



# GOVERNMENT GAZETTE

## OF THE

# REPUBLIC OF NAMIBIA

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## Government Notice

### MINISTRY OF SAFETY AND SECURITY

No. 34 2009

#### AMENDMENT OF REGULATIONS RELATING TO ADMINISTRATION AND CONTROL OF NAMIBIAN PRISON SERVICE: PRISON ACT, 1998

Under section 124 of the Prisons Act, 1998 (Act No.17 of 1998), I have amended the regulations set out in the Schedule.

**N. IYAMBO**  
**MINISTER OF SAFETY AND SECURITY**

#### SCHEDULE

#### Definitions

**1.** In these regulations the “Regulations” means the Regulations for the Administration and Control of the Namibian Prison Service published under Government Notice No. 226 of 8 November 2001.

#### Amendment of regulation 1 of Regulations

**2.** Regulation 1 of the Regulations is amended by the insertion after the definition of “chairperson” of the following definitions:

“fixed establishment” means the posts created for the normal and regular requirements of the Prison Service;

“medical personnel” means, a medical officer or a nurse appointed, designated or engaged as such for a prison;”.

### **Substitution of regulation 2 of Regulations**

**3.** The Regulations are amended by the substitution for regulation 2 of the following regulation:

#### **“Determination of establishment and distribution of prison members**

**2.** (1) The fixed establishment of the Namibian Prison Service is determined by the Commissioner with the concurrence of the Minister, for the normal and regular requirements of the Prison Service.

(2) The Commissioner must make recommendations to the Minister as to the number, grading, regrading, conversion or abolition of posts constituting part of the fixed establishment, including any reduction in or reorganization or readjustment of the Prison Service.

(3) Any recommendation referred to in subregulation (2) which involves expenditure from the revenue, may not, if approved by the Minister, be carried out unless prior approval for such expenditure has been obtained.

(4) The Commissioner must determine the distribution of prison members in all prisons, offices and work places.”.

### **Substitution of regulation 9 of Regulations**

**4.** The Regulations are amended by the substitution for regulation 9 of the following regulation:

#### **“Duties of officer-in-charge, head of office or work place**

**9.** (1) The officer in charge or the head of office or work place, as the case may be, is responsible to the Commissioner for the maintenance of efficient administration, discipline and proper use, and care of State property at any prison, office or work place under his or her command.

(2) In order to ensure the efficient administration, discipline and care of State property at the prison, office or work place, the officer in charge, or head of office or work place, as the case may be, may, in such form and manner as they may determine, issue orders and directives: Provided that, such orders and directives may not contradict the Act, these Regulations or any rule, order or directive issued by the Commissioner, on a similar matter.

(3) Prison members and other persons at the prison, office or work places, as the case may be, must obey the orders or directives issued under subregulation (2).”.

### **Substitution of heading of Part IV of Regulations**

**5.** The Regulations are amended by the substitution for the heading of Part IV of the following heading:

“APPOINTMENT OF PRISON MEMBERS”

**Substitution of regulation 14 of Regulations**

6. The Regulations are amended by the substitution for regulation 14 of the following regulation:

**“Appointment of senior prison members**

14. (1) The appointment of senior prison members is done in accordance with section 6(1) of the Act.

(2) The appointment of junior prison members is done in accordance with section 7(a) of the Act and with due consideration of the Recruitment Policy of the Namibian Prison Service.”.

**Insertion of regulation 14A of Regulations**

7. The Regulations are amended by the insertion after regulation 14 of the following Regulation:

**“Appointment of persons as prison members on contract**

14A. (1) The Commissioner may appoint on contract a person who is a Namibian citizen as a prison member in a vacancy on the fixed establishment or additional to the fixed establishment as the Commissioner may consider expedient.

(2) Subject to subregulation (4), the Commissioner may, appoint on contract a person who is a non-Namibian citizen as a prison member in a vacancy on the fixed establishment or additional to the fixed establishment where such non-Namibian citizen is having specialized knowledge and skills required in the Prison Service and the Namibian job market, in the opinion of the Commissioner, cannot provide a Namibian citizen with the required knowledge and skills or there is a common knowledge that Namibia citizens with the required knowledge and skills are scarce or are not readily available.

(3) The appointment of persons on contract as prison members is done in a prescribed manner and be subject to prescribed conditions.

(4) The appointment of a non-Namibian citizen is subject to the approval of the Minister.”.

**Substitution of regulation 15 of Regulations**

8. The Regulations are amended by the substitution for regulation 15 of the following regulation:

**“Conditions of probation and confirmation of appointment of junior prison members**

15. (1) Subject to this regulation, the appointment of a senior and junior prison member is on a permanent basis with effect from the date of his or her assumption of duty.

(2) The first year of service of a senior or junior prison member is on probation but the probationary period of service of a senior or junior prison member is extended by the number of days of leave taken by him or her during the period of probation or any extension of that period.

(3) The probationary period of a senior or junior prison member may, on good and sufficient grounds, be extended by the Commissioner for such period as he or she considers to be necessary, but not exceeding one year.

(4) If, at any time during the probationary period or extended probationary period, it appears that a senior or junior prison member is unfit or for any other reason unsuitable for further retention in the Prison Service, the Commissioner may terminate his or her service on 30 days written notice.

(5) If the officer in charge, head of office or work place, as the case may be, certifies that the senior or junior prison member concerned has been diligent and his or her conduct uniformly satisfactory during the period of probation or extended probation and that he or she is in all respects suitable for further retention in the service of the Prison Service, the Commissioner may confirm the appointment of such senior or junior prison member.

(6) The monitoring of a senior or junior prison member during the probationary period and his or her confirmation of appointment is done in a form and manner as prescribed.”.

### **Substitution of regulation 16 of Regulations**

**9.** The Regulations are amended by the substitution for regulation 16 of the following regulation:

#### **“Oath of office of senior and junior prison members**

**16.** On appointment, the senior or junior prison member must take oath of office in the prescribed form and manner.”.

### **Substitution of regulation 26 of Regulations**

**10.** The Regulations are amended by the substitution for regulation 26 of the following regulation:

#### **“Requirements for promotion of prison members**

**26.** (1) The Commissioner decides the promotion of a prison member according to the personnel requirements of the Prison Service and with due regard to the Promotion Policy of the Namibian Prison Service.

(2) The promotion of prison members is on probation and regulation 15(2), (3) and (5), applies, with necessary changes, to such promotion.

(3) Where the promotion of a prison member is not confirmed after the probationary period and any extension of the period, such prison member shall revert to the post previously held by him or her or to any other post of an equivalent grade, and to the salary and salary scale he or she would have attained in his or her previous post and any equivalent benefits applicable to such previous post, or be employed additional to the establishment on a suitable grade with an appropriate rank, salary and salary scale.

(4) The monitoring of a prison member during the probationary period and his or her confirmation of promotion is done in a form and manner as prescribed.”.

**Substitution of regulation 36 of Regulations**

11. The Regulations are amended by the substitution for regulation 36 of the following regulation:

**“General provision**

36. Subject to regulation 37, the leave provisions contained in the Public Service Staff Rules D.I. apply with the necessary changes, to a prison member.”.

**Substitution of regulation 37 of Regulations**

12. The Regulations are amended by the substitution for regulation 37 of the following regulation:

**“Approval and control of official journeys of prison members**

37. (1) The leave application of a prison member must be made on a prescribed form.

(2) The leave application of a prison member not being an officer in charge or the head of the office or the work place, is channeled to and approved by the officer in charge or the head of the office or work place, as the case may be, or his or her respective delegate.

(3) The leave application of the officer in charge or the head of office or work place is channeled to and approved by the Commissioner or his or her delegate.”.

**Substitution of regulation 47 of Regulations**

13. The Regulations are amended by the substitution for regulation 47 of the following regulation:

**“Desertion**

47. A prison member who deserts the Prison Service as provided for under section 34 (2) of the Act is deemed to have been dismissed from the Prison Service with effect from a day immediately following the day he or she became a deserter.”.

**Substitution of regulation 69 of Regulations**

14. The Regulations are amended by the substitution for regulation 69 of the following regulation:

**“Uniform at inquiry of accused junior prison member**

69. (1) All prison members attending an inquiry must wear uniform of their respective ranks.

(2) Despite subregulation (1), a prison member may, for good reasons, be allowed to attend the inquiry without wearing uniform by -

- (a) the officer in charge or head of the office or workplace, in case of the member of a disciplinary board or the presiding officer; or
- (b) the chairperson of the disciplinary board or the presiding officer, in case of other prison members,

Provided that such a prison member must wear civilian clothes as prescribed in the Code of Conduct for prison members.”.

### **Substitution of regulation 90 of Regulations**

**15.** The Regulations are amended by the substitution for regulation 90 of the following regulation:

#### **“Accused prison member to plead to charge**

**90.** (1) Subject to subregulation (2), the inquiry must be started by the prosecutor putting the charge to the accused prison member and then the chairperson of the disciplinary board or the presiding officer, as the case may be, must request the accused prison member to plead to the charge.

(2) Before asking the accused prison member to plead to the charge, the chairperson of the disciplinary board or the presiding officer, as the case may be, must ensure that the charge sheet is free of errors.

(3) Where the chairperson of the disciplinary board or the presiding officer, as the case may be, finds that there is an error on the charge sheet and that error does not necessarily require the amendment of the charge, the chairperson of the disciplinary board or the presiding officer, as the case may be, may postpone the inquiry for a period he or she may determine after consulting the parties and order the prosecutor to rectify the error.

(4) Where the error on the charge sheet requires the amendment of the charge, regulation 88 applies, unless the parties agree otherwise.”.

### **Substitution of regulation 103 of Regulations**

**16.** The Regulations are amended by the substitution for regulation 103 of the following regulation:

#### **“Witness to testify orally**

**103.** (1) Where a witness testifies in an inquiry contrary to what he or she previously gave in his or her statement on the matter at issue, such testimony may not be considered, unless that witness proves that, the signature appearing on the mentioned statement is not his or her signature, in which case, his or her oral evidence must be considered.

(2) If the witness whose testimony is not considered as provided for under subregulation (1) is a prison member, the disciplinary board or the presiding officer may order that, that prison member be charged for committing a disciplinary offence of prevarication under section 38(i) of the Act.”.

### **Substitution of regulation 160 of Regulations**

**17.** The Regulations are amended by the substitution for regulation 160 of the following regulation:

#### **“Recovery of determined amount for liability**

**160.** Whenever the liability of a prison member and the sum of money involved have been determined in terms of regulation 159, the recovery of that sum is made in

accordance with the relevant provisions of section 11 of the State Finance Act, 1991 (Act No. 31 of 1991) and Chapter E of Treasury Instructions issued in terms of section 24(1) of the State Finance Act, 1991 (Act No. 31 of 1991).”.

#### **Substitution of regulation 171 of Regulations**

**18.** The Regulations are amended by the substitution for regulation 171 of the following regulation:

##### **“Seizure and destruction of articles**

**171.** All articles which are unlawfully brought into prison by a prisoner or any other person or found being unlawfully possessed by a prisoner or any other person or found in or near a prison may be seized and dealt with as prescribed.”.

#### **Substitution of regulation 173 of Regulations**

**19.** The Regulations are amended by the substitution for regulation 173 of the following regulation:

##### **“Stripping**

**173.** (1) A prisoner may be stripped and searched as prescribed: Provided that, the stripping may, as far as practicable, not be done in the presence and sight of other prisoners.

(2) Where there is reasonable ground to suspect that a prisoner has ingested prohibited article in his or her body, the body cavity of that prisoner may be searched in a prescribed manner.”.

#### **Substitution of regulation 179 of Regulations**

**20.** The Regulations are amended by the substitution for regulation 179 of the following regulation:

##### **“Bringing in and removal of prohibited articles**

**179.** (1) A prohibited article may not be brought or removed from a prison by any person without the permission of the officer in charge or any other senior prison member authorized to grant such permission.

(2) For the purpose of prison administration prohibited article means -

- (a) an intoxicant;
- (b) a firearm or a component thereof;
- (c) ammunition for a firearm;
- (d) anything that is designed to kill, injure or disable a person or that is altered so as to be capable of killing, injuring or disabling a person, when possessed without prior authorization;
- (e) an explosive or a bomb or a component thereof;

- (f) currency, when possessed without prior authorization;
- (g) any item that could jeopardize the security of the prison or the safety of persons, when that item is possessed without prior authorization;
- (h) any other article, object, item or thing that is not authorised by the Commissioner's Directive or written order of the officer in charge, when possessed or bought into or removed from prison without prior authorization."

**Substitution of expression "medical personnel" in regulations 182, 183, 187, 246, 256 and 269 of Regulations**

**21.** The expression "medical personnel" is substituted for the expression "medical officer" wherever it occurs in regulations 182; 183; 187; 246; 256; and 269.

**Amendment of regulations 328 and 329 of Regulations**

**22.** Regulations 328 and 329 of the Regulations are amended by the insertion immediately after the words "Prison Service Orders" of the words "or Standard Operating Practices" wherever they occur in the regulations.

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