

LAWS OF PITCAIRN, HENDERSON, DUCIE
AND OENO ISLANDS

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SENTENCING ORDINANCE

Arrangement of sections

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[Ordinances:
No. 9 of 2002
No. 4 of 2010
No 1 of 2016.]

An ordinance to reform and consolidate the law as to sentencing in criminal cases

[19 November, 2002]

Short title

1. This ordinance may be cited as the Sentencing Ordinance.

PART I SENTENCING PURPOSES AND PRINCIPLES

Purposes

- 2.** The purposes of this ordinance are—
- (a) to set out the purposes for which offenders may be sentenced or otherwise dealt with; and
 - (b) to promote those purposes and aid in the public's understanding of sentencing practices by providing principles and guidelines to be applied by Courts in sentencing or otherwise dealing with offenders; and
 - (c) to provide a sufficient range of sentences and other means of dealing with offenders; and
 - (d) to provide for the interests of victims of crime.

Interpretation

3.—(1) In this ordinance, unless the context otherwise requires—

commencement date means the date on which this ordinance comes into force

community-based sentence means a sentence of supervision or a sentence of community work

Court means a Magistrate's Court, the Supreme Court and, where appropriate, the Court of Appeal in its appellate jurisdiction

Court of Appeal means the Pitcairn Court of Appeal

[as constituted by section 49 of the Constitution of Pitcairn]

(Amended by Ordinance No. 4 of 2010)

designated work centre means such premises, building or land as may from time to time be declared by the Governor to be a place or facility wholly or partially available for the performance of work pursuant to a sentence of community work

[detention conditions means the standard conditions of a sentence of home detention set out in section 76C and any special conditions imposed by the court on an offender under section 76D]

[detention end date means the date on which an offender who is subject to a sentence of home detention ceases to be subject to detention conditions]

[determinate sentence means a sentence of imprisonment or a sentence of home detention for a fixed term]

[home detention means detention under a sentence given in accordance with section 76A]

[home detention residence means the residence, specified by a court, where an offender sentenced to home detention serves that sentence]

determinate sentence of imprisonment means a sentence of imprisonment for a fixed term

home detention means detention under a sentence of imprisonment, in a residence, of an offender who is on home detention under a direction made under section 32 of the Parole Ordinance 2002

hospital means a hospital wholly or partly for the treatment of mentally disordered persons as compulsory inpatients

immediate family, in relation to a victim—

- (a) means a member of the victim's family group who is in a close relationship with the victim at the time of the offence; and
- (b) for the avoidance of doubt, includes persons whose relationship to the victim at that time is close through a relationship which is, or one or more relationships which are, that of spouse or de facto partner (whether the partner and victim are of the same sex or of different sexes) child or step-child, brother or step-brother, sister or step-sister, parent or step-parent and grandparent

incapable means a person who

- (a) (i) lacks, wholly or partly, the capacity to understand the nature and to foresee the

consequences of decisions in respect of matters relating to his or her personal care and welfare; or

- (ii) has the capacity to understand the nature and to foresee the consequences of decisions in respect of matters relating to his or her personal care and welfare but wholly lacks the capacity to communicate decisions in respect of matters of that kind; and
- (b) includes a person who is in a state of continuing unconsciousness

indeterminate sentence of imprisonment means a sentence of imprisonment for life or a sentence of preventive detention

minimum period of imprisonment means the period of imprisonment which the Court has, under section 81 or section 84 or section 98, ordered that an offender must serve before he or she can be released under Part II of the Parole Ordinance 2002

[**non-release day** has the same meaning as in section 2 of the Parole Ordinance 2002]

offender includes a person who is dealt with or is liable to be dealt with for non-payment of a sum of money, disobedience or a court order or contempt of court

penal institution means a prison or other place of detention established under any ordinance [, but does not include a home detention residence]

[**post-detention conditions** means any standard post-detention condition and special post-detention conditions imposed under section 76L on an offender sentenced to home detention]

[**Public Prosecutor** has the same meaning as in section 2 of the Judicature (Courts) Ordinance]

[**release conditions** has the same meaning as in section 2 of the Parole Ordinance 2002]

sentence of imprisonment means a determinate sentence of imprisonment or an indeterminate sentence of imprisonment but does not include a term of imprisonment imposed for non-payment of a sum of money, disobedience of a court order or contempt of court

[**short-term sentence of imprisonment** has the same meaning as in section 2 of the Parole Ordinance]

Supervision Officer means a person appointed by the Governor to be a Supervision Officer for the purposes of this ordinance

victim means

- (a) a person against whom an offence is committed; and
- (b) every person who, through or by means of an offence committed by another person, suffers physical injury or loss of or damage to property; and
- (c) every member of the immediate family of a person who, as a result of an offence committed by another person, dies or is incapable.

(Amended by Ordinance No. 1 of 2016)

(2) For the purposes of this ordinance—

- (a) an offender is subject to a sentence of imprisonment until the sentence expires (in accordance with section 79 of the Parole Ordinance 2002);
- [(ab)an offender is subject to a sentence of home detention from the date the sentence commences in accordance with section 76R or 76S until the sentence ends in accordance with section 76T, except when the sentence is suspended under section 76Y(2);]
- (b) except as provided in paragraph (c), an offender is subject to a sentence of community work from the date when the sentence commences in accordance with section 73 until the date upon which it expires in accordance with section 73;
- (c) an offender is not subject to a community-based sentence during any period when the community-based sentence is suspended under section 74(2)(a) or section 74(7).

(Amended by Ordinance No. 1 of 2016)

(3) For the purposes of this ordinance, **otherwise dealing with an offender** or **other means of dealing with an offender**—

- (a) means dealing with the offender in relation to an offence following a finding of guilt or a plea of guilty, instead of imposing a sentence; and
- (b) does not include dealing with a person for non-payment of a sum of money, disobedience of a court order or contempt of court.

4.—(1) Except as provided in subsection (2), this ordinance binds the Crown.

(2) This ordinance does not apply to proceedings of a service court under the United Kingdom Forces (Jurisdiction of Colonial Courts) Order 1965 or to proceedings on appeal from any decision under that order except as expressly provided in that order.

Application of this ordinance

(3) Subject to section 5, this ordinance applies to offences committed before or after the commencement date.

Penal enactments not to have retro-spective effect to disadvantage of offender

5. Notwithstanding any other enactment or rule of law, an offender has the right, if convicted of an offence in respect of which the penalty has been varied between the commission of the offence and sentencing, to the benefit of the lesser penalty.

Purposes of sentencing or otherwise dealing with offenders

6. The purposes for which a Court may sentence or otherwise deal with an offender are—

- (a) to hold the offender accountable for harm done to the victim and the community by the offending; or
- (b) to promote in the offender a sense of responsibility for, and an acknowledgement of, that harm; or
- (c) to ensure that the interests of the victim are given due recognition; or
- (d) to provide reparation for harm done by the offending; or
- (e) to denounce the conduct in which the offender was involved; or
- (f) to deter the offender or other persons from committing the same or a similar offence; or
- (g) to protect the community from the offender; or
- (h) to assist in the offender's rehabilitation and reintegration; or
- (i) any combination of two or more of the foregoing purposes.

Principles of sentencing or otherwise dealing with offenders

7. In sentencing or otherwise dealing with an offender, the Court—

- (a) shall take into account the gravity of the offending in the particular case, including the degree of culpability of the offender;
- (b) shall take into account the seriousness of the type of offence in comparison with other types of offences, as indicated by the maximum penalties prescribed for the offences;
- (c) should impose the maximum penalty prescribed for the offence only if the offending is within the most serious of cases for which that penalty is prescribed;
- (d) should impose a penalty near to the maximum prescribed for the offence if the offending is near to the most serious of cases for which that penalty is prescribed;
- (e) shall take into account the general desirability of consistency with appropriate levels in respect of similar offenders committing similar offences in similar circumstances;

- (f) shall take into account a particular circumstance of the offender that would mean that a sentence that would otherwise be appropriate would, in the particular instance, be disproportionately severe;
- (g) shall ensure that a sentence with a partly or wholly rehabilitative purpose is appropriate to the offender's personal, family, community or cultural background;
- (h) shall take into account any outcomes of any processes of reparation that have occurred, or that the Court is satisfied are likely to occur, in relation to the particular case (including, without limitation, any referred to in section 9).

8.—(1) In sentencing or otherwise dealing with an offender, the Court must take into account the following aggravating factors to the extent that they are applicable in the case—

Aggravating and
mitigating factors

- (a) that the offence involved actual or threatened violence or the actual or threatened use of a weapon;
- (b) that the offence involved unlawful entry into, or unlawful presence in, a dwelling place;
- (c) that the offence was committed while the offender was on bail or still subject to a sentence;
- (d) the extent of any loss, damage or harm resulting from the offence;
- (e) particular cruelty in the commission of the offence;
- (f) that the offender was abusing a position of trust or authority in relation to the victim;
- (g) that the victim was particularly vulnerable because of his or her age or health or any other factor;
- (h) that the offender committed the offence partly or wholly because of hostility towards a group of persons who have an enduring common characteristic such as race, colour, nationality, religion, gender identity, sexual orientation, age or disability;
- (i) premeditation on the part of the offender;
- (j) the number, seriousness, date, relevance and nature of any previous convictions of the offender and of any convictions for which the offender is being sentenced or otherwise dealt with at the same time.

(2) In sentencing or otherwise dealing with an offender, the Court must take into account the following mitigating factors to the extent that they are applicable in the case—

- (a) the age of the offender;
- (b) whether and when the offender pleaded guilty;
- (c) the conduct of the victim;

- (d) that there was a limited involvement in the offence on the offender's part;
- (e) that the offender has, or had at the time the offence was committed, diminished intellectual capacity or understanding;
- (f) any remorse shown by the offender or anything as described in section 9;
- (g) any evidence of the offender's previous good character.

(3) Despite subsection (2)(e), the Court must not take into account by way of mitigation the fact that the offender was, at the time of committing the offence, affected by the voluntary consumption or use of alcohol or any drug or other substance (other than a drug or other substance used for bona fide medical purposes).

(4) Nothing in subsection (1) or subsection (2)—

- (a) prevents the Court from taking into account any other aggravating or mitigating factor that the Court thinks fit; or
- (b) implies that a factor referred to in those subsections must be given greater weight than any other factor that the Court might take into account.

9.—(1) In sentencing or otherwise dealing with an offender, the Court must take into account—

- (a) any offer of amends, whether financial or by means of the performance of any work or service, made by or on behalf of the offender to the victim;
- (b) any agreement between the offender and the victim as to how the offender can remedy the wrong, loss or damage caused by the offender;
- (c) the response of the offender or the offender's family or family group to the offending;
- (d) any measures taken or proposed to be taken by the offender or family group of the offender to—
 - (i) make compensation to any victim of the offending or family or family group of the victim; or
 - (ii) apologise to any victim of the offending or family or family group of the victim; or
 - (iii) otherwise make good the harm that has occurred.

(2) In deciding whether and to what extent any offer, agreement, response or measure should be taken into account, the Court may take into account whether or not it has been accepted by the victim as expiating or mitigating the wrong.

(3) If a Court determines that, despite an offer, agreement,

Court must take into account offer, agreement, re-sponse or measure to make amends

response or measure referred to in subsection (1), it is appropriate to impose a sentence, it may take that offer, agreement, response or measure into account when determining the appropriate sentence for the offender.

(4) Without limiting any other powers of a Court to adjourn in any case contemplated by this section, a Court may adjourn the proceedings until—

- (a) compensation has been paid; or
- (b) the performance of any work or service has been completed; or
- (c) any agreement between the victim and the offender has been fulfilled; or
- (d) any measure proposed under subsection (1)(d) has been completed.

PART II
GENERAL PROVISIONS ABOUT DISCHARGE
WITHOUT CONVICTION ETC. AND IMPOSITION
OF REPARATION, FINES, COMMUNITY-BASED
SENTENCES AND IMPRISONMENT

10.—(1) If a person who is charged with an offence is found guilty or pleads guilty, before entering a conviction and imposing a sentence the Court must consider whether the offender would be more appropriately dealt with by—

- (a) discharging the offender without conviction under section 101 ; or
- (b) convicting and discharging the offender under section 103; or
- (a) convicting the offender and ordering the offender under section 105 to come up for sentence if called on.

(2) If any provision applicable to the particular offence in this or any other enactment provides a presumption in favour of imposing, on conviction, a sentence of imprisonment, [a sentence of home detention,] a community-based sentence or a fine, then—

- (a) notwithstanding subsection (1), a Court is not obliged to consider whether the offender would be more appropriately dealt with in the manner described in any of paragraphs (a), (b) or (c) of that subsection; but
- (b) the Court is not precluded from dealing with the offender in that manner if the Court thinks that it is appropriate in the circumstances.

(Amended by Ordinance No. 1 of 2016)

11.— (1) If a Court is lawfully entitled under this ordinance to impose a sentence of reparation, it must impose it unless it is satisfied that the sentence would result in undue hardship

Discharge or order to come up for sentence if called on

Reparation

for the offender or the dependants of the offender, or that any other special circumstances would make it inappropriate.

(2) A sentence of reparation may be imposed, in relation to any particular offence, on its own or in addition to any other sentence.

(3) If a Court does not impose a sentence of reparation in a case where it is lawfully entitled to do so, it must give reasons for not doing so.

Sentence of fine

12.—(1) If a Court is lawfully entitled under this or any other enactment to impose a fine in addition to, or instead of, any other sentence, the Court must regard a fine as the appropriate sentence for the particular offence unless—

- (a) the Court is satisfied that the purpose or purposes for which sentence is being imposed cannot be achieved by imposing a fine; or
- (b) the Court is satisfied that the application of any of the principles in section 7 to the particular case make a fine inappropriate; or
- (c) any provision applicable to the particular offence in this or any other enactment provides a presumption in favour of imposing any other sentence or requires the Court to impose any other sentence; or
- (d) the Court is satisfied that a fine, on its own or in addition to a sentence of reparation, would otherwise be clearly inadequate in the circumstances.

Reparation, fines and financial capacity of offender

13.—(1) Even if it would be appropriate in accordance with section 12 to impose a fine, a Court may nevertheless decide not to impose a fine if it is satisfied that the offender does not nor will not have the means to pay it.

(2) If a Court considers that it would otherwise be appropriate to impose a sentence of reparation and a sentence of a fine, but it appears to the Court that the offender has or will have the means to pay a fine or make reparation but not both, the Court must sentence the offender to make reparation.

Community-based sentences

14.—(1) If a Court is lawfully entitled under this or any other enactment to impose a community-based sentence or a fine, or both, it may impose a community-based sentence only, if—

- (a) the Court, in accordance with section 12, does not regard a fine as the appropriate sentence; or
- (b) the Court is not going to impose a fine because of either of the circumstances referred to in section 13.

(2) This section is subject to any provision in this or any other enactment that—

- (a) provides a presumption in favour of or against

imposing a particular sentence in relation to a particular offence; or

- (b) requires a Court to impose a particular sentence in relation to a particular offence.

[14A.—(1) If a court is lawfully entitled under this or any other enactment to impose a sentence of home detention, it may impose a sentence of home detention only if—

Sentence of home detention

- (a) the court is satisfied that the purpose or purposes for which the sentence is being imposed cannot be achieved by any less restrictive sentence or combination of sentences; and
- (b) the court would otherwise sentence the offender to a short-term sentence of imprisonment.

(2) This section is subject to any provision in this or any other enactment that—

- (a) provides a presumption in favour of or against imposing a sentence of home detention in relation to a particular offence; or
- (b) requires a court to impose a sentence of imprisonment in relation to a particular offence.]

(Inserted by Ordinance No. 1 of 2016)

15.—(1) When considering the imposition of a sentence of imprisonment for any particular offence, the Court must have regard to the desirability of keeping offenders in the community as far as that is practicable and consonant with the safety of the community.

Sentence of imprisonment

(2) The Court must not impose a sentence of imprisonment unless it is satisfied that—

- (a) a sentence is being imposed for all or any of the purposes in section 6(a) to (c), (e), (f) or (g); and
- (b) those purposes cannot be achieved by a sentence other than imprisonment; and
- (c) no other sentence would be consistent with the application of the principles in section 7, to the particular case.

(3) This section is subject to any provision in this or any other enactment that—

- (a) provides a presumption in favour of or against imposing a sentence of imprisonment in relation to a particular offence; or
- (b) requires a Court to impose a sentence of imprisonment in relation to a particular offence.

16. Nothing in this Part limits the discretion of a Court to impose a sentence of imprisonment on an offender if the Court is satisfied on reasonable grounds that the offender is

Imprisonment may be imposed if offender is unlikely to comply with other sentences

unlikely to comply with any other sentence it could lawfully impose and that would otherwise be appropriate.

Limitation on
[home detention or]
imprisonment of
person under 17 years

17. No Court may impose a sentence of imprisonment [or a sentence of home detention] on an offender in respect of a particular offence other than an offence triable only by the Supreme Court if, at the time of the commission of the offence, the offender was under the age of 17 years.

(Amended by Ordinance No. 1 of 2016)

PART III

PERMITTED COMBINATIONS OF SENTENCES

Limitations on use of
certain combinations
of sentences

18.—(1) Unless the particular enactment expressly provides otherwise, no Court may, in respect of any particular offence, impose on an offender both a fine and a sentence of imprisonment.

(2) No Court may, in respect of any particular offence, or in respect of two or more offences, impose on an offender both a community-based sentence and a sentence of imprisonment.

(3) If an offender who is before a Court for sentence is already detained under a sentence of imprisonment imposed on an earlier occasion, the Court must not impose on the offender any kind of community-based sentence.

Use of combination
sentences

19.— (1) This section applies to the imposition on an offender of a combination of sentences [] in respect of a particular offence.

(2) No Court may impose both a fine and a sentence of community work but, subject to this section, may impose—

- (a) a sentence of supervision and a sentence of community work; or
- (b) a sentence of supervision and a fine[; or
- (c) a sentence of home detention and a sentence of community work; or
- (d) a sentence of home detention and a fine.]

(3) A Court may only impose [a particular combination of sentences on an offender] if the Court is satisfied that [any] of those sentences, if imposed individually [or in any less restrictive combination], would not be in accordance with—

- (a) the purpose or purposes for which sentence is imposed; or
- (b) the application of the principles in section 7 to the particular case.

(4) A Court may only impose both a sentence of supervision and a sentence of community work if the Court is satisfied that [] a sentence of community work is appropriate but the offender requires the imposition of standard conditions or any of the special conditions available under a sentence of

supervision to address the causes of his or her offending.

(Amended by Ordinance No. 1 of 2016)

20. Nothing in sections 18 and 19—

- (a) empowers a Court to impose any sentence that it would not otherwise be empowered to impose; or
- (b) limits the power of a Court to make any order that it is empowered to make on the conviction of any person, whether under this or any other enactment.

Effect of provisions concerning multiple sentences on powers of Court

Provisions of general application restricting cumulative sentences

21. No sentence of any kind may be imposed cumulatively on a non-association order.

No sentence may be cumulative on non-association order

22. No sentence of any kind may be imposed cumulatively on an indeterminate sentence of imprisonment.

No sentence may be cumulative on indeterminate sentence of imprisonment

Proof of facts

23.—(1) In determining a sentence or other disposition of the case, a Court—

Proof of facts

- (a) may accept as proved any fact that was disclosed by evidence at the hearing or trial and any facts agreed on by the prosecutor and the offender; and
- (b) must accept as proved all facts, express or implied, that are essential to a plea of guilty or a finding of guilt.

(2) If a fact that is relevant to the determination of a sentence or other disposition of the case is asserted by one party and disputed by the other—

- (a) the Court must indicate to the parties the weight that it would be likely to attach to the disputed fact if it were found to exist and its significance to the sentence or other disposition of the case;
- (b) if a party wishes the Court to rely on that fact, the parties may adduce evidence as to its existence unless the Court is satisfied that sufficient evidence was adduced at the hearing or trial;
- (c) the prosecutor must prove beyond a reasonable doubt the existence of any disputed aggravating fact and must negate any disputed mitigating fact raised by the defence (other than a mitigating fact referred to in paragraph (d)) that is not wholly implausible or manifestly false;
- (d) the offender must prove on the balance of probabilities the existence of any disputed mitigating fact that is not related to the nature of the offence or to the offender's part in the offence;

- (e) either party may cross-examine any witness called by the other party.

Sentencing procedure

Power of adjournment for inquiries as to suitable punishment

24.—(1) A court may adjourn the proceedings in respect of any offence after the offender has been found guilty or has pleaded guilty and before the offender has been sentenced or otherwise dealt with for any one or more of the following purposes—

- (a) to enable inquiries to be made or to determine the most suitable method of dealing with the case;
- (b) to enable a restorative process to occur;
- (c) to enable a restorative justice agreement to be fulfilled;
- (d) to enable a rehabilitation programme or course of action to be undertaken;
- (e) to enable the Court to take account of the offender's response to any process, agreement, programme or course of action referred to in paragraph (b), (c) or (d).

(2) If proceedings are adjourned under this section or under section 9(4), a Judge or Magistrate having jurisdiction to deal with offences of the same kind (whether or not the same Judge or Magistrate before whom the case was heard) may, after inquiry into the circumstances of the case, sentence or otherwise deal with the offender for the offence to which the adjournment relates.

Pre-sentence reports

25.—(1) If an offender who is charged with an offence punishable by imprisonment is found guilty or pleads guilty, the Court may direct a Supervision Officer to provide a report to the Court under subsection (2).

(2) A pre-sentence report may include—

- (a) information regarding the personal, family, community and cultural background and social circumstances of the offender;
- (b) information regarding the factors contributing to the offence and the rehabilitative needs of the offender;
- (c) information regarding any offer, agreement, response or measure of a kind referred to in section 9(1) or the outcome of any other restorative justice processes that have occurred in relation to the case;
- (d) recommendations on the appropriate sentence or other disposition of the case, taking into account the risk of further offending by the offender;
- (e) in the case of a proposed sentence of supervision [or home detention], recommendations on the

- appropriate conditions of [that sentence];
- (f) in the case of a proposed sentence of supervision [or home detention] involving one or more programmes—
 - (i) a report on the programme or programmes, including a general description of the conditions that the offender will have to abide by; and
 - (ii) confirmation that the report has been made available to the offender;
 - (g) in the case of a proposed sentence of supervision [or home detention] involving a special condition requiring the offender to take prescription medication, confirmation that the offender—
 - (i) has been fully advised by a person who is qualified to prescribe that medication about the nature and likely or intended effect of the medication and any known risks; and
 - (ii) consents to taking the prescription medication;
 - (h) in the case of a proposed sentence of community work, information regarding the availability of community work of a kind referred to in section 61 in the area in which the offender will reside.

(Amended by Ordinance No. 1 of 2016)

(3) The Court must not direct the preparation of a report under subsection (1) on any aspects of the personal characteristics or personal history of an offender if a report covering those aspects is readily available to the Court and there is no reason to believe that there has been any change of significance to the Court since the report was prepared.

(4) On directing the preparation of a report under subsection (1) the Court may indicate to the Supervision Officer the type of sentence or other mode of disposition that the Court is considering and may also give any other guidance to the Supervision Officer that will assist the officer to prepare the report.

(5) If a Court has directed the preparation of a report under subsection (1), the Supervision Officer charged with the preparation of the report may seek the further directions of the Court on—

- (a) any particular item of information sought by the Court; or
- (b) any alternative sentence or other mode of disposition that may be considered by the Court if it appears that the sentence or other mode of disposition under consideration is inappropriate.

Additional
requirements when
considering sentence
of home detention

[25A.—(1) This section applies to reports prepared under section 25 if—

- (a) the court has indicated that it is considering a sentence of home detention; or
- (b) the Supervision Officer intends to recommend a sentence of home detention.

(2) A pre-sentence report to which subsection (1) applies may include any of the matters outlined in section 25(2), and must include—

- (a) information regarding the suitability of the proposed home detention residence, including the safety and welfare of the occupants of the proposed home detention residence; and;
- (b) confirmation that the offender consents to the standard detention conditions and any special conditions recommended by the Supervision Officer or that the court has indicated it is considering imposing.

(3) Before completing a report that covers the matters in subsection (2) of this section, the Supervision Officer must—

- (a) ensure that every relevant occupant of the proposed home detention residence is aware of the nature of the offender's past and current offending; and
- (b) tell every relevant occupant that the reason for giving that information is to enable the occupant to make an informed decision about whether to consent to the offender serving the sentence at the home detention residence; and
- (c) tell every relevant occupant that the information provided about the offender must not be used for any purpose other than that described in paragraph (b); and
- (d) obtain the consent of every relevant occupant to the offender serving the sentence in the home detention residence; and
- (e) inform every relevant occupant that they may withdraw their consent, at any time, to the offender serving the sentence in the home detention residence.

(4) In subsection (3) **relevant occupant** means—

- (a) in the case of a family residence, every person of or over the age of 16 who ordinarily lives there; and
- (b) in the case of any other residence, every person whom the Supervision Officer identifies as being a relevant occupant for the purpose of subsection (3).]

(Inserted by Ordinance No. 1 of 2016)

26.—(1) If an offender appears before a Court for sentencing, the offender may request the Court to hear any person or persons called by the offender to speak on—

Offender may request
Court to hear certain
persons

- (a) the personal, family, community and cultural background of the offender;
- (b) the way in which that background may have related to the commission of the offence;
- (c) any processes that have been tried to resolve, or that are available to resolve, issues relating to the offence involving the offender and his or her family or community and the victim or victims of the offence;
- (d) how support from the family or community may be available to help prevent further offending by the offender;
- (e) how the offender's background or family or community support may be relevant in respect of possible sentences.

(2) The Court must hear a person or persons called by the offender under this section on any of the matters specified in subsection (1) unless the Court is satisfied that there is some special reason which makes this unnecessary or inappropriate.

(3) If the Court declines to hear a person called by the offender under this section, the Court must give reasons for doing so.

(4) Without limiting any other powers of a Court to adjourn, the Court may adjourn the proceedings to enable arrangements to be made to hear a person or persons under this section.

(5) If an offender does not make a request under this section, the Court may suggest to the offender that it may be of assistance to the Court to hear a person or persons called by the offender on any of the matters specified in subsection (1).

27.—(1) If a written report is submitted to a Court, whether under section 25 or section 32 or otherwise, a copy of the report must be given—

Disclosure of reports

- (a) except as provided in subsection (2), to the offender; and
- (b) if the offender is represented, to the offender's counsel, whether or not an order is made under subsection (2).

(2) The Court may order that any part of the report not be disclosed to the offender if it is of the opinion that the disclosure would be likely to prejudice the offender's physical or mental health or endanger the safety of any person.

(3) The offender or his or her counsel may tender evidence on any matter referred to in any report, whether written or oral, that is submitted to a Court under section 25 or section 32.

(4) Failure to give a copy of any report in accordance with this section does not affect the validity of the proceedings in a Court or of any order made or sentence imposed by a Court.

Access to reports

28.—(1) The following persons may have access to any report submitted to a Court under section 25 or section 32 and held by the Court—

- (a) the superintendent or other person in charge of a penal institution to which the offender is sent, whether during any proceedings or in accordance with any sentence imposed;
- (b) the medical superintendent of a hospital—
 - (i) to which the offender is remanded; or
 - (ii) in which the offender is detained as a compulsory inpatient or from which he or she is on leave;
- (c) an officer or employee of the administration who requires access to the report for the purposes of his or her official duties;
- (d) a member of the Pitcairn Parole Commission;
- (e) the prosecutor appearing on sentence or on appeal against sentence.

No sentence of imprisonment [or home detention] to be imposed without opportunity for legal representation

29.—(1) No Court may impose a sentence of imprisonment [or a sentence of home detention] on an offender who has not been legally represented at the stage of the proceedings at which the offender was at risk of conviction, except as provided in subsection (2).

(Amended by Ordinance No. 1 of 2016)

(2) Subsection (1) does not apply if the Court is satisfied that the offender—

- (a) was informed of his or her rights relating to legal representation including, where appropriate, the right to apply for legal aid under the Legal Aid (Criminal Proceedings) Ordinance; and
- (b) fully understood those rights; and
- (c) had the opportunity to exercise those rights; and
- (d) refused or failed to exercise those rights or engaged counsel but subsequently dismissed him or her.

cap.9

(3) If, on any appeal against sentence, a Court finds that a sentence was imposed in contravention of subsection (1), the Court must either—

- (a) quash the sentence imposed and impose in substitution for it any other lawful sentence that the Court thinks ought to have been imposed; or
- (b) quash the conviction and direct a new hearing or trial or make any other order that justice requires.

(4) For the purposes of this section, an offender refuses or fails to exercise his or her rights relating to legal representation if the offender—

- (a) refuses to apply for legal aid under the Legal Aid (Criminal Proceedings) Ordinance or applies for it unsuccessfully; and cap.9
- (b) refuses or fails to engage counsel by other means.

30.—(1) A Court must give reasons in open court—

General requirement to give reasons

- (a) for the imposition of a sentence or for any other means of dealing with the offender; and
- (b) for the making of an order under Part IV.

(2) The reasons may be given under this section with whatever level of particularity is appropriate to the particular case.

(3) Nothing in this section limits any other provision of this or any other enactment which requires a Court to give reasons.

(4) The fact that a Court, in giving reasons in a particular case, does not mention a particular principle in section 7 or a particular factor in section 8 or a consideration under section 9 or section 10 is not in itself grounds for an appeal against a sentence imposed or an order made in that case.

PART IV SENTENCES, ORDERS AND RELATED MATTERS

Monetary penalties

31.—(1) A Court may impose a sentence of reparation if an offender has, through or by means of an offence of which the offender is convicted, caused a person to suffer—

Sentence of reparation

- (a) loss or damage to property; or
- (b) emotional harm; or
- (c) loss or damage consequential on any emotional or physical harm or loss of or damage to property.

(2) Notwithstanding subsection (1), a Court must not impose a sentence of reparation in respect of emotional harm or loss or damage consequential on emotional harm, unless the person who suffered the emotional harm is a person described in paragraph (a) of the definition of victim in section 3.

(3) In determining whether a sentence of reparation is appropriate or the amount of reparation to be made for any consequential loss or damage described in subsection (1)(c), the Court must take into account whether there is or may be, under the provisions of any enactment or rule of law, a right available to the person who suffered the loss or damage to bring proceedings or to make any application in relation to that loss or damage.

(4) Subsection (3) applies whether or not the right to bring proceedings or make the application has been exercised in the particular case and whether or not any time prescribed for the exercise of that right has expired.

(5) When determining the amount of reparation to be made, the Court must take into account any offer, agreement, response, measure or action as described in section 9.

(6) The Court must not impose as part of a sentence of reparation an obligation on the offender to perform any form of work or service for the person who suffered the harm, loss or damage.

Court may order
reparation report

32.—(1) If the Court considers that a sentence of reparation should be imposed, the Court may order a Supervision Officer, or any other person designated by the Court for the purpose, to prepare a reparation report for the Court in accordance with section 33 on all or any of the following matters—

- (a) in the case of loss or damage to property, the value of that loss or damage and any consequential loss or damage;
- (b) in the case of emotional harm, the nature of that harm and any consequential loss or damage;
- (c) in the case of any loss or damage consequential on physical harm, the nature of the loss or damage;
- (d) the financial capacity of the offender;
- (e) the maximum amount that the offender is likely to be able to pay under a sentence of reparation;
- (f) the frequency and magnitude of any payments that should be required under a sentence of reparation, if provision for payment by instalments is thought desirable.

(2) The Court may decline to seek a report under subsection (1) and impose a sentence of reparation without further inquiry if—

- (a) the Court is satisfied as to the amount of reparation that the offender should pay; or
- (b) the type of information referred to in a reparation report is available through other means (including, without limitation, a declaration made following a direction under section 40); or
- (c) in all the circumstances the Court considers that a report is unnecessary.

(3) For the purposes of the preparation of a reparation report, a Court may direct the offender to make a declaration as to his or her financial capacity in accordance with section 41.

Reparation reports

33.—(1) A Supervision Officer or other person who is required by a Court to prepare a report under section 32 must

attempt to gain agreement between the offender and the person who suffered the harm, loss, or damage on the amount that the offender should be required to pay by way of reparation.

(2) If agreement is reached, the Supervision Officer or other person must report the terms of the agreement to the Court (in addition to any other matters on which the Court has required a report).

(3) If no agreement is reached, the Supervision Officer or other person must—

- (a) in respect of emotional harm, state in the report the respective positions of the offender and the person who suffered the harm and that the matter is unresolved; and
- (b) in respect of loss of, or damage to, property, either
 - (i) determine the value of the loss or damage and the consequential loss or damage on the evidence available and include that value in the report; or
 - (ii) state in the report that the matter is unresolved; and
- (c) in respect of loss or damage consequential on emotional or physical harm, either
 - (i) determine the value of the loss or damage on the evidence available and include that value in the report; or
 - (ii) state in the report the respective positions of the offender and the person who suffered the loss or damage and that the matter is unresolved.

(4) Notwithstanding subsections (1) to (3), the person who suffered the harm, loss or damage is not obliged to meet with the offender or otherwise participate in the preparation of the report.

(5) The person who prepared a report under this section must give a copy to the person who suffered the harm, loss or damage unless the Court orders otherwise.

(6) Failure to give a copy of any report in accordance with subsection (5) does not affect the validity of the proceedings in a Court or of any order made or sentence imposed by a Court.

34.—(1) If the offender has insufficient means to pay the total value of the loss, damage or harm, the Court may sentence the offender to make—

- (a) reparation for any amount that is less than the value of the loss, damage or harm; or
- (b) payment by instalments in respect of the loss, damage or harm; or

Taking into account
financial capacity of
offender

(c) both (a) and (b).

(2) If the Court imposes on an offender a sentence of reparation and a sentence of a fine, any payments received from the offender must be applied first in satisfaction of the amount due under the sentence of reparation.

Conditions of sentence of reparation

35. If a Court sentences an offender to make reparation, the Court must determine the conditions of the sentence in respect of the following matters—

- (a) the total amount of reparation to be paid by the offender;
- (b) whether the amount is to be paid in one lump sum or in instalments;
- (c) if the amount is to be paid in one lump sum, whether it is to be paid immediately or at some specified future date;
- (d) if the amount is to be paid in instalments, the frequency and amounts of the instalments.

Copies of conditions of reparation to be given to person who suffered harm, loss or damage

36.—(1) A copy of the conditions of a sentence of reparation must be given to the person who suffered the harm, loss or damage.

(2) Failure to give a copy of the conditions of the sentence in accordance with this section does not affect the validity of the proceedings in the Court or of the sentence imposed by the Court.

Payment of sums to person who suffered harm, loss or damage

37.—(1) Every sum payable under a sentence of reparation must be paid to the person who suffered the harm, loss or damage or, with that person's consent, to that person's insurer.

(2) A sentence of reparation does not affect any right that the person who suffered the harm, loss or damage has to recover by civil proceedings any damages in excess of the amount recovered under the sentence.

Fines

Power to impose fine instead of imprisonment[, home detention,] or community-based sentence

38.—(1) If an enactment provides that a Court may sentence an offender to imprisonment but does not prescribe a fine, the Court may sentence the offender to pay a fine instead of sentencing the offender to imprisonment.

[(1A) If an enactment provides that a Court may sentence an offender to a sentence of home detention but does not provide for a fine, the Court may sentence the offender to pay a fine instead of imposing a sentence of home detention.]

(Inserted by Ordinance No. 1 of 2016)

(2) If an enactment provides that a Court may sentence an offender to a community-based sentence but does not prescribe

a fine, the Court may sentence the offender to pay a fine instead of imposing a community-based sentence.

(3) Subsections (1)[, (1A)] and (2) are subject to any express provision to the contrary in the relevant enactment.

(Amended by Ordinance No. 1 of 2016)

(4) No person may be sentenced by a Magistrate's Court in accordance with this section to pay a fine exceeding—

- (a) \$10,000, if the Court is presided over by a Magistrate appointed under section 11(1) and (4) of the Judicature (Courts) Ordinance.
- (b) \$400, if the Court is presided over by the Island Magistrate.

39.—(1) In determining the amount of a fine, the Court must take into account, in addition to the provisions of sections 6 to 9, the financial capacity of the offender.

Determining amount of fine

(2) Subsection (1) applies whether taking into account the financial capacity of the offender has the effect of increasing or reducing the amount of the fine.

cap.2

(3) If under an enactment an offender is liable to a fine of a specified amount, the offender may be sentenced to pay a fine of any less amount unless a minimum fine is expressly provided for by that enactment.

(4) If a Court imposes a fine in addition to a sentence of reparation, it must, in fixing the amount of the fine, take into account the amount payable under the sentence of reparation.

40.—(1) If the Court considers that a fine of less than \$100 may be an appropriate sentence, it may assume that the offender has the means to pay the fine unless evidence is presented to the contrary.

Financial capacity of offender

(2) If the Court considers that a fine of \$100 or more may be an appropriate sentence but it is uncertain about the offender's ability to pay the fine, the Court may direct the offender to make a declaration as to his or her financial capacity in accordance with section 41.

(3) The Court may decline to give a direction under subsection (2) and impose a fine without further inquiry if—

- (a) the type of information referred to in a declaration is available through other means (including, for example, a reparation report under section 32); or
- (b) in all the circumstances, the Court considers that a declaration is unnecessary.

Declaration as to financial capacity

41. A declaration as to financial capacity must contain information on all sources of income, assets, liabilities and

Declaration as to financial capacity

outgoings, including, without prejudice to the generality of the foregoing—

- (a) salary and wages;
- (b) benefits and pensions;
- (c) commissions;
- (d) interest and dividends;
- (e) income from rental property;
- (f) ownership of land;
- (g) vehicle ownership;
- (h) ownership of other property;
- (i) income and realisable assets that the offender does not currently have but which it is anticipated that the offender will receive during the 12 months following the date of giving the declaration;
- (j) debts;
- (k) essential outgoings of the offender and his or her dependants.

Offence of providing false or misleading information

42. Every person is liable on summary conviction to imprisonment for a period not exceeding three months or to a fine not exceeding \$1,000 who provides false or misleading information in a declaration of financial capacity provided in accordance with section 41.

PART V COMMUNITY-BASED SENTENCES

Supervision

Sentence of supervision

43.—(1) A Court may sentence an offender to supervision if—

- (a) the offender is convicted of an offence punishable by imprisonment; or
- (b) the offender is convicted of an offence and the enactment prescribing the offence expressly provides that a community-based sentence may be imposed on conviction.

(2) The sentence may be for a period, being not less than 6 months and not more than 2 years, that the Court thinks fit.

(3) This section is subject to sections 44 and 45.

Guidance on use of sentence of supervision

44. A Court may impose a sentence of supervision only if the Court is satisfied that a sentence of supervision would reduce the likelihood of further offending by the offender through the rehabilitation and reintegration of the offender.

Sentences of supervision in respect of two or more offences must be served concurrently

45. If a Court imposes a sentence of supervision in respect of each of two or more offences (whether on the same occasion or on different occasions) the sentences must be served concurrently.

46. An offender who is sentenced to supervision is subject to—

Conditions of sentence of supervision

- (a) the standard conditions in section 47; and
- (b) any special conditions imposed by the Court under section 48 or section 50 or both.

47.—(1) If an offender is sentenced to supervision, the following standard conditions apply—

Standard conditions of supervision

- (a) the offender must report in person to the Supervision Officer as soon as practicable, and not later than 72 hours, after the sentence is imposed;
- (b) the offender must report to the Supervision Officer as and when required to do so by the Supervision Officer and must notify the officer of his or her residential address and the nature and place of his or her employment when asked to do so;
- (c) the offender must not move to a new residential address without the prior written consent of the Supervision Officer;
- (d) if consent is given under paragraph (c), the offender must report in person to the Supervision Officer as soon as practicable, and not later than 72 hours, after the offender's arrival in the new area;
- (e) the offender must not reside at any address at which the Supervision Officer has directed the offender not to reside;
- (f) the offender must not engage, or continue to engage, in any employment or occupation in which the Supervision Officer has directed the offender not to engage or continue to engage;
- (g) the offender must not associate with any specified person, or with persons of any specified class, with whom the Supervision Officer has, in writing, directed the offender not to associate;
- (h) the offender must take part in a rehabilitative and reintegrative needs assessment if and when directed to do so by the Supervision Officer.

(2) The conditions in subsection (1)(c) to (e) do not apply if, and to the extent that, they are inconsistent with any special condition imposed by the Court.

48. A Court may impose any special condition or conditions related to a programme if the Court is satisfied that—

Special conditions related to programme

- (a) there is a significant risk of further offending by the offender; and
- (b) standard conditions alone would not adequately reduce that risk; and

- (c) the offender requires a programme to reduce the likelihood of further offending by the offender through the rehabilitation and reintegration of the offender.

Programmes

49. For the purposes of section 48, **programme** means any of the following:

- (a) any psychiatric or other counselling or assessment;
- (b) attendance at any medical, psychological, social, therapeutic, cultural, educational, employment-related, rehabilitative or reintegrative programme;
- (c) placement in the care of any appropriate person, persons, or agency, approved by the Supervision Officer, such as, without limitation, a religious group, a church or religious order or any members or particular members of any such group, church or order.

Other special conditions

50.—(1) A Court may impose any of the special conditions described in subsection (2) if the Court is satisfied that—

- (a) there is a significant risk of further offending by the offender; and
- (b) standard conditions alone would not adequately reduce the risk; and
- (c) the imposition of special conditions would reduce the likelihood of further offending by the offender through the rehabilitation and reintegration of the offender.

(2) The conditions referred to in subsection (1) are—

- (a) any conditions that the Court thinks fit relating to the offender's place of residence (which may include a condition that the offender not move residence), finances or earnings;
- (b) conditions requiring the offender to take prescription medication;
- (c) any other conditions that the Court thinks fit to reduce the likelihood of further offending by the offender.

(3) No Court may impose a condition under this section that the offender pay any fine, reparation or other sum ordered to be paid on conviction or that the offender perform any service that he or she could have been required to perform if he or she had been sentenced to community work.

[(3A) No court may impose a condition under this section that the offender submit to electronic monitoring.]

(Inserted by Ordinance No. 1 of 2016)

(4) No offender may be made subject to a special condition

that requires the offender to take prescription medication unless the offender—

- (a) has been fully advised by a person who is qualified to prescribe that medication, about the nature and likely or intended effect of the medication and any known risks; and
- (b) consents to taking the prescription medication.

(5) An offender does not commit a breach of his or her conditions for the purposes of section 68 if he or she withdraws consent to taking prescription medication.

51. An offender who is subject to a sentence of supervision must be under the supervision of the Supervision Officer or of any other supervision officer that the Governor may direct.

Offender to be
under supervision of
Supervision Officer

52.—(1) An offender who is subject to a sentence of supervision, or the Supervision Officer, may apply in accordance with section 70 for an order under subsection (3) of this section on the grounds that—

Variation or
cancellation
of sentence of
supervision

- (a) the offender is unable to comply, or has failed to comply with any of the conditions of the sentence;
- (b) any programme to which the offender is subject is no longer available or suitable for the offender;
- (c) having regard to any change in circumstances since the sentence was imposed and to the manner in which the offender has responded to the sentence—
 - (i) the rehabilitation and reintegration of the offender would be advanced by the remission, suspension, or variation of conditions, or the imposition of additional conditions; or
 - (ii) the continuation of the sentence is no longer necessary in the interests of the community or the offender.

(2) The Supervision Officer may apply in accordance with section 70 for an order under subsection (3) of this section if an offender who is subject to a sentence of supervision is convicted of an offence punishable by imprisonment.

(3) On an application under subsection (1) or subsection (2), the Court may, if it is satisfied that the grounds on which the application is based have been established—

- (a) remit, suspend or vary conditions imposed by the Court or impose additional conditions;
- (b) cancel the sentence;
- (c) cancel the sentence and substitute any other sentence (including another sentence of supervision) that could have been imposed on the offender at the time when the offender was convicted of the offence for which the sentence was imposed.

(4) The Court must not vary any existing condition or impose any new condition of a kind referred to in section 50(2)(b) without the consent of the offender.

(5) When determining a substitute sentence under subsection (3)(c), the Court must take into account the portion of the original sentence that remains unserved at the time of the order.

(6) If the Court cancels a sentence under this section, the sentence expires on the date that the order is made, or on any other date that the Court may specify.

(7) If an application is made under this section for the remission, suspension or variation of any condition imposed by the Court, the Supervision Officer may suspend the condition until the application has been heard and disposed of.

Community Work

Sentence of
community work

53.—(1) A Court may sentence an offender to community work—

- (a) if the offender is convicted of an offence punishable by imprisonment; or
- (b) if the offender is convicted of an offence and the enactment prescribing the offence expressly provides that a community-based sentence may be imposed on conviction.

(2) The sentence may be for the number of hours, being not less than 40 or more than 400, that the Court thinks fit.

(3) This section is subject to sections 54 and 55.

Guidance on use
of sentence of
community work

54.—(1) In considering whether to impose a sentence of community work, the Court must give particular consideration to—

- (a) whether the nature and circumstances of the offending make it appropriate for the offender to make compensation to the community in the form of work, in addition to, or instead of, making reparation to any person in respect of the offending; and
- (b) whether the sentence is appropriate, having regard to the offender's character and personal history, and to any other relevant circumstances.

(2) A sentence of community work is inappropriate if the Court is satisfied that—

- (a) the offender has alcohol, drug, psychiatric, or intellectual problems that indicate that it is unlikely that he or she would complete a sentence of community work; or
- (b) for any other reason it is unlikely that the offender would complete a sentence of community work.

(3) The Court may assume that suitable work is available for the offender to perform under the sentence unless the Court is advised otherwise by the Supervision Officer.

55.—(1) If a Court imposes a sentence of community work on an offender who is already subject to a sentence of community work, the sentences must be served concurrently unless the Court directs that they are to be served cumulatively.

Concurrent and cumulative sentences of community work

(2) If a Court imposes a sentence of community work in respect of each of two or more offences, the sentences must be served concurrently unless the Court directs that they are to be served cumulatively.

[(3) A sentence of community work must be served concurrently with any sentence of supervision or home detention, whether or not the sentences are imposed at the same time.]

(Repealed and replaced by Ordinance No. 1 of 2016)

[55A. If a Court imposes both a sentence of community work and a sentence of home detention, the Court may defer the commencement of the sentence of community work for a specified period if, in its opinion, deferral is necessary to enable the offender to comply with any conditions imposed under section 76C or 76D.]

Court may defer commencement date of sentence of community work

(Inserted by Ordinance No. 1 of 2016)

56.—(1) If the Court imposes a sentence of community work of 200 hours or less, that sentence must be served within 12 months of the date that it commences under section 73.

Length of sentence of community work.

(2) If the Court imposes a sentence of community work of more than 200 hours, that sentence must be served within 24 months of the date that it commences under section 73.

(3) Any work done by an offender under a sentence of community work must be treated as having been done under that sentence and under any and each other concurrent sentence of community work that the offender was subject to at the time that the work was done.

57. An offender who is subject to a sentence of community work must report in person to the Supervision Officer

Offender must report to Supervision Officer

- (a) as soon as practicable and not later than 72 hours after the sentence is imposed; and
- (b) as directed at any other time during the sentence for the purpose of monitoring the sentence.

58. If an offender who is subject to a sentence of community work moves to a new residential address, the offender must, within 72 hours, notify the Supervision Officer of the offender's new residential address.

Offender must notify Supervision Officer if offender changes residential address

Supervision Officer
must determine
placement of offender
for community work

59. As soon as practicable after a sentence of community work is imposed and at any other time during the sentence if the Supervision Officer thinks fit, the Supervision Officer must determine in accordance with sections 60 and 61 whether the community work will be done—

- (a) on placement at a designated work centre; or
- (b) on placement with another agency; or
- (c) on placement at a designated work centre for a certain number of the hours of work and on placement with another agency for a certain number of the hours of work, as specified by the Supervision Officer.

Guidance to
Supervision Officer
in determining
placement of offender
for community work

60. For the purpose of section 59, the Supervision Officer must take into account—

- (a) the circumstances of the offending; and
- (b) how the offender could benefit from learning work habits or skills through the sentence; and
- (c) the offender's character and personal history; and
- (d) the offender's physical and mental capabilities; and
- (e) the outcome of any restorative justice processes that have occurred in the case; and
- (f) whether there is a designated work centre within a reasonable distance of the offender's place of residence; and
- (g) whether there is an agency within a reasonable distance of the offender's place of residence that has sufficient suitable work available for the offender; and
- (h) any other relevant circumstances.

Authorised work for
person sentenced to
community work

61. (1) The type of work that an offender may be required to perform for the purposes of a sentence of community work is work—

- (a) at or for any hospital, clinic or church or at or for any charitable, educational, cultural or recreational institution or organisation; or
- (b) at or for any other institution or organisation for old, infirm or disabled persons or at the home of any old, infirm or disabled person; or
- (c) on any land of which the Crown or any public body is the owner or lessee or occupier or any land that is administered by the Crown or any public body.

(2) No offender may be directed for the purposes of a sentence of community work to do any work if, in doing so, the offender would take the place of any person who would otherwise be employed in doing that work in the ordinary course of paid employment.

62.—(1) If community work is to be done on placement with an agency other than a designated work centre, the days on which and the times at which the offender does the work must be fixed by agreement between the Supervision Officer and the agency and notified in writing to the offender.

When community work must be done

(2) If the community work is to be done on placement at a designated work centre, the days on which and the times at which the offender performs the work must be determined by the Supervision Officer and notified in writing to the offender.

(3) It is not necessary for all the periods of work to be of the same duration but no period may be longer than 10 hours and no offender may be required to do more than 40 hours of community work in any week.

(4) The times at which the offender is required to report and the periods during which he or she is required to do community work must be such as to avoid interference, so far as practicable, with the offender's attendance at any place of education or employment, or with his or her religious observances.

63.—(1) An offender who is directed to do community work on placement at a designated work centre is subject to the control, direction and supervision of the Supervision Officer—

Supervision of offender while doing community work

- (a) while the offender is at a designated work centre; and
- (b) while the offender is at any other place at the direction or with the permission of the Supervision Officer; and
- (c) while the offender is travelling between a designated work centre and any other place referred to in paragraph (b) or between any two such places.

(2) An offender who is directed to do community work on placement with an agency other than a designated work centre is subject to the control, direction and supervision of the Supervision Officer at all times while the offender is doing work or is required to be doing work under the sentence.

64.—(1) An offender who is subject to a sentence of community work may be excused from reporting during any period when the designated work centre or other agency at which the offender is required to report is closed.

Offender excused from reporting in certain circumstances

(2) In special circumstances, the Supervision Officer may excuse an offender from reporting on any day or during any period.

(3) Without limiting subsection (2), if an offender is unable to report on any day or during any period because of illness or injury, the Supervision Officer must, on being

satisfied (whether before or after the failure to report) with the circumstances of the case, excuse the offender from the requirement to report on that day or during that period.

(4) For the purpose of determining whether or not to excuse an offender under subsection (3), the Supervision Officer may require that the offender obtain a medical certificate as to whether the offender is, will be or was unfit to report on the day or during the period.

(5) A certificate obtained in accordance with subsection (4) is not conclusive as to whether the offender is, will be or was unfit to report.

(6) For the avoidance of doubt, if an offender is excused under this section from reporting, that does not have the effect of remitting any of the hours of community work required to be done under the sentence.

Remission of sentence
of community work

65. If the Supervision Officer is satisfied that the offender has a good record of compliance with a sentence of community work, the Supervision Officer may remit up to 10% from the number of hours imposed by the Court.

Variation or
cancellation
of sentence of
community work

66.—(1) An offender who is subject to a sentence of community work or the Supervision Officer, may apply in accordance with section 70 for an order under subsection (3) of this section on the grounds that—

- (a) there has been a change of circumstances since the sentence was imposed which would justify the variation or cancellation of the sentence; or
- (b) having regard to any change in circumstances since the sentence was imposed and to the manner in which the offender has responded to the sentence, the continuation of the sentence is no longer necessary in the interests of the community or the offender.

(2) The Supervision Officer may apply in accordance with section 70 for an order under subsection (3) of this section—

- (a) if an offender who is subject to a sentence of community work is convicted of an offence punishable by imprisonment; or
- (b) on the grounds that the offender has behaved in a manner described in any of paragraphs (a) to (j) of section 69(1).

(3) On an application under subsection (1) or subsection (2), the Court may, if it is satisfied that the grounds on which the application is based have been established—

- (a) vary the sentence by reducing the number of hours of work to be done; or

- (b) cancel the sentence; or
- (c) cancel the sentence and substitute any other sentence, (including another sentence of community work) which could have been imposed on the offender at the time when the offender was convicted of the offence for which the sentence was imposed.

(4) When determining a substitute sentence under subsection (3)(c), the Court must take into account the portion of the original sentence which remains unserved at the time of the order.

(5) If the Court cancels the sentence, the sentence expires on the date that the order is made or on any other date which the Court may specify.

67.—(1) An offender who is subject to a sentence of community work or the Supervision Officer may apply in accordance with section 70 for an extension of the period within which the work must be done on the grounds that—

Extension of period within which community work must be done

- (a) because of incapacity or any humanitarian or other reasons, it will be impossible for the offender to do the work during a certain period; or
- (b) it would be unreasonable to require the offender to do the work during that period.

(2) On an application under subsection (1), the Court may, if it is satisfied that the grounds in subsection (1) have been established, extend the period within which the work must be done by the amount that the Court thinks fit.

Offences related to community-based sentences

68. An offender commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$400 who—

Offences related to breach of conditions of supervision

- (a) fails without reasonable excuse to comply with any condition of a sentence of supervision; or
- (b) fails without reasonable excuse to report when required to do so under section 74 or section 76.

69.—(1) An offender who is sentenced to community work commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$400 who—

Offences relating to breach of sentence of community work

- (a) fails without reasonable excuse to report to the Supervision Officer in accordance with section 57 or section 74 or section 76; or
- (b) fails without reasonable excuse to notify the Supervision Officer of any new residential address in accordance with section 58; or

- (c) fails without reasonable excuse to—
 - (i) do any work satisfactorily in accordance with the sentence; or
 - (ii) comply with the terms of any agreement entered into for the purposes of section 62 (1); or
- (d) fails without reasonable excuse to complete the required number of hours of work within the period prescribed under section 56 or within any extended period granted under section 67; or
- (e) accepts remuneration whether by way of gift or otherwise for any work that the offender is required to do for the purposes of the sentence; or
- (f) fails without reasonable excuse to report or to remain at any place as required by or under this ordinance; or
- (g) fails without reasonable excuse to obey any rules governing a designated work centre; or
- (h) fails without reasonable excuse to obey any directions lawfully given regarding the manner in which his or her time must be spent while under the supervision of the Supervision Officer under section 63; or
- (i) refuses to work or fails to work in the manner reasonably required of the offender or neglects or intentionally mismanages his or her work while under the supervision of the Supervision Officer under section 63; or
- (j) behaves in an offensive, threatening, insolent, insulting, disorderly, or indecent manner while under the supervision of the Supervision Officer under section 63.

(2) A person commits an offence and is liable on summary conviction to a fine not exceeding \$250 who without lawful justification or excuse loiters about any designated work centre or any place where persons sentenced to community work are placed and refuses or neglects to depart after being warned by a police officer or by the Supervision Officer.

Review of Community-based Sentences

70.—(1) Every application under section 52 or section 66 must be made—

- (a) to the Supreme Court, if the sentence was passed—
 - (i) by the Court of Appeal on appeal from the Supreme Court; or
 - (ii) by the Supreme Court otherwise than on appeal from the Magistrate’s Court; or

- (b) in any other case, to the Magistrate's Court presided over by a Senior Magistrate.
- (2) A copy of the application must, either before or as soon as practicable after the application is lodged in the office of the Court, be served—
 - (a) on the offender, if the offender is not the applicant; or
 - (b) on the Supervision Officer if the Supervision Officer is not the applicant.
- (3) If an application under section 52 or section 66 has been lodged in the Court by the Supervision Officer, the Supervision Officer or a police officer may, for the purpose of having the offender brought before the Court, apply for the issue of a warrant to arrest the offender. cap. 2
- (4) No warrant issued under subsection (3) may be executed otherwise than by a police officer.
- (5) If an offender is arrested under a warrant issued under subsection (3), sections 18, 21 and 22 of the Justice Ordinance, so far as they are applicable and with any necessary modifications, apply as if the application were a charge.

71. For the purposes of any appeal or application for leave to appeal,—

- (a) a sentence substituted for a community-based sentence imposed on the conviction of the offender on information is deemed to be a sentence imposed in the conviction of the offender on information; and
- (b) a sentence substituted for a community-based sentence imposed on the offender on the determination of a charge in the Magistrate's Court is deemed to be a sentence imposed on the determination of a charge against the offender in the Magistrate's Court. cap. 3

Appeal in respect of substituted sentence

Miscellaneous provisions as to community-based sentences

72.—(1) If a Court imposes a community-based sentence on an offender, the particulars of the sentence must be drawn up in the form of an order.

Order must be drawn up and copy given to offender, etc.

(2) Wherever practicable, a copy of the order must be given to the offender before he or she leaves the Court.

(3) The order must include information regarding—

- (a) the nature of the sentence; and
- (b) the initial reporting obligations; and
- (c) the date on which the sentence commences; and
- (d) the obligations to comply with the instructions of the

Supervision Officer and the terms of the sentence;
and

- (e) the consequences of non-compliance with the terms of the sentence; and
- (f) the statutory provisions under which the sentence may be varied or cancelled.

(4) For the purposes of subsection (1), a Court may direct that the offender be detained in the custody of the Court for a period, not exceeding 2 hours, as may be necessary to enable the order to be drawn up and a copy given to the offender.

(5) If it is not practicable to give a copy of the order to the offender before the offender leaves the Court, a copy must be given to the offender in person as soon as practicable after the offender leaves the Court.

(6) A copy of the order must be given to the Supervision Officer as soon as possible after it is drawn up.

Commencement of
community-based
sentences

73.—(1) A community-based sentence commences on the day on which it is imposed.

(2) Subsection (1) applies—

- (a) subject to the remainder of this section; and
- (b) regardless of whether or not the sentence is imposed in substitution for another sentence.

[(2A) If the commencement date of a sentence of community work is deferred under section 55A, the sentence commences on the date specified in the order of the court.]

(Inserted by Ordinance No. 1 of 2016)

(3) If a sentence of community work is imposed cumulatively on another sentence of community work imposed at the same time—

- (a) at least one of the sentences must commence on the day that the sentence is imposed; and
- (b) the commencement date for the subsequent sentence is the date of the completion of the hours of community work under the first sentence of community work to be served.

(4) If a sentence of community work is imposed cumulatively on another sentence of community work to which the offender is already subject, the commencement date for the subsequent sentence is the date of the completion of the hours of community work under the first sentence of community work to be served.

(5) For the avoidance of doubt, if a sentence of community work is imposed cumulatively on another sentence of community work, hours of work done under either of the sentences on the date referred to in subsection (3)(b) or subsection (4) are not counted towards the hours of work

required to be done under the other sentence.

(6) If a sentence of community work is imposed cumulatively on another sentence of community work (hereinafter called **the first sentence**) whether or not imposed at the same time, and the first sentence is subsequently quashed—

- (a) the commencement date for the subsequent sentence is the date on which the subsequent sentence was imposed; and
- (b) any hours of work completed under the quashed sentence must be treated as having been done under the subsequent sentence.

(7) If a sentence of community work is imposed cumulatively on another sentence of community work (hereinafter called **the first sentence**), whether or not imposed at the same time and the first sentence is subsequently cancelled,—

- (a) the commencement date for the subsequent sentence is the date on which the first sentence was cancelled; and
- (b) for the avoidance of doubt, any hours of work completed under the cancelled sentence must not be treated as having been done under the subsequent sentence.

(8) A sentence of community work expires on the date that the offender completes the hours of work required under the sentence (taking into account any hours remitted under section 65) whether or not the period of time allowed under section 56 or any extended period granted under section 67 has expired.

74.—(1) Subsection (2) applies if an offender who is subject to a community-based sentence is subsequently sentenced to—

- (a) a term of imprisonment of not more than 12 months; or
- (b) two or more terms of imprisonment to be served concurrently, each term of which is not more than 12 months; or
- (c) two or more terms of imprisonment which are cumulative, the total term of which is not more than 12 months.

(2) If this subsection applies, the Court must either—

- (a) order that the community-based sentence be suspended; or
- (b) order that the community-based sentence be suspended for the duration of the period in which the offender is detained under the sentence or sentences of imprisonment.

Effect of subsequent sentence of imprisonment

(3) If the Court suspends the community-based sentence under subsection (2)(b), it may if it thinks fit remit, suspend or vary any conditions of the sentence imposed by the Court or impose additional conditions.

(4) The Court must not vary any existing condition or impose any new condition of a kind referred to in section 50(2)(b) (which involves prescription medication) unless the offender—

- (a) has been fully advised by a person who is qualified to prescribe that medication about the nature and likely or intended effect of any variation or new condition in relation to the medication and any known risks; and
- (b) consents to taking the prescription medication.

(5) If a community-based sentence is suspended under subsection (2)(b)—

- (a) the offender must report to the Supervision Officer as soon as practicable and not later than 72 hours after being released from detention; and
- (b) the sentence does not resume until the offender has reported to the Supervision Officer as required by paragraph (a).

(6) Subsection (7) applies if an offender who is subject to a community-based sentence is subsequently sentenced to—

- (a) a term of imprisonment of more than 12 months; or
- (b) two or more terms of imprisonment to be served concurrently, each term of which is more than 12 months; or
- (c) two or more terms of imprisonment which are cumulative, the total term of which is more than 12 months.

(7) If this subsection applies, the community-based sentence is suspended.

Period of suspension not counted towards sentence

75.—(1) No period during which a sentence of supervision is suspended under section 74(2) or (7) is counted towards the period under section 43(2).

(2) No period during which a sentence of community work is suspended under section 74(2) or (7) is counted towards the periods referred to in section 56(1) and (2).

Resumption of community-based sentence if sentence of imprisonment quashed.

76.—(1) This section applies to a community-based sentence which is suspended under section 74(2)(a) or section 74(7).

(2) The community-based sentence is suspended until the earlier of the following events:

- (a) it resumes under section (3); or
- (b) it is cancelled under subsection (5).

(3) If the sentence or sentences of imprisonment based on which the community-based sentence was suspended are quashed and that results in the offender no longer being detained under a sentence of imprisonment—

- (a) the offender must report to the Supervision Officer as soon as practicable and not later than 72 hours after being released from detention; and
- (b) the community-based sentence resumes when the offender has reported as required by paragraph (a).

(4) The Registrar of the Court in which the sentence or sentences of imprisonment are quashed must notify the Supervision Officer thereof.

(5) If the community-based sentence never resumes under subsection (3), it is cancelled when the offender ceases to be detained under the sentence or sentences of imprisonment.

PART VA HOME DETENTION

76A. (1) A court may sentence an offender to a sentence of home detention if the offender is convicted of an offence punishable by imprisonment.

Sentence of home
detention

(2) A court may sentence an offender to home detention under subsection (1) if the court is satisfied that—

- (a) the proposed home detention residence is suitable; and
- (b) the relevant occupants (as defined in section 25A(4)) of the proposed home detention residence—
 - (i) understand the conditions of home detention that will apply to the offender; and
 - (ii) consent to the offender serving the sentence in the residence in accordance with those conditions; and
 - (iii) have been informed that they may withdraw their consent to the offender serving the sentence in the residence at any time; and
- (c) the offender has been made aware of and understands the conditions that will apply during home detention, and he or she agrees to comply with them.

(3) A sentence of home detention may be for such period as the court thinks fit, but must not be for less than 14 days or more than 12 months.

(4) The court must specify the home detention residence when sentencing the offender to a sentence of home detention.

(5) An offender sentenced to home detention is not in custody while serving the sentence.

(6) This section is subject to section 76B.

Concurrent and
cumulative sentences
of home detention

76B. (1) If a court imposes a sentence of home detention on an offender who is already subject to a sentence of home detention, the sentences must be served concurrently unless the court directs that they are to be served cumulatively.

(2) If a court imposes cumulative sentences of home detention or imposes 1 or more sentences of home detention on an offender who is already serving a sentence of home detention, the total term of the sentences of home detention must not be more than 12 months.

(3) Before deciding to impose 2 or more sentences of home detention cumulatively or concurrently, the court must consider the guidance under sections 78 and 79 as if it applied to sentences of home detention.

(4) Subject to section 55A, if a court imposes a sentence of community work and a sentence of home detention, or imposes one of them on an offender who is already subject to the other, the sentences must be served concurrently.

Detention conditions
applying to offender
sentenced to home
detention

76C. (1) An offender who is serving a sentence of home detention is subject to detention conditions comprising—

- (a) the standard detention conditions set out in subsection (2); and
- (b) any special conditions that may be imposed by the court under section 76D.

(2) The standard detention conditions for a sentence of home detention are that—

- (a) the offender is under the supervision of the Supervision Officer and must co-operate with the Supervision Officer and comply with any lawful direction given by that Supervision Officer;
- (b) the offender must not leave the home detention residence at any time except in the circumstances set out in subsections (3) or (4);
- (c) the offender must keep in his or her possession the order drawn up under section 76W, and, if requested to do so by a member of the police or the Supervision Officer, must produce the order for inspection;
- (d) the offender must, when required by the Supervision Officer, submit to the electronic monitoring of compliance with his or her detention conditions;
- (e) the offender must not engage, or continue to engage, in any employment or occupation in which the Supervision Officer has directed the offender not to engage or continue to engage;
- (f) the offender must not associate with any specified person, or with persons of any specified class, with

- whom the Supervision Officer has, in writing, directed the offender not to associate; and
- (g) the offender must take part in rehabilitative and reintegrative needs assessment if and when directed to do so by the Supervision Officer.
- (3) An offender may leave the home detention residence only—
- (a) to seek urgent medical or dental treatment; or
 - (b) to avoid or minimise a serious risk of death or injury to the offender or any other person; or
 - (c) with the approval of the Supervision Officer—
 - (i) to comply with any special condition; or
 - (ii) to seek or engage in employment; or
 - (iii) to attend training or other rehabilitative or reintegrative activities or programmes; or
 - (iv) to attend a restorative justice conference or other process relating to the offender's offending; or
 - (v) to carry out any undertaking arising from any restorative justice process; or
 - (vi) for any other purpose specifically approved by the Supervision Officer.
- (4) The Supervision Officer may approve an alternative residence under section 76H pending determination of an application to vary the residence under section 76F.

76D. (1) In addition to the standard conditions that apply under section 76C, the court may, subject to subsections (2) and (6), impose 1 or more special conditions described in subsection (3).

Special conditions
of sentence of home
detention

- (2) A court may impose any of the special conditions described in subsection (3) if the court is satisfied that—
- (a) there is a significant risk of further offending by the offender; and
 - (b) standard conditions alone would not adequately reduce the risk; and
 - (c) the imposition of special conditions would reduce the likelihood of further offending by the offender through the rehabilitation and reintegration of the offender.
- (3) The special conditions referred to in subsection (1) or (2) are—
- (a) any conditions that the court thinks fit relating to the offender's finances or earnings;
 - (b) conditions requiring the defendant to take prescription medication;
 - (c) conditions relating to a programme;

(d) any other conditions that the court thinks fit to reduce the likelihood of further offending by the offender.

(4) For the purposes of subsection (3), **programme** has the same meaning as in section 49.

(5) No court may impose a condition under this section that—

- (a) the offender pay any fine, reparation, or other sum ordered to be paid on conviction; or
- (b) the offender perform any service that he or she could have been required to perform if he or she had been sentenced to community work.

(6) No offender may be made subject to a special condition that requires the offender to take prescription medication unless the offender—

- (a) has been fully advised, by a person who is qualified or authorised by law to prescribe that medication, about the nature and likely or intended effect of the medication and any known risks; and
- (b) consents to taking the prescription medication.

(7) An offender does not breach his or her detention conditions for the purposes of section 76N if he or she withdraws consent to taking prescription medication; but the failure to take the medication may give rise to a ground for variation or cancellation of the sentence of home detention under section 76F.

Electronic monitoring

76E. (1) The purpose of an electronic monitoring condition is to deter the offender from breaching conditions that relate to his or her whereabouts, and to monitor compliance with those conditions.

(2) Information about an offender that is obtained through electronic monitoring may be used both for the purposes referred to in subsection (1) and for the following purposes:

- (a) to verify compliance with any detention conditions;
- (b) to detect non-compliance with any detention conditions and the commission of offences;
- (c) to provide evidence of non-compliance with detention conditions and the commission of offences;
- (d) to verify that the offender has not tampered or otherwise interfered with the ability of the electronic monitoring equipment to operate effectively and accurately.

76F. (1) An offender who is subject to a sentence of home detention, or a Supervision Officer, may apply for an order under subsection (3) on the grounds that—

Application
for variation or
cancellation of
sentence of home
detention

- (a) the offender is unable to comply, or has failed to comply, with any detention conditions;
- (b) any programme to which the offender is subject is no longer available or suitable for the offender;
- (c) the home detention residence is no longer available or suitable because of a change in circumstances;
- (d) having regard to any changes in circumstances since the sentence was imposed and to the manner in which the offender has responded to the sentence—
 - (i) the rehabilitation and reintegration of the offender would be advanced by the remission, suspension, or variation of any special conditions, or the imposition of additional special conditions; or
 - (ii) the continuation of the sentence is no longer necessary in the interests of the community or the offender.

(2) The Supervision Officer may apply for an order under subsection (3) if an offender, who is subject to a sentence of home detention, is convicted of an offence punishable by imprisonment.

(3) On an application under subsection (1) or (2), the court may, if it is satisfied that the grounds on which the application is based have been established—

- (a) remit, suspend, or vary any special conditions imposed by the court, or impose additional special conditions; or
- (b) vary the home detention residence; or
- (c) cancel the sentence; or
- (d) cancel the sentence and substitute any other sentence (including another sentence of home detention) that could have been imposed on the offender at the time that the offender was convicted of the offence for which the sentence was imposed.

(4) An application under subsection (1) or (2) may be made at any time before or after the sentence commences.

(5) Section 70 applies, with any necessary modifications, to an application under this section.

76G. (1) If the court cancels a sentence of home detention under section 76F(3)(d), the court may at the same time cancel any sentence of community work that the offender is serving concurrently with the sentence of home detention.

Matters relating to
orders under section
76F

(2) When determining a substitute sentence under section 76F(3)(d), the court must take into account the portion of the original sentence that remains unserved at the time of the order.

(3) If the court varies a special condition or imposes a new special condition under section 76F(3)(a), section 76D applies:

(4) If the court cancels the sentence, the sentence expires on the date that the order is made or on any other date that the court may specify.

(5) If an application is made under section 76F for the remission, suspension, or variation of any special condition of a sentence of home detention, the Supervision Officer may suspend the condition until the application has been heard and disposed of.

Alternative residence pending determination of application under section 76F

76H. (1) This section applies if a Supervision Officer or an offender who is subject to a sentence of home detention intends to apply, or has applied, for a variation of conditions under section 76F(1)(c) (which relates to the offender's home detention residence).

(2) A Supervision Officer may approve an alternative residence in which the sentence of home detention must be served pending the determination of an application.

(3) If a Supervision Officer approves an alternative residence before an application under section 76F has been made, the Supervision Officer must make an application to the court under that section within 5 working days.

(4) Subsection (3) does not apply if an offender makes an application under section 76F within the 5-day period specified in subsection (3).

(5) If, in the opinion of the Supervision Officer, there is no suitable alternative residence available and the Supervision Officer has not made an application under section 76F, the Supervision Officer must make an application to the court under that section at the earliest opportunity.

Leave to apply for cancellation of sentence of imprisonment and substitution of sentence of home detention in certain cases

76I. (1) This section applies if—

(a) a court has sentenced an offender to a sentence of imprisonment; and

(b) at the time of sentencing, the court would have sentenced the offender to a sentence of home detention if a suitable residence had been available.

(2) At the time of sentencing, the court must make an order granting the offender leave to apply to the court of first instance for cancellation of the sentence of imprisonment and substitution of a sentence of home detention if the offender finds a suitable residence at a later date.

(3) For the purposes of appeal, an order made under this section is a sentence.

76J. (1) An offender who is subject to a sentence of imprisonment and who has leave to apply for cancellation of a sentence of imprisonment and substitution of a sentence of home detention under section 76I may apply to the court at any time.

Application for cancellation of sentence of imprisonment and substitution of sentence of home detention

(2) An application must be served as soon as practicable on the Public Prosecutor.

(3) An application must be accompanied by a pre-sentence report updated in accordance with 76K.

(4) On application under subsection (1), the court may, if satisfied of the matters in section 76A(2), cancel the sentence of imprisonment and substitute a sentence of home detention.

(5) A sentence of home detention substituted under subsection (4) may be for any period the court thinks fit, but must not be longer than the maximum term of imprisonment specified for the relevant offence.

(6) When substituting a sentence of home detention, the court must take into account the portion of the original sentence that remains unserved at the time of the order.

(7) If the court does not substitute a sentence of home detention, the court—

- (a) must reconsider the issue of leave to apply for cancellation of the sentence of imprisonment and substitution of a sentence of home detention; and
- (b) may make a further order granting the offender leave to apply to the court at any time for cancellation of the sentence of imprisonment and substitution of a sentence of home detention.

(8) For the purposes of appeal, an order made under subsection (7) is a sentence.

(9) A sentence of imprisonment that is cancelled under this section is a custodial sentence for the purposes of any other enactment.

76K. (1) An offender subject to a sentence of imprisonment who makes an application for substitution of a sentence of home detention under section 76J must agree to the Supervision Officer updating the offender's pre-sentence report with any new information.

Updated pre-sentence report

(2) If an offender agrees to the Supervision Officer updating the offender's pre-sentence report under subsection (1) the Supervision Officer must update the report in accordance with section 25A.

76L. (1) In this section—

post-detention conditions means any standard post-detention conditions and special post-detention conditions imposed on an offender under this section

Imposition of post-detention conditions on offender

that apply to the offender after the detention end date

special post-detention conditions includes, without limitation, conditions of a kind described in section 12(3) of the Parole Ordinance 2002, other than an electronic monitoring condition as referred to in section 12(3)(f) of that Ordinance

standard post-detention conditions means the conditions of the sort described in section 11(1) of the Parole Ordinance.

(2) A court that sentences an offender to a term of home detention of 6 months or less may impose the standard post-detention conditions and any special post-detention conditions on the offender and, if it does so, must specify when the conditions expire.

(3) If a court sentences an offender to a term of home detention of more than 6 months, –

- (a) the standard post-detention conditions apply to the offender for a period of 12 months from the detention end date, unless the court specifies otherwise; and
- (b) the court may, at the same time, impose any special post-detention conditions on the offender and, if it does so, must specify when the conditions expire.

(4) The court must specify that post-detention conditions imposed under this section expire on a date that is no more than 12 months from the detention end date.

(5) If the court imposes special post-detention conditions on the offender under this section, the special post-detention conditions may apply for as long as, but not longer than, the standard conditions that apply to the offender.

(6) If the court sentences the offender to more than 1 sentence of home detention on the same occasion –

- (a) only one order under this section may be made; and
- (b) that order applies in respect of all the sentences of home detention imposed on that occasion.

Variation or discharge
of post-detention
conditions

76M. (1) An offender who is subject to post-detention conditions imposed under section 76L, or a Supervision Officer, may apply for an order under subsection (3).

(2) Section 70 applies, with any necessary modifications to an application under this section.

(3) On an application under subsection (1), the court may, if it thinks fit, –

- (a) suspend or vary any condition, or impose any additional conditions described in section 76L, that could have been imposed on the offender at the time

when the offender was convicted of the offence for which the sentence was imposed; or

- (b) discharge a condition and substitute any other condition described in section 76L that could have been imposed on the offender at the time that the offender was convicted of the offence for which the sentence was imposed.

(4) If an application is made under this section for the suspension, variation, or discharge of any condition, a Supervision Officer may suspend the condition until the application has been heard and disposed of.

76N. An offender commits an offence, and is liable on summary conviction to imprisonment for a term not exceeding 1 year or to a fine not exceeding \$2000, who—

Offence to breach
detention conditions

- (a) breaches, without reasonable excuse, any detention conditions of a sentence of home detention; or
- (b) fails to report when required to do so under section 76Y.

76O. (1) Every person commits an offence, and is liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding \$5,000, who refuses or fails, without reasonable excuse, to allow the Supervision Officer who has identified himself or herself to enter into the home detention residence if the offender is required to be at the residence at the time that the Supervision Officer seeks entry.

Offence to refuse
entry to home
detention residence

(2) Every person commits an offence, and is liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding \$5,000, who refuses or fails, without reasonable excuse, to allow an authorised person to enter into the home detention residence for the purpose of servicing or inspecting any equipment used in the electronic monitoring of the offender's compliance with the sentence of home detention (whether or not the offender is required to be at the home detention residence at the time).

(3) For the purposes of subsection (2), an **authorised person** is a person who—

- (a) is the Supervision Officer and has identified himself or herself; or
- (b) accompanies the Supervision Officer; or
- (c) is authorised in writing by the Supervision Officer and has produced that written authority to an occupant of the residence.

76P. (1) An offender commits an offence, and is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding \$1,500, who breaches,

Offence to breach
post-detention
conditions

without reasonable excuse, any post-detention conditions imposed under section 76L or 76M.

Arrest without
warrant for breach
of detention or post-
detention conditions

76Q. Any member of the police or any Supervision Officer may arrest, without warrant, an offender who the member or Officer has reasonable grounds to believe has breached any of his or her detention conditions or post-detention conditions.

Court may defer start
date of sentence of
home detention

76R. (1) The court may defer the start date of a sentence of home detention for a specified period of up to 6 months.

(2) If a sentence of home detention is deferred in accordance with subsection (1), the sentence of home detention starts on the date to which the court has ordered that the sentence be deferred.

(3) An offender whose sentence of home detention is deferred under this section must be granted bail in accordance with section 37A or 62A of the Bail Ordinance.

(4) Despite subsection (1), no court may defer the start date of a sentence of home detention if—

- (a) the sentence of home detention is imposed cumulatively on any other sentence of home detention; or
- (b) the sentence of home detention is imposed in substitution for a sentence of home detention or imprisonment that has been quashed or set aside; or
- (c) an order under this section has already been made in respect of the sentence; or
- (d) the offender has already commenced serving the sentence or is detained under any other sentence or order.

Commencement of
sentence of home
detention

76S. (1) A sentence of home detention commences on the day it is imposed unless the start date of the sentence is deferred under section 76R.

(2) Subsection (1) applies—

- (a) subject to the remainder of this section; and
- (b) regardless of whether or not the sentence is imposed in substitution for another sentence.

(3) If a sentence of home detention is imposed cumulatively on another sentence of home detention imposed at the same time,—

- (a) at least 1 of the sentences must commence on the day that the sentence is imposed or to which the start date has been deferred under section 76R; and
- (b) the commencement date for the subsequent sentence is the detention end date of the first sentence.

(4) If a sentence of home detention is imposed cumulatively on another sentence of home detention to which the offender

is already subject, the commencement date of the subsequent sentence is the detention end date of the first sentence.

(5) If a sentence of home detention is imposed cumulatively on another sentence of home detention, whether or not imposed at the same time, and the first sentence is subsequently quashed, –

- (a) the commencement date for the subsequent sentence is the date on which the subsequent sentence was imposed; and
- (b) any time served under the quashed sentence must be treated as having been served under the subsequent sentence.

(6) If a sentence of home detention is imposed cumulatively on another sentence of home detention, whether or not imposed at the same time, and the first sentence is subsequently cancelled, –

- (a) the commencement date for the subsequent sentence is the date on which the first sentence was cancelled; and
- (b) any time served under the cancelled sentence must not be treated as having been served under the subsequent sentence.

76T. (1) An offender ceases to be subject to a sentence of home detention when –

When home detention ends

- (a) the offender reaches his or her detention end date; or
- (b) a court cancels the sentence of home detention.

(2) If the offender’s detention end date falls on a non-release day, the offender ceases to be subject to detention conditions on the nearest preceding day that is not a non-release day.

76U. The detention conditions of an offender serving a sentence of home detention are suspended during any period that the offender spends in custody under a court order (for example, on remand), but time continues to run during any period that they are suspended.

When detention conditions suspended

76V. For the purpose of calculating how much time an offender who is subject to a sentence of home detention has served, time ceases to run on the sentence during any period –

Time ceases to run in certain circumstances

- (a) between the date on which an application for a variation or cancellation of the sentence under section 76F is lodged and the earlier of –
 - (i) the date on which the offender is next taken into custody; and
 - (ii) the date on which the offender resumes serving his or her sentence in accordance with

- his or her detention conditions; or
- (b) in which an offender is released on bail pending an appeal.

Order must be drawn up

76W. (1) If a court imposes a sentence of home detention on an offender, the particulars of the sentence must be drawn up in the form of an order.

(2) A copy of the order must be given to the offender before he or she leaves the court wherever practicable.

(3) The order must include information regarding —

- (a) the nature of the sentence; and
- (b) the start date and the term of the sentence; and
- (c) the detention conditions that apply to the offender while he or she is serving the sentence; and
- (d) the post-detention conditions (if any) that apply and the period for which those conditions apply; and
- (e) the obligations to comply with the instructions of the Supervision Officer and the terms of the sentence; and
- (f) the consequences of non-compliance with the terms of the sentence; and
- (g) the statutory provisions under which the sentence may be varied or cancelled.

(4) For the purposes of subsection (1), a court may direct that the offender be detained in the custody of the court for a period, not exceeding 2 hours, that may be necessary to enable the order to be drawn up and a copy given to the offender.

(5) If it is not practicable to give a copy of the order to the offender before the offender leaves the court, a copy must be given to the offender in person as soon as practicable after the offender leaves the court.

(6) A copy of the order must be given to the Supervision Officer as soon as possible, but no later than 24 hours, after it has been drawn up.

Offender must be given copy of new or amended order

76X. If an offender's detention conditions or post-detention conditions are varied or discharged, the offender must be given a copy of the new or amended order that shows the conditions as varied or discharged, and the provisions of this section and section 76W apply.

Effect of a subsequent sentence of imprisonment

76Y. (1) This section applies if an offender who is subject to a sentence of home detention is subsequently sentenced to a term of imprisonment.

(2) If this section applies, the sentence of home detention is suspended until the earlier of the following events—

- (a) it resumes under subsection (4)(b); or
- (b) it is cancelled under subsection (6).

(3) No period during which a sentence of home detention is suspended under subsection (2) is counted towards the period under section 76A(3).

(4) If the sentence or sentences of imprisonment are quashed and that results in the offender no longer being detained under a sentence of imprisonment, -

- (a) the offender must report to the Supervision Officer as soon as practicable and not later than 72 hours after being released from detention; and
- (b) the sentence of home detention resumes when the offender has reported as required under paragraph (a).

(5) The Registrar of the court in which the sentence or sentences of imprisonment are quashed must notify the Supervision Officer.

(6) If the sentence of home detention never resumes under subsection (4)(b), it is cancelled when the offender ceases to be detained under the sentence of imprisonment.]

(Part VA inserted by Ordinance No. 1 of 2016)

PART VI IMPRISONMENT

77. If under any enactment an offender is liable to imprisonment for life or for any specified term, the Court may, in accordance with this ordinance, impose imprisonment for the maximum term provided for the particular offence or any lesser term, unless a minimum term of imprisonment is expressly provided for.

Length of sentence of imprisonment

78.—(1) A determinate sentence of imprisonment may be imposed cumulatively on any other determinate sentence of imprisonment that the Court directs, whether then imposed or to which the offender is already subject, including any sentence in respect of which a direction of that kind is or has been given.

Cumulative and concurrent sentences of imprisonment

(2) Notwithstanding subsection (1), if a sentence of imprisonment is imposed on an offender who is, at the time of sentencing, still subject to a sentence of imprisonment but is not detained under it, a subsequent sentence must not be imposed cumulatively.

(3) For the purposes of subsection (2), a person who is detained under an interim recall order under the Parole Ordinance 2002 is not detained under the sentence to which the interim recall order applies.

(4) An indeterminate sentence of imprisonment must not be imposed cumulatively on any other sentence.

(5) Any sentence of imprisonment may be imposed concurrently with any other sentence of imprisonment.

(6) For the purpose of this section, a term of imprisonment imposed on an offender (whether by committal, sentence or order) in respect of the non-payment of a sum of money, contempt of court or disobedience of a court order is deemed to be a determinate sentence of imprisonment.

Guidance on use
of cumulative and
concurrent sentences
of imprisonment

79.—(1) Cumulative sentences of imprisonment are generally appropriate if the offences for which an offender is being sentenced are different in kind, whether or not they are a connected series of offences.

(2) Concurrent sentences of imprisonment are generally appropriate if the offences for which an offender is being sentenced are of a similar kind and are a connected series of offences.

(3) In determining for the purpose of this section whether two or more offences committed by one offender are a connected series of offences, the Court may consider—

- (a) the time at which they occurred; or
- (b) the overall nature of the offending; or
- (c) any other relationship between the offences that the Court considers relevant.

Court to consider
totality of offending

80.—(1) Subject to this section, if a Court is considering imposing sentences of imprisonment for two or more offences, the individual sentences must reflect the seriousness of each offence.

(2) If cumulative sentences of imprisonment are imposed, whether individually or in combination with concurrent sentences, they must not result in a total period of imprisonment wholly out of proportion to the gravity of the overall offending.

(3) If, because of the need to ensure that the total term of cumulative sentences is not disproportionately long, the imposition of cumulative sentences would result in a series of short sentences that individually fail to reflect the seriousness of each offence, then longer concurrent sentences, or a combination of concurrent and cumulative sentences, must be preferred.

(4) If only concurrent sentences are to be imposed—

- (a) the most serious offence must, subject to any maximum penalty provided for that offence, receive the penalty that is appropriate for the totality of the offending; and
- (b) each of the lesser offences must receive the penalty appropriate to that offence.

Imposition of minimum period of imprisonment

81.—(1) If a Court sentences an offender to a determinate

sentence of imprisonment of more than two years for a particular offence, it may, at the same time as it sentences the offender, order that the offender serve a minimum period of imprisonment in relation to that particular sentence.

Imposition of minimum period of imprisonment in relation to determinate sentence of imprisonment

(2) The Court may impose a minimum period of imprisonment under this section if it is satisfied that the circumstances of the offence are sufficiently serious to justify a minimum period of imprisonment that is longer than the period otherwise applicable under section 80 of the Parole Ordinance 2002.

(3) For the purposes of this section, the circumstances of an offence may be regarded as sufficiently serious if the Court is satisfied that the circumstances take out of the ordinary range of offending of the particular kind.

(4) A minimum period of imprisonment imposed under this section must not exceed the lesser of—

- (a) two-thirds of the full term of the sentence; or
- (b) 10 years.

(5) For the purposes of eligibility for appeal, an order under this section is a sentence.

Preventive detention

82.—(1) The purpose of preventive detention is to protect the community from those who pose a significant and ongoing risk to the safety of its members.

Sentence of preventive detention

(2) This section applies if—

- (a) a person is convicted of a qualifying sexual or violent offence (as that term is defined in subsection (5)); and
- (b) the person was 18 years of age or over at the time of committing the offence; and
- (c) the Court is satisfied that the person is likely to commit another qualifying sexual or violent offence if the person is released at the sentence expiry date (as specified in section 79(1) and (2) and section 81(1) and (2) of the Parole Ordinance 2002) of any sentence, other than a sentence under this section, that the Court is able to impose.

(3) The Supreme Court may, on the application of the prosecutor or on its own motion, impose a sentence of preventive detention on the offender.

(4) When considering whether to impose a sentence of preventive detention, the Court must take into account—

- (a) any pattern of serious offending disclosed by the offender's history; and
- (b) the seriousness of the harm to the community caused by the offending; and

- (c) information indicating a tendency to commit serious offences in future; and
- (d) the absence of, or failure of, efforts by the offender to address the cause or causes of the offending; and
- (e) the principle that a lengthy determinate sentence is preferable if this provides adequate protection for society.

(5) In this section and in sections 83 and 85, **qualifying sexual or violent offence** means any sexual offence, or offence of violence against the person, punishable by seven or more years imprisonment.

Offender must be notified that sentence of preventive detention will be considered and reports must be obtained

83. A sentence of preventive detention must not be imposed unless—

- (a) the offender has been notified that a sentence of preventive detention will be considered and has been given sufficient time to prepare submissions on the sentence; and
- (b) the Court has considered reports from at least two appropriate health assessors about the likelihood of the offender committing a further qualifying sexual or violent offence.

Imposition of minimum period of imprisonment

84.—(1) If a Court sentences an offender to preventive detention, it must also order that the offender serve a minimum period of imprisonment, which in no case may be less than five years.

(2) The minimum period of imprisonment imposed under this section must be the longer of—

- (a) the minimum period of imprisonment required to reflect the gravity of the offence; or
- (b) the minimum period of imprisonment required for the purposes of the safety of the community in the light of the offender's age and the risk posed by the offender to that safety at the time of sentencing.

(3) For the purpose of eligibility for appeal, an order under subsection (1) is a sentence.

Procedure if offender convicted in Magistrate's Court

85.—(1) This section applies if a person is convicted by a Magistrate's Court of a qualifying sexual or violent offence and the Court has reason to believe, from a report of a Supervision Officer or otherwise, that a sentence of preventive detention may be appropriate.

(2) In the circumstances described in subsection (1) the Court must decline jurisdiction on the ground that it has reason to believe that the offender should be considered for a sentence of preventive detention and commit the offender to the Supreme Court for sentence.

86.—(1) If a Court imposes a sentence of imprisonment, a warrant must be issued stating briefly the particulars of the offence and directing the detention of the offender in accordance with the sentence.

Warrant of
commitment
for sentence of
imprisonment

(2) A warrant issued under this section must include a statement as to whether the offender was or was not legally represented as contemplated by section 29(1).

(3) If the offender was not legally represented, the warrant must state the way in which the requirements of that section have been satisfied.

(4) **(Repealed by Ordinance No. 1 of 2016)**

(5) **(Repealed by Ordinance No. 1 of 2016)**

(6) If the sentence is imposed by a Magistrate's Court, any Magistrate appointed under section 11(1) and (4) of the Judicature (Courts) Ordinance may sign the warrant.

(7) If the sentence is imposed by the Supreme Court, any Judge of that Court may sign the warrant.

(8) If the sentence is imposed by the Court of Appeal, any Judge of that Court may sign the warrant.

(9) A warrant under this section may be issued in respect of any number of sentences imposed in respect of the same offender at the same sitting of the Court.

[Release conditions for short term sentences]

87.—(1) For the purposes of section 88, a Court sentences an offender to imprisonment for a particular period if—

References to period
of imprisonment for
purposes of section 88

- (a) in a case where the offender was not already subject to a sentence or sentences of imprisonment, it sentences the offender to one sentence of imprisonment, the term of which is equal to that period; or
- (b) in a case where the offender was not already subject to a sentence or sentences of imprisonment, it sentences the offender to two or more sentences of imprisonment, the total term of which is equal to that period; or
- (c) in a case where the offender was already subject to a sentence or sentences of imprisonment, it sentences the offender to one or more sentences of imprisonment, the total term of which, including the existing sentences of imprisonment, is equal to that period.

cap.2

(2) For the purposes of this section, the total term of two or more sentences of imprisonment is a term beginning with the commencement date of the first of the sentences to commence and ending with the sentence expiry date (as defined in the Parole Ordinance 2002) of the sentence last to expire.

Imposition of conditions on release of offender sentenced to imprisonment for short term

88.—(1) If a Court sentences an offender to a term of imprisonment of 12 months or less, it may impose on the offender—

- (a) the standard conditions described in section 11(1) of the Parole Ordinance 2002; and
- (b) any special conditions of a kind described in section 12(3)(a) to (c) of the Parole Ordinance 2002.

(2) If a Court sentences an offender to a term of imprisonment of more than 12 months but not more than 24 months, it—

- (a) must impose on the offender the standard conditions described in section 11(1) of the Parole Ordinance 2002; and
- (b) may impose on the offender any special conditions including, for example, any conditions of a kind described in section 12(3)(a) to (c) of the Parole Ordinance 2002

(3) A special condition must not be imposed unless it is designed to—

- (a) reduce the risk of re-offending by the offender; or
- (b) facilitate or promote the rehabilitation and reintegration of the offender; or
- (c) provide for the reasonable concerns of victims of the offender.

(4) No offender may be made subject to a special condition which requires the offender to take prescription medication unless the offender—

- (a) has been fully advised, by a person who is qualified to prescribe that medication, about the nature and likely or intended effect of the medication and any known risks; and
- (b) consents to taking the prescription medication.

(5) If a Court sentences an offender to a term of imprisonment of more than 24 months, it must not impose conditions on the offender's release from imprisonment (and section 15(2) of the Parole Ordinance 2002 applies).

(6) A Court must not impose conditions on an offender's release from imprisonment if—

- (a) the Court sentences an offender to an indeterminate sentence or imprisonment; or
- (b) the Court sentences an offender to imprisonment who is already subject to an indeterminate sentence of imprisonment.

(7) The Court must specify the duration of conditions imposed under this section but no condition may apply in relation to a particular sentence of imprisonment beyond the

sentence expiry date as defined in the Parole Ordinance 2002.

(8) If the Court sentences the offender to more than one term of imprisonment on the same occasion—

- (a) only one order under this section may be made; and
- (b) that order applies in respect of all the sentences of imprisonment imposed on that occasion.

89.—(1) An offender who is subject to conditions imposed under section 88, or a Supervision Officer, may apply for an order under subsection (3) of this section.

Variation of release conditions

(2) Section 70 applies with any necessary modifications to an application under this section.

(3) On an application under subsection (1), the Court may, if it thinks fit,—

- (a) suspend any condition or vary the duration of any condition or impose additional conditions; or
- (b) discharge a condition and substitute any other condition described in section 88 which could have been imposed on the offender at the time when the offender was convicted of the offence for which the sentence was imposed.

(4) The Court must not vary any existing condition or impose any new condition of a kind referred to in section 88(4) (which involves prescription medication) unless the offender—

- (a) has been fully advised, by a person who is qualified to prescribe that medication, about the nature and likely or intended effect of any variation or new condition in relation to the medication and any known risks; and
- (b) consents to taking the prescription medication.

(5) If an application is made under this section for the suspension, variation or discharge of any condition, a Supervision Officer may suspend the condition until the application has been heard and disposed of.

90.— (1) This section applies if—

- (a) an offender is, at the same time, subject to conditions imposed under two or more orders made under section 88; and
- (b) a Supervision Officer is satisfied that—
 - (i) any condition to which the offender is subject under any of the orders is incompatible with any other condition to which the offender is subject under any other of the orders; or
 - (ii) in light of all the conditions to which the offender is subject under the orders, it is

Review of conditions if conditions incompatible

unreasonable to expect the offender to comply with any one or more of the conditions.

(2) The Supervision Officer must apply for a review of the conditions to which the offender is subject under the orders made under section 88.

(3) Section 89 applies with any necessary modifications to an application made under this section.

Offence to commit
breach of conditions

91.—(1) Every offender commits an offence and is liable on summary conviction to imprisonment for a term not exceeding one year or to a fine not exceeding \$2,000, who commits any breach without reasonable excuse of any conditions imposed under section 88 or section 89.

(2) In the case of a condition of a kind referred to in section 88(4) (which involves prescription medication) an offender does not commit a breach of his or her conditions for the purposes of this section if he or she withdraws consent to taking prescription medication.

(Sections 92–94 repealed by Ordinance No. 1 of 2016)

Provisions about start date of sentence of imprisonment

Court may defer start
date of sentence of
imprisonment

95.—[(1) The court may defer the start date of a sentence of imprisonment for a specified period of up to six months.]

(2) []

(3) The sentence of imprisonment starts on the date specified in section 75 of the Parole Ordinance 2002.

[(3A) An offender whose sentence of imprisonment is deferred under this section must be granted bail in accordance with section 37A or 62A of the Bail Ordinance.]

(4) Notwithstanding subsection (1), no Court may defer the start date of a sentence of imprisonment if—

- (a) the sentence of imprisonment is imposed cumulatively on any other sentence of imprisonment; or
- (b) the sentence of imprisonment is imposed in substitution for a sentence of imprisonment which has been quashed or set aside.

(5) For the purpose of this section, a term of imprisonment imposed on an offender (whether by committal, sentence or order) in respect of the non-payment of a sum of money, contempt of court or disobedience of a court order is deemed to be a determinate sentence of imprisonment.

(Amended by Ordinance No. 1 of 2016)

Start date of sentence
of imprisonment

96.—(1) Except as provided in section 95, the start date of a sentence of imprisonment is that set out in section 73 of the Parole Ordinance 2002.

(2) For the purpose of this section, a term of imprisonment imposed on an offender (whether by committal, sentence or order) in respect of the non-payment of a sum of money, contempt of court or disobedience of a court order is deemed to be a determinate sentence of imprisonment.

Sentencing for murder

97.—(1) An offender who is convicted of murder must be sentenced to imprisonment for life unless, given the circumstances of the offence and the offender, a sentence of imprisonment for life would be manifestly unjust.

Presumption in relation to sentence for murder

(2) If a Court does not impose a sentence of imprisonment for life on an offender convicted of murder, it must give written reasons for not doing so.

98.—(1) If the Court does not impose a minimum period of imprisonment under this section, an offender sentenced to imprisonment for life for murder will serve a minimum period of imprisonment of 10 years as provided in section 80(3) of the Parole Ordinance 2002.

Imposition of minimum period of imprisonment

(2) If a Court sentences an offender convicted of murder to imprisonment for life, it may, within 28 days of the imposition of the sentence, on the application of the prosecutor or on its own motion, also order that the offender serve a minimum period of imprisonment of more than 10 years.

(3) The Court may impose a minimum period of imprisonment of more than 10 years if it is satisfied that the circumstances of the offence are sufficiently serious to justify doing so.

(4) The duration of the minimum period of imprisonment imposed under this section must be the minimum period of imprisonment that the Court considers to be justified having regard to the circumstances of the case, including those of the offender.

(5) For the purposes of this section, the circumstances of an offence may be regarded as sufficiently serious if the Court is satisfied that the circumstances take the offence out of the ordinary range of offending of the particular kind.

(6) If the court makes an order under this section, it must give written reasons for doing so.

(7) This section is subject to section 99.

99. The Court must make an order under section 98 imposing a minimum period of imprisonment of at least 17 years in the following circumstances, unless it is satisfied that it would be manifestly unjust to do so—

Minimum period of imprisonment of 17 years or more

(a) if the murder was committed in an attempt to avoid

- the detection, prosecution or conviction of any person for any offence or in any other way to attempt to subvert the course of justice; or
- (b) if the murder involved calculated or lengthy planning, including making an arrangement under which money or anything of value passes (or is intended to pass) from one person to another; or
 - (c) if the murder involved the unlawful entry into or unlawful presence in a dwelling place; or
 - (d) if the murder was committed in the course of another serious offence; or
 - (e) if the murder was committed with a high level of brutality, cruelty, depravity or callousness; or
 - (f) if the deceased was a member of the police or a prison officer acting in the course of his or her duty; or
 - (g) if the deceased was particularly vulnerable because of his or her age, health or because of any other factor; or
 - (h) if the offender has been convicted of two or more counts of murder, whether or not arising from the same circumstances; or
 - (i) in any other exceptional circumstances.

Appeal against
imposition of
minimum period of
imprisonment

100. For the purposes of eligibility for appeal, an order under section 98 is a sentence.

Discharge and miscellaneous orders

Discharge without
conviction

101.—(1) If a person who is charged with an offence is found guilty or pleads guilty, the Court may discharge the offender without conviction, unless by any enactment applicable to the offence, the Court is required to impose a minimum sentence.

(2) A discharge under this section is deemed to be an acquittal.

(3) A Court discharging an offender under this section may—

- (a) make an order for payment of costs or the restitution of any property; or
- (b) make any order for the payment of any sum that the Court thinks fair and reasonable to compensate any person who, through or by means of the offence, has suffered—
 - (i) loss of or damage to property; or
 - (ii) emotional harm; or
 - (iii) loss or damage consequential on any emotional or physical harm or loss of or damage to property;

(c) make any order that the Court is required to make on conviction.

(4) Despite subsection (3)(b), the Court must not order the payment of compensation in respect of any emotional harm or loss or damage consequential on emotional harm unless the person who suffered the emotional harm is a person described in paragraph (a) of the definition of **victim** in section 3.

(5) When determining the amount of compensation to be paid, the Court must take into account any offer, agreement, response, measure or action as described in section 9.

102. The Court must not discharge an offender without conviction unless the Court is satisfied that the direct and indirect consequences of a conviction would be out of all proportion to the gravity of the offence.

Guidance for
discharge without
conviction

103.—(1) If a person is convicted of an offence, a Court before which the offender appears for sentence may, instead of imposing sentence, direct that the offender be discharged, unless by any enactment applicable to the offence the Court is required to impose a minimum sentence.

Conviction and
discharge

(2) A Court discharging an offender under this section may—

- (a) make an order for the payment of costs or for the restitution of any property; or
- (b) make any order for the payment of any sum that the Court thinks fair and reasonable to compensate any person who, through or by means of, the offence, has suffered—
 - (i) loss of or damage to property; or
 - (ii) emotional harm; or
 - (iii) loss or damage consequential on any emotional or physical harm or loss of or damage to property;
- (c) make any order that the Court is required to make on conviction.

(3) Notwithstanding subsection (2)(b) the Court must not order the payment of compensation in respect of any emotional harm, or loss or damage consequential upon emotional harm, unless the person who suffered the emotional harm is a person described in paragraph (a) of the definition of **victim** in section 3.

(4) When determining the amount of compensation to be paid, the Court must take into account any offer, agreement, response, measure or action as described in section 9.

104. The Court must not convict and discharge an offender unless it is satisfied that a conviction is sufficient penalty in itself.

Guidance on
conviction and
discharge.

Order to come up for sentence if called on

Order to come up for sentence if called on.

105.—(1) If a person is convicted of an offence, a Court before which the offender appears for sentence may, instead of imposing sentence, order the offender to appear for sentence if called on to do so within the period described in subsection (2).

(2) The period referred to in subsection (1) is a period, not exceeding one year commencing with the date of conviction, that the Court may specify in the order.

(3) A Court making an order under this section may—

- (a) make an order for the payment of costs or for the restitution of any property; or
- (b) make any order for the payment of any sum that the Court thinks fair and reasonable to compensate any person who, through or by means of, the offence, has suffered—
 - (i) loss of or damage to property; or
 - (ii) emotional harm; or
 - (iii) loss or damage consequential on any emotional or physical harm or loss of or damage to property;

(4) Notwithstanding subsection (3)(b) the Court must not order the payment of compensation in respect of any emotional harm, or loss or damage consequential on emotional harm, unless the person who suffered the emotional harm is a person described in paragraph (a) of the definition of **victim** in section 3.

(5) When determining the amount of compensation to be paid, the Court must take into account any offer, agreement, response, measure or action as described in section 9.

Calling an offender to come up for sentence

106.—(1) This section applies if an offender in respect of whom an order is made under section 105—

- (a) is convicted of a subsequent offence punishable by imprisonment for a term of more than three months; or
- (b) fails to comply with any other order referred to in section 105(3); or
- (c) fails to comply with any agreement or fails to take any measure or action of a kind referred to in section 9(1)(b), (d) or (e) which was brought to the attention of the Court at the time the Court made the order under section 9.

(2) Any of the following persons may, at any time within the period specified in the order, apply to a Court having jurisdiction to deal with the original offence to have the offender brought before the Court to be dealt with for that offence:

- (a) a member of the police
- (b) the Public Prosecutor or Deputy Public Prosecutor
- (c) the [Attorney General]
- (d) any person designated by the Governor

(Amended by Ordinance No. 4 of 2010)

(3) On an application under subsection (2), the Court may—

- (a) issue a summons in the prescribed form requiring the offender to appear at the time and place appointed in the summons to show cause why he or she should not be dealt with for the original offence; or
- (b) if the offender fails to appear before the Court in answer to the summons issued under paragraph (a), issue a warrant to arrest the offender and bring him or her before the Court; or
- (c) issue an arrest warrant without first issuing a summons.

(4) If an application is made under subsection (2), the Court shall have and may exercise power to adjourn the hearing of the application from time to time to a time and place then appointed and to exercise its discretion to release the defendant at large or remand the defendant thereto on bail or in custody, as if the application were a charge. If at the time and place appointed for the hearing or when the defendant is brought before the Court on arrest, the Court by reason of its constitution has no jurisdiction to hear the application, the Registrar or Deputy-Registrar may adjourn the hearing to a time and place then appointed.

(5) Where pursuant to subsection (4) a defendant is remanded in custody, the Court or Magistrate or Registrar or Deputy-Registrar must issue a warrant in the prescribed form for the detention of the defendant in custody for the period of the adjournment.

(6) If a person appears before a Court under this section and the Court is satisfied of any of the matters specified in subsection (1), the Court—

- (a) must inquire into the circumstances of the original offence and the conduct of the offender since the order was made (including, where appropriate, the circumstances and gravity of the subsequent offence); and
- (b) may sentence or otherwise deal with the offender for the original offence.

Non-association orders

107.—(1) If an offender is convicted of an offence punishable by imprisonment, the Court may make a non-association order in respect of the offender.

Non-association order

(2) Before making a non-association order, the Court must be satisfied that the making of the order is reasonably necessary to ensure that the offender does not commit further offences punishable by imprisonment.

(3) Subject to subsection (4), a non-association order may be made in addition to, or instead of, imposing a sentence or making any other order.

(4) If the Court makes a non-association order, it must not at the same time impose on the offender a sentence of imprisonment, whether for the offence for which that order was made or for any other offence for which the offender has appeared for sentence.

(5) The Court must not make a non-association order if the offender is already detained under a sentence of imprisonment of more than 24 months imposed on an earlier occasion.

(6) On the making of a non-association order, a Court may make an order prohibiting the publication of the name, address or occupation of the offender or of any other person connected with the proceedings or any other particulars likely to lead to any such person's identification. Such order may have effect for only a limited period but, if not so directed, shall have effect permanently.

Effect of non-association order

108.—(1) A non-association order prohibits the offender from associating with—

- (a) any person or persons specified in the order; or
- (b) any person or persons of any class specified in the order.

(2) A non-association order has effect for the period, not exceeding 12 months, that the Court may specify in the order.

Cumulative orders and sentences

109.—(1) A non-association order must not be cumulative on another non-association order or on a sentence of any kind imposed at the same time as the non-association order.

(2) If the Court imposes a non-association order on an offender who is already detained under a sentence of imprisonment of 24 months or less, the non-association order is cumulative on the other sentence.

Order must be drawn up and copy given to offender, etc.

110.—(1) If a Court makes a non-association order, the particulars of non-association must be drawn up in the form of an order.

(2) For the purposes of subsection (1), a Court may direct that the offender be detained in the custody of the Court for a period, not exceeding 2 hours, that may be necessary to enable the order to be drawn up and a copy given to the offender.

(3) If it is not practicable to give a copy of the order to the offender before the offender leaves the Court, a copy must be

given to the offender in person as soon as practicable after the offender leaves the Court.

- (4) A copy of the order must be given to—
- (a) the Governor; and
 - (b) the officer in charge of the police.

111. For the purposes of eligibility for appeal, a non-association order is a sentence.

Right of appeal
against non-
association order

112.—(1) Except as provided in subsection (2), the period of non-association specified by a non-association order commences on the day on which the order is made.

Commencement
of period of non-
association

(2) If a non-association order is, under section 109(2), cumulative on a sentence of imprisonment, the period of non-association specified by the non-association order commences on the day on which the offender is released from detention under the sentence of imprisonment.

113.—(1) An offender who is subject to a non-association order commits an offence who, without reasonable excuse, associates with any person in contravention of the order.

Breach of non-
association order
constitutes offence

(2) A person who commits an offence against this section is liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding \$1,000.

114. If an offender who is subject to a non-association order (whether or not it is cumulative on a sentence of imprisonment and whether or not the period of non-association has commenced) is subsequently sentenced for another offence, the following provisions apply—

Effect of subsequent
sentences on
non-association
order

- (a) if the offender is subsequently sentenced to imprisonment for a term of more than 24 months, the non-association order is suspended;
- (b) if any other sentence is imposed, the Court may make an order suspending the non-association order;
- (c) if the offender is sentenced to imprisonment for a term of 24 months or less and the Court makes no order under paragraph (b)—
 - (i) if the non-association order is cumulative on a sentence of imprisonment and the period of non-association specified by the order has not commenced, the period of non-association does not commence until the day on which the offender is released from detention after serving each sentence of imprisonment to which he or she is subject;
 - (ii) in any other case, the period of non-association continues to run while the offender is detained

and, on the offender's release, he or she continues to be subject to the non-association order for any unexpired residue of the period of non-association.

Resumption of non-association order if sentence of imprisonment quashed

115.—(1) This section applies to a non-association order that is suspended under section 114(a) or (b).

(2) The non-association order is suspended until the earlier of the following events—

- (a) it resumes under subsection (3); or
- (b) it is cancelled under subsection (5).

(3) The non-association order is resumed if the sentence of imprisonment based on which the non-association order was suspended is quashed and which results in the offender no longer being detained under a sentence of imprisonment.

(4) If a non-association order is resumed under subsection (3), no period during which the order was suspended is counted towards the period under section 108(2).

(5) If the non-association order never resumes under subsection (3), it is cancelled when the offender ceases to be detained under the sentence of imprisonment based on which the non-association order was suspended.

Application for review of non-association order

116.—(1) An offender may, at any time after the expiration of half the period of non-association under a non-association order, apply to the Court in accordance with section 118 for the variation or cancellation of the order.

(2) If a non-association order is cumulative on a sentence of imprisonment, the offender may, before the period of non-association commences, apply to the Court in accordance with section 118 for the variation or cancellation of the order.

(3) A Supervision Officer may apply to a Court in accordance with section 118 for the variation or cancellation of a non-association order if—

- (a) the offender who is subject to it is convicted of an offence punishable by imprisonment; or
- (b) a Supervision Officer believes on reasonable grounds that the offender has failed or is unable to comply with the order.

(4) Subsection (3) does not apply if the order is cancelled under section 114.

(5) If an application is made under this section by a Supervision Officer, the Supervision Officer may suspend the order until the application has been heard and disposed of.

Determination of application for variation or cancellation of order

117.—(1) On an application under section 116, the Court must have regard to—

- (a) any change in circumstances since the non-association order was made; and
 - (b) if the period of non-association specified by the order has commenced, the manner in which the offender has responded to the order.
- (2) The Court may—
- (a) vary the particulars of non-association; or
 - (b) cancel the order; or
 - (c) cancel the order and substitute any other sentence which could have been imposed on the offender at the time when the offender was convicted of the offence for which the order was made.
- (3) When determining any substitute sentence under subsection (2)(c), the Court must take into account the portion of the non-association order which remains unserved at the time.
- (4) If the Court cancels the order—
- (a) in any case where the period of non-association specified by the order has commenced, the period of non-association expires on the date which the Court may specify;
 - (b) in any other case, the period of non-association expires on the date upon which the order cancelling the non-association order is made.

118.—(1) Section 70 applies, with any necessary modifications, to every application under section 116.

Jurisdiction and procedure

(2) Before determining the application, the Court may make any inquiries as to the circumstances of the case that the Court considers reasonable and may hear any evidence relevant to those circumstances

(3) If the Court varies or cancels the non-association order, the Registrar must give written notice of the decision to the Governor and the officer in charge of the police.

PART VII MISCELLANEOUS, TRANSITIONAL AND REPEAL PROVISIONS

119.—(1) If a Court imposes a sentence of imprisonment on an offender who appears to the Court to have been at the time of conviction of an age at which the offender would have been liable to that sentence, the sentence is not invalid by reason only of the fact that, because of the offender's age at the time of conviction, the offender was not liable to that sentence.

Sentence not invalidated by mistake in age of offender

(2) If it appears that, because of the offender's age at the time of conviction, the offender was not liable to the sentence, the offender or the prosecutor or any counsel on behalf of the

Crown may, at any time, apply in accordance with this section for the substitution of some other sentence.

(3) An application under this section must be made—

(a) to the Supreme Court, if the sentence was passed—
(i) by the Court of Appeal on appeal from the Supreme Court; or

(ii) by the Supreme Court otherwise than on appeal from the Magistrate's court; or

(b) to the Magistrate's Court presided over by a Magistrate appointed under section 11(1) and (4) of the Judicature (Courts) Ordinance.

cap.2

(4) The Judge or Magistrate to whom the application is made, after inquiry into the circumstances of the case, may impose in substitution for the original sentence any sentence that could have been imposed on the offender at the time of conviction.

(5) For the purposes of an appeal or application for leave to appeal against the substituted sentence—

(a) the substituted sentence is deemed to be a sentence passed on the conviction of the offender; but

(b) the time allowed for giving notice of the appeal or application runs from the date on which the substituted sentence was in fact imposed.

Royal prerogative not affected

120. Nothing in this ordinance limits or affects the Royal prerogative of mercy.

Consent to treatment, etc., not affected

121.—(1) No sentence or condition imposed or order made under this ordinance limits or affects in any way any enactment or rule of law relating to consent to any medical or psychiatric treatment.

(2) Subsection (1) applies except as expressly provided by any other enactment.

Regulations

122. The Governor may from time to time make regulations for all or any of the following purposes—

(a) prescribing forms for the purposes of this ordinance;

(b) prescribing offences in respect of the contravention of, or non-compliance with, any regulations made under this ordinance and the amounts of fines that may be imposed in respect of those offences;

(c) generally providing for any other matters that are contemplated by or necessary for giving full effect to this ordinance and for its due administration.

Repeals
No. 2 of 2002
No. 5 of 2002

123. The Power of Courts on Sentencing (Offences against the Person) Ordinance 2002 and the Sentencing (Community-based Sentences) Ordinance 2002 are hereby repealed.

PITCAIRN, HENDERSON, DUCIE AND OENO
ISLANDS

**SENTENCING (PRESCRIBED FORMS)
REGULATIONS 2004**

Made by the Governor in exercise of the powers conferred by section 122(a) of the Sentencing Ordinance (cap. 35).

[7 December 2004]

Amended by the Governor by Regulations dated 24 February 2016

Arrangement of Regulations

- Form 1 Warrant of Committal for Imprisonment
- Form 2 Order for Sentence of Supervision
- Form 3 Order for Sentence of Community Work
- Form 4 Order for Minimum Period of Imprisonment within
Determinate Sentence or Sentence for Imprisonment
for Life
- Form 5 Order for Minimum Period of Imprisonment within
Sentence of Preventive Detention
- Form 6 Order for Sentence of Home Detention

1. These regulations may be cited as the Sentencing (Prescribed Forms) Regulations.

Title

2. Subject to these regulations, the forms prescribed in the Schedule shall be used in connection with sentencing of offenders.

Forms in schedule to be used on sentencing

3. Such variations may be made in any prescribed form as the circumstances of a particular case may require.

Variations may be made in forms if required

4. Strict compliance with the prescribed forms is not necessary and substantial compliance, or such compliance as the circumstances of the case allow, is sufficient.

Strict compliance with forms not necessary

SCHEDULE**FORM 1****Warrant of Committal for Imprisonment***[Section 86 of the Sentencing Ordinance 2002, CAP 35]*

Case No. of 20__

To: Every Police Officer and to the Superintendent of prisons in the Islands

Name:

Address:

Occupation:

was on the _____ day of _____ 20__

convicted of

[specify offence or offences]

by the _____ Court at

and was sentenced:

to imprisonment for life*

to imprisonment for a term of _____ years*

to preventive detention*

Start date of sentence

Pursuant to section 73 of the Parole Ordinance 2002 the start date is the date on which the sentence was imposed, namely the _____ day of _____ 20__ *

The start date is deferred, under section 95 of the Sentencing Ordinance 2002, for a period of [specify period] or the period ending with the date on which the Pitcairn Parole Commission determines an application for home detention, whichever is sooner.*

* Delete one.

Legal representation

The offender was legally represented in accordance with section 29(1) of the Sentencing Ordinance 2002.*

The offender was not legally represented but he/she was informed of his/her rights relating to legal representation and to legal aid; he/she fully understood those rights; and he/she had the opportunity to exercise those rights and refused or failed to exercise them.*

The offender was not legally represented, having dismissed counsel that he/she had earlier engaged.*

*Delete one.

[]

(Amended by Regulations of 24 February 2016)

You the members of the Police are directed to deliver the offender to the Superintendent of prisons in the Islands.

You the Superintendent are directed to receive the offender into your custody and detain the offender for the purposes of the sentence.

Release conditions imposed by the Court

The offender was a person to whom section 88(1) of the Sentencing Ordinance applies, and the Court imposed:

- (a) The standard release conditions set out in section 11(1) of the Parole Ordinance 2002, which expire on []
- (b) The special conditions listed below, which expire on []

The offender was a person to whom section 88(2) of the Sentencing Ordinance applies, and:

- (a) The standard release conditions set out in section 11(1) of the Parole Ordinance 2002 apply until they expire on []
- (b) The special conditions listed below apply until they expire on []

Special conditions

[]

Dated at Court at this day
of 20__

[Name of Magistrate, Judge of the Supreme Court, or Judge of the Court of Appeal]

[Signature of same]

FORM 2**Order for Sentence of Supervision***[Section 43 of the Sentencing Ordinance 2002]*

Case No. of 20__

Name**Address****Occupation**

At a sitting of the _____ Court at _____ on _____ day the
 _____ day of 20__, you were convicted of _____ [specify
 charge(s)] and sentenced to supervision for a period of _____ [period]

The standard terms of supervision are set out on the reverse of this form.
 In addition, the Court imposed the following special conditions:

Dated at _____ this _____ day of _____ 20

[Court]

Judge

[Back of form]

Section 47 of the Sentencing Ordinance provides for the following standard conditions:

- (a) the offender must report in person to the Supervision Officer as soon as practicable, and not later than 72 hours after the sentence is imposed;
- (b) the offender must report to the Supervision Officer as and when required to do so by the Supervision Officer and must notify the Officer of his or her residential address and the nature and place of his employment when asked to do so;
- (c) the offender must not move to a new residential address without the consent of the Supervision Officer;
- (d) if consent is given under paragraph (c), the offender must report in person to the Supervision Officer as soon as practicable, and not later than 72 hours, after the offender's arrival in the new area;
- (e) the offender must not reside at any address at which the Supervision Officer has directed the offender not to reside;
- (f) the offender must not engage or continue to engage, in any employment or occupation in which the Supervision Officer has directed the offender not to engage or continue to engage;
- (g) the offender must not associate with any specified person, or with persons of any specified class, with whom the Supervision Officer has, in writing, directed the offender not to associate;
- (h) the offender must take part in a rehabilitative and reintegrative needs assessment if and when directed to by the Supervision Officer.

Statement of Service

This Order was served by me by delivering a copy of the same to the offender personally at _____ on the _____ day of _____ 20__.

[Signed]

[Officer of the Court]

FORM 3

Order for Sentence of Community Work

[Section 53 of the Sentencing Ordinance 2002]

Case No. of 20__

Name

Address

Occupation

At a sitting of the Court at on day the day of 20__ you were convicted of [specify charge(s)] and sentenced to community work for a total of [] hours

The sentence commences on [specify date in accordance with s 73 of Sentencing Ordinance]

You must report to the Supervision Officer as soon as practicable and not less than 72 hours after the sentence was imposed.

During your sentence you must report to the Supervision Officer as directed.

You must work as directed by the Supervision Officer until the completion of your sentence.

Note:

In accordance with sections 56(1) and (2) of the Sentencing Ordinance 2002:

If your sentence requires you to perform 200 hours or less community work that sentence must be served within 12 months of the date on which the sentence commences.

If your sentence requires you to perform more than 200 hours community work that sentence must be served within 24 months of the date on which the sentence commences.

If you move to a new address during your sentence you must advise the Supervision Officer of your new address.

You may not be required to work for more than 10 hours in succession nor more than 40 hours in a week.

If the Supervision Officer is satisfied that you have a good record of compliance with your sentence of community work the Supervision Officer may remit up to 10% of the hours imposed by the Court.

Dated at the Court at this day of 20__

[Court]

[Judge]

Statement of Service

This Order was served by me by delivering a copy of the same to the offender personally at _____ on the _____ day of _____ 20__.

[Signed]

[Officer of the Court]

FORM 4

Order for Minimum Period of Imprisonment within Determinate Sentence or Sentence for Imprisonment for Life

[To be attached to warrant of commitment]

[Section 81 Sentencing Ordinance 2002]

Case No. of 20__

To all Police Officers and the Superintendent of Prisons on the Islands

Name

Address

Occupation

(the offender) was on the _____ day of _____ 20__ convicted of

[charge(s)]

by the _____ Court at _____ and was this day sentenced to

imprisonment for life*

imprisonment for a term of _____.*

* delete one

I am satisfied that the circumstances of the offence were sufficiently serious to justify a minimum term of imprisonment that is longer than the period otherwise applicable under section 80 of the Parole Ordinance 2002.

The Court therefore orders under section 81 of the Sentencing Ordinance 2002 that the offender must serve a minimum period of imprisonment of [] .

Dated at the _____ Court at _____ this _____ day of _____ 20__

[Court]

[Judge]

FORM 5

Order for Minimum Period of Imprisonment within Sentence of Preventive Detention

[To be attached to warrant of commitment]

[Section 84 Sentencing Ordinance 2002]

Case No. of 20__

To all Police Officers and the Superintendent of prisons on the Islands

Name

Address

Occupation

(the offender) was on the _____ day of _____ 20__ convicted of

[charge(s)]

by the _____ Court at _____ and was this day sentenced to preventive detention.

The Court orders under section 84 of the Sentencing Ordinance 2002 that the offender must serve a minimum period of imprisonment of [____] .

Dated at the _____ Court at _____ this _____ day of _____ 20__

[Court]

[Judge]

FORM 6**Order for sentence of home detention**

[Section 76A and 76W, Sentencing Ordinance]

Case No:

To *[full name]* of *[address]*, *[occupation]*

At a sitting of the *[court and place]* this *[date]* you were sentenced to home detention for a period of *[specify period]* for *[offence]* to be served at the home detention residence at *[address]*

*This sentence is cumulative on *[specify cumulative sentences]*.

*Delete if inapplicable

*The start date of the sentence is the date of this order, or the expiry of any sentence this order is cumulative upon (if applicable).

OR if deferred:

*The start date of your sentence was deferred under section 76R of the Sentencing Ordinance. The start date of your sentence is *[deferred start date]*.

*Delete one

*You must go to and remain at the residence where the sentence is to be served immediately upon receiving this order, unless a Supervision Officer has authorised you to be absent for a particular reason.

OR if deferred:

*You must go to and remain at the residence where the sentence is to be served on *[deferred start date]*, unless a Supervision Officer has authorised you to be absent for a particular reason.

*Delete one

Conditions

The standard conditions of home detention are set out in section 76C of the Sentencing Ordinance (a list of which is attached to this form).

*In addition to the standard conditions for home detention, the Court imposed the following special conditions under section 76D of the Sentencing Ordinance: *[specify special conditions]*.

*Delete if inapplicable.

*Post-detention conditions apply or have been imposed by the Court under section 76L of the Sentencing Ordinance (a list of which is attached to this form) and will apply to your home detention sentence for a period of *[duration]* from the detention end date

*Delete if inapplicable

*In addition to the standard post-detention conditions the Court imposed the following special post-detention conditions under section 76L: *[specify special post-detention conditions]*

*Delete if inapplicable

Consequences of non-compliance

Failure to comply with the terms of this sentence, without reasonable excuse, may result in you being charged under section 76N of the Sentencing Ordinance with an offence punishable by a maximum of 1 year's imprisonment or a fine not exceeding \$2,000.

Any person who refuses or fails, without reasonable excuse, to allow a Supervision Officer to enter the home detention residence at a time when you are required to be at the residence may be charged under section 76O(1) of the Sentencing Ordinance with an offence punishable by a maximum of 3 months' imprisonment or a fine not exceeding \$5,000.

Any person who refuses or fails, without reasonable excuse, to allow an authorised person to enter the home detention residence at any time for the purpose of servicing or inspecting the electronic monitoring equipment, may be charged under 76O(2) of the Sentencing Ordinance with an offence punishable by a maximum of 3 months' imprisonment or a fine not exceeding \$5,000.

Failure to comply with the post-detention conditions, without reasonable excuse, may result in your being charged with an offence under section 76P of the Sentencing Ordinance.

Variation or cancellation of sentence

You, or your Supervision Officer, may apply under section 76F of the Sentencing Ordinance for variation or cancellation of this sentence if you are unable to comply with its terms, or if one of the other grounds for variation or cancellation in that section applies.

Variation or discharge of post-detention conditions

You, or your Supervision Officer, may apply under section 76M of the Sentencing Ordinance for variation or discharge of your post-detention conditions.

Dated at the *[specify]* Court at *[place]* on *[date]*

.....

Registrar

Standard conditions of sentence of home detention

Under section 76C of the Sentencing Ordinance, the following conditions apply to every sentence of home detention:

- (a) the offender is under the supervision of the Supervision Officer and must co-operate with the Supervision Officer and comply with any lawful direction given by that Supervision Officer;
- (b) the offender must not leave the home detention residence at any time except in the circumstances set out in section 76C(3) or (4) of the Sentencing Ordinance (see below);

- (c) the offender must keep in his or her possession this order and, if requested to do so by a member of the police or the Supervision Officer, must produce the order for inspection;
- (d) the offender must, when required by the Supervision Officer, submit to the electronic monitoring of compliance with his or her detention conditions;
- (e) the offender must not engage, or continue to engage, in any employment or occupation in which the Supervision Officer has directed the offender not to engage or continue to engage;
- (f) the offender must not associate with any specified person, or with persons of any specified class, with whom the Supervision Officer has, in writing, directed the offender not to associate;
- (g) the offender must take part in a rehabilitative and reintegrative needs assessment if and when directed to do so by the Supervision Officer.

Section 76C(3) of the Sentencing Ordinance provides that the offender must not leave the home detention residence at any time except in the following circumstances:

- (a) to seek urgent medical or dental treatment; or
- (b) to avoid or minimise a serious risk of death or injury to the offender or any other person; or
- (c) with the approval of the Supervision Officer—
 - (i) to comply with any special condition; or
 - (ii) to seek or engage in employment; or
 - (iii) to attend training or other rehabilitative or reintegrative activities or programmes; or
 - (iv) to attend a restorative justice conference or other process relating to the offender's offending; or
 - (v) to carry out any undertaking arising from any restorative justice process; or
 - (vi) for any other purpose specifically approved by the Supervision Officer.

Section 76C(4) of the Sentencing Ordinance provides that the Supervision Officer may approve an alternative residence pending determination of an application to vary the home detention residence under section 76F.

Standard post-detention conditions of sentence of home detention

Section 76 of the Sentencing Ordinance provides that conditions of the sort described in s 11(1) of the Parole Ordinance apply to every offender subject to post-detention conditions. Those conditions are:

- (a) the offender must report in person to the Supervision Officer as soon as practicable and not later than 72 hours after the detention end date;
- (b) the offender must report in person to the Supervision Officer as and when required to do so by the Supervision Officer and must notify the Supervision Officer of his or her residential address and the nature and place of his or her employment when asked to do so;
- (c) the offender must not move to a new residential address without the prior written consent of the Supervision Officer;

- (d) the offender must not reside at any address at which the Supervision Officer has directed the offender not to reside;
- (e) the offender must not engage, or continue to engage, in any employment or occupation in which the Supervision Officer has directed the offender not to engage or continue to engage;
- (f) the offender must not associate with any specified person, or with persons of any specified class, with whom the Supervision Officer has, in writing, directed the offender not to associate;
- (g) the offender must take part in a rehabilitative and reintegrative needs assessment if and when directed to do so by the Supervision Officer.

