

THIRD SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4580 of 31 May, 2019

B. 24/19

BILL

FOR

AN ACT to amend the Prison Act 2011 and the Prison Regulations 2011 to amend the provisions relating to the release of prisoners and to substitute the current provisions relating to remission.

ENACTED by the Legislature of Gibraltar.

Short title.

1. This Act may be cited as the Prison (Amendment) Act 2019.

Commencement.

2. This Act comes into operation on the day appointed by the Minister by notice in the Gazette.

Amendments to Act.

3.(1) The Prison Act 2011 (“the Act”) is amended in accordance with the provisions of this section.

(2) For the heading and section 51 of the Act substitute-

“ADDITIONAL DAYS

Additional days for disciplinary offences.

51.(1) Regulations made under section 71 (“prison regulations”), may in addition to anything provided for under that section include provision for the award of additional days-

- (a) to fixed-term prisoners; or
- (b) conditionally on their subsequently becoming such prisoners, to persons on remand,

who (in either case) are guilty of disciplinary offences.

(2) Where additional days are awarded to a fixed-term prisoner, or to a person on remand who subsequently becomes such a prisoner, and are not remitted in accordance with prison regulations-

- (a) any period which that prisoner must serve before becoming entitled to or eligible for release; and
- (b) any period for which a licence granted to that prisoner remains in force,

is extended by the aggregate of those additional days.

(3) In this section “fixed-term prisoner” means-

- (a) a person serving a sentence of imprisonment for a determinate term; or
- (b) a person serving a determinate sentence of detention,

and “fixed-term sentence” means a sentence falling within paragraph (a) or (b).

AUTOMATIC RELEASE

Duty to release prisoners.

51A.(1) A person serving a sentence of imprisonment or detention for a determinate period-

- (a) of 12 months or less; or
- (b) exceeding 12 months, up to a period of 4 years,

shall be released automatically after such person has served the greater of-

- (i) five days imprisonment, or
- (ii) half of his sentence.

(2) A person to whom subsection (1)(a) applies is released unconditionally.

(3) A person to whom subsection (1)(b) applies is released on licence.

APPLICATION TO PRISONERS IN DEFAULT OF PAYMENT

Application of sections 51 and 51A.

51B.(1) A person committed to prison in default of payment of a sum adjudged to be paid by a conviction is to be treated-

- (a) as a fixed-term prisoner for the purposes of section 51; and
 - (b) as a person serving a sentence of imprisonment for a determinate period for the purposes of section 51A.
- (2) For the purposes of subsection (1) a person serving consecutive terms of imprisonment shall be treated as serving one term.”.
- (3) In section 53(1)-
- (a) at the end of paragraph (a) insert “and”;
 - (b) at the end of paragraph (b) for “and” substitute “or”;
 - (c) renumber paragraph (c) as paragraph (d);
 - (d) immediately before renumbered paragraph (d) insert the following paragraph-
 - “(c) the conditions of licences and the variation or cancellation of such conditions for those prisoners released under section 51A(3); and”.
- (4) For section 54(1)(a) substitute-
- “(a) a person serving a sentence of imprisonment or detention for a determinate period of more than 4 years, after such person has served not less than half of his sentence;”.
- (5) In section 55 of the Act for “section 54(1)(a) a person has served one third” substitute “sections 51A(1) and 54(1)(a) a person has served one half”.
- (6) For section 56(1) of the Act substitute the following subsections-
- “56.(1) Subject to subsections (1A) and (1B) where a person is released on licence under 51A(1)(b) or 54(1)(a), the licence shall, subject to any revocation under section 59, remain in force for three-quarters of his sentence.
- (1A) For the purposes of calculating the expiry of a licence under subsection (1) any additional days awarded under section 51 are added to the three-quarters of the sentence.
- (1B) Where a person is released on licence after having served at least three-quarters of his sentence the licence, subject to any revocation under section 59, remains in force until the expiry of his sentence.”.
- (7) In section 57 of the Act-
- (a) in subsection (1) for “section 54–” substitute “sections 51A(3) and 54–”; and

(b) in subsection (2)(a) for “section 54” substitute “sections 51A(3) and 54”.

(8) After section 61 insert-

“EXPIRATION OF SENTENCE

Expiration of sentence.

61A. A persons sentence expires-

- (a) in a case where a person is released under section 51A(1)(a), and in appropriate cases after having served any additional days awarded under section 51, on the day that person is released;
- (b) in a case where a person has been released on licence under section 51A(1)(b) or 54(1)(a), (and the licence has not been revoked pursuant to section 59) on the expiration of the licence.”.

(9) In section 70-

- (a) in subsection (1) delete “the Prison Board or”;
- (b) in subsection (2) for “forfeiture of remission” substitute “additional days”; and
- (c) in subsection (3) for “forfeiture of remission” substitute “additional days”.

(10) In section 71(1) delete paragraph (e).

Amendments to the Regulations.

4. The Prison Regulations 2011 are amended in accordance with the Schedule.

Application to persons already on remand and existing prisoners.

5.(1) Subject to subsection (2) the provisions of the Prison Act 2011 and the Prison Regulations 2011 as amended by this Act apply only to persons who are held in police detention, remanded in custody or committed to prison after the commencement of this Act.

(2) The Prison Act 2011 and the Prison Regulations 2011 apply to a person (“P”) as though this Act had not come into operation if P falls within any of paragraphs (a) to (d)-

- (a) P had been held in police detention prior to the commencement of this Act and, after its commencement, P is sentenced to a term of imprisonment in relation to the matters in respect of which P was held in police detention;

- (b) having been remanded in custody P is granted bail by a court prior to the commencement of this Act and a court after the commencement of this Act rescinds bail and P is remanded in custody again;
- (c) at the commencement of this Act P is in custody on remand and after the commencement of this Act and whilst still on remand P is further remanded in custody in respect of another offence;
- (d) at the commencement of this Act P is serving a sentence of imprisonment and whilst still imprisoned and after the commencement of this Act P is sentenced to a further term of imprisonment.

SCHEDULE

Amendments to Prison Regulations 2011

Section 4

- 1.(1) The Prison Regulations 2011 are amended in accordance with this paragraph.
- (2) Delete regulation 38.
- (3) In regulation 53 for “forfeiture of remission (if applicable)” substitute “additional days” in both places where it appears.
- (4) In regulation 55-
- (a) in subregulation (1)(e) for “21” substitute “14”;
 - (b) in subregulation (3) for “21” substitute “14”.
- (5) In regulation 56-
- (a) in subregulation (1)(b) for “forfeiture of remission” substitute “additional days”; and
 - (b) in subregulation (3)-
 - (i) for “forfeited” substitute “of additional days”,
 - (ii) for “forfeiture of remission” substitute “additional days”,
 - (iii) for “21” substitute “14”.
- (6) In regulation 59-
- (a) in the heading, for “forfeiture of remission” substitute “award of additional days”;
 - (b) in subregulation (1), for “forfeiture of remission (if applicable) may be made” substitute “additional days may be awarded”;
 - (c) in subregulation (2), for “in the case of a sentence of imprisonment being imposed which is reduced,” substitute “if the prisoner in question subsequently becomes a fixed-term prisoner whose sentence is reduced, under section 497(3) of the Criminal Procedure and Evidence Act 2011,”; and
 - (d) insert the following after subregulation (2)-
 - “(3) In subregulation (2), “fixed-term prisoner” has the meaning given in section 51(3).”

(7) In regulation 60 insert the following after subregulation (2)-

“(3) Where an award of additional days has been suspended under subregulation (1) and a prisoner is charged with committing an offence against discipline during the period specified in a direction given under that paragraph, the Superintendent shall either-

(a) inquire into the charge and give no direction with respect to the suspended award; or

(b) refer the charge to the justice of the peace for him to inquire into it.”.

(8) For regulation 61 substitute-

“61.(1) Except in the case of a finding of guilt made, or a punishment imposed, by a justice of the peace under regulation 56(1) the Minister may quash any finding of guilt and may remit any punishment or mitigate it either by reducing it or by substituting another award which is, in his opinion, less severe.

(2) Subject to any directions given by the Minister, the Superintendent may on the grounds of good behaviour, remit or mitigate any punishment imposed by him or a justice of the peace.”.

(9) In regulation 70 delete “remission,”.

EXPLANATORY MEMORANDUM

This Bill amends the Prison Act 2011 and the Prison Regulations 2011.

Clause 3(2) substitutes section 51 of the Act, which presently provides for the remission of a sentence based on the ground of the individual's industry and good conduct.

New section 51 makes provision for the award of additional days. Additional days are added to the computation of any period of time used to calculate any period governing a person's release. The effect of the additional days is to delay release by the aggregate number of additional days awarded. This section also provides for regulations made under section 71 to be made for administering the additional days provisions.

Clause 3(2) also inserts section 51A and provides for the automatic release of a prisoner who has served the greater of 5 days or half of a sentence of up to 4 years imprisonment. A person who has been sentenced to imprisonment for 12 months or less is at that point released unconditionally. Those serving a sentence of imprisonment greater than 12 months and up to 4 years are released on licence.

Clause 3(3) amends subsection 53(1) and requires that the Parole Board advise the Minister in respect of licence conditions (including their variation and cancellation) for prisoners released under the automatic release provision in section 51A(3).

Clause 3(4) substitutes section 54(1)(a) and permits for the possible release on licence after having served half of a sentence that exceeds 4 years.

Clause 3(5) makes a consequential amendment to section 55 to reflect the change from one third to half of the sentence served.

Clause 3(6) recasts section 56(1) and inserts new subsections (1A) and (1B). The effect of this subclause is to impose an expiry to the duration of the licence, which will be three-quarters of the length of the sentence. Subsection (1A) increases the three-quarter period by the number of additional days that a person may have been awarded (for breaches of discipline) under section 51, if any. Subsection (1B) provides that where a person is only released after having served at least three-quarters of a sentence, that person will remain on licence until the expiry of the sentence.

Clause 3(7), (9) and (10) make consequential amendments arising from the foregoing provisions.

Clause 38 inserts a new section 61A that provides that a sentence expires once a person has been released unconditionally or where the licence period has expired.

Clause 4 amends the Prison Regulations 2011 in accordance with the Schedule and provide as follows-

Regulation 38, concerning remission of a sentence for good behaviour is deleted.

Regulations 53 and 56 are amended by the substitution of additional days in place of remission.

Regulation 55 is amended to reduce the period of cellular confinement to 14 days.

Regulation 59 is amended to provide for the prospective award of additional days to persons who have been on remand and who subsequently become prisoners falling within the ambit of section 51(3) of the Act.

Regulation 60 is amended by the inclusion of a new subregulation (3) to provide for the suspension of an award of additional days.

Regulation 61 is amended by the introduction of a new subregulation (2) that confers a power on the Minister to quash, remit or mitigate any punishment, save a Justice of the Peace's finding of guilt or punishment. The current provision is renumbered as subregulation (2).

Regulation 70 is amended by the deletion of the reference to remission.

Clause 5 ensures that a person who is on remand or in prison continues to be governed by the law as it stood before the changes made by this Act. This is the case even if the same detainee or prisoner is subject to a second or subsequent order of detention or sentence whilst on remand or in prison.

