PROJET DE LOI

ENTITLED

The Prison (Enabling Provisions) (Guernsey) Law, 2010

ARRANGEMENT OF SECTIONS

1. Declaration of prisons.
2. Objects of the prison system.
3. Principles of the prison system.
4. Functions of the Department.
5. The Governor.
6. General power to make Ordinances relating to the prison and prisoners.
7. Specific matters for which Ordinances may make provision.
8. General provisions as to Ordinances, etc.
9. Interpretation.
10. Citation.
11. Commencement.

Schedule 1: Specific matters for which an Ordinance may be made.

Schedule 2: Enactments that may be amended or repealed by Ordinance.

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The Prison (Enabling Provisions) (Guernsey) Law, 2010

THE STATES, in pursuance of their Resolution of the 30th January, 2008[a], have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the island of Guernsey.

Declaration of prisons.

1. (1) The Department, by notice in La Gazette Officielle, may declare any land or building or any part of any land or building to be a prison –

(a) indefinitely, until the declaration is revoked under subsection (2), or

(b) temporarily, for a specified period of time or until the occurrence of a specified event.

(2) A declaration under subsection (1)(a) or (b) –

(a) may include a declaration of the class or category of the prison, for the purposes of this Law,

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[a] Article XVI of Billet d'État No. I of 2008.

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(b) takes effect from the date specified in the notice, and

(c) may at any time be revoked or amended by the Department, by notice in La Gazette Officielle.

Objects of the prison system.

2. The objects of the prison system are –

(a) to protect the public,

(b) to keep prisoners in a safe, decent, and healthy environment, and

(c) to promote pro-social and law-abiding behaviour by prisoners, both in custody and after release.

Principles of the prison system.

3. (1) The principles that guide the operation of the prison system are –

(a) the maintenance of public safety is the paramount consideration in decisions about prisoners,

(b) prisoners and all others who come into contact with the prison system are to be dealt with fairly, openly, humanely, and with respect for their human dignity,

(c) prisoners, even the most vulnerable, are to be held safely,

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(d) prisoners are able, and expected, to engage in activity that is likely to benefit them,

(e) prisoners are to be prepared for their release into the community and helped to reduce the likelihood of reoffending, and

(f) prisoners are to be given, and made aware of, their minimum entitlements under the prison system.

(2) A person who exercises or performs functions under this Law must take into account any principle set out in subsection (1) that is applicable, so far as is practicable in the circumstances.

(3) Subsection (1) does not affect the application or operation of any other enactment.

Functions of the Department.

4. (1) Subject to the other provisions of this Law, the Department is responsible for the overall supervision and control of the prison.

(2) The Department has the following functions –

(a) declaring any land or building, or any part of any land or building, to be a prison under section 1,

(b) making any subordinate legislation and issuing any code or guidance under an Ordinance, and

(c) any other functions conferred by or under this Law.

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(3) The Department may give general directions to the Governor in relation to the exercise of his functions under this Law.

(4) Subsection (3) does not authorise the Department to give directions about the exercise of functions in relation to a particular person.

(5) As soon as practicable after giving a direction under subsection (3), the Department must publish in La Gazette Officielle and lay before a meeting of the States of Deliberation a copy of the direction.

The Governor.

5. (1) The Governor is responsible for –

(a) the management, security and good order of the prison,

(b) the safe custody and welfare of prisoners, in respect of the prison, and

(c) the manner in which other persons who come into contact with prisoners, staff members and officers of the prison, are dealt with.

(2) The Governor has the following functions -

(a) making or issuing for the prison any Order or other subordinate legislation, or any code or guidance, authorised by or under an Ordinance,

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(b) providing strategic direction for and giving directions to staff members and officers assigned to the prison, and

(c) any other functions conferred by or under this Law.

(3) The States, by Ordinance –

(a) must make provision for the appointment, suspension and dismissal of the Governor, and

(b) may prescribe or regulate the terms and conditions of service of the Governor, such as remuneration, expenses and pensions.

General power to make Ordinances relating to the prison and prisoners.

6. The States may by Ordinance make such provision as they think fit concerning all or any of the following matters –

(a) prisoners remanded in custody pending trial, sentencing or appeal, in relation to an offence,

(b) the classification, treatment, employment, discipline and control of prisoners,

(c) temporary or early release of prisoners, including remission of sentences,

(d) the government, control, and administration of the prison,

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(e) the structured management of prison life, and

(f) the administration of this Law.

Specific matters for which Ordinances may make provision.

7. Without limiting the generality of section 6, an Ordinance under that section may make provision in relation to all or any of the matters set out in Schedule 1.

General provisions as to Ordinances, etc.

8. (1) An Ordinance under this Law –

(a) may be amended or repealed by a subsequent Ordinance,

(b) may amend in any manner, repeal or (as the case may be) revoke –

(i) any enactment specified in Schedule 2, or

(ii) any Ordinance or subordinate legislation made under the enactment, and

(c) may contain such consequential, incidental, supplementary, transitional and savings provisions as may appear to be necessary or expedient (including, without limitation, provision making consequential amendments to this Law and any other enactment).

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(2) Any power to make an Ordinance under this Law may be exercised –

(a) in relation to all cases to which the power extends, or in relation to all those cases subject to prescribed exceptions, or in relation to any prescribed cases or classes of cases, and

(b) so as to make, as respects the cases in relation to which it is exercised –

(i) the full provision to which the power extends or any lesser provision (whether by way of exception or otherwise),

(ii) the same provision for all cases, or different provision for different cases, or classes of cases, or different provision for the same case or class of case for different purposes,

(iii) any such provision either unconditionally or subject to any prescribed conditions, or

(iv) different provision for different classes, descriptions and categories of –

(A) sentences,

(B) prisons, or

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(C) prisoners, staff members, officers or other persons.

(3) Without prejudice to the generality of the other provisions of this Law, an Ordinance made under this Law –

(a) may, subject to subsection (4), make provision in relation to the creation, trial (summarily or on indictment) and punishment of offences,

(b) may empower the Department, any other department of the States, any other body or authority (including, without limitation, any court in the Island), the Governor or any other person to –

(i) make subordinate legislation, or

(ii) issue codes or guidance,

in relation to any matter for which an Ordinance may be made under this Law,

(c) may make provision for the purpose of dealing with matters arising out of or related to matters set out in section 6,

(d) may provide that no liability shall be incurred by any person in respect of anything done or omitted to be done in the discharge or purported discharge of any of his functions unless the thing is done or omitted to be

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done in bad faith,

(e) may make provision under the powers conferred by this Law despite the provisions of any enactment for the time being in force,

(f) may repeal, replace, amend, extend, adapt, modify or disapply any rule of custom or law, and

(g) without prejudice to the generality of the foregoing, may make any such provision of any such extent as might be made by Projet de Loi, but may not provide that a person is to be guilty of an offence as a result of any retrospective effect of the Ordinance.

(4) An Ordinance under this Law may not –

(a) provide for offences to be triable only on indictment,

(b) authorise the imposition, on summary conviction of an offence, of a term of imprisonment or a fine exceeding the limits of jurisdiction for the time being imposed on the Magistrate's Court by section 9(1)(a) or (2) of the Magistrate's Court (Guernsey) Law, 2008[b], or

(c) authorise the imposition, on conviction on indictment

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[b] Order in Council No. XVIII of 2009; as amended by Ordinance No. XXII of 2009.

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of an offence, of a term of imprisonment exceeding 10 years.

(5) For the avoidance of doubt, an Ordinance under this Law may not –

(a) lower the age below which a child can be guilty of any offence, as specified in section 3 of the Criminal Justice (Children and Juvenile Court Reform) (Bailiwick of Guernsey) Law, 2008[c], or

(b) lower the age below which a person convicted of an offence punishable with imprisonment can be sentenced to a custodial sentence, as specified in section 1(2) of the Criminal Justice (Youth Detention) (Bailiwick of Guernsey) Law, 1990[d].

Interpretation.

9. (1) In this Law, unless the context requires otherwise –

"**Department**" means the States of Guernsey Home Department,

"**enactment**" means any Law, Ordinance, or subordinate legislation,

"**functions**" includes powers and duties,

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[c] Order in Council No. VI of 2009.

[d] Ordres en Conseil Vol. XXXII, p. 106; as amended by Recueil d'Ordonnances Tome XXIX, p. 406.

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"**Governor**" means the person appointed as Governor under an Ordinance made under section 5(3),

"**Island**" means the island of Guernsey,

"**this Law**" includes –

(a) any Ordinance made under this Law, and

(b) any subordinate legislation made under any such Ordinance,

"**officer**" means an employee of the States of Guernsey,

"**Ordinance**" means an Ordinance made under this Law,

"**person**" includes any body or authority,

"**place**" includes vessel or aircraft,

"**prescribed**" means prescribed in any manner (including by class, category or description) by or under an Ordinance,

"**prison**" means any land or building, or any part of any land or building, declared to be a prison under section 1,

"**prison system**" includes –

(a) this Law,

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(b) any code or guidance made or issued under this Law,

(c) practices, procedures, acts, omissions, and decisions carried out, done or made –

(i) under or in relation to any of the legislation, code, or guidance specified in paragraph (a) or (b),

(ii) otherwise in relation to any prison or prisoners, or

(iii) by a staff member or an officer assigned to any prison,

"**prisoner**" means any person –

(a) held in lawful custody in, or lawfully remanded or committed to, the prison, or

(b) held in lawful custody, or lawfully remanded or committed to any place, in any prescribed circumstances,

"**staff member**", in relation to a prison, means any person, other than an officer, who is contracted to the States of Guernsey to work in or in relation to the prison,

"**subordinate legislation**" means any regulation, rule, order, rule of

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court, resolution, scheme, byelaw or other instrument made under any enactment and having legislative effect, and

"**uniform scale**" means the uniform scale of fines for the time being in force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989[e].

(2) Unless the context requires otherwise, references in this Law to any enactment are references thereto as amended, varied, re-enacted (with or without modification), extended or applied.

Citation.

10. This Law may be cited as the Prison (Enabling Provisions) (Guernsey) Law, 2010.

Commencement.

11. This Law comes into force on a day appointed by the States by Ordinance; and the States may appoint different days for different provisions of this Law and for different purposes.

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[e] Ordres en Conseil Vol. XXXI, p. 278.

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SCHEDULE 1

SPECIFIC MATTERS FOR WHICH AN ORDINANCE MAY BE MADE

Section 7

1. The minimum entitlement of prisoners, or minimum standards, in relation to–

(a) accommodation, including a bed and bedding,

(b) physical and mental welfare, including –

(i) prevention of suicide, self harm, and bullying,

(ii) physical exercise,

(iii) food and drink, and

(iv) personal hygiene,

(c) contact with family, friends, and others, including –

(i) access to visitors,

(ii) access to legal advisers,

(iii) correspondence and telephone calls,

(d) cultural and religious matters,

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(e) applications, complaints, and representations, and

(f) educational, health and medical, welfare, and religious services.

2. Prisoners' access to facilities and amenities such as a library, books, and prescribed devices or media of communications.

3. The money and other property of prisoners within the prison system.

4. The collection, disclosure, and use of data and information about prisoners, including information to be given to family, friends, and others.

5. A system of privileges for prisoners, including the criteria or grounds for giving and withdrawing these privileges.

6. A system for receiving prisoners into prison and releasing prisoners from prison at the end of their sentence.

7. A system for resettlement, including sentence and custody planning, offending behaviour programmes, substance misuse, public protection, and resettlement and reintegration.

8. A system for the transfer of prisoners, either permanently or temporarily, to a place either within or outside the Island, including the criteria or grounds for such transfer.

9. A system for the temporary release of prisoners, including the criteria or grounds for such release.

10. The duties, obligations and responsibilities of prisoners.

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11. The correspondence and telephone communications of prisoners.

12. Drugs, tobacco, and alcohol.

13. The maintenance of safety, security, and discipline in or in relation to any prison, including –

(a) access to the prison site, admission to the prison, and removal of persons from the prison site or prison,

(b) the things that may, or must not, be conveyed into or out of the prison or prison site.

14. The duties, obligations, and responsibilities of persons (other than prisoners or officers assigned to the prison) who are in, or in the vicinity of, a prison or prison site.

15. Prison discipline, including procedures for investigating and dealing with offences against prison discipline, penalties and sanctions, and appeal procedures.

16. A system for the segregation or confinement of prisoners, including the criteria or grounds for such segregation or confinement.

17. The circumstances in which officers may use force or weapons, and the type or description of restraints that may be used.

18. Powers of entry, inspection, testing and examination (including medical examination), search, seizure, forfeiture and disposal, arrest and detention,

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and any other powers considered necessary or expedient, in relation to both prisoners and non-prisoners.

19. A system for supporting any Governor in the event of a riot, major incident, other disorder or circumstances in which the Governor requires immediate assistance.

20. The appointment of officers and their assignment to the prison.

21. The powers, obligations, duties, and responsibilities of officers assigned to the prison.

22. A disciplinary code for officers, including provision for penalties and sanctions against officers.

23. The name, constitution and objects, powers, obligations, duties and responsibilities of any panel set up to monitor the prison.

24. A system of independent and regular inspections of the prison.

25. The functions of the Department, the Governor, and other persons.

26. The maximum period for which a person may be remanded in custody pending trial, sentencing or appeal, without reference to a Court or tribunal.

27. The minimum age for the detention of children or young persons in the prison, and the presence or keeping of babies in the prison.

28. The proportion of a sentence of imprisonment that must be served by a prisoner before he is eligible for remission.

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29. The release of a prisoner before the end of his sentence, including the criteria or grounds for such release.

30. Deaths of prisoners.

31. Any other matters necessary or expedient for giving full effect to this Law and for its due administration.

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SCHEDULE 2

ENACTMENTS THAT MAY BE AMENDED OR REPEALED BY ORDINANCE

Section 8(1)(b)(i)

Orders in Council and Laws.

The Order in Council entitled "Nouvelle Prison Publique" registered on the 11th of June 1803.[f]

The Law entitled "Loi portant Règlement pour Mesurer et Photographier des Prisonniers condamnés ou accusés de crime" registered on the 14th of July 1923.[g]

The Prison Administration (Guernsey) Law, 1949[h].

The Prison Administration (Amendment) (Guernsey) Law, 1957[i].

The Prison Administration (Amendment) (Guernsey) Law, 1999[j].

The Prison Sentences (Reception of Alderney Prisoners) Law, 1949[k].

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[f] Ordres en Conseil Vol. I, p. 1.

[g] Ordres en Conseil Vol. VII, p. 86.

[h] Ordres en Conseil Vol. XIV, p. 159.

[i] Ordres en Conseil Vol. XVII, p. 234.

[j] Ordres en Conseil Vol. XXXIX, p. 13.

[k] Ordres en Conseil Vol. XIV, p. 156.

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The Prison Sentences (Reception of Sark Prisoners) Law, 1971[l].

The Rehabilitation of Offenders (Bailiwick of Guernsey) Law, 2002[m].

The Criminal Justice (Youth Detention) (Bailiwick of Guernsey) Law, 1990[n].

The Criminal Justice (Supervision of Offenders) (Bailiwick of Guernsey) Law, 2004[o].

The Parole Review Committee (Guernsey) Law, 1989[p].

Ordinances.

The Ordinance entitled "Marins au service de Sa Majesté emprisonnés" of the 7th of August, 1872[q].

The Prison Sentences (Reception of Sark Prisoners) Law, 1971 (Commencement) Ordinance, 1972[r].

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l Ordres en Conseil Vol. XXIII, p. 193.

m Order in Council No. XIV of 2002.

n Ordres en Conseil Vol. XXXII, p. 106.

o Order in Council No. IX of 2005.

p Ordres en Conseil Vol. XXXI, p. 414; Recueil d'Ordonnances, Tome XXIX, p. 448.

q Recueil d'Ordonnances Tome IV, p. 134.

r Recueil d'Ordonnances Tome XVIII, p. 1.

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The Prison (Regulation of Access) Ordinance, 1990[s].

The Prison Administration (Guernsey) Ordinance, 1998[t].

The Prison Administration (Amendment) Ordinance, 2002[u].

The Prison Administration (Guernsey) (Amendment) Ordinance, 2006[v].

The Prison Administration (Alcohol and Drug Testing) Ordinance, 1999[w].

The Prison Administration (Alcohol and Drug Testing) (Amendment) Ordinance, 2009[x].

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[s] Recueil d'Ordonnances Tome XXV, p. 206.

[t] Recueil d'Ordonnances Tome XXVIII, p. 90.

[u] Recueil d'Ordonnances Tome XXIX, p. 206.

[v] Recueil d'Ordonnances Tome XXXI, p. 656.

[w] Recueil d'Ordonnances Tome XXVIII, p. 223.

[x] Ordinance No. XXX of 2009.

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