

4 May 2007
Circular: F.15/07

Electoral (Amendment) Act 2006 (No. 33 of 2006)
Postal Voting Facilities for Prisoners

A Chara,

I am directed by the Minister for the Environment, Heritage and Local Government to refer to the Electoral (Amendment) Act 2006 (No. 33 of 2006), which was signed into law by the President on 11 December 2006. The Act provides primarily for postal voting facilities for prisoners along with other miscellaneous amendments to electoral law.

Please find enclosed *Postal Voting Facilities for Prisoners – Information Note*. The purpose of this information note is to set out for registration authorities, returning officers, prison service officials, An Garda Síochána and others, areas of common interest in relation to postal voting by prisoners.

This information supplements guidance for registration authorities which issued in a Memorandum for Guidance of Registration Authorities on 2 April 2007 (Circular F.09/07 refers) and guidance for returning officers which issued in a Memorandum for the Guidance of Returning Officers at the General Election on 23 April 2007 (Circular F.11/09 refers).

Queries in relation to this circular may be made to Rory O’Leary; telephone 01-8882422; e-mail: rory_o'leary@environ.ie or the undersigned at 01-8882423; email: nora_rowland@environ.ie.

Mise, le meas,

Nora Rowland,
Franchise Section.

To Each: Registration Authority.
 Returning Officer/County Registrar
 Department of Justice, Equality and Law Reform (for transmission to
 Irish Prison Service and An Garda Síochána (re: paragraph 16))

Electoral (Amendment) Act 2006

Postal Voting Facilities for Prisoners

Information Note for

Registration Authorities, Returning Officers, Department of Justice
Equality and Law Reform (for transmission to Irish Prison Service and
An Garda Síochána)

An Roinn Comhshaoil, Oidhreachta agus Rialtais Áitiúil
May 2007

Contents

	Page
1. Context.....	3
2. Introduction.....	3
3. Application forms relevant to prisoners	4
4. Registration authorities with responsibility for providing forms and public notices to prisons	4
5. Security and confidentiality of prisoner information... ..	4
6. Deletion of names from prisoner postal voters list.....	5
7. Transfer of information and documentation to Returning Officer at election time	5
8. Receipt of information from registration authority by Returning Officers.....	6
9. Form of Declaration of Identity	6
10. Prisoner/prison postal arrangements.....	6
11. Role of relevant official of a prison – Overview.....	7
12. Role of relevant official of a prison – Application Forms.....	8
13. Role of relevant official of a prison - Voting process	8
14. Voting process.....	9
15. Offences under electoral law	10
16. Voting at a Garda Station.	11

1. **Context**

The Electoral (Amendment) Act 2006, which was enacted on 11 December 2006 provides specific arrangements for postal voting by prisoners and puts in place a practical framework for prisoners to vote at elections and referenda.

Implementation of the provisions of this Act is now being finalised to ensure all necessary procedures and practical arrangements are in place to facilitate prisoners exercising their franchise at the forthcoming General Election and at later elections and referenda. As part of the implementation process, guidance documents issued on 11 January 2007 (Circular F.01/07) to deal with the transitional arrangements immediately following enactment. Detailed guidance on all aspects of the new procedures for registration authorities issued in a Memorandum for Guidance for Registration Authorities on 2 April 2007 (Circular F.09/07). Specific guidance for returning officers is incorporated in the Memorandum for Guidance for Returning Officers at a Dáil Election which issued to returning officers on 23 April 2007.

The purpose of this information note is to set out for registration authorities, returning officers, prison service officials and others, areas of common importance in relation to postal voting by prisoners.

This information note does not purport to be exhaustive or provide a definitive statement of the law. The relevant provisions of the Electoral (Amendment) Act 2006 should be referred to, where necessary; these and other legislative provisions are indicated below.

2. **Introduction** (Ss. 2 & 3/06)

The Electoral (Amendment) Act 2006 provides specific arrangements for postal voting by prisoners. Prisoners will continue to be registered at their home address as provided for under section 11(5) of the Electoral Act 1992 and, consistent with this, section 2(2) of the 2006 Act provides that, for postal voting purposes, prisoners will be deemed to be ordinarily resident in their home constituency (Section 4(1)(b) of the 2006 Act gives authorities power to seek information in this regard if necessary).

Prisoners must be able to establish that they were ordinarily resident in the State prior to being imprisoned in order to avail of the postal voting arrangements. As is the case with all voters, citizenship will determine the type of elections at which prisoners can vote.

3. **Application forms relevant to prisoners** (Ss.3 & 5/06)

A list of application forms that may be used by prisoners in the registration process and a brief description of them are given below:

- Form RFA – the application form to be used for entry in the register of electors by all persons, including prisoners;
- Form RFA4 – the application form to be used for entry in the supplement to the register of electors by prisoners;
- Form RFG – the application form to be used for entry in the postal voters list by prisoners;
- Form RFG1 – the application form to be used for entry in the supplement to the postal voters list by prisoners

Registration authorities are advised that an adequate supply of all relevant forms should be available in prisons at all times, having particular regard to the registration cycle. The relevant official should liaise with the relevant registration authority (Appendix 1) to ensure that an adequate stock of forms is available within the prison (see paragraph 4).

4. **Registration authorities with responsibility for providing public notices and forms to prisons** (S.5/06)

Registration authorities should take particular note of the prisons in their area (see Appendix 1) and the need to:

- (i) give public notice in these prisons, and
- (ii) ensure an adequate supply of appropriate forms is made available in these prisons.

Key dates in relation to the registration cycle for postal voters are given in Appendix 2 attached.

5. **Security and confidentiality of prisoner information**

At all stages of the postal voting process specific regard must be had to the particular issues of security and confidentiality of prisoners. It is essential that no information other than the prisoner's reference number (e.g. P.1. number) and name be released into the public domain.

The address on the register of electors, prison address, number on register of electors and polling district letter must not be publicly disclosed. For Returning Officers, sections 12(b) and 13(c) of the Memorandum for Guidance issued on 23 April 2007 should also be referred to.

6. **Deletion of names from prisoner postal voters list** (S. 15(1) & (2)/06)

Section 15 of the 2006 Act provides that a prisoner may have his or her name deleted from the postal voters list on notifying the registration authority in writing on or before the second day after the dissolution of the Dáil at a general election or on or before the second day after the making of a polling day order at a Dáil bye-election, or a Presidential, European or local election, or a referendum. If more than one poll is held on the same day, the latest closing date for receipt of notification to delete shall apply.

In this regard, registration authorities should ensure that the necessary procedures are in place in the period immediately leading up to an election or referendum to facilitate such a request. It is important to ensure that, if a request is received, the elector is deleted from the postal voters list only, and not from the register of electors. The register should be marked in such a way that it is clear to the Returning Officer that the elector is no longer eligible for a postal vote but is eligible to vote in person at their polling station.

Returning officers should check with the relevant registration authority to ascertain whether any electors have submitted such a request and been deleted from the postal voters list. In these circumstances, the elector may vote at the relevant polling station in the normal way and postal voting documents should not be issued to him/her.

7. **Transfer of information and documentation to Returning Officer at election time**

Specific regard must be had to security and confidentiality in relation to prisoners. Registration authorities should separately from the postal voters list keep related supporting information on the prisoner (i.e. address on register of electors, no. on register, polling district letters, prison address). This information should issue only to returning officers as appropriate in the lead-in to polling day. Care should be taken to ensure that the information is transmitted to returning officers in a secure manner that cannot be accessed by a third party. Registration authorities and returning officers must take all necessary steps to maintain the confidentiality of this information.

8. **Receipt of information from registration authority by Returning Officers**

In preparation for elections and referenda returning officers will receive documentation from the registration authority in relation to prisoners. This documentation will include the published postal voters list (publicly available) - *Postal Voters List Part VI – Persons unable to vote in person because of the circumstances of their detention in prison pursuant to an order of a court* for the constituency concerned.

This list will include:

- the prisoner's reference number (e.g. P.1. number);
- prisoner's name;

Only the information on this list can be released into the public domain.

Also included in the documentation returning officers will receive (for **internal use only**) details of the prisoner's:

- address on the register of electors (i.e. home address);
- prison address;
- number on register of electors;
- polling district letters;

for the purposes of posting election/referendum documentation to the prisoner.

This information will be indicated as being for 'internal purposes only' and should remain confidential. Returning officers should ensure appropriate procedures are in place to maintain the confidentiality of this information.

9. **Form of Declaration of Identity** (S.7(1)(a), 8 & 9/06)

A form of declaration of identity for completion by prisoners is required by returning officers. The form has two parts, both of which must be completed. Part A is to be completed by the prisoner and Part B must be signed by a relevant official of the prison and stamped with a stamp of the prison (or of Garda station, if applicable – see paragraph 16 below). Relevant instructions are included on the form as to completion and a copy of form is enclosed at Appendix 3 for ease of reference.

10. **Prisoner/prison postal arrangements**

Postal voting documents for prisoners will be addressed to the individual prisoner (using the prison address supplied by the registration authority) and will be sent by the

returning officer to prisoners using normal postal procedures. The envelope addressed to a prisoner, which will be clearly marked 'Election Documentation', will not be subject to inspection by the prison censor. Similarly, for the return of the ballot paper and declaration of identity, the covering envelope addressed to the returning officer, which is also easily identifiable, will not be subject to inspection by the prison censor.

11. **Role of relevant official of a prison – Overview** (Ss.3, 7, 10,12 & 15(4)/06)

The Electoral (Amendment) Act 2006 provides for a “relevant official” to be designated by the governor to assist in the registration and voting processes in prisons. The Governor may, at his or own discretion, appoint more than one relevant official, depending on individual circumstances. The relevant official has an important role in ensuring that these processes take place in accordance with the law.

The main functions of the relevant official are to:

- Certify applications for entry on the postal voters list, the supplement to that list and the supplement to the register and arrange for their posting to the registration authority.
- Witness and stamp the declaration of identity at the time of voting (on being satisfied as to the identity of the person).
- Arrange for the covering envelope (containing ballot paper envelope and completed declaration of identity) to be posted to the returning officer. **It is the responsibility of the relevant official to arrange for this envelope to be posted to the returning officer. It is important that this envelope is posted without delay; if it arrives too late (i.e. after the close of poll on polling day) for the count the elector will be disenfranchised.**

In addition, the relevant official may:

- Re-address an envelope containing postal voting documentation and send it by post to another prison where the elector concerned is detained.
- Re-address an envelope containing postal voting documentation and send it by post to the returning officer if the elector is no longer detained in any prison.

In these circumstances it is important that the envelope is readdressed and posted without delay.

12. **Role of relevant official of a prison – Application Forms** (S. 3(2), 10 & 12/06)

The relevant official should liaise with the relevant registration authority (see Appendix 1) to ensure that adequate stocks of applications forms are available within the prison and should also be satisfied that the forms are readily accessible to prisoners. Once the prisoner has completed the relevant form (see paragraph 3), he/she will hand it to the relevant official who must check the form and certify if it is in order. In this regard the relevant official should:

- check that the form has been completed properly by the prisoner
- sign and date the form
- enter his/her Rank/Title and Number
- enter his/her name official telephone number
- stamp the form with the Prison Stamp

It is the responsibility of the relevant official to arrange for the completed application form to be posted to the relevant registration authority.

13. **Role of relevant official of a prison - Voting process** (S.7, 8 & 9/06)

At election time, the returning officer will post to each prisoner listed as a postal voter an envelope containing the following election documentation.

- a ballot paper,
- a ballot paper envelope
- a declaration of identity
- a covering envelope addressed to the returning officer

The relevant official should ensure that each prisoner receives their documentation in good time to enable them to vote. This documentation will be contained in an envelope addressed to the elector and clearly marked 'Election Documentation'.

The precise arrangements for facilitating prisoners to cast their ballots are a matter for the Prison Service having regard to the security of the prison and normal prison operational procedures. **However, within these constraints the secrecy of the ballot must be maintained.**

14. **Voting process** (S.7, 8 & 9/06)

The relevant official must ensure that the envelope, addressed to the prisoner from the returning officer, is given to the prisoner unopened and in good time to enable them to vote and for the ballot paper etc. to be posted back to the returning officer to be included in the count at the election (see paragraph 11 above).

(i) The envelope given to the prisoner by the relevant official from the returning officer will contain the following documents:

- an unmarked ballot paper,
- a small ballot paper envelope,
- a form of declaration of identity
- a larger covering envelope addressed to the returning officer and

(ii) The prisoner must produce to the relevant official in the prison:

- (a) the envelope addressed to him/her by the returning officer,
- (b) the ballot paper (which the relevant official must establish is unmarked), and
- (c) the form of declaration of identity.

(iii) In the presence of the relevant official, the prisoner must:

- (a) complete and sign (or mark) the declaration of identity and have it witnessed by the relevant official,
- (b) vote **in secret**,
- (c) put the completed ballot paper into the ballot paper envelope and seal it,
- (d) **put the ballot paper envelope and the completed declaration of identity** into the larger covering envelope addressed to the returning officer and seal it,
- (e) **give the covering envelope to the relevant official who will arrange to have it posted immediately to the Returning Officer.** This is important in order to avoid the ballot paper arriving too late for the count.

- (iv) The relevant official must:
- (a) ensure that the prisoner produces to him/her the following documents:
 - the envelope addressed to the prisoner by the returning officer
 - the declaration of identity and
 - **an unmarked** ballot paper,
 - (b) satisfy himself/herself as to the identity of the prisoner,
 - (c) witness the prisoner's declaration of identity and stamp it with the prison stamp,
 - (d) destroy the (original) envelope addressed to the prisoner by the returning officer,
 - (e) allow the prisoner to mark the ballot paper **in secret** in the relevant official's presence,
 - (f) take receipt from the prisoner of the larger covering envelope addressed to the returning officer containing (i) the ballot paper envelope (into which the completed ballot paper will have been placed by the prisoner) and (ii) the completed declaration of identity – both placed therein by the voter on completion of voting,
 - (g) ensure that appropriate arrangements are made to have the covering envelope posted immediately to the returning officer. **N.B. It is important that this envelope is posted without delay; if it arrives too late for the count the voter will be disenfranchised.**

15. **Offences under electoral law** (*Ss. 137(4)(d) & 146/92*)

It is an offence under electoral law for any person:

- (a) wilfully and without lawful authority to take, destroy, conceal, open or otherwise interfere with any ballot paper or other document sent to a postal voter;
- (b) without lawful authority knowingly to supply any ballot paper or other document sent to a postal voter to a person other than the person lawfully entitled to it;
- (c) without lawful authority to interfere with or attempt to interfere with the receipt, marking or return of a ballot paper by a postal voter or to

attempt to obtain information as to the candidate for whom any such voter has or has not voted.

It is also an offence for a person to aid, abet, counsel or procure the commission of any of the offences referred to at (a) or (b) above, or to solicit or induce any other person to commit such an offence.

Where a person is guilty of any of the offences referred to above, the person shall be liable:

- (a) on summary conviction to a fine not exceeding €1,269.74 or, at the discretion of the court, to imprisonment for a period not exceeding six months, or to both such fine and such imprisonment; or
- (b) on conviction on indictment to a fine not exceeding €3,174.35 or, at the discretion of the court, to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

16. **Voting at a Garda Station** (*S.15(3), (4) & (5)/06*)

Section 15(3) of the 2006 Act sets out that where an elector whose name is on the prisoners postal voters list is released before polling day and has not arranged to have his or her name deleted from the postal voters list, and where the relevant official returns the ballot paper documents to the returning officer before polling day under section 15(4) as not having been delivered, the returning officer can re-address the envelope to the elector at his or her home address. In these circumstances, the elector can vote at a Garda station in the same manner as applies to an occupation or student postal voter under section 63 of the Electoral Act 1997.

Under section 15(5), the elector, in order to vote, is required to go in person to a Garda station and produce to a member of the Garda Síochána the covering envelope addressed to him or her, the unmarked ballot paper and the declaration of identity. The elector is required to sign the declaration of identity in the presence of the Garda and hand it to the Garda. If the Garda is satisfied as to the identity of the elector, he or she witnesses the declaration and stamps the declaration of identity with the stamp of the Garda station. The elector may then mark the ballot paper (**in secret**) and return it and the declaration of identity by post to the returning officer.