

# **Prisoners and the Law**

Second edition

**Simon Creighton**

Solicitor; partner, Bhatt Murphy

**Vicky King**

Solicitor, Thanki Novy Taube

Contributor

**Hamish Arnott**

Solicitor, Prisoners' Advice Service

**Butterworths**

London, Dublin and Edinburgh

2000

# CONTENTS

<i>Foreword</i>	v
<i>Preface</i>	vii
<i>Table of Abbreviations</i>	xvii
<i>Table of Statutes</i>	xix
<i>Table of Statutory Instruments</i>	xxiii
<i>Table of Cases</i>	xxvii

## SECTION I

### Chapter 1 Introduction 3

### Chapter 2 Legislation 6

Statute and Prisons	6
The Prison Act 1952	7
The Chief Inspector and Boards of Visitors	7
Prison staff	8
Location and accommodation	9
Disciplinary and miscellaneous provisions	10
The power to make prison rules	10
The Prison Rules	11
The legal status	11
The key provisions	12
The Criminal Justice Acts and other Legislation	13
Standing Orders and Advice and Prison Service Orders	13
Contracted out Prisons	16
The statutory basis	16
The provisions in detail	16
Private escorts	17
The contract document	17
The legal implications	18

### Chapter 3 Basic Legal Remedies 20

The Internal Mechanisms	20
The formal system	20
Confidential access	22
Complaints to the Board of Visitors	22
The right to petition	23
The Prisons Ombudsman	23
Judicial Review	25
The decisions that can be reviewed	26

## Contents

The judgment in <i>Doody</i>	27
Private Law Claims	29
Actions in negligence	29
Property claims	29
Negligent medical treatment	29
Dangerous premises and working conditions	30
Negligent supervision	30
The decision in <i>Hague</i>	32
Breach of statutory duty	32
False imprisonment	33
Assault and battery	33
Misfeasance in public office	34

## Chapter 4 Statutory Agencies and Non-Governmental Organisations 35

Boards of Visitors	35
The Chief Inspector of Prisons	35
The Prisons Ombudsman	36
The Parole Board	36
Local Authorities and other Enforcement Agencies	37
Prison Reform Groups	37
United Nations and European Committees for the Prevention of Torture	38

## SECTION II

## Chapter 5 The Various Types of Prison 41

Men's Prisons	41
Local prisons	41
High security prisons	42
Special security units and high security units	43
Close supervision centres	45
Category B training prisons	47
Category C prisons	48
Category D/open prisons	48
Resettlement prisons	49
Vulnerable prisoners' units	49
Women's Prisons	50
Male Young Offender Institutions	51

## Chapter 6 Categorisation, Allocation and Sentence Planning 54

The Definition of Categories	54
The authority to categorise	54
The Mountbatten criteria	54
Escape list prisoners	55
The initial categorisation decision	56
Subsequent decisions and challenges	57
Category A status	58
The judgment in <i>Duggan</i>	60

The implementation of the judgment in <i>Duggan</i>	61
Remand prisoners and category A	62
The Basis of Allocation	63
Adult male prisoners	63
Reallocation	64
Particular considerations for allocation to category C prisons	65
Allocation of male young offenders	66
Allocation of female adult prisoners	67
The allocation of female young offenders	69
Sentence Planning	70
Transfers Between Jurisdictions	71
Transfers between prisons in England and Wales, and other UK jurisdictions	71
The Repatriation of Prisoners Act 1984	73
Sentence Calculation	75
The single term prior to the Crime and Disorder Act 1998	76
The Crime and Disorder Act 1998 and the single term	77
Remand time	77
Juveniles and remand time	79
Time spent unlawfully at large	79
Time spent awaiting extradition	80
Returns to custody	80
Default and civil sentences	81

## **Chapter 7 The Requests/Complaints Procedure 83**

An Overview of the Procedure	83
How the Procedure Works Within Prison Establishments	84
Oral applications	85
Formal requests/complaints	85
Role of the Board of Visitors	87
The Consideration of Requests and Complaints at Prison Service Headquarters	87
Appeals against the governor's decision	88
Reserved subjects	88
Confidential access to the area manager	91
The Prisons Ombudsman	91

## **Chapter 8 Prison Discipline 95**

The Formal Disciplinary System	95
Offences against prison discipline	95
Charging	96
Legal representation	98
An in-depth look at the charges	99
The conduct of adjudications	109
Evidential matters and the standard of proof	111
Punishments	111
Appealing against findings of guilt	113
Applying for remission of additional days	114
The Human Rights Act and prison discipline	115
The Informal Disciplinary System	117

## *Contents*

Rule 45 Good order and discipline	117
Instruction to Governors 28/93	119
Prisoner informants	123
<b>Chapter 9 Rights and Privileges</b>	<b>125</b>
Introduction	125
Visits	126
Social visits	126
Remand prisoners	127
Standing Order 5A	127
Restrictions on social visits	128
Searching	131
Visits to category A prisoners	131
Visits by legal advisors	131
Letters	132
Restrictions on correspondence	133
Unconvicted prisoners	135
Legal correspondence	135
Telephone Calls	136
Temporary Release	138
Risk assessment	138
Compassionate licence	140
Facility licence	140
Resettlement licence	141
Lifers	141
Breach of licence conditions	142
Authorised Possessions	142
Retaining Personal Possessions	143
Prisoners' money	145
Forfeiture of personal possessions	145
Incentives and Privileges	146
The basis of the scheme	146
Unconvicted prisoners	147
The assessment of behaviour	148
Decision making and reviews	148
Production at Court in Civil Cases	150
The right to be produced	150
The costs of production	152
Conclusion	152
<b>Chapter 10 Prison Conditions</b>	<b>154</b>
Searching	154
Searches of the person	154
Strip searches and intimate searches	155
Rub-down searches	156
Searches of visitors	157
Searches of prisoners' accommodation	160
Work and Pay	162
Food	164
The Use of Force, Special Accommodation and Mechanical Restraints	166

Violent and refractory prisoners	166
Escorts	169
Race Relations	170
Health Care	173
Disability	177
Religion	178
Education, Library and Access to Information	179
Unconvicted Prisoners	180
Civil Prisoners	180
Deaths in Custody	181
Introduction	181
The prison response following a death	181
Personal property	182
Funeral arrangements	182
The Inquest Procedure	182
Introduction	182
Duty to hold an inquest	183
Persons entitled to ask questions at the inquest	183
The post mortem	184
The opening of the inquest	184
Adjournment of inquest pending arrest/criminal proceedings	185
The remit of the inquest	185
The statutory position	185
The case law	185
Pre-Inquest Disclosure	186
The law	186
Prison service policy on pre-inquest disclosure following a death in prison	187
Witnesses and evidence at the inquest	188
Verdicts	189
Applications under the CA 1988, s 13 and judicial review	191
Remedies following death in custody	192
Other remedies	192
Funding	193
Suicide Prevention Policy	193
<b>Chapter 11 Lifers</b>	<b>195</b>
Mandatory Lifers	195
Prisoners Charged with Murder	195
Adult Prisoners Convicted of Murder	195
The tariff	196
The Human Rights Act and tariffs	200
Progression through the life sentence system	200
Parole board reviews and release from prison	202
Detention on the basis of risk and the need to maintain public confidence in the criminal justice system	206
Recall	209
Human Rights Act and release procedures	211
Custody for Life	211
Persons Detained at Her Majesty's Pleasure	211

## *Contents*

- Tariff setting 212
- Discretionary Life Sentenced Prisoners 214
  - Tariffs 214
  - Discretionary lifer panels/oral parole hearings 216
  - Procedure at DLPs/oral parole hearings 217
  - Recall 220
- Automatic Life Sentences 220
  - Human Rights Act and automatic life sentences 221

## **Chapter 12 Parole and Release 223**

- The Parole System 223
  - The automatic unconditional release scheme 223
  - Automatic conditional release scheme 224
  - The discretionary release scheme 225
  - Subsequent reviews 230
  - Licence conditions 230
- Non-Parole Release 230
- Young Offenders 231
- Deportees 232
- Recall of Determinate Sentence Prisoners 232
  - Short-term prisoners sentenced before 1 January 1999 232
  - Short-term prisoners sentenced after 1 January 1999 and long-term prisoners 233
  - The 'at risk' period 235
- Home Detention Curfew 236
  - Eligibility 236
  - Risk assessment 237
  - Licence conditions 238
  - Refusal to grant release 239
  - Post release 240
  - Recall 240
  - Re-release 241
- Compassionate Release 241
- Discharge Grants 245

## **SECTION III**

## **Chapter 13 Legal Aid 249**

- Introduction 249
- Public Funding 250
- Advice and Assistance 250
- Advocacy Assistance 252
- Legal Aid Certificates 252
  - Financial assessment 252
  - The 'merits' test 253
  - Satisfying the 'benefit' test 253
  - Personal injury claims 254
  - Property claims 255

<b>Chapter 14 Prisoners' Property Claims</b>	<b>256</b>
Introduction	256
Establishing Liability	257
Legal Action	258
<b>Chapter 15 Personal Injury and Assault Claims</b>	<b>260</b>
Introduction	260
Reporting Incidents to the Police	260
Claims to the Criminal Injuries Compensation Authority	261
Access to Medical Records	262
Disclosure of other Records	262
Independent Medical Examinations	263
Obtaining and Preserving Evidence	264
<b>Chapter 16 Applications for Judicial Review</b>	<b>266</b>
What Decisions are Reviewable?	266
Against Whom does the Application Lie?	268
The governor	268
Decisions of the Secretary of State	269
The Parole Board	270
Time limits	270
The Ombudsman and Judicial Review	271
How the Courts View Prisoners' Applications	272
<b>Chapter 17 Criminal Offences Committed in Prison</b>	<b>274</b>
Introduction	274
Referring Serious Offences to the Police	274
Offences Committed in Prison	276
The Police Interview	278
Charging	278
Preparing the Defence Case	279
Disclosure	279
Double jeopardy	280
Visits to the crime scene	281
Issues Arising at Court	281
Handcuffing	281
Training to give evidence	282
Prisoner witnesses	283
<b>Chapter 18 The Human Rights Act 1998 and the European Convention on Human Rights</b>	<b>284</b>
Introduction	284
The Relevant Articles	284
Procedure at the European Court	285
Is the Applicant a Victim?	287
Exhausting Domestic Remedies	287
Time Limits	288
Legal Aid	289
Applications from English Prisoners	289



*Contents*

The Convention and Domestic Law	290
The Human Rights Act 1998	291
Proportionality under the Human Rights Act	292
Positive obligations	293
The absence of the margin of appreciation	294
Conclusions	295
<b>Appendix I Prison Act 1952</b>	<b>297</b>
<b>Appendix II Prison Rules 1964</b>	<b>318</b>
<b>Appendix III Young Offender Institution Rules 1988</b>	<b>348</b>
<b>Appendix IV Human Rights Act 1998</b>	<b>383</b>
Index	411