



[Click here for
Explanatory Memorandum](#)

Number 10 of 2007

PRISONS ACT 2007

ARRANGEMENT OF SECTIONS

PART 1

PRELIMINARY AND GENERAL

Section

1. Short title, commencement and collective citation.
2. Interpretation (general).
3. Expenses.

PART 2

PRISONER ESCORT SERVICES

4. Interpretation (*Part 2*).
5. Agreement for the provision of prisoner escort services.
6. Certification of prisoner custody officers.
7. Revocation of certificate.
8. Functions of prisoner custody officer.
9. Prohibition of unauthorised disclosure of information.
10. Reports to Minister.

PART 3

PRISON DISCIPLINE

11. Interpretation (*Part 3*).
12. Inquiry into alleged breach of prison discipline.
13. Sanctions for breach of prison discipline.
14. Petition by prisoner against sanction.
15. Appeal against forfeiture of remission of portion of sentence.
16. Appeal Tribunals.

PART 4

REQUIREMENTS RELATING TO CONSTRUCTION AND EXTENSIONS OF PRISONS

17. Interpretation (*Part 4*).
18. Application of this Part.
19. Environmental impact assessment.
20. Notice of development.
21. Contents of notice.
22. Publication of information on development.
23. Appointment of rapporteur.
24. Procedure where substantive amendments by Minister to development.
25. Decision by Minister on development.
26. Oireachtas approval for development.
27. Questioning of acts, etc., done pursuant to this Part.
28. Exemptions, etc., relating to development.
29. Saving.

PART 5

INSPECTOR OF PRISONS

30. Inspector of Prisons.
31. Functions of Inspector.
32. Annual report.

PART 6

MISCELLANEOUS

33. Certain applications to court to be heard using videolink.
34. Application of *section 33* to children in remand centres or children detention schools and other detained persons.
35. Prison rules.
36. Prohibition of unauthorised possession or use of mobile telecommunications device by prisoner.
37. Amendment of National Minimum Wage Act 2000.
38. Payment by prisoners for requested services.
39. Absence from prison on compassionate, etc., grounds.
40. Lawful custody of prisoners while absent from prison.

[2007.]

Prisons Act 2007.

[No. **10.**]

41. Minor and consequential amendments.
 42. Repeals.
 43. Regulations.
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ACTS REFERRED TO

Building Control Act 1990	1990, No. 3
Children Act 2001	2001, No. 24
Criminal Justice (Miscellaneous Provisions) Act 1997	1997, No. 4
Criminal Justice (Public Order) Act 1994	1994, No. 2
Criminal Justice Act 1960	1960, No. 27
Criminal Justice Act 1990	1990, No. 16
Criminal Law (Insanity) Act 2006	2006, No. 11
Criminal Procedure Act 1967	1967, No. 12
General Prisons (Ireland) Act 1877	40 & 41 Vic., c. 49
National Minimum Wage Act 2000	2000, No. 5
National Monuments Act 1930	1930, No. 2
National Monuments Acts 1930 to 2004	
Penal Servitude Act 1891	54 & 55 Vic., c. 69
Planning and Development Act 2000	2000, No. 30
Planning and Development Acts 2000 to 2006	
Prisons Act 1933	1933, No. 51
Prisons Act 1970	1970, No. 11
Prisons Act 1972	1972, No. 7
Prisons Acts 1826 to 1980	
Prisons (Ireland) Act 1907	7. Edw. 7., c. 19
Prisons (Visiting Committees) Act 1925	1925, No. 11
Statutory Instruments Act 1947	1947, No. 44



Number 10 of 2007

PRISONS ACT 2007

AN ACT TO ENABLE THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM TO ENTER INTO AGREEMENTS FOR THE PROVISION OF SERVICES RELATING TO THE ESCORT OF PRISONERS BY PERSONS OTHER THAN PRISON OFFICERS; TO PROVIDE FOR THE CONDUCT OF INQUIRIES BY GOVERNORS OF PRISONS INTO ALLEGED BREACHES OF DISCIPLINE BY PRISONERS, FOR THE SANCTIONS THAT MAY BE IMPOSED AFTER SUCH INQUIRIES AND FOR THE ESTABLISHMENT OF APPEAL TRIBUNALS TO HEAR APPEALS AGAINST FORFEITURES SO IMPOSED OF REMISSION OF PORTION OF SENTENCES; TO ENABLE SPECIAL REQUIREMENTS TO BE PROVIDED FOR IN RELATION TO THE CONSTRUCTION OR EXTENSION OF PRISONS AND OTHER PLACES OF DETENTION, INCLUDING APPROVAL THEREOF BY A RESOLUTION OF EACH HOUSE OF THE OIREACHTAS AND CONFIRMATION BY ACT OF THE OIREACHTAS OF THE RESOLUTION; TO PROVIDE FOR THE APPOINTMENT OF AN INSPECTOR OF PRISONS; TO PROVIDE FOR THE GIVING OF EVIDENCE BY PRISONERS IN CERTAIN TYPES OF PROCEEDINGS BEFORE THE COURTS BY LIVE TELEVISION LINK; TO AMEND AND REPEAL CERTAIN ENACTMENTS IN RELATION TO PRISONS AND PRISONERS AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH.

[31st March, 2007]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY AND GENERAL

1.—(1) This Act may be cited as the Prisons Act 2007.

Short title,
commencement and
collective citation.

(2) This Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision, and different days may be so appointed for different purposes or provisions.

(3) This Act and the Prisons Acts 1826 to 1980 may be cited together as the Prisons Acts 1826 to 2007.

Interpretation (general).

2.—In this Act—

“governor” means the governor of a prison or an officer of the prison acting on his or her behalf;

“Minister” means the Minister for Justice, Equality and Law Reform;

“prison” means a place of custody administered by or on behalf of the Minister (other than a Garda Síochána station) and includes—

- (a) St. Patrick’s Institution,
- (b) a place provided under section 2 of the Prisons Act 1970,
- (c) a place specified under section 3 of the Prisons Act 1972;

“prisoner” means a person who is ordered by a court to be detained in a prison and includes a prisoner who is in lawful custody outside a prison;

“prison rules” means any rules for the government of prisons made under *section 35* or other enactment and in force at a material time.

Expenses.

3.—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

PART 2

PRISONER ESCORT SERVICES

Interpretation (*Part 2*).

4.—In this Part—

“agreement” means an agreement mentioned in *section 5*;

“certificate” means a certificate issued by the Minister under *section 6*;

“contractor” has the meaning assigned to it by *section 5*;

“employment” includes employment under a contract for services, and cognate words shall be construed accordingly;

“prisoner custody officer” means a person—

- (a) in respect of whom a certificate under *section 6* is in force, and
- (b) who is, for the time being, in the employment of a contractor;

“prisoner escort services” has the meaning assigned to it by *section 5*.

Agreement for the provision of prisoner escort services.

5.—(1) The Minister may, with the consent of the Minister for Finance and the approval of the Government, enter into an agreement with another person (in this Act referred to as a “contractor”) for the provision by that person of prisoner escort services.

(2) An agreement to which *subsection (1)* applies shall be subject to such terms and conditions as the Minister, with the consent of the Minister for Finance, shall determine.

(3) The Minister may terminate an agreement under *subsection (1)* if the contractor fails to comply with any of the terms or conditions of the agreement concerned or contravenes a provision of this Act.

(4) In this section “prisoner escort services” means services that before the passing of this Act were normally provided by members of the Garda Síochána or prison officers in relation to—

- (a) the transfer of prisoners from any place (including a prison) to a prison or from a prison to any place (including a prison),
- (b) the detention in custody of prisoners in a prison in the course of their transfer from one prison to another prison,
- (c) the detention in custody of prisoners in a place other than a prison, or
- (d) the production of a prisoner to a court.

6.—(1) An application may be made to the Minister by or on behalf of any person for a certificate that the person is, in the opinion of the Minister, a fit and proper person to perform the functions of a prisoner custody officer.

Certification of
prisoner custody
officers.

(2) An application under this section shall be in such form and accompanied by such fee as may be determined by the Minister and shall also be accompanied by such information or documentation as the Minister may reasonably require to enable him or her to perform his or her functions under this section.

(3) The Minister may, for the purposes of performing his or her functions under this section, make such further inquiries as he or she considers appropriate.

(4) It shall be the duty of an applicant for a certificate, at all times, to provide the Minister with such information as he or she may reasonably require to enable him or her to perform his or her functions under this section.

(5) Subject to *subsection (7)*, the Minister may, on an application under this section, issue a certificate in respect of the person to whom the application relates.

(6) The Minister shall not issue a certificate unless he or she is satisfied that the person—

- (a) is of good character,
- (b) is capable of performing the functions of prisoner custody officer,
- (c) has undergone such course of training relating to, or has such experience of, custody of prisoners as would, in the opinion of the Minister, enable the person to perform the functions of a prisoner custody officer in an efficient manner, and
- (d) is otherwise a fit and proper person to perform the functions of a prisoner custody officer.

(7) It shall be a condition of a certificate that the person in respect of whom it is issued shall, in the performance of his or her functions as a prisoner custody officer—

- (a) not contravene the terms of an agreement under *section 5*, and
- (b) comply with the provisions of this Act and any prison rules relating to the treatment of prisoners in custody.

(8) The Minister may attach such other conditions to a certificate as he or she considers appropriate.

(9) A certificate shall remain in force for such period, not exceeding 5 years, as is specified in the certificate.

(10) Where the Minister refuses to issue a certificate, he or she shall, by notice in writing, inform the applicant of the reasons for his or her so refusing.

(11) If the Minister refuses to issue a certificate to an applicant, the applicant may, not later than 6 weeks from the date on which he or she receives a notice under *subsection (10)*, or such later date as the court may permit, appeal to the court for an order directing the Minister to issue a certificate to the applicant.

(12) The court may, on the hearing of an appeal—

- (a) dismiss the appeal and affirm the refusal of the Minister to issue the certificate, or
- (b) allow the appeal and direct the Minister to issue a certificate to the applicant.

(13) The Minister shall comply with a direction of the court under this section.

(14) A person who knowingly or recklessly provides the Minister with information or documentation that is false or misleading in a material respect is guilty of an offence and liable on summary conviction to a fine not exceeding €3,000 or imprisonment for a term not exceeding 6 months or both.

(15) A person who—

- (a) forges or utters, knowing it to be forged, a certificate purporting to have been issued under this section (in this subsection referred to as a “forged certificate”),
- (b) alters with intent to deceive or defraud or utters, knowing it to be so altered, a certificate (in this subsection referred to as an “altered certificate”), or
- (c) without lawful authority or other reasonable excuse, has in his or her possession a forged certificate or an altered certificate,

is guilty of an offence and liable—

- (i) on summary conviction, to a fine not exceeding €3,000 or imprisonment for a term not exceeding 6 months or both, or

- (ii) on conviction on indictment, to a fine not exceeding €50,000 or imprisonment for a term not exceeding 5 years or both.

(16) In this section—

“applicant” includes a person on whose behalf another person applies for a certificate;

“court” means the Circuit Court for the circuit in which—

- (a) the applicant resides, or
- (b) the contractor concerned has his or her principal office in the State.

7.—(1) If, in relation to a prisoner custody officer, the Minister ceases to be satisfied as to any of the matters referred to in *section 6(6)*, he or she shall revoke the certificate issued in respect of that person. Revocation of certificate.

(2) Where it falls to the Minister to make a decision as to whether or not a certificate should be revoked, the Minister shall direct that, pending the making of the decision, the prisoner custody officer concerned shall not perform the functions of a prisoner custody officer.

(3) The prisoner custody officer concerned and the contractor by whom he or she is employed shall comply with a direction under *subsection (2)*.

(4) Where the Minister revokes a certificate, he or she shall, by notice in writing, inform the prisoner custody officer concerned and the contractor concerned.

(5) If the Minister revokes a certificate, the prisoner custody officer concerned may, not later than 6 weeks from the date on which he or she receives a notice under *subsection (4)*, or such later date as the court may permit, appeal to the court against the decision to revoke the certificate.

(6) The court may, on the hearing of the appeal—

- (a) dismiss the appeal and affirm the decision of the Minister to revoke the certificate, or
- (b) allow the appeal and set aside the revocation.

(7) A person who contravenes *subsection (3)* is guilty of an offence and liable on summary conviction to a fine not exceeding €3,000 or a term of imprisonment not exceeding 6 months or both.

(8) A person in respect of whom a certificate is not in force and who purports to perform functions of a prisoner custody officer is guilty of an offence and liable on summary conviction to a fine not exceeding €3,000 or a term of imprisonment not exceeding 6 months or both.

(9) Upon receipt by—

- (a) a person appointed under *section 10*,
- (b) the Commissioner of the Garda Síochána, or

- (c) the governor of a prison or person for the time being performing the functions of governor of a prison,

of a complaint in writing concerning the conduct of a prisoner custody officer the said person, Commissioner, governor or person performing the functions of governor, as the case may be, shall refer the matter to the Minister.

(10) In this section “court” means the Circuit Court for the circuit in which—

- (a) the prisoner custody officer concerned resides, or
 (b) the contractor by whom he or she is employed has his or her principal office in the State.

Functions of
 prisoner custody
 officer.

8—(1) A prisoner custody officer shall, while escorting a prisoner, have all such powers as are conferred on prison officers by or under any enactment and shall, in particular, have the power to search the person of any prisoner for whose transfer or custody he or she is responsible and to remove any prohibited articles found during the course of such a search.

(2) A prisoner custody officer shall not, in the performance of his or her functions under *subsection (1)*, remove or require the removal of a prisoner’s clothing (other than outer clothing) unless he or she has reasonable grounds for believing that the prisoner has concealed a prohibited article beneath his or her clothing.

(3) A prisoner custody officer shall not conduct a search—

- (a) of a prisoner who is not of his or her sex, or
 (b) in public view.

(4) A prisoner custody officer shall, as respects any prisoner for whose transfer or custody he or she is responsible—

- (a) prevent his or her escape from lawful custody,
 (b) prevent the commission of an offence by him or her,
 (c) ensure that he or she behaves in an orderly and disciplined fashion,
 (d) comply with any order of a court relating to him or her, including any such order relating to his or her custody, treatment or transfer.

(5) A prisoner custody officer may, where necessary, use all reasonable force in the performance of his or her functions under this section.

(6) It shall be the duty of a prisoner custody officer, when escorting a prisoner from a court to a prison, to give to the governor of the prison—

- (a) the original or a copy of any order of the court committing the prisoner to the prison or any other document relating to the committal,

- (b) any medication or prescription for medication given to the officer in respect of the prisoner, and
- (c) any information relating to the prisoner's health that the officer is aware of.

(7) A prisoner custody officer shall, in the performance of any function under this Act in relation to a prisoner, comply with such provisions of prison rules as apply in relation to the performance of that function by a prison officer.

(8) In this section—

“outer clothing” means—

- (a) a hat, shoes or gloves, or
- (b) a coat, sweater, jumper or similar garment, provided that the prisoner is wearing another garment underneath that covers all or the greater part of that part of the body that is covered by the said coat, sweater, jumper or similar garment;

“prohibited article” means any article that a prisoner would not be permitted to have in his or her possession while in prison.

9.—(1) A prisoner custody officer shall not disclose information relating to a prisoner which is obtained by him or her in the course of his or her employment as a prisoner custody officer unless he or she—

Prohibition of unauthorised disclosure of information.

- (a) is authorised by the Minister to so do, or
- (b) does so for the purposes of performing his or her functions as a prisoner custody officer.

(2) A person who contravenes *subsection (1)* is guilty of an offence and liable on summary conviction to a fine not exceeding €3,000 or imprisonment for a term not exceeding 6 months or both.

10.—(1) The Minister shall appoint one of his or her officers to monitor the performance by a contractor of his or her functions under an agreement.

Reports to Minister.

(2) A person appointed under this section shall, not later than 31 March in each year, prepare and submit a report to the Minister on the performance by a contractor of his or her functions under an agreement in respect of the year immediately preceding the year in which the report is so prepared and submitted.

(3) A person appointed under this section may, for the purposes of performing his or her functions under this section—

- (a) at all reasonable times enter the principal office in the State of a contractor or any premises at which he or she carries on business in the State, and
- (b) inspect and take copies of any books, records, other documents (including documents stored in non-legible form) or extracts therefrom which he or she finds in the course of his or her inspection.

PART 3

PRISON DISCIPLINE

Interpretation
(Part 3).

11.—In this Part—

“Appeal Tribunal” means a tribunal appointed under *section 16*;

“breach of prison discipline” is to be construed in accordance with the relevant provisions of prison rules.

Inquiry into alleged
breach of prison
discipline.

12.—(1) If a prisoner is alleged to have committed a breach of prison discipline, the governor of the prison may decide to hold an inquiry into the alleged breach.

(2) The prisoner shall be informed of the alleged breach and of the date and time of the inquiry.

(3) The procedure relating to an inquiry may be specified in prison rules.

(4) At the conclusion of an inquiry, the governor shall—

(a) if he or she finds that the prisoner committed a breach of prison discipline—

(i) impose such one or more of the sanctions provided for in *section 13* as he or she considers appropriate, and

(ii) record the finding and the sanction imposed,

or

(b) if he or she does not so find, record a finding that the allegation has not been substantiated.

Sanctions for
breach of prison
discipline.

13.—(1) One or more than one of the following sanctions may be imposed on a prisoner who is found by the governor to have committed a breach of prison discipline:

(a) caution;

(b) reprimand;

(c) confinement in a cell (other than a special observation cell) for a period not exceeding 3 days;

(d) prohibition, for a period not exceeding 60 days, on—

(i) engaging in specified authorised structured activities or recreational activities,

(ii) receiving visits (except those from a doctor or other healthcare professional, his or her legal adviser, a chaplain or member of the visiting committee to the prison, the Inspector of Prisons, a judge or representative of a court or tribunal, a member of either House of the Oireachtas, a representative of the Minister, Parole Board, Human Rights Commission

or European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment or, if the prisoner is a national of another state, a diplomatic or consular officer of that state),

- (iii) sending or receiving letters (except letters from a person mentioned in *subparagraph (ii)* or the United Nations Committee against Torture or any document relating to the registration of electors (including entry in the postal voters' list) or to voting at an election or a referendum),
- (iv) using money or credit or any other facilities, including telephone facilities, or
- (v) possessing specified articles or articles of a specified class the possession of which is permitted as a privilege;
- (e) forfeiture of such sum of money credited or to be credited to the prisoner from public funds as may be specified by the governor;
- (f) forfeiture of not more than 14 days' remission of portion of a sentence;
- (g) postponement, for a specified period not exceeding 60 days, of payment of the amount of any gratuity to which the prisoner would have been entitled under prison rules in respect of such a period;
- (h) where the breach of prison discipline concerned relates to an attempt to escape from lawful custody, a requirement to wear prison clothes for a specified period not exceeding 60 days.

(2) The governor may suspend, subject to such conditions as he or she may specify, the operation of the whole or any part of a sanction so imposed (other than a sanction of forfeiture of remission) for a period not exceeding 3 months from the date of the conclusion of the inquiry concerned.

(3) If any condition to which a suspension is subject is not complied with during the period of suspension, the governor may direct—

- (a) that the sanction shall take effect either forthwith or from a specified date, or
- (b) that it be abated in a specified manner and, as so abated, so take effect.

(4) If any such conditions are complied with during the period of suspension, the sanction ceases to have effect at the end of that period.

(5) The governor may restore all or any part of any remission of portion of a sentence forfeited by a prisoner under this section if—

- (a) he or she considers that its restoration is justified by the prisoner's good behaviour over a period of time, or

(b) the prisoner has, in the opinion of the governor, performed an exceptionally meritorious act.

(6) Nothing in this section prevents the governor taking immediate provisional or protective measures to maintain order and discipline or prison security.

(7) The following sanctions for breaches of prison discipline are prohibited:

- (a) collective punishment;
- (b) corporal punishment;
- (c) placing in a restraint;
- (d) any form of sensory deprivation;
- (e) deprivation of sleep;
- (f) deprivation of food or drink;
- (g) reduction in, or denial of, normal prison diet;
- (h) confinement in a special observation cell;
- (i) placing in a cell or room without adequate light, heat or ventilation;
- (j) a sanction of indeterminate duration;
- (k) a sanction constituting cruel, inhumane or degrading treatment.

(8) On the imposition of a sanction under this section, the governor shall explain in ordinary language to the prisoner concerned the content of *section 14(1)* and, if the sanction consists of or includes forfeiture of remission of portion of his or her sentence, of *section 15(1)*.

Petition by prisoner against sanction.

14.—(1) A prisoner—

- (a) who is found by a governor to have committed a breach of prison discipline, and
- (b) on whom a sanction under *section 13* has been imposed,

may, within 7 days of its imposition, send to the governor, for transmission to the Minister, a petition concerning the finding or sanction or both finding and sanction.

(2) On such a petition the Minister may, after consulting the governor, affirm, modify, suspend (subject to any specified terms or conditions) or revoke the sanction and cause the petitioner to be notified accordingly.

Appeal against forfeiture of remission of portion of sentence.

15.—(1) Without prejudice to *section 14*, a prisoner—

- (a) who is found by a governor to have committed a breach of prison discipline, and

- (b) on whom a sanction of forfeiture of remission of portion of his or her sentence has been imposed,

may notify the governor of his or her intention to appeal against the finding or sanction, or both finding and sanction, to an Appeal Tribunal established under *section 16*.

(2) On receipt of the notification, the governor shall refer the matter to an Appeal Tribunal.

(3) The Appeal Tribunal may invite the prisoner and the governor to make written submissions to it in relation to the appeal.

(4) The prisoner shall be notified by the Appeal Tribunal of the date and time of the hearing of the appeal and that he or she—

(a) may attend the hearing, and

(b) may, for the purposes of the hearing, avail himself or herself of legal aid, advice or representation or apply for free legal aid under the regulations referred to in *subsection (7)*.

(5) If the appeal relates only to the sanction imposed, the Appeal Tribunal may limit the hearing to issues relating to the sanction.

(6) The Appeal Tribunal may—

(a) uphold or quash a finding that the prisoner has committed the breach of prison discipline concerned,

(b) affirm or quash the sanction imposed by the governor,

(c) vary the period of remission to be forfeited, subject to the period, as so varied, not exceeding 14 days, or

(d) where it quashes the sanction, substitute for it any other sanction provided for in *section 13*.

(7) The Minister may, with the consent of the Minister for Finance, make regulations providing for the granting of legal aid to prisoners appealing to an Appeal Tribunal under this section.

(8) The decision of an Appeal Tribunal shall be notified in writing to the governor and prisoner and be published in accordance with prison rules.

16.—(1) The Minister may by direction in writing establish, for a specified period, an Appeal Tribunal or more than one such Tribunal to adjudicate on appeals under *section 15*. Appeal Tribunals.

(2) An Appeal Tribunal is independent in the performance of its functions.

(3) The Minister may appoint a person who is a practising barrister or solicitor of not less than 7 years' standing to be a member of and constitute an Appeal Tribunal.

(4) The appointment shall be subject to such terms and conditions, including remuneration, as the Minister may determine with the consent of the Minister for Finance.

(5) A person constituting an Appeal Tribunal may at any time resign by a letter sent to the Minister, and the resignation shall take effect on the date on which the Minister receives the letter.

(6) Such a person may at any time be removed from office by the Minister for stated misbehaviour or if, in the opinion of the Minister, the person has become incapable through ill health or otherwise of effectively performing the functions of an Appeal Tribunal.

(7) Subject to this Part and to any general directions given to Appeal Tribunals by the Minister in the interests of securing consistency of procedures in relation to appeals under this Part, an Appeal Tribunal may determine its own procedure.

PART 4

REQUIREMENTS RELATING TO CONSTRUCTION AND EXTENSIONS OF PRISONS

Interpretation
(Part 4).

17.—In this Part—

“development” means—

(a) the proposed construction of a prison on a site not previously used for that purpose where—

(i) the area of the site is greater than 5 hectares, or

(ii) the prison is planned to accommodate more than 250 prisoners,

or

(b) the proposed construction or extension of a prison or part thereof on a site or portion of a site previously used as a prison where the new or extended prison—

(i) involves an increase of more than 50 per cent in the area of the site, or

(ii) is planned to accommodate more than 250 prisoners;

“environmental impact assessment” is to be construed in accordance with *section 19*;

“site”, in relation to a prison, includes any boundary walls or fences and any land which is used for car parking or is otherwise subsidiary or ancillary to the prison.

Application of this
Part.

18.—(1) This Part applies in relation to a development only if the Minister directs in writing that it shall apply to it.

(2) Such a direction is deemed to be a statutory instrument to which the Statutory Instruments Act 1947 primarily applies.

Environmental
impact assessment.

19.—(1) Before proceeding with a development, the Director-General of the Irish Prison Service shall appoint a person to prepare an environmental impact assessment in respect of it.

(2) The following information shall be contained in the environmental impact assessment:

- (a) a description of the development, including in particular—
 - (i) a description of its physical characteristics and land-use requirements during the construction and operational phases,
 - (ii) information concerning its site, design and size, and
 - (iii) an estimate, by type and quantity, of any expected residues or emissions resulting from the development, such as water, air or soil pollution, noise, vibration, light, heat or radiation;
- (b) an outline of the main alternatives to the development that were considered by the Minister and an indication of the main reasons for choosing the development, taking into account the environmental effects;
- (c) a description of any aspects of the environment likely to be significantly affected by the development, including, in particular, population, fauna, flora, soil, water, air, climatic factors, material assets (including any architectural, archaeological or cultural heritage) and landscape and the inter-relationship between the matters referred to in this paragraph;
- (d) a description of any likely significant effects of the development resulting from—
 - (i) the existence of the development,
 - (ii) the use of natural resources, and
 - (iii) any emission of pollutants, creation of nuisances or elimination of waste,whether the effects are short, medium or long term, direct, indirect, permanent, temporary, positive, negative, cumulative or secondary;
- (e) a description of the forecasting methods used to assess the effects on the environment;
- (f) a description of the measures envisaged to prevent, reduce and, where possible, offset any significant adverse effects on the environment;
- (g) the data required to identify and assess the main effects which the development is likely to have on the environment;
- (h) an indication of any difficulties (technical deficiencies or lack of know-how) encountered in compiling the information;
- (i) a non-technical summary of the information.

(3) The Director-General of the Irish Prison Service shall also arrange for the preparation of a drawing or other visual representation of the exterior of the completed development.

(4) The environmental impact assessment and visual representation of the development shall be submitted by the Director-General of the Irish Prison Service to the Minister.

Notice of development.

20.—(1) On receipt of the documents mentioned in *section 19(4)*, the Minister shall give notice of the development to—

- (a) the planning authority or authorities for the area where the development is to be situated,
- (b) members of the public,
- (c) the Minister for the Environment, Heritage and Local Government, and
- (d) if the development or any part thereof is adjacent to or on the foreshore, the Minister for Communications, Marine and Natural Resources.

(2) The Minister shall cause a copy of the notice to be laid before each House of the Oireachtas.

(3) Notice of the development shall be given to members of the public by placing—

- (a) a notice or notices on the site so that it or they is or are easily visible from the public roadway, and
- (b) by placing a notice in at least one daily newspaper and one other newspaper in circulation in the area concerned.

(4) If the development is likely to have significant effects on the environment of another party to the Espoo Convention, the Minister shall give notice of the development to the appropriate authority in that state and proceed in other respects in accordance—

- (a) with the Convention, and
- (b) if the other state is a member state of the European Union, with Article 7 of the Council Directive as if that Article applied, with the necessary modifications, in relation to the development.

(5) In this section—

“Council Directive” means Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment¹, as amended by Council Directive 97/11/EC of 3 March 1997²;

“Espoo Convention” means the Convention on Environmental Impact Assessment in a Transboundary Context, done at Espoo (Finland) on 25 February 1991.

Contents of notice.

21.—Each notice referred to in *section 20* shall—

- (a) state the date on which the notice was issued,

¹ OJ L 175, 5.7.1985, p. 40

² OJ L 73, 14.3.1997, p. 5

- (b) give a brief description of the general nature of the development, including its size and purpose and the number of prisoners to be accommodated therein,
- (c) identify its location,
- (d) indicate how copies of the documents mentioned in *section 19* may be obtained from the Minister pursuant to *section 22*,
- (e) invite any interested parties to make written submissions or observations on the development to the rapporteur appointed under *section 23* at a specified address within a period of 6 weeks commencing on the day after the day on which the notice was issued, and
- (f) state that any submissions or observations so made must be accompanied by the name and address of the person or body making them.

22.—Subject to *section 29*, the Minister shall make a copy of the documents mentioned in *section 19* available to any interested party in written form or electronically.

Publication of information on development.

23.—(1) The Minister shall appoint a rapporteur to receive written submissions or observations relating to a development from interested parties pursuant to *section 21(e)*.

Appointment of rapporteur.

(2) The rapporteur shall take account only of those written submissions or observations which are received within the period of 6 weeks referred to in *paragraph (e)* of that section and are accompanied by the names and addresses of the persons or bodies making them.

(3) The rapporteur shall prepare a report on the basis of those submissions or observations.

(4) The report shall—

- (a) specify the names and addresses of those who made written submissions or observations,
- (b) identify the main issues or other points of substance raised by those who made such submissions or observations, and
- (c) include a summary of the submissions or observations.

(5) The rapporteur shall submit the report to the Minister, who shall arrange for it to be published.

24.—(1) If the Minister, having had regard to the report of the rapporteur, decides to make a material alteration to the development, he or she shall—

Procedure where substantive amendments by Minister to development.

(a) cause to be prepared—

- (i) an amended description of the development, specifying any such alterations,

- (ii) a supplementary environmental impact assessment relating to the impact of the alterations on the environment, and
- (iii) if the alterations materially affect the exterior of the development, an amended visual representation of the exterior,

and

- (b) specify in a notice to the persons and bodies mentioned in *section 20* the alterations that he or she has decided to make to the development.

(2) *Section 19* applies in relation to a supplementary environmental impact assessment, with the necessary modifications.

(3) *Section 21* applies in relation to a notice under *subsection (1)(b)*, with the modification that the period within which submissions or observations on the alterations must be made is 21 days and with any other necessary modifications.

(4) The rapporteur shall prepare a supplementary report on the basis of any written submissions or observations received within the said period of 21 days.

(5) The supplementary report shall—

- (a) specify the names and addresses of those who made written submissions or observations,
- (b) identify the main issues or other points of substance raised by those who made such submissions or observations, and
- (c) include a summary of the submissions or observations.

(6) The rapporteur shall submit the report to the Minister, who shall arrange for it to be published.

Decision by
Minister on
development.

25.—The Minister, having had regard to—

- (a) the environmental impact assessment in respect of the development and the report of the rapporteur under *section 23(5)*, and
- (b) any supplementary environmental impact assessment and supplementary report,

may make further alterations to the development and may either—

- (i) decide to proceed with the development, including any such alterations, or
- (ii) decide not to do so.

Oireachtas approval
for development.

26.—(1) If the Minister decides to proceed with the development, he or she shall move a draft resolution in both Houses of the Oireachtas—

- (a) containing—

- (i) a description of the development, including its location, purpose and size and any alterations made by the Minister to it in accordance with *section 25*,
- (ii) a statement that an environmental impact assessment and, where appropriate, a supplementary environmental impact assessment was or were prepared with respect to it,
- (iii) the measures taken to invite submissions or observations from members of the public,
- (iv) the main measures taken to avoid, reduce or offset any possible significant adverse effects of the development on the environment,
- (v) a drawing or other visual representation of the exterior of the completed development, and
- (vi) any conditions to be complied with by the person or body responsible for the construction of the new or extended prison,

and

(b) approving of the development.

(2) Before moving the draft resolution, the Minister shall cause the following documents to be laid before each House of the Oireachtas:

- (a) a document stating—
 - (i) the location, purpose and size of the development,
 - (ii) its land-use requirements during the construction and operational phases, and
 - (iii) the estimated type and quantity of any residues and emissions expected to result from it;
- (b) the environmental impact assessment and any supplementary impact assessment;
- (c) a drawing or other visual representation of the exterior of the completed development;
- (d) the report and any supplementary report of the rapporteur.

(3) The Minister may also, before moving the draft resolution, cause a document containing his or her observations on any of the documents mentioned in *subsection (2)* to be so laid.

(4) If the draft resolution is approved by each House of the Oireachtas and confirmed by an Act of the Oireachtas, the Minister may proceed with the development.

27.—(1) A person shall not question—

- (a) the validity of any act done (including any decision made or direction given) pursuant to this Part, or

Questioning of acts, etc., done pursuant to this Part.

- (b) whether any environmental impact assessment or report by a rapporteur complies with this Part,

otherwise than by way of an application to the High Court for judicial review under Order 84 of the Rules of the Superior Courts (S.I. No. 15 of 1986).

(2) An application for leave to apply for judicial review under subsection (1) shall—

- (a) be made only by a person who is substantially affected by the development concerned or has made a submission or observations to the rapporteur in relation to it,
- (b) be made within a period of 8 weeks after the act is done or the environmental impact assessment or report concerned is published, unless the Court, on the basis of evidence put before it, is satisfied that there is a good and substantial reason for extending the period, and
- (c) be made by motion on notice, grounded in the manner specified under the said Order 84 in respect of an *ex parte* motion for such leave in accordance with that Order, to the Minister and any other party concerned.

(3) The application for such leave shall not be granted unless the Court is satisfied that there are substantial grounds for contending that the act done, or the statement or report, is invalid or ought to be quashed.

(4) The Court may, before hearing the application, direct that notice of it be also served on such persons as the Court may specify.

- (5) (a) The determination of the Court of an application for leave to apply for judicial review, or an application for judicial review, is final, and no appeal from the determination lies to the Supreme Court in either case, except by leave of the Court.
- (b) Such leave shall be granted only where the Court certifies that its decision involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal be taken to the Supreme Court.
- (c) This subsection does not apply to a determination of the Court, in so far as it involves a question of the validity of any law having regard to the provisions of the Constitution.

Exemptions, etc., relating to development.

28.—(1) A development—

- (a) is an exempted development for the purposes of the Planning and Development Acts 2000 to 2006,
- (b) is not subject to—
- (i) regulations under section 181 of the Planning and Development Act 2000,
- (ii) the European Communities (Environmental Impact Assessment) Regulations 1989 to 2005,

(iii) the said Acts of 2000 to 2006 in so far as they relate to environmental impact assessments or any regulations under those Acts relating to such assessments, or

(iv) the Building Control Act 1990 and regulations thereunder,

and

(c) subject to *subsections (2) and (3)*, shall not require a consent or licence under the National Monuments Acts 1930 to 2004 (other than a licence under section 25 of the National Monuments Act 1930) or any other consent or licence.

(2) Any works of an archaeological nature that are carried out in respect of a development shall be carried out in accordance with the directions of the Minister for the Environment, Heritage and Local Government.

(3) If a national monument within the meaning of the said Acts of 1930 to 2004 is discovered on the site of a development, the discovery shall be reported to the Minister for the Environment, Heritage and Local Government as soon as practicable and, pending directions by that Minister, no works shall be carried out that would interfere with the monument, except any that are urgently required to secure its preservation and are carried out in a manner specified by that Minister.

(4) Before issuing directions under *subsection (2) or (3)*, the Minister for the Environment, Heritage and Local Government shall consult in writing with the Director of the National Museum of Ireland.

(5) The period during which such consultation takes place shall not exceed 14 days or such other period as may be agreed to by that Minister and the Director in a particular case.

29.—Nothing in this Part requires disclosure of details of any matters relating to the design and construction of a new or extended prison that may prejudice its security or enable any person to enter or leave it unlawfully. Saving.

PART 5

INSPECTOR OF PRISONS

30.—(1) The Minister may appoint a person (to be known as the Inspector of Prisons) to perform the functions conferred on him or her by this Part. Inspector of Prisons.

(2) The Inspector of Prisons—

(a) shall hold office on such terms and conditions, including remuneration, as the Minister may determine with the consent of the Minister for Finance,

(b) may at any time resign the office by letter addressed to the Minister, the resignation to take effect on and from the date of receipt of the letter, and

- (c) may at any time be removed by the Minister from office for stated misbehaviour or if, in the Minister's opinion, he or she has become incapable through ill health of effectively performing his or her functions.

(3) The term of office of a person appointed to be Inspector of Prisons shall be such term, not exceeding 5 years, as the Minister may determine at the time of the appointment.

(4) Subject to this Part, an Inspector of Prisons is eligible for re-appointment.

(5) Subject to this Part, the Inspector of Prisons is independent in the performance of his or her functions.

Functions of
Inspector.

31.—(1) The Inspector of Prisons shall carry out regular inspections of prisons and for that purpose may—

- (a) at any time enter any prison or any part of a prison,
- (b) request and obtain from the governor a copy of any books, records, other documents (including documents stored in non-legible form) or extracts therefrom kept there, and
- (c) in the course of an inspection or arising out of an inspection bring any issues of concern to him or her to the notice of the governor of the prison concerned, the Director-General of the Irish Prison Service, or the Minister or of each one of them, as the Inspector considers appropriate.

(2) The Inspector may, and shall if so requested by the Minister, investigate any matter arising out of the management or operation of a prison and shall submit to the Minister a report on any such investigation.

(3) As soon as practicable after receiving the report, the Minister shall, subject to *subsection (4)*, cause a copy of it to be laid before each House of the Oireachtas and to be published.

(4) The Minister may omit any matter from any report so laid or published where he or she is of opinion—

- (a) that its disclosure may be prejudicial to the security of the prison or of the State, or
- (b) after consultation with the Secretary-General to the Government, that its disclosure—
- (i) would be contrary to the public interest, or
- (ii) may infringe the constitutional rights of any person.

(5) Where any matters are so omitted, a statement to that effect shall be attached to the report concerned on its being laid before each House of the Oireachtas and on its publication.

(6) It is not a function of the Inspector to investigate or adjudicate on a complaint from an individual prisoner, but he or she may examine the circumstances relating to the complaint where necessary for performing his or her functions.

(7) Governors and other prison officers, other persons employed in prisons and prisoners shall, as far as reasonably practicable, comply with any request for information that the Inspector may make in the performance of his or her functions.

32.—(1) The Inspector of Prisons shall, not later than 31 March in any year or such later date as may be specified by the Minister, submit to the Minister a report on the performance of the Inspector's functions during the previous year and on such other related matters as the Minister may from time to time direct. Annual report.

(2) A report under this section shall, in respect of each prison inspected during the year in question, deal with, in particular—

- (a) its general management, including the level of its effectiveness and efficiency,
- (b) the conditions and general health and welfare of prisoners detained there,
- (c) the general conduct and effectiveness of persons working there,
- (d) compliance with national and international standards, including in particular the prison rules,
- (e) programmes and other facilities available and the extent to which prisoners participate in them,
- (f) security, and
- (g) discipline.

(3) As soon as practicable after receiving a report under this section, the Minister shall, subject to *subsection (4)*, cause a copy of it to be laid before each House of the Oireachtas and to be published.

(4) *Subsections (4) and (5) of section 31* apply in relation to a report under this section as they apply in relation to a report under that section.

PART 6

MISCELLANEOUS

33.—(1) This section applies to an application to a court in criminal proceedings where— Certain applications to court to be heard using videolink.

- (a) the application is one of those specified in *subsection (11)*,
- (b) the accused or person convicted of the offence concerned (“the prisoner”) is in a prison,
- (c) the application is made or to be made by the Director of Public Prosecutions or by the prisoner, and
- (d) the prisoner is legally represented or has obtained legal advice or been given the opportunity of obtaining or being provided with such advice.

(2) An application to which this section applies may be heard without the prisoner being present in court if the court so directs on being satisfied that—

- (a) to do so would not be prejudicial to the prisoner,
- (b) the interests of justice do not require his or her presence at the hearing,
- (c) the facilities provided by a live television link between the court and the prison concerned are such as to enable—
 - (i) the prisoner to participate in, and to view and hear, the proceedings before the court,
 - (ii) those present in the court to see and hear the prisoner, and
 - (iii) the prisoner and his or her legal representative to communicate in confidence during the hearing,
- (d) to do so is otherwise appropriate having regard to—
 - (i) the nature of the application,
 - (ii) the complexity of the hearing,
 - (iii) the age of the prisoner, and
 - (iv) his or her mental and physical capacity,and
- (e) no other circumstances exist that warrant the prisoner's presence in court for the hearing.

(3) An application for such a direction may be made *ex parte* to the judge, or a judge, of the court concerned by or on behalf of the Director of Public Prosecutions or the prisoner.

(4) On such an application the judge, if he or she considers it desirable in the interests of justice to do so, may require notice of the application to be given to the prisoner or his or her legal representative or, as the case may be, to the Director of Public Prosecutions.

(5) Where the court decides not to give a direction under this section, it shall state its reasons for not doing so.

(6) At any time after a direction under this section is given, an application may be made to the court by or on behalf of the prisoner to revoke the direction on the ground that one or more than one of the considerations mentioned in paragraphs (a) to (e) of *subsection (2)* do not apply in the prisoner's case.

(7) The court may at any time revoke a direction, whether on an application under *subsection (6)* or not.

(8) If, on an application under *subsection (6)*, the court refuses to revoke a direction, it shall state its reasons for the refusal.

(9) Where the provisions of this section are complied with in relation to the hearing of an application to which this section applies,

the prisoner is deemed to be present in court for the purposes of any enactment or rule of law or order of any court requiring the presence in court of an accused or convicted person during criminal proceedings against him or her.

(10) Nothing in this section affects the right of the prisoner to be present during any criminal proceedings other than the hearing of an application to which this section applies.

(11) The following applications (other than applications under subsections (3) and (6)) are specified for the purposes of subsection (1):

- (a) an application for bail or free legal aid;
- (b) in relation to proceedings on indictment, any other application except—
 - (i) an application made at the commencement of the trial,
 - (ii) an application relating to the arraignment or sentence of the prisoner, or
 - (iii) any other application that appears to the court to require the presence of the prisoner at the hearing, including—
 - (I) an application relating to the capacity of the prisoner to stand trial, or
 - (II) an application to dismiss the charges against the prisoner on the ground that there is not sufficient evidence to put him or her on trial;
- (c) in relation to proceedings in the District Court, any other application to the Court before the date on which—
 - (i) a trial before it begins or the court accepts a plea of guilty, or
 - (ii) the accused is sent forward for trial or sentence;
- (d) any application in appeal proceedings or any subsequent proceedings.

(12) In this section “criminal proceedings” means proceedings for an offence and includes any appeal proceedings or subsequent proceedings.

34.—Section 33 also applies to an application to a court in criminal proceedings where the accused or person convicted of the offence concerned is in a remand centre, or a children detention school, within the meaning of the Children Act 2001 or, where the Minister for Health and Children, after consultation with the Minister, by order so directs, a designated centre within the meaning of the Criminal Law (Insanity) Act 2006 and has effect accordingly, with the necessary modifications.

Application of section 33 to children in remand centres or children detention schools and other detained persons.

35.—(1) The Minister may make rules for the regulation and good government of prisons. Prison rules.

(2) Without prejudice to the generality of *subsection (1)* and to *Part 3*, such rules may provide for—

- (a) the duties and conduct of the governor and officers of a prison,
- (b) the classification of prisoners,
- (c) the treatment of prisoners, including their diets, clothing, maintenance, employment, instruction, discipline and correction,
- (d) the provision of facilities and services to prisoners, including educational facilities, medical services and services relating to their general moral and physical welfare,
- (e) the acts which constitute breaches of prison discipline committed by prisoners while inside a prison or outside it in the custody of a prison officer or prisoner custody officer,
- (f) the remission of portion of a prisoner's sentence,
- (g) the manner of publication of decisions of an Appeal Tribunal,
- (h) the entry to a prison of a member of the Garda Síochána in the performance of his or her functions,
- (i) photographing and measuring prisoners and taking fingerprints and palmprints from them, and
- (j) testing prisoners for intoxicants, including alcohol and other drugs.

(3) The governor of a prison or an officer of the prison acting on his or her behalf may give to a member of the Garda Síochána copies of—

- (a) photographs, measurements, fingerprints or palmprints obtained in accordance with rules under this section, and
- (b) documents relating to the testing of prisoners under *subsection (2)(j)*.

(4) Rules under this section shall be laid before each House of the Oireachtas as soon as may be after they are made and, if a resolution annulling the rules is passed by either such House within the next 21 days on which the House has sat after they are laid before it, the rules shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

(5) Rules under section 12 of the General Prisons (Ireland) Act 1877 and the Prisons (Ireland) Act 1907, and regulations made under section 8 of the Penal Servitude Act 1891, that were in force immediately before the commencement of this section by virtue of section 19(8) of the Criminal Justice (Miscellaneous Provisions) Act 1997 shall continue in force as if made under this section and may be amended or revoked accordingly.

36.—(1) A prisoner who, without the permission of the governor of the prison, possesses or uses a mobile telecommunications device, or a person who supplies such a device to a prisoner without such permission, is guilty of an offence and liable—

Prohibition of unauthorised possession or use of mobile telecommunications device by prisoner.

- (a) on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both, or
- (b) on conviction on indictment, to a fine not exceeding €10,000 or imprisonment for a term not exceeding 5 years or both.

(2) *Subsection (1)* applies also to a prisoner while in custody outside the prison.

(3) In this section “mobile telecommunications device” includes a component of such a device.

37.—Section 5 of the National Minimum Wage Act 2000 is amended by the numbering of the section as subsection (1) and the insertion of the following subsection:

Amendment of National Minimum Wage Act 2000.

“(2) This Act does not apply to any non-commercial activity or work engaged in by prisoners under the supervision of the governor or person in charge of the prison concerned, including—

- (a) any cleaning or kitchen work or other work relating to the operation of the prison;
- (b) activity of an educational, training or work experience nature which is intended to prepare prisoners for their re-integration into society;
- (c) the production of goods or services which are—
 - (i) sold or provided for the purpose of raising funds for charitable purposes or providing facilities for prisoners, or
 - (ii) disposed of or provided without charge or for a nominal charge.”.

38.—The Minister may provide, by prison rules or otherwise, that prisoners shall pay (whether directly or by way of credit deduction) for specified goods or services requested by them that are not available without charge to prisoners generally, including—

Payment by prisoners for requested services.

- (a) telephone calls,
- (b) access to electronic devices,
- (c) private medical treatment, or
- (d) escorts provided outside the prison for matters not related to the imprisonment of those prisoners,

but the payments or deductions shall not exceed the full cost of providing the goods or services.

Absence from prison on compassionate, etc., grounds.

39.—(1) The Minister may—

- (a) on compassionate grounds, or
- (b) for the purpose of assessing a prisoner’s suitability for early release or facilitating his or her re-integration into society, or
- (c) to enable a prisoner to assist in the investigation of an offence,

order that he or she be taken to a specified person or place within the State for a specified purpose during a specified period and return at the end of that period.

(2) The order may provide that the prisoner shall be returned to the prison forthwith if, during the period so specified—

- (a) the prisoner is not of good behaviour,
- (b) a breach of the peace involving the prisoner occurs, or
- (c) he or she attempts to escape from lawful custody or is helped by another person in so attempting.

Lawful custody of prisoners while absent from prison.

40.—(1) A prisoner who—

- (a) is absent from a prison pursuant to an order under *section 39* or another enactment or an order of a court, or
- (b) is being brought to or from a prison or court,

may be placed in the custody of a prison officer, a prisoner custody officer or a member of the Garda Síochána.

(2) A prisoner in such custody is deemed to be in lawful custody.

Minor and consequential amendments.

41.—(1) Section 13(3) of the Criminal Justice Act 1960 is amended by—

- (a) the substitution of the following paragraph for paragraph (a):

“(a) the *Prisons Acts 1826 to 2007* (other than section 12 of the General Prisons (Ireland) Act 1877, the Prisons (Ireland) Act 1907 and section 8 of the Penal Servitude Act 1891) and rules thereunder, whether made before or after the commencement of this Act,”

and

- (b) the insertion of the following paragraph:

“(aa) rules made under *section 35* of the *Prisons Act 2007*, and”.

(2) Section 22(3) of the Criminal Procedure Act 1967 is amended by the insertion of “, by the governor of the prison to which the person has been committed or a prison officer designated by the governor” after “justice of the Court”.

(3) Section 3(3) of the Criminal Justice Act 1990 is amended by the substitution of the following definition for the definition of “prison officer”:

“ ‘prison officer’ includes any member of the staff of a prison and any person having the custody of, or having duties relating to the custody of, a person in relation to whom an order of a court committing that person to a prison is for the time being in force;”.

(4) Section 19(6) of the Criminal Justice (Public Order) Act 1994 is amended by the substitution of the following definition for the definition of “prison officer”:

“ ‘prison officer’ includes any member of the staff of a prison and any person having the custody of, or having duties relating to the custody of, a person in relation to whom an order of a court committing that person to a prison is for the time being in force;”.

42.—The following enactments are repealed:

Repeals.

- (a) section 3(3) of the Prisons (Visiting Committees) Act 1925;
- (b) section 1(2) of the Prisons Act 1933;
- (c) section 19 of the Criminal Justice (Miscellaneous Provisions) Act 1997.

43.—(1) The Minister may make regulations for the purpose of giving full effect to this Act. Regulations.

(2) The regulations may contain such consequential, supplementary or incidental provisions as may be necessary or expedient for that purpose.



ACHT NA bPRIOSÚN 2007
PRISONS ACT 2007

EXPLANATORY MEMORANDUM

Purpose of Bill

The purpose of the Bill is to provide for matters relating to prisons and prisoners. In particular, the Bill provides a statutory basis for

- (i) the possibility of certain prisoner escort services to be contracted out by the Minister,
- (ii) revised prisoner disciplinary procedures, including the establishment of Appeal Tribunals,
- (iii) planning provisions for the construction of new prisons and extensions to existing prisons,
- (iv) the appointment of an Inspector of Prisons,
- (v) prisoners to participate from prison in certain applications to court by means of a live television link,
- (vi) charging prisoners for certain optional services,
- (vii) the prohibition of unauthorised possession or use of mobile telecommunications devices by prisoners.

Provision is also made for the closure of Mountjoy Prison. The current statutory provisions for the making of Prison Rules have been amended. Non-commercial work within a prison has been excluded from the National Minimum Wage Act 2000 and the position in relation to the lawful custody of prisoners while absent from prison has been clarified.

PART 1
PRELIMINARY AND GENERAL

Part 1 defines certain terms used in the Act and includes standard provisions in relation to the bringing into force of the Act and expenses. It also provides for a collective citation for the Prison Acts.

Short title, commencement and collective citation

Section 1 is a standard provision providing for the short title, commencement orders and collective citation.

Interpretation (general)

Section 2 is a standard provision which defines certain words and terms used in the Bill.

Expenses

Section 3 is a standard provision providing for the payment of expenses incurred in the administration of the Act out of moneys provided by the Oireachtas.

PART 2 PRISONER ESCORT SERVICES

Part 2 allows for the Minister, with the consent of the Minister for Finance and approval of Government, to enter into an agreement with a contractor for the provision of prisoner escort services. This Part also sets out provisions in relation to the certification and functions of prisoner custody officers.

Interpretation (Part 2)

Section 4 defines certain words and terms used in this Part of the Bill.

Agreement for the provision of prisoner escort services

Section 5 provides that the Minister may, with the consent of the Minister for Finance and the approval of Government; enter into an agreement with a contractor to provide prisoner escort services. Such services are defined in *subsection (4)* as the transfer of prisoners to and from places/prisons, their production in court and holding them in detention for those purposes. The agreement will be subject to terms and conditions determined by the Minister with the consent of the Minister for Finance (*subsection (2)*). In accordance with *subsection (3)*, failure to comply with the terms and conditions of an agreement or a contravention of a provision of the Bill may result in the termination of the agreement.

Certification of prisoner custody officers

Section 6 provides that the Minister may certify an applicant as a fit and proper person to perform the functions of a prisoner custody officer. (A contractor may only engage persons certified under this section for the purpose of escorting prisoners). In accordance with *subsection (2)*, an application must be in the form, and accompanied by such fee, as may be determined by the Minister. The Minister (under *subsections (3) and (6)*) can make inquiries and must be satisfied that an applicant is of good character, has been properly trained or has relevant experience and is fit to perform the functions of a prisoner custody officer, before a certificate can be issued. Where a certificate is refused, the Minister shall, in writing, inform the applicant of the reasons for refusal and an appeal against refusal may be made to the Circuit Court within 6 weeks of the notification. The Minister must comply with the decision of the court in relation to the appeal (*subsections (10) to (13)*).

Conditions may be attached to the issue of a certificate which will be valid for a period not exceeding 5 years. A person who obtains a certificate must abide by the terms of any agreement entered into pursuant to section 5 and must comply with the requirements for the treatment of prisoners in custody (*subsections (7) to (9)*).

It will be an offence to provide false information relating to an application or to forge or alter a certificate or possess without lawful authority or reasonable excuse an altered certificate (*subsections 14 and 15*).

Revocation of certificate

Section 7 provides that the Minister may, in certain circumstances, by notice in writing revoke a certificate issued under *section 6* and

may direct that a prisoner custody officer cease to perform the functions of a prisoner custody officer pending a decision on revocation. Failure to comply with such direction shall be an offence. A decision to revoke a certificate may be appealed to the Circuit Court within 6 weeks of notification of revocation (*subsections (1) to (6)*).

A person, who is not properly certified and who purports to perform the functions of a prisoner custody officer shall be guilty of an offence (*subsections (7) and (8)*).

Written complaints about the conduct of a prisoner custody officer must be referred to the Minister (*subsection (9)*).

Functions of prisoner custody officer

Section 8 provides that a prisoner custody officer escorting a prisoner shall have the same powers as a prison officer, including the power to use reasonable force, where necessary. Certain limitations on the power to search are imposed. Prisoner custody officers are obliged to prevent escapes and the commission of offences, maintain order, comply with any court order relating to a prisoner and comply generally with the relevant prison rules (*subsections (1) to (5)*).

When escorting a prisoner from court to prison, there is an onus on the prisoner custody officer to comply with prison rules which apply to prison officers and to give to the governor of the prison documentation relating to the committal and any medication or prescription for medication in respect of the prisoner. There is also an obligation on the prisoner custody officer to inform governors of anything to do with the health of the prisoner of which they are aware (*subsections (6) and (7)*).

Prohibition of unauthorised disclosure of information

Section 9 makes it an offence to disclose information relating to a prisoner obtained in the course of employment as a prisoner custody officer, unless such disclosure is authorised by the Minister or necessary for the purpose of carrying out the functions of a prison custody officer.

Reports to Minister

Section 10 provides for the appointment by the Minister of one of his or her officers to monitor the performance of contractors and for the submission of a report to the Minister on an annual basis. For the purpose of performing their function, the appointed officer may, at all reasonable times, enter the office or premises of a contractor and may inspect and take copies of any books, records or documents found in the course of the inspection.

PART 3 PRISON DISCIPLINE

This Part allows the Governor of a Prison to hold inquiries into alleged breaches of prison discipline by prisoners and to impose sanctions where such a breach is found. Provision is also made for a prisoner to petition the Minister against a finding and/or sanction. Where a sanction involves forfeiture of remission of portion of sentence, provision is made for an appeal to an independent Appeal Tribunal established by the Minister to adjudicate on such appeals.

Interpretation (Part 3)

Section 11 defines certain words and terms used in this Part of the Act.

Inquiry into alleged breach of prison discipline

Section 12 provides for the holding of an inquiry by the Governor of a Prison into an alleged breach of prison discipline. The prisoner shall be informed of the alleged breach and the date and time of the inquiry (*subsection (2)*). Where a finding of a breach of discipline is reached, the governor shall impose one or more of the sanctions provided for in *section 13* and record the finding and sanction imposed. If a breach of prison discipline is not found, the governor will record a finding that the allegation has not been substantiated (*subsection (4)*). The procedure relating to the inquiry may be specified in prison rules (*subsection (3)*).

Sanctions for breach of prison discipline

Section 13 details the sanctions which may be imposed on a prisoner who is found to have committed a breach of prison discipline. It also sets out sanctions which are prohibited.

Subsection (1) lists possible sanctions which may be imposed including caution, reprimand, confinement in a cell for a period not exceeding 3 days or prohibition for a period not exceeding 60 days on engaging in specified structured or recreational activities, receiving visits or sending or receiving letters (excluding those specified), using money, credit or any other facilities, possessing articles which are permitted as a privilege, forfeiture of money from public funds, forfeiture of not more than 14 days' remission of portion of sentence, postponement for a specified period, not exceeding 60 days, of the amount of any gratuity to which the prisoner would have been entitled under prison rules. Where the breach relates to an attempt to escape from lawful custody, a requirement to wear prison clothes for a specified period, not exceeding 60 days, can be imposed.

Subsection (2) allows the governor to suspend the operation, subject to conditions, of the whole or any part of a sanction (other than a sanction for forfeiture of remission) for a period not exceeding 3 months from the date of the conclusion of the inquiry.

Subsection (3) provides that where the conditions of suspension are not complied with, the governor may direct that the sanction shall take effect immediately or from a specified date, or that it be abated in a specified manner and, as so abated, take effect. In accordance with *subsection (4)* where a condition is complied with during the period of suspension, the sanction ceases to have effect at the end of the period.

Subsection (5) allows a governor, based on a prisoner's good behaviour or performance of a meritorious act, to restore all or part of any remission of portion of a sentence.

Subsection (6) ensures nothing in *section 13* prevents a governor taking immediate measures to maintain order and discipline or prison security.

Subsection (7) prohibits the use of certain punishments such as collective or corporal punishment, restraint, sensory deprivation, deprivation of sleep, food or drink, confinement in a special observation cell, sanctions of indeterminate duration, or sanctions constituting cruel, inhumane or degrading treatment.

Subsection (8) requires the governor, when a sanction is being imposed, to explain to the prisoner, so that he or she understands, their right to have transmitted to the Minister a petition concerning the finding and/or sanction as provided for under *section 14*. If the sanction consists of forfeiture of remission of portion of sentence,

the governor is required to explain to the prisoner the content of *section 15* which allows for a prisoner to appeal such a sanction and/or the finding leading to the sanction.

Petition by prisoner against sanction

Section 14(1) provides that a prisoner who has been sanctioned for a breach of prison discipline under *section 13* may, within 7 days of a sanction being imposed, send a petition concerning the finding and/or sanction to the governor for transmission to the Minister. Under *subsection (2)*, the Minister may, following consultation with the governor, affirm, modify, suspend (subject to conditions) or revoke the sanction and arrange for the petitioner to be notified accordingly.

Appeal against forfeiture of remission of portion of sentence

Section 15 provides that a prisoner on whom a sanction of forfeiture of remission of portion of sentence has been imposed for a breach of prison discipline, may notify the governor of his or her intention to appeal against the finding and/or sanction to an Appeal Tribunal established under *section 16*. The governor shall refer the matter to the Tribunal which may invite written submissions from the prisoner and governor. The prisoner shall be notified of the date and time of the appeal hearing, that he or she may attend the hearing and may avail of legal advice or representation for the purposes of the hearing. If the appeal only relates to the sanction imposed, the Appeal Tribunal may limit the hearing to issues relating to the sanction (*subsections (1)-(5)*).

The Appeal Tribunal may uphold or quash a finding of breach of prison discipline, affirm, vary or quash the sanction imposed, vary any period for which the sanction was imposed or, where it quashes the sanction, substitute any other sanction provided for in *section 13*. Regulations may be made by the Minister, with the consent of the Minister for Finance, for the grant of legal aid to prisoners who appeal to the Appeal Tribunal. The decision of an Appeal Tribunal shall be notified in writing to the governor and prisoner and be published in accordance with prison rules (*subsections (6)-(8)*).

Appeal Tribunals

Section 16 allows for the establishment of one or more Appeal Tribunal, independent in the performance of its function, to adjudicate on appeals arising from a sanction of forfeiture of remission of portion of sentence made under *section 15*. A practising barrister or solicitor, of at least 7 years standing, may be appointed by the Minister to be a member of and constitute an Appeal Tribunal, subject to such terms, conditions and remuneration as the Minister may determine with the consent of the Minister for Finance (*subsections (1)-(4)*).

Resignation of a person as an Appeal Tribunal may be made, at any time, by letter to the Minister and will take effect from the date on which the letter is received. Such a person may be removed from office by the Minister for stated misbehaviour or if, in the opinion of the Minister, the person has become incapable through ill health or otherwise of effectively performing their functions (*subsections (5) and (6)*).

In accordance with subsection (7), Appeal Tribunals may determine their own procedures, subject to this Part, and to any general directions given to them by the Minister in the interests of securing consistency between them in that respect.

PART 4
REQUIREMENTS RELATING TO CONSTRUCTION AND EXTENSIONS
OF PRISONS

This Part provides for planning arrangements in relation to the construction and extension of prisons. The Minister must direct that these provisions will apply to any prison development encompassed by this Part. An environmental impact assessment is also required to be carried out. This Part also sets down the requirement for, and contents of, a notice of the proposed development. Provision is also made for the appointment of a rapporteur to prepare a report — to be published — which will, *inter alia*, summarise submissions and observations received from interested persons and bodies. In the event the Minister decides to make substantive amendments to the proposed development on foot of the rapporteur's report, an amended description of the development and of the visual representation of the exterior (if it is to be materially different) will be prepared, together with a supplementary environmental impact assessment. As with the initial environmental impact assessment, notice of alterations must be given and a supplementary report will be prepared by the rapporteur, submitted to the Minister and published. If the Minister decides to proceed with the development he or she will move a resolution in both Houses of the Oireachtas, which if approved must be confirmed by an Act of the Oireachtas before the development can proceed. An order by the Minister in relation to proposed developments under this Section shall not have effect or the force of law unless confirmed by an Act of the Oireachtas. Any acts done pursuant to this Part can only be questioned by way of an application from a person to the High Court for judicial review. Provision is also made for exemptions from planning regulations etc for developments which fall within this Part.

Interpretation (Part 4)

Section 17 defines certain words and terms used in this Part of the Bill.

Application of this Part

Section 18 provides that Part 4 will only apply to a development where the Minister directs. Such a direction is deemed a statutory instrument.

Environmental impact assessment

Section 19 sets down provisions relating to an environmental impact assessment. The Irish Prison Service, before proceeding with a development, shall appoint a person to carry out an environmental impact assessment. The environmental impact assessment shall contain a description of the development, including a description of its physical characteristics and land-use requirements, together with information concerning its site, design and size and an estimate of expected residues or emissions from the development. An outline of the main alternatives to the development that were considered must be furnished together with an indication of the main reasons for choosing the development. The environmental assessment shall also include a description of the aspects of the environment likely to be significantly affected by the development including, in particular, population, fauna, flora, soil, water, air, climatic factors, material assets and landscape and the inter-relationship between these matters. A description of the likely significant effects on the environment and measures envisaged to prevent, reduce or offset those effects, together with information on the methods and data used in this context must be supplied (*subsections (1)-(2)*)

In accordance with *subsection (3)*, the Director-General of the Irish Prison Service shall also arrange for the preparation of a drawing or visual representation of the exterior of the completed development. *Subsection (4)* provides that the Director-General shall submit the environmental impact assessment and visual representation to the Minister.

Notice of development

Section 20 provides that, on receipt of the environmental impact assessment and visual representation of the proposed development, the Minister is required to give notice of the proposed development to the relevant local planning authority or authorities, the public (through placing of notices on the site and in one daily newspaper and one local newspaper), the Minister for the Environment, Heritage and Local Government and, where the development or part thereof is adjacent to or on the foreshore, the Minister for Communications, Marine and Natural Resources. A copy of the notice must also be laid before each House of the Oireachtas. (*subsections (1)-(3)*).

Where the development is likely to have significant effects on the environment of another EU or Espoo Convention member state, the appropriate authority in that State must be notified by the Minister under *subsection (4)*. *Subsection (5)* defines the instruments encompassed by *subsection (4)*.

Contents of notice

Section 21 requires that each notice of a development provided for in *section 20* shall state the date the notice was issued, contain a brief description of the development, identify its location, indicate how copies of the documents mentioned under *section 19* may be obtained and invite written submissions or observations to be furnished to the rapporteur within 6 weeks from the day after the day on which the notice of the development issued. Any submissions or observations must include the name and address of the person or body making them.

Publication of information on development

Section 22 requires that the Minister shall make available to any interested party, in written form or electronically, a copy of the documents in relation to the environmental impact assessment mentioned under *section 19*.

Appointment of rapporteur

Section 23 provides that the Minister shall appoint a rapporteur who will prepare a report based on any written submissions or observations relating to a proposed development which are received from interested parties within the 6 week timeframe set down in *section 21(e)* (*subsections (1)-(3)*). The report prepared by the rapporteur will specify the names and addresses of those who made the submissions/observations, identify and summarize the main issues raised (*subsection (4)*). Under *subsection (5)*, the Minister will arrange for publication of this report.

Procedure where substantive amendments by Minister to development

Section 24 provides that should the Minister, having regard to the report of the rapporteur, decide to make a material alteration to the development, then he or she shall arrange for an amended description of the development, specifying the alterations, a supplementary environmental impact assessment and an amended visual representation of the exterior (where necessary) to be prepared. Notice of the alterations will be given to the persons and bodies specified in *section 20*. The contents of any such notice must comply with the

requirements under *section 21*, with the exception that the period for the submission of written observations or submissions in relation to the alterations to the development is 21 days (*subsections (1)-(3)*).

The rapporteur will prepare a supplementary report on the basis of any submissions or observations received. Similar to the provisions in *section 23*, the supplementary report will specify those from whom submissions and observations have been received, identify and summarize the main issues raised. The report will be submitted to the Minister who shall arrange to have it published (*subsections (4)-(6)*).

Decision by Minister on development

Under *section 25*, the Minister may, having regard to the environmental impact assessment and report of the rapporteur and any supplementary assessment and report, make further alterations to the development and either order that the development proceed or not proceed.

Oireachtas approval for development

Section 26 provides that, where the Minister decides to proceed with a development, a resolution of both Houses of the Oireachtas approving the development is required.

Under *subsection (1)* a draft resolution approving the development must contain a description of the development (including location, purpose and size and any alterations made by the Minister under *section 25*), a statement that the necessary environmental impact assessment, including, where necessary, a supplementary assessment, was or were prepared, the measures taken to invite submissions from the public, main measures taken to avoid, reduce or offset any possible significant adverse effects on the environment, a visual representation of the exterior of the development and any conditions with which the person or body responsible for construction must comply.

Prior to moving the resolution, the Minister shall, in accordance with *subsection (2)*, have laid before each House of the Oireachtas a document stating the location, size and purpose of the development, land-use requirements during construction and operational phases and the estimated type and quantity of any expected residues and emissions. The environmental impact statement and any supplementary impact assessment, a visual representation of the exterior of the development and the report, including any supplementary report, of the rapporteur shall also be laid before each House of the Oireachtas. Under *subsection (3)*, the Minister may also lay before the Houses a document containing his or her observations on any of the documents mentioned in *subsection (2)*.

The Minister may proceed with the development if the draft resolution is approved by each House of the Oireachtas and confirmed by an Act of the Oireachtas (*subsection (4)*).

Questioning of acts, etc., done pursuant to this Part

Section 27 provides that the validity of any act done under this Part or whether any environmental impact assessment or report by a rapporteur complies with this Part can only be questioned by way of an application to the High Court for judicial review (*subsection (1)*). Any application for leave to apply for judicial review can only be made by a person substantially affected by the development or who has made a submission or observations to the rapporteur. It must be made within 8 weeks of the act being done or the assessment or report published, unless the Court considers there is good reason for extending the period and must be made on notice to the Minister and any other party concerned, including such persons as the Court

may specify. An application for leave to apply for judicial review shall not be granted unless the Court is satisfied that there are substantial grounds for contending that the act, statement or report is invalid or ought to be quashed (*subsections (2)-(4)*).

Under *subsection (5)*, the determination of the Court of the leave application or the application for judicial review is final and may only be appealed to the Supreme Court by leave of the Court. Such leave will only be granted where the Court certifies that a point of law of exceptional public importance is at issue and that it is desirable in the public interest that an appeal is taken. However, *subsection (5)* does not apply to a determination of the Court insofar as the validity of any law having regard to the provisions of the Constitution is concerned.

Exemptions, etc., relating to development

Section 28 specifies the various exemptions relating to a development under this Part. *Subsection (1)* specifies that a development is exempt from the Planning and Development Acts. The development is also not subject to regulations under the Planning Act 2000, European Communities Regulations 1989 to 2005, the Planning and Development Acts of 2000 to 2006 insofar as they relate to environmental impact assessments, the Building Control Act 1990 and regulations made thereunder. A consent or licence is not required under the National Monuments Acts, with the exception of that under section 25 of the National Monuments Act 1930.

Provision is also made for any works on a development of an archaeological nature to be carried out in accordance with the directions of the Minister for the Environment, Heritage and Local Government. Discovery of a national monument on the site shall be reported to the Minister for the Environment, Heritage and Local Government as soon as practicable. Pending directions from that Minister, no works which would interfere with the monument can be carried out, except those urgently required to secure the preservation of the monument and they will be carried out in a manner specified by the Minister (*subsections (2)-(3)*). *Subsection (4)* requires the Minister for the Environment, Heritage and Local Government to consult with the Director of the National Museum before issuing directions under *subsections (2)* and *(3)* and the period for consultation will not exceed 14 days unless another period is agreed by those parties in a particular case (*subsection (5)*).

Section 29 (Saving)

This section confirms that this Part of the Act does not require the disclosure of information relating to the design and construction of a new or extended prison which may compromise its security or enable any person to enter or leave it unlawfully.

PART 5 INSPECTOR OF PRISONS

This Part provides for the statutory appointment of an Inspector of Prisons, details the functions of the inspector and requires the preparation by the Inspector, for submission to the Minister, of an annual report on the performance of his or her functions and on such other related matters as the Minister may direct from time to time.

Inspector of Prisons

Section 30 provides that the Minister may appoint a person as the Inspector of Prisons. The terms and conditions of the office, including remuneration, will be determined by the Minister, with the consent of the Minister for Finance. The Inspector may resign office, at

any time, by letter to the Minister and resignation will take effect from the date of receipt of the letter. The Minister may remove the Inspector from office for stated misbehaviour or if, in the Minister's opinion, he or she has become incapable through ill health of effectively performing his or her functions (*subsections (1) and (2)*). In accordance with *subsection (3)*, the term of office will not exceed 5 years and, subject to the provisions under this Part, an Inspector is eligible for re-appointment, under *subsection (4)*. *Subsection (5)* provides that the Inspector, subject to the provisions of this Part, is independent in the performance of his or her functions.

Functions of Inspector

Section 31 provides that the Inspector will carry out regular inspections of prisons. To that end, he or she may enter, at any time, any prison or part thereof and request and obtain any records or documents. During an investigation or arising from an investigation, the Inspector may bring any issues of concern to the notice of the governor, the Director-General of the Irish Prison Service or the Minister, as he or she considers appropriate. Under *subsection (2)*, the Inspector may, or shall if requested by the Minister, carry out an investigation of any matter arising out of the management or operation of a prison and submit a report of such an investigation to the Minister, which will be laid before the Oireachtas and published in accordance with *subsection (3)*. The Minister may omit matters from any such report where he or she is of the opinion that disclosure would be prejudicial to the security of the prison or of the State; or where, following consultation with the Secretary-General to the Government, disclosure would be contrary to the public interest or may infringe the constitutional rights of any person. Where any matters are so omitted, a statement to this effect will be attached to the report (*subsections (4)-(5)*). *Subsection (6)* clarifies that the Inspector does not have a role in investigating or deciding on a complaint from a prisoner, although, where necessary for performing his or her functions, the Inspector may examine the circumstances relating to a complaint. Governors, prison officers, other prison employees and prisoners shall, as far as is reasonably practicable, comply with any request for information from an Inspector in the course of carrying out his or her function (*subsection (7)*).

Annual report

Section 32 requires the inspector to present not later than 31 March each year, or such later date as the Minister may specify, a report to the Minister on the performance of his or her functions and such other matters as is directed by the Minister. The report shall in particular address, in respect of each prison inspected, general management, conditions, health and welfare of prisoners, conduct and effectiveness of persons working there, compliance with national and international standards (including prison rules), programmes and facilities available and the participation by prisoners in them, security and discipline. The Minister will arrange for the report to be laid before the Houses of the Oireachtas and to be published (*subsections (1)-(3)*). *Section 31*, insofar as it provides for the omission of any matter from a report of the Inspector, shall also apply to the annual report (*subsection (4)*).

PART 6 MISCELLANEOUS

This Part provides for a number of miscellaneous provisions relating to the use of videolink for specified applications to a court in criminal

proceedings, the making of Prison Rules, the introduction of penalties for the unauthorised possession or use of mobile phones by prisoners, the non-application of certain provisions of the National Minimum Wage Act 2000 to non-commercial work undertaken by prisoners, the requirement for prisoners to pay for certain requested services, provision for the absence from prison on compassionate and other grounds and clarifies the custody situation of prisoners being escorted outside the prison.

Certain applications to court to be heard using videolink

Section 33 applies to an application to a court in criminal proceedings where the application is one of those specified in subsection (11), the accused or person convicted is in prison, it is made or will be made by the Director of Public Prosecutions or by the prisoner and the prisoner is legally represented or advised or given the opportunity to obtain such advice.

Under subsection (2), an application to which this section applies may be heard in court without the presence of the prisoner if the court so directs on being satisfied that it does not prejudice the prisoner, the interests of justice do not require his or her presence and the live television link between the prison and the court enables the prisoner to participate in, view and hear the proceedings, those in the court can see and hear the prisoner and the prisoner and his or her legal representative can communicate in confidence during the hearing. The absence of the prisoner from the court must also be appropriate having regard to the nature of the application and the complexity of the hearing, the age, mental and physical capacity of the prisoner. No other circumstance must exist which would warrant the prisoner's physical presence in court.

Subsection (3) provides that an application for such a direction of the court may be made *ex parte* to a judge of the court by or on behalf of the Director of Public Prosecutions or prisoner. The judge may require notice of the application to be given to the Director of Public Prosecutions or prisoner or his or her legal representative, if the judge considers it in the interests of justice to do so (subsection (4)).

Under subsection (5), where a court decides not to give a direction under this section, it shall give its reasons. Subsection (6) provides that an application may be made by or on behalf of the prisoner to the court, at any time after a direction has been given, to revoke the direction on the ground that those matters to which the court must be satisfied, as set out under subsection (2), do not apply and where the court refuses such an application, it shall state its reasons (subsection (8)). The court, however, may at any time revoke a direction whether or not an application for revocation has been made (subsection (7)).

Subsection (9) confirms that for the purposes of an application to which this section applies, and where the necessary provisions are complied with in relation to that hearing, a prisoner is deemed to be present in court for the purposes of any enactment, rule of law or order of court requiring the presence in court, during criminal proceedings, of an accused or convicted person. Nothing in this section affects the rights of the prisoner to be present during any criminal proceedings other than the hearing of an application to which this section applies (subsection (10)). Subsection (11) sets out the applications referred to in subsection (1) — they are applications for bail or free legal aid, certain specified applications in relation to proceedings on indictment, pre-trial applications in the District Court and other applications in appeal or subsequent proceedings. Criminal

proceedings for the purposes of this section are defined in *subsection (12)*.

Application of section 33 to children in remand centres or children detention schools and other detained persons

Section 34 provides that *section 33* (dealing with applications to court to be heard using videolink), will also apply to an application to a court in criminal proceedings where the accused or person convicted of the offence concerned is in a remand centre, or a children detention centre, within the meaning of the Children Act 2001. It also applies where the Minister for Health and Children, after consultation with the Minister for Justice, Equality and Law Reform, by order directs a designated centre within the meaning of the Criminal Law (Insanity) Act 2006. *Section 33* has effect accordingly, with the necessary modifications.

Prison Rules

Section 35 provides that the Minister may make rules for the regulation and good government of prisons (*subsection (1)*). Without prejudice to *subsection (1)*, these rules may provide for the duties and conduct of the governor and officers of a prison; the classification and treatment of prisoners; provision of facilities and services to prisoners; the acts which constitute breaches of prison discipline; the remission of portion of a prisoner's sentence; the manner of publication of decisions of an Appeal Tribunal; the entry into a prison, for the performance of his or her functions, of a member of the Garda Síochána; photographing and measuring prisoners, taking fingerprints and palmprints and testing prisoners for intoxicants (*subsection (2)*). The governor of a prison or an officer acting on his or her behalf may give to a member of the Garda Síochána copies of photographs, measurements, fingerprints or palmprints obtained and documents relating to the testing of prisoners for intoxicants (*subsection (3)*).

Subsection (4) provides that rules under this section shall be laid before both Houses of the Oireachtas and can be annulled if a resolution is passed by either House within 21 sitting days of their being laid before it. Any such act will be without prejudice to the validity of anything previously done thereunder.

Subsection (5) ensures that rules under section 12 of the General Prisons (Ireland) Act 1877 and the Prisons (Ireland) Act 1907 and regulations made under section 8 of the Penal Servitude Act 1891 that were in force immediately before the commencement of this Act shall continue in force as if made under this section and may be amended or revoked accordingly.

Prohibition of unauthorised possession or use of mobile telecommunications device by prisoner

Section 36 prohibits the unauthorised possession or use of mobile phones (including a component of such a device) by prisoners. Under *subsection (1)*, it is an offence to possess or use a mobile phone or to supply such a device to a prisoner without the permission of the governor of the prison. The penalty for such an offence, on summary conviction, is a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both, and on conviction on indictment, to a fine not exceeding €10,000 or imprisonment for a term not exceeding 5 years or both. This provision also applies to prisoners while in custody outside the prison (*subsection (2)*).

Amendment of National Minimum Wage Act 2000

Section 37 amends section 5 of the National Minimum Wage Act 2000 so that that Act does not apply to any non-commercial activity or work engaged in by prisoners under the supervision of the governor or person in charge of the prison. Such activity includes cleaning or kitchen work, educational, training or work experience activities, the production of goods or services intended to raise funds for charitable purposes or are provided without charge or with nominal charge.

Payment by prisoners for requested services

Section 38 allows the Minister to provide for charges to be made to prisoners for goods or services that are not generally available to prisoners including telephone calls, access to electronic devices, private medical treatment or escorts provided outside the prison for matters not related to their imprisonment. Payments by or deductions from prisoners for such goods or services shall not be greater than the full cost of providing the good or service.

Absence from prison on compassionate, etc., grounds

Section 39 provides that the Minister may on compassionate grounds, for reason of assessing or facilitating a prisoner's reintegration into society or to allow a prisoner assist in the investigation of an offence, order that a prisoner be taken to a specified person or place within the State for a specified purpose during a specified period and return at the end of that period (*subsection (1)*). That order may provide that the prisoner shall be returned to prison immediately if they are not of good behaviour, a breach of the peace occurs or an attempt is made to escape custody (*subsection (2)*).

Lawful custody of prisoners while absent from prison

Section 40 provides that a prisoner, absent from prison pursuant to an order under *section 39* or another enactment or court order, or who is being brought to or from a prison or court, may be placed in the custody of a prison officer, a prisoner custody officer or a member of the Garda Síochána and such custody is deemed to be in lawful custody.

Minor and consequential amendments

Section 41 makes minor and consequential amendments arising from the provisions in this Bill to the Criminal Justice Act 1960, Criminal Procedure Act 1967, Criminal Justice Act 1990 and the Criminal Justice (Public Order) Act 1994.

Repeals

Section 42 repeals section 3(3) of the Prisons (Visiting Committees) Act 1925, section 1(2) of the Prisons Act 1933 and section 19 of the Criminal Justice (Miscellaneous Provisions) Act 1997.

Regulations

Section 43 provides for the making of regulations for the purpose of giving full effect to the Act.

Financial Implications

In the light of the Prison Officers Association acceptance of proposals for changes in work practices last year, it is not intended to outsource prisoner escort services in the foreseeable future. Nevertheless the provision is being maintained in case such outsourcing became necessary in the future. The financial implications of contracting of prisoner escort services cannot be quantified in advance of a detailed implementation plan being prepared because of the

number of variables concerned. However, the intent behind the provision was to allow the Minister to enter into such agreements where they would be more cost effective than the arrangements in place.

There will be some costs associated with providing for prison disciplinary Appeals Tribunals but it should not be significant.

There will be costs associated with planning permission for new prisons but it is not possible to quantify such costs in advance as it will depend on the circumstances of individual cases. However, the costs should not differ significantly from the costs associated with a planning application for a similar sized development processed under the normal planning system.

The establishment of an office of Inspector of Prisons on a statutory basis will not give rise to significant costs as an equivalent post already exists on a non-statutory basis.

The experience in other countries is that the use of video links between the courts and prisons results in significant savings as prisoners do not have to be physically escorted to and from the courts.

The amendments relating to a statutory basis for making charges and clarifying the position regarding minimum wages legislation are intended to reduce the financial exposure of the Exchequer to possible future claims.

The Bill is deleting the special statutory provision which did not allow for the closure of Mountjoy (*section 42(b)*). That provision does not have any intrinsic financial implications although the closure of Mountjoy will free up a valuable site. However, its purpose is to facilitate the replacement of Mountjoy Prison by a new complex involving capital expenditure but which will have significantly better facilities for prisoners and which will be more cost effective to operate.

The other amendments have no direct financial implications.

An Roinn Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí Aibreán, 2007.