

PITCAIRN, HENDERSON

DUCIE & OENO ISLANDS

No 001 of 2016



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Enacted by the Governor of the Islands
of Pitcairn, Henderson, Ducie and Oeno

SENTENCING (HOME DETENTION AMENDMENT) ORDINANCE 2016

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An Ordinance to allow the imposition of a sentence of home detention and to make further amendments to the Sentencing Ordinance and related Ordinances to improve sentencing procedure

PART I – PRELIMINARY

Short title and commencement

1. (1) This Ordinance may be cited as the Sentencing (Home Detention Amendment) Ordinance 2016.

(2) This Ordinance shall come into operation on the day after it is passed.

PART II – AMENDMENTS TO SENTENCING ORDINANCE

Interpretation

2. (1) The definition of **home detention** in section 3(1) is repealed and the following definition substituted:

“**home detention** means detention under a sentence given in accordance with section 76A.”

(2) The definition of **determinate sentence of imprisonment** in section 3(1) is repealed and the following definition substituted:

“**determinate sentence** means a sentence of imprisonment or a sentence of home detention for a fixed term”

(3) The definition of **penal institution** in section 3(1) is amended by adding “, but does not include a home detention residence”.

(4) The following definitions are inserted in section 3(1) in their appropriate alphabetical order:

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

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

home detention residence means the residence, specified by a court, where an offender sentenced to home detention serves that sentence
non-release day has the same meaning as in section 2 of the Parole Ordinance 2002

Public Prosecutor has the same meaning as in s 2 of the Judicature (Courts) Ordinance

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

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

short-term sentence of imprisonment has the same meaning as in s 2 of the Parole Ordinance”

(5) Section 3(2) is amended by inserting the following paragraph after paragraph (a):

“(ab) an offender is subject to a sentence of home detention from the date the sentence commences in accordance with section 76R or 76S until the sentence ends in accordance with section 76T, except when the sentence is suspended under section 76Y(2);”

Discharge or order to come up for sentence if called on	3. Section 10(2) is amended by inserting “a sentence of home detention,” after “a sentence of imprisonment”.
New section 14A	4. The following section is inserted after section 14:
Sentence of home detention	<p>14A. (1) If a court is lawfully entitled under this or any other enactment to impose a sentence of home detention, it may impose a sentence of home detention only if –</p> <ul style="list-style-type: none"> (a) the court is satisfied that the purpose or purposes for which the sentence is being imposed cannot be achieved by any less restrictive sentence or combination of sentences; and (b) the court would otherwise sentence the offender to a short-term sentence of imprisonment. <p>(2) This section is subject to any provision in this or any other enactment that –</p> <ul style="list-style-type: none"> (a) provides a presumption in favour of or against imposing a sentence of home detention in relation to a particular offence; or (b) requires a court to impose a sentence of imprisonment in relation to a particular offence.
Limitation on imprisonment of person under 17 years	<p>5. (1) The heading to section 17 is amended by inserting “home detention or” after “on”.</p> <p>(2) Section 17 is amended by inserting “or a sentence of home detention” after “imprisonment”.</p>
Use of combination sentences	<p>6. (1) The heading to section 19 is amended by omitting “including community-based sentences”.</p> <p>(2) Section 19(1) is amended by omitting the words “that includes a community-based sentence or sentences”.</p> <p>(3) Section 19(2) is amended by omitting the “.” at the end of paragraph (b) and inserting the following text –</p> <ul style="list-style-type: none"> “; or (c) a sentence of home detention and a sentence of community work; or (d) a sentence of home detention and a fine.

- (4) Section 19(3) is amended by –
 - (a) omitting the words “both a sentence of supervision and a fine” and substituting the words “a particular combination of sentences on an offender”; and
 - (b) omitting the word “either” and substituting the word “any”; and
 - (c) inserting the words “or in any less restrictive combination” after the word “individually”.
- (5) Section 19(4) is amended by repealing paragraphs (a) and (b).

Pre-sentence reports

- 7. Section 25(2) is amended by –
 - (a) in paragraph (e), omitting the words “a sentence of supervision” and substituting the words “that sentence”; and
 - (b) inserting the words “or home detention” after the word “supervision” in each place it occurs in paragraphs (e), (f) and (g).

New section 25A inserted

8. The following section is inserted after section 25:

Additional requirements when considering sentence of home detention

- 25A. (1) This section applies to reports prepared under section 25 if –
- (a) the court has indicated that it is considering a sentence of home detention; or
 - (b) the Supervision Officer intends to recommend a sentence of home detention.

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

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

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

- (a) ensure that every relevant occupant of the proposed home detention residence is aware of

the nature of the offender’s past and current offending; and

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

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

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

No sentence of imprisonment to be imposed without opportunity for legal representation

9. (1) The heading of section 29 is amended by inserting “or home detention” after “imprisonment”.

(2) Section 29(1) is amended by inserting “or a sentence of home detention” after “imprisonment”.

Power to impose fine instead of imprisonment or community-based sentence

10. (1) The heading to section 38 is amended by inserting “, home detention,” after “imprisonment”.

(2) Section 38 is amended by inserting the following subsection after subsection (1):

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

(3) Section 38(3) is amended by inserting “, (1A)” after “(1)”.

Other special conditions

11. Section 50 is amended by inserting the following subsection after subsection (3):

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

Concurrent and cumulative sentences of community work

12. Section 55 is amended by repealing subsection (3) and substituting the following subsection:

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

New section 55A inserted

13. The following section is inserted after section 55:

Court may defer commencement date of sentence of community work

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

Commencement of community-based sentences

14. Section 73 is amended by inserting the following subsection after subsection (2):

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

New Part IIIA inserted

15. The following Part is inserted after section 76:

PART VA – HOME DETENTION

Sentence of home detention

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

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

(a) the proposed home detention residence is suitable; and

(b) the relevant occupants (as defined in section 25A(4)) of the proposed home detention

residence –

- (i) understand the conditions of home detention that will apply to the offender; and
 - (ii) consent to the offender serving the sentence in the residence in accordance with those conditions; and
 - (iii) have been informed that they may withdraw their consent to the offender serving the sentence in the residence at any time; and
- (c) the offender has been made aware of and understands the conditions that will apply during home detention, and he or she agrees to comply with them.

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

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

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

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

Concurrent and cumulative sentences of home detention

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

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

(3) Before deciding to impose 2 or more sentences of home detention cumulatively or concurrently, the court

must consider the guidance under sections 78 and 79 as if it applied to sentences of home detention.

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

Detention
conditions
applying to
offender sentenced
to home detention

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

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

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

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

- not to associate; and
- (g) the offender must take part in rehabilitative and reintegrative needs assessment if and when directed to do so by the Supervision Officer.

(3) An offender may leave the home detention residence only –

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

(4) The Supervision Officer may approve an alternative residence under section 76H pending determination of an application to vary the residence under section 76F.

Special conditions of sentence of home detention

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

(2) A court may impose any of the special conditions described in subsection (3) if the court is satisfied that –

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

(3) The special conditions referred to in subsection (1) or (2) are –

- (a) any conditions that the court thinks fit relating to the offender's finances or earnings;
- (b) conditions requiring the defendant to take prescription medication;
- (c) conditions relating to a programme;
- (d) any other conditions that the court thinks fit to reduce the likelihood of further offending by the offender.

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

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

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

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

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

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

Electronic
monitoring

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

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

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

Application for variation or cancellation of sentence of home detention

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

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

(2) The Supervision Officer may apply for an order under subsection (3) if an offender, who is subject to a sentence

of home detention, is convicted of an offence punishable by imprisonment.

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

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

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

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

Matters relating to orders under section 76F

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

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

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

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

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

Alternative residence pending determination of application under section 76F

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

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

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

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

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

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

76I. (1) This section applies if –

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

(2) At the time of sentencing, the court must make an order granting the offender leave to apply to the court of first instance for cancellation of the sentence of imprisonment and substitution of a sentence of home

detention if the offender finds a suitable residence at a later date.

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

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

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

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

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

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

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

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

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

(a) must reconsider the issue of leave to apply for cancellation of the sentence of imprisonment and substitution of a sentence of home detention; and

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

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

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

Updated pre-sentence report

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

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

Imposition of post-detention conditions on offender

76L.—(1) In this section –
post-detention conditions means any standard post-detention conditions and special post-detention conditions imposed on an offender under this section that apply to the offender after the detention end date
special post-detention conditions includes, without limitation, conditions of a kind described in section 12(3) of the Parole Ordinance 2002, other than an electronic monitoring condition as referred to in section 12(3)(f) of that Ordinance
standard post-detention conditions means the conditions of the sort described in section 11(1) of the Parole Ordinance.

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

(3) If a court sentences an offender to a term of home detention of more than 6 months, –
(a) the standard post-detention conditions apply to

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

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

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

(6) If the court sentences the offender to more than 1 sentence of home detention on the same occasion –
(a) only one order under this section may be made; and
(b) that order applies in respect of all the sentences of home detention imposed on that occasion.

Variation or discharge of post-detention conditions

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

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

(3) On an application under subsection (1), the court may, if it thinks fit, –
(a) suspend or vary any condition, or impose any additional conditions described in section 76L, that could have been imposed on the offender at the time when the offender was convicted of the offence for which the sentence was imposed; or
(b) discharge a condition and substitute any other condition described in section 76L that could have been imposed on the offender at the time that the offender was convicted of the offence for which

the sentence was imposed.

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

Offence to breach
detention
conditions

76N. An offender commits an offence, and is liable on summary conviction to imprisonment for a term not exceeding 1 year or to a fine not exceeding \$2000, who –
(a) breaches, without reasonable excuse, any detention conditions of a sentence of home detention; or
(b) fails to report when required to do so under section 76R.

Offence to refuse
entry to home
detention
residence

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

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

(3) For the purposes of subsection (2), an **authorised person** is a person who –
(a) is the Supervision Officer and has identified himself or herself; or
(b) accompanies the Supervision Officer; or
(c) is authorised in writing by the Supervision Officer and has produced that written authority

to an occupant of the residence.

Offence to breach post-detention conditions

76P.—(1) An offender commits an offence, and is liable on summary conviction to imprisonment for a term not exceeding \$1,500, who breaches, without reasonable excuse, any post-detention conditions imposed under section 76L or 76M.

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

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

Court may defer start date of sentence of home detention

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

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

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

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

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

Commencement of sentence of home detention

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

deferred under section 76R.

(2) Subsection (1) applies –

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

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

- (a) at least 1 of the sentences must commence on the day that the sentence is imposed or to which the start date has been deferred under section 95; and
- (b) the commencement date for the subsequent sentence is the detention end date of the first sentence.

(4) If a sentence of home detention is imposed cumulatively on another sentence of home detention to which the offender is already subject, the commencement date of the subsequent sentence is the detention end date of the first sentence.

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

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

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

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

subsequent sentence.

When home
detention ends

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

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

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

When detention
conditions
suspended

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

Time ceases to run
in certain
circumstances

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

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

Order must be
drawn up

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

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

(3) The order must include information regarding –

- (a) the nature of the sentence; and
- (b) the start date and the term of the sentence; and

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

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

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

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

Offender must be given copy of new or amended order

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

Effect of a subsequent sentence of imprisonment

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

- (2) If this section applies, the sentence of home detention is suspended until the earlier of the following events –
- (a) it resumes under subsection (4)(b); or
 - (b) it is cancelled under subsection (6).

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

(4) If the sentence or sentences of imprisonment are quashed and that results in the offender no longer being detained under a sentence of imprisonment, -
(a) the offender must report to the Supervision Officer as soon as practicable and not later than 72 hours after being released from detention; and
(b) the sentence of home detention resumes when the offender has reported as required under paragraph (a).

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

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

Warrant of commitment for sentence of imprisonment

16. Section 86 is amended by repealing subsections (4) and (5).

New subheading

17. A new subheading is inserted above section 87:
“Release conditions for short term sentences”

Subheading repealed

18. The subheading above section 88 is repealed.

Subheading and sections 92 – 94 repealed

19. (1) The subheading above section 92 is repealed.
(2) Sections 92, 93 and 94 are repealed.

Court may defer start date of sentence of imprisonment

20.–(1) Section 95(1) is repealed and the following subsection substituted:
“(1) The court may defer the start date of a sentence of imprisonment for a specified period of up to six months .”

(2) Section 95(2) is repealed.

(3) A new subsection (3A) is inserted as follows:
“(3A) An offender whose sentence of imprisonment is deferred under

this section must be granted bail in accordance with section 37A or 62A of the Bail Ordinance.”

PART III – AMENDMENTS TO PAROLE ORDINANCE

- Interpretation 21.–(1) The definitions of **commencement date**, **detention conditions** and **standard detention conditions** in section 2 of the Parole Ordinance are repealed.
- (2) The definition of **home detention** in section 2 is repealed and the following definition substituted:
“**home detention** has the meaning given to it in section 3(1) of the Sentencing Ordinance”
- (3) The following definition is inserted into section 2 in the appropriate alphabetical order:
“**home detention residence** has the meaning given to it in section 3(1) of the Sentencing Ordinance”.
- (4) The definition of **penal institution** in section 2 is amended by adding “, but does not include a home detention residence”.
- (7) The definition of **variation** in section 2 is amended by omitting the words “or detention conditions”.
- Overview of release 22. (1) Section 4 is amended by repealing subsection (3) and substituting the following subsection:
“(3) This Part provides for two types of early release from detention –
(a) parole;
(b) compassionate release.”
- (2) Section 4(5) is repealed.
- Guiding principles 23. Section 5(2)(a) is amended by omitting “or detention conditions”.
- Special conditions 24. (1) Section 12(1) is amended by omitting “, or if the standard detention conditions apply to the offender”.
- (2) Section 12(3) is amended by adding the following paragraphs:
“(e) conditions prohibiting the offender from entering or remaining in specified places or areas, at specified times, or at all times;
(f) conditions requiring the offender to submit to the electronic monitoring of compliance with any release conditions that relate to

the whereabouts of the offender.

New section 12A	25. The following section is inserted after section 12:
Electronic monitoring	12A. (1) The purpose of an electronic monitoring condition imposed under section 12(3)(f) is to deter the offender from breaching conditions that relate to his or her whereabouts, and to monitor compliance with those conditions. (2) Information about an offender that is obtained through electronic monitoring may be used both for the purposes referred to in subsection (1) and for the following purposes: (a) to verify compliance with any release conditions: (b) to detect non-compliance with any conditions and the commission of offences: (c) to provide evidence of non-compliance with conditions and the commission of offences: (d) to verify that the offender has not tampered or otherwise interfered with the ability of the electronic monitoring equipment to operate effectively and accurately.
Release at statutory release date	26. Section 14(2) is amended by omitting “or who is on home detention”.
Conditions applying to release at statutory release date	27. Section 15(2)(b) is amended by omitting “oppose” and substituting “impose”.
Parole eligibility date	28. Section 17(1) is amended by omitting “only” and also by omitting “imposed on or after the commencement date”.
New section 20 substituted	29. Section 20 is repealed and the following section substituted:
No consideration for parole of offenders on compassionate release	20. An offender who is released on compassionate release may not be considered for parole by the Commission.
Subpart “Home Detention” repealed	30. Sections 30 to 37 are repealed.
Application of procedure set out in	31.–(1) Section 39 is amended by – (a) omitting from paragraph (b) “; or” and substituting “.”; and

sections 40 to 47	(b) repealing paragraph (c).
Start of process	32. (1) Section 40(1) is amended by (a) omitting “or home detention”; and (b) repealing paragraph (d). (2) Section 40(2)(d) is repealed.
Decisions must be notified	33. (1) Section 47(1)(a) is amended by omitting “or to commence home detention”. (2) Section 47 is amended by omitting “or detention” in each place where it appears.
Date of release	34. Section 48(3) is amended by omitting “, or to start home detention,”.
Release of offenders released at statutory release date	35. Section 49(1) is amended by omitting “or from home detention”
Licence issued on release	36. (1) Section 50(1) is amended by – (a) omitting “or from home detention”; and (b) omitting “(if any)” from paragraph (a); and (c) inserting the following after “recall”: “; and (d) the statutory provisions under which the conditions may be varied or discharged” (2) Section 50(3) is repealed. (3) Section 50(4) is amended by omitting “or detention conditions”.
Police must be advised	37. (1) Section 51(1) is amended by (a) omitting “When” and substituting “Before”; and (b) omitting “or from home detention”. (2) Section 51(2) is repealed.
Application for variation or discharge of conditions	38. (1) Section 53(1) is amended by omitting “or detention conditions”. (2) Section 53(2) is amended by omitting “or detention condition”.
Commission determines application for	39. (1) Section 55(1) is amended by omitting “or detention condition”.

variation or discharge	(2) Section 55(2)(b) is amended by omitting “or detention”.
Making a recall application	40. (1) Section 57(2)(c) is amended by omitting “, home detention,”. (2) Section 57(4) is repealed and substituted by the following subsection: “(4) When a recall application is made, the sentence to which the application relates ceases to run, except for any period between the lodgement of the application and the date on which it is determined during which the offender is in custody in a penal institution.”
Grounds for recall	41. (1) Section 58(b) is amended by omitting “or detention conditions”. (2) Section 58(d) is repealed.
Making an interim recall order	42. Section 59(1)(c) is repealed.
Commission may make final recall order	43. Section 63(4)(b) is amended by omitting “or detention conditions”.
Powers of Court on appeal	44. Section 67(2)(b)(ii) is amended by omitting “or standard detention”.
Offence to commit breach of conditions	45.– (1) Section 68(1) is amended by omitting “or detention conditions”. (2) Section 68(2) is amended by omitting “, home detention,”.
Offence to refuse entry to home detention residence	46. Section 69 is repealed.
Arrest without warrant	47. Section 70(2) is amended by omitting “or detention conditions”.
Meaning of pre-sentence detention	48. Section 82B(6) is amended by – (a) omitting “2 or 3” and substituting “(2) or (3)”; and (b) omitting “or on home detention” from paragraph (a); and (c) omitting “tinder” from paragraph (b) and substituting “under”.
Time ceases to run in certain circumstances	49. (1) Section 83(b) is amended by – (a) omitting “leave” and substituting “release”; and (b) omitting “in to” and substituting “into”; and (c) omitting “; and”. (2) Section 83(c) is repealed.
Functions of	50. – (1) Section 87(1)(b) is repealed.

Commission	(2) Section 87(1)(d)(iii) is repealed.
	(3) Section 87(1)(e)(i) is amended by omitting “and detention conditions”.
	(4) Section 87(1)(e)(ii) is amended by omitting “, home detention”.
Administrative and training support for Commission	51. Section 88 is repealed.
Membership of Commission	52. Section 89(2)(b) is amended by omitting “nine” and substituting “two”.
Committee convenors	53. (1) Section 92(3)(a) is amended by omitting “release conditions, parole or home detention” and substituting “release conditions or parole”.
	(2) Section 92(3)(d) is amended by omitting “under section 64” and substituting “under sections 43(2) and 64”.
Decisions of Commission	54. Section 94(3) is amended by omitting “or detention”.

PART IV – CONSEQUENTIAL AND MISCELLANEOUS AMENDMENTS

Justice	55.–(1) This section amends the Justice Ordinance.
	(2) Section 36 is hereby repealed.
	(3) A new subsection is added to section 38 as follows:
	“(4) In this section, a reference to imprisonment includes detention in a home detention residence under a sentence of home detention given in accordance with section 76A of the Sentencing Ordinance 2002.”
Judicature (Appeals in Criminal Cases)	56.–(1) This section amends the Judicature (Appeals in Criminal Cases) Ordinance.
	(2) Section 13(4) is amended by
	(a) inserting “or sentence of home detention” after “sentence of imprisonment”; and
	(b) inserting “or term of home detention” after “term of imprisonment”.
	(3) Section 22 is amended by omitting the words “Chief Justice” and inserting the words “Supreme Court” in their place.
	(4) Section 36(4) is amended by omitting the words “Chief Justice” and inserting the words “Supreme Court or Court of Appeal” in their place.

- Local Government 57.–(1) This section amends the Local Government Ordinance.
 (2) Section 14A is amended by inserting a new subsection as follows:
 “(2) In this section –
 (a) a reference to a sentence of imprisonment includes a sentence of home detention; and
 (b) a reference to being detained in a prison includes detention in a home detention residence pursuant to a sentence of home detention.”
 (3) Section 16(8)(v) is amended by –
 (a) inserting the words “home detention” before the word “residence”; and
 (b) deleting the words “direction made under section 32 of the Parole Ordinance 2002” and inserting the words “sentence of home detention given in accordance with section 76A of the Sentencing Ordinance 2002” in their place.
- Victims of Offences 58.–(1) This section amends the Victims of Offences (No 2) Ordinance.
 (2) Section 13(1) is amended by inserting the words “home detention residence, or a” before the word “hospital”.
 (3) Section 13(2) is amended by –
 (a) in paragraph (c), inserting the words “home detention residence” before the word “hospital”; and
 (b) inserting a new paragraph as follows:
 “(d) any impending release or grant of early release of the defendant from home detention under the Parole Ordinance 2002.”
- Bail 59. –(1) This section amends the Bail Ordinance.
 (2) Section 2 of the Bail Ordinance is amended by inserting the following definitions in appropriate alphabetical order:
 “**home detention residence** has the meaning given under section 3 of the Sentencing Ordinance;
Superintendent of Prisons means the person appointed in accordance with section 5 of the Prisons Ordinance;
Supervision Officer has the meaning given under section 3 of the Sentencing Ordinance;”
 (3) A new subheading and section 37A is inserted after section 37 as follows:
Bail on deferment of sentence
- Bail on deferment of sentence 37A. – (1) This section applies if the start date of a sentence imposed on an offender is deferred under section 76R or section 95 of the Sentencing Ordinance.
 (2) If this section applies, the court that defers the start date of the offender’s sentence must grant the offender bail.
 (3) An offender who is granted bail under this section must

be released on condition that the offender must –

(a) if the sentence is deferred under section 76R of the Sentencing Ordinance, –

(i) go to and remain at the home detention residence at the expiry of the period of deferral specified by the court, unless absent in accordance with 76C(3) (a) or (b) of that Act; and

(ii) advise a Supervision Officer as soon as possible of any change in circumstances affecting the availability or suitability of the home detention residence; or

(b) if the sentence is deferred under section 95 of the Sentencing Ordinance, surrender himself or herself to the Superintendent of Prisons at the expiry of the period of deferral specified by the court.

(4) The provisions of sections 29 to 36 and 38 to 42 of this Ordinance, as far as they are applicable and with all necessary modifications, apply as if the offender were a defendant who had been granted bail.

(4) A new subheading and section 62A is inserted after section 62 as follows:

Bail on deferment of sentence

Bail on deferment
of sentence

62A. – (1) This section applies if the start date of a sentence imposed on an offender is deferred under section 76R or section 95 of the Sentencing Ordinance.

(2) If this section applies, the court that defers the start date of the offender’s sentence must grant the offender bail.

(3) An offender who is granted bail under this section must be released on condition that the offender must –

(a) if the sentence is deferred under section 76R of the Sentencing Ordinance, –

(i) go to and remain at the home detention residence at the expiry of the period of deferral specified by the court, unless absent in accordance with 76C(3) (a) or (b) of that Act; and

(ii) advise a Supervision Officer as soon as possible of any change in circumstances affecting the availability or suitability of the home detention residence; or

(b) if the sentence is deferred under section 95 of the Sentencing Ordinance, surrender himself or herself to the Superintendent of Prisons at the expiry of the period of deferral specified by the court.

(4) The provisions of sections 54, 55, 57, 59 and 60 of this Ordinance, as far as they are applicable and with all necessary modifications, apply as if the offender were a defendant who had been granted bail.

- Firearms Control 60. –(1) This section amends the Local Government (Firearms Control) Regulations.
(2) Regulation 18(2) is amended by inserting the words “or home detention” after the word “imprisonment”.
- Sexual Offences 61. –(1) This section amends the Sexual Offences (Notification and Prevention) Ordinance.
(2) Section 6 is amended by inserting a new subsection as follows:
 “(7) In this section, a reference to a sentence of imprisonment includes a sentence of home detention.”
(3) Section 8(1) is amended by inserting the words “, home detention,” after the word “imprisonment” in paragraph (e).
(4) Schedule 1 is amended by inserting a new section as follows:
 “44. In this Schedule, a reference to a sentence of imprisonment includes a sentence of home detention.”