

## **THE REFORM INSTITUTIONS (AMENDMENT) BILL**

**Bill No. 03 of 2018**

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**The following Bills which are set out for introduction into the National Assembly are published for general information.**

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## **THE REFORM INSTITUTIONS (AMENDMENT) BILL**

(No. III of 2018)

### **Explanatory Memorandum**

The object of this Bill is to amend the Reform Institutions Act so as to –

- (a) do away with the system of automatic remission whereby convicted persons were eligible to be discharged after having served two thirds of the period of sentence and to replace it with a new system of earned remission with a view to encouraging convicted persons to earn maximum remission not exceeding one third of the period of sentence where, during their term of imprisonment, they are of good conduct by not committing any prison default;
- (b) toughen the law against officers of the Mauritius Prisons Service, detainees and persons working in reform institutions who are convicted under the Act; and
- (c) provide that where, during his term of imprisonment, a detainee commits an offence under the Act, that detainee shall, on conviction for that offence, be ordered to serve immediately after the expiry of the sentence for which he was detained, any sentence imposed upon him by the Court.

**Sir ANEROOD JUGNAUTH, G.C.S.K., K.C.M.G., Q.C.**

*Minister Mentor, Minister of Defence and*

*Minister for Rodrigues*

06 April 2018

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**THE REFORM INSTITUTIONS (AMENDMENT) BILL**

(No. III of 2018)

**ARRANGEMENT OF CLAUSES**

*Clause*

- |   |   |
|---|---|
| 1. Short title  | 8. Section 61 of principal Act amended        |
| 2. Interpretation                                     | 9. Section 62 of principal Act amended        |
| 3. Section 2 of principal Act amended                 | 10. New section 63A inserted in principal Act |
| 4. Section 37 of principal Act amended                | 11. Section 65 of principal Act amended       |
| 5. Section 50 of principal Act repealed and replaced  | 12. Schedule added to principal Act           |
| 6. New sections 50A and 50B inserted in principal Act | 13. Consequential amendments                  |
| 7. Section 51A of principal Act amended               | 14. Commencement                              |

SCHEDULE

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**A BILL**

**To amend the Reform Institutions Act**

ENACTED by the Parliament of Mauritius, as follows –

**1. Short title**

This Act may be cited as the Reform Institutions (Amendment) Act 2018.

**2. Interpretation**

In this Act –

“principal Act” means the Reform Institutions Act.

**3. Section 2 of principal Act amended**

Section 2 of the principal Act is amended –

- (a) in the definition of “institution”, in paragraph (b), by adding the following new subparagraph, the word “and” at the end of subparagraph (v) being deleted and the word “and” being added at the end of subparagraph (vi) –

(vii) any place where a detainee is in the custody of an officer;

- (b) by deleting the definition of “prohibited article” and replacing it by the following definition –

“prohibited article” means such article as may be prescribed;

- (c) by deleting the definition of “remission”;

- (d) by inserting, in the appropriate alphabetical order, the following new definitions –

“ammunition” has the same meaning as in the Firearms Act;

“dangerous drug” has the same meaning as in the Dangerous Drugs Act;

“explosive” has the same meaning as in the Explosives Act;

“firearm” has the same meaning as in the Firearms Act;

“good conduct”, in relation to detainees, means detainees who do not commit any prison default;

“lawful authority” means a written authorisation given by the Commissioner, or a person delegated by the Commissioner, to any person;

“message” has the same meaning as in the Information and Communication Technologies Act;

“sound-recording” means a recording of sounds in any medium from which the sounds may, by any means, be reproduced;

#### **4. Section 37 of principal Act amended**

Section 37 of the principal Act is amended –

(a) by repealing subsection (1) and replacing it by the following subsection –

(1) Where the Commissioner or, in Rodrigues, the Island Chief Executive, after due enquiry made by him, finds a detainee guilty of a minor prison default, he –

(a) shall punish the detainee by ordering a loss of remission for a period of 15 days; and

(b) may, additionally, punish the detainee by a warning or ordering –

(i) his confinement in a separate cell for a period not exceeding 2 weeks;

(ii) the forfeiture of his privileges for a period not exceeding 3 months;

(iii) the forfeiture of his earnings for a period not exceeding 3 months; or

(iv) a combination of any of the punishments specified in subparagraphs (i) to (iii).

(b) by repealing subsection (4) and replacing it by the following subsection –

(4) Subject to subsection (5) and to section 43, where a matter has been referred to the Board under subsection (3) and the Board, after such further enquiry it may determine, finds a detainee guilty of an aggravated prison default, the Board –

(a) shall punish the detainee by ordering a loss of remission for a period of 45 days; and

(b) may, additionally, punish the detainee by ordering –

(i) his confinement in a separate cell for a period not exceeding 30 days;

(ii) a reduction in his stage or postponement of promotion in his stage for a period not exceeding 6 months;

(iii) forfeiture of his privileges for a period not exceeding 6 months;

(iv) forfeiture of his earnings for a period not exceeding 6 months; or

(v) a combination of any of the punishments specified in subparagraphs (i) to (iv).

(c) by repealing subsection (5) and replacing it by the following subsection –

(5) Where the Board finds that the evidence discloses only a minor prison default, it –

(a) shall inflict the punishment referred to in subsection (1)(a); and

(b) may, additionally, inflict the punishment referred to in subsection (1)(b).

(d) by adding the following new subsection –

(6) (a) Subsections (1), (4) and (5) shall not apply to a person who, prior to the commencement of this subsection, was sentenced to serve a term of imprisonment.

(b) Where the Commissioner or, in Rodrigues, the Island Chief Executive, after due enquiry made by him, finds a detainee referred to in paragraph (a) guilty of a minor prison default, he may punish the detainee by giving him a warning or by ordering –

(i) his confinement in a separate cell for a period not exceeding 2 weeks;

(ii) the forfeiture of his privileges for a period not exceeding 3 months;

(iii) the forfeiture of his earnings for a period not exceeding 3 months;

(iv) a loss of remission for a period not exceeding 2 months; or

(v) a combination of any of the punishments specified in subparagraphs (i) to (iv).

(c) Subject to paragraph (d) and to section 43, where a matter has been referred to the Board under subsection (3) and the Board, after such further enquiry it may determine, finds a detainee referred to in paragraph (a) guilty of an aggravated prison default, the Board may punish the detainee by ordering –

- (i) his confinement in a separate cell for a period not exceeding 30 days;
- (ii) a loss of remission for a period not exceeding 12 months;
- (iii) a reduction in his stage or postponement of promotion in his stage for a period not exceeding 6 months;
- (iv) forfeiture of his privileges for a period not exceeding 6 months;
- (v) forfeiture of his earnings for a period not exceeding 6 months; or
- (vi) a combination of any of the punishments specified in subparagraphs (i) to (v).

(d) Where the Board finds that the evidence discloses only a minor prison default, it may inflict any of the punishments authorised under paragraph (b).

## **5. Section 50 of principal Act repealed and replaced**

Section 50 of the principal Act is repealed and replaced by the following section –

## 50. Earned remission

(1) A person sentenced to serve a term of imprisonment exceeding 30 days shall, subject to this Act, earn remission on his sentence where, during the term of imprisonment, he is of good conduct.

(2) Subject to subsection (3), a person referred to in subsection (1) shall –

(a) for every period of 30 days of imprisonment served, earn 15 days' remission; and

(b) for every incomplete period of 30 days of imprisonment served, earn remission calculated in the manner provided in the Schedule.

(3) The remission earned pursuant to subsection (1) shall not exceed one third of the term of imprisonment to be served.

(4) A person referred to in subsection (1) who, during his term of imprisonment, commits –

(a) a minor prison default shall, for that default –

(i) not earn 15 days' remission; and

(ii) lose, pursuant to section 37(1)(a), 15 days' remission; or

(b) an aggravated prison default shall, for that default –

(i) not earn 15 days' remission; and

(ii) lose, pursuant to section 37(4)(a), 45 days' remission.

(5) (a) Where an unconvicted person commits, during the period he is detained for an alleged offence –

(i) a minor prison default, 15 days' remission shall be forfeited from the period during which he serves a term of imprisonment for that offence; or

(ii) an aggravated prison default, 45 days' remission shall be forfeited from the period during which he serves a term of imprisonment for that offence.

(b) Where an unconvicted person commits a prison default during the period he is detained for 2 or more offences, the forfeiture referred to in paragraph (a), as the case may be, shall apply for only the first sentence he is ordered to serve amongst the 2 or more offences.

(6) This section, other than subsection (7), shall apply to a person who is sentenced, on or after the commencement of this section, to serve a term of imprisonment.

(7) (a) Notwithstanding this section and subject to paragraph (b), a person who, prior to the commencement of this section, was sentenced to serve a term of imprisonment for a period exceeding 31 days shall continue to be eligible for discharge after having served two thirds of the period of sentence.

(b) No person referred to in paragraph (a) shall serve less than 31 days of his sentence.

## **6. New sections 50A and 50B inserted in principal Act**

The principal Act is amended, by inserting, after section 50, the following new sections –

#### **50A. Additional remission and restoration of lost remission**

The Commissioner may, where he so determines –

- (a) grant additional remission to any prisoner who has worked extra hours or on a Sunday or other public holiday;
- (b) restore remission lost under section 37, in respect of minor prison defaults, to an extent not exceeding one third of the lost remission.

#### **50B. Discharge**

(1) The actual term of imprisonment to be served by a person referred to in section 50(6) shall be calculated by deducting, from the term of imprisonment he was sentenced to serve –

- (a) any remission he earned pursuant to section 50;
- (b) any additional remission he was granted pursuant to section 50A(a); and
- (c) any lost remission that was restored pursuant to section 50A(b).

(2) Subject to subsection (3), a person shall, after having served his actual term of imprisonment, be eligible to be discharged.

(3) No person shall serve less than 30 days of his sentence.

#### **7. Section 51A of principal Act amended**

Section 51A of the principal Act is amended by deleting the words “50 and 51” and replacing them by the words “50, 50A, 50B and 51”.

**8. Section 61 of principal Act amended**

Section 61 of the principal Act is amended –

- (a) in subsection (1), by repealing paragraph (a);
- (b) in subsection (2) –
  - (i) by repealing paragraphs (a), (b) and (c) and replacing them by the following paragraphs –
    - (a) without lawful authority –
      - (i) possess a prohibited article in an institution or in a place where a detainee is working;
      - (ii) bring a prohibited article into, or out of, an institution or a place where a detainee is working;
      - (iii) cause another person to bring a prohibited article into, or out of, an institution or a place where a detainee is working;
      - (iv) give, supply or convey a prohibited article to another person in an institution or in a place where a detainee is working;
      - (v) cause another person to give, supply or convey a prohibited article to a third person in an institution or in a

place where a detainee is working;

(vi) leave, place or hide a prohibited article in an institution or in a place where a detainee is working; or

(vii) cause another person to leave, place or hide a prohibited article in an institution or in a place where a detainee is working;

(b) throw a prohibited article into, or out of, an institution or a place where a detainee is working;

(c) cause another person to throw a prohibited article into, or out of, an institution or a place where a detainee is working;

(ii) by repealing paragraph (f);

(c) by inserting, after subsection (2), the following new subsections –

(2A) A person shall be deemed to possess a prohibited article if it is in his custody or is held by another person subject to his control, or on his behalf.

(2B) No person shall, without lawful authority –

(a) take a photograph, or make a film, by means of –

(i) a camera;

(ii) a mobile phone;

(iii) a photographic or an electronic device;  
or

(iv) any other device through which a  
photograph may be taken or a film may  
be made,

in an institution or in a place where a detainee is working;

(b) make a sound-recording in an institution or where a  
detainee is working;

(c) transmit, or cause to be transmitted, any message, through  
any device, from an institution;

(d) fly a remotely piloted aircraft over an institution to record  
any sound or image or to convey any prohibited article;

(e) bring or otherwise convey a restricted document out of an  
institution or causes such document to be brought or  
conveyed out of an institution.

(d) in subsection (5), by inserting, after the words "Subject to", the words "subsection  
(6) and";

(e) by adding the following new subsection –

(6) Any person who is convicted of an offence under section 61(2)(a) to  
(c) shall be liable to a fine not exceeding 500,000 rupees and to imprisonment for  
a term not exceeding 15 years where that offence is related to dangerous drugs,  
explosives, firearms or ammunition.

**9. Section 62 of principal Act amended**

Section 62 of the principal Act is amended by repealing subsection (4).

**10. New section 63A inserted in principal Act**

The principal Act is amended by inserting, after section 63, the following new section –

**63A. Consecutive sentence**

Where a detainee commits an offence under this Act, he shall, on conviction, be ordered to serve, immediately after the expiry of any other sentence for which he was detained, any sentence imposed upon him by the Court for the offence committed under this Act.

**11. Section 65 of principal Act amended**

Section 65 of the principal Act is amended –

(a) by numbering the existing provision as subsection (1);

(b) by adding the following new subsection –

(2) Sections 150, 151, 152 and 153 of the Criminal Procedure Act shall not apply to a conviction under this Act.

**12. Schedule added to principal Act**

The principal Act is amended by adding the Schedule set out in the Schedule to this Act.

**13. Consequential amendments**

(1) The Dangerous Drugs Act is amended –

(a) in section 41 –

(i) in subsection (1) –

(A) by adding the following new paragraph, the full stop at the end of paragraph (k) being deleted and replaced by a semi colon –

(1) the offence is committed in an institution or a place where a detainee is working.

(ii) by adding the following new subsection –

(5) For the purpose of subsection (1) –

“detainee” has the same meaning as in the Reform Institutions Act;

“institution” has the same meaning as in the Reform Institutions Act.

(b) in section 47(4), by deleting the words “50 and 51” and replacing them by the words “50, 50A, 50B and 51”;

(2) The Prisons Regulations 1989 are amended, in regulation 33, by inserting, after paragraph (c), the following new paragraph –

(ca) refuses to participate in such rehabilitation programme as the Commissioner may approve;

**14. Commencement**

(1) Subject to subsection (2), this Act shall come into operation on a date to be fixed by Proclamation.

(2) Different dates may be fixed for the coming into operation of different sections of this Act.

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**SCHEDULE**

[Section 12]

**SCHEDULE**

[Section 50(2)(b)]

**REMISSION ON INCOMPLETE PERIOD OF IMPRISONMENT SERVED**

Amount of remission\* =  $\frac{15}{30} \times$  incomplete period of imprisonment served (in days)

\* *The amount of remission shall be calculated to the nearest whole number.*

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