

**Prisoner Voting in Ireland**  
**Information Note for the Equalities and Human Rights Committee of the Scottish**  
**Parliament**

**1. Prisoner Voting Arrangements prior to 2006**

In Ireland, prior to 2006 there was no legal prohibition on voting by prisoners, once they met the standard qualifying criteria under electoral law which applied on a general basis. While a person in legal custody could have been registered as an elector under section 11(5) of the Electoral Act 1992, he or she was deemed to be ordinarily resident in the place where he or she would have been residing but for his or her detention. However, the law provided no specific mechanism for prisoners who were on the electoral register at such places to exercise their franchise. In other words, they could not get out for the day to go home to cast their votes.

**2. Electoral (Amendment) Act 2006**

The Electoral (Amendment) Act 2006<sup>1</sup> modernised existing electoral law in this area and provided a practical framework for prisoners to vote in future elections and referenda. It provided specific arrangements for voting by prisoners by way of postal vote. It also brought certainty to Ireland's position in meeting fully our obligations under the relevant provisions of the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms. This followed a judgment of the European Court of Human Rights in 2005 in a case taken by a UK prisoner who challenged successfully a prohibition on voting (*Hirst v The United Kingdom*). While the legal position in the UK differs significantly from that in this country, in light of the judgment it was considered appropriate, timely and prudent to implement new arrangements to give practical effect to prisoner voting in Ireland.

**3. Registration and postal voting for prisoners**

In broad terms, the Electoral (Amendment) Act 2006 provides for applications by prisoners for entry in the postal voters list and, if necessary, in the supplement to the postal voters list

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<sup>1</sup> <http://www.irishstatutebook.ie/eli/2006/act/33/enacted/en/print>

and in the supplement to the register itself. It also sets out the detailed procedures for prisoner voting. Under the Act, prisoners continue to be registered at the address they would have ordinarily been resident but for their detention and, for voting purposes, are deemed to be ordinarily resident in their home constituency. This allows prisoners to vote for candidates in their own locality. The Act does not provide that a prison location is used for constituency purposes. These arrangements apply to prisoners who can establish that they were ordinarily resident in the State prior to being imprisoned. Under electoral law, citizenship determines the type of elections at which people can vote, and the address at which they are ordinarily resident determines where they can vote. This applies in the same way to people who are in prison. The scheme of postal voting contained in the Act is modelled largely on existing postal voting procedures and mirrors most closely those used for the occupation and student category of postal voter. The procedures have been modified, where necessary, to take account of prisoner circumstances, for example, in the witnessing of signatures. Relevant detailed guidance issued by the then Department of Environment, Heritage and Local Government on the procedures for postal voting for prisoners is attached.

Finally, by way of information, postal voting in Ireland is provided in respect of a number of specific categories: persons living at home who are unable to go to a polling station to vote because of a physical illness or physical disability; persons whose occupation is likely to prevent them from voting at their local polling station and full-time students registered at home who are living elsewhere while attending a college in the State; whole-time members of the Defence Forces; Irish diplomats and their spouses; and members of An Garda Síochána (the National Police Force of Ireland). Extension of postal voting arrangements to prisoners was considered the most appropriate way to proceed. Postal voting procedures are well established, simple and flexible and registration authorities and returning officers are familiar with them.

***Franchise Section***

***Department of Housing, Planning and Local Government***

***Government of Ireland***

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