



LAWS OF KENYA

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## **BORSTAL INSTITUTIONS ACT, CAP 92**

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**CHAPTER 92**

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**CHAPTER 92**

**BORSTAL INSTITUTIONS ACT**

[Date of assent: 22nd August, 1963.]

[Date of commencement: 2nd September, 1963.]

**An Act of Parliament to make provision for the establishment of borstal institutions for youthful offenders and for the detention of youthful offenders therein, and for connected purposes**

[Act No. 23 of 1963, Act No. 10 of 1983.]

**PART I – PRELIMINARY**

**1. Short title**

This Act may be cited as the Borstal Institutions Act.

**2. Interpretation**

In this Act, except where the context otherwise requires—

“**After-Care Committee**” means a committee appointed under section 21 of this Act;

“**authorized officer**” means a police officer, a prison officer or a probation officer;

“**Board of Visitors**” means a board of visitors appointed under section 20 of this Act;

“**borstal institution**” means a borstal institution established under section 3;

“**borstal order**” means an order under section 6 or section 7 of this Act directing that a youthful offender be sent to a borstal institution;

“**Commissioner**” means the Commissioner of Prisons;

“**conviction**” includes a finding of guilt by a juvenile court;

“**juvenile court**” means a juvenile court within the meaning of the Children and Young Persons Act (Cap. 141);

“**licence**” means a licence granted under section 26(1) of this Act;

“**principal borstal officer**” means a person appointed by the Commissioner to be a principal borstal officer of an institution and includes a principal borstal officer (women);

“**prison officer**” has the meaning assigned to it in the Prisons Act (Cap. 90);

“**probation officer**” has the meaning assigned to it in the Probation of Offenders Act (Cap. 64);

“**removal order**” means an order made under section 13;

“**sentence**” includes an order by a juvenile court on a finding of guilt;

“**superintendent**”, in relation to a borstal institution, means the prison officer appointed by the Commissioner to be superintendent of that institution;

“**youthful offender**” means a person who has been convicted of an offence punishable with imprisonment and has been found by the court, at the time of such conviction, to have attained the age of fifteen years but to be under the age of eighteen years.

## PART II – ESTABLISHMENT OF BORSTAL INSTITUTIONS

### 3. Power to establish borstal institutions

(1) The Minister\* may by order—

- (a) establish borstal institutions at such places as he thinks fit; or
- (b) direct that a borstal institution shall cease to exist as a borstal institution.

(2) Every borstal institution shall include the grounds and buildings within the institution enclosure and also any other grounds or buildings belonging or attached hereto and used by inmates or the staff of the institution.

### 4. Requisites of borstal institution

Every borstal institution shall provide—

- (a) proper sanitary arrangements, water supply, food, clothing and bedding for the inmates thereof;
- (b) the means of giving such inmates educational, industrial or agricultural training; and
- (c) an infirmary or proper place for the reception of inmates who are ill.

## PART III – COMMITTAL TO BORSTAL INSTITUTIONS

### 5. Court before sentencing youthful offender to consider his history

Before sentencing a youthful offender, a court shall consider the evidence available as to his character and previous conduct and the circumstances of the offence, and whether it is expedient for his reformation that he should undergo a period of training in a borstal institution.

### 6. Committal of youthful offender to borstal institution

(1) Where the High Court or a subordinate court of the first class or a juvenile court is satisfied, after considering the matters specified in section 5 of this Act, that it is expedient for his reformation that a youthful offender should undergo training in a borstal institution, it may, instead of dealing with the offender in any other way, direct that the offender be sent to a borstal institution for a period of three years.

(2) (a) Where it appears to any court other than the High Court or a subordinate court of the first class after considering the matters specified as aforesaid, that a youthful offender should, for his reformation, undergo training in a borstal institution, it may, instead of dealing with the offender in any other way, after recording the same, commit the offender in custody to a juvenile court having jurisdiction in the area, for sentence.

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\* Power delegated to Permanent Secretary of the Ministry by L.N. 692/1963.

(b) The juvenile court to which the youthful offender is committed shall itself consider the matters specified as aforesaid, and, if it is satisfied that it is expedient for his reformation that the offender should undergo training in a borstal institution, it may direct that the offender be sent to a borstal institution for a period of three years, or may deal with the offender in any way which would have been open to the court which committed the offender.

**7. Power of court to direct youthful offender undergoing imprisonment to be sent to borstal institution**

The officer in charge of a prison in which a youthful offender is imprisoned in execution of a sentence of imprisonment may bring him, if he has not then attained the age of eighteen years, before the High Court or a subordinate court having jurisdiction to try the offence of which he was originally convicted, and such court may, after considering the matters specified in section 5 of this Act, direct that instead of undergoing the residue of his sentence in prison he be sent to a borstal institution for the unexpired residue of a period of three years commencing on the date upon which the sentence of imprisonment began to run.

**8. Court to ascertain that accommodation available**

Before directing that a youthful offender be sent to a borstal institution, the court shall ascertain whether accommodation is available in a borstal institution for the youthful offender, and shall not so direct unless it has found that accommodation is so available.

**9. Commissioner to determine borstal institution to which youthful offender to be sent**

Every youthful offender directed to be sent to a borstal institution under this Act shall be sent to such borstal institution as the Commissioner directs.

PART IV – ADMINISTRATION

**10. Duties of superintendent**

The superintendent of a borstal institution shall supervise and control all matters concerning the institution, and shall keep or cause to be kept such records as the Commissioner may from time to time direct, and shall be responsible to the Commissioner for the conduct and treatment of staff and of the inmates under his control and for the due observance by staff and inmates of the provisions of this Act and of all rules, directions and orders made thereunder.

**11. Duties of medical officer**

(1) There shall be a medical officer stationed in or otherwise responsible for each borstal institution.

(2) The medical officer shall be responsible for the health of all inmates of the borstal institution, and shall cause all inmates of the borstal institution to be medically examined on such occasions as may be prescribed.

(3) A medical officer may, whether or not an inmate consents thereto, take or cause or direct to be taken such action (including the forcible feeding, inoculation, vaccination or other treatment of the inmate, whether of a like nature

or not) as he may consider necessary to safeguard or restore the health of the inmate or to prevent the spread of disease.

(4) All actions of a medical officer, borstal officer, medical orderly or other person acting under subsection (3) or in pursuance of directions given thereunder shall be lawful.

## **12. Powers and duties of prison officers**

A prison officer on the staff of a borstal institution shall, in relation to the borstal institution and the inmates thereof, have the like powers, protections and duties as are conferred and imposed on him by the Prisons Act (Cap. 90) in relation to a prison and prisoners therein, and shall be subject to the like prohibitions and restrictions (and liable to the like punishment for breach thereof), and be subject to the like provisions as to discipline, as are applicable in the case of prisons and prisoners therein under that Act.

## **13. Removal orders**

The Commissioner may at any time, by order in writing called a removal order, order the removal of a person who is detained in a borstal institution to another specified borstal institution.

## **14. Removal to hospital**

(1) Where an inmate of a borstal institution is so ill that he cannot be adequately cared for in the institution's infirmary, the superintendent, on the advice of a medical practitioner, may order his removal to a hospital or other institution:

Provided that in cases of emergency such removal may be ordered by the senior officer present without the advice of a medical practitioner.

(2) Whenever the medical officer in charge of a hospital to which an inmate has been removed under subsection (1) of this section considers that the health of that inmate no longer requires him to be kept in the hospital, he shall notify the superintendent of the borstal institution in which the inmate was previously detained, and that officer shall thereupon cause the inmate to be removed to the borstal institution if he is still liable to be detained there.

(3) The medical officer in charge of a hospital shall take all reasonable precautions to prevent the escape of any inmate who is kept in the hospital under this section.

(4) Nothing in subsection (3) of this section shall authorize any act which in the opinion of the medical officer in charge of the hospital is likely to be prejudicial to the health of the inmate concerned.

## **15. Removal to mental hospital**

(1) Whenever a medical officer is of the opinion that any inmate in respect of whom a borstal order is in force is of unsound mind, he may by order under his hand in the prescribed form direct that such inmate be removed to a mental hospital within the meaning of the Mental Treatment Act (Cap. 248) and be there detained, and such order shall be authority for the reception of that inmate and for his detention in that mental hospital until removed or discharged as hereinafter provided.

(2) Where an inmate removed to a mental hospital under subsection (1) of this section is, in the opinion of the person in charge of the mental hospital, no longer of unsound mind, the person in charge as aforesaid shall notify the superintendent of the borstal institution from which the inmate was removed, and the inmate shall then be delivered into the custody of the superintendent of that borstal institution if his borstal order is still in force, and if not so liable shall be released.

(3) Upon the expiration of the period of detention to which he has been sentenced, section 30 of the Mental Treatment Act (Cap. 248) shall apply to an inmate detained in a mental hospital under this section as if he were detained in accordance with a reception order made under Part VI of that Act.

(4) The period during which an inmate has been detained in a mental hospital under this section shall be reckoned as part of his period of detention.

#### **16. Removal to leper settlement**

(1) Where a medical officer reports to the Commissioner that an inmate in respect of whom a borstal order is in force is a leper, the Commissioner may, subject to subsection (2) of this section, by order in writing direct the removal of that inmate to a leper settlement, there to be kept and treated until cured of his leprosy or until such time as he ceases to be liable to confinement in a borstal institution, whichever is the earlier.

(2) No order shall be made by the Commissioner under subsection (1) of this section unless he has received notification in writing that the person in charge of the leper settlement to which he wishes to remove the leper is able and willing to receive the leper.

(3) So long as the borstal order of an inmate who is in a leper settlement under this section remains in force, the person in charge of the leper settlement shall from time to time transmit to the superintendent of the borstal institution from which the inmate was removed a certificate signed by him that it is in his opinion necessary that he should remain in the leper settlement.

(4) As soon as it ceases to be necessary, in the opinion of the person in charge of a leper settlement, that any inmate who is kept thereunder this section should remain therein, he shall transmit to the superintendent of the borstal institution whence that inmate was removed, if that inmate's borstal order is still in force, a certificate of such opinion, and thereupon the superintendent shall forthwith cause the inmate to be returned to the borstal institution; and if not so liable the inmate shall be released.

(5) Every reasonable precaution shall be taken by the person in charge of a leper settlement and the other persons employed therein to prevent the escape of inmates kept therein under this section, and it shall be lawful for them to take such measures as are necessary for the preventing of such escapes:

Provided that nothing shall be done under the authority of this section which, in the opinion of the person in charge of the settlement, is likely to be prejudicial to the health of the inmate.

(6) For the purposes of this section, "**leper**" means a person suffering from active leprosy.



**17. Inmates to be subject to borstal institution discipline**

Every inmate of a borstal institution shall be subject to the discipline of a borstal institution and to this Act and to all rules, orders and directions made thereunder during the whole period of his detention, whether he is or is not within the precincts of a borstal institution.

**18. Female inmates to be kept apart**

Males and females shall not be detained in the same borstal institution.

**19. Work**

Every inmate of a borstal institution shall be liable to perform such work as may be directed by the superintendent:

Provided that an inmate shall not be required to perform any work, or any work other than light work, if the medical officer so orders.

**PART V – VISITATION****20. Appointment of Board of Visitors**

(1) The Minister\* shall, by notice in the *Gazette*, appoint a Board of Visitors for every borstal institution, and may, by notice in the *Gazette*, revoke any appointment so made.

(2) A Board of Visitors shall consist of not less than ten persons.

(3) Every Board of Visitors shall meet at least four times in every year.

**21. Appointment and duties of After-Care committee**

(1) Every Board of Visitors shall appoint from among its members a committee, to be known as the After-Care Committee, and shall arrange for one or more members of the committee at least once a month to visit the borstal institution in respect of which the Board is appointed, for the purpose of—

- (a) hearing complaints by the inmates of the borstal institution;
- (b) ensuring that the requirements of section 4 of this Act have been complied with and that the management of the borstal institution is proper in all respects;
- (c) examining the punishment book;
- (d) ensuring that no person is illegally detained in the borstal institution; and
- (e) bringing any special case and any matter affecting the welfare of inmates or staff of the notice of the superintendent (who shall inform the Commissioner), and reporting thereon to the Board of Visitors.

(2) For the purposes of this section, “**punishment book**” means a book in which the adjudication of disciplinary offences committed by inmates of a borstal institution is recorded.

**22. Board of Visitors may initiate inquiry as to age**

(1) If at any time after a youthful offender has been sent to a borstal institution it appears to the Board of Visitors or the superintendent that the age of

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\* Power delegated to the Permanent Secretary of the Ministry by L.N. 692/1963.

the youthful offender is other than that determined by the court and that he was under the age of fifteen years or had attained the age of eighteen years at the time of his conviction, the Board of Visitors or the superintendent shall cause the youthful offender to be taken before a court having jurisdiction to try the offence of which he was originally convicted so that the question of his age may be inquired into anew.

(2) Where a court before which a youthful offender is taken under subsection (1) of this section finds that such youthful offender was at the time of his conviction under the age of fifteen years or had attained the age of eighteen years, it shall revoke the order for detention in the borstal institution and may pass such sentence as the court which tried the youthful offender might have passed on him, but without prejudice to anything lawfully done under the borstal order:

Provided that the court in passing sentence under this subsection shall take into consideration the period during which the youthful offender was detained in a borstal institution.

(3) Notwithstanding anything in this Act, no person shall be detained in a borstal institution after he has attained the age of twenty-one years.

### **23. Appointment of ministers**

The Minister may, from time to time, by notice in the *Gazette*, appoint ministers of any religious faith to be ministers of a borstal institution.

### **24. Power of Minister, judges and magistrates**

(1) The Minister, a judge or a magistrate may at any time visit any borstal institution and exercise all or any of the powers of the Board of Visitors, and may enter any observations he thinks fit to make in reference to the condition of the borstal institution and its inmates in a visitors' book to be kept for that purpose by the superintendent; and the superintendent shall inform the Commissioner of any observations so entered in the visitors' book.

(2) *Deleted by Act No. 10 of 1983, Sch.*

[Act No. 10 of 1983, Sch.]

## **PART VI – ABSENCE FROM BORSTAL INSTITUTIONS**

### **25. Leave of absence**

The Commissioner may grant leave of absence to any inmate of a borstal institution for such period and on such conditions as he may think fit, and may at any time revoke such leave of absence for breach of its conditions and direct the inmate to whom the leave was granted to return to the borstal institution.

### **26. Superintendent may grant licence**

(1) The superintendent, on the recommendation of the After-Care Committee, may by licence under his hand permit any inmate who has been detained in a borstal institution for a period of not less than twelve months to live under the charge of a named trustworthy and respectable person who is willing to receive and take charge of him and to supervise, guide and advise him.

(2) A licence shall remain in force until the expiration of the period for which the inmate has been directed to be detained, or until cancelled under section 27.

(3) The time during which an inmate is absent from a borstal institution in pursuance of a licence shall, except where the licence is cancelled by reason of his breach of licence be deemed to be part of the time of his detention in the borstal institution.

#### **27. Revocation of licence**

A licence may be revoked by order in writing of the Commissioner—

- (a) if the person to whom it was granted has broken any condition of the licence; or
- (b) if the Commissioner and the After-Care Committee consider revocation of the licence to be in the best interests of the person to whom it was granted.

### **PART VII – DISCHARGE AND SUPERVISION**

#### **28. Discharge by order of Minister**

(1) The Minister may at any time in writing order any inmate to be discharged from a borstal institution and upon discharge the borstal order made in respect of that inmate shall cease to have effect.

(2) The superintendent shall be responsible for the due discharge of all inmates immediately upon their becoming entitled to release.

(3) No inmate under treatment by the medical officer in a borstal institution shall, except at his own request, be discharged from any borstal institution until, in the opinion of the medical officer, such discharge can be effected without danger to the health of such inmate.

#### **29. Supervision after expiration of detention**

(1) Every person in respect of whom a borstal order has been made, other than a person discharged under section 28 or section 48 of this Act, shall, on the expiration of his period of detention therein, remain for a period of one year, or such lesser period as the After-Care Committee may recommend, under the supervision of the superintendent of the borstal institution in which he was last detained, or a person appointed in writing by the superintendent.

(2) A person while under supervision in pursuance of subsection (1) of this section shall comply with the written instructions of the superintendent regarding his place of residence, occupation, activities, conduct and otherwise, and if he fails to comply with any of those instructions he may be recalled by the Commissioner to the borstal institution in which he was detained immediately before the expiration of his period of detention:

Provided that no person shall be recalled unless in the opinion of the Commissioner such recall is necessary for his well-being.

(3) Any person recalled under subsection (2) of this section may be detained in the borstal institution for a period not exceeding three months or until the period of supervision specified in subsection (1) of this section ends, whichever period is the shorter.

(4) Where under subsection (3) of this section a person is detained in a borstal institution for a period expiring before the period of his supervision ends, he shall, on completion of his period of detention, remain under supervision in accordance with this section, until his period of supervision expires.

(5) Notwithstanding anything in this section, the Commissioner may at any time in writing direct that a person who is under supervision in pursuance of this section shall cease to be under supervision.

#### PART VIII – OFFENCES BY INMATES OF BORSTAL INSTITUTIONS

##### **30. Borstal institution offences**

The Minister may prescribe what acts or omissions by inmates shall be borstal institution offences.

##### **31. Punishment of inmate by principal borstal officer**

The principal borstal officer of a borstal institution may punish any inmate found after due inquiry by him to be guilty of a borstal institution offence by awarding him deprivation of one or more of the following privileges for a period not exceeding seven days—

- (a) playing games;
- (b) loss of grade;
- (c) forfeiture of earnings.

##### **32. Punishment of inmate by superintendent**

The superintendent of a borstal institution may punish any inmate found after due inquiry by him to be guilty of a borstal institution offence by awarding him one or more of the following punishments—

- (a) removal to the penal grade;
- (b) deprivation of either or both of the following privileges for a period not exceeding one month—
  - (i) playing games;
  - (ii) earnings.
- (c) loss of grade for a period not exceeding three months;
- (d) confinement in a room for three days;
- (e) such restricted diet as may be prescribed, for a period not exceeding three days.

##### **33. Punishment of inmate by commissioner**

(1) The Commissioner may punish any inmate found after due inquiry by him to be guilty of a borstal institution offence.

(2) The superintendent on finding an inmate guilty of a borstal institution offence may, if he is of the opinion that in the circumstances of the case the powers of punishment he possesses are inadequate, transfer the case to the Commissioner for punishment.

(3) The superintendent, if he transfers a case to the Commissioner under subsection (2) of this section, shall forward to the Commissioner—

- (a) a copy of the charge;
- (b) the record of all the evidence he has taken, including the evidence of the inmate;

- (c) the reasons why he has found the inmate guilty; and
- (d) any representations the inmate wishes to make to the Commissioner in regard to punishment.

(4) The Commissioner, on receipt of a record forwarded to him under subsection (3) of this section, may—

- (a) punish the inmate; or
- (b) reverse the findings of the superintendent and find the inmate not guilty; or
- (c) require the superintendent to take further evidence and submit it to him before he makes a decision.

(5) The Commissioner may award an inmate one or more of the following punishments—

- (a) any award authorized under section 32 of this Act;
- (b) deprivation of privileges;
- (c) loss of grade;
- (d) confinement in a room for not more than fourteen days;
- (e) restricted diet as may be prescribed for a period not exceeding fifteen days;
- (f) corporal punishment not exceeding ten strokes.

#### **34. Inmate's defence**

No inmate shall be punished for a borstal institution offence until he has had an opportunity of hearing the charge against him and making his defence.

#### **35. Restricted diet**

(1) No inmate shall be subjected to restricted diet until certified by a medical officer or other person appointed for such purpose by the medical officer as medically fit to undergo it.

(2) A person shall not be required to perform work while he is on a restricted diet.

#### **36. Corporal punishment**

(1) No sentence of corporal punishment shall be carried out until a period of twenty-four hours has elapsed from the time of the order thereof and a medical officer has certified that the offender is physically fit to undergo the punishment.

(2) A medical officer may give such orders for the prevention of injury to the health of the offender ordered to receive corporal punishment as he may deem necessary, and such orders shall be carried out before the punishment is inflicted; and if, during the course of the infliction of the punishment, the medical officer orders it to be discontinued it shall be discontinued accordingly.

(3) Corporal punishment shall not be inflicted upon any female inmate.

**37. Segregation of inmate**

Whenever it appears to the superintendent that it is desirable for the good order and discipline of the borstal institution for an inmate to be segregated and not to work nor to be associated with other inmates, it shall be lawful for the superintendent to order the segregation of such inmate for such period as he considers necessary.

**38. Register of punishment**

The superintendent shall cause to be entered in a register, which shall be open to the inspection of the Board of Visitors, a record of all punishments imposed upon inmates, showing in respect of each inmate punished his name, the nature of his offence and the extent of his punishment.

**PART IX – GENERAL****39. Return of person to borstal institution**

(1) Any person in respect of whom a borstal order is in force who—

- (a) escapes from the borstal institution in which he is detained, or from any hospital or other institution to which he has been removed on account of his physical or mental condition; or
- (b) runs away from the person into whose charge he has been entrusted under a licence; or
- (c) fails to return to a borstal institution on the revocation of his licence under section 27 of this Act or of his leave of absence under section 25 of this Act or on recall under section 29(2) of this Act,

may be arrested without warrant by an authorized officer and taken back to a borstal institution.

(2) Where any such person as aforesaid has committed any of the acts mentioned in subsection (1)(a) of this section, the period of his detention in a borstal institution shall be increased by a period equal to the period during which he was unlawfully at large.

**40. Assisting escape and harbouring**

(1) If any person knowingly—

- (a) assists or incites a person in respect of whom a borstal order is in force to commit any of the acts specified in section 39(1) of this Act; or
- (b) harbours or conceals such a person who has committed any such act, or prevents him from returning,

he shall be guilty of an offence and liable to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding six months, or to both.

(2) If a court is satisfied, by information on oath, that a person in respect of whom a borstal order is in force has committed one of the acts specified in section 39(1) of this Act and that there is reasonable ground for believing that some other person, named in the information, can produce him, the court may issue a summons requiring that other person to attend at the court on a day specified in the summons and produce the person who has committed the act, and if the person summoned fails without reasonable excuse to comply with the

summons he shall be guilty of an offence and liable, in addition to any other liability to which he may be subject under this Act, to a fine not exceeding one thousand shillings.

#### **41. Trespassing**

(1) Any person who without lawful authority enters or remains within the boundaries of a borstal institution or any place where inmates of a borstal institution are working shall be guilty of an offence and, if he refuses to leave when requested to do so, may be arrested without a warrant by a prison officer on the staff of the borstal institution or a police officer.

(2) Any person who, without authority from the Commissioner—

- (a) takes a photograph of any inmate of a borstal institution; or
- (b) takes a photograph or makes a sketch, plan or other representation of any object or person within the precincts of a borstal institution,

shall be guilty of an offence.

(3) Any person who is guilty of an offence under subsection (1) or subsection (2) of this section shall be liable to a fine not exceeding two thousand five hundred shillings or to imprisonment for a term not exceeding three months, or to both such fine and such imprisonment.

#### **42. Power of court to commit borstal inmate to prison**

If the Commissioner is of the opinion that any inmate of a borstal institution is of such a character, or has conducted himself in such a manner, as to render his detention in such borstal institution to be no longer expedient, he may cause the inmate to be taken before a court having jurisdiction to try the offence of which he was originally convicted, and that court may direct that the inmate, instead of undergoing the residue of his detention in a borstal institution, shall undergo a term of imprisonment not exceeding three years commencing on the day when the inmate began his detention in a borstal institution.

#### **43. Procedure on conviction during detention in borstal institution**

Except where it is otherwise provided in this Act, where a court convicts a person of any offence committed during the period of his detention in a borstal institution and sentences him to a term of imprisonment, such court shall take into consideration in assessing the length of the term passed the period of that person's detention which remained unexpired at the time of such finding or conviction, and shall cancel the order for his detention in a borstal institution.

#### **44. No interference with control of person on licence or under supervision**

(1) When a person is absent from a borstal institution in pursuance of a licence, or is under supervision in pursuance of section 29 of this Act, no person whatever shall interfere with the control or supervision conferred in respect of the absent person by the licence or by the said section, as the case may be.

(2) Any person who contravenes subsection (1) of this section shall be guilty of an offence and liable to a fine not exceeding two thousand five hundred shillings or to imprisonment for a term not exceeding three months, or to both.

**45. Removal in custody**

A person in respect of whom a borstal order is in force may be removed—

- (a) to or from a borstal institution under the borstal order or under a removal order; or
- (b) to or from a hospital or other institution, mental hospital or leper settlement under section 14, section 15 or section 16 of this Act; or
- (c) to or from a court under section 42 or section 47 of this Act,

in the custody of an authorized officer, and while being so removed he shall be deemed to be in the lawful custody of such officer.

**46. Inmate of borstal institution in lawful custody**

A person who is detained in a borstal institution by virtue of a borstal order shall be deemed to be in the lawful custody of the superintendent, and during any period that he is in any hospital or other institution, a mental hospital or a leper settlement under section 14, section 15 or section 16 of this Act he shall be deemed to be in the lawful custody of the officer in charge of the institution.

**47. Inmate required as witness**

(1) Whenever the presence of any inmate of a borstal institution is required by any court, such court may issue an order addressed to the superintendent requiring production before the court of the inmate in proper custody at the time and place named in the order, and the superintendent shall cause the inmate named in the order to be brought up as directed, and shall provide for his safe custody during his absence from the borstal institution.

(2) Every such court may by endorsement on such order require the inmate to be again brought up at any time to which the matter may be adjourned.

**48. Apprenticeship**

If it appears to the superintendent that a person has behaved well while out on licence, the superintendent may on the recommendation of the After-Care Committee arrange a contract of indentured learnership or a contract of apprenticeship for him under the Industrial Training Act (Cap. 237), and on such contract being arranged such person shall be discharged from the borstal institution.

**49. Prohibited articles and communication with borstal inmates**

(1) Any person who without lawful authority—

- (a) conveys, supplies or causes to be supplied or conveyed to any inmate of a borstal institution, or hides or places for the use of any such inmate, any prohibited article; or
- (b) places, where inmates of a borstal institution work, any prohibited article; or
- (c) brings out of or takes into any borstal institution any prohibited article; or
- (d) in any manner communicates with any inmate of a borstal institution,

shall be guilty of an offence and liable to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding six months, or to both.



(2) In this section, “**prohibited article**” means any article contained in a list which—

- (a) specifies the articles which are prohibited in borstal institutions; and
- (b) is written in English, Swahili and the language which the superintendent considers to be the local vernacular language;
- (c) is signed by the Commissioner or the superintendent on his behalf; and
- (d) is posted in a conspicuous place outside the borstal institution.

#### **50. Seizure of prohibited articles, etc.**

Whether or not any criminal or disciplinary proceedings are commenced against any person, any prison officer on the staff of a borstal institution may seize any article found to be unlawfully in a borstal institution, and the superintendent may order its confiscation and it shall thereupon be forfeited.

#### **51. Unlawful possession of public property**

Any person who—

- (a) is found in possession of any article which has been supplied to a prison officer on the staff of a borstal institution for use on duty, or of any property belonging to a borstal institution, and who fails to account satisfactorily for the possession thereof; or
- (b) without lawful authority or excuse purchases any such article or property from any such officer; or
- (c) aids and abets any such officer to sell or dispose of any such article or property,

shall be guilty of an offence and liable to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding six months, or to both.

#### **52. Rules**

(1) The Minister may make rules generally for the better carrying out of the provisions and purposes of this Act, and in particular may make rules for any of the following purposes—

- (a) defining which types of offenders may be sent to particular borstal institutions;
- (b) providing for and regulating the discipline and duties of borstal institution staff, and prescribing punishments for neglect of duty and other offences committed by any member of such staff;
- (c) regulating the conduct, management and discipline of borstal institutions;
- (d) providing for the maintenance, discipline, treatment and education, vocational or otherwise, of the inmates of borstal institutions, and regulating the punishment of inmates for breach of discipline, whether by loss of privileges, restricted diet, confinement or, in serious cases, caning;

- (e) providing for the payment of youthful offenders for work done while detained in borstal institutions, and prescribing the conditions under which such payments shall be made;
- (f) providing for the photographing of the inmates of borstal institutions;
- (g) prescribing the manner in which Boards of Visitors shall discharge their duties;
- (h) providing for the construction, equipment and supervision of rooms and dormitories;
- (i) regulating the mode and kind of labour and employment;
- (j) making provision for the disposal of articles made by inmates of a borstal institution;
- (k) prescribing the method of disposal of inmates' property left unclaimed for a prescribed period, including its sale and the disposal of the proceeds of such sale.

(2) Rules made under this section may make different provision concerning different borstal institutions or different classes of borstal institutions or different parts of borstal institutions.

### **53. Amendment of Act 49 of 1962**

Section 67(1) of the Prisons Act, 1962, is amended by adding at the end of paragraph (a) of the proviso thereto the expression "a borstal institution as defined in the Borstal Institutions Act, 1963; or".

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**CHAPTER 92**

**BORSTAL INSTITUTIONS ACT**

SUBSIDIARY LEGISLATION

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*List of Subsidiary Legislation*

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**PLACES ESTABLISHED AS BORSTAL INSTITUTIONS UNDER SECTION 3**

CENTRAL PROVINCE

[L.N. 736/1963.]

*Kiambu District*

Kamiti Youth Corrective Training Centre.

WESTERN PROVINCE

[L.N. 617/1963.]

*Kakamega District*

Shikusa.

COAST PROVINCE

[L.N. 320/1964.]

*Mombasa District*

Admiralty Radio Station, Shimo-la-Tewa.

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**BORSTAL INSTITUTIONS RULES, 1963**

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2. Interpretation.
3. Control and administration.

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4. Classification of inmates.
5. Inmates to be divided into grades.
6. Institution Board.

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13. Mental conditions of inmates.
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*Rule*

- 72. Officers' quarters.
- 73. Officers to report cases of illness.

SCHEDULES

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-

[Subsidiary]

**BORSTAL INSTITUTIONS RULES, 1963**

## RULES UNDER SECTION 52

[L.N. 596/1963, L.N. 310/1964, L.N. 133/1969, Corr. No. 35/1969, L.N. 539/1997, Corr. No. 21/1998.]

## PART I – PRELIMINARY

**1. Citation**

These Rules may be cited as the Borstal Institutions Rules.

**2. Interpretation**

In these Rules, except where the context otherwise requires—

“**inmate**” means any person detained in a borstal institution, and includes any person granted leave of absence or licence under section 25 or section 26 of the Act;

“**officer**”, in relation to a borstal institution, means the superintendent, principal borstal officer or any prison officer posted to the staff of a borstal institution.

**3. Control and administration**

(1) Every borstal institution shall be under the control of the Commissioner.

(2) The general charge and administration of a borstal institution shall be vested in the superintendent.

## PART II – CLASSIFICATION OF INMATES

**4. Classification of inmates**

The Commissioner shall classify all inmates having regard to their character, previous history and other relevant circumstances, and shall arrange for each inmate to receive his training at the borstal institution which in his opinion is most suitable.

**5. Inmates to be divided into grades**

(1) Inmates shall be divided into such grades as the Commissioner may approve.

(2) An inmate may be placed in the penal grade by order of the superintendent, for period no longer than is necessary, in the interests of the inmate or of another person if the superintendent is satisfied that such inmate is exercising a bad influence on other inmates, or is idle or ill-conducted.

(3) While in the penal grade he shall not be employed in association with other inmates and shall receive no payment.

**6. Institution Board**

At every borstal institution there shall be an Institution Board, consisting of the superintendent and such other persons as the Commissioner may determine, who shall consider the case of an inmate before placing him in any grade and promoting him from one grade to another.

## PART III – MEDICAL OFFICERS AND THE HEALTH OF INMATES

**7. Power of medical officer to delegate**

Subject to the directions of the Director of Medical Services, the medical officer may depute any of his functions or duties under this Part to any person who he considers is suitably qualified to carry out such functions or duties.



**8. Medical officer to attend regularly**

The medical officer shall attend at the borstal institution for which he is responsible either daily or at regular intervals.

**9. Examination of inmates**

The medical officer shall examine an inmate on each of the following occasions—

- (a) on the inmate's admission to a borstal institution;
- (b) before the inmate is required to undergo any class of work of a more strenuous nature than that which he has been certified fit to undertake, and certify whether the inmate is fit to undergo the work;
- (c) before the inmate undergoes corporal punishment or any other punishment likely to affect his health, and certify whether the inmate is fit to undergo the punishment;
- (d) during the course of infliction of corporal punishment;
- (e) before the inmate is discharged from a borstal institution;
- (f) before the inmate is transferred to another borstal institution.

**10. Frequency of medical examinations and inspections**

The medical officer shall—

- (a) see every inmate at least once every month; and
- (b) inspect the inmate at work from time to time; and
- (c) at least once in every month inspect the whole institution paying particular attention to the cooking and sanitary equipment therein.

**11. Medical officer may recommend modifications**

As a result of his examinations and inspections, a medical officer may recommend modifications in labour, diet or punishment in relation to a particular inmate.

**12. Medical officer to advise on removal of inmates**

(1) The medical officer shall advise the superintendent of the case of any inmate who he considers should be transferred from the borstal institution which he is in to a hospital, mental hospital or leper settlement.

(2) The medical officer shall advise the superintendent of the case of any inmate who he considers should be released from a borstal institution by reason of his health being likely to be endangered by remaining in a borstal institution or of his being unlikely to survive his sentence or being permanently unfit for borstal discipline.

**13. Mental condition of inmates**

(1) The medical officer shall keep observation on the mental health of all inmates.

(2) The medical officer shall report to the superintendent any case where he considers an inmate is mentally disordered.

**14. Spread of disease**

The medical officer shall take all measures necessary to prevent the spread of infectious or contagious diseases.

[Subsidiary]

**15. Books to be kept**

The medical officer shall keep the following books and records—

- (a) a case book showing the name, disease and treatment of every sick inmate;
- (b) a journal containing his comments and the state of the borstal institution and inmates;
- (c) a case book giving full details of the medical history, cause of death and treatment of every inmate who dies in the borstal institution; and
- (d) periodical reports on the nature and quality of the food of the inmates both before and after cooking.

**16. Vaccination**

If the medical officer considers it necessary for the health of any particular inmate or inmates, or for the health of other inmates or members of the public, he may arrange for the vaccination or inoculation of all or any of the inmates.

PART IV – ACCOMMODATION IN AND GENERAL MANAGEMENT OF BORSTAL  
INSTITUTION

**17. Sleeping accommodation**

(1) The inmates shall sleep in rooms or dormitories as the superintendent directs in the case of each inmate.

(2) The following provisions shall apply for the separation of the sexes—

- (a) male and female inmates shall be kept absolutely separate from each other and shall be confined in different buildings;
- (b) the rooms, dormitories and yards where female inmates are confined shall be secured by locks different from those securing the rooms, dormitories and yards allotted to male inmates;
- (c) female inmates shall in all cases be attended by women officers;
- (d) a male prison officer on the staff of the borstal institution shall not enter an institution or part of an institution appropriated to female inmates, except on duty and accompanied by a woman prison officer.

(3) The medical officer shall certify the number of inmates that may sleep in any one room or dormitory.

**18. Cleanliness of institution**

The borstal institution and every room and part thereof shall be kept clean, and every inmate shall keep his room, dormitory, utensils, books and other articles issued for his use, and his clothing and bedding, clean and neatly arranged, as may be ordered and shall clean and sweep the yards, passages and other parts of the borstal institution as he may be ordered.

**19. Confinement of inmates**

In every borstal institution, rooms shall from time to time be set aside for the confinement of inmates undergoing punishment for borstal institution offences, and shall be certified as fit to be used for such purpose by the medical officer.

**20. Admission**

The superintendent shall, upon receiving an order under section 6 or section 7 of the Act, make all necessary arrangements for the transfer of the person in respect of whom the order is made to the borstal institution.

**21. Search on admission**

Every inmate shall be searched when taken into custody by the superintendent, on admission into a borstal institution and at such subsequent times as the superintendent directs, and all unauthorized articles shall be taken from him.

**22. Children of female inmates**

Subject to conditions that may be imposed by the Commissioner, the child of a female inmate may be admitted into the borstal institution with its mother and may be supplied with necessaries at public expense:

Provided that such child shall not be permitted to remain in the institution after it has attained the age of four years, or after arrangements for its proper care outside the institution have been made, whichever is the earlier.

**23. Manner of search**

(1) An inmate shall be searched in as seemly a manner as is consistent with the necessity for discovering concealed articles.

(2) An inmate shall be searched only by officers of the same sex as himself.

**24. Inmate's property**

(1) Subject to subrule (2) of this rule, all money, clothing or other effects belonging to an inmate which he is not allowed to retain shall be placed in the custody of the superintendent, who shall keep an inventory thereof, which shall be signed by the inmate.

(2) All articles of a perishable nature, and all articles infected with vermin or otherwise likely to spread disease in a borstal institution, which are in the possession of an inmate on admission into a borstal institution shall be destroyed.

(3) In any case where the clothes of an inmate are so old, worn out or dirty as to be useless, the superintendent shall order them to be destroyed, and, in such case, on the release of the inmate the superintendent shall give the inmate clothing of a suitable kind.

(4) Articles which in the opinion of the superintendent are too bulky for storage shall not be accepted into the borstal institution.

(5) On the discharge of an inmate, all articles of clothing and property shall be returned to him unless they have been destroyed under this rule.

(6) If any inmate is discharged from a borstal institution and fails to claim his property within six months from his discharge, or if any inmate dies in the borstal institution and his personal representative or relatives do not claim his property within six months of his death, the superintendent may, if in his opinion such property is of no substantial value, destroy it, or if he considers it possible to sell it he shall sell it and devote the proceeds to the welfare of the inmates in the borstal institution generally.

**25. Recording of particulars**

(1) The name, race, tribe, age, weight and particular marks, and such other measurements and particulars as may be required, in regard to an inmate shall upon his admission be recorded in such manner as the Commissioner directs.

(2) At regular intervals of not less than once a month thereafter, his weight shall be recorded in such manner as may be directed by the Commissioner.

**26. Baths**

Every inmate shall, unless exempted by the superintendent or the medical officer, take a bath or shower on admission and thereafter whenever ordered by the superintendent.

[Subsidiary]

**27. Medical examination on admission**

Every inmate shall, on the day of his admission or as soon as possible after his admission, be separately examined by the medical officer, who shall record the state of health of the inmate and such other particulars as may be directed:

Provided that when an inmate is received too late to be examined on the same day he shall be examined as soon as possible on the next day, and in any case within twenty-four hours of his admission.

**28. Information for inmates to be provided in rooms or dormitories**

Every inmate on admission to an institution shall be provided in his room or dormitory with sufficient information as to the rules concerning the disciplinary requirements of the borstal institution, to earnings and privileges and to the proper methods of submitting petitions to the President and of making complaints as to food, clothing, bedding and other necessities.

**29. Superintendent to ensure that information is understood**

(1) The superintendent shall, personally or through another officer, ensure that as soon as possible after admission into a borstal institution, and in any case within twenty-four hours, every inmate who can read has read the information so provided.

(2) Where an inmate cannot read or has difficulty in understanding the information so provided, it shall be so explained to him that he may understand his rights and obligations.

**30. Privacy during transfer**

An inmate shall not be exposed to public view more than is necessary while being moved to or from a borstal institution.

## PART V – TREATMENT OF INMATES

**31. Use of force**

(1) An officer shall not punish any inmate unless authorized to do so under the Act or these Rules.

(2) No officer shall deliberately act in a manner calculated to provoke an inmate.

(3) If an officer strikes or uses force against an inmate, he shall have the inmate as soon as possible examined by the medical officer, and shall immediately report the incident to the superintendent.

**32. Clothing**

(1) Every inmate shall be supplied with and shall wear such clothing as may be directed by the superintendent.

(2) Additional or alternative clothing may be supplied to an inmate on the recommendation of the medical officer, or by order of the superintendent.

**33. Bedding**

(1) Every inmate shall be supplied with bedding adequate for warmth and health.

(2) Additional or alternative bedding may be supplied to an inmate on the recommendation of the medical officer.

**34. Cleanliness of clothe and bedding**

(1) The clothes of an inmate shall be changed and washed at least weekly, and bedclothes shall be washed and aired as often as the superintendent directs.

[Subsidiary]

(2) The borstal institution clothing and bedding left by an inmate on discharge shall be thoroughly washed, dried and disinfected before being returned to store or reissued.

**35. Food**

(1) Every inmate shall be entitled to a sufficient quantity of plain, wholesome food, in accordance with the borstal inmates diet set out in the First Schedule.

(2) A copy of the diet scale shall be displayed in a conspicuous place in the borstal institution.

(3) The diet of an inmate who wastes food may be reduced by the superintendent after obtaining the written advice of the medical officer.

[L.N. 539/1997, s. 2.]

**36. Extra food**

No inmate shall receive or have in his possession any food other than the allowance authorized by the diet scales, except—

- (a) with the authority of the superintendent; or
- (b) with the authority of the medical officer, if a variation diet is ordered on medical grounds.

**37. Complaints about food**

An inmate who has any complaint to make regarding food supplied to him shall make it to the superintendent or principal borstal officer immediately after the food is served.

**38. Personal hygiene**

Every inmate shall obey such directions as may be given to him by the superintendent about washing, bathing, shaving and haircutting.

**39. Inmates' hair**

The hair of female inmates shall not be cut on admission or afterwards unless the medical officer considers it to be necessary for health and cleanliness or the inmate expresses a desire to have her hair cut.

**40. Exercise**

An inmate shall take regular physical exercise in accordance with instructions issued by the superintendent, unless he is exempted by the medical officer for reasons of health.

**41. Visits and letters**

(1) Communications between inmates and other persons shall be allowed only in accordance with this rule, and the superintendent may restrict such communications still further if he thinks it necessary for the maintenance of discipline and order in the borstal institution and the welfare of the inmates.

(2) Save as provided in subrule (3), visits and letters shall be governed by the following rules—

- (a) on admission an inmate shall be entitled to write and receive one letter;
- (b) an inmate shall be entitled to write one letter every week to persons approved by the superintendent and to receive letters as often as the superintendent considers desirable;
- (c) an inmate shall be entitled to receive one visit of thirty minutes duration every month from three persons on such conditions relating to visits as may be imposed by the superintendent.

**[Subsidiary]**

(3) The superintendent may allow an inmate to write a special letter and to receive a reply or to receive a special visit at his discretion.

(4) The superintendent shall at any time communicate to an inmate, or to his relatives or friends, any matter which he thinks likely to be of importance to such inmate.

(5) The degree of supervision to be exercised during visits to inmates shall be within the discretion of the superintendent.

**42. Postponement of privileges of letter and visits**

(1) The privilege of writing and receiving letters and receiving visits may, at the discretion of the superintendent, be postponed at any time in case of misconduct, but shall not be subject to forfeiture.

(2) When an inmate who becomes entitled to a letter or visit is at the time undergoing punishment, the superintendent shall defer the privilege to a suitable time.

**43. Visits to sick inmates**

If an inmate dangerously ill desires to be visited by a near relative or friend, the superintendent may give an order in writing for the admission of that relative or friend.

**44. Inmate may see an advocate**

(1) Reasonable facilities shall be allowed for the advocate of an inmate to see him on any legal matter in the sight of but not in the hearing of an officer of the institution.

(2) For the purposes of this rule, “**advocate of an inmate**” means either the inmate’s advocate himself or the advocate’s clerk.

**45. Letters to be read**

Every letter to or from an inmate shall be read by the superintendent, or by an officer deputed by him for the purpose, and it shall be within the discretion of the superintendent to stop any letter, on the grounds that he considers its contents are objectionable or that it is of inordinate length.

**46. Visits by police officers and process servers**

(1) On the production of an order from a magistrate, from the Inspector-General, from the Regional Commissioner of Police, or from a gazetted officer as defined in the Police Act (Cap. 84), a police officer may at any reasonable time, visit an institution and interview an inmate for any of the following purposes—

- (a) identifying offenders;
- (b) taking statements considered necessary for any investigation;
- (c) any other purpose authorized in writing by the Inspector-General of Police, Regional Commissioner of Police or gazetted officer.

(2) The superintendent shall direct whether a visit by a police officer to an inmate shall take place in or out of the hearing or sight of an officer.

**47. Education**

(1) The superintendent shall make provision for educational classes for the inmates.

(2) A library for the use of inmates shall be provided in every borstal institution, and every inmate shall be permitted to draw books from the library in accordance with the Commissioner’s directions.

(3) The superintendent may arrange for lectures, concerts and debates for inmates to take place outside the hours of work.

**48. Religious instruction**

(1) Adequate arrangements shall be made for the provision of religious instruction to inmates according to their religious beliefs.

(2) Every inmate shall on admission be furnished with such religious books of his faith as are obtainable in the borstal institution.

**49. Complaints**

(1) Any request by an inmate to see the Commissioner or a member of the Board of Visitors shall be recorded by the officer to whom it is made and conveyed without delay to the superintendent, who shall inform the Commissioner or a member of the Board of Visitors, as the case may be, of any such request.

(2) The superintendent shall at a convenient hour every day, other than Sundays and Public Holidays, hear the complaints of all inmates who have requested to see him.

## PART VI – DISCIPLINE OF INMATES

**50. Borstal institution offences**

An inmate who—

- (a) disobeys any order of the superintendent or of any other officer or any borstal institution rule;
- (b) is idle, careless or negligent at work or refuses to work;
- (c) is indecent in language, act or gesture;
- (d) escapes from the borstal institution or from lawful custody;
- (e) mutinies or incites other inmates to mutiny;
- (f) commits an assault;
- (g) leaves his room or dormitory or place of work or other appointed place without permission;
- (h) wilfully disfigures or damages any part of the borstal institution or any property which is not his own;
- (i) commits nuisance;
- (j) has in his possession any unauthorized articles, or attempts to obtain such an article;
- (k) gives to or receives from any person any unauthorized articles;
- (l) makes repeated and groundless complaints;
- (m) in any way offends against good order and discipline;
- (n) attempts to do any of the foregoing things; or
- (o) aids or abets the doing of any of the foregoing things,

shall be guilty of a borstal institution offence.

**51. Inquiry into offences**

(1) When an inmate has been reported for a borstal institution offence, the superintendent may order him to be kept apart from other inmates pending adjudication.

(2) Before a report is dealt with, the inmate shall be informed of the offence for which he has been reported and shall be given an opportunity of hearing the facts alleged against him and of being heard in his defence.

(3) Every report against an inmate shall be heard without delay.

[Subsidiary]

## **52. Medical examination before confinement or restricted diet**

No inmate shall be subjected to confinement to a room or to a restricted diet, until certified as medically fit to undergo such punishment.

## **53. Corporal punishment**

(1) Corporal punishment shall be inflicted in the presence of the superintendent and the medical officer.

(2) Before corporal punishment is inflicted the medical officer shall examine the inmate and satisfy himself that he is in a fit condition of health to undergo the punishment and shall make such recommendation for preventing injury to the inmate's health as he may deem necessary, and the superintendent shall carry such recommendations into effect.

(3) At any time after the infliction of punishment has commenced the medical officer may, if he deems it necessary in order to prevent injury to the inmate's health, recommend that no further punishment be inflicted, and the superintendent shall thereupon remit the remainder of the punishment.

(4) The superintendent shall enter in the corporal punishment book the order for corporal punishment, the hour at which the punishment was inflicted, the number of strokes inflicted, the recommendations of the medical officer and any order which he may have given as to remission.

(5) Corporal punishment shall be inflicted with a light cane on the buttocks.

(6) Corporal punishment shall not be inflicted by instalments.

## **54. Restricted diets**

(1) The restricted diets which may be awarded under section 33 of the Act shall be those prescribed in the First Schedule:

Provided that, where such diet is ordered for a longer period than three days, the offender shall receive one day's full diet on every fourth day.

(2) On the days when restricted diet is ordered, an inmate shall not be required to work but may perform any suitable work if he so desires.

(3) No inmate who has been on restricted diet shall be placed upon this diet for a new offence until an interval has elapsed equal to the period already spent by the inmate on restricted diet.

## **55. Restraint**

(1) No inmate shall be placed in handcuffs or other mechanical restraint as a punishment, and an inmate shall be so restrained only if it is necessary to prevent him from—

- (a) causing injury to himself or injury to another person; or
- (b) damaging property; or
- (c) creating a disturbance.

(2) No means of mechanical restraint shall be used which has not been approved by the Commissioner.

(3) No inmate shall be kept under mechanical restraint unless the medical officer has certified that such restraint will not injure his health.

(4) An order to place an inmate under mechanical restraint shall—

- (a) be made only in case of urgent necessity;



[Subsidiary]

- (b) be made by the superintendent, who shall notify the Commissioner immediately;
- (c) not be continued for longer than twenty-four hours without the permission of the medical officer, and in such cases, the Commissioner shall be notified immediately;
- (d) be notified immediately to the medical officer; and
- (e) be entered in such journals and books as the Commissioner directs.

(5) The superintendent may order any refractory or violent inmate to be temporarily confined in a special room for such period as may be necessary.

#### **56. Employment of inmates**

(1) Every inmate shall be required to engage in useful work, all of which so far as is practicable shall be performed in association with other inmates either on the necessary services of the borstal institution, or in workshops or on outdoor work; and shall be instructed, as far as possible, in useful occupations which may help him to earn his livelihood on discharge.

(2) No inmate shall be set to any work unless he has been certified as fit for that type of work by the medical officer.

(3) Every inmate who has not been exempted by the medical officer shall be required to work at least forty-two hours a week and shall in addition to work attend educational classes as required.

(4) In each borstal institution there shall be a scheme approved by the Minister under which inmates may receive payment for work done.

(5) Inmates participating in the earnings scheme shall be classified in the following grades—

Grade A—inmates who in the opinion of the Commissioner are of exemplary conduct and are skilled in their trade, and inmates who are placed in a position of trust and responsibility and are promoted by the Commissioner to be prefects;

Grade B—inmates who in the opinion of the superintendent are of good conduct and are semi-skilled in their trade;

Grade C—inmates who are eligible to participate in the earnings scheme but who are not in grade A or grade B.

(6) Promotion to Grade A shall be made by the Commissioner, and promotion to Grade B by the superintendent.

#### **57. Work of female inmates**

Female inmates shall be employed in association with female inmates and on work suitable for them.

#### **58. Holidays**

(1) Except where the Commissioner otherwise directs, inmates shall not be required to do any work, other than keeping the borstal institution clean and preparing food, on Sundays and public holidays.

(2) The superintendent may, in his discretion, make special arrangements for the observation by any inmate of his religious and national festivals.

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## PART VII – ABSENCE FROM BORSTAL INSTITUTION

**59. Leave of absence**

Where the Commissioner allows an inmate to be absent from the borstal institution under section 25 of the Act, he shall issue to the inmate a leave of absence in Form 1 in the Second Schedule to these Rules.

**60. Form of discharge on licence**

(1) An order for discharge on licence shall be in Form 2 in the Second Schedule to these Rules.

(2) When an inmate is discharged on licence under subrule (1) of this rule, the After-Care Committee shall be given such information and assistance as may be necessary by the superintendent to ensure a proper and regular supervision of the inmate.

**61. Revocation of licence**

(1) An inmate whose licence is revoked may, on re-admission to a borstal institution, be detained in the penal grade for such length of time as the superintendent deems necessary, having regard to all the circumstances of the case.

(2) Revocation of licence shall be in Form 3 in the Second Schedule.

## PART VIII – ADMINISTRATION

**62. General duty of officers**

(1) It shall be the duty of an officer of a borstal institution to carry out his duties and responsibilities in accordance with the Act, these Rules and any standing orders, administrative directions or general or special instructions issued by the Commissioner.

(2) Any breach of or non-compliance by an officer of the borstal institution with any of the provisions of the Act, these Rules or any standing orders, administrative directions or general or special instructions issued by the Commissioner shall be a disciplinary offence.

(3) The conditions of service of the officers of the borstal institution shall be subject to Part XI of the Prison Rules, 1963 (L.N. 60/1963).

(4) Nothing in this or any other rule shall be so construed as to exempt any officer of a borstal institution from being prosecuted under the Act or any other written law in respect of any act or omission that is an offence under the Act or any other written law:

Provided that an officer shall not be punished twice for the same offence or disciplinary offence.

**63. Responsibilities of superintendent**

(1) The superintendent shall be responsible for the maintenance of discipline in the borstal institution.

(2) In carrying out his duties under this rule, the superintendent shall be responsible for all property in the borstal institution and shall—

- (a) keep or cause to be kept the following books and records—
  - (i) an inventory of the furniture and tools in the borstal institution;
  - (ii) a diary, in which all acts, events or occurrences of importance within the borstal institution shall be recorded;
  - (iii) a record of all inmates committed to the borstal institution, showing the date and period of commitment of inmates, the names and addresses of their parents (if known) and their general appearance, race, language, nationality, apparent age, health, height and weight;

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- (iv) a record of the conduct and health of the inmates;
- (v) a visitor's book for the entry of observations by visitors;
- (vi) an account of all materials purchased for use in the workshops of the borstal institution and the disposal thereof;
- (vii) a record of all articles manufactured in the borstal institution of all sales of such articles, showing cost of materials, transport and other incidental expenses; and
- (viii) an inmate's property book in the form approved by the Commissioner.

(3) In the absence of the superintendent the Commissioner may appoint any officer to perform all or any of the duties required to be performed by the superintendent.

(4) The superintendent and the principal borstal officer shall not be absent from the borstal institution at the same time.

(5) The principal borstal officer, prison officers on the staff of the borstal institution and other members of the staff shall be under the order of the superintendent and shall not be absent from the borstal institution without the leave of the superintendent.

**64. Special duties**

(1) The superintendent shall—

- (a) exercise a close and constant personal supervision of the whole borstal institution;
- (b) visit and inspect every part of the borstal institution once a day where inmates are employed or confined and give special attention to every inmate who for any reason is confined to his room or is a patient in the borstal institution's infirmary;
- (c) visit every part of the borstal institution at night at an uncertain hour at least twice in every fortnight and satisfy himself as to the state of the borstal institution; and
- (d) interview each inmate immediately after admission to the borstal institution and before his discharge.

**65. Duties of superintendent as to health**

(1) The superintendent shall—

- (a) ensure so far as is practicable that the medical officer's instructions and recommendations in regard to any inmate are carried out;
- (b) upon the dangerous illness of any inmate, give immediate notice thereof to the most easily accessible known relative of the inmate;
- (c) upon the death of an inmate, give immediate notice thereof to the nearest magistrate empowered to hold an inquest, and to the relatives of the deceased, and report the death to the Commissioner;
- (d) without delay, report to the Commissioner any case in which the medical officer is of the opinion that the mental state of any inmate is becoming impaired or enfeebled by continued discipline or treatment, or that the life of any inmate will be endangered by further detention, or that any sick inmate will not survive his period of detention or is totally and permanently unfit for the discipline of the borstal institution;
- (e) without any delay, report to the medical officer and to the Commissioner any case of mental disorder or apparent mental disorder; and

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- (f) pay special attention to the ventilation, drainage and sanitary condition of the borstal institution, and take such measures as may be necessary for the proper maintenance of the borstal institution.

**66. Visitors to institution**

(1) The Commissioner and the superintendent may, in the exercise of their discretion, allow any person to visit the borstal institution.

(2) No person visiting a borstal institution shall, without the permission of the superintendent, make any sketch, or take any photograph, and this permission shall not be granted unless an undertaking is given that the sketch or photograph will not be published without the authority of the Commissioner.

(3) The superintendent may remove any visitor from the borstal institution whose conduct is improper.

**67. Fire precautions**

(1) The superintendent shall take care that proper precautions against fire are adopted, and that the appliances for the extinction of fire are at all times kept in good order and ready for use.

(2) The superintendent shall take care that instructions are given as to the steps to be taken in case of fire and that officers concerned are acquainted with their duties in such an event.

**68. Principal borstal officer responsible for administering each house**

Where a borstal institution is divided into houses, a principal borstal officer shall be responsible for the administration of each house, subject to the general directions of the superintendent.

**69. Officers attached to each house**

One or more prison officers on the staff of the borstal institution may be attached to each house, and shall be subject to the directions of the principal borstal officer in charge of the house.

**70. General duties**

Principal borstal officers and prison officers on the staff of the borstal institution shall devote themselves to the mental, physical and moral development of each inmate under their charge.

**71. Officers to refrain from certain acts**

No officer of a borstal institution shall—

- (a) use force unnecessarily in dealing with inmates, nor where the application of force is necessary, otherwise than in a reasonable manner;
- (b) discuss his duties or any matters of discipline or of institutional arrangements within the hearing of an inmate;
- (c) carry out any pecuniary or business transactions with any inmate or on his behalf with any person;
- (d) except with the authority of the superintendent, bring in or carry out any prohibited article to or for any inmate;
- (e) have any interest, directly or otherwise, in any contract with the borstal institution or with any contractor or other interested party on any work connected with the borstal institution;

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- (f) receive any fee, gratuity or other consideration for admitting any visitors to enter a borstal institution or to visit any inmates;
- (g) make any unauthorized communication to a representative of the press or any other persons about matters which have become known to him in the course of his official duties;
- (h) except with the authority of the Commissioner, publish any matter or make any public pronouncement about the borstal institution, the inmates or the administration of the institution.

**72. Officers' quarters**

(1) The officers of the borstal institution shall occupy the quarters the Commissioner assigns to them, and shall vacate them when required to do so.

(2) The principal borstal officer and prison officers on the staff of a borstal institution living within an institution shall not permit any person who is not a regular member of his household to remain for the night in his quarters without the permission of the superintendent.

**73. Officers to report cases of illness**

The principal borstal officer and prison officers on the staff of the borstal institution shall direct the attention of the superintendent to any inmate who may appear to be in poor health, although not complaining of illness, or whose state of mind may appear deserving of special notice and care, so that the opinion and instructions of the medical officer may be obtained.

FIRST SCHEDULE

BORSTAL INMATES DIET (MONDAY TO SUNDAY)

[L.N. 133/1969, Corr. No. 35/1969, L.N. 539/1997, Corr. No. 21/1998.]

	<i>On each 4 days a week</i>	<i>On each 3 days a week</i>
	<i>Grams</i>	<i>Grams</i>
<i>Carbohydrates/Vegetables</i>		
<i>Proteins</i>		
maize or wheat meal .....	570	515
Beans .....	225	125
Soya flour .....	20	—
Green grams .....	—	230
Bread .....	125	—
<i>Animal Proteins</i>		
Fresh meat .....	—	200
Milk .....	500 ml	500 ml
Sugar .....	40	40
Salt .....	15	15
<i>Fats</i>		
Fortified vegetable oil or ghee .....	16	16
Margarine .....	45	—

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FIRST SCHEDULE—continued

	On each 4	On each 3
	days a week	days a week
	Grams	Grams
<i>Fresh Vegetables and Fruits</i>		
Green leafy vegetables and carrots.....	120	—
Carrots .....	—	90
Irish potatoes or sweet potatoes .....	—	115
Spring onions .....	30	30
Capsicum .....	30	30
Tomatoes .....	—	30
Lemon .....	30	30
Fruits, bananas, pawpaw, orange, mangoes, avocados .....	—	1

Borstal Inmate under Escort Diet

	Grams
Biscuits .....	125
Tinned beans .....	120

SECOND SCHEDULE

FORMS

Form 1

(r. 59)

LEAVE OF ABSENCE

.....  
 .....  
 Date .....

To .....

You are hereby given leave of absence for the purpose of .....  
 ..... on the following conditions:

1. You will go to such place as the Superintendent directs.
2. You will not change your address without permission.
3. You will keep away from persons of bad character.
4. If the Superintendent has told you to report to ....., you will do so.

If ..... gives you any instructions, you will carry them out.

In any case, you should see him/her if you want advice or help.

His/Her name and address is—

.....  
 .....

5. You will report back at the Borstal Institution by .....  
 on ..... and if you fail to return at the proper time you will  
 render yourself liable to be arrested. No extension of this leave of absence can be granted.

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SECOND SCHEDULE, Form 1—continued

6. You will keep this form on you all the time that you are on leave of absence, and you will produce it if required to do so.

.....  
Superintendent,  
on the authority of the Commissioner

I have read and understood the above conditions of my leave of absence.

.....  
Inmate

Form 2

(r. 60)

ORDER FOR DISCHARGE ON LICENCE

..... day of ....., 20 .....

IN EXERCISE of the powers conferred by rule 60 of the Borstal Institution Rules, 1963 the Superintendent hereby permits ..... who, at the ..... held at ..... on the ..... day of ....., 20 ..... for the ..... of ....., was found guilty of ..... and was ordered to detention in a Borstal Institution and who is now detained in the Borstal Institution at ..... to be discharged from the said Borstal Institution from the date hereof on condition that the licensee is placed under the care, supervision and authority of ..... until the expiration of the sentence on the ..... day of ..... 20..... and during the further period of ..... for which the licensee is liable, by section 29 of the Borstal Institutions Act to remain under supervision, namely until ..... day of ..... 20 ....., unless the Commissioner sooner revokes or alters this Licence.

This Licence is granted subject to the conditions contained herein, upon breach of any of which the Licence shall be liable to be revoked or forfeited.

.....  
Superintendent,

..... Name of Borstal Institution

CONDITIONS

- 1. The licensee shall proceed to such place as is directed by ..... and shall not, without the consent of the person under whose charge he/she has been placed, move from that place or such other place as may be named by the person.
- 2. The licensee shall obey such instructions as may be given with regard to punctual and regular attendance at employment or otherwise, and shall report periodically, either personally or by letter, if required to do so, and shall make no change of address without permission.
- 3. The licensee shall abstain from any violation of the law, and shall not associate with persons of bad character, and shall lead a sober, steady and industrious life to the satisfaction of .....
- 4. The licensee shall not visit the Borstal Institution or write to any inmate in it without first obtaining the permission of the Superintendent.

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SECOND SCHEDULE, Form 2—continued

I hereby acknowledge that I am aware of, and understand, the above named conditions which have been explained to me.

Inmate

SUPERINTENDENT

This inmate was discharged on ..... , 20 .....

Form 3

(r. 61)

REVOCATION OF LICENCE FOR DISCHARGE

WHEREAS, by Licence bearing date the ..... day of ..... 20....., you ..... being a person under sentence of detention in the Borstal Institution were duly licensed to the care of ..... for the period of ..... months ..... days from .....

The Commissioner of Prisons does hereby revoke the said licence from the date hereof, and requires you the said ..... forthwith to return to the Borstal Institution on ..... at.....

Given under my hand this

Date ..... , 20 .....

Commissioner of Prisons

NOTE—A person failing to return to a Borstal Institution on revocation of Licence may be apprehended without warrant and be taken to the Borstal Institution.