

## **PERIODIC DETENTION OF PRISONERS BILL, 1981**

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### **EXPLANATORY NOTE**

**(This Explanatory Note relates to this Bill as introduced into Parliament)**

The following Bills are cognate with this Bill:—

Prisons (Amendment) Bill, 1981;

Parole of Prisoners (Amendment) Bill, 1981.

The objects of this Bill are—

- (a) to make provision for a system of periodic detention of certain persons who are sentenced to imprisonment; and
- (b) to repeal the Periodic Detention of Prisoners Act, 1970, and certain other enactments.

The Bill contains the following provisions:—

#### **PART I.—PRELIMINARY.**

Clause 1. Short title.

Clause 2. Commencement.

Clause 3. Arrangement.

Clause 4. Interpretation.

#### **PART II.—ORDERS FOR PERIODIC DETENTION.**

Clause 5 enables courts to make orders for periodic detention in respect of certain persons who are convicted of offences and sentenced upon those convictions to terms of imprisonment of not less than 3 months and not more than 18 months.

Clause 6 requires that each person in respect of whom an order for periodic detention is made be committed to prison by warrant under the hand of a justice.

Clause 7 requires that each person who is committed to prison under clause 6 be served with a notice specifying certain matters and deems each person in respect of whom an order for periodic detention is made to be in lawful custody during a certain specified time.

Clause 8 makes provision for and with respect to the commencement of each sentence of imprisonment in respect of which an order for periodic detention is made.



### PART III.—PROVISIONS RELATING TO PERIODIC DETENTION.

Clause 9 requires that a person in respect of whom an order for periodic detention is in force (a "periodic detainee") serve his sentence by way of periodic detention under the proposed Act and imposes an obligation to report to prison on each periodic detainee.

Clause 10 enables the Corrective Services Commission of New South Wales ("the Commission") to order certain periodic detainees to participate in certain activities or perform certain work.

Clause 11 enables the Commission, in any case where it makes an order directing a periodic detainee to work outside a prison, to exempt him from serving the whole or part of the unexpired portion of his sentence in prison.

Clause 12 enables the Commission to vary the times at which detention periods are to commence or finish.

Clause 13 enables the Commission to vary the prison at which a periodic detainee is required to serve the whole or part of his sentence.

Clause 14 requires the Commission to give notice of certain orders made by it to the periodic detainees in respect of whom it makes those orders.

Clause 15 makes provision for the commencement of certain orders.

Clause 16 makes provision for the revocation, rescission, amendment, variation and alteration of certain orders.

Clause 17 makes provision with respect to the effect of complying with certain orders.

Clause 18 makes provision for the transfer of certain periodic detainees, who behave in a certain specified manner, from one prison to another prison for the balance of the detention period during which they so behave.

Clause 19 makes provision for remission of sentence.

Clause 20 makes provision for leave of absence.

Clause 21 makes provision for the forfeiture of certain remission of sentence which has been granted to certain periodic detainees.

Clause 22 enables certain persons and the Commission to give directions.

Clause 23 enables the Commission, with the approval of the Minister, to make rules for the control, management and supervision of periodic detainees while they are deemed under the proposed Act to be prisoners.

### PART IV.—CANCELLATION OF ORDERS FOR PERIODIC DETENTION.

Clause 24 makes provision for the cancellation of orders for periodic detention on the subsequent conviction of the periodic detainees in respect of whom they were made.

Clause 25 makes provision for the cancellation of orders for periodic detention otherwise than on the subsequent conviction of the periodic detainees in respect of whom they were made.



Clause 26 makes provision for the issue of a warrant for the apprehension and detention, or the detention, of a person where an order for periodic detention that was made in respect of him is cancelled.

Clause 27 specifies certain effects of the cancellation of an order for periodic detention.

#### PART V.—MISCELLANEOUS.

Clause 28 deems each periodic detainee to be a prisoner within the meaning of the Prisons Act, 1952, during certain specified periods of time.

Clause 29 makes provision for the calculation of the unexpired portions of sentences of imprisonment served by way of periodic detention.

Clause 30 deems that a periodic detainee who serves a detention period in such manner as he may be ordered under clause 10 (1) (b), and is exempted under clause 11 from serving it in prison, to have served that detention period in prison.

Clause 31 preserves the Royal prerogative of mercy.

Clause 32 enables the Minister to establish certain committees (to be known as "Community Committees") each of which is to operate in respect of a particular geographical area and make recommendations to the Commission in respect of certain matters.

Clause 33 specifies the offences against the proposed Act and provides for defences to certain prosecutions under the proposed Act.

Clause 34 enables the Governor to make regulations under the proposed Act.

Clause 35 and Schedule 1 repeal the Periodic Detention of Prisoners Act, 1970, and the Periodic Detention of Prisoners (Amendment) Act, 1977, and amend the Prisons (Amendment) Act, 1978.

Clause 36 and Schedule 2 make provisions of a saving and transitional nature.

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**PERIODIC DETENTION OF PRISONERS BILL, 1981.**

No. , 1981.

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**A BILL FOR**

An Act to make provision for and with respect to the periodic  
detention of certain persons sentenced to imprisonment.

[MR HAIGH—27 November, 1980.]

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See also Prisons (Amendment) Bill, 1981; Parole of Prisoners (Amendment) Bill, 1981.



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*Periodic Detention of Prisoners.*

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**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

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**PART I.**

**PRELIMINARY.**

**Short title.**

**1.** This Act may be cited as the "Periodic Detention of Prisoners Act, 1981".

**10 Commencement.**

**2. (1)** This section and section 1 shall commence on the date of assent to this Act.

**(2)** Except as provided in subsection (1), this Act shall commence on such day as may be appointed by the Governor in  
15 respect thereof and as may be notified by proclamation published in the Gazette.

**Arrangement.**

**3.** This Act is divided as follows :—

PART I.—PRELIMINARY—ss. 1–4.

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PART II.—ORDERS FOR PERIODIC DETENTION—ss. 5–8.

PART III.—PROVISIONS RELATING TO PERIODIC DETENTION  
—ss. 9–23.

PART IV.—CANCELLATION OF ORDERS FOR PERIODIC  
DETENTION—ss. 24–27.

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PART V.—MISCELLANEOUS—ss. 28–36.



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SCHEDULE 1.—REPEALS.

SCHEDULE 2.—SAVINGS AND TRANSITIONAL PROVISIONS.

**Interpretation.**

4. (1) In this Act, except in so far as the context or subject-  
5 matter otherwise indicates or requires—

“Commission” means the Corrective Services Commission of  
New South Wales;

“court” includes a judge, a stipendiary magistrate and any  
justice or justices sitting in petty sessions;

10 “detention period”, in relation to a person in respect of whom  
an order for periodic detention is made, means a period  
that—

(a) occurs during the term of the sentence of  
imprisonment imposed on the person; and

15 (b) subject to any order of the Commission under  
section 12—

(i) commences at 7.00 p.m. on the same day  
of the week as the date specified in the  
order of the court imposing the sentence  
as the date on which the sentence com-  
20 mences; and

(ii) ends at 4.30 p.m. on the second day after  
the day on which the period commences,

25 but does not include any such period which includes the  
whole or any part of Christmas Day, Good Friday or  
Easter Sunday;

“governor”, in relation to a prison, means the superintendent,  
governor, gaoler or other officer for the time being in  
charge of the prison;

30 “imprisonment” includes penal servitude;



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“justice” means justice of the peace;

“order for periodic detention” means an order under section 5 (1);

5 “periodic detainee” means a person in respect of whom an order for periodic detention is in force;

10 “periodic detention”, in relation to a person in respect of whom an order for periodic detention is made, means detention in a prison for such number of consecutive detention periods as there are in the term of imprisonment to which the person has been sentenced;

“prison” means a prison to which the Prisons Act, 1952, applies;

“regulation” means a regulation under this Act;

“rule” means a rule in force under section 23.

15 (2) A reference in this Act to an order made under section 10, 11, 12 or 13 includes a reference to the order as amended, varied or altered under section 16.

PART II.

ORDERS FOR PERIODIC DETENTION.

20 **Power to order periodic detention.**

5. (1) Where a person is convicted of an offence and sentenced upon that conviction to imprisonment for a term of not less than 3 months and not more than 18 months, the court by which the person is sentenced may—

25 (a) if it is of the opinion that it is appropriate in the circumstances of the case that the person serve his sentence by way of periodic detention; and



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(b) if it is satisfied that—

- (i) there is accommodation available at a prison for the person to serve the sentence by way of periodic detention; and
- 5       (ii) travel by the person to and from that prison, for the purpose of serving the sentence by way of periodic detention, could not reasonably be expected to have the effect of imposing undue inconvenience, strain or hardship on the person,

10 order that the term of imprisonment to which it has sentenced him be served by way of periodic detention.

(2) A court shall not make an order for periodic detention in respect of—

- (a) a person who is under the age of 18 years; or
- 15       (b) a person on whom a court has, in the 7 years immediately prior to the date on which he is sentenced as referred to in subsection (1), imposed, in respect of any particular offence of which the person was convicted, a sentence of imprisonment for a term of more than 6
- 20       months—
  - (i) if the sentence was one in respect of which the court did not make an order for periodic detention; or
  - 25       (ii) if the sentence was one in respect of which the court made an order for periodic detention and if the order was cancelled and the person was required, as a result of the cancellation, to serve the unexpired portion of the sentence by way of full-time imprisonment.

30       (3) Where a court—

- (a) imposes on a person 2 or more sentences of imprisonment; and

(b) orders that those sentences be served concurrently,

the court may order that those sentences be served by way of periodic detention.



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(4) Where a court—

(a) imposes on a person 2 or more sentences of imprisonment; and

5 (b) orders that any of those sentences be served at the expiration of any other of those sentences,

the court shall not order that those sentences, or any of them, be served by way of periodic detention.

(5) Without limiting subsection (4), a court shall not impose a sentence of imprisonment on a periodic detainee, to be  
10 served at the expiration of the sentence that he is required to serve by way of periodic detention, unless it cancels the order for periodic detention that was made in respect of him.

(6) Where a court makes an order for periodic detention in respect of a person, it may also order the person to pay any  
15 fine, penalty, sum of money, costs or expenses authorised by law.

**Warrant of commitment to prison.**

6. As soon as practicable after a court has made an order for periodic detention in respect of a person, the person shall be committed to prison by warrant, in or to the effect of the prescribed  
20 form and under the hand of a justice.

**Notice to be served.**

7. (1) Where a person is committed to prison under section 6, the justice who commits the person to prison shall forthwith serve, or cause to be served, on the person a notice, in or to the  
25 effect of the prescribed form, specifying—

(a) the date on which the person is first to report to prison;

(b) the day of the week on which the person is thereafter to report, during the term of his sentence, to prison; and

30 (c) the time and prison at which the person is to report on that date and on each such day.



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(2) A person in respect of whom an order for periodic detention has been made shall be deemed to be in lawful custody from the time at which the order is made until the time at which the notice required by subsection (1) is served on him.

**5 Commencement of sentence.**

8. A sentence of imprisonment to be served by way of periodic detention shall commence on the date specified in the order of the court imposing the sentence as the date on which the sentence shall commence, which date shall be not earlier than 7 days and  
10 not later than 21 days after the date on which the sentence is imposed.

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**PART III.****PROVISIONS RELATING TO PERIODIC DETENTION.****Service of sentence.**

- 15 9. (1) A periodic detainee shall serve his sentence by way of periodic detention in accordance with this Act.

- (2) A periodic detainee shall first report on the date and at the time and prison specified in the notice served on him under section 7 (1) and thereafter during the term of his sentence on the  
20 day of the week specified in that notice as the day on which he is so to report and at the same time and place unless otherwise ordered under this Act by the Commission, and if otherwise so ordered, then in accordance with the order made by the Commission.

- 25 (3) Subsection (2) ceases to apply to or in respect of a periodic detainee if the order for periodic detention that was made in respect of him is cancelled.



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**(4) Where—**

(a) a periodic detainee is required, by or under this Act, to report at a prison; and

**5** (b) the regulations prescribe the manner in which any such periodic detainee is so to report,

the periodic detainee complies with the requirement only if he reports in the manner so prescribed.

**Work, etc.**

**10. (1)** The Commission may, by order, direct a periodic detainee—

(a) to participate in any activity, attend any class or group or undergo any instruction that the Commission considers conducive to his welfare or training; or

**15** (b) to perform, between such hours as are specified in the order, any work, whether in a prison or at a place outside a prison (which place shall be specified in the order), that the Commission considers suitable to his physical capacity,

while he is serving his sentence.

**20 (2)** The type of work which a periodic detainee referred to in subsection (1) (b) may be directed to perform at a place outside a prison shall be work—

(a) at a hospital or a charitable or educational institution;

(b) at the home of an old, infirm or handicapped person;

**25** (c) at an institution for old, infirm or handicapped persons; or

(d) on any land of which the Crown or a public body is the owner, lessee or occupier or which is administered by the Crown or a public body.



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(3) The Commission shall not direct a periodic detainee to perform any work referred to in subsection (2) if, in performing the work, the periodic detainee would take the place of any person who would otherwise be employed on that work as a regular  
5 employee of the hospital, the old, infirm or handicapped person, the institution, the Crown or the public body, as the case may be.

(4) Where the Commission makes an order under subsection (1) (b) directing a periodic detainee to perform work at a place outside a prison (whether or not it makes an order in respect  
10 of him under section 11) and for any reason work is not available at the place or it is impracticable for him to perform work at the place, the periodic detainee shall report at such other place, and in accordance with such instructions as may be given to him, by such person, or a person holding such office, as may be specified in the  
15 order.

**Exemption from serving sentence in prison.**

11. Where the Commission makes an order under section 10 (1) (b) directing a periodic detainee to perform work at a place outside a prison during the whole or part of the unexpired portion  
20 of his sentence, the Commission may, in another order, exempt him from serving in prison the whole or that part of the unexpired portion of his sentence.

**Variation of times of attendance.**

12. (1) A periodic detainee may make application in writing  
25 to the Commission requesting the Commission to make an order varying—

- (a) the time at which he is required to report at a prison or place of work each detention period during the whole or part of his sentence; and
- 30 (b) the time at which he may leave a prison or place of work each detention period during the whole or part of his sentence.



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(2) Subject to subsection (3), where a periodic detainee makes application under subsection (1), the Commission may—

- (a) grant the application and order that the times in respect of which the application is made be varied as requested in the application; or
- (b) refuse to grant the application.

(3) Where a periodic detainee makes application under subsection (1) requesting the Commission to make an order that would, if the Commission were to make the order, have the effect of—

- (a) altering the days that comprise each detention period during the whole or part of his sentence; or
  - (b) increasing or reducing the number of consecutive hours that he is required to serve in prison each detention period during the whole or part of his sentence,
- the Commission shall refuse to grant the application.

**Variation of prison at which sentence is to be served.**

13. (1) Subject to subsection (2), the Commission may, by order, direct a periodic detainee to serve the whole or part of his sentence at a prison other than the prison specified in the notice served on him under section 7 (1).

(2) The Commission shall not make an order under subsection (1) in respect of a periodic detainee that could reasonably be expected to have the effect of imposing undue inconvenience, strain or hardship on him.

**Commission to give notice.**

14. Where the Commission makes—

- (a) an order under section 10 (1) (b) directing a periodic detainee to perform work at a place outside a prison and an order under section 11 exempting him from serving the whole or part of the unexpired portion of his sentence in prison; or



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(b) an order under section 12 or 13,

the Commission shall forthwith cause notice in writing setting forth particulars of the orders or order to be given to the periodic detainee in respect of whom they are or it is made.

**5 Commencement of certain orders.**

**15.** An order under section 10, 11, 12 or 13 shall take effect on and from the day on which the order is made or on and from such later day as may be specified in the order.

**Revocation or amendment of certain orders.**

**10 16.** An order made under section 10, 11, 12 or 13 or deemed by clause 5 of Schedule 2 to be made under this Act may—

(a) at any time, be revoked or rescinded; or

(b) from time to time, be amended, varied or altered,

by further order made by the Commission.

**15 Effect of complying with certain orders.**

**17. (1)** Where the Commission makes an order under section 10, 11, 12 or 13 in respect of a periodic detainee, any provision of the order for periodic detention made in respect of him, the warrant issued in respect of him under section 6 or the notice served on him under section 7 (1) or any stipulation of this Act, which is inconsistent with a provision of the order made by the Commission, is, while the periodic detainee complies with the order made by the Commission, of no force or effect to the extent of the inconsistency.

**25 (2)** While a periodic detainee is complying with an order under section 10, 12 or 13 made in respect of him, he shall be deemed to be serving, by way of periodic detention, the sentence of imprisonment that was imposed on him.



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**Transfer of unruly periodic detainees.**

18. Where a periodic detainee, while in custody under this Act in a prison, behaves in such a manner as to disturb the peace and good conduct of the prison, the governor of the prison may, 5 subject to and in accordance with such provisions of the regulations as are made for the purposes of this section, order that the periodic detainee be transferred to another prison for the unexpired portion of the detention period.

**Remission of sentence.**

10 19. (1) A person who is ordered, on or after the day appointed and notified under section 2 (2), to serve a sentence of imprisonment by way of periodic detention shall be granted remission of sentence as prescribed.

(2) Any regulation made for the purposes of subsection 15 (1) may include provisions for or with respect to any of the following matters :—

- (a) the circumstances in which and the conditions (including conditions as to conduct, industry and behaviour) subject to which remission of sentence may be granted;
- 20 (b) the period in respect of which remission of sentence may be granted;
- (c) the forfeiture of entitlement to remission of sentence by reference to any matter or thing prescribed or as the Commission may determine;
- 25 (d) the procedures and methods of calculation of remission of sentence.

(3) Any remission of sentence to which a prisoner would otherwise be entitled under the Prisons Act, 1952, shall not apply to any part of a term of imprisonment served by way of periodic 30 detention.

(4) A determination as to remission of sentence shall be made by the Commission and shall be final and without appeal.



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(5) Where a periodic detainee is released from periodic detention on remission of sentence granted to him under this section—

- 5 (a) he shall be deemed to have served the sentence of imprisonment that was imposed on him; and
- (b) any orders made under this Act in respect of him shall cease to be of any force or effect.

**Leave of absence.**

10 **20.** Leave of absence may, for health reasons or on compassionate grounds, be granted, subject to and in accordance with the regulations, to any periodic detainee.

**Forfeiture of remission for time spent on leave of absence, etc.**

15 **21. (1)** Whenever a periodic detainee is granted leave of absence under section 20 in respect of the whole or part of a detention period and takes the leave, he shall forfeit 1 week of any remission of sentence to which he may otherwise be entitled under section 19.

20 **(2)** Whenever a periodic detainee who fails to report, as required, to serve a detention period has not been granted leave of absence in respect of the detention period but—

- (a) if he is prosecuted under section 33 (1) (a) or (b)—satisfies the court before which he is prosecuted that he has a sufficient defence as referred to in section 33 (2), (3) or (5) or is acquitted for any other reason; or
- 25 (b) if he is not prosecuted under section 33 (1) (a) or (b)—satisfies the Commission that he has a sufficient defence as referred to in section 33 (2), (3) or (5),

he shall forfeit 1 week of any remission of sentence to which he may otherwise be entitled under section 19.

30 **(3)** Notwithstanding subsections (1) and (2), the Commission may, for any reason which to it seems sufficient, exempt a person to whom either of those subsections applies, from the operation thereof.



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**Directions.**

22. (1) The full-time members of the Commission, the governor of each prison and any prison officer may, subject to and in accordance with such provisions of the regulations as are made for the purposes of this subsection, each give directions (not inconsistent with a provision of this Act or a regulation, rule or order made under this Act) to any periodic detainee for the purpose of securing the enforcement or observance of the provisions of this Act, a regulation or rule or an order made under this Act.

(2) Notwithstanding anything in subsection (1), the Commission may, subject to and in accordance with such provisions of the regulations as are made for the purposes of this subsection, give directions in an emergency or in any other prescribed circumstances to any periodic detainee.

**Rules.**

23. The Commission may, with the approval of the Minister, make rules (not inconsistent with this Act or the regulations) for the control, management and supervision of periodic detainees who are deemed by section 28 to be prisoners.

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**PART IV.****CANCELLATION OF ORDERS FOR PERIODIC DETENTION.****Cancellation of orders for periodic detention on subsequent conviction.**

24. (1) Where a periodic detainee is convicted of an offence and sentenced upon that conviction to a term of imprisonment of more than 1 month, and the sentence is one the execution of which is not deferred under section 558 of the Crimes Act, 1900, the court by which he is convicted shall cancel the order for periodic detention that was made in respect of him.

(2) Except in a case where subsection (1) applies, where a periodic detainee is convicted of an offence and sentenced upon that conviction to a term of imprisonment, the court before which he is convicted may cancel the order for periodic detention that was made in respect of him.



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(3) Where a periodic detainee is convicted of an offence and ordered to pay a fine, penalty, sum of money, costs or expenses authorised by law, the court before which he is convicted may cancel the order for periodic detention that was made in respect  
5 of him.

(4) Where an order for periodic detention is cancelled under subsection (1) or (2), the person in respect of whom the order was made shall serve the unexpired portion of the sentence to which the order applied—

- 10 (a) by way of full-time imprisonment; and  
(b) concurrently with the term of imprisonment to which he is sentenced as referred to in subsection (1) or (2), as the case may be.

(5) Where an order for periodic detention is cancelled  
15 under subsection (3), the person in respect of whom the order was made shall serve the unexpired portion of the sentence to which the order applied by way of full-time imprisonment.

**Cancellation of orders for periodic detention otherwise than on subsequent conviction.**

20 **25.** (1) Where an order for periodic detention is in force in respect of a person, the court that made the order, whether or not the court is constituted by the same member or members who constituted it at the time the order was made, may—

- (a) on application by the person or the Commission; or  
25 (b) without application, if it appears to the court that there is good reason for so doing,

cancel the order.

(2) Where an order is cancelled under subsection (1), the person in respect of whom the order was made shall serve the  
30 unexpired portion of the sentence to which the order applied by way of full-time imprisonment.



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**Issue of warrant on cancellation of an order for periodic detention.**

26. Where an order for periodic detention is cancelled under section 24 or 25, a justice may—

- 5 (a) if the person in respect of whom the order was made is not before the court or in prison at the time at which the order is cancelled, issue a warrant, in or to the effect of the prescribed form, for the apprehension and detention of that person; or
- 10 (b) in any other case, issue a warrant, in or to the effect of the prescribed form, for the detention of that person, to serve the unexpired portion of the sentence to which the order applied by way of full-time imprisonment.

**Certain effects of cancellation of an order for periodic detention.**

15 27. Where an order for periodic detention is cancelled under section 24 or 25—

- 20 (a) any order that was made under section 10, 11, 12 or 13, and any order deemed to have been made under this Act, in respect of the person in respect of whom the order for periodic detention was made, shall cease to be of any force or effect;
- 25 (b) the provisions of the Parole of Prisoners Act, 1966, apply to and in respect of the unexpired portion of the sentence to which the order applied in the same way as they would apply if that unexpired portion were the term of a sentence of full-time imprisonment imposed, at the time of the cancellation, on the person in respect of whom the order was made;
- 30 (c) the unexpired portion of the sentence of imprisonment to which the order applied shall be deemed to be a separate term of imprisonment imposed at the time of the cancellation, which term of imprisonment shall commence—
  - 35 (i) in the case of a person who is before a court or in prison when the order made in respect of him is cancelled, at the time at which the order is cancelled; or



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- (ii) in the case of a person who is not before a court or in prison when the order made in respect of him is cancelled, at the time at which he is apprehended to serve that term of imprisonment; and
- (d) any remission of sentence granted to the person in respect of whom the order was made under section 19 shall be forfeited.

**PART V.**

**MISCELLANEOUS.**

**Periodic detainee deemed to be a prisoner.**

**28. Where a periodic detainee is—**

- (a) detained in prison for the purpose of serving his sentence;
- (b) working (pursuant to an order under this Act) at a place outside a prison; or
- (c) travelling between a prison and a place of work (at which he is ordered under this Act to work) outside a prison,

he shall be deemed to be a prisoner within the meaning of the Prisons Act, 1952, and to be in the legal custody of the governor of the prison in which he is detained or, in a case referred to in paragraph (b) or (c), would, but for an order made under this Act in respect of him, be detained, and the provisions of the Prisons Act, 1952, shall (subject to this Act and the regulations and in so far as provision is not made in respect of the same matter by this Act or the regulations) apply to and in respect of him.

**Calculation of proportion of sentence served.**

**29. (1)** Where a periodic detainee has served or is deemed to have served any detention period in prison, he shall be deemed to have served the same proportion of his sentence as the number of detention periods he has served in prison bears to the total number of detention periods in the term of imprisonment to which he was sentenced.



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(2) Without limiting the generality of subsection (1), the unexpired portion of the sentence that was imposed on a periodic detainee referred to in that subsection shall be calculated having regard to the provisions of that subsection.

**5 Detention period deemed to have been served in certain circumstances.**

**30.** Where a periodic detainee serves a detention period in such manner as he may be ordered under section 10 (1) (b) and is exempted under section 11 from serving it in prison, he shall, for the purposes of this Act, be deemed to have served that detention 10 period in prison.

**Royal prerogative of mercy preserved.**

**31.** Nothing in this Act shall be so construed as to limit or affect in any manner the Royal prerogative of mercy.

**Community Committees.**

15 **32. (1)** The Minister may, by notification published in the Gazette, establish such committees (to be known as "Community Committees") as the Minister thinks fit.

(2) A committee established under subsection (1) shall operate in respect of a particular geographical area specified in 20 the notification establishing the committee.

(3) A committee shall consist of a person nominated by the Commission, who shall be chairman of the committee, and such other persons as the Minister may appoint.

(4) The functions of a committee are to make recom- 25 mendations to the Commission—

(a) as to the nature and extent of the work (as referred to in section 10 (2)) that may be performed by periodic detainees; and

30 (b) in respect of any matter referred to it by the Commission.



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**Offences.**

33. (1) A periodic detainee who—

(a) fails to report—

(i) on any day on which; or

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(ii) at the time on any day on which,

and at the prison at which he is required pursuant to the provisions of this Act to report;

(b) fails to comply with an order in force—

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(i) under section 10 (1) (b) directing the person to perform work outside a prison; or

(ii) under section 13;

(c) escapes or attempts to escape from lawful custody;

(d) commits an offence against discipline as specified in the regulations; or

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(e) disobeys a rule, an instruction given to him under section 10 (4) or a direction given under section 22 that applies to him,

is guilty of an offence and liable on conviction to imprisonment for a term not exceeding 12 months or a fine not exceeding \$500.

20

(2) Where a periodic detainee is prosecuted for an offence under subsection (1) (a) or (b), it is a sufficient defence if he satisfies the court that—

(a) in the case of a prosecution for an offence—

25

(i) under subsection (1) (a) (i), he had a reasonable excuse for failing to report on any day on which; or

(ii) under subsection (1) (a) (ii), he had a reasonable excuse for failing to report at the time on the day on which,

30

and at the prison at which he is required pursuant to the provisions of this Act to report;



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*Periodic Detention of Prisoners.*

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(b) in the case of a prosecution for an offence under subsection (1) (b), he had a reasonable excuse for failing to report in compliance with the order of the Commission; and

5 (c) he had made known that excuse—

(i) in the case of a prosecution under subsection (1) (a) (i) or (ii), to the governor of the prison at which he was so required to report;

10 (ii) in the case of a prosecution under subsection (1) (b) (i), to the governor of the prison at which he was required to report before the order of the Commission was made; or

15 (iii) in the case of a prosecution under subsection (1) (b) (ii), to the governor of the prison at which he was required to report after the order of the Commission was made,

before the time on the day on which he was so required to report or as soon as practicable after that time.

(3) Where a periodic detainee is prosecuted for an offence  
20 involving an order made under this Act, it is a sufficient defence if he satisfies the court that the terms of the order were not communicated to him in sufficient time to enable compliance with the order, but the terms of such an order shall be deemed to have been communicated to a periodic detainee upon whom a notice of the  
25 order was duly served.

(4) Where a periodic detainee is prosecuted for an offence involving a direction given under this Act, it is a sufficient defence—

30 (a) if he satisfies the court that the direction was not communicated to him in sufficient time to enable compliance with the direction; or

(b) if he satisfies the court that the direction was inconsistent with another direction given to him under this Act and he was obeying that other direction.



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*Periodic Detention of Prisoners.*

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(5) Where a periodic detainee is prosecuted for an offence involving a provision of this Act, a regulation or rule or an order made under this Act, it is a sufficient defence if he satisfies the court that he was obeying a direction or an instruction given to him under this Act and that he could not, at the same time that he was obeying the direction or the instruction, as the case may be, comply with the provision, regulation, rule or order.

(6) Where a periodic detainee is convicted of an offence under subsection (1), the court before which he is convicted may, in addition to, or in substitution for, the imposition of a penalty under subsection (1), order that the whole or part of any remission of sentence granted to him, before the date on which he is convicted, under section 19 shall be forfeited.

**Regulations.**

34. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular, may make regulations for or with respect to—

- (a) the control, management and supervision of periodic detainees who are deemed by section 28 to be prisoners;
- (b) offences against discipline;
- (c) the adoption, for the purposes of this Act, of any regulations made under the Prisons Act, 1952;
- (d) the suspension of the application of any specified provisions of the Prisons Act, 1952, to periodic detainees;
- (e) the granting of leave of absence under section 20, including regulations for or with respect to the circumstances in which leave of absence may be granted and the duration of leave of absence;
- (f) the transmission of warrants, notices or orders under this Act;



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*Periodic Detention of Prisoners.*

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- 5 (g) the giving of notice to the Commission when an appeal is lodged against a sentence of imprisonment in respect of which an order for periodic detention has been made or when a periodic detainee is dealt with under section 25, otherwise than on application by the Commission;
- (h) the procedure to be followed in any proceedings under section 25;
- 10 (i) the manner in which periodic detainees are to report to prison and the admission to prison, identification and searching of periodic detainees;
- (j) requirements to be observed by periodic detainees who are directed under section 10 (1) (b) to perform work, whether in a prison or at a place outside a prison;
- 15 (k) the transfer, under section 18, of periodic detainees to whom that section applies and the issue of authorities for the transfer of such periodic detainees; and
- (l) any forms required for the purposes of this Act.
- (2) A provision of a regulation may—
- 20 (a) apply generally or be limited in its application by reference to specified exceptions or factors; or
- (b) apply differently according to different factors of a specified kind,

or may do any combination of those things.

**Repeals.**

- 25 35. Each Act specified in Column 1 of Schedule 1 is, to the extent specified in Column 2 of that Schedule, repealed.

**Savings and transitional provisions.**

36. Schedule 2 has effect.
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*Periodic Detention of Prisoners.*

## SCHEDULE 1.

(Sec. 35.)

## REPEALS.

Column 1.		Column 2.
5 Year and number of Act.	Short title of Act.	Extent of repeal.
1970 No. 90 ..	Periodic Detention of Prisoners Act, 1970.	The whole Act.
10 1977 No. 12 ..	Periodic Detention of Prisoners (Amendment) Act, 1977.	The whole Act.
1978 No. 155 ..	Prisons (Amendment) Act, 1978.	So much of the Table in Schedule 4 as amended Act No. 90, 1970.

15

## SCHEDULE 2.

(Sec. 36.)

## SAVINGS AND TRANSITIONAL PROVISIONS.

**Interpretation.**

1. In this Schedule, "appointed day" means the day appointed and  
20 notified under section 2 (2).

**Persons sentenced before appointed day.**

2. (1) Where a person—

(a) has been duly sentenced under section 3 (1) of the Periodic Detention of Prisoners Act, 1970; and

25 (b) as at the appointed day, has not commenced or has commenced but not completed serving his sentence,

an order for periodic detention shall be deemed to have been made in respect of that person at the time at which he was so sentenced.

(2) Where a person—

30 (a) has been duly sentenced under section 3 (1) of the Periodic Detention of Prisoners Act, 1970; and

(b) as at the appointed day, has completed serving his sentence,

an order for periodic detention shall, for the purposes of section 5 (2) (b) of this Act, be deemed to have been made in respect of the person at the  
35 time at which he was so sentenced.



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*Periodic Detention of Prisoners.*

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SCHEDULE 2—*continued.*SAVINGS AND TRANSITIONAL PROVISIONS—*continued.***Remission of sentence for persons sentenced to periodic detention prior to the appointed day.****5 3. (1) A person who—**

- (a) has been duly sentenced under section 3 (1) of the Periodic Detention of Prisoners Act, 1970; and
- (b) as at the appointed day, has not commenced or has commenced but not completed serving his sentence,

**10** shall be entitled to be granted remission of sentence under the provisions of this Act.

(2) For the purpose of calculating the remission of sentence to which a person referred to in subclause (1) may be entitled, where the person has commenced but not completed serving his sentence—

- 15** (a) the portion of the term of imprisonment which the person has served shall be disregarded; and
  - (b) the provisions of this Act relating to the granting of remission of sentence shall be deemed to apply to and in respect of the unexpired portion of the term of imprisonment to which the person
- 20** was sentenced as if that unexpired portion were the full term of imprisonment to which he was sentenced.

**Warrants and notices continued.**

**25** 4. Where a warrant or notice was issued, before the appointed day, under section 5 (1) or (2) of the Periodic Detention of Prisoners Act, 1970, as the case may be, and, as at that day, the person in respect of whom the warrant or notice was issued has not commenced or has commenced but not completed serving his sentence—

- 30** (a) the warrant shall continue in force on and after the appointed day and shall, for all purposes, be deemed to be a warrant issued under section 6 of this Act; and
- (b) the notice shall continue in force on and after the appointed day and shall, for all purposes, be deemed to be a notice issued under section 7 (1) of this Act.



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*Periodic Detention of Prisoners.*

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SCHEDULE 2—*continued.*

SAVINGS AND TRANSITIONAL PROVISIONS—*continued.*

**Directions continued.**

5. A direction under section 4 (2) or 6 (1) (b) of the Periodic Detention of Prisoners Act, 1970, that was in force immediately before the appointed day, continues in force on and after the appointed day and shall, for all purposes, be deemed to be an order duly made under this Act by the Commission.

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BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1981  
(65c)



## Periodic Detention of Prisoners.

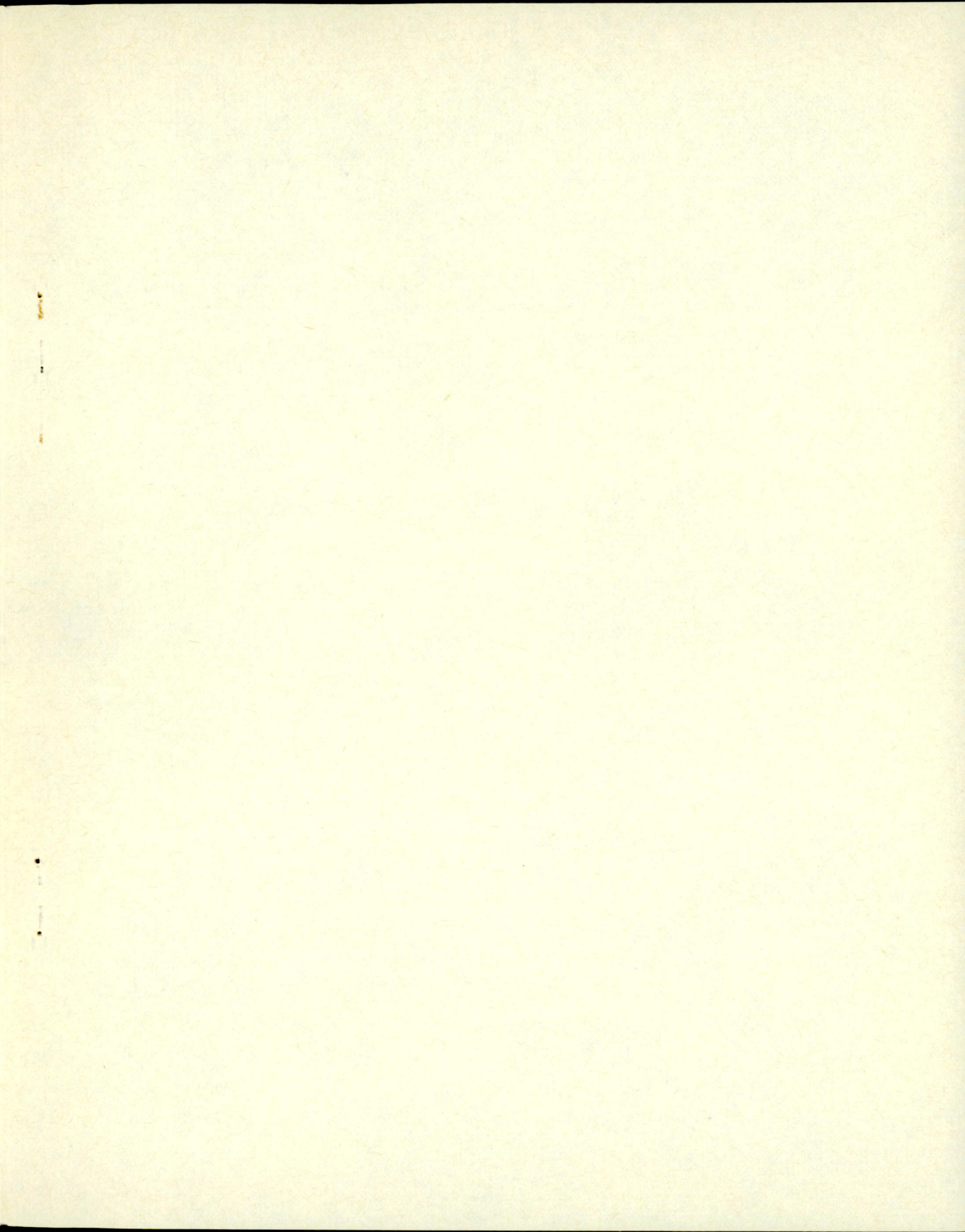
## SCHEDULE 2—continued.

## Savings and Transitional Provisions—continued.

## Directions continued.

2. A direction under section 4 (1) or 6 (1) (b) of the Periodic Detention of Prisoners Act, 1970, that was in force immediately before the appointed day, continues in force on and after the appointed day and shall, for all purposes, be deemed to be an order duly made under this Act by the Commission.











**PERIODIC DETENTION OF PRISONERS  
ACT, 1981, No. 18**

**New South Wales**



**ANNO TRICESIMO**

**ELIZABETHÆ II REGINÆ**

\*\*\*\*\*

**Act No. 18, 1981.**

An Act to make provision for and with respect to the periodic  
detention of certain persons sentenced to imprisonment.  
[Assented to, 22nd April, 1981.]

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See also Prisons (Amendment) Act, 1981; Parole of Prisoners (Amendment) Act, 1981.



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*Periodic Detention of Prisoners.*

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**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

**PART I.**

**PRELIMINARY.**

**Short title.**

**1.** This Act may be cited as the "Periodic Detention of Prisoners Act, 1981".

**Commencement.**

**2. (1)** This section and section 1 shall commence on the date of assent to this Act.

**(2)** Except as provided in subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

**Arrangement.**

**3.** This Act is divided as follows :—

PART I.—PRELIMINARY—ss. 1–4.

PART II.—ORDERS FOR PERIODIC DETENTION—ss. 5–8.

PART III.—PROVISIONS RELATING TO PERIODIC DETENTION  
—ss. 9–23.

PART IV.—CANCELLATION OF ORDERS FOR PERIODIC  
DETENTION—ss. 24–27.

PART V.—MISCELLANEOUS—ss. 28–36.



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*Periodic Detention of Prisoners.*

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SCHEDULE 1.—REPEALS.

SCHEDULE 2.—SAVINGS AND TRANSITIONAL PROVISIONS.

**Interpretation.**

4. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

“Commission” means the Corrective Services Commission of New South Wales;

“court” includes a judge, a stipendiary magistrate and any justice or justices sitting in petty sessions;

“detention period”, in relation to a person in respect of whom an order for periodic detention is made, means a period that—

(a) occurs during the term of the sentence of imprisonment imposed on the person; and

(b) subject to any order of the Commission under section 12—

(i) commences at 7.00 p.m. on the same day of the week as the date specified in the order of the court imposing the sentence as the date on which the sentence commences; and

(ii) ends at 4.30 p.m. on the second day after the day on which the period commences,

but does not include any such period which includes the whole or any part of Christmas Day, Good Friday or Easter Sunday;

“governor”, in relation to a prison, means the superintendent, governor, gaoler or other officer for the time being in charge of the prison;

“imprisonment” includes penal servitude;



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*Periodic Detention of Prisoners.*

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“justice” means justice of the peace;

“order for periodic detention” means an order under section 5 (1);

“periodic detainee” means a person in respect of whom an order for periodic detention is in force;

“periodic detention”, in relation to a person in respect of whom an order for periodic detention is made, means detention in a prison for such number of consecutive detention periods as there are in the term of imprisonment to which the person has been sentenced;

“prison” means a prison to which the Prisons Act, 1952, applies;

“regulation” means a regulation under this Act;

“rule” means a rule in force under section 23.

(2) A reference in this Act to an order made under section 10, 11, 12 or 13 includes a reference to the order as amended, varied or altered under section 16.

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PART II.

ORDERS FOR PERIODIC DETENTION.

**Power to order periodic detention.**

5. (1) Where a person is convicted of an offence and sentenced upon that conviction to imprisonment for a term of not less than 3 months and not more than 18 months, the court by which the person is sentenced may—

- (a) if it is of the opinion that it is appropriate in the circumstances of the case that the person serve his sentence by way of periodic detention; and



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*Periodic Detention of Prisoners.*

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(b) if it is satisfied that—

- (i) there is accommodation available at a prison for the person to serve the sentence by way of periodic detention; and
- (ii) travel by the person to and from that prison, for the purpose of serving the sentence by way of periodic detention, could not reasonably be expected to have the effect of imposing undue inconvenience, strain or hardship on the person,

order that the term of imprisonment to which it has sentenced him be served by way of periodic detention.

(2) A court shall not make an order for periodic detention in respect of—

- (a) a person who is under the age of 18 years; or
- (b) a person on whom a court has, in the 7 years immediately prior to the date on which he is sentenced as referred to in subsection (1), imposed, in respect of any particular offence of which the person was convicted, a sentence of imprisonment for a term of more than 6 months—
  - (i) if the sentence was one in respect of which the court did not make an order for periodic detention; or
  - (ii) if the sentence was one in respect of which the court made an order for periodic detention and if the order was cancelled and the person was required, as a result of the cancellation, to serve the unexpired portion of the sentence by way of full-time imprisonment.

(3) Where a court—

- (a) imposes on a person 2 or more sentences of imprisonment; and
  - (b) orders that those sentences be served concurrently,
- the court may order that those sentences be served by way of periodic detention.



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*Periodic Detention of Prisoners.*

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**(4) Where a court—**

- (a) imposes on a person 2 or more sentences of imprisonment; and
- (b) orders that any of those sentences be served at the expiration of any other of those sentences,

the court shall not order that those sentences, or any of them, be served by way of periodic detention.

**(5)** Without limiting subsection (4), a court shall not impose a sentence of imprisonment on a periodic detainee, to be served at the expiration of the sentence that he is required to serve by way of periodic detention, unless it cancels the order for periodic detention that was made in respect of him.

**(6)** Where a court makes an order for periodic detention in respect of a person, it may also order the person to pay any fine, penalty, sum of money, costs or expenses authorised by law.

**Warrant of commitment to prison.**

**6.** As soon as practicable after a court has made an order for periodic detention in respect of a person, the person shall be committed to prison by warrant, in or to the effect of the prescribed form and under the hand of a justice.

**Notice to be served.**

**7. (1)** Where a person is committed to prison under section 6, the justice who commits the person to prison shall forthwith serve, or cause to be served, on the person a notice, in or to the effect of the prescribed form, specifying—

- (a) the date on which the person is first to report to prison;
- (b) the day of the week on which the person is thereafter to report, during the term of his sentence, to prison; and
- (c) the time and prison at which the person is to report on that date and on each such day.



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*Periodic Detention of Prisoners.*

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(2) A person in respect of whom an order for periodic detention has been made shall be deemed to be in lawful custody from the time at which the order is made until the time at which the notice required by subsection (1) is served on him.

**Commencement of sentence.**

8. A sentence of imprisonment to be served by way of periodic detention shall commence on the date specified in the order of the court imposing the sentence as the date on which the sentence shall commence, which date shall be not earlier than 7 days and not later than 21 days after the date on which the sentence is imposed.

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**PART III.**

**PROVISIONS RELATING TO PERIODIC DETENTION.**

**Service of sentence.**

9. (1) A periodic detainee shall serve his sentence by way of periodic detention in accordance with this Act.

(2) A periodic detainee shall first report on the date and at the time and prison specified in the notice served on him under section 7 (1) and thereafter during the term of his sentence on the day of the week specified in that notice as the day on which he is so to report and at the same time and place unless otherwise ordered under this Act by the Commission, and if otherwise so ordered, then in accordance with the order made by the Commission.

(3) Subsection (2) ceases to apply to or in respect of a periodic detainee if the order for periodic detention that was made in respect of him is cancelled.



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*Periodic Detention of Prisoners.*

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**(4) Where—**

- (a) a periodic detainee is required, by or under this Act, to report at a prison; and
- (b) the regulations prescribe the manner in which any such periodic detainee is so to report,

the periodic detainee complies with the requirement only if he reports in the manner so prescribed.

**Work, etc.**

**10. (1)** The Commission may, by order, direct a periodic detainee—

- (a) to participate in any activity, attend any class or group or undergo any instruction that the Commission considers conducive to his welfare or training; or
- (b) to perform, between such hours as are specified in the order, any work, whether in a prison or at a place outside a prison (which place shall be specified in the order), that the Commission considers suitable to his physical capacity,

while he is serving his sentence.

**(2)** The type of work which a periodic detainee referred to in subsection (1) (b) may be directed to perform at a place outside a prison shall be work—

- (a) at a hospital or a charitable or educational institution;
- (b) at the home of an old, infirm or handicapped person;
- (c) at an institution for old, infirm or handicapped persons; or
- (d) on any land of which the Crown or a public body is the owner, lessee or occupier or which is administered by the Crown or a public body.



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*Periodic Detention of Prisoners.*

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(3) The Commission shall not direct a periodic detainee to perform any work referred to in subsection (2) if, in performing the work, the periodic detainee would take the place of any person who would otherwise be employed on that work as a regular employee of the hospital, the old, infirm or handicapped person, the institution, the Crown or the public body, as the case may be.

(4) Where the Commission makes an order under subsection (1) (b) directing a periodic detainee to perform work at a place outside a prison (whether or not it makes an order in respect of him under section 11) and for any reason work is not available at the place or it is impracticable for him to perform work at the place, the periodic detainee shall report at such other place, and in accordance with such instructions as may be given to him, by such person, or a person holding such office, as may be specified in the order.

**Exemption from serving sentence in prison.**

11. Where the Commission makes an order under section 10 (1) (b) directing a periodic detainee to perform work at a place outside a prison during the whole or part of the unexpired portion of his sentence, the Commission may, in another order, exempt him from serving in prison the whole or that part of the unexpired portion of his sentence.

**Variation of times of attendance.**

12. (1) A periodic detainee may make application in writing to the Commission requesting the Commission to make an order varying—

- (a) the time at which he is required to report at a prison or place of work each detention period during the whole or part of his sentence; and
- (b) the time at which he may leave a prison or place of work each detention period during the whole or part of his sentence.



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*Periodic Detention of Prisoners.*

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(2) Subject to subsection (3), where a periodic detainee makes application under subsection (1), the Commission may—

- (a) grant the application and order that the times in respect of which the application is made be varied as requested in the application; or
- (b) refuse to grant the application.

(3) Where a periodic detainee makes application under subsection (1) requesting the Commission to make an order that would, if the Commission were to make the order, have the effect of—

- (a) altering the days that comprise each detention period during the whole or part of his sentence; or
- (b) increasing or reducing the number of consecutive hours that he is required to serve in prison each detention period during the whole or part of his sentence,

the Commission shall refuse to grant the application.

**Variation of prison at which sentence is to be served.**

13. (1) Subject to subsection (2), the Commission may, by order, direct a periodic detainee to serve the whole or part of his sentence at a prison other than the prison specified in the notice served on him under section 7 (1).

(2) The Commission shall not make an order under subsection (1) in respect of a periodic detainee that could reasonably be expected to have the effect of imposing undue inconvenience, strain or hardship on him.

**Commission to give notice.**

14. Where the Commission makes—

- (a) an order under section 10 (1) (b) directing a periodic detainee to perform work at a place outside a prison and an order under section 11 exempting him from serving the whole or part of the unexpired portion of his sentence in prison; or



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*Periodic Detention of Prisoners.*

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(b) an order under section 12 or 13,  
the Commission shall forthwith cause notice in writing setting forth particulars of the orders or order to be given to the periodic detainee in respect of whom they are or it is made.

**Commencement of certain orders.**

15. An order under section 10, 11, 12 or 13 shall take effect on and from the day on which the order is made or on and from such later day as may be specified in the order.

**Revocation or amendment of certain orders.**

16. An order made under section 10, 11, 12 or 13 or deemed by clause 5 of Schedule 2 to be made under this Act may—

- (a) at any time, be revoked or rescinded; or
  - (b) from time to time, be amended, varied or altered,
- by further order made by the Commission.

**Effect of complying with certain orders.**

17. (1) Where the Commission makes an order under section 10, 11, 12 or 13 in respect of a periodic detainee, any provision of the order for periodic detention made in respect of him, the warrant issued in respect of him under section 6 or the notice served on him under section 7 (1) or any stipulation of this Act, which is inconsistent with a provision of the order made by the Commission, is, while the periodic detainee complies with the order made by the Commission, of no force or effect to the extent of the inconsistency.

(2) While a periodic detainee is complying with an order under section 10, 12 or 13 made in respect of him, he shall be deemed to be serving, by way of periodic detention, the sentence of imprisonment that was imposed on him.



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*Periodic Detention of Prisoners.*

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**Transfer of unruly periodic detainees.**

**18.** Where a periodic detainee, while in custody under this Act in a prison, behaves in such a manner as to disturb the peace and good conduct of the prison, the governor of the prison may, subject to and in accordance with such provisions of the regulations as are made for the purposes of this section, order that the periodic detainee be transferred to another prison for the unexpired portion of the detention period.

**Remission of sentence.**

**19. (1)** A person who is ordered, on or after the day appointed and notified under section 2 (2), to serve a sentence of imprisonment by way of periodic detention shall be granted remission of sentence as prescribed.

**(2)** Any regulation made for the purposes of subsection (1) may include provisions for or with respect to any of the following matters :—

- (a) the circumstances in which and the conditions (including conditions as to conduct, industry and behaviour) subject to which remission of sentence may be granted;
- (b) the period in respect of which remission of sentence may be granted;
- (c) the forfeiture of entitlement to remission of sentence by reference to any matter or thing prescribed or as the Commission may determine;
- (d) the procedures and methods of calculation of remission of sentence.

**(3)** Any remission of sentence to which a prisoner would otherwise be entitled under the Prisons Act, 1952, shall not apply to any part of a term of imprisonment served by way of periodic detention.

**(4)** A determination as to remission of sentence shall be made by the Commission and shall be final and without appeal.



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*Periodic Detention of Prisoners.*

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(5) Where a periodic detainee is released from periodic detention on remission of sentence granted to him under this section—

- (a) he shall be deemed to have served the sentence of imprisonment that was imposed on him; and
- (b) any orders made under this Act in respect of him shall cease to be of any force or effect.

**Leave of absence.**

20. Leave of absence may, for health reasons or on compassionate grounds, be granted, subject to and in accordance with the regulations, to any periodic detainee.

**Forfeiture of remission for time spent on leave of absence, etc.**

21. (1) Whenever a periodic detainee is granted leave of absence under section 20 in respect of the whole or part of a detention period and takes the leave, he shall forfeit 1 week of any remission of sentence to which he may otherwise be entitled under section 19.

(2) Whenever a periodic detainee who fails to report, as required, to serve a detention period has not been granted leave of absence in respect of the detention period but—

- (a) if he is prosecuted under section 33 (1) (a) or (b)—satisfies the court before which he is prosecuted that he has a sufficient defence as referred to in section 33 (2), (3) or (5) or is acquitted for any other reason; or
- (b) if he is not prosecuted under section 33 (1) (a) or (b)—satisfies the Commission that he has a sufficient defence as referred to in section 33 (2), (3) or (5),

he shall forfeit 1 week of any remission of sentence to which he may otherwise be entitled under section 19.

(3) Notwithstanding subsections (1) and (2), the Commission may, for any reason which to it seems sufficient, exempt a person to whom either of those subsections applies, from the operation thereof.



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*Periodic Detention of Prisoners.*

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**Directions.**

**22. (1)** The full-time members of the Commission, the governor of each prison and any prison officer may, subject to and in accordance with such provisions of the regulations as are made for the purposes of this subsection, each give directions (not inconsistent with a provision of this Act or a regulation, rule or order made under this Act) to any periodic detainee for the purpose of securing the enforcement or observance of the provisions of this Act, a regulation or rule or an order made under this Act.

**(2)** Notwithstanding anything in subsection (1), the Commission may, subject to and in accordance with such provisions of the regulations as are made for the purposes of this subsection, give directions in an emergency or in any other prescribed circumstances to any periodic detainee.

**Rules.**

**23.** The Commission may, with the approval of the Minister, make rules (not inconsistent with this Act or the regulations) for the control, management and supervision of periodic detainees who are deemed by section 28 to be prisoners.

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**PART IV.****CANCELLATION OF ORDERS FOR PERIODIC DETENTION.****Cancellation of orders for periodic detention on subsequent conviction.**

**24. (1)** Where a periodic detainee is convicted of an offence and sentenced upon that conviction to a term of imprisonment of more than 1 month, and the sentence is one the execution of which is not deferred under section 558 of the Crimes Act, 1900, the court by which he is convicted shall cancel the order for periodic detention that was made in respect of him.

**(2)** Except in a case where subsection (1) applies, where a periodic detainee is convicted of an offence and sentenced upon that conviction to a term of imprisonment, the court before which he is convicted may cancel the order for periodic detention that was made in respect of him.



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*Periodic Detention of Prisoners.*

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(3) Where a periodic detainee is convicted of an offence and ordered to pay a fine, penalty, sum of money, costs or expenses authorised by law, the court before which he is convicted may cancel the order for periodic detention that was made in respect of him.

(4) Where an order for periodic detention is cancelled under subsection (1) or (2), the person in respect of whom the order was made shall serve the unexpired portion of the sentence to which the order applied—

- (a) by way of full-time imprisonment; and
- (b) concurrently with the term of imprisonment to which he is sentenced as referred to in subsection (1) or (2), as the case may be.

(5) Where an order for periodic detention is cancelled under subsection (3), the person in respect of whom the order was made shall serve the unexpired portion of the sentence to which the order applied by way of full-time imprisonment.

**Cancellation of orders for periodic detention otherwise than on subsequent conviction.**

25. (1) Where an order for periodic detention is in force in respect of a person, the court that made the order, whether or not the court is constituted by the same member or members who constituted it at the time the order was made, may—

- (a) on application by the person or the Commission; or
- (b) without application, if it appears to the court that there is good reason for so doing,

cancel the order.

(2) Where an order is cancelled under subsection (1), the person in respect of whom the order was made shall serve the unexpired portion of the sentence to which the order applied by way of full-time imprisonment.



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*Periodic Detention of Prisoners.*

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**Issue of warrant on cancellation of an order for periodic detention.**

**26.** Where an order for periodic detention is cancelled under section 24 or 25, a justice may—

- (a) if the person in respect of whom the order was made is not before the court or in prison at the time at which the order is cancelled, issue a warrant, in or to the effect of the prescribed form, for the apprehension and detention of that person; or
- (b) in any other case, issue a warrant, in or to the effect of the prescribed form, for the detention of that person,

to serve the unexpired portion of the sentence to which the order applied by way of full-time imprisonment.

**Certain effects of cancellation of an order for periodic detention.**

**27.** Where an order for periodic detention is cancelled under section 24 or 25—

- (a) any order that was made under section 10, 11, 12 or 13, and any order deemed to have been made under this Act, in respect of the person in respect of whom the order for periodic detention was made, shall cease to be of any force or effect;
- (b) the provisions of the Parole of Prisoners Act, 1966, apply to and in respect of the unexpired portion of the sentence to which the order applied in the same way as they would apply if that unexpired portion were the term of a sentence of full-time imprisonment imposed, at the time of the cancellation, on the person in respect of whom the order was made;
- (c) the unexpired portion of the sentence of imprisonment to which the order applied shall be deemed to be a separate term of imprisonment imposed at the time of the cancellation, which term of imprisonment shall commence—
  - (i) in the case of a person who is before a court or in prison when the order made in respect of him is cancelled, at the time at which the order is cancelled; or



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- (ii) in the case of a person who is not before a court or in prison when the order made in respect of him is cancelled, at the time at which he is apprehended to serve that term of imprisonment; and
- (d) any remission of sentence granted to the person in respect of whom the order was made under section 19 shall be forfeited.

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**PART V.**

**MISCELLANEOUS.**

**Periodic detainee deemed to be a prisoner.**

**28.** Where a periodic detainee is—

- (a) detained in prison for the purpose of serving his sentence;
- (b) working (pursuant to an order under this Act) at a place outside a prison; or
- (c) travelling between a prison and a place of work (at which he is ordered under this Act to work) outside a prison,

he shall be deemed to be a prisoner within the meaning of the Prisons Act, 1952, and to be in the legal custody of the governor of the prison in which he is detained or, in a case referred to in paragraph (b) or (c), would, but for an order made under this Act in respect of him, be detained, and the provisions of the Prisons Act, 1952, shall (subject to this Act and the regulations and in so far as provision is not made in respect of the same matter by this Act or the regulations) apply to and in respect of him.

**Calculation of proportion of sentence served.**

**29. (1)** Where a periodic detainee has served or is deemed to have served any detention period in prison, he shall be deemed to have served the same proportion of his sentence as the number of detention periods he has served in prison bears to the total number of detention periods in the term of imprisonment to which he was sentenced.



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(2) Without limiting the generality of subsection (1), the unexpired portion of the sentence that was imposed on a periodic detainee referred to in that subsection shall be calculated having regard to the provisions of that subsection.

**Detention period deemed to have been served in certain circumstances.**

30. Where a periodic detainee serves a detention period in such manner as he may be ordered under section 10 (1) (b) and is exempted under section 11 from serving it in prison, he shall, for the purposes of this Act, be deemed to have served that detention period in prison.

**Royal prerogative of mercy preserved.**

31. Nothing in this Act shall be so construed as to limit or affect in any manner the Royal prerogative of mercy.

**Community Committees.**

32. (1) The Minister may, by notification published in the Gazette, establish such committees (to be known as "Community Committees") as the Minister thinks fit.

(2) A committee established under subsection (1) shall operate in respect of a particular geographical area specified in the notification establishing the committee.

(3) A committee shall consist of a person nominated by the Commission, who shall be chairman of the committee, and such other persons as the Minister may appoint.

(4) The functions of a committee are to make recommendations to the Commission—

(a) as to the nature and extent of the work (as referred to in section 10 (2)) that may be performed by periodic detainees; and

(b) in respect of any matter referred to it by the Commission.



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**Offences.**

**33. (1)** A periodic detainee who—

- (a) fails to report—
  - (i) on any day on which; or
  - (ii) at the time on any day on which,

and at the prison at which he is required pursuant to the provisions of this Act to report;
- (b) fails to comply with an order in force—
  - (i) under section 10 (1) (b) directing the person to perform work outside a prison; or
  - (ii) under section 13;
- (c) escapes or attempts to escape from lawful custody;
- (d) commits an offence against discipline as specified in the regulations; or
- (e) disobeys a rule, an instruction given to him under section 10 (4) or a direction given under section 22 that applies to him,

is guilty of an offence and liable on conviction to imprisonment for a term not exceeding 12 months or a fine not exceeding \$500.

**(2)** Where a periodic detainee is prosecuted for an offence under subsection (1) (a) or (b), it is a sufficient defence if he satisfies the court that—

- (a) in the case of a prosecution for an offence—
  - (i) under subsection (1) (a) (i), he had a reasonable excuse for failing to report on any day on which; or
  - (ii) under subsection (1) (a) (ii), he had a reasonable excuse for failing to report at the time on the day on which,

and at the prison at which he is required pursuant to the provisions of this Act to report;



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- (b) in the case of a prosecution for an offence under subsection (1) (b), he had a reasonable excuse for failing to report in compliance with the order of the Commission; and
- (c) he had made known that excuse—
  - (i) in the case of a prosecution under subsection (1) (a) (i) or (ii), to the governor of the prison at which he was so required to report;
  - (ii) in the case of a prosecution under subsection (1) (b) (i), to the governor of the prison at which he was required to report before the order of the Commission was made; or
  - (iii) in the case of a prosecution under subsection (1) (b) (ii), to the governor of the prison at which he was required to report after the order of the Commission was made,

before the time on the day on which he was so required to report or as soon as practicable after that time.

(3) Where a periodic detainee is prosecuted for an offence involving an order made under this Act, it is a sufficient defence if he satisfies the court that the terms of the order were not communicated to him in sufficient time to enable compliance with the order, but the terms of such an order shall be deemed to have been communicated to a periodic detainee upon whom a notice of the order was duly served.

(4) Where a periodic detainee is prosecuted for an offence involving a direction given under this Act, it is a sufficient defence—

- (a) if he satisfies the court that the direction was not communicated to him in sufficient time to enable compliance with the direction; or
- (b) if he satisfies the court that the direction was inconsistent with another direction given to him under this Act and he was obeying that other direction.



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(5) Where a periodic detainee is prosecuted for an offence involving a provision of this Act, a regulation or rule or an order made under this Act, it is a sufficient defence if he satisfies the court that he was obeying a direction or an instruction given to him under this Act and that he could not, at the same time that he was obeying the direction or the instruction, as the case may be, comply with the provision, regulation, rule or order.

(6) Where a periodic detainee is convicted of an offence under subsection (1), the court before which he is convicted may, in addition to, or in substitution for, the imposition of a penalty under subsection (1), order that the whole or part of any remission of sentence granted to him, before the date on which he is convicted, under section 19 shall be forfeited.

**Regulations.**

34. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular, may make regulations for or with respect to—

- (a) the control, management and supervision of periodic detainees who are deemed by section 28 to be prisoners;
- (b) offences against discipline;
- (c) the adoption, for the purposes of this Act, of any regulations made under the Prisons Act, 1952;
- (d) the suspension of the application of any specified provisions of the Prisons Act, 1952, to periodic detainees;
- (e) the granting of leave of absence under section 20, including regulations for or with respect to the circumstances in which leave of absence may be granted and the duration of leave of absence;
- (f) the transmission of warrants, notices or orders under this Act;



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- (g) the giving of notice to the Commission when an appeal is lodged against a sentence of imprisonment in respect of which an order for periodic detention has been made or when a periodic detainee is dealt with under section 25, otherwise than on application by the Commission;
- (h) the procedure to be followed in any proceedings under section 25;
- (i) the manner in which periodic detainees are to report to prison and the admission to prison, identification and searching of periodic detainees;
- (j) requirements to be observed by periodic detainees who are directed under section 10 (1) (b) to perform work, whether in a prison or at a place outside a prison;
- (k) the transfer, under section 18, of periodic detainees to whom that section applies and the issue of authorities for the transfer of such periodic detainees; and
- (l) any forms required for the purposes of this Act.

(2) A provision of a regulation may—

- (a) apply generally or be limited in its application by reference to specified exceptions or factors; or
- (b) apply differently according to different factors of a specified kind,

or may do any combination of those things.

**Repeals.**

35. Each Act specified in Column 1 of Schedule 1 is, to the extent specified in Column 2 of that Schedule, repealed.

**Savings and transitional provisions.**

36. Schedule 2 has effect.

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*Periodic Detention of Prisoners.*

## SCHEDULE 1.

(Sec. 35.)

## REPEALS.

Column 1.		Column 2.
Year and number of Act.	Short title of Act.	Extent of repeal.
1970 No. 90 ..	Periodic Detention of Prisoners Act, 1970.	The whole Act.
1977 No. 12 ..	Periodic Detention of Prisoners (Amendment) Act, 1977.	The whole Act.
1978 No. 155 ..	Prisons (Amendment) Act, 1978.	So much of the Table in Schedule 4 as amended Act No. 90, 1970.

## SCHEDULE 2.

(Sec. 36.)

## SAVINGS AND TRANSITIONAL PROVISIONS.

**Interpretation.**

1. In this Schedule, "appointed day" means the day appointed and notified under section 2 (2).

**Persons sentenced before appointed day.**

2. (1) Where a person—

- (a) has been duly sentenced under section 3 (1) of the Periodic Detention of Prisoners Act, 1970; and
- (b) as at the appointed day, has not commenced or has commenced but not completed serving his sentence,

an order for periodic detention shall be deemed to have been made in respect of that person at the time at which he was so sentenced.

(2) Where a person—

- (a) has been duly sentenced under section 3 (1) of the Periodic Detention of Prisoners Act, 1970; and
- (b) as at the appointed day, has completed serving his sentence,

an order for periodic detention shall, for the purposes of section 5 (2) (b) of this Act, be deemed to have been made in respect of the person at the time at which he was so sentenced.



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*Periodic Detention of Prisoners.*

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SCHEDULE 2—*continued.*SAVINGS AND TRANSITIONAL PROVISIONS—*continued.***Remission of sentence for persons sentenced to periodic detention prior to the appointed day.**

## 3. (1) A person who—

- (a) has been duly sentenced under section 3 (1) of the Periodic Detention of Prisoners Act, 1970; and
- (b) as at the appointed day, has not commenced or has commenced but not completed serving his sentence,

shall be entitled to be granted remission of sentence under the provisions of this Act.

(2) For the purpose of calculating the remission of sentence to which a person referred to in subclause (1) may be entitled, where the person has commenced but not completed serving his sentence—

- (a) the portion of the term of imprisonment which the person has served shall be disregarded; and
- (b) the provisions of this Act relating to the granting of remission of sentence shall be deemed to apply to and in respect of the unexpired portion of the term of imprisonment to which the person was sentenced as if that unexpired portion were the full term of imprisonment to which he was sentenced.

**Warrants and notices continued.**

4. Where a warrant or notice was issued, before the appointed day, under section 5 (1) or (2) of the Periodic Detention of Prisoners Act, 1970, as the case may be, and, as at that day, the person in respect of whom the warrant or notice was issued has not commenced or has commenced but not completed serving his sentence—

- (a) the warrant shall continue in force on and after the appointed day and shall, for all purposes, be deemed to be a warrant issued under section 6 of this Act; and
- (b) the notice shall continue in force on and after the appointed day and shall, for all purposes, be deemed to be a notice issued under section 7 (1) of this Act.



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*Periodic Detention of Prisoners.*

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SCHEDULE 2—*continued.*

SAVINGS AND TRANSITIONAL PROVISIONS—*continued.*

**Directions continued.**

5. A direction under section 4 (2) or 6 (1) (b) of the Periodic Detention of Prisoners Act, 1970, that was in force immediately before the appointed day, continues in force on and after the appointed day and shall, for all purposes, be deemed to be an order duly made under this Act by the Commission.

*In the name and on behalf of Her Majesty I assent to this Act.*

J. A. ROWLAND,  
*Governor.*

*Government House,  
Sydney, 22nd April, 1981.*









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