

FREEDOM OF INFORMATION GUIDE

**DEPARTMENT OF JUSTICE, EQUALITY
& LAW REFORM**

Rules and Practices

Section 16 Reference Book

2008 Edition

**Department of Justice, Equality & Law Reform
Pinebrook House
Harcourt Street
Dublin 2**

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CONTENTS

	Page
Introduction	5
How to use this reference book	7
Part 1	
How to acquire information under the Freedom of Information Acts, 1997 & 2003	8
❖ Applications under the Freedom of Information Act	
❖ How to make an application	
❖ Rights of Review of Decisions and Appeals	
❖ Internal Reviews	
❖ Review by the Information Commissioner	
❖ Fees	
Part 2	
Information about rules, procedures, practices, guidelines, interpretations and precedents used by Division of the Department in making decisions, determinations or recommendations.	14
2.1 Central Procurement Division	15
2.2 Cosc – The National Office for the Prevention of Domestic, Sexual & Gender Based Violence	16
2.3 Corporate Services Division	17
2.4 Courts Policy Division	19
2.5 Crime I Division	31
2.6 Crime II Division	32
2.7 Crime IV Division	33
2.8 Disability Equality Division	35
2.9 Diversity & Equality Law Division	36
2.10 Financial Shared Services Centre	37
2.11 Freedom of Information Unit	40
2.12 Garda Division	41
2.13 Gender Equality Division	43
2.14 Human Resources Division	45
2.15 Information Technology Division	46
2.16 Internal Audit Division	49
2.17 International Policy Division	50
2.18 Irish Naturalisation & Immigration Service	51
2.19 Irish Youth Justice	59
2.20 Irish Prison Service	60
2.20.1 Corporate Services Directorate	61
2.20.2 Estate Management Directorate	62
2.20.3 Finance Directorate	64
2.20.4 Human Resources Directorate	75

2.20.5	Healthcare Directorate	138
2.20.6	Operations Directorate	139
2.20.7	Regimes Directorate	148
2.21	Law Reform Divisions (Criminal & Civil)	151
2.22	Minister's Office	152
2.23	Minister of State's Office	153
2.24	Office of the Minister for Integration	154
2.25	Mutual Assistance & Extradition Division	156
2.26	Organisation Development Unit	160
2.27	Parole Board	161
2.28	Prisons & Probation Policy Division	167
2.29	Project Development Division	195
2.30	Reception & Integration Agency RIA	198
2.31	Security & Northern Ireland	201

Part 3

Glossary

INTRODUCTION

The Freedom of Information (FOI) Acts, 1997 and 2003 establishes new statutory rights:

- ❖ A legal right for each person to access information held by public bodies
- ❖ A legal right for each person to have official information relating to him/herself amended where it is incomplete, incorrect or misleading
- ❖ A legal right to obtain reasons for decisions affecting oneself

The Acts assert the right of members of the public to obtain access to official and personal information to the greatest possible extent consistent with the public interest and the right to privacy of individuals.

This reference book has been prepared and published in accordance with the requirement of Section 16 of the FOI Act, 1997. Its purpose is to facilitate access to official information held by this Department. It does this by outlining the structure and functions of the Department; the services they provided and how they may be availed of, the classes of records held; and how a request to the Department under the FOI Act, of 1997 can be made.

Routinely Available Information

At present the Department of Justice, Equality and Law Reform makes a range of information available to the public in relation to its functions, activities and schemes. Such information will continue to be made available without the need to use the FOI Act. In general, information leaflets are available free of charge from any of the Department's offices. The Department's Head Office at 94 St. Stephen's Green, Dublin 2 can be contacted at **01/6028202 or at the Department's Lo Call number 1890 221 227.**

This reference book highlights, in relation to each of the Department's activities, where information of this nature is available. The Department's website at **<http://www.justice.ie>** also contains a large range of general information.

Copies of the reports, guides and legislation can be purchased :

- (a) directly from the Government Publications Sales Office, Sun Alliance House, Molesworth Street, Dublin 2. (Ph. 01/6793515);
- (b) by mail order from Government Publications, Postal Transactions, **51 St Stephen's Green, Dublin 2. (Ph.6476000 Fax: 6476843);**
- (c) through any bookseller.

Information on EU legislation/Directives is available at **<http://www.europa.eu.int/eur-lex>.**

The Freedom of Information Acts are designed to allow public access to information held by public bodies which is **NOT** routinely available through other sources. Access

to information under these Acts are subject to certain exemptions and involves specific procedures and time limits. Information on making a request under this Act is set out in **Chapter 1.**

How to use this Reference Book

This Reference Book supersedes the 2004 Edition and has been prepared and published in accordance with the requirements of Section 16 of the Freedom of Information Act, 1997(as amended).

Section 16 of the FOI Act provides for a publication containing 'the rules, procedures, practices, guidelines and interpretations used by the body, and an index of any precedents kept by the body for the purposes of decisions, determinations or recommendations, under of for the purposes of any enactment or scheme administered by the body with respect to rights, privileges, benefits, obligations, penalties or other sanctions to which members of the public are or may be entitled or subject under the enactment or scheme...'

To achieve the maximum benefit from this Reference Book, it is worthwhile spending some time looking through the contents pages, the different chapters, the glossary and the general index to get an idea of the book's scope.

If any assistance is required in using this reference book, or on any aspect of the Freedom of Information Act, please contact the FOI Unit at (01) 6028408 or at the Department's Lo Call number 1890 221 227 ext. 8408 or 8417.

Freedom of Information Act and Routinely Available Information - Chapters 1

Chapter 1 gives a brief introduction to the rights under FOI Act and also explains how routinely available information can be accessed outside of the Act. It also outlines your rights of access to information under the FOI Acts. This includes details on the procedures to follow when requesting information under the Acts, rights of review of decisions, appeal procedures and reviews to the Information Commissioner. This chapter also outlines any fees that may be charged on foot of an FOI request.

Chapter 2 give detailed information about Rules, Procedures, Practices, Guidelines, Interpretations used by the Divisions of the Department in making decisions, determinations or recommendations.

Availability of this Book

Copies of this publication are available free of on request from the Freedom of Information Unit, Department of Justice, Equality and Law Reform, Pinebrook House, 71-74 Harcourt Street, Dublin 2. Telephone 01-6028408 Fax 01-6028652, E-mail: foi@justice.ie. An up-to-date version is maintained on the Department's website at <http://www.justice.ie>

PART 1

HOW TO ACQUIRE INFORMATION UNDER THE FREEDOM OF INFORMATION ACT, 1997 & 2003 (AS AMENDED)

Applications under the Freedom of Information Act

The Department is disposed to conduct its business in as open and transparent a manner as possible. In keeping with this, it will attempt to make available information to the public outside the formal procedures of the Freedom of Information (FOI) Act, if this is the preferred option of the person seeking information, subject to the general scope of exemptions in the Act.

Under the FOI Act, anyone is entitled to apply for access to information not otherwise publicly available.

Each person has a right to:

- ◆ access to records held by the Department;
- ◆ correction of personal information relating to oneself held by the Department where it is inaccurate, incomplete or misleading;
- ◆ access to reasons for decisions made by the Department directly affecting oneself.

The following records come within the scope of the Act:

- all records relating to personal information held by the Department irrespective of when created;
- all other records created from the date the FOI Act comes into effect on 21 April 1998;
- any records necessary to the understanding of a current record even if created prior to 21 April 1998.

Requests for information under the FOI Act, 1997 and 2003 should be addressed to:

**Ms Aisling Brennan,
Freedom of Information Officer,
Department of Justice, Equality and Law Reform,
Pinebrook House,
71- 74 Harcourt Street,
Dublin 2.**

**Phone : (01) 6028202 ext. 8408/8473
Lo-Call number 1890 221 227 ext. 8408/8473
E-mail: FOI@justice.ie
Fax: (01) 6616612**

How to make an application

Applications must be in writing and should indicate that the information is sought under the Freedom of Information Act. If information is desired in a particular form (such as a photocopy, computer disk, etc.) this should be specified in the application. Requests should be as detailed and specific as possible to enable the information sought to be identified. If difficulty is experienced in identifying the records required, the staff of the FOI Unit will be happy to assist in the formulation of the request. **A copy of the FOI Act Request form outlined at Appendix 2** can also be used and is available on request from the FOI Unit. The Department is obliged to respond to FOI requests within 20 working days. Requests will be acknowledged within 10 working days and the applicant will be informed of the name of the person handling the request.

To obtain further information about making a request under the Act contact Ms Aisling Brennan at the address, telephone number or e-mail address quoted previously above.

Rights of Review of Decisions and Appeals

The FOI Act sets out a series of exemptions to protect sensitive information where its disclosure may damage key interests of the State or of third parties. Where the Department/Office invokes these provisions to withhold information, the decision may be appealed by the requester. Decisions in relation to deferral of access, charges, forms of access, etc. may also be appealed. Details of the appeals mechanisms are set out in the following paragraphs.

Internal Reviews

You may seek an internal review of the initial decision, and this review will be carried out by an official at a higher level if:

- ⇒ You are dissatisfied with the initial response received, e.g. refusal of information, form of access, charges, etc., or
- ⇒ You have not received a reply within 20 working days of the initial application. This is deemed to be a refusal of the request and allows you to proceed to internal review.

A request for an internal review must be submitted in writing within 20 working days of the initial decision to:

**Freedom of Information Officer,
Department of Justice, Equality and Law Reform,
Pinebrook House,
71 – 74 Harcourt Street,
Dublin 2.**

The Department must complete the review within 15 working days. An internal review must normally be completed before an appeal may be made to the Information Commissioner.

Review by the Information Commissioner

Following completion of the internal review, if you are still dissatisfied, you may seek an independent review of the decision from the Information Commissioner. Alternatively, if a reply is not received from the Department within 15 working days, this may be deemed to be a refusal and an appeal for a review may be made to the Information Commissioner.

Appeals must be made in writing to the Information Commissioner at the following address:

Office of the Information Commissioner,
18 Lower Lesson Street,
Dublin 2.
Phone: (01) 6395689
Lo-Call 1890 22 30 30
Fax: (01) 6610570
E-mail. foi@ombudsman.irlgov.ie

Fees

Freedom of Information (Fees) Regulations 2003

Regulations have been made by the Minister for Finance prescribing fees for the purposes of section 47(6A) of the Freedom of Information Act 1997. **These fees are effective from 7 July, 2003.**

The following fees will apply to FOI requests under section 7 of the FOI Act (requests for access to records) and applications under section 14 (internal review) and 34 (review by Information Commissioner) received on or after **7 July 2003.**

Requests for records

A standard application fee of **€15** must accompany an FOI request under section 7 for a record or records containing non-personal information.

A reduced fee of **€10** applies if the person making such a request is covered by a medical card.

The following requests/applications are exempt:

- (a) a request under section 7 for a record or records containing only personal information related to the requester.

- (b) an application under section 17 (right of amendment of records relating to personal information).
- (c) an application under section 18 (right of person to information regarding acts of public bodies affecting the person).

Internal Review

A standard fee of **€75** must accompany an application for internal review under section 14.

A reduced fee of **€25** applies if the person bringing the application is a medical card holder or a dependant of a medical card holder.

An internal review fee will **not** be imposed where a reply from the body concerned has not issued within 20 working days as provided for in the Act.

The following internal review applications are exempt:

- (a) an application in relation to a decision concerning records containing only personal information related to the applicant.
- (b) an application in relation a decision under section 17 (right of amendment of records relating to personal information).
- (c) an application in relation to a decision under section 18 (right of person to information regarding acts of public bodies affecting the person).
- (d) an application in relation to a decision to charge a fee or deposit, or a fee or deposit of a particular amount.

Review by Information Commissioner

A standard fee of **€150** must accompany applications to the Information Commissioner for review of decisions made by public bodies under section 34.

A reduced fee of **€50** applies if

- (a) the person bringing the application is a medical card holder or a dependant of a medical card holder or
- (b) the person is specified in section 29(2) i.e. a third party with the right to apply directly to the Information Commissioner where a public body decides to release their information on public interest grounds.

The following applications to the Information Commissioner are exempt:

- (a) an application concerning records containing only personal information related to the applicant.

- (b) an application in relation a decision under section 17 (right of amendment of records relating to personal information)
- (c) an application in relation to a decision under section 18 (right of person to information regarding acts of public bodies affecting the person).
- (d) an application in relation to a decision to charge a fee or deposit exceeding €25.00 under section 47 in respect of search and retrieval and photocopying of records (decisions in relation to the charging of fees or deposits for search and retrieval and/or photocopying of less than €25 are not subject to review by the Information Commissioner).
- (d) an application in relation to a decision to charge a fee under section 47(6A), or a fee of a particular amount under section 47(6A), on the grounds that the records concerned do not contain only personal information related to the requester or the requester is not a medical card holder or a dependant of a medical card holder.

Summary of Fees

Type of Request/Application	Standard Fee*	Reduced Fee_ **
Request for a record		
Initial Request	€15	€10
Internal Review	€75	€25
Review by Information Commissioner	€150	€50
Request for a record or containing personal information	No charge	No charge
Application under section 17 for amendment of a record containing incorrect, incomplete or misleading personal information	No charge	No charge
Application under section 18 for the reasons for a decision affecting the individual	No charge	No charge

** Fee will not apply where a person appeals a decision to charge a fee or deposit, or a fee or deposit of a particular amount under section 47 of the FOI Act*

*** Reduced fee will apply in respect of third parties who appeal a decision of a public body to release their information on public interest grounds*

In addition to the application fees applicable for FOI requests the following additional charges may apply:

- ◆ In respect of personal records, no fees are charged in respect of the cost of copying the records requested unless a large number of records are involved;
- ◆ In respect of other (non-personal) information, fees may be charged for the time spent in efficiently locating and copying records based on a standard hourly rate. This process is known as search and retrieval as provided for in section 47(2)(a) and (b) of the Act;
- ◆ No charges will apply in respect of the time spent by the Department in considering requests;
- ◆ A deposit may be payable where the total fee is likely to exceed €50.79 (£40). In these circumstances, the Department will, if requested, assist in amending the request so as to reduce or eliminate the fee.

Charges may be waived in the following circumstances:

- where the collection and related costs would exceed the amount of the fee;
- where the information is of particular assistance to the understanding of an issue of national importance;
- in the case of personal information, where such charges would not be reasonable having regard to the means of the applicant.

Charges

Search and Retrieval	-	€20.95 per hour
Photocopying	-	€0.04 per copy
3 1/2" Computer Diskette	-	€0.51
CD-ROM	-	€10.16
Radiograph	-	€6.35

PART 2

Information about the rules, procedures, practices, guidelines interpretations and precedents used by the Department in making decisions, determinations or recommendations.

This chapter give more detailed information about the rules, procedures, practices, guidelines interpretations and precedents used by the Divisions in the Department in making decisions, determinations or recommendations.

Further information

Further information concerning any of the Divisions of the Department or the Rules, Practices or Precedents mentioned may be obtained from:

**Ms Aisling Brennan
Freedom of Information Officer
Department of Justice, Equality & Law Reform
Pinebrook House
71 – 74 Harcourt Street
Dublin 2**

**Phone: 01-6028473
Fax: 01-6028652
E-Mail: foi@justice.ie**

2.1 CENTRAL PROCURMENT DIVISION

Listed below are the procedures followed by Central Procurement Division in relation to certain decisions, determinations.

Financial Procedures Publications

Public Finance Procedures – An outline

2.2 Cosc – THE NATIONAL OFFICE FOR THE PREVENTION OF DOMESTIC, SEXUAL & GENDER BASED VIOLENCE

Rules, procedures, practices, guidelines and interpretations used by Cosc

Cosc operates financial procedures and procurement in line with the guidelines and instructions set down by the Department of Finance in accordance with legislation.

Internal guidelines for the provision of grant funding for the awareness raising activities of locally based service providers are set out below. Similar guidelines for considering proposals for funding research projects are being developed. In all cases successful applicants for funding must operate under the standard government accounting practice which includes the following conditions:-

1. The funding provided is used solely for the purpose of the approved application.
2. The provision of funding by the Department of Justice, Equality and Law Reform through Cosc is acknowledged in the literature developed for the project.
3. Receipts of costs incurred are kept and audited accounts for the year clearly show how the Department's grant was received and spent.

Cosc is guided in all of its work by the relevant Irish and European legislation, the conventions and guidelines of the United Nations and the Council of Europe, the commitments of the Programme for Government in its area, Government decisions, the relevant part of the Strategy Statement of the Department of Justice, Equality and Law Reform .

2.3 CORPORATE SERVICES DIVISION

Corporate Services Division provides the support services to ensure that the Department and its associated offices operate as efficiently and effectively as possible. The Division is responsible for administering the functions of the Minister and the Department as contained in a wide range of legislation, as listed below, and acts as a liaison between head office and a number of associated bodies/agencies:

The Division also co-ordinates the Department's responses to certain queries and requests for information especially those where two or more line Divisions of the Department are involved.

Corporate Services Division also manages the Department's customer service policy.

Below are listed the rules, practices and procedures followed by Corporate Services Division in relation to certain decisions, determinations or recommendations with respect to the rights, privileges, benefits, obligations, penalties or sanctions to which members of the public are or may be entitled or subject. All are available through the Government Publications Sale Office, Molesworth Street, Dublin 2.

Listing

Primary Legislation

Auctioneers and House Agents Acts 1947 to 1973
Betting Act 1931
Censorship of Films Acts 1923 to 1992
Censorship of Publications Acts 1946 to 1967
Civil Legal Act 1995
Coroners Act 1962
Data Protection Act 1988
Deeds of Bravery Act 1947
Disability Act 2005
National Archives Act 1986
Official Languages Act 2003
Pawnbrokers Act 1964
Prompt Payments Act 1997
Registration of Deeds and Title Acts 1964 and 2006
Video Recordings Act 1989

Secondary Legislation/Statutory Instruments

European Communities (Freedom of Establishment and freedom to provider services) (Moneylenders Regulations) 1977
Money Lenders Act Rules, 1933
SI 240 of 2007 – Coroners Act, 1962 (Fees and Expenses) Regulations 2007

Procurement Directives/Rules/Guidelines

Public Procurement Guidelines Competitive Process
Public Sector Procurement Directive 2004/18/EC

Miscellaneous

Government Procedures [including financial, procurement and Cabinet]
Department's Customer Charter
Department's Health and Safety Statement
Department of Finance Circulars

2.4 COURTS POLICY DIVISION

The following is a listing and description of the rules/practices followed by Courts Policy Division in relation to certain decisions, determinations or recommendations with respect to the rights, privileges, benefits, obligations, penalties or other sanctions to which members of the public are or may be entitled or subject.

Rules/Guidelines/Precedents

Constitution of Ireland

Legislation

Statutory Instruments

Civil Service Circulars

Consultation with the Judiciary and Courts Service officials

Sanctions from the Department of Finance

Advice from the Attorney General, Chief State Solicitor, Director of Public

Prosecutions and the Garda Authorities

Consultation with the Legal Profession

Consultation with staff representatives and other Government Departments and Agencies

Cabinet Handbook

Statutory Instruments Drafting Checklist and Guidelines

Guidelines on the Electronic Statutory Instruments System

Legislation from 1924 to date

The Courts of Justice Act, 1924

Juries (Amendment) Act, 1924

Courts of Justice Act, 1926

Enforcement of Courts Orders Act, 1926

Court Officers Act, 1926

Juries (Dublin) Act 1926

Circuit Court Appeals Act, 1927

Juries Act, 1927

Courts of Justice Act, 1927

Courts of Justice Act, 1928

Courts of Justice (No. 2) Act, 1928

Juries (Protection) Act, 1929

Courts of Justice Act, 1929

Courts of Justice Act, 1931

Juries (Protection) Act, 1931

Courts of Justice (No. 2) Act, 1931

Pounds (Provision and Maintenance) Act, 1935

Courthouses (Provision and Maintenance) Act, 1935

Courts of Justice Act, 1936

Court Officers (Amendment) Act, 1937

Enforcement of Court Orders Act, 1940

Juries Act, 1945

Court Officers Act, 1945

Courts of Justice (District Court) Act, 1946

Courts of Justice Act, 1947

Courts of Justice (District Court) Act, 1949

Court Officers Act, 1951

Courts of Justice Act, 1953

Courts of Justice Act, 1959

Criminal Justice Act, 1960

Juries Act, 1961

Courts of Justice and Court Officers (Superannuation) Act, 1961

Courts (Establishment and Constitution) Act, 1961

Courts (Supplemental Provisions) Act, 1961

Criminal Justice (Legal Aid) Act, 1962

Courts (Supplemental Provisions) (Amendment) Act, 1962

Courts (Supplemental Provisions) (Amendment) Act, 1964

Courts Act, 1964

Courts (Supplemental Provisions) (Amendment) Act, 1968

Courts (Supplemental Provisions) (Amendment) (No.2) Act, 1968

Courts Act, 1971

Court Officers Act, 1972

Courts Act, 1973

Juries Act, 1976

Courts Act, 1977

Courts Act, 1979

Courts Act, 1981

Courts (No.2) Act, 1981

Courts-Martial Appeals Act, 1983

Courts Act, 1985

Courts Act, 1986

Courts (No.2) Act, 1986

Courts (No. 3) Act, 1986

Courts Act, 1988

Courts (No.2) Act, 1988

Courts Act, 1991

Courts (No.2) Act, 1991

Courts (Supplemental Provisions) (Amendment) Act, 1991

Jurisdiction of Courts and Enforcement of Judgements Act, 1993

Courts and Court Officers Act, 1995

Courts Act, 1996

Courts Act, 1997

Courts (No. 2) Act, 1997

Courts Service Act, 1998

Jurisdiction of Courts and Enforcement of Judgements Act, 1998

Courts and Court Officers Act, 2002

Courts and Court Officers Act, 2002

Courts and Court Officers (Amendment) Act, 2002

Civil Liability and Courts Act, 2004

Courts and Court Officers (Amendment) Act, 2007

Practices/procedures in relation to the functions of Courts Policy Division

Statutory relationship between the Minister and the Courts Service

Courts Policy Division monitors and liaises with the Courts Service to ensure that the Courts Service fulfils its role under the Courts Service Act, 1998 as set out below.

Section 7 of the Courts Service Act, 1998 provides that the Service is required to prepare a Strategic Plan and submit same to the Minister for approval, which should, inter alia, be prepared in a form and manner in accordance with any directions issued by the Minister.

Section 8 of the Act provides that the Service is required to report to the Minister on its activities on a yearly basis. Such report should include information on the performance of the functions of the Service in such form as the Service thinks fit or the Minister may direct. In addition, the Service, shall, if so requested by the Minister, furnish information requested by the Minister relating to:

- any matter concerning policy or activities of the Service generally or
- any specific matter or account prepared by it.

Section 13 of the Act provides that the Board of the Service shall have regard to any policy or objective of the Government or a Minister of the Government when informed of any such policy or objective by the Minister. This section also provides that the Board shall have regard to the need to secure the most beneficial, effective and efficient use of the resources of the Service in the performance of its functions.

Section 23(1) of the Act provides that the numbers of staff of the Courts Service are to be approved by the Minister for Justice, Equality and Law Reform with consent of Minister for Finance. Section 23(2) of the Act provides that the grading structure and numbers in each grade are to be approved by the Minister for Justice, Equality and Law Reform with the consent of the Minister for Finance.

Staffing levels in Courts Service

The Minister is required under the Courts Service Act, 1998 to approve, with the consent of the Minister for Finance, the overall staffing levels in the Courts Service and the numbers in each grade. If the Courts Service puts forward proposals for increases in staffing, regarding packages etc., the proposals are evaluated in Courts Policy Division and a formal request, if necessary, is made for Department of Finance sanction.

Requesting nominations for judicial office from Judicial Appointments Advisory Board

Where the Government proposes to advise the President to make a judicial appointment, the Board shall, on the request of the Minister, (a) submit the names of each person who has informed the Board of his/her wish to be considered for appointment to judicial office and (b) recommend at least 7 persons for appointment.

Preparation of Government Memoranda for the appointment of Judges, County Registrars, the Master of the High Court and Taxing Masters

When a vacancy is anticipated or after a vacancy occurs, the memorandum is prepared in line with the legislative and Constitutional requirements. Drafts are cleared with Minister and relevant Government Departments prior to formal submission to the Government. The memorandum is submitted according to Cabinet procedures. On receipt of Government decision immediate steps are taken to inform all parties. For judicial appointments arrangements are immediately set in train for the President to make the appointment and the Judge to make the statutory declaration.

In the case of County Registrars, the Master and the Taxing Masters, the Government makes the appointment and the Department then makes contact with the appointee in order to agree the administrative arrangements for appointment.

Appointment /Removal of judges to/from the Special Criminal Court

Section 39 of the Offences Against the State Act, 1939 provides for the appointment of judges to the Special Criminal Court by the Government. The Act of 1939 also provides that judges can be removed from the Special Criminal Court by the Government.

Whenever it becomes necessary to appoint/remove a judge to/from the Special Criminal Court, a Memorandum is prepared in Courts Policy Division and submitted to Government requesting the Government to take the appropriate action. Following the Government decision Courts Policy Division notifies the judges concerned of the decision.

Retention of District Judges and County Registrars beyond the age of 65

District Court Judges and County Registrars, on reaching the age of 65, must apply to continue in office on a yearly basis up to the age of 70. Judges and County Registrars are formally notified in advance of reaching age 65. Applications for retention are submitted to the Court Committee, comprising the Chief Justice, the President of the High Court and the Attorney General who make the decision having consulted the Minister.

Appointment of the Judge or Advocate General to the European Court of Justice

Nominations for these judicial posts are made by the Government on foot of Memoranda prepared by Courts Policy Division. Follow-up action in relation to such nominations is a matter for the Department of Foreign Affairs.

Leave for District Court Judges

District Court Judges leave is calculated on the basis of a six day week. Permanently assigned Judges are allocated 12 days leave and the month of August and moveable Judges are allocated 36 days leave. If Judges transfer between permanently assigned positions and moveable positions their leave entitlement in a given year must be calculated and recorded.

District Court Judges leave is notified to Courts Policy Division by the Secretary to the President of the District Court.

Mandamus Proceedings, Judicial Reviews or Claims for Compensation against a Judge of the District Court

When notice of mandamus proceedings, judicial review or claims for compensation are received against a Judge, the papers are sent to the Chief State Solicitor. The Judge may be asked if s/he wishes to be represented. The Chief State Solicitor is requested to correspond directly with the respondent. The respondent is informed that the papers have been sent to the Chief State Solicitors Office who will contact him/her directly.

The Chief State Solicitor may forward correspondence or requests for additional information to this Division which should be forwarded to the respondent or the appropriate authority.

Making of Court Rules

The Minister is required to concur with Rules of Court before they can come into force. From time to time as required the Superior, Circuit and District Courts Rules Committees submit draft Rules of Court for the Minister's concurrence. Before concurring with these draft Rules the Minister may need to consult with other bodies such as, Government Departments, the Attorney General etc. When the Minister concurs with the Rules and signs them they are then promulgated as a Statutory Instrument in the usual way.

Fees for various applications to the Courts

Section 65 of the Courts of Justice Act, 1936 (No. 48 of 1936) empowers the Minister for Justice with the consent of the Minister for Finance to vary or otherwise revise the fees in the offices established by the Court Officers Act, 1926. The Courts Service Act, 1998 empowers the Courts Service to make proposals in this regard to the Minister.

Fees may need to be varied as a result of new legislation being introduced, inflation since the passing of the last Fees Order or as a rationalising or streamlining measure to improve the service to the court users.

The proposed amendments are drafted using previous Orders as a guide and setting out the increase(s) or changes required. Where fees are being increased in line with inflation the Consumer Price Index is used.

A submission, including a copy of the draft Order, is made to the Minister for Finance requesting sanction for the appropriate increase. When the sanction of the Minister of Finance is received, the draft Fees Order is forwarded to the Parliamentary Draftsman for final drafting and clearance.

When the clearance of the Parliamentary Draftsman is obtained, the Fees Order is formally approved by the Minister for Justice, Equality and Law Reform and the Minister for Finance. The Fees Order is then made into a Statutory Instrument in accordance with standard procedures.

Court Fees payable on certain court documents

Court fees are payable on certain court documents. The documents which attract court fees and the fees payable thereon are set out in the various court fees orders. Court fees are impressed on the documents by a special court fee franking machine in a similar manner to a post office frank. A number of solicitors have been licensed to operate a court fee franking machine on the Department's behalf.

Issuing licences to solicitors

Solicitors can apply for a licence to operate a court fee franking machine. An annual licence fee of €158.72 is payable by the licensed solicitor. Applications for licences are considered under the following headings,

- a) the length of time for which the solicitor has been in practice,
- b) the expected level of use of the machine by the solicitor,
- c) the number of other machines in the area.

If issued, the licence is signed by a partner in the solicitor's firm and by an official of the Department of Justice Equality and Law Reform, not below the rank of a Principal Officer.

Making of a Statutory Instrument

The procedures for making a Statutory Instrument are as follows;

1. Consult with other Departments, Agencies or Divisions which may have an input into the making of the Statutory Instrument (S.I.). Many of the S.I.s handled in this Division originate with the Rules Committees of the District, Circuit and Superior Courts.
2. Prepare draft Regulations and submit them to the Attorney General for examination by the Parliamentary Draftsman
3. When draft Regulations have been approved and stamped by the Parliamentary Draftsman follow the procedure set out in the Guidelines on the Electronic Statutory Instruments System

Iris Oifigiúil Notices - Insertion of notice into Iris Oifigiúil

Iris Oifigiúil is an official Government Publication - notices inserted in it are deemed to have been drawn to the notice of the public. Notices for insertion into Iris Oifigiúil must be submitted to the Editor by 2 p.m. on a Monday or Thursday as the publication appears on a Tuesday and Friday each week.

Items which are inserted into Iris Oifigiúil by Courts Policy Division include:-

- Notifications of the publication of Statutory Instruments e.g. Rules of Court
- Matters relating to Judicial appointments.

A Demand together with the text item for publication is faxed to the Editor prior to the relevant deadline. On the date of publication proofs are sent back to the person requesting publication. The proofs are checked for accuracy against the original and returned. A copy is retained on the relevant file in Courts Policy Division.

Following publication, a copy of the dated Iris Oifigiúil page is placed on the relevant file - this is required particularly in relation to items such as Rules of Court as the exact date of publication in Iris Oifigiúil must be inserted in the final printed Rules.

Pounds

Local Authorities are required under law to provide and maintain pounds as directed by the County Registrars with the approval of the Minister. Where a County Registrar is satisfied that a place provided by the local authority is suitable and in an acceptable condition, s/he issues a Certificate declaring the place to be a pound and notifies this Division.

Where the County Registrar no longer requires a place to be a pound s/he must consult with the local Gardaí and request the approval of the Minister. This Division prepares a short submission to the Minister and notifies the County Registrar of the Minister's decision. Where approval is granted the County Registrar issues a Certificate of Cesser.

The Revenue Commissioners and the Garda Commissioner are informed when new pounds are established or existing pounds are closed.

The fees to be paid to the Pound-keeper are specified by the Pounds Amendment Regulations, 1995 which are made by the Minister. The Professional Accountant in the Department, in consultation with the Department of Agriculture, reviews the fees and suggests amendments. An Order is drafted and forwarded to the Parliamentary Draftsman and on return is submitted to the Minister for signature. The usual procedures for making a Statutory Instrument are then followed.

Preparation of Estimates

1. The Estimates Circular is received from Finance Division with instructions that the Estimate of expenditure for the forthcoming year be prepared in accordance with the Government's instructions.
2. Estimates of expenditure must be prepared for each subhead in the vote with an explanation of any increase or decrease on the previous year's allocation.
3. The information received is examined in the context of expenditure in previous years and proposed major expenditure projects for the following year. Department of Finance sanctions in relation to any proposed expenditure should be supplied.
4. The budgetary profiles for forthcoming years are updated at the same time using the same criteria but in a less detailed fashion.
5. On receipt of a request from Finance Division, the Minister's Estimate Brief is compiled in accordance with directions received from Finance Division. All material is combined to form the Brief which must cover all areas of expenditure, all major developments proposed and all matters of topical interest. Speech material is also prepared for the Minister for his/her appearance before a Dáil Committee. The material

should refer to the ambit of the vote, previous expenditure, and proposed major projects in the forthcoming year.

7. During the year expenditure must be monitored to ensure the allocation is not exceeded. Where it is anticipated that allocation will in fact be exceeded permission must be sought from the Department of Finance to vire money from a different subhead of the Vote or, where this is not possible, a Supplementary Estimate must be sought.

8. Supplementary Estimates are prepared by way of in-depth briefing which is submitted to the Minister. If the Minister decides to proceed with a request to the Dáil for a supplementary estimate the necessary briefing is supplied in association with Finance Division.

9. Regulations governing Government Accounting are contained in the Department of Finance manual - Public Financial Procedures.

Press Queries - response to

Press Queries are received by the Press Office and forwarded to the Division for reply - usually a time limit for reply is indicated. On receipt of a query, research is undertaken to obtain the necessary information and a reply is forwarded to the Press Office.

Correspondence Tracking from Minister's Office

When correspondence/representation is received in the Minister's Office it is acknowledged and forwarded to the relevant Division. The Principal Officer passes the correspondence to the appropriate Assistant Principal Officer who assigns the work to a subordinate officer or, where appropriate, deals with the correspondence directly.

The status of the document is changed on the electronic Ministerial Tracking System to 'received in Division' and the name of the officer to whom the correspondence has been assigned is entered. When a final reply is prepared it is forwarded to the Minister's Office and the Tracking System is updated. If there is a delay in preparing a final reply, an interim reply is issued.

Preparation of observations to other Divisions and Departments

Requests for observations are regularly received from other Divisions within the Department, from other Departments or from other bodies or outside Agencies. The subject matter may include, inter alia, policy proposals or legislation.

The documentation is forwarded to the Courts Service, if appropriate, with a request for observations with a closing date for receipt of responses. Upon receipt, the observations, if any, are submitted to the Principal Officer for approval and forwarded to the enquiring body.

Criminal Legal Aid Scheme

The Criminal Justice (Legal Aid) Act, 1962 and the Regulations made under it, provide that free legal aid may be granted, in certain circumstances, for the defence of persons of insufficient means in criminal proceedings.

Under the Act, the Courts are responsible for the granting of legal aid. An application for legal aid is made to the court, either, in person, by the applicant's legal representative or by letter. An applicant for legal aid must establish to the satisfaction of the court that his/her means are insufficient to enable him/her to pay for legal aid him/herself. When granting legal aid, the court must also be satisfied that by reason of the "gravity of the charge" or "exceptional circumstances" it is essential in the interests of justice that the applicant should have legal aid. However, where the charge is one of murder or where an appeal is one from the Court of Criminal Appeal to the Supreme Court, free legal aid is granted merely on the grounds of insufficient means. The grant of legal aid entitles the applicant to the services of a solicitor and, in certain circumstances, up to two counsel, in the preparation and conduct of his/her defence or appeal.

Tax Clearance Regulations

Regulations were introduced under the Criminal Justice (Legal Aid) Act, 1962 in May 1999 requiring solicitors and barristers who wish to participate in the Criminal Legal Aid Scheme to furnish a tax clearance certificate to a County Registrar or the Minister, as appropriate. The Regulations were effective from 1 August, 1999.

A solicitor who wishes to join a panel is required to furnish a tax clearance certificate to the relevant County Registrar. A barrister who wishes to join the panel is required to furnish a tax clearance certificate to the Minister for Justice, Equality and Law Reform. A solicitor or barrister who wishes to remain on a panel is required to furnish a tax clearance certificate to the County Registrar or the Minister, as appropriate, on or before 30 November annually to retain their name on a panel.

Courts Policy Division maintains the barristers panel and the County Registrars maintain the solicitors panels.

Ad-Hoc Legal Advice Scheme (CAB).

The Department administers the Ad-Hoc Legal Aid Scheme (CAB). The Scheme is applicable to persons who are respondent/defendants in any court proceedings brought by, or in the name of, the Criminal Assets Bureau including court proceedings under the Proceeds of Crime Act 1996, Revenue Acts or Social Welfare Acts.

The Scheme also includes Social Welfare appeals made to the Circuit Court under Section 34 of the Social Welfare Act, 1997, Tax appeals made to the Circuit Court under the Taxes Acts where the Criminal Assets Bureau is the respondent/defendant and applications made by the Director of Public Prosecutions under Section 39 of the Criminal Justice Act, 1994.

The Ad-Hoc Legal Aid Scheme provides that the grant of legal aid, including the level of legal representation, is a matter for the Court. The calculation of fees which apply to counsel representing the legally aided person is made in accordance with the parity mechanism which is in operation under the Criminal Justice (Legal Aid) Act, 1962 and the Regulations made under that Act.

Garda Station Legal Advice Scheme

The Department also administers the Garda Station Legal Advice Scheme which provides that where a person is detained in a Garda station for the purpose of the investigation of an offence and s/he has a legal entitlement to consult with a solicitor and the person's means are insufficient to enable him/her to pay for such consultation, that consultations with solicitors will be paid for by the State.

A fee is paid for consultations in circumstances where the person is detained under the provisions of the Offences against the State Act, 1939 as amended by the Offences against the State (Amendment) Act, 1998 or the Criminal Justice Act, 1984 or the Criminal Justice (Drug Trafficking) Act, 1996. Persons who are in receipt of social welfare payments or persons whose earnings are less than €20,315.81 are eligible to receive assistance under the Scheme.

Attorney General's Scheme

Responsibility for the administration, on behalf of the Attorney General, of the Attorney General's Scheme transferred from the Chief State Solicitor's Office to the Department of Justice, Equality and Law Reform on 1 February, 2007.

The Scheme applies to the following forms of litigation in the High Court and the Supreme Court

- (i) Applications under Article 40.4 of the Constitution (*habeas corpus*).
- (ii) Bail Motions.
- (iii) Such Judicial Reviews as consist of or include Certiorari, Mandamus or Prohibition and are concerned with criminal matters or matters where the liberty of the applicant is at issue.
- (iv) Applications under the Extradition Act 1965 and the European Arrest Warrant Act 2003.

The purpose of the Scheme is to provide legal representation for persons who need it but cannot afford it. It is not an alternative to costs. Accordingly, a person wishing to obtain from the court a recommendation that the Scheme be applied must make his/her application (personally or through his/her lawyer) at the commencement of the proceedings and must obtain the recommendation at the commencement of the proceedings.

The calculation of fees which will apply to counsel representing the legally aided person will be made in accordance with the mechanism which is in operation under the Criminal Justice (Legal Aid) Act, 1962 and the Regulations made under that Act.

2.5 CRIME I DIVISION

This document lists all rules, practices and procedures followed by Crime I Division in relation to certain decisions, determinations or recommendations with respect to the rights, privileges, benefits, obligations, penalties or sanctions which members of the public are or may be entitled or subject.

Legislation

Having regard to the wide body of criminal, and other laws, which provide for the prevention of conduct that unjustifiably inflicts or threatens substantial harm to the individual or to the public interest, it is not feasible to list specific pieces of legislation as being more relevant to the work of the Crime Policy Section than others.

Miscellaneous

- Cabinet Procedures Instructions
- Public Financial Procedures
- Government decision
- Department of Finance sanctions
- Strategy statements of the Department of Justice, Equality and Law Reform
- Customer Service Action Plan

2.6 CRIME II DIVISION

Crime II Division does not operate any general scheme as such but all rules, practices and procedures followed by the Division in its work programme are determined in the context of the wide range of legislation the Government has put in place to address the issues of organised crime including human trafficking and drugs trafficking.

Procedures followed by the Division are also determined by the Units participating in a range of working groups in place under the Governments policy framework to tackle the problems of organised crime and drugs.

2.7 CRIME IV DIVISION

This document lists all rules, practices and procedures followed by the Unit in relation to certain decisions, determinations or recommendations with respect to the rights, privileges, benefits, obligations, penalties or sanctions to which members of the public are or may be entitled or subject.

Primary Legislation

Firearms Act, 1925 to 2007
Explosives Act, 1875
Public Service Management Act, 1997

Secondary Legislation

Firearms

Firearms (Temporary Custody) Order, 1972 (S.I. No. 187 of 1972)
Firearms (Dangerous Weapons) Order 1972 (S.I. No. 251 of 1972)
Firearms Regulations 1976 (S.I. No. 239 of 1976).
European Communities (Acquisition and Possession of Weapons and Ammunition) Regulations, 1993. (S.I. No. 362 of 1993).
Firearms Certificate for Non-Residents Order, 2002 (S.I. No. 48 of 2002)
European Communities (Acquisition and Possession of Weapons and Ammunition) (Amendment) Regulations, 2002 (S.I. No. 49 of 2002)

Explosives

Stores for Explosives Order, 1955 (S.I. No 42 of 1955).
Explosives (Ammonium Nitrate and Sodium Chlorate) Order, 1972 – (S.I. No. 191 of 1972)
Explosives (Nitro-Benzene) Order, 1972 – (S.I. No. 233 of 1972)
Explosives (Potassium Nitrate and Sodium Nitrate) Order, 1972 – (S.I. No. 273 of 1986)
Keeping of fireworks Order, 1984 (S.I. No 129 of 1984).
Import of Explosives Order 1994 – (S.I. No. 449 of 1994)
Classification and Labelling of Explosives Order 1994 – (S.I. No. 450 of 1994)
European Communities (Placing on the Market and Supervision of Explosives for Civil Uses) Regulation 1995 – (S.I. No. 115 of 1995)

Conveyance of Explosives Amendment Bye-Laws 1995 (S.I. No. 251 of 1995)
Explosives Landmines Order 1996 (S.I. 175 of 1996)
Sale of Explosives Order, 1997 – (S.I. No. 364 of 1997)
Ammonium Nitrate Mixtures Exemption Order, 1997 – (S.I. No. 365 of 1997)
Carriage of Dangerous Goods Act, 1998.
Stores for Explosives Amendment Order 2003 (S.I. 71 of 2003)
Carriage of Dangerous Goods by Road Regulations 2007 (S.I. No 288 of 2007.)
European Communities (Carriage of Dangerous Goods by Road) (ADR Miscellaneous Provisions) Regulations 2007 – (S.I. No 289 of 2007)
Carriage of Dangerous Goods by Road Act 1998 (Appointment of Competent Authorities) Order 2007, (S.I. No 290 of 2007)
Carriage of Dangerous Goods by Road Act 1998 (Fees) Regulations 2007, (S.I. No 291 of 2007)

Miscellaneous

EC Directive 91/477/EEC dated 8 June, 1991 on the Control of the Acquisition and Possession of Weapons.

EC Directive 93/15/EEC dated 5 April, 1993 on the Harmonisation of the provision relating to the placing on the Market and supervision of explosives for civil uses.

Cabinet Procedures Instructions

Public Financial Procedures

Government Decisions

Department of Finance sanctions

Strategy Statements of the Department of Justice, Equality and Law Reform

Customer Service Action Plan

2.8 DISABILITY EQUALITY DIVISION

Publications

National Disability Strategy 2004

The following documents were produced by the Disability Equality Unit in line with the National Disability Strategy announced in September 2004:

- National Disability Strategy pack
- Disability Bill 2004
- Guide to the Disability Bill 2004 (Also published in a number of accessible formats)
- Disability Act 2005
- Guide to the Disability Act 2005 (Also published in a number of accessible formats)

Disability Awareness – National Information Day

The following publications were produced by the Disability Equality Unit to promote social inclusion of people with disabilities:

- Someone Like Me Primary Schools Essay Competition 2004 (National Information Day on Disability Booklet & DVD 2004)
- I can, You Can (National Information Day Booklet 2005)
- Games we can all play (National Information Day Booklet & DVD 2006)

Statutory Instruments

The following Statutory Instruments were produced by the Disability Equality Unit between 2004 and 2007:

- S.I. 474 of 2005 – Disability Act 2005 (Commencement) Order 2005 – Published 28 July 2005; and
- S.I. 163 of 2006 – Disability Act 2005 (Code of Practice) (Declaration) Order 2006: Code of Practice on Accessibility of Public Services and Information provided by Public Bodies – Published 6 April 2006.

2.9 DIVERSITY & EQUALITY LAW DIVISION

The procedures and practices operated by the Diversity & Equality Law Division are as follows:-

- Cabinet Procedure Instructions
- Public Financial Procedures - An Outline, 1996
- Statutory Instruments Act, 1995
- Public Financial Procedures - An Outline, 1996;
- Government Contracts Procedures (see Appendix A);
- Department of Finance circulars;
- Circulars issued by Department of Justice, Equality and Law Reform;
- Sustaining Progress – commitments to Equality Proofing

Index of precedents

Information on past procedures is obtained by referring to the relevant files.

2.10 FINANCIAL SHARED SERVICES CENTRE

Accounting Requirements and Practices

The principles of Government Accounting are mainly derived from the Constitution and from the institutional and financial relationships between parliament and the executive which have been developed over the years. All administrators in Government Departments are responsible for managing and using state resources and detailed rules and procedures are laid down by the Department of Finance to ensure that this is achieved.

The rules and procedures are available in published form from the Government Publications Sales Office entitled 'Public financial Procedures - Department of Finance'. All expenditure by Government Departments has to be sanctioned by the Department of Finance in some form or another and is far too voluminous to detail here. Sanctions come in different formats:-

Department of Finance Circular (various e.g. Pay, Allowances, Travel and Subsistence etc.);

Specific Department of Finance sanction for individual items;

Delegated sanctions to allow for day to day spending up to agreed limits.

Prompt Payment of Accounts Act, 1997

This Act came into effect on 1st January, 1998 allows for the payment of interest to suppliers if payment for services rendered is not received by them within an agreed timeframe.

Payment of Wages Act, 1991

This Act came into effect on 1st January, 1992 and supersedes the Payment of Wages Act, 1979. The Act outlines a range of rights for all employees relating to the payment of wages and provides a right of complaint to a Rights Commissioner in the event of unlawful deduction from wages. It defines the meaning of wages and outlines the various modes of payment acceptable. It outlines for employers the various deductions allowable or restricted. An explanatory booklet for employers and employees is available from the Department of Enterprise, Trade and Employment.

Criminal Legal Aid Scheme

The Criminal Justice (Legal Aid) Act, 1962 and the Regulations made under it, provide that free legal aid may be granted, in certain circumstances which are quite wide in practice, for the defence of persons of insufficient means in criminal proceedings. The grant of legal aid entitles the applicant to the services of a solicitor and, in circumstances, up to two counsel, in the preparation and conduct of their defence or appeal. Services are provided through panels of solicitors and barristers who are remunerated on a fee basis.

The Department of Justice, Equality and Law Reform is responsible for the administration of the Scheme in the areas of policy, preparation of legislation, compilation of estimates and accountability to the Dáil. It is also responsible for the legal aid fees and expenses to the legal practitioners who operate the Scheme. (For further information, please see Court's Policy Division Section 16 Reference Book contribution).

Garda Station Legal Advice Scheme

The Garda Station Legal Advice Scheme provides that where a person is detained in a Garda Station for the purpose of the investigation of an offence and s/he has a legal entitlement to consult with a solicitor and the person's means are insufficient to enable him/her to pay for such a consultation, that consultations with solicitors will be paid for by the State.

A fee is paid for consultation in circumstances where the person is detained under the provisions of the Offences Against the State Act, 1939 as amended by the Offences Against the State (Amendment) Act, 1998 or the Criminal Justice Act, 1984 or the Criminal Justice (Drug Trafficking) Act, 1996. Persons who are in receipt of social welfare payments or persons whose earnings are less than €20,315.81 (£16,000) are eligible to receive assistance under the Scheme.

Solicitors forward completed claim forms to Courts Policy Division (see separate entry), for verification. When claims are verified they are passed to Finance Division for payment.

The Department of Justice, Equality and Law Reform is responsible for the administration of the Scheme in the areas of policy, preparation of legislation, compilation of estimates and accountability to the Dáil. It is also responsible for the legal aid fees and expenses to the legal practitioners who operate the Scheme. (For further information, please see Court's Policy Division Section 16 Reference Book contribution).

Attorney General's Scheme

The Attorney General Scheme provides payments for legal representation in certain types of legal cases not covered by the Civil or Criminal Legal Aid Schemes. The types of cases covered include certain judicial review, bail, extradition and habeas corpus applications. The purpose of the Scheme is to provide legal representation for persons who need it but cannot afford it. The applicant must satisfy certain criteria before representation can be provided under the Scheme. The Scheme is applicable to proceedings conducted in the High and Supreme Courts and which fall within the scope of the Scheme.

Garda Síochána Superannuation Schemes

The Garda Síochána Superannuation Scheme and the Garda Síochána Spouses and Childrens Pension Schemes are similar to the Civil Service Schemes (further information available from Department of Finance Section 16 Reference Book). However, there are some differences. The principal differences are as follows:-

Reckonable Service

A Garda may retire on full pension after 30 years service provided s/he has reached 50 years of age.

Doubling of Service

Years served in excess of 20 are doubled for calculation of reckonable service.

Maximum Retirement Ages

This depends on Rank.

Contribution Rate

Gardaí recruited prior to 5 April, 1995 pay a contribution of 1.75% of pay for their own pension.

Member's Special Pension

If a member has to retire due to an injury on duty a Special Pension is payable.

Spouse's/Children's Contributions

These are based on years service. If a Garda retires after 30 years he still has 10 years contributions to make. These are taken from lump sum.

Spouse's/Children's Special Pension

If a member is killed on duty there is a Special Spouse's/Children's pension.

Spouse's Extra (Article 15) Pension

A spouse of a deceased member may qualify for an extra pension in addition to the normal spouse's pension under Article 15 of the G.S. Pension Order 1981 (S.I. 199 of 1981).

2.11 FREEDOM OF INFORMATION UNIT

Rules and Practices

The administration of Freedom of Information is as outlined in Chapter 1. In dealing with FOI applications officers may refer to the following guidance that has been provide by the Department of Finance.

- ◆ **FOI Manual** - A guide to the Freedom of Information Act produced by the FOI Central Policy Unit of the Department of Finance
- ◆ **Guidance notes** on the provisions of assistance by public bodies to facilitate persons with a disability to exercise their rights under the Act.
- ◆ **Guidance notes** on access to records by parents/guardians and access to records relating to deceased persons.

The FOI Manual and Guidance notes are available on the Department of Finance's website: <http://www.finance.ie>

Legislation

Freedom of Information Acts, 1997 and 2003

Information Commissioner's Decisions

This office holds a list of the Information Commissioners Decisions which are also available on the Information Commissioner's Office website at <http://www.irlgov.ie/oic/>.

High Court Judgements

1998 No. 48 CA

The Minister for Agriculture and Food (Appellant) and The Information Commissioner (Respondent) 17/12/1999

2000 No. 96 MCA

The Courts Service and The Information Commissioner and The Minister for Justice, Equality & Law Reform 14/03/2001.

2.12 GARDA DIVISION

The following is a list of all rules, practices and procedures followed by Garda Division

Primary Legislation

The Garda Síochána Act, 1924 (No. 25 of 1924);
Dublin Police Act, 1924 (No. 31 of 1924);
Police Forces (Amalgamation) Act, 1925 (No. 7 of 1925);
The Garda Síochána (Compensation) Acts, 1941
The Garda Síochána (Compensation) (Amendment) Act, 1945
Garda Síochána Act, 1958 (No. 14 of 1958);
Garda Síochána Acts 2005 (No. 20 of 2005) - 2007;
Metrology Act, 1996 (No. 27 of 1996);
Europol Act, 1997 (No. 38 of 1997);
Garda Síochána (Police Co-operation) Act, 2003 (No. 19 of 2003).

Secondary Legislation/Statutory Instruments

Garda Síochána (Retirement) Regulations, 1934
Garda Síochána (Retirement) Regulations 1951
Garda Síochána (Retirement) (No. 2) Regulations 1951
Garda Síochána (Admissions and Appointments) Regulations 1988
Garda Síochána (Discipline) Regulations 1989
Garda Síochána (Registration of Certain Births and Deaths Occurring Outside the State) Regulations 1989
Garda Síochána (Retirement) Regulations 1989
Garda Síochána (Retirement) Regulations 1990
Garda Síochána (Retirement) Regulations 1996
Garda Síochána (Admissions and Appointments) (Amendment) Regulations 1997

2000

S.I. No. 163/2000 — Garda Síochána (Retirement) (Amendment) Regulations, 2000
S.I. No. 164/2000 — Garda Síochána (Admissions and Appointments) (Amendment) Regulations, 2000
S.I. No. 234/2000 — Garda Síochána (Ranks) Order, 2000.*

2001

S.I. No. 392/2001 — Garda Síochána (Promotion) (Amendment) Regulations, 2001
S.I. No. 451/2001 — Garda Síochána (Associations) (Amendment) Regulations
S.I. No. 498/2001 — Garda Síochána (Admissions and Appointments) (Amendment) Regulations, 2001
Garda Síochána (Confidential Reporting of Corruption or Malpractice) Regulations, 2007 (S.I. No. 168 of 2001);

2003

S.I. No. 273/2003 — Garda Síochána (Retirement) Regulations 2003
S.I. No. 706/2003 — Garda Síochána (Associations)(Amendment) Regulations 2003

2004

S.I. No. 186/2004 — Garda Síochána (Police Co-Operation) Act 2003 (Commencement) Order 2004
S.I. No. 222/2004 — Garda Síochána (Ranks) Order 2004*
S.I. No. 726/2004 — Garda Síochána (Ranks) (No. 2) Order, 2004*
S.I. No. 749/2004 — Garda Síochána (Admissions and Appointments) (Amendment) Regulations, 2004

2005

S.I. No. 560/2005 — Garda Síochána (Admissions and Appointments) (Amendment) Regulations, 2005
S.I. No. 849/2005 — Garda Síochána (Ranks) Order 2005*

2006

S.I. No. 286/2006 — Garda Síochána (Ranks) Regulations 2006*
S.I. No. 686/2006 — Garda Síochána (Retirement)(No. 2) Regulations 2006
S.I. No. 485/2006 - Garda Síochána (Promotions) Regulations 2006
Garda Síochána (Reserve Members) Regulations, 2006 (S.I. No. 413 of 2006);

2007

S.I. No. 28/2007 — Garda Síochána (Ranks) Regulations 2007*
S.I. No. 214/2007 — Garda Síochána (Discipline) Regulations 2007

* These Orders establish the maximum total strength of An Garda Síochána and the maximum strength of each rank. However, the actual strength of the Force is authorised by Government from time to time in the context of decisions concerning Garda recruitment and policing requirements.

2.13 GENDER EQUALITY DIVISION

The procedures and practices operated by this Division are as follows.

General

Cabinet Procedure Instructions
Public Financial Procedures - An Outline, 1996

Implementation of Gender Equality policy

The following list identifies the key influences on the work of the Division

- The Government set the objective of achieving a minimum of 40% of both men and women in direct Ministerial appointments to State Boards. This is monitored through the collection by this Division of data from Government Departments periodically.
- Towards 2016 - commitments to Gender Equality
- Sections of the following in relation to issues relating to gender equality and factors which impact upon such equality.
 - EU Treaties;
 - EU Directives in relation to gender equality and
 - EU Council Conclusions
- Recommendations from the United Nations in the context of
 - the UN Platform for Action and Beijing Declaration (following the Fourth World Conference on Women, 1995),
 - the Commission on the Status of Women, and
 - the Convention on the Elimination of Discrimination against Women.
- Recommendations of the Council of Europe in relation to gender equality and related issues.

National Development Plan 2007 – 2013/ Equality for Women Measure

Arrangements are currently being made for the implementation of a grant scheme in support of positive actions to foster gender equality. This is a measure of the National Development Plan 2007 – 2013 and of the Human Capital Investment Operational Programme.

National Women's Strategy 2007 – 2016

The National Women's Strategy 2007 – 2016 was published in April 2007. The Strategy represents an "All of Government" approach to address gender equality and the needs and role of women in all sectors of Irish society under the three key themes of

- Equalising socio-economic opportunity for women
- Ensuring the well-being of women
- Engaging Women as Equal and Active Citizens

The Strategy will be implemented through co-ordinated efforts of all relevant Government Departments under the guidance of an Inter-Departmental Committee.

In the event that it is decided that elements of the Strategy should be implemented by external bodies, invitations to such bodies to compete for contracts will be posted in the media, on the Department's website and on the Government contracts web-site as appropriate. Information to be provided would also include details of the selection criteria and funding arrangements.

2.14 HUMAN RESOURCES DIVISION

Rules, procedures, practices, guidelines and interpretations used in making decisions, determinations or recommendations

- (a) Relevant Government Decisions
- (b) Employment law legislation including case law
- (c) In making decisions, determinations or recommendations concerning conditions of service reference is made to Department of Finance circulars and letters concerning conditions of service which are contained in the Personnel Code at www.codpearsanra.ie
- (d) Specific Department of Finance sanctions and directions
- (e) Work Processes Database - this database holds a separate work procedure in respect of tasks carried out in Human Resources Division. The database serves as a reference to all staff members in carrying out a task within Human Resources Division
- (f) The ongoing training and development of staff in the Human Resources Division through seminars, courses and conferences to ensure that staff are familiar with current best practice in the area of Industrial Relations and Human Resource Management. Reference is also made Department of Finance website at www.finance.ie
- (g) Networking by the Personnel Officer, the Training Officer and the Employee Assistance Officers by attending and participating in cross-Departmental network meetings.

Employee Assistance Service

- (a) Department of Finance Circular 35/97 defines the functions and duties of Employee Assistance Officers.
- (b) Employee Assistance Officers operate to the Code of Ethics of their professional association AWEAC (Association of Welfare and Employee Assistance Counsellors)

Corporate Learning Unit

- (a) Programme guidelines differ depending on the course involved. Generally speaking courses are designed for particular grades or areas of work.
- (b) In relation to refund of fees for educational courses, guidelines are laid down by the Department of Finance Circular 21/78.

2.15 INFORMATION TECHNOLOGY DIVISION

The following is a listing of the rules and practices observed by the Division in its operations.

Rules and Practices

- A. Procurement of Goods or Services under Government Contracts Committee Procedures
- B. Procurement of Goods or Services under European Union (EU) Public Procurement Directives

A. Procurement of Goods or Services under Government Contract Committee Procedures

1. When the IT Division identifies a need for works, supplies or services, the likely cost of such contracts is estimated to determine whether an EU procurement procedure or a non-EU procurement procedure must be followed, as EU Directives become operational according to financial thresholds. The procurement of goods and services below the threshold levels defined in EU Directives is governed in the first instance by the delegated financial sanctions agreed as part of the Administrative Budget Agreement signed with the Department of Finance. In all cases, however, the guidelines laid down by the Government Contracts Committee are observed.
2. Competitive tendering is always used, unless exceptional circumstances apply, and tendering is open to competition from as wide a range of firms as practicable. Competitive tendering may occur according to open or restricted procedures, but in the case of the latter the number of firms from which tenders are received is not less than five, if possible, and is decided by reference to the requirements of the project. In all cases, however, every effort is made to obtain at least three realistic tenders.
3. Depending on the value of the goods or services required, Requests for Tender (RFTs) may be made in writing, facsimile or by telephone, with the latter form used for lower-value items. Where practical, written RFTs are published on the government procurement portal, www.e-tenders.gov.ie. The prepared RFT provides as detailed a specification as possible of the goods or services required, as well as any maintenance, delivery, insurance or other requirements. An explanation of how tenders are to be evaluated is also provided, using the evaluation criteria of either the lowest-cost suitable tender or the most economically advantageous tender.

4. In the case of written tenders, all tenders received are opened together at the date and time set for receipt of tenders and occurs in the presence of at least two officials of the Department, one of whom is always of at least Higher Executive Officer or equivalent grade.
5. When awarding a contract, evidence from the Revenue Commissioners that the tenderer's tax affairs are in order is provided (usually in the form of a tax clearance certificate) within a reasonable period, and this condition is always stated in the RFT. Finally, all unsuccessful tenderers are informed as soon as practicable of the outcome of the tendering process, and any queries in this regard are answered in such a manner as to ensure that information is not revealed about other tenderers which could enable the price or other details of these tenders to be identified.

B. Procurement of Goods or Services under European Union Public Procurement Directives

1. In relation to public procurement, European Union (EU) Directives set legal obligations on contracting authorities as part of its Internal Market Programme.
2. When the IT Division identifies a need for works, supplies or services, the likely cost of such contracts is estimated to determine whether an EU procurement procedure or a non-EU procurement procedure must be followed, as EU Directives become operational according to financial thresholds. However, contracts below the various thresholds may also be covered by the Directives.
3. Once it is established that an EU procurement procedure must be followed, a choice has to be made between three recognised tendering procedures - open, restricted and negotiated. Only one procedure can be used in any given tender process - usually the open procedure, which is the preferred option of the European Commission.
4. Before any contract notice is submitted to the Official Journal of the European Communities (OJEC), the IT Division submits a Prior Information Notice (PIN) to OJEC, the function of which is to set out Divisions contract proposals for the next 12 months, above the given financial thresholds. The insertion of a PIN in OJEC also shortens the minimum timescale that must be given to prospective tenderers to submit their tenders in response to a contract notice.
5. Once the Division has devised detailed specifications for goods or services required in the form of a 'Request for Tender' document, a Contract Notice is then submitted to OJEC. This notifies potential tenderers that detailed 'Request for Tender' (RFT) documentation is available on request. A notice is also published subsequently on the government procurement portal, www.e-tenders.gov.ie, where possible.

6. Once tenders are received, a decision is made on which bid to accept on the basis of either the lowest price only or the most economically advantageous tender (using various criteria such as price, period for completion, running costs, profitability, technical merit etc.). It is obligatory to state explicitly in the 'Request for Tender' documentation or in the Contract Notice which of these two criteria will be used in the selection process.
7. When the contract is awarded, information as to the successful tenderer must be notified to the European Commission not more than 48 calendar days after the award of the contract in question in the form of a Contract Award Notice submitted to OJEC. Unsuccessful bidders, if they seek reason for their non-acceptance, must be supplied with that information in writing.

2.16 INTERNAL AUDIT UNIT

Internal Audit Requirements and Practices

The guidelines relating to the standards to be followed by Internal Audit are outlined in the Department of Finance's publication "Internal Audit Standards". The Department may also refer as appropriate to the standard and guidelines issued by the Irish District of the Institute of Internal Auditors, the Institute of Chartered Accountants in Ireland and other appropriate professional bodies.

The "Internal Audit Standards" in published form is available from the Government Publications Sales Office.

2.17 INTERNATIONAL POLICY DIVISION

There is no contribution from International Policy Division in this Reference Manual. The role of this Division is mainly a co-ordinating one, dealing principally with other Divisions, staff in the Permanent Representation in Brussels and the Department of Foreign Affairs, and has little, if any contact with the public. There are therefore no relevant rules, practices, procedures in relation to certain decisions, determinations, or recommendations with respect to the rights, privileges, benefits, obligations, penalties or sanctions which members of the public may be entitled to or subject.

2.18 IRISH NATURALISATION & IMMIGRATION SERVICE (INIS)

Primary Legislation

Refugee Act, 1996 (as amended by Section 11(1) of the Immigration Act, 1999 and Section 9 of the Illegal Immigrants (Trafficking) Act, 2000, Section 7 of the Immigration Act, 2003, Section 16 of the Immigration Act 2004 and Section 75 and Schedule 6 Part 15 of the Health Act, 2004).

Irish Nationality and Citizenship Act, 1956 (S.I. No. 26 of 1956)

Irish Nationality and Citizenship Act, 1986 (S.I. No. 23 of 1986)

Irish Nationality and Citizenship Act, 1994 (S.I. No. 9 of 1994)

Irish Nationality and Citizenship Act, 2001 (S.I. No.15 of 2001)

Irish Nationality and Citizenship Act, 2004 (S.I. No 38 of 2004)

Domicile and Recognition of Foreign Divorces Act, 1986 (S.I. No. 24 of 1986)

Refugee Act, 1996 (S.I. No. 17 of 1996)

Aliens Act 1935 (SI No. 14 of 1935)

European Communities Act 1972 (No. 27 of 1972)

Secondary Legislation/Statutory Instruments

Refugee Act 1996 (Safe Countries of Origin) Order 2003: S.I. No. 422/2003.

Refugee Act 1996 (Safe Countries of Origin) Order 2004: S.I. No. 714/2004.

Refugee Act 1996 (Section 22) Order 2003: S.I. No. 423/2003.

Refugee Act (Section 22) (Amendment) Order 2004: S.I. No. 500/2004.

Refugee Act 1996 (Appeals) Regulations 2003: S.I. No. 424/2003.

Refugee Act 1996 (Section 24(1)) (Commencement) Order, 1996: S.I. No. 290/1996.

Council Regulation (EC) No. 2725/2000 of 11 December 2000.

Council Regulation (EC) no. 407/2002 of 28 February 2002.

Refugee Act, 1996 (Sections 1,2,5,22 and 25) (Commencement) Order, 1997: S.I. No 359 of 1997.

Refugee Act 1996 (Section 6 and First Schedule) (Commencement) Order, 2000: S.I. No 8 of 2000.

Refugee Act 1996 (Sections 14 and 15 and Second Schedule (Commencement) (No. 2) Order, 2000: S.I. No. 308 of 2000.

Refugee Act 1996 (Establishment Day) Order, 2000: S.I. No 309 of 2000.

Refugee Act 1996 (Section 23)(Commencement) (No. 3) Order, 2000: S.I. No 341 of 2000.

Refugee Act 1996 (Appeals) Regulations, 2002: S.I. No 571 of 2002.

Refugee Act, 1996 (Places and Conditions of Detention) Regulations, 2000: S.I. No. 344 of 2000.

Refugee Act, 1996 (Application Form) Regulations 2000: S.I. No 345 of 2000.

Refugee Act, 1996 (Temporary Residence Certificate) Regulations 2002: S.I. No. 426 of 2002.

Refugee Act, 1996 (Travel Document) Regulations, 2000: S.I. No 347 of 2000.

Refugee Act, 1996 (Transitional) Regulations, 2000: S.I. No. 348 of 2000.

Refugee Act 1996 (Commencement) Order, 2000: S.I. No 365 of 2000.

EU Treaty Protocol on asylum for nationals of Member States of the European Union.

European Communities (Eligibility for Protection Regulations) 2006.

Irish Nationality and Citizenship Regulations, 1956 (S.I. No. 216 of 1956)

Irish Nationality and Citizenship Regulations, 1986 (S.I. No. 261 of 1986)

Irish Nationality and Citizenship Regulations, 2002 (SI. No.567 of 2002)

Irish Nationality and Citizenship (Fees) Regulations, 1993 (S.I. No. 89 of 1993)

Irish Nationality and Citizenship (Fees) Regulations, 1996 (S.I. No. 291 of 1996)

Refugee Act, 1996 (Section 24(1)) (Commencement) Order, 1996 (S.I. No. 290 of 1996)

European Communities(Amendment Act 2003) (S.I. No 25 of 1993)

Immigration Act 2003 (S.I. No 26 of 2003)

Immigration Act 2004 (S.I. No 24 of 2004)

Illegal Immigrants (Trafficking) Act, 2000

S.I. No. 518 of 2006 - European Communities (Eligibility for Protection Regulations) 2006

S.I. No. 422 of 2003 - Refugee Act 1996 (Safe Countries of Origin) Order 2003

S.I. No. 423 of 2003 - Refugee Act 1996 (Section 22) Order 2003

S.I. No. 500 of 2004 - Refugee Act (Section 22) (Amendment) Order 2004

S.I. No. 714 of 2004 – Refugee Act (Safe Countries of Origin) Order 2004

Irish Nationality and Citizenship Act, 2004

European Convention on Human Rights Act, 2003

The Criminal Justice (United Nations Convention Against Torture) Act, 2000

Aliens Order, 1946 (S.R. & O. No. 395 of 1946)

Aliens (Amendment) Order, 1975 (S.I. No. 128 of 1975)

Aliens (Amendment) Order, 1978 (S.I. No. 351 of 1978)

Aliens (Amendment) Order, 1985 (S.I. No. 154 of 1985)

Aliens (Amendment) Order, 1986 (S.I. No. 31 of 1986)

Aliens (Amendment) Order, 1987 (S.I. No. 340 of 1987)

Aliens (Amendment) Order, 1988 (S.I. No. 55 of 1988)

Aliens (Amendment) Order, 1989 (S.I. No. 297 of 1989)

Aliens (Amendment) Order, 1990 (S.I. No. 53 of 1990)

Aliens (Amendment) (No. 2) Order, 1990 (S.I. No. 78 of 1990)

Aliens (Amendment) Order, (No. 3) 1990 (S.I. No. 142 of 1990)

Aliens (Amendment) Order, (No. 4) 1990 (S.I. No. 228 of 1990)

Aliens (Amendment) Order, 1991 (S.I. No. 219 of 1991)

Aliens (Amendment) Order, 1992 (S.I. No. 326 of 1992)

Aliens (Amendment) Order, (No. 2) 1992 (S.I. No. 348 of 1992)

Aliens (Amendment) Order, (No. 3) 1992 (S.I. No. 442 of 1992)

Aliens (Amendment) Order, 1993 (S.I. No. 28 of 1993)

Aliens (Amendment) (No. 2) Order, 1993 (S.I. No. 90 of 1993)

Aliens (Amendment) (No. 3) Order, 1993 (S.I. No. 100 of 1993)

Aliens (Amendment) (No. 4) Order, 1993 (S.I. No. 340 of 1993)

Aliens (Amendment) (No. 5) Order, 1993 (S.I. No. 271 of 1993)

Aliens (Amendment) (No. 6) Order, 1993 (S.I. No. 361 of 1993)

Aliens (Amendment) Order, 1994 (S.I. No. 9 of 1994)

Aliens (Amendment) (No. 2) Order, 1994 (S.I. No. 94 of 1994)

Aliens (Amendment) (No. 3) Order, 1994 (S.I. No. 193 of 1994)

Aliens (Amendment) (No. 4) Order, 1994 (S.I. No. 311 of 1994)

Aliens (Amendment) (No. 5) Order, 1994 (S.I. No. 326 of 1994)

Aliens (Amendment) Order, 1995 (S.I. No. 240 of 1995)

Aliens (Amendment) (No. 2) Order, 1995 (S.I. No. 314 of 1995)

Aliens (Amendment) Order, 1996 (S.I. No. 69 of 1996)

Aliens (Amendment) (No. 2) Order, 1996 (S.I. No. 89 of 1996)

Aliens (Amendment) (No. 3) Order, 1996 (S.I. No. 120 of 1996)

Aliens (Amendment) (No. 4) Order, 1996 (S.I. No. 251 of 1996)

Aliens (Amendment) (No. 5) Order, 1996 (S.I. No. 301 of 1996)

Aliens (Amendment) Order, 1997 (S.I. No. 86 of 1997)

Aliens (Amendment) (No. 2) Order, 1997 (S.I. No. 280 of 1997)

Aliens (Amendment) (No. 3) Order, 1997 (S.I. No. 277 of 1997)

Aliens (Amendment) (No. 4) Order, 1997 (S.I. No. 361 of 1997)

Aliens (Amendment) (No. 5) Order, 1997 (S.I. No. 362 of 1997)

European Communities (Aliens) Regulations 1977 (S.I. No. 393 of 1977)

European Communities (Right of Residence for Non-Economically Active Persons) Regulations 1997 (S.I. No. 57 of 1997)

European Communities (Aliens) (Amendment) Regulations, 1985 (S.I. No. 39 of 1985)

Dublin Convention (Implementation) Order 1997 (S.I. No. 360 of 1997)

Refugee Act, 1996 (Sections 1, 2, 5, 22 and 25) (Commencement) Order, 1997 (S.I. No. 359 of 1997)

Relevant judgments

Herbert v Minister for Justice and others [High Court, 1988 No. 378; (Costello J.)
1 December 1995]

Mishra v Minister for Justice and others [High Court, 1994 No. 290 JR; (Kelly, J)
21 May 1996]

	FULL TITLE OF CASE	REFERENCE Plus Official Citation if known
i	Pok Sun Shum	Reported as: Costello J, High Court [1986] ILRM 593
ii	Osig Benba Martin Osheku, Sunday Osheku, Caroline Osheku (an infant)	Reported as: Gannon J, High Court [1986] IR 733
iii	Ahmed Hussein Fakh, Ali Ismail Hamdan, Mohammed Anis Slim	Reported as: [1993] 2 IR 406; [1993] ILRM 274 O'Hanlon J
iv	Cing Sze Tang, Kap Sun Tang, Lin Choi Leung	Reported as: [1996] 2 ILRM 46
v	Bankole Lawrence Fajujonu, Zohra Fajujonu, Miriam Fajujonu (an infant suing by her next friend Breda O'Dwyer)	Reported as: [1999] 4 IR 26; [1999] 4 IR 42; [2000] 1 ILRM 1 (Supreme Court, 20th May 1999)
vi	Sorin Laurentiu	Reported as: [1999] 4 IR 27; [2000] 1 ILRM 1 (Supreme Court, 20th May 1999)
vii	Olga Anisimova	Reported as: [1998] IR 186 (High Court, 18th February

		1997) Morris J, 18th February 1997 1996 JR/104 High Court ref Supreme Court Murphy J, 28th November 2001
viii	D. P.	Reported as: [2001] 1 IR 492 (High Court, 18th August 2000) Finnegan J, 18th August 2000. 2000 JR/447 High Court ref
ix	Article 26 and the Illegal Immigrants (Trafficking) Bill 1999	Reported as: [2000] 2 IR 360 (Supreme Court, 28th August 2000)
x	Toma Adam and Florin Iordache	TA - 2000 JR/026 } FI - 2000 JR/226 } High Court JR refs Reported as: [2001] 2 ILRM 452 (Supreme Court, 5th April 2001)
xi	P,L, B	P - 2000 JR/596 } L - 2000 JR/758 } High Court JR refs B - 2000 JR/697 } Reported as: [2002] 1 ILRM 16 (High Court 2nd January 2001, Supreme Court 30th July 2001)
xii	Gabrel (2001 JR/76) UNREPORTED. Finnegan J (as he then was), 15th March 2001.	(2001 JR/76) UNREPORTED. Finnegan J (as he then was), 15th March 2001.
xiii	Benson and Salim	UNREPORTED SC Appeal Ref 107/2001 and 115/01 for Benson SC Appeal Ref 164/2001 for Salim
xiv	G.K., M.M., Z.M. (an infant applying by her father and next friend G.K.) and P.K. (an infant applying by her father and next friend GK.)	Reported as: [2002] 1ILRM 401 (Supreme Court, 17th December 2001) Hardiman J., Supreme Court 17th December 2001
xv	Baby O. (suing by her next friend and mother I.A.O.) and I.A.O.	UNREPORTED (Supreme Court, 6th June 2002) 2001 JR/801 High Court ref. Recorded as IESC 53 (6th June 2002) by BAILII but that is not an official Irish law journal recording of the judgment.
xvi	LOBE & OSAYANDE	UNREPORTED (Supreme Court, 23rd Jan 2003) 2001 JR/658 } 2001 JR/659 } High Court refs SC Appeal refs 109/02 and 108/02 Keane CJ (30th January 2002)

		BAILII cite [2002] IESC 4 but that is not an official Irish law journal record
xvii	Bola Funmi Ojo	UNREPORTED (High Court, 8th May 2003) Finlay Geoghegan J, 8th May 2003 2003 SS/265 } 2003 JR/103 } High Court refs
xvii i	Sava, Hrickova, Goncescu	UNREPORTED High Court: Smyth J, 25th Jun 2002 Supreme Court July 2003

- (i) Fajujonu and others V Minister for Justice, Ireland and the Attorney General [1984 No. 9203P: SC No. 387 of 1987]
- (ii) Fakih and others V Minister for Justice, Ireland and the Attorney General [High Court, 1992 No. 14 JR (O'Hanlon) 6 March 1992]
- (iii) Gutrani V Minister for Justice, Ireland and the Attorney General [Supreme Court No. 173/92; (McCarthy J) 2 July, 1992]
- (iv) Kwaeder V Minister for Justice, Ireland and the Attorney General [High Court, Judicial Review No. 276 JR 1994; (Geoghegan J) 11 October 1994]
- (v) Tang and others V Minister for Justice, Ireland and the Attorney General [Supreme Court, Judicial Review JR 327/94 (Hamilton C.J.) 19 December 1995]
- (vi) Anisimova and others V Minister for Justice, Ireland and the Attorney General [Supreme Court, Judicial Review JR No. 104/96 (Murphy J) 28 November 1997].

Title of Case	Reference
Pok Sun Shum v. Ireland, The Attorney General and The Minister for Justice	[1986] ILRM 593 (28 June 1985)
Lobe & Osayande v. Minister for Justice, Equality and Law Reform	[2003] IESC 3 (23 January 2003)
Baby O v. Minister for Justice, Equality and Law Reform	[2002] IESC 44 (06 June 2002)
Fajujonu v. Minister for Justice, Ireland and The Attorney General	[1987] IEHC 2; [1990] 2 IR 151 (Supreme Court 08 December 1989)
Laurentiu v. Minister for Justice, Equality and Law Reform	[1999] IESC 47; [1999] 4 IR 26; [2000] 1 ILRM 1 (Supreme Court 20 May 1999)
Osheku v. Ireland, The Attorney General and The Minister for Justice	[1986] IR 733 (27 June 1986)
Bode (and related cases) v. Minister for Justice, Equality and Law Reform & Ors	[2007] IESC 62 (Supreme Court 20 December 2007)
P, L, B v. Minister for Justice, Equality and Law Reform	[2001] IESC 107; [2002] 1 ILRM 16 (Supreme Court 30 July 2001)
Kouaype v. Minister for Justice, Equality and Law Reform & Ors	[2005] IEHC 380 (Supreme Court 09 November 2005)
Zheng Wu v. Minister for Justice, Equality and Law Reform	[2002] IEHC 163 (25 January 2002)
Izevbekhai v. Minister for Justice,	Unreported Judgment, High Court, Feeney

Equality and Law Reform	J., 30 th January 2008
Kozhukarov v. Minister for Justice, Equality and Law Reform	[2005] IEHC 424 (14 December 2005)
Agbonlahor & Ors v. Minister for Justice, Equality and Law Reform and The Attorney General	[2006] IEHC 56; [2007] IEHC 166 (18 April 2007)
Dada v. Minister for Justice, Equality and Law Reform	[2006] IEHC 166 (31 January 2006)
P(R) & Anor v. Minister for Justice, Equality and Law Reform	[2004] IEHC 223 (17 June 2004)
Kitembo v. Minister for Justice, Equality and Law Reform	Unreported Judgment, High Court, Birmingham J., 20 th July 2007
Hila & Djolo v. Minister for Justice, Equality and Law Reform	Unreported Judgment, High Court, Feeney J., 27 th July 2007

2.19 IRISH YOUTH JUSTICE SERVICE

The procedures and practices operated by the Irish Youth Justice Service are used by all areas within the Service with specific procedures used by individual areas as follows:

Legislation

Children Act 2001

Criminal Justice Act 2006

General

Report on the Youth Justice Review

Garda Youth Diversion Project Guidelines

Programme for Government

National Children's Strategy

National Development Plan

Towards 2016

National Youth Justice Strategy (to be published shortly)

Miscellaneous

Cabinet Procedures Instructions

Public Financial Procedures

Strategy Statements and Annual Reports of the Department of Justice, Equality and Law Reform

Customer Service Action Plan

2.20 IRISH PRISON SERVICE

2.20.1 Corporate Services Directorate

Below are listed all rules, practices and procedures followed by the Corporate Services Directorate in relation to certain decisions, determinations or recommendations with respect to the rights, privileges, benefits, obligations, penalties or sanctions to which members of the public are or may be entitled or subject.

Listing

Prompt Payments Act, 1997

Secondary Legislation / Statutory Instruments

Procurement Directives / Rules / Guidelines

An Outline of Government Contracts Procedures

Public Procurement

European Union Procurement Directive 93/36/EEC (Supplies) and 92/50/EEC (Services)

Miscellaneous

Government Procedures

Government Financial Procedures

Additional Information in relation to the functions carried out by the Corporate Services Directorate

Co-ordination Function

The Corporate Services Directorate co-ordinates the Irish Prison Service response to Government Memoranda, general correspondence and replies to Parliamentary Questions where two or more Directorates are involved. Tracking systems are in place to record the details and the processing of all correspondence received regarding the above.

2.20.2 Estates Management Directorate

The aspects of the Division's work impacted upon by the requirements of Section 16 of the Act is that relating to the Procurement of Goods and Services relating to the issues listed at Paragraph 2 under Section 15 of the Act. In this regard, please see below a listing and description of the rules and practices followed by this Directorate in relation to certain decisions, determinations or recommendations with respect to the rights, privileges, benefits, obligations penalties or other sanctions which members of the public, i.e. commercial suppliers, are or may be entitled or subject.

1. Procurement of goods or services under Government Contracts Committee Procedures.
2. Procurement of goods or services under EU Public Procurement Directives.

Rules and practices

1. Procurement of Goods or Services under Government Contract Committee Procedures

(i) When the need for works, supplies or services are identified, the security nature of the works etc. are determined and the likely cost of such contracts are estimated to decide whether an EU procurement procedure or a non-EU procurement procedure is appropriate. All procurements of goods and services are governed in the first instance by the delegated financial sanctions agreed with the Department of Finance. In all cases, however, the guidelines laid down by the Government Contracts Committee are observed.

(ii) Competitive tendering processes of an open or restricted nature are always used, unless exceptional circumstances apply. Generally, tendering is open to competition from as wide a range of firms as practicable. Competitive tendering may occur according to open or restricted procedures, but in the case of the latter the number of firms from which tenders are received is not less than five, if possible, and is decided by reference to the requirements of the project. In all cases, however, every effort is made to obtain at least three realistic tenders.

(iii) Depending on the value of the goods or services required, Requests for Tender (RFTs) may be made in writing or facsimile with the latter form used for lower-value items. The prepared RFT provides as detailed a specification as possible of the goods or services required, as well as any maintenance, delivery, insurance or other requirements. An explanation of how tenders are to be evaluated is also provided, using the evaluation criteria of either the lowest-cost suitable tender or the most economically advantageous tender. In the normal course the Irish Prison Service (IPS) would impose additional conditions on contractors, i.e. the ability to produce adequate insurance and a bond. Security Clearance for all site personnel is also required. The IPS, in all cases, reserves the right not to accept the lowest or any tender.

(iv) In the case of written tenders, all tenders received are opened together at the date and time set for receipt of tenders and occurs in the presence of at least three persons including two members of staff of the Division.

(v) When awarding a contract, evidence from the Revenue Commissioners that the tenderer's tax affairs are in order is required (usually in the form of a tax clearance certificate) within a reasonable period, and this condition is always stated in the RFT. Finally, all unsuccessful tenderers are informed as soon as practicable of the outcome of the tendering process, and any queries in this regard are answered in such a manner as to ensure that sensitive commercial information is not revealed about other tenderers [which could enable the price or other details of these tenders to be identified].

2. Procurement of Goods or Services under European Union Public Procurement Directives

(i) In relation to public procurement, European Union (EU) Directives set legal obligations on contracting authorities as part of its Internal Market Programme.

(ii) When the need for supplies or services is identified the likely cost of such contracts is estimated to decide whether an EU procurement procedure or a non-EU procurement procedure must be followed.

(iii) Once it is established that an EU procurement procedure must be followed, a choice has to be made between three recognised tendering procedures - open, restricted and negotiated. Only one procedure can be used in any given tender process - usually the restricted procedure, on the grounds of security.

(iv) Once the Directorate has produced detailed specifications for goods or services required in the form of a 'Request for Tender' document, a Contract Notice is then submitted to OJEC. This notifies potential tenderer's that 'Request for Tender' documentation is available on request from the Directorate..

(v) Once tenders are received, the Directorate decide on which bid to accept on the basis of either the lowest price only or the most economically advantageous tender (using various criteria such as price, period for completion, running costs, profitability, technical merit, etc.). It is obligatory to state explicitly in the 'Request for Tender' documentation or in the Contract Notice which of these two criteria will be used in the selection process.

(vi) When the contract is awarded, information as to the successful tenderer must be notified to the European Commission not more than 48 calendar days after the award of the contract in question in the form of a Contract Award Notice submitted to OJEC. Unsuccessful bidders, if they seek reason for their non-acceptance, must be supplied with that information in writing.

2.20.3 Finance Directorate

Below are all the rules, practices & procedures followed by the Finance Directorate in relation to certain decisions, determinations or recommendations with respect to the rights, privileges, benefits, obligations, penalties or sanctions to which members of the public are or may be entitled or subject.

Finance Directorate processes:

- (a) claims for compensation for personal injury and/or material damage incurred on prison property or involving prison vehicles;
- (b) loan applications from Prison Service staff for installation of security alarms;
- (c) requests for contribution towards funeral expenses of persons who die in custody;
- (d) certain miscellaneous civil compensation claims not covered by the above categories;
- (e) applications for escorts from prisons for civil litigation purposes.

Compensation Claims

Claims for compensation in respect of personal injuries arising from accident/incident or material damage incurred on prison property or involving prison vehicles are received by the Irish Prison Service (Finance Directorate) Claims Unit from the Plaintiff's solicitor, the Chief State Solicitors Office (CSSO) or from the Governor of the prison.

An acknowledgement issues and each claim is accorded a separate file. The name of the claimant, together with the file reference and the month in which the claim was lodged is registered. Details are also kept on a paper folder of each claim in order of receipt.

New compensation claims lodged are transferred to the State Claims Agency for case management. Documents transferred include solicitor's letter and Incident Report Form, completed and forwarded by the relevant Institution.

The Irish Prison Service Claims Unit liaises closely with the State Claims Agency on cases managed by them on behalf of the Irish Prison Service.

A standardised incident/accident report form including the observations of the prison authorities (Governor), including statements from staff, witness reports, sketches, etc., are requested in writing by the Claims Section together with further precise information in the event that the allegations contained in the solicitor's letter are vague. On receipt of relevant information /reports they are examined and further detailed information is sought, if deemed necessary. The reports are copied and originals sent to the CSSO with a covering minute detailing the incident. Additional details, if requested, are obtained from the Governor and forwarded to the CSSO. Occasionally, the CSSO will advise the Claims Section to reply directly to the plaintiff's solicitor. In the case of claims involving prison vehicles, damage to third party vehicles is inspected by a

professional damage assessor retained by the State Claims Agency when an estimate for repairs is received. This is to ensure that the amount claimed is reasonable.

Where the plaintiff is a prisoner and it is desired by either his solicitor or the CSSO that a medical/specialist appointment be arranged, appropriate security clearance might be required in respect of the medical person. If the appointment is to take place outside the prison appropriate Departmental clearance will be required and an undertaking obtained from the plaintiff's solicitor undertaking to discharge the escort costs. On receipt of Counsel's advice on liability and quantum a Claims Section official prepares a submission for the attention of his/her superior recommending either that the case should be contested or settled prior to a court hearing. The policy is to contest these claims unless the State is considered clearly liable.

When the CSSO or the local State Solicitor requests payment in respect of a case that has been settled or where an award has been determined by a court, a payable order is requested from Financial Shared Services in Killarney to cover the award/settlement and costs. The payable order is sent directly to the CSSO or local State Solicitor by Financial Shared Services. The result of the case is listed on the paper folder and entered on the computerised database. The same system of payment applies to cases managed by the State Claims Agency where payments are made based on reimbursement requests submitted by the Agency.

Loan Applications from prison service staff to install security alarms

Applications may be submitted by prison service staff for an interest-free loan (up to €1000) for the installation of security alarms in their homes. The application must be approved by the Governor and an authorisation form signed by the officer and witnessed by another officer from the prison, authorising Financial Shared Services to deduct a designated amount from the officer's salary on a weekly basis until the loan is repaid. The authorisation also includes an undertaking that in the event of the officer leaving the Prison Service that s/he will repay the loan in full. The application together with the authorisation form is forwarded to the Financial Shared Services for the issue of a payable order. Each application is noted in an appropriate paper file.

Funeral Expenses of Persons who Die in custody

An application for the payment of funeral expenses may be received from the relatives of a person who dies in custody. In such event, a report is obtained from the Governor of the prison detailing the circumstances of the death in custody.

On receipt of an original invoice from the funeral directors, and being satisfied that a payment to defray funeral expenses is appropriate, Financial Shared Services is requested to draw up a payable order in favour of the funeral directors. A letter then issues to the relatives of the deceased prison informing them that payment has been made to the funeral directors on an ex-gratia basis without admission of liability.

Scheme of Compensation for Personal Injuries Criminally Inflicted on Prison Officers

1. Background

The Criminal Injuries Compensation Tribunal, established under the Scheme of Compensation for Personal Injuries Criminally Inflicted, may pay ex-gratia compensation in accordance with this Scheme in respect of certain personal injuries inflicted on a Prison Officer where the injury is directly attributable to a crime of violence or in circumstances arising from the action of the victim in assisting or attempting to assist the prevention of crime or the saving of human life. The injury must have been sustained within the State or aboard an Irish ship or aircraft on or after 1st April 1986.

2. Application of the Scheme

The Scheme applies to:

- a. the death of a Prison Officer who dies from injuries criminally inflicted on him/her on or after 1st April 1986.
- b. the death of a person who has previously been, but at the time of his/her death had ceased to be, a Prison Officer and dies from injuries criminally inflicted on or after the 1st April, 1986 because of anything previously done by him/her as a Prison Officer or merely because of his/her having been a Prison Officer; and
- c. personal injuries (not causing death) criminally inflicted on or after 1st April, 1986 on a Prison Officer;
- d. personal injuries (not causing death) criminally inflicted on or after 1st April, 1986 on a person who has previously been, but at the time when such injuries are inflicted has ceased to be a Prison Officer where such injuries are inflicted on such person because of anything previously done by him/her as a Prison Officer or merely because of his/her having been a Prison Officer.

The Tribunal is entirely responsible for deciding in any particular case whether compensation is payable under the Scheme, and, if so, the amount. There will be no appeal against or review of a final decision of the Tribunal.

3. Who can claim?

The Tribunal will consider claims for compensation made by or on behalf of -

- a. the Prison Officer who sustained the injury (the victim);
- b. any person responsible for the maintenance of the victim who has suffered pecuniary loss or incurred any expenses as a result of the victim's injury;
- c. where the victim has died as a result of the injury, any dependant of the victim, or if s/he has no dependant, any person who incurred expenses as a result of his/her death;
- d. where the victim has died otherwise than as a result of the injury, any dependant of the victim.

The Tribunal also considers claims in respect of injury received by a Prison Officer while actually on duty in certain circumstances, e.g. going to the assistance of a member of Garda Síochána, attempting to prevent a crime in a public place, or

attempting to prevent, in a public place, the escape of a person who had committed a crime, or the rescue of a person in custody, or attempting to save a human life.

4. Extent of Compensation

The nature and extent of compensation which may be awarded by the Tribunal will be subject to limitations and restrictions on the basis of damages awarded under the Civil Liability Acts except that compensation will not be payable:

- a. by way of exemplary, vindictive or aggravated damages;
- b. in respect of the maintenance of any child born to any victim of a sexual offence;
- c. in respect of loss or diminution of expectation of life; or
- d. where the victim has died, for the benefit of the victim's estate.

Where the victim has died otherwise than as a result of the injury the Tribunal may award compensation in respect of loss of earnings, expenses and liabilities incurred before the death but only to a dependant who would in the opinion of the Tribunal, otherwise suffer hardship. Compensation will be by way of lump sum payment, but it will be open to the Tribunal to make an interim award and to postpone making a final award in a case in which a final medical assessment of the injury is delayed.

5. When to apply

Applications for compensation to the Tribunal should be made as soon as possible but, except in exceptional circumstances, not later than three months after the event giving rise to the injury.

Applications should be made on the Tribunal's application form. This is obtainable from the Secretary to the Tribunal.

To qualify for compensation it will be necessary to indicate to the Tribunal that the offence giving rise to the injury had been the subject of criminal proceedings or that it was reported without delay to the Gardaí or to the relevant Governor or officer in charge of training.

6. Human Resources Directorate's functions in the area

The role of the Human Resources Directorate is quite minimal in this area. When the staff of Criminal Injuries Compensation Tribunal are processing claims made by Prison Officers regarding injuries they have received in the course of their duty (as outlined above) they will get in touch with this office requesting details of the incident, any loss of earnings, dates on which the officer was out sick, etc. These details are retrieved from the relevant Institution/Prison and Pay Section and forwarded to the Tribunal for their attention.

Prison Officers' Medical Aid Society

The Vote for the Irish Prison Service includes provision for an annual Grant-in-Aid payment to the Prison Officers' Medical Aid Society. The annual provision is intended to be a contribution towards the pay, pension, social welfare contributions, equipment and accommodation costs of the Society, subject to appropriate sanction being obtained

from the Department of Finance. The annual accounts are submitted to the Director of Finance.

Since the expiry in 2005 of the previous funding agreement between the Irish Prison Service and the Prison Officers' Medical Aid Society, no new agreement has been concluded and no grant payments have been made.

Miscellaneous

Disposal of Obsolete/Surplus Stock

It is necessary to dispose of obsolete/surplus stock within the Prisons from time to time to reduce pressure on storage space and to offset the need for very significant write-offs after several years.

Disposal arises in two ways:

1. By request of the Prison (usually for a single item or small amount of items); or
2. Prison-wide surveys initiated by this Division.

Routine disposals

Prisons will seek sanction to write-off equipment or stock that is surplus to requirements. A general delegated sanction of €1250 from the Department of Finance applies in these cases. All disposals of assets are documented by the Prison Store. The reasons for disposal are documented and approved by the stores staff and a Governor, and then it is forwarded to Finance Directorate for final approval.

The prison should certify that the material is surplus to requirements and provide details of its purchases costs. Attempts are made to find an alternative use within the Prison service.

If this is not possible, the material can be written-off. Initially it should be offered for sale to a number of suitable firms, who should tender to purchase it. If it is not possible to obtain a buyer, the equipment can either be given to charity or destroyed. Adequate disclaimers are to be put in place to insure against any potential liability. Confidential goods/assets are not disposed of unless all information is removed and identification marks should be eliminated.

Prison-wide surveys

Levels of surplus stock in the prisons routinely are reviewed. This should be done as part of an overall approach of reducing stockholding costs and encouraging just-in-time purchasing. Prisons should be encouraged to avoid purchasing large amounts of items that have previously been written off.

A survey of all prisons is carried out which requested the following information regarding obsolete, surplus or slow moving stock;

- Item
- Description of quality
- Reason for obsolescence
- Approximate purchase price

These returns are amalgamated and the reasons for obsolescence are scrutinised. Where possible stock is transferred from one location to another. When entirely amalgamated, sanction is sought from the Department of Finance for sale or disposal (see also process description for asset registers).

Additional Hours System

A. Elimination of Overtime

In August 2005, prisons staff voted to accept the revised *Proposal for Organisational Change in the Irish Prison Service*.

The central element of the agreement is the replacement of overtime with a new additional hours system, which is broadly based on the concept of annualised hours. The agreement has seen the elimination of overtime working by prison staff.

The operation of the new additional hours system is managed by SORT (Staff and Operations Review Team), within the Human Resources Directorate of the Irish Prison Service.

B. Manual Re-Submissions

Each institution submits a weekly return of additional hours worked by staff, which is processed for payment by Finance Division in Killarney. Adjustments can be made by prisons themselves for up to 4 weeks but if there is a subsequent requirement to adjust the additional hours of a particular employee, a Manual Re-Submission request must be submitted by the relevant Governor to the Finance Directorate. Once endorsed by Finance Directorate, the form is forwarded to Finance Division in Killarney.

C. Additional Hours Write-Off

In return for the commitment from prisons staff to work additional hours, the Irish Prison Service guarantees payment for an agreed number of hours each year, irrespective of whether these hours are worked or not. At the end of each quarter, additional hours that were not worked during the period, and are not being carried forward, are written off and payments is made to the relevant staff. Finance Directorate monitors the level of such payments made at the end of each quarter.

Payments

Payments are authorised by individual prisons and Finance Directorate in accordance with Government accounting procedures and are forwarded to Finance Division in Killarney for payment.

The principles of Government Accounting are mainly derived from the Constitution, and from the institutional and financial relationships between parliament and the executive, which have been developed over the years. All administrators in Government Departments are responsible for managing and using state resources and detailed rules and procedures are laid down by the Department of Finance to ensure that this is achieved.

Prompt Payment of Accounts Act 1997

This Act, which came into effect on 1st January 1998, allows for the payment of interest to suppliers if payment for services rendered is not received by them within an agreed timeframe.

An EU wide law came into effect on 8 August 2002 to combat late payment in commercial transactions. The Regulations will, with some exceptions, apply to all commercial transactions in both the public and private sectors and amend the Prompt Payment of Accounts Act, 1997.

Prisons Vote

A. Calculation of Average Cost of Keeping an Offender

The average cost of keeping an offender is calculated annually as an aid to expenditure monitoring and also for public information purposes.

The cost per prisoner is based on the average daily number of offenders in those institutions for the year in question. The operational cost of each institution is based on actual running costs (i.e. pay, overtime, food, light and heat, maintenance, etc.). These costs include certain items that are fixed no matter what the number of offenders in custody, e.g. staffing numbers, utilities, etc. All headquarters and central service costs are allocated over the prison establishments for the purpose of this calculation. Capital expenditure is excluded from the calculation.

B. Co-ordination of Asset Register Process

Under the accrual accounting initiative it is necessary to maintain an asset register and to include a statement of assets in the appropriation account.

The following circulars discuss the accrual accounting initiative in detail:

- D/Finance circular 18/92
- D/Finance circular 1/95
- D/Finance circular letter of 23 February. '95
- D/Finance circular 1/96
- D/Finance circular 14/96
- D/Finance circular 19/96

Each Institution must therefore maintain an asset register of all assets exceeding €500 for IT assets and €1000 for non-IT assets in purchase value and record date of purchase, location, supplier, depreciation and disposal details. Assets are classified according to three depreciation categories:

Furniture, Fittings, and fax machines	10%
Equipment	20%
Motor Vehicles, plant and machinery	20%
Buildings	50%

Depreciation is on a straight-line-basis - items are depreciated in year of purchase but not in year of disposal. It is particularly important that all disposals are recorded.

Prisons are informed of any additional requirements/refinements to this process as they arise and are forwarded details of any assets ordered centrally (photocopiers) to enable them to maintain their records in good order.

C. Co-ordination of Liabilities for Appropriation Account

Under the accrual accounting initiative, it is now necessary to include liabilities, commitments and prepayments in the appropriation account, with a view to showing a more realistic picture of operating expenses.

The following circulars discuss the accrual accounting initiative in detail:

- D/Finance circular 18/92
- D/Finance circular 1/95
- D/Finance circular letter of 23 Feb. 95
- D/Finance circular 1/96
- D/Finance circular 14/96
- D/Finance circular 19/96

D. Preparation and co-ordination of briefing material/speeches in relation to financial issues

Briefing material and speeches/speaking notes are required by the Minister and Secretary in relation to the Estimates process and in relation to the review of the Appropriation Accounts.

E. Preparation of Profiles of Expenditure

Finance Directorate request monthly profiles of expenditure in advance each year. These profiles form the basis of returns of expenditure against profile to the Department of Finance during the course of the year and are also of internal value in monitoring expenditure in the light of seasonal variations.

General Procedures and specific Competitions

1. General Procedures

The Irish Prison Service (IPS) organises a number of tender competitions, for a varied range of supplies and services. In general terms, the IPS carries out its procurement function in line with the public Procurement guidelines 2004, as set out by the Department of Finance. The contract cost and nature of the items being procured dictates the type of procurement adopted.

The IPS uses the services of the Government Supplies Agency and the Office of Public Works for contracts for the supply of goods and services, which are common across the Government Departments and State Agencies.

Any person wishing to obtain information on tender competitions for supplies or services should contact:

**The Manager,
Central Procurement Unit
Finance Directorate
Irish Prison Service
IDA Business Park
Ballinalee Road
Longford**

1. Advertising

Advertisements for all contracts above €50,000 are published on the Irish Government e-tenders website (www.etenders.gov.ie). The site is the key reference point for potential suppliers and service providers. The practice of advertising in national and provincial newspapers has ceased, except in exceptional circumstances.

2. The Operation of Tender Competitions

Persons or companies who wish to express an interest in tendering for specific competitions are supplied with the tender documents through the website www.etenders.gov.ie when the tender is advertised thereon.

Each tenderer is advised of deadlines for:

- Requests for tender documents;
- Receipt of requests for clarification on the tender documents; and
- Receipt of completed tender documents

Responses to requests for clarification are disseminated to all interested parties via www.etenders.gov.ie. Tenders are opened in accordance with the Public Procurement Guidelines, 2004. Tenders received after the specific date are not accepted and are returned to sender unopened.

Marks are awarded in relation to the award criteria as set out in the call for competition. The IPS may carry out inspections on the highest ranked tenderers to ensure that the product or service complies with the tender requirements. All tenders are informed by the letter as to the success, or otherwise, of their tender.

3. Interaction with the Government Contract Committee (G.C.C)

Department of Finance Circular Ref; S9/10/00 dated 20 December, 2002 outlines revised procedures put in the place with effect from 1 January 2003 for the award of certain contracts. This circular states that it has been decided to dispense with the requirement for Departments to seek GCC approval contract award procedures. In future all procurement contracts which a Department proposes to award which exceed €25,000 in value (exclusive of VAT) and where no competitive process place should be reviewed within the Department, preferably by the Internal Audit Unit, or alternatively by an appropriate senior officer who is not part of the procurement process.

4. Procurement under EU Directives

The IPS organises a number of tender competitions where the anticipated contract value exceeds the EU threshold €137,000 for services and supplies contracts.

All advertising and notices are published on both the national procurement website www.etenders.gov.ie and the EU public procurement website <http://simap.eu.int> in accordance with EU Directives.

5. Calls for Competition

There are three possible tendering procedures, under EU procurement Directives, namely open, restricted and negotiated. The IPS has only used the open procedure, in any tender competition run under the EU Directives.

The format of advertising follows the model “call for competition” notices, as set out by Official Journal of the European Union (OJEU). The model notice includes, inter alia, details of contracting authority, delivery details, final date for receipt of tenders, persons authorised to be present at opening of tenders, information required from the contracting authority of the supplier, award criteria.

Contracts may be awarded based on either the lowest price or the most economically advantageous tender (MEAT). The IPS, if using the MEAT criteria states the criteria and weighting in descending order of importance in the Call for Competition

Completed award notifications are published in the OJEU and on the Irish Government procurement website www.etenders.gov.ie.

6. Contract Award Notices

Contract Award Notices are published in the OJEU. This requirement applies only to items that exceed the relevant thresholds for any particular product category or priority service category. Further details are in the “Public Procurement” (2004) and the relevant directives are 2004/17/EC and 2004/18/EC. SI 329 of 22 June 2006 transposed Directive 2004/18/EC into Irish Law.

The notice requires the following information; name of contracting authority, nature of award procedure, award criteria, number of tenders received, successful suppliers, nature of goods, price/ value of the contract and date the invitation to tender was published.

The notice is published in the OJEU and on the Irish Government procurement website www.etenders.gov.ie.

7. Statistical Report under EU Procurement Directives

The IPS is obliged to complete a periodical statistical return on public procurement contracts awarded under the EU thresholds of €278,000 and €137,000 only are required.

The Finance directorate of the IPS completes the report in respect of contracts for services and supplies awarded during the period under review.

Contracts negotiated by the Government Supplies Agency and the office of Public Works on behalf of the IPS are excluded from the return

Exemptions from Returns

Services contracts, which are exempt from the EU Services Directive, are listed at annex 1B of Council Directive 92/50/EEC as updated by Council Directive 97/52/EC of 13 October 1997. The IPS currently claims an exemption for contracts awarded in respect of the Dental service, because it is a non-priority service.

2.20.4 Human Resources Directorate

1. Annual Leave
2. Sick Leave
3. Career Breaks
4. Code of Discipline
5. Criminal Injuries Compensation
6. Employee Assistance Programme
7. Injury on Duty
8. Late Attendance
9. Maternity Leave/Adoptive Leave and Paternity Leave
10. Merit Awards
11. Miscellaneous
 - Circulation of D/Finance Circulars to Prisons
 - Department of Social Welfare Disablement Benefit Forms
 - Entitlement to Marriage Gratuity
 - Information on Recruitment/Career of a Prison Officer
 - Representations received on behalf of Prisons' Staff
12. Dismissals
13. Increments
14. Job-sharing
15. Payscale and allowances
16. Travel and Subsistence and Removal Expenses
17. Promotions Procedure
18. Recertification
19. Recruitment
20. Reinstatement
21. Staff Training and Development - Educational Refunds
22. Staff Training and Development - Administration
23. Transfers and Assignments
24. Department of Finance Quarterly Returns
25. Pensions Administration
26. Chaplaincy Services
27. Medical Services
28. Probationary Services
29. Social Welfare Contributions
30. Special Leave
31. Temporary Transfers
32. Industrial Relations

1. Annual Leave

Applications for annual leave for all prison staff excluding that of Prison Governors are dealt with locally in the Detail Office while applications for annual leave for general service staff serving in the Irish Prison Service Headquarters are dealt with in each Directorate.

Applications for annual leave by prison Governors are submitted to the Director of Human Resources, Human Resources Directorate for noting and his/her approval. The Clerical Officer will note the relevant Governor's file and return the leave sheet.

2. Sick Leave

1.

Relevant Circulars-DPS Circulars 4/75, 25/75, 34/76, 7/78, 25/78, Agreed Report No.2/89

The above Circulars, principally 25/78, deal with the issue of sick leave in the Civil Service, including the Prison Service.

2. Human Resources Directorate's functions

All of Human Resources Directorate's functions in relation to sick leave arise from the provisions of the above Circulars. These functions are as follows:

- a. It is this Directorate's responsibility to ensure that the provisions of the Circulars are being followed in each institution, e.g. are officers notifying their superior officers correctly; are medical certificates being submitted and do certificates contain as much details as required under the relevant circulars.
- b. If officers are being considered for confirmation of appointment, for establishment or for promotion, full account is taken of their sick leave and the extent and pattern of their sick absences. If any of these aspects is unsatisfactory, the officer concerned cannot be accepted as suitable.
- c. DPS 25/78 lays down the prescribed limits for uncertified sick leave absences. Should an officer exceed or regularly approach the limit the Director General of the Prison Service can decide at his discretion whether the privilege should be modified or withdrawn. This Directorate, in consultation with the Prisons, keeps a check on uncertified sick leave levels - see under heading "Uncertified Sick Leave" which outlines the procedures to be followed when dealing with uncertified sick leave.
- d. The Director General of the Prison Service has general discretion in whether sick leave is to be granted for an absence and whether it is to be with or without pay. The production of a medical certificate does not in itself entitle the officer to sick leave.
- e. This Directorate, in consultation with individual Prisons, also keeps an account of those officers who have availed of an amount of sick leave to be in danger of

exceeding the sick leave allowable. Appendix A to DPS Circular 25/78 at paragraph 1. provides that full pay during properly certified sick absence, provided there is no evidence of permanent disability for service, may be allowed up to a maximum of six months in one year and half-pay thereafter, subject to a maximum of twelve months' sick leave in any period of four years or less.

- f. This Directorate keeps a check on the sick absences of staff, particularly those in the early years of service, with a view to identifying tendencies towards unacceptable patterns and taking steps to eradicate them. Each Prison will return on a monthly basis statistics in relation to sick leave taken during that month.

3. Procedures for tackling sick leave

It should be stated that the procedures indicated below are subject to continuous review.

Regular meetings take place between Governors and Human Resources Directorate to review individual sick leave records. As a means of focusing on absenteeism, printouts showing the sick leave records of officers who have incurred more than 60 days sick leave in the previous four years, are discussed together with printouts showing the sick leave records of more recently recruited officers who have had more than 30 days sick leave in the previous four years. These figures do not indicate an acceptable level of sick leave: they are simply an administrative filter to focus on the more serious cases. Decisions are taken on how to tackle those officers whose records indicate absenteeism - which is defined as an excessive amount of sick days coupled with excessive absences. There is a choice of sanctions to be imposed viz.:-

Issue a warning. These warnings are of varying severity.

Withdraw privilege of uncertified sick leave for a specified period - usually a year.

Withdraw privilege of paid sick leave, both certified and uncertified, for a specified period - usually a year.

referral of officer to CMO.

recommend ill health retirement.

Recommend dismissal. In the case of a probationer, the Minister has power to dismiss. In the case of an established officer, the power of dismissal has been devolved to the 'Head of Department' under the Civil Service Regulations (Amendment) Act 2005.

4. Where privilege of paid sick leave is to be withdrawn

The discretion to grant sick leave without pay rests with the Director General of the Prison Service. When it is proposed, following consultation with the Governor, to award an officer sick leave without pay the officer is afforded the opportunity to make any submission he considers appropriate as to why such action should not be taken,

within 7 days of receipt of the letter. All documentation received is then submitted to the Director General for decision.

If the Director General decides to award sick leave without pay, notification of it is issued to the officer concerned via the Governor. This notification informs the officer of the consequences of the Director General's decision. If the privilege of sick leave without pay is withdrawn for a period of 12 months, the officer will have the opportunity to appeal the decision in respect of any particular absence during that period, within 14 days of notification from the Governor.

5. Appeals against the award of Sick Leave Without Pay

An officer awarded sick leave without pay for a particular absence is given fourteen days from receipt of the notification to appeal the decision. In certain circumstances, the time allowed may be extended.

- a. An appeal against sick leave without pay must be submitted via the Governor. The Governor forwards the appeal to the Human Resources Directorate for consideration by the Director General.
- b. If an appeal is not submitted within 14 days, the number of hours concerned should be entered by the Prison Staff on a Pay Stoppage Authorisation Form and transmitted by the Prison to Financial Shared Services, Killarney.
- c. Appeals are considered by the Minister unless the Director of Human Resources accepts that there is sufficient new information in the appeal to warrant a reversal of the Governor's decision. Where it is suggested that the appeal should be disallowed, a submission to the Minister is made in a standard format. If the Minister disallows the appeal, the officer is informed of the decision.
- d. If no appeal is received or if the Minister disallows an appeal, the number of hours of pay for the relevant absence is transmitted by the Prison to Financial Shared Services, Killarney, on the standard Pay Stoppage Authorisation form with Part A completed and signed by the Governor. Financial Shared Services will complete Part B of the form and return it directly to the Governor setting out the relevant amount of money, the manner in which the deductions from pay are to be made and the date of the first proposed deduction (not less than three weeks from the date of returning the communication to the Governor). This gives the Governor sufficient time to inform the officer of the amount and manner of the deduction from wages in accordance with the Payment of Wages Act, which requires the officer to be informed at least 7 days in advance of the first deduction taking place.
- e. The officer should sign to acknowledge receipt of the notification of the deduction from pay and a record should be kept on the officer's file in the Prison. If the officer is not available to receive the notification in person, the Governor should send the notification by registered post to the officer's home address sufficiently in advance to give at least 7 days advance notification. The

Act also requires that such deductions should take place within 6 months of the date(s) for which sick leave without pay was granted.

6. Constraints on the award of Sick Leave Without Pay

It is important to ensure that appropriate notification is given to officers in accordance with the terms of the Payment of Wages Act. A deduction from an officer's pay for this purpose must be implemented within six months of the date of the event to which it relates, i.e. the period of sick leave that has been awarded without pay. The officer must have at least 7 days advance notice of the amount of the deduction and the manner in which such deduction will be made. Where the officer is not available in the Prison for whatever reason, a registered letter is used to indicate that all reasonable steps were taken to ensure the officer would be notified on time.

7. Consultation with the Chief Medical Officer

The medical file of any officer may be sent to the Chief Medical Officer for advice on how to proceed in various circumstances:

- i. Recurring patterns of sick leave;
- ii. Suitability for promotion;
- iii. Absenteeism problem which may question officer's suitability for retention in the Service or dismissal;
- iv. Content of an appeal against sick leave without pay or disciplinary proceedings;
- v. Retirement on grounds of ill-health;
- vi. Payment at pension rate of pay for an officer who has exhausted entitlement to sick leave with pay (365 days in four years) but not retired on ill-health grounds or dismissed;
- vii. Applications for premium payments for ongoing absences;
- viii. Assignment of an officer to restricted duties for a limited period;
- ix. Rule out a medical factor from a proposed dismissal of an officer who might otherwise retire on ill health.

Officers who incur excessive sick leave or who have an ongoing ill health may be requested to submit an up-to-date Doctor-to-Doctor report on their illness to the Chief Medical Officer for consideration. In the course of warning an officer about excessive sick leave, the officer should be informed that it is open to him/her to submit a report to the CMO. It may be unfair to impose sick leave without pay on an officer who has a genuine medical problem, but is otherwise reliable in performance. The advantage of this confidential process of doctor-to-doctor reports is to allow information to be considered in an appeal which the officer might not have divulged to the Governor or Directorate, but might be a significant cause of the absences under scrutiny.

8. Procedures

- a. **Write to the Officer** - If it is decided that the officer must obtain a report from his or her doctor for the assessment of the CMO, a letter should be sent to the Officer requesting that a medical report be forwarded directly to the Chief Medical Officer, Floor 3, Frederick Buildings, South Frederick St., Dublin 2. A Doctor's report should state the nature of the illness, the treatment required and

the prognosis for the future. Such medical reports are sent directly to the Chief Medical Officer. If returned here by the CMO, medical reports are only kept on file in their envelope as sealed by the CMO.

- b. Write to CMO** - Where the CMO indicates that he requires the medical file of an officer, having received a doctor-to-doctor report as requested, the relevant medical file with an appropriate briefing as to the circumstances in which his advice is sought along with copies of any relevant documents, appeals, etc. and a copy of the officer's record over the four previous years and current year to date, are sent to the CMO.
- c. Maintain Medical Confidentiality** - If a medical report addressed to the CMO is received in error in this office, it is immediately sealed and sent to the CMO. Any medical report returned by the CMO remains sealed in the envelope with the CMO's stamp. Any further communication with the Officer via the Governor or the Prison should not refer to any information that has become available through the process of submitting doctor-to-doctor reports but should only involve the resulting decision.
- d. Referrals to other doctors** - Where the CMO refers an officer for independent examination by an appropriate specialist, a copy of the Officer's Medical file is made available to the doctor along with the same comprehensive briefing as to the circumstances in which the examination is required. It is important that records are kept of what documentation has been passed on to a doctor and more important that records are given back to the Human Resources Directorate.

9. Sick Leave Arrangements for un-established and temporary staff

In line with the terms of DF Circular 33/95, the sick leave arrangements as described above (i.e. as set out in Appendix A to Circular 25/78) have been applied to temporary and un-established staff, as well as to established staff, with effect from 29 November 1995 (subject to the appropriate adjustment where an officer is entitled to social welfare benefits - see Chapter 30 "Social Welfare Contributions").

This provision does not apply to officers appointed for fixed terms of twelve months or less. In such cases the arrangements for sick pay conditions for temporary and un-established staff as laid down in Appendix B to DPS Circular 25/78 continues to apply, subject to the sick pay and maternity arrangements provided for in paragraphs 9 to 12 of Circular 6/95 inclusive, also applying.

Uncertified Sick Leave

1. DPS Circular 25/78 provides

- a.** at Paragraph 9: "It must be emphasised that the arrangement under which an officer may be granted leave for one or two days without medical certificate, within a limit of seven days in the aggregate in any period of twelve months, is not to be regarded as a means of supplementing annual leave. There is reason to think that a misapprehension on that point has existed. Any case where the facts appear to show that an officer is resorting to single or two-day absences on that basis will be vigorously pursued."

- b. at Paragraph 10: "In any case where there appears to be unduly frequent resort to sick absences without medical certificate, special note will be taken of the days of the week and dates in a month on which such absences occur and appropriate action will be taken. Where the absences continue to give ground for suspicion in this respect, special domiciliary visits by a medical officer will be considered and arranged if considered necessary."
- c. at Paragraph 12: "If in any period of twelve months, reckoned from the date of the latest absence, an officer has been absent for five days on the plea of illness not covered by medical certificate, his attention will be drawn to the matter. In any case where the absences are unduly frequent or where the maximum of seven days allowable is regularly approached or taken year after year, the Head of the Department will consider, and decide at his discretion, whether the privilege of uncertified sick leave should be modified or withdrawn in that case."
- d. at Paragraph 5 of Appendix A: "Sick leave for single or two-day absences, in total not exceeding seven days in any period of twelve months, may be granted without medical certificate. If the number of days' absence without medical certificate in any period of twelve months, reckoning backwards from the date of the latest absence, exceeds seven in the aggregate, the excess will be deducted from the annual leave allowance of the officer for the current leave year. If that allowance has been exhausted, the excess will be deducted from the annual leave allowance of the next succeeding year." ***NB: The preceding applies to staff with more than 5 years service. Those who have less than five years service will be deducted pay for the number of hours rostered on the day of the unauthorised absence.***

2. Agreed Report No. 2/1989

Agreement was reached in 1989 between the Staff Side and the Official Side for the settlement of a claim for a comprehensive review of systems of attendance for all grades represented by the Prison Officers' Association. Agreed Report No.2/1989 records details of this agreement. In the context of uncertified sick leave, this Agreed Report outlines that only one day's uncertified sick leave may be taken in situations where there are only two tours of duty between rest days. However, the upper limit of 7 days uncertified sick leave in any period of 12 months will remain subject to this being kept under continuous review in conjunction with the operation of the revised rosters having regard to the amount of sick leave actually being taken by staff.

3. Procedure to be followed regarding Uncertified Sick Leave

In line with these provisions:

- a. If an officer has taken more than 7 days uncertified sick leave in a one-year period or if s/he consistently approaches that limit s/he should lose the privilege. The officer should be invited to submit his views on a proposal to withdraw this privilege prior to a submission being made to the Director General. A schedule should then be drawn up for submission to the Director General, incorporating the officer's views and an appropriate recommendation.

- b. Where an officer regularly takes uncertified sick leave s/he should be warned that if the trend continues that s/he may lose the privilege - warnings are normally issued locally.
- c. If the privilege is restored to the officer and s/he again abuses the privilege, a further schedule should be sent to the Director General recommending that the privilege be withdrawn indefinitely having first invited the officer's views.
- d. If an officer appeals this decision, any such appeal should be submitted for consideration by the Director General. The accompanying submission should outline the basis for the Director General's decision to withdraw the privilege together with a copy of the relevant section attached along with the officer's appeal.
- e. If the officer applies to have the privilege restored, a short submission should be done to the HEO recommending whether or not the privilege should be restored.

Sick Leave Allowable to Established Staff

1. Appendix A to Circular 25/78 provides:

- a. at paragraph 1: "Full pay during properly certified sick absence, provided there is no evidence of permanent disability for service, may be allowed up to a maximum of six months in one year and half-pay thereafter, subject to a maximum of twelve months' sick leave in any period of four years or less".
- b. at paragraph 2: "Annual and special leave, and also public and privilege holidays (or days in lieu thereof) at the beginning or end of periods of sick leave, are excluded in the calculation of the period of six months' sick leave, in the aggregate, allowable on full pay".
- c. at paragraph 3: "For the purposes of calculating the periods of sick leave on full and half-pay, six months and twelve months are, where sick absence is not continuous, reckoned as 183 days and 365 days, respectively, including Sundays and public and privilege holidays falling within a period of sick leave"
- d. at paragraph 4: "When sick pay has once ceased owing to the operation of the maximum limit it cannot be resumed during the same absence. Where during a particular absence an officer goes on half-pay or pension rate of pay, he cannot revert to full pay during the same absence. The continued grant of sick pay is dependent on the existence of a reasonable prospect of recovery."

2. Functions of Human Resources Directorate

In line with the above provisions, the pay entitlements of officers on continuous sick leave or those with recurring absences have to be monitored and calculated. Therefore, a continuous check on the number of days availed of on a running yearly and a running four yearly period basis is necessary. A regular check of the sick leave returns received from each Prison will bring to attention any officer who is likely to exceed the sick leave allowable. The following explains the procedure to be followed regarding officers who have come to attention:

- a. In any twelve-month period the most sick leave an officer can incur without losing any pay is 183 days - any days incurred above 183 are at half pay. For those officers who appear to be likely to exceed the 183 days:

- a note must be kept of all officers whose sick leave appear to be approaching the maximum 183 days sick leave in any twelve month period; in the case of officers on continuous sick leave it may be possible to calculate the date on which s/he is likely to exceed 183 days;
 - in either situation where an officer(s) is still on continuous sick leave or has resumed duty but incurs further sick leave and it appears that s/he will avail of more than 183 days in a twelve month period allowed, it is necessary to write to the officer(s) putting him or her on notice that s/he will be placed on half pay for any sick leave taken over and above 183 days in the twelve month period;
 - it is also necessary to notify Financial Shared Services that officers are to be placed at half pay w.e.f. the date on which they expired 183 days in a twelve-month period;
 - again, it is necessary to notify Financial Shared Services in the case of officers returning to work from sick leave and instructing that they be paid full pay.
- b. In any four-year period the most sick leave an officer can incur without losing full pay is 365 days - any days incurred above 365 are without pay. The same procedures apply as at a. for those officers who appear to be likely to exceed the 365 days.
- c. It is important to remember that while an officer is exceeding 183 days in a twelve-month period, s/he may also be exceeding the 365 days in a four-year period at the same time. Therefore, s/he might not be placed on half pay but be taken straight off the payroll. Therefore, a close watch has to be put on officers' records in these instances.
- d. The above provisions apply to ordinary sick leave. Sick leave incurred because of an injury on duty, while subject to the limits laid down above, is treated separately from ordinary illness - see Chapter 7 "Injury on Duty".
- e. When an officer has exhausted his/her entitlement to paid sick leave and is not medically fit for return to work, sanction may be sought from Department of Finance for pension rate of pay. This is subject to the approval of the Chief Medical Officer. Steps to be followed when applying for sanction to pay an officer at pension rate:
- As a first step it is necessary to complete Form E Gen 24 - Part 1 is filled out in this office and part 11 has to be forwarded to Financial Shared Services for completion and return to HR Directorate;
 - The medical file of the officer in question must be forwarded to Chief Medical Officer for advice regarding whether sick pay at pension rate is appropriate;
 - On receipt back of completed Form E Gen 24 and advice of CMO, both are forwarded together with the officer's sick leave record to Pension Section, Department of Finance seeking sanction to pay the officer at pension rate of pay;

- When sanction has been received from the Department of Finance, it is necessary to notify Prisons' Pay Section enclosing Department of Finance sanction directing the officer be paid pension rate of pay.
- It is also necessary to notify the officer concerned of the Department of Finance decision.

(NB: as the duration of the Department of Finance sanction might expire prior to the officer's return to duty, this procedure may be carried out a number of times on any one case. Financial Shared Services need to be informed on the expiration of one sanction that Department of Finance has sanctioned a further period of pension rate of pay. While it is necessary to obtain the CMO's advice prior to seeking D/Finance sanction each time, it is not necessary to re-complete an E Gen 24 Form.)

This procedure is outlined in more detail under Chapter 25 "Pensions Administration".

Regardless of the fact that officers on pension rate of pay are not being retired or dismissed and are not returning immediately to work, sick leave at pension rate of pay is not regarded as reckonable service for superannuation purposes.

3. Administration Of Career Breaks Scheme

1. Relevant Circulars: DPS Circulars 28/86, 2/88, 2/93, 18/98

Prison Governors submit all career break applications together with their recommendation. When applications are being considered the following must be borne in mind, along with the exigencies of the Service:

All applications must comply with the conditions of circular 18/98.
Career breaks for 5 years are allowed for most purposes, including:

- i. domestic
- ii. education
- iii. foreign travel for a minimum period of 6 months and,
- iv. devilling at the Bar.

Career breaks for up to 3 years are allowed for the purpose of self-employment.

The implications the granting of a career break for staffing/grading.

If it is decided to refuse a career break for reasons other than those that appear in the relevant circulars, the Department of Finance must be appraised of the situation.

Career breaks cannot be approved if the officer concerned has had two previous career breaks.

2. Procedures to be followed when career break has been approved

- A letter must issue to the applicant outlining approval in relation to duration of approved career break, career break guidelines, official secrecy, option of making voluntary social welfare contributions and the requirement to notify the Department of his/her intention to resume duty (or otherwise) at least two months prior to the expiry date of the career break.
- When issuing the letter at (a) a Form of Undertaking must be included for the applicant's signature undertaking to agree to the specific provisions relating to career breaks. Ensure that the officer has also completed the relevant application form to avail of a career break.
- Financial Shared Services have to be notified of the career break period.
- The Dept. of Social, Community and Family Affairs, Voluntary Contributions Section, must be notified that the Officer is availing of a career break quoting his/her home address and RSI number.
- Details of the career break should be entered in the computer amendment book in order for the Computer Records to be updated,
- It is imperative that diary entries are made in respect of officers availing of career breaks and their expected date of return to duty in order that provisions can be made for their return.
- In the event that the officer fails to notify this Section before the time specified then a letter should issue reminding him/her that s/he is due to resume and asking him/her whether s/he wishes to extend the career break, resume duty or resign.
- The prison to which the officer is being reassigned must be notified of the date of resumption of duty and indeed it is necessary to confirm that s/he commences duty on the due date.
- Financial Shared Services must also be notified of the officer's resumption date, the prison to which s/he is returning, his incremental date and the point of the pay scale which he should be placed on.
- In the case of an officer who applies for an extension of a career break and s/he has taken less than the maximum duration allowable s/he should be asked to complete an Application form for Extension of career break. If the extension is granted a letter confirming the extension should issue.
- In a case where it is discovered that an officer is abusing the regulations governing career breaks s/he should be asked to resume duty immediately or resign from the Service. The onus is on the Department to ensure that officers are complying with the provisions of the circulars.

- If an officer resigns from a career break, the officer in the Directorate who deals with pension and superannuation rights should be notified (see "Pensions Administration"). Financial Shared Services, Finance Division should also be notified re the resignation as well as the Prison to which s/he had been assigned so s/he can be taken off the books. Details should also be entered in the computer amendment book.
- In the case of an officer who fails to resume duty after the maximum duration of a career break has expired, i.e. 5 years, a letter should issue by recorded delivery deeming the officer to be resigned from the last day of his/her career break.

4. Administration of Code of Discipline

1. Background

A Code of Discipline for the Prison Service was introduced by Statutory Instrument with effect from 1 October 1996, in accordance with the agreement at Departmental Council between the Irish Prison Service and the Prison Officers' Association.

The principal features of the Code are:-

- a. identification of what is intended to be a full range of possible offences (First Schedule),
- b. the designation of the Minister as the ultimate decision maker in disciplinary cases with the exception of dismissal (as under the Civil Service Regulations Act, 1956) - see also e. below,
- c. oral hearings of serious charges of breach of discipline,
- d. hearings of appeals by a Disciplinary Review Committee. Where the Minister decides to set up such a Committee s/he will be bound by its findings,
- e. the Code provides for an officer charged with an offence to call an "advocate to help him/her out in the presentation of his/her case at an oral hearing, this friend must be a member of the Prison Service.

Many of the features of the Code are similar to those in the formal procedures for dealing with disciplinary matters in the Civil Service in Appendix 2 to Department of Finance Circular No.1/92. However, the Code differs in some respects from the equivalent instrument employed by the Garda Síochána, which provides for sworn evidence and legal representation at oral hearings. The procedure envisaged in the Prison Service code only commences when, the Governor having investigated the alleged incident, is satisfied that there is a case to be heard rather than at the commencement of the investigation in the Garda procedure, which allows the investigating officer to caution a person before asking for their account of an alleged incident.

The following are relevant constituents of the overall process envisaged by the Departmental Council Agreement on the introduction of a Code of Discipline:

Code of Discipline - S.I. No. 289 of 1996
Agreed Report No.1/1996 of the Department of Justice Departmental Council;
Memorandum of Understanding
Draft Circular on Procedure for dealing with Prisoner Allegations;
Draft Circular on Investigation Procedures.

It was agreed that procedure for processing disciplinary cases arising from allegations by prisoners would be dealt with by Circular rather than contained in the Code. This agreement is contained in the Memorandum of Understanding and the Agreed Report No. 1/1996.

2. How is Human Resources Directorate involved?

- a. We are required to be familiar with the provisions and application of the Code in order to advise Governors and Prison Staff as well as the Minister, if required.
- b. In the event of cases being submitted by the Governor, it is useful to check that all documents that are required to be submitted by the Governor are included. The Statutory Instrument talks only of the Governor making submissions to the Minister so Human Resources Directorate do not get involved in assessing such submission.
- c. There is provision for review of the Code. In any such review group the Director of Human Resources and Manager represent the Minister and also included are two Governors and three national officers of the Prison Officers' Association.

3. How does the Code of Discipline Apply?

When the Governor is made aware of an incident, he/she must decide if it is likely to involve a disciplinary issue. An allegation against an officer must be made to the Governor within 7 days of the matter coming to the notice of a superior officer.

If the Governor decides that there may be a disciplinary issue but has insufficient detail at this stage to bring disciplinary charges against an officer, s/he appoints an investigating officer, not below the rank of Chief Officer to investigate the incident and take statements from all persons concerned. Should a Chief Officer be unavailable, for whatever reason, the Governor may appoint an investigating officer of the rank of Assistant Chief Officer. The Governor must inform the officer who is subject of the investigation within 3 days of being notified about the incident that s/he is conducting an investigation.

If the Governor is satisfied from the investigation that a breach of discipline has occurred, s/he issues a complaint form to the officer along with the documents, which form the basis of the complaint. The officer must reply within 48 hours of receipt of the form but this limit can be extended by the Governor if requested. (see Rule 7 re Complaint Form)

The Governor must conduct an oral hearing unless the accused officer admits to the charge or admits to a lesser breach that the Governor is willing to substitute in the Complaint Form (Rule 7(10))

Where an oral hearing is to be conducted, it is by the Governor with the Investigating Officer who usually presents the case against the officer, the officer concerned and a friend to assist the officer in presentation of his/her case at the oral hearing. The Governor arranges for the proceedings to be recorded, usually someone acts as Secretary. The oral hearing is an opportunity for the accused officer to call any witness and cross-examine them as to the evidence given by them, which is being used against the accused. The officer presenting the case and the Governor may also question any such witnesses. Although not clear from the Code, there is nothing to prevent the Governor from calling any other witness he regards as relevant.

The Governor, if satisfied that a breach has not been proven, dismisses the charges (Rule(9(1)(a))).

If satisfied that a breach has taken place (Rule 9(1)(b)), s/he has two options. S/he can either apply the "Saver" in Rule 5 if the incident is a minor breach in which case the matter is not recorded on the officer's personnel file. Otherwise, the Governor must submit to the Minister a report of the disciplinary procedure with a recommendation of an appropriate penalty. The Governor has the authority to issue a reprimand under the Code. Otherwise s/he must recommend the penalty to the Minister (Rule 9(2)).

If the Minister agrees with the Governor's views or intends to apply a different penalty, the Officer is informed of the decision and given 14 days to appeal. The officer is given access to all documents considered by the Minister, which includes the Governor's submission and transcript notes of the oral hearing.

If the Minister considers that an appeal against the finding of guilt contains new information not previously considered by the disciplinary process, a Disciplinary Review Committee is convened consisting of a Governor, Human Resources Directorate Official and Trade Union Official. This Committee examines the case and the appeal. It may conduct an oral hearing into a specific aspect of the case or the whole case. The Minister must accept the decision of this Disciplinary Review Committee, which can only either confirm or reduce the penalty that the Minister intended to impose.

4. Oral Hearings (see Rule 8)

Evidence is not sworn and there is no legal representation at oral hearings. Oral proceedings are recorded either by the presiding Governor or by a member of the Prison Service.

5. Scheme of Compensation for Personal Injuries Criminally Inflicted on Prison Officers

1. The Criminal Injuries Compensation Tribunal, established under the Scheme of Compensation for Personal Injuries Criminally Inflicted, may pay ex-gratia compensation in accordance with this Scheme in respect of certain personal injuries inflicted on a Prison Officer in circumstances arising from the action of the victim in assisting or attempting to assist the prevention of crime or the saving of human life.

2. Application of the Scheme

The Scheme applies to:

- a. the death of a Prison Officer who dies from injuries criminally inflicted on him/her on or after 1st April 1986;
- b. the death of a person who had previously been, but at the time of his/her death had ceased to be, a Prison Officer and dies from injuries criminally inflicted on or after the 1st April, 1986 because of anything previously done by him/her as a Prison Officer or merely because of his/her having been a Prison Officer; and
- c. personal injuries (not causing death) criminally inflicted on or after the 1st April, 1986 on a Prison Officer;
- d. personal injuries (not causing death) criminally inflicted on or after 1st April, 1986 on a person who had previously been, but at the time when such injuries are inflicted has ceased to be a Prison Officer where such injuries are inflicted on such person because of anything previously done by him/her as a Prison Officer or merely because of his/her having been a Prison Officer.

The Tribunal is entirely responsible for deciding in any particular case whether compensation is payable under the Scheme, and, if so, the amount. There will be no appeal against or review of a final decision of the Tribunal.

3. Who can claim?

The Tribunal will consider claims for compensation made by or on behalf of -

- the Prison Officer who sustained the injury (the victim);
- any person responsible for the maintenance of the victim who has suffered pecuniary loss or incurred any expenses as a result of the victim's injury;
- where the victim has died as a result of the injury, any dependant of the victim, or if s/he has no dependant, any person who incurred expenses as a result of his/her death;
- where the victim has died otherwise than as a result of the injury, any dependant of the victim.

The Tribunal also considers claims in respect of injury received by a Prison Officer while actually on duty in certain circumstances, e.g. going to the assistance of a

member of the Garda Síochána attempting to prevent a crime in a public place, or attempting to prevent, in a public place, the escape of a person who had committed a crime, or the rescue of a person in custody, or attempting to save a human life.

4. Extent of Compensation

The nature and extent of compensation which may be awarded by the Tribunal will be, subject to limitations, on the basis of damages awarded under the Civil Liability Acts except that compensation will not be payable

by way of exemplary, vindictive or aggravated damages;
in respect of the maintenance of any child born to any victim of a sexual offence;
in respect of loss or diminution of expectation of life; or
where the victim has died, for the benefit of the victim's estate.

Where the victim has died otherwise than as a result of the injury the Tribunal may award compensation in respect of loss of earnings, expenses and liabilities incurred before the death but only to a dependant who would, in the opinion of the Tribunal, otherwise suffer hardship. Compensation will be by way of a lump sum payment.

5. When to apply

Applications for compensation to the Tribunal should be made as soon as possible but, except in exceptional circumstances, not later than three months after the event giving rise to the injury. To qualify for compensation it will be necessary to indicate to the Tribunal that the offence giving rise to the injury had been the subject of criminal proceedings or that it was reported without delay to the Gardaí or to the relevant Governor or officer in charge of training.

6. Human Resources Directorate's functions in this area

The role of Human Resources Directorate is minimal in this area. When the staff of Criminal Injuries Compensation Tribunal are processing claims made by Prison Officers regarding injuries they have received in the course of their duty (as outlined above) they will get in touch with this Directorate requesting details of the incident, any loss of earnings, dates on which the Officer was out sick, etc. These details are retrieved from the relevant Institution/Prison and Financial Shared Services and forwarded to the Tribunal for their attention.

6. Employee Assistance Programme

1. The Employee Assistance Programme (EAP) is an initiative, which was taken as a result of an awareness on the part of the Prison Service, local management and the Prison Officers' Association of the damage to individuals and to the Prison Service, which can arise from unresolved personal problems. These problems, if not alleviated, corrode the operational efficiency of the individual with adverse consequences for the officer, him or herself, his/her family and the organisation.

The EAP was accordingly agreed between the Prison Service and the Prison Officers' Association as an in-service resource designed to help members of the Prison Staff to

overcome personal problems, to maintain recovery and avoid a situation where they would become progressively more incapacitated and more subject to disciplinary action.

The Programme is available to all grades as a voluntary confidential service to help them to

- a. clarify the problem,
- b. consider ways of resolving it,
- c. arrange, if necessary, specialist help, and
- d. develop and follow a plan of remedial action.

The individual officer is, of course, responsible for the cost of any treatment s/he undergoes.

An Advisory Committee provides operational direction for the Programme. It comprises six members - 2 Prison Officers' Association Officials, 2 Officials from Human Resources Directorate, 2 Governors and 2 Welfare Officers. The Advisory Committee published a revised programme in September 2001 setting out the concept and administrative guidelines of the Employee Assistance Programme.

Staff Support Officers have been selected from among serving staff and are operating in all institutions. The Staff Support Officers have an allotment of 3 hours each per week. The Irish Prison Service expects that these hours will be used with the Governor's agreement in a flexible way to suit local requirements.

A Welfare Service continues to be provided as required. It is a distinct service with complementary operational objectives. Both however aim at improving the quality of life of Prison staff by providing referral options to help deal with personal and/or job related issues, and therefore improving the effectiveness of the Prison Service.

2. Role of Human Resources Directorate

The majority of the work undertaken by the EAP takes place at local level within prisons and Human Resources Directorate only become involved where "absenteeism control measures" are necessary.

When an officer's record gives rise for concern, and following consultation with local management, a warning notification is issued to the officer from Human Resources Directorate. The officer is informed of the need for immediate remedial action in order to address the problem and avoid the possibility of the award of sick leave without pay or other disciplinary action in the future. The notification also informs of the availability of the EAP and the Welfare Service to assist with any personal or work related issues that might be affecting capacity or ability to provide regular and effective service.

As stated previously the objective of the EAP is to improve the quality of life of employees and help retain members with valuable experience who might otherwise be lost to the Prison Service by providing access to support services to minimise the potentially negative impact of unresolved personal difficulties.

3. Other functions in this area are:

Prepare policy papers in conformity with changes in legislation.;
Make recommendations to the Advisory Committee as to direction of EAP;
Service EAP Advisory Committee;
Consult with the Welfare Service as appropriate regarding tasks arising from the Prison Service's obligations to the EAP;
Ensure local management utilise the resource of the EAP in responding to staff presenting with personal difficulties that impact on attendance and/or work performance;
Support the continuing development of the EAP;

7. Procedures In Relation To Officers Who Sustain Injuries During The Course Of Their Duty. (This should be read in conjunction with "Absenteeism and sick leave")

1. Injury on Duty Reports

Relevant Circulars: DPS Circular 1/82, DF Circular 6/97, Agreed Report 12/83

An alleged injury on duty is to be recorded as an absence due to ordinary illness under the provisions of Circular 25/78 until the necessary investigations have been carried out, all relevant documentation has been submitted; and the Personnel Officer has reached a decision. Under no circumstances should an absence on sick leave be recorded in the Prison/institution as being injury on duty related until the Prisons Personnel Officer has decided under the terms of Circular 1/82 if it is to be so recorded or not.

2. Sick leave entitlements in respect of an injury on duty

Circular 1/82 as amended by Circular 6/97 provides that, where an officer is absent from duty as a result of an injury allegedly sustained on duty, the Personnel Officer must be satisfied that this absence arose as a result of an occupational injury or disease which was not due to negligence on the part of the officer. If he is so satisfied, the absence will not normally be combined with a period of absence due to ordinary illness so as to adversely affect sick pay entitlement. It should be noted that the amount of paid sick leave allowable in respect of such absences is still governed by the same limits as apply in the case of ordinary illness. These limits are set out in Circular 25/78.

When a completed form AIRF 1 and all relevant documentation are received in Human Resources Directorate and the Personnel Officer is satisfied that the absence concerned arose as a result of an occupational injury or disease which was not due to negligence on the part of the officer the computer sick record database system is amended to show the absence as an injury on duty. The Prison/institution is then notified by Human Resources Directorate that the absence is accepted as injury on duty related. Only then should the absence be recorded as "yes" in the box "Injury on Duty" on the computer sick record database system operating in the prison.

3. Reporting requirements arising from an injury on duty

Where an officer has incurred an injury in the course of his/her duty, an AIRF 1 Form must be completed and signed by the officer concerned. In order to confirm his/her entitlement under the provisions of Circulars 1/82 and 6/97 it is necessary to establish whether the injury or disease was not due to negligence on the part of the officer.

Therefore, a report from the Governor outlining the investigation conducted (to include a comment or observations as to whether or not any negligence can be attributed to the officer in question) and signed witnesses' reports, must be forwarded to Human Resources Directorate as soon as possible after the occurrence of the incident.

4. Report Accident to the Health and Safety Authority

The Health and Safety (General Applications) Regulations 1993 requires that certain accidents and dangerous occurrences are reported to the Health and Safety Authority. An accident sustained in the course of his/her employment which prevents an officer from performing the normal duties of his/her employment for more than three consecutive days, (excluding the day of the accident but including any days which would not have been working days) must be notified to the Health and Safety Authority. In such circumstances the Governor is obliged to submit Form of Notice of Accident to the Health and Safety Authority and a copy to Human Resources Directorate.

5. Circumstances in which CMO's advice is necessary

- a. If an officer goes off duty as a result of an injury sustained on duty, this will only be recorded as an injury on duty where the procedures laid down above have been followed. Any subsequent sick leave as a result of the same injury will only be recorded as being due to an injury on duty where a report from the officer's doctor is made available for assessment by the Chief Medical Officer. The CMO will then advise Human Resources Directorate as to whether the absences can be attributed to the injury on duty. It should be noted that only properly medically certified sick leave will be allowed to be treated as injury on duty- uncertified sick leave will not be treated as injury on duty related under any circumstances.
- b. If the officer appears to be taking an excessively lengthy period of time to recover or if s/he has a large number of absences claiming to be related to the injury then the officer may be asked to submit a doctor-to-doctor medical report for further assessment and advice by the CMO
- c. If an officer has incurred a number of injuries on duty which result in him/her having to take recurring absences from work on sick leave then it may be necessary to call into question the suitability of the officer for the full range of duties of a Prison Officer and/or suitability for retention in the Prison Service. This will also involve seeking the advice of the Chief Medical Officer.

6. Premium Payments

The grades represented by the Prison Officers' Association receive Premium Payments-notional unsocial hours allowances - during a period of sick leave arising from an injury at work. The premiums are in respect of rostered hours on Saturdays, Sundays, Public Holidays, Night Duty 8pm to 8am and Night Duty 6pm to 8pm. The average premium payments are calculated by reference to the premiums earned in the preceding year.

When it has been established that an absence is the result of an injury on duty where there was no negligence on the part of the officer and s/he has applied for Premium Payments these may be paid in accordance with the terms of Agreed Report 12/83. Financial Shared Services will be instructed to make the necessary payment and the officer will be notified accordingly.

7. Medical Expenses

An officer who has sustained an Injury on Duty is entitled to claim medical expenses under the terms of Circular 25/75. Payment is limited to Public Health Expenses which are paid "ex gratia" without admission of liability. It should be noted that public medical expenses cannot be paid in the absence of properly completed AIRF 1 Forms and subsequent investigations as outlined above. A letter to this effect is sent to the officer when s/he has applied for the medical expenses and has completed the AIRF 1 Form.

It is important to remember that if an officer is paying Class A PRSI (most officers recruited after April, 1995 pay Class A PRSI) his or her claims for medical expenses are the responsibility of Department of Social, Community and Family Affairs. (Paragraph 4 Circular 6/97)

8. Late Attendances

1. The Department of Justice Circular of 1988 on late attendances sets out the procedure, which deals with excessive late attendances by Prison Officers. The procedure establishes that where an officer incurs in excess of 36 reckonable lates in an incremental year, the next increment is deferred pending review in 6 months (however, if the incremental date has recently passed, the deferral takes effect from the date of the decision). If the officer incurs in excess of 18 reckonable lates in the 6 month review period, the increment is deferred for a year. If the officer incurs 18 or less reckonable lates in the 6 month review period, the increment is restored with effect from the six month review date, resulting in a net loss of the value of that increment for 6 months.

2. Definition of Late

A reckonable late is defined by the degree of lateness, e.g. an officer more than one hour late in reporting for duty is recorded as having two reckonable late attendances.

3. Warnings

An officer receives a warning from the Governor on reaching 18 and 27 reckonable lates in any incremental year and if exceeding 12 in any quarter. If the officer exceeds the limit, the Governor should inform the officer by giving him/her a copy of his/her lates record and inform him/her that the matter is to be submitted to the Human Resource Directorate for appropriate action. The officer should be given the opportunity to respond.

4. Procedures within Human Resources Directorate

On receipt of a report from a Governor relating to an officer exceeding 36 reckonable lates:

the record should be examined to ensure it is correct and that the officer received the appropriate warnings;

if there is to be a deferral of an increment, a submission outlining the details of the case is made to the Director of Human Resources, taking account of any comments made by the officer;

if the Officer is on the maximum of his/her pay scale, the matter is to be submitted to the Minister for approval to reduce the officer in pay by an amount equivalent to the last point on the incremental scale for that grade;

it is important that where the deferral of an increment involves a reduction in an officer's pay (particularly if the increment has already been awarded) or a deduction of arrears, the officer should receive at least 7 days advance notice of the manner and means by which such deduction will be made from salary in accordance with Article 5.2 of the Payment of Wages Act (this provision is outlined in detail under the heading absenteeism and sick leave);

the date for the 6 month review should be recorded in the relevant diary.

it is important to remember that Prison Officers have the right to appeal against any decision which affects them, as provided for in Rule 102 of the 1947 Rules for the Government of Prisons. (3) Therefore, if such an appeal is received in relation to any penalty that has been laid down in respect of a breach of the lates circular, the matter is resubmitted together with any new information to the Minister for appropriate decision.

9. Maternity/Adoption Entitlements, and Paternity Leave

Relevant Legislation: Maternity Protection Act 1994 and Maternity Protection (Amendment) Act 2004, Safety, Health and Welfare at Work (Pregnant Employees Etc. Regulations 1994 (SSI 446 of 1994), Adoptive Leave Act 1995.

Relevant Circulars: DF Circular 34/95: Measures to Protect the Health and Safety of Pregnant Employees, DF Circular 35/95: Maternity Leave, DF Circular 2/97: Adoptive

Leave, DF Circular 32/99: Paternity Leave and DF Circular 9/2001: Extension of Maternity and Adoptive Leave

1. The Maternity Protection Act 1994

The Maternity Protection Act, 1994 provides protection to all employees who are pregnant, have recently given birth, or are breast feeding up to the 26th week after the birth of the child. The Act gives certain legal rights, the main ones being:

- a. the right to 26 weeks maternity leave;
- b. the right to up to 16 weeks additional maternity leave;
- c. the right to return to work;
- d. the right to time off work without loss of pay to attend ante-natal and post-natal care medical appointments
- e. the right to health and safety leave in certain circumstances;
- f. the right of an employed father to leave of up to 26 weeks where the death of the mother occurs within 26 weeks of the birth;
- g. the right not to be dismissed for any pregnancy related illness from the beginning of pregnancy until the end of maternity leave;
- h. the provision of a rest facility (requirement of SI 44 of 1993).
- i. In the case of a woman who is on probation at the commencement of maternity leave, the period of probation will stand suspended during maternity leave and during additional leave where applicable and will be completed by the woman on her return to work.

2. The Safety, Health and Welfare at Work Act (Pregnant Employees Etc.) Regulations

The Safety, Health and Welfare at Work Act (Pregnant Employees Etc.) Regulations (SI 446 of 1994) deals with the issues relating to the application of health and safety provisions of the Maternity Protection Act. The main issues are:

The regulations apply to employees who are pregnant, have recently given birth or who are breast feeding and who have informed their employer of their condition;

The employer must assess the occupational risks to maternity employees in each of the cases above. The risks the employer must consider include; risk of physical injury, the risk from chemical agents, from biological agents, from certain industrial processes and certain work conditions;

If the employer cannot adequately protect the maternity employee from the defined risks then he or she must provide her with Health and Safety leave;

If a maternity employee's GP certifies that her health would be damaged by night work then she must be given day work or if that is not feasible Health and Safety leave. (The night work provision applies up to 14 weeks after birth; night work – 3 or more hours worked between 11 pm and 6 am or 25% of monthly working time in that period).

The Health and Safety Authority outline that on receipt of notification that an employee is pregnant an employer must assess the specific risks to that employee and take action to ensure that she is not exposed to anything that will damage either her health or that of her developing child. The employer must act to ensure that there is no damage to health that for this purpose means any disease or damage to a person's physical or mental condition or any possible effect on the pregnancy or to the unborn infant.

The risk assessment must be in writing and updated periodically and if the assessment reveals that there is a risk the employer must inform the woman about the risk and what will be done to ensure neither she nor the developing child is injured. If the employer is not in a position to adjust the working conditions or provide suitable alternative work then the employee should be given health and safety leave under Section 18 of the Maternity Protection Act 1994.

3. The Adoptive Leave Act 1995

The Adoptive Leave Act, 1995 provides for entitlements to all women civil servants and to male civil servants who are the sole male adopters, in relation to adoptive leave, and are summarised as follows:

- (a) Adoptive leave will consist of 14 consecutive weeks from the day of placement of the child with the adopting officer.
- (b) Conditional on notifying the Personnel Officer no later than four weeks before placement and submitting documentation as appropriate.
- (c) The right to up to 8 additional weeks unpaid leave
- (d) The right of the adopting father who is not the sole male adopter to leave of up to 22 weeks where the death of the mother occurs within 22 weeks of the day of placement
- (e) In the case of an officer who is on probation at the commencement of adoptive leave, the period of probation will stand suspended during adoptive leave and during additional leave where applicable and will be completed by the officer on his/her return to work.

4. Paternity Leave

In December 1999 agreement was reached at the Equality sub-committee of General Council to grant fathers paternity leave subject to the following:

3 days special leave with pay in respect of children born on or after 1 January 2000.

This leave may be taken at the time of birth or up to four weeks after the birth.

In the case of adoption where the date of placement is on or after 1 January 2000, the leave may be taken on or up to four weeks after the date of placement of the child.

Job-sharers should be treated on a pro-rata basis.

5. Function of Human Resources Directorate in regard to Maternity Leave

(a) **Maternity Leave** (*In the case of officers paying modified rate, Class B PRSI*) - An officer paying Class B PRSI contributions and intending to avail of maternity leave must submit her application through her Governor to the Personnel Officer at least 4 weeks before the date on which she intends to go on maternity leave, together with a medical certificate confirming her expected date of confinement.

(b) **Maternity Leave** (*In the case of officers paying Class A PRSI*) - An officer paying Class A PRSI contributions and intending to avail of maternity leave must obtain a Form MB10 from her G.P. Her G.P and Governor should complete the relevant sections and forward to the Personnel Officer together with a Form of Authorisation at least 4 weeks before the date on which she intends to go on maternity leave.

The application will be processed in Human Resources Directorate and if the criteria laid down by DF Circular 35/95 is satisfied the completed Form MB10 will be forwarded to the Department of Social, Community and Family Affairs together with the Form of Authorisation, which advises the Department of Social, Community and Family Affairs to make all maternity benefit payments payable to the Irish Prison Service. Both the officer and Prisons Pay Section will also be notified accordingly.

(c) Additional Maternity Leave / Adoptive Leave

All applications for additional unpaid maternity leave/ adoptive leave must be submitted to the Personnel Officer, through the Governor at least 4 weeks before the date on which maternity leave / adoptive leave is due to end. The application is processed in Human Resources Directorate and the officer is advised, through his/her Governor of the dates for which the additional leave has been granted.

10. Administration of the Prison Service Merit Awards

1. Background

The Prison Service Merit Award Scheme was introduced in 1991 to reward performance beyond the call of duty. The need for the Scheme was highlighted after an incident in the High Court some years previous where three officers disarmed a prisoner who produced a gun and fired in attempting to escape. A scheme was put together with the agreement of the Prison Officers Association in 1991.

The awards were made by an Awards Committee that consisted of an independent chairperson, a Trade Union Representative and a representative of the Irish Prison Service.

Nominations for awards were submitted in a standard format through the Governor of the institution to the Advisory Committee, consisting of a Governor, 2 POA representatives and chaired by an Irish Prison Service official.

The scheme is currently being re-examined and up-dated where necessary.

** The above process is subject to ongoing review*

11. Miscellaneous Functions of Human Resources Directorate

A. Department of Finance Circulars relating to personnel issues

1. Human Resources Directorate's Functions

It is the responsibility of this Directorate to circulate all Department of Finance circulars in relation to Personnel issues to each Prison/Institution for circulation to all staff, to the Prison Officers' Association and to Staff Support Officers.

When this has been done the original is filed on our Personnel Code and a copy placed on our circular file.

When circulars are superseded by updated circulars, i.e. salary changes, travelling and subsistence, etc., the old circular is removed from our circular file.

Other circulars received relating to conditions of service, sick leave, etc. are added to the Personnel Code and our circular file.

B. Disablement Benefit - administration responsibilities

1. Background

Any Prison Officer who is injured in the course of his/her duty or is involved in an accident to or from work can claim Disablement Benefit from the Department of Social, Community and Family Affairs.

2. Procedures within the Human Resources Directorate

- a. The injured officer makes application to the Department of Social, Community and Family Affairs, who seek confirmation of the injury from this Directorate by sending to this office a disablement benefit form for completion;
- b. The disablement benefit form is forwarded to the Governor of the Prison/Institution at which the named officer is based and a copy is kept with the date it issued to the Governor. When the completed form is returned to this Directorate a copy is kept on the officer's file and the completed form is forwarded to the Department of Social, Community and Family Affairs and we have no further involvement.
- c. The injured officer is examined by a Department of Social, Community and Family Affairs Medical Referee and an assessment is determined regarding the extent of the injury. The officer is then notified of the award of the Disablement Pension amount. Each notification of determination from Social, Community and Family Affairs carries a hand written addendum stating " this amount represents half the normal rate payable in your case; the other half will be paid by your parent Department, the Department of Justice".

C. Entitlement to Marriage Gratuity

1. Background

Section 11 of the Civil Service Regulation Act 1956 required the retirement on marriage from the Civil Service of women who are civil servants. This Section was repealed by Section 3 of the Civil Service (Employment of Married Women) Act, 1973. (However, the Labour Court determined on 23 July 1993 that the reinstatement provisions were discriminatory; that they contravene the principle of equal treatment and that they should be repealed at the earliest opportunity. In view of this determination a letter issued from Department of Finance dated 27 October 1993 to the effect that the practice of reinstatement must be terminated and no new applications for reinstatement can be considered. This is the present position.)

The position in relation to entitlement to a marriage gratuity is that any established civil servant who was appointed from a competition advertised before 1 February 1974 is eligible for a marriage gratuity if the following conditions are fulfilled:

- a. the officer has a minimum of 5 years' reckonable service, and
- b. the officer resigns on marriage or within 2 years of marriage.

The rate of gratuity is one months' pay for each year of service, subject to a maximum of one years' pay.

2. Reckonable Service

Only service up to the date of marriage is reckonable. The gratuity is calculated on pay on that date or, if the resignation takes place within 2 years of marriage, then equivalent of that pay at the date of marriage. Since the gratuity is in lieu of preserved benefits payable at age 60, no further benefits will be payable to any officer who has received a marriage gratuity.

3. Re-entry to the Civil Service

If a civil servant who has received a marriage gratuity re-enters the civil service the pre-marriage service will count for superannuation purposes but the gratuity must be repaid at current rates. (A re-instated widow will refund only the actual gratuity received.) Such payment may be made at any time during service or by deduction from retirement lump sum.

D. Information regarding the recruitment and career of a Prison Officer.

1. Provision of Information

As a matter of course, there are many queries requesting details on the career of a Prison Officer - members of the public, career-guidance teachers, etc. Responding to such queries, an information leaflet entitled "A Short Guide to a career in The Irish Prison Service" are sent to the person making the enquiry.

E. Representations received by the Minister concerning Prison Officers

1. Background

As a matter of course representations (reps) will arrive in the Minister's Office on behalf of a member of the Prisons' Staff. These reps could be from a number of sources, e.g. a Minister or Dáil Deputy or Solicitor will write to the Minister on behalf of an officer wishing to transfer between institutions. The Minister's Office will acknowledge receipt of the reps informing the sender that a more detailed reply will follow. The documentation will be forwarded to the relevant Directorate for appropriate response.

12. Dismissals Procedure

1. Introduction

- The Unfair Dismissal Acts of 1977 and 1993 do not apply to civil servants.
Prison Officers who are Civil Servants are regarded as persons whose employment is regulated by statute. The principal Act governing their employment is the Civil Service Regulation Act 1956, section 5 of which states that established, i.e. permanent civil servants, "hold office at the will and pleasure of the government".
- Section 6 refers to "unestablished", or temporary officers, and states that "the appropriate authority may terminate the services of a Civil Servant who is not an established Civil Servant".
- Prison Officers usually have permanent and pensionable employment whereby they hold employment for life subject to the right of their employer to dismiss them for misconduct, neglect of duty, or unfitness for the job they have been employed to do.
- A decision to dismiss an officer from the Prison Service shall be made -

in the case of an officer who is on probation, by the Minister; and
in the case of an officer who has successfully completed his/her period of probation and has been finally appointed, by the Government.

Prison Officers can be dismissed, inter alia, on any of the following grounds:

disciplinary offences;
excessive sick leave;
termination of probation.
behaviour (e.g. criminal behaviour) outside of his/her job which is incompatible with the position of Prison Officer.

2. Procedure for dismissal on grounds of absenteeism.

- a. In cases where a **probationer** is not giving satisfactory attendance and performance, his/her service may be terminated. Performance is reviewed on a wide variety of headings. If after completion of probationary services the Governor is not willing to recommend that an officer's appointment should be confirmed,

then his/her dismissal should be proposed. The Minister can decide to terminate a probationer's services unlike a person who has completed their probationary services in which case a decision of Government is required. It is important that the probationer has been made aware that attendance/performance was a cause for concern and a reason why confirmation of appointment would not be recommended.

A letter must issue to the probationer informing him/her that a recommendation is to be made to the Minister that his/her probationary services are to be terminated. The probationer must be given a copy of the documentation considered by the Personnel Officer in reaching this decision. The probationer should be given 14 days to submit any material by way of appeal against this decision.

The appeal including all relevant papers is submitted to the Minister for decision.

The officer is informed of the Minister's decision and, if the decision is to dismiss, s/he is given a further 14 days to appeal.

- b. Where an **established officer** comes to adverse attention to such a degree that, where appropriate, after repeated final warnings, access to the Employee Assistance Programme and the Prison Service Welfare Officer, the officer has failed to deliver the required level of reliable and regular attendance, dismissal must be considered, as follows:
 - i. A submission is sent to the Personnel Officer outlining in detail, where appropriate, the officer's attendance record in relation to late attendance and sick leave, the warnings that have been given, progress under the Employee Assistance Programme and any comments/advice from the Chief Medical Officer.
 - ii. A letter is issued to the Officer informing him/her that a recommendation is to be made to the Minister that s/he propose to Government that s/he be dismissed from the Prison Service. The officer is given a copy of all documentation considered by the Personnel Officer in reaching this decision. The Officer is given 14 days to submit any reasons by way of appeal why his/her dismissal should not proceed.
 - iii. The appeal including all relevant papers is submitted to the Minister for decision.
 - iv. The officer is informed of the Minister's decision and if the decision is to dismiss, the officer is given a copy of the papers through his/her Governor and is given 14 days in which to make an appeal against the decision.
 - v. If having considered the appeal, the Minister decides to confirm the original decision, a draft Memorandum for Government is prepared which the Department of Finance must submit to Government.

13. Payment of Increments

Relevant Circulars: DF 9/87 Increments and Department of Justice, Equality and Law Reform Circular 21/98

1. Background

Paragraph 2 of Department of Finance Circular 9/87: Increments describes an increment as "an increase in pay for which provision is made in a pay scale. As a general rule increments are granted annually provided an officer's services are satisfactory".

Increments are not an entitlement. They are granted based on an officer's duty performance and from January 2009 increments will be linked to the Performance Management and Development System at which stage the payment of increments will be dependent on each officer receiving a rating of 2 or over at annual review stage. The current system requires Governors to review every officers' duty performance, attendance, etc. every four months as outlined in Circular 21/98. If an officer's performance in that period is such that the Governor could not recommend payment of an increment at the end of an incremental year the officer should be informed of where s/he is (specifically) failing to meet required standards and told that unless an immediate improvement occurs and is sustained the Governor would have to recommend non-payment of the increment. Only details in respect of increments not being authorised for payment need to be forwarded to Human Resources Directorate.

It is the Governor of each Prison/Institution/Place of Detention with whom the responsibility for completing incremental forms lies. Each officer's form should be completed in advance of his/her incremental date and if payment of the increment is being authorised, it is a matter for the Governor, him or herself, to inform Financial Shared Services accordingly, keeping a record of the payment on the officer's file. If, however, the Governor decides that the payment of the increment is not authorised, for whatever reason, e.g. lates, sick leave, duty performance, s/he should forward the completed incremental form to Human Resources Directorate for appropriate action.

2. Procedure to be followed within Human Resources Directorate when dealing with increments which are not being authorised**

The officer's record should be examined to ensure, as laid out at 1. above,

- his/her record was reviewed every four months;
- s/he was informed of where s/he failed to meet required standards;
- s/he was given an opportunity to improve

If the criteria laid down at 1. is satisfied then a submission has to be prepared recommending that payment of the increment be deferred for a specified period, e.g. three, six, nine or twelve months. On the expiration of the period, the officer's performance should be reviewed and the increment may be allowed with effect from the end of the review period provided the officer's service is satisfactory. The increment should not be restored with effect from an earlier date save in the most exceptional circumstances.

If the officer is on the maximum of his/her pay scale, the matter is to be submitted to the Minister for approval to reduce the officer in pay by an amount equivalent to the last point on the incremental scale for that grade. For officers not on the maximum of their pay scale, the matter is to be considered by the Director General.

It is important that where the deferral of an increment involves a reduction in an officer's pay (particularly if the increment has already been awarded) or a deduction of arrears, the officer should receive at least 7 days advance notice of the manner and means by which such deduction will be made from salary in accordance with Article 5.2 of the Payment of Wages Act, 1991 (this provision is outlined in detail under "Absenteeism and Sick Leave").

In the case of an increment which has already been awarded to an officer but it subsequently transpires that it is not authorised, then Circular 9/87, at paragraph 17.d, outlines that recovery of the overpayment should be made within the quarter in which the overpayment occurred. Where, however, such recovery would impose hardship on the officer concerned, it may be spread into the subsequent quarter.

If an appeal is received in the case of a deferred increment the matter is resubmitted to the Minister together with any new information for appropriate decision.

**** These procedures will be reviewed as the integrated Performance Management and Development System is introduced to the prisons in 2009.**

3. Long Service Increment

The payment of the Long Service Increment, which was agreed under the PCW settlement with the POA, requires three years satisfactory service at the maximum of the incremental scale in the present grade.

14. Work-Sharing Scheme

1. Background

Relevant Circulars: DPS Circular 3/84, DF Circular 2/88, Circular Letters of 13 July 1984, 24 March 1993 and 14 July 1994, Agreed Report on the payment of children's allowance to job-sharers.

The Job-Sharing Scheme was introduced in 1984 and under the DPS Circular 3/84 and DF Circular 2/88. All Civil Servants, whether established or un-established and including staff still on probation, are eligible to apply to participate in the Scheme.

Applications for job-sharing from Prison Officers must be submitted through the Governor who must add his/her own observations/recommendations. The minimum period of job-sharing is one year.

Generally speaking there are two situations in which applicants find themselves:

those who are able to find their own job-sharing partners at their own Institution/Prison and

those who have to consult, through the Governor, with the Human Resources Directorate in order to find a suitable partner.

2. Procedures to be followed when dealing with applicants who are able to find their own job-sharing partners at their own Institution/Prison.

- i. On its arrival in Human Resources Directorate, the application is examined and, if found to be in order (i.e. complies with the provisions of Circulars 2/88 and 3/84) a letter) is issued to the officers concerned approving job-sharing in their case. A form of acceptance is also issued to them that they must sign and return to this Section. This form is also an undertaking to agree to the specific rules relating to job-sharing;
- ii. Prisons' Pay Section must be notified regarding the commencement of job-sharing;
- iii. The personnel records on the computer are updated.

3. Procedures to be followed when dealing with applicants who have to consult with the Human Resources Directorate in order to find a suitable partner.

As a first step it is necessary to refer to the central transfer list for the prisons. Officers on this list are asked, according to seniority, whether they would be interested in a job-sharing appointment. The most senior suitable Officer will be offered the assignment on the understanding that the assignment is temporary and is for the duration of the job-sharing arrangement. The receiving Prison Governor is consulted if an officer is transferring for the purpose of job-sharing. If this first step fails to secure a partner an attempt is made under (ii) below; the vacancy for a job-sharing partner in a specific Prison/Institution can be advertised throughout the Service. However, if this action does not yield a suitable partner, the original application is refused. Prisons' Pay Section must be notified regarding the commencement of job-sharing; The personnel records on the computer is updated.

15. Payscale and Allowances - Changes/Increases

1. Background

Pay and allowances for the Prison Service are increased in accordance with general pay increases or special pay agreements from time to time. The current agreement in force is that of Towards 2016.

2. Pay Increases

With regard to proposed pay increases the following is the procedure to be followed in the implementation of any new increase:

Enquire with the Department of Finance approximately one month in advance of the proposed implementation of the increase. On receipt of sanction and pay scales, rates of pay are checked by Human Resources in consultation with the Finance Directorate and any discrepancies reported to the Department of Finance. Copy of the Department of Finance sanction is issued to the Payroll Officer and the Accountant in the Finance Division, Department of Justice, Equality and Law Reform, Killarney.

Salaries of Officers on off points/marking time are checked separately and Prisons' Pay Section is notified. New pay scales are circulated to Governors, Welfare Officers and the Prisons Officers' Association.

3. Allowances

In relation to changes to allowances, this Department has delegated sanction to increase allowances with the general pay increases. The following is the procedure to be followed in this regard :

- a. Increases are calculated by the Clerical Officer and checked by the Assistant Manager in Human Resources Directorate. Financial Shared Services are notified in advance of the proposed date of the implementation of the increase.
- b. Applications for allowances are submitted via the Governors to Human Resources Directorate. If there is an Agreed Report covering the specific allowance a minute issues to Financial Shared Services instructing them to commence payment.
- c. Sanction is required from the Department of Finance for allowances not covered by Agreed Reports. On receipt of approval, a copy of the sanction issues to Financial Shared Services, Department of Justice, Equality and Law Reform, asking for payment to commence.
- d. Claims for the payment of allowances to various posts can be submitted through the Conciliation and Arbitration Section.
- e. In considering new claims it is the practice to consult local Prison Management and the other H.Q. Directorates that may be affected by the claim. C&A request supporting information in respect of such claims prior to each Departmental Council meeting where the merits or otherwise of each claim are discussed. If the claim is agreed the Agreed Report is circulated to each Governor for his/her information and also to Financial Shared Services and the Accountant, Department of Justice, Equality and Law Reform.

4. Uniform Allowance

Generally speaking all Prison Officers are entitled to an allowance in relation to the wearing of their uniforms. However, this rule does not extend to those officers who are in receipt of a plain clothes allowance.

** The above process is subject to ongoing review.*

16. Travel, Subsistence, Removal and Other Expenses

Relevant Circulars: DPS 11/821 and DF 6/892

see also FD2004/139 re Travel and Subsistence - temporary transfers

a. Travel and Subsistence

Paragraph 1 of the General Rules laid down in Circular 11/82 outlines that "officers employed on official business away from their headquarters and officers assigned to field duties will be paid travelling and subsistence expenses within the rates authorised from time to time by the Minister for the Public Service". Paragraph 2 outlines that "travelling and subsistence allowances are payable only in respect of necessary absence from headquarters. All travelling duties should be planned so as to reduce the total

amount of travel to the minimum consistent with efficiency. All official travel should be by the shortest practicable routes and by the cheapest practicable mode of conveyance. Return tickets, contract, season or other cheap tickets should be used wherever a saving in travelling expenses is secured thereby".

b. Removal Expenses

Paragraph 1 of the Appendix to Circular 6/89 outlines that "where an established officer or un-established officer is permanently transferred on duty from one station to another within the State, or is permanently transferred on appointment to a higher post as a result of success at a confined competition, removal expenses will be allowed in accordance with the following instructions. The instructions will be applied to temporary officers only in cases of clear necessity (e.g. where it is essential to transfer an experienced temporary officer whose services are likely to be required for a considerable time). Note: the instructions mentioned are summarised below.

2. Procedures to be followed

a. Travel and Subsistence

- Travel and Subsistence Claims for most Prison Staff can be signed locally by the Governor and forwarded to Human Resources Directorate for transmission to the Finance Directorate for approval prior to the applications being forwarded to Accounts Payable, Killarney, for payment. Claims in respect of Governors must be submitted to Human Resources Directorate for approval at Manager or Deputy Director level and are processed in the same manner. The applications must be checked on receipt to ensure the necessary form has been completed correctly and in accordance with the governing circular. The necessary form for claiming travel and subsistence expenses is Form FMSTR(1). However, should an officer of a particular rank travel with an officer of a higher rank the rate of subsistence applicable to the higher rank may be paid - in this case Form FMSTR(2) should be completed.
- There is a log book held in Human Resources Directorate into which all the relevant details of the each claim made by a Governor is entered prior to the claim being referred to the Finance Directorate.
- Any updated circulars which are received, e.g. referring to increases in rates, are to be forwarded to all Governors, Prisons Pay, Civil Claims, P.O.A., Welfare Officer and Chaplains for information purposes.

b. Removal Expenses

- All claims for removal expenses must be forwarded to Human Resources Directorate for approval at Manager or Deputy Director level. The applications must be checked on receipt to ensure the necessary form has been completed correctly and in accordance with the governing circular. The necessary form for claiming removal expenses is Form POTF(2).
- Paragraph 4 of Appendix to Circular 6/89 provides that removal expenses will be allowed at the time of transfer only, unless the officer

(when officially informed of the transfer) obtains permission to defer removal for a limited period or to arrange the removal of her/his household and furniture in advance of the transfer. In such a case the officer concerned should complete Form POTF(1) and submit the application through the Governor to this Directorate accompanied by all relevant documentation.

- Applications for an extension of the deferral of removal period should be submitted on form P.O.T.F.(1) before the expiry date of the previous approval, with reasons clearly stated and relevant documentation attached, as to why a further deferral is required, through the Governor. Each deferral period is for three months only. Each application for deferral must be accompanied by supporting evidence, items 2 & 3 on POTF(1).
- Governors are responsible for issuing forms POTF(1) and (2) as well as guidelines and transfer regulations to each officer as appropriate.

c. Other Expenses

- Officers submitting claims for **lodging allowance** should complete Form POTF(2). Details of the amounts to be claimed should be entered on Form FMSTR(1). Both Forms, together with relevant vouched receipts, should be forwarded to Human Resources Directorate for approval prior to payment, duly signed and certified by the Governor or Deputy/Assistant Governor. A copy of all documentation should accompany the application.
- Claims for legal expenses, etc. should also be submitted on Form FMSTR(1).

d. Claims are duly scrutinised in Human Resources Directorate on receipt. Copies are retained on a personal folder that is opened in respect of individual officers. As appropriate, queries are referred through the Governor. Claims are then forwarded to the Finance Directorate for approval and are then transmitted to Accounts Payable for payment.

e. The 'life' of these claims can be as long as 18 months. The first 15 months are at the full rate, the remaining 3 are at half the appropriate rate. The ideal is that claims should be submitted on a monthly basis.

f. The appropriate rates for travel and subsistence and mileage are issued (annually) by the Department of Finance. The travel and subsistence rates are adjusted by C & A Section to suit Prison Officer grades.

17. Promotions Procedure

1. Background

Relevant Circulars: DPS Circular 34/76 as amended by DF Circular E100/2/96, DPS Circular 34/772

Promotions and assignments within the Irish Prison Service are made by the Director General of the Irish Prison Service. Promotions in respect of general civil service grades are effected in accordance with normal civil service procedures and practices. In respect of Prison Service grades formal Interview Boards assess the suitability of all candidates for promotion to all Irish Prison Service grades.

2. Procedures to be followed when dealing with promotion

- a. Department of Finance approval must be obtained for the holding of competitions in the case of new positions in the Irish Prison Service.
- b. A draft circular has to be prepared - this circular will advertise the position through the Governor to all eligible officers. The draft circular has to be approved by the Director of Human Resources and the observations of relevant unions are taken into consideration.
- c. The approved circular together with application and assessment forms and an acknowledgement form (which the Governor will return to the Human Resources Directorate acknowledging receipt of the circular) are issued to all Governors. Copies are also forwarded to relevant unions for their information.
- d. Completed application and assessment forms must be forwarded to arrive in the Human Resources Directorate (on an already appointed date). On receipt, they have to be examined to ensure that they are fully completed.
- e. The Governor of each Prison/Institution has to supply a list of the names of all applicants, and their personnel file numbers to ensure that no application is overlooked. The Governor must also indicate that he/she has made any officer absent on leave etc., aware of the circular.
- f. A Selection Interview Board is selected comprising of Irish Prison Service personnel and experienced HR practitioners. A timetable for interviews is drafted following consultation with the members of the Selection Interview Board.
- g. The application/assessment forms are photocopied to provide each member of the Board with a copy and the original to the Chairperson. A further copy is retained in Human Resources Directorate in the event of any query arising.
- h. Arrangements are made in respect of the venues to be used for the interviews. Interviews held in provincial locations are normally held in Beladd House, Portlaoise with options to hold interviews in Dublin for Dublin-based candidates and also at IPS HQ, Longford as necessary.

- i. On the final day of interviews the Board are supplied with a form on which to fill out the panel. This document should be signed by all members of the Board and dated.
- j. When the panel is drawn up by the Interview Board it is referred to the Director of Human Resources and subsequently published. Panels usually last for eighteen months. Exceptions have been made in certain cases to ensure continuity in the post.
- k. Promotion is offered in turn to each candidate on the panel, through the Governor of his/her Institution provided that s/he is within the prescribed limits in the context of sick leave. If the prescribed sick leave is exceeded in any case (that is over 56 days in four years or 25 absences) the Officer's medical file is referred to the Chief Medical Officer for his/her observations as to whether any sick leave can be discounted. If sick leave is discounted and the Officer is within the prescribed limits s/he is offered promotion. If the sick leave is still outside the limits the Officer is afforded the opportunity to appeal his/her sick leave record. S/he is asked to submit a medical report to the Chief Medical Officer who will make a decision as to whether sick leave can now be discounted. If the sick leave remains outside the limits the Officer cannot be promoted and is informed accordingly.
- l. If an Officer refuses an offer of promotion s/he goes to the end of the panel.
- m. Starting pay on promotion is calculated in accordance with the provisions laid down in Circular 34/77 and a letter issues to the successful candidates, through the Governor, informing them of their new salary scale with a form of acceptance⁵ which must be signed, dated and returned.
- n. The promoted Officer is assigned to the institution as previously offered to him/her.
- o. Financial Shared Services must be notified regarding any promotions, the effective date (and the reassignment if appropriate) and the appropriate pay scales.
- p. All promotions are recorded and looked at regularly as progress reports/probation reports are required before an officer's probation year in the new grade expires. If a satisfactory progress report is submitted an Officer is confirmed in his/her new grade subject to his/her signing a form of acceptance⁶.
- q. The computer system is updated to take account of the promotions and reassignments.

3. The following guidelines apply in relation to promotion procedures:-

In all cases where Interview Boards are used in the promotion process, the recommendations of the Interview Board are always accepted.

Interview Boards are made up of senior prisons personnel and experienced HR practitioners. The Board must conduct the interview process in accordance with the Code of Practice as published by the Commission for Public Service Appointments

(CPSA) and reflect the core principles of probity, merit, fairness, consistency, openness, transparency, accountability and in line with best practice.

Governors are required to complete and sign assessment forms in the cases of all officers applying for promotion and have them counter-signed by candidates. Full assessments are completed on each candidate by his/her Governor and forwarded to Human Resources Directorate at Headquarters.

Interview notes and comments are recorded by Interview Boards with regard to each candidate interviewed. This, as well as the marks awarded, are retained by Human Resources with the candidate's application/assessment forms and is available for issue to interviewees as feedback where requested. All documents in relation to the competitions are held in Human Resources Directorate for a period of 18 months from the date of release of the panel.

18. Recertification

1 Relevant legislation: Civil Service Commissioners Act 1956: DPS Circular 34/76: Section II of the Personnel Code

Recertification occurs when an appointment from an established position to another position on promotion or transfer occurs in a manner that is not customary. Section 20(1) of the Civil Service Commissioners Act, 1956 applies.

2. Who can apply for recertification?

Generally speaking prison officers may apply to revert to a previously held grade or a lower grade in either the Civil Service or the Prison Service.

a. Officers on probation may apply as follows:

The conditions of service of civil servants are laid down in Section 11 of the Personnel Code, outline that "an officer must serve in a probationary period which will normally last for two years. Should the officer's services be satisfactory as regards health, conduct and efficiency generally during the probationary period, the officer, on completion of the period, will be finally appointed. Should the officer's services be unsatisfactory the appointment may be terminated at any time during the period or any limited extension thereof that may be authorised. An officer who immediately prior to the probationary appointment held a position in a civil service grade may be appointed to a position in that grade or in an equivalent or lower grade".

If, during his/her probationary period, it is discovered, for whatever reason (e.g. the officer him/herself could find s/he is unsuited to the job or it could be recommended in a probationary report that s/he is unsuited to the job of prison officer), that an officer's services are unsatisfactory then, if s/he had been serving as a civil servant immediately prior to his/her appointment as a probationary prison officer, s/he could apply to revert to his/her previous civil service grade or in an equivalent or lower grade. (This provision also applies to prison service grades as Prison Officers are civil servants.)

b. Officers already confirmed in their positions (i.e. satisfactorily completed their probationary periods) can apply in accordance with Section 20(1) of the Civil Service Commissioners Act 1956 - apply for appointment on promotion or transfer not in the customary course. The application must outline the reasons and background for the proposed change. The officer in question must comply fully with the regulations governing the competition of the new post and sick leave must be within the limits as set out in DPS Circular 34/76. Department of Finance sanction must also be requested prior to the application being submitted to the Public Appointments Service.

c. The ultimate decision to approve or refuse such an application is a matter for the Department of Finance, however this Department would supply appropriate observations regarding the filling of any consequential vacancies. If the Department of Finance approves such a re-grading the Public Appointments Service will be requested to recertify the individual concerned.

3. Procedures to be followed

All applications for recertification are forwarded to the Department of Finance, together with relevant details of his/her employment history and his/her reasons for making the application.

On consideration of the application the Department of Finance will issue a response to the effect that

the application is refused;
further clarification of circumstances is required;
the application is approved.

If the Department of Finance has approved the application, the Public Appointments Service are approached with a view to issuing a certificate of recertification.

The officer should be notified of the Department of Finance decision.

Financial Shared Services should be notified of the change in pay circumstances of the officer concerned;

In the case of officers who are re-grading to a lower grade, they should be approached with a view to their signing a form of undertaking⁶ accepting the lower scale of pay before recertification is finalised.

19. Recruitment in the Prison Service

1. Background

Relevant Circulars are contained in Sections 7 to 11 of the Personnel Code

While recruitment is primarily a matter for the Public Appointment Service (PAS), occasionally the necessity for a recruitment competition will present itself based on a number of factors, e.g. a high number of vacancies in a particular grade or a vacancy in an area where a specifically trained person is required to be recruited (e.g. Trades staff or Nursing staff etc.).

2. Procedures to be followed when it has been established that a recruitment competition is necessary:

- a. It is necessary to obtain Department of Finance sanction for holding of the competition(s);
- b. The Public Appointment Service (PAS) has to be requested to hold the competition(s)1;
- c. PAS will forward to the Human Resources Directorate a job specification request form for completion. This form, when completed, will inform the PAS of the title of the position, the Department involved, the location of the employment, a brief description of the position, the principal tasks and the working environment.
- d. Competition guidelines are drafted in the Human Resources Directorate based upon the job specification and forwarded to the PAS.
- e. Interview Boards are established by the PAS;
- f. PAS forward job specification and guidelines to the Department of Finance for approval while this Directorate forward conditions of service to Department of Finance for approval.
- g. PAS advertise details of competition in national media. The competition may consist of an examination and competitive interview. Where an examination takes place only those who score sufficiently high in the examination will be called for interview.
- h. The PAS forward a list of successful candidates to Human Resources Directorate for security clearance. (This normally takes a minimum of six weeks and involves contacting Security Division, Department of Justice, Equality and Law Reform and requesting them to arrange for Garda clearance, giving details of the candidates known address and any other information on file regarding the candidates.) The PAS are informed immediately on receipt of clearance by way of Ministerial letter9. At this stage references are sought by the PAS from candidate's previous and present employers. Candidates are informed of their appointment by the PAS subject to their being contacted by the Irish Prison Service;(NB. *If a candidate is not deemed suitable the PAS are also informed by way of Ministerial letter.*)

- i. Thereafter, medical examinations for successful candidates are arranged by the PAS.
- j. The PAS then forward notices of selection and certificates of qualification to the Human Resources Directorate for all successful candidates. Letters then issue from the Human Resources Directorate to the candidates informing them of their assignment dates, enclosing acceptance forms for signature, size cards, payroll details for completion, contract and conditions of service and requirements to be brought with them. Candidates are informed that if they have any queries to contact Human Resources Directorate. Recruitment grades to the Prison Service include Recruit Prison Officer, Nurse Officers, Trades Officers, Inspector of Works Electrical/Mechanical, Industrial Training Instructors II, A/Governor in Charge of Work and Training. Fire Safety Prevention Officer and Psychologists.
- k. It is up to Human Resources Directorate to liaise with the Chief Medical Officer in terms of arranging Hepatitis B Vaccination for new recruits.

20. Reinstatement into the Prison Service

1. Background

Applications from former prison officers who resigned from the Service are referred to the Department of Finance for their observations giving details of the Officer's career to date and his/her reasons for resigning. The standard reply, however, is that if someone voluntarily resigns s/he cannot be readmitted without competing and being successful at an Open Competition run by PAS. If, however, a positive decision is received from the Department of Finance, the following procedure should be followed:

2. Procedures

security clearance is obtained for the applicant;

an appointment is arranged with the CMO to obtain medical clearance for the applicant;

the applicant is re-appointed on a trial basis for one year in an established capacity;

depending on the period of time since his/her resignation, it may be necessary for the Officer to undergo training in order for the Department to fulfil obligations under that 1989 Health and Safety Act;

the Department of Finance is notified in writing of the appointment;

on completion of the trial period, the following information is forwarded to PAS:

Governor's report

Copy of Department of Finance sanction

Copy of CMO Clearance

Copy of applicant's sick leave record for the four year period prior to resigning

Copy of Garda Clearance.

a certificate of Qualification is received from the PAS and the officer is informed of his/her establishment.

21. Staff Training and Development - Educational Refunds

1. Relevant Circulars: DPS Circulars 21/78 and 38/81

Paragraph 4 of DPS Circular 21/78 provides that "Officers pursuing courses which fulfil the conditions in paragraph 2 may have the appropriate course and examination fees refunded to them". The refund will be made at the end of each completed academic year or corresponding course period, that is, where it is established, normally by written statement from the institution providing the course, that the officer gave satisfactory attendance at the course (or participated satisfactorily in the course, if it is a correspondence course) during the academic year/period and underwent the relevant examinations or other prescribed tests. Officers are requested to seek approval for sponsorship in advance of commencing the course on a Form of Intention. All applications should be submitted through the individual's Governor who should provide a recommendation and forward application to the Governor i/c Training, Beladd House, Portlaoise. In the case of IPS Headquarters staff, applications should be submitted through the individual's Director and forwarded to the Training Section in Human Resources Directorate. All appeals in respect of Refund of Fees should also be forwarded to the Training Section in the Human Resources Directorate for review.

2. Procedures to be followed on receipt of applications for refunds

- a. Applications are checked to ensure that they comply with the provisions of circular 21/78 or that the course is relevant to an Officers' area of work. Officers are required to complete forms of undertaking as per paragraph 6(b) circular 21/78. As a matter of course letters approving courses are sent out to officers requiring them to resubmit their application for a Refund of Fees when the course has been completed.
- b. All refunds are subject to a number of factors such as the number of applicants, the relevance of the course to the Officer's work and the financial resources available.
- c. Staff apply for refunds at the end of each academic year. Applications for refunds must be accompanied by original receipts and a certificate of attendance at the course and/or the certificate of examination results before the payment can be processed.
- d. If the application is in order an authorisation form (PS1 form) is completed for the amount to be refunded, signed by an authorised signatory and forwarded to Civil Claims Section, Finance Division, Killarney, together with original receipts and a copy of the signed form of undertaking. The PS1 form should be stamped by Finance Directorate prior to transmission to Killarney.
- e. Copies of all documentation are retained on the officer's personnel file.

** The above process is subject to ongoing review.*

22. Staff Training and Development - Administration

1. Relevant Circular: Dept. of Justice Circular 48/99 (19/8/99) and IPS Human Resources Circulars Gen. 6A and 6B 2003 (11/8/2003) refer

The role of Human Resources Directorate with regard to Prison Officer training is an administrative one only. The Governor in the Irish Prison Service Training Centre, Beladd House is in charge of training throughout the Prison Service (with the exception of IPS Headquarters staff) and is allocated a budget for training. However, s/he liaises with the Training Section in Human Resources Directorate to agree expenditure and training priorities for the forthcoming year under the Staff Training and Development subhead as the one budget allocation covers both Prison Service staff and Headquarters staff. Requests for approvals to attend at training courses should be made by officers through their own Governor to the Governor i/c Training, Beladd House and a Form of Intention and Form of Undertaken (as heretofore mentioned at Annex. 21a and b) should be completed in advance.

Occasionally applications for approval to attend at Training Courses come through the Assistant Governors in charge of Work and Training who provide a recommendation, generally noting the relevance of the course to the Officer's area of work. If in doubt about these applications the Co-ordinator of Work and Training can be consulted. The Co-ordinator of Work and Training's observations should also be noted on applications for the Chef Day Release course at Cathal Brugha Street.

2. NCEF Training (Gym Instructor Training)

NCEF training usually commences in January and September of each year. When a vacancy occurs in an institution the Governor advertises the position locally and invites interested Officers to compete at interview for a place on the course. The interviews are usually conducted using a three person panel comprising of the Governor, a representative from Human Resources Directorate and a qualified NCEF Trainer. There are various centres throughout Ireland that run this course under the auspices of the N.C.E.F.

3. Open University

Applications for Open University courses are dealt with in the normal way (i.e. as in the case of educational refunds). The usual criteria apply before fees are refunded, i.e. evidence from the University that each student completed the academic year and completed the required assignments. Officers are also required to complete a form of undertaking in which they agree to repay fees should they leave the Prison Service before completing one year's service in respect of each academic year for which a refund fees shall have been made.

23. Transfers and Assignments of Prison Officers

1. Background

The authority to transfer prisons officers from one prison or institution to another rests with the Minister for Justice, Equality and Law Reform. If a round of transfers is due to take place a circular is prepared and issued to each Governor for information. A copy is taken for the transfer and assignment file and also circulated to Prisons' Pay Section, Killarney and the Prison Officers' Association for their information.

2. Guidelines that apply in relation to transfers;

Any Prison Officer may apply to Headquarters (Human Resources Directorate) for a transfer.

The application should be made on a standard form¹ through the Governor who shall attach to the application all salient information known to him/her in the case along with his/her recommendation/observations.

The application shall then be forwarded to Human Resources Directorate. The views and recommendations of the Governor should be given full consideration before the transfer is granted/refused.

Seniority subject to suitability shall be the main criterion taken into consideration when deciding on transfer applications. Ideally, all applications for transfers should be formally acknowledged by Human Resources Directorate as soon as possible.

The transfer of Prison Officers in the interest of the Prison Service shall continue as required. Governors should only recommend such transfers where the circumstances are exceptional. In all cases the Governor shall forward all the salient facts and information in writing to Human Resources Directorate at the earliest opportunity.

Authorisation of all transfers shall be conveyed in writing to both prisons/institutions (through the offices of the Governors) and the officer concerned, at least seven days prior to the actual date of transfer. In exceptional circumstances, and with the agreement of the Governors concerned, the period of notice may be shortened.

When transfer requests are received in the Directorate, they are entered into the computer. When a transfer list is required, the list in order of seniority is printed from the computer. All transactions regarding transfers and assignments have to be entered to the temporary file on computer and updated.

Financial Shared Services are notified of all movements of officers.

In relation to grades more senior to Prison Officer, seniority is determined by service in the **grade**. However, if officers were promoted on the same day transfer will take place based on overall service in the Prison Service.

In respect of assignment and transfer of new recruits, the notifying letter must be forwarded to the Training Centre, Beladd and to the relevant Prisons on Friday of the week prior to the date of assignment.

3. Steps to be followed when dealing with transfer requests (these steps should apply to all cases including exceptional circumstances, temporary transfers, etc.)

Prison Officer applies in writing, through the Governor. The Governor attaches any relevant information together with his recommendation/views and forwards application to Human Resources Directorate.

On receipt of the application, the officer's name is entered on the relevant transfer list on the computer. (The computer can print the list as required and it will print in order of seniority.)

When a vacancy arises due to retirements, resignations, etc. and if the vacancy is going to be filled, the Officer who is first on the relevant transfer list is given consideration for a transfer. The criteria considered is: the views and recommendations of both Governors, seniority subject to suitability.

When a transfer has been authorised at Manager/Deputy Director level, a letter issues informing the Governor and the relevant officer of the date of transfer. A copy of this letter issues to the receiving prison.

Financial Shared Services are informed of the change of work address of the officer concerned.

** The above process is subject to ongoing review.*

24. Department of Finance Quarterly Returns

Background

The Department of Finance are given a summary of the number of staff serving at the end of each quarter. This summary is certified correct by the Deputy Director of Human Resources who signs the return. The computer system prints off the necessary data.

25. Pensions Administration

A. Pension Rate of Pay

1. Relevant Circular: DPS Circular 25/78

DPS Circular 25/78, at paragraph 1 of Appendix A, provides entitlements for pay for officers availing of sick leave, as follows: "Full pay during properly certified sick absence, provided there is no evidence of permanent disability for service, may be allowed up to a maximum of six months in one year and half-pay thereafter, subject to a maximum of twelve months' sick leave in any period of four years or less". When an officer has exhausted his/her entitlement to sick leave with pay (i.e. by exceeding the limits laid down), sanction may be sought from the Department of Finance to pay

him/her for the continuing absence on sick leave at the rate of an estimate of his/her pension, i.e. "pension rate of pay". This is subject to the approval of the Chief Medical Officer.

2. Steps to be followed when applying for sanction to pay an officer at pension rate

Form E GEN 24 is to be filled out - Part 1 is filled out in this office and then the form is forwarded to Prisons' Pay Section who complete part 2 and then return the form to this Section. The purpose behind this is to inform the Department of Finance, when making the application for sanction, of the officer's pay and service details in order that they may make an estimate of his/her pension entitlements upon which they will make a decision regarding pension rate of pay.

The officer's medical file is sent to the Chief Medical Officer (CMO) for his/her advice regarding whether the officer should receive pay for his/her sick leave at pension rate of pay.

On receipt back of the CMO's advice, the advice together with Form EGEN24 has to be forwarded to the Pensions Section, Department of Finance requesting sanction from the Minister for Finance to pay the officer at pension rate of pay.

When sanction has been received a letter must issue to Prisons' Pay Section enclosing the Department of Finance sanction directing the officer be paid pension rate of pay.

The officer must be notified regarding the Minister for Finance's decision.

The matter must be entered in an appropriate diary for review as the duration of the pension rate of pay sanctioned by the Department of Finance is likely to expire before the officer resumes duty. If this is the case a further application is made to Department of Finance for sanction for a further period of pension rate of pay and all of the above steps (b) to (e) are again followed (it is not necessary to complete form E Gen 24 a second time unless the Officer resumed duty between absences).

3. Important Points to Remember

- a. In any one case the above procedure may be carried out a number of times, depending on the duration of the sanction given by the Department of Finance and the duration of the continuing sick leave. In such a case Prisons' Pay Section will need to be informed on the expiration of every sanction that the Department of Finance has sanctioned a further period of pension rate of pay.
- b. Should officers remain on continuous sick leave for a lengthy period, the Chief Medical Officer may recommend ill-health retirement in certain cases which will result in a halt to the above procedure and the procedure as laid down under the sub-heading of Pensions Administration entitled "resignations/retirements/ill-health retirements" coming into play.
- c. Alternatively, the Chief Medical Officer may advise that the officer concerned is medically fit to resume duty. In this case if the officer still does not present himself for duty his/her case may be looked at under the procedures laid down under the "dismissal" heading.

B. Death of a serving Prison Officer

Procedures to be followed

In the case of an officer who dies while still in employment the procedures to follow are as follows:

- The Prisons' Pay Section have to be informed of the officer's death in order that s/he may be removed from the payroll;
- The officer's computer personnel record needs to be updated;
- The form EGEN23 must be completed following the same procedure as For completing form EGEN24 (see sub-headings Resignations/Retirements/Ill-Health Retirement" or "Pension Rate of Pay" of this Chapter) and sent to Pensions Section, Finance Division in order that his/her pension entitlements may be established;
- If the officer has a spouse s/he should be asked to supply a Death Certificate, a Marriage Certificate, long version of Birth certificates for all children attending school or college, Certificate of attendance from the school or college for all children over 16 years;
- The Personnel Officer or the Minister as appropriate will send a letter of sympathy to the bereaved spouse and/or family.
- Copies of all of the above are retained on the deceased officer's file.

C. Professional Added Years

1. Background

Relevant Circulars: DPS Circular 11/85, DF Circular 12/97

Professional Added years may be granted to officers who by virtue of the qualifications and/or time they spent acquiring their qualifications would not allow them to be appointed by age 25 and thereby acquire maximum reckonable service for full pension by age 55. DPS Circular 11/85 and Department of Finance Circular 12/97 fully explain this concept and both are included under this heading. The onus is on the individual officer to apply for the grant of added years and the application must be in writing. Only applications from officers with less than 40 years service, or 30 years in the case of Prison Officers, (excluding purchased notional service) can be considered.

2. Procedures

On receipt of an application from an officer for added years a number of procedures are commenced, as follows:

- a) In order to establish if the criteria outlined under the circulars and at 1. above is satisfied, it is necessary to write to the Civil Service Commission requesting the regulations governing the competition from which the officer was recruited;
- b) it is also necessary to ascertain certain details regarding the officer's work history, therefore a letter is issued to the officer to find out if

s/he transferred from a post in the local authority service which would have attracted added years and if so, full details of the professional

experience required for appointment of the local authority post,
any of this service is transferable to the civil service,
s/he received or retained an entitlement to pension, preserved pension or
other
s/he has any entitlement to retirement of old age pension benefits under the
Social Welfare Acts,
s/he has any option to purchase notional service under Circular 16/79 and
if s/he has exercised same.

- c) On receipt of all of the above information, calculate the officer's shortfall in service and make a submission to the Department of Finance for sanction for the award of ad hoc years.
- d) On receipt back of sanction (or otherwise) from Department of Finance write to Officer notifying him/her of decision.

In relation to b) v. above, if an Officer is short of service for full pension s/he may request to buy Notional Service. S/he may apply through the Governor . The Officers' service details are sent to Pensions Section, Finance Division where the calculation is done. The calculation is sent directly to the Officer and s/he will inform Finance Division directly if s/he is taking up the offer to buy Notional Service.

D. Resignations/Retirements/Ill-health retirements

1. Background

Relevant circulars/legislation: Section 9 of the Civil Service Regulation Act 1956, Superannuation (Prison Officers) Act, 1919, DF Circular 9/57 as amended by the DPS Circular letter E109/20/29, DPS Circular Letter E109/21/83

Prison Officers may retire any time after reaching 55 years of age regardless of service, but retirement is compulsory at 60 years of age. In cases where an officer has 30 years actual prison service s/he may retire from 50 years of age. However, new entrants appointed as prison officers (as defined in the Superannuation (Miscellaneous Provisions) Act, 2004) on or after 1 April 2004 may not retire before the age of 55 - there is no exemption for 30 years actual prison service. New entrants' compulsory retirement age remains at 60 years of age.

An officer is obliged to give a months notice of his/her intention to retire. If however s/he is within one month of his/her 60th birthday and s/he has not submitted his/her notice of retirement then it is necessary to write to him/her informing him/her that s/he is due to retire and requesting him/her to submit his/her retirement notice in writing.

A computer printout is run off in early January each year of all officers who are aged 59 years and a note made in a diary so that we may notify officers in time of their pending retirement date if the need arises.

2. Procedures to be followed when dealing with resignations

- a. A formal written notification of resignation must be submitted by the officer concerned, the resignation must be unconditional.
- b. The notification must reach the Human Resources Directorate at least three clear working days before the last day of service. (The Minimum Notice and Terms of Employment Act, 1973 requires not less than one weeks' notice from unestablished employees.) (Generally speaking, a month's notice is more desirable for procedural purposes and officers are as a matter of course informed of this.)
- c. A notification may not be withdrawn on or after the date indicated as the last day of service.
- d. A notification must issue to Financial Shared Services regarding the date of the Officer's resignation so they can remove him/her from the payroll.
- e. It is also necessary to remove the Officer from the Computer Personnel Records.
- f. A letter must issue to the officer accepting his/her resignation and depending on the number of years reckonable service, one of the following procedures applies:
 - i. if the Officer has less than two years service a letter should issue to the Officer advising him/her that as s/he has less than two years service s/he is not entitled to preserved superannuation benefits. S/he should be given the option of transferring his/her service provided s/he is taking up employment with one of the approved organisations within the "transfer network". Otherwise s/he can receive a refund of his/her superannuation contributions.
 - ii. on receipt of the officer's reply a letter should issue to Financial Shared Services instructing them to issue a refund of his/her superannuation contributions or:
 - iii. details of the Officer's service should be forwarded to his/her new employer.
 - iv. if the Officer has more than two years service a letter should issue to the Officer advising him/her that as s/he has more than two years service, s/he is entitled to preserved superannuation benefits provided s/he does not transfer his/her service to one of the approved organisations within the "transfer network".
- g. In order that his/her preserved pension may be approved it is necessary to complete an E GEN 24 form in order that various details are specified to enable Pensions Section and Financial Shared Services to calculate the officer's preserved lump sum and pension entitlements - these details include
 - i. periods throughout his/her career in the Service for which s/he may not have been paid, e.g. career break, special leave without pay, job-sharing, unauthorised absences, sick leave without pay, pension rate of pay, industrial action (Most officers recruited before 1988 took part in the 1988 strike);
 - ii. transferred service from an outside organisation (generally if service has been transferred a copy of the Department of Finance sanction is also forwarded to Pensions Section for information);

- iii. iii. notional service the officer may have bought or is buying;
 - iv. iv. a credit of Ad-Hoc Years (see sub-heading on "Ad-Hoc Years" in this Chapter);
 - v. v. whether the officer could be said to have carried out his/her duties "with diligence and fidelity and satisfaction to the head of the Department". If it can be said that the officer concerned carried out his/her duties to such a degree then it is a matter for the AP to sign the E GEN 24 form;
- h. The E GEN 24 and the following forms that are retrieved from the officer's personnel file and sent to Pensions Administration, Financial Shared Services, Killarney who send the officer a Pensions Declaration Form for completion. This form also includes information on how deductions previously made from the officer's pay may be continued after his/her retirement:
- i. copy of Deimhniú Cáiliúcháin (which is the officer's certificate of qualification issued by the Civil Service Commissioners on his/her employment),
 - ii. WP2 and SP1 (which relate to widows, spouses' and children's pension schemes) are then sent to Pensions Section, Finance Division.
- i. Pensions Administration also fill out Part 2 of EGen24 form, attach pay details from Prisons Pay and send these forms to the Department of Finance.

3. Procedures to be followed when dealing with retirement on age grounds or with full service

On receipt of the notice of intention to retire a letter of acknowledgement should be sent to the Officer concerned through the Governor.

In order that his/her pension may be arranged it is necessary to complete an EGEN24 form in order that various details are specified to enable Pensions Section and Financial Shared Services to calculate the officer's lump sum and pension entitlements - these details include:

- i. periods throughout his/her career in the Service for which s/he may not have been paid, e.g. career break, special leave without pay, job-sharing, unauthorised absences, sick leave without pay, pension rate of pay, industrial action (Most officers recruited before 1988 took part in the 1988 strike);
- ii. transferred service from an outside organisation (generally if service has been transferred a copy of the Department of Finance sanction is also forwarded to Pensions Section for information);
- iii. notional service the officer may have bought or is buying;
- iv. a credit of Ad-Hoc Years (see sub-heading on "Ad-Hoc Years" in this Chapter);
- v. whether the officer could be said to have carried out his/her duties "with diligence and fidelity and satisfaction to the head of the Department". If it can be said that the officer concerned carried out his/her duties to such a degree then it is a matter for the AP to sign the E GEN 24 form;

- vi. whether the officer was in receipt of a uniform or rent allowance as both of these allowances are reckonable for pension purposes.

The EGEN24 and the following forms, which are retrieved from the officer's personnel, file, and sent to Pensions Administration, Financial Shared Services who send the officer a pensions declaration form for completion. This form also includes information on how deductions previously made from the officer's pay may be continued after the officer's retirement. Pensions Administration also complete Part 2 of the EGen 24, attach pay details from Prison Pay and send to the Department of Finance.

- i. copy of Deimhniú Cáiliúcháin (which is the officer's certificate of qualification issued by the Civil Service Commissioners on his employment),
- ii. WP2 and SP1 (which relate to widows, spouses and children's pension schemes).

Prisons' Pay Section must also be notified to remove the Officer from the Payroll. Officer must be removed from computer records on the date of his/her retirement. Letter should be sent to the Officer thanking him/her for his/her service, and signed by an appropriate Departmental Official.

4. Procedures to be followed when dealing with retirement on ill health grounds

When an officer is absent on long bouts of illness or has one continuous long illness the question of his/her suitability for the job of prison officer is queried, usually by requesting the officer to submit details of his/her illness to the Chief Medical Officer, who is then asked for his/her opinion on whether or not ill health retirement should be considered. In addition, after a period on pension rate of pay, the question of ill-health retirement may arise if the officer does not look like s/he is coming back to work. In this case Form EGEN24 must be filled out and forwarded to Pensions Section to request an estimate of his/her gratuity entitlement (generally estimated from last day on which s/he received pension rate of pay).

An officer may also apply for ill health retirement if s/he feels that s/he is no longer fit for the job of a prison officer, and again the decision as to whether ill health retirement be granted is adjudicated on by the Chief Medical Officer.

A letter is sent to the officer informing him/her of whether or not the Chief Medical Officer has advised if ill health retirement should be proceeded with. The officer is given the opportunity to appeal the decision to a medical referee.

When the decision to ill health retire an officer has been fully agreed by the Chief Medical Officer, this Department, the officer concerned, and the Department of Finance the following procedure is followed:

- a. Form JHR1 is to be filled out by the Officer's doctor and then submitted to the CMO for approval;
- b. A letter is written to the officer concerned stating the following;

- i. CMO considers him/her incapable of carrying out his/her duty due to ill health and that this position is likely to be permanent;
- ii. request his/her resignation on an appointed date (this day should be thirty days from date of postage);
- iii. state that on receipt of his/her resignation, an application for pension will be submitted to Department of Finance (this should not be included if the officer has less than five years pensionable service);
- iv. inform him/her that if s/he disputes this decision that the appointment of a Medical Referee will be necessary;
- v. failing receipt of resignation or application for appointment of Medical referee s/he shall be deemed to have resigned from the Service on ill-health grounds on the appointed date;
- vi. where a case is referred to the medical referee, the relevant Departmental papers in the case, along with completed form JHR1 and a copy of Section 10 of the Superannuation Act 1859 should be forwarded to him/her. Referee should report his/her opinion on officer's health and whether situation likely to be permanent to parent Department. His/her account should then be submitted to Department of Finance indicating Officer's Name, Rank, and Department;
- vii. E GEN 24 etc. to be processed in normal way for retirement on age or service grounds - see above.

c. Officers on ill health retirement should be reviewed as follows.- Officers **less than 50 years of age should be reviewed every two years. Officers over 50 years are not reviewed at all.** The onus is on Prisons' Personnel Section to keep a note of the Officers on ill health retirement and review them accordingly.

5. Constraints to the above Rules re. Ill-health Retirements

a. Transferred Officers

The same procedure applies to established "transferred officers " regarding retirement on ill-health grounds as applies to other established Officers except that termination of their services will be a matter of the Government.

b. Mental Infirmary

If CMO'S report advises ill-health retirement for mental infirmity and it is considered unwise to notify officer him or herself, the Department of Finance should be informed in order that it can be arranged for the Government to discharge him/her.

c. Retirement on officers' own initiative

Established civil servants applying for early retirement due to ill health should furnish a medical report on Part 1 of Form JHR1 which should be submitted to CMO who signs Part 11 (if satisfied), thereafter the Officer may resign as soon as convenient.

If CMO is not prepared to sign Form JHR1 the officer should be informed of the provisions regarding the appointment of a medical Referee. If a Medical Referee is satisfied that the officer should be allowed to retire, retirement can take place as soon as possible.

d. Unestablished Civil servants

Temporary or unestablished Officers with 5 years full-time service may be entitled to a pension if they retire on ill-health. A medical report from the CMO together with a completed form JHR1 must accompany the application to Department of Finance.

e. Miscellaneous

Officers who have not exhausted their sick pay privileges may be paid up to and including date of retirement.

Officers may qualify for ill-health added years for pension purposes if they are ill-health retired. However, the Pensions' Section in our Finance Division deal exclusively with this question.

E. Transfer of Service

1. Background

Relevant Circular DPS Circular 18/7/75

An officer joining the Prison Service may have his/her service transferred into the Prison Service from certain designated organisations for superannuation, i.e. pension purposes. DPS Circular 18/7/75 of 30 January 1981 explains in detail the concept of transferring service.

2. Procedures to be followed when dealing with applications for the transfer of service from an outside organisation into the Prison Service

- a. Any officer may apply to have previous service transferred to Prison Service. Applications must be in writing.
- b. On receipt of applications it is necessary to write to the officer's previous employer - seeking certain details - there is a standard form used for this purpose and the employer is asked to complete same.
- c. It is important to establish if the officer was dismissed from any previous employment (as only satisfactory service may be transferred) or if he was working anywhere else, was there a gap in service.
- d. On receipt of the completed form from the previous employer a letter must issue to the Department of Finance seeking sanction for the transfer of service, it is necessary to enclose the completed form received from the previous employer.
- e. On receipt of Department of Finance's sanction to transfer the service, it is necessary to calculate the amount of service to be transferred - [uniform accrual normally applies, i.e. only three quarters of the service done in the outside agency may be transferred into the Prison Service. The reason behind this is that Prison officers have only to work three quarters (30 years) of the amount of time outside employees have to work (40 years)].
- f. In some cases, the officer may have received a gratuity from his previous pension scheme. If this is the case, s/he will have to pay this sum back at an appropriate rate of compound interest (usually 6%) per annum, calculated from the date on which s/he received it to the date s/he pays it back. (Generally speaking the Department of Finance will instruct on this point when issuing a

decision regarding the transfer of service application.) S/he is notified of this and has three months in which to pay it back, tax relief is allowed on the interest payable.

- g. At this stage it is necessary to write to the officer informing him/her that his/her service has been transferred.
- h. If refund of gratuity has to be made, the Revenue Commissioners have to be informed (when the payment has been made and the cheque has cleared) of repayment and interest element.
- i. Requests for estimation of Pensions

1. Background

From time to time, for example if an officer is coming close to retirement age, requests will be submitted to Prisons' Personnel Section from Prison Officers, etc. for an estimate of their pensions. The Officer may apply in writing through the Governor. However, requests are also received from the Staff Welfare Officer on behalf of the Officer or from Pensions' Section, Finance Division.

2. Procedure to be followed

Retrieve relevant service details and copy forms WP2 and SP1 from the personnel file of the officer concerned and forward same to Pensions Section, Finance Division.

On receipt of the service details Pensions Section will calculate the estimate and forward the information to the officer concerned.

The relevant details are:

- i. Date of Birth
- ii. Date Officer joined the Service
- iii. Off pay periods (e.g. sick leave without pay, industrial action, career breaks, etc.)
- iv. Whether or not s/he is a member of the Spouses' and Children's Scheme
- v. If s/he has any transferred service
- vi. If s/he is buying notional service
- vii. If s/he has been awarded ad-hoc years
- viii. If s/he is job-sharing

26. Administration of Chaplaincy Services to the Prison Service

1. Background

Human Resources Directorate have the responsibility for the administration of Chaplaincy Services in the Prison Service. This involves the administering of (a) staff changes due to resignations, retirements and transfers or (b) where occasionally it is necessary to create an additional post.

a. Staff Changes

- (i) On receipt of request(s) from the Bishop to effect changes in the serving chaplains, letter(s) have to be drafted for the Minister's signature approving same.
- (ii) On receipt of confirmation that the Minister has consented to the changes, security clearance is sought and the relevant Prison Governor is informed.
- (iii) It is also necessary to establish a personnel file for the new chaplain(s) and inform Financial Shared Services accordingly of change(s). Chaplains retiring or resigning are removed from the Payroll;
- (iv) Chaplains travel expenses are submitted to Human Resources Directorate through the General Office of their Institution. Any requests for attendance at conferences or courses related to their position in the Prisons are submitted through the Head Chaplain with a recommendation to be submitted to Human Resources Directorate for approval.
- (v) Department of Finance sanction E27/1/28 conveyed sanction for the establishment of a pool of Chaplains for places of Detention within the Dublin area. The Chaplains in this pool to be assigned by the Head Chaplain to the different institutions in the Dublin area in accordance with the needs of the institution, sick leave, annual leave arrangements, etc.
- (vi) The salary of Chaplains are increased with general round pay increases. Sanction from Finance is required each time. New scales of pay are calculated in Human Resources Directorate and forwarded to the Department of Finance for approval. On receipt of sanction the new scales are circulated to each Governor and to Financial Shared Services.

b. New Post

If there is a need to create an additional Chaplaincy post, Department of Finance approval is required. A submission is prepared giving the reasons for the additional post (new prison, etc.). The salary applicable to the post should be comparable with that of another institution. Salaries are calculated on a pro-rata type basis and is dependant on the number of offenders in an institution.

The Bishop of the Diocese in which the Institution is situated is consulted and will nominate a Chaplain. The procedures as listed at (a) above now apply.

** The above process is under ongoing review.*

27. Medical Services - filling vacancies in this area

1. Background

The Director of Healthcares' role is to advise in relation to the overall structure of prison health care services, including psychiatric, nursing, dental and ancillary medical services in Prisons. The Human Resources Directorate's involvement comes into play whenever a vacancy arises in the medical area - either an old or a new post.

2. Procedures to be followed in relation to finding a suitably qualified person to fill a vacancy in the medical area (i.e. Prison Doctor, Pharmacist, Psychiatrist). (NB. Nurses – See also recruitment of Nurse Officers)

- A submission has to be prepared and forwarded to the Department of Finance for sanction for the creation of a new post (if applicable) or for the filling of the post by open competition;
- an advertisement is placed in both the national and medical newspapers inviting applications and CVs from suitably qualified persons (qualifications are generally determined by the Director of Healthcare);
- all applications received are referred to the Director of Healthcare and the Director of Human Resources who will advise on short-listing, if considered appropriate, for interview;
- at this stage it is necessary to establish a Selection Interview Board and this will generally comprise the Director of Healthcare, a representative from the Human Resources Directorate and the Governor of the Prison/Institution where the vacancy exists;
- short-listed candidates have to be scheduled for interview and informed accordingly;
- after the interview stage and when the Human Resources Directorate have been informed regarding successful candidates, security clearance is sought.
- it is then necessary to offer appointment to successful candidate(s) in writing, including form of acceptance and copy of contract.
- when the form of acceptance has been returned, duly completed, a notification must issue to the Financial Shared Services regarding the new appointees' relevant details and a personnel file has to be opened in Human Resources Directorate. The Governor of the relevant prison/institution must also be informed accordingly;
- letters of regret to unsuccessful candidates/applicants returning curriculum vitae must also issue;
- salaries are calculated by Human Resources Directorate and forwarded to the Department of Finance for approval. Salaries for doctors are increased in accordance with general pay increases (refer to "Payscale - allowances increases" for further information in this regard);
- new rates as sanctioned by the Department of Finance are circulated to Governors etc., the Director of Healthcare and Finance Division.
- some medical personnel are retained on a fee per session basis. In such cases the relevant fee is to be agreed with the Department of Finance at the recruitment stage

** The above process is subject to ongoing review.*

28. Officers serving in a probationary capacity

1. Background

Relevant Circulars: DPS E100/16/76 of 30 August 1983, DPS 9/87 Increments
Appendix 1 to DPS E100/16/76 dated 30 August 1983, at paragraph 2, outlines that officers "must serve a probationary period which normally will last for two years. Should the officer's services be satisfactory as regards health, conduct and efficiency generally during the probationary period, the officer, on completion of the period, will be finally appointed. Should the officer's services be unsatisfactory, the appointment may be terminated at any time during the period or any limited extension thereof that may be authorised. An officer who immediately prior to the probationary appointment held a position in a civil service grade may be appointed to a position in that grade or in an equivalent or lower grade".

2. Probationary Reports

Probationary reports should be received from the Prison Governor in respect of all officers on probation at the 6, 12, 18 and 22 month stages of their probationary periods. If these reports are not received in time the Governor should be contacted and asked to submit the relevant report. A list of "probation reports due" is forwarded to the prison every month.

3. Procedures to be followed on receipt of probationary reports

- a. all reports are checked and entered on the computer system as received.
- b. if it is found that a probationer with 6, 12, or 18 months is failing in any way to provide the required service an appropriate warning should issue clearly outlining where s/he is deemed to be failing and outlining the improvement that is necessary before s/he will be considered for appointment.
- c. if a report shows that an officer is not satisfactory in either aspects of work or attendance then it may be necessary to forward a submission to the Minister outlining how the officer has failed to provide the required service and recommend what action to take, usually this is either an extension of the probationary period or termination of the probationary period. (It should be noted that the Minister may terminate the services of a probationer at any stage during probation and it is not always necessary to wait until the 22 month stage to terminate his/her services.)
- d. If it is recommended that the probationary services of an officer should be terminated or extended, the Minister must agree with same on or before the two years probationary period has expired otherwise the officer will have been confirmed in his/her appointment by default.
- e. If the probationary reports are satisfactory and the Governor and this Department are satisfied that s/he is suitable for retention in the service then a letter of confirmation should issue on expiry of the probationary period.

4. Increments during probation

The terms of Circular 9/87 are, as a matter of course, taken into account when it is decided that the officer is not providing the required standard of service. It states at paragraph 4 that "The payment of an increment should normally be deferred as a matter

of course where doubts arise, during a probationary period or a period of acting appointment, as to an officer's suitability for final appointment". This procedure will be reviewed in the context of the introduction of the Performance Management and Development System in the Prison Service.

5. Maternity Leave during probation

If a case arises whereby a female officer serving in a probationary capacity commences maternity leave, the terms of Circular 35/95 Paragraph 3 (g) are enforced. Paragraph 3(g) states "In the case of a woman who is on probation at the commencement of maternity leave, the period of probation will stand suspended during maternity leave (and during additional maternity leave where applicable) and will be completed by the woman on her return to work".

29. Class A Social Welfare Contributions

1. Background

Relevant Circular: DF 6/95

Class A rate of PRSI contribution applies to officer's appointed on or after 6 April 1995 unless they were immediately prior to appointment serving elsewhere in the public service in a position in respect of which s/he was paying Class B C or D rate of PRSI contribution.

2. Procedures

All new recruits to the Prisons Service who fall into this category are required to sign the Form of Authorisation (Sick Pay) which is attached to Circular 6/95. The officer should be made aware at this stage that if s/he is absent from duty on sick leave for more than three days s/he must furnish a Social Welfare Certificate in addition to the medical certificate for this Department, these certificates should be furnished directly to the Governor.

The Governor's Office should stamp the Social Welfare Cert "Pay direct to Financial Shared Services, Killarney" and should then send it to the Department of Social, Community and Family Affairs.

A letter is sent to Financial Shared Services advising that the officer has been on sick leave and has submitted the relevant certificates and is a Class A PRSI contributor.

If an officer on sick leave sends in a medical certificate but fails to furnish the proper Social Welfare Certificate then a letter is sent to Financial Shared Services advising that the relevant amount of Social Welfare payment due should be deducted from the officer's pay.

The Officer should be notified that s/he will be deducted the relevant amount and that they should forward the appropriate Social Welfare Cert.

30. Applications for Special Leave

Relevant Legislation: Organisation of Working Time Act, 1997 and Parental Leave (Amendment) Act, 2006.

Relevant Circulars: DPS 2/76, DF 28/91 and DF 33/91 DPS 5/52 DF Circular 22/98: Parental Leave, DF Circular 39/02: Amendments to Parental leave Entitlement, and DPS Circular letter E103/5/76 (16/3/93), DF Circular 6/06

1. Background

The basic circular for special leave is DPS 2/76. It has been superseded by DF Circulars 28/91 and 33/91 in regards to certain provisions for special leave. However, miscellaneous topics such as special leave to work with charitable organisations are still covered under DPS Circular 2/76. It is important to note that the list of instances for special leave outlined below is not exhaustive and, as this is such a wide area, should any situation arise which does not appear to be covered by the circulars the Department of Finance are, as a matter of course, approached for advice.

The authority to grant special leave with or without pay rests with the Director of Human Resources. Governors, however, have delegated authority since 1985 to grant special leave with pay on the occasions of marriages and bereavements. The following guidelines apply:-

- a. all applications for special leave with or without pay should be made to the Governor;
- b. in relation to applications for special leave due to marriage and bereavement, the decision to grant or refuse special leave shall be made by the Governor and the officer informed accordingly; records of all such decisions shall be recorded in the personal file of the officer concerned;
- c. in the case of every other application for special leave, the Governor shall attach to the application, his or her views and recommendations and forward them to the Human Resources Directorate as soon as possible;
- d. the views and recommendations of Governors shall be given full consideration by the Director of Human Resources;
- e. all decisions by the Directorate in response to special leave applications for domestic reasons are made having regard to Department of Finance Circular 28/91: Special Leave for Domestic Reasons and E103/5/76 (16/3/93) and DF Circular 22/98: Parental Leave and DF Circular 39/02: Amendments to Parental Leave Entitlement. These Circulars allow for special leave with pay in the event of the serious and unforeseen illness of an officer's immediate relative. Special leave will only be granted if the criteria laid down is fulfilled. Therefore, applications for special leave for serious and unforeseen illness should be accompanied by a medical certificate, except in some cases when discretion will be used.

2. The Parental Leave (Amendment) Act, 2006

(i) Parental Leave

Under the terms of the Parental Leave (Amendment) Act, 2006 an officer who is the natural or adoptive parent of a child, or acting in loco parentis to the child, is entitled to 14 working weeks unpaid parental leave subject to the following:

The leave applies only to parents in respect of a child born on or after 1 December 2003 or adopted on or after that date.

The leave must be taken before the child is 8 years of age or 16 years in the case of a child with a disability.

Each parent has a separate entitlement to parental leave from his/her job.

Any officer wishing to avail of Parental Leave must apply in writing to his Governor at least six weeks prior to the intended commencement date. The Governor must satisfy himself that all the conditions outlined in DF Circulars 22/98 and 6/06 have been met before the leave sought is granted. Where Parental Leave is granted notification must then issue to Prisons Pay Section instructing them to remove the officer from the payroll for the duration of the Parental Leave and a copy should be forwarded to Human Resources Directorate for the officer's file.

(ii) Force Majeure Leave

Under the Parental Leave Act, 1998 an officer is also entitled to *Force Majeure* leave for urgent family reasons owing to the injury or illness of an immediate relative. *Force Majeure* leave is paid and is separate from parental leave. *Force Majeure* leave shall not exceed 3 days in any 12 consecutive months or 5 days in any 36 consecutive months. Section 8 of the Parental Leave (Amendment) Act, 2006 amends Section 13(2)(f) of the Principal Act.

An officer availing of *Force Majeure* leave must notify the Governor of the leave being taken as soon as is practical thereafter and must provide to the Governor details of the relative's illness. A schedule is completed and signed by the officer outlining details of the relative's illness and retained on the officer's personnel file in the prison. Any officer found to be abusing the leave allowable will face appropriate disciplinary action.

3. Special Leave

Example of instances of special leave applied for includes Training with the Reserve Defence Forces and attendance at Court (DPS Circular 31/2007). Special leave for attendance at court can be decided locally but applications for FCA leave are submitted through the Governor (DPS Circular 51/79 applies).

Special Leave for representing your country in sport is covered by DPS Circular letter E103/3/83 (of 9/3/87). Officers must submit the application on the official form that accompanies this circular. While, participants/team members are covered, team managers are not. It is also important that prior approval is sought and obtained.

Special leave is also allowed for union business (DPS Circular 14/80). Human Resources Directorate are informed on a regular basis of the names of officers availing

of leave for Union/Staff Association business. The Governor is then given approval for same.

Special leave amounting to 10.5 hours is allowed for the purpose of family mediation service when coping with marital breakdown (DF Circular letter E103/3/67 (of 14/2/91)).

Occasionally special leave is granted for exceptional (adverse) weather conditions, such as snow. That is, if enough evidence is provided to show that the officer could not turn up for work and that others were in the same situation. The application maybe submitted to Department of Finance for observations. In these circumstances checks are made with local weather stations and with other Departments in the locality concerned. The Governor concerned should also provide a recommendation. All decisions shall be conveyed to the officer concerned through the Governor.

31. Transfer of officers between prisons/institutions on a temporary basis

Background

Transfers in the Prison Service are usually on a seniority basis, although a certain degree of assessment of suitability must be applied. However, certain circumstances arise from time to time where an officer, who is not eligible by virtue of seniority, seeks to transfer to a preferred location by way of temporary transfer. These are primarily for urgent domestic issues and include family illness, particular domestic circumstances or medical advice confirmed by the CMO.

It is difficult to accommodate requests for temporary transfers as they hold up opportunities for officers who have patiently waited for their opportunity to arise on terms of seniority. Officers know that when appointed they can be assigned to any prison/place of detention. They are usually assigned initially to a prison in the Dublin area. Unfortunately, some officers either do not move their home to the location to which they are assigned or move their home prematurely in anticipation of a forthcoming transfer on seniority. Both circumstances put a lot of strain on domestic relations, particularly when there are long distances to travel and the Prison Service requires the officer to be available for overtime. Officers are paid a rent-allowance, which is pensionable, to account for the fact that they may be assigned away from home. This payment does not get over the practical problems that arise.

The desire to be transferred to a work location near one's family is entirely understandable but it cannot be solved by temporary transfers, particularly when there are no vacancies in the prison to which they want to be transferred.

Aside from the fact that a vacancy may not exist in the prison to where the officer wishes to transfer, it is not possible to accede to all such requests. A permanent domestic problem will not be solved by a temporary transfer; in fact it can sometimes make the situation worse.

Bearing in mind that the Minister has the sole right to assign any officer to where he or she is required in the exigencies of the service and that a temporary transfer is a privilege not a right it has been decided that the following **procedures** will apply in the case of officers applying for temporary transfers:-

- i. all temporary transfer requests for compassionate purposes must be routed through the Governor. The Governor will then submit the application, along with his own recommendations to the Personnel Officer for consideration. The Welfare Officer must also submit his observations.
- ii. a temporary transfer will be for a period of no more than 13 weeks. In very exceptional circumstances the Personnel Officer may, on application by the Officer, extend the temporary transfer for a further period subject to the overall maximum period of the temporary transfer being no more than 20 weeks. All temporary transfers will be granted based on an 8 to 5, Monday to Friday posting. However, if the transferred officer applies for an 8 to 5 seven day liability posting this may be granted by the Governor of the prison concerned if it is in accordance with the requirements of the prison.
- iii. a decision on a particular temporary transfer application will take into account, inter alia, the existing number of officers on temporary transfer to the institution involved. In the event that a choice is required to be made between a number of equally deserving applications then the seniority of the applicants will determine the issue.

When the decision has been made a letter must issue to the Officer concerned informing him/her of the decision to grant or refuse a temporary transfer. If the application has been approved, the letter must state the length of the approved temporary transfer and the Officer must sign an undertaking to acknowledge that s/he is being transferred on a temporary basis and the date on which s/he is due to resume duty at the Prison to which s/he is normally assigned. If the Officer is unwilling to sign the undertaking, then the temporary transfer will not proceed.

If the temporary transfer is approved and the Officer has signed the required undertaking with agreed commencement and termination dates. Prisons Pay Section have to be informed of the temporary assignment and the computer records in Human Resources Directorate are updated. The Governor of both prisons / institutions have also to be informed.

32. Industrial Relations - change management (sort/step), attendance patterns / rosters, staffing levels

A. Industrial Relations / Change Management

Following extensive negotiations between management and unions, agreement was reached in August 2005 on a radical change programme for the Irish Prison Service, the Proposal for Organisational Change.

The Agreed Proposal for Organisational Change in the Irish Prison Service provides for revised working arrangements and changes in the conditions of service of grades represented by the Prison Officers' Association. The central element of the Agreement involves the elimination of overtime working and its replacement with an Additional Hours System.

These new working arrangements were successfully rolled out in the various prisons and places of detention in three phases between 12 November 2005 and 11 February 2006.

Local monitoring and review committees comprising management and staff representatives have been set up in all prisons. These committees meet regularly to monitor all aspects of the operation of the Agreement. Any difficulties arising that cannot be resolved locally are addressed by the National Monitoring and Review Committee, which comprises IPS senior management, and the POA. Meetings take the form of weekly structured engagement. Meetings also take place under the Chairmanship of the Labour Relations Commission as necessary.

B. Industrial Relations - Attendance Patterns/Roster Design

Prisons operate 24 hours a day, 365 days a year. Most staff in the Prison Service do not work a Monday to Friday 8-5 week. Rather, staff are rostered to work in such a fashion that cover throughout the day and year is provided. The Human Resources Directorate of the Irish Prison Service is responsible for the design of rosters in consultation with prison management and negotiating their introduction with the Prison Officers' Association.

The attendance arrangements for prison service staff under the additional hours system comprises a 39 hour average week and the use of additional hours to meet demands in excess of the rostered hours.

New rosters were devised and agreed for every institution ahead of the roll-out of the additional hours system. Following protracted negotiations, staff of the Prison Service Escort Corps (PSEC) have, in accordance with the terms of the Agreement, agreed revised attendance arrangements to better meet the needs of the Service while at the same time providing benefits for staff. These new attendance arrangements have led to the provision of a more efficient and effective service by PSEC. Changes in rosters in particular areas will be necessary in the future to meet identified needs and management has already tabled proposals in this regard.

C. Industrial Relations - Staffing Levels

The Human Resources Directorate of the Irish Prison Service is also responsible for ensuring that the staff numbers employed in the Prison Service stays within its overall authorised level and for acquiring authorisation from the Department of Finance for the staff resources necessary to operate the Prison Service within parameters laid down by Government.

In discharging this duty, the Human Resources Directorate discusses and negotiates with Prison Governors and other members of Prison Management as well as with the Prison Officers' Association. Such discussions and negotiations would deal with the number and grading of staff. A review of staffing levels and deployment constituted a key element of the SORT analysis referred to above.

D. Industrial Relations - Formal and Informal

Industrial relations within the Prison Service are conducted through both formal and informal structures. Formal industrial relations discussions take place within the Departmental Council of the Department of Justice, Equality and Law Reform under

the Scheme of Conciliation and Arbitration for the Civil Service. Most industrial relations work, however, takes place outside of the Council. Communications are by letter, email, fax, phone and face to face meetings. While issues are raised from time to time by the Governor's Branch of the AHCPS and more recently, general Civil Service unions, the bulk of all contact in relation to industrial relations matters is initiated by the Prison Officers' Association (POA).

Structures are in place to provide close monitoring and review of the new working arrangements. National monitoring and review takes the form of weekly structured meetings between IPS senior management and the POA to resolve any difficulties arising that cannot be resolved at local monitoring and review committee level.

E. Advice to Governors re Industrial Relations Matters

Governors regularly seek advice in relation to what course of action to take in relation to negotiations/discussions with their local monitoring and review branch of the POA. The Human Resource Directorate's role is to give consistent advice to all Governors so that widely different agreements do not emerge in different prisons.

F. Briefing Material/Speeches

Briefing material and speeches/speaking notes are, from time to time, required by the Minister for Justice, Equality and Law Reform as well as the Director General of the Irish Prison Service, in relation to meetings with staff associations. Such meetings range from informal meetings with staff associations to the Minister addressing the annual POA Conference.

2.20.5 Healthcare Directorate

The following is a listing of all rules, practices and procedures followed by the Healthcare Directorate in relation to certain decisions, determinations or recommendations with respect to the rights, privileges, benefits, obligations, penalties or sanctions which members of the public are or may be entitled or subject.

Primary Legislation

Pharmacy Act, 1875 (No. 157 of 1875)
Pharmacy (Amendment) Act, 1890 (No. 48 of 1890)
Pharmacy Act, 1951 (No. 30 of 1951)
Pharmacy Act, 1962 (No. 14 of 1962)
Pharmacy Act, 2007 (S.I. No.243 of 2007)
Poisons Act, 1961 (No. 12 of 1977)
Medical Practitioners Act, 1978 (No. 4 of 1978)
Medical Practitioners Act, 2007
Misuse of Drugs Act, 1977 and 1984 (No. 12 of 1984)
Health Acts, 1947 - 1992
Rules for the Government of Prisons, 1947 (S.I. No. 320 of 1947)
Medicinal Products (Prescription and Control of Supply) Regulations, 2003 (S.I. No. 540 of 2003)
Regulations of the Pharmaceutical Society of Ireland, 1977 to 1995
Misuse of Drugs Regulations 1988 (S.I. No. 328 of 1988) and (Amended) Regulations 1993 (S.I. No. 342 of 1993)
Misuse of Drugs (Supervision of Prescription and Supply of Methadone) Regulations 1998
Nurses Act, 1985 (S.I. No. 225 of 1998)
Guidance to Nurses and Midwives on Administration of Medical Preparations. An Bord Altranais 2000
Code of Professional Conduct for Nurses and Midwives. An Bord Altranais 2000
The Practice of Pharmacy Guide. Pharmaceutical Society of Ireland 1999
Guide to Ethical Conduct of Behaviour. Medical Council 2004

2.20.6 Operations Directorate

Processes

(a) Control/management of prisoner numbers

In order to identify available prison spaces and areas of overcrowding, an analysis of the population of the Prison System is carried out each working day. Each individual institution makes a daily electronic return, which includes the number of offenders in custody, on temporary release, the number of sex offenders in custody, and the number of persons held for deportation. A report which provides details by institution and totals of capacities, numbers in custody, % of capacity occupied, numbers on temporary release, numbers out on licence, total numbers serving sentences, numbers on remand, numbers on protection, non-nationals in custody on immigration warrants/deportation orders and the number of sex offenders in custody is compiled. This report is intended for internal distribution. The number of prisoners in the system must be carefully managed on a daily basis in the interests of security and safe custody.

It is often necessary to reduce the numbers in the committal institutions by transferring prisoners to other institutions and in some cases by granting temporary releases.

(b) General Sentence Management

(i) Review Meetings

Review meetings are used as an important element in the positive management of sentences. Meetings are generally held in each institution on a monthly basis. Each meeting is attended by the Governor and/or Deputy/Assistant Governors of the institution, Probation Service, Chaplains, Psychology Service, Teachers, other prison staff and an officer of the Directorate.

A list of prisoners whose cases are to be reviewed is submitted to the Directorate in advance of the meeting and the Prisoner Details Reports are prepared as necessary and assembled together. These are brought to the meeting by the Directorate's representative and any proposals are recorded on them. Recommendations made might include prison transfers, escorted outings or temporary releases, education and work or work training.

(ii) Case conferences

It is sometimes the case that when prisoners present particular emotional or behavioural difficulties, a case conference is convened to draw on experience and expertise from various prison officials and representatives from the various prison-based therapeutic services. Examples where these conferences could be deemed necessary include cases involving disruptive behaviour, severe psychological problems or when an offender convicted of a violent crime is nearing release and is deemed a "high risk" with regard to re-offending.

(iii) Temporary Releases

Section 1 of the Criminal Justice (Temporary Release of Prisoners) Act, 2003 provides that the Minister may approve the temporary release of a sentenced prisoner. Temporary release arrangements are in effect our system of parole and are regarded as an important vehicle for reintegrating an offender into the community in a phased and planned way. While due regard must be given to any risk which a particular release might pose, the generally accepted view is that the risk to the community would be even greater if, in certain cases, attempts at planned reintegration of offenders were not made since they must return to the community anyway on the completion of their sentence.

Temporary releases may be granted for the purpose of -

- (a) assessing a person's ability to reintegrate into society upon such release,
- (b) preparing a prisoner for release upon the expiration of his/her sentence of imprisonment, or upon him/her being discharged from prison before such expiration,
- (c) assisting the Garda Síochána in prevention, detection or investigation of offences, or the apprehension of a person guilty of an offence or suspected of having committed an offence, or

where there exist circumstances that, in the opinion of the Minister, justify his/her temporary release on -

- (a) grounds of health, or
- (b) other humanitarian grounds, or

where, in the opinion of the Minister, it is necessary or expedient in order to –

- (a) ensure the good government of the prison concerned, or
- (b) maintain good order in, and humane and just management of, the prison concerned, or

where the person has been rehabilitated and would, upon being released, be capable of reintegrating into society.

Each temporary release is subject to certain conditions. The offender must, among other things, undertake to keep the peace and be of good behaviour and of sober habits and, in most cases, he/she must report on a regular basis to a local Garda Station. Temporary release may also be subject to various other conditions depending on the circumstances of the offender and the purpose of the release.

Short-term temporary release or reviewable temporary release may be requested by a prisoner on a "half sheet" or at a "governor's parade". A half sheet is a written request by an offender and a governor's parade is a daily opportunity for offenders to speak with a senior officer in the prison. Requests for short term and reviewable temporary releases are then transmitted to the Directorate for attention. These requests are received either in writing or in electronic format, i.e. e-mail.

The request together with any relevant information is brought to the attention of the relevant officer who will generally either grant or refuse the request. In some cases, it may be considered necessary to submit the request with a recommendation to the Minister.

A prisoner is granted reviewable temporary release for a specified period and at the end of this period of release, he/she must return to the institution to have his/her period of temporary release reviewed. This form of temporary release is appropriate to prisoners who are nearing the end of their sentences and often for reasons such as taking up employment or to take up places in residential treatment centres. Life sentence prisoners who have been released into the community are also subject to this form of temporary release.

Full temporary release may also be granted to offenders. This form of release is used where a prisoner is near the end of a sentence or where a prisoner is serving a short sentence for a minor offence. There is no need for the offender to return to custody once he has been granted this form of release.

There will also be occasions where some committal institutions come under pressure to alleviate the pressure of numbers by releasing prisoners who are nearing the end of their sentences. Such situations result in some prisoners being released at short notice rather than as part of a structured programme of release. The Operations Directorate is responsible for ensuring the safe, secure and humane custody of prisoners consistent with the rule of law and to allow overcrowding to develop to a dangerous level would be inconsistent with this approach. When such an occasion arises, the staff of the relevant institutions are asked to recommend a number of candidates for consideration for release. In addition, prisoner records maintained within the Directorate are examined with a view to identifying suitable persons.

Criteria

A number of factors are taken into account when considering the temporary release of any prisoner.

These include:

- the nature and gravity of the offences to which the sentence of imprisonment being served by the person relates
- the sentence of imprisonment concerned and any recommendations of the Court that imposed that sentence in relation thereto
- the period of the sentence of imprisonment served by the person
- the potential threat to the safety and security to members (including the victim of the offence) of the public should the person be released from prison
- the person's previous criminal record
- the risk of the person failing to return to prison at the expiration of the period of temporary release
- the conduct of the person while in custody or while previously on temporary release

- any report or recommendation made by the Governor, the Garda Síochána, a Probation Officer, or any other person whom the Minister considers may be of assistance in coming to a decision as to whether to grant temporary release
- the risk of the person committing an offence during any period of temporary release
- the risk of the person failing to comply with any of the conditions of temporary release
- the likelihood that a period of temporary release might accelerate the person's reintegration into society or improve his prospects of obtaining employment

In all cases, the overriding concern is for the safety of the public. All requests received and decisions made are recorded on the Prisoners Details Report sheet and the Prisoner Records Information System.

(iv) Transfer of prisoners within the prison system

Prisoners are transferred from one institution to another for operational reasons or, possibly, on foot of an application from an individual prisoner.

The need to transfer prisoners often arises for operational reasons such as the need to protect a prisoner, to prevent planned disruption, as part of a penalty for breach of discipline, to reallocate cell space or to disperse prisoners from committal prisons in order to avoid overcrowding.

A number of factors are taken into account in considering transfers. These include the reason for the request, the offence committed by the prisoner, the length of sentence and time served, behaviour while in custody, the availability of a suitable place or places in other institutions, the availability of officers for the escort or escorts and the needs and personal circumstances of the individual offender or offenders. Particular regard is had for any security implications.

Regard is also had, when placing prisoners in Institutions appropriate to their level of security, for the need to accommodate prisoners at institutions offering programmes that best meet their individual needs and requirements. This process may include increased investment of trust and responsibility in prisoners. The process includes the progressive movement of prisoners from closed or high security prisons to lower security semi-open and open centres

When all of the relevant information is available, a transfer is approved or refused by an officer at Manager level or higher and the decision is conveyed to the transferring institution. Where a transfer is approved, a Transfer Order is prepared and signed by an officer at Deputy Director level or higher on behalf of the Minister for Justice, Equality and Law Reform. The original of this Transfer Order is sent to the receiving institution. Detailed arrangements for the transfers are made between the relevant institutions.

(v) Production of Prisoners to Court

Where a member of the Garda Síochána requires the presence of a prisoner before the Courts he must seek to have the prisoner "produced". The production of prisoners before the courts is provided for in the Prisons Act, 1898. The Operations Directorate is required to prepare and sign, on behalf of the Minister, a Production Order. Requests to have a prisoner produced are received in writing and more usually by telephone on a daily basis. The details of the request, i.e. the name, prison number, the prison that the offender is detained in, the date and time of the court appearance, the reason for the court appearance and the name, station and a contact number of the Garda are recorded in a special diary. When the production of the prisoner is approved, the General Office in the relevant institution is advised and a Production Order is prepared and signed by an officer at Deputy Director level or higher on behalf of the Minister for Justice, Equality and Law Reform. The original of this Production Order is sent to the prison. On any occasion when it is not possible to arrange the appearance of a prisoner in court or where the request is refused the Garda who requested the production or another Garda in the same station is advised accordingly.

(vi) Transfer of Prisoners to Hospital

On occasion, it is considered that the proper medical care of a prisoner cannot be provided for with the facilities available within an institution. On such occasions, a decision to bring the prisoner to hospital is made. The staff of the institution will request authority to bring the prisoner to a designated hospital. In all cases the details of the prisoner, the prison from which the movement is taking place, the date of the movement and the hospital to which the offender is being moved to are entered in a special diary and a Hospital Order is prepared. This Order is signed by an officer at Deputy Director level or higher on behalf of the Minister for Justice, Equality and Law Reform and is forwarded to the institution for placement on the prisoner's file.

(vii) Maintaining prisoner records

Each morning, articles and/or reports in the daily newspapers are identified and copied. Articles and reports generally fall into one of two categories, those relating to individuals who have been committed to a penal institution and those which may be of general interest in the context of the prison service.

Those reports and articles that relate to individuals in custody are associated with the manual record relating to that individual. Those of general interest are circulated as deemed appropriate.

Manual or paper records relating to individual prisoners may consist of anything from a single Prisoner Details Sheet to a comprehensive prisoner file.

A Prisoner Details Report is completed in respect of each offender committed on sentence to a prison or place of detention. The information for the preparation of the Report is available from the PRIS system. The relevant information is entered on the Report within the Division by an officer responsible for the institution. All requests from prisoners and decisions taken in relation to applications for temporary release, transfers, escorted outings, etc. are recorded on this Report.

Where an offender enters or re-enters the prison system it is usual practice to seek, in confidence, a report from the Garda Síochána about the offender as well as some background to the offence for which he/she has been committed to custody. Any information obtained is recorded in the appropriate spaces on the Prisoner Details Report and the PRIS system.

(viii) Offenders reviewed by the Parole Board

As issues concerning risk to the community and preparation for re-integration are much more complex in relation to offenders serving long sentences, a Parole Board was established to advise in relation to the administration of longer term prison sentences including the type of programmes which should be set in place leading up to eventual release.

Offenders who have served half of a determinate sentence of eight years or more, or who have served at least seven years in custody (including persons serving life sentences) are now invited to have their cases considered by this Parole Board.

As a general principle, prisoners serving sentences for:

(a) treason or attempted treason or murder or attempted murder to which Section 3 of the Criminal Justice Act, 1990 applies (e.g. murder or attempted murder of a member of the Garda Síochána or the Prison Service acting in the course of his/her duty),

(b) murder or attempted murder done in the course or furtherance of an offence under Section 6 of the Offences Against the State Act, 1939, or in the course or furtherance of the activities of an unlawful organisation within the meaning of Section 18 (other than paragraph (f) of that Act),

(c) murder or attempted murder, committed within the State for a political motive, of the head of a foreign state or of a member of the government of a diplomatic officer of a foreign state will not be eligible for review.

Persons sentenced to a term of imprisonment for the possession of drugs under subsections 3a and 3b of Section 27 of the Misuse of Drugs Act, 1977, as amended by Section 5 of the Criminal Justice Act, 1999 will also not be eligible for review by the Board. However, in these excepted cases, the Minister may, in an individual case, make a specific reference to the Board.

The Board does not review the case of any offender who indicates that he/she does not want their case considered by the Board. An offender who wishes to opt out of the review procedure may, through the Governor, write to the Board indicating this. Prisoners who are excluded from or who do not wish to avail of the Parole Board process are still entitled to submit requests to the Minister for Justice, Equality and Law Reform and their cases continue to be managed in the normal manner. In advance of the Parole Board issuing a recommendation, this Directorate provides them with a Prison Review Committee Report which may set out all or a number of the following:-

(a) the background and the circumstances of the current conviction,

- (b) any previous convictions that the offender has,
- (c) the offender's behaviour while in custody,
- (d) whether he/she has engaged with the prison based therapeutic services and, if so, to what extent,
- (e) whether the offender has been reviewed in the past and, if so, the previous recommendations and
- (f) a recommendation on the future sentence management of the case.

The Operations Directorate is responsible for the day-to-day sentence management of such prisoners, in line with the Minister's decision on how to proceed in each case having had regard for the Parole Board's recommendations.

(c) Monitoring of long term sentenced prisoners on temporary release

The Operations Directorate also has responsibility for life sentence offenders who have been granted reviewable temporary release and whose cases continue to be monitored. These offenders remain subject to the supervision of the Minister for Justice, Equality and Law Reform indefinitely. This supervision in the community is carried out on behalf of the Minister by the Probation Service. When this Directorate is made aware of a possible breach of condition of temporary release, an investigation is carried out and reports are sought from concerned parties. If there is strong evidence that a breach did occur, actions taken, depending on the seriousness of the case, could range from the offender receiving a warning to him/her being taken back into custody.

(d) Victim Liaison

If requested by the victim of a serious sexual or violent offence the Prison Service is obliged to notify the Gardaí, who will then notify the victim, when the release of the perpetrator from prison either on temporary release or at the end of their sentence is imminent. In cases where the release is ordered by the Court, prior notification will not usually be possible.

The Victim Liaison Officer, when requested by a victim (or a victim's family) also makes every attempt to inform them of significant developments with regard to the sentence management of such prisoners. These details could include, for example, notification of release/temporary release, a prison transfer, any changes in sentence length and outcome of parole board hearings. This Officer can be contacted by writing to the Victim Liaison Officer, Irish Prison Service Headquarters, IDA Business Park, Ballinalee Road, Longford, County Longford.

(e) Mitigation of fines

Section 23 (3) of the Criminal Justice Act, 1951 as amended by Section 17 of the Criminal Justice (Miscellaneous) Provisions Act, 1997 empowers the Minister for Justice, Equality and Law Reform to commute or remit, in whole or in part, any punishment imposed by a Court exercising criminal jurisdiction. In practice, persons committed to prison on foot of non-payment of fines may be dealt with under this legislation as many offer a sum less than the amount owed in an attempt to secure their release. Each case is considered on its own merits by an appropriate officer from the Operations Directorate, on behalf of the Minister, taking into account such matters as

length of time served, the nature of the offence, the amount of money owed, the amount of money being offered and any compassionate circumstances that may be associated with the particular case. The Minister does not have the authority to release persons from custody serving sentences involving orders to pay costs or compensation unless these have been paid in full. Similarly, the Minister is unable to consider releasing persons serving sentences for debtor offences.

(f) Security Procedures

This Directorate is responsible for the management of security issues such as the updating and implementation of appropriate escort guidelines, hostage negotiation procedures and the management of disruptive prisoners. This type of information is regarded as highly confidential and, for obvious security reasons, is not released into the public forum. Extra security measures are being introduced including the establishment of a drug detection dog service, the introduction of security screening (X-ray/metal detectors) for all persons (prisoners, visitors and staff) entering our prisons as well as a rolling programme of reviews of security at all closed prisons.

(g) Responding to legal challenges

This Directorate acts for the Minister for Justice, Equality and Law Reform and/or Prison Governors on many legal challenges that are taken by prisoners. Such challenges vary from individual matters (such as claims of illegal detention, complaints about their treatment while in custody or complaints about the way their sentence has been managed) to more general matters such as health and safety issues, the legality of legislation or the rights of all prisoners.

(h) Parliamentary Questions

Parliamentary Questions for both oral and written answer, which concern either individual prisoners or the prison system, in general are passed to this Directorate in order that appropriate answers may be drafted for the Minister for Justice, Equality and Law Reform.

(i) Representations

Representations made to the Director General or the Minister for Justice, Equality and Law Reform concerning individual prisoners or the prison system in general are passed to this Directorate in order that appropriate responses may be drafted. Representations may be received from members of the public, including the family and friends of prisoners, victims of crime and from public representatives. As representations are received in the Directorate their receipt is recorded on the Irish Prison Service Correspondence Tracking System.

(j) Press Queries

All requests for information concerning prison issues from persons working in the media are channelled to the Directorate through the Prison Service Press Office. Queries from the Press Office may be in either oral or written form and are generally

dealt with as a matter of urgency. Information may be furnished to the Press Office orally or in memo form and in all cases the information to be furnished is approved by an appropriate officer.

(k) Queries from members of the Public

The bulk of queries from members of the public generally fall into three categories:

- (i) those from the immediate family or friends of a prisoner
- (ii) those from members of the general public, and
- (iii) those from victims of crimes (or their friends/relatives)

When appropriate, queries from relatives are directed to the Governor of the institution in which the prisoner is in custody. Alternatively, or if the member of the public wishes, details of the query will be taken and enquires will be made by an official from the Operations Directorate who will then answer the query in as short a time as is practical. On occasions, a senior officer may be familiar with the particular case and will therefore be able to provide immediate answers to the query. Only in exceptional circumstances will the personal circumstances of a prisoner be discussed with a third party.

Queries from non-relatives of prisoners tend to concern general or statistical information. In such cases the information, if available, is provided immediately. In other cases the caller may be directed elsewhere or asked to make their request in writing. All general queries are dealt with as soon as circumstances allow.

Queries from victims, or their families, are forwarded to the Victim Liaison Officer (the responsibilities and functions of the Victim Liaison Officer are referred to earlier in this document).

(l) Freedom of Information Requests

The Operations Directorate is responsible for the processing of Freedom of Information Requests relating to prisoners and operational prison issues. Decisions on the release/refusal of records are made at Manager level and decisions on appeals are made at Deputy Director level. Responses are issued directly to the applicant by the Freedom of Information Officer in the Department of Justice, Equality and Law Reform.

2.20.7 Regimes Directorate

Below are listed the rules, practices and procedures followed by the Regimes Directorate (including the Psychology Service, Education Service, Work and Training and Chaplaincy) in relation to certain decisions, determinations or recommendations with respect to the rights, privileges, benefits, obligations, penalties or sanctions to which members of the public are or may be entitled or subject. All are available through the Government Publications Sales Office, Molesworth Street, Dublin 2.

Legislation

The general body of legislation including -

Rules and Regulations

Prison Rules, 2007

European Conventions and International Standards

European Prison Rules (Strasbourg 2006);
European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (Strasbourg 1987);
European Convention on Human Rights (Strasbourg 1950);
Universal Declaration of Human Rights, 1948;
Vienna Declaration of Human Rights, 1993;
International Covenant on Civil and Political Rights;
UN Convention on the Rights of the Child 1989.

Miscellaneous

Children Act, 2001
Prompt Payments Act, 1997
Government Procedures
Public Financial Procedures (Department of Finance 1996)
Procurement Directives / Rules / Guidelines
An Outline of Government Contracts Procedures
European Union Procurement Directive 93/36/EEC (Supplies) and 92/50/EEC (Services)
Keeping Drugs out of Prisons – IPS Drugs Policy and Strategy 2006
Report of the Advisory Group on Prison Deaths 1991
Report of the National Steering Group on Deaths in Prisons 1999

Additional Information in relation to the functions carried out by the Regimes Directorate:

Deaths in Prison Custody

All deaths in prison custody are the subject of a Garda investigation and an inquest held in a Coroner's Court. The cause of death is determined by a jury based on the information presented to the Court. In most cases the cause of death is recorded as being in accordance with the medical evidence. The Irish Prison Service liaises with the Chief State Solicitor's Office and the Coroners Courts concerning inquests on persons who have died in prison custody.

The circumstances of each death in prison custody are examined by a Suicide Awareness Group in each institution. These examinations cover fully the background and circumstances of each death. Their objective is to identify, where possible, measures that might be implemented to contribute to a reduction in the risk of deaths in the future.

As a result of discussions between the Department of Justice, Equality and Law Reform and the Irish Prison Service during 2004, the Minister for Justice, Equality and Law Reform approved the dissolution of the National Steering Group on Deaths in Custody (which had been in existence since 1991) and the setting up of a new group, which would be sited in the Irish Prison Service, and would extend its remit to the area of prisoner self-harm. This new group, The Irish Prison Service Steering Group on Prevention of Self-harm and Death in the Prisoner Population, held its inaugural meeting on 1 February, 2005. The terms of reference of the Group are as follows:-

To promote best practice in the Irish Prison Service in preventing and, where necessary, responding to self-harm and death in the prisoner population.

In particular, the Group will:

- monitor the incidence and nature of self-harm and death in the prisoner population;
- review incidents of self-harm and death in the prisoner population with a view to improving prevention measures and the implementation of response measures;
- make recommendations, as appropriate, and when necessary;
- ensure the sharing of relevant information on risk factors and best practice, with the Suicide Awareness Group in each prison and place of detention;
- report annually to the Minister for Justice, Equality and Law Reform on all matters relevant to the work of the Group.

Parliamentary Questions

Parliamentary Questions for both oral and written answer, which fall within the remit of the Regimes Directorate, are processed through the Irish Prison Service central PQ database.

Representations to the Minister

Representations made to the Minister, orally or most often in writing which concern matters within the ambit of the Directorate are passed to this Directorate in order that appropriate responses may be drafted. Representations may be received by the Minister from other Ministers, Dáil Deputies, Senators, any other public representative and members of the public including the family and friends of prisoners. An electronic Correspondence Tracking System is in place to record such representations and responses.

Press Queries

All requests for information concerning prisons issues from persons working in the media are channelled to the Directorate through the Irish Prison Service Press Office. The Directorate complies with the Department's policy of not commenting on the case

or circumstances of any individual. Information may be furnished to the Press Office orally or by written memo.

Queries from members of the public

Queries from members of the public are received by e-mail, telephone and letter. The necessary enquires are then made. A response will be made as soon as practicable. On occasion, a senior officer may be familiar with the particular issue/case and, accordingly, may be in a position to provide some assistance. Only in exceptional circumstances will the personal circumstances of a prisoner be discussed with a third party. Queries from other than relatives of prisoners tend to concern general or statistical information. In such cases, the information is provided immediately if it is available. In other cases, the caller may be directed elsewhere or asked to make their request in writing. All general queries are dealt with as soon as circumstances allow.

2.21 LAW REFORM DIVISIONS (CRIMINAL & CIVIL)

Legislation

In the preparation of legislation, reference is made to the procedures set out in "The Legislative Process - A Guide for Civil Servants" published by the Civil Service Training Centre in 1986 and to Government Procedure Instructions.

Central Authority for Child Abduction

The Central Authority processes applications in accordance with provisions of the Child Abduction and Enforcement of Custody Orders Act 1991 which gives the force of law to the Convention on the Civil Aspects of International Child Abduction, signed at The Hague on the 25th day of October 1980, and to the European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children, signed at Luxembourg on the 20th day of May 1980. The Central Authority also deals with matters arising under Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility.

Central Authority for Maintenance Recovery

The Central Authority processes applications in accordance with the provisions of the Maintenance Act, 1994 which gives the force of law to the Convention on the recovery abroad of maintenance done at New York on the 20th day of June, 1956. Legislation relevant to the processing of applications under the 1994 Act:

- Jurisdiction of Courts and Enforcement of Judgements Act 1998
- Family Law (Maintenance of Spouses and Children) Act 1976
- European Communities (Civil and Commercial Judgments) Regulations 2002 (S. I. No. 52 of 2002)
- Enforcement of Court Orders Act 1940

2.22 MINISTER'S OFFICE

The following is a listing and description of each rule and or practice followed by the Minister's Office in relation to correspondence received in the Office.

Procedures followed

All correspondence from members of the public and members of the Oireachtas are date stamped on receipt, entered in the Ministerial Correspondence Tracking System and acknowledged to the correspondent. It is then transmitted to the appropriate Division within the Department for attention.

Invitations/requests for meetings etc. (which can only be considered when submitted in writing) are brought to the Minister's attention and considered in the context of diary commitments. It may be necessary to seek advice in relation to acceptance of the invitation/request. Where a request is refused, contact is made via telephone and followed up and if necessary in writing.

Minister's Invitations which are accepted and consequent arrangements are normally dealt with by telephone and email.

Government Decisions are received from Government Secretariat recorded on the Correspondence Tracking System and transmitted to the appropriate official for attention.

2.23 OFFICE OF THE MINISTER OF STATE

The following is a listing and description of each rule and or practice followed by the Office of the Minister of State in relation to correspondence received from members of the public.

Rules and Practices

All correspondence received in the office of the Minister of State is logged in the computer filing system and given to the Private Secretary for attention.

Invitations/requests for meetings etc. are brought to the Minister of State's immediate attention. The Minister of State decides whether he is in a position to accept the invitation or may seek advice from the appropriate section in relation to acceptance of the invitation. When an invitation/request for a meeting is accepted, a speech or briefing material is requested from the appropriate section.

Other correspondence is acknowledged and sent to the appropriate section or other Department for consideration and draft reply. All replies are brought to the Minister of State's attention before issuing. Correspondence which requires the Minister of State's immediate attention or direction, before issuing to Sections/Departments with an instruction from the Minister of State in relation to action to be taken.

Reminders are issued to the Sections/Departments on a monthly basis in respect of outstanding correspondence.

Details of action taken in relation to correspondence are recorded in the computer database.

2.24 Office of the Minister for Integration

List of legislation:

On 20th May 2007, An Taoiseach appointed a Minister of State, with special responsibility for Integration Policy, at the Departments of Community, Rural and Gaeltacht Affairs; Education and Science and Justice, Equality and Law Reform. The Integration Unit of the Reception and Integration Agency operates as the Office of the Minister for Integration while retaining links with the Reception and Integration Agency and the Irish Naturalisation and Immigration Service.

All primary legislation applies to legally resident immigrants, the client group of the Office of the Minister for Integration.

Section 24 of the Refugee Act, 1996 (as amended) sets down the framework under which the Resettlement Programme operates.

The European Refugee Fund and the European Fund for the Integration of Third Country Nationals is administered in accordance with EU Council Decisions and Guidelines (more information available on www.ria.gov.ie)

Government Decisions:

S180/15/05/0010 18 July, 2007 Appointment of Conor Lenihan, T.D. as Minister of State at the Departments of Community, Rural and Gaeltacht Affairs, Education and Science and Justice Equality and Law Reform (with special responsibility for Integration Policy)

S 180/20/10/0122E 8 June, 2005 ‘to increase the annual resettlement quota of refugees/vulnerable persons under the UNHCR Resettlement Programme from 10 cases to 200 persons to be admitted as programme refugees...’

Practices and Procedures in relation to the functions of the Office

The Office of the Minister for Integration has a cross departmental mandate to develop drive and coordinate Integration Policy.

The Office will be involved in the development of a long-term national policy on integration which will be informed by widespread consultation at a national level, properly structured objective research and international experience and best practice.

The Minister intends to establish a Task Force on Integration in early 2008 to identify key issues affecting immigrant communities; consult widely with immigrants and Irish people; visit communities; examine previous research and report back with recommendations.

The Minister also intends to establish a Ministerial Council, comprised exclusively of migrants residing in Ireland, to ensure the direct input of the new immigrant communities in policy formulation and development.

It is also intended that a National Integration Forum will be established to advise Government on integration related matters.

The Office of the Minister for Integration will also be involved in setting up new funding lines to address integration priorities; developing “principles” of integration; bringing Departments together to coordinate integration activities and helping all parties (local communities/local authorities/trade unions/religious groups etc.,) to play their part in building an integrated Irish society.

The Office is also responsible for the selection and resettlement of programme refugees admitted into the Ireland under Government Decision. The Office is also involved in the Development of reception, resettlement and Integration programmes in cooperation with receiving communities and the coordination and monitoring of the Resettlement process over the first 18 months after arrival.

The Office manages a small grants scheme for local voluntary community groups involved in supporting asylum seekers or legally resident migrants in the local community. Application Forms and Guidelines are placed on the RIA website www.ria.gov.ie

The Office works with Pobal to develop guidelines and application procedures for various funding streams, including the Immigrant Integration Fund. Guidelines are published on the RIA website www.ria.gov.ie and on the Pobal website www.pobal.ie

Procurement Directives / Rules / Guidelines

The RIA operates its procurement procedures under the Guide to Community Rules on Public Procurement of Services (Directive 92/50/EEC).

The RIA also operates in accordance with Procurement Guidelines as set out in the Department of Finance website www.finance.gov.ie

Miscellaneous

European Refugee Fund and European Fund for the Integration of Third Country Nationals - Council Decisions and Guidelines.

The Integration Unit will be developing a set of Rules and Procedures for the operation of Reception and Orientation Centres for Resettlement Refugees in 2008.

2.25 MUTUAL ASSISTANCE & EXTRADITION DIVISION

This document lists the rules, practices and procedures followed by the Mutual Assistance and Extradition Division. The legislative framework within which the Division operates is as follows:

Irish legislative measures on Mutual Assistance

- Criminal Justice Act, 1994 with particular reference to Part VII, International Cooperation
- Criminal Justice Act, 1994 (Commencement) Order, 1996 which is the commencement order for Parts V and VII of the 1994 Act including the First and Second Schedules to the Act (S.I. 333 of 1996).
- Criminal Justice (Joint Investigation Teams) Act 2004
- Criminal Justice Act, 1994 (Section 55(1)) Order, 1996 (S.I. 341 of 1996).
- Criminal Justice Act, 1994 (Section 47(1)) Order, 1996 (S.I. 342 of 1996).
- Criminal Justice Act 1994 (Section 46(6)) Regulations 1996 which make modifications to the Criminal Justice Act, 1994 for the purpose of adapting to confiscation co-operation orders provisions of the Act relating to confiscation orders (S.I. 343 of 1996).
- Criminal Justice Act, 1994 (Section 46(1)) Order, 1996 (S.I. 344 of 1996).
- Criminal Justice Act, 1994 (Section 46(1)) Order, 1997 (S.I. 104 of 1997).
- Criminal Justice Act, 1994 (Section 47(1)) Order, 1997 (S.I. 105 of 1997).
- Criminal Justice Act, 1994 (Section 46(1)) (No 2) Order, 1997 (S.I. 366 of 1997).
- Criminal Justice Act, 1994 (Section 47(1)) (No 2) Order, 1997 (S.I. 367 of 1997).
- Criminal Justice Act, 1994 (Section 55(1)) Order, 1997 (S.I. 368 of 1997).
- Criminal Justice Act, 1994 (Section 46(1)) (No 3) Order, 1997 (S.I. 463 of 1997).
- Criminal Justice Act, 1994 (Section 47(1)) (No 3) Order, 1997 (S.I. 464 of 1997).
- Criminal Justice (Misc. Provisions) Act 1997 S.15.
- Criminal Justice Act, 1994 (Section 46(1)) Order, 1998 (S.I. 65 of 1998).
- Criminal Justice Act, 1994 (Section 47(1)) Order, 1998 (S.I. 6 of 1998).
- Criminal Justice Act, 1994 (Section 46(1)) (No 2) Order, 1998 (S.I. 259 of 1998).
- Criminal Justice Act, 1994 (Section 47(1)) (No 2) Order, 1998 (S.I. 260 of 1998).
- Criminal Justice Act, 1994 (Section 55(1)) Order, 1998 (S.I. 261 of 1998).
Agreement between Ireland and the United Kingdom concerning Mutual Assistance in Criminal Matters (signed 26 November 1998).
Treaty between Ireland and the United States of America on Mutual Legal Assistance in Criminal Matters (signed 18 January 2001).
Agreement between Hong Kong SAR and Ireland concerning MLA in

Criminal Matters .

- Criminal Justice Act 1994 (section 46(1)) Order 2002
- Criminal Justice Act 1994 (section 47(1)) Order 2002
- Criminal Justice Act 1994 (section 55(1)) Order 2002.

Irish legislative measures on Extradition

- Extradition Act, 1965. This is the primary legislation which provides for both the simplified arrangements Ireland operates with Britain and Northern Ireland (Part III) and
- Extradition Act 1965 (Commencement) Order, 1965.
- The Extradition (European Convention on the Suppression of Terrorism) Act 1987 which g
- Extradition (Amendment) Act 1987 which amends Part III of the 1965 Act.
- Extradition (Amendment) Act, 1994 which amends the Extradition Act 1965, the Extradition (Amendment) Act 1987 and the Extradition (European Convention on the Suppression of Terrorism) Act 1987.
- Extradition (Amendment) Act, 1994 (Commencement) Order, 1994.
- Extradition (Rule of Specialty and Re-extradition for Purposes of Part III of purposes of Part III of that Act. Extradition A
- District Court Rules, 1997 (S.I. No. 93 of 1997) (Order 29). These Rules replace in rev
- District Court (Extradition), Rules 1998 (S.I. No. 89 of 1998). These Rules prescribe an amended form of arrest warrant for use in extradition proceedings.
- Extradition Act 1965 (Application of Part II) Order, 2000 (S.I. 474 of 2000). The effect of previous Extradition Orders pertaining to multilateral and bilateral extradition agreements)
- Extradition (European Union Conventions) Act, 2001. This Act gives effect to two European
- Extradition Act 1965 (Application of Part 11) (Amendment) Order 2002 (S.I. 173/2002) gives effect to the extradition provisions of the Criminal Justice (United Nations Convention against Torture) Act 2000 and the Criminal Justice (Safety of United Nations Workers) Act, 2000.
- Extradition (European Union Conventions) Act, 2001 (Commencement Order) 2001. This Order brought the Extradition(European Union Conventions) Act, 2001 into operation from 20 March, 2002.
- The European Arrest Warrant Act 2003 gives effect to the Council Framework Decision of 1
- Criminal Justice (Terrorist Offences) Act 2005.
- Transfer of Execution of Sentences Act 2005
- European Arrest Warrant Act 2003 (Designated Member States) (No. 4) Order 2004.
- European Arrest Warrant Act 2003 (Designated Member States) (No. 130) Order 2004.
- European Arrest Warrant Act 2003 (Designated Member States) (No. 206) Order 2004.
- European Arrest Warrant Act 2003 (Designated Member States) (No. 400) Order 2004.
- European Arrest Warrant Act 2003 (Designated Member States) (No. 449) Order 2004.
- European Arrest Warrant Act 2003 (Designated Member States) (No. 532) Order 2004.

- European Arrest Warrant Act 2003 (Designated Member States) (No. 27) Order 2005.
- European Arrest Warrant Act 2003 (Designated Member States) (No. 240) Order 2005.
- European Arrest Warrant Act 2003 (Designated Member States) (No. 2) Order 2007.

Irish legislative measures in relation to Europol

- Europol Act 1997.
- Europol (Amendment) Act 2006.

Irish legislative measures which relate to both Mutual Assistance and Extradition

- International War Crimes Tribunals Act, 1998. This Act enables Ireland to fulfil its obligations to co-operate with international Tribunals in the performance of their functions relating to the prosecution and punishment of international war crimes.
- Criminal Justice (United Nations Convention against Torture Act, 2000. This Act gives effect to the Convention against torture and other cruel, inhuman or degrading treatment or punishment adopted by resolution of the General Assembly of the United Nations on the 10th day of December, 1984.
- Criminal Justice (Safety of United Nations Workers) Act, 2000. This Act gives effect to the Convention on the safety of United Nations and associated personnel done at New York on the 9th day of December, 1994.
- The International Criminal Court Act 2006. This Act gives effect to the Rome Statute of the International Criminal Court done at Rome on 17 July 1998.

2.26 ORGANISATION DEVELOPMENT UNIT

Rules and Practices

Procurement and FOI Requests

ODU adheres to the general rules and practices which apply in relation to procurement and dealing with FOI requests.

Public Service Management Act, 1997

The Public Service Management Act, 1997 provides for a new management structure to enhance management and transparency of operations in Departments and Offices. It increases the accountability of civil servants, gives formal responsibility to Secretaries General for the day-to-day management of Departments, and provides for the formal assignment of tasks by the Secretary General to other officers of the Department. It also obliges each Secretary General to prepare a strategy statement which sets out the specific objectives, outputs and strategies of the Department.

A considerable proportion of ODU's work is on matters relevant to the Public Service Management Act, including co-ordination of the preparation of the Department's Strategy Statements and Annual Progress Reports, the business planning process in the Department and assignments of responsibility. The terms and procedures outlined in the Act are strictly followed by ODU in these matters.

2.27 PAROLE BOARD

The Parole Board

The following is a listing and description of each rule and practice followed by the Parole Board in its review of cases referred to it by the Minister for Justice, Equality and Law Reform.

Process

Incoming Post

Letters and other items are delivered to the Parole Board through the post, usually, once each day. Letters and other items may also be delivered by hand. Each item is opened and examined and given attention or redirected to another body as appropriate.

Newspaper Reports

Articles and/or reports in certain daily newspapers which relate to the work of the Board are identified and copied. These articles and/or reports are associated with a relevant general file or are, initially, maintained on a central file and later associated with the relevant case file.

Parliamentary Questions

Parliamentary Questions which concern the work of the Board are dealt with by the Prisons and Probation Policy Division of the Department of Justice, Equality and Law Reform. The Board may be asked to supply information to assist that Division in drafting a reply.

Press Queries

The Parole Board does not have a press office nor does it respond directly to requests for information concerning its work from persons in the media. Such persons requesting information are directed to the Press Office of the Department of Justice, Equality and Law Reform.

Queries from Members of the Public

Queries received from members of the public may be general and in relation to the work of the Board or may be in relation to individual prisoners whose cases have been referred to the Board for review by the Minister. General information is provided as soon as possible, either orally or in writing. The Board does not provide information in relation to the cases of individual prisoners to members of the public but queries from the immediate family of a prisoner in relation to the review of that prisoner's case may be answered in general terms. Callers seeking information which the Board is not in a position to provide are directed to the appropriate body where possible.

Role of the Parole Board

The role of the Board is to review the cases of prisoners referred to it by the Minister for Justice, Equality and Law Reform and to provide advice to the Minister on the administration of the sentences of the individual prisoners concerned.

Eligibility Criteria

The Board reviews the cases of prisoners sentenced to 8 years or more, where the cases have been referred to it by the Minister. In general, the Board will review a case when the prisoner has served the lesser of half of his or her sentence or 7 years. The review process may be started in advance of the half sentence or 7 year stage being reached.

As a general principle, prisoners serving sentences for:

- Treason or attempted treason or murder or attempted murder to which section 3 of the Criminal Justice Act, 1990 applies (e.g. murder or attempted murder of a member of the Garda Síochána or the Prison Service acting in the course of his or her duty,
- Murder or attempted murder committed in the course or furtherance of an offence under section 6 of the Offences against the State Act, 1939, or in the course or furtherance of the activities of an unlawful organisation within the meaning of section 18 (other than paragraph (f) of that Act, and
- Murder or attempted murder, committed within the State for a political motive, of the head of a foreign state or of a member of the government or a diplomatic officer of a foreign State,

are not eligible to have their cases reviewed by the Board.

Persons sentenced to a term of imprisonment for the possession of drugs under subsection 3 (B) of section 27A of the Misuse of Drugs Act, 1977 are also not eligible for review by the Board.

Notwithstanding these exceptions, the Minister may refer a specific individual case to the Board for review.

Main Features of the Review Process

Referral of cases by the Minister

The Minister periodically ascertains, from the Irish Prison Service, details of prisoners who will become eligible for review by the Board.

The Minister may then refer these cases to the Board for review. Where a case is referred to the Board by the Minister, the Board invites the prisoner concerned to have his or her case reviewed. The Board will not review the case of any prisoner who declines this invitation or who indicates, at any stage, that they do not wish the Board to review their case. Prisoners who indicate that they do not wish to have their cases reviewed may join, or rejoin, the process at a later stage.

Parole Review Dossier

Where a prisoner accepts the invitation to have his or her case reviewed, the Board prepares a 'review dossier'. In addition to basic details concerning the prisoner (e.g. address, date of birth, offence, sentence, date of conviction), the dossier will generally include reports prepared by:

- An Garda Síochána,
- prison management and staff,
- the local Prison Review Committee in the institution where the prisoner is accommodated, and
- the Probation Service

The dossier may also include psychiatric, psychological and other reports.

The Board is free to make such further enquiries, or to seek such further reports, as it deems appropriate in any individual case.

When the dossier has been assembled a copy is sent to the prisoner in a sealed envelope. A "Disclosure/Prisoner's Observations" form is enclosed to allow the prisoner to submit observations, to the Board, on the content of the dossier. The prisoner is also advised that he or she will have another opportunity to submit observations to the Board, in the context of his or her interview with Parole Board members.

The prisoner's observations, if any, can be returned to the Parole Board Secretariat, sealed in a pre-addressed envelope, provided for the purpose. The prisoner is free to send other information, which he or she wishes the Board to take into account, in its review of his or her case. A copy of the prisoner's observations, and any other submissions and documents, is included in the dossier furnished to the members of the Board.

Although the entire contents of a dossier, which is presented to the Board, is usually disclosed to the prisoner whose case is being reviewed, certain documents may be withheld, for the following reasons:

- in the interests of national security,
- for the prevention of crime or disorder, including prison security,
- for the protection of information received in confidence from third parties, including victims of crime, or other information which may put third parties at risk, or
- if, on medical and/or psychiatric grounds, it is considered necessary to withhold certain information.

Interviews with Board Members

As part of the first review of his or her case, a prisoner is afforded an interview with two members of the Board, who are accompanied by a member of the staff of the Board's secretariat. The two Board members each have a copy of the prisoner's dossier. The interview is intended to allow Board members to review and discuss the information contained in the dossier with the prisoner, to provide an opportunity to clarify particular issues as necessary, to obtain additional information, which will improve the Board's ability to assess and deal appropriately with the prisoner's case, and to afford the prisoner an opportunity to make submissions, in person, to Board members. Interviews are as informal as possible, in order to promote an open and frank discussion. A single written report of the interview is prepared and a copy is given to the prisoner. He or she is given an opportunity to comment, in writing, on the interview report and to provide additional information. A copy of the report together with the prisoner's observations, if any, is added to the dossier furnished to the members of the Board.

A decision in relation to an interview in a second, or subsequent, review is made by the Board, on a case by case basis.

Parole Board Review Meetings

Meetings of the Board, at which cases are reviewed, are held periodically, generally on a monthly basis. The Board will hold meetings more frequently if the caseload so requires. Each Board Member is furnished, in advance, with a dossier for each case to be discussed at a meeting. In addition to deciding on recommendations to be made to the Minister, the Board may decide to defer its consideration of a particular case for a number of reasons, e.g. to seek additional information or to await the outcome of court proceedings.

Factors to be Considered by Parole Board

The main factors to be taken into account by the Parole Board, when considering cases will be as follows:

- the nature and gravity of the offence to which the sentence being served by the person relates,
- the sentence concerned and any recommendations of the Court that imposed the sentence,
- the period of the sentence served at the date of the review,
- previous convictions,
- the potential threat to the safety and security of members of the public should the person be released,
- the risk of the commission of further offences during any period of temporary release,
- the risk of the person failing to return to custody upon the expiration of any period of release,
- the risk of the person failing to comply with any conditions attaching to his or her temporary release,
- the conduct of the person while in custody or while previously on temporary release,
- the likelihood that any period of temporary release might enhance the prospects of the person's safe reintegration into society and/or improve his or her chances of obtaining employment.

Parole Board Recommendations

Having discussed a case at a meeting the Board may decide on its recommendations to the Minister. The Board may make a wide variety of recommendations including:

- A structured programme advising that the prisoner should participate in one or more of the following:
 - Therapy - encourage the prisoner to work with particular therapeutic services, to attend particular programmes or be referred for psychiatric evaluation etc.;
 - Education and Training - encourage the prisoner to participate with the educational and vocational training services;
 - Work Training Releases - to appropriate bodies, such as Prisoners Aid through Community Effort (PACE),
 - Resocialisation - measures to reduce the effects of institutionalisation;
 - Outings - escorted/accompanied outings to aid familiarisation with the outside world, meet with family or relatives etc.,

- Transfer to another institution or an open centre to avail of particular courses and/or as part of a pre-release programme,
- Day release for specified periods, e.g. to take up work or training opportunities in the community,
- A progressive pre-release programme,
- Temporary Release.

Decisions of the Minister

The Minister will consider the Parole Board recommendations, and submissions from the prisoner (if any), before coming to a decision. The role of the Parole Board is strictly an advisory one. The Minister may or may not accept, or act on, a recommendation made by the Board. The decision of the Minister, in each individual case, is conveyed, in writing, through the Prison Service to the prisoner by the Department. The letter conveying the decision refers to the Board's recommendation and gives reasons, in general terms, for the decision reached.

A copy of the letter conveying the Minister's decision is forwarded to the Parole Board.

Provision for Further Reviews

It is open to the Parole Board to decide, in the case of a prisoner who is not released from custody, when a further review will take place. The Board will review the cases of prisoners serving 10 years or less, generally, on an annual basis. Where prisoners serving sentences of more than 10 years are concerned, the Board will decide, on a case by case basis, when the next review will take place. There will, however, usually be no more than 3 years between reviews.

Recall of Prisoners

The Board is notified about the recall to custody of any prisoner whose case has been reviewed by it. The Board is also advised of the circumstances surrounding the recall and any charge pending, or further sentence imposed, and it is asked to make a recommendation as to when such a case should be further reviewed. The Board may also make recommendations to the Minister in such cases, as to the administration of a sentence, pending a further review by the Board.

Nothing in the Parole Board's review process inhibits the Minister in authorising the release of a prisoner who has been referred to the Board for review in any situation where the Minister deems it warranted.

2.28 PRISONS & PROBATION POLICY DIVISION

Prisons and Probation Policy

The following is a listing and description of each rule and/or practice followed by Prisons and Probation Policy Division in relation to certain decisions, determinations or recommendations with respect to the rights, privileges, benefits, obligations, penalties or other sanctions which members of the public are or may be entitled or subject.

LEGISLATION

The general body of criminal justice legislation including:-

Primary Legislation

The Constitution;
Adaptation of Enactments Act, 1922 (No. 22 of 1922);
Lunatics (Ireland) Act, 1921;
The Prison (Ireland) Act, 1826;
Criminal Lunatics (Ireland) Act, 1838;
Central Criminal Lunatic Asylum (Ireland) 1845;
The Prisons (Ireland) Act, 1846;
The Prisons (Ireland) Act, 1856;
The Prison Officers Superannuation (Ireland) Act, 1873;
Lunatic Asylums (Ireland) Act, 1875;
The General Prisons (Ireland) Act, 1877;
Trial of Lunatics Act, 1883;
The Prison Service (Ireland) Act, 1883;
The Prisons (Ireland) Amendment Act, 1884;
Prisons Act, 1898;
Fines of Imprisonment (Ireland and Scotland) Act, 1899;
The Prisons (Ireland) Act, 1907;
Children Act, 1908;
Criminal Justice Administration Act, 1914;
Prisons Visiting Committee Act, 1925;
Prisons Act, 1933;
Offences against the State Act, 1939;
Enforcement of Court Orders Act, 1940;
Children Act, 1941;
Prisons Act, 1956;
Criminal Justice Act, 1951;
Criminal Justice Act, 1960;
Prisons Act, 1970;
Prisons Act, 1972;
Prisons Act, 1974;
Prisons Act, 1977;
Prisons Act, 1980
Prisons Act, 2007;

Transfer of Sentenced Persons Act, 1995;
Transfer of Sentenced Persons (Amendment) Act, 1997;
Criminal Justice Act, 1998;
Children Act, 2001(As amended).
Criminal Justice Act, 2003
Human Rights Act, 2003
Criminal Law (Insanity) Act, 2006
Criminal Justice Act, 2006
Criminal Justice Act, 2007
Criminal Justice (Community Service) Act, 1983
Sex Offender Act, 2001
Probation of Offenders Act, 1907

Rules and Regulations

General Prisons Board (Transfer of Functions) Order, 1928;
St. Patrick's Institution Regulations 1960 (S.I. No. 224 of 1960);
Detention of Offenders (Loughan House) Regulations, 1973 and 1983 (S.I. No. 60 of 1973 and S.I. No. 132 of 1983);
Detention of Offenders (Training Unit) Regulations, 1975 (S.I. No. 251 of 1975);
Detention of Offenders (Shelton Abbey) Regulations 1976 (S.I. No. 293 of 1976);
Detention of Offenders (Fort Mitchell) Regulations 1985 (S.I. No. 104 of 1985);
Temporary Release of Offenders (Unit A Castlerea) Rules (S.I. No. 360 of 1996);
Detention of Offenders (The Curragh) Regulations 1996 (S.I. No. 390 of 1996);
Rules for the Government of Prisons, 1947 (S.R. & O. No. 320 of 1947);
Rules for the Government of Prisons, 1955 (S.I. No. 127 of 1955);
Rules for the Government of Prisons, 1976 (S.I. No. 30 of 1976);
Rules for the Government of Prisons, 1983 (S.I. No. 135 of 1983);
Rules for the Government of Prisons, 1987 (S.I. No. 90 of 1987);
Prisons (Temporary Release) Rules, 1960 (S.I. No. 167 of 1960);
Prisons Act, 1972 (Military Custody) Regulations, 1972 (S.I. No. 138 of 1972);
Prisons (Visiting Committees) Order, 1925 (Vol XVIII 805, June 3rd 1925);
Prisons (Visiting Committees) Order, 1972 (S.I. No. 217 of 1972);
Rules for the Government of Prisons, 1947 (S.I. No. 320 of 1947);
Rules of the Superior Courts;
Rules of the Circuit Court;
Rules of the District Court.
Prison Rules 2007 (S.I. No. 252 of 2007)

European Conventions and International Standards

European Prison Rules (Strasbourg 1987);
European Convention on the Transfer of Sentenced Persons (Strasbourg 1983);
European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (Strasbourg 1987);
European Convention on Human Rights (Strasbourg 1950);
Universal Declaration of Human Rights, 1948;
Vienna Declaration of Human Rights, 1993;

International Convention on Civil and Political Rights;
UN Convention on the Rights of the Child.

PROCESSES

Incoming Post

Letters and other items are delivered to the Division a number of times each day. Each item is opened; date stamped, examined, and passed to the appropriate officer for attention or redirected to the appropriate Division or Body.

Newspaper Reports

Articles and / or reports in the daily newspapers relating to the Irish prison system or the Probation Service are identified and copied. These reports are associated with a general file containing newspapers clippings or with relevant general and personal files in the Division.

Parliamentary Questions

Parliamentary Questions for both Written and Oral Answer which concern either the prison system in general, individual prisoners or the Probation Service are passed to this Division for attention.

In cases where the Parliamentary Question contains the name of an individual, then that name does not appear on the Dáil records.

Press Queries

All requests for information relating to the work of the Division from persons in the media are channelled to the Division through the Departmental Press Office. Queries from the Press Office may be either in oral and written form and, generally, are dealt with as a matter of urgency.

The Division complies with the Department's general policy of not commenting on the case or circumstances of any individual. Information may be furnished to the Press Office in oral or written form and in all cases; the information to be furnished will be approved by an appropriate officer.

Queries from Members of the Public

The bulk of queries from members of the public tend to concern statistical or general information relating to the prisons. A small number of queries are received from victims of crimes and from the immediate families of prisoners.

General or statistical information is provided as soon as possible, if available. In other cases, the caller may be directed elsewhere or asked to make their request in writing. All general queries are dealt with as soon as circumstances allow. In all cases every effort is made to meet the Departments Customer Service guidelines.

Representations to the Minister

Written representations made to the Minister on issues relating to the work of the Division are passed to Prisons and Probation Policy in order that appropriate responses may be drafted. Representations may be received from members of the public, organisations, and public representatives.

Following examination of the correspondence and Departmental records, an appropriate response is drafted and approved by an Assistant Principal Officer at Divisional level before being transmitted to the Minister's Office for approval and signature. In some instances, information may be requested from other Divisions, Bodies, etc. in order to draft a complete response. The transmission to the Minister's Office of a draft response is recorded on the Ministerial Correspondence Tracking System.

CENTRAL MENTAL HOSPITAL

Offenders requiring treatment for a mental illness may be detained in the Central Mental Hospital. There are basically five categories of such offenders as follows - offenders on remand; offenders for trial; sentenced offenders; persons found not guilty by reason of insanity and persons found unfit to stand trial. The relevant legislation granting the Minister the power to detain offenders in the Central Mental Hospital is set out below:

Remand Prisoners

Section 13 of the Lunatic Asylums (Ireland) Act, 1875, as adapted, and extended by the Criminal Justice, Act, 1960.

Trial Prisoners

Section 3 of the Criminal Lunatics (Ireland) Act, 1838 as adapted, and extended by the by Section 8 of the Criminal Justice Act, 1960.

Sentenced Prisoners

Under Section 15(2) of the Criminal Law (Insanity) Act, 2006, where 2 or more relevant officers certify in writing that a prisoner is suffering from a mental disorder for which he or she cannot be afforded appropriate care or treatment within prison, then the Governor of the prison may direct in writing the transfer of the prisoner to the Central Mental Hospital for the purpose of the prisoner receiving care or treatment for the mental disorder.

Not Guilty by Reason of Insanity

Under Section 15(1) of the Criminal Law (Insanity) Act, 2006, where an accused person is tried for an offence and, in certain circumstances where the jury finds that the accused

person committed the alleged act, the court or the jury, may return a special verdict to the effect that the accused person is not guilty by reason of insanity.

Fitness to Stand Trial

Under Section 4(1) of the Criminal Law (Insanity) Act, 2006, the court may determine the fitness of a person to stand trial and in certain circumstances recommend that the accused undergo treatment in a designated centre, such as the Central Mental Hospital.

Temporary Release

Temporary release is considered a vital part of the rehabilitative process in these cases. Offenders may progress through various degrees of temporary release leading eventually to transfer to hostel accommodation. Pursuant to Section 14(1) of the Criminal Law (Insanity) Act, 2006, the Clinical Director of the Central Mental Hospital may, with the consent of the Minister, direct the temporary release of a patient on such conditions and for such periods of time as the Director deems appropriate.

Some offenders may also attract the provisions of the Criminal Justice Act, 1960 depending on whether or not an order was made by the Minister under section 8 of the Central Criminal Lunatic Asylums (Ireland) Act, 1845 directing their detention in the Central Mental Hospital. (An order under the 1845 Act is made when the Court Order of detention does not specify a place of detention and it is therefore the Minister's duty to assign a place of detention)

Mental Health (Criminal Law) Review Board

The Mental Health (Criminal Law) Review Board was set up under Section 11 of the Criminal Law (Insanity) Act 2006. The Board is a statutory, independent body whose function is to review the detention of patients at the Central Mental Hospital, currently the only designated centre defined by the Act, who have been referred there arising from a decision by the Courts that they are unfit to stand trial or found to be not guilty of an offence by reason of insanity.

The Board is also responsible for reviewing the detention of patients who have been transferred to the Central Mental Hospital from within the prison populace and reviewing the detention of military prisoners suffering from mental disorders, who have been transferred to the hospital from prison and military personnel referred by tribunals under the relevant Defence Acts.

Powers of the Review Board

As required by Section 12(1) of the Act, the Review Board shall –

- (a) hold sittings for the purpose of a review by it under this Act and at the sittings may receive submissions and such evidence as it thinks fit,
- (b) take account of the court record (if any) of the proceedings of the court to whose decision the request for review relates and, where such a record exists, the court shall make it available to the Board,

(c) assign a legal representative to a patient the subject of the review unless he or she proposes to engage one.

The Review Board is empowered under Section 12(2) of the Act for the purposes of its functions –

(a) to direct in writing the consultant psychiatrist responsible for the care or treatment of a patient the subject of the review to arrange for the patient to attend before the Review Board on a date and at a time and place specified in the direction, provided that a patient shall not be required to attend before the Review Board if, in the opinion of the Review Board, such attendance might be prejudicial to his or her mental health, well-being or emotional condition.

(b) to direct in writing any person whose evidence is required by the Review Board to attend before the Review Board on a date and at a time and place specified in the direction and there to give evidence and to produce any document or thing in his or her possession or power specified in the direction,

(c) to direct any person in attendance before the Review Board to produce to the Review Board any document or thing in his or her possession or power specified in the direction,

(d) to direct in writing any person to send to the Review Board any document or thing in his or her possession or power specified in the direction, and

(e) to give any other directions for the purpose of the proceedings concerned that appears to the Review Board to be reasonable and just.

Legal representation

The Review Board shall assign a legal representative to represent the patient unless he or she proposes to engage one. The Review Board shall operate a scheme that provides for the provision of legal aid in accordance with Section 12(6)(a) of the Act. The Scheme shall be referred to as the "Mental Health (Criminal Law) Legal Aid Scheme" and the panel of legal representatives who are selected to carry out this work shall be referred to as the "Mental Health (Criminal Law) Legal Representatives Panel". A copy of the Scheme and Legal Representatives Panel will be made available to the patient the subject of the review as soon as possible but no later than 14 days before the date scheduled for the review.

Notifications to interested parties and procedures for sittings of the Review Board

The Review Board shall notify the consultant psychiatrist responsible for the care or treatment of the patient the subject of the review and the patient and his or her legal representative of the date, time and place of the relevant sitting of the Review Board at least 14 days before the date scheduled.

The Review Board shall give the patient the subject of the review and his or her legal representative a copy of any document furnished to the Board and an indication in writing of the nature and source of any information relating to the matter which shall have come to notice in the course of the review.

A patient the subject of the review (unless in the opinion of the Review Board, such attendance might be prejudicial to his or her mental health, well-being or emotional condition) and his or her legal representative shall be entitled to be present at the relevant sitting of the Review Board and the patient may present his or her case to the Board in person or through a legal representative.

The Minister for Justice, Equality and Law Reform, the Director of Public Prosecutions and, where appropriate, the Minister for Defence shall be entitled to be heard or represented at all sittings of the Review Board. For this purpose, a notification of the date, time and place of the relevant sitting of the Review Board shall issue at least 14 days before the date scheduled for the Review.

Written statements shall be admissible as evidence by the Review Board with the consent of the patient the subject of the review or his or her legal representative.

If a patient the subject of the review or his or her legal representatives intend to submit evidence from a medical practitioner at a hearing, a report in writing from such medical practitioner shall be furnished to the Review Board at least 5 working days prior to the date of the hearing.

Any signature appearing on a document produced before the review Board shall be taken, in the absence of evidence to the contrary, to be that of the person whose signature it purports to be.

The Review Board shall determine in each case whether evidence, called by the Review Board or the patient the subject of the review, shall be given on oath or affirmation or otherwise. If it is determined that evidence shall be given on oath or affirmation, the oath or affirmation shall be administered by the Chairman in a form compatible with the practice in the courts.

Witnesses called by the Review Board to appear before it may be examined by or on behalf of the Review Board and cross-examined by or on behalf of the patient the subject of the review.

Witnesses before the Review Board called by the patient the subject of the review may be examined by or on behalf of the patient and cross-examined by or on behalf of the Review Board.

The Review Board shall ensure that a proper and sufficient record shall be kept of all proceedings before it. In addition, the Review Board may, and shall if requested in writing by the patient the subject of the review or his or her legal representatives at least 5 working days before the hearing, arrange that a full record of the entire proceedings shall be taken in such form as the Review Board shall determine and that a transcript of such proceedings shall be made available on request to the patient and his or her legal representatives.

Sittings of the Review Board for the purposes of an investigation by it under the Act shall be held in private.

Decisions of the Review Board and the reasons therefore shall, whenever reasonably possible, be given on the day of the review hearing or, if not possible, within 14 working days. Such decisions shall be conveyed to the patient the subject of the review, his or her legal representative, the Director of the Central Mental Hospital, the Director of Public Prosecutions and the Minister for Justice, Equality and Law Reform or the Minister for Defence as appropriate.

Where emergency situations arise during the course of a review hearing, such as a patient becoming physically ill or emotionally distressed, the Review Board shall ensure that appropriate measures are put in place to deal with such situations.

Delegation of administrative functions

The Review Board may delegate to the Chief Executive Officer such administrative functions as it considers appropriate.

DEATHS IN PRISON CUSTODY

All deaths in prison custody are the subject of a Garda investigation and an inquest held in a Coroner's Court. The cause of death is determined by a jury on the basis of the information presented to the Court. In most cases the cause of death is recorded as being in accordance with the medical evidence.

Prisons and Probation Policy Division liaise with the Irish Prison Service, Chief State Solicitor's Office and the Coroners Courts concerning inquests on persons who have died in prison custody.

INSPECTOR OF PRISONS

An Inspector of Prisons and Places of Detention was appointed on a statutory basis with effect from 1 January, 2008.

The terms of reference of the post are as follows:-

To

- (a) Inspect and report, as the Inspector considers appropriate, to the Minister for Justice, Equality and Law Reform on prisons and other places of detention managed on behalf of the Department of Justice, Equality and Law Reform by the Irish Prison Service;
- (b) Report in particular on conditions in those institutions and on the regimes in place for prisoners and detainees;
- (c) Investigate and report on any specific issue referred to the Inspectorate by the Minister; and,
- (d) Submit to the Minister an Annual Report on the activities of the Inspectorate.

To facilitate the Inspector in carrying out his functions, he may consider complaints from prisoners but only to the extent that such complaints are relevant to the functions of the Inspector. The Inspector is required, not later than 31 March in any year or such later date as may be specified by the Minister, to submit a written report to the Minister on his activities during the year.

Prisons and Probation Policy Division, along with the Irish Prison Service, provides information relating to the prison system to the Inspector on an ongoing basis. The Division arranges for the public release of the Inspector's Annual Reports.

PAROLE BOARD

Background

The Interim Parole Board is a non statutory body established by the Minister for Justice, Equality and Law Reform in April, 2001. The Board's principal function is to advise the Minister for Justice, Equality and Law Reform in relation to the administration of long term prison sentences. The Board replaced the Sentence Review Group which performed similar functions.

The Parole Board may review the cases of prisoners sentenced to determinate sentences of 8 years or more. Prisoners serving sentences for certain offences, such as the murder of a member of the Garda Síochána or the Prison Service in the course of their duty, are excluded from the process. The Board, by way of recommendation to the Minister, advises of the prisoner's progress to date, the degree to which the prisoner has engaged

with the various therapeutic services and how best to proceed with the future administration of the sentence, including the possibility of temporary release.

Process

Lists of prisoners due to become eligible for review by the Parole Board in the near future are sought on a monthly basis by the Division from the Irish Prison Service. When received, each list is checked for accuracy before being forwarded to the Parole Board for review.

Recommendations on individual cases reviewed by the Board are received in the Minister's Office before being passed to the Division for their views. A dossier of reports and documentation given to the Parole Board for their consideration of the case is also forwarded to the Division by the Board. Each case is then re-submitted to the Minister for decision. Statistics for the year 2006 show that almost 88% of the Board's recommendations were accepted in full by the Minister. When a decision is made, it is communicated to the offender through the Governor of the Institution. The letter will also outline the views and recommendations which the Parole Board forwarded to the Minister in the case and the factors taken into account by the Minister in reaching his decision.

Appeal

There is no appeal mechanism against the Minister's decision (except by way of Judicial Review). The offender may, however, write to the Parole Board or the Minister to raise any matter which he or she considers may not have been dealt with adequately.

PEACE COMMISSIONERS

1. Section 88 of the Courts of Justice Act, 1924 confers authority on the Minister for the appointment and removal of "such and so many fit and proper persons as he shall think expedient in each county to be called Peace Commissioners". The Office of Peace Commissioner is an honorary appointment and Peace Commissioners receive no remuneration or compensation by way of fees or expenses for their services.
2. The powers and duties of Peace Commissioner have been reduced over the years as a result of court rulings and policy changes by organisations which previously used the services of Peace Commissioners. At present the powers and duties consist primarily of
 - (a) the taking of statutory declarations;
 - (b) witnessing signatures on documents if required by various authorities; and,
 - (c) signing certificates and orders under various Acts.

3. An application for appointment may be made by a person who is interested in obtaining an appointment or a third party may submit a nomination in respect of a person considered suitable for appointment. Nominations are generally received from public representatives, and a Garda Superintendent may sometimes request an appointment in his district as the need arises in the public interest
4. There is no qualifying examination but appointees are required to be of good character And they are usually well established in the local community. Persons convicted of serious offences are considered unsuitable. Civil servants are usually only appointed where the performance of their official duties requires an appointment (i.e ex-officio). Solicitors, persons employed in legal offices and members of the clergy are, as a matter of practice, not appointed because of their occupation.
5. On receipt of an application or nomination, a Garda report is usually sought on the person's age, character, educational qualifications, financial circumstances and suitability for appointment. The Gardaí are also asked if an appointment is required in the particular area. If the person is suitable and an appointment is considered necessary in the public interest, the Minister usually invites the person to accept appointment and sends him/her an Acceptance Form for completion and return. At the same time, the public representative or other third party, if any, is informed that the nominee has been invited to accept appointment. Upon return of the completed Acceptance Form, a Warrant of Appointment is prepared, signed by the Minister, sealed with the Ministerial Seal and issued to the appointee with an accompanying letter. The public representative or other third party, if any, is informed of the appointment and Garda District Officer is notified
6. The fact that an applicant or nominee may be suitable for appointment does not in itself provide any entitlement to appointment because appointments are made at the discretion of the Minister and having regard to the needs of particular areas.
7. *There are approximately 6,000 Peace Commissioners at present.*

PETITIONS

Legal Background

Section 23(3) of the Criminal Justice Act, 1951, as amended by Section 17 of the Criminal Justice (Miscellaneous Provisions) Act, 1997 empowers the Minister, except in capital cases, to commute or remit, in whole or in part, any punishment imposed by a Court exercising criminal jurisdiction. However, a 1995 High Court judgement on petitions significantly restricts the exercise of clemency in that the Minister's power must be used sparingly and only for special reasons, with the proper maintenance of records.

The Court also noted that the petitions procedure is not an alternative system of justice to that provided by the courts.

A decision whether or not to open a petition and a subsequent decision to refuse to mitigate or to mitigate in full or in part a court penalty, has to be made personally by the Minister. This power cannot be delegated to a civil servant. It should also be noted that the Gardaí have a legal obligation to promptly execute warrants, notwithstanding the fact that the Minister has a legal right to consider a petition.

It is important to realise how very restricted the scope for intervention under the petitions procedure is, having regard to the 1995 High Court Judgement on petitions. Intervention cannot be a regular or a frequent occurrence and a humanitarian or other reason does not necessarily qualify as a special case nor constitute exceptional circumstances for the purpose of the Judgement. The requirement to adhere to the criteria laid down by the High Court means that the exercise of clemency under the procedure is very much the exception rather than the rule.

If the information provided by the applicant is incomplete or does not establish a probability to the satisfaction of the Minister that the matter may be a special case or have exceptional circumstances, then a petition will not be opened. In essence, the 1995 High Court Judgement on petitions precludes the procedure from being used as a parallel or alternative system of justice to that provided by the courts and it would be *ultra vires* for the Minister to intervene in anything other than a special case or one with exceptional circumstances.

Procedure involved

1. To facilitate the operation of the procedure and to comply with the requirement of the High Court that proper records be maintained, a detailed combined information sheet and application form is provided for the guidance and use of intending applicants (Appendix A). The information provided on the back of the standard application form sets out the limited scope of the procedure and the application form itself is designed to elicit the relevant information and to ensure that an application is clearly grounded and set in context. The submission of a completed application form is an integral and essential part of the procedure and ensures that applications are processed on their merit in a uniform manner.
2. A defendant, or a third party acting on his/her behalf, submits a completed 'Application to Open a Petition' form to the Minister. On receipt of the form, an acknowledgement is issued from the Minister's Office; details of the correspondence are entered on a Tracking System designed to maintain a record of the location of the correspondence and the application is referred to Petitions Section for attention. A petition file is opened unless a petition file already exists for the defendant, in which case the application will be attached to that file. The application is examined to see whether it comes within the scope of the procedure and if the information supplied indicates that a special case and exceptional circumstances might be involved for the purpose of the High Court judgement. An assessment is submitted to the Petitions Officer, who in turn makes a recommendation to the Minister on the merit of the application. The

Minister has the sole decision as to whether or not to open a petition, irrespective of the recommendation submitted. The Minister's decision is entered on file and reply issues to the correspondent advising of the Minister's decision. The file is then returned to Petitions Section for attention in accordance with the decision.

3. If a petition is opened, additional information, in the form of reports, will normally be sought by Petitions Section to assist in evaluation of the basis upon which the petition is made. An example would be a request for a Garda prosecution report in a serious case or a local Garda report on the defendant's current family and financial circumstances. Court extracts may also be sought to verify court details in cases where variation of court orders may arise.
4. When all relevant information is associated, an assessment of the petition is made and the Petitions Officer makes a recommendation to the Minister as to whether the penalty should be mitigated, in whole or in part, or refused. The Minister has the sole decision in the matter, irrespective of the recommendation submitted. The Minister's decision is entered on file and a reply issues to the correspondent advising of the decision. The file is then returned to Petitions Section for attention in accordance with the decision.
5. Petitions Section issues a notification of the decision to the Garda Síochána (and to the relevant Court Office if variation of a court order is involved) and details of the outcome are recorded for statistical purposes.

PRISON VISITING COMMITTEES

General

Under the Prisons (Visiting Committees) Act, 1925 and Prisons (Visiting Committees) Order, 1925, a Visiting Committee is appointed to each prison institution. They are essentially one of the independent prison watchdogs.

Nominations

A Committee of between 6 and 12 persons, including a Chairperson, is appointed to each prison institution by the Minister for Justice for a term of 3 years. A person may be re-appointed by the Minister following completion of a term up to appointment. No person can become a member of a Visiting Committee if they are in receipt of a salary paid out of the Central Fund other than a member of Dáil Éireann or Seanad Éireann.

A list of persons who have expressed an interest in becoming members of a Visiting Committee is maintained by Prisons and Probation Policy Division. Persons can write in and nominate themselves or they can be nominated by another person. When a vacancy arises, the list is submitted to the Minister's Office. "Warrants of Appointment" are prepared for signature by the Minister for his/her decision to be made. The person to be appointed, the person who nominated him/her and the Governor of the Prison are notified.

Each Committee elects its own Chairperson.

Expenses

Visiting Committee members receive no remuneration. Travel and subsistence allowances are paid at Civil Service rates to Visiting Committee members in respect of travel incurred, in relation to their work on the Visiting Committee.

Duties

Each Committee visits the prison monthly to meet and inspect the prison as a group. In inspecting prisons, the Visiting Committees focus on issues such as quality of accommodation, catering, medical, education and welfare services and recreational facilities.

The Visiting Committee has free access either collectively or individually to every part of their prison and to all records to the prison.

They are charged with investigating complaints made to them by prisoners.

They report to the Minister any abuses observed or found by them in the prison, or any repairs which they think may be urgently needed.

Two members are designated by the Committee to make unannounced visits to the prison or to visit at the request of a prisoner or prison authorities.

The Committees submit an Annual Report to the Minister in which they may draw attention to particular deficiencies/faults identified during the course of their visits

Annual Report

The Chairperson of each of the Prison Visiting Committees submits an annual report to the Minister by the end of the year.

Every report made by a Visiting Committee to the Minister is open to inspection, without charge, by any person who makes an application to the Minister for that purpose.

Visiting Committee Chairpersons Group

A Visiting Committee Chairpersons Group was established in 1997 in answer to the need for a formal arrangement for the sharing of information and experience between Committees. The purpose of this group is to hold formalised meetings, twice yearly, in order to co-ordinate the approach of Visiting Committees, to discuss matters of mutual interest and to facilitate the exchange of information. These meetings are organised by the Chairpersons group itself.

TRANSFER OF SENTENCED PERSONS TO/FROM THE STATE

The Council of Europe Convention on the Transfer of Sentenced Persons was ratified in Ireland following the passing of the Transfer of Sentenced Persons Act, 1995 and came into effect on 1 November, 1995.

The relevant legislation applicable to the transfer of sentenced persons is as follows:-

1. Council of Europe Convention on the Transfer of Sentenced Persons;
2. Transfer of Sentenced Persons Act, 1995;
3. Transfer of Sentenced Persons (Amendment) Act, 1997;
4. Statutory Instrument S.I. No. 417 of 2007 Rules of the Superior Courts (NO.1) of 2007.

The Transfer of Sentenced Persons Act, 1995 provides the legislative basis for the operation of the Convention between Ireland and other countries. The Act provides a mechanism whereby non-nationals serving sentences in Ireland may apply to serve the remainder of their sentences in their own countries and, similarly, Irish persons who are imprisoned overseas may apply to serve the remainder of their sentences in Ireland.

The policy of the Convention, which is based on humanitarian considerations, is to overcome the difficulties posed for prisoners serving sentences in foreign jurisdictions through, for example, absence of contacts with family and differences in languages and culture. In this regard, it has been established Government policy that, whenever possible, prisoners should be permitted to serve their sentences close to their families.

The Transfer of Sentenced Persons (Amendment) Act, 1997 was passed in December, 1997. The purpose of this legislation is to facilitate the transfer into State of persons who were sentenced to periods of imprisonment greater than the maximum penalties allowed under our law for similar offences. A number of additional amendments were also made to the Act requiring a decision to be made as far as practicable within 6 months of the date of the application, and keeping an applicant informed at regular intervals on the progress of an application.

An annual report is presented to the Oireachtas, within 4 months after the end of each year, in accordance with section 11 of the Act, outlining details on matters in relation to the operation of the Act for the preceding year.

The information leaflet (Appendix B) explains the main features of the Act and is given to each applicant together with a copy of the Transfer of Sentenced Persons Acts, 1995 and 1997.

Eligibility for a Transfer

Section 4(3) and 6 of the Act states that the Minister may consent to a transfer out of the State, or into the State, if he is satisfied that the following requirements have been met:-

- (a) that the sentenced person concerned is, for the purpose of the Convention, regarded by the administering state as a national of that state;
- (b) that the order under which the sentence concerned was imposed on the sentenced person is final;
- (c) that, at the time of the receipt of the application, the sentenced person had at least 6 months of the sentence left to serve;
- (d) that the sentenced person, or in a case where the Minister or the administering state considers it necessary because of the age or physical or mental condition of the sentenced person, the legal representative of the sentenced person or any other person considered by the Minister or the administering state to be an appropriate person for the purpose, consents in writing to the transfer;
- (e) that the acts or omissions constituting the offences concerned would, if done or made in the administering state, constitute an offence under the law of that state, and
- (f) that the administering state agrees to the transfer.

Time scales for processing an application.

Each application is considered on its own individual and particular merits. The timescale for completing an application can vary significantly from one case to another given the complexity of the information required and the various agencies involved who must be contacted to submit reports etc. It is therefore difficult to say how long it may take for any application to be processed.

Procedures for processing an application received for transfer into this jurisdiction.

1. An application for transfer can be received either from the Sentencing State, or directly from the sentenced person or his representatives. On receipt of an application from a sentenced person, the procedure is to advise the applicant of the steps involved in processing a transfer request. The sentencing state is then contacted on his/her behalf and formally requested to transmit the necessary documentation as required under the provisions of the Convention.
2. The formal application when received from the sentencing state may include documentation such as; the request from the prisoner to be repatriated, a photograph of the sentenced person, home address, date and place of birth, details of the offence and sentence, copies of the order for imprisonment, indictment, court record, conduct and

behaviour report, probation report, details of previous convictions, police reports, copies of relevant legislation under which the prisoner was convicted.

3. The eligibility of the applicant is checked in accordance with Section 6 of the Act. Details of nationality, and close family ties etc. in this jurisdiction are examined. This may require obtaining copies of the sentenced person's birth certificate, passport details, home address, details of previous residence and education here, address of close family/relatives etc. who would be willing to offer support if the person were to be transferred here.

The evaluation of an applicant's eligibility under the Act is assessed on the basis that the sentenced person is normally a resident here, that his home address is here, and that close family such as wife, children, mother, father, brothers, sisters etc, are resident in this jurisdiction. There is also an expectation that on release the sentenced person will continue to reside in this jurisdiction in line with the Convention's objectives of furthering an offender's social rehabilitation.

4. The documentation transmitted by the sentencing state is referred to the Chief State Solicitor's Office for their consideration. Section 6(3)(e) of the Act requires verification that "the acts or omissions constituting the offences concerned would, if done or made in the administering state, constitute an offence under the law of the state". The Chief State Solicitor's Office may refer to the Attorney General's Office for further directions in the matter.

If any documentation is outstanding or the application is deficient on the basis of legal advice received from the Chief State Solicitor's Office, the sentencing state is requested to provide the information required, or to clarify any possible legal issues that may have arisen. The Minister may not, under the provisions of the Act, consent to any application until such time as he has been advised that the documentation is in order.

5. On evaluation of the application, a submission and recommendation is made to the Minister by Prisons and Probation Policy Division. The Minister may consent to an application pursuant to Section 6 of the Act, if he is satisfied that all requirements have been fulfilled in this regard.

6. The Minister may refuse a transfer request. However, where the Minister decides not to grant an application, he shall as required under Section 10(2) of the Act "notify the applicant or the requesting state, as the case may be, of such decision and such notification shall, where practicable and where the interests of justice do not preclude so doing, include a statement specifying the grounds for such decision". The sentencing state is advised of the Minister's decision and the reasons for same. The sentencing state is asked to convey this decision to the sentenced person concerned. The Act does not provide a formal appeal mechanism. However, it is open to the person concerned to re-apply for transfer should that person wish to offer any new information that may be relevant to their particular circumstances.

7. In the case of the Minister consenting to an application, the sentencing state is advised by letter. Confirmation is given that the person concerned satisfies the criteria laid down by the Convention, and details are given as how the person's sentence would be

administered on transfer here. Copies of the relevant legislation that would apply if the offences were committed in this jurisdiction are enclosed.

8. A letter is enclosed for the sentenced person detailing the legal consequences for him of a transfer to this jurisdiction. This includes an estimate in respect of his release date on transfer, details on temporary release, remission, and if applicable, eligibility to be reviewed by the Parole Board.

9. The continuation of sentence procedure, as explained in the information leaflet, applies for persons transferring into Ireland. This means that the original sentence imposed by the foreign country continues to be enforced by the home country taking into account time already served and any remission earned. The sentence, on transfer is administered in accordance with the laws and regulations of this country.

Applicants transferring from the United Kingdom for example, generally serve longer on transfer to this jurisdiction given that our standard rate of remission is one quarter of sentence as opposed to one third in the UK. The position as regards remission and eligibility to be considered for release/temporary release is as follows:-

(a) Remission

Under Rule 59 of the Prison Rules, 2007, all persons serving determinate sentences are automatically entitled to 25% remission of sentence. This remission rate is taken into account by trial Judges in passing sentence. There is no supervision in the community of persons released on reaching remission.

(b) Release/Temporary Release

Under the Constitution (Articles 13(6) and 13(9)), Offences Against the State Act, 1939 (Section 33) and the Criminal Justice Act, 1951 and 1960, the Minister for Justice, Equality and Law Reform has the power to commute or remit a sentence imposed by any Court exercising criminal jurisdiction except in capital murder cases. In addition, the Minister may grant temporary release subject to certain conditions.

In assessing cases for temporary release whether for a short period or a long period, the following factors are considered: - 1993 Act considerations.

- (1) Would release constitute a threat to the community?
- (2) Is it reasonable to grant some form of release at a particular stage in view of the nature of the offence committed?
- (3) Does the offender merit some form of release having regard to behaviour while in prison?
- (4) Are there any compassionate grounds which merit special consideration?

These criteria apply in all cases including temporary release for prisoners serving life sentences or for unexpired determinate sentences. Short term temporary releases may be granted for a variety of reasons including family occasions, re-socialisation and as part of

structured pre-release programmes. If temporary release is granted, it is always subject to conditions. In all cases, there is the condition that the person released must be of good behaviour. Other conditions could include supervision by the Probation Service, reporting at regular intervals to a Garda Station, etc. Temporary release automatically ends if any conditions are breached, in which event the individual concerned can be immediately returned to custody on foot of the original warrant which remains in effect.

9. The sentenced person must give his voluntary consent to the transfer pursuant to Section 6(5) of the Act. In this regard, the Minister must be satisfied that all reasonable steps have been taken to inform the sentenced person concerned in writing in his own language of the effects of repatriation relating to his or her detention here.

10. On receipt of the formal consent of the Sentencing State, and of the sentenced person, an application is made to the High Court for the issue of a warrant pursuant to Section 7 of the Act authorising the transfer of an offender into this jurisdiction and his continued detention in custody here.

11. This application is made by the Chief State Solicitor's Office on behalf of the Minister. Counsel nominated by the Attorney General's Office, prepare exhibits and affidavits to be sworn by an officer at Assistant Principal level or higher of this Department. S.I. No. 347 of 1997 outlines the rules applicable in making such applications.

12. On receipt of the warrant, the practical arrangements i.e. transfer dates, escort details, transport arrangements etc, are made between both states to effect the actual transfer.

13. While every attempt will be made to take account of personal circumstances in the event of a transfer to this jurisdiction there can be no guarantee that a sentenced person will be accommodated in any particular prison or institution.

Procedures for processing an application for transfer out of this jurisdiction.

1. The sentenced person, through the Governor, applies in writing using the official application form TSP1 for a transfer to another Convention state. Section 1(1) and Section 4(1) of the Act refer.

2. The sentenced person's eligibility for a transfer is checked in accordance with Section 4(3) of the Act. If necessary, the sentenced person may be requested to provide further information to substantiate his application.

3. Reports on the sentenced person are then sought from the Prison Governor, the Gardaí, and the Probation Service.

4. The Prison Governor, from where the person is detained, is requested to provide the following information:-

(a) Two recent passport - size photographs;

(b) A copy of the Court Order for Imprisonment;

- (c) Calculation of the balance of the current sentence (in days) that the offender would have left to serve here on an assumed date (A transfer date of 3-4 months in advance is normally assumed);
- (d) A report on the general conduct and behaviour of the offender while in custody;
- (e) A security assessment - i.e. serious security risk, normal risk, low risk, trustee etc;
- (f) A medical assessment prepared by the Prison Medical Officer and conveyed directly to the Prison Service Medical Director who transmits it to his equivalent in the Prison Service where the transfer is sought;
- (g) Any relevant psychological or psychiatric reports which are available. The Prison Governor is asked to note that an offender must give his or her consent in writing before any medical, psychiatric or psychological report can be issued by a medical practitioner, psychiatrist or psychologist. The circumstances are explained to the offender concerned.

5. The various reports together with the sentenced person's application is formally transmitted to the state where transfer is requested, for their consideration.

6. On receipt of the consent from the state to which the transfer is requested, the application is submitted to the Minister for final decision. The consenting state will advise as to how they consider that person to be a national, how his sentence will be managed on transfer, and also enclose a detailed letter for the sentenced person on the legal consequences for him of repatriation.

7. The Minister's consent is given if he is satisfied that Section 4(3) and 4(5) of the Act have been fulfilled.

8. If a transfer is refused, reasons will be given in accordance with Section 10(2) of the Act. The Act does not provide a formal appeal mechanism. However, it is open to the person concerned to re-apply for transfer should that person wish to offer any new information that may be relevant to their particular circumstances. The person may also seek to judicially review the decision.

9. The sentenced person is requested to give his/her voluntary consent to a transfer, having been made aware of the effects of repatriation in accordance with Section 4(5) of the Act.

10. On receipt of the sentenced person's consent, arrangements are made between both states to affect the actual transfer as soon as possible thereafter.

11. A warrant, signed by the Minister in exercise of the powers conferred on him under Section 5 of the Act, is prepared authorising the sentenced person's transfer from Ireland to another Convention state.

APPENDIX A

Application Form

To Open a Petition

APPLICATION TO OPEN A PETITION

under Section 23 of the Criminal Justice Act, 1951, as amended.
[Read Questions and Answers overleaf before completing this application - use separate form for each case, continue on separate page(s) if space is insufficient.]

1. Name & Address of Defendant:
2. Date of Court:
3. Place of Court:
4. Penalty:
5. Case Number:
6. Offence:
7. Background to offence:
8. Did defendant attend Court?
9. Was defendant professionally represented in Court?
10. If answer to No. 8 is NO, explain why not:

11. Was the case appealed to a higher Court?
12. If the answer to NO. 11 is NO, explain why not; if the answer is YES, give details of the date and place of the appeal hearing, appeal reference number and outcome of appeal:
13. Give details of any convictions for similar or other offences in past three years:
14. Basis upon which remission or mitigation of penalty is sought:
15. Domestic and financial circumstances (dependants, accommodation, occupation, income, car ownership, etc.) (a) at time of Court hearing: (b) were these brought to the attention of the Court? (answer yes or no) (c) domestic and financial circumstances at present:
I confirm that the above details are correct and submit this application for consideration.
Signed:
Date:
Address:

PETITIONS QUESTIONS & ANSWERS

Q.1. What is the petitions procedure? Section 23 of the Criminal Justice Act, 1951, confers on the Government, except in capital cases, the power to commute or remit, in whole or in part, any punishment imposed by a court exercising criminal jurisdiction, subject to such conditions as they may think proper. The Government has delegated this power to the Minister for Justice, Equality and Law Reform and it is exercised by the Minister in relation to fines, **having regard to a 1995 High Court Judgment on petitions which stated that the power of the Minister to mitigate penalties must be used sparingly and only for special reasons.**

Q.2. Can any penalty be petitioned? **No.** The petitions procedure is not a parallel or alternative system of justice to that provided by the courts. **The Minister has no function in determining the guilt or innocence of a defendant or the appropriateness or otherwise of penalties imposed in the light of evidence presented in court.** Such matters and other legal issues are properly the subject for appeal to a higher court. In addition, **matters which have not yet come before the courts or are still before the courts**, that is to say, where the original court case is not yet finalised or where an appeal to a higher court has been lodged, **are inappropriate for consideration under the petitions procedure. Other matters excluded are civil and revenue cases, disqualification from driving and endorsement on driving licence, community service orders, costs and expenses awarded by the courts, on-the-spot-fine tickets and requests for time to pay or to pay by instalments.**

Q.3. How can a prosecution in error by the Gardaí, Local Authority, An Post, etc. be remedied? Such an error should be clarified with the prosecuting authority prior to the court hearing. Failing that, the case should be defended in court. The petitions procedure is not an alternative to such action because there is no Ministerial power to remove a conviction, disqualification, costs, etc. If the case has already been heard, a full remedy can only be provided by appeal through the court system.

Q.4. What if no notification of the court hearing was received? If the summons was not legally served or other notification to which the defendant was legally entitled was not received, it is open to the defendant to apply to the court to have the case reheard or to appeal. The petitions procedure cannot provide an alternative to such action.

Q.5. If the penalty or the basis upon which intervention is sought is not in the categories already mentioned, will an application be accepted automatically? **No.** The 1995 High Court Judgment on petitions states that the Minister's power must be **used sparingly and only for special reasons.** Therefore, a petition will not normally be opened if:

- (a) the petition does not disclose any grounds which might justify mitigation;
- (b) the defendant ignored the court proceedings;

- (c) the defendant has not, without good reason, attempted to exercise his/her right of appeal to a higher court (including failure to apply for an extension of time in which to lodge a notice of appeal or seek legal aid for appeal);
- (d) the matter was the subject of a previous petition.

Q.6. What factors are taken into account in considering an application? The offence and penalty involved, details of court proceedings, details of the defendant's domestic and financial circumstances **which were not available to the court** and the basis upon which the application is made, that is to say, **all the information sought on the application form overleaf.**

Q.7. How is an application made? An application may be made by the defendant or a person acting on his/her behalf by completing the form overleaf and forwarding it the Minister for Justice, Equality and Law Reform, 94 St. Stephen's Green, Dublin 2. **The onus is on the applicant to provide full details** of court proceedings, domestic and financial circumstances, basis of petition, etc.

Q.8. What happens next? If the form is incomplete or the information provided **does not establish** that the case is one where the Minister **might** find special and exceptional circumstances to justify intervention, a petition will **not** be opened and a reply to that effect will issue to the person who submitted the application. If, on the other hand, the completed form indicates that the case is one where the Minister **might** find special and exceptional circumstances which might justify intervention, then **an official acknowledgement that a petition has been opened** will issue.

Q.9. Does a petition stop the enforcement of warrants? There is no statutory requirement on the Garda Síochána to defer the enforcement of a warrant in respect of a penalty under petition. There is, in fact, an obligation on the Garda Síochána to enforce all warrants irrespective of their status

APPENDIX B

Information Leaflet

Transfer of Sentenced Persons Acts, 1995 and 1997

Convention on the Transfer Of Sentenced Persons

TRANSFER OF SENTENCED PERSONS ACTS 1995 AND 1997

INFORMATION LEAFLET

The Transfer of Sentenced Persons Act, 1995 came into force in November 1995. The Act was subsequently amended by the Transfer of Sentenced Persons (Amendment) Act, 1997. The Acts may be cited as the Transfer of Sentenced Persons Acts, 1995 and 1997

This leaflet is designed to explain to you the main features of the Acts and to help you to avail of the opportunity for transfer.

What do the Acts do?

The Acts provides a procedure under which prisoners serving a sentence in a foreign country may be transferred to serve the rest of their sentence in their home country, if that is their preference.

Am I eligible for transfer?

To be considered eligible for transfer to your home country you must satisfy the following conditions:

- You must be a national of the country to which you want to be Transferred However, even if you are not strictly speaking a national, but you have close ties with the country - for example through a period of permanent residence there - this will sometimes be sufficient.
- The sentence imposed on you is final
This means that transfer is not available for prisoners on remand, or where an appeal against conviction or sentence is still outstanding.
- There is normally at least 6 months of your sentence left to serve
- The offence you have been convicted of is a crime in your home country also

Who has to agree to the transfer?

For a transfer to take place there must be a three-way consent involving you **and** the country where you are serving your sentence **and** the country to which you are seeking transfer.

Your consent must be given in advance. It must be freely given, definite and in writing. Your legal representative may give consent on your behalf.

What happens upon transfer/will my sentence change?

Upon transfer, your home country may deal with your sentence in one of 2 ways: It can "continue the sentence" or "convert the sentence".

Continuation of Sentence

means that the original sentence imposed by the foreign country simply continues to be enforced by the home country. If the sentence given in the foreign country is longer than the maximum available for that offence in the home country, the sentence may be modified somewhat. But, the length of time to be served in the home country must correspond as closely as possible to the amount of the original sentence, taking into account time already served and any remission earned in the foreign country.

Conversion of Sentence

involves the home country in a re-sentencing of the prisoner. The original sentence imposed is actually converted or substituted by a sentence available under the law of the home country. The procedure is merely re-sentencing, and is not a retrial: the home country is bound by the facts as found in the foreign country. A sentence of imprisonment cannot be converted to a fine. Account must be taken of time served in the sentencing state.

Whatever procedure is used the length of your original sentence cannot be increased.

The **continuation of sentence** procedure applies for persons transferring **into** Ireland.

For prisoners transferring **out** of Ireland the procedure may vary from country to country and you will need to seek information about this through the Department of Justice, Equality and Law Reform in Ireland. The United Kingdom, for instance, operates the continuation of sentence procedure in the event that a person is transferred there.

Transfer of Sentenced Persons (Amendment) Act, 1997

The purpose of the Act is to facilitate the transfer into the State of persons who have been sentenced to periods of imprisonment greater than the maximum penalties allowed under our law for similar offences. Under this Act a court will be permitted to adapt a sentence that is incompatible by its duration with the law of the State only where an application in this regard is made by the Minister for Justice, Equality and Law Reform.

What about eligibility for conditional/early release after transfer?

If you are transferred to your home country, your sentence will be administered in accordance with the laws and regulations of your home country. Your home country will take all appropriate decisions on eligibility for conditional release.

How do I make an application for transfer?

If you are **serving a sentence in Ireland**, an application for transfer to your home country is made on a special application form which can be obtained from prison staff. Or you may apply directly to the authorities in your home country but it would help matters to notify the Governor of the institution you are in that you are doing this.

If you are **serving a sentence outside Ireland** you may express your interest in a transfer to Ireland to the authorities of the country where you are serving. Or, you may express your interest in a transfer to Ireland directly to the Minister for Justice, Equality and Law Reform, Department of Justice, Equality and Law Reform, 94 St. Stephen's Green, Dublin 2, Ireland.

How long does it take to deal with an application?

This will vary from case to case. Applications being pursued will involve exchanges of information between the countries involved.

Can I be prosecuted for other offences in the country to which I am transferred?

The authorities of the country to which you are transferred are entitled to prosecute, sentence or detain you for any offence other than that for which your current sentence was imposed.

What if my application is refused?

A transfer into or out of Ireland is not an entitlement or right. Your application may be refused by either the sentencing State or the proposed administering State. However, if the Minister for Justice, Equality and Law Reform in Ireland decides not to grant your application, the Minister will normally give you the reasons why.

Would I have to contribute to the cost of a transfer?

The question of seeking contributions to the cost of a transfer will be dealt with on a case by case basis.

What countries are covered by the Acts?

At present transfers of prisoners can take place between Ireland and a number of other countries. A full list is below. However, the list is added to from time to time and you should check the up-to-date position if your country is not on the list.

Countries covered by the Transfer of Sentenced Persons Acts, through the Council of Europe Convention, are:

Albania, Andorra, Armenia, Austria, Australia, Azerbaijan, Bahamas, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Panama, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, Trinidad-Tobago, Turkey, Ukraine, United Kingdom and the United States.

*Note: This leaflet is designed to explain briefly the Transfer of Sentenced Persons Acts
1995 and 1997.*

It is not a legal interpretation of the Acts.

Published by the Department of Justice, Equality and Law Reform, Montague Court, Montague Street, Dublin 2, Ireland

2.29 PROJECT DEVELOPMENT DIVISION

The following is a listing of all rules, practices and procedures followed by Project Development Division in relation to its work.

Legislation

The main legislation currently relevant is as follows:

Censorship of Films Act 1923 - 92
Censorship of Publications Acts, 1929 - 67
Child Trafficking and Pornography Act, 1998
Gaming and Lotteries Acts, 1956 - 86
Video Recording Act, 1989 - 92

Schemes operated by the Division

Two schemes are operated by the Division and these relate to the Internet Advisory Board research/project work and the Commission for the Support of Victims of Crime annual grant funding scheme operated to fund organisations who support victims of crime.

An annual sum is allocated in the Minister's Vote in respect of the Internet Advisory Board research/project work and the Commission for the Support of Victims of Crime annual funding grant scheme.

The Division's work in this area involves securing of Ministerial/Government approval for the amount of the annual allocation on the basis of the Internet Advisory Board and the Commission for the Support of Victims of Crime forward action plans. Under the Commission for the Support of Victims of Crime the funding is allocated on the decision of the Commission and paid in instalments on the basis of the Secretariat's scrutiny of the organisations returns in relation to their outlay.

The following provisions govern the Division's operation of this scheme:

- ✓ Comptroller and Auditor General (Amendment) Act, 1993; This refers to the requirement of inspection by the Comptroller and Auditor General of the accounts, books and records of bodies which receive 50% or more of their gross income in any year of account from official funds;
- ✓ Department of Finance Circular 21/93 which also refers to the above requirement;
- ✓ Public Financial Procedure - an outline: Manual published by the Department of Finance (July 1996): [see Section C3 : Grants and grants-in-aid];

There are no precedents governing the operation of these schemes.

Rules and practices for examination of individual projects

The Division's work in examining discrete projects is not carried out pursuant to a particular enactment. In general terms, the Division's procedures in this area of its work are as follows:

1. Preliminary assessment of all the issues to be reviewed, which would include legal precedents and court judgements.
2. Decision made on the consultation process to be used; for example:
 - whether a Review Body/Working Group is to be established and the consequential logistical arrangements;
 - the method whereby (i) the views of other relevant Government Departments and agencies are to be requested; (ii) submissions are to be invited from interested organisations and individuals;
 - whether a Conference/Seminar/Forum is to be organised;
 - arrangements for seeking public views through newspaper advertisements.
3. If a Review Body is to be established, a Government decision is sought on its composition and terms of reference.
4. In evaluating all the submissions and views received, and in recommending proposals to the Minister and Government, the Division has regard to:
 - criteria which include existing legislation,
 - stated Government policy,
 - the effect on the public finances,
 - relevant international developments,
 - the views of all interested parties and
 - the overall effect on public order.
5. If a Review Body/Working Group is established, rules and procedures as applicable throughout the Civil Service will apply. Examples of such rules and procedures are the following:
 - ✓ Department of Finance Circulars 7/60 and 3/69 which set out the Instructions and Regulations governing the conduct of Temporary Commissions and Special Inquiries and the conditions covering payment of travelling expenses of the non-civil service members of such Body/Group;
 - ✓ The requirements of the Ethics in Public Office Act, 1995 as regards the members of the Review Body/Working Group;

- ✓ Minister for Finance letter of 11 March 1992 setting out Guidelines for State Bodies;
6. On completion of the examination of a particular project, draft proposals are drawn up and an overall Departmental view of the issues is established. The proposals are then circulated to (relevant) Government Departments for their views. The final draft is then submitted to the Minister/Government for approval.

2.30 RECEPTION & INTEGRATION AGENCY

(Note that the Integration Unit of the RIA is now operating at the Office of the Minister of State with special responsibility for Integration Policy (see separate entry for Office of the Minister for Integration). For the purposes of this document references to RIA are divided between RIA (Reception) and the Integration Unit of the Office of the Minister for Integration.)

The Reception and Integration Agency (Reception) is responsible for:

- planning and co-ordinating the provision of services to asylum seekers;
- the accommodation of asylum seekers through the Direct Provision system
- assisting in the voluntary repatriation of destitute nationals from the twelve States which joined the EU in May, 2004 and January, 2007.

The Integration Unit of the Office of the Minister for Integration is responsible for:

- in relation to all immigrants, monitoring, promoting and facilitating effective integration initiatives; and co-ordinating and developing integration policy.
- the operation of the selection and resettlement of programme refugees;
- administration of the European Refugee Fund allocation for Ireland;

RIA (Reception) and the Integration Unit are cross-departmental in nature and comprise staff from the Department of Justice, Equality and Law Reform, as well as staff seconded from the Departments of Education and Science, Health and Children and the Environment, the Health Service Executive, Dublin City Council, the Irish Prison Service and the Irish Red Cross.

The Integration Unit of the RIA operates under the Office of the Minister of State for Integration and is based at Dún Aímhírgin, 43-49 Mespil Road, Dublin 4 (see separate entry in this reference book). RIA (Reception) is based at Block C, Ardilaun Centre, St. Stephen's Green, Dublin 2.

While the RIA (Reception) has overall responsibility for the direct provision of support to meet the basic needs of asylum seekers, other Departments and Agencies, e.g. the Health Services Executive and the Department of Education and Science, have the primary role in the actual delivery of services under the relevant primary and secondary legislation.

In respect of contracts for direct provision of accommodation and ancillary services to asylum seekers, the following legislation applies:

- ▶ Employment Permit Act, 2003;
- ▶ European Communities (Drinking Water) Regulations 2000;
- ▶ European Communities (Hygiene of Foodstuffs) Regulations 2000 and 2005;
- ▶ European Communities (Official Control of Foodstuffs) Regulations 1998;
- ▶ Fire Services Acts, 1981 and 2003;

- ▶ Food Hygiene Regulations, 2000;
- ▶ Housing Acts, 1966 to 2004;
- ▶ Industrial Relations Acts 1946 to 2004;
- ▶ National Minimum Wage Act 2000;
- ▶ Planning and Development Acts 2000 to 2005;
- ▶ Private Security Services Act, 2004;
- ▶ Prompt Payment of Accounts Act, 1997;
- ▶ Safety, Health & Welfare at Work Act, 2005;
- ▶ Tourist Traffic Acts, 1939 to 2003;
- ▶ Any statutory modification or re-enactment of same; and,
- ▶ Any other relevant Act or Regulations as may be notified by the Minister to the Contractor.

Government decisions

1 September 1999

S180/20/10/0122 Government decided in principle that asylum seekers are to have their basic needs met through direct provision.

3 September 1999

S180/20/10/0122 Government decided that the Department of Justice, Equality & Law Reform would have responsibility for the direct provision of support to meet the basic needs of asylum seekers.

19 October 1999

S180/20/10/0122A Government announced that asylum seekers would be dispersed throughout the country and have their needs met by direct provision.

28 March 2000

S180/20/10/0122B Government approved the establishment of a statutory agency to be called the Reception and Integration Agency under the aegis of the Department of Justice, Equality and Law Reform. Pending the enactment of legislation the Reception and Integration Agency will operate on a non-statutory basis. It replaced the Directorate for Asylum Support Services and incorporated the Refugee Agency, which previously operated under the aegis of the Department of Foreign Affairs.

18 April 2000

S180/20/10/0122B Government approved the establishment of an Interim Advisory Board for the Reception and Integration Agency.

2 March 2004

S180/20/10/0723 Government approved that applications from citizens of the accession States for social assistance would be notified to the Department of Justice, Equality and Law Reform and that failed applicants would be referred to the Department of Justice,

Equality and Law Reform who would support their repatriation on an agency basis for the Department of Social and Family Affairs.

Other Legislation:

Data Protection Act, 1988
Freedom of Information Act, 1997 (as amended)
Prompt Payment of Accounts Act, 1997
Child Care Act, 1991
Refugee Act, 1996 (as amended)

Practices / Procedures in relation to the functions of the RIA

The RIA and its agents operate in accordance with the following:

- All relevant legislation as listed in this chapter
- Accommodation centres rules and procedures
- Code of Practice
- Child Protection Policy
- Other appropriate guidelines and procedures

Procurement Directives / Rules / Guidelines

The RIA operates its procurement procedures under the Guide to Community Rules on Public Procurement of Services (Directive 92/50/EEC).

The RIA also operates in accordance with Procurement Guidelines as set out in the Department of Finance website www.finance.gov.ie.

Miscellaneous

Cabinet procedures instructions (Government Publications Sales Office);

Customer Service Action Plan of the Department of Justice, Equality and Law Reform

Memoranda of Agreement (contracts) with proprietors and contractors

2.31 SECURITY & NORTHERN IRELAND

This document lists legislation and agreements followed by Crime 3 Division in making decisions, determinations or recommendations.

Primary Legislation

Offences against the State Acts 1939 – 1998
Interception of Postal Packets and Telecommunications Messages (Regulation) Act 1993
Decommissioning Act 1997
Criminal Justice (Location of Victims' Remains) Act 1999
Criminal Justice Act 1999
Independent Monitoring Commission Act 2003
Private Security Services Act 2004
Criminal Justice (Terrorist Offences) Act 2005

Secondary Legislation

Unlawful Organisation (Suppression) Order 1939
Offences Against the State (Scheduled Offences) Order 1972
Offences Against the State (Scheduled Offences) (No. 2) Order 1972
Unlawful Organisation (Suppression) Order 1983
Decommissioning Act 1997 (Commencement) Order 1997
Decommissioning Act 1997 (Section 3) (Commencement) Order 1997
Decommissioning Act 1997 (Independent International Commission on Decommissioning) (Privileges and Immunities) Order 1997
Decommissioning Act 1997 (Independent International Commission on Decommissioning) Regulations 1997
Decommissioning Act 1997 (Sections 5 and 6) (Commencement) Order 1998
Decommissioning Act 1997 (Decommissioning) Regulations 1998
Decommissioning Act 1997 (Decommissioning)(Amendment) Regulations 2000-2007
Decommissioning Act 1997 (Decommissioning)(Supplementary) Regulations 2001-2007
Criminal Justice (Location of Victims' Remains) Act, 1999 (Commencement) Order 1999
Criminal Justice (Location of Victims' Remains) Act, 1999 (Independent Commission For The Location of Victims' Remains) (Privileges and Immunities) Order 1999

Miscellaneous

Agreement between the Government of Ireland and the Government of the United Kingdom establishing the Independent International Commission on Decommissioning (1997)
Agreement between the Government of Ireland and the Government of the United Kingdom establishing the Independent Commission for the Location of Victims' Remains (1999)

Agreement between the Government of Ireland and the Government of the United Kingdom of Great Britain and Northern Ireland establishing the Independent Monitoring Commission (2003)
Intergovernmental Agreement on Co-operation on Criminal Justice Matters (2005)

PART 3

Glossary

Civil Servants often use terminology which may not be familiar to the general public to describe their work and information they hold. A glossary of the more commonly used terms is set out below:

Agreed Report - A record of discussions on an item at either the General Council, a Departmental Council or a Joint Conciliation Council. Reports summarise the arguments advanced by both the Unions and Management on the item in question and record the conclusions reached. These conclusions can either be in the form of recording whatever was agreed between both sides or in the form of recording that agreement could not be reached. In the case of the latter the report is often known as a "disagreed report" or an "agreed report recording disagreement".

Adjudication & Arbitration - These are arrangements whereby certain claims can be referred to an independent third party for examination and recommendation. Major claims (e.g. pay claims) would normally be appropriate to the Arbitration Board. Minor claims would be appropriate to the Adjudicator.

Attorney General - advisor to the Government regarding legal opinion and matters of law. The Attorney General's Office has a broad range of functions which, in addition to above, includes representing the State in legal proceedings which involve the State, extradition matters, drafting/amending Government Bills and Statutory Instruments, matter of constitutional and administrative law. (also see Office of the Chief State Solicitor)

Comptroller & Auditor General (C&AG) - the main functions of the C&AG are to control and audit all state disbursement and accounts of money administered by or under the authority of the Government and examine the efficiency and economy within Government Departments.

Council of Europe - A distinct intergovernmental political organisation consisting of some 40 European Parliamentary democracies. The objective is co-operation in all matters, except defence, with emphasis on human rights and strengthening democratic institutions through political, legal, social and cultural co-operation.

Council of the European Union - Composed of ministerial representatives from the Member States of the EU. It exercises legislative and decision-making powers and is responsible for intergovernmental co-operation in foreign policy and Justice & Home Affairs.

Council of Europe Committee for the Prevention of Torture and Inhuman or degrading treatment or Punishment (CPT) - Set up in 1987, the Committee's role is to examine the treatment of persons deprived of their liberty. It is entitled to visit any place where such persons are held by a public authority. The purpose of the Committee is not to condemn States, but by co-operation and advice seek improvements for the protection of persons deprived of liberty.

Data Protection Act 1988 - Provides the individual with the statutory right to seek access to personal information held on computer and the right to ensure incorrect or inaccurate information is corrected or deleted.

Departmental Council - The formal name given to a meeting of Union representatives and representatives of Management held under the Conciliation and Arbitration Scheme to discuss issues of concern to civil servants in a particular Department with the exception of items proper to be discussed at the General Council.

Director of Public Prosecutions (DPP) - examines files, usually submitted by or on behalf of the Gardaí, to decide if a case is one proper for prosecution.

EU - European Union

EU Directives - Legally binding instruments available to the EU Council and Commission as a means of implementing EU law. Directives are implemented in either of two ways - by primary legislation by the passing of a bill, or by secondary legislation which involves ministerial regulations.

EU Regulations - Legally binding instruments which has immediate effect, requiring no implementation methods at national level.

FOI - Freedom of Information Acts, 1997 & 2003

Garda Conciliation Council - The formal name given to a meeting of representatives of the Garda association (the Staff Side) and representatives of Management (the Official Side) held under the Garda C & A Scheme to discuss items raised by either side - more commonly raised by the staff side.

General Council - The formal name given to a meeting of Union representatives and representatives of Management held under the Conciliation and Arbitration Scheme to discuss issues of concern to civil servants generally or to grades common to two or more Departments.

Government Contracts Committee (GCC) - A committee of officials drawn from Departments, chaired by the Department of Finance, concerned with purchasing and construction contracts. Where, due to particular circumstances a Department must depart from normal contracting rules, the GCC must give its approval. Departures from the EU rules are not permitted.

Information Commissioner - Provides an independent avenue for appeal of Freedom of Information requests where the individual is not satisfied with the decision made by the public bodies.

Instructions/guidelines - Records in this category would include instructions or guidelines issued to staff in respect of the administration of schemes / programmes operated by the Department. They could also include practical experiences gained in operating schemes / programmes.

Internal Administration - Relates to the day to day management of the Department. Typically, information of this type can pertain to staff training courses, annual leave, provision of accommodation for staff, circulation of information, documents, etc.

Iris Oifigiúil - Official Government publication

Legislation - Legislation refers to the procedure by which a proposal becomes law through the introduction of an Act of the Oireachtas or by secondary legislation made by the Minister under the Primary Act.

Ministerial Certificates - Certificate provided for under section 25(1) of the FOI Act in which a Minister declares a record is exempt under the Act.

National Development Plan - a series of programmes that sets out a development strategy for the country in key areas, supported by investment commitments. The key objectives of The National Development Plan 2000-2006 are - Continued sustainable national economic and employment growth, Consolidating and improving Ireland's international competitiveness, Fostering balanced Regional Development and Promoting Social Inclusion.

Office of the Chief State Solicitor - comes within the remit of the Attorney General's Office. Its services include the provision of solicitor services to the Government, and provision of services to the Director of Public Prosecutions (see separate entry) in relation to criminal matters.

Offices of the Refugee Applications Commissioner (RAC) - An independent office established under the provisions of The Refugee Act 1996 as amended, which provides a new statutory system for processing asylum applications. This office makes recommendations to the Minister for Justice, Equality & Law Reform on whether refugee status should be granted.

Official Side - The name given to the representatives of the Management at meetings of General Council and Departmental Councils. In the case of the General Council, the Official Side generally consists of Department of Finance officials and in the case of a Departmental Council, the Official Side consists of officials from the Department concerned.

OJEC Official Journal of European Community - Publishes EU legislation (directives, regulations, etc.), the primary source of all official communications of the EU.

Protocols - A Treaty may have one or more Protocols annexed to it. It has exactly the same binding legal effect as the provisions of the Treaty.

Refugee Appeals Tribunal (RAT) - An independent office established under the provisions of The Refugee Act 1996 as amended which provides a new statutory system for processing asylum applications appeals. This office makes recommendations to the Minister for Justice, Equality & Law Reform on whether refugee status should be granted at appeal stage.

Reception & Integration Agency (RIA) – The Reception and Integration Agency (RIA) is responsible for coordinating service provision for asylum seekers and the implementation of the policies of resettlement and direct provision. It is also responsible for coordinating the implementation of integration policy.

Staff Side * - The name given to Union representatives at a meeting of a Joint Conciliation Council, Departmental Council or General Council.

Sub Judice - before the court

Vote - annual amount authorised by the Oireachtas for spending by each Department.

The terms marked * are used in the Conciliation and Arbitration (C &A) Section of Personnel Division. *Some of these terms as defined by the Public Service Executive Union in the September/October, 1997 edition of the Public Service Executive Union (PSEU) Review, are reprinted hereunder with their kind permission.*