



### **PRISONER'S RIGHTS AND PRIVILEGES**

A prisoner enjoys few rights determined by legislation but may be able to enjoy many privileges granted by the prison. The law accepts that prisoners lose many rights when they enter prison but the prison regime does offer privileges to prisoners who are of good behaviour. Prisoners can also lose those privileges if they misbehave. There are three levels of regime a prisoner can be placed upon, basic, standard and enhanced. A prisoner will commence his sentence on basic and with good behaviour can proceed to enhanced status. Some of the privileges prisoners can expect are correspondence and visits with family and friends; access to legal assistance; education; library, telephone calls and work within the prison environment to name but a few. The Prison Rules determine general and specific rights, prohibitions and obligations relating to prison discipline.

### **ADJUDICATIONS AND DISCIPLINE**

The power to discipline prisoners for misconduct whilst in prison is contained in the Prison Act 1952 and is dealt with under the Prison Rules. Offences against discipline include assaults; fighting; endangering the health and safety of others; obstruction of officers, being found with any substance in their urine following a drug test; intoxication from alcohol; being in possession of any unauthorised article such as drugs; alcohol; weapons and mobile phones/sim cards etc. Where a prisoner is facing a charge with an offence against discipline, the charge will initially be laid before the Governor who may deal with it by punishment or refer the matter to an Adjudicator for a hearing. The Adjudicator will then hear the facts of the charge and if the prisoner pleads not guilty will listen to the evidence relating to the charge both from the prisoner and the officers involved. For all adjudications heard by an outside Adjudicator the prisoner is entitled to the services of a solicitor and will be entitled to be granted an adjournment for legal advice to be given. If the prisoner is found guilty by the Adjudicator then he may award the prisoner additional days not exceeding 42 days.

### **PAROLE APPLICATIONS**

The Parole Board when determining applications must protect the public by making risk assessments about prisoners to establish who may be safely released into the community and who must remain or be returned to custody. For those serving up to 15 years imprisonment the Parole Board make their decisions either by a paper consideration or an oral hearing. For those serving over 15 years it makes recommendations to the Secretary of State for early release. The starting point is collating a parole dossier. This contains reports and relevant documents about the prisoner and will be placed before the Parole Board to enable them to make their decision. The prisoner will be given access to the dossier before it is submitted to the Parole Board and entitled to legal representation to assist in the preparation of his/her own submissions which are included in the dossier.

There is a set timetable to follow within which the dossier must be completed and sent to the Parole Board. When considering the application for parole the Board has to consider the need to protect the public from serious harm, the prevention of further offending and the ability for rehabilitation in the community. The decision of the Parole Board must be communicated to the prisoner and the prisoner will be entitled to further annual reviews should the first application be unsuccessful.

## **RECALLS**

If a prisoner upon release fails to comply with any licence conditions or commits an offence whilst on licence they are liable to be recalled to prison. A determinative sentence prisoner remains on licence following release until the expiry of the licence period. The grounds upon which a prisoner may be recalled to custody will vary according to the sentence that was imposed. A prisoner can be recalled to prison by the Parole Board or the Secretary of State but in practice it is nearly always the prisoner's supervising Probation Officer that initiates the recall. The prisoner is entitled to appeal against recall and if the Parole Board does not recommend immediate release and there is 12 months or more before the prisoner's unconditional release date, it can fix a future date for the prisoner's release on licence or review the circumstances again no more than 12 months from their decision to refuse release. A prisoner will be entitled to legal advice and assistance throughout the recall procedure.

## **OTHER AREAS OF PRISON LAW**

A prisoner may seek legal assistance for the following : applications for Home Detention Curfew and appeal against refusal; release on temporary licence; compassionate release due to family circumstances and any infringement of prisoner's rights such as closed visits.

## **JUDICIAL REVIEW**

If your matter is such that it is necessary to challenge the Prison Authorities/Parole Board or Adjudicators for acting outside their authority, then this firm would be in a position to apply to the Legal Services Commission for civil funding to pursue an application for judicial review arising from prison law. The need to apply for judicial review would be on a case by case basis.

## **FURTHER ASSISTANCE**

Further information will be given should this be appropriate in your case, and an appropriate referral made to a law firm with a contract to provide advice and assistance in prison law cases.

*Dunn & Baker – Here to help you*

*Disclaimer: The material contained in this fact sheet is for general guidance only. It is specific to the law of England and Wales, and represents a brief outline of the law current as at the date of the fact sheet. It is not intended to constitute, or to be a substitute for, legal advice specific to your case. Dunn and Baker will be responsible only for advice specifically given to you.*