

LAWS OF PITCAIRN, HENDERSON, DUCIE
AND OENO ISLANDS

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CHAPTER XXXIV

PAROLE ORDINANCE

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An ordinance to reform the law relating to the release from detention of offenders serving sentences of imprisonment

[18 September 2002]

PART I—PRELIMINARY PROVISIONS

Short title

1. This ordinance may be cited as the Parole Ordinance.

2. In this ordinance, unless the context otherwise requires— Interpretation

chairperson means the chairperson of the Commission appointed under section 90

Commission means the Pitcairn Parole Commission established under section 86; and includes a committee of the Commission, a committee convenor and the chairperson acting within their respective jurisdictions

compassionate release means release under section 38

determinate sentence means a sentence of imprisonment for a fixed term

final recall order means a final recall order made under section 63

[**home detention** has the meaning given to it in section 3(1) of the Sentencing Ordinance]

[**home detention residence** has the meaning given to it in section 3(1) of the Sentencing Ordinance]

hospital means a hospital wholly or partly for the treatment of mentally disordered persons as compulsory inpatients

indeterminate sentence means a sentence of imprisonment that is imprisonment for life or preventive detention

interim recall order means an interim recall order made under section 59

key date, in relation to a sentence of imprisonment, means the start date, sentence expiry date and release date of the sentence

long-term sentence means a sentence of imprisonment that is—

(a) a determinate sentence of more than 24 months; or

(b) a notional single sentence of more than 24 months; or

(c) an indeterminate sentence

non-parole period means the term within, or proportion of, a long-term sentence during which the offender who is subject to the sentence is not eligible to be released on parole from the sentence

non-release day means the Sabbath, Christmas Day, New Year's Day, the Sovereign's Birthday and Bounty Day

notional single sentence means the notional single sentence of imprisonment that is created when one determinate sentence is directed to be served

cumulatively on another determinate sentence (*see* section 74)

parole eligibility date means the date on and after which an offender who is subject to one or more long-term sentences of imprisonment is eligible to be released on parole (*see* section 17)

penal institution means a prison or other place of detention established under any ordinance, [but does not include a home detention residence]

postponement order means an order made under section 24 that postpones the date of an offender's next parole

release conditions means the standard release conditions and any special conditions imposed by the Commission or the sentencing court which apply to an offender released from detention

release date means, in relation to a determinate sentence of imprisonment, the date on which the offender who is subject to the sentence ceases to be liable to be recalled to continue serving that sentence in a penal institution (*see* section 81)

sentence expiry date means the date on which the offender who is subject to the sentence has served its full term and therefore ceases to be subject to it (*see* section 79)

short-term sentence means a sentence of imprisonment that is

(a) a determinate sentence of 24 months or less; or

(b) a notional single sentence of 24 months or less

special conditions means conditions of a type referred to in section 12

standard release conditions means the standard conditions of release set out in section 11

start date, in relation to a sentence of imprisonment, means the date on and from which an offender who is subject to the sentence begins to be subject to it (*see* sections 73 to 78)

statutory release date means the date on which an offender who is subject to one or more sentences of imprisonment—

(a) must be released from detention (*see* section 14); and

(b) ceases to be liable to be recalled to continue serving any sentence in a penal institution (*see* sections 56 to 63)

Supervision Officer means, for the purposes of this ordinance, the person appointed to that office in accordance with section 2 of the Sentencing (Community-based Sentences) Ordinance 2002

variation, in relation to the variation by the Commission of release conditions, [] includes the suspension and addition of conditions and the variation of their duration.

(Amended by Ordinance No. 1 of 2016)

3. This ordinance binds the Crown.

Ordinance binds the Crown

PART II—RELEASE

General provisions

4.—(1) This section is intended to give a broad overview of how and when offenders are released from detention. It does not confer rights or impose obligations and, if there is an inconsistency between this section and any other, the other section prevails.

Overview of release

(2) Unless an offender has been released earlier under this Part, he or she must be released from detention on his or her statutory release date and after that is no longer subject to recall. However, offenders may be subject to release conditions after their statutory release date.

[(3) This Part provides for two types of early release from detention—

- (a) parole; and
- (b) compassionate release.]

(Repealed and replaced by Ordinance No. 1 of 2016)

- (4) Parole has the following characteristics—
- (a) it is available only to an offender who is subject to a long-term sentence;
 - (b) it is granted by the Commission, which also imposes release conditions;
 - (c) an offender on parole from a determinate sentence is subject to recall at any time until his or her statutory release date;
 - (d) an offender on parole from an indeterminate sentence is subject to recall for life.
- (5) **(Repealed by Ordinance No. 1 of 2016)**
- (6) Compassionate release has the following characteristics—
- (a) it may be granted by the Commission in either of two specific circumstances;
 - (b) the Commission may impose release conditions and may recall the offender.

Guiding principles

5.—(1) When making decisions about, or in any way relating to, the release of an offender, the paramount consideration for the Commission in every case is the safety of the community.

(2) Other principles which must guide the Commission's decisions are—

- (a) that offenders must not be detained any longer than is consistent with the safety of the community and that they must not be subject to release conditions [] that are more onerous or last longer than is consistent with the safety of the community; and
- (b) that offenders must be provided with information about decisions that concern them and be advised how they may participate in decision-making that directly concerns them; and
- (c) that decisions must be made on the basis of all the relevant information that is available to the commission at the time; and
- (d) that the rights of victims are upheld and victims' submissions and any restorative justice outcomes are given due weight.

(Amended by Ordinance No. 1 of 2016)

(3) When any person is required under this ordinance to assess whether an offender poses an **undue risk**, the person must consider both—

- (a) the likelihood of further offending; and
- (b) the nature and seriousness of any likely subsequent offending.

Application of ordinance

6.—(1) This ordinance applies to all offenders who are subject to a sentence of imprisonment.

(2) Every decision about, or in anyway relating to, the release of an offender that is made after the commencement date must be made under this ordinance unless specifically provided otherwise.

Application of ordinance to persons subject to term of imprisonment

7. Unless specifically provided otherwise, this ordinance applies to every person who is subject to a term of imprisonment (whether by committal, sentence or order) for non-payment of a fine or other sum of money, disobedience or a court order or contempt of court, as if—

- (a) every reference to a sentence of imprisonment included a reference to a term of imprisonment; and
- (b) every reference to an offender included a reference to a person who is subject to a term of imprisonment.

Application of ordinance to offenders detained in hospital

8.—(1) This section applies to an offender who is detained in or on leave from a hospital following his or her transfer from detention in a penal institution to that hospital under

relevant provisions of law by reason of mental disorder or illness.

(2) An offender to whom this section applies must be treated for the purposes of this ordinance as if he or she were detained in a penal institution and a reference to an offender detained in a penal institution is a reference to an offender detained in or on leave from a hospital.

(3) However, nothing in subsection (2) derogates from any provision that applies specifically to offenders to whom this section applies and the Commission and the Governor may make special arrangements for such offenders.

(4) When an offender to whom this section applies is released under this ordinance, he or she must be treated thereafter as an inpatient or a voluntary patient, as the case may be.

9. For the avoidance of doubt, a requirement in this Part that an offender be released from detention at a certain time is subject to any order of a court or other authority of competent jurisdiction that the offender be detained.

This ordinance
subject to other orders

10.—(1) The Commission must take all reasonable steps to ensure that the information received by the Commission on which it will make any decision relating to an offender is made available to the offender—

General rules about
information to be
given to offenders

- (a) at least 20 working days before the relevant hearing; or
- (b) if that is not possible, as soon as practicable before the hearing.

(2) Notwithstanding subsection (1), the Commission must ensure that—

- (a) no information is given to the offender that discloses the address or contact details of any victim of the offender; and
- (b) if any written submissions by a victim or any victim impact statements are shown to an offender, they are not retained by the offender.

(3) Notwithstanding subsection (1), the Commission may, in exceptional circumstances, order that any information referred to in that subsection not be made available to an offender if, in the opinion of the relevant committee convenor, it would prejudice the mental or physical health of the offender or endanger the safety of any person.

(4) Information withheld under subsection (3) may be provided to the offender's counsel on a confidential basis, with the consent of the offender or, if the circumstances so require, without such consent.

(5) Information provided or shown to an offender under this section must be used only for the purpose of assisting the offender to make submissions to the Commission.

(6) The Commission must give a written copy of every order or determination to the offender who is the subject of the order or determination together with information as to how the offender may exercise any review or appeal rights that he or she has in relation to the order or determination.

(7) Any person who publishes information provided under this section in a form that identifies, or enables the identification of, a victim commits an offence and is liable on summary conviction to—

- (a) in the case of an individual, a term of imprisonment not exceeding 3 months or a fine not exceeding \$2,000; and
- (b) in the case of a body corporate, a fine not exceeding \$10,000.

Conditions

Standard release
conditions

11.—(1) An offender who is subject to the standard release conditions must comply with the following conditions—

- (a) the offender must report in person to the Supervision Officer as soon as practicable and not later than 72 hours after release;
- (b) the offender must report to the Supervision Officer as and when required to do so by the Supervision Officer and must notify the Supervision Officer of his or her residential address and the nature and place of his or her employment when asked to do so;
- (c) the offender must not move to a new residential address without the prior written consent of the Supervision Officer;
- (d) the offender must not reside at any address at which the Supervision Officer has directed the offender not to reside;
- (e) the offender must not engage, or continue to engage, in any employment or occupation in which the Supervision Officer has directed the offender not to engage or continue to engage;
- (f) the offender must not associate with any specified person, or with persons of any specified class, with whom the Supervision Officer has, in writing, directed the offender not to associate;
- (g) the offender must take part in a rehabilitative and reintegrative needs assessment if and when directed to do so by the Supervision Officer.

(2) The conditions in subsection (1)(c) and (d) do not apply if, and to the extent that, they are inconsistent with any special conditions imposed by the Commission.

12.—(1) If the Commission imposes standard release conditions on an offender [], the Commission may (subject to subsections (2) and (4)) impose any one or more special conditions on the offender.

Special conditions

(Amended by Ordinance No. 1 of 2016)

(2) A special condition must not be imposed unless it is designed to—

- (a) reduce the risk of re-offending by the offender; or
- (b) facilitate or promote the rehabilitation and reintegration of the offender; or
- (c) provide for the reasonable concerns of victims of the offender.

(3) Without prejudice to the generality of this section, the kinds of conditions that may be imposed as a special condition include—

- (a) conditions relating to the offender's place of residence (which may include a condition that the offender reside at a particular place) or his or her finances or earnings;
- (b) conditions requiring the offender to participate in a programme (as defined in section 13) to reduce the risk of further offending by the offender through the rehabilitation and reintegration of the offender;
- (c) conditions that the offender not associate with any person, persons or class of persons;
- (d) conditions requiring the offender to take prescription medication;
- [(e) conditions prohibiting the offender from entering or remaining in specified places or areas, at specified times, or at all times;
- (f) conditions requiring the offender to submit to the electronic monitoring of compliance with any release conditions that relate to the whereabouts of the offender.]

(Amended by Ordinance No. 1 of 2016)

(4) No offender may be made subject to a special condition that requires the offender to take prescription medication unless the offender—

- (a) has been fully advised, by a person who is qualified or authorised by law to prescribe that medication, about the nature and likely or intended effect of the medication and any known risks; and
- (b) consents to taking the prescription medication.

(5) An offender does not commit a breach of his or her conditions for the purposes of section 68 if he or she withdraws consent to taking prescription medication but the failure to take the medication may give rise to a ground for recall set out in section 58.

Electronic monitoring

[12A.—(1) The purpose of an electronic monitoring condition imposed under section 12(3)(f) is to deter the offender from breaching conditions that relate to his or her whereabouts, and to monitor compliance with those conditions.

(2) Information about an offender that is obtained through electronic monitoring may be used both for the purposes referred to in subsection (1) and for the following purposes:

- (a) to verify compliance with any release conditions;
- (b) to detect non-compliance with any conditions and the commission of offences;
- (c) to provide evidence of non-compliance with conditions and the commission of offences;
- (d) to verify that the offender has not tampered or otherwise interfered with the ability of the electronic monitoring equipment to operate effectively and accurately.]

(Inserted by Ordinance No. 1 of 2016)

Programmes

13. For the purposes of section 12, a **programme** means any of the following—

- (a) any psychiatric or other counselling or assessment;
- (b) attendance at any medical, psychological, social, therapeutic, cultural, educational, employment-related, rehabilitative or reintegrative programme;
- (c) placement in the care of any appropriate person, persons or agency approved by the Supervision Officer.

Release at statutory release date

Release at statutory
release date

14.—(1) The statutory release date of an offender is the release date of the sentence to which the offender is subject (including any notional single sentences) that has the latest release date.

(2) An offender who is detained in a penal institution [] on his or her statutory release date must be released from detention on that date.

(Amended by Ordinance No. 1 of 2016)

Conditions applying
to release at statutory
release date

15.—(1) An offender who is released under section 14 at the release date of a short-term sentence is, on release, subject to any release conditions imposed by the Court on that sentence unless subsection (3) or section 16 applies.

(2) If an offender is released under section 14 at the release-date of a long-term sentence, the Commission—

- (a) must impose the standard release conditions for a period of six months from the offender’s statutory release date; and
- (b) may [impose] any special conditions for a period of up to six months from the offender’s statutory release date.

(Amended by Ordinance No. 1 of 2016)

(3) If an offender who is subject to a long-term sentence is, while not on parole or compassionate release, sentenced within the year preceding his or her statutory release date to a short-term sentence of which the release date is after that statutory release date, then, if the offender is released at the release date of the short-term sentence, that release date must be treated as if it were the release date of a long-term sentence.

16.—(1) If an offender who is on parole is sentenced to a concurrent short-term sentence of which the release date is before the offender’s statutory release date, then (provided the offender is not recalled) the offender must be released from detention on the release date of the short-term sentence.

Special provision for offenders sentenced to short-term sentences while on parole

(2) If subsection (1) applies, except that the offender is subject to more than one short-term sentence, the offender must be released on the release date of the short-term sentence (including any short-term notional single sentence) that has the latest release date.

(3) For the avoidance of doubt, subsection (2) does not apply in respect of any short-term sentences that are imposed cumulatively if the resulting notional single sentence is a long-term sentence.

(4) If an offender is released in accordance with subsection (1) or subsection (2)—

- (a) the offender is released on parole under section 25 and the Commission must impose release conditions under section 26 accordingly; but
- (b) the actual date of release is determined under sections 48(2) and 50 as if the offender were being released at his or her statutory release date.

(5) If for any reason an offender is released in accordance with subsection (1) or subsection (2) before the Commission has imposed release conditions as required by subsection (4)

(a), then—

- (a) if the offender was at the start date of the sentence (or earliest applicable sentence) subject to any release conditions, the Commission is deemed to have re-imposed those release conditions for the remainder of the period for which they were

- originally imposed; and
- (b) if the offender was not, at the start date of the sentence (or earliest applicable sentence) subject to release conditions, the offender is not subject to release conditions when he or she is released under subsection (1) or subsection (2).

Parole

Parole eligibility date

17.—(1) The parole eligibility date of an offender who is subject [] to one or more sentences [] is the date on which the offender—

- (a) has finished serving the non-parole period of every long-term sentence to which he or she is subject; and
- (b) has passed the release date of every short-term sentence to which he or she is subject.

(Amended by Ordinance No. 1 of 2016)

(2) Notwithstanding anything in this section, an offender who is subject only to one or more short-term sentences does not have a parole eligibility date (unless the short-term sentences are cumulative and form a long-term notional single sentence, in which case subsection (1) applies to the notional single sentence and the offender will have a parole eligibility date under that subsection).

Consideration for parole of offenders detained in penal institution

18.—(1) The Commission must, as soon as practicable after the parole eligibility date of an offender who is detained in a penal institution, consider the offender for release on parole.

(2) The Commission must consider for parole every offender who is detained in a penal institution at least once in every 12 months after the offender's last parole hearing unless, when the offender is due to be considered—

- (a) the offender has a new parole eligibility date that is more than 12 months after his or her last parole hearing (in which case subsection (1) applies); or
- (b) the offender is subject to a postponement order; or
- (c) the offender is detained following an application for a recall order, or under an interim or final recall order.

(3) If subsection 2(c) (but not subsection 2(a)) applies to an offender, the Commission must consider the offender for parole within twelve months of any final recall order that is, or is subsequently, made.

Date of hearings

19. For the purpose of administrative efficiency, the Commission may consider an offender for release on parole at any time within the month preceding the date on which the offender is due to be considered by the Commission; but

in no case may an offender who is considered early under this section be released on parole before his or her parole eligibility date.

[20.—An offender who is released on compassionate release may not be considered for parole by the Commission.]

(Repealed and replaced by Ordinance No. 1 of 2016)

No consideration for parole of offenders on compassionate release

21. An offender who is unlawfully at large on the date on which he or she is due to be considered for parole must be considered by the Commission for parole on the later of—

Consideration of offenders unlawfully at large when due to be considered for parole

- (a) the date that is 12 months after his or her return to custody (or as soon as practicable after it); or
- (b) if the offender, after being returned to custody, has a new parole eligibility date, the offender's parole eligibility date (or as soon as practicable after it).

22.—(1) The chairperson may, in exceptional circumstances, refer an offender who has not yet reached his or her parole eligibility date for consideration by the Commission for parole.

Early referral and consideration for parole

(2) A referral under this section must be in writing and must set out the reasons why the chairperson is making the referral.

(3) The Governor may designate a class of offenders who have not yet reached their parole eligibility dates for early consideration by the Commission for parole.

(4) The Commission must, as soon as practicable, consider for parole any offender referred to it under subsection (1) and every offender belonging to a class designated under subsection (3).

(5) The Commission may direct the release on parole of an offender considered under this section if—

- (a) the Commission is satisfied on reasonable grounds that the offender, if released on parole, will not pose an undue risk to the safety of the community or any person or class of persons within the term of the sentence, having regard to the matters set out in section 25(2)(a) and (b); and
- (b) in the Commission's opinion the interests of justice require that the offender be released before his or her parole eligibility date.

(6) An offender released on parole under this section is to be treated for all purposes as an offender released on parole under section 25(1).

23.—(1) The Commission may, at any time after an offender's parole eligibility date, consider the offender for release on parole at a time other than when the offender is due to be considered for parole and may make an order under section 25(1) directing his or her release on parole.

Other times when Commission may consider offenders for parole

(2) An offender may, at any time, apply to the Commission to exercise its discretion under subsection (1) to consider the offender for parole.

Postponement of
consideration for
parole

24.—(1) If the Commission is satisfied that, in the absence of a significant change in the offender's circumstances, an offender will not be suitable for release at the time when he or she is next due to be considered for parole, the Commission may make a postponement order in relation to the offender.

(2) If the Commission makes an postponement order, it must specify the date by which the offender must be further considered for parole, which—

- (a) in the case of an offender serving an indeterminate sentence, must be within three years of the offender's most recent parole hearing; or
- (b) in the case of an offender serving any other long-term sentence, must be within two years of the offender's most recent parole hearing.

(3) Despite being subject to a postponement order, an offender may at any time apply to the Commission requesting consideration for parole on the grounds that there has been a significant change in his or her circumstances.

(4) A postponement order may be made at—

- (a) an attended parole hearing; or
- (b) a special attended hearing convened for the purpose of considering whether to make a postponement order.

(5) The Commission may not make a postponement order in relation to an offender unless it has first—

- (a) advised the offender, at least 28 days before the hearing, that it is to consider making a postponement order; and
- (b) given the offender an opportunity to make written submissions to the Commission about whether the order should be made; and
- (c) held a hearing at which the offender (in person or through counsel) has been given an opportunity to make oral submissions.

Direction for release
on parole

25.—(1) The Commission may, after a hearing at which it has considered whether to release an offender on parole, direct that the offender be released on parole.

(2) The Commission may give a direction under subsection (1) only if it is satisfied on reasonable grounds that the offender, if released on parole, will not pose an undue risk to the safety of the community or any person or class of persons within the term of the sentence, having regard to—

- (a) the support and supervision available to the offender following release; and
 - (b) the public interest in the reintegration of the offender into society as a law-abiding citizen.
- (3) If the Commission directs the release of an offender on parole, it must specify the date on which the offender is to be released which must be a date that is—
- (a) not later than six months after the hearing; and
 - (b) not a non-release day.
- (4) Notwithstanding subsection (3)(b), the Commission may, in exceptional circumstances, specify a date for release that is a non-release day.
- (5) The Commission may revoke or amend any direction under this section at any time before the offender is released on parole but, if it does so, the Commission must hold another parole hearing as soon as practicable.

26.—(1) The Commission must specify, in respect of every offender who is released on parole—

Release conditions
applying to parole

- (a) how long the standard release conditions will apply to the offender; and
 - (b) whether any special conditions will apply and, if so, what they are and how long they will last.
- (2) If an offender who is released on parole is subject to one or more determinate sentences, the commission must impose the standard release conditions for a period of at least six months but it may impose them for any period up to a maximum of six months beyond the offender's statutory release date.
- (3) If an offender who is released on parole is subject to an indeterminate sentence, the Commission must impose the standard release conditions on the offender for the rest of the offender's life.
- (4) If the Commission imposes special conditions on an offender who is released on parole, the special conditions may apply for as long as, but no longer than, the standard release conditions apply to the offender.

27.—(1) The Commission may, when directing the release on parole of an offender who is detained in, or on leave from, a hospital, vary any standard release conditions or waive the obligation to comply with any or all of them.

Release conditions
applying to offenders
detained in hospital
who are released on
parole

(2) The offender's release conditions do not take effect until the offender is actually released from the hospital.

(3) However, for the purpose of determining when the release conditions are discharged, time starts to run from the

date on which the offender would have been released if he or she had been detained in a penal institution.

When release conditions discharged or suspended

28.—(1) The release conditions of an offender who is on parole (other than an offender who is subject to an indeterminate sentence) are discharged—

- (a) when the period for which they were imposed expires; or
- (b) if the offender resumes detention in a penal institution under a new sentence; or
- (c) when the Commission discharges all release conditions under section 55.

(2) The release conditions of an offender who is on parole are suspended during any period that the offender spends in custody under a court order (for instance, on remand) or an interim recall order, and time runs on the conditions during any period that they are suspended.

When parole ends

29. An offender who has been released on parole ceases to be on parole—

- (a) when the offender reaches his or her statutory release date (as determined under section 14(1)); or
- (b) if the offender resumes detention in a penal institution under a final recall order.

Home detention

(Sections 30–37 repealed by Ordinance No. 1 of 2016)

Compassionate release

Commission may direct early release on compassionate grounds

38.—(1) The Commission may, on referral by the chairperson, direct that an offender be released on compassionate release on either of the following grounds—

- (a) the offender has given birth to a child;
- (b) the offender is seriously ill and is unlikely to recover.

(2) Every referral by the chairperson for consideration for compassionate release must be in writing and set out the reasons why the chairperson is making the referral.

(3) The Commission may, as part of a direction for compassionate release, impose the standard release conditions and any special conditions on the offender and may vary or waive the obligation to comply with any standard release conditions if necessary in the circumstances.

(4) Before an offender is released, the Commission may cancel a direction for release or vary any of the conditions of release.

(5) After an offender is released, the Commission may vary or discharge any release conditions under section 55.

(6) An offender released on compassionate release is liable to recall as if he or she had been released on parole.

(7) When an offender is released under this section, a copy of the order for release, together with any conditions imposed on the offender, must be supplied to—

- (a) the offender; and
- (b) every victim of the offender; and
- (c) the Governor; and
- (d) the police.

Procedures for certain hearings

39. Sections 40 to 47 apply to every hearing of the Commission concerning an offender who—

Application of procedures set out in sections 40 to 47

- (a) is due to be released from detention on his or her statutory release date; or
- (b) is to be considered for parole [].

(Amended by Ordinance No. 1 of 2016)

40.—(1) When an offender is due to be released at his or her statutory release date, or to be considered by the Commission for parole [], the Supervision Officer must provide the Commission with—

Start of process

- (a) copies of all relevant information relating to the offender's current and previous convictions, including (for example) sentencing notes and pre-sentence reports; and
- (b) if the offender has engaged in any restorative justice processes, any reports arising from those processes; and
- (c) in the case of an offender detained in a penal institution, a report by the officer in charge; and
- (d) []
- (e) in the case of an offender currently detained in, or on leave from, a hospital, a report from the responsible clinical (or the most suitable other health professional to provide such a report) concerning the offender and any care programmes that the hospital has put, or intends to put, in place for the offender; and
- (f) in the case of a young offender placed under the control of a caregiver, a report by the caregiver of the conduct and social attitudes of the offender.

(Amended by Ordinance No. 1 of 2016)

(2) The Commission must take all reasonable steps to give notice to the following people that a hearing is pending—

- (a) the offender;
- (b) every victim of the offender;

- (c) the superintendent of the prison in which the offender is detained (if applicable);
- (d) []
- (e) the medical superintendent (in the case of an offender currently detained in a hospital);
- (f) the police.

(Amended by Ordinance No. 1 of 2016)

(3) If the hearing relates to an offender who is subject to a long-term sentence, any victim who is notified must be advised that he or she may request information on the offender under section 41.

(4) Any person notified under subsection (2) may write to the Commission by a given date, making submissions on or giving information relevant to—

- (a) the substantive matter to be decided; and
- (b) whether the hearing should be an unattended hearing or an attended hearing.

(5) For the purpose of providing the reports required under subsection (1)(e) and (f), the responsible clinician (or other health professional) referred to in subsection (1)(e) or the caregiver referred to in subsection (1)(f) (as the case may be) must, on request by the Supervision Officer, supply a report on the relevant offender to the Supervision Officer as required.

Information for
victims

41. If a victim requests information on an offender under section 40(3), the Supervision Officer must prepare and send to the victim the following—

- (a) a list of any programmes that the offender has attended since commencing his or her sentence and a list of any programmes that the offender has completed;
- (b) a statement of the offender's current security classification;
- (c) a list of any convictions received by the offender since commencing his or her sentence;
- (d) an explanation of the hearing process and how the victim may participate;
- (e) an undertaking that the purpose of providing the victim with information about the offender is to assist the victim to make submissions and that the information is not to be used for any other purpose.

Decision on type of
hearing

42.—(1) The committee convenor who is allocated to conduct a particular hearing must decide whether that hearing will be an unattended hearing under section 45 or an attended hearing under section 46.

(2) A decision under subsection (1) may not be made until—

- (a) the Commission has received the information referred to in section 40(1); and
 - (b) the given date referred to in section 40(4) has passed.
- (3) If the committee convenor believes on reasonable grounds that the Commission is able to make a proper decision on the basis of the information available to the Commission, without the need for any person other than Commission members to attend the hearing, the convenor may decide that the hearing will be an unattended hearing.
- (4) In deciding whether to hold an unattended hearing or an attended hearing, the committee convenor must consider—
- (a) whether and how often the offender has been considered by the Commission;
 - (b) the length of time since his or her last attended hearing (if any);
 - (c) whether there are significant advantages to be gained by having one type of hearing rather than the other;
 - (d) whether written submissions indicate that there are matters that warrant consideration at an attended hearing;
 - (e) any relevant cultural or personal factors;
 - (f) any other matter that the committee convenor considers relevant.
- (5) The decision on the type of hearing must be notified in writing to the offender and every victim of the offender and to any other person from whom the Commission wishes to receive information in relation to the hearing.
- (6) A committee convenor may, before or during an unattended hearing, determine that the hearing must be an attended one and, in that case, a time for the attended hearing must be fixed and the people referred to in subsection (5) must be notified accordingly.
- (7) Notification under subsections (5) or (6) must include—
- (a) if the hearing is to be an unattended one, a summary of the reasons for deciding that the hearing will be unattended and information about the right to an interview under section 44; and
 - (b) if the hearing is to be an attended one, the date of the hearing and relevant information about the rights of people attending; and
 - (c) information about the right of review given by section 43.

43.—(1) A person who is dissatisfied with a decision that a hearing will be an unattended hearing may seek a review of the decision by writing to the Commission within thirty days of the date of the notice.

Review of decision on
type of hearing

(2) The Commission must review a decision on the type of hearing as soon as practicable after a person has asked for a review of the decision.

(3) Following a review, the Commission may confirm the decision or determine that the hearing will be an attended hearing.

(4) If the hearing is to be an attended hearing, the Commission must fix a time for the attended hearing and notify the people referred to in section 42(5) accordingly.

(5) If the hearing is to be an unattended hearing, the Commission must notify the person who sought the review.

Interviews before
hearings

44.—(1) If a hearing is to be an unattended hearing, the offender and every victim of the offender must be given the opportunity to have an interview before the hearing with one member of the committee allocated to conduct the hearing.

(2) The member conducting the interview may conduct the interview at whatever place and in whatever manner he or she considers appropriate, subject to this section.

(3) In relation to an interview with a victim—

- (a) the victim may have a support person with him or her and the support person may, with the consent of the victim and the permission of the member conducting the interview, speak on behalf of the victim; and
- (b) if there are special circumstances, and with the consent of the victim and the prior written approval of the Commission, the victim may be represented at the interview by another person who must attend the interview in place of the victim; and
- (c) the interview may not take place at a penal institution unless the victim (or his or her representative) consents.

(4) At an interview with an offender, the offender may have a support person with him or her and the support person may, with the consent of the offender and the permission of the member conducting the interview, speak in support of the offender.

Unattended hearings

45.—(1) At an unattended hearing, the only people who may be present are—

- (a) the Commission members conducting the hearing; and
- (b) the staff assisting the Commission; and
- (c) any other person whom the Commission agrees in writing to allow to be present.

(2) An unattended hearing may be conducted with any or all of the people mentioned in subsection (1) being present by way of telephone or video link, rather than in person.

46.—(1) An attended hearing must be conducted in the manner of an inquiry and in an atmosphere that encourages persons appearing before the Commission to speak for themselves and as freely and openly as possible.

Attended hearing

(2) Within that context, the Commission may conduct the hearing as it thinks appropriate and, subject to this section, has the following powers—

- (a) to determine who may attend and determine whether a person may attend other than in person (for instance by telephone or video link);
 - (b) to determine who may speak;
 - (c) to impose limits on what a person may talk about and for how long;
 - (d) to require any person to leave the hearing, either temporarily or for the remainder of the hearing;
 - (e) to adjourn the hearing.
- (3) The offender who is being considered is entitled to—
- (a) appear and make oral submissions to the Commission; and
 - (b) attend while any other person is making submissions, provided that the offender may not be present unless the victim, the offender and the Commission agree; and
 - (c) with the leave of the Commission, be represented by counsel; and
 - (d) be accompanied by one or more support persons (subject to any limitation on numbers imposed by the Commission) who may, with leave of the Commission, speak in support of the offender.
- (4) Every victim of the offender is entitled to—
- (a) appear and make oral submissions to the Commission for the purpose of assisting the Commission to reach a decision;
 - (b) with the leave of the Commission, be represented by counsel; and
 - (c) be accompanied by one or more support persons (subject to any limitation on numbers imposed by the Commission) who may, with the leave of the Commission
 - (i) speak in support of the victim; and
 - (ii) with the permission of the victim, speak on behalf of the victim.

Decisions must be notified

47.—(1) After a hearing, every person who was notified under section 40(2) must be advised—

- (a) whether, and if so, when, the offender is to be released from detention []; and
- (b) of any release [] conditions applying to the offender; and
- (c) if a postponement order has been made, the duration of the postponement.

(2) Advice under subsection (1) to a victim may include all those release [] conditions which are of personal relevance to the victim or his or her family, or which address the victim's submissions.

(Amended by Ordinance No. 1 of 2016)

Actual release

Date of release

48.—(1) This section applies to an offender who is serving a sentence of imprisonment in a penal institution.

(2) An offender who is due to be released at his or her statutory release date must be released from the penal institution on that date, unless he or she is released earlier under section 49.

(3) An offender who has been directed by the Commission to be released on parole or compassionate release [] must be released from the penal institution on the date specified by the Commission.

(Amended by Ordinance No. 1 of 2016)

Release of offenders released at statutory release date

49.—(1) This section applies only to an offender who is serving a sentence of imprisonment of more than 14 days and who is due to be released from a penal institution [] at his or her statutory release date.

(Amended by Ordinance No. 1 of 2016)

(2) If the offender's statutory release date falls on a non-release day, the offender must be released on the nearest preceding date that is not a non-release day.

(3) If an offender is released early under subsection (2), the offender, during the period between the date of actual release and his or her statutory release date—

- (a) is subject to any release conditions that will apply on his or her statutory release date as if he or she had been released on his or her statutory release date (but time does not begin to run on any conditions until the offender's statutory release date); and
- (b) is liable to recall.

50.—(1) When an offender is released from detention in a penal institution [], he or she must be issued with a licence that sets out—

Licence issued on release

- (a) the release conditions [] that apply to the offender; and
- (b) the date or dates on which the conditions, or any of them, cease to apply; and
- (c) details about liability to recall; and
- (d) the statutory provisions under which the conditions may be varied or discharged.]

(Amended by Ordinance No. 1 of 2016)

(2) Subsection (1) does not apply to an offender who is released from a short-term sentence if, on release, the offender is not subject to any release conditions.

(3) (Repealed by Ordinance No. 1 of 2016)

(4) If an offender's release conditions [] are varied or discharged, the offender must be given a new or amended licence that shows the conditions as varied or discharged.

(Amended by Ordinance No. 1 of 2016)

51.—(1) [Before] an offender is released from detention in a penal institution [], the Supervision Officer must advise the police of—

Police must be advised

- (a) the date on which the offender is released; and
- (b) the offender's release conditions; and
- (c) the offender's statutory release date.

(Amended by Ordinance No. 1 of 2016)

52.—(1) The Governor may, by notice in writing to the superintendent of a penal institution, order the release of an offender into the custody of any officer of the police if—

Release for purpose of deportation

- (a) the offender is subject to a sentence of imprisonment; and
- (b) the offender has been ordered to be deported from the Islands by the Governor under section 6 of the Landing and Residence Ordinance.

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(2) A notice issued under subsection (1) is sufficient authority for the superintendent to release the offender accordingly on request by any officer of the police.

(3) When a ship becomes available to take the offender from the Islands and it is practicable in all the circumstances for the offender to leave on that ship, an officer of the police may require the superintendent, in accordance with subsection (1), to deliver the offender into the custody of the officer; and the officer must escort the offender (or arrange for him or her to be escorted) to the Landing and ensure that the offender is placed upon the ship and detained there until the ship leaves the Islands.

(4) If for any reason that ship is delayed in the Islands for more than 24 hours, the offender must be returned to the custody of the superintendent and, for that purpose, the warrant by which the offender was originally committed to the institution is deemed to be still in force.

(5) If an offender is returned to custody under subsection (4), the superintendent must, on request by any officer of the police, release the offender into the custody of that officer for deportation and the provisions of this section apply in respect of every request until the offender is finally deported.

(6) Notwithstanding subsection (1), in respect of any offender to whom paragraphs (a) and (b) of that subsection apply, the Supervision Officer may, at any time within 28 days preceding the offender's statutory release date, by notice in writing to the superintendent of the penal institution in which the offender is detained, order the release of the offender into the custody of any officer of the police in possession of the notice; and that notice is sufficient authority for the superintendent to release the offender accordingly.

(7) If an offender is released into the custody of an officer of the police under subsection (6), subsections (3) to (5) apply as if the release were ordered by the Governor.

(8) If an offender is released and deported under this section, his or her sentence continues to run and, if the offender subsequently returns to the Islands before the sentence expiry date, the offender is liable to resume serving it.

Variation and discharge of conditions

Application for
variation or discharge
of conditions

53.—(1) An offender who is subject to release conditions [] imposed by the Commission may apply to the Commission at any time for the variation or discharge of any of those conditions.

(2) The Supervision Officer may at any time apply to the Commission for the variation or discharge of any release condition [] imposed by the Commission that applies to the offender.

(3) An application under this section must indicate whether or not the offender wishes to appear before the Commission to state his or her case.

(4) When the Supervision Officer applies for the variation or discharge of a condition, the Supervision Officer may suspend the condition until the application is determined.

(Amended by Ordinance No. 1 of 2016)

Procedure for
determining
applications

54.—(1) Before determining an application for variation or discharge, the Commission may seek information from anyone

it considers has, or may have, an interest in the application, such as the police or any victim of the offender.

(2) For the avoidance of doubt, section 10 (concerning information to be given to offenders) applies to hearings for the purpose of determining an application for variation or discharge.

(3) An application for variation or discharge may be determined without the Commission hearing from any person, unless—

- (a) the offender has asked to appear before the Commission to state his or her case; or
- (b) the Commission wishes to hear from any person orally.

55.—(1) On an application under section 53, the Commission may direct the variation or discharge of any release condition [] imposed by the Commission that applies to an offender.

Commission determines application for variation or discharge

(2) The Commission may not—

- (a) extend the duration of any release condition to a date that is later than six months after the offender's statutory release date; or
- (b) extend the duration of any special condition beyond the date on which the standard release [] conditions cease to apply.

(3) The Commission may not discharge the standard release conditions with effect from a date that is less than six months after the date on which the offender was released, unless the offender is released on compassionate release or was, at the time of his or her release, detained in a hospital.

(4) If the Commission directs the variation or discharge of a condition—

- (a) the variation or discharge takes effect on the date specified in the direction; and
- (b) every variation must be treated as part of the conditions that apply to the offender; and
- (c) notice of the direction must be given to the offender, the Supervision Officer, the police and (if reasonably practicable) any victim to whom notice of the original condition was given.

(Amended by Ordinance No. 1 of 2016)

Recall

56. A **recall application** is an application for an order that an offender be recalled to continue serving a sentence of imprisonment in a penal institution.

Definition of recall application

Making recall
application

57.—(1) The Supervision Officer may make a recall application to the Commission in respect of any offender who—

- (a) is subject to an indeterminate sentence; and
- (b) is on parole or on compassionate release.

(2) The Supervision Officer may make a recall application to the Commission in respect of any offender who—

- (a) is subject to a determinate sentence; and
- (b) has not yet reached his or her statutory release date; and
- (c) is on parole, [] or compassionate release.

(Amended by Ordinance No. 1 of 2016)

(3) A recall application must specify the ground or grounds in section 58 on which the applicant relies and the basis on which the applicant is satisfied that the ground or grounds apply.

[(4) When a recall application is made, the sentence to which the application relates ceases to run, except for any period between the lodgement of the application and the date on which it is determined during which the offender is in custody in a penal institution.]

(Repealed and replaced by Ordinance No. 1 of 2016)

Grounds for recall

58. The grounds for recall are that—

- (a) the offender poses an undue risk to the safety of the community or any person or class of persons; or
- (b) the offender has committed a breach of his or her release conditions []; or
- (c) the offender has committed an offence punishable by imprisonment; or
- (d) []
- (e) in the case of an offender who is subject to a special condition that requires his or her attendance at a residential programme—
 - (i) the offender is jeopardising the safety of any person at the residence or the order or security of the residence; or
 - (ii) the offender has failed to remain at the residence for the duration of the programme; or
 - (iii) the programme has ceased to operate or the offender's participation in it has been terminated for any reason.

(Amended by Ordinance No. 1 of 2016)

Making an interim
recall order

59.—(1) On receiving a recall order, the chairperson or any committee convenor must make an interim recall order if he or she is satisfied on reasonable grounds that—

- (a) the offender poses an undue risk to the safety of the community or to any person or class of persons; or
- (b) the offender is likely to abscond before the determination of the application for recall [].

(Amended by Ordinance No. 1 of 2016)

(2) When deciding whether to make an interim recall order in respect of an offender who is currently detained, the chairperson or committee convenor (as the case may be) must make the decision as if the offender were not detained.

60.—(1) When an interim recall order is made, the chairperson or a committee convenor (as the case may be) must issue a warrant in the prescribed form for the offender to be detained in a penal institution pending the determination of the application for recall.

What happens when interim recall order made

(2) At any time after a warrant is issued under subsection (1), a police officer may arrest the offender, whether or not the officer has possession of the warrant, for the purpose of returning the offender to a penal institution.

(3) On, or as soon as practicable after, being taken into custody following the issue of a warrant under subsection (1), the offender must be given a copy of the recall application and a notice that—

- (a) specifies the date on which the application is to be determined; and
- (b) advises the offender of his or her right to appear before the Commission and to state his or her case in person or through counsel; and
- (c) requires the offender to notify the Commission not later than 14 days before the date on which the application is to be determined, whether he or she wishes to make written submissions or to appear in person or to be represented by counsel.

(4) While an offender is subject to an interim recall order, he or she must be detained in custody.

61. If no interim recall order is made following a recall application, the Commission must cause to be served on the offender—

What happens if no recall order made

- (a) a copy of the recall application;
- (b) a notice of the kind described in section 60(3).

62.—(1) If an interim recall order is made, the Commission must determine the recall application on a date that is—

Procedure for determining recall applications

- (a) if the offender is in custody when the interim order is made, at least 21 days after, but not more than one month after, the date of the interim order; or

- (b) if the offender is not in custody when the interim order is made, at least 21 days after, but not more than one month after, the date on which the offender is taken into custody.

(2) If no interim recall order is made, the Commission must determine the recall application on a date that is at least 21 days after, but not more than two months after, the date on which the copy of the recall application is served on the offender.

(3) For the avoidance of doubt, section 10 (concerning information to be given to offenders) applies to hearings for the purpose of determining a recall application.

(4) The Commission may determine a recall application without the Commission hearing from any person orally unless —

- (a) the offender has indicated that he or she, in person or through counsel, wishes to appear to state his or her case; or
- (b) the Commission wishes to hear from any other person orally.

(5) Notwithstanding subsections (1) and (2), the Commission may from time to time adjourn the hearing of a recall application; but no adjournment may be for more than eight days, unless the offender consents to a longer period.

Commission may
make final recall order

63.—(1) The Commission may make a final recall order recalling an offender to continue serving his or her sentence in a penal institution if, following a hearing on a recall application, it is satisfied on reasonable grounds that one or more of the grounds for recall in section 58 have been established.

(2) When deciding whether to make a final recall order in respect of an offender who is currently detained, the Commission must make the decision as if the offender were not detained.

(3) On making a recall order, the Commission must issue a warrant in the prescribed form for the offender to resume serving his or her sentence in a penal institution.

(4) If the Commission refuses a recall application —

- (a) the Commission must direct the offender's release from custody under any warrant issued under section 60(1) (if applicable); and
- (b) any release conditions [] that were suspended resume (subject to paragraph (c)); and
- (c) the Commission may vary or discharge any conditions imposed by the Commission that apply

to the offender without the need for an application under section 53.

(Amended by Ordinance No. 1 of 2016)

Reviews and appeals from decisions

64.—(1) Subject to subsection (2), an offender who is the subject of any decision of the Commission under this ordinance may, within 28 days of the decision, apply in writing to the Commission for a review of that decision.

Review of decisions

(2) No review under this section may be sought in respect of—

- (a) a decision under section 42 about the type of hearing; or
- (b) a decision under section 43 on a review of a decision about the type of hearing.

(3) The grounds for an application for review under this section are that the Commission, in making the decision—

- (a) failed to comply with the procedures set out in this ordinance and any regulations made under it; or
- (b) made an error of law; or
- (c) failed to comply with a policy of the Commission developed under section 87(2)(a), which resulted in unfairness to the offender; or
- (d) based its decision on erroneous or irrelevant information that was material to the decision reached; or
- (e) acted without jurisdiction.

(4) A review under this section must be undertaken, as soon as practicable, by the chairperson or by a committee convenor to whom the chairperson delegates the conduct of the review.

(5) Following a review, the reviewer must—

- (a) confirm, quash, or amend the decision; or
- (b) refer the matter back to the Commission with a direction to reconsider and decide the matter.

(6) for the purposes of an appeal under section 65—

- (a) a decision to confirm, quash or amend the decision is the final decision of the Commission; and
- (b) a decision of the Commission taken following a reconsideration in accordance with a referral under subsection (5)(b) is the final decision of the Commission.

65.—(1) An offender who is subject to a postponement order or a final recall order may, within 28 days of the date of the decision on a review under section 64 (or whatever longer time the Court permits), appeal to the Supreme Court

Appeals to Supreme Court

against the decision on the grounds that the order ought not to have been made.

(2) No appeal may be made under this section until the decision to make the order has been reviewed under section 64.

(3) If an offender lodges an appeal, he or she remains subject to the order while the appeal is determined.

(4) In the case of an appeal against a final recall order, without limiting the matters that the Court may consider in determining the appeal, the Court must consider the need to protect the community or any person or class of persons.

Procedure on appeals

66.—(1) An appellant must forward a copy of his or her appeal to the Commission.

(2) On receiving a copy of an appeal, the Commission must forward to the Registrar of the Supreme Court all information in its possession regarding the decision appealed against.

(3) The Registrar of the Supreme Court must, on receipt of the information from the Commission, set down the appeal for hearing on the first practicable sitting day in the most convenient place where sittings of the Supreme Court are held, and must notify the appellant and the Commission accordingly.

(4) Subject to this section and, with any necessary modifications, the provisions of sections 11, 14 and 22 of the Judicature (Appeals in Criminal Cases) Ordinance shall apply to an appeal under section 65 as if the order appealed against were an order made by the Magistrate's Court.

cap.4

(5) On an appeal under section 65, the Court may receive in evidence anything that the Commission could have received at first instance.

(6) The Court is not bound to allow the appeal on the ground merely of the improper admission or rejection of evidence unless, in the opinion of the Court, a substantial wrong or miscarriage of justice occurred because of it.

Powers of Court on appeal

67.—(1) On an appeal against a postponement order, the Court may—

- (a) confirm, quash or amend the order; or
- (b) refer the matter back to the commission with a direction to reconsider and decide the matter, in which case it must—
 - (i) advise the Commission of its reasons for doing so; and
 - (ii) give the Commission any directions that it thinks just concerning any aspect of the reconsideration.

(2) On an appeal against a final recall order, the Court may—

- (a) confirm the order; or

- (b) quash the order and, unless the offender is liable to be detained under this or any other enactment,—
 - (i) direct the release of the offender from custody; or
 - (ii) direct the release of the offender on standard release [] conditions (in which case the conditions are deemed to have been imposed by the Commission) and refer the offender to the Commission for consideration of whether to impose any special conditions; or
- (c) refer the matter back to the Commission with a direction to reconsider and decide the matter, in which case it must—
 - (i) advise the Commission of its reasons for doing so; and
 - (ii) give the Commission any directions that it thinks just concerning any aspect of the reconsideration.

(Amended by Ordinance No. 1 of 2016)

Offences

68.—(1) Every offender commits an offence and is liable on summary conviction to imprisonment for a term not exceeding one year or to a fine not exceeding \$2,000, who commits any breach, without reasonable excuse, of any release conditions [] imposed by the Commission.

Offence to commit
breach of conditions

(2) The conviction and sentencing of an offender under this section does not limit the power to recall the offender from parole [] or compassionate release.

(Amended by Ordinance No. 1 of 2016)

69. (Repealed by Ordinance No. 1 of 2016)

Offence to refuse
entry to home
detention residence

Arrest of offenders

70.—(1) Any police officer may arrest, without a warrant, an offender whom the officer has reasonable grounds to believe is unlawfully at large.

Arrest without
warrant

(2) Any police officer or the Supervision Officer may arrest, without a warrant, an offender whom the police officer or Supervision Officer has reasonable grounds to believe has committed a breach of any of his or her release conditions [].

(Amended by Ordinance No. 1 of 2016)

Regulations

71. The Governor may, from time to time, make regulations for all or any of the following purposes—

Regulations

- (a) prescribing forms for the purpose of this Part;
- (b) prescribing the manner in which the key dates and non-parole periods of sentences of imprisonment are to be determined;
- (c) providing that specified information must be given to offenders and prescribing the manner and form in which that information is to be given;
- (d) regulating the operation of the Commission;
- (e) prescribing offences in respect of the contravention of, or non-compliance with, any regulations made under this section and the amounts of the fines that may be imposed in respect of those offences;
- (f) generally providing for any other matters that are contemplated by, or necessary for giving full effect to, this Part and its due administration.

Sentence Calculation

Cumulative sentences

Cumulative sentences form notional single sentence

72.—(1) If, after the commencement date, an offender is sentenced to a sentence of imprisonment (a **later sentence**) that is directed to be served cumulatively on another sentence (an **earlier sentence**), the later sentence and the earlier sentence form a notional single sentence for the purpose of determining—

- (a) whether the offender is subject to a long-term sentence or a short-term sentence; and
- (b) the non-parole period to apply when determining the offender’s parole eligibility date; and
- (c) the release date to apply when determining the offender’s statutory release date.

(2) If the earlier sentence is part of a series of cumulative sentences, then all the sentences in that series, along with the later sentence, form a notional single sentence for the purpose described in subsection (1).

(3) Every sentence in a series of cumulative sentences links to the next one in the series at its sentence expiry date.

Start date of sentence of imprisonment

General rules about start date of sentence of imprisonment

73. The start date of a sentence of imprisonment imposed after the commencement date is the date on which the sentence is imposed, except as otherwise provided in sections 74 to 78.

Start date of notional single sentence

74. The start date of a notional single sentence is the start date of the first sentence in the series of sentences that forms the notional single sentence.

75. If a Court defers a start date under any provision of law, the start date of the sentence of imprisonment is the date on which the offender is taken into custody after the expiry of the period specified by the Court.

Deferred start date

76.—(1) Subject to this section, if a sentence of imprisonment is quashed or otherwise set aside and another sentence of imprisonment is substituted for it, the start date of the new sentence is the start date of the original sentence.

Start date if new sentence replaces original sentence

(2) Subsection (3) applies if—

- (a) a sentence of imprisonment that was directed to be served cumulatively on another sentence or term is quashed or otherwise set aside; and
- (b) a new sentence of imprisonment is substituted for the original sentence, but is not directed to be served cumulatively.

(3) In the situation described in subsection (2), the start date of the new sentence is the start date that the original sentence would have had if it had not been directed to be served cumulatively.

77.—(1) This section applies if an offender is temporarily surrendered to Pitcairn under the law of extradition in force in Pitcairn and—

Start date after temporary surrender to Pitcairn

- (a) is convicted and sentenced to a sentence of imprisonment; and
- (b) is required to be returned in accordance with such law to the country from which the offender was surrendered on completion of the proceedings to which the extradition related.

(2) Unless the Court otherwise directs, the start date of the sentence imposed is the date on which the person, having been returned to Pitcairn, is taken into custody.

(3) This section applies notwithstanding any other provision in this ordinance.

78. If a person on whom a term of imprisonment is imposed for non-payment of a sum of money, disobedience of a court order or contempt of court is not already detained under a sentence of imprisonment, then the start date of the sentence of imprisonment is the day on which the person is taken into custody to serve the term imposed.

Start date of sentence of imprisonment when term imposed

Sentence expiry dates

79.—(1) The sentence expiry date of a determinate sentence is the date that is reached when the offender who is subject to the sentence has served the full term of the sentence.

Sentence expiry date

(2) The sentence expiry date of a notional single sentence is the sentence expiry date of the last sentence in the series of sentences that forms the notional single sentence.

(3) An indeterminate sentence has no sentence expiry date.

Non-parole periods

Non-parole periods

80.—(1) The non-parole period of a long-term determinate sentence is one-third of the length of the sentence, unless the sentence is one to which subsection (2) or subsection (4) applies.

(2) The non-parole period of a sentence in respect of which the Court has imposed a minimum term of imprisonment is the minimum term imposed.

(3) The non-parole period of a sentence of imprisonment for life (other than one in respect of which the Court has imposed a minimum term of imprisonment) is ten years.

(4) The non-parole period of a long-term notional single sentence is the total obtained by adding together all the non-parole periods of every sentence that makes up the notional single sentence.

(5) For the purpose only of calculating the non-parole period of a long-term notional single sentence, every short-term sentence within the notional single sentence must be treated as if it had a non-parole period of one-third of its length.

Release dates

Release date of sentence

81.—(1) The release date of a short-term sentence (including a short-term notional single sentence) is the date on which the offender who is subject to the sentence has served half of it.

(2) The release date of a long-term determinate sentence (including a long-term notional single sentence) is its sentence expiry date.

(3) An indeterminate sentence has no release date.

Determining key dates

Supervision Officer must determine key dates etc.

82.—(1) The Supervision Officer must ensure that the key dates and non-parole period of every sentence to which an offender is subject and the offender’s parole eligibility date and statutory release date (if any) are determined in accordance with this Part and any regulations made under this ordinance.

(2) Notwithstanding subsection (1), the non-parole period and release date of every sentence imposed on an offender need not be determined if the offender’s parole eligibility date and statutory release date (if any) may be correctly calculated

without determining all the non-parole periods and release dates.

(3) A determination under this section may be revised at any time.

[82A. For the purpose of calculating the key dates and non-parole period of a sentence of imprisonment (including a notional single sentence) and an offender's statutory release date and parole eligibility date, an offender is deemed to have been serving the sentence during any period that the offender has spent in pre-sentence detention.

Period spent in pre-sentence detention deemed to be time served

(2) Where an offender is subject to 2 or more concurrent sentences,

- (a) the amount of pre-sentence detention applicable to each sentence must be determined; and
- (b) the amount of pre-sentence detention that is deducted from each sentence must be the amount determined in relation to that sentence.

(3) Where an offender is subject to 2 or more cumulative sentences that make a notional single sentence, any pre-sentence detention that relates to the cumulative sentences may be deducted only once from the single notional sentence.

82B.—(1) Pre-sentence detention is detention of a type described in subsection (2) that occurs at any stage during the proceedings leading to a conviction or pending sentence of the person, whether that period (or any part of it) relates to—

Meaning of pre-sentence detention

- (a) any charge on which the person was eventually convicted; or
- (b) any other charge on which the person was originally arrested; or
- (c) any charge that the person faced at any time between his or her arrest and before conviction.

(2) The types of detention that are pre-sentence detention are—

- (a) detention in a prison pursuant to section 4 of the Prisons Ordinance;
- (b) detention in a New Zealand prison pursuant to section 38(2) of the Pitcairn Trials Act 2002 (NZ);
- (c) detention in a New Zealand hospital or other similar institution pursuant to section 46 of the Pitcairn Trials Act 2002 (NZ).

(3) In the case of a person who is convicted of an offence following upon his or her extradition to the Islands, pre-sentence detention includes detention in custody overseas in relation to that extradition provided that the length of such

detention is recorded in a certificate supplied by the competent authority in the overseas country from which the person was extradited.

(4) The certificate referred to in subsection (3) shall be sought by the Governor from the competent authority in the country from which the person was extradited.

(5) In the event that no such certificate is made available, then the length of pre-sentence detention shall be determined having regard to the information that is available to the Governor, provided that the Governor is satisfied the information is accurate.

(6) Detention that would, under subsection [(2) or (3)], be pre-sentence detention, is not pre-sentence detention if the offender was, during that detention,—

- (a) serving a sentence of imprisonment in a penal institution []; or
- (b) in the case of a person who was extradited to the Islands, detained in custody under a sentence for an offence imposed under the law of the country from where the offender was extradited [under] the request for extradition.

(Amended by Ordinance No. 1 of 2016)

Islands time to be used in calculating key dates

82C.—In any case where the calculation of key dates or non-parole periods depends in whole or part upon the time at which an event (such as the commencement of pre-sentence detention) occurred in some place outside the Islands, the time at which that event took place shall be expressed in Islands time and the key dates or non-parole period shall be calculated accordingly.]
(Sections 82A — 82C inserted by Ordinance No. 2 of 2007)

Time ceases to run in certain circumstances

83. For the purpose of calculating how much time an offender who is subject to a sentence of imprisonment has served, time ceases to run—

- (a) for an offender detained in a penal institution, during any period when the offender is unlawfully at large from detention; and
- (b) for an offender on parole or compassionate [release], during any period between the date on which an application for a recall order is lodged and the date on which the offender is next taken [into] custody [].

(Amended by Ordinance No. 1 of 2016)

Time on bail pending appeal does not count as time served

84. Any time during which an offender is released from detention on bail pending an appeal does not count as time served under any sentence.

85.—(1) Subsection (2) applies if—

- (a) a sentence of imprisonment is passed on the conviction of an offender; and
- (b) that conviction is subsequently quashed and a new hearing or a new trial is ordered; and
- (c) following a new hearing or a new trial, the offender is again convicted and a new sentence of imprisonment is imposed on the offender.

Period between
quashed sentence and
new sentence does not
count as time served

(2) In the situation in subsection (1), the period commencing on the quashing of the first sentence and the imposition of the new sentence does not count as time served under the new sentence.

PART III

Pitcairn Parole Commission

Establishment of Commission

86. The Pitcairn Parole Commission is established as an independent statutory body.

Pitcairn Parole
Commission
established

87.—(1) The functions of the Commission are—

- (a) to consider offenders for parole and, if appropriate, to direct offenders to be released on parole (under sections 17 to 29);
- (b) []
- (c) to consider offenders for release on compassionate release and, if appropriate, to give a direction for their release on compassionate grounds under section 38;
- (d) to set the conditions for—
 - (i) offenders released at their statutory release date (under section 15); and
 - (ii) offenders released on parole or compassionate release; and
 - (iii) []
 - (iv) offenders released at their final release date under section ;
- (e) to consider and determine applications for—
 - (i) the variation and discharge of release conditions [] under section 55; and
 - (ii) interim and final recall from parole [] or compassionate release;
- (f) to make postponement orders under section 24 in relation to offenders;
- (g) to make and review orders under this ordinance;
- (h) to review decisions in accordance with section 64;
- (i) to do anything else required under this ordinance or any other enactment.

Functions of
Commission

(Amended by Ordinance No. 1 of 2016)

- (2) The Commission also has the following functions—
- (a) to develop policies on how to discharge its function under this section and to amend and revise those policies as it sees fit;
 - (b) to maintain a register of Commission decisions;
 - (c) to keep statistical and other records relating to its work;
 - (d) to provide information that is readily accessible to offenders, victims and the general public about matters relating to release from detention and the policies and operation of the Commission generally.

Administrative and
training support for
Commission

88. (Repealed by Ordinance No. 1 of 2016)*Membership of Commission*

Membership of
Commission

89.—(1) The Commission consists of members who are appointed by the Governor on the recommendation of the [Attorney General].

- (2) The Commission must include—
- (a) one member who is appointed as chairperson; and
 - (b) at least [two] members who are appointed as committee convenors; and
 - (c) a sufficient number of other members to enable the Commission to carry out its functions efficiently and effectively.

(Amended by Ordinance No. 1 of 2016)

(3) Before recommending a person as a member, the [Attorney General] must be satisfied that the person has—

- (a) knowledge or understanding of the criminal justice system; and
- (b) the ability to make a balanced and reasonable assessment of the risk an offender may present to the community when released from detention; and
- (c) the ability to operate effectively with people from a range of cultures; and
- (d) sensitivity to, and understanding of, the impact of crime on victims.

(Amended by Ordinance No. 4 of 2010)

Chairperson of
Commission

90.—(1) The member appointed as chairperson must be a Judge of the Supreme Court or a former Judge of the Supreme Court or a Magistrate or a former Magistrate.

(2) The primary function of the chairperson is to ensure that the Commission carries out its function in accordance with this ordinance in an efficient and effective manner.

- (3) Without limiting the function described in subsection (2), it is also the function of the chairperson to—
- (a) make referrals to the Commission for early release under section 22; and
 - (b) make referrals to the Commission for compassionate release under section 38; and
 - (c) make interim recall orders under section 59; and
 - (d) allocate committee convenors to undertake reviews of decisions under section 64; and
 - (e) do anything else that the chairperson is required to do under this ordinance or any other enactment.
- (4) The chairperson may sit as a member (including as a committee convenor) at any committee hearing.

91.—(1) The chairperson may delegate any of his or her functions or powers to any one or more committee convenors.

Delegation of chairperson's functions, powers and duties.

(2) Every delegation must be in writing and may be revoked at will, either in writing or orally.

(3) A delegation under this section may not be further delegated.

(4) For the purpose of ensuring that the functions and powers of the chairperson are performed or exercised during any period when the chairperson is absent or incapacitated, the chairperson must ensure that at all times he or she has nominated one committee convenor to serve as acting chairperson if the need arises.

(5) The fact that a person purports to exercise or to have exercised any function or power of the chairperson under a delegation or nomination is, in the absence of proof to the contrary, sufficient evidence of the person's authority to do so.

92.—(1) Every member who is appointed as a committee convenor must be a Magistrate, a former Magistrate or a barrister or solicitor who has held a practising certificate admitting him or her to practise in Pitcairn or in any Commonwealth country, or both, for at least seven years.

Committee convenors

(2) Notwithstanding subsection (1), at any time there may be appointed as a committee convenor one person who is a Judge of the Supreme Court or a former Judge of the Supreme Court.

(3) The functions of a committee convenor are—

- (a) to make the decision on whether to hold an attended or an unattended hearing for any decision relating to [release conditions or parole]; and
- (b) at a hearing—
 - (i) to preside at the hearing; and
 - (ii) to determine any matters of procedure that

- may arise during or in relation to the hearing;
and
- (iii) to sign the decision of the committee at that hearing; and
 - (c) to make interim recall orders under section 59; and
 - (d) to undertake reviews [under sections 43(2) and 64]; and
 - (e) to do anything else that a committee convenor is required to do under this ordinance or any other enactment; and
 - (f) under the direction of the chairperson, to undertake or assist in the exercise of any of his or her functions.

(Amended by Ordinance No. 1 of 2016)

(4) The chairperson may appoint any member (whether or not qualified to be a committee convenor) as an acting committee convenor in respect of a particular hearing or number of hearings if, for any reason, a committee convenor is not available for that hearing or those hearings.

(5) If the chairperson sits on a parole committee, he or she may act as a committee convenor for the purposes of that sitting; and for that purpose the chairperson has all the functions and powers of a committee convenor.

How Commission performs its functions

Parole committees

93.—(1) The Commission must operate in committees of at least three members, one of whom must be a committee convenor or the chairperson.

(2) The decision of the majority of members of on a committee is the decision of the committee.

(3) Subsection (1) is subject to any other provision of this ordinance which requires or permits the Commission to perform its functions other than by way of committee hearings.

(4) Notwithstanding subsection (1), if a member leaves a hearing for any reason, the remaining two members may continue the hearing and, provided the absent member participates in the decision-making process, the validity of any resulting decision is not affected.

Decisions of
Commission

94.—(1) A decision by a committee acting within its jurisdiction is a decision of the Commission.

(2) A decision by the chairperson or a committee convenor, acting within their respective jurisdictions, is a decision of the Commission.

(3) A decision of the Commission on the detention or release of an offender or on his or her release [] conditions, must be in writing and include reasons for the decision.

(Amended by Ordinance No. 1 of 2016)

(4) A copy of every decision of the Commission that relates to an offender must be given to—

- (a) the offender to whom it relates; and
- (b) the Supervision Officer.

95.—(1) In any hearing before the Commission, the Commission may receive and take into consideration whatever information it thinks fit, whether or not the information would be admissible as evidence in a court of law.

Information before
Commission

(2) Information received by the Commission may be in a form other than writing, but only if the Commission is satisfied that—

- (a) the information adds significantly to the written information available to it; and
- (b) it will be possible, in relation to that information, to comply with the rule in section 10(1) about making information available to offenders.

96.—(1) The chairperson must ensure that no person involved in a parole committee hearing reviews a decision of that panel.

Avoiding actual or
perceived bias

(2) The chairperson must, if he or she becomes aware that a member has, or may be perceived as having, bias for or against an offender, require the member to excuse himself or herself from—

- (a) participating in a committee that considers an application by or relating to the offender; and
- (b) making, or participating in making, any other decision under this ordinance that relates to the offender.

General provisions about Commission and members

97.—(1) The Commission must, within two months of the end of each calendar year, give the [Attorney General] an annual report on the operation of the Commission and the performance of its functions, during the financial year.

Annual report

(Amended by Ordinance No. 4 of 2010)

(2) The Commission's annual report must include

- (a) information about every referral made by the chairperson to the Commission for early consideration for parole and for compassionate release; and
- (b) information about every class designated by the Governor under section 22(3) for early consideration by the Commission for parole.

98.—(1) Every member, including the chairperson, must be appointed for a term of three years or less.

Term of appointment
and reappointment

(2) A member continues in office despite the expiry of his or her term of office until—

- (a) the member is reappointed; or
- (b) the member's successor is appointed; or
- (c) the [Attorney General] informs the member in writing that the member is not to be reappointed and that no successor is to be appointed at that time.

(Amended by Ordinance No. 4 of 2010)

(3) A member who is involved in a hearing that is not complete on the date that he or she ceases to be in the office may complete the hearing after that date and is, for that purpose, deemed to be in office until the hearing is complete.

(4) Any member may be reappointed any number of times.

Remuneration and
expenses of members

99.—(1) A member may at any time resign from office by written notice to the Governor.

(2) The Governor may at any time, on the recommendation of the [Attorney General], remove a member from office for just cause; and the member is not entitled to compensation for removal.

(Amended by Ordinance No. 4 of 2010)

Members ceasing to
hold office

100.—(1) The remuneration of any member who is a Magistrate or a Judge of the Supreme Court must, so far as it relates to his or her membership of the Commission, be determined by the Governor.

(2) Every other member must be paid fees and expenses in accordance with the framework determined by the Governor from time to time for the classification and remuneration of statutory and other bodies.

(3) A person is not employed in the service of the Crown, merely as a result of being a member of the Commission.

Immunity of members

101. No member is personally liable for any act or omission done in pursuance, or intended pursuance, of the Commission's functions, unless the act or omission was done in bad faith.