

The Law of Principles

A Guide



Foreword

This brochure is intended for people serving a custodial sentence or measure in a Belgian prison.

Its aim is to explain the law of principles of 12 January 2005 on prison administration and the legal status of prisoners.

It does not seek to cover every aspect of the law but rather to present a general outline that will offer detainees a better understanding of their prison experience and of their rights and responsibilities.

As far as possible (and to avoid cluttering up the text), references to specific articles of the law have been included alongside the various themes dealt with, enabling readers to consult the text of the law themselves. Copies of the text are available from prison libraries upon request.

It should be noted that the law of principles is being implemented in stages and at the time of going to press only part of it is in force. Prison managements are informed each time a new section of the law is implemented. Useful information on this subject can be obtained from prison staff.

This brochure is for information only. It is intended for a large audience and accordingly compiled. For a rigorous legal study of the law of Principles, it is advisable to refer to the text of the law itself, such as it was published with the Belgian Monitor of February 1, 2005.

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Introduction

The law of principles¹ is a reality, and an increasingly important factor in prison life. Everybody is talking about it - but who really knows what it is about?

The law of principles is about your rights and responsibilities as a prisoner but also, in a wider sense, about how life is organised inside prisons.

Rather than offering practical answers to specific problems, it sets out theoretical rules for resolving these problems and provides a structure for tackling the day-to-day situations actually encountered in prisons.

We should note here the relationship with internal prison rules. Whilst complying strictly with the law, the internal rules of individual prisons will adapt the law's provisions to the realities of the prison and its regime.

Content of the law

We should begin by noting the **four fundamental principles** laid down by the law:

Article 5(1)

The enforcement of the custodial sentence or measure shall take place in psychosocial, physical and material conditions that respect human dignity, enable the prisoner to retain or enhance his self-respect and appeal to his sense of personal responsibility.

Article 5(2)

Order and security shall be maintained during enforcement of the sentence or measure.

Article 6(2)

Preventable detrimental effects of detention should be avoided during enforcement of the custodial sentence.

Article 6(1), Article 7, Article 8

The prisoner remains a fully-fledged citizen. Accordingly, he shall not suffer any restriction of his political, civil, social, economic or cultural rights, excepting those restrictions arising from his criminal sentence, the circumstances of his detention or the law. The prisoner shall be entitled to reasonable justification for any measure taken concerning him. The prisoner shall be entitled to express himself on matters of community interest through the medium of consultation bodies.

The law can be divided up into four main areas:

- Organisation of daily life
- Order and security
- The 3 Rs: rehabilitation, reparation, reintegration
- The prisoner as citizen

¹ The law of principles (*Loi de principes/Basiswet*) is often referred to as the Dupont Law, after the professor at the Catholic University of Leuven (KUL) whom minister Stefaan De Clerck appointed in 1996 to draft a provisional bill of principles on the administration of prisons and the legal status of prisoners.

Chapter I Organisation of Daily Life

In this area, the main difference compared with the current situation is that the law establishes rights where currently there are only operating rules left open to interpretation. This is reflected in the frequent use of the phrase: "The prisoner shall be entitled to..."

An individual whose freedom of movement has been taken away becomes dependent on others in many ways, most notably with respect to his most basic needs (housing, clothing, food, sanitation, physical and mental healthcare, work, relations with others, etc.). In view of this, a prison law clearly defining specific prisoner rights in this area is essential.

Material living conditions (Articles 41 to 47)

- **Living space:** the internal prison rules specify which items are authorised in cells, as some items may be prohibited for order and security reasons.
- **Clothing:** you are entitled to wear your own clothes and shoes. If you do not wish to wear your own clothes, the director will provide suitable attire for you. The director may also require you to wear particular attire if your own clothes and shoes do not meet the required standards of hygiene, decency, order and security or when carrying out work or other activities (e.g. visits) within the prison.
- **Food** must be provided in sufficient quantities, meet the latest hygiene standards and be appropriate to your state of health.
- **Hygiene:** you must be able to attend to your appearance and bodily hygiene every day.
- **Current account:** you are entitled to your own personal account which you can manage as you please in complete privacy.
- **Money:** you are not entitled to possess cash.

Communal living (Articles 48 to 51)

Custodial sentences and measures are generally enforced in a regime of communal (group activities and work, leisure time spent in the living space) or semi-communal (some group activities) living.

Contact with the outside world (Articles 53 to 70)

- **Contact with your legal adviser**

As a rule, you may contact your legal adviser whenever you wish to and in complete privacy: you can phone him/her, write to him/her without your letters being inspected or talk to him/her without your conversation being listened to (visual supervision alone is permitted). Only in case of abuse may the director bar a legal adviser from the prison, after having consulted the president of the Bar.

- **Correspondence**

The confidentiality of letters is a fundamental principle. Correspondence may be inspected in the cases and conditions prescribed by the law. The law specifies what an inspection of correspondence involves, namely a search for unauthorised substances or items. It also specifies the procedure to be followed if illicit items are found.

Mail may only be read when there are reasons specific to a particular prisoner for performing such a check. It must be done under the director's personal supervision.

The law lists a series of individuals and institutions with whom you may correspond unsupervised, including MPs, the federal mediator and the prison director.

- **Visits**

The law prescribes minimum visiting rights: these are seven days a week for unconvicted prisoners and three days a week (including one day at the weekend and one Wednesday afternoon) for convicted prisoners.

The minimum duration is one hour.

'Table visits' are the norm; 'window visits' are the exception and must be properly justified.

The law allows for the possibility of conjugal visits.

- **Telephone**

As a rule, you may use the telephone every day under the conditions specified in the prison's internal rules. You must pay for the cost of your calls, except for the first call following your incarceration which is free of charge so that you can inform your family of your situation.

The prison administration may monitor the numbers you call but may not record or listen to your telephone conversations.

Religion and philosophy (Articles 71 to 75)

Every prison in Belgium must allow all prisoners to exercise their moral or religious convictions.

You are free to practise the religion(s) of your choice and participate in meetings and activities organised by the representatives of recognised religions or the secular movement with no restrictions other than those required to ensure order, dignity and tolerance (**Article 74**).

The law attaches particular importance to the relationship of trust between prisoners and those responsible for providing pastoral or philosophical guidance. You may correspond privately with a chaplain or secular counsellor.

As far as security regulations allow, chaplains and moral counsellors will meet prisoners at their request, with priority for those who have been placed in solitary confinement whether as a specific security measure, as part of a specific individual security regime or as a disciplinary sanction.

Education and leisure activities (Articles 76 to 80)

You will be given as much access as possible to any education and training activities likely to further your personal development, give meaning to your incarceration and prepare you to reintegrate into society.

The term 'education' covers literacy, vocational and sociocultural training, social skills, as well as creative and cultural activities and physical education.

These activities are organised outside working hours, unless the training is considered as work and remunerated on similar terms.

You are entitled to buy magazines and consult books from the prison library. The director may censor written material but must justify his decision on grounds of order and security. You will be informed in writing of any decision to ban use of written material; the same applies to use of the radio and television.

You are entitled to a minimum of two hours' physical exercise or sport each week and a daily walk or other outdoor activity lasting a minimum of one hour a day.

Work and work-related income (Articles 81 to 86)

The main aims of prison work are: to make your prison experience more tolerable, to prepare your reintegration into society, to allow you to meet your responsibilities towards family and friends and

towards your victims and to pay off your debts. Note, however, that the right to work will depend on the availability of work within the prison.

The terms and conditions of work must correspond as closely as possible to those in the wider community and the work must be remunerated in accordance with the relevant regulations.

The work must not be degrading or punitive in nature.

The individual detention plan must be taken into consideration when assigning work to convicted prisoners.

You are legally entitled to compensation if you are the victim of a work-related accident while in prison.

Healthcare and health protection (Articles 87 to 99)

The care provided in prison must be commensurate to that provided in the wider community and any healthcare an individual was receiving prior to incarceration must be available during detention.

The law specifies in detail under what circumstances you may consult a doctor of your choice.

The decisions taken by those providing healthcare to prisoners must be based solely on medical criteria.

A prison health council (*Conseil pénitentiaire de la santé/Penitentiaire Gezondheidsraad*) has been established by law, and has been operational since the start of 2006. It advises on ways of improving the quality of prison healthcare.

The law also provides for medical officers, whose tasks include carrying out health and safety inspections in prisons.

Medical officers are also required to visit prisoners being held in solitary confinement or in a punishment cell for disciplinary reasons, to ascertain their state of health.

Social and legal assistance

You are entitled to assistance from the prison's psychosocial services in implementing your detention plan. Other social services and professionals outside the judicial system may take over this role.

Similarly, you are also entitled to legal assistance from outside the prison.

The prison must be able to accommodate these outside professionals appropriately and must allow them to carry out their work.

Chapter II Order and Security

The terms 'order' and 'security' are used frequently, so it is important to understand what they mean.

Order: compliance with the rules of behaviour imposed in prison to ensure a humane social environment.

Security: the law distinguishes between internal and external security.

Internal security: safeguarding the physical integrity of individuals inside the prison and preventing the risk of damage to, and destruction and theft of, movable or immovable property.

External security: protecting society against the threat of escape and preventing offences committed from inside prisons.

As a detained person, you must:

- follow staff instructions;
- comply with internal prison rules;
- not threaten order and security.

In other words, you must not disrupt order or security through your behaviour towards staff, your fellow inmates or any other individuals (**Article 106**).

Every person in the prison has a part to play in ensuring order and creating a humane social environment within the prison.

When these attitudes are not sufficient to ensure order, or in emergency situations, appropriate measures will need to be taken. These measures, and the principles that apply in such cases, are laid down by the law.

They are as follows:

- Control measures, applied to individual prisoners or more widely
- Coercive measures (restraint)
- Structural or one-off measures with respect to specific prisoners
- Disciplinary measures in the event of disciplinary offences.

Control measures

- a. Access to prisons is subject to control and security measures (**Articles 32 to 34**). The law includes a list of persons authorised to enter prisons.
- b. The control measures may take the form of mandatory ID to be worn by prisoners, fingerprints or photographs (**Article 107**).
- c. Searches
The law recognises three types of search:
 - Clothing search
 - Cell search
 - Strip search, in which you remove all your clothing and undergo a visual inspection of all body cavities and orifices (this is different from a manual body cavity search (involving probing), which may only be performed by a medical professional).

The aim of such searches is to check for prohibited items in order to maintain order and security. Any items discovered may be confiscated (a receipt will be issued) and either destroyed with the prisoner's consent, kept or handed over to the judicial authorities.

The law stipulates that these searches must be carried out in a dignified and proportional manner.

Security measures

The law distinguishes between:

- general security measures: these are security rules relating to watches, patrols and the organisation of prison personnel;
- specific security measures relating to individual inmates.

There are two types of specific measure: a) temporary measures, imposed for a limited period of time, and b) structural measures, which are ongoing.

A. Specific security measures (Articles 110 to 115)

Example 1: You are a new arrival at a prison and have a history of violence. The prison authorities wish to monitor you before putting you on a normal regime.

Example 2: The director has credible evidence to suggest that you are preparing an escape.

In both these cases, nothing untoward has yet taken place and no offence has been committed; however, there is serious evidence that you represent a threat to order or security.

Following an interview with you, the director may take a reasoned decision to place you on a more stringent regime.

This regime lasts for seven days and may be renewed three times.

In practical terms, this may mean having goods confiscated, being excluded from group activities, confined to cell (either your own or a special high-security cell) or placed under heightened surveillance.

As a rule, you retain the right (unless the director decides otherwise) to receive visits, use the telephone, conduct correspondence, take part in work and educational activities, practise your religion (collectively or alone), read, live hygienically, spend at least one hour a day in the prison yard, etc. These activities will be undertaken either alone or collectively, depending on the measure imposed and the director's decisions.

B. Being placed on an individual specific security regime (Articles 116 to 118).

This measure is applied to prisoners who present an ongoing security risk and for whom temporary measures proved inadequate.

Example: an inmate has escaped several times

The decision to place an inmate on an individual specific security regime is taken by the director-general of prison administration. He will issue a reasoned decision based on a detailed report by the prison director, who will have had an interview with the prisoner and will enclose a medical opinion with his report.

This regime may last a maximum of two months but may be renewed as often as is necessary.

The regime will undergo regular (monthly) evaluation.

In practical terms, being placed on this type of regime may mean being deprived of objects, excluded from group activities, confined to cell (either your own or a special high-security cell) or placed under heightened surveillance.

As a rule, you retain the right (unless the director-general decides otherwise) to receive visits, use the telephone, conduct correspondence, take part in work and training activities, practise your religion (collectively or alone), read, live hygienically, spend at least one hour a day in the prison yard, etc.

On occasions, it may prove necessary to employ

Direct coercive measures

This means physical restraint exercised by staff against you or third parties present in the prison, with or without the use of designated equipment (**Article 119**).

The use of physical restraint and instruments of restraint must cause the least amount of damage possible. They should only be used when other means of ensuring order and security would not suffice and must be proportional to the order/security threat posed.

Whenever possible, staff will threaten the individual with restraint as a warning before actually employing it, so that he has the chance to desist voluntarily from his behaviour (Article 120).

Disciplinary regime

Disciplinary measures are imposed when an offence has been committed.

1. Some general principles:

- Only the director (or his legal substitute) may impose a disciplinary sanction.
- Disciplinary sanctions may only be used for the disciplinary offences specified by the law.
- Only those disciplinary sanctions specified by the law may be imposed.
- The principle of subsidiarity: since the purpose of discipline is to maintain order and security (which, it should be remembered, are created through dynamic interaction favouring dialogue), it should only be used if other means of resolving the conflict are ineffectual.
- You may only be punished once for a disciplinary offence.

2. Offences

The law recognises two categories of disciplinary offence:

1. Category 1 offences = the most serious offences
Attack on an individual's physical or mental integrity, vandalism, theft, breach of order, collective actions, drug trafficking or possession and escape (**Article 129**)
2. Category 2 offences = less serious offences
Verbal abuse, breach of internal prison rules on items permitted in cells, refusal to obey orders, unauthorised presence in a location, unauthorised contact, poor hygiene and excessive noise. (**Article 130**)

The law also punishes attempted offences and provides for sanctions against all those involved in the offence (**Article 131**).

3. Disciplinary sanctions

The law distinguishes between general sanctions and specific (or 'mirror') sanctions.

General sanctions can be applied for any offence (**Article 132**): reprimand, restriction on use of store, cell isolation, confinement to a punishment cell.

Specific sanctions are directly linked to the offence (**Article 133**): confiscation of goods, ban on using library (except for educational purposes), visits in an individual visiting room, ban on using telephone, exclusion from group activities.

Example: If you abused your right to use the telephone, the sanction will relate to phone use; if you were disruptive during a visit, the sanction will relate to table visits: hence the term 'mirror' sanctions (the punishment reflects the crime).

Disciplinary sanctions are related to the category of offence (i.e. category 1 or 2).

The director will assess the circumstances of the offence when deciding on the exact nature and duration of the sanction.

The law sets out in detail:

A. Cell isolation (Articles 140 to 142)

If you receive this sanction, you will be confined to your cell, excluded from group and outdoor activities (excepting religious ones) and will not receive income from group work. However, the director may authorise you to take part in group educational activities.

You remain entitled to visits in an individual visiting room (unless the director decides otherwise) and to one telephone call a week, excluding those with your legal adviser.

You will be seen once a week by the director and the medical officer.

For a category 1 offence, the sanction may last 30 days.

For a category 2 offence, the sanction may last 15 days

NB: these sanctions may be extended to 45 days in the event of a serious attack on the physical integrity of an individual during the punishment period.

Note that no other sanction may be applied in tandem with this one.

B. Confinement in a punishment cell (Articles 134 to 139)

Unless the director decides otherwise, this sanction will mean that you are excluded from group activities and deprived of work income, use of the store (except for hygiene and correspondence purposes), personal effects, use of the telephone (except for calls to your legal adviser), visits (although you will be entitled to visits in an individual visiting room if the sanction lasts longer than three days) and access to the media.

You remain entitled to decent food and clothing, reading material, one hour a day in the exercise yard, personal education, correspondence, individual religious practice, contact with your legal representative and medical, psychological and social assistance.

You will be seen once a day by the director and medical officer.

The director must consult a doctor before reaching his decision.

For a category 1 offence, the sanction may last 9 days.

For a category 2 offence, the sanction may last 3 days.

NB: these sanctions may be extended to 15 days in the event of a serious attack on the physical integrity of an individual during the punishment period.

Note that no other sanction may be applied in tandem with this one.

4. Disciplinary procedure (Articles 144 to 146)

When a staff member discovers that a prisoner has committed an act which he believes to be an offence, he files a report with the director.

The director decides whether or not to take action within seven days.
If he does decide to take action, the prisoner will be interviewed within 24 hours of being informed of this.

The prisoner may be assisted by a legal adviser or support person.

The director may decide to hear witnesses or the staff member who reported the incident.

The director will reach a reasoned decision, which will be communicated to the prisoner both verbally and in writing.

5. The temporary measure

In cases which he feels involve a serious threat to the prison's internal security and cases of collective action by inmates, the director may opt to impose a temporary measure and order the prisoner concerned to be confined to his cell or a high-security cell, pending the disciplinary procedure.

In such cases, the prisoner is heard within 24 hours and the director reaches a decision regarding the disciplinary sanction within 48 hours of the hearing.

Chapter III

Rehabilitation, Reparation, Reintegration

Sentences are enforced based on three principles (**Article 9(2)**):

- rehabilitation
- reparation
- reintegration.

What do these words mean?

Rehabilitation: the aim of rehabilitation is to enable the prisoner to come to terms with himself, to offer him the chance while in prison to talk about what he has done wrong and how that could be avoided, and to look forward positively to the future.

Reparation: focusing on the needs and requirements of victims by making the perpetrator take responsibility for his actions.

In general, the main needs expressed by victims are to have their status as victims recognised, to be listened to, both by the police and by the courts, to have their shaken confidence restored and to receive material and moral reparation from the perpetrator.

The relationship is a triangular one (perpetrator - victim - society) in which the victim has an important role to play in bringing about closure.

The prison administration can play its part in the reparation (perpetrator - victim - society) by creating an environment within which prisoners are given the chance to face up to the consequences of their actions, not only for themselves, their family and those around them, but also for their victims and for society at large, thereby enabling them to meet their responsibilities towards their victims.

The reparation process is not mandatory, but it must be made possible in a climate of voluntary action and respect for all parties.

Reintegration: sooner or later the prisoner will be released and re-enter society.

In the interests of both the prisoner and society, everything must be done to ensure that this reintegration takes place in the best possible conditions.

The damaging effects of detention must be limited, for example by offering the widest possible range of activities and services corresponding to the prisoner's needs.

These 3 Rs underpin the detention plan (**Articles 35 to 40**).

The detention plan should be seen as a tool enabling you to make the most of your time in prison.

The aim of the plan is to adapt the objectives of your prison sentence to your situation.

The development and implementation of the plan must form part of a process that encourages you to take responsibility whilst in prison and allows you to play an active role in your detention, rather than being a passive object governed by the institution.

The detention plan should identify the obstacles to reintegration and develop strategies aimed to overcome these. It should include activities and training, agreed on in consultation with you, which will be of benefit to you in managing your detention and working towards your release.

Before drawing up the detention plan, a preliminary survey of the character and circumstances of the detainee is carried out in the period immediately after his conviction and arrival at the prison. (**Article 35(1)**)

This survey is a sort of inventory, a snapshot of the individual, his personal resources, his areas of vulnerability, family and financial resources, and any resources that can be put to use during his time in prison.

In drawing up the plan, you will need to decide together on your priorities at each stage of your detention and as your personal circumstances change.

The plan will contain activity proposals in areas such as work, education and training, psychosocial support and medical or psychological treatment.

Implementation of the plan must be evaluated regularly with the various parties involved, including yourself. It must be flexible, adjustable and adaptable throughout the detention period to take account of changes in the individuals and their circumstances. **(Article 39)**

The individual detention plan must fit into a wider plan for the prison as a whole, and the prison's operating rules must provide an environment that fosters the personal development of detainees. When classifying prisoners and transferring them to specific jails, the detention plans of the individuals concerned must be taken into account.

It should be remembered that, as regards both education **(Article 76)** and prison work (82), the law specifies that the aim of such activities is to give meaning to the period of detention, contribute to the prisoner's development and reintegration and help him to meet his responsibilities, notably towards his victim(s).

Chapter IV The Prisoner as Citizen

The principle is set out in **Article 6** of the law:

“The prisoner shall not suffer any restriction of his civil, social, economic or cultural rights, excepting those restrictions arising from his criminal sentence or custodial measure, those inherent to deprivation of liberty and those determined by or by virtue of the law.”

The law goes on to state:

“Detrimental effects of detention shall be avoided during enforcement of the sentence.”

In other words, the prisoner retains all his rights ... except those lost as a result of detention.

In other words still, the principle to fall back on in case of doubt is ‘normality’: how does it work outside prison? Is there any specific reason for supposing it should be different in prison?

How does a prisoner’s status as citizen manifest itself in prison life?

There are a number of points to consider:

- First and foremost, citizen status means having the right to be treated with respect and dignity; this should be in evidence during visits, at work, in the shower and during illness, but also in the event of searches, punishment and the sometimes necessary use of restraint. As a prisoner, you should show the same respect to everybody else living in the prison, whether your fellow inmates or prison personnel.
- **Justification**
The law on the justification of administrative acts applies to prisoners as to all citizens. Under the law, you are entitled to expect every decision taken concerning you to be reasoned, i.e. to include an explanation of the reasons why it was taken.
- **Transparency rules**
The law on administrative transparency applies to detained persons, who are entitled to a copy of any decision concerning them and to explanations regarding it. It is under this law that the prisoner receives a copy of any disciplinary reports concerning him.
- The right to be informed is in evidence upon reception into the prison, when the prisoner receives comprehensive information about life in the prison, the internal prison rules (which he must follow to the letter), his legal and criminal status and the assistance available to him, including social assistance from the relevant services and legal assistance.
- The citizen is responsible for:
 - managing his income (amongst other things), which he must do with a view to fulfilling his duties towards his family/friends and victims (see the principals of prison work under Article 82);
 - his behaviour. Remember: order and security are the responsibility of everybody in the prison.
- Citizenship is also about involvement: involvement in consultation bodies, where prisoners come together to discuss issues of common interest, but also involvement in your detention plan, as discussed above.
- As we have seen, philosophical and religious life and freedom of religion are other ways that you exercise your citizen status.
- Being a citizen also means being entitled to defend your rights: e.g. the right to be heard regarding offences alleged against you, the right to a lawyer, but also the right to access your case file and request witnesses.

- The right to complain: besides appeals to various types of court, which can sometimes be long-winded and costly, the law gives prisoners a special right of appeal against decisions taken by or on behalf of the prisoner director. This is an important right.

The law stipulates that a prisoner may file a complaint regarding a decision taken by or on behalf of the director. It does not therefore entitle him to complain about every trifling inconvenience of prison life but only to contest decisions that affect him personally. The right to complain is a strictly individual right.

The prisoner should lodge the complaint with the complaints commission (*Commission des plaintes/Beklagcommissie*), a body comprising three members of the monitoring commission (*Commission de Surveillance/Commissie voor toezicht*) and chaired by a judge.

The complaints commission will hear the prisoner (who is entitled to assistance) and the director and can overturn the director's decision if it is illegal or if it deems the decision to be unfair or unreasonable.

Both the director and the prisoner may appeal against the commission's ruling.

It is important to note that the law favours an informal approach to dealing with complaints, through mediation. This relates back to the ideas on control outlined above: prison is a place where people live together and frank and open discussion is often the best way of resolving conflicts. The principles of reparation are also reflected in this attitude.

NB: the law provides for a special procedure against placement and transfer decisions: as these decisions are taken on behalf of the director-general, they are dealt with by the Central Monitoring Board (Conseil central de Surveillance/Centrale Toezichtsraad).

This brings us to the monitoring commissions.

Monitoring commissions are made up of individuals unconnected with the prison system who volunteer to perform citizen monitoring inside prisons.

They appoint a monthly commissioner who visits the prison at least once a week.

They report their observations to the (national) Central Monitoring Board which puts forward opinions to the Minister of Justice and makes suggestions for ensuring that prison life runs as smoothly as possible.

The members of the monitoring commission play a key mediation role and the chairman meets regularly with the prison director.

Conclusion

The law of principles covers all aspects of (daily) prison life.

It defines much more precisely than previously the internal legal status of prisoners, including their rights, obligations, the disciplinary regime to which they are subject during detention and so on.

With the law of principles, Belgium is closing the gap that has opened up between it and other European countries and for which it has been repeatedly condemned by international bodies such as the European Court of Human Rights.

Last but not least, it will have the major benefit of creating a consistent set of practices for all prisons, instead of the confused mass of rules and regulations that exist today.