

LEGISLATIVE COUNCIL BRIEF

Criminal Procedure Ordinance (Chapter 221)

Criminal Procedure (Amendment) Bill 2004

INTRODUCTION

At the meeting of the Executive Council on 2 March 2004, the Council ADVISED and the Chief Executive ORDERED that the Criminal Procedure (Amendment) Bill 2004 (the Amendment Bill), at **Annex A**, should be introduced into the Legislative Council.

JUSTIFICATIONS

Background

2. Following certain amendments to the Criminal Procedure Ordinance (CPO) on 30 June 1997, when imposing a discretionary life sentence on a person for an offence, the judge must, under section 67B(1) of the CPO, specify as part of the sentence a minimum term that the person must serve. As for the prisoners who on 30 June 1997 were already detained at Executive discretion, or serving mandatory life sentences (for murder committed under the age of 18) or discretionary life sentences, they were given their minimum terms in 1998 and 1999 by the CE acting in accordance with section 67C or 67D of the CPO (copies at **Annexes B and C**), and taking into account the Chief Justice's (CJ) recommendations on what the minimum terms should be. In fact, all the recommendations made by the CJ under section 67C or 67D were accepted by the CE.

3. In a judgment of September 2002 (Yau Kwong Man and another v. Secretary for Security [2002] 3HKC457), the Court of First Instance (CFI) declared section 67C(2), (4) and (6) of the CPO as inconsistent with Article 80 of the Basic Law (BL80), as it vested in the Chief Executive (CE) the power to determine the minimum terms of imprisonment to be served by a group of prisoners detained at Executive discretion or serving discretionary life sentences. The CFI ruled that this power should be exercised by the

Judiciary instead. As a result, the prisoners concerned and, by extension, certain other prisoners serving mandatory life sentences (for murder committed under the age of 18) with minimum terms determined in accordance with section 67D (2), (4) and (6) of the CPO are left with no lawfully determined minimum terms. ^(Note 1)

4. The expression “minimum term” derives from the concept that an indeterminate sentence consists of two parts – a minimum term to be served to satisfy the requirements of retribution and deterrence, and a subsequent “preventive” or “protective” period during which the question of whether it would be safe to release the prisoner becomes the major consideration.

5. In practice, the minimum terms affect the prisoners mainly in two aspects. Firstly, pursuant to sections 12(2) and 15(3) of the Long-term Prison Sentences Review Ordinance (Cap. 524), the Long-term Prison Sentences Review Board is not authorized to order early conditional release of a prisoner before any minimum term applicable to the prisoner has been served. Secondly, the minimum term of a prisoner is one of the matters, amongst others, that the Board may take into account when reviewing the sentence of that prisoner.

Mechanism for Determining Minimum Term

6. As indicated above, 25 prisoners, comprising the 14 prisoners under (a) and (b) of Note 1 and the 11 prisoners under (c) of Note 1, are left with no lawfully determined minimum terms. To put this matter right, we propose that the power to determine the relevant minimum terms should be vested in a judge of the CFI. The proceedings would be held in open court and determined after hearing the parties in accordance with the existing provisions of the CPO, in line with the present practice in respect of discretionary life sentences under section 67B(1) of the CPO. Similarly, under the existing provisions of the CPO, there will also be a right of appeal to the Court of Appeal with leave of the Court of Appeal which should also be appealable to the Court of Final Appeal (CFA) with leave on the criteria laid down in the Court of Final Appeal Ordinance (Cap. 484).

7. The amendments should make it clear that the previous recommendation or determination in respect of minimum terms should not be taken into account by the CFI judge when deciding on the new minimum terms. Amendment will also be made to enable the prisoners to apply for

^(Note 1) A total of 29 prisoners were given their minimum terms by the CE in accordance with sections 67C and 67D of the CPO. As at end February 2004, four of the 29 prisoners have been given determinate sentences by the CE on recommendation of the Long-term Prison Sentences Review Board. They are no longer prisoners serving indeterminate sentences and therefore will not be affected by the Amendment Bill. The remaining **25 prisoners** comprise (a) 12 prisoners detained at Executive discretion for having committed murder under the age of 18, (b) two prisoners serving mandatory life sentences for having committed murder under the age of 18, and (c) 11 prisoners serving discretionary life sentences.

legal aid. We consider, on compassionate and fairness grounds, a minimum term determined by the CFI judge which is longer than the minimum term recommended by the CJ would raise concern, especially for those prisoners who have already completed or will complete such minimum terms shortly. In view of this, we propose that any minimum term determined by the CFI judge independently which happens to be longer than the minimum term recommended by the CJ shall be treated as equal to the recommended minimum term.

Discretion to Give Determinate Sentence to Young Murderers

8. In addition, we propose that for each of the 14 “young murderers” under (a) and (b) of Note 1, the CFI judge should, subject to the consent of the concerned prisoner, be given the discretion to give a determinate sentence as an alternative to determining a minimum term. This additional arrangement is premised on section 2 of the Offences against the Person Ordinance (Cap. 212) (copy at **Annex D**), which came into effect on 30 June 1997. Under that section, the court has the discretion to sentence “young murderers” to a discretionary life sentence or a determinate sentence (as noted in paragraph 2 above, if the judge decides to impose a discretionary life sentence, he must at the same time specify a minimum term in accordance with section 67B(1) of the CPO). This discretion was not available to the courts when they decided on the sentences in respect of the 14 cases in question. The arrangement would, therefore, put the 14 prisoners on a par with their counterparts convicted of murder committed after 30 June 1997, in terms of the penalty to which they would be liable for committing murder under the age of 18. From the legal point of view, providing this discretion to the CFI judge by legislation will not pose any unacceptable implications. Further, this arrangement will have one-off and limited scope of application.

9. This arrangement would not apply to the 11 prisoners who are also affected by the CFI judgment in September 2002 but are serving discretionary life sentences (prisoners under (c) of Note 1). Those prisoners will still benefit from the Amendment Bill and have minimum terms given to them by the CFI judge, but the CFI judge would not have the discretion to substitute a determinate sentence for their discretionary life sentence. In these cases, the court has already exercised its discretion as to whether to hand down the maximum penalty of life sentence, or a lesser determinate sentence.

THE BILL

10. Clause 2 of the Amendment Bill introduces new sections 67C to 67G to provide for a revised scheme which–

- (a) applies to any prisoner who is covered by the definition of “prescribed prisoner” in new section 67G(1), unless the prisoner ceases to serve the relevant sentence (see new section 67E);

- (b) requires the Secretary for Justice to apply to the CFI for a determination by a CFI judge in respect of the prisoner (see new section 67C(1));
- (c) requires the CFI judge to determine the minimum term to be served by the prisoner, although in the event that the prisoner has been convicted of murder committed under the age of 18, the CFI judge, with the consent of the prisoner, has the discretion instead to make a determination to quash the relevant sentence and to substitute for the relevant sentence a determinate sentence (see new section 67C(2) to (4));
- (d) provides that the CFI judge, in making any such determination, may not take into account the previous recommendation or the previous determination, although any minimum term fixed by the CFI judge that is longer than that fixed under the previous recommendation is to be treated as equal to the latter (see new section 67C(5) and (6));
- (e) requires the CFI judge, when making a determination as to the minimum term to be served by the prisoner, to specify details of any special considerations or circumstances relating to the prisoner or the relevant offence in a report for purposes of future review of the relevant sentence (see new section 67C(7));
- (f) provides for procedural matters, including those related to the application by the Secretary for Justice in respect of the prisoner (see new section 67D); and
- (g) provides for the effect of a determination made by the CFI judge in respect of the prisoner on any previous conditional release orders made under section 15(1)(b) of the Long-term Prison Sentences Review Ordinance (Cap. 524) (see new section 67F).

11. Clauses 3 and 4 introduce consequential amendments to the Legal Aid in Criminal Cases Rules (Cap. 221 sub. leg. D) to enable the prisoner to apply for legal aid in accordance with the rules and to update related references, and clauses 5 to 10 introduce consequential amendments to the Post-Release Supervision of Prisoners Ordinance (Cap. 475) and the Long-term Prison Sentences Review Ordinance (Cap. 524) also to update related references.

12. The existing provisions being amended are at **Annex E**.

LEGISLATIVE TIMETABLE

13. The legislative timetable is as follows -

Publication in the Gazette	5 March 2004
First Reading and commencement of Second Reading debate	17 March 2004
Resumption of Second Reading debate, committee stage and Third Reading	To be notified

IMPLICATIONS OF THE PROPOSAL

14. The proposal is in conformity with the Basic Law, including the provisions concerning the exercise of judicial power and human rights. It has no direct economic, productivity, environmental or sustainability implications, but given the need to hear the cases of the prisoners in court and to provide legal aid where appropriate, there may be manpower and other resource implications for the Judiciary and the Legal Aid Department. Any additional funding or manpower requirements will be absorbed within the relevant bureau/departments' existing resources. No civil service post will be created for the purpose.

15. The Amendment Bill does not affect the current binding effect of the CPO. Since the purpose of the amendment is to provide a statutory basis for the Judiciary of the HKSAR to determine the minimum terms or determinate sentences of a finite group of prisoners, it has no application to the State or organs of the State.

PUBLIC CONSULTATION

16. The Legislative Council Panel on Security was briefed on the proposal and related matters on 13 November 2003 and 12 February 2004.

PUBLICITY

17. A press release will be issued on 5 March 2004. A spokesman will be available to answer media enquiries.

ENQUIRIES

18. Enquiries concerning the Bill may be directed to Mr Charles Wong, Principal Assistant Secretary for Security at 2810 3435.

Security Bureau
5 March 2004

CRIMINAL PROCEDURE (AMENDMENT) BILL 2004

CONTENTS

Clause		Page
1.	Short title and commencement	1
2.	Sections substituted	
	67C. Determinations in respect of certain existing prisoners	2
	67D. Further provisions relating to applications under section 67C(1) and related procedural matters	3
	67E. Sections 67C and 67D no longer to apply if prescribed prisoners cease to serve relevant sentence	5
	67F. Effect of section 67C determinations on previous orders under section 15(1)(b) of Long-term Prison Sentences Review Ordinance	5
	67G. Interpretation	7

Consequential Amendments

Legal Aid in Criminal Cases Rules

3.	Interpretation	10
4.	Legal aid for accused persons and appellants	12

Post-Release Supervision of Prisoners Ordinance

5.	Application	12
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Long-term Prison Sentences Review Ordinance

6.	Interpretation	13
7.	Duty of Commissioner to refer cases of prisoners to Board for review	13
8.	Board may request reports	13
9.	Board may make recommendations relating to prisoners and orders for their release	13
10.	Recall of prisoner to serve remainder of sentence on expiry of conditional release order	14

A BILL

To

Amend the Criminal Procedure Ordinance to introduce a revised scheme applicable to prisoners who have been serving certain sentences (being discretionary life sentences, mandatory life sentences served in respect of the conviction of murder committed under 18 years of age, or detention at Executive discretion, within the meaning of the Long-term Prison Sentences Review Ordinance) since the commencement of, or any time before the commencement of, the provisions which previously provided for the determination of the minimum terms to be served by such prisoners, and to provide for related matters.

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Criminal Procedure (Amendment) Ordinance 2004.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Security by notice published in the Gazette.

2. Sections substituted

Sections 67C to 67E of the Criminal Procedure Ordinance (Cap. 221) are repealed and the following substituted -

**"67C. Determinations in respect of
certain existing prisoners**

(1) Within 6 months after the commencement of this section, the Secretary for Justice must, in respect of each prescribed prisoner, apply to the court for a determination by a judge under this section.

(2) Subject to subsection (3), the judge hearing an application under subsection (1) must determine the minimum term that the prescribed prisoner must serve for the relevant offence.

(3) Subject to subsection (4), where the prescribed prisoner is serving the relevant sentence in respect of the conviction of murder committed when the prescribed prisoner was under 18 years of age, the judge has the discretion as to whether

-

(a) to make a determination under subsection (2);

or

(b) to determine instead that the relevant sentence be quashed, and be substituted by a sentence of imprisonment for a fixed term of such duration as the judge considers appropriate.

(4) In any case where the prescribed prisoner is within the description of subsection (3), the judge does not have the discretion under that subsection without the consent of the prescribed prisoner to the application of that subsection to the prescribed prisoner.

(5) Notwithstanding subsections (2) and (3), in making a determination under this section, the judge may not take into account the previous recommendation or the previous determination.

(6) Notwithstanding subsections (2) and (5), if the term determined under subsection (2) (whether or not also by application of subsection (3)(a)) as the minimum term that the prescribed prisoner must serve for the relevant offence is longer than the term specified as the minimum term to be served by the prescribed prisoner for the relevant offence under the previous recommendation, the term so determined is, for all purposes, to be treated as equal to the term so specified.

(7) If, when making a determination under subsection (2) (whether or not also by application of subsection (3)(a)), the judge is of the opinion that there are any special considerations or circumstances relating to the prescribed prisoner or the relevant offence which should be taken into account in any future review of the relevant sentence, the judge must make a report in writing to the Chief Executive specifying details of those special considerations or circumstances.

**67D. Further provisions relating to
applications under section
67C(1) and related
procedural matters**

(1) Notwithstanding section 67C(1), on an application by the Secretary for Justice to the court, a judge may extend the

period within which the Secretary for Justice must make any particular application under that section for such further period as the judge considers appropriate.

(2) An application by the Secretary for Justice under section 67C(1) or subsection (1) is to be -

- (a) in writing; and
- (b) signed by the Secretary for Justice or any person holding one of the offices in the Department of Justice mentioned in Schedule 1 to the Legal Officers Ordinance (Cap. 87).

(3) For the purposes of an application in respect of a prescribed prisoner under section 67C(1), the Registrar must, as soon as practicable after a request in writing has been made by the Secretary for Justice to him in that behalf, deliver to the Secretary for Justice -

- (a) a copy of the record, if available, of the whole of the proceedings concerning the prescribed prisoner which were before the court which passed the relevant sentence, other than the evidence given in any trial that took place in those proceedings; and
- (b) a copy of any report concerning the prescribed prisoner which was before the court which passed the relevant sentence.

(4) Without prejudice to section 123, all proceedings conducted before a judge for the purposes of an application under section 67C(1) (other than any proceedings conducted before a judge for the purposes of an application under subsection (1)) must be held in open court.

**67E. Sections 67C and 67D no longer to apply
if prescribed prisoners cease to serve
relevant sentence**

Where a prescribed prisoner ceases to serve the relevant sentence at any time after the commencement of section 67C but before any determination is made in respect of the prescribed prisoner under that section -

- (a) sections 67C and 67D then cease to apply to the prescribed prisoner; and
- (b) without limiting the generality of paragraph (a), any proceedings instituted under section 67C in relation to the prescribed prisoner and any appeal or other proceedings arising from or preliminary or incidental to such proceedings are, to the extent that they have not been completed, then to be treated as having been discontinued.

**67F. Effect of section 67C determinations
on previous orders under section
15(1)(b) of Long-term Prison
Sentences Review Ordinance**

(1) Where, before any determination is made under section 67C(2) (whether or not also by application of section 67C(3)(a)) in respect of a prescribed prisoner, any order has been made under section 15(1)(b) of the Long-term Prison Sentences Review Ordinance (Cap. 524) in respect of the prescribed prisoner (whether or not any such order has been renewed under section 15(4) of that Ordinance) -

- (a) the determination does not affect the validity or effect of the order or the order as renewed from time to time under section 15(4) of that Ordinance; and
- (b) sections 12(2) and 15(3) of that Ordinance are, for all purposes, not to be regarded as having application to and in relation to the order or the order as renewed from time to time under section 15(4) of that Ordinance.

(2) Where, before any determination is made under section 67C(3)(b) in respect of a prescribed prisoner, any order has been made under section 15(1)(b) of the Long-term Prison Sentences Review Ordinance (Cap. 524) in respect of the prescribed prisoner (whether or not any such order has been renewed under section 15(4) of that Ordinance), upon the making of the determination -

- (a) without prejudice to section 27 of that Ordinance, the order ceases to have effect; and

(b) for the purpose of requiring the prescribed prisoner to serve the remainder (if any) of the sentence of imprisonment by which the relevant sentence is substituted under the determination -

(i) the Commissioner of Correctional Services must recall the prescribed prisoner to prison; and

(ii) section 26 of that Ordinance applies to and in relation to the prescribed prisoner as it applies to and in relation to a prisoner referred to in subsection (1) of that section.

67G. Interpretation

(1) In sections 67B, 67C, 67D, 67E and 67F and this section -
"discretionary life sentence" (酌情性終身監禁刑罰) has the same meaning as in the Long-term Prison Sentences Review Ordinance (Cap. 524);

"Executive discretion" (行政酌情決定) has the same meaning as in the Long-term Prison Sentences Review Ordinance (Cap. 524);

"mandatory life sentence" (強制性終身監禁刑罰) has the same meaning as in the Long-term Prison Sentences Review Ordinance (Cap. 524);

"prescribed prisoner" (訂明囚犯) means any prisoner -

- (a) to whom any of the relevant provisions applied at their commencement; and
- (b) who at all times between such commencement and the commencement of section 67C has been, and at the commencement of section 67C is still -
 - (i) serving a discretionary life sentence in respect of the conviction of any offence;
 - (ii) serving a mandatory life sentence in respect of the conviction of murder committed when the prisoner was under 18 years of age; or
 - (iii) detained at Executive discretion in respect of the conviction of any offence;

"previous determination" (原先裁定), in relation to a prescribed prisoner, means the determination of the Chief Executive specifying the minimum term to be served by the prescribed prisoner for the relevant offence and notified to the prescribed prisoner by letter dated 2 April 1998, 9 April 1998, 30 April 1998, 11 June 1998 or 16 July 1999, as the case may be;

"previous recommendation" (原先建議), in relation to a prescribed prisoner, means the recommendation of the Chief Justice to the Chief Executive specifying the minimum term to be

served by the prescribed prisoner for the relevant offence and dated 15 December 1997, 28 August 1998 or 9 April 1999, as the case may be;

"relevant offence" (有關罪行), in relation to a prescribed prisoner, means -

- (a) where the prescribed prisoner is within the description of paragraph (b)(i) of the definition of "prescribed prisoner", the offence described in that paragraph;
- (b) where the prescribed prisoner is within the description of paragraph (b)(ii) of the definition of "prescribed prisoner", the offence of murder described in that paragraph; or
- (c) where the prescribed prisoner is within the description of paragraph (b)(iii) of the definition of "prescribed prisoner", the offence described in that paragraph;

"relevant provisions" (有關條文) means -

- (a) section 67C as enacted by the Long-term Prison Sentences Review Ordinance (Cap. 524); and
- (b) section 67D as enacted by the Criminal Procedure (Amendment) Ordinance 1998 (6 of 1998);

"relevant sentence" (有關刑罰), in relation to a prescribed prisoner, means -

- (a) where the prescribed prisoner is within the description of paragraph (b)(i) of the definition of "prescribed prisoner", the discretionary life sentence described in that paragraph;
- (b) where the prescribed prisoner is within the description of paragraph (b)(ii) of the definition of "prescribed prisoner", the mandatory life sentence described in that paragraph; or
- (c) where the prescribed prisoner is within the description of paragraph (b)(iii) of the definition of "prescribed prisoner", the detention at Executive discretion described in that paragraph.

(2) In sections 67C and 67D, any reference to judge is a reference to a judge of the court, a recorder of the court or a deputy judge of the court."

Consequential Amendments

Legal Aid in Criminal Cases Rules

3. Interpretation

Rule 2 of the Legal Aid in Criminal Cases Rules (Cap. 221 sub. leg. D) is amended by adding -

"(3) In these rules, in any case to which rule 4(1)(ca) applies -

- (a) the prescribed prisoner referred to in that rule shall be regarded as included in any reference to accused person or accused persons or to appellant or appellants, as the case may be; and
- (b) the provisions of these rules shall apply to such case with such modifications as the circumstances require, and, without limiting the generality of the foregoing -

- (i) rule 9(a) shall be read as if the reference to "convicted" were a reference to the subject of a determination under section 67C of the Ordinance, and the reference to "his conviction or sentence or both" were a reference to such determination under that section;

- (ii) rule 10(a) shall be read as if it referred also to the certificate of solicitor or counsel assigned to represent the prescribed prisoner in question in the proceedings instituted in relation to him under section 67C of the Ordinance as given

under rule 9(a) (as read in accordance with sub-subparagraph (i)); and

(iii) rule 21(1)(a) and (d), (2), (4)(a) and (5) shall be read as if any reference to "the trial", "a trial" or "any trial" were a reference to the proceedings instituted under section 67C of the Ordinance, and the reference to "tried together" were a reference to the subjects of such proceedings instituted under that section that are conducted together.".

4. Legal aid for accused persons and appellants

Rule 4(1) is amended by adding -

"(ca) a prescribed prisoner within the meaning of section 67C of the Ordinance may be granted legal aid under these rules for the purposes of any proceedings instituted in relation to him under that section and any appeal or other proceedings arising therefrom or preliminary or incidental thereto;".

Post-Release Supervision of Prisoners Ordinance

5. Application

Section 3(2) of the Post-Release Supervision of Prisoners Ordinance (Cap. 475) is amended by adding "by the Chief Executive" after "converted".

Long-term Prison Sentences Review Ordinance

6. Interpretation

Section 4(1) of the Long-term Prison Sentences Review Ordinance (Cap. 524) is amended, in the definition of "minimum term", by repealing ", 67C or 67D" and substituting "or 67C".

7. Duty of Commissioner to refer cases of prisoners to Board for review

Section 11(9) is amended by adding "by the Chief Executive" after "converted".

8. Board may request reports

Section 14(1)(c)(ii) is amended by adding "or 67C" after "67B".

9. Board may make recommendations relating to prisoners and orders for their release

Section 15 is amended -

- (a) in subsection (1)(b) and (c), by adding "by the Chief Executive" after "converted";
- (b) in subsection (3), by repealing ", 67C or 67D" and substituting "or 67C".

10. Recall of prisoner to serve remainder of sentence on expiry of conditional release order

Section 25(3) is amended by adding "by the Chief Executive" after "converted".

Explanatory Memorandum

The main purpose of this Bill is to amend the Criminal Procedure Ordinance (Cap. 221), in order to put in place a revised scheme applicable to prisoners who have been serving discretionary life sentences or serving mandatory life sentences (for murder committed under 18 years of age) or detained at Executive discretion since the commencement of, or any time before the commencement of, the relevant provisions which previously provided for the determination of the minimum terms to be served by such prisoners.

2. Clause 2 introduces new sections 67C to 67G to provide for a revised scheme which -

- (a) applies to any prisoner who is covered by the definition of "prescribed prisoner" in new section 67G(1), unless the prisoner ceases to serve the relevant sentence at any time after the commencement of new section 67C (see new section 67E);
- (b) requires the Secretary for Justice to apply to the Court of First Instance for a determination by a judge of the Court in respect of the prisoner (see new section 67C(1));

- (c) requires the judge to determine the minimum term to be served by the prisoner, although in the event that the prisoner has been convicted of murder which has been committed under 18 years of age, the judge, with the consent of the prisoner, has the discretion instead to make a determination to quash the relevant sentence and to substitute for the relevant sentence a determinate sentence (see new section 67C(2) to (4));
- (d) provides that the judge, in making any such determination, may not take into account the previous recommendation or the previous determination, although any minimum term fixed by the judge that is longer than that fixed under the previous recommendation is to be treated as equal to the latter (see new section 67C(5) and (6));
- (e) requires the judge, when making a determination as to the minimum term to be served by the prisoner, to specify in a written report to the Chief Executive details of any special considerations or circumstances relating to the prisoner or the relevant offence for purposes of future review of the relevant sentence (see new section 67C(7));
- (f) provides for procedural matters, including those related to the application by the Secretary for Justice in respect of the prisoner (see new section 67D); and

(g) provides for the effect of a determination made by the judge in respect of the prisoner on any previous conditional release orders made under section 15(1)(b) of the Long-term Prison Sentences Review Ordinance (Cap. 524) (see new section 67F).

3. Clauses 3 and 4 introduce consequential amendments to the Legal Aid in Criminal Cases Rules (Cap. 221 sub. leg. D) to enable the prisoner to apply for legal aid in accordance with the rules and to update related references, and clauses 5 to 10 introduce consequential amendments to the Post-Release Supervision of Prisoners Ordinance (Cap. 475) and the Long-term Prison Sentences Review Ordinance (Cap. 524) also to update related references.

雙語法例資料系統

Bilingual Laws Information System

Annex B

[English](#)[繁體](#)[簡體](#)[繁體](#)[Gif](#)[簡體](#)[Gif](#)[Previous section of enactment](#)[Next section of enactment](#)[Switch language](#)[Back to the List of Laws](#)

Section of Enactment



Chapter:	221	Title:	CRIMINAL PROCEDURE ORDINANCE	Gazette Number:	6 of 1998
Section:	67C	Heading:	Minimum terms to be determined in respect of certain existing prisoners	Version Date:	06/03/1998

Remarks:

Adaptation amendments retroactively made - see 39 of 1999 s. 3

(1) This section applies to prisoners who, at the commencement of this section-

- (a) are serving discretionary life sentences; or (Amended 6 of 1998 s. 2)
- (b) are detained at Executive discretion.

(2) Within 6 months after the commencement of this section, the Chief Justice must, after taking into account any representations made under subsection (3), submit to the Chief Executive in respect of each prisoner to whom this section applies a recommendation specifying a minimum term that the prisoner should serve in relation to the offence for which the prisoner was sentenced to imprisonment or is detained at Executive discretion and the recommendation should include any special considerations or circumstances to be taken into account in any future review. (Amended 39 of 1999 s. 3)

(3) Before making a recommendation under subsection (2), the Chief Justice must-

- (a) give the prisoner an opportunity to make written representations to the Chief Justice for the Chief Justice to take into account in making the recommendation; and
- (b) as far as it is practicable to do so, consult with the judge who presided at the trial of the relevant offence.

(4) As soon as practicable after receiving a recommendation under subsection (2), the Chief Executive must determine a minimum term that the prisoner must serve for the offence, taking into account the recommendation of the Chief Justice and any representations made under subsection (5). (Amended 39 of 1999 s.3)

(5) The Chief Executive must not make a determination under subsection (4) in respect of a prisoner without having-

- (a) provided the prisoner with a copy of the Chief Justice's recommendation in respect of the prisoner's sentence or detention; and
- (b) given the prisoner an opportunity to make written representations to the Chief Executive with respect to that recommendation. (Amended 39 of 1999 s. 3)

(6) A determination under this section is final and not subject to appeal to any court.

(7) In this section, "Executive discretion" (行政酌情決定) has the same meaning as in the Long-term Prison Sentences Review Ordinance (Cap 524).

(Added 86 of 1997 s. 44)

[Previous section of enactment](#)[Next section of enactment](#)[Switch language](#)[Back to the List of Laws](#)

雙語法例資料系統
Bilingual Laws Information System

Annex C

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[Previous section of enactment](#)[Next section of enactment](#)[Switch language](#)[Back to the List of Laws](#)

Section of Enactment



Chapter:	221	Title:	CRIMINAL PROCEDURE ORDINANCE	Gazette Number:	6 of 1998 s. 3
Section:	67D	Heading:	Minimum terms to be determined in respect of certain prisoners serving mandatory life sentences	Version Date:	06/03/1998

(1) This section applies to prisoners who, at the commencement of this section, are serving mandatory life sentences in respect of the conviction of murder committed when they were under 18 years of age.

(2) Within 6 months after the commencement of this section, the Chief Justice must, after taking into account any representations made under subsection (3), submit to the Chief Executive in respect of each prisoner to whom this section applies a recommendation specifying a minimum term that the prisoner should serve in relation to the offence for which the prisoner was sentenced to imprisonment and the recommendation should include any special considerations or circumstances to be taken into account in any future review.

(3) Before making a recommendation under subsection (2), the Chief Justice must-

- (a) give the prisoner an opportunity to make written representations to the Chief Justice for the Chief Justice to take into account in making the recommendation; and
- (b) as far as it is practicable to do so, consult with the judge who presided at the trial of the relevant offence.

(4) As soon as practicable after receiving a recommendation under subsection (2), the Chief Executive must determine a minimum term that the prisoner must serve for the offence, taking into account the recommendation of the Chief Justice and any representations made under subsection (5).

(5) The Chief Executive must not make a determination under subsection (4) in respect of a prisoner without having-

- (a) provided the prisoner with a copy of the Chief Justice's recommendation in respect of the prisoner's sentence; and
- (b) given the prisoner an opportunity to make written representations to the Chief Executive with respect to that recommendation.

(6) A determination under this section is final and not subject to appeal to any court.

(Added 6 of 1998 s. 3)

[Previous section of enactment](#)[Next section of enactment](#)[Switch language](#)[Back to the List of Laws](#)

雙語法例資料系統
Bilingual Laws Information System

Annex D

[English](#)[繁體](#)[簡體](#)[繁體](#)[Gif](#)[簡體](#)[Gif](#)[Previous section of enactment](#)[Next section of enactment](#)[Switch language](#)[Back to the List of Laws](#)**Section of Enactment**

Chapter:	212	Title:	OFFENCES AGAINST THE PERSON ORDINANCE	Gazette Number:	
Section:	2	Heading:	Murder	Version Date:	30/06/1997

HOMICIDE

Any person who is convicted of murder shall be imprisoned for life. However, if it appears to the court that a person convicted of murder was under 18 years of age at the time of the offence, the court has a discretion as to whether the person should be sentenced to imprisonment for life or to imprisonment for a shorter term.

(Amended 50 of 1991 s. 4; 24 of 1993 s. 5; 86 of 1997 s. 44)
 [cf. 1861 c. 100 s. 1 U.K.]

[Previous section of enactment](#)[Next section of enactment](#)[Switch language](#)[Back to the List of Laws](#)

Chapter:	221	CRIMINAL PROCEDURE ORDINANCE	Gazette Number	Version Date
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Section:	67C	Minimum terms to be determined in respect of certain existing prisoners	6 of 1998	06/03/1998
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Remarks:

Adaptation amendments retroactively made - see 39 of 1999 s. 3

- (1) This section applies to prisoners who, at the commencement of this section-
 - (a) are serving discretionary life sentences; or (Amended 6 of 1998 s. 2)
 - (b) are detained at Executive discretion.
- (2) Within 6 months after the commencement of this section, the Chief Justice must, after taking into account any representations made under subsection (3), submit to the Chief Executive in respect of each prisoner to whom this section applies a recommendation specifying a minimum term that the prisoner should serve in relation to the offence for which the prisoner was sentenced to imprisonment or is detained at Executive discretion and the recommendation should include any special considerations or circumstances to be taken into account in any future review. (Amended 39 of 1999 s. 3)
- (3) Before making a recommendation under subsection (2), the Chief Justice must-
 - (a) give the prisoner an opportunity to make written representations to the Chief Justice for the Chief Justice to take into account in making the recommendation; and
 - (b) as far as it is practicable to do so, consult with the judge who presided at the trial of the relevant offence.
- (4) As soon as practicable after receiving a recommendation under subsection (2), the Chief Executive must determine a minimum term that the prisoner must serve for the offence, taking into account the recommendation of the Chief Justice and any representations made under subsection (5). (Amended 39 of 1999 s.3)
- (5) The Chief Executive must not make a determination under subsection (4) in respect of a prisoner without having-
 - (a) provided the prisoner with a copy of the Chief Justice's recommendation in respect of the prisoner's sentence or detention; and
 - (b) given the prisoner an opportunity to make written representations to the Chief Executive with respect to that recommendation. (Amended 39 of 1999 s. 3)
- (6) A determination under this section is final and not subject to appeal to any court.
- (7) In this section, "Executive discretion" (行政酌情決定) has the same meaning as in the Long-term Prison Sentences Review Ordinance (Cap 524).

(Added 86 of 1997 s. 44)

Section:	67D	Minimum terms to be determined in respect of certain prisoners serving mandatory life sentences	6 of 1998 s. 3	06/03/1998
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- (1) This section applies to prisoners who, at the commencement of this section, are serving mandatory life sentences in respect of the conviction of murder committed when they were under 18 years of age.
- (2) Within 6 months after the commencement of this section, the Chief Justice must, after taking into account any representations made under subsection (3), submit to the Chief Executive in respect of each prisoner to whom this section applies a recommendation specifying a minimum term that the prisoner should serve in relation to the offence for which the prisoner was sentenced

to imprisonment and the recommendation should include any special considerations or circumstances to be taken into account in any future review.

(3) Before making a recommendation under subsection (2), the Chief Justice must-

- (a) give the prisoner an opportunity to make written representations to the Chief Justice for the Chief Justice to take into account in making the recommendation; and
- (b) as far as it is practicable to do so, consult with the judge who presided at the trial of the relevant offence.

(4) As soon as practicable after receiving a recommendation under subsection (2), the Chief Executive must determine a minimum term that the prisoner must serve for the offence, taking into account the recommendation of the Chief Justice and any representations made under subsection (5).

(5) The Chief Executive must not make a determination under subsection (4) in respect of a prisoner without having-

- (a) provided the prisoner with a copy of the Chief Justice's recommendation in respect of the prisoner's sentence; and
- (b) given the prisoner an opportunity to make written representations to the Chief Executive with respect to that recommendation.

(6) A determination under this section is final and not subject to appeal to any court.

(Added 6 of 1998 s. 3)

Section:	67E	Interpretation	6 of 1998 s. 3	06/03/1998
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In sections 67B and 67C, "discretionary life sentence" (酌情性終身監禁刑罰) has the same meaning as in the Long-term Prison Sentences Review Ordinance (Cap 524).

(Added 6 of 1998 s. 3)

Chapter:	221D	LEGAL AID IN CRIMINAL CASES RULES	Gazette Number	Version Date
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Rule:	2	Interpretation	79 of 1995 s. 50; 25 of 1998 s. 2	01/07/1997
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Remarks:

Amendments retroactively made - see 25 of 1998 s. 2

(1) In these rules, unless the context otherwise requires-

"aided person" (受助人) means a person who has been granted a legal aid certificate or an appeal aid certificate;

"appeal aid certificate" (上訴援助證書) means an appeal aid certificate granted under rule 10, 11, 12 or 13;

"appellant" (上訴人) means a person referred to in paragraph (c), (d), (e), (f), (g), or (h) of rule 4; (L.N. 122 of 1982)

"counsel" (大律師) means a person who is enrolled as a barrister on the roll of barristers maintained in accordance with the provisions of the Legal Practitioners Ordinance (Cap 159), and who, at the material time, is not suspended from practice; (L.N. 122 of 1982; 79 of 1995 s. 50)

"Director" (署長) means the Director of Legal Aid appointed under section 3 of the Legal Aid Ordinance (Cap 91) and any Deputy Director of Legal Aid, Assistant Director of Legal Aid

and Legal Aid Officer so appointed; (24 of 1983 s. 7; L.N. 204 of 1984)

"disposable capital" (可動用資産), in relation to an applicant for legal aid, means his capital as assessed under rule 15;

"disposable income" (可動用収入), in relation to an applicant for legal aid, means his income as assessed under rule 15;

"financial resources" (財務資源) means the financial resources of an aided person assessed in accordance with the Legal Aid (Assessment of Resources and Contributions) Regulations (Cap 91 sub. leg.); (L.N. 199 of 1992)

"legal aid" (法律援助) means representation, as provided by these rules, by counsel or solicitor or both;

"legal aid certificate" (法律援助證書) means a legal aid certificate granted under rule 6, 7, 8 or 13;

"Registrar" (司法常務官) means the Registrar of the High Court and, for the purposes of any proceedings before the Court of Final Appeal, includes the Registrar of the Court of Final Appeal; (L.N. 122 of 1982; 79 of 1995 s. 50; 25 of 1998 s. 2)

"solicitor" (律師) means a person enrolled on the roll of solicitors maintained in accordance with the provisions of the Legal Practitioners Ordinance (Cap 159), and who, at the material time, is not suspended from practice. (L.N. 122 of 1982; 79 of 1995 s. 50)

(79 of 1995 s. 50)

(2) In these rules-

- (a) references to counsel or solicitor shall be read as including references to the Director if, under rule 14, he is representing an accused person or appellant;
- (b) (Repealed L.N. 199 of 1992)
- (c) any references to proceedings relating to an appeal to, or an application for leave to appeal to, the Court of Final Appeal shall include proceedings relating to any opposition to such an appeal or application. (L.N. 122 of 1982; 79 of 1995 s. 50)

Rule:	4	Legal aid for accused persons and appellants	79 of 1995; L.N. 362 of 1997; 25 of 1998	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

PART II

GRANT OF LEGAL AID

- (1) Subject to any requirement to make contributions under Part III- (L.N. 204 of 1984)
 - (a) an accused person committed for trial before the Court of First Instance may be granted legal aid under these rules for the preparation and conduct of his defence and for any plea arising from the indictment; (25 of 1998 s. 2)
 - (aa) an accused person in respect of whom proceedings have been transferred to the Court of First Instance under section 4 of the Complex Commercial Crimes Ordinance (Cap 394) may be granted legal aid under these rules for the preparation and conduct of his defence including any application for discharge under section 22 of that Ordinance and any appeal arising therefrom; (57 of 1988 s. 33; 25 of 1998 s. 2)
 - (b) a person charged before the District Court with any offence may be granted legal aid under these rules for the preparation and conduct of his defence and for any plea arising from the charge sheet; (L.N. 70 of 1973; L.N. 64 of 1978)
 - (c) a person convicted of any offence before the Court of First Instance or the District

- Court may be granted legal aid under these rules for any appeal to the Court of Appeal and in any proceedings preliminary or incidental thereto; (25 of 1998 s. 2)
- (d) the respondent in an appeal to the Court of Appeal under section 84 of the District Court Ordinance (Cap 336) may be granted legal aid under these rules for the appeal and in any proceedings preliminary or incidental thereto; (L.N. 169 of 1969)
 - (e) a respondent referred to in section 81A of the Ordinance may be granted legal aid under these rules for the hearing of an application for the review of any sentence under that section; (L.N. 167 of 1972)
 - (f) a person who is convicted by, or aggrieved by, an order or determination of a magistrate in respect of or in connexion with any offence may be granted legal aid under these rules for the purpose of any appeal to the Court of First Instance and any proceedings preliminary or incidental thereto; (L.N. 148 of 1973; 25 of 1998 s. 2)
 - (g) a respondent in an appeal by way of case stated by the Secretary for Justice under section 105 of the Magistrates Ordinance (Cap 227) may be granted legal aid under these rules for the appeal and in any proceedings preliminary or incidental thereto; (L.N. 65 of 1976; L.N. 362 of 1997)
 - (h) a person convicted of any offence may be granted legal aid under these rules for any appeal to, or any application for leave to appeal to, the Court of Final Appeal and any proceedings preliminary or incidental thereto; (L.N. 122 of 1982; 79 of 1995 s. 50)
 - (i) (Repealed L.N. 182 of 1993)
 - (j) an accused person in respect of whom a magistrate has appointed a return day for the continuation of committal proceedings may be granted legal aid under these rules for the preparation and conduct of his defence including any application for discharge under section 16 and any appeal arising therefrom; (48 of 1983 s. 5; L.N. 204 of 1984)
 - (k) a person ordered to appear before the Court of First Instance or the District Court to be dealt with under the Community Service Orders Ordinance (Cap 378) may be granted legal aid under these rules for the purpose of the proceedings; (L.N. 115 of 1985; L.N. 157 of 1986; 25 of 1998 s. 2)
 - (l) a person who is to be dealt with by a judge of the District Court under section 20 or 21 of the District Court Ordinance (Cap 336) may be granted legal aid under these rules for the purpose of the proceedings; (L.N. 115 of 1985; L.N. 157 of 1986)

if the Director is satisfied that his financial resources do not exceed the limits specified in section 5 of the Legal Aid Ordinance (Cap 91) in relation to the grant of legal aid under that Ordinance. (L.N. 427 of 1982; L.N. 323 of 1983; L.N. 115 of 1985; L.N. 199 of 1992)

(2) Where a person has been granted legal aid for any matter specified in paragraph (1) he may also be granted legal aid for any proceedings arising out of or connected with such matter, including any application for bail or an appeal against refusal to grant bail. (L.N. 204 of 1984)

(3) Where an accused person has been granted legal aid under paragraph (1)(a), (b) or (j) and a letter of request has been issued by the Court of First Instance under section 77E of the Evidence Ordinance (Cap 8) addressed to a court or tribunal exercising jurisdiction in a place outside Hong Kong, he may also be granted legal aid for any proceedings in that court or tribunal in connection with the letter of request. (L.N. 157 of 1986; 25 of 1998 s. 2)

Chapter:	475	POST-RELEASE SUPERVISION OF PRISONERS ORDINANCE	Gazette Number	Version Date
Section:	3	Application		30/06/1997

- (1) This Ordinance applies to every prisoner who- (Amended 86 of 1997 s. 44)
- (a) was aged 21 years or over at the time of being sentenced to imprisonment, or who has since attained the age of 25 years;
 - (b) is serving a sentence of a kind specified in regulations made under section 23;
 - (c) is not subject to a deportation order under section 20 of the Immigration Ordinance (Cap 115) or to a removal order under section 19(1) of that Ordinance;
 - (d) is not subject to supervision by virtue of an order under section 7(1) of the Prisoners (Release under Supervision) Ordinance (Cap 325); and
 - (e) is not liable to supervision following his release from imprisonment by virtue of section 5A of the Training Centres Ordinance (Cap 280).
- (2) However, this Ordinance does not apply to a prisoner who was sentenced or detained under an indeterminate sentence within the meaning of the Long-term Prison Sentences Review Ordinance (Cap 524) and whose sentence is subsequently converted to a determinate sentence. (Added 86 of 1997 s. 44)
- (3) In subsection (2), "determinate sentence" (確定限期刑罰) has the same meaning as in the Long-term Prison Sentences Review Ordinance (Cap 524). (Added 86 of 1997 s. 44)
- (Enacted 1995)

Chapter:	524	LONG-TERM PRISON SENTENCES REVIEW ORDINANCE	Gazette Number	Version Date
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Section:	4	Interpretation	6 of 1998 s. 4	06/03/1998
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- (1) In this Ordinance, unless the context otherwise requires-
- "addiction treatment centre" (戒毒所) has the same meaning as in section 2 of the Drug Addiction Treatment Centres Ordinance (Cap 244);
- "Board" (委員會) means the Long-term Prison Sentences Review Board established by this Ordinance;
- "Commissioner" (署長) means the Commissioner of Correctional Services;
- "conditional release order" (有條件釋放令) means an order made under section 15(1)(b);
- "correctional services officer" (懲教人員) means an officer of the Correctional Services Department;
- "court" (法院) includes a judge or magistrate;
- "discretionary life sentence" (酌情性終身監禁刑罰) means-
- (a) a sentence of imprisonment for life where the maximum sentence that could be imposed for the relevant offence was life imprisonment; and
 - (b) a sentence of imprisonment for life under section 2 of the Offences against the Person Ordinance (Cap 212) in respect of a person convicted of murder who was under 18 years of age at the time of the offence; (Amended 6 of 1998 s. 4)
- "Executive discretion" (行政酌情決定) means-
- (a) for the period beginning on the date of commencement of this section and ending on 30 June 1997-Her Majesty's pleasure; and
 - (b) on and after 1 July 1997-the discretion of the Chief Executive;
- "function" (職能) includes a power and an authority;
- "indeterminate sentence" (無限刑期刑罰) means-
- (a) a mandatory life sentence or a discretionary life sentence; or
 - (b) detention at Executive discretion;
- "juvenile prisoner" (青少年囚犯) means a prisoner who has not yet reached 21 years of age;

"long-term prisoner" (長刑期囚犯) means a prisoner who is serving a determinate sentence of 10 years or more;

"mandatory life sentence" (強制性終身監禁刑罰) means a sentence of imprisonment for life where the only sentence that could be imposed for the relevant offence was life imprisonment;

"minimum term" (最低刑期), in relation to a sentence, means a minimum term of imprisonment specified or determined under section 67B, 67C or 67D of the Criminal Procedure Ordinance (Cap 221); (Amended 6 of 1998 s. 4)

"prisoner" (囚犯) includes a person who is released under a conditional release order or a supervision order;

"regulation" (規例) means a regulation made under this Ordinance;

"sentence" (刑罰) means-

- (a) a sentence of imprisonment; or
- (b) detention at Executive discretion,

and includes a sentence of imprisonment imposed by a court outside Hong Kong where all or part of the sentence is permitted to be served at a prison in Hong Kong;

"supervision order" (監管令) means an order made under section 15(1)(c);

"transferred prisoner" (被移交囚犯) means a prisoner who, having been sentenced to an indeterminate sentence or a long term sentence by a court outside Hong Kong, is permitted to serve all or part of the sentence at a prison in Hong Kong.

(2) For the purposes of this Ordinance, consecutive sentences are to be regarded as a single sentence equal to the sum of the terms of those sentences.

Section:	11	Duty of Commissioner to refer cases of prisoners to Board for review	6 of 1998 s. 4	06/03/1998
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PART III

REVIEW OF SENTENCES

(1) The Commissioner must refer to the Board for review the sentences of prisoners as provided by this section.

(2) Subject to subsection (3A), the sentence of a prisoner serving a long-term prison sentence or a mandatory life sentence is to be referred for review as soon as practicable after the fifth anniversary of the date of the start of the sentence and as soon as practicable after each subsequent second anniversary of that date. In the case of a prisoner who has, before the commencement of this section, served more than 5 years of a long-term prison sentence or of a mandatory life sentence, the sentence is, after that commencement, to be referred for review as soon as practicable after the same anniversaries of the date of the start of the sentence as would have been the case if this subsection had been in force at the start of the sentence. (Amended 6 of 1998 s. 4)

(3) If a prisoner is serving a discretionary life sentence or is detained at Executive discretion, the sentence is to be referred for review as soon as practicable after the relevant date and as soon as practicable after each subsequent second anniversary of that date.

(3A) If a prisoner is serving a mandatory life sentence in respect of the conviction of murder committed when he was under 18 years of age, the sentence is to be referred for review as soon as practicable after the relevant date and as soon as practicable after each subsequent second anniversary of that date. (Added 6 of 1998 s. 4)

(4) For the purposes of subsections (3) and (3A), the relevant date is- (Amended 6 of 1998 s. 4)

- (a) in the case of a prisoner sentenced after the commencement of this section, the day

that is 6 months before the earlier of-

- (i) the date on which the minimum term specified for the sentence is due to end; and
 - (ii) the fifth anniversary after the start of the sentence; and
- (b) in the case of a prisoner sentenced before that commencement, the date on which the minimum term is determined for the sentence.

(5) Despite subsections (3) and (3A), the sentence of a prisoner who is serving a discretionary life sentence or is detained at Executive discretion is to be referred for review as soon as practicable after the day that is 6 months before the date on which the minimum term specified or determined in respect of the prisoner is due to end and then as soon as practicable after each subsequent second anniversary of that day. (Amended 6 of 1998 s. 4)

(6) If a prisoner who is serving a determinate sentence for an offence was under 21 years of age at the time of conviction for the offence, the sentence is to be referred for review as soon as practicable after each anniversary of the date of the start of the sentence and then, when the prisoner reaches that age, as soon as practicable after each subsequent second anniversary of that date.

(7) If-

- (a) a prisoner who is serving at a prison in Hong Kong the whole or a part of an indeterminate or long-term sentence imposed by a court outside Hong Kong; and
- (b) the prisoner has served at least 3 years of the sentence outside Hong Kong,

the sentence is to be referred for review as soon as practicable after each second anniversary of the date on which the prisoner returned to Hong Kong.

(8) If-

- (a) a prisoner who is serving at a prison in Hong Kong the whole or a part of an indeterminate or long-term sentence imposed by a court outside Hong Kong; and
- (b) the prisoner has served less than 3 years of the sentence outside Hong Kong,

the sentence is to be referred for review as soon as practicable after the date on which the prisoner completed 5 years of the sentence (including any part of the sentence that has been served outside Hong Kong) and as soon as practicable after each subsequent second anniversary of that date.

(9) As soon as practicable after the sentence of a prisoner who is serving an indeterminate sentence is converted to a determinate one, the sentence is to be referred for review. The referral must include or be accompanied by a report and recommendation of the Commissioner with respect to the prisoner.

(10) Where any right, privilege, obligation or liability has been acquired, accrued or incurred under the repealed rule, then this section shall, with all necessary modifications, apply to and in relation to any such right, privilege, obligation or liability, as the case may be, as if such right, privilege, obligation or liability, as the case may be, had been acquired, accrued or incurred under this section.

(11) In subsection (10), "repealed rule" (已廢除規則) means rule 69A of the Prison Rules (Cap 234 sub. leg.) as in force at any time before the rule was repealed by this Ordinance.

Section:	14	Board may request reports	25 of 1998 s. 2	01/07/1997
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Remarks:

Amendments retroactively made - see 25 of 1998 s. 2

- (1) To facilitate review of the sentence of a prisoner, the Board is entitled to request-
 - (a) the Commissioner of Correctional Services to provide a report specifying the conduct of the prisoner while serving the sentence and any relevant medical, psychological or psychiatric report relating to the prisoner; and
 - (b) the Commissioner of Police to provide a copy of the prisoner's criminal record and, if available, particulars of any assistance that the prisoner has given to police officers in connection with their investigations concerning alleged offences; and

- (c) the Registrar of the High Court to provide- (Amended 25 of 1998 s. 2)
 - (i) in relation to the offence in respect of which the prisoner is serving the sentence, a copy of the summing up by the judge to the jury, or, in the event of a plea of guilty, a copy of the agreed statement of facts which is read into the court record, of any plea in mitigation, of any comments made by the judge at the sentencing as to the minimum term to be served, and of any other matters recorded by the judge for the purposes of any such review; and
 - (ii) where the sentence is an indeterminate sentence, a copy of the report under section 67B of the Criminal Procedure Ordinance (Cap 221) which relates to the prisoner or sentence; and
 - (d) the Director of Social Welfare to provide a report setting out-
 - (i) the prisoner's family circumstances; and
 - (ii) whether or not the prisoner is likely to be employed on release; and
 - (iii) whether or not the prisoner is likely to be rehabilitated on release; and
 - (iv) whether or not there are any grounds for treating the prisoner compassionately.
- (2) A request under this section is to be made in writing.
- (3) It is the duty of a person who is requested to provide a report or other document under this section to comply with the request within the period specified in the request as far as it is practicable to do so.

Section:	15	Board may make recommendations relating to prisoners and orders for their release	6 of 1998	06/03/1998
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Remarks:

Amendments retroactively made - see 15 of 1999 s. 3

- (1) When reviewing the sentence of a prisoner in accordance with this Part, the Board may do such of the following as it considers appropriate-
- (a) make a recommendation to the Chief Executive that the Chief Executive should- (Amended 15 of 1999 s. 3)
 - (i) remit all or part of a prisoner's determinate sentence by substituting a shorter determinate sentence; or
 - (ii) substitute a determinate sentence for a prisoner's indeterminate sentence;
 - (b) in the case of a prisoner who is serving an indeterminate sentence and in respect of whom the Board wishes to defer making a recommendation that the sentence should be converted to a determinate one-make an order in accordance with Part IV directing the prisoner to be conditionally released under supervision;
 - (c) in the case of a prisoner whose indeterminate sentence has been converted to a determinate one-make an order in accordance with Part V directing the early release of the prisoner under supervision.
- (2) The Board may not make a supervision order in respect of a prisoner who is, on completion of the relevant sentence-
- (a) required to leave Hong Kong in accordance with a removal order in force under section 19 of the Immigration Ordinance (Cap 115); or
 - (b) liable to be deported under a deportation order made under section 20 of that Ordinance.
- (3) An order under this section purporting to direct the release of a prisoner before the end of the minimum period fixed in respect of the prisoner in accordance with section 67B, 67C or 67D of the Criminal Procedure Ordinance (Cap 221) does not take effect until the end of that period. (Amended 6 of 1998 s. 4)
- (4) The Board may renew a conditional release order (whether in the same terms or different terms) at any time before its expiry.

(5) Where pursuant to a licence under the repealed section a prisoner is released, then this section shall, with all necessary modifications, apply to and in relation to the licence and the prisoner as if-

- (a) the licence were a conditional release order;
 - (b) the prisoner were the person to whom the order related; and
 - (c) any conditions to which the licence was subject were conditions of the order,
- and the other provisions of this Ordinance (including section 18) shall be construed accordingly.

(6) In this section, "repealed section" (已廢除條文) means section 70(3) of the Criminal Procedure Ordinance (Cap 221) as in force immediately before the commencement of section 9 of the Crimes (Amendment) Ordinance 1993 (24 of 1993).

Section:	25	Recall of prisoner to serve remainder of sentence on expiry of conditional release order		30/06/1997
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(1) If a conditional release order relating to a prisoner is to expire without being renewed, the Board must, within 1 month before the order is due to expire, inform the Commissioner by notice in writing of the impending expiry.

(2) If the order is not renewed, the Commissioner must, on expiry, recall the prisoner to prison to continue serving the relevant sentence.

(3) This section does not apply in the case of a prisoner who is subject to a conditional release order if the prisoner's indeterminate sentence has been converted to a determinate one and the end of the determinate sentence coincides with or is earlier than the end of the period of the order.