appointment, is deemed to be an authorised person for the purposes of the Law, but

^c Order in Council No. XV of 2011.

- (b) must not be regarded as being employed by the Department or the States of Guernsey by reason only that the person is appointed as a member of the healthcare team.

General duty of healthcare team.

9. The members of the healthcare team are responsible for the care of the health of all prisoners.

Duties upon admission.

10. As soon as practicable after a prisoner is admitted into custody in the prison, and in any event within 24 hours of such admission (or any other prescribed period of time), a member of the healthcare team must –

- (a) examine the prisoner, and
- (b) record, as part of the prisoner's medical records, the following matters –
 - (i) any physical or mental illness, disorder or condition suffered or suspected to be suffered by the prisoner,
 - (ii) any infectious or contagious illness, disorder or condition suffered or suspected to be suffered by the prisoner,
 - (iii) any necessary measures to be taken in relation

to the illness, disorder or condition, including segregation of the prisoner,

- (iv) any apparent physical or mental impairment that might hamper rehabilitation of the prisoner,
- (v) whether the prisoner is physically capable of work,
- (vi) any other matter the member considers necessary or appropriate, in relation to the prisoner, and
- (vii) any prescribed matter.

Duties in the event of illness, etc.

11. If a prisoner complains of illness or being unwell to any authorised person –

- (a) the authorised person must immediately notify a member of the healthcare team or ensure that a member of the healthcare team is notified, and
- (b) a member of the healthcare team must visit and, if appropriate, examine the prisoner as soon as is reasonable in the circumstances, and in any event within 24 hours of the complaint being made.

Duty to report issues and unfitness for prison.

12. (1) A member of the healthcare team who –

- (a) is aware of any issue affecting the health of a prisoner,
and
- (b) considers that the Governor should be made aware of
the issue,

must promptly advise the Governor in writing of that issue.

(2) Without limiting the duty in subsection (1), a member of the healthcare team must promptly advise the Governor and the Department in writing if, at any time, the member considers that –

- (a) a prisoner's health has been or will be injuriously
affected by continued imprisonment or by any
condition of imprisonment,
- (b) the life of a prisoner will be endangered by
imprisonment, or
- (c) a prisoner will not survive a sentence of imprisonment
imposed on the prisoner or is totally or permanently
unfit for imprisonment.

Healthcare Manager to report on general health conditions.

13. The Healthcare Manager must make an annual report to the Governor concerning the health and healthcare of prisoners, in accordance with regulations.

Healthcare Manager may delegate functions.

14. (1) The Healthcare Manager may arrange for any of the

Healthcare Manager's functions under the Law to be performed by any other member of the healthcare team.

(2) Where the Healthcare Manager arranges under subsection (1) for another member of the healthcare team to perform any functions, section 4(2), (3) and (5) of the Public Functions Law has effect as if –

- (a) the Healthcare Manager is the holder of a public office,
- (b) the member of the healthcare team concerned is an officer responsible to the Healthcare Manager, and
- (c) the member of the healthcare team concerned is duly authorised by the Healthcare Manager to perform those functions of the Healthcare Manager under section 4 of that Law.

Other functions of members of healthcare team.

15. The Department may make regulations prescribing other functions of members of the healthcare team.

Agreements for services

Agreements for provision of services to have effect.

16. (1) Subject to subsection (4), the Department may, on behalf of the States of Guernsey, enter into an agreement with any person (whether or not located in the Island) for the provision of services in the discharge of the functions of any authorised person under the Law.

(2) The services provided under an agreement may be carried

out-

- (a) by the person with whom the agreement is made, or
- (b) by personnel provided by that person.

(3) A person discharging the functions of any authorised person under an agreement –

- (a) is deemed to be the authorised person concerned for the purposes of the Law,
- (a) has all the powers, authority, protection and privileges of the authorised person concerned, and
- (b) is subject to the duties and obligations of the authorised person concerned under the Law, subject to section 46(4).

(4) An agreement must not provide for the discharge of the functions of the Governor except whilst a declaration of emergency is in force for the prison.

(5) For the avoidance of doubt, an agreement may be made for the provision of services on a voluntary or any other basis.

(6) In this section, "**agreement**" means an agreement made under subsection (1) .

PART II
INDEPENDENT MONITORING PANEL

Establishment, purpose and other provisions.

17. (1) The States must appoint the Chairman and other members of a panel to be known as the Independent Monitoring Panel, from persons nominated by the Department.

- (2) The purpose of the Panel is to monitor –
- (a) whether the objects of the prison system in section 2 of the Law are being met, and
 - (b) whether the prison is being administered in accordance with the principles in section 3 of the Law.
- (3) Schedule 3 has effect in relation to the Panel and its members.

Other functions of the Panel and its members.

18. The Department may make regulations prescribing any other function of the Panel or its members.

PART III**CLASSIFICATION AND ACCOMMODATION OF PRISONERS****Age and classification of prisoners.**

19. (1) The Governor must classify a prisoner according to the following –

- (a) age,

- (b) gender,
- (c) whether the prisoner is an unconvicted prisoner,
- (d) whether the prisoner is a vulnerable prisoner,
- (e) the security risk posed by the prisoner, and
- (f) any other prescribed criteria.

(2) A prisoner's classification –

- (a) must be made upon the prisoner's admission into custody in the prison or as soon as practicable afterwards, and
- (b) must be reviewed as often as necessary.

(3) Prisoners must be classified into one of these four age categories –

- (a) 21 years of age or above,
- (b) 18 years of age or above but under 21 years of age,
- (c) 14 years of age or above but under 18 years of age, and
- (d) under 14 years of age.

(4) No person under the age of 12 years may be admitted into custody, or kept in custody, in the prison.

(5) In classifying prisoners according to gender, the classification of any prisoner with a gender identity disorder or similar condition must be made in consultation with a medical officer and the prisoner concerned.

(6) In classifying prisoners according to security risk, the following matters must be taken into account –

- (a) the offence or matter in respect of which the prisoner is remanded or committed to prison, and
- (b) the period of time for which the prisoner is remanded or committed to prison.

Governor may set aside parts of the prison.

20. The Governor may set aside parts of the prison for particular purposes, including for the accommodation of prisoners classified into a particular category.

Appropriate accommodation of prisoners.

21. (1) Subject to subsections (3) and (4), the Governor must assign accommodation at the prison to each prisoner and determine the conditions under which the prisoner is held, as he considers best meets the following objectives –

- (a) prisoners should be kept safe,
- (b) the accommodation and conditions of each prisoner should be appropriate to the security risk category of

the prisoner, and

- (c) prisoners should be kept in accommodation and under conditions that promote pro-social and law-abiding behaviour, both in custody and after release, and reduce the likelihood of their reoffending.

(2) The Governor must review a prisoner's accommodation, and the conditions under which the prisoner is held, at regular intervals and as frequently as the Governor considers necessary to meet the objectives in subsection (1).

(3) A prisoner must not to be held in conditions of isolation or near isolation, unless –

- (a) expressly authorised by or under this Ordinance or the regulations, or
- (b) the prisoner consents to this.

(4) Female prisoners must be accommodated apart from male prisoners, either in separate buildings, or in separate parts of the same building.

(5) Nothing in subsection (4) prevents a female prisoner or a male prisoner electing to take part in vocational or educational activities in which both categories of prisoners participate.

Matters to consider when allocating accommodation.

22. In carrying out the duties in section 21(1) and (2), the Governor must take into account the following matters –

- (a) the security risk posed by the prisoner,
- (b) whether the prisoner is a vulnerable prisoner,
- (c) the age of the prisoner,
- (d) the gender of the prisoner, and
- (e) the prisoner's personal circumstances, including the prisoner's record of offending.

Different regimes based on classification.

23. (1) Subject to subsection (2) the Department may make regulations prescribing different regimes and different treatment for prisoners based on their classification.

(2) So far as is reasonably practicable, the categories of prisoners under 21 years of age must be treated in a manner that takes into account their status and needs.

(3) So far as is reasonably practicable and as applicable in the context of a prison regime, a person exercising or performing functions under the Law must take into account the child welfare principles in section 3 of the Children (Guernsey and Alderney) Law, 2008^d and the child welfare checklist in section 4 of that Law when making any decision in relation to a prisoner under 18 years of age.

^d Order in Council No. XIV of 2009; as amended by Recueil d'Ordonnances Tome XXXIII, pp. 480 and 709.

Babies.

24. (1) If a female prisoner wishes to keep her baby with her in prison, the Governor may request the Secretary of State to make an order under paragraph 1 of Schedule 1 to the Crime (Sentences) Act, 1997^e for the transfer of the prisoner to a prison with suitable facilities for a mother and baby in the United Kingdom.

(2) Without limiting subsection (1), the Governor may at any time permit a female prisoner to keep her baby with her in the prison in the Island for a period of time determined by the Governor and subject to any condition the Governor considers fit, unless the prisoner has been transferred to a prison with suitable facilities for a mother and baby in the United Kingdom.

(3) In making a decision under subsection (1) or (2), the Governor must—

- (a) have particular regard to the best interests of the baby, and
- (b) consult the female prisoner concerned, members of the healthcare team, and officers of the Health and Social Services Department and of any other Department the Governor considers appropriate.

(4) If the Governor permits a female prisoner to keep her baby with her in the prison in the Island, the Governor must ensure that —

^e An Act of Parliament (Chapter 43 of 1997).

- (a) everything necessary for the baby's maintenance and care is provided to the mother and baby, and
 - (b) any search of the baby is conducted with sensitivity and in accordance with appropriate procedures and training.
- (5) A decision of the Governor under this section –
- (a) subject to paragraphs (b) and (c), must be made in accordance with any Prison Orders issued for this purpose,
 - (b) is subject to any prescribed restriction or limitation, and
 - (c) is subject to review by the Department in accordance with any regulations made for this purpose.

PART IV

PRISONERS' ENTITLEMENTS

Governor to appoint coordinating chaplain.

25. (1) The Governor must appoint a faith leader as coordinating chaplain for the prison.

(2) The Department may make regulations prescribing the functions of a coordinating chaplain.

(3) In subsection (1), "faith leader" means any generally recognised leader of a religion, denomination or spiritual belief.

Other entitlements.

26. The Department may make regulations prescribing any other entitlements of prisoners.

Prisoners to be informed of entitlements and other matters.

27. (1) An authorised person must provide each prisoner with written information about the following –

- (a) the prisoner's entitlements,
- (b) the procedures for making requests and complaints, and
- (c) any other prescribed matter.

(2) The written information referred to in subsection (1) must be provided to the prisoner –

- (a) upon the prisoner's admission into custody in the prison, and upon the prisoner's request at any reasonable time, and
- (b) so far as is reasonably practicable, in a language and in terms that the prisoner understands.

(3) An authorised person must ensure that a suitable person (with the help of a translator if necessary and practicable) explains the written information to the prisoner in any case where the prisoner –

- (a) is under 18 years of age, or
- (b) cannot read or otherwise appears to have difficulty understanding the information.

(4) The Department may make regulations to require an authorised person to make any information (including the information specified in subsection (1)) or document available to prisoners in a prescribed manner.

PART V
REMISSION AND TEMPORARY RELEASE

Interpretation.

28. (1) In this Part –

"**extended sentence**" means an extended sentence passed on a prisoner under section 3(2) of the Criminal Justice (Supervision of Offenders) (Bailiwick of Guernsey) Law, 2004^f,

"**extension period**" has the meaning given by section 3(2)(b) of the Criminal Justice (Supervision of Offenders) (Bailiwick of Guernsey) Law, 2004,

"**Parole Review Committee**" means the committee of that name established under the Parole Review Committee Ordinance,

^f Order in Council No. IX of 2005.

1991^g,

"**prisoner**" refers to any convicted prisoner, and

"**term of imprisonment**", in relation to any prisoner –

- (a) includes any term of youth detention to which the prisoner has been sentenced, but
- (b) excludes any extension period within an extended sentence.

(2) For the purposes of calculating a prisoner's term of imprisonment –

- (a) any terms of imprisonment which are wholly or partly concurrent are to be treated as a single term, and
- (b) in the case of consecutive sentences, the term of imprisonment is the aggregate of the terms of imprisonment to which that prisoner has been sentenced.

Remission of sentences.

29. (1) Subject to subsections (2) and (3), the Governor must grant any prisoner who has served two-thirds of a term of imprisonment imposed on the

^g Recueil d'Ordonnances, Tome XXV, p. 230; as amended by Order in Council No. IX of 2005; Recueil d'Ordonnances Tome XXVI, p. 150 and Tome XXIX, p. 448.

prisoner remission of the remaining portion of the term of imprisonment.

(2) A remission –

- (a) must not result in the prisoner's term of imprisonment being reduced to less than 5 days, and
- (b) is subject to forfeiture of remission in accordance with any prison regulations, upon the prisoner being found guilty of a disciplinary offence.

(3) Where a prisoner's date of release under this section would otherwise fall on a non-working day, the Governor may release the prisoner on the nearest working day before that date of release.

(4) For the avoidance of doubt, a release on remission under this section–

- (a) in the case of a prisoner serving a sentence of imprisonment, must be regarded as a release from a sentence of imprisonment for the purposes of section 1 of the Criminal Justice (Supervision of Offenders) (Bailiwick of Guernsey) Law, 2004,
- (b) in the case of a prisoner serving an extended sentence passed under the Criminal Justice (Supervision of Offenders) (Bailiwick of Guernsey) Law, 2004, must be regarded as an unconditional release for the purpose of section 4(3) of that Law, and

- (c) in the case of a prisoner serving a sentence of youth detention, must be regarded as a release from a sentence of youth detention for the purposes of section 4 of the Criminal Justice (Youth Detention) (Bailiwick of Guernsey) Law, 1990^h.

(5) For the avoidance of doubt, nothing in this section applies to a prisoner sentenced to life imprisonment.

Temporary release licence.

30. (1) The Governor may grant a prisoner a temporary release on licence from the prison, for any purpose specified in subsection (2) –

- (a) for a period of time determined by the Governor, and
- (b) subject to any conditions specified by the Governor on the licence, and any other prescribed conditions.

(2) Subsection (1) refers to the following purposes –

- (a) for compassionate reasons or for the purpose of receiving medical treatment,
- (b) to engage in employment or voluntary work,

^h Ordres en Conseil Vol. XXXII, p. 106; as amended by Order in Council No. III of 2012 and Recueil d'Ordonnances Tome XXIX, p. 406; see also Order in Council No. IX of 2005.

- (c) to receive instruction or training that cannot reasonably be provided in the prison,
- (d) to enable the prisoner to participate in any proceedings before any court or inquiry,
- (e) to assist any police officer or customs or immigration officer in any enquiries,
- (f) to facilitate the prisoner's transfer between prisons,
- (g) to assist the prisoner in maintaining family ties or in that prisoner's transition from prison life to freedom, and
- (h) any other prescribed purpose.

(3) A temporary release licence must not be granted unless the Governor is satisfied that there would not be an unacceptable risk of the prisoner –

- (a) committing an offence whilst on temporary release, or
- (b) failing to comply with any condition of the licence.

(4) A temporary release licence must not be granted if, in the Governor's opinion, the temporary release would be likely to undermine public confidence in the administration of justice, having regard to –

- (a) the period or proportion of the prisoner's term of imprisonment that has already been served,

- (b) the frequency with which that prisoner has been granted temporary release (both under this Ordinance and before the commencement date),
 - (c) whether that prisoner has ever been convicted of an offence whilst out on temporary release on any previous occasions, and
 - (d) any other relevant matters.
- (5) A decision to grant or refuse a temporary release licence –
- (a) subject to paragraphs (b) and (c), must be made in accordance with any Prison Orders issued for this purpose,
 - (b) is subject to any prescribed restriction or limitation, and
 - (c) is subject to review by the Department in accordance with any regulations made for this purpose.
- (6) The Governor may recall to prison any prisoner released under this section, whether or not any condition of the prisoner's temporary release licence has been breached, but, so far as reasonably practicable, must give the prisoner a written summary of the reasons for the recall.
- (7) A temporary release licence must not be regarded as –

- (a) a release from a sentence of imprisonment for the purposes of section 1 of the Criminal Justice (Supervision of Offenders) (Bailiwick of Guernsey) Law, 2004,
- (b) an unconditional release for the purpose of section 4(3) of the Criminal Justice (Supervision of Offenders) (Bailiwick of Guernsey) Law, 2004, that Law, or
- (c) a release from a sentence of youth detention for the purposes of section 4 of the Criminal Justice (Youth Detention) (Bailiwick of Guernsey) Law, 1990.

PART VI
OFFENCES AND PENALTIES

Escape, etc.

Escape by use of force.

31. A prisoner commits an offence who, by the use of force, escapes –

- (a) from the prison, or
- (b) from the legal custody of the Governor.

Escaping or absconding without force.

32. A prisoner commits an offence who, other than by the use of force, escapes or absconds –

- (a) from the prison, or

- (b) from the legal custody of the Governor.

Assisting an escape.

33. A person commits an offence who, with intent to facilitate the escape or abscondment of any prisoner –

- (a) brings, throws or otherwise conveys any thing into the prison, the green area or the yellow area,
- (b) conceals or deposits any thing anywhere in the prison, the green area or the yellow area, or
- (c) supplies any thing to a prisoner.

Unauthorised conveyance, supply, use, etc. of things

Prohibition of conveyance or supply of prohibited things.

34. Subject to section 37, a person commits an offence who –

- (a) brings, throws or otherwise conveys a prohibited thing into the prison,
- (b) conceals or deposits a prohibited thing anywhere in the prison, or
- (c) supplies a prohibited thing to a prisoner.

Prohibition of conveyance or supply of other things.

35. Subject to section 37, a person commits an offence who –

- (a) brings, throws or otherwise conveys any thing, other than a prohibited thing, into the prison,
- (b) conceals or deposits any thing, other than a prohibited thing, anywhere in the prison, or
- (b) supplies any thing, other than a prohibited thing, to a prisoner.

Prohibition on allowing conveyance, supply or use of prohibited things.

36. Subject to section 37, an authorised person commits an offence who allows any prohibited thing to be –

- (a) brought, thrown or otherwise conveyed into the prison,
- (b) concealed or deposited anywhere in the prison,
- (c) supplied to a prisoner, or
- (d) used in the prison or by a prisoner.

Exemption for authorised conduct.

37. A person is exempt from the offence created in any of sections 34, 35 and 36 to the extent that –

- (a) the person is acting in the exercise or performance of a function conferred on that person by this Ordinance, any regulation or any Prison Order, or

- (b) the conduct which is the subject of the prohibition is otherwise lawfully required or authorised.

Unauthorised access to surrounding areas

Prohibition of unauthorised access to prison site.

38. (1) Subject to subsection (2), a person commits an offence who is found in or upon, or leaves a vehicle in or upon –

- (a) a green area, or
- (b) a yellow area.

(2) Subsection (1) does not apply if the person has lawful authority or reasonable excuse for being so found or (as the case may require) for so leaving the vehicle.

Penalties and notice

Penalties for offences.

39. (1) A person who commits an offence under section 31 is liable –
- (a) on summary conviction to a fine not exceeding twice level 5 on the uniform scale, to imprisonment for a term not exceeding 2 years, or both, and
 - (b) on conviction on indictment to a fine, to imprisonment for a term not exceeding 7 years, or both.

(2) A person who commits an offence under section 32 or 33 is liable –

(a) on summary conviction to a fine not exceeding twice level 5 on the uniform scale, to imprisonment for a term not exceeding 2 years, or both, and

(b) on conviction on indictment to a fine, to imprisonment for a term not exceeding 5 years, or both.

(3) A person who commits an offence under section 34 or 36 is liable on summary conviction or conviction on indictment to a fine not exceeding twice level 5 on the uniform scale, to imprisonment for a term not exceeding two years, or both.

(4) A person who commits an offence under section 35 is liable on summary conviction or conviction on indictment to a fine not exceeding level 5 on the uniform scale, to imprisonment for a term not exceeding six months, or both.

(5) A person who commits an offence under section 38(1)(a) is liable on summary conviction to a fine not exceeding level 3 on the uniform scale, to imprisonment for a term not exceeding six months, or both.

(6) A person who commits an offence under section 38(1)(b) is liable on summary conviction to a fine not exceeding level 1 on the uniform scale.

Display of penalties.

40. The Department must cause to be affixed in a conspicuous place outside the prison a notice of the penalties to which any person committing an offence under any of sections 31 to 36, or section 38, may be liable.

PART VII
PRISONER CUSTODY AND DISCIPLINE

Legal custody of prisoners.

41. (1) Subject to subsection (2), a prisoner is at all times deemed to be in the legal custody of the Governor, even whilst –

- (a) the prisoner is outside the prison on a temporary release licence (whether that prisoner is working or otherwise),
- (b) the prisoner is being taken to or from the prison,
- (c) the prisoner is being taken to or from any place to which that prisoner is lawfully required or authorised to be taken, or
- (d) the prisoner is being kept in the custody or under the control of any person, for the purposes of being taken to or from any place to which that prisoner is lawfully required or authorised to be taken.

(2) Nothing in subsection (1) applies to a prisoner who is lawfully at large for the time being –

- (a) after being granted remission under section 29, or
- (b) in accordance with the conditions of a temporary release licence.

Custody while outside the prison.

42. (1) A prisoner in the legal custody of the Governor must, at all times while outside the prison –

- (a) be kept in the custody of an authorised officer, a customs or immigration officer, or a police officer, and
- (b) so far as practicable, be protected from public view, insult and curiosity.

(2) While a person is, or is supposed to be, kept in the custody of an authorised officer or a customs or immigration officer under subsection (1)(a), the officer concerned has all the powers, authority, protection and privileges of a police officer.

Disciplinary offences.

43. (1) A prisoner commits a disciplinary offence in the circumstances specified in Schedule 4.

(2) The Department may make regulations in connection with a disciplinary offence or suspected disciplinary offence, including regulations –

- (a) amending or revoking any part of Schedule 4,
- (b) deeming any conduct or other matter, whether or not occurring in the Island, to constitute a disciplinary offence for the purposes of the Law,
- (c) setting out the procedure for dealing with a suspected

disciplinary offence,

- (d) providing for the holding of an inquiry into a suspected disciplinary offence,
- (e) providing for the award of any punishment where a prisoner is found guilty of a disciplinary offence,
- (f) without limiting the generality of paragraph (e), providing for forfeiture of remission of sentence as punishment for any disciplinary offence, and
- (g) providing for appeals against the determination of a charge of a disciplinary offence.

PART VIII
GENERAL

Procedures on death, or serious injury from attempted suicide.

44. Schedule 5 has effect where any prisoner in the legal custody of the Governor –

- (a) dies, or
- (b) appears to have attempted suicide, and suffers incapacitation or any other serious injury as a result.

Regulations may authorise taking of bodily samples, etc.

45. The Department may make regulations to authorise any authorised person to require a prisoner to provide a sample of urine, breath or other prescribed

bodily matter or substance, for the purpose of determining or ascertaining –

- (a) whether the prisoner has any prescribed thing in that prisoner's body, or
- (b) whether the prisoner has or may have committed a disciplinary offence.

Declaration of emergency.

46. (1) This section applies where the Governor reasonably believes that a situation exists at the prison that poses a serious threat to –

- (a) prison security, or good order and discipline, in the prison, or
- (b) the safety of a prisoner or any other person in the prison.

(2) Where this section applies, the Governor, with the Department's approval, may by public notice make a declaration of emergency, specifying –

- (a) that an emergency exists in the prison for a specified period not exceeding 3 days, and
 - (b) that this Ordinance, the regulations and the Prison Orders have effect to the extent consistent with any action taken with regard to the emergency.
- (3) Whilst a declaration of emergency is in force, the Governor

may do all or any of the following –

- (a) order that any activity in, or access to, the prison, be restricted,
 - (b) order that prisoners' entitlements and privileges or a specified prisoner's entitlements and privileges be withheld,
 - (c) pursuant to any agreement made under section 17, authorise any personnel to discharge the functions of any authorised person (including the Governor),
 - (d) authorise police officers to discharge the functions of any authorised person, under the direction of the senior police officer present, or
 - (e) authorise any equipment or other thing to be brought into and used in the prison.
- (4) Whilst a declaration of emergency is in force –
- (a) this Ordinance, the regulations and the Prison Orders have effect consistent with actions taken with regard to that emergency, and
 - (b) the duties and obligations of all authorised persons under the Law are modified to the extent provided in paragraph (a).

(5) A police officer discharging the functions of an authorised person under subsection (3)(d) –

- (a) has all the powers, authority, protection and privileges of the authorised person concerned, and
- (b) is subject to the duties and obligations of the authorised person concerned under the Law, subject to subsection (4)(b).

(6) For the avoidance of doubt, the power to make a declaration under this section includes the power to amend or revoke such a declaration in a similar manner, on similar grounds and subject to the approval of the Department.

(7) In this section, "**Governor**" (except in subsection (3)(c)) –

- (a) means the Governor of the prison, but
- (b) if the Governor is absent, incapacitated or otherwise unable to discharge the Governor's functions, and no Governor grade is available to discharge the Governor's functions, means the Chief Officer of the Department.

Exclusion of liability.

47. (1) Subject to subsections (3) and (4), no person within subsection (2) is to be –

- (a) liable in damages, or

- (b) where an individual, personally liable in any civil proceedings,

in respect of anything done or omitted to be done after the commencement date in the discharge or purported discharge of the person's functions under the Law, unless the thing was done or omitted to be done in bad faith.

- (2) The persons within this subsection are -

- (a) any Panel member,
- (b) any member, officer or servant of the Department,
- (c) the Governor,
- (d) any authorised person, and
- (e) any other person discharging functions under the Law.

(3) Any liability in respect of any act or omission that would, but for subsection (1), attach to a person within subsection (2) attaches to the States of Guernsey.

(4) Subsection (1) does not apply so as to prevent an award of damages in respect of the act or omission on the ground that it was unlawful as a

result of section 6(1) of the Human Rights (Bailiwick of Guernsey) Law, 2000ⁱ.

Confidentiality.

48. (1) This section applies to any document or information from which an individual or body may be identified and which is acquired by any person within section 47(2) in carrying out that person's functions under the Law.

(2) A person within section 47(2) must not disclose any document or information to which this section applies without the consent of every individual who, and every body which, can be identified from that document or information, except to the extent that its disclosure –

- (a) is expressly authorised or required by or under this Ordinance or any other enactment, or
- (b) appears to that person to be necessary –
 - (i) to enable functions under the Law to be carried out,
 - (ii) for –
 - (A) the investigation, detection or prevention of crime or disciplinary offences, or

ⁱ Ordres en Conseil Vol. XL p. 396; as amended by Order in Council No. I of 2005; Recueil d'Ordonnances Tome XXIX, p. 406; Tome XXVIII, p. 493 and Tome XXXIII, p. 617; G.S.I. No. 27 of 2006.

(B) the apprehension or prosecution of offenders,

(C) proceedings for any disciplinary offence, within or outside the Island, or

(iii) in connection with a transfer or proposed transfer of any prisoner to or from the Island,

(iv) in connection with the discharge of any international obligation to which the Bailiwick may from time to time be subject, or

(v) to comply with an order of a court of the Island.

(3) Without limiting subsection (2), any information communicated to a person within section 47(2) by a committee of the States must, if that committee so requests, be regarded as confidential by that person; and that person must not disclose such information except –

(a) to comply with an order of a court, or

(b) with the leave of that committee, for any reason set out in subsection (2)(a) or (b).

(4) A person who, without reasonable excuse, discloses any information or who causes or permits the disclosure of any information in contravention of this section is guilty of an offence and liable on summary

conviction or conviction on indictment to a fine not exceeding level 5 on the uniform scale, to imprisonment for a term not exceeding six months, or both.

(5) For the avoidance of doubt, CCTV material relating to a prisoner is to be regarded as information from which the prisoner can be identified, for the purposes of subsection (1).

(6) In this section –

"**CCTV material**" means material obtained by means of an overt closed circuit television system, and

"**disciplinary offence**" means any offence against discipline by a prisoner, an authorised person, or any other person.

Department authorised to make regulations.

49. (1) Subject to subsections (3) and (4), the Department may at any time make regulations –

- (a) prescribing any matter which it is authorised to prescribe under any provision of this Ordinance, or
- (b) in relation to any other matter for which an Ordinance may be made under the Law (including, for the avoidance of doubt, any matter specified in Schedule 1 to the Prison (Enabling Provisions) (Guernsey) Law, 2010).

(2) Without limiting the generality of subsection (1) and section 8(3) of the Law, regulations made under this Ordinance may empower the

Department, any other department of the States, any other body or authority (including, without limitation, any court in the Island), the Governor or any other person to –

- (a) make or issue subordinate legislation, or
- (b) issue codes or guidance,

in relation to any matter for which an Ordinance may be made under the Law.

(3) Regulations made under this Ordinance –

- (a) must not authorise the imposition on conviction for any offence of a term of imprisonment exceeding six months, and
- (b) must not exclude or limit the liability incurred by any person in respect of anything done or omitted to be done in the discharge or purported discharge of any of that person's functions.

(4) For the avoidance of doubt, a regulation made under this Ordinance has no effect to the extent that it contradicts any provision of this Ordinance.

Governor authorised to issue Prison Orders.

50. (1) Subject to subsections (2) and (3), the Governor may issue a Prison Order by giving written notice of it within the prison in any manner the Governor thinks fit.

(2) The Governor may certify any Prison Order to be

"Restricted" on grounds that disclosure of it to any prisoner or the public poses or is likely to pose –

- (a) a significant security risk in relation to any prisoner,
- (b) a risk of interfering with or compromising any action or other conduct authorised in accordance with Part II of the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003^j, or
- (c) a risk of jeopardising any criminal investigation.

(3) The Governor may issue a Prison Order that is certified to be "Restricted" under subsection (2) by giving written notice of it to all authorised persons or only those authorised persons the Governor considers appropriate.

- (4) A notice under subsection (1) or (3) must specify –
 - (a) the date and time of its issue, and
 - (b) the date and time when the Prison Order concerned is to come into force (unless it is to come into force on the date and at the time the notice was issued).

- (5) A Prison Order has no effect to the extent that it contradicts –
 - (a) any provision of this Ordinance, or

^j Ordres en Conseil Vol. XLIII(2), p. 894, as amended by Recueil d'Ordonnances Tome XXIX, p. 406 and G.S.I Nos. 25 and 26 of 2004.

(b) any regulation.

(6) Directions given under section 4(3) of the Law may include a direction to the Governor to revoke, but not to amend, any Prison Order.

(7) In this section, "**Prison Order**" includes any amendment or revocation of a Prison Order.

General provisions as to regulations, Prison Orders, etc.

51. (1) Any regulation, Prison Order or other subordinate legislation made or issued under the Law –

(a) may be amended or revoked by subordinate legislation of the same kind subsequently made or issued under the Law, and

(b) may contain such consequential, incidental, supplementary, transitional and savings provisions as may appear to be necessary or expedient.

(2) A power conferred by any provision of the Law to make or issue regulations, Prison Orders or other subordinate legislation may be exercised–

(a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,

(b) so as to make, as respects the cases in relation to which it is exercised –

- (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),
- (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,
- (iii) any such provision either unconditionally or subject to any conditions specified in the subordinate legislation.

(3) Any regulation made or issued under the Law must be laid before a meeting of the States as soon as possible after being made; and, if at that or the next meeting the States resolve that the regulation be annulled, then it ceases to have effect, but without prejudice to anything done under it or to the making of new regulations.

Relationship with other enactments.

52. (1) Unless otherwise expressly provided, nothing in this Ordinance, the regulations, Prison Orders or any other subordinate legislation made or issued under the Law limits or restricts –

- (a) any power, duty or obligation conferred or imposed on any person by any other enactment, or
- (b) any offence created by or under the Criminal Justice (Attempts, Conspiracy and Jurisdiction) (Bailiwick of

Guernsey) Law, 2006^k, the Criminal Justice (Aiding and Abetting etc.) (Bailiwick of Guernsey) Law, 2007^l or any other enactment.

(2) For the avoidance of doubt, neither a Prison Order nor a declaration of emergency is to be regarded as a statutory instrument for the purposes of the Guernsey Statutory Instruments (Registration) Ordinance, 1949^m.

Persons prescribed to be prisoners.

53. For the avoidance of doubt, the following persons are prescribed to be prisoners for the purposes of the Law –

- (a) any person serving a sentence of youth detention at the prison, and
- (b) any person kept in secure accommodation at the prison.

Meaning of "convicted prisoner" and "unconvicted prisoner".

54. (1) A "convicted prisoner" means –

- (a) a prisoner serving a sentence of imprisonment or youth detention imposed by a court following conviction for an offence, or

^k Order in Council No. XII of 2006; as amended by No. XVI of 2009. See also Ordres en Conseil Vol. XXXVI, p. 639.

^l Order in Council No. I of 2008.

^m Recueil d'Ordonnances Tome X, p. 16.

(b) a prisoner in default.

(2) An "**unconvicted prisoner**" –

(a) means any prisoner other than a convicted prisoner,
and

(b) includes –

(i) a person kept in secure accommodation at the
prison,

(ii) a person remanded in custody in the prison
pending or in the course of the hearing of a
charge for an offence,

(iii) a person detained in the prison under any
enactment or prerogative relating to
immigration control or the detention of aliens,

(iv) a person detained in the prison pending
extradition, deportation or proceedings for
extradition or deportation,

(v) a person detained in the prison pending return
to any place under any law relating to fugitive
offenders, or related proceedings,

(vi) a person detained in the prison to await the
arrival of a military or police escort, and

- (vii) a person committed to a term of imprisonment for contempt of court.

Interpretation.

55. (1) In this Ordinance, unless the context requires otherwise –

"authorised officer", in relation to any function –

- (a) means any person appointed as an authorised officer under section 7(1) for the purposes of the Law generally or the provision of the Law which confers or imposes the function, and
- (b) includes any person deemed to be an authorised officer in relation to the function concerned,

"authorised person" –

- (a) means –
 - (i) any employee of the States of Guernsey assigned to work in the prison or in relation to prisoners, or
 - (ii) any person, other than an employee of the States of Guernsey, contracted, engaged or otherwise authorised by the States of Guernsey or the Department to work in the prison or in relation to prisoners (including for the avoidance of doubt, on a voluntary basis),
- (b) for the avoidance of doubt, includes the Governor and

any Governor grade, and

- (c) includes any person deemed under this Ordinance or any regulations to be an authorised person,

"**cellular confinement**" means confinement to a cell under regulations,

"**classify**" –

- (a) means classify under section 19, and
- (b) includes any change of such classification,

and cognate terms are to be construed accordingly,

"**commencement date**" means the date specified for the commencement of this Ordinance in section 62,

"**controlled drug**" has the meaning given by section 1(1)(a) of the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974ⁿ,

ⁿ Ordres en Conseil Vol. XXIV, p. 273, as amended by Vol. XXVIII, p. 307; Vol. XXXI, pp. 47 and 278; Vol. XXXIII, p. 217; Vol. XXXIV, p. 172; Vol. XXXVI, p. 396; Vol. XL, pp. 34 and 131; Order in Council No. IV of 2006; No. XIII of 2006; Recueil d'Ordonnances Tome XX, p. 271; Tome XXII, p. 483; Tome XXIV, p. 477; Tome XXV, pp. 38 and 325; Tome XXIX, p. 406; Ordinance No. XLIII of 2010 and Ordinance No. XXV of 2011; G.S.I. No. 19 of 1997; G.S.I. No. 5 of 2004; G.S.I. No. 42 of 2006; G.S.I. No. 20 of 2008; G.S.I. No. 22 of 2010; G.S.I. No. 33 of 2010; G.S.I. No. 82 of 2010; G.S.I. No. 44 of 2012; see also Recueil d'Ordonnances Tome XXVII, p. 247; Ordres en Conseil Vol. XXIX, p. 207.

"**convicted prisoner**" has the meaning given by section 54(1),

"**coordinating chaplain**" –

- (a) means a person appointed as coordinating chaplain under section 25, and
- (b) includes a person deemed under this Ordinance to be, or to have been appointed, coordinating chaplain,

"**court**" includes –

- (a) the Magistrate's Court,
- (b) the Royal Court,
- (c) the Court of Appeal,
- (d) Her Majesty in Council,
- (e) the Juvenile Court,
- (f) the Court of Alderney,
- (g) the Court of the Seneschal of Sark,
- (h) the European Commission of Human Rights,

- (i) the European Court of Human Rights,
- (j) the European Court of Justice, and
- (k) any other court or tribunal,

"customs or immigration officer" means –

- (a) an officer authorised under section 3 of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972^o, or
- (b) an immigration officer appointed under the Immigration Act 1971^P as extended to the Bailiwick of Guernsey by the Immigration (Guernsey) Order 1993^q,

"declaration of emergency" means a declaration of emergency made under section 46,

"Department" means the States of Guernsey Home Department,

"disciplinary offence" means a disciplinary offence committed by a prisoner under section 43 and Schedule 4,

"enactment" means any Act, Law, Ordinance, or subordinate legislation,

^o Ordres en Conseil Vol. XXIII, p. 573; to which there are amendments not relevant to this Ordinance.

^P An Act of Parliament (Chapter 77 of 1971).

^q United Kingdom S.I. 1993 No. 1796.

"entitlement", in relation to a prisoner, means anything to which the prisoner is expressly entitled under the regulations or this Ordinance,

"function" includes power or duty,

"Governor" –

- (a) means the person appointed Governor under section 3, and
- (b) includes a person deemed under this Ordinance to be, or to have been appointed, Governor,

"Governor grade" means a Deputy Governor or a person holding any other position allocated a Governor grade in the States officers' pay scale, other than the Governor,

"Governor's annual report" means the annual report of the Governor required under Schedule 1, containing the information specified in Schedule 2,

"green area" –

- (a) means any area (whether or not adjacent to the prison) prescribed as a green area in relation to the prison, and
- (b) includes any area deemed under this Ordinance to be a green area,

"**health**" means physical or mental health,

"**Healthcare Manager**" –

- (a) means the person appointed as Healthcare Manager under section 8(1)(c), and
- (b) includes a person deemed under this Ordinance to be, or to have been appointed, Healthcare Manager,

"**Her Majesty's Procureur**" includes Her Majesty's Comptroller,

"**intoxicating liquor**" has the meaning given by section 101(1) of the Liquor Licensing Ordinance, 2006^r,

"**the Island**" means the island of Guernsey,

"**the Law**" means the Prison (Enabling Provisions) (Guernsey) Law, 2010, and includes –

- (a) this Ordinance, and
- (b) any regulations, Prison Orders, or other subordinate legislation made under the Prison (Enabling Provisions) (Guernsey) Law, 2010 or this Ordinance,

^r Recueil d'Ordonnances Tome XXXI, p. 157; as amended by Ordinance No. XXIV of 2010; see also G.S.I. No. 54 of 2010; G.S.I. No. 10 of 2011; G.S.I. No. 20 of 2012 and G.S.I. No. 9 of 2013.

"lawfully required or authorised" means –

- (a) required or authorised by or under the Law or any other enactment,
- (b) required, authorised or permitted by the Governor, or under a direction or order of the Governor,

"legal custody of the Governor", in relation to any prisoner, means a prisoner who is kept in the prison or is otherwise deemed to be in the legal custody of the Governor under section 41,

"medical officer" –

- (a) means any person appointed as a medical officer under section 8(1)(a), and
- (b) includes a person deemed under this Ordinance to be, or to have been appointed, a medical officer,

"medicinal product" has the meaning given by section 133(1) of the Medicines (Human and Veterinary) (Bailiwick of Guernsey) Law, 2008,^s

"member of the healthcare team" –

- (a) means a person appointed as a member of the healthcare team under section 8(1), and

^s Order in Council No. V of 2009; as amended by Recueil d'Ordonnances Tome XXXIII, p. 541.

(b) includes –

(i) any person deemed under this Ordinance to be, or to have been appointed, a medical officer, and

(ii) any person deemed under this Ordinance to be, or to have been appointed, a member of the healthcare team,

"Panel" means the Independent Monitoring Panel appointed under Part II,

"Panel member" means a member of the Panel,

"police officer" means a member of the salaried police force of the Island,

"prescribed" means prescribed by or under regulations made by the Department under this Ordinance,

"the prison" –

(a) means any land or building, or any part of any land or building, declared to be a prison under section 1 of the Law, and

(b) includes any land or building deemed under this Ordinance to have been so declared,

"Prison Order" -

- (a) means a Prison Order issued by the Governor in accordance with section 50, and
- (b) includes any Order deemed under this Ordinance to be a Prison Order,

"the Prison Plan" means the plan which for the purpose of the Prison (Regulation of Access) Ordinance, 1990^t was signed by the Bailiff on the 12th day of December, 1990, and lodged at the Greffe,

"prisoner" has the meaning given by section 9(1) of the Law and includes any person prescribed by section 53 to be a prisoner,

"prisoner in default" -

- (a) means a prisoner imprisoned by a court in default of payment of an amount ordered by the court to be paid by the prisoner in connection with that prisoner's conviction for an offence, and
- (b) for the avoidance of doubt, includes a prisoner imprisoned by a court in default of payment of an amount ordered to be paid under a confiscation order within the meaning of section 2(8) of the Drug

^t Recueil d'Ordonnances Tome XXV, p. 206.

Trafficking (Bailiwick of Guernsey) Law, 2000^u or section 2(10) of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999^v,

"**prohibited thing**" means any thing declared by regulations to be a prohibited thing,

"**the Public Functions Law**" means the Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991^w,

"**public notice**", in relation to a standard of conduct or guidance issued under section 6 or a declaration of emergency made under section 46, means to publish a notice in La Gazette Officielle, or in any other manner considered appropriate by the person issuing or making the standard, guidance or declaration –

- (a) to the effect that the standard, guidance or declaration concerned has been issued or made (or, as the case may be, amended or revoked), and
- (b) including information on where a copy of the standard,

^u Ordres en Conseil Vol. XL, p. 131; to which there are amendments not relevant to this Ordinance.

^v Ordres en Conseil Vol. XXXIX, p. 137; amended by Order in Council No. II of 2005 and No. XV of 2007; Recueil d'Ordonnances Tome XXVIII, p. 266; Tome XXIX, pp. 112 and 406; Tome XXXII, p. 666; Tome XXXIII, pp. 157 and 535; G.S.I. No. 27 of 2002; G.S.I. No. 33 of 2007, G.S.I. No. 48 of 2008 and G.S.I. No. 12 of 2010; and certain sections of the Law are modified in their application to external confiscation orders by Recueil d'Ordonnances Tome XXVIII, p. 274.

^w Ordres en Conseil Vol. XXXIII, p. 478; as amended by Recueil d'Ordonnances Tome XXIX, p. 406.

guidance or declaration (or amendment or revocation) concerned can be viewed or obtained, unless the notice itself includes a copy of it,

"recognised medical practitioner" has the meaning given by the Doctors, Dentists and Pharmacists Ordinance, 1987^x,

"registered nurse" means a person registered in the Nurses' Part, or the Specialist Community Public Health Nurses' Part of the register maintained by the Nursing and Midwifery Council under article 5 of the Nursing and Midwifery Order 2001^y,

"regulation" means any regulation made by the Department under –

- (a) this Ordinance, or
- (b) any other Ordinance made under the Law,

"secure accommodation" means secure accommodation –

- (a) pursuant to an order of the Juvenile Court under Part IX of the Children (Guernsey and Alderney) Law, 2008 or section 1 of the Children and Young Persons (Secure Accommodation) (Guernsey) Law, 1997^z, or

^x Recueil d'Ordonnances Tome XXIV, pp. 79, 238 and 262.

^y United Kingdom S.I. 2002 No. 253.

^z Ordres en Conseil Vol. XXXVII, p. 137; as amended by Recueil d'Ordonnances Tome XXIX, p. 406.

- (b) in the care of the Health and Social Services Department under section 14 or 15 of the Criminal Justice (Children and Juvenile Court Reform) (Bailiwick of Guernsey) Law, 2008^{aa},

"security risk", in relation to any prisoner, means –

- (a) the risk that the prisoner would present to the community if that prisoner were to escape from custody,
- (b) the risk that the prisoner would try to escape, either on that prisoner's own or with assistance from another person,
- (c) the risk that the prisoner presents to good order and discipline in the prison, and
- (d) the physical risk the prisoner presents to other prisoners, authorised persons, and any other person that prisoner is likely to come into contact with, including visitors,

"subordinate legislation" –

- (a) means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made

^{aa} Order in Council No. VI of 2009. See also Ordres en Conseil Vol. XXIX, p. 207 and Order in Council No. XVIII of 2009.

under any enactment and having legislative effect, and

- (b) for the avoidance of doubt, includes Prison Orders and any declaration of emergency,

"supply" includes –

- (a) to sell, give, exchange, distribute, convey, consign, deliver, furnish, or transfer possession of or title to, or arrange, offer, or agree to do so, whether for a fee or other consideration or without charge,
- (b) to have in one's possession for the purpose of doing any of the things specified in paragraph (a), or
- (c) to leave in any place (whether inside or outside the prison) with a view to its coming into the possession of a person,

"temporary confinement" means temporary confinement under regulations,

"temporary release licence" means a licence granted under section 30 for the temporary release of a prisoner,

"thing" includes –

- (a) any substance, including any liquid or gaseous substance, and

- (b) any aircraft, vehicle or vessel,

"**tobacco product**" has the meaning given by section 5 of the Tobacco Products (Enabling Provisions) (Guernsey) Law, 2010^{bb} (which, for the purposes of this definition, is to be regarded as having come into force on the commencement date),

"**unconvicted prisoner**" has the meaning given by section 54(2),

"**vehicle**" –

- (a) means any vehicle intended or adapted for use on a public highway, and
- (b) includes a mechanically propelled vehicle, an animal drawn vehicle, a bicycle or a tricycle,

"**visitor**" includes any person visiting or working in the prison or any part of it, except an authorised person,

"**vulnerable prisoner**" means a prisoner who would be vulnerable to abuse, exploitation or violent assault, if housed with the general prisoner population,

"**working day**" means any day other than –

- (a) a Saturday, a Sunday, Christmas Day or Good Friday,

^{bb}

Order in Council No. IV of 2012.

or

- (b) a day appointed as a public holiday by Ordinance of the States under section 1(1) of the Bills of Exchange (Guernsey) Law, 1958^{cc},

"yellow area" –

- (a) means any area (whether or not adjacent to the prison) prescribed to be a yellow area in relation to the prison, and
- (b) includes any area deemed under this Ordinance to be a yellow area, and

"youth detention" –

- (a) means a sentence of youth detention passed by a court under the Criminal Justice (Youth Detention) (Bailiwick of Guernsey) Law, 1990, and
- (b) includes a suspended sentence of youth detention passed by a court under that Law and ordered by a court to take effect.

(2) Any reference in this Ordinance to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification),

^{cc} Ordres en Conseil Vol. XVII, p. 384; Vol. XXIV, p. 84; Vol. XXXIV, p. 507 and Vol. XXXV (1), p. 370.

extended or applied.

Index of defined expressions.

56. In this Ordinance, the expressions listed below are defined by the provisions specified.

Expression	Interpretation Provision
administer	Paragraph 4 of Schedule 4
agreement	Section 16(6)
authorised officer	Section 55(1)
authorised Panel member	Paragraph 12 of Schedule 3
authorised person	Section 55(1)
CCTV material	Section 48(6)
cellular confinement	Section 55(1)
civil proceedings	Paragraph 6 of Schedule 5
classify	Section 55(1)
commencement date	Section 55(1)
controlled drug	Section 55(1)
convicted prisoner	Section 54(1)
coordinating chaplain	Section 55(1)
court	Section 55(1)
customs or immigration officer	Section 55(1)
declaration of emergency	Section 55(1)
Department	Section 55(1)
disciplinary offence	Sections 48(6) and 55(1)
enactment	Section 55(1)
entitlement	Section 55(1)
extended sentence	Section 28(1)
extension period	Section 28(1)
faith leader	Section 25(3)
function	Section 55(1)
Governor	Section 55(1)
Governor grade	Section 55(1)
Governor's annual report	Section 55(1)
green area	Section 55(1)
health	Section 55(1)
Healthcare Manager	Section 55(1)
Her Majesty's Procureur	Section 55(1)
incident	Paragraph 6 of Schedule 5
intoxicating liquor	Section 55(1)

Expression	Interpretation Provision
the Island	Section 55(1)
the Law	Section 55(1)
lawfully required or authorised	Section 55(1)
legal custody of the Governor	Section 55(1)
medical officer	Section 55(1)
medicinal product	Section 55(1)
member of the healthcare team	Section 55(1)
nearest known relative	Paragraph 6 of Schedule 5
Panel	Section 55(1)
Panel member	Section 55(1)
Parole Review Committee	Section 28(1)
personal data	Paragraph 4(7) of Schedule 3
police officer	Section 55(1)
prescribed	Section 55(1)
presumed	Paragraph 4 of Schedule 4
the prison	Section 55(1)
Prison Order	Section 55(1)
the Prison Plan	Section 55(1)
prisoner	Sections 28(1) and 55(1)
prisoner in default	Section 55(1)
prohibited thing	Section 55(1)
Public Functions Law	Section 55(1)
public notice	Section 55(1)
racial group	Paragraph 4 of Schedule 4
racist	Paragraph 4 of Schedule 4
recognised medical practitioner	Section 55(1)
registered nurse	Section 55(1)
regulation	Section 55(1)
secure accommodation	Section 55(1)
security risk	Section 55(1)
smoke	Paragraph 4 of Schedule 4
subordinate legislation	Section 55(1)
supply	Section 55(1)
temporary confinement	Section 55(1)
temporary release licence	Section 55(1)
term of imprisonment	Section 28(1)
thing	Section 55(1)
tobacco product	Section 55(1)
unconvicted prisoner	Section 54(2)
vehicle	Section 55(1)
visitor	Section 55(1)
vulnerable prisoner	Section 55(1)

Expression	Interpretation Provision
working day	Section 55(1)
yellow area	Section 55(1)
youth detention	Section 55(1)

Repeals and revocations.

57. The enactments listed in Schedule 6 are repealed or (as the case may require) revoked.

References to repealed or revoked legislation.

58. (1) On and from the commencement date, unless the context requires otherwise, a reference in any enactment or document to an enactment repealed or revoked by section 57 is deemed to be a reference to –

- (a) the Law, this Ordinance, or any subordinate legislation made under the Law or this Ordinance, or
- (b) as the case may require, any relevant provision of the Law, this Ordinance or any subordinate legislation made under the Law or this Ordinance.

(2) Nothing in subsection (1) limits the effect of section 19 of the Interpretation (Guernsey) Law, 1948^{dd}.

Consequential amendments.

59. The enactments listed in column 1 of Schedule 7, so far as these apply in the Island, are amended as set out in columns 2 and 3 of that schedule.

Transitional and savings provisions.

60. The transitional and savings provisions in Schedule 8 have effect.

^{dd} Ordres en Conseil Vol. XIII, p. 355.

Citation.

61. This Ordinance may be cited as the Prison (Guernsey) Ordinance, 2013.

Commencement of the Law and this Ordinance.

62. The Law and this Ordinance shall both come into force on the 4th November, 2013.

J.TORODE,
Her Majesty's Greffier.

SCHEDULE 1

THE GOVERNOR

Section 3(1)

Appointment and term of office.

1. (1) The Department must appoint the Governor for a term agreed between the Department and the Governor at the time of the Governor's appointment.

(2) If the Governor ceases to hold office by reason of the expiration of the Governor's term or the Governor's resignation, the Governor is eligible for reappointment.

Terms and conditions of appointment.

2. Subject to any other provision of the Law –

(a) the terms and conditions of the Governor's appointment (including suspension or removal from office) are as agreed between the Department and the Governor, and

(b) the Governor must comply with any direction given to the Governor by the Department under section 4(3) of the Law.

Oath of office.

3. The Governor must, upon the Governor's appointment or as soon as reasonably practicable thereafter, take an oath or make an affirmation before the

Royal Court in the following terms or in words to the like effect:

"You [swear and promise on the faith and truth that you owe to God] [do solemnly, sincerely and truly declare and affirm] that you will well and faithfully discharge the functions of Governor in accordance with law; that you will exercise the powers entrusted to you only as appears necessary to you for the due discharge of those functions."

Annual report.

4. As soon as practicable after the end of each calendar year, the Governor must submit a written report to the Department that includes the information set out in Schedule 2.

Presumption of authenticity.

5. Any document purporting to be issued by the Governor and to be signed by or on behalf of the Governor is deemed to be such a document unless the contrary is shown.

SCHEDULE 2

INFORMATION IN GOVERNOR'S ANNUAL REPORT

Paragraph 4 of Schedule 1

1. A statement on the conditions of accommodation and facilities at the prison.
2. The daily average and the highest daily number of prisoners.
3. A breakdown of the monthly average number of prisoners in each category.
4. A statement of the work done by prisoners while in custody, including the kind and quantity of things produced and the nature of other work done.
5. A statement of the educational and vocational activities available for prisoners, and whether these are particularly aimed at male prisoners, female prisoners, or prisoners under 21 years of age or 18 years of age.
6. A statement of the kind and quantity of punishments awarded to prisoners found guilty of a disciplinary offence in accordance with any regulations.
7. Statistical and other information regarding –
 - (a) the determination of appeals by prisoners against a finding of guilt, or a punishment awarded, for a disciplinary offence,
 - (b) the use of force against prisoners,

- (c) temporary confinement or cellular confinement of prisoners,
 - (d) violence between prisoners,
 - (e) injuries suffered by prisoners,
 - (f) deaths and attempted escapes, and
 - (g) incidents of self-harm.
8. A copy of the Healthcare Manager's annual report on the health and healthcare of prisoners under section 13.
9. Any other information required by the Department or by Resolution of the States to be included in the report.

SCHEDULE 3

THE INDEPENDENT MONITORING PANEL

Section 17(3)

Constitution of the Panel.

1. (1) The Panel is to consist of not less than four and not more than eight members, with the exact number being determined by the Department.

(2) Before nominating a person to the States for appointment to the Panel, the Department may require that person to provide, and to authorise the Department to obtain, such information (including previous convictions) and references as the Department may reasonably require to ascertain that person's suitability for membership of the Panel, having regard to subparagraphs (3) and (4).

(3) The Department must have particular regard to the need to ensure that Panel members have a strong commitment to human rights, have a strong sense of integrity, are able to maintain confidentiality, and have effective communication and listening skills.

(4) Each Panel member is to be appointed for a term of four years or such shorter period as the States may determine in each case.

(5) A Panel member may be reappointed.

(6) A person may not be a Panel member if the person –

(a) is now, or has ever been in the 12 preceeding months, a member of the States,

- (b) is a person employed, whether on a full-time or part-time basis, by the States,
- (c) is an authorised person, or is otherwise under the direction and control of the Governor or the Department, or
- (d) is the holder of judicial office in any court in the Island.

Panel members.

2. (1) The Chairman or any other Panel member may resign from office at any time by giving notice in writing to the Department.

(2) The Department may remove the Chairman or any other Panel member from office by giving notice in writing to the Panel member concerned, if the Department is satisfied that the person concerned –

- (a) has without reasonable cause failed to carry out that person's duties under this Ordinance,
- (b) has been convicted of a criminal offence,
- (c) has become bankrupt,
- (d) is incapacitated by physical or mental illness, or
- (e) is otherwise unable or unfit to perform that person's duties.

(3) The Department must notify the States of the resignation or removal from office of the Chairman or any other Panel member at the first available opportunity.

(4) If the Chairman resigns or is removed from the Chairman's office –

(a) this in itself does not affect that person's continuance in office as a Panel member,

(b) the Panel must, with the consent of the Department, appoint a Panel member to act as Chairman for the remainder of that Panel member's term of office as a Panel member, and

(c) the Department must notify the States of that appointment at the first available opportunity.

(5) The validity of any proceedings of the Panel is unaffected by a vacancy in its members, by any defect in the election or appointment of a member or by any lack of qualification of a person to act as a member.

General duties and powers.

3. (1) For its purpose in section 17(2), the Panel must –

(a) ensure that its members pay frequent unannounced visits to the prison, including at least one unannounced visit each month by two authorised Panel members,

- (b) arrange for the food and drink of the prisoners, and any premises (including cells) within the prison that it considers appropriate, to be inspected on such visits, and
 - (c) satisfy itself as to the state of the prison premises, the management and administration of the prison, and the treatment of prisoners.
- (2) In addition, the Panel must ensure that an authorised Panel member –
 - (a) visits any prisoner who requests the Panel for a visit by a Panel member,
 - (b) makes at least one visit to each prisoner held in temporary confinement or cellular confinement,
 - (c) inquires into any complaint or request made to it by any prisoner,
 - (d) inquires into any report or allegation made to it by any person, other than a prisoner, concerning any matter that –
 - (i) affects or is likely to affect the health, safety or well-being of any prisoner, or
 - (ii) is otherwise relevant to the Panel's purpose in section 17(2),

- (e) informs the Department immediately of any abuse that comes to the Panel's knowledge,
- (f) directs the attention of the Governor to any matter which calls for the Governor's attention, and reports to the Department any matter which the Panel considers appropriate to report, and
- (g) inquires into, and provides findings and recommendations on, any matter at the request of the Department.

(3) The Panel may at any time report to the States on any matter that the Panel considers appropriate, in addition to the annual report required under paragraph 5.

Power to inspect, interview and review records, etc.

4. (1) The Governor and all authorised persons must allow any authorised Panel member at any time –

- (a) to enter and inspect any part of the prison,
- (b) with the consent of any prisoner, to interview the prisoner –
 - (i) in the prisoner's cell, or
 - (ii) at the request of that Panel member or the prisoner, in a room out of the sight and hearing

of authorised persons, and

- (c) to review any records of the prison, subject to subparagraph (6).

(2) The Governor and all authorised persons must cooperate fully with an authorised Panel member exercising or performing a function under the Law.

(3) For the avoidance of doubt, an authorised person may discuss with any authorised Panel member any matter that, in the opinion of the authorised person –

- (a) affects or is likely to affect the health, safety or well-being of any prisoner, or
- (b) is otherwise relevant to the Panel's purpose in section 17(2).

(4) After each visit to the prison or a prisoner, an authorised Panel member must –

- (a) write a report setting out the observations of the visiting Panel members on the condition of the prison or any prisoner, including any concerns held by these Panel members, and
- (b) send the report to the Governor and a copy of the report to the Chairman.

(5) If dissatisfied with the Governor's response to the report, the

Panel may report the matter to the Department and request a written response from the Department.

(6) Nothing in subparagraph (1)(c) authorises a Panel member to review–

(a) records held for the purposes of or relating to conduct authorised in accordance with Part 2 of the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003, or

(b) the personal data of a prisoner, unless either the prisoner concerned or the Governor consents to it.

(7) In subparagraph (6)(b), "**personal data**" –

(a) has the meaning given by section 1(1) of the Data Protection (Bailiwick of Guernsey) Law, 2001^{ee}, and

(b) includes anything specified by regulations to be personal data.

Annual report.

5. (1) As soon as practicable after the end of each calendar year, the Panel must submit a written report to the States in respect of that calendar year in accordance with subparagraphs (2) and (3).

(2) The Panel's annual report must include the following information –

^{ee} Ordres en Conseil Vol. XLII(I), p. 51; to which there are amendments not relevant to this Ordinance.

- (a) a summary of the Panel's activities, including the number of –
 - (i) complaints or requests received from prisoners, and
 - (ii) inquiries conducted by Panel members,broken down by the topics to which they relate (e.g. food, temporary release licence, privileges, use of force) and compared to statistics from previous years,
- (b) anonymous examples of prisoner's complaints and results of the Panel's inquiries into those, including recommendations made and responses received from the Governor or the Department,
- (c) in light of its purpose in section 17(2) –
 - (i) the Panel's observations on the state of the prison premises,
 - (ii) its observations on the administration of the prison,
 - (iii) its observations on the treatment of prisoners, and
 - (iv) any advice or recommendation it sees fit to

make, and

- (d) any other information required by the Department or by Resolution of the States.

(3) The Panel's annual report must be sent to the Department for submission on the Panel's behalf to the States in accordance with section 1(1) of this Ordinance.

Delegation to members.

6. (1) The Panel may, in writing, delegate to any of its members named or described in that instrument, either generally or otherwise as provided by that instrument, any of its functions except –

- (a) this power of delegation, or
- (b) its duty to make an annual report to the States.

(2) A function delegated under this paragraph may be carried out by the delegate in accordance with the instrument of delegation and, when so carried out, is deemed to have been carried out by the Panel.

(3) A delegation under this paragraph is revocable by the Panel at will and does not prevent the carrying out of a function by the Panel.

(4) For the avoidance of doubt, a function may be delegated under this paragraph to a committee comprising any number of Panel members.

Administration and expenses.

7. (1) The Department must provide the Panel with the

accommodation, equipment, secretarial and clerical services, and other facilities, that the Panel reasonably requires for the proper and effectual discharge of its functions.

(2) The Department must pay out of the general revenue account of the States –

(a) any reasonable expenses claimed by the Panel and its members, and

(b) any allowances to Panel members (including attendance allowances) provided for by regulations.

(3) The Department must cause to be kept a record and account of all expenditure incurred by the Department under subparagraph (1) or (2).

(4) The Panel must provide the Department with any information that the Department reasonably requires to enable the Department to discharge its obligations under subparagraph (3).

Meetings.

8. (1) The Panel must meet –

(a) at least once every two months, or

(b) less frequently if resolved by the Panel (but no fewer than four times a year).

(2) If the Panel resolves to meet less frequently than once every two months, it must specify the reason in its resolution.

- (3) The person who presides at meetings of the Panel is –
 - (a) the Chairman, if the Chairman is present, or
 - (b) if the Chairman is not present, the person elected to chair the meeting by, and from among, the other Panel members present.

- (4) At a meeting –
 - (a) a quorum is constituted by –
 - (i) three members, if the Panel (including the Chairman) consists of four, five or six members, or
 - (ii) four members, if the Panel (including the Chairman) consists of seven or eight members,
 - (b) decisions are made by a majority vote,
 - (c) each member other than the person presiding has one vote, and
 - (d) the person presiding has no original vote, but in the event of equality in the votes of the other members present, the person presiding must exercise a casting vote.

Transaction of business without meeting.

9. The Panel may, if it thinks fit, transact any business by the circulation of papers to all Panel members, and a resolution in writing approved in writing by a majority of the Panel members is as valid and effectual as if passed at a meeting of the Panel by the votes of the members so approving the resolution.

Minutes.

10. The Panel shall keep proper minutes of its proceedings, including minutes of –

- (a) any business transacted as permitted by paragraph 9,
- (b) the authorisation of any Panel member to carry out functions of authorised Panel members, and
- (c) any written exchanges with the Governor or the Department.

Residual power to regulate procedure.

11. Subject to the provisions of this Schedule the Panel may regulate its own procedure.

Interpretation.

12. In this Schedule, "**authorised Panel member**", in relation to any function –

- (a) means a Panel member authorised by the Panel to carry out the relevant function, and
- (b) includes any Panel member purporting to act with the authorisation of the Panel.

SCHEDULE 4
DISCIPLINARY OFFENCES

Section 43(1)

Disciplinary offences.

1. A prisoner commits a disciplinary offence if the prisoner –
 - (1) commits any assault,
 - (2) commits any racially aggravated assault,
 - (3) detains any person against the person's will,
 - (4) denies access to any part of the prison to any authorised person or visitor,
 - (5) fights with any person,
 - (6) intentionally endangers the health or personal safety of others or, by the prisoner's conduct, is reckless as to whether such health or personal safety is endangered,
 - (7) intentionally obstructs any authorised person in the execution of the person's duty or the performance of the person's work,
 - (8) escapes or absconds from prison or from the legal custody of the Governor,

- (9) fails to comply with any condition of a temporary release licence upon which the prisoner is or was temporarily released,
- (10) is found with any substance in the prisoner's urine or breath, or other bodily matter or substance taken as a sample from the prisoner, which demonstrates that –
 - (a) a controlled drug has been administered to the prisoner by that prisoner or by another person, whether in the prison or outside whilst that prisoner is on a temporary release licence (but subject to paragraph 2),
 - (b) a medicinal product has been administered to the prisoner by that prisoner or by another person, in the prison (but subject to paragraph 2), or
 - (c) the prisoner has smoked a tobacco product or any other thing at any time whilst in the prison,
- (11) is intoxicated as a consequence of consuming any intoxicating liquor (but subject to paragraph 3),
- (12) consumes any intoxicating liquor, whether or not provided to the prisoner by another person (but subject to paragraph 3),
- (13) has in the prisoner's possession –
 - (a) any thing which the prisoner is not lawfully required or authorised to possess, or

- (b) a quantity of any thing that is greater than the quantity that that prisoner is lawfully required or authorised to possess,
- (14) supplies to any person any prohibited thing,
- (15) supplies to any person any thing which the prisoner is lawfully required or authorised to have for that prisoner's own use, unless that supply is lawfully required or authorised,
- (16) takes improperly any thing belonging to another person, the prison or the Department,
- (17) intentionally or recklessly sets fire to any part of the prison or any other property, whether or not the prisoner's own,
- (18) destroys or damages any part of the prison or any property (other than the prisoner's own),
- (19) causes racially aggravated damage to, or destruction of, any part of the prison or any other property, other than the prisoner's own,
- (20) absents the prisoner's self from any place where the prisoner is required to be, or is present at any place where the prisoner is not lawfully required or authorised to be,
- (21) is disrespectful to any authorised person or any visitor (other than a prisoner),
- (22) uses threatening, abusive or insulting words or behaviour,

- (23) uses threatening, abusive or insulting racist words or behaviour,
- (24) intentionally fails to work properly or, being required to work, refuses to do so,
- (25) disobeys any lawful order,
- (26) disobeys or fails to comply with any provision of this Ordinance, the Prison Regulations or the Prison Orders that applies to the prisoner,
- (27) receives any controlled drug, or, without the consent of an authorised officer, any other thing, during the course of a visit,
- (28) displays, attaches or draws on any part of a prison, or on any other property, threatening, abusive or insulting racist words, drawings, symbols or other material,
- (29) smokes a tobacco product or any other thing, or
- (30) (a) attempts to commit, (b) incites another prisoner to commit, or (c) assists another prisoner to commit or to attempt to commit, any of the foregoing disciplinary offences.

Defences.

- 2. It is a defence for a prisoner charged with a disciplinary offence under paragraph 1(10)(a) or 1(10)(b) to show that –
 - (1) the administration of the controlled drug or (as the case may be) medicinal product to that prisoner had been lawfully required or authorised,

- (2) the controlled drug or (as the case may be) medicinal product was administered by or to that prisoner in circumstances in which that prisoner did not know and had no reason to suspect that such a drug or medicinal product was being administered, or
 - (3) the controlled drug or (as the case may be) medicinal product was administered by or to that prisoner under duress, or without that prisoner's consent in circumstances where it was not reasonable for that prisoner to have resisted.
3. It is a defence for a prisoner charged with a disciplinary offence under paragraph 1(11) or 1(12) to show that –
- (1) the intoxicating liquor was consumed by the prisoner in circumstances in which that prisoner did not know and had no reason to suspect that that prisoner was consuming intoxicating liquor, or
 - (2) the intoxicating liquor was consumed by the prisoner without that prisoner's consent in circumstances where it was not reasonable for that prisoner to have resisted.

Interpretation.

4. In this Schedule –

"**administer**", in relation to a controlled drug or medicinal product, includes to consume, take, inject, inhale (or inhale the fumes or vapour from), ingest or use, the controlled drug or medicinal product in any way,

"**presumed**" means presumed by the prisoner committing, or alleged

to have committed, the disciplinary offence,

"**racial group**" means a group of persons that may be defined by reference to race, colour, nationality (including citizenship) or ethnic, national or territorial origins,

"**racist**", in relation to words, behaviour or material, means words, behaviour or material that demonstrate, or are wholly or partly motivated by, hostility to members of a racial group (whether identifiable or not) based on their actual or presumed membership of a racial group; and cognate terms are to be construed accordingly, and

"**smoke**" means to smoke orally, hold or otherwise have control over any ignited tobacco product or any other ignited thing, with a view to tasting or inhaling the smoke.

SCHEDULE 5

PROCEDURES ON DEATH, OR SERIOUS INJURY FROM ATTEMPTED SUICIDE

Section 44

Notice of death or serious injury.

1. The Governor must ensure that immediate notice of the incident is given to –

- (a) the nearest known relative of the prisoner concerned,
- (b) any other persons previously nominated by that prisoner as persons to be notified in the event of an emergency,
- (c) Her Majesty's Procureur,
- (d) the Chief Officer of the salaried police force of the Island,
- (e) the Panel,
- (f) the Department, and
- (g) any prescribed person.

Inquest or independent investigation must be held.

2. (1) As soon as practicable after the incident, the Department, in consultation with Her Majesty's Procureur, must initiate or commission an independent investigation into the causes and circumstances of that incident, regardless whether death occurs or whether there is a police investigation into that

incident.

- (2) An investigation under subparagraph (1) must be carried out—
 - (a) in an effective manner,
 - (b) reasonably expeditiously, and
 - (c) in a manner that does not interfere with or otherwise compromise any criminal investigation relating to the circumstances of the incident.

(3) On completion of an investigation under subparagraph (1), the person conducting the investigation must –

- (a) make a written report which includes that person's conclusions on the following matters –
 - (i) whether any act or omission on the part of any authorised person, or any other person, was relevant to the incident,
 - (ii) whether there was a failure to comply with any provision of the Law or any relevant procedures,
 - (iii) whether there was, or could reasonably be thought to be, any defect in any procedures in place,

- (iv) whether applicable procedures following the incident were carried out at the proper time, and
 - (v) what, if any, measures should be taken by the Governor to prevent or minimise the likelihood of a similar incident occurring in future, and
- (b) give the report to the Department and the Governor, and a copy of that report to each person specified in paragraph 1(a) to (e) and any prescribed person.

(4) If the incident involves the death of the prisoner, the duty in subparagraph (1) is deemed to be discharged if an inquest is opened into the incident pursuant to any enactment.

Full cooperation required.

3. The Department, the Panel and all authorised persons must provide any information requested by, and otherwise cooperate fully with, any person conducting an investigation under paragraph 2.

Governor to implement or report on recommendations.

4. Within one month of the Governor being given the report under paragraph 2(3), the Governor must, in relation to each measure recommended in that report to prevent or minimise the likelihood of a similar incident occurring in the future, provide a written report to the Department setting out –

- (a) how the measure has been carried out,
- (b) why the measure should not or could not be carried out, or

- (c) a reasonable timetable to carry out that measure.

Contents not to be used in civil proceedings without leave.

5. (1) The contents of a report made under paragraph 2(3) may not be used in civil proceedings of any kind except with the leave of the court or tribunal hearing those proceedings.

(2) The court or tribunal hearing those proceedings may grant a person leave to use the contents of that report if, and only if, that court or tribunal determines that–

- (a) the person is or may be entitled to claim relief of some kind in the proceedings,
- (b) it is impossible or impracticable for the person to formulate that person's claim without reference to the contents of that report, and
- (c) the interests of justice in the disclosure of those contents outweigh the adverse impact the disclosure might have on any future investigations into prisoners' deaths while in custody.

Interpretation.

6. In this Schedule –

"civil proceedings" excludes –

- (a) proceedings for a disciplinary offence committed or

suspected to be committed by a prisoner,

- (b) proceedings for disciplinary or any other action that may be taken against an authorised person who is found guilty of misconduct or gross misconduct, and
- (c) proceedings for any form of disciplinary action against any other person,

"**incident**" means the death, incapacitation or other serious injury of the prisoner concerned, and

"**nearest known relative**", in relation to a prisoner, means –

- (a) if the prisoner is married and the prisoner's spouse is known to the Governor, that spouse, or
- (b) in any other case, the nearest relative of the prisoner whose address is known to the Governor.

SCHEDULE 6
ENACTMENTS REPEALED OR REVOKED

Section 57

The Order in Council entitled "Nouvelle Prison Publique" registered on the 11th of June 1803^{ff}.

The Law entitled "Loi portant Règlement pour Mesurer et Photographier des Prisonniers condamnés ou accusés de crime" registered on the 14th of July 1923^{gg}.

The Prison Administration (Guernsey) Law, 1949^{hh}.

The Prison Administration (Amendment) (Guernsey) Law, 1957ⁱⁱ.

The Prison Administration (Amendment) (Guernsey) Law, 1999^{jj}.

The Ordinance entitled "Marins au service de Sa Majesté emprisonnés" of the 7th of August, 1872^{kk}.

The Prison (Regulation of Access) Ordinance, 1990.

The Prison Administration (Guernsey) Ordinance, 1998^{ll}.

The Prison Administration (Amendment) Ordinance, 2002^{mmm}.

ff Ordres en Conseil Vol. I, p. 1.

gg Ordres en Conseil Vol. VII, p. 86.

hh Ordres en Conseil Vol. XIV, p. 159.

ii Ordres en Conseil Vol. XVII, p. 234.

jj Ordres en Conseil Vol. XXXIX, p. 13.

kk Recueil d'Ordonnances Tome IV, p. 134.

ll Recueil d'Ordonnances Tome XXVIII, p. 90, as amended by Tome XXIX, p. 206.

mmm Recueil d'Ordonnances Tome XXIX, p. 206.

The Prison Administration (Guernsey) (Amendment) Ordinance, 2006ⁿⁿ.

The Prison Administration (Alcohol and Drug Testing) Ordinance, 1999^{oo}.

The Prison Administration (Alcohol and Drug Testing) (Amendment) Ordinance, 2009^{pp}.

ⁿⁿ Recueil d'Ordonnances Tome XXXI, p. 656.

^{oo} Recueil d'Ordonnances Tome XXVIII, p. 223, as amended by Recueil d'Ordonnances Tome XXXIII, p. 611.

^{pp} Recueil d'Ordonnances Tome XXXIII, p. 611.

SCHEDULE 7
CONSEQUENTIAL AMENDMENTS

Section 59

Enactment	Provision	Amendment
Criminal Justice (Supervision of Offenders) (Bailiwick of Guernsey) Law, 2004	Section 4(2)	For the expression "section 22 of the Prison Administration (Guernsey) Ordinance, 1998", substitute the expression "section 29 of the Prison (Guernsey) Ordinance, 2013".
Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003	Section 4(4)	For the expression "any Ordinance under section 3 of the Prison Administration (Guernsey) Law, 1949", substitute the expression "the Prison (Enabling Provisions) (Guernsey) Law, 2010 and any Ordinance or subordinate legislation made under it".
Criminal Justice (International Co- operation) (Bailiwick of Guernsey) Law, 2001 ⁹⁹	Section 5(8)	For the expression "section 22 of the Prison Administration (Guernsey) Ordinance, 1998", substitute the expression "section 29 of the Prison (Guernsey) Ordinance, 2013".
Data Protection	Table in	In the table, for the expression "States Prison

⁹⁹ Ordres en Conseil Vol. XLI, p. 240; as amended by Vol. XL, p. 15; Order in Council No. IX of 2008; Ordinance No. XXXVIII of 2010. See also Ordres en Conseil Vol. XXII, p. 122; Vol. XXIX, p. 207; Order in Council No. III of 2005.

Enactment	Provision	Amendment
(Bailiwick of Guernsey) Law, 2001	section 56(5)	Board", substitute the expression "Home Department".
		In the table, for the expression "Prison Administration (Guernsey) Law, 1949" substitute the expression "Prison (Enabling Provisions) (Guernsey) Law, 2010 and any Ordinance or subordinate legislation made under it".
	Section 56(6)	Repeal the definition of "States Prison Board".
Parole Review Committee (Guernsey) Ordinance, 1991	Section 1(5)	For paragraph (g), substitute the following paragraph – <p style="text-align: center;">"(g) specify the date on which a licence expires, being the date on which a prisoner would have been released on remission under section 29 of the Prison (Guernsey) Ordinance, 2013 or such later date as he would have been released on or after any forfeiture of remission under any regulations made under that Ordinance, and".</p>
Criminal Justice (Youth Detention) (Bailiwick of Guernsey) Law, 1990	Section 1	For subsection (6), substitute the following subsection– <p style="text-align: center;">"(6) A person serving a sentence of youth detention at the prison</p>

Enactment	Provision	Amendment
		shall be deemed a prisoner for the purposes of the Prison (Enabling Provisions) (Guernsey) Law, 2010 and any Ordinance or subordinate legislation made under it."
	Section 4(9)	For the definition of "remission", substitute the following definition – "remission" means remission under section 29 of the Prison (Guernsey) Ordinance, 2013".
Criminal Justice (Day Training Centre) (Guernsey) Law, 1989 ^{rr}	Section 6(1)	For the definition of " the Governor of the States Prison ", substitute the following definition – " the Governor of the States Prison " means the Governor within the meaning of section 55(1) of the Prison (Guernsey) Ordinance, 2013,".
Uniform Scale of Fines (Guernsey) Law, 1989 ^{ss}	Part I of the Schedule	Delete the entry relating to the Prison Administration (Guernsey) Ordinance, 1959.

^{rr} Ordres en Conseil Vol. XXXI, p. 210; as amended by Recueil d'Ordonnances Tome XXIX, p. 406.

^{ss} Ordres en Conseil Vol. XXXI, p. 278; as amended by Order in Council No. XVIII of 2009; Recueil d'Ordonnances Tome XXV, p. 344; Tome XXVIII, p. 89 and Tome XXXI, p. 542.

SCHEDULE 8

TRANSITIONAL AND SAVINGS PROVISIONS

Section 60

Existing prison deemed to be declared a prison.

1. (1) The premises outlined in red on the Prison Plan, comprising land and buildings known as the States Prison and situated at Baubigny in the Parish of St. Sampson, excluding the road giving access to those premises, are deemed to have been declared to be a prison under section 1 of the Law.

(2) The deemed declaration under subparagraph (1) –

(a) takes effect from the commencement date, and

(b) may be revoked or amended by the Department in accordance with section 1(2)(c) of the Law.

Existing green and yellow areas to continue.

2. (1) The area coloured in green in the Prison Plan is deemed to be a green area.

(2) The area coloured in yellow in the Prison Plan is deemed to be a yellow area.

(3) Subparagraphs (1) and (2) may respectively be repealed at any time by regulations made under this Ordinance.

Governor to continue in office.

3. The person appointed as the Governor of the Prison under the Prison Administration (Guernsey) Law, 1949, and holding office as such immediately before the commencement date –

- (a) is deemed to have been appointed Governor under section 3 of this Ordinance, and
- (b) continues to hold the office of Governor in accordance with the terms and conditions of that person's appointment, subject to the provisions of this Ordinance.

Medical officer to continue in office.

4. A person appointed as medical officer of the prison under the Prison Administration (Guernsey) Ordinance, 1998, and holding office as such immediately before the commencement date –

- (a) is deemed to have been appointed as a medical officer and member of the healthcare team under section 8(1) of this Ordinance, and
- (b) continues to hold office as such in accordance with the terms and conditions of that person's appointment, subject to the provisions of this Ordinance.

Chaplain to continue in office.

5. The person appointed as Chaplain of the Prison under the Prison Administration (Guernsey) Law, 1998, and holding office as such immediately before the commencement date –

- (a) is deemed to have been appointed coordinating chaplain under section 25 of this Ordinance, and
- (b) continues to hold office as such in accordance with the terms and conditions of that person's appointment, subject to the provisions of this Ordinance.

Offences against discipline to be dealt with under former provisions.

6. An offence against discipline committed by a prisoner under the Prison Administration (Guernsey) Ordinance, 1998 before the commencement date must be dealt with under that Ordinance and all other relevant legislation, as if this Ordinance had not come into force.

Existing Code of Discipline to continue in force.

7. The Prison Administration (Code of Discipline for Prison Officers) Order, 2006^{tt} -

- (a) is deemed to set out standards of conduct and guidance issued by the Department in accordance with section 6,
- (b) has effect accordingly subject to the provisions of the regulations, this Ordinance and the Law, and
- (c) may be amended or revoked in accordance with section 6(1).

Existing Orders to continue in force.

8. (1) The Orders listed in the table in subparagraph (3), including

^{tt} G.S.I. No. 31 of 2006.

the amendments noted –

- (a) are deemed to be Prison Orders issued in accordance with section 50,
- (b) have effect subject to the provisions of this Ordinance and the Law, and
- (c) may be amended or revoked in accordance with section 50.

(2) The Orders indicated to be "Restricted" in the table in subparagraph (3) are deemed to be certified "Restricted" under section 50(3).

(3) Subparagraphs (1) and (2) refer to the following table –

P.O. no	Title or Description	Initial Issue Date	Amendments	Restricted
P.O. 1	Adjudications	13-Nov-06	01-Jan-09	-
P.O. 2	Prisoners Financial Affairs	Feb-07	Sept-12	-
P.O. 4	Sentence Calculations	08-Aug-07	04-Feb-09	-
P.O. 5	Health & Safety	13-Nov-06	no date	-
P.O. 6	I.E.P. Scheme	13-Nov-06	12-Aug-11	-
P.O. 6A	Electronic Game	18-Jun-07	27-Jan-09	-
P.O. 7	Categorisation	Mar-07	Jan-13	-
P.O. 8	Prisoners Pay Policy	Feb-12	01-Sep-12	-

P.O. no	Title or Description	Initial Issue Date	Amendments	Restricted
P.O. 10	Mandatory Drug Testing	Jul-07	2010	-
P.O. 12	ROTL Work Release	14-May-07	01-June-13	-
P.O. 14	Staff Alcohol & Drugs Policy	23-Jul-07	23-Jul-08	Restricted
P.O. 15	Reporting Wrongdoings	-	2011	Restricted
P.O. 16	Complaints made by the public	07-Jun-07	07-Jun-08	-
P.O. 20	C.N.A.	23-May-02	-	-
P.O. 22	Prisoner Risk Management Team Meeting	06-Aug-07	01-Jun-11	-
P.O. 23	Prisoner Correspondence	19-Jul-07	Keep in touch booklet	-
P.O. 24	Prisoner Visits	19-Nov-07	Keep in touch booklet	-
P.O. 24B	Closed Visits	01-Sep-09	01-Sep-10	-
P.O. 25	Other Employment/ Part Time Work	17-Dec-07	17-Dec-08	-
P.O. 27	SCAPU	15-Feb-08	2010	-
P.O. 28	ACCT	Dec-07	Feb-11	-
P.O. 29	Safer Cell Policy	01-Jan-12	-	-
P.O. 31	Reception/Induction/ First Night	Jul-2011	2011	-
P.O. 33	Flexible working	26-Mar-08	26-Mar-09	Restricted

P.O. no	Title or Description	Initial Issue Date	Amendments	Restricted
P.O. 34	Staff Fitness	07-Feb-07	Jan-13	Restricted
P.O. 35	Telephone Communications (PIN Phone)	Apr-08	2011	-
P.O. 36	Follow up Death in Custody	Feb-11	2011	-
P.O. 37	Mother & Baby Policy	Apr-11	-	-
P.O. 38	Post Incident Care	Jul-08	2011	-
P.O. 39	Activity Allocation Board	Nov-12	-	-
P.O. 41	Marriages	Jun-08	2011	-
P.O. 42	E Cigarettes Policy	Apr-12	Jan-13	-
P.O. 45	Use of Prison & Private Vehicles	12-May-10	-	Restricted
P.O. 46	Dress Code Policy	01-Jul-10	Jan-13	Restricted
P.O. 47	Inappropriate Materials Guidance	01-Aug-10	2011	-
P.O. 48	Data Protection Policy	12-Aug-11	Combined with former P.O. 18	-
P.O. 49	Violence Reduction Policy	01-Feb-11	2011	-
P.O. 50	Long Service & Good Conduct Medal regulations	01-Oct-09	2011	Restricted
P.O. 51	Performance & Recognition	01-Aug-11	2011	-

P.O. no	Title or Description	Initial Issue Date	Amendments	Restricted
P.O. 57	Contamination Injuries (Sharps)	01-Aug-10	Jan-13	-
P.O. 58	Audit Policy	21-Jul-10	Combined with former P.O. 26	Restricted
P.O. 60	Managing Attendance for staff	Jun-10	02-Aug-12	Restricted
P.O. 60B	Managing attendance – Guidance for managers	Jun-10	2011	Restricted
P.O. 61	Prisoner Complaints Procedure	Nov-10	Jun-13	-
P.O. 67	Transfers	Nov-09	Nov-09	-
P.O. 68	Food Refusal Policy	Nov-09	-	-
P.O. 70	Diversity Policy	Dec-11	Apr-12	-
P.O. 71	Staff Rotation Policy	Jan-13	-	Restricted
P.O. 81	Grievances	23-Feb-07	01-Nov-07	Restricted
P.O. 84	Staff Capability Procedure	01-Aug-12	Aug-12	Restricted
P.O. 85	Investigations	13-Nov-06	-	Restricted
P.O. 86	Conduct & Discipline	13-Nov-06	Jan-07	-
P.O. 87	Detail Policies, Procedures & Guidelines	Mar-09	Jan-13	Restricted
P.O. 88	Avon Catalogue (ordering & issuing of products)	Oct-09	-	-

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