

GOVERNMENT OF ZAMBIA

ACT

No. 16 of 2004

Date of Assent: 12th December, 2004

An Act to amend the Prisons Act

[17th December, 2004

ENACTED by the Parliament of Zambia.

Enactment

1. This Act may be cited as the Prisons (Amendment) Act, 2004, and shall be read as one with the Prisons Act, in this Act referred to as the principal Act.

Short title
Cap. 97

2. Section *two* of the principal Act is amended by the insertion in the appropriate places of the following new definitions:

Amendment
of
section 2

“ Assistant Commissioner ” includes a Senior Assistant Commissioner;

“ Director ” means the Director of health services appointed under section *sixteen A*; and

“ Parole ” means the conditional release of a convicted offender from a penal or correctional institution, under the continued custody of the State, to serve the convicted offender’s remainder of sentence in the community under supervision;

“ Parole Board ” means the National Parole Board established under section *one hundred and thirteen A*;

3. Section *four* of the principal Act is amended by the deletion of subsection (2) and the substitution therefor of the following:

Amendment
of
section 4

(2) The Commissioner may, with the approval of the Minister, direct the Regional Commanding Officer to provide shelter in temporary prisons for the safe custody of such number of prisoners as cannot be conveniently or safely kept in the prison.

4. The principal Act is amended by the insertion immediately after section *four* of the following new section:

Insertion of
new
section 4A

4A. (1) The Commissioner shall appoint for every region a Regional Commanding Officer below the rank of the Deputy Commissioner on the advice of the Police and Prisons Service Commission.

Regional
commanding
officer

- (2) A Regional Commanding Officer shall—
- (a) be responsible to the Commissioner for the conduct and treatment of all prison officers and prisoners in the Regional Commanding Officer's region;
 - (b) supervise and control all prisons and officers in charge of prisons in the Regional Commanding Officer's region;
 - (c) keep or cause to be kept such records as the Commissioner may direct; and
 - (d) ensure that all prison officers and prisoners observe the provisions of this Act and any regulations, directions and orders made under it.

Amendment
of
section 5

5. Section *five* of the principal Act is amended by—
- (a) the deletion of subsection (1) and the substitution therefor of the following:
 - (1) The Commissioner shall appoint for every prison an officer in charge who in the performance of their functions shall be subject to the direction and control of the Regional Commanding Officer.;
 - (b) in subsection (2) by the deletion of the word "Commissioner" after the words "such records as the" and the substitution therefor of the words "Regional Commanding Officer"; and
 - (c) by the insertion immediately after subsection (3) of the following new subsection:
 - (4) Where an officer in charge appointed under subsection (1) is absent from the office or is for any reason unable to discharge the functions of the office of officer in charge, a prison officer of the senior-most rank in that prison shall temporarily assume charge of the prison until another officer in charge is appointed.

Amendment
of
section 6

6. Section *six* of the principal Act is amended—
- (a) by the deletion of subsection (1) and the substitution therefor of the following:
 - (1) Where in any prison the number of prison officers detailed for duty in the prison is insufficient to secure the good management and government of the prison the Regional Commanding Officer shall, with the consent of the Commissioner and the Minister, employ such number of temporary prison officers as the Regional Commanding Officer considers necessary for the good management and government of the prison.;

- (b) in subsection (2) by the deletion of the words “ police officer ” wherever they appear and the substitution therefor of the words “ prison officer ”; and
- (c) in subsection (3) by the deletion of the words “ police officer ” before the words “ to whom a prisoner ’ and the substitution therefor of the words “ temporary prison officer.”
7. The principal Act is amended by the repeal of section *seven* and the substitution therefor of the following:
- Repeal and replacement of section 7
7. (1) Subject to subsection (1), in every prison in which women prisoners are imprisoned there shall be women prison officers who shall have care and the superintendence of the women prisoners, and who shall be responsible for their discipline.
- Women prison officers to care for and discipline female prisoners
- (2) Notwithstanding subsection (1), a male prison officer may be employed in a prison where women prisoners are imprisoned and a female prison officer may be employed in a prison where men prisoners are imprisoned:
- Provided that whenever—
- (a) any male prison officer who is employed in a prison where women prisoners are imprisoned is on duty the male prison officer shall be accompanied by a female prison officer; and
- (b) any female prison officer who is employed in a prison where men prisoners are imprisoned is on duty the female prison officer shall be accompanied by a male prison officer.
8. Part IV of the principal Act is amended by the deletion of the heading “APPOINTMENT AND DUTIES OF MEDICAL OFFICERS” and the substitution therefor of the heading “ESTABLISHMENT OF PRISON HEALTH SERVICE.”
- Amendment of Part IV
9. The principal Act is amended by the repeal of section sixteen and the substitution therefor of the following:
- Repeal and replacement of section 16
16. There is hereby established a Prison Health Service whose purpose shall be to provide and administer health care within the Service.
- Establishment of Prison Health Service
10. The principal Act is amended by the insertion immediately after section *sixteen* of the following new section:
- Insertion of new section 16A

Director of
health
services

16A. (1) The Commissioner shall appoint a Director of health services on the advice of the Minister responsible for health and on the recommendation of the Police and Prisons Service Commission.

(2) The Director shall—

(a) be responsible for the efficient and effective day to day administration of the Prison Health Service; and

(b) supervise the medical officers appointed under section *seventeen*.

Repeal and
replacement
of section 17

11. The principal Act is amended by the repeal of section *seventeen* and the substitution therefor of the following:

Medical
officers

17A. (1) The Commissioner shall, with the concurrence of the Minister responsible for health, appoint for each prison such number of medical officers as shall be necessary for the provision of health care to the prisoners in that prison.

(2) Subject to the provisions of this Act, any medical officer appointed under subsection (1) shall have the general care of the health of prisoners and shall visit the prison daily where practicable or when called upon by the officer-in-charge.

(3) A medical officer shall report to the officer in charge any circumstances connected with the prison or the treatment of prisoners which appear to the medical officer to require consideration on medical or health grounds.

(4) Where no medical officer is appointed under subsection (1), a Government medical officer in the district in which a prison is situated and who is nominated for duty as medical officer of the prison by the director of medical services with the concurrence of the Director shall be the medical officer of the prison.

(5) During any period the medical officer appointed or nominated as medical officer of a prison under subsection (4) is absent or is not available for duty, the officer in charge of the prison may, with concurrence of the Director, engage temporarily any medical practitioner as medical officer and the medical practitioner so engaged shall exercise and perform in the prison the functions of a medical officer and shall, for the purposes of this Act, be deemed to be the medical officer.

12. Section *nineteen* of the principal Act is amended by the deletion of the words "as may be prescribed" and the substitution thereof of the words "as the Commissioner may by standing order prescribe."

Amendment
of section 19

13. The principal Act is amended by the insertion immediately after Part IV of the following new Part:

Insertion of
new Part
IVA

PART IVA

ATTESTATION, SERVICE AND DISCHARGE OF PRISON OFFICERS

23A. A prison officer shall on joining the Service be attested to serve in the Service for such period and on such conditions as may be prescribed by the Police and Prisons Service Commission.

Attestation

23B. (1) A person shall on joining the Service make and sign a declaration before a magistrate or a senior prison officer in such manner as may be declared to be binding on that person's conscience.

Declaration
on joining
the service

(2) A person on joining the Service shall, before making a declaration required in subsection (1), answer truthfully any question put to that person as to that person's previous service in any military, naval, air force or police force, and as to whether that person has at any time been convicted in Zambia or elsewhere and been sentenced to a term of imprisonment of not less than six months without the option of a fine.

23C. Any prison officer who resigns or whose period of service expires during any state of war, insurrection or hostilities may be restrained from resigning or retiring from the Service and the service of that prison officer shall be prolonged for such further period as the President may direct.

Prolongation
of service in
case of war

23D. (1) The appointment of a prison officer by the Police and Prisons Service Commission may within six months of making and signing the declaration prescribed under section *twenty-three B*, be terminated on fourteen days' notice on either side or payment of fourteen days' salary in lieu of notice.

Termination
of
appointment
of certain
prison
officers

(2) Notwithstanding subsection (1) the Commission may discharge a prison officer—

- (a) who is unfit to work due to ill health;
- (b) for misconduct;
- (c) for providing false information on attestation or in the course of duty; or
- (d) who is charged with a disciplinary offence under this Act.

Release on
completion
of service

23E. (1) Subject to the provision of this Act, a prison officer who has completed that officer's period of service shall be retired by the Police and Prison Service Commission and released from service by the officer in charge of the prison at the place where that prison officer is stationed unless at the date of completion of service, the prison officer is charged with a disciplinary offence under this Act and the case is still pending:

Provided that where a prison officer is stationed at the Service headquarters, a regional headquarters or at the Ministry responsible for home affairs the prison officer shall be released from service by the head of the station.

(2) Where a prison officer commits a disciplinary offence under this Act the prison officer's period of service shall be prolonged and the prison officer's release from service deferred until that prison officer is—

- (a) tried by a court of law; or
- (b) has undergone disciplinary proceedings under this Act and any punishment imposed by a court or disciplinary authority in respect of that offence is enforced.

(3) A prison officer shall remain subject to the provisions of this Act until that prison officer has received a certificate of service.

Arms and
accoutrements
to be
delivered up
on ceasing
to belong to
the Service

23F. (1) Where a person ceases to be a member of the Service, that person shall forthwith deliver up to a prison officer appointed by the Commissioner for that purpose, or to the officer in charge of the prison at the place at which that person was last stationed, all arms, ammunition, accoutrements, uniforms and other equipment which were supplied to that person and are the property of the Government.

(2) Any person who, having ceased to be a member of the Service, fails to deliver up any arms, ammunition, accoutrements, uniform or other equipment in the possession of that person as required under this section commits an offence and shall be liable on conviction to a fine not exceeding one thousand five hundred penalty units or to imprisonment for a term of three months, or to both.

(3) Subject to the provisions of this section the court which convicts a person may issue a warrant to search for and seize all such arms, ammunition, accoutrements, uniform and other equipment not delivered up.

14. Section *twenty-seven* of the principal Act is amended by the deletion of subsection (5) and the substitution therefor of the following:
- (5) Any search of a person under this section shall be made by an officer of the same sex as the person to be searched.
15. Section *twenty-eight* of the principal Act is amended—
- (a) by the insertion of a comma after the word “Commissioner”; and
- (b) by the insertion after the comma of the words “Regional Commanding Officer.”
16. Section *thirty-three* of the principal Act is amended—
- (a) by the insertion of a full-stop after the word “ or both ”; and
- (b) by the deletion of the comma and the words “and in addition to any such punishment shall be liable to a sentence of corporal punishment of such number, not exceeding twelve strokes with a cane, as the court specifies.”
17. Section *thirty-nine* of the principal Act is amended in subsection (5) by the deletion of the words “ the Minister whose decision thereon shall be final and conclusive and shall not be questioned in any proceedings” and the substitution of the words “ the Industrial Relations Court, subject to the right to appeal to the Supreme Court ”.
18. Section *forty-one* of the principal Act is amended—
- (a) in subsection (1) by the deletion of the word “ Constitution ” and the substitution therefor of the words “ Police and Prisons Service Commission Regulations ”; and
- (b) in subsection (2) by the insertion of the word “ Assistant ” before the word “ Superintendent ”.
19. The principal Act is amended by the repeal of section *forty-two* and the substitution therefor of the following:
42. (1) The Commissioner may recommend to the Police and Prisons Service Commission—
- (a) the reduction in rank of any prison officer below the rank of Assistant Superintendent who is found guilty of a disciplinary offence the circumstances of which warrant such reduction; or
- (b) the dismissal of any prison officer below the rank of Assistant Superintendent who is sentenced to a term of imprisonment for a period of six months or more.

Amendment
of section 27Amendment
of section 28Amendment
of section 33Amendment
of section 39Amendment
of section 41Repeal and
replacement
of section 42Reduction in
rank or
dismissal of
prison
officer

Cap. 259

(2) A prison officer who is reduced in rank or dismissed under this section may appeal against the reduction in rank or dismissal in the manner provided in regulation 42 of the Police and Prison Service Commission Regulations.

Amendment
of
section 45

20. Section *forty-five* of the principal Act is amended by the deletion of subsection (1) and the substitution therefor of the following:

(1) The Commissioner, or a senior prison officer authorised by the Commissioner, may inquire into any disciplinary offence alleged to have been committed by a junior officer and if satisfied that the offence has been committed, shall impose any of the following punishments:

- (a) reprimand;
- (b) severe reprimand;
- (c) deferment of increment;
- (e) withholding of increment; or
- (f) fine:

Provided that prior to imposing any punishment under this subsection the Commissioner shall give the junior officer an opportunity to be heard during such inquiry.

(2) The junior officer may, if the junior officer so wishes, be present during the inquiry, and shall be given an opportunity to be heard during such inquiry.

Amendment
of
section 46

21. Section *forty-six* of the principal Act is amended by the deletion of subsection (1) and substitution therefor of the following:

(1) The Commissioner, a senior officer or officer in charge may inquire into any disciplinary offence alleged to have been committed by a subordinate officer and if satisfied that an offence has been committed, may impose any of the following punishments:

- (a) reprimand;
- (b) severe reprimand;
- (c) deferment of increment;
- (d) stoppage of increment;
- (e) withholding of increment;
- (f) forfeiture of one or more efficiency badges;
- (g) fine not exceeding one-half of one month's pay; or
- (h) in the case of a subordinate officer undergoing training at the prison staff training school, extra drill for a period not exceeding seven days:

Provided that—

- (i) the subordinate officer may if the subordinate officer so wishes be present during the inquiry and shall be given an opportunity to be heard during such inquiry; and
- (ii) the proceedings and the results of the inquiry shall not be recorded in the personal records of the offending prison officer.

22. Section *forty-seven* of the principal Act is amended in subsection (2) by the deletion of the word “ President ” and the substitution therefor of the words “ Police and Prisons Service Commission.”

Amendment
of
section 47

23. Section *sixty* of the principal Act is amended by the deletion of the words “ their seeing or communicating with each other ” after the words “ as far as is practicable ” and the substitution therefor of the words “ any form of contact ”.

Amendment
of
section 79

24. Section *seventy-nine* of the principal Act is amended in subsection (4) by the deletion of the words “seven hundred and fifty ” after the words “ a fine not exceeding ” and the substitution therefor of the words “ one thousand five hundred ”.

Amendment
of
section 60

25. Section *eighty-four* of the principal Act is amended by the deletion of the words “ a fine not exceeding one thousand and five hundred penalty units or to imprisonment for a period not exceeding six months.” and the substitution therefor of the words “ a fine not exceeding three thousand penalty units or to imprisonment for a period not exceeding two years.”

Amendment
of
section 84

26. Section *ninety-one* of the principal Act is amended—

Amendment
of
section 91

(a) by the insertion immediately after paragraph (ix) of the following new paragraph:

(x) committing sodomy or any other indecent act to, or with, another prisoner; and

(b) by the re-numbering of paragraph (x) as paragraph (xi).

27. Section *ninety-four* of the principal Act is amended by the deletion of subsection (3).

Amendment
of
section 94

28. Section *ninety-eight* of the principal Act is amended—

Amendment
of
section 98

(a) by the deletion of the semi-colon at the end of the proviso to paragraph (g) and the substitution therefor of a full stop; and

(b) by the deletion of paragraph (h).

- Repeal of sections 99 to 105
29. The principal Act is amended by the repeal of sections *ninety-nine, one hundred, one hundred and one, one hundred and two, one hundred and three, one hundred and four and one hundred and five.*
- Amendment of section 108
30. Section *one hundred and eight* of the principal Act is amended by—
- (a) the deletion of the comma after the word “imposed” and before the word “may”; and
- (b) the deletion of the words “other than corporal punishment” between the words “imposed” and “may”.
- Insertion of new section 111A
31. The principal Act is amended by the insertion immediately after section *one hundred and eleven* of the following new section:
- 111A. The Commissioner may, with the approval of the Minister, order the discharge from prison of any terminally ill prisoner on the recommendation of the Regional Commanding Officer and the medical officer responsible for the health care of the prisoner:
- Provided that where the terminally ill prisoner is an unconvicted person or an appellant whose appeal is pending before a court, the Commissioner shall prior to releasing that prisoner notify the court of the intention to release the prisoner and the court shall indicate whether or not it consents to the release.
- (2) Where the court does not consent to the release of the prisoner under subsection (1), the court shall give the reasons for so refusing.
- Insertion of new sections 113A and 113B
32. The principal Act is amended by the insertion immediately after section *one hundred and thirteen* of the following new sections:
- National Parole Board
- 113A. (1) There is hereby established the National Parole Board which shall consist of members appointed by the Minister as follows:
- (a) the Deputy Commissioner in charge of correctional services who shall be the Chairperson;
- (b) the Chaplain-General;
- (c) the Director;
- (d) a representative of the ministry responsible for home affairs;

- (e) a representative of the ministry responsible for community development and social welfare;
- (f) a representative of the Attorney-General;
- (g) a representative of religious organisations;
- (h) a representative of a non-governmental organisation dealing with the welfare of prisoners; and
- (i) a member of the reception and discharge committee referred to in section *one hundred and sixteen B*.

(2) The Vice-Chairperson shall be elected by the Members from among their number.

113B. The Parole Board shall—

- (a) coordinate activities related to, and recommend the release of prisoners on parole; and
- (b) perform such other functions as the Minister may, by statutory instrument, prescribe.

Functions of parole Board

33. The principal Act is amended by the repeal of section *one hundred and fourteen* and the substitution therefor of the following:

Repeal and replacement of section 114

114. The Commissioner may, on such terms and conditions as the Parole Board may determine, permit a prisoner who is serving a term of imprisonment of at least two years, within six months of the date the prisoner is due to be released, to be absent from prison on parole until the expiry of the remainder of the prisoner's term of imprisonment.

Release prisoner on parole

34. The principal Act is amended in Part XVI by the deletion of the heading "COMPULSORY AFTER CARE ORDERS" and the substitution therefor of the heading "EXTENSION SERVICES AND COMPULSORY AFTER CARE ORDERS".

Amendment of Part XVI

35. The principal Act is amended by the insertion immediately before section *one hundred and seventeen* of the following new sections:

Insertion of new sections 116A, 116B and 116C

116A. (1) The Commissioner shall establish an extension services programme for purposes of providing post imprisonment programmes for discharged prisoners and prisoners who are released under compulsory after care orders.

Extension services

(2) The Commissioner shall appoint, as extension officers, persons who are professionally qualified in social welfare for the purposes of administering the extension services programme and compulsory after care orders.

Eligibility for extension services	<p>116B. (1) A prisoner shall not be eligible for selection to an extension services programme unless the prisoner—</p> <p>(a) has served a term of imprisonment of at least two years;</p> <p>(b) has proved to be of good conduct and is industrious; and</p> <p>(c) deserves to be settled back into society following the expiry of that prisoner's term of imprisonment.</p> <p>(2) The selection of an eligible prisoner for the extension services programme shall be determined by a reception and discharge committee which shall be established for that purpose at a prison where the eligible prisoner is imprisoned.</p> <p>(3) A reception and discharge committee shall comprise such members as the Commissioner may, by standing orders, determine and shall include the prison chaplain.</p>
Amendment of section 119	<p>36. Section <i>one hundred and nineteen</i> of the principal Act is amended in subsection (1) by the insertion of the words " to the President " after the words " shall forward."</p>
Amendment of section 123	<p>37. Section <i>one hundred and twenty-three</i> is amended by the insertion of the following new proviso:</p> <p style="padding-left: 40px;">Provided that no visiting judge may during an official visit release any prisoner from prison.</p>
Amendment of section 124	<p>38. Section <i>one hundred and twenty-four</i> of the principal Act is amended—</p> <p>(a) in subsection (1) by the insertion of a comma and the words " and the Permanent Secretary to the ministry responsible for home affairs " after the words " Deputy Minister "; and</p> <p>(b) by the deletion of subsection (2) and the substitution therefor of the following:</p> <p style="padding-left: 40px;">(2) The Deputy Minister in charge of a province and the Permanent Secretary to the province shall be visiting justices of all prisons in that province.</p>
Repeal and replacement of section 125	<p>39. The principal Act is amended by the repeal of section <i>one hundred and twenty-five</i> and the substitution therefor of the following:</p>
Magistrates, etc to be visiting justices in own areas	<p>125. Magistrates, Town Clerks, Council Secretaries, and members of the Human Rights Commission shall be visiting justices of the prisons situated in the area in which they normally exercise jurisdiction.</p>

40. Section *one hundred and twenty-six* of the principal Act is amended by the deletion of the words “ at any time ” after the words “ visiting justice may ” and the substitution therefor of the words “ such times as the Commissioner may prescribe.”
- Amendment
of
section 126
41. Section *one hundred and twenty-seven* of the principal Act is amended—
- Amendment
of
section 127
- (a) by the renumbering of the paragraph of that section as subsection (1); and
- (b) by the insertion immediately after subsection (1) of the following new subsection:
- (2) A visiting justice shall submit to the Commissioner a written and comprehensive report of the inspection containing such details as the visiting justice may consider necessary.
42. Section *one hundred and twenty-eight* of the principal Act is amended by the insertion of the words “ by *Gazette* notice ” after the words “ Minister may.”
- Amendment
of
section 128
43. Section *one hundred and twenty-nine* of the principal Act is amended in paragraph (b)—
- Amendment
of
section 129
- (a) by the insertion of a semi-colon after the word “ confinement ”; and
- (b) by the deletion of the words “ save that women official visitors may visit only those parts of each prison set aside for the detention of women prisoners.”
44. Section *one hundred and thirty* of the principal Act is amended—
- Amendment
of
section 130
- (a) by the renumbering of the paragraph of that section as subsection (1); and
- (b) by the insertion immediately after subsection (1) of the following new subsection:
- (2) A written and comprehensive report of the inspection by the official visitor shall be submitted to the Minister and copied to the Commissioner, Regional Commanding Officer and the officer in charge of the prison visited.
45. Section *one hundred and thirty-two* of the principal Act is amended by the deletion of the words “ prisoner’s aid society ” after the words “ a representative of a ” and the substitution therefor of the words “ a non-governmental organisation dealing with the welfare of prisoners.”
- Amendment
of
section 132

Amendment
of
section
135A

46. Section *one hundred and thirty-five A* of the principal Act is amended by the insertion immediately after subsection (2) of the following new subsection:

(3) In this section “authorised officer” means any officer or person whom the minister may, by statutory order, designate as such.

Amendment
of
section 136

47. Section *one hundred and thirty-six* of the principal Act is amended by the deletion of the words “officer in charge” after the word “Every” and the substitution therefor of the words “Regional Commanding Officer.”

Amendment
of
section 138

48. Section *one hundred and thirty-eight* of the principal Act is amended—

(a) by the deletion of the colon at the end of paragraph (d) and the substitution therefor of a full stop; and

(b) by the deletion of the proviso to subsection (1).
