



BILLE NA bPRÍOSÚN 2006
PRISONS BILL 2006

EXPLANATORY AND FINANCIAL MEMORANDUM

Purpose of the Bill

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

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

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

PART 1

PRELIMINARY AND GENERAL

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

Short title, commencement and collective citation

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

Interpretation (general)

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

Expenses

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

PART 2

PRISONER ESCORT SERVICES

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

Interpretation

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

Agreement for the provision of prisoner escort services

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

Certification of prisoner custody officers

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

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

It will be an offence to provide false information relating to an application or to forge or alter a certificate or possess without lawful

authority or reasonable excuse an altered certificate (*subsections 14 and 15*)).

Revocation of certificate

Section 7 provides that the Minister may, in certain circumstances, by notice in writing revoke a certificate issued under **section 6** and may direct that a prisoner custody officer cease to perform the functions of prisoner custody officer pending a decision on revocation. Failure to comply with such direction shall be an offence. A decision to revoke a certificate may be appealed to the Circuit Court within 6 weeks of notification of revocation (*subsections (1) to (6)*).

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

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

Functions of prisoner custody officer

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

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

Prohibition of unauthorised disclosure of information

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

Report to Minister

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

PART 3

PRISON DISCIPLINE

This Part allows the governor of a Prison to hold inquiries into alleged breaches of prison discipline by prisoners and to impose sanctions where such a breach is found. Provision is also made for a prisoner to petition the Minister against a finding and/or sanction.

Where a sanction involves forfeiture of remission of portion of sentence, provision is made for an appeal to an independent Appeal Tribunal established by the Minister to adjudicate on such appeals.

Interpretation (Part 3)

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

Inquiry into alleged breach of prison discipline

Section 12 provides for the holding of an inquiry by the governor of a prison into an alleged breach of prison discipline. The prisoner shall be informed of the alleged breach and the date and time of the inquiry. Where a finding of a breach of discipline is reached, the Governor shall impose one or more of the sanctions provided for in **section 13** and record the finding and sanction imposed. If no breach of prison discipline is found the governor will record a finding that the allegation has not been substantiated. The procedure relating to the inquiry may be specified in prison rules.

Sanctions for breach of prison rules

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

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

Subsection (2) allows the governor to suspend the operation, subject to conditions, of the whole or any part of a sanction (other than a sanction for forfeiture of remission) for a period not exceeding 3 months from the date of the conclusion of the inquiry. **Subsection (3)** provides that where the conditions of suspension are not complied with, the governor may direct that the sanction shall take effect immediately or from a specified date, or that it be abated in a specified manner and, as so abated, take effect. In accordance with **subsection (4)** where a condition is complied with during the period of suspension, the sanction ceases to have effect at the end of the period.

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

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

Subsection 7 prohibits the use of certain punishments such as collective or corporal punishment, restraint, sensory deprivation, deprivation of sleep, food or drink, confinement in a special observation

cell, sanctions of indeterminate duration, or sanctions constituting cruel, inhumane or degrading treatment.

Petition by prisoner against sanction

Section 14(1) provides that a prisoner who has been sanctioned for a breach of prison discipline under **section 13** may send a petition concerning the finding and/or sanction to the governor within seven days of being sanctioned, for transmission to the Minister.

Under **subsection (2)** the Minister may, following consultation with the governor, affirm, modify, suspend (subject to conditions) or revoke the sanction and arrange for the petitioner to be notified accordingly.

Appeal against forfeiture of remission of portion of sentence

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

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

Appeal Tribunals

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

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

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

PART 4

REQUIREMENTS RELATING TO CONSTRUCTION AND EXTENSION OF PRISONS

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

Interpretation (Part 4)

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

Application of this Part

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

Environmental impact assessment

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

In accordance with **subsection (3)** the Prison Service shall also arrange for the preparation of a drawing or visual representation of the exterior of the completed development. **Subsection (4)** provides for the submission of the environmental impact assessment and visual representation to the Minister by the Prison Service.

Notice of development — Section 20

In accordance with **subsections (1) and (2)** on receipt of the environmental impact assessment and visual representation of the proposed development from the Prison Service, the Minister is required to give notice of the proposed development to the relevant local planning authority or authorities, the public (through placing of notices on the site and in newspapers), the Minister for the Environment, Heritage and Local Government and the Minister for Communications, Marine and Natural Resources if the development or part thereof is adjacent to or on the foreshore.

Where the development is likely to have significant effects on the environment of another EU or Espoo Convention member state, the appropriate authority in that state must be notified by the Minister under **subsection (3)**. The instruments encompassed by **subsection (3)** are defined in **subsection (4)**.

Contents of notice

Section 21 requires that each notice of a development provided for in **section 20** shall state the date the notice was issued, contain a brief description of the development, identify its location, state where or how to obtain documents mentioned under **section 19** and invite written submissions or observations to be furnished to the rapporteur established under **section 23** within six weeks after the day on which the notice of the development was issued.

Publication of information on proposed development

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

Appointment of rapporteur

Section 23 provides that the Minister shall appoint a rapporteur to receive and consider written submissions or observations relating to a proposed development received from interested parties within six weeks following the date on which the notice of the proposed development was issued. The report prepared by the rapporteur on the basis of the submissions or observations will identify the main issues raised, specify the names and addresses of those who made the submissions/observations and summarise them. The Minister will arrange for publication of this report submitted to him or her by the rapporteur.

Procedure where substantive amendments by Minister to proposed development

Section 24 provides that should the Minister, having regard to the report of the rapporteur, decide to materially alter the development, then he or she shall arrange for an amended description of the development, specifying the alterations, a supplementary environmental impact assessment and an amended visual representation of the exterior (where necessary) to be prepared. Notice of the alterations will be given to the persons and bodies specified in **section 20**. Any such notice must comply with the requirements of **section 21**, with the exception that the period for the submission of written

observations or submissions in relation to the alterations to the development is 21 days after the date of issue of notice (**subsections (1)-(3)**).

The rapporteur will prepare a supplementary report based on submissions/observations received within 21 days of notifying interested persons and bodies. Similar to the provisions in **sections 23(4) and (5)** the rapporteur's supplementary report will specify those from whom submissions/observations have been received, identify the main issues raised and summarise the submissions/observations. The report will be submitted to the Minister who shall arrange to have it published.

Decision by Minister on development

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

Oireachtas approval for development

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

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

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

The Minister may proceed with the development if the draft resolution is approved by each House of the Oireachtas and confirmed by an Act of the Oireachtas (**subsection (3)**).

Questioning of acts, etc. done pursuant to this Part

Section 27(1) provides that the validity of any act done under this Part or whether any environmental impact assessment or report by a rapporteur complies with this Part can only be questioned by an application to the High Court for judicial review. In accordance with **subsection (2)** any application for leave to apply for judicial review can be made by a person substantially affected by the development or who has made a submission or observations to the rapporteur. An application must be made within eight weeks of the act being done or the assessment or report published, unless the Court considers there is good reason for extending the period. The application must

be made on notice to the Minister and any other party concerned. **Subsection (3)** provides that an application for leave to apply for judicial review shall not be granted unless the Court is satisfied that there are substantial grounds for contending that the act, statement or report is invalid or ought to be quashed. Under **subsection (4)** the Court may, before hearing the application, direct that notice be also served on such other persons as the Court may specify. **Subsection (5)(a)** provides that the determination of the Court in relation to an application for leave to apply for judicial review, or an application for judicial review if final may only be appealed to the Supreme Court by leave of the Court. In accordance with **subsection 5(b)** leave to appeal will only be granted where the Court certifies that a point of law of exceptional importance in relation to its decision is at issue and that it is desirable in the public interest that an appeal is taken to the Supreme Court. In accordance with **subsection (5)(c)** this section does not apply to a determination of the Court insofar as the validity of any law having regard to the provisions of the Constitution is concerned.

Exemptions, etc., relating to development

Section 28 specifies the various exemptions relating to a development under this Part. In accordance with **subsection (1)** a development is exempt from the Planning and Development Acts. The development is also not subject to regulations under the Planning Acts, European Communities Regulations, the Building Control Act 1990 and regulations made thereunder and a consent or licence is not required under the National Monuments Acts, with the exception on under section 25 of the National Monuments Act 1930. Provision is also made under **subsection (2)** that any works on a development on an archaeological site shall only be carried out in accordance with the directions of the Minister for the Environment, Heritage and Local Government. Under **subsection (3)** discovery of a national monument on the site shall be reported to the Minister for the Environment, Heritage and Local Government as soon as practicable. Pending directions from that Minister no works which would interfere with the monument can be carried out, except those urgently required to secure the preservation of the monument and they will be carried out in a manner specified by the Minister. Provision is made in **subsection (4)** for mandatory consultation by the Minister for the Environment, Heritage and Local Government with the Director of the National Museum before issuing directions under **subsections (2) and (3)**. The period for consultation between the Minister for the Environment, Heritage and Local Government and the Director of the National Museum will not exceed 14 days unless another period is agreed by those parties in a particular case in accordance with **subsection (5)**.

Section 29 (Saving)

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

PART 5

INSPECTOR OF PRISONS

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

Inspector of Prisons

Section 30(1) provides for the Minister to appoint a person as the Inspector of Prisons. In accordance with **subsection (2)** terms and conditions of the office, including remuneration, will be determined by the Minister, with the consent of the Minister for Finance. The Inspector may resign office, at any time, by letter to the Minister and resignation will take effect from receipt of the letter. The Minister may remove the Inspector from office for stated misbehaviour or if, in the Minister's opinion, he or she has become incapable through ill health of effectively performing his or her functions. In accordance with **subsection (3)** the term of office will not exceed five years and subject to the provisions under this Part, an Inspector is eligible for re-appointment under **subsection (4)**. The Inspector is independent in the performance of his or her functions (**subsection (5)**).

Functions of Inspector

Section 31(1) provides that the Inspector will carry out regular inspections of prisons. For that purpose he may enter at any time any prison or part thereof, obtain records and bring any issues of concern to the notice of the governor, the Director-General of the Prison Service, or the Minister, as is considered appropriate. In accordance with **subsection (2)**, the Inspector may or shall, if requested by the Minister, carry out an investigation of any matter arising out of the management or operation of a prison and submit a report of such an investigation to the Minister, which will be laid before the Oireachtas and published in accordance with **subsection (3)**. The Minister may, under **subsection (4)** omit matters from any such report where s/he is of the opinion that disclosure would be prejudicial to the security of the prison or of the State; or where, following consultation with the Secretary-General to the Government, disclosure would be contrary to the public interest or may infringe the constitutional rights of any person. Where any matters are omitted, a statement to this effect will be attached to the report, in accordance with **subsection (5)**. The Inspector does not have a role in investigating or deciding on a complaint from a prisoner (**subsection (6)**). Governors, prison officers, other prison employees and prisoners shall, as far as is reasonably practicable, comply with any request for information from an Inspector in the course of carrying out his or her function (**subsection (7)**).

Annual report

Section 32(1) requires the Inspector to present, not later than 31 March each year or such later date as the Minister specifies, a report to the Minister on the performance of his or her functions and such other matters as is directed by the Minister. **Subsection (2)** provides that the report shall in particular address, in respect of each prison inspected, general management, conditions, health and welfare of prisoners, conduct and effectiveness of persons working there, compliance with national and international standards (including prison rules), programmes and facilities available and the participation by prisoners in them, security and discipline. The Minister will arrange for the report to be laid before the Houses of the Oireachtas and to be published (**subsection (3)**). **Subsections (4) and (5) of section 31** relating to the omission of any matter from the report submitted shall also apply to the annual report.

PART 6

MISCELLANEOUS

This Part provides for a number of miscellaneous provisions relating to the use of videolink in non-trial court hearings, the making of Prison Rules, the non-application of certain provisions of the National Minimum Wage Act 2000 to non-commercial work undertaken by prisoners, the requirement for prisoners to pay for certain requested services and provision for the absence from prison on compassionate and other grounds and clarifies the custody situation of prisoners being escorted outside the prison.

Certain applications to court to be heard using videolink

Section 33(1) provides that the section applies to an application to a court in criminal proceedings where the application is one of those specified in **subsection (11)**, the accused or person convicted is in prison, it is made or will be made by the Director of Public Prosecutions or by the prisoner and the prisoner is legally represented or advised or given the opportunity to obtain such advice.

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

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

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

Subsection (9) provides that for the purposes of an application to which this section applies, and where the necessary provisions are complied with in relation to that hearing, a prisoner is deemed to be present in court for the purposes of any enactment or rule of law requiring the presence in court, during criminal proceedings, of an accused or convicted person. Nothing in this section affects the rights of the prisoner to be present during any criminal proceedings other than the hearing of an application to which this section applies (**subsection (10)**).

Subsection (11) sets out the applications referred to in **subsection (1)** — they are applications for bail or free legal aid, certain specified applications in relation to proceedings on indictment (**subsection**

(11)(b)) and in the District Court **(subsection (11)(c))** and other applications in appeal or subsequent proceedings. Criminal proceedings for the purposes of this section are defined in **subsection (12)**.

Application of section 33 to children in remand centres or children detention centres

Section 34 provides that **section 33** (dealing with applications to court to be heard using videolink), will also apply to an application to a court in criminal proceedings where the accused or person convicted of the offence concerned is in a remand centre, or a children detention centre, within the meaning of the Children Act 2001 and has effect accordingly, with the necessary modifications.

Prison Rules

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

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

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

Amendment of National Minimum Wage Act 2000

Section 36 amends the National Minimum Wage Act 2000 so that it does not apply to any non-commercial activity or work engaged in by prisoners under the supervision of the governor or person in charge of the prison. Such activity includes cleaning or kitchen work, educational, training or work experience activities, the production of goods or services which are for the purposes of raising funds for charitable purposes or are provided without charge or with nominal charge.

Payment by prisoners for requested services

Section 37 allows the Minister to provide for charges to be made to prisoners for goods or services that are not generally available to prisoners including telephone calls, access to electronic devices, private medical treatment or escorts provided outside the prison for matters not related to their imprisonment.

Absence from prison on compassionate etc. grounds

Section 38(1) provides that the Minister may on compassionate grounds, for reason of assessing or facilitating a prisoner's reintegration into society or to allow a prisoner assist in the investigation of an offence, order that a prisoner be taken to a specified person or place within the State for a specified purpose during a specified period and return at the end of that period. That order may provide that the prisoner shall be returned to prison immediately if they are not of good behaviour, a breach of the peace occurs or an attempt is made to escape custody (**subsection (2)**).

Lawful custody of prisoners while absent from prison

Section 39 provides that a prisoner absent from prison pursuant to an order under **section 36** or another enactment or court order, or who is being brought to or from a prison or court, is deemed to be in lawful custody when in the custody of a prison officer, a prisoner custody officer or a member of the Garda Síochána.

Minor and consequential amendments

Section 40 makes minor and consequential amendments arising from the provisions in this Bill to the Criminal Justice Act 1960, Criminal Procedure Act 1967, Criminal Justice Act 1990 and the Criminal Justice (Public Order) Act 1994.

Repeals

Section 41 repeals section 3(3) of the Prisons (Visiting Committees) Act 1925, section 1(2) of the Prisons Act 1933 and section 19 of the Criminal Justice (Miscellaneous Provisions) Act 1997.

Regulations

Section 42 provides for the making of regulations for the purpose of giving full effect to the Act.

Financial Implications

In the light of the Prison Officers Association's acceptance of proposals for changes in work practices last year, it is not intended to outsource prisoner escort services in the foreseeable future. Nevertheless the provision is being maintained in case such outsourcing becomes necessary in the future. The financial implications of the contracting out of prisoner escort services cannot be quantified in advance of a detailed implementation plan being prepared because of the number of variables concerned. However, the intent behind the provision is to allow the Minister to enter into such agreements where they would be more cost effective than the arrangements in place.

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

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

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

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

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

The Bill is deleting the special statutory provision which did not allow for the closure of Mountjoy (**section 41(b)**). That provision does not have any intrinsic financial implications although the closure of Mountjoy will free up a valuable site. However, its purpose is to facilitate the replacement of Mountjoy Prison by a new complex involving capital expenditure but which will have significantly better facilities for prisoners and which will be more cost-effective to operate.

The other amendments have no direct financial implications.

***An Roinn Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí
Samhain, 2006.***