



BILLE NA bPRÍOSÚN 2006
PRISONS BILL 2006

Mar a ritheadh ag Dáil Éireann
As passed by Dáil Éireann

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ACTS REFERRED TO

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



BILLE NA bPRÍOSÚN 2006
PRISONS BILL 2006

BILL

entitled

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

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY AND GENERAL

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

Short title,
commencement and
collective citation.

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

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

Interpretation
(general).

2.—In this Act—

“governor” means the governor of a prison or an officer of the prison acting on his or her behalf; 5

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

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

(a) St. Patrick’s Institution,

(b) a place provided under section 2 of the Prisons Act 1970, 10

(c) a place specified under section 3 of the Prisons Act 1972;

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

“prison rules” means any rules for the government of prisons made under *section 35* or other enactment and in force at a material time. 15

Expenses.

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

PART 2 20

PRISONER ESCORT SERVICES

Interpretation
(Part 2).

4.—In this Part—

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

“certificate” means a certificate issued by the Minister under *section 6*; 25

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

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

“prisoner custody officer” means a person—

(a) in respect of whom a certificate under *section 6* is in force, and 30

(b) who is, for the time being, in the employment of a contractor;

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

Agreement for the provision of prisoner escort services.

5.—(1) The Minister may, with the consent of the Minister for Finance and the approval of the Government, enter into an agreement with another person (in this Act referred to as a “contractor”) for the provision by that person of prisoner escort services. 35

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

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

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

(a) the transfer of prisoners from any place (including a prison) to a prison or from a prison to any place (including a prison),

15 (b) the detention in custody of prisoners in a prison in the course of their transfer from one prison to another prison,

(c) the detention in custody of prisoners in a place other than a prison, or

(d) the production of a prisoner to a court.

20 6.—(1) An application may be made to the Minister by or on behalf of any person for a certificate that the person is, in the opinion of the Minister, a fit and proper person to perform the functions of a prisoner custody officer. Certification of prisoner custody officers.

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

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

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

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

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

(a) is of good character,

(b) is capable of performing the functions of prisoner custody officer,

45 (c) has undergone such course of training relating to, or has such experience of, custody of prisoners as would, in the opinion of the Minister, enable the person to perform

the functions of a prisoner custody officer in an efficient manner, and

(d) is otherwise a fit and proper person to perform the functions of a prisoner custody officer.

(7) It shall be a condition of a certificate that the person in respect of whom it is issued shall, in the performance of his or her functions as a prisoner custody officer— 5

(a) not contravene the terms of an agreement under *section 5*, and

(b) comply with the provisions of this Act and any prison rules relating to the treatment of prisoners in custody. 10

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

(9) A certificate shall remain in force for such period, not exceeding 5 years, as is specified in the certificate. 15

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

(11) If the Minister refuses to issue a certificate to an applicant, the applicant may, not later than 6 weeks from the date on which he or she receives a notice under *subsection (10)*, or such later date as the court may permit, appeal to the court for an order directing the Minister to issue a certificate to the applicant. 20

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

(a) dismiss the appeal and affirm the refusal of the Minister to issue the certificate, or 25

(b) allow the appeal and direct the Minister to issue a certificate to the applicant.

(13) The Minister shall comply with a direction of the court under this section. 30

(14) A person who knowingly or recklessly provides the Minister with information or documentation that is false or misleading in a material respect is guilty of an offence and liable on summary conviction to a fine not exceeding €3,000 or imprisonment for a term not exceeding 6 months or both. 35

(15) A person who—

(a) forges or utters, knowing it to be forged, a certificate purporting to have been issued under this section (in this subsection referred to as a “forged certificate”),

(b) alters with intent to deceive or defraud or utters, knowing it to be so altered, a certificate (in this subsection referred to as an “altered certificate”), or 40

(c) without lawful authority or other reasonable excuse, has in his or her possession a forged certificate or an altered certificate, 45

is guilty of an offence and liable—

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

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

(16) In this section—

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

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

(a) the applicant resides, or

(b) the contractor concerned has his or her principal office in the State.

15 7.—(1) If, in relation to a prisoner custody officer, the Minister ceases to be satisfied as to any of the matters referred to in *section 6(6)*, he or she shall revoke the certificate issued in respect of that person. Revocation of certificate.

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

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

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

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

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

35 (a) dismiss the appeal and affirm the decision of the Minister to revoke the certificate, or

(b) allow the appeal and set aside the revocation.

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

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

- (9) Upon receipt by—
- (a) a person appointed under *section 10*,
 - (b) the Commissioner of the Garda Síochána, or
 - (c) the governor of a prison or person for the time being performing the functions of governor of a prison, 5

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

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

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

Functions of
prisoner custody
officer.

8.—(1) A prisoner custody officer shall, while escorting a prisoner, have all such powers as are conferred on prison officers by or under any enactment and shall, in particular, have the power to search the person of any prisoner for whose transfer or custody he or she is responsible and to remove any prohibited articles found during the course of such a search. 15
20

(2) A prisoner custody officer shall not, in the performance of his or her functions under *subsection (1)*, remove or require the removal of a prisoner’s clothing (other than outer clothing) unless he or she has reasonable grounds for believing that the prisoner has concealed a prohibited article beneath his or her clothing. 25

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

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

(4) A prisoner custody officer shall, as respects any prisoner for whose transfer or custody he or she is responsible— 30

- (a) prevent his or her escape from lawful custody,
- (b) prevent the commission of an offence by him or her,
- (c) ensure that he or she behaves in an orderly and disciplined fashion,
- (d) comply with any order of a court relating to him or her, including any such order relating to his or her custody, treatment or transfer. 35

(5) A prisoner custody officer may, where necessary, use all reasonable force in the performance of his or her functions under this section. 40

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

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

5 (b) any medication or prescription for medication given to the officer in respect of the prisoner, and

(c) any information relating to the prisoner's health that the officer is aware of.

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

(8) In this section—

“outer clothing” means—

(a) a hat, shoes or gloves, or

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

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

25 **9.—(1)** A prisoner custody officer shall not disclose information relating to a prisoner which is obtained by him or her in the course of his or her employment as a prisoner custody officer unless he or she—

Prohibition of unauthorised disclosure of information.

(a) is authorised by the Minister to so do, or

(b) does so for the purposes of performing his or her functions as a prisoner custody officer.

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

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

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

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

(a) at all reasonable times enter the principal office in the State of a contractor or any premises at which he or she carries on business in the State, and

- (b) inspect and take copies of any books, records, other documents (including documents stored in non-legible form) or extracts therefrom which he or she finds in the course of his or her inspection.

PART 3

5

PRISON DISCIPLINE

Interpretation
(Part 3).

11.—In this Part—

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

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

10

Inquiry into alleged
breach of prison
discipline.

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

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

15

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

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

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

20

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

(ii) record the finding and the sanction imposed,

or

25

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

Sanctions for
breach of prison
discipline.

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

30

(a) caution;

(b) reprimand;

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

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

35

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

- 5 (ii) receiving visits (except those from a doctor or other
healthcare professional, his or her legal adviser, a
chaplain or member of the visiting committee to the
prison, the Inspector of Prisons, a judge or represen-
tative of a court or tribunal, a member the Houses
of the Oireachtas, a representative of the Minister,
Parole Board, Human Rights Commission or Euro-
pean Committee for the Prevention of Torture and
10 Inhuman or Degrading Treatment or Punishment or,
if the prisoner is a national of another state, a diplo-
matic or consular officer of that state),
- (iii) sending or receiving letters (except letters from a per-
son mentioned in *subparagraph (ii)* or the United
Nations Committee against Torture or any document
15 relating to the registration of electors (including
entry in the postal voters' list) or to voting at an elec-
tion or a referendum),
- (iv) using money or credit or any other facilities, including
telephone facilities, or
- 20 (v) possessing specified articles or articles of a specified
class the possession of which is permitted as a
privilege;
- (e) forfeiture of such sum of money credited or to be credited
25 to the prisoner from public funds as may be specified by
the governor;
- (f) forfeiture of not more than 14 days' remission of portion
of a sentence;
- (g) postponement, for a specified period not exceeding 60
30 days, of payment of the amount of any gratuity to which
the prisoner would have been entitled under prison rules
in respect of such a period;
- (h) where the breach of prison discipline concerned relates to
35 an attempt to escape from lawful custody, a requirement
to wear prison clothes for a specified period not
exceeding 60 days.

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

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

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

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

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

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

(b) the prisoner has, in the opinion of the governor, performed an exceptionally meritorious act. 5

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

(7) The following sanctions for breaches of prison discipline are prohibited: 10

(a) collective punishment;

(b) corporal punishment;

(c) placing in a restraint;

(d) any form of sensory deprivation; 15

(e) deprivation of sleep;

(f) deprivation of food or drink;

(g) reduction in, or denial of, normal prison diet;

(h) confinement in a special observation cell;

(i) placing in a cell or room without adequate light, heat or ventilation; 20

(j) a sanction of indeterminate duration;

(k) a sanction constituting cruel, inhumane or degrading treatment.

(8) On the imposition of a sanction under this section, the governor shall explain in ordinary language to the prisoner concerned the content of *section 14(1)* and, if the sanction consists of or includes forfeiture of remission of portion of his or her sentence, of *section 15(1)*. 25

Petition by prisoner against sanction.

14.—(1) A prisoner— 30

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

(b) on whom a sanction under *section 13* has been imposed,

may, within 7 days of its imposition, send to the governor, for transmission to the Minister, a petition concerning the finding or sanction or both finding and sanction. 35

(2) On such a petition the Minister may, after consulting the governor, affirm, modify, suspend (subject to any specified terms or conditions) or revoke the sanction and cause the petitioner to be notified accordingly. 40

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

Appeal against
forfeiture of
remission of portion
of sentence.

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

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

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

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

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

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

15 (a) may attend the hearing, and

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

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

(6) The Appeal Tribunal may—

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

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

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

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

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

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

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

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

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

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

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

(6) Such a person may at any time be removed from office by the Minister for stated misbehaviour or if, in the opinion of the Minister, the person has become incapable through ill health or otherwise of effectively performing the functions of an Appeal Tribunal. 10

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

PART 4 15

REQUIREMENTS RELATING TO CONSTRUCTION AND EXTENSIONS OF PRISONS

Interpretation
(Part 4).

17.—In this Part—

“development” means—

(a) the proposed construction of a prison on a site not previously used for that purpose where— 20

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

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

or 25

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

(i) involves an increase of more than 50 per cent in the area of the site, or 30

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

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

“site”, in relation to a prison, includes any boundary walls or fences and any land which is used for car parking or is otherwise subsidiary or ancillary to the prison. 35

Application of this
Part.

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

(2) Such a direction is deemed to be a statutory instrument to which the Statutory Instruments Act 1947 primarily applies. 40

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

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

(a) a description of the development, including in particular—

(i) a description of its physical characteristics and land-use requirements during the construction and operational phases,

10 (ii) information concerning its site, design and size, and

(iii) an estimate, by type and quantity, of any expected residues or emissions resulting from the development, such as water, air or soil pollution, noise, vibration, light, heat or radiation;

15 (b) an outline of the main alternatives to the development that were considered by the Minister and an indication of the main reasons for choosing the development, taking into account the environmental effects;

20 (c) a description of any aspects of the environment likely to be significantly affected by the development, including, in particular, population, fauna, flora, soil, water, air, climatic factors, material assets (including any architectural, archaeological or cultural heritage) and landscape and the inter-relationship between the matters referred to in this paragraph;

25 (d) a description of any likely significant effects of the development resulting from—

(i) the existence of the development,

(ii) the use of natural resources, and

30 (iii) any emission of pollutants, creation of nuisances or elimination of waste,

whether the effects are short, medium or long term, direct, indirect, permanent, temporary, positive, negative, cumulative or secondary;

35 (e) a description of the forecasting methods used to assess the effects on the environment;

(f) a description of the measures envisaged to prevent, reduce and, where possible, offset any significant adverse effects on the environment;

40 (g) the data required to identify and assess the main effects which the development is likely to have on the environment;

45 (h) an indication of any difficulties (technical deficiencies or lack of know-how) encountered in compiling the information;

(i) a non-technical summary of the information.

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

(4) The environmental impact assessment and visual representation of the development shall be submitted by the Director-General of the Irish Prison Service to the Minister. 5

Notice of development.

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

(a) the planning authority or authorities for the area where the development is to be situated, 10

(b) members of the public,

(c) the Minister for the Environment, Heritage and Local Government, and

(d) if the development or any part thereof is adjacent to or on the foreshore, the Minister for Communications, Marine and Natural Resources. 15

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

(3) Notice of the development shall be given to members of the public by placing— 20

(a) a notice or notices on the site so that it or they is or are easily visible from the public roadway, and

(b) by placing a notice in at least one daily newspaper and one other newspaper in circulation in the area concerned.

(4) If the development is likely to have significant effects on the environment of another party to the Espoo Convention, the Minister shall give notice of the development to the appropriate authority in that state and proceed in other respects in accordance— 25

(a) with the Convention, and

(b) if the other state is a member state of the European Union, with Article 7 of the Council Directive as if that Article applied, with the necessary modifications, in relation to the development. 30

(5) In this section—

“Council Directive” means Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment¹, as amended by Council Directive 97/11/EC of 3 March 1997²; 35

“Espoo Convention” means the Convention on Environmental Impact Assessment in a Transboundary Context, done at Espoo (Finland) on 25 February 1991. 40

Contents of notice.

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

¹ OJ L 175, 5.7.1985, p. 40

² OJ L 73, 14.3.1997, p. 5

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

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

Publication of information on development.

20 **23.**—(1) The Minister shall appoint a rapporteur to receive written submissions or observations relating to a development from interested parties pursuant to *section 21(e)*.

Appointment of rapporteur.

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

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

30 (4) The report shall—

(a) specify the names and addresses of those who made written submissions or observations,

(b) identify the main issues or other points of substance raised by those who made such submissions or observations, and

35 (c) include a summary of the submissions or observations.

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

40 **24.**—(1) If the Minister, having had regard to the report of the rapporteur, decides to make a material alteration to the development, he or she shall—

Procedure where substantive amendments by Minister to development.

(a) cause to be prepared—

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

- (ii) a supplementary environmental impact assessment relating to the impact of the alterations on the environment, and
- (iii) if the alterations materially affect the exterior of the development, an amended visual representation of the exterior, 5

and

- (b) specify in a notice to the persons and bodies mentioned in *section 20* the alterations that he or she has decided to make to the development. 10

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

(3) *Section 21* applies in relation to a notice under *subsection (1)(b)*, with the modification that the period within which submissions or observations on the alterations must be made is 21 days and with any other necessary modifications. 15

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

(5) The supplementary report shall— 20

- (a) specify the names and addresses of those who made written submissions or observations,
- (b) identify the main issues or other points of substance raised by those who made such submissions or observations, and
- (c) include a summary of the submissions or observations. 25

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

Decision by
Minister on
development.

25.—The Minister, having had regard to—

- (a) the environmental impact assessment in respect of the development and the report of the rapporteur under *section 23(5)*, and 30
- (b) any supplementary environmental impact assessment and supplementary report,

may make further alterations to the development and may either—

- (i) decide to proceed with the development, including any such alterations, or 35
- (ii) decide not to do so.

Oireachtas approval
for development.

26.—(1) If the Minister decides to proceed with the development, he or she shall move a draft resolution in both Houses of the Oireachtas— 40

- (a) containing—

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

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

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

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

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

27.—(1) A person shall not question—

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

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

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

otherwise than by way of an application to the High Court for judicial review under Order 84 of the Rules of the Superior Courts (S.I. No. 15 of 1986). 5

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

- (a) be made only by a person who is substantially affected by the development concerned or has made a submission or observations to the rapporteur in relation to it, 10

- (b) be made within a period of 8 weeks after the act is done or the environmental impact assessment or report concerned is published, unless the Court, on the basis of evidence put before it, is satisfied that there is a good and substantial reason for extending the period, and 15

- (c) be made by motion on notice, grounded in the manner specified under the said Order 84 in respect of an *ex parte* motion for such leave in accordance with that Order, to the Minister and any other party concerned.

(3) The application for such leave shall not be granted unless the Court is satisfied that there are substantial grounds for contending that the act done, or the statement or report, is invalid or ought to be quashed. 20

(4) The Court may, before hearing the application, direct that notice of it be also served on such persons as the Court may specify. 25

- (5) (a) The determination of the Court of an application for leave to apply for judicial review, or an application for judicial review, is final, and no appeal from the determination lies to the Supreme Court in either case, except by leave of the Court. 30

- (b) Such leave shall be granted only where the Court certifies that its decision involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal be taken to the Supreme Court.

- (c) This subsection does not apply to a determination of the Court, in so far as it involves a question of the validity of any law having regard to the provisions of the Constitution. 35

Exemptions, etc., relating to development.

28.—(1) A development—

- (a) is an exempted development for the purposes of the Planning and Development Acts 2000 to 2006, 40

(b) is not subject to—

- (i) regulations under section 181 of the Planning and Development Act 2000,

- (ii) the European Communities (Environmental Impact Assessment) Regulations 1989 to 2005, 45

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

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

and

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

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

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

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

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

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

PART 5

INSPECTOR OF PRISONS

35 **30.**—(1) The Minister may appoint a person (to be known as the Inspector of Prisons) to perform the functions conferred on him or her by this Part. Inspector of Prisons.

(2) The Inspector of Prisons—

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

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

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

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

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

(5) Subject to this Part, the Inspector of Prisons is independent in the performance of his or her functions. 10

Functions of
Inspector.

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

(a) at any time enter any prison or any part of a prison,

(b) request and obtain from the governor a copy of any books, records, other documents (including documents stored in non-legible form) or extracts therefrom kept there, and 15

(c) in the course of an inspection or arising out of an inspection bring any issues of concern to him or her to the notice of the governor of the prison concerned, the Director-General of the Irish Prison Service, or the Minister or of each one of them, as the Inspector considers appropriate. 20

(2) The Inspector may, and shall if so requested by the Minister, investigate any matter arising out of the management or operation of a prison and shall submit to the Minister a report on any such investigation. 25

(3) As soon as practicable after receiving the report, the Minister shall, subject to *subsection (4)*, cause a copy of it to be laid before each House of the Oireachtas and to be published. 30

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

(a) that its disclosure may be prejudicial to the security of the prison or of the State, or

(b) after consultation with the Secretary-General to the Government, that its disclosure— 35

(i) would be contrary to the public interest, or

(ii) may infringe the constitutional rights of any person.

(5) Where any matters are so omitted, a statement to that effect shall be attached to the report concerned on its being laid before each House of the Oireachtas and on its publication. 40

(6) It is not a function of the Inspector to investigate or adjudicate on a complaint from an individual prisoner, but he or she may examine the circumstances relating to the complaint where necessary for performing his or her functions. 45

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

- (a) to do so would not be prejudicial to the prisoner,
- (b) the interests of justice do not require his or her presence at the hearing, 5
- (c) the facilities provided by a live television link between the court and the prison concerned are such as to enable—
 - (i) the prisoner to participate in, and to view and hear, the proceedings before the court, 10
 - (ii) those present in the court to see and hear the prisoner, and
 - (iii) the prisoner and his or her legal representative to communicate in confidence during the hearing,
- (d) to do so is otherwise appropriate having regard to— 15
 - (i) the nature of the application,
 - (ii) the complexity of the hearing,
 - (iii) the age of the prisoner, and
 - (iv) his or her mental and physical capacity,and 20
- (e) no other circumstances exist that warrant the prisoner's presence in court for the hearing.

(3) An application for such a direction may be made *ex parte* to the judge, or a judge, of the court concerned by or on behalf of the Director of Public Prosecutions or the prisoner. 25

(4) On such an application the judge, if he or she considers it desirable in the interests of justice to do so, may require notice of the application to be given to the prisoner or his or her legal representative or, as the case may be, to the Director of Public Prosecutions. 30

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

(6) At any time after a direction under this section is given, an application may be made to the court by or on behalf of the prisoner to revoke the direction on the ground that one or more than one of the considerations mentioned in paragraphs (a) to (e) of subsection (2) do not apply in the prisoner's case. 35

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

(8) If, on an application under subsection (6), the court refuses to revoke a direction, it shall state its reasons for the refusal. 40

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

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

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

(11) The following applications (other than applications under subsections (3) and (6)) are specified for the purposes of subsection 10 (1):

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

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

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

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

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

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

- (a) the duties and conduct of the governor and officers of a prison,
- (b) the classification of prisoners, 5
- (c) the treatment of prisoners, including their diets, clothing, maintenance, employment, instruction, discipline and correction,
- (d) the provision of facilities and services to prisoners, including educational facilities, medical services and services relating to their general moral and physical welfare, 10
- (e) the acts which constitute breaches of prison discipline committed by prisoners while inside a prison or outside it in the custody of a prison officer or prisoner custody officer, 15
- (f) the remission of portion of a prisoner's sentence,
- (g) the manner of publication of decisions of an Appeal Tribunal,
- (h) the entry to a prison of a member of the Garda Síochána in the performance of his or her functions, 20
- (i) photographing and measuring prisoners and taking fingerprints and palmprints from them, and
- (j) testing prisoners for intoxicants, including alcohol and other drugs.

(3) The governor of a prison or an officer of the prison acting on his or her behalf may give to a member of the Garda Síochána copies of— 25

- (a) photographs, measurements, fingerprints or palmprints obtained in accordance with rules under this section, and
- (b) documents relating to the testing of prisoners under *subsection (2)(j)*. 30

(4) Rules under this section shall be laid before each House of the Oireachtas as soon as may be after they are made and, if a resolution annulling the rules is passed by either such House within the next 21 days on which the House has sat after they are laid before it, the rules shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder. 35

(5) Rules under section 12 of the General Prisons (Ireland) Act 1877 and the Prisons (Ireland) Act 1907, and regulations made under section 8 of the Penal Servitude Act 1891, that were in force immediately before the commencement of this section by virtue of section 19(8) of the Criminal Justice (Miscellaneous Provisions) Act 1997 shall continue in force as if made under this section and may be amended or revoked accordingly. 40

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

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

5 (a) on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both, or

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

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

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

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

Amendment of National Minimum Wage Act 2000.

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

(a) any cleaning or kitchen work or other work relating to the operation of the prison;

25 (b) activity of an educational, training or work experience nature which is intended to prepare prisoners for their re-integration into society;

(c) the production of goods or services which are—

30 (i) sold or provided for the purpose of raising funds for charitable purposes or providing facilities for prisoners, or

(ii) disposed of or provided without charge or for a nominal charge.”.

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

Payment by prisoners for requested services.

(a) telephone calls,

(b) access to electronic devices,

(c) private medical treatment, or

40 (d) escorts provided outside the prison for matters not related to the imprisonment of those prisoners,

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

Absence from prison on compassionate, etc., grounds.

39.—(1) The Minister may—

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

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

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

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

Lawful custody of prisoners while absent from prison.

40.—(1) A prisoner who—

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

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

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

Minor and consequential amendments.

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

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

and

- (b) the insertion of the following paragraph:

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

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

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

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

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

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

42.—The following enactments are repealed:

Repeals.

(a) section 3(3) of the Prisons (Visiting Committees) Act 1925;

(b) section 1(2) of the Prisons Act 1933;

25 (c) section 19 of the Criminal Justice (Miscellaneous Provisions) Act 1997.

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

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