CHAPTER 260

PRISONS ACT

To provide, in place of the Prisons Ordinance, for matters relating to Prisons.

20th April, 1976

ACT IX of 1976, as amended by Acts XI of 1977, XLIX of 1981, XIII of 1983, XIII of 1990, VII of 1999 and XXIV of 2002; Legal Notices 211 and 351 of 2004; Act XXXII of 2007; Legal Notice 423 of 2007; and Acts XXXVIII of 2015, XLI of 2016 and IV of 2017.

Short title.

1. The short title of this Act is the Prisons Act.

Interpretation.
Amended by: XI. 1977.2; VII.1999.2.

2. In this Act, unless the context otherwise requires -

"Director" means the Director of Correctional Services and includes any other public officer authorised on his behalf by such Director;

"Minister" means the Minister responsible for the prisons and includes, to the extent of the authority given, any person authorised on his behalf for any purpose of this Act;

"other person employed in the prisons" means such other person who is not a prisons officer and who may from time to time be employed or assigned duties, in a prison;

"prison" means the Corradino Prison and includes any other place or building declared or deemed to be a prison under the provisions of article 3;

"prisoner" means any person who is confined in any prison;

"prisons officer" means any public officer of whatever grade or category, who is appointed or seconded to serve in the Department of Correctional Services and includes the Director.

Power of Minister to appoint other prisons.

3. (1) The Minister may by order published in the Gazette declare any place or building or part of a building to be a prison.

(2) The Minister may also appoint any suitable place outside the precincts of a prison for the custody of any prisoner, or other person liable to be confined in prison, who is subject to quarantine or is suffering from any contagious or infectious disease within the meaning of any law for the time being in force; and any such place shall be guarded only if and to the extent that the Director deems it necessary or expedient.

(3) A prisoner shall be deemed to be confined in a prison while he is being moved to or from a prison or from one prison to another or while he is under treatment or observation in any hospital.

Persons to be confined in prison.
Amended by:
XLIX. 1981.4;
XIII. 1990.2;
XXIV. 2002.15.

4. (1) The following persons shall be confined in prison:

(*a*) any person who has been sentenced by a court of criminal jurisdiction in Malta to the punishment of imprisonment or detention or who, having been sentenced by a competent authority to pay a fine (*multa* or *ammenda*) or costs, fails to pay such fine or costs in any case in which, according to law, such fine or costs are, if not paid, convertible into imprisonment or detention;

(*b*) any person who has been sentenced to the punishment of death, imprisonment or detention by any other court or by any authority in Malta authorised by law to inflict any such punishments, unless such law appoints any other place in which the punishment is to be undergone;

(*c*) any person who, having been sentenced abroad by a foreign or international court or other competent authority to a punishment involving deprivation of liberty for a limited or unlimited period of time on account of a criminal offence, is sent to Malta to continue serving such sentence in Malta in accordance with any treaty, convention, agreement or understanding for that purpose to which Malta is a party or which is for the time being in force between Malta and the foreign country concerned or which applies to both such countries or to which both countries are a party;

(*d*) any person who has been arraigned under arrest and charged before the competent court for an offence in respect of which the courts in Malta have jurisdiction according to law, or is under examination before a court of criminal inquiry, or who is committed for trial by the said court or by any other competent authority, or who is under trial in Malta, or who is the subject of extradition proceedings, unless such person is released on bail.

(2) It shall be lawful to confine in a prison:

(*a*) any person who, having been sentenced to give security to keep the peace and to be of good behaviour or to watch over the conduct of a minor is, upon failure to give such security, liable to be detained and kept in custody, and any person who is arrested by a competent court for non-payment of the sum in which he bound himself;

(*b*) any person, whose arrest or detention according to law is ordered by any court or other competent authority;

(*c*) any person who, under any extradition arrangement, is liable to be surrendered to a foreign country;

(*d*) any person detained in custody under the provisions of the Immigration Act, other than under article 10 or 22

Cap. 217.

thereof;

(*e*) any person who has been arrested for an offence.

(3) Where any prison is used for both men and women, separate places or buildings or parts of a building shall be used for the men and for the women respectively so as to prevent the one category of prisoners from seeing or communicating with the other category.

5. *Repealed by Act VII of 1999.*

Powers of Minister to make regulations. *Amended by: XXXVIII. 2015.2.*

6. (1) The Minister may by regulations provide for:

(*a*) the good order and management of prisons;

(*b*) the admission, removal or discharge of prisoners;

(*c*) the diet, clothing, maintenance, discipline, instruction, employment and correction of prisoners, including the work prisoners may be required to perform by way of discipline, instruction or employment;

(*d*) the means for facilitating the identification of prisoners and their classification into categories accordingly;

(*e*) the manner in which and conditions under which a remission of a portion of the sentence may be earned by industry, good conduct and adherence to the Care Plan in terms of the Restorative Justice Act; Cap. 516.

(*f*) the granting of gratuities to prisoners and the remuneration of prisoners for work done by them;

(*g*) the temporary absence of prisoners from the prison for any legitimate purpose;

(*h*) the temporary removal of a prisoner to any hospital or similar institution in circumstances not contemplated under the provisions of article 3;

(*i*) the conditions under which visitors may be allowed in the precincts of a prison;

(*j*) the duties and conduct of the prison officers and of other persons employed in the prisons;

(*k*) the penalties which may be inflicted for any offence committed against the provisions of any such regulations;

(*l*) generally any other matter relating to the prisons and to the proper treatment of prisoners or which may appear to the Minister to be necessary or expedient for the better carrying out of the provisions of this Act.

(2) Any gratuity or remuneration granted to a prisoner under the provisions of this article shall not be attached by a garnishee order.

Introduction of prohibited articles into prison. *Amended by: XIII. 1983.4, 5; L.N. 423 of 2007.*

7. (1) Where any person, not being a prisons officer or other person employed in the prisons, without lawful authority, introduces or attempts to introduce into any part of the precincts of a prison any article whatsoever not allowed under any regulations made under this Act, or conveys or attempts to convey any such article out of any prison, shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) not exceeding two hundred and thirty-two euro and ninety-four cents (232.94).

(2) Where the article which is introduced or sought to be introduced into a prison as aforesaid consists of arms proper as defined by article 64 of the Criminal Code, or an explosive substance as defined by article 314 of the Criminal Code, or any burning or corrosive fluid or substance, or any drug which is a dangerous drug under the Dangerous Drugs Ordinance, or which is a drug controlled by regulations made under the Medical and Kindred Professions Ordinance, the punishment shall be imprisonment for a period of not less than one and not more than eighteen months unless a higher punishment is provided for under any other law.

Cap. 9.

Cap. 101.

Cap. 31.

(3) Where any offence under the foregoing provisions of this article is committed by a prisons officer or by any other person employed in the prisons the punishment shall be a fine (*multa*) not exceeding one thousand and one hundred and sixty-four euro and sixty-nine cents (1,164.69) in the case of a conviction under the provisions of subarticle (1), and imprisonment from six months to two years in the case of a conviction under the provisions of subarticle (2) unless a higher punishment is provided for under any other law.

Board of Visitors. *Amended by: XI.1977.2; XXXVIII. 2015.3.*

8. (1) There shall be a Corradino Correctional Facility Monitoring Board, composed of such members as shall be appointed every two years by the President.

(2) If any vacancy in the Board occurs on account of death, resignation or for any other cause, the President shall, as soon as practicable, appoint another person to fill the vacancy:

Provided that the Board and the members thereof may act notwithstanding any such vacancy.

(3) The members of the Board shall exercise such functions as shall be assigned to them by regulations made under article 6 of this Act.

(4) The Minister responsible for the Prisons, the Chief Justice, the judges, the magistrates and the Attorney-General shall be *ex officio* Special Visitors of the prisons, and as such it shall be lawful for them to have at any time access to the prisons for the purpose of inspecting such prisons and any of the prisoners therein. They shall enter in the official Visitors' Book any remarks which they may deem proper in regard to the prisons and prisoners, and the book shall be produced to the members of the Corradino Correctional Facility Monitoring Board on their next visit to the prisons.

(5) The Director of Prisons shall ensure that all prisoners are made aware of the Corradino Correctional Facility Monitoring

Board and its functions thereof and to make available the necessary mechanism in order that the prisoners can make their requests or complaints to the Board.

Abolition of hard labour and employment of prisoners.

9. (1) With effect from the commencement of this Act, every sentence of imprisonment, whether with or without hard labour, passed upon any convicted prisoner shall subject the prisoner during the term of such sentence to be imprisoned and to perform such work as the Director may in accordance with regulations made under this Act direct.

(2) Notwithstanding the provisions of any other law, no person shall be sentenced by a court or by any other competent authority to imprisonment with hard labour.

(3) Every law conferring power on a court or on a competent authority to pass a sentence of imprisonment with hard labour shall be construed as conferring a power to pass a sentence of imprisonment for a term not exceeding a term for which a sentence of imprisonment with hard labour could have been passed immediately before the commencement of this Act.

Saving.

10. The Corradino Civil Prisons Regulations, 1931, and any regulations made under the provisions of the Prisons Ordinance shall, until other provision is made under or by virtue of this Act, continue in force, and have effect as if made under this Act, and may be varied, altered or repealed accordingly.

Prisons Officers

Duties and powers or prisons officers. *Added by: VII. 1999.4.*

11. (1) Prisons officers shall carry out such duties as may be assigned to them by regulations made under this Act or by any direction of the Minister.

(2) In the performance of their duties within a prison and when on escort duties with prisoners outside the prisons, prisons officers shall be vested with all such functions, powers and duties as are by law vested in an officer of the Malta Police Force.

Pensions regulations. *Added by: VII. 1999.4. Amended by: XLI. 2016.33.*

12. (1) The Minister, with the concurrence of the Minister from time to time responsible for the Department of Social Security, may make regulations for the granting of pensions to persons who have served in the Department of Correctional Services or to their legal representatives or dependants.

(2) Any regulations made under this article may with retroactive effect confer a benefit upon or remove a disability attaching to any person or class of persons.

(3) Any pension granted under this Act shall be computed in accordance with the provisions in force at the actual date of the officer's retirement.

(4) No regulation made under this article shall have effect unless it has been approved by a prior resolution of the House of Representatives.

Pensions to be charged on revenues of Malta. *Added by: VII. 1999.4.*

13. There shall be charged on and paid out of the Consolidated Fund all such sums of money as may from time to time be granted by way of pension in accordance with this Act.

Removal from office. *Added by: VII.1999.4.*

14. It shall be lawful for the Minister to remove from his office at any time an officer of the Department of Correctional Services who -

(i) is considered unlikely to become, or has ceased to be, an efficient officer of the Department of Correctional Services;

(ii) is incapable by reason of some infirmity of mind or body of discharging the duties of his office when such infirmity is likely to be permanent; and

(iii) it is considered, having regard to the conditions of the Department of Correctional Services, the usefulness of the office thereto, and all the circumstances of the case, should in the public interest no longer serve as a member of the Department of Correctional Services.

Circumstances in which pension may be granted. *Added by: VII. 1999.4. Amended by: XXXVIII. 2015.4.*

15. No pension shall be granted to any officer of the Department of Correctional Services except on his retirement from the Department of Correctional Services in any one of the following cases:

(i) on or after attaining the age of fifty-five years or if he has completed twenty-five years' service in the Department of Correctional Services;

(ii) on the abolition of his office;

(iii) on compulsory retirement for the purpose of facilitating improvement in the organisation of the Department of Correctional Services, by which greater efficiency and economy can be effected;

(iv) in the case of termination of employment in the public interest as provided in this Act;

(v) on medical evidence to the satisfaction of the Minister that such office of the Department of Correctional Services is incapable by reason of infirmity of mind or body of discharging the duties of his office and that such infirmity is likely to be permanent:

Provided that if a correctional services officer has, without his own default, been seriously injured during the course of his duties and due to such injury he is incapable of discharging the duties of his office, and has been duly certified by an Injuries Board made up of medical and other professionals appointed by the Minister responsible for Prisons, such officer may be entitled to pensionable emoluments as if he had completed the 25 years' service:

Provided further that, if a correctional services officer, without his own default, dies as a direct consequence of him having carried out the duties of his office, his dependants, unless otherwise precluded at law, will be entitled to the payment of such pensionable emoluments in accordance with regulation 16 of the Prisons Pensions Regulations. S.L. 260.04

Saving as to correctional services officers. *Added by: XXXII. 2007.38.*

15A. Subject to any regulations made under this Act determining the maximum pension grantable to a correctional services officer as may be in force from time to time, where a person has been appointed a correctional services officer, any period previous to that appointment during which that person has served as a prisons officer or as a member of a disciplined force as defined in article 47(1) of the Constitution shall be deemed as service as a correctional services officer for the purpose of any pension that may be granted under this Act or any regulations made thereunder.

Retirement on the ground of public interest. *Added by: VII. 1999.4.*

16. Where the services of an officer of the Department of Correctional Services are terminated on the ground referred to in article 14(iii), and a pension cannot otherwise be granted under the provisions of this Act, such officer may be granted a pension not exceeding in amount that for which he would be eligible if he retired from the Department of Correctional Services in the circumstances described in article 15(v).

Cross-border payments. *Added by: L.N. 211 of 2004.*

17. Pensions, gratuities and allowances payable under this Act to any prisons officer shall also be payable to the person entitled thereto in other Member States of the European Community net of any taxes and transaction charges in accordance with Article 5 of Council Directive 98/49/EC of the 29th June, 1998 on safeguarding the supplementary pension rights of employed and self-employed persons moving within the Community.

Information to persons entitled to pension, gratuity or allowance. *Added by: L.N. 211 of 2004. Amended by: L.N. 351 of 2004.*

18. Where any prisons officer is posted in another Member State of the European Community, such officer shall be entitled to receive adequate information as to his rights under article 17.

Animals used by the Corradino Correctional Facility. *Added by: IV. 2017.2.*

19. (1) The Corradino Correctional Facility may make use of animals in the performance of certain operations and in ceremonial functions.

(2) The Director shall ensure that these are treated in the best way possible and compatible to the nature of such animals, and that they are not subjected to any cruel treatment.

(3) Unless otherwise advised by a veterinary surgeon, an animal that is no longer of use to the Corradino Correctional Facility, for any reason whatsoever, shall preferably be donated to any person or body that can continue to treat the animal well in its retirement. The Corradino Correctional Facility shall not euthanize any animal merely because no suitable person has been immediately found to take care of that animal.