

# PROJET DE LOI

ENTITLED

## **The Prison (Enabling Provisions) (Guernsey) Law, 2010 \***

[CONSOLIDATED TEXT]

### **NOTE**

*This consolidated version of the enactment incorporates all amendments listed in the footnote below. It has been prepared for the Guernsey Law website and is believed to be accurate and up to date, but it is not authoritative and has no legal effect. No warranty is given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use. The authoritative text of the enactment and of the amending instruments may be obtained from Her Majesty's Greffier, Royal Court House, Guernsey, GY1 2PB.*

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\* No. XIII of 2012; as amended by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016). See also the Prison (Guernsey) Ordinance, 2013 (No. XXIX of 2013).

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

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# PROJET DE LOI

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

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

### **Declaration of prisons.**

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

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

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

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

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

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

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

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### **NOTES**

*In section 1, the word "Committee" in square brackets, wherever occurring, was substituted by the Organisation of States' Affairs (Transfer*

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<sup>a</sup> Article XVI of Billet d'État No. I of 2008.

*of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 7, with effect from 1st May, 2016.*

*In accordance with the provisions of the Prison (Guernsey) Ordinance, 2013, section 60, Schedule 8, paragraph 1, with effect from 4th November, 2013, the premises outlined in red on the Prison Plan (as defined in the 2013 Ordinance), comprising land and buildings known as the States Prison and situated at Baubigny in the Parish of St. Sampson, excluding the road giving access to those premises, are deemed to have been declared to be a prison under this section.*

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**Objects of the prison system.**

2. The objects of the prison system are –
- (a) to protect the public,
  - (b) to keep prisoners in a safe, decent, and healthy environment, and
  - (c) to promote pro-social and law-abiding behaviour by prisoners, both in custody and after release.

**Principles of the prison system.**

3. (1) The principles that guide the operation of the prison system are –
- (a) the maintenance of public safety is the paramount consideration in decisions about prisoners,
  - (b) prisoners and all others who come into contact with the prison system are to be dealt with fairly, openly, humanely, and with respect for their human dignity,
  - (c) prisoners, even the most vulnerable, are to be held safely,
  - (d) prisoners are able, and expected, to engage in activity that is likely to benefit them,

- (e) prisoners are to be prepared for their release into the community and helped to reduce the likelihood of re-offending, and
- (f) prisoners are to be given, and made aware of, their minimum entitlements under the prison system.

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

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

**Functions of the [Committee].**

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

(2) The [Committee] has the following functions –

- (a) declaring any land or building, or any part of any land or building, to be a prison under section 1,
- (b) making any subordinate legislation and issuing any code or guidance under an Ordinance, and
- (c) any other functions conferred by or under this Law.

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

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

(5) As soon as practicable after giving a direction under subsection (3), the [Committee] must publish in *La Gazette Officielle* and lay before

a meeting of the States of Deliberation a copy of the direction.

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**NOTES**

*In section 4, the word "Committee" in square brackets, wherever occurring, was substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 7, with effect from 1st May, 2016.*

*The following Ordinance has been made under section 4:*

*Prison (Guernsey) Ordinance, 2013.*

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**The Governor.**

5. (1) The Governor is responsible for –
- (a) the management, security and good order of the prison,
  - (b) the safe custody and welfare of prisoners, in respect of the prison, and
  - (c) the manner in which other persons who come into contact with prisoners, staff members and officers of the prison, are dealt with.
- (2) The Governor has the following functions –
- (a) making or issuing for the prison any Order or other subordinate legislation, or any code or guidance, authorised by or under an Ordinance,
  - (b) providing strategic direction for and giving directions to staff members and officers assigned to the prison, and
  - (c) any other functions conferred by or under this Law.

- (3) The States, by Ordinance –
- (a) must make provision for the appointment, suspension and dismissal of the Governor, and
  - (b) may prescribe or regulate the terms and conditions of service of the Governor, such as remuneration, expenses and pensions.

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**NOTE**

*The following Ordinance has been made under section 5:*

*Prison (Guernsey) Ordinance, 2013.*

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

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

- (a) prisoners remanded in custody pending trial, sentencing or appeal, in relation to an offence,
- (b) the classification, treatment, employment, discipline and control of prisoners,
- (c) temporary or early release of prisoners, including remission of sentences,
- (d) the government, control, and administration of the prison,
- (e) the structured management of prison life, and
- (f) the administration of this Law.

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**NOTE**

*The following Ordinance has been made under section 6:*

*Prison (Guernsey) Ordinance, 2013;*  
*Prison (Guernsey) (Amendment) Ordinance, 2016.*

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**Specific matters for which Ordinances may make provision.**

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

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**NOTE**

*The following Ordinance has been made under section 7:*

*Prison (Guernsey) Ordinance, 2013;*  
*Prison (Guernsey) (Amendment) Ordinance, 2016.*

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**General provisions as to Ordinances, etc.**

8. (1) An Ordinance under this Law –
- (a) may be amended or repealed by a subsequent Ordinance,
  - (b) may amend in any manner, repeal or (as the case may be) revoke –
    - (i) any enactment specified in Schedule 2, or
    - (ii) any Ordinance or subordinate legislation made under the enactment, and
  - (c) may contain such consequential, incidental, supplementary, transitional and savings provisions as may appear to be necessary or expedient (including, without limitation, provision making consequential amendments to this Law and any other enactment).



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

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

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

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

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

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

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

(A) sentences,

(B) prisons, or

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

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

*Consolidated text*

- (a) may, subject to subsection (4), make provision in relation to the creation, trial (summarily or on indictment) and punishment of offences,
- (b) may empower the [Committee], any other [Committee] of the States, any other body or authority (including, without limitation, any court in the Island), the Governor or any other person to –
  - (i) make subordinate legislation, or
  - (ii) issue codes or guidance,

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

- (c) may make provision for the purpose of dealing with matters arising out of or related to matters set out in section 6,
- (d) may provide that no liability shall be incurred by any person in respect of anything done or omitted to be done in the discharge or purported discharge of any of his functions unless the thing is done or omitted to be done in bad faith,
- (e) may make provision under the powers conferred by this Law despite the provisions of any enactment for the time being in force,
- (f) may repeal, replace, amend, extend, adapt, modify or disapply any rule of custom or law, and
- (g) without prejudice to the generality of the foregoing, may make any such provision of any such extent as might be made by *Projet de Loi*, but may not provide

that a person is to be guilty of an offence as a result of any retrospective effect of the Ordinance.

- (4) An Ordinance under this Law may not –
- (a) provide for offences to be triable only on indictment,
  - (b) authorise the imposition, on summary conviction of an offence, of a term of imprisonment or a fine exceeding the limits of jurisdiction for the time being imposed on the Magistrate's Court by section 9(1)(a) or (2) of the Magistrate's Court (Guernsey) Law, 2008<sup>b</sup>, or
  - (c) authorise the imposition, on conviction on indictment of an offence, of a term of imprisonment exceeding 10 years.

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

- (a) lower the age below which a child can be guilty of any offence, as specified in section 3 of the Criminal Justice (Children and Juvenile Court Reform) (Bailiwick of Guernsey) Law, 2008<sup>c</sup>, or
- (b) lower the age below which a person convicted of an offence punishable with imprisonment can be sentenced to a custodial sentence, as specified in section 1(2) of the Criminal Justice (Youth Detention) (Bailiwick of Guernsey) Law, 1990<sup>d</sup>.

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<sup>b</sup> Order in Council No. XVIII of 2009; as amended by Ordinance No. XXII of 2009.

<sup>c</sup> Order in Council No. VI of 2009.

<sup>d</sup> Ordres en Conseil Vol. XXXII, p. 106; as amended by Recueil

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**NOTES**

*In section 8, the word "Committee" in square brackets, wherever occurring, was substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 7, with effect from 1st May, 2016.*

*The following Ordinance has been made under section 8:*

*Prison (Guernsey) Ordinance, 2013;  
Prison (Guernsey) (Amendment) Ordinance, 2016.*

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**Interpretation.**

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

"[**Committee**]" means the States of Guernsey [Committee for Home Affairs],

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

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

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

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

"**this Law**" includes –

- (a) any Ordinance made under this Law, and
- (b) any subordinate legislation made under any such Ordinance,

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

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d'Ordonnances Tome XXIX, p. 406.

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

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

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

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

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

**"prison system"** includes –

- (a) this Law,
- (b) any code or guidance made or issued under this Law,
- (c) practices, procedures, acts, omissions, and decisions carried out, done or made –
  - (i) under or in relation to any of the legislation, code, or guidance specified in paragraph (a) or (b),
  - (ii) otherwise in relation to any prison or prisoners, or
  - (iii) by a staff member or an officer assigned to any prison,

**"prisoner"** means any person –

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

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

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

**"subordinate legislation"** means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any enactment and having legislative effect, and

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

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

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## NOTES

*In section 9, the words in the first and second pairs of square brackets in the definition of the expression "Committee" in subsection (1) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, respectively section 5(1), Schedule 3, paragraph 7 and section 2, Schedule 1, paragraph 6(a), with effect from 1st May, 2016.*

*The functions, rights and liabilities of the Home Department and its Minister arising under or by virtue of this Law were transferred to and vested in, respectively, the Committee for Home Affairs and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 6(a), with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.*

*The following Ordinance has been made under section 9:*

*Prison (Guernsey) Ordinance, 2013.*

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<sup>e</sup> Ordres en Conseil Vol. XXXI, p. 278.

**Citation.**

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

**Commencement.**

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

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**NOTE**

*The Law was brought into force on 4th November, 2013 by the Prison (Guernsey) Ordinance, 2013, section 62.*

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SCHEDULE 1

Section 7

SPECIFIC MATTERS FOR WHICH AN ORDINANCE MAY BE MADE

1. The minimum entitlement of prisoners, or minimum standards, in relation to –
  - (a) accommodation, including a bed and bedding,
  - (b) physical and mental welfare, including –
    - (i) prevention of suicide, self harm, and bullying,
    - (ii) physical exercise,
    - (iii) food and drink, and
    - (iv) personal hygiene,
  - (c) contact with family, friends, and others, including –
    - (i) access to visitors,
    - (ii) access to legal advisers,
    - (iii) correspondence and telephone calls,
  - (d) cultural and religious matters,
  - (e) applications, complaints, and representations, and
  - (f) educational, health and medical, welfare, and religious services.
2. Prisoners' access to facilities and amenities such as a library, books, and prescribed devices or media of communications.



3. The money and other property of prisoners within the prison system.
4. The collection, disclosure, and use of data and information about prisoners, including information to be given to family, friends, and others.
5. A system of privileges for prisoners, including the criteria or grounds for giving and withdrawing these privileges.
6. A system for receiving prisoners into prison and releasing prisoners from prison at the end of their sentence.
7. A system for resettlement, including sentence and custody planning, offending behaviour programmes, substance misuse, public protection, and resettlement and reintegration.
8. A system for the transfer of prisoners, either permanently or temporarily, to a place either within or outside the Island, including the criteria or grounds for such transfer.
9. A system for the temporary release of prisoners, including the criteria or grounds for such release.
10. The duties, obligations and responsibilities of prisoners.
11. The correspondence and telephone communications of prisoners.
12. Drugs, tobacco, and alcohol.
13. The maintenance of safety, security, and discipline in or in relation to any prison, including –
  - (a) access to the prison site, admission to the prison, and removal of persons from the prison site or prison,
  - (b) the things that may, or must not, be conveyed into or out of the prison or prison site.

14. The duties, obligations, and responsibilities of persons (other than prisoners or officers assigned to the prison) who are in, or in the vicinity of, a prison or prison site.
15. Prison discipline, including procedures for investigating and dealing with offences against prison discipline, penalties and sanctions, and appeal procedures.
16. A system for the segregation or confinement of prisoners, including the criteria or grounds for such segregation or confinement.
17. The circumstances in which officers may use force or weapons, and the type or description of restraints that may be used.
18. Powers of entry, inspection, testing and examination (including medical examination), search, seizure, forfeiture and disposal, arrest and detention, and any other powers considered necessary or expedient, in relation to both prisoners and non-prisoners.
19. A system for supporting any Governor in the event of a riot, major incident, other disorder or circumstances in which the Governor requires immediate assistance.
20. The appointment of officers and their assignment to the prison.
21. The powers, obligations, duties, and responsibilities of officers assigned to the prison.
22. A disciplinary code for officers, including provision for penalties and sanctions against officers.
23. The name, constitution and objects, powers, obligations, duties and responsibilities of any panel set up to monitor the prison.
24. A system of independent and regular inspections of the prison.

25. The functions of the [Committee], the Governor, and other persons.
26. The maximum period for which a person may be remanded in custody pending trial, sentencing or appeal, without reference to a Court or tribunal.
27. The minimum age for the detention of children or young persons in the prison, and the presence or keeping of babies in the prison.
28. The proportion of a sentence of imprisonment that must be served by a prisoner before he is eligible for remission.
29. The release of a prisoner before the end of his sentence, including the criteria or grounds for such release.
30. Deaths of prisoners.
31. Any other matters necessary or expedient for giving full effect to this Law and for its due administration.

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**NOTE**

*In Schedule 1, the word in square brackets was substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 7, with effect from 1st May, 2016.*

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ENACTMENTS THAT MAY BE AMENDED OR REPEALED BY ORDINANCE

**Orders in Council and Laws.**

The Order in Council entitled "Nouvelle Prison Publique" registered on the 11<sup>th</sup> of June 1803<sup>f</sup>.

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

The Prison Administration (Guernsey) Law, 1949<sup>h</sup>.

The Prison Administration (Amendment) (Guernsey) Law, 1957<sup>i</sup>.

The Prison Administration (Amendment) (Guernsey) Law, 1999<sup>j</sup>.

The Prison Sentences (Reception of Alderney Prisoners) Law, 1949<sup>k</sup>.

The Prison Sentences (Reception of Sark Prisoners) Law, 1971<sup>l</sup>.

The Rehabilitation of Offenders (Bailiwick of Guernsey) Law, 2002<sup>m</sup>.

The Criminal Justice (Youth Detention) (Bailiwick of Guernsey) Law, 1990<sup>n</sup>.

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- <sup>f</sup> Ordres en Conseil Vol. I, p. 1.  
<sup>g</sup> Ordres en Conseil Vol. VII, p. 86.  
<sup>h</sup> Ordres en Conseil Vol. XIV, p. 159.  
<sup>i</sup> Ordres en Conseil Vol. XVII, p. 234.  
<sup>j</sup> Ordres en Conseil Vol. XXXIX, p. 13.  
<sup>k</sup> Ordres en Conseil Vol. XIV, p. 156.  
<sup>l</sup> Ordres en Conseil Vol. XXIII, p. 193.  
<sup>m</sup> Order in Council No. XIV of 2002.

The Criminal Justice (Supervision of Offenders) (Bailiwick of Guernsey) Law, 2004<sup>o</sup>.

The Parole Review Committee (Guernsey) Law, 1989<sup>p</sup>.

**Ordinances.**

The Ordinance entitled "Marins au service de Sa Majesté emprisonnés" of the 7<sup>th</sup> of August, 1872<sup>q</sup>.

The Prison Sentences (Reception of Sark Prisoners) Law, 1971 (Commencement) Ordinance, 1972<sup>r</sup>.

The Prison (Regulation of Access) Ordinance, 1990<sup>s</sup>.

The Prison Administration (Guernsey) Ordinance, 1998<sup>t</sup>.

The Prison Administration (Amendment) Ordinance, 2002<sup>u</sup>.

The Prison Administration (Guernsey) (Amendment) Ordinance, 2006<sup>v</sup>.

The Prison Administration (Alcohol and Drug Testing) Ordinance, 1999<sup>w</sup>.

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<sup>n</sup> Ordres en Conseil Vol. XXXII, p. 106.

<sup>o</sup> Order in Council No. IX of 2005.

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

<sup>q</sup> Recueil d'Ordonnances Tome IV, p. 134.

<sup>r</sup> Recueil d'Ordonnances Tome XVIII, p. 1.

<sup>s</sup> Recueil d'Ordonnances Tome XXV, p. 206.

<sup>t</sup> Recueil d'Ordonnances Tome XXVIII, p. 90.

<sup>u</sup> Recueil d'Ordonnances Tome XXIX, p. 206.

<sup>v</sup> Recueil d'Ordonnances Tome XXXI, p. 656.

The Prison Administration (Alcohol and Drug Testing) (Amendment) Ordinance, 2009<sup>x</sup>.

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**NOTE**

*The Order in Council entitled "Nouvelle Prison Publique" registered on the 11th of June 1803, the Loi portant Règlement pour Mesurer et Photographier des Prisonniers condamnés ou accusés de crime, 1923, the Prison Administration (Guernsey) Law, 1949, the Prison Administration (Amendment) (Guernsey) Law, 1957, the Prison Administration (Amendment) (Guernsey) Law, 1999, the Ordinance entitled "Marins au service de Sa Majesté emprisonnés" of the 7th of August, 1872, the Prison (Regulation of Access) Ordinance, 1990, the Prison Administration (Guernsey) Ordinance, 1998, the Prison Administration (Alcohol and Drug Testing) Ordinance, 1999, the Prison Administration (Amendment) Ordinance, 2002, the Prison Administration (Guernsey) (Amendment) Ordinance, 2006 and the Prison Administration (Alcohol and Drug Testing) (Amendment) Ordinance, 2009 have all since been repealed by the Prison (Guernsey) Ordinance, 2013, section 57, Schedule 6, with effect from 4th November, 2013, subject to the transitional and savings provisions in section 60 of, and Schedule 8 to, the 2013 Ordinance.*

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<sup>w</sup> Recueil d'Ordonnances Tome XXVIII, p. 223.

<sup>x</sup> Ordinance No. XXX of 2009.