ANALYSIS

1993, No. 43

An Act to amend the Criminal Justice Act 1985

[*23 June 1993*

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Criminal Justice Amendment Act 1993, and shall be read together with and deemed part of the Criminal Justice Act 1985 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the 1st day of September 1993.

2. Interpretation—(1) The principal Act is hereby amended by repealing section 2, and substituting the following section:

"2. (1) In this Act, unless the context otherwise requires,—

" 'Approved' means approved by the Secretary:

" 'Community-based sentence' means—

"(a) A sentence of community service:

"(b) A sentence of periodic detention:

"(c) A sentence of supervision:

"(d) A sentence of a community programme:

" 'Compulsory treatment order' means a compulsory treatment order made under Part II of the Mental Health (Compulsory Assessment and Treatment) Act 1992:

" 'Counsel', in relation to any person, means a barrister and solicitor of the High Court of New Zealand who is representing that person in any proceedings:

" 'Court' means any court exercising jurisdiction in criminal cases:

" 'Determinate sentence' means a sentence of imprisonment otherwise than for life:

" 'District Court' includes a Youth Court:

" 'Employing authority', in relation to a person who is serving a sentence of community service, means the institution or organisation, or the instrument of the Crown, or the public body, on whose behalf the person is required to perform any service for the purposes of the sentence:

" 'Final release date', in relation to a full-time custodial sentence, means the date specified in section 90 of this Act beyond which (subject to any liability for recall under Part VI of this Act) an offender cannot be detained in a penal institution in respect of that sentence:

" 'Full-time custodial sentence' means—

"(a) A sentence of corrective training:

"(b) A sentence of imprisonment:

"(c) A sentence of preventive detention:

" 'Habilitation centre' means an approved residential centre that operates programmes for offenders designed to discover and address the cause or causes of or factors contributing to their offending:

" 'Home detention' means the detention, in an approved private residence, of an offender who is subject to residential conditions:

" 'Hospital' means a hospital, other than a security institution, within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992:

" 'Indeterminate sentence' means a sentence of imprisonment for life or a sentence of preventive detention:

" 'Inmate' means a person who is for the time being in the legal custody of the Superintendent of any penal institution:

" 'Manager Community Corrections' means a person appointed to be a Manager Community Corrections of a district under section 127 of this Act:

" 'Mentally disordered' has the same meaning as it has in the Mental Health (Compulsory Assessment and Treatment) Act 1992:

" 'Minimum period of imprisonment' means the period of imprisonment which the court has, under section 80 of this Act, ordered that an offender shall serve before he or she can be released under Part VI of this Act:

" 'Minister' means the Minister of Justice:

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

" 'Parole', in relation to a full-time custodial sentence, means the point of the sentence at which the Parole or a District Prisons Board as the case may be, may, but is not required to, release an offender pursuant to section 89 of this Act:

" 'Patient' means a person who is, or is deemed to be, subject to a compulsory treatment order:

" 'Penal institution' means a penal institution established under the Penal Institutions Act 1954:

" 'Periodic detention centre' means a periodic detention centre established under section 126 (1) of this Act:

" 'Probation officer' means a person appointed to be, or designated as, a probation officer under section 124 of this Act; and includes a person exercising only some of the functions or powers of a probation officer under this Act:

" 'Programme' means one or more of the following:

"(a) Attendance on some form of continuing basis at one or more medical, social, therapeutic, educational, or rehabilitative amenities:

"(b) Placement within programmes such as Maatua Whangai:

"(c) Placement in the care of members of an appropriate ethnic group, such as a tribe (iwi), a subtribe (hapu), an extended family (whanau), or marae, or in the care of any particular member or members of any such group, such as an elder (kaumatua):

"(d) Placement in the care of members of an appropriate religious group, such as a church or

religious order, or in the care of any particular member or members of any such group:

"(e) Placement in the care of any other person or persons or of any agency:

" 'Residential conditions' means the conditions prescribed in section 107D of this Act and imposed on an offender who is released under Part VI of this Act to an habilitation centre or to home detention, as the case may be:

" 'Secretary' means the Secretary for Justice:

" 'Sentence expiry date', in relation to a determinate sentence, means the date on which the term of the sentence imposed by the court ends:

" 'Sentence of imprisonment' does not include—

"(a) A term of imprisonment imposed, whether by committal, sentence, or order, for—

"(i) Non-payment of a sum of money; or

"(ii) Disobedience of a court order; or

"(iii) Contempt of court; or

"(b) A suspended sentence of imprisonment that has not taken effect; or

"(c) A sentence of preventive detention; or

"(d) A sentence of corrective training:

" 'Serious violent offence' means an offence against any of the following provisions of the Crimes Act 1961 in respect of which a determinate sentence of more than 2 years imprisonment is imposed on the offender:

"(a) Section 128 (sexual violation):

"(b) Section 171 (manslaughter):

"(c) Section 173 (attempt to murder):

"(d) Section 188 (1) (wounding with intent to cause grievous bodily harm):

"(e) Section 188 (2) (wounding with intent to injure):

"(f) Section 189 (1) (injuring with intent to cause grievous bodily harm):

"(g) Section 189 (2) (injuring with intent to injure):

"(h) Section 198A (using a firearm against law enforcement officer, etc.):

"(i) Section 198B (commission of crime with firearm):

"(j) Section 234 (robbery):

"(k) Section 235 (aggravated robbery):

" 'Supervising officer', in relation to a person who is serving a sentence of community service, means the probation officer who is for the time being supervising that person in accordance with section 32 of this Act:

" 'Suspended sentence'—

"(a) Means a sentence in respect of which an order has been made under subsection (1) of section 21A of this Act; but

"(b) Does not include a sentence that has taken effect by virtue of an order made under subsection (4) or subsection (5) (a) of that section:

" 'Trial Judge', in relation to a District Court, means a Judge who holds a warrant under section 28B of the District Courts Act 1947 to conduct trials on indictment:

" 'Warden' means a person appointed to be, or designated as, a Warden under section 128 of this Act.

"(2) References in this Act to offences punishable by imprisonment, or to offences punishable by imprisonment for a term of a specified period or more, shall be construed, in relation to any particular case, without regard to any restriction imposed by any of the provisions of this or any other Act on the jurisdiction or powers of the court dealing with the case.

"(3) For the purposes of this Act, an offender is subject to a full-time custodial sentence if the offender is serving that sentence or is liable to commence or to resume serving it at some time in the future."

(2) The following enactments are hereby consequentially repealed:

(a) So much of the Second Schedule to the Children, Young Persons, and Their Families Act 1989 as relates to section 2 (1) of the principal Act:

(b) So much of the Fourth Schedule to the Mental Health (Compulsory Assessment and Treatment) Act 1992 as relates to section 2 (1) of the principal Act.

3. Limitation on combined sentences—(1) The principal Act is hereby amended by inserting, after section 8, the following section:

"8A. (1) No court shall, in respect of any offence, impose on an offender a community-based sentence cumulative on a sentence of imprisonment, if the court ought not to have imposed a sentence of imprisonment at all.

"(2) Where a court imposes a community-based sentence cumulative on a sentence of imprisonment, the total duration of the combined sentences shall not exceed the term of imprisonment that would otherwise be appropriate for that offence."

4. Reparation to be considered in all cases—The principal Act is hereby amended by repealing section 11, and substituting the following section:

"11. The court shall consider imposing a sentence of reparation in every case, and, subject to section 22 of this Act, shall impose such a sentence unless it is satisfied that it would be clearly inappropriate to do so."

5. Court may take into account offer to make amends—(1) Section 12 (1) of the principal Act is hereby amended by inserting, after the word "compensation", the words ", whether financial or by means of the performance of any work or service,".

(2) Section 12 (3) of the principal Act is hereby amended by adding the words "or the performance of any work or service".

6. Concurrent sentences of different kinds—The principal Act is hereby amended by repealing section 13, and substituting the following section:

"13. (1) This section applies where an offender is before a court for sentence, whether or not the offender is already subject to any sentence or sentences.

"(2) A court shall not impose any sentence or sentences of one kind to be served concurrently with any sentence or sentences of another kind unless the combination is permitted by this section.

"(3) Where any kind of full-time custodial sentence is or has been imposed on an offender, a court may also impose a sentence of reparation or a sentence of a fine, or both.

"(4) Where any kind of community-based sentence is or has been imposed on an offender, a court may also impose one or more of the following:

"(a) A sentence of reparation or a sentence of a fine, or both:

"(b) A suspended sentence of imprisonment:

"(c) Where the community-based sentence is periodic detention, a sentence of supervision:

"(d) Where the community-based sentence is supervision, a sentence of periodic detention.

"(5) Where a suspended sentence of imprisonment is imposed on an offender, a court may also impose either or both of the following:

"(a) Any one community-based sentence or the combination of the sentences of periodic detention and supervision:

"(b) A sentence of reparation or a sentence of a fine, or both.

"(6) Where a suspended sentence of imprisonment has been imposed on an offender on a previous occasion and the offender is before a court for sentence in respect of one or more offences not punishable by imprisonment, the court may also impose a sentence of reparation or a sentence of a fine, or both.

"(7) Where a sentence of reparation or a sentence of a fine, or both, are or have been imposed on an offender, a court may also impose—

"(a) A full-time custodial sentence; or

"(b) Either or both of the following:

"(i) Any one community-based sentence:

"(ii) A suspended sentence of imprisonment; or

"(c) Either or both of the following:

"(i) The combination of the sentences of periodic detention and supervision:

"(ii) A suspended sentence of imprisonment.

"(8) Where any offender who is before a court for sentence is already detained under a full-time custodial sentence imposed on an earlier occasion, the court shall not impose on that offender any community-based sentence or a suspended sentence of imprisonment.

"(9) Nothing in this section—

"(a) Empowers a court to impose any sentence that it would not otherwise be empowered to impose; or

"(b) Limits the power of a court to make any order that it is empowered to make on the conviction of any person, whether under this Act or under any other enactment."

7. New sections inserted—The principal Act is hereby amended by inserting, after section 21, the following sections:

"21A. **Suspended sentences**—(1) Where a court sentences an offender to a term of imprisonment of not less than 6 months and not more than 2 years, it may make an order suspending the sentence for a period not exceeding 2 years from the date of the order.

"(2) A court shall not make an order under subsection (1) of this section if it would not have sentenced the offender to imprisonment in the absence of power to make an order suspending the sentence.

"(3) A court making an order under subsection (1) of this section shall specify a suspended sentence that corresponds in length to the sentence of imprisonment that it would have imposed in the absence of power to make an order suspending the sentence.

"(4) Where an offender who is subject to a suspended sentence is convicted of a further offence punishable by imprisonment, the court shall order that the suspended sentence shall take effect for the period specified in the order made under subsection (1) of this section, unless it is of the opinion that it would be unjust to do so in view of all the circumstances which have arisen since the suspended sentence was imposed, including the circumstances of any further offending.

"(5) Where the Court decides pursuant to subsection (4) of this section that a suspended sentence shall not take effect for the period specified in the order, the court shall, subject to this Act, order that the suspended sentence—

"(a) Take effect with the substitution of a lesser term of imprisonment; or

"(b) Be cancelled and replaced by any non-custodial sentence that could have been imposed on the offender at the time when the offender was convicted of the offence for which the suspended sentence was imposed; or

"(c) Be cancelled.

"(6) Where, pursuant to subsection (4) or subsection (5) of this section, a court orders that the suspended sentence shall take effect, then, notwithstanding section 78 of this Act but subject to any direction made under section 73 (1) of this Act, the sentence shall commence on the date of the making of that order.

"(7) Where a court sentences an offender for a further offence without taking into account the existence of a suspended sentence, the Solicitor-General or any member of the Police or a Crown Prosecutor may, before the expiry of the suspended sentence, apply to the court for the making of an order referred to in subsection (4) of this section.

"(8) On any application under subsection (7) of this section, the court may issue a summons requiring the offender to appear, or issue a warrant to arrest the offender and bring him or her before the court, at the time and place appointed, for

the purpose of being dealt with in accordance with subsection (4) of this section and that subsection shall have effect in all respects notwithstanding that the offender has already been sentenced for the further offence.

"(9) Where a court imposes a suspended sentence for one offence, the court may also impose suspended sentences under subsection (1) of this section for other offences for which the offender has appeared for sentence, so long as the total period of all suspended sentences to which the offender is subject does not exceed 2 years from the date of commencement of the first such sentence; and, where 2 or more suspended sentences are imposed on an offender, the sentences shall be served concurrently.

"(10) For the purposes of this section, a conviction includes a conviction entered in the Youth Court where the offender is referred to the District Court for sentencing pursuant to section 283 (o) of the Children, Young Persons, and Their Families Act 1989.

"21B. **Administration and effect of suspended sentences**—(1) On making an order under section 21A (1) of this Act, the court shall explain to the offender that if he or she is convicted of a further offence punishable by imprisonment while subject to a suspended sentence he or she is liable to undergo the sentence in addition to any other sentence which may be imposed.

"(2) Where the court imposes a suspended sentence on an offender it shall cause the particulars of the sentence, including the consequences of non-compliance to be drawn up in the form of an order and the provisions of section 58 of this Act shall apply as if the reference in that section to a community-based sentence were a reference to a suspended sentence.

"(3) An offender shall have the same right of appeal against a suspended sentence as he or she would have had if the sentence had taken effect.

"(4) Nothing in this Act shall authorise any court to direct that—

"(a) A suspended sentence shall be cumulative on another suspended sentence or on a sentence of any other kind; or

"(b) A sentence of any kind shall be cumulative on a suspended sentence.

"(5) Subject to subsection (3) of this section, an offender who is subject to a suspended sentence which has not taken effect under subsection (4) or subsection (5) (a) of section 21A of this

Act shall not be treated for the purposes of this Act or any other Act as being subject to a sentence of imprisonment.

"21C. **Registrar to keep records**—The Registrar of any court making an order or sentencing an offender under section 21A of this Act shall cause records to be kept of such orders and sentences for the purpose of ensuring that suspended sentences are administered in accordance with sections 21A and 21B of this Act."

8. Court may sentence offender to make reparation—(1) Section 22 (4) (b) of the principal Act (as substituted by section 4 (1) of the Criminal Justice Amendment Act (No. 3) 1987) is hereby amended by omitting the expression "$250", and substituting the expression "$500".

(2) Section 22 of the principal Act is hereby amended by adding the following subsections:

"(6) Notwithstanding anything to the contrary in this section, where the offender has insufficient means to pay the total value of the loss or damage, or the amount the court would otherwise have ordered to be paid in respect of the harm, on sentencing the offender to make reparation, the court may direct the offender to make—

"(a) Reparation for any amount which is less than the value or amount of the loss, damage, or harm; or

"(b) Periodic payments in respect of the loss, damage, or harm; or

"(c) Both.

"(7) Where the court, having been satisfied that the requirements of subsection (1) of this section have been met, considers whether it is appropriate to impose, in addition to the sentence of reparation, a sentence of a fine, and it appears to the court that the offender has insufficient means to make reparation in addition to paying a fine, the court shall, subject to subsection (6) of this section, sentence the offender to make reparation alone.

"(8) Where the court imposes upon an offender a sentence of reparation and a sentence of a fine, any payments received from the offender shall be applied first in satisfaction of the amount due under the sentence of reparation."

9. Enforcement of sentence—Section 25 of the principal Act is hereby amended by adding the following subsection:

"(4) For the avoidance of doubt, it is hereby declared that the remission of the whole or any part of the amount required to be paid under a sentence to make reparation does not affect

the right of the person who suffered loss or damage to bring civil proceedings to recover the amount so remitted."

10. Effect of subsequent sentences—Section 28G of the principal Act (as inserted by section 2 of the Criminal Justice Amendment Act 1989) is hereby amended—

(a) By omitting from paragraph (a) the expression "12 months or more", and substituting the expression "more than 12 months":

(b) By omitting from paragraph (c) the expression "less than 12 months", and substituting the expression "12 months or less":

(c) By omitting from paragraph (d) the words "by a District Prisons Board or":

(d) By omitting from paragraph (d) the expression "section 91", and substituting the expression "section 94".

11. Concurrent and cumulative sentences—Section 30 (4) of the principal Act is hereby amended by inserting, after the words "community service", the words "may be cumulative on a sentence of imprisonment of 12 months or less but".

12. Matters to be considered by court before community service imposed—Section 31 of the principal Act is hereby amended by adding, as subsection (2), the following subsection:

"(2) Notwithstanding subsection (1) (c) of this section, a court may impose on an offender a sentence of community service cumulative on a sentence of imprisonment, if satisfied that it is likely that suitable authorised service will be available for the offender to perform for the purposes of the sentence."

13. Supervising Officer—Section 32 of the principal Act is hereby amended by repealing subsection (2), and substituting the following subsections:

"(2) Except as provided in subsection (3) of this section, the offender shall report in person to the Supervising Officer within 72 hours after a sentence of community service is imposed.

"(3) Where the sentence of community service is cumulative on a sentence of imprisonment, the offender shall, as soon as practicable and not later than 72 hours after release from the penal institution, report in person to a probation officer for the district in which the offender is to reside."

14. Community service to be performed by offenders—(1) Section 33 (1) of the principal Act is hereby amended by omitting the word "As", and substituting the words "Subject to subsection (2) of this section, as".

(2) Section 33 of the principal Act is hereby amended by adding, as subsection (2), the following subsection:

"(2) Where a sentence of community service is cumulative on a sentence of imprisonment, the Supervising Officer shall make the arrangements required to be made under subsection (1) of this section upon the release of the offender from the penal institution."

15. When service to be performed—(1) Section 34 (1) of the principal Act is hereby amended by inserting, after the expression "subsection (2)", the expression "or subsection (2A)".

(2) Section 34 (2) of the principal Act is hereby amended by omitting the word "Where", and substituting the words "Except as provided in subsection (2A) of this section, where".

(3) Section 34 of the principal Act is hereby amended by inserting, after subsection (2), the following subsection:

"(2A) Where a sentence of community service is cumulative on a sentence of imprisonment, the service required to be performed shall be performed within 12 months of the commencement of the sentence of community service."

(4) Section 34 (3) of the principal Act is hereby amended by omitting the expression "and (2)", and substituting the expression ", (2), and (2A)".

16. Offences relating to breach of sentence of community service—Section 36 (1) of the principal Act is hereby amended by repealing paragraph (a), and substituting the following paragraph:

"(a) Fails without reasonable excuse—

"(i) To report to the Supervising Officer in accordance with section 32 (2) of this Act; or

"(ii) To report to a probation officer in accordance with section 32 (3) of this Act; or".

17. Cumulative sentences—Section 39 (1) of the principal Act is hereby amended by inserting, after the words "A sentence of periodic detention", the words "may be cumulative on a sentence of imprisonment of 12 months or less but".

18. Conditions of sentence—The principal Act is hereby amended by repealing section 40, and substituting the following section:

"40. (1) An offender who is subject to a sentence of periodic detention shall be required during the term of the sentence—

"(a) To report at a periodic detention centre on such occasions as may be specified in or pursuant to the order of the court made under subsection (2) of this section; and

"(b) To remain at the periodic detention centre, or to report to and remain at any other place, at the direction of the Warden; and

"(c) On each such occasion, to remain in the custody of the Warden of that centre as directed by the Warden in accordance with this section.

"(2) A court imposing a sentence of periodic detention shall, by order,—

"(a) Either—

"(i) Specify the number of occasions in each week on which the offender is required to report; or

"(ii) Direct the offender to report on 1 occasion in each week and on such other occasion or occasions in each week as the Warden may from time to time specify; or

"(iii) Direct the offender to report on such number of occasions in each week as the Warden may from time to time specify; and

"(b) Except where the sentence is cumulative on a sentence of imprisonment, specify the periodic detention centre at which the offender is required to report on each occasion; and

"(c) Specify—

"(i) In any case where the sentence of periodic detention is cumulative on a sentence of imprisonment, that the offender shall, as soon as practicable and not later than 72 hours after release from the penal institution, report in person to a probation officer for the district in which the offender is to reside and report to a periodic detention centre in that district in accordance with the directions of that probation officer; or

"(ii) In any other case, the date and time at which the offender is required to report on the first such occasion after the sentence is imposed; and

"(d) Specify the maximum duration of each period of custody.

"(3) It shall not be necessary for all the periods of custody in any week to be of the same duration, but no such period shall be longer than 10 hours and the aggregate in any week shall not exceed 18 hours.

"(4) The day and time at which an offender who is subject to a sentence of periodic detention is required to report at a periodic detention centre on every occasion after the first, and the period for which the offender is required to remain in custody on any occasion (including the first), shall be determined by the Warden, who shall have regard to the directions given by the court in imposing the sentence or, subsequently, by any District Court Judge to whom an application is made by the offender.

"(5) The times at which the offender is required to report, and the periods during which he or she is required to remain in custody, shall be such as to avoid interference, so far as practicable, with the offender's attendance at any place of education or employment, or with his or her genuine religious observances.

"(6) Notwithstanding anything in subsections (1) and (2) of this section,—

"(a) The Secretary may subsequently direct that an offender who is serving a sentence of periodic detention shall thereafter report at a periodic detention centre established in a district different from that in which the periodic detention centre specified by the court is established:

"(b) The Warden may subsequently direct that any offender shall thereafter report to another periodic detention centre established within the same district as the periodic detention centre specified by the court.

"(7) A direction given under subsection (6) of this section may be revoked at any time."

19. Offender excused from reporting in certain circumstances—Section 41 of the principal Act is hereby amended by repealing subsection (3), and substituting the following subsection:

"(3) Without limiting subsection (2) of this section, the Warden may excuse an offender who is subject to a sentence of periodic detention from reporting for any period or periods not exceeding in the aggregate 1 week on completion of each 3-month period of the sentence."

20. Offences relating to breach of sentence of periodic detention—Section 45 (1) of the principal Act is hereby amended by repealing paragraph (a), and substituting the following paragraph:

"(a) Fails without reasonable excuse,—

"(i) To report at a periodic detention centre—

"(A) As ordered by the court imposing the sentence; or

"(B) As specified pursuant to section 137 (4) of the Summary Proceedings Act 1957 on appeal; or

"(C) As directed by a probation officer pursuant to section 40 (2) (c) (i) of this Act; or

"(D) As determined pursuant to section 40 (4) of this Act; or

"(E) As directed pursuant to section 40 (6) of this Act; or

"(ii) To report to any other place as directed pursuant to section 40 (1) (b) or section 43 of this Act; or".

21. Sentence of supervision—Section 46 of the principal Act is hereby amended by omitting the word "Where", and substituting the words "Except as provided in section 47 (1) of this Act, where".

22. Cumulative sentences—Section 47 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection:

"(1) A sentence of supervision—

"(a) May be cumulative on a sentence of imprisonment of 12 months or less so long as the term of the sentence of supervision does not exceed 12 months; but

"(b) Shall not be cumulative on another sentence of supervision or on a sentence of any other kind."

23. Conditions of sentence—Section 49 of the principal Act is hereby amended by repealing paragraph (a), and substituting the following paragraph:

"(a) The offender shall report in person as follows:

"(i) In any case where the sentence is cumulative on a sentence of imprisonment, the offender shall, as soon as practicable and not later than 72 hours after release from the penal institution, report to a

probation officer for the district in which the offender is to reside:

"(ii) In any other case, the offender shall report to the probation officer for the district in which the court office is situated as soon as practicable and not later than 72 hours after the sentence is imposed:".

24. Variation or cancellation of sentence—Section 51 (3) of the principal Act is hereby amended by inserting, before the words "to the manner", the words ", where the sentence has commenced,".

25. Change of name of community care—(1) The principal Act is hereby amended by omitting the heading above section 53, and substituting the heading "*Community Programme*".

(2) Sections 54 to 57 of the principal Act are hereby amended by omitting the words "community care" wherever they occur, and substituting in each case the words "a community programme".

(3) Every reference to a sentence of community care in any Act, regulation, rule, order, other enactment, agreement, deed, instrument, application, notice, or other document whatever in force at the commencement of this Act shall, unless the context otherwise requires, be hereafter read as a reference to a sentence of a community programme under section 53 of the principal Act.

26. Cumulative sentences—(1) Section 55 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection:

"(1) A sentence of a community programme may be cumulative on a sentence of imprisonment for a term of 12 months or less but shall not be cumulative on another sentence of a community programme or on a sentence of any other kind."

(2) Section 55 of the principal Act is hereby amended by adding the following subsections:

"(3) Where a sentence of a community programme is cumulative on a sentence of imprisonment, the programme which the offender is to undergo shall be completed within 12 months after the commencement of the sentence of a community programme.

"(4) Where the sentence of a community programme is cumulative on a sentence of imprisonment, the offender shall,

as soon as practicable and not later than 72 hours after release from the penal institution, report in person to a probation officer for the district in which the offender is to reside."

27. Variation or cancellation of sentence of community programme—(1) Section 57 of the principal Act is hereby amended by inserting, after subsection (1), the following subsection:

"(1A) Without limiting anything in subsection (1) of this section, a sentence of a community programme that is cumulative on a sentence of imprisonment may at any time before the commencement of the sentence of a community programme, on the application of the offender or a probation officer made in accordance with section 65 of this Act, be varied or cancelled by a court where it is satisfied that, due to a change in circumstances since the sentence of a community programme was imposed,—

"(a) The offender will be unlikely or unable to comply with any of the conditions of the sentence; or

"(b) The programme is no longer available or suitable for the offender."

(2) Section 57 (2) of the principal Act is hereby amended by omitting the expression "subsection (1) (a)", and substituting the expression "subsections (1) (a) and (1A)".

28. Commencement of sentences—The principal Act is hereby amended by repealing section 59, and substituting the following section:

"59. (1) Except as otherwise provided in this Act, but subject to section 137 of the Summary Proceedings Act 1957,—

"(a) The period during which authorised service is to be performed under a sentence of community service shall commence—

"(i) In any case where the sentence is cumulative on a sentence of imprisonment, on the day on which the offender is released from the penal institution; or

"(ii) In any other case, on the day on which the sentence is imposed; and

"(b) The term of every sentence of periodic detention, or of supervision, or of a community programme shall commence—

"(i) In any case where the sentence is cumulative on a sentence of imprisonment, on the day on which the offender is released from the penal institution; or

"(ii) In any other case, on the day on which the sentence is imposed,—

whether or not the sentence is imposed in substitution for some other sentence.

"(2) Where an offender will be subject to a community-based sentence on release from a penal institution, before his or her release the Superintendent of the penal institution shall give to the Manager Community Corrections in the district in which the offender is to reside upon release notice of—

"(a) The date of the offender's release; and

"(b) The address at which the offender is expected to reside; and

"(c) The community-based sentence to which the offender will be subject upon release.

"(3) Nothing in section 40 (2) (c) (ii) or section 44 of this Act empowers a court to defer the commencement of a sentence of periodic detention, except where—

"(a) The sentence is imposed during the period commencing on the 20th day of December in any year and ending with the close of the 20th day of January in the following year; and

"(b) The periodic detention centre to which the offender would report during that period is not operational."

29. Effect of subsequent sentences—(1) Section 63 of the principal Act is hereby amended by omitting from subsection (1), and also from subsection (2), the word "Where", and substituting in each case the words "Subject to subsection (3) of this section, where".

(2) Section 63 (2) of the principal Act is hereby amended—

(a) By omitting from paragraph (a) the expression "12 months or more", and substituting the expression "more than 12 months":

(b) By omitting from paragraph (c) the expression "less than 12 months", and substituting the expression "12 months or less":

(c) By omitting from paragraph (d) the words "by a District Prisons Board or":

(d) By omitting from paragraph (d) the expression "section 91", and substituting the expression "section 94".

(3) Section 63 of the principal Act is hereby amended by adding the following subsections:

"(3) Where an offender who has been sentenced to a community-based sentence cumulative on a sentence of

imprisonment is, before commencing or completing the community-based sentence, sentenced to a further period of imprisonment, and the total period to be served under the combined sentences of imprisonment exceeds 12 months, the community-based sentence shall not take effect or shall cease to have effect, as the case may be, and shall be deemed to be cancelled.

"(4) Where an offender who is subject to a community-based sentence is also subject to a suspended sentence, and a court orders under subsection (4) or subsection (5) (a) of section 21A of this Act that the suspended sentence shall take effect, subsections (1) and (2) of this section shall apply, so far as they are applicable and with any necessary modifications, as if the offender were subsequently sentenced for another offence."

30. Application to review sentence—Section 64 of the principal Act is hereby amended by inserting, after subsection (1), the following subsection:

"(1A) Without limiting subsection (1) of this section, where an offender has been sentenced to any community-based sentence cumulative on a sentence of imprisonment, other than a sentence of a community programme, and, before the commencement of the community-based sentence, a probation officer believes on reasonable grounds that, due to a change in circumstances since the community-based sentence was imposed,—

"(a) The offender will be unlikely or unable to comply with any of the conditions of the community-based sentence; or

"(b) The community-based sentence is no longer suitable for the offender; or

"(c) In the case of a sentence of supervision, any programme arranged for the offender is no longer available or suitable,—

the probation officer may, unless the sentence is cancelled or is deemed to be cancelled or does not take effect in accordance with any of the provisions of this Act, apply to a court in accordance with section 65 of this Act for a review of the sentence."

31. Powers of court—(1) Section 66 (1) of the principal Act is hereby amended by inserting, after the expression "subsection (1)", the expression "or subsection (1A)".

(2) Section 66 of the principal Act is hereby amended by omitting from subsection (3) (d) and also from subsection (4) (d)

the expression "paragraph (c) of subsection (3) of section 100", and substituting in each case the expression "section 88 (3) (c)".

32. Effect of subsequent sentence of imprisonment—(1) Section 71 (1) of the principal Act is hereby amended—

(a) By omitting from paragraph (a) the words "If the term or terms of imprisonment will expire on or before the date of the expiry", and substitute the words "If the final release date of the term or terms of imprisonment is a date on or before the final release date":

(b) By omitting from paragraph (b) the words "If the term or terms of imprisonment will expire after the date of the expiry", and substitute the words "If the final release date of the term or terms of imprisonment is a date later than the final release date".

(2) Section 71 (2) of the principal Act is hereby amended by omitting the words "the date when the offender would have become eligible for remission of sentence had he or she been", and substituting the words "the final release date that would apply if he or she were".

(3) Section 71 (3) of the principal Act is hereby amended by omitting the words "the term of imprisonment imposed on the offender will expire on or before the date of the expiry", and substituting the words "the final release date of the term of imprisonment is a date on or before the final release date".

33. Cumulative sentences—The principal Act is hereby amended by repealing section 73, and substituting the following section:

"73. (1) A determinate sentence of imprisonment may be cumulative on such other determinate sentence or sentences as the court directs, whether then imposed or to which the offender is already subject, including any sentence or sentences in respect of which any such direction is or has been given.

"(2) A term of imprisonment imposed on an offender (whether by committal, sentence, or order) in respect of the non-payment of a sum of money, may be cumulative on any determinate sentence or sentences of imprisonment as the court directs, whether then imposed or to which the offender is already subject, including any sentence or sentences in respect of which any such direction is or has been given.

"(3) Except as expressly provided in this Act,—

"(a) No sentence of imprisonment shall be cumulative on another sentence of imprisonment or on a sentence of any other kind:

"(b) No sentence of any kind shall be cumulative on a sentence of imprisonment."

34. Sentence of preventive detention—(1) Section 75 of the principal Act (as substituted by section 2 of the Criminal Justice Amendment Act (No. 2) 1987) is hereby amended by repealing subsection (1), and substituting the following subsection:

"(1) This section shall apply to any person who is not less than 21 years of age, and who either—

"(a) Is convicted of an offence against section 128 (1) (a) of the Crimes Act 1961; or

"(b) Having been previously convicted on at least one occasion since that person attained the age of 17 years of a specified offence, is convicted of another specified offence, being an offence committed after that previous conviction."

(2) Section 75 of the principal Act (as so substituted) is hereby amended by inserting, after subsection (3), the following subsections:

"(3A) A court shall not impose a sentence of preventive detention on an offender to whom subsection (1) (a) of this section applies unless the court—

"(a) Has first obtained a psychiatric report on the offender; and

"(b) Having regard to that report and any other relevant report,—

is satisfied that there is a substantial risk that the offender will commit a specified offence upon release.

"(3B) Notwithstanding anything in section 121 (1) of this Act, the Court may, for the purposes of obtaining the psychiatric report referred to in subsection (3A) (a) of this section, exercise all or any of the powers conferred by section 121 (2) of this Act, and subsections (2A) to (13) of section 121 and sections 122 and 123 of this Act shall apply, so far as they are applicable and with any necessary modifications, to the offender and any psychiatric report so obtained."

35. Repeals—(1) Section 77A of the principal Act (as inserted by section 7 of the Criminal Justice Amendment Act (No. 3) 1987) is hereby repealed.

(2) Section 7 of the Criminal Justice Amendment Act (No. 3) 1987 is hereby consequentially repealed.

(3) Section 2 of the Criminal Justice Amendment Act (No. 2) 1989 is hereby consequentially repealed.

36. Court may impose conditions of non-association on release on parole or remission date—(1) Section 77B (1) of the principal Act (as inserted by section 3 (1) of the Criminal Justice Amendment Act 1989) is hereby amended by omitting the words "the date on which the offender becomes eligible for remission of sentence", and substituting the words "the final release date".

(2) Section 77B (1) of the principal Act (as so inserted) is hereby amended by omitting the expression "section 82", and substituting the expression "section 93".

(3) Section 77B of the principal Act (as so inserted) is hereby amended by inserting, after subsection (1), the following subsection:

"(1A) Where a court imposes a community-based sentence cumulative on a sentence of imprisonment, pursuant to any of sections 30, 39, 47, and 55 of this Act, the court may also exercise the power conferred by subsection (1) of this section; and that subsection shall apply accordingly."

37. Commencement of sentence or term of committal—(1) Section 78 (1) of the principal Act is hereby amended by omitting the expression "section 114 (5)", and substituting the expression "sections 21A (4), 21A (5), and 114 (5)".

(2) Section 78 of the principal Act is hereby amended by repealing subsections (8) and (9), and substituting the following subsections:

"(8) Where a determinate sentence of imprisonment is directed to be cumulative on another determinate sentence of imprisonment, the term of the sentence shall commence on the final release date of that other sentence; but if that other sentence is subsequently quashed and no other sentence of imprisonment is substituted therefor, the later sentence shall commence when the quashed sentence would have commenced.

"(9) Where—

"(a) A community-based sentence is cumulative on a sentence of imprisonment; and

"(b) While the offender is serving that sentence of imprisonment, one or more further sentences of

imprisonment are imposed cumulative on that sentence of imprisonment,—

the term of the community-based sentence shall, subject to section 63 (3) of this Act, commence on the release of the offender from a penal institution after serving all the sentences of imprisonment to which he or she is then subject.

"(10) Where a term of imprisonment imposed on an offender (whether by committal, sentence, or order) in respect of the non-payment of a sum of money or for disobedience of a court order or for contempt of court is directed to be cumulative on a determinate sentence of imprisonment, that term shall commence on the final release date of that sentence; but if that sentence is subsequently quashed and no other sentence of imprisonment is substituted therefor, the term of imprisonment shall commence when the quashed sentence would have commenced."

38. Sentence to cease to run while offender unlawfully at large—Section 79 of the principal Act is hereby amended by omitting the words "section 44 (4) of the Mental Health Act 1969", and substituting the words "section 48 (1) of the Mental Health (Compulsory Assessment and Treatment) Act 1992".

39. Minimum periods of imprisonment—(1) The principal Act is hereby amended by repealing section 80, and substituting the following section:

"80. (1) Subject to subsections (2) and (3) of this section, where a court sentences an offender to an indeterminate sentence, it may, at the same time, order that the offender serve a minimum period of imprisonment of more than 10 years.

"(2) The court shall not impose a minimum period of imprisonment under subsection (1) of this section unless it is satisfied that the circumstances of the offence are so exceptional that a minimum period of imprisonment of more than 10 years is justified.

"(3) Where the court imposes a minimum period of imprisonment under subsection (1) of this section, the duration of the period imposed shall be the minimum period that the court considers to be justified having regard to the circumstances of the case, including those of the offender.

"(4) Where a court sentences an offender to a term of imprisonment of more than 2 years for a serious violent offence, it may, at the same time, order that the offender serve a minimum period of imprisonment.

"(5) The court shall not impose a minimum period of imprisonment under subsection (4) of this section unless it is satisfied that the circumstances of the offence are so exceptional that the imposition of a minimum period of imprisonment that is longer than the period otherwise applicable under section 89 or section 90 of this Act, as the case may be, is justified.

"(6) The duration of the period imposed under subsection (4) of this section shall be the minimum period that the court considers to be justified having regard to the circumstances of the case, including those of the offender, but in no case shall the period exceed—

"(a) The period beginning on the commencement of the sentence and ending 3 months before the sentence expiry date; or

"(b) Ten years,—

whichever is the lesser.

"(7) Where the court makes an order under this section, it shall give the offender written reasons for so doing and the offender may appeal against the imposition of the minimum period of imprisonment in the same manner as he or she may appeal upon conviction against the sentence or sentences imposed."

(2) Section 149 of the principal Act is hereby amended by repealing paragraph (g), and substituting the following paragraph:

"(g) Prescribing the manner in which final release dates are to be determined under section 91 of this Act:".

(3) The following enactments are hereby consequentially repealed:

(a) Section 3 of the Criminal Justice Amendment Act (No. 2) 1987:

(b) Section 3 of the Criminal Justice Amendment Act (No. 2) 1989.

(4) In any Act, regulation, rule, order, other enactment, agreement, deed, instrument, application, notice, or other document whatever in force at the commencement of this section, every reference to remission under the principal Act (as it read immediately before the commencement of this section) shall, unless the context otherwise requires, be hereafter read as a reference to a final release date.

40. Period on remand to be taken as time served—(1) The principal Act is hereby amended by repealing section 81 (as substituted by section 8 (1) of the Criminal Justice

Amendment Act (No. 3) 1987), and substituting the following section:

"81. (1) The Superintendent of any penal institution (not being a police jail) shall for the purposes of this section cause a record to be kept of—

"(a) The date on which any person is admitted to the institution on remand; and

"(b) The total period during which any person is detained in the institution on remand—

at any stage of the proceedings leading to the person's conviction or pending sentence, whether that period or any part of it relates to any charge on which the person was eventually convicted or any other charge on which the person was originally arrested or that the person faced at any time subsequent to his or her arrest and prior to conviction.

"(2) In determining the length of any sentence of imprisonment to be imposed, the sentencing Judge shall not take into account any part of the period during which the offender was detained in a penal institution on remand, as recorded under subsection (1) of this section, and shall not specify any such period on the warrant of commitment.

"(3) On receiving a warrant of commitment for any sentenced offender, the Superintendent shall cause any period during which the offender was detained in a penal institution on remand (as so recorded) to be determined and entered on the warrant of commitment.

"(4) The Superintendent shall cause a copy of the warrant of commitment completed in accordance with subsection (3) of this section to be given to the offender to whom it relates, and any such offender who disputes the accuracy of the determination made under that subsection may apply to the Superintendent for a review of the determination.

"(5) On receiving an application under subsection (4) of this section, the Superintendent shall forthwith review the determination and shall, if he or she believes it is inaccurate, cause the determination to be amended. Where the Superintendent is satisfied that the original determination is accurate, he or she shall cause the offender to be informed in writing accordingly.

"(6) Where an offender is dissatisfied with the review of his or her application under subsection (5) of this section, he or she may appeal against the Superintendent's decision to the court that imposed the sentence; and, subject to this subsection, the provisions of Part IV of the Summary Proceedings Act 1957, or (as the case may require) Part XIII of the Crimes Act 1961, shall

apply, so far as they are applicable and with any necessary modifications, to every such appeal.

"(7) For the purposes of determining the dates on which an offender to whom subsection (1) of this section applies will become eligible for parole or final release, as the case may be, the offender shall be deemed to have been serving the sentence during the period specified on the warrant of commitment in accordance with subsection (3) of this section or determined under subsection (5) or subsection (6) of this section, as the case may be.

"(8) This section shall not apply in respect of any time during which an offender is detained in a penal institution on remand while the offender is subject to any full-time custodial sentence.

"(9) For the purposes of subsection (7) of this section, terms of imprisonment under cumulative sentences shall be treated as one term determined in the manner provided in section 92 of this Act.

"(10) Nothing in this section shall limit or affect the provisions of section 78 of this Act."

(2) Nothing in subsection (1) of this section shall apply in respect of any sentences imposed before the commencement of this section or any sentences imposed in substitution, or as a result of a retrial, for any such sentences.

41. Repeal—Section 82 of the principal Act is hereby repealed.

42. Court may order confiscation of motor vehicles—Section 84 (2) of the principal Act is hereby amended—

(a) By omitting the expression "1 year or more", and substituting the expression "more than 12 months":

(b) By inserting in paragraph (a), before the word "facilitate", the words "commit or".

43. New Part VI substituted—(1) The principal Act is hereby amended by repealing Part VI (comprising sections 89 to 107) and section 107A (as inserted by section 8 of the Criminal Justice Amendment Act (No. 2) 1987), and substituting the following Part:

"PART VI

"ADMINISTRATION OF FULL-TIME CUSTODIAL SENTENCES

"*Release*

"89. **Discretionary release on parole**—(1) Subject to subsection (2) of this section, an offender who is subject to an

indeterminate sentence is eligible to be released on parole after the expiry of 10 years of that sentence.

"(2) An offender to whom subsection (1) applies who is subject to a minimum period of imprisonment imposed under section 80 (1) of this Act is eligible to be released on parole after the expiry of the minimum period specified in the order.

"(3) An offender who is subject to a determinate sentence of imprisonment for a term of more than 12 months, not being a sentence for a serious violent offence, is eligible to be released on parole after the expiry of one-third of that sentence.

"(4) An offender who is subject to a sentence of imprisonment for a term of 15 years or more for a serious violent offence is eligible to be released on parole after the expiry of 10 years of that sentence.

"(5) An offender who has been recalled under this Part of this Act or an offender in respect of whom a direction for return has been made under section 94 (6) of this Act, whether before or after that offender's final release date under section 90 (1) of this Act, may be released again on parole at any time before the final release date specified in section 90 (4) of this Act.

"(6) Notwithstanding anything in this section, no offender is eligible to be released on parole under this section—

"(a) While the offender remains subject to an order made under section 105 of this Act; or

"(b) Where an application for an order under that section in respect of the offender has been made to, but not determined by, the Parole Board; or

"(c) While the offender is detained in a police station or police jail; or

"(d) While the offender is subject to an order made under section 47A of the Misuse of Drugs Amendment Act 1978.

"(7) Except as provided in subsection (4) of this section, no offender who is subject to a sentence of imprisonment for a serious violent offence shall, in respect of that sentence, be eligible to be released on parole under this section.

"90. **Final release**—(1) Subject to sections 33 (3) and 34 (3) of the Penal Institutions Act 1954, to section 47A of the Misuse of Drugs Amendment Act 1978, and to subsections (2), (3), and (4) of this section, an offender shall be released—

"(a) Where the offender is subject to a sentence of imprisonment for a term of 12 months or less, after the expiry of one-half of the sentence:

"(b) Where the offender is subject to a sentence of imprisonment for a term of more than 12 months, not being a sentence for a serious violent offence, after the expiry of two-thirds of the sentence:

"(c) Where the offender is subject to a sentence of corrective training, after the expiry of two-thirds of the sentence:

"(d) Where the sentence is in respect of a serious violent offence,—

"(i) If no minimum period of imprisonment has been imposed under section 80 (4) of this Act, after the expiry of two-thirds of the sentence:

"(ii) If a minimum period of imprisonment has been imposed under section 80 (4) of this Act, after the expiry of the minimum period specified in the order.

"(2) Subject to sections 33 (3) and 34 (3) of the Penal Institutions Act 1954, where an offender is subject to an order made under section 105 of this Act, the offender shall be released—

"(a) If the order is revoked after the date when the offender would but for the order have been finally released under subsection (1) of this section, on the date of revocation; or

"(b) On expiry of the order, being a date not later than 3 months before the sentence expiry date.

"(3) An offender in respect of whom an application for an order under section 105 of this Act has been made to, but not determined by, the Parole Board shall not be released under this section until the application has been determined in accordance with section 105 of this Act.

"(4) Subject to sections 33 (3) and 34 (3) of the Penal Institutions Act 1954, where an offender has been recalled or a direction for the return of an offender has been made under section 94 (6) of this Act, the offender shall be released not later than 3 months before the sentence expiry date.

"(5) For the purposes of this section, a person on whom a term of imprisonment is imposed (whether by way of committal, sentence, or order) for non-payment of a sum of money or for disobedience of a court order or for contempt of court shall be treated as an offender who is subject to a sentence of imprisonment for that term.

"91. **Secretary to determine offender's final release dates**—In respect of each offender who is detained in a penal

institution (other than a police jail) for the purposes of any sentence or term of imprisonment or any sentence of corrective training, the Secretary shall from time to time determine, in accordance with sections 90 and 92 of this Act and any regulations made under this Act, the offender's final release date.

Cf. 1985, No. 120, s. 90

"92. **Calculation of parole, final release, and sentence expiry dates**—(1) Where an offender is subject to cumulative or concurrent sentences of imprisonment, or both, the parole, final release and sentence expiry dates of such sentences shall be calculated in accordance with this section.

"(2) For the purposes of this Part of this Act, terms of imprisonment under cumulative sentences shall be treated as one term as provided in this section.

"(3) The date on which an offender who is subject to cumulative sentences of imprisonment is eligible for parole under section 89 shall be determined by—

"(a) Calculating, for each sentence within each link in the cumulative chain, the period beginning with the commencement of the sentence and ending with the close of the date on which the offender becomes eligible for parole in accordance with section 89 of this Act, or, in respect of any sentence where there is no such parole eligibility date, the final release date for that sentence; and

"(b) Taking the longest period within each link; and

"(c) Adding that period to the longest periods from the other links in the cumulative chain.

"(4) The date on which an offender who is subject to cumulative sentences of imprisonment is to be finally released pursuant to section 90 of this Act shall be determined by—

"(a) Calculating, for each sentence within each link in the cumulative chain, the period beginning with the commencement of the sentence and ending with the close of the final release date specified in section 90 of this Act; and

"(b) Taking the longest period within each link; and

"(c) Adding that period to the longest periods from the other links in the cumulative chain.

"(5) The sentence expiry date for an offender who is subject to cumulative sentences of imprisonment shall be determined by—

"(a) Determining the term imposed by the court for each sentence within each link in the cumulative chain; and

"(b) Taking the longest term within each link; and

"(c) Adding that term to the longest term from the other links in the cumulative chain.

"(6) For the purposes of subsections (3), (4), and (5) of this section, each sentence or group of sentences that is cumulative on another sentence or group of sentences or on which another such sentence or group of sentences is cumulative constitutes a link in the cumulative chain.

"(7) An offender who is subject to 2 or more concurrent sentences of imprisonment shall not be eligible to be released on parole under this Part of this Act until he or she is so eligible under section 89 of this Act in respect of each of those sentences.

"(8) Where, in a case to which subsection (7) of this section relates, the offender is subject to 1 or more sentences of imprisonment that do not carry eligibility for parole under section 89 of this Act, the final release date of each such sentence shall be treated for the purposes of this section as if the offender were eligible to be released on parole under that sentence at that date.

"(9) For the purposes of this Part of this Act, references to an offender's final release date mean, in relation to an offender who is subject to 2 or more concurrent sentences, the later or latest date by which the offender shall be released in respect of each of those sentences.

"(10) For the purposes of this section, a term of imprisonment imposed (whether by way of committal, sentence, or order) for non-payment of a sum of money or for disobedience of a court order or for contempt of court shall be treated as a sentence of imprisonment.

Cf. 1985, No. 120, ss. 89 (2), (3), 93 (2), (4)

"93. **Date of release to avoid weekends and holidays**—Except in the case of a sentence of imprisonment for a term of 7 days or less but notwithstanding anything in this Part of this Act, whenever an offender is due to be discharged or released on any Thursday, Friday, Saturday, or Sunday or on New Year's Day, Waitangi Day, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day, Christmas Day, or Boxing Day the offender shall be discharged or released on the nearest preceding day that is not one of those days.

Cf. 1985, No. 120, s. 82

"94. **Early release for special reason**—(1) Notwithstanding that the offender may not be eligible for release under section 90 of this Act, but subject to subsection (2) of this section, the Minister may direct the release on a specified date of an offender who is subject to a determinate sentence of imprisonment, or who is subject to a sentence of corrective training, and who—

"(a) Has given birth to a child; or

"(b) Would be finally released pursuant to section 90 of this Act at any time within the period that commences with the 15th day of December in any year and ends with the 5th day of January in the next following year; or

"(c) Is serving a sentence of 6 months or less and proposes on release to undertake a full-time educational course that will commence before the offender would otherwise be released; or

"(d) Is seriously ill and is unlikely to recover.

"(2) The Minister shall not direct the release under this section of any offender who is subject to an order made under section 105 of this Act.

"(3) Notwithstanding subsection (1) (b) of this section, no offender shall be released under that provision before the 1st day of December immediately preceding the offender's final release date.

"(4) Where an offender is released under this section, the Minister may direct that the offender shall be subject to such conditions as the Minister specifies for a specified period, not exceeding 6 months or a period equal to that period commencing with the date of release under this section and ending with the sentence expiry date, whichever is the longer.

"(5) Where an offender is released on conditions imposed under subsection (4) of this section, the provisions of section 107G of this Act, so far as they are applicable and with any necessary modifications, shall apply as if the offender were released on parole by the Parole Board.

"(6) Where an offender has been released on any condition imposed under subsection (4) of this section and it appears to the Minister that the condition has been breached, the Minister may, at any time not later than 3 months before the sentence expiry date, direct that the offender be returned to or otherwise detained in any institution in which the offender may be lawfully detained, whereupon the offender shall, subject to sections 89 and 90 of this Act, continue to serve his or her

sentence from the time of his or her return or other detention until the sentence expiry date.

"(7) An offender who is released on conditions imposed under subsection (4) of this section shall be deemed to be unlawfully at large if the offender is at large after the giving of a direction for his or her return to an institution under subsection (6) of this section.

"(8) The Minister may revoke a direction for the release of an offender under this section at any time before the offender is released.

"(9) Subject to any direction by the Minister to the contrary, the powers conferred by this section on the Minister in respect of any offender to whom subsection (1) (b) of this section applies may be exercised by the Secretary.

Cf. 1985, No. 120, s. 91

"95. **Release of offender detained in psychiatric institution while subject to sentence of imprisonment**—(1) Notwithstanding anything in sections 97 and 100 of this Act, where an offender who is subject to a determinate sentence is detained in a hospital or in an institution under the Alcoholism and Drug Addiction Act 1966, or is on leave from any such hospital or institution, the offender shall not be considered by the Parole Board or a District Prisons Board for parole.

"(2) If an offender to whom subsection (1) of this section applies is so detained or on leave at the offender's final release date, the offender shall thereafter no longer be liable to be detained under the sentence.

"(3) Where an offender who is subject to an indeterminate sentence, is detained in a hospital, or is on leave from any such hospital, at the date that he or she becomes eligible for parole, the offender shall be considered by the Parole Board in accordance with section 97 of this Act.

"(4) Where the Parole Board directs the release on parole of an offender to whom subsection (3) of this section applies and, pursuant to that direction, a release date is set, then, if at that date the offender is still detained or on leave, the offender shall thereafter—

"(a) Be treated in accordance with the provisions of section 48 (3) of the Mental Health (Compulsory Assessment and Treatment) Act 1992, if the offender was previously subject to an order made under section 45 of that Act or to arrangements made under section 46 of that Act; or

"(b) Be a special patient, if the offender is subject to an order made under section 115 (1) of this Act; or

"(c) Be a patient, in any other case.

"(5) Notwithstanding anything in this Part of this Act an offender who is released from a hospital or an institution under the Alcoholism and Drug Addiction Act 1966 shall not be subject to conditions on release but shall continue to be liable to recall under this Part of this Act until 3 months before the sentence expiry date or, in the case of an offender who is subject to an indeterminate sentence, unless and until the offender is discharged from such liability under section 107N of this Act.

Cf. 1985, No. 120, s. 102

"96. **Release for purpose of deportation**—(1) Where—

"(a) An offender who is subject to a sentence of imprisonment or to a sentence of preventive detention has been ordered to be deported from New Zealand by the Governor-General under section 72 of the Immigration Act 1987 or by the Minister of Immigration under section 73 or section 91 or section 92 of that Act; and

"(b) A copy of the order, or a notice of the making of the order, has been served on the offender; and

"(c) The offender—

"(i) Has no right of appeal under that Act against the making of that order; or

"(ii) The time for bringing such an appeal has expired and the offender has not brought such an appeal; or

"(iii) Any such appeal has been determined and the order has not been quashed,—

the Minister of Immigration may, by notice in writing to the Superintendent of the penal institution in which the offender is detained, order the release of the offender into the custody of any member of the Police for the purpose of deportation.

"(2) A notice issued under subsection (1) of this section shall be sufficient authority for the Superintendent to release the offender accordingly on request by any member of the Police.

"(3) When a ship or aircraft becomes available to take the offender from New Zealand, and it is practicable in all the circumstances for the offender to leave on that ship or aircraft, a member of the Police shall require the Superintendent, in accordance with subsection (1) of this section, to deliver the offender into the custody of the member who shall escort the

offender or arrange for him or her to be escorted to the seaport or airport and ensure that the offender is placed upon the ship or aircraft and detained there until the ship or aircraft leaves New Zealand.

"(4) If, for any reason, that ship or aircraft is delayed in New Zealand for more than 24 hours, the offender shall be returned to the custody of the Superintendent; and for that purpose the warrant by which the offender was originally committed to the institution shall be deemed still to be of full force and effect.

"(5) Thereafter the Superintendent shall, on request by any member of the Police, release the offender into the custody of that member for deportation, and the provisions of this section shall apply in respect of every such request until the offender is finally deported.

"(6) Notwithstanding anything in subsection (1) of this section, in respect of an offender to whom paragraphs (a) to (c) of that subsection apply, the Secretary may, at any time within 28 days preceding the offender's final release date, by notice in writing to the Superintendent of the penal institution in which the offender is detained, order the release of the offender into the custody of any member of the Police in possession of the notice; and that notice shall be sufficient authority for the Superintendent to release the offender accordingly.

"(7) Thereafter subsections (3) to (5) of this section shall apply as if the release were ordered by the Minister of Immigration.

"(8) Where an offender is released and deported under this section, his or her sentence shall continue to run, and, if the offender subsequently returns to New Zealand before the sentence expiry date the offender shall, subject to sections 89 and 90 of this Act, be liable to resume serving it.

Cf. 1985, No. 120, s. 92; 1987, No. 74, s. 151 (1)

"97. **Jurisdiction of Parole Board to release offenders on parole**—(1) This section applies to offenders who are subject to one or more indeterminate sentences or to one or more sentences of imprisonment for a term of 7 years or more.

"(2) Subject to subsection (8) of this section, the Parole Board shall consider the case of an offender to whom this section applies, as soon as practicable after the offender becomes eligible to be released on parole under section 89 of this Act, and at least once in every 12 months thereafter.

"(3) Subject to subsection (8) of this section, an offender to whom this section applies and whose case has been considered by the Parole Board, may from time to time thereafter apply to the Board to have the case considered again; and the Board

shall consider the case again unless the application is made within 6 months after a previous application by the offender under this subsection, when it may refuse to consider the case.

"(4) An offender who has been recalled to a penal institution to continue serving his or her sentence pursuant to section 107L of this Act, or in respect of whom a direction for return has been made under section 94 (6) of this Act, shall have his or her case for further release considered by the Board not later than 12 months after the date of recall or return, as the case may be, and at least once in every 12 months thereafter.

"(5) Notwithstanding anything in section 89 of this Act or any order made under section 80 of this Act or section 47 of the Misuse of Drugs Amendment Act 1978, a member of the Parole Board may, at any time, refer to the Board the case of an offender to whom this section applies, and the Board shall consider the case as soon as practicable.

"(6) Notwithstanding anything in section 89 of this Act, but subject to subsection (7) of this section, the Parole Board shall consider the case of each offender belonging to any class of offenders, being offenders to whom this section applies, that the Minister designates as a class to be so considered.

"(7) The Parole Board shall not consider under any of the foregoing provisions of this section the case of an offender who is subject to an order made under section 105 of this Act or in respect of whom an application for such an order has been made to, but not determined by, the Parole Board.

"(8) The Parole Board shall not consider under subsection (2) or subsection (3) or subsection (6) of this section the case of an offender in respect of whom an order was made under section 80 of this Act or under section 47 of the Misuse of Drugs Amendment Act 1978 until the expiry of the period specified in the order.

"(9) If, after considering any case to which subsection (2) or subsection (3) or subsection (4) or subsection (5) of this section applies, the Parole Board is of the opinion that the offender should be released on parole, it may direct that the offender be released on parole accordingly, notwithstanding anything to the contrary in section 89 of this Act.

"(10) A direction given by the Parole Board for the release of any offender on parole may be revoked by the Parole Board at any time before the offender is released.

Cf. 1985, No. 120, s. 94; 1987, No. 95, s. 6

"98. **Parole Board to comply with policy directions**—(1) In the exercise of its functions and powers under this Act in

relation to parole for offenders subject to indeterminate sentences, the Parole Board shall have regard to the policy of the Government and shall comply with any directions relating to that policy given to it in writing signed by the Minister. As soon as practicable after any such direction is given, the Minister shall publish in the *Gazette* and lay before the House of Representatives a copy of that direction.

"(2) The Minister shall not give any direction under subsection (1) of this section which requires the Parole Board to do, or refrain from doing, a particular act, or bring about a particular result, in respect of any particular offender or offenders.

"99. **Jurisdiction of Parole Board where offender to be released at final release date**—(1) This section applies to offenders who are subject to one or more sentences of imprisonment for a term of 7 years or more and who are to be released at their final release dates pursuant to paragraph (b) or paragraph (d) of subsection (1) or to subsection (2) or subsection (4) of section 90 of this Act.

"(2) The Parole Board shall consider the case of an offender to whom this section applies before the offender's final release date and shall determine, in accordance with section 107A of this Act, the nature and duration of the conditions to which the offender shall be subject on release.

"(3) Where, at the final review of the case of an offender who is eligible to be released on parole under section 89 of this Act, the Parole Board declines to release the offender, it may, at the same time, determine in accordance with section 107A the nature and duration of the conditions to which the offender shall be subject when released pursuant to section 90 of this Act.

"(4) Any direction given by the Parole Board under this section may be revoked or amended by the Parole Board at any time before the offender is released.

Cf. 1985, No. 120, s. 94; 1987, No. 95, s. 6

"100. **Jurisdiction of District Prisons Boards to release offenders on parole**—(1) This section applies to offenders who are subject to one or more sentences of imprisonment for a term of more than 12 months but less than 7 years.

"(2) Subject to subsection (8) of this section, the appropriate District Prisons Board shall consider the case of an offender to whom this section applies, as soon as practicable after the offender becomes eligible to be released on parole under

section 89 of this Act, and at least once in every 12 months thereafter.

"(3) Subject to subsection (8) of this section, an offender to whom this section applies and whose case has been considered by the appropriate District Prisons Board, may from time to time thereafter apply to the Board to have the case considered again; and the Board shall consider the case again unless the application is made within 6 months after a previous application by the offender under this subsection, when it may refuse to consider the case.

"(4) An offender who has been recalled to a penal institution to continue serving his or her sentence pursuant to section 107L of this Act, or in respect of whom a direction for return has been made under section 94 (6) of this Act, shall have his or her case for further release considered by the appropriate District Prisons Board not later than 12 months after the date of recall or return, as the case may be, and at least once in every 12 months thereafter.

"(5) Notwithstanding anything in section 89 of this Act or any order made under section 80 of this Act or section 47 (2) of the Misuse of Drugs Amendment Act 1978, a member of the appropriate District Prisons Board (including the appropriate Superintendent or the appropriate probation officer) may, at any time, refer to the Board the case of an offender to whom this section applies, and the Board shall consider the case as soon as practicable.

"(6) Notwithstanding anything in section 89 of this Act, but subject to subsection (8) of this section, the appropriate District Prisons Board shall consider the case of each offender belonging to any class of offenders, being offenders to whom this section applies, that the Minister designates as a class to be so considered.

"(7) The appropriate District Prisons Board shall not consider under any of the foregoing provisions of this section the case of an offender who is subject to an order made under section 105 of this Act or in respect of whom an application for such an order has been made to, but not determined by, the Parole Board.

"(8) The appropriate District Prisons Board shall not consider under subsection (2) or subsection (3) or subsection (5) of this section the case of an offender in respect of whom an order was made under section 80 of this Act or under section 47 (2) of the Misuse of Drugs Amendment Act 1978 until the expiry of the period specified in the order.

"(9) If, after considering any case to which subsection (2) or subsection (3) or subsection (4) or subsection (5) of this section applies, a District Prisons Board is of the opinion that the offender should be released on parole, it may direct that the offender be released on parole accordingly, notwithstanding anything to the contrary in section 89 of this Act.

"(10) A direction given by a District Prisons Board for the release of any offender on parole may be revoked by the appropriate Board at any time before the offender is released.

Cf. 1985, No. 120, s. 95; 1987, No. 95, s. 7; 1989, No. 91, s. 5 (2), (3)

"101. **Jurisdiction of District Prisons Boards where offender to be released at final release date**—(1) This section applies to offenders who are subject to one or more sentences of imprisonment for a term of more than 12 months but less than 7 years and who are to be released at their final release dates pursuant to paragraph (b) or paragraph (d) of subsection (1) or to subsection (2) or subsection (4) of section 90 of this Act.

"(2) The appropriate District Prisons Board shall consider the case of an offender to whom this section applies before the offender's final release date and shall determine in accordance with section 107A of this Act the nature and duration of the conditions to which the offender shall be subject on release.

"(3) Where, at the final review of the case of an offender who is eligible to be released on parole under section 89 of this Act, the appropriate District Prisons Board declines to release the offender, it may, at the same time, determine in accordance with section 107A of this Act the nature and duration of the conditions to which the offender shall be subject when released pursuant to section 90 of this Act.

"(4) Any direction given by a District Prisons Board under this section may be revoked or amended by the appropriate Board at any time before the offender is released.

"102. **Release to habilitation centre**—(1) This section applies to offenders who are eligible for release on parole under section 89 of this Act or who are to be released under section 90 of this Act at their final release date, except offenders subject to—

"(a) A sentence of imprisonment of 12 months or less; or

"(b) A sentence of corrective training.

"(2) The Parole Board or a District Prisons Board, as the case may be, may, with the consent of the offender, direct, as a condition of release, that the offender be released to a

habilitation centre that the Secretary has approved for the purposes of this Act.

"(3) No offender shall be released to a habilitation centre unless the Parole Board or District Prisons Board is satisfied that—

"(a) The offender is suitable for release to the habilitation centre; and

"(b) The offender is likely to benefit from participation in a programme offered at that particular centre; and

"(c) The offender has been made aware of and understands the conditions that would apply on release to the habilitation centre and he or she agrees to comply with them.

"(4) The Parole Board or District Prisons Board shall not release an offender to a habilitation centre unless it has first obtained and considered a report from the Department of Justice as to the offender's suitability for release to that particular habilitation centre.

"(5) Nothing in this section affects or limits the matters that the Board shall consider under section 104 of this Act in relation to release on parole.

"103. **Release to home detention**—(1) This section applies to offenders who are eligible for release on parole under section 89 of this Act or who are to be released under section 90 of this Act at their final release date, except—

"(a) Offenders subject to—

"(i) A sentence of imprisonment of 12 months or less; or

"(ii) A sentence of corrective training; or

"(iii) A sentence in respect of a serious violent offence; or

"(iv) An order made under section 105 of this Act; or

"(v) An indeterminate sentence; or

"(b) Offenders released on the expiry of an order made under section 105 of this Act.

"(2) The Parole Board or a District Prisons Board, as the case may be, may, with the consent of the offender, direct that the offender be released to home detention.

"(3) No offender shall be released to home detention unless the Parole Board or District Prisons Board is satisfied that—

"(a) The offender is suitable for release to home detention; and

"(b) The occupants of the residence to which the offender will be released understand the conditions of the offender's release to home detention and consent to the offender's detention in that residence in accordance with those conditions; and

"(c) The offender has been made aware of and understands the conditions that would apply on release to home detention and he or she agrees to comply with them.

"(4) The Parole Board or District Prisons Board shall not release an offender to home detention unless it has first obtained and considered a report from the Department of Justice as to the offender's suitability for release to home detention.

"(5) Nothing in this section affects or limits the matters that the Board shall consider under section 104 of this Act in relation to release on parole.

"104. **Matters to be considered when determining release on parole**—In determining, pursuant to section 97 and section 100 of this Act, whether to release an offender on parole, the Parole Board or District Prisons Board shall consider the need to protect the public or any person or class of persons who may be affected by the release of the offender, and shall also consider the following matters:

"(a) Generally, the likelihood of the offender committing further offences upon his or her release:

"(b) The welfare of the offender and any change in his or her attitude during the sentence:

"(c) The nature of the offence:

"(d) In the case of an offender who is subject to an order for recall or an offender in respect of whom a direction for return has been made under section 94 (6) of this Act, the reasons for the order or direction, as the case may be:

"(e) The policy directions (if any) given by the Minister under section 98 of this Act.

Cf. 1985, No. 120, s. 96; 1987, No. 168, s. 10

"105. **Offender may be required to serve full term**—(1) This section applies to every offender who is subject to a sentence of imprisonment for a specified offence other than the offence of murder.

"(2) The Secretary may apply to the Parole Board at any time before the offender's final release date under section 90 of this

Act for an order that the offender not be released before the applicable release date.

"(3) The Board may make an order that the offender not be released before the applicable release date if it is satisfied that the offender would, if released before that date, be likely to commit a specified offence between the date of release and the applicable release date.

"(4) A copy of any application made under subsection (2) of this section and a copy of any report to be submitted to the Board shall be given to the offender at least 14 days before the application is to be considered by the Parole Board, and the offender shall be given an opportunity of appearing before the Board and stating his or her case in person or by counsel.

"(5) If the Parole Board makes an order under subsection (3) of this section in respect of any offender, it shall state its reasons in writing for making the order, and shall give a copy of that statement to the offender or his or her counsel.

"(6) Every order made under subsection (3) of this section shall be reviewed by the Parole Board at least once in every 6 months following the making of the order and subsection (4) of this section shall apply with the necessary modifications.

"(7) On any such review, the Parole Board may revoke the order if it is no longer satisfied that the offender would, if released before his or her applicable release date, be likely to commit a specified offence between the date of release and the applicable release date and may at the same time determine pursuant to section 99 of this Act the nature and duration of the conditions to which the offender shall be subject on release.

"(8) An order made under this section shall, if not earlier revoked under subsection (7) of this section, expire 3 months before the sentence expiry date.

"(9) In this section,—

"(a) 'Applicable release date' means,—

"(i) In the case of an offender who is subject to one sentence of imprisonment, 3 months before the sentence expiry date:

"(ii) In the case of an offender who is subject to more than one sentence of imprisonment imposed in respect of a specified offence, 3 months before the later or latest sentence expiry date of any of those sentences:

"(b) 'Specified offence' means—

"(i) Murder:

"(ii) If committed against a child under the age of 16 years at the time of the commission of the offence,—

"(A) Any offence against any of the following provisions of the Crimes Act 1961:

"Section 130 (incest):

"Section 131 (sexual intercourse with a girl under care and protection):

"Section 132 (sexual intercourse with a girl under 12 years):

"Section 133 (indecency with a girl under 12 years):

"Section 134 (sexual intercourse or indecency with a girl between 12 and 16 years):

"Section 140 (indecency with boy under 12 years):

"Section 140A (indecency with boy between 12 and 16 years):

"Section 141 (indecent assault on man or boy):

"Section 142 (anal intercourse):

"(B) An attempt to commit an offence against section 142 of the Crimes Act 1961:

"(iii) If committed against any person, whether or not a child under the age of 16 years at the time of the commission of the offence,—

"(A) Any offence against any of following provisions of the Crimes Act 1961:

"Section 128 (sexual violation):

"Section 129 (attempt to commit sexual violation):

"Section 142A (compelling indecent act with animal):

"Section 173 (attempt to murder):

"Section 188 (wounding with intent):

"Section 189 (1) (injuring with intent to cause grievous bodily harm):

"Section 191 (aggravated wounding or injury):

"Section 199 (acid throwing):

"(B) An attempt to commit an offence against section 142A or section 188 (1) of the Crimes Act 1961.

Cf. 1985, No. 120, s. 107A; 1987, No. 95, s. 8

"106. **Reports and representations to Boards**—In determining any application or considering any matter in respect of which the Parole Board or District Prisons Boards

have jurisdiction under this Part of this Act, the Board shall have regard to—

"(a) Any representations made by the offender, whether orally or in writing, and any written submissions made by any other person on the offender's behalf; and

"(b) Any report made by the Superintendent of the penal institution in which the offender is detained; and

"(c) Any report made by the Department of Justice or the Ministry of Health relating to the case.

Cf. 1985, No. 120, s. 96 (1) (d)-(f)

"107. **Rights of offender whose case is to be considered by Parole Board or District Prisons Board**—(1) An offender who is subject to an indeterminate sentence or to a sentence of imprisonment for a term of 7 years or more, and who is eligible under section 89 of this Act to be released on parole shall be given an opportunity of appearing before the Parole Board and stating his or her case in person or, with leave of the Chairperson of the Board, by counsel,—

"(a) When it is considered under section 97 (2) of this Act; and

"(b) At least once in every 12 months thereafter.

"(2) An offender who is subject to a sentence of imprisonment for a term of more than 12 months but less than 7 years and who is eligible under section 89 of this Act to be released on parole and whose case is to be considered under section 100 (2) of this Act shall be given an opportunity of appearing before the appropriate District Prisons Board and stating his or her case in person or, with leave of the Chairperson of the Board, by counsel.

"(3) An offender who is to be released at his or her final release date and whose case is to be considered under section 99 or section 101 of this Act shall be given an opportunity of appearing before the Parole Board or the appropriate District Prisons Board, as the case may be, and stating his or her case in person or, with leave of the Chairperson of the Board, by counsel.

"(4) Except as provided in this section, an offender whose case is to be considered under any of sections 97, 99, 100, and 101 of this Act shall not be entitled to appear before the Parole Board or the appropriate District Prisons Board to state his or her case in person; but nothing in this subsection shall prevent the Board from inviting the offender to do so if the Board thinks fit on any particular occasion.

"(5) Subject to subsection (6) of this section, whenever any case is to be considered under any of sections 97, 99, 100, and 101 of this Act, a copy of any report to be submitted to the Parole Board or the appropriate District Prisons Board pursuant to section 106 of this Act shall be given to the offender in sufficient time to enable the offender to submit any comments he or she may wish to make on the report or reports for consideration by the Board.

"(6) The Parole Board or appropriate District Prisons Board may, if it is of the opinion that the disclosure under subsection (5) of this section to the offender of any part of a report or reports, other than a report by the Superintendent of the penal institution in which the offender is detained, would be likely to prejudice the offender's physical or mental health or endanger the safety of any person, order that such part or parts of the report or reports not be disclosed to the offender; but where the offender is represented, the whole of the report or reports shall be shown to the offender's counsel.

"(7) When the Parole Board or a District Prisons Board has completed its consideration of any case under any of sections 97, 99, 100, and 101 of this Act, it shall notify the offender of its decision, and, where it declines to direct the release of the offender on parole, the reasons for that decision.

Cf. 1985, No. 120, s. 97; 1987, No. 25, s. 3; 1989, No. 91, s. 5 (5)

"107A. **Conditions of release**—(1) Subject to subsections (6) and (7) of this section, where an offender who is subject to an indeterminate sentence is directed by the Parole Board to be released on parole (including such a release following recall), the offender shall be subject to—

"(a) The standard conditions prescribed by section 107B of this Act for the life of the offender; and

"(b) Such special conditions (if any) as the Parole Board may think fit to impose, under section 107C of this Act, for such period as the Parole Board may determine.

"(2) Subject to subsections (6), (7), and (8) of this section, where an offender who is subject to a sentence of imprisonment for a term of more than 12 months is released pursuant to section 89 or section 90 of this Act (including such a release following recall), the offender shall be subject to—

"(a) The standard conditions prescribed by section 107B of this Act for such period, being not less than 6 months from the date of release or where the period from that date to the sentence expiry date is less

than 6 months, that period, as the Parole Board or a District Prisons Board, as the case may be, may determine; and

"(b) Such special conditions (if any) as the Parole Board or District Prisons Board, as the case may be, may impose under section 107C of this Act for such period from the date of release as the Parole Board or a District Prisons Board, as the case may be, may determine.

"(3) Subject to subsection (5) of this section, in determining the duration of any conditions imposed in accordance with this section, the Board shall fix a period that is not longer than is reasonably necessary in the circumstances of the particular case to reduce the risk of re-offending.

"(4) In no case shall any conditions imposed under this section apply for any period after the sentence expiry date nor, subject to subsection (8) of this section, shall any special conditions imposed under section 107C of this Act apply for a period when the offender is not also subject to standard conditions under section 107B of this Act.

"(5) Residential conditions shall apply for such period not exceeding 12 months as the Parole Board or a District Prisons Board, as the case may be, may determine, and may before the expiry of such period be extended for one further period not exceeding 12 months, if the offender consents.

"(6) Where an offender is released to a habilitation centre or to home detention, the offender shall be subject to residential conditions prescribed by subsection (1) or subsection (2) of section 107D of this Act, as the case may be, but shall not be subject at the same time to standard conditions under section 107B of this Act.

"(7) No offender released to a habilitation centre shall be subject, at the same time, to special conditions imposed under section 107C of this Act.

"(8) An offender who is released on home detention may, in addition to the residential conditions prescribed in section 107D (2) of this Act, at the same time be subject to special conditions imposed under section 107C of this Act.

"(9) Where the Parole Board imposes residential conditions under section 107D (1) of this Act on an offender to whom subsection (1) of this section applies, the standard conditions prescribed by section 107B of this Act shall apply to that offender from the date of release from a habilitation centre.

"(10) Where the Parole Board imposes residential conditions under section 107D (1) of this Act on an offender to whom

subsection (1) of this section applies, it may, at the same time, direct that special conditions imposed under section 107C of this Act shall apply to that offender from the date of release from a habilitation centre.

"(11) Where the Parole Board or a District Prisons Board imposes residential conditions on an offender to whom subsection (2) of this section applies, it may, at the same time, direct that standard conditions under section 107B of this Act and any special conditions imposed under section 107C of this Act shall apply to that offender from the date that the residential conditions terminate.

Cf. 1985, No. 120, s. 99; 1987, No. 168, s. 7; 1989, No. 20, s. 3 (2); 1989, No. 91, s. 5 (6)

"107B. **Standard conditions**—Where standard conditions are imposed on an offender under this Part of this Act, the following conditions shall apply:

"(a) As soon as practicable and in any event not later than 72 hours after release, the offender shall report in person to a probation officer for the district in which he or she is to reside:

"(b) The offender shall report to the probation officer under whose supervision he or she is, as and when required to do so by the probation officer, and shall notify the officer of his or her residential address and the nature and place of his or her employment on request:

"(c) The offender shall obtain the consent of the probation officer before moving from his or her residential address, and if the offender removes to any place within the district of another probation officer, the offender shall, within 72 hours after arriving in that district, notify that other probation officer of his or her address, and the nature and place of his or her employment:

"(d) The offender shall not reside at an address at which the probation officer has directed the offender not to reside unless that place has been approved by the Parole Board or the appropriate District Prisons Board:

"(e) The offender shall not engage, or continue to engage, in any employment or occupation in which the probation officer has directed the offender not to engage or continue to engage:

"(f) The offender shall not associate with any specified person, or with persons of any specified class, with whom the probation officer, or the Parole Board or the appropriate District Prisons Board, has, in writing, directed the offender not to associate.

Cf. 1985, No. 120, s. 100

"107C. **Special conditions**—(1) Subject to section 107A of this Act and to subsection (3) of this section, the Parole Board or a District Prisons Board may impose on an offender such special conditions as it thinks necessary to protect the public or any person or class of persons who may be affected by the release of the offender, or for—

"(a) The rehabilitation of the offender; or

"(b) The welfare of the offender.

"(2) Without limiting the generality of subsection (1) of this section the Parole Board or a District Prisons Board may impose under that subsection a condition that the offender shall undergo a programme, on such terms as are specified by the Board.

"(3) Nothing in this section shall authorise the imposition on an offender of any special conditions unless they are designed to reduce the risk of his or her re-offending.

Cf. 1985, No. 120, s. 101; 1988, No. 181, s. 2

"107D. **Residential conditions**—(1) Where an offender is released to a habilitation centre, the following conditions shall apply:

"(a) The offender shall reside in the habilitation centre, unless authorised by the habilitation centre manager to be released on leave for a period not exceeding 3 days:

"(b) The offender shall comply with the programme designed for that offender:

"(c) The offender shall comply with the rules of the habilitation centre and any lawful order given by habilitation centre personnel:

"(d) The offender shall co-operate with, and comply with any lawful direction given by, the probation officer assigned to him or her.

"(2) Where an offender is released to home detention, the following conditions shall apply in addition to any special conditions imposed under section 107A (11) of this Act:

"(a) The offender shall not at any time leave the place where he or she is serving home detention, except—

"(i) To seek or engage in employment approved by a probation officer; or

"(ii) To seek urgent medical or dental treatment; or

"(iii) To avoid or minimise a serious risk of death or injury to the offender or any other person; or

"(iv) To attend training or other rehabilitative activities or programmes approved by a probation officer; or

"(v) For such other purpose as a probation officer may from time to time approve:

"(b) The offender shall co-operate with, and comply with any lawful direction given by, the probation officer assigned to him or her.

"(3) An offender who is subject to residential conditions shall keep the licence issued pursuant to section 107F of this Act in his or her possession and, if requested to do so by a member of the Police, or by a probation officer, shall produce it for inspection.

"107E. **Conditions applying to corrective trainees**—(1) Where an offender who is subject to a sentence of corrective training, is released from detention in a penal institution on the offender's final release date, the offender shall be subject to—

"(a) The standard conditions prescribed by section 107B of this Act for a period of 6 months from the date of his or her release; and

"(b) Such special conditions as the Secretary may think fit to impose, being special conditions that could have been imposed under section 107C of this Act, for such period not exceeding 6 months from the date of release as the Secretary may determine.

"(2) An application for the discharge, variation, or suspension of all or any such conditions may be made to any District Prisons Board by a probation officer, or by the offender; and in any such case the provisions of section 107G of this Act, with any necessary modifications, shall apply.

"107F. **Released offender on licence**—(1) Every offender who is released under this Part of this Act shall, on release, be issued with a licence setting out the conditions of his or her release (if any) and their duration and his or her liability to recall.

"(2) Where the conditions of the offender's release are varied at any time pursuant to section 107G of this Act, the offender shall be given a licence which sets out the conditions as so varied.

"(3) Subject to subsection (4) of this section, every offender who is released on conditions under this Part of this Act shall be under the supervision of a probation officer in whose district the offender resides for the time being, or of such other probation officer as the Secretary may from time to time direct, while the offender remains subject to any such conditions.

"(4) Where the offender is released to home detention or a habilitation centre, the offender shall be under the supervision of a probation officer who is designated as a home detention officer or habilitation co-ordinator, as the case may be, pursuant to section 124 (3A) of this Act.

Cf. 1985, No. 120, s. 98

"107G. **Variation and discharge of conditions**—(1) Where an offender is released on conditions, a probation officer, or the offender, may apply at any time for the variation, discharge, or suspension of any or all of the conditions of the offender's release.

"(2) Where an offender is released on conditions, a probation officer may apply at any time for—

"(a) The imposition of any additional condition or conditions of the offender's release:

"(b) The extension of the period during which the offender is to be subject to any or all conditions.

"(3) On an application under this section, any probation officer may suspend any conditions to which the application relates until the application is determined.

"(4) An application under this section shall be made to the Parole Board or a District Prisons Board, as the case may be.

"(5) Subject to subsection (6) of this section, the Chairperson of the Board to which an application is made under this section may determine the application and give such directions as he or she thinks fit or may refer the application to the Board for determination.

"(6) Where the offender wishes to appear before the Board and state his or her case in person or by counsel, the appropriate Board shall determine the application.

"(7) The provisions of sections 107 and 107A of this Act shall apply with any necessary modifications in respect of any application and determination made under this section.

"(8) Where an offender is discharged under this section from all conditions to which the offender was subject, those conditions shall cease to apply on the date specified in the direction.

"(9) Nothing in this section allows any condition to be imposed in respect of any period after the sentence expiry date.

Cf. 1985, No. 120, s. 103

"107H. **Breach of conditions**—(1) Every offender commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding $2,000 who fails, without reasonable excuse, to comply with any condition of his or her release under this Part of this Act.

"(2) Where any probation officer or member of the Police believes on reasonable and probable grounds that an offender who has been released under this Part of this Act has committed a breach of a condition of his or her release, that officer may arrest the offender without warrant.

"(3) The conviction and sentencing of an offender under this section shall not limit the power to recall under this Part of this Act.

Cf. 1985, No. 120, s. 105

"Recall

"107I. **Application for recall**—(1) Subject to subsection (6) of this section, where an offender who is subject to an indeterminate sentence is released on conditions under this Part of this Act, the Secretary may, at any time, while the offender remains liable to recall, apply to the Parole Board for an order that the offender be recalled to a penal institution to continue serving his or her sentence.

"(2) Subject to subsection (6) of this section, where an offender is released pursuant to subsections (3) and (4) of section 95 of this Act while in a psychiatric hospital or on leave from any such institution, the Secretary may, at any time, while the offender remains liable to recall, apply to the Parole Board for an order that the offender be recalled to a penal institution to continue serving his or her sentence.

"(3) Subject to subsection (6) of this section, where an offender subject to a determinate sentence is released under this Part of this Act, a probation officer may, at any time not later than 3 months before the sentence expiry date, apply to the Parole Board or a District Prisons Board, as the case may be, for an order that the offender be recalled to a penal institution to continue serving his or her sentence.

"(4) Where an application is to be made under this section to a District Prisons Board, the application shall be made to the

Board for, or closest to, the place where the offender to whom the application relates resides or is believed to be located.

"(5) Where an application is received by a District Prisons Board other than the Board which released or determined the conditions of the offender's release, the first-mentioned Board may, if it considers that the second-mentioned Board could more appropriately deal with the application, transfer the application to the second-mentioned Board.

"(6) An application may be made under this section where the applicant believes on reasonable grounds that—

"(a) The offender has breached the conditions of his or her release; or

"(b) The offender has committed an offence; or

"(c) Because of the offender's conduct, or a change in his or her circumstances since release, further offending is likely; or

"(d) In the case of an offender subject to residential conditions, the offender is jeopardising the safety of any person in the habilitation centre or in the residence where the offender is serving home detention; or

"(e) In the case of an offender released to an habilitation centre, the offender is jeopardising the order or security of the habilitation centre.

"(7) An application made under this section shall specify the grounds in subsection (6) of this section on which the applicant relies and the reasons for believing that the grounds apply.

"(8) Where an application is made under this section, the sentence to which the application relates shall cease to run except for any period between the date of lodgment of the application and the date it is determined in accordance with section 107L or section 107M of this Act, as the case may be, during which the offender is held in custody.

Cf. 1985, No. 120, s. 106

"107J. **Interim order for recall**—(1) Where an application is made under paragraph (d) or paragraph (e) of section 107I (6) of this Act, the Chairperson of a Parole Board or a District Prisons Board, as the case may be, shall, on behalf of the Board, make an interim order for the recall of the offender.

"(2) Where an application is made under paragraph (a) or paragraph (b) or paragraph (c) of section 107I (6) of this Act, the Chairperson of the appropriate Board shall, on behalf of the Board, make an interim order for the recall of the offender where—

"(a) The offender is subject to a sentence for a serious violent offence or the offender was subject before release to an order made under section 105 of this Act in respect of the sentence to which he or she is subject; or

"(b) The Chairperson believes on reasonable grounds that—

"(i) The offender poses an immediate risk to the safety of the public or of any person or any class of persons; or

"(ii) The offender is likely to abscond before the determination of the application for recall.

"(3) Where a Chairperson makes an interim order under this section, the Chairperson shall issue a warrant in the prescribed form for the offender to be detained in the penal institution specified; and if, on the giving of any such order, the offender is still at large, any member of the Police may arrest the offender without warrant for the purpose of returning him or her to the penal institution specified.

"(4) Where an order is made under this section and a warrant is issued, the offender shall on, or as soon as practicable after, being taken into custody be given—

"(a) A copy of the application made under section 107I of this Act; and

"(b) A notice—

"(i) Specifying the date on which the application is to be determined, being a date not earlier than 14 days, nor later than 1 month, after the date on which the offender is taken into custody pursuant to this section; and

"(ii) Advising the offender that he or she is entitled to be heard and to state his or her case in person or by counsel; and

"(iii) Requiring the offender to notify the Board, not later than 7 days before the date on which the application is to be determined, whether he or she wishes to make written submissions or to appear in person or be represented by counsel.

"(5) Where an order is made under this section, any conditions of release in existence shall be suspended and the offender shall be detained in the penal institution specified in the warrant where he or she shall continue to serve his or her sentence pending the determination of the application for recall.

"107K. **Other section 107I applications**—Where an application is made under section 107I of this Act and no order is made under section 107J of this Act, the Chairperson of the Parole Board or a District Prisons Board, as the case may be, shall cause to be served on the offender—

"(a) A copy of the application made under section 107I of the Act; and

"(b) A notice—

"(i) Specifying the date on which the application is to be determined, being a date not earlier than 14 days, nor later than 2 months, after the date on which a copy of the application is served on the offender; and

"(ii) Advising the offender that he or she is entitled to be heard and to state his or her case in person or by counsel; and

"(iii) Requiring the offender to notify the Board, not later than 7 days before the date on which the application is to be determined, whether he or she wishes to make written submissions or to appear in person or be represented by counsel.

"107L. **Determination of application for recall**—(1) Subject to subsection (10) of this section, the Parole Board or a District Prisons Board, as the case may be, shall determine the application made under section 107I of this Act—

"(a) Where an interim order is made under section 107J of this Act, not earlier than 14 days, nor later than 1 month, after the date on which the offender is taken into custody pursuant to this section; or

"(b) In any other case, not earlier than 14 days, nor later than 2 months, after the date on which a copy of the application is served on the offender.

"(2) The Board may order the recall of an offender if it is satisfied, on the balance of probabilities, that one or more of the grounds in section 107I (6) of this Act have been established.

"(3) Without limiting the matters that the Board may consider in determining the application, the Board shall consider the need to protect the public or any person or class of persons from the offender.

"(4) An order for the recall of an offender may be made under this section whether or not the offender is in custody relating to a charge, and whether or not the offender is alleged to have—

"(a) Breached any of the conditions of his or her release; or

"(b) Committed any offence.

"(5) On an application under this section, the Board may receive any evidence that it thinks fit, whether or not the evidence would otherwise be admissible in a court of law.

"(6) Section 107 of this Act shall apply in respect of an application made under section 107I of this Act as if the application were related to the offender's release on parole under section 89 of this Act as far as applicable and with any necessary modifications.

"(7) Where the Board orders the recall of an offender to whom subsection (1) (b) of this section relates, the Chairperson of the Board shall issue a warrant in the prescribed form for the offender to be detained in the penal institution specified and if, on the giving of any such order, the offender is still at large, any member of the Police may arrest the offender without warrant for the purpose of returning him or her to the penal institution specified.

"(8) Where the Board orders the recall of an offender under this section, any suspended or existing release conditions shall be cancelled and the offender shall, on being returned to custody, subject to sections 89 and 90 of this Act, continue to serve his or her sentence.

"(9) Where the Board refuses to grant an application for recall under section 107I of this Act,—

"(a) The Board shall direct the offender's release if he or she is in custody under this section or section 107J of this Act unless the offender is liable to be detained under any other provision of this Act or any other Act:

"(b) The Board may, at the same time, exercise any of its powers under section 107G of this Act to vary or discharge the conditions of release as it thinks fit without the necessity for an application under that section:

"(c) Subject to paragraph (b) of this subsection, any conditions that were previously suspended under section 107J (5) of this Act shall continue to apply to the offender on release under this subsection.

"(10) Nothing in subsection (1) of this section shall prevent the Board from adjourning, from time to time, the hearing of an application made under section 107I of this Act, and, where the offender is in custody pursuant to an order made and a warrant issued under section 107J of this Act, that warrant may be extended accordingly, but in such a case the period of the adjournment shall not exceed 8 days unless both parties otherwise consent.

"107M. **Appeal from order for recall**—(1) Where the Parole Board or a District Prisons Board, as the case may be, has ordered the recall of an offender pursuant to section 107L of this Act, the offender may, within 28 days of the date of the order, or such longer time as the court may on application allow, appeal to the High Court against the making of the order.

"(2) Subject to this section, and with any necessary modifications, the provisions of sections 116 to 120, 123, 129, 130, 133, 134, 136, and 143 of the Summary Proceedings Act 1957 shall apply to every appeal under this section as if the determination of the Board appealed against were an order.

"(3) The offender shall be detained in custody pending the determination of any appeal under this section and the offender's sentence shall continue to run during that period.

"(4) On hearing an appeal pursuant to this section, the High Court may—

"(a) Confirm the order:

"(b) Refer the matter back to the Board with a direction to reconsider:

"(c) Quash the order and, unless the offender is liable to be detained under any other provision of this Act or any other Act,—

"(i) Direct the release of the offender from custody; or

"(ii) Direct the release of the offender from custody and refer the offender to the appropriate Board to consider the imposition of release conditions under this Part of this Act:

"(d) Make such further or other orders as the case may require.

"(5) In the exercise of its powers under this section, the court may receive as evidence any statement, document, information, or matter that the Board would have been entitled to receive at first instance.

"(6) The court shall not be bound to allow the appeal on the ground merely of the improper admission or rejection of evidence unless in the opinion of the court a substantial wrong or miscarriage of justice has thereby been occasioned.

"(7) Without limiting the matters that the court may consider in determining the appeal, the court shall consider the need to protect the public or any person or class of persons from the offender.

"(8) In referring a matter back to the Board under subsection (4) (b) of this section, the court shall—

"(a) Advise the Board of its reasons for so doing; and

"(b) Give the Board such direction as it thinks just as to any rehearing or to the reconsideration or determination of the whole or any part of the matter.

"107N. **Discharge from liability to recall**—(1) Where an offender who is subject to an indeterminate sentence is, while detained in a hospital or on leave from any such hospital, released on the direction of the Parole Board, the offender may apply at any time to the Chairperson of the Board for discharge from liability to recall.

"(2) In any such case, the Chairperson of the Parole Board may direct that the offender be so discharged.

Cf. 1985, No. 120, s. 104"

(2) The following enactments are hereby consequentially repealed:

(a) Section 3 of the Criminal Justice Amendment Act 1987:

(b) So much of the Fourth Schedule to the Immigration Act 1987 as relates to the principal Act:

(c) Sections 4 to 8 of the Criminal Justice Amendment Act (No. 2) 1987:

(d) Sections 9 and 10 of the Criminal Justice Amendment Act (No. 3) 1987:

(e) The Criminal Justice Amendment Act 1988:

(f) Subsections (2) to (5) of section 3 of the Criminal Justice Amendment Act 1989:

(g) Section 5 of the Criminal Justice Amendment Act (No. 2) 1989.

44. Probation officers—(1) Section 124 (1) of the principal Act is hereby amended by omitting the words "State Services Act 1962", and substituting the words "State Sector Act 1988".

(2) Section 124 of the principal Act is hereby amended by inserting, after subsection (3), the following subsection:

"(3A) The Secretary may from time to time designate persons appointed under this section to—

"(a) Be habilitation co-ordinators:

"(b) Be home detention officers:

"(c) Manage or work at one or more periodic detention centres within any district."

(3) In any Act, regulation, rule, order, other enactment, agreement, deed, instrument, application, notice, or other document whatever in force at the commencement of this Act, every reference to a district probation officer shall, unless the

context otherwise requires, be hereafter read as a reference to a Manager Community Corrections.

45. Duties of probation officers—The principal Act is hereby amended by repealing section 125, and substituting the following section:

"125. (1) It shall be the duty of every probation officer—

"(a) To supervise all persons placed under the officer's supervision pursuant to a sentence or a release on conditions under Part VI of this Act, and to ensure that the conditions of the sentence or of the release are complied with:

"(b) To arrange and administer the sentences of community service and community programme referred to the officer for such administration, and to ensure that the sentences are carried out:

"(c) To co-ordinate and arrange community involvement (including the use of volunteers) in the administration of any particular community-based sentence, or any particular release on conditions under Part VI of this Act, where appropriate, and in accordance with any instructions issued by the Manager Community Corrections:

"(d) To arrange and monitor courses of social education or counselling or personal services directed at the social re-integration of offenders and the reduction of the likelihood of re-offending, where appropriate, and in accordance with any instructions issued by a controlling officer:

"(e) To provide to a court all such reports and information as the court may require pursuant to any of the provisions of this Act:

"(f) To perform such other duties as may be prescribed by or under this Act or any other Act.

"(2) It shall be the duty of every probation officer who is designated as an habilitation co-ordinator—

"(a) To investigate and evaluate the suitability of inmates for release to habilitation centres; and

"(b) To monitor the conduct and degree of programme participation of offenders who are resident in habilitation centres in the officer's designated district; and

"(c) To monitor the offender's compliance with the conditions on which he or she was released; and

"(d) To provide advice to habilitation centre staff on placements of offenders as residents, on programme development, and on operational and security matters; and

"(e) To perform such other duties as may be prescribed by or under this Act or any other Act; and

"(f) To report to the Manager Community Corrections in the officer's district on the matters specified in paragraphs (a) to (e) of this subsection and on any other matter relating to habilitation centres as he or she thinks fit.

"(3) It shall be the duty of every probation officer who is designated as a home detention officer—

"(a) To investigate and evaluate the suitability of offenders for release to home detention; and

"(b) To supervise all offenders assigned to the home detention officer during the period of home detention; and

"(c) To monitor the offender's compliance with the conditions on which he or she was released; and

"(d) To perform such other duties as may be prescribed by or under this Act or any other Act; and

"(e) To report to the Manager Community Corrections in the officer's district on the matters specified in paragraphs (a) to (d) of this subsection and on any other matter relating to home detention as he or she thinks fit.

"(4) It shall be the duty of every probation officer or person who is designated or appointed to manage or be employed at a periodic detention centre—

"(a) To monitor the compliance by offenders with the conditions of the sentence of periodic detention; and

"(b) To ensure that authorised work is available for offenders sentenced to periodic detention; and

"(c) To perform other such duties as may be prescribed by or under this Act or any other Act; and

"(d) To report to the Manager Community Corrections in the officer's district on the matters specified in paragraphs (a) to (c) of this subsection and on any other matter relating to periodic detention as he or she thinks fit.

"(5) A probation officer may commence or prosecute proceedings in any court on behalf of any other probation officer."

46. New sections inserted—The principal Act is hereby amended by inserting, after section 125, the following sections:

"125A. **Pilot home detention schemes**—The Minister may establish pilot home detention schemes in such districts and for such periods, being not less than 2 years, as the Minister may direct.

"125B. **Offences**—Every person commits an offence and is liable on summary conviction to a fine not exceeding $5,000 who refuses or fails, without reasonable excuse,—

"(a) To allow a probation officer who is designated as a home detention officer, who has identified himself or herself as such, to have entry to the place where an offender is serving a period of home detention; or

"(b) To allow a probation officer who is designated as an habilitation co-ordinator, who has identified himself or herself as such, to have entry to the habilitation centre where an offender is resident."

47. Establishment of periodic detention centres—(1) The principal Act is hereby amended by repealing section 126, and substituting the following section:

"126. (1) The Minister may from time to time, by notice in the *Gazette*, declare any land or building or any part of any land or building to be a periodic detention centre.

"(2) The Minister may from time to time, in like manner, declare any land or building or any part of any land or building to be added to or excluded from any periodic detention centre.

"(3) The Minister may at any time, in like manner, revoke any notice given under this section.

"(4) Every notice under this section shall take effect from the date of its publication in the *Gazette*, or from such other date as may be specified in the notice."

(2) Sections 38, 42, 43, 44, and 45, 60, 64 (4), and 65 of the principal Act are hereby consequentially amended by omitting the words "work centre" wherever they occur, and substituting in each case the words "periodic detention centre".

(3) Section 45 (1) (a) of the principal Act is hereby consequentially amended by omitting the words "reporting centre", and substituting the words "periodic detention centre".

(4) Sections 129 and 149 of the principal Act are hereby consequentially amended by omitting the words "work centre" and "work centres" wherever they occur, and substituting,

respectively, in each case the words "periodic detention centre" and "periodic detention centres".

(5) In any Act, regulation, rule, order, other enactment, agreement, deed, instrument, application, notice, or other document whatever in force at the commencement of this section, every reference to a work centre or reporting centre shall, unless the context otherwise requires, be hereafter read as a reference to a periodic detention centre.

(6) Every place which, immediately before the commencement of this section, is designated as a work centre or as a reporting centre under the principal Act, shall hereafter be deemed to be a periodic detention centre.

48. New sections substituted—The principal Act is hereby amended by repealing sections 127 and 128, and substituting the following sections:

"127. **Manager Community Corrections**—(1) There shall from time to time be appointed under the State Sector Act 1988 a Manager Community Corrections for each district defined by the Secretary for the purposes of this Act.

"(2) A Manager Community Corrections shall oversee the administration of all community-based sentences being served in his or her district and shall be responsible for probation offices and periodic detention centres in that district.

"(3) Subject to any directions given by the Secretary, a Manager Community Corrections may delegate, in writing, to any probation officer or any other officer or employee of the Department of Justice all or any of his or her powers as a Manager Community Corrections under this Act or regulations made under it, including the power to delegate under this section.

"(4) A person appointed or designated to manage a periodic detention centre may, if permitted by a delegation referred to in subsection (3) of this section, delegate to any employee engaged at the centre, any power so delegated.

"(5) The fact that any officer or employee of the Department of Justice exercises or performs any power, duty, or function of a Manager Community Corrections shall be conclusive evidence of his or her authority to do so.

"(6) Subject to subsection (7) of this section, a Manager Community Corrections shall have and may exercise all the powers of a Warden and of a probation officer under this Act.

"(7) Where a Warden has been appointed or designated under section 128 of this Act in respect of a periodic detention

centre, a Manager Community Corrections may exercise the powers of a Warden in relation to that periodic detention centre in the event of the incapacity, illness, sudden absence, or death of the Warden.

"128. **Wardens**—(1) There shall from time to time be appointed under the State Sector Act 1988 such Wardens as are required for the purposes of this Act.

"(2) The Secretary may from time to time designate any officer or employee of the Department of Justice as a Warden.

"(3) Any appointment or designation under this section may be combined with any office, appointment, or position if the Secretary is satisfied that the duties of that office, appointment, or position are not inconsistent with those of a Warden.

"(4) Subject to any directions given by the Secretary, a Warden may delegate, in writing, to any probation officer or any other officer or employee of the Department of Justice all or any of his or her powers as a Warden under this Act or regulations made under it, including the power to delegate under this section.

"(5) A person appointed or designated to be a Warden at a periodic detention centre may, if permitted by a delegation referred to in subsection (4) of this section, delegate to any employee engaged at the centre, any power so delegated.

"(6) In this section, every reference to the powers of the Warden in relation to the sentence of periodic detention shall be deemed to include a reference to the duties and functions of the Warden under this Act and any regulations made under it.

"(7) It shall be the duty of every person who is appointed or designated to be a Warden at a periodic detention centre—

"(a) To monitor the compliance by offenders with the conditions of the sentence of periodic detention; and

"(b) To ensure that authorised work is available for offenders sentenced to periodic detention; and

"(c) To perform such other duties as may be prescribed by or under this Act or any other Act; and

"(d) To report to the Manager Community Corrections in the officer's district on the matters specified in paragraphs (a) to (c) of this subsection and on any other matter relating to periodic detention as he or she thinks fit.

"(8) The fact that any officer or employee of the Department of Justice exercises or performs any power, duty, or function of a Warden shall be conclusive evidence of his or her authority to do so."

49. Parole Board—(1) Section 130 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection:

"(1) For the purposes of this Act, there shall be a board, to be called the Parole Board, which shall consist of not less than 3 nor more than 8 members, being—

"(a) A Judge of the High Court, who shall be appointed on the recommendation of the Minister and shall be the Chairperson:

"(b) A District Court Judge who shall be appointed on the recommendation of the Minister and shall be the Deputy Chairperson:

"(c) The Secretary:

"(d) Not less than 1 nor more than 5 other members, who shall be appointed on the recommendation of the Minister."

(2) Section 130 (3) of the principal Act is hereby amended by omitting the expression "paragraph (c)", and substituting the expression "paragraph (d)".

(3) Section 130 of the principal Act is hereby amended by inserting, after subsection (4), the following subsections:

"(4A) The Deputy Chairperson appointed under subsection (1) (b) of this section may act for, and have all the powers of, the Chairperson during any period when the Chairperson is incapacitated by illness, by absence from New Zealand, or by other sufficient cause (including, but not limited to, inability to attend at a place where a meeting of the Board is being or is to be held) from performing the duties of his or her office.

"(4B) Where both the Chairperson and the Deputy Chairperson are incapacitated by illness, by absence from New Zealand, or by other sufficient cause from performing the duties of their offices, the deputy of the Chairperson appointed under subsection (5) of this section, or, if no such appointment has been made or the deputy so appointed is incapacitated for any of those reasons, the deputy of the Deputy Chairperson, may act for the Chairperson."

50. District Prisons Board—(1) Section 132 (2) (a) of the principal Act is hereby amended by omitting the word "Chairman", and substituting the word "Chairperson".

(2) Section 132 of the principal Act is hereby amended by inserting, after subsection (5), the following subsection:

"(5A) The Minister may from time to time appoint not more than 4 retired District Court Judges to be deputies of the Chairpersons of District Prisons Boards appointed under subsection (2) (a) of this section, and any such deputies may act for any such Chairperson during any period when that Chairperson is incapacitated by illness, absence from New Zealand, or by other sufficient cause from performing the duties of his or her office (including, but not limited to, inability to attend at a place where a meeting of the Board is being or is to be held); but no such deputy may act for more than one Chairperson at one time."

(3) Section 132 (6) of the principal Act is hereby amended by omitting the expression "paragraph (a) or".

(4) Section 132 (7) of the principal Act is hereby amended by inserting, before the expression "subsection (6)", the expression "subsection (5A) or".

(5) Section 132 of the principal Act is hereby amended by repealing subsection (8), and substituting the following subsection:

"(8) Any deputy appointed under subsection (5A) or subsection (6) of this section shall, while he or she acts as such, be deemed to be a member of the District Prisons Board, and any deputy acting for the Chairperson shall have all the powers of the Chairperson."

51. Criminal Justice Advisory Councils abolished—(1) Every Criminal Justice Advisory Council established under section 134 of the principal Act and in existence immediately before the commencement of this Act is hereby abolished.

(2) Sections 134 and 135 of the principal Act are hereby consequentially repealed.

(3) Section 4 of the Criminal Justice Amendment Act 1986 is hereby consequentially repealed.

52. Amendments to Immigration Act 1987—Sections 83 (1) (b), 89 (2), 90 (2), 106 (1) (b), and 113 (2) of the Immigration Act 1987 are hereby consequentially amended by omitting the expression "section 92", and substituting in each case the expression "section 96".

53. Amendments to Legal Services Act 1991—(1) Section 4 of the Legal Services Act 1991 is hereby amended by adding the following paragraph:

"(c) Proceedings—

"(i) Before the Parole Board or a District Prisons Board under section 105 or section 107I of the Criminal Justice Act 1985:

"(ii) In the High Court under section 107M of that Act (which relates to appeals against the decision of such a Board)."

(2) Section 6 (2) of the said Act is hereby amended by inserting, after paragraph (a), the following paragraph:

"(aa) In the case of an application for criminal legal aid in respect of proceedings referred to in section 4 (c) (i) of this Act, the District Court nearest to the penal institution in which the applicant is detained or to the place where the applicant resides, as the case may be:".

(3) Section 6 (3) of the said Act is hereby amended by inserting, after the words "Privy Council", the words "or, in any case to which section 4 (c) (i) of this Act applies, the Parole Board or District Prisons Board, as the case may be".

(4) Section 7 (2) (a) of the said Act is hereby amended by adding the words "or, in any case to which section 4 (c) of this Act applies, the offence for which the sentence to which the proceedings relate was imposed".

(5) Section 7 (2) of the said Act is hereby amended by inserting, after paragraph (a), the following paragraph:

"(aa) In any case to which section 4 (c) of this Act applies, the consequences for the applicant if criminal legal aid is not granted:".

54. Amendment to Mental Health (Compulsory Assessment and Treatment) Act 1992—(1) Section 48 (4) of the Mental Health (Compulsory Assessment and Treatment) Act 1992 is hereby amended by repealing paragraph (a), and substituting the following paragraph:

"(a) As determined under section 90 of the Criminal Justice Act 1985; or".

(2) Section 48 (4) (b) of the said Act is hereby amended by omitting the expression "section 94", and substituting the expression "section 97".

55. Amendment to Privacy Act 1993—The Fifth Schedule to the Privacy Act 1993 is hereby amended by inserting in the part headed "*Department of Justice Records*", in its appropriate alphabetical order, the following item:

"Suspended sentences	Particulars of persons subject to suspended sentence orders or sentences subsequently imposed in respect of the original offences for which suspended sentence orders were made, pursuant to section 21A of the Criminal Justice Act 1985	Police"

Transitional Provisions

56. Application of courts' new powers—(1) No court shall, on the conviction of an offender for any offence, impose on that offender—

(a) Any sentence or combination of sentences; or

(b) A minimum period of imprisonment,—

that it could not have imposed on the offender at the time of the commission of the offence.

(2) Subsection (1) of this section shall also apply in respect of any sentence substituted for a sentence imposed before the commencement of this Act.

57. Application of Act to offenders on parole and remission—Every offender who—

(a) Was sentenced to imprisonment before the date of commencement of this Act; and

(b) Was, before the date of commencement of this Act,—

(i) Released on parole; or

(ii) Released early pursuant to section 91 of the principal Act; or

(iii) Released on remission; and

(c) Was still on parole, subject to section 91 of the principal Act or on remission, immediately before the commencement of this Act,—

shall continue to be on parole, subject to section 91 of the principal Act (as it read immediately before the commencement of this Act) or on remission, as the case may be, on the same conditions and for the same period as if this Act had not been passed.

58. Application of changes to parole and remission on existing offenders—(1) This section applies to every offender who, immediately before the commencement of this Act, was in custody serving a full-time custodial sentence or a term of imprisonment for non-payment of a sum of money or for disobedience of a court order or for contempt of court.

(2) Except as expressly provided in this Act, the provisions of the principal Act (as amended by this Act) in respect of parole and final release (including the conditions that are to apply on release), so far as they are applicable and with any necessary

modifications, shall apply to every offender to whom this section applies.

(3) Every offender to whom this section applies who was not, immediately before the commencement of this Act, eligible to have his or her case considered by the Parole Board or a District Prisons Board under Part VI of the principal Act but who is, on the commencement of this Act, eligible for parole, shall have his or her case considered by the appropriate board as soon as practicable.

(4) Every offender to whom this section applies who was not, immediately before the commencement of this Act, eligible for remission under section 80 of the principal Act but who, on the commencement of this Act, is entitled to be released at the final release date of each sentence to which he or she is then subject, shall be—

(a) Released on the 1st day of September 1993, if the offender is then in a penal institution; or

(b) No longer subject to the sentence, if the offender is at that date detained in or on leave from a hospital,—

and the provisions of section 102 of the principal Act (as it read immediately before the commencement of this Act) shall, so far as applicable and with any necessary modifications, apply as if this Act had not been passed.

(5) Every offender who is released on the 1st day of September 1993 pursuant to subsection (4) (a) of this section or who will be released, at the final release date of each sentence to which he or she is then subject, before the 15th day of December 1993, and who would, before the commencement of this Act, have been released on remission conditions imposed pursuant to section 107 of the principal Act (as it read immediately before the commencement of this Act), shall not be considered by the Parole Board or District Prisons Board under section 99 or section 101 of the principal Act (as substituted by section 43 of this Act) but shall be released on conditions under section 107 of the principal Act as if this Act had not been passed.

59. Certain existing conditions to continue—Notwithstanding the provisions of section 58 of this Act, offenders on whom conditions have been imposed under section 77A of the principal Act before the commencement of this Act shall continue to be subject to those conditions on release in addition to any conditions that may be imposed under the principal Act (as amended by this Act).

60. Application to section 107A offenders—An offender who was, immediately before the commencement of this Act,

subject to an order under section 107A of the principal Act, shall be released in accordance with section 90 (2) of the principal Act (as substituted by section 43 of this Act) on a date not later than 3 months before the sentence expiry date on conditions determined in accordance with section 99 of the principal Act (as so substituted).

61. Recall proceedings—(1) No offender who, at the commencement of this Act,—

(a) Has been released from custody in respect of a full-time custodial sentence which has not at that date expired; or

(b) Is in custody in respect of a full-time custodial sentence,—

shall be liable to be recalled under sections 107I to 107M of the principal Act (as substituted by section 43 of this Act) to serve any part of that sentence, unless the offender would have been liable to be recalled to serve that part of the sentence if this Act had not been passed.

(2) Where, before the commencement of this Act, any recall proceedings under section 106 of the principal Act had been commenced in but not been finally determined by any court, the proceedings shall continue and be dealt with as if the Act had not been passed.

(3) Any recall proceedings that are commenced on or after the commencement of this Act shall be dealt with in accordance with sections 107I to 107M of the principal Act (as so substituted).

62. Offenders not to be disadvantaged—(1) Except as otherwise provided in this Act, a Parole Board or District Prisons Board, as the case may be, shall not apply the provisions of this Act to any offender referred to in section 58 (1) of this Act in a way that places the offender in a position of disadvantage in comparison with the position that would have applied to that offender had this Act not been passed, and, to the extent that the provisions of the principal Act (as it read immediately before the commencement of this Act) conferred entitlements that are removed or reduced by the provisions of this Act, the Board shall apply the provisions of the principal Act as it read immediately before the commencement of this Act.

(2) Any decision made by any such Board, so far as it relates to the interpretation or application of subsection (1) of this section, shall be final and conclusive.

This Act is administered in the Department of Justice.