
PRISON (GENERAL) (AMENDMENT) REGULATIONS 2013

The Administrator makes the following Regulations in exercise of the powers under section 9(1) of the Prisons Ordinance 2005(a).

Short title and commencement

1. These Regulations may be cited as the Prison (General) (Amendment) Regulations 2013 and come into force on the day after publication in the Gazette.

Amendment of the Prison (General) Regulations 2005

2. The Prison (General) Regulations 2005(b) are amended in accordance with regulations 3 to 7.

Substitution of regulation 78 (removal to hospital outside prison)

3. For regulation 78, there is substituted the following regulation—

“Medical treatment

78. (1) The Superintendent may issue an authorisation that a prisoner requiring medical treatment be taken to a hospital or a medical centre outside the precincts of the prison accompanied by 1 or more prison officers.

(2) The authorisation may impose such conditions on the prisoner as the Superintendent determines are necessary in all the circumstances of the case.

(3) Except in the case of an emergency, the Superintendent may issue an authorisation under paragraph (1) only where the Medical Officer determines that medical treatment outside the precincts of the prison is necessary.

(4) Without limit to the generality of paragraph (2), the Superintendent may impose 1 or more of the following conditions—

- (a) that the prisoner (P) remains at all times in the presence of the prison officer or officers accompanying P;
- (b) that P obeys any instruction given by the prison officer or officers accompanying P;
- (b) that P returns to the prison immediately on completion of the medical treatment with the prison officer or officers accompanying P.

(5) Except where paragraph (6) applies, the Superintendent must inform the prisoner of the conditions imposed under paragraph (2), orally and in writing, before the prisoner is taken from the precincts of the prison.

(6) This paragraph applies where—

- (a) the authorisation is in the case of an emergency; or
- (b) the Superintendent determines that the medical condition of the prisoner (P) is such that P is not capable of understanding the conditions imposed under paragraph (2).

(7) Where paragraph (6) applies, the prisoner must be informed of the conditions imposed under paragraph (2) orally and in writing as soon as reasonably practicable, which in the case of paragraph (6)(b) is as soon as reasonably practicable in the event of the prisoner becoming capable of understanding them.”.

Amendment of regulation 83 (inquiry into a disciplinary offence)

4. In regulation 83,—

(a) after paragraph (1) insert—

“(1A) In the case of a prisoner (P) who escapes from lawful custody or fails to comply with the conditions imposed in an order or in a licence which require P to return to the prison at a specified time, discovery of the offence is the time P is returned to prison custody.”;

(b) in paragraph (3), omit “Every” and substitute “Subject to regulation 89, every”.

Amendment to regulation 85 (inquiry into a charge)

5. In regulation 85, after paragraph (4) add—

“(5) Where a charge has been referred to the adjudicator, the inquiry may be heard by an adjudicator outside the Areas using a live link.

(6) In this regulation “live link” is to be construed, subject to all necessary modifications, in accordance with section 27B of the Courts (Constitution and Jurisdiction) Ordinance 2007(c).”.

Substitution of regulation 89 (charging of prisoners before court)

6. For regulation 89, there is substituted the following regulation—

“Criminal offences

89. (1) Where the Superintendent considers that a prisoner may have committed a criminal offence arising from the same facts as an offence against discipline, the Superintendent must—

(a) refer the case to the Attorney-General and Legal Adviser immediately after laying a charge under regulation 83(1); and

(b) suspend an inquiry under these Regulations.

(2) Following a referral under paragraph (1)(a), the Attorney-General and Legal Adviser must decide as soon as reasonably practicable whether or not to prosecute the prisoner for a criminal offence arising from the same facts for which the charge has been laid, and notify the Superintendent of the decision.

(3) Where the decision under paragraph (2) is to prosecute the prisoner, the Superintendent must withdraw the charge.

(4) Where the decision under paragraph (2) is not to prosecute the prisoner, the Superintendent must—

(a) inquire into the charge within 7 days of notification of the decision; or

(b) refer the charge to the adjudicator as soon as reasonably practicable, who must inquire into the charge within 28 days of the referral.”.

Amendment of Schedule 1 (discipline offences)

7. After paragraph 10 in Schedule 1(d) insert—

“10A. Failing to comply with a condition imposed under regulation 78(2).”.

Dated this 22nd day of April 2013.

By the Administrator’s Command,

J. S. Wright,

Chief Officer,

Sovereign Base Areas.

(SBA/AG/2/CR/188/1)

Notes

(a) Ordinance 11/71; section 9 was amended by Ordinance 14/05.

(b) P.I. 47/2005; amended by P.I. 32/09 and 25/11.

(c) Ordinance 5/2007; section 27B was inserted by Ordinance 10/2011.

(d) Schedule 1 was substituted by P.I.25/2011.

EXPLANATORY NOTE

(This note is not part of the Regulations)

Introduction

1. This explanatory note relates to the Prison (General) (Amendment) Regulations 2013 (the “Regulations”). It has been prepared by the Office of the Attorney General and Legal Adviser in order to assist the reader of the Order. It does not form part of the Regulations.

Particular Points

2. The purpose of the Regulations is to amend provisions in the Prison (General) Regulations 2005 (the principal Regulations) related to prison discipline.

3. Regulation 3 substitutes a new regulation 78 in the principal Regulations. It provides for a power for the Superintendent of Prisons to order a prisoner to be taken outside the prison for medical treatment accompanied by 1 or more prison officers. The order may include conditions including that the prisoner remains in the presence of the accompanying officers, obeys instructions given by them and returns to the prison immediately on completion of medical treatment. The prisoner must be told orally and in writing of the conditions imposed. Regulation 7 inserts a new disciplinary offence in Schedule 1 of the principal Regulations of failing to comply with a condition imposed under regulation 78(2).

4. The office of Superintendent of Prisons is held by the Chief Constable of the SBA Police Service. The definition of Superintendent in the principal Regulations includes any officer who acts for him.

5. Regulation 4 clarifies the meaning of “discovery of the offence” in regulation 83 of the principal Regulations by inserting a new paragraph (1A). In the case of a prisoner escaping from lawful custody or failing to comply with conditions in a licence or an authorisation to return to the prison, “discovery” is the time the prisoner returns to prison custody. A charge must be laid within 48 hours of discovery.

6. An amendment to regulation 85 of the principal Regulations, made by regulation 5, provides that an adjudicator may inquire into a disciplinary offence by means of a live link. This is a video conference type facility and enables the adjudicator to conduct an inquiry from outside the Areas. The adjudicator is a person approved by the Chief Officer to inquire into more serious disciplinary offences. Only the adjudicator has the power to impose a penalty of loss of remission.

7. Regulation 6 substitutes regulation 89 of the principal Regulations. It puts beyond doubt that if a prisoner is charged with a disciplinary offence which is also a criminal offence, and the Attorney-General and Legal Adviser decides to prosecute, the disciplinary charge must be dropped. It provides for amended time limits for inquiring into a charge where a prosecution is not brought.