

# STATES OF JERSEY



## **DRAFT PRISON (INDEPENDENT PRISON MONITORING BOARD) (JERSEY) REGULATIONS 201-**

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**Lodged au Greffe on 5th December 2016  
by the Minister for Home Affairs**

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**STATES GREFFE**





Jersey

# **DRAFT PRISON (INDEPENDENT PRISON MONITORING BOARD) (JERSEY) REGULATIONS 201-**

## **REPORT**

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These Regulations provide for the establishment of the Independent Prison Monitoring Board, as detailed below.

### **1. Background**

The Education and Home Affairs Scrutiny Panel presented its report entitled “Prison Board of Visitors” to the States Assembly on 26th November 2015 (*see* [S.R.9/2015](#)). The Panel made a single recommendation that the States Assembly should remove Jurats of the Royal Court from the Prison Board of Visitors and replace them with independent members.

The Minister for Home Affairs signed a Ministerial Decision ([MD-HA-2015-0075](#)) on 26th November 2015, instructing officers to take forward the law drafting necessary to ensure that Jersey complies with the requirements of the United Nations Optional Protocol to the U.N. Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (“OPCAT”), including the establishment of an independent Prison Board of Visitors. In addition, the Deputy Chief Minister signed a Ministerial Decision ([MD-C-2015-0134](#)) on 27th November 2015, instructing officers to make arrangements for OPCAT to be extended to Jersey once all legislative and administrative actions have been taken to ensure Jersey’s compliance.

The objective of OPCAT is to require the establishment of a system of regular visits undertaken by independent bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment. There is a wider project underway in order to address the overall requirements of OPCAT in a Jersey context, including the establishment of a ‘national preventative mechanism’ covering all places of detention.

These Ministerial Decisions were reflected in the Ministerial response to the Panel’s review, as presented to the States Assembly on 18th January 2016 by the Minister for Home Affairs ([S.R.9/2015 Res.](#)).

### **2. Draft Prison (Amendment No. 7) (Jersey) Law 201- ([P.89/2016](#))**

The Minister for Home Affairs subsequently lodged the Draft Prison (Amendment No. 7) (Jersey) Law 201- (P.89/2016) which the Assembly adopted during the 11th October 2016 Sitting. P.89/2016 included provision for the establishment of an Independent Prison Monitoring Board by Regulations, and for the existing Prison Board of Visitors to remain in place until the Assembly has decided upon such Regulations. It also made provision for all members of the Monitoring Board to have

free access at all times to all parts of the Prison and to all prisoners, and for them to see such prisoners as they desire, either in their cells or in a room out of sight and hearing of officers.

### **3. The Regulations**

These draft Regulations provide for the establishment, functioning and administration of the new Independent Prison Monitoring Board. Vacancies for members of the Monitoring Board are to be advertised and interested people invited to apply. The Minister for Home Affairs will appoint members to the Monitoring Board upon the recommendation of a recruitment panel. The draft Regulations specify those who are not eligible for appointment, which includes anyone who has in the past 5 years adjudicated on a question of fact or law in a court.

The function of the Monitoring Board is to satisfy itself as to the state of the premises of the Prison, the administration of the Prison and the treatment of the prisoners. The Monitoring Board must hear complaints or requests from prisoners, must inform the Minister of any abuse which comes to the knowledge of the Monitoring Board, and must attend to any report which it receives to the effect that the mind or body of a prisoner is likely to be injured by their conditions of imprisonment. In addition, the Monitoring Board must inspect the food provided to prisoners at regular intervals, may inspect any of the records of the Prison, and may also inquire into the state of the Prison buildings.

Following the decision of the States Assembly in October 2016 to adopt the Draft Prison (Amendment No. 7) (Jersey) Law 201-, open recruitment for members of the Monitoring Board has commenced, with a view to the new Independent Prison Monitoring Board becoming operational in early 2017. It is anticipated that there will need to be a transitional period of a few months to allow for a smooth handover between the existing Prison Board of Visitors and the new Independent Prison Monitoring Board.

#### **Financial and manpower implications**

There are no financial or manpower implications for the States arising from the adoption of these draft Regulations.

## Explanatory Note

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These Regulations provide for the establishment of the Independent Prison Monitoring Board (“Monitoring Board”).

*Regulation 1* contains definitions of expressions used in these Regulations.

*Regulation 2* provides for the establishment of the Monitoring Board (which must consist of 7 or more persons, including a chairman and a deputy chairman) and provides that the function of the Monitoring Board is to satisfy itself as to the treatment and welfare of the prisoners, the state of the premises of the prison and the administration of the prison.

*Regulation 3* provides for the appointment of the Monitoring Board members by the Minister, for the term of appointment to be 4 years, or such shorter period as the Minister may in the circumstances decide, and for the filling of vacancies and reappointment of members.

*Regulation 4* provides that any person may be appointed to the Monitoring Board, if he or she is eligible for appointment, and sets out the descriptions of persons who are not eligible.

*Regulation 5* provides for the resignation of Monitoring Board members or termination of appointment of Monitoring Board members by the Minister.

*Regulation 6* provides for the frequency and quorum of meetings of the Monitoring Board and requires the Minister to provide a secretary to the Monitoring Board who must attend meetings of the Monitoring Board, keep minutes of Monitoring Board meetings and other proceedings and perform such other clerical duties as the Monitoring Board may require. By *Regulation 6(8)*, the Governor, or such other officer of the prison as the Governor may assign for the purpose, must attend each meeting of the Monitoring Board if so requested by the Monitoring Board.

*Regulation 7* sets out the powers and duties of the Monitoring Board and its members. By *Regulation 7(1)*, the Monitoring Board must arrange a rota of attendance of its members at the prison and arrange for at least one member of the Monitoring Board to visit the prison once between each meeting of the Monitoring Board. By *Regulation 7(2)*, the Monitoring Board or any member of the Monitoring Board must hear any complaint or request which a prisoner wishes to make to the Monitoring Board or a member of the Monitoring Board; inform the Minister of any abuse of a prisoner which comes to the knowledge of the Monitoring Board or any of its members; and attend to any report which it receives to the effect that the mind or body of a prisoner is likely to be injured by the conditions of his or her imprisonment. In urgent cases, it must bring the matter to the immediate attention of the Governor and, in any event, report its opinion to the Minister. The Monitoring Board must also inspect, at regular intervals, the food provided to prisoners; and may inspect any of the records of the prison and inquire into the state of the prison buildings. If any repairs or other work appear to it to be necessary, the Monitoring Board must report its opinion with its advice and suggestions to the Governor and the Minister. Where it appears to the monitoring Board that action needs to be taken in respect of a complaint, request or report that was made to the Board of Visitors before the coming into force of these Regulations, the Monitoring Board must take that action as if the complaint, request or report was received by the Monitoring Board.

*Regulation 8* provides that in exercising its powers and duties under these Regulations, the Monitoring Board, must direct the attention of the Governor to any matter which,

in the opinion of the Monitoring Board, calls for the Governor's attention; consult the Governor on any matter concerning discipline in the prison; make inquiry into any matter referred to it by the Governor or the Minister; and report to the Minister any matter that the Monitoring Board considers it expedient to report.

*Regulation 9* provides for the Monitoring Board to make an annual report to the Minister no later than the 31st March each year, and to make such other reports to the Minister as it considers necessary, and for the Minister to present any report provided to him or her to the States Assembly as soon as reasonably practicable.

*Regulation 10* revokes the Prison (Board of Visitors) (Jersey) Regulations 1957.

*Regulation 11* provides the title to these Regulation and for them to come into force 3 months after they are made.



Jersey

## **DRAFT PRISON (INDEPENDENT PRISON MONITORING BOARD) (JERSEY) REGULATIONS 201-**

### **Arrangement**

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#### **Regulation**

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Jersey

## **DRAFT PRISON (INDEPENDENT PRISON MONITORING BOARD) (JERSEY) REGULATIONS 201-**

*Made* [date to be inserted]  
*Coming into force* [date to be inserted]

**THE STATES**, in pursuance of Article 6 of the Prison (Jersey) Law 1957<sup>1</sup>,  
have made the following Regulations –

### **1 Interpretation**

In these Regulations –

“Law” means the Prison (Jersey) Law 1957;

“Monitoring Board” means the Independent Prison Monitoring Board established under Regulation 2;

“panel” means the panel described in Regulation 3(2);

“police officer” means a member of the Honorary Police, a member of the States of Jersey Police Force, the Agent of the Impôts or any other officer of the Impôts;

“prison rules” means rules made under Article 29 of the Law;

“probation officer” has the same meaning as in Article 1 of the Criminal Justice (Community Service Orders) (Jersey) Law 2001<sup>2</sup>;

“senior officer” means a person recruited in accordance with Article 26 of the Employment of States of Jersey Employees (Jersey) Law 2005<sup>3</sup>.

### **2 Establishment, constitution and functions of the Independent Prison Monitoring Board**

- (1) There is established the Independent Prison Monitoring Board consisting of 7 or more persons, including a chairman and a deputy chairman.
- (2) The function of the Monitoring Board is to satisfy itself as to –
  - (a) the treatment and welfare of the prisoners;
  - (b) the state of the premises of the prison; and
  - (c) the administration of the prison.

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**3 Appointment of Monitoring Board members**

- (1) The Minister must appoint the members of the Monitoring Board.
- (2) An application for appointment to the Monitoring Board must be considered by a panel of the following persons –
  - (a) a senior officer in the department of the States having responsibility for the prison;
  - (b) if the chairman of the Monitoring Board has been appointed, that chairman, or a member of the Monitoring Board appointed by that chairman to that panel; and
  - (c) a senior officer employed in the department of the States having responsibility for human resources,and the Minister may only appoint a person as a member of the Monitoring Board where the panel has identified that person to the Minister as being a suitable person for membership of it.
- (3) The panel, when considering applications of persons for membership of the Monitoring Board, and the Minister, when appointing members, must have regard to the need to encourage diversity in the range of persons appointed by the Minister.
- (4) The term of appointment of any member shall be 4 years or such shorter period as the Minister may in the circumstances decide.
- (5) The Minister must appoint from the membership of the Monitoring Board a chairman and a deputy chairman.
- (6) Where a vacancy in the membership of the Monitoring Board arises, the Minister must advertise the vacancy in such manner as he or she thinks fit and invite interested persons to apply.
- (7) Before advertising for a person to fill a vacancy in the membership of the Monitoring Board the Minister –
  - (a) must prepare a person specification and a description of the role the member will be expected to perform; and
  - (b) if the chairman of the Monitoring Board has been appointed, must prepare that specification and description in consultation with the chairman of the Monitoring Board.
- (8) Where the vacancy arises because a serving member's term of office has expired, or is about to expire, the Minister may reappoint the member on the recommendation of the chairman of the Monitoring Board, or in the case of the vacancy being that of the chairman of the Monitoring Board, upon the recommendation of the panel.

**4 Membership of the Monitoring Board**

- (1) Any person may be appointed to the Monitoring Board if he or she is eligible for appointment.
- (2) The following persons are not eligible to be members of the Monitoring Board –
  - (a) a member of the States Assembly;

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- (b) a person who is, or has been at any time in the past 5 years, a police officer, probation officer or prison officer;
  - (c) a person who is in the service of the Minister;
  - (d) a person who is bankrupt;
  - (e) a person who has been received into guardianship pursuant to a guardianship application under Article 14 of the Mental Health (Jersey) Law 1969<sup>4</sup> or has a curator appointed under Article 43 of the Mental Health (Jersey) Law 1969 to manage and administer his or her property and affairs;
  - (f) a person who has a conviction, except a spent conviction, where the Minister is of the opinion that it is not fitting for a person with such a conviction to be a member of the Monitoring Board;
  - (g) a person who in the past 5 years acted for or on behalf of the prosecution in any criminal proceedings;
  - (h) a person who has in the past 5 years adjudicated on a question of fact or law in a court;
  - (i) a person with an interest in any contract for the supply of goods or services to the prison;
  - (j) any other person who the Minister considers has or may be perceived to have interests which conflict with the functions of the Monitoring Board.
- (3) The proceedings of the Monitoring Board are not invalidated by any vacancy in the membership or defect in the appointment of a member.

## **5 Resignation or termination of appointment of Monitoring Board member by Minister**

- (1) A member of the Monitoring Board may resign at any time by giving notice in writing to the Minister.
- (2) The Minister may by notice in writing terminate the appointment of a member of the Monitoring Board if he or she has reasonable grounds for believing that the member –
  - (a) is no longer eligible to be a member of the Monitoring Board; or
  - (b) is a person who, for any other reason, has acted in a way that is not conducive to the Monitoring Board discharging its functions or duties under these Regulations such that it is not, in the Minister's opinion, fitting that the person remain a member of the Monitoring Board.
- (3) The Minister shall consult the panel before terminating the appointment of a member.
- (4) The Minister may by notice in writing suspend a member of the Monitoring Board from office forthwith and for such period as he or she may reasonably require to consult the panel and determine whether or not a member's appointment should be terminated.
- (5) A notice in writing given under paragraph (2) or (4) shall set out the reasons for the termination or suspension, as the case may be.

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- (6) A member suspended under paragraph (4) must not, during the period of suspension, be regarded as a member of the Monitoring Board, other than for the purposes of this Regulation.

## **6 Proceedings of the Monitoring Board**

- (1) The Monitoring Board –
- (a) must meet at the prison once a month to discharge its functions under these Regulations or, if the Monitoring Board resolves that, for reasons specified in the resolution, less frequent meetings are sufficient, not less than 8 times in any period of 12 months; and
  - (b) must meet to review its own practices and procedures at intervals of not less than 12 months and make such improvements to those practices and procedures as it sees fit.
- (2) A meeting of the Monitoring Board –
- (a) may be held at any time at the request of its chairman; and
  - (b) must be held following the submission of a written request by 2 members of the Monitoring Board to the secretary of the Monitoring Board.
- (3) The quorum necessary for the purpose of the carrying out of the Monitoring Board's duties or the exercise of its powers is 3 members of the Monitoring Board.
- (4) The quorum fixed under paragraph (3) is not required for performing a function which, in accordance with an express provision of these Regulations or of prison rules, may be performed by a smaller number.
- (5) Every meeting of the Monitoring Board must be presided over by –
- (a) its chairman;
  - (b) in the absence of its chairman, the deputy chairman;
  - (c) in the absence of the chairman and the deputy chairman, either –
    - (i) a member of the Monitoring Board appointed by the chairman to preside over the meeting, or
    - (ii) in default of an appointment specified in clause (i), or in the absence of the member so appointed, a member elected by those present at the meeting.
- (6) The Monitoring Board must keep minutes of its meetings and of all its proceedings.
- (7) The Minister must provide a secretary to the Monitoring Board who must attend meetings of the Monitoring Board, keep minutes of Monitoring Board meetings and other proceedings and perform such other clerical duties as the Monitoring Board may require.
- (8) The Governor, or such other officer of the prison as the Governor may assign for the purpose, must attend each meeting of the Monitoring Board if so requested by the Monitoring Board.

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**7 Powers and duties of Monitoring Board**

- (1) The members of the Monitoring Board, for the purpose of carrying out the Monitoring Board's or their duties, must –
  - (a) arrange a rota of attendance at the prison of the members of the Monitoring Board; and
  - (b) arrange for at least one member of the Monitoring Board to visit the prison once between each meeting of the Monitoring Board.
- (2) The Monitoring Board or any member of the Monitoring Board –
  - (a) must hear any complaint or request which a prisoner wishes to make to the Monitoring Board or a member of the Monitoring Board;
  - (b) must immediately inform the Minister of any abuse of a prisoner which comes to the knowledge of the Monitoring Board or any of its members;
  - (c) must attend to any report which it receives to the effect that the mind or body of a prisoner is likely to be injured by the conditions of his or her imprisonment and –
    - (i) if the case is urgent, bring the matter to the immediate attention of the Governor, and
    - (ii) in any event, report its opinion to the Minister;
  - (d) must, at regular intervals, inspect the food provided to prisoners;
  - (e) may inspect any of the records of the prison, except that members of the board shall not have access to any records held for the purposes of or relating to conduct authorised in accordance with Part 3 of the Regulation of Investigatory Powers (Jersey) Law 2005<sup>5</sup>;
  - (f) may inquire into the state of the prison buildings and, if any repairs or other work appear to it to be necessary, must report its opinion with its advice and suggestions to the Governor and the Minister.
- (3) Where it appears to the Monitoring Board that action needs to be taken in respect of a complaint, request or report that was made to the Board of Visitors (established by the Prison (Board of Visitors) (Jersey) Regulations 1957<sup>6</sup>) before the coming into force of these Regulations, the Monitoring Board must take that action as if the complaint, request or report was received by the Monitoring Board.

**8 Duty of Monitoring Board to co-operate with the Minister and Governor**

In exercising its powers and duties under these Regulations, the Monitoring Board –

- (a) must direct the attention of the Governor to any matter which, in the opinion of the Monitoring Board, calls for the Governor's attention;
- (b) must consult the Governor on any matter concerning discipline in the prison;

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- (c) must make inquiry into any matter referred to it by the Governor or the Minister; and
  - (d) must report to the Minister on any matter that the Monitoring Board considers it expedient to report.

## **9 Annual and other reports**

- (1) The Monitoring Board –
  - (a) must make an annual report to the Minister, no later than the 31st March each year, with regard to the matters referred to in these Regulations or in prison rules, with its advice and suggestions upon any such matter; and
  - (b) may make such other reports to the Minister as it considers necessary concerning any matter relating to the prison to which, in its opinion, attention should be drawn.
- (2) The Minister shall present any report provided to him or her under paragraph (1) to the States Assembly as soon as reasonably practicable.

## **10 Revocation**

The Prison (Board of Visitors) (Jersey) Regulations 1957<sup>7</sup> are revoked.

## **11 Citation and commencement**

These Regulations may be cited as the Prison (Independent Prison Monitoring Board) (Jersey) Regulations 201- and shall come into force 3 months after they are made.

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- 1 *chapter 23.775*
  - 2 *chapter 08.180*
  - 3 *chapter 16.325*
  - 4 *chapter 20.650*
  - 5 *chapter 08.830*
  - 6 *chapter 23.775.15*
  - 7 *R&O.3828 (chapter 23.775.15)*