

**C03/2019**



**Command Paper on  
a draft Bill to make provision for the automatic release  
of certain categories of prisoners and matters connected  
thereto**

**Presented to Parliament by  
the Minister for Justice**

**by Command of Her Majesty  
13<sup>th</sup> May 2019**

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Comments on this Command Paper should be:

- a) sent by email to [command.papers@gibraltar.gov.gi](mailto:command.papers@gibraltar.gov.gi), or
- b) delivered to Command Papers Consultation c/o Karl Tonna, Ministry of Health Care and Justice, Zone 1, Level 7, St Bernard's Hospital, Harbour Views Road, Gibraltar.

Any comments received later than 4:00 pm on Tuesday 28<sup>th</sup> May 2019 may not be taken into account for the purposes of the relevant consultation.

## INTRODUCTION

The Law Commission has been considering the point at which a person serving a sentence becomes eligible for parole under the Prison Act 2011. The Law Commission has received evidence from the Prison Superintendent and the Deputy Prison Superintendent, the Parole Board and members of the Probation Services.

The Parole Board is an independent statutory body that considers all requests for parole. It is the Parole Board's duty to advise the Minister on whether to release a prisoner on licence and on which conditions. Persons who do not abide by the conditions set out in their parole licenses can be recalled to prison to serve the remainder of their sentence. The Minister for Justice must act on the advice of the Parole Board to release a prisoner on licence, but, if he thinks it appropriate in a particular case, he may ask the Parole Board to reconsider their decision. The Minister may make an application to the Supreme Court following such a reconsideration, if he still disagrees with the Parole Board.

At present, in general terms, an inmate is eligible to apply for parole once they have served one third of their sentence.

In the light of the evidence submitted, the Law Commission has made a series of recommendations to Her Majesty's Government of Gibraltar to reform the Prison Act 2011. The Government now places these proposals for consultation as reflected in the provisions of the draft Bill to amend the Prison Act 2011 found below.

The proposed changes would increase the minimum time to be served for inmates serving a fixed-term sentence, from the current third, to half of their sentence. The envisaged reforms introduce 3 different categories based on the overall length of the sentence:

1. prisoners serving sentences of 12 months or less would be automatically released at the half way point of their sentences without licence conditions;
2. those inmates serving sentences greater than 12 months and up to 4 years, will also be automatically released at the half way point. In such cases, inmates will be subject to licence conditions to be advised by the Parole Board, for up to three-quarters of the sentence (subject to any revocation or additional days that may be imposed); and
3. inmates serving sentences greater than 4 years will be eligible to apply for parole at the half way point. The release of such inmates would not be automatic and would require consideration by the Parole Board as is currently the case. Licence conditions, subject to any revocation or additional days that may be imposed, will remain in force for three-quarters of the sentence.

Further, it is proposed that the system of remission should be replaced by a system of the award of additional days in order to ensure the effectiveness of the proposed amendments. Additional days for disciplinary offences are added to the computation of any period of time used to calculate any period governing a prisoner's release. The effect of the additional days is to delay release from prison by the aggregate number of additional days awarded. It also enables those days to be added to a licence period.

It is also important to note that the proposed changes would have prospective effect.

## **DRAFT 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**

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**

### **Automatic release.**

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 by the Minister after such person has served 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.”.

(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) In section 56(1) of the Act substitute the following subsections-

“56.(1) Subject to subsection (1A) 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.”.

(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) In section 60(2) of the Act for “later” substitute “earlier”.

(9) In section 70-

(a) in subsection (2) for “forfeiture of remission” substitute “additional days”; and

(b) 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) The Prison Act 2011 and the Prison Regulations 2011, as amended by this Act, only apply to persons who are remanded in custody or committed to prison after the commencement of this Act.

(2) A person also does not fall within subsection (1) if that person-

(a) is at the time of the commencement of this Act already remanded in custody and that person is, after the commencement of this Act, remanded in custody in respect of other matters; and

(b) is at the time of the commencement of this Act serving a sentence of imprisonment and that person is, after the commencement of this Act, 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 56-

(a) for “forfeiture of remission” substitute “additional days” in both places where it appears;  
and

(b) for “forfeited” substitute “of additional days”.

(5) 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” substitute “if the prisoner in question subsequently becomes a fixed-term prisoner whose sentence”; and

(d) insert the following after subregulation (2)-

“(3) In subregulation (2), “fixed-term prisoner” has the meaning given in section 51(3).”.

(6) 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.”.

(7) For regulation 61 substitute-

“(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.”.

(8) 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 half of a sentence of up to 4 years imprisonment. A person who is 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 a new subsection (1A). 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.

Clause 3(7) to (10) make consequential amendments arising from the foregoing provisions.

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 55 are amended by the substitution of additional days in place of remission.

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.