

11 January 2007

Circular: F.1/07

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. A copy of the final version of the Bill (the Electoral (Amendment) Bill 2006) as passed by Dáil Éireann is enclosed for your information. A copy of the Act will be available shortly on the Oireachtas website www.oireachtas.ie. The Act primarily provides for postal voting facilities for prisoners along with other minor miscellaneous amendments to electoral law.

A summary of the main provisions of the Act is appended (Appendix 1) and detailed guidance on all aspects of the new procedures will issue as soon as possible. In the meantime, authorities should proceed immediately to implement the arrangements as set out in this circular.

The Act must be implemented as quickly as possible and in any event before the forthcoming General Election. All necessary procedures and practical arrangements should be well in place to facilitate prisoners exercising their franchise at that election. Towards this end, the initial focus is to enable prisoners to apply for inclusion on the 2007/2008 postal voters list and, in this regard, a copy of the Ministerial Order under section 6(4) and (5)(b) of the Act is enclosed for information.

Registration authorities should **commence preparations immediately** to deal with the transitional arrangements as set out below. Please note that these arrangements apply only in respect of the 2007/2008 postal voters list. While prisoners will technically be making applications during the currency of the 2006/2007 register, they are to be

included on the 2007/2008 postal voters list only and it is not intended that any change be made in respect of the 2006/2007 postal voters list.

Transitional Arrangements

Section 6(4) and (5)(b) of the Act contains transitional arrangements to facilitate prisoners who wish to vote at any election/referendum held in the period immediately following enactment of the Act. It enables the Minister this year to alter the fixed statutory timeframe for giving public notice and for the receipt of applications for entry in the postal voters list from prisoners.

To this effect, the Minister has made an order (S.I. No. 1 of 2007), dated 5th January, 2007, as follows:

- The period for registration authorities to give public notice under section 5 of the Act in respect of applications for entry in the 2007/2008 postal voters list will commence on **19th January 2007** and end on **26th January 2007**
- The latest date for the receipt of applications for entry in the 2007/2008 postal voters list will be **14th February 2007**

I wish to draw your attention to Appendix 2 of this Circular which gives guidance in relation to processing by registration authorities of applications from prisoners for entry onto the 2007/2008 postal voters list for the transitional period.

A list of prisons in the State and their bed capacity is attached in Appendix 3 for reference. The registration authority with responsibility for providing the public notice and forms (RFG and RFA4) to each prison is listed in this Appendix also. All correspondence to a prison should be addressed to 'Governor'.

Appendix 4 contains a sample form of Public Notice to be used as appropriate by authorities in meeting the public notice requirement in section 5 of the Act. In addition, this may provide a useful template for display purposes; if it is used for this purpose the full and List of Local Authority Offices should be displayed alongside it. Appendix 5 contains the application form for entry into the prisoners postal voters list (Form RFG) and Appendix 6 contains the application form for use by prisoners for entry in the Supplement to the Register of Electors (Form RFA4).

Immediate Practical Arrangements

Registration Authorities with responsibility for providing public notice and forms to prisons

Your attention is drawn in particular to:

- **the need to give public notice in all prisons situated in your area, as set out in Appendix 3, and other locations, within the period set out above (between 19th and 26th of January 2007);**
- **the need to ensure that an adequate supply of the appropriate forms (RFG and RFA4) are available in all prisons situated in your area, as set out in Appendix 3, and all locations given in the public notice by 19 January 2007.**

It is important that registration authorities make arrangements with the Governor of the prison in this regard.

Please note that forms (RFG and RFA4) provided to prisons should be generic (i.e. without a stamped return address), as they will be returned to a variety of registration authorities based on the register address of the prisoner.

All Registration Authorities

Your attention is drawn in particular to:

- **the need to give public notice within the period set out above (between 19th and 26th of January 2007)**
- **the need to ensure that the appropriate forms (RFG and RFA4) are available in all locations given in the public notice by 19 January 2007.**

It is important to note that these arrangements will only apply for the 2007/2008 Register of Electors. Subsequent postal voters lists/registers will follow the specified dates set out in the relevant parts of the 2006 Act and the Second Schedule to the Electoral Act 1992. In this regard, the parts of the Department's standing guidance *Preparing and Maintaining the Register of Electors* (issued with circular letter F06/06 of 23 June 2006) which relate to the postal voters list generally apply also to postal voting by prisoners, subject to the specific provisions now being advised to authorities.

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

Appendix 1

Electoral (Amendment) Act 2006: Summary of Sections

Section	Details
1	Interpretation (including definition of prison)
2	Substantive provision providing for scheme of postal voting for prisoners. Prisoners to be registered at their home address (ordinarily resident) – a prison location cannot be used for constituency purposes.
3	Sets out procedure for applying for inclusion on postal voters list. Application to be accompanied by certificate signed by relevant prison official verifying that applicant is prisoner for postal voter purposes. Prison official to arrange for return of documentation to registration authority by 25 th November.
4	Provides that the applicant must furnish the registration authority with the necessary information to allow it to decide on the application. The authority can request additional information or documentation. Local authorities have a reserve power to set a deadline where necessary – at least 7 days is allowed for this before the application is deemed to be withdrawn (where feasible, as much time as possible should be allowed).
5	Provides that the registration authority must give public notice each year of the electors entitled to apply for inclusion on the prisoners postal voters list; how they may apply; and the time and place at which application forms may be obtained, including in every prison in their area.
6	Provides for the procedure to be followed by the registration authority following examination of the application. There is scope to vary the normal statutory deadline for receipt of applications (25 th Nov) in the period after enactment. <u>S. 6(6)</u> provides for an appeal to the County Registrar against a ruling of the registration authority.
7	<u>Section 7</u> sets out the procedure for voting by prisoners entered on the postal voters list dealing with matters such as completion of declaration of identity/ballot papers and return of documentation by post by relevant prison official. <u>S. 7(2)</u> applies the same procedures as apply to Dáil postal voting to presidential elections and referendums.
8	<u>Section 8</u> applies the same procedures as apply for Dáil postal voting to European Parliament elections, which have a separate electoral code.
9	Similar to <u>S. 8</u> , <u>section 9</u> applies the same procedures as apply for Dáil postal voting to local elections, which have a separate electoral code.

Section	Details
10	Sets out a procedure to allow a prisoner who is not on the current postal voters list to make application for inclusion on the supplement to the list.
11	<u>Section 11</u> extends the deadlines in relation to the compilation of the 2007/2008 register of electors. The deadline for claims for a correction to the draft register is extended from 25 November to the 9 December. Local authorities must prepare/forward the list of claims to County Registrars by 12 December as opposed to 30 November. County Registrars must return an endorsed list of claims to local authorities by 12 January. The final date for the publication of the register for 2007/8 will remain as 1 February and it will come into force on 15 February as normal.
12	<u>Section 12</u> establishes specific procedures for a prisoner who is not already on the register of electors to apply for inclusion on the supplement to the register, in order to qualify for inclusion on the prisoners postal voting list.
13	<u>Section 13</u> amends the Seanad Electoral (University Members) Act 1937 to implement a minor procedural adjustment. It enables the relevant prison official (rather than the prisoner) to arrange for the return of ballot papers etc. to the returning officer, in accordance with standard prison postal procedures.
14	<u>Section 14</u> amends the Seanad Electoral (Panel Members) Act 1947. It designates the relevant official as an authorised person to carry out the specified functions, viz: the elector must open the envelope containing the voting paper documentation in the presence of the authorised person (relevant official). The authorised person must ensure that the ballot papers are unmarked; witness the prisoner's signature on the declaration of identity and stamp it with the prison stamp. Following the voting process, the prisoner hands the authorised person (relevant official) the sealed envelope containing the ballot papers and declaration of identity whereupon, if satisfied that everything is in order, the authorised person affixes a prescribed label to the envelope and signs the certificate thereon. Procedurally, it enables the relevant prison official (rather than the prisoner) to arrange for the return of ballot papers etc. to the returning officer, similar to <u>section 13</u> . In summary, the relevant official is now being added to the list of existing authorised persons such as Seanad Returning Officer, Clerk of the Dáil, county registrars, city and co. managers etc.
15	<p><u>Section 15</u> enables a prisoner released from prison to have their 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 (general election) or on or before the second day after the making of a polling day order (all other elections and referendums). They can then vote in person at their local polling station in the normal way.</p> <p>Where a prisoner is released but is still on the postal voters list coming up to an election, the returning officer can re-address the envelope with the election documentation when it has been returned by the prison authority. The elector can then vote at a Garda station (similar to person in employment or student).</p>

Section	Details
	Additionally, the prison authorities can re-address an envelope addressed to a postal voter who has been transferred to another prison or return it to the returning officer if the elector has been released.
16	This amends S. 6 of the European Parliament Elections Act 1997 by inserting a new provision which authorises a member of the Garda Síochána or an official of a registration authority to witness the statutory declaration which EU voters are required to submit when registering to vote for the first time in European Parliament elections in Ireland.
17	<u>Section 17</u> makes technical amendments to the Local Elections Regulations 1995 which delete qualifications regarding surpluses and exclusions in the count rules that are no longer relevant (used in the past for saving deposits where the number of votes exceeded $\frac{1}{4}$ of quota). This section also repeals provisions relating to the order of election. This has become superfluous since the term alderman was abolished in 2004.
18	<u>Section 18</u> amends the Presidential Elections Act 1993. It makes technical amendments to the presidential count rules to ensure that candidates are excluded separately in cases where this could give them the opportunity of qualifying for recoupment of election expenses (if they are credited with more than $\frac{1}{4}$ of the quota at any stage of the count).
19	<u>Section 19</u> provides that local authorities may publish a list of names of persons who are on the register currently in force but are not included in the published draft register.
20	Standard provision dealing with the short title, collective citation and construction.

Appendix 2

Guidance in relation to Applications from Prisoners for Entry onto the 2007/2008 Postal Voters List

1. **Introduction**

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. The Act also provides for a number of other miscellaneous amendments to electoral law.

The purpose of this guidance is to set out, for registration authorities and others, the changes in the law in relation to the postal voters list. It also deals with the transitional period which applies only in respect of the 2007/2008 postal voters list.

This guidance does not purport to be exhaustive or to 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 relevant legislative provisions are indicated below.

2. **Applicability of prisoner postal voters list in 2007/2008 (section 6(4) and (5) of 2006 Act)**

Section 6(4) and (5)(b) of the Act contains transitional provisions to facilitate prisoners who wish to vote at any election/referendum held in the period immediately following enactment of the Act. It enables the Minister to alter the fixed statutory timeframe for giving public notice and for the receipt of applications for entry in the postal voters list from prisoners. To this effect, the Minister has made an order entitled Registration of Electors (Entry in Postal Voters List) Order 2007 (S.I. No. 1 of 2007), dated 5th January, 2007 appointing the following dates:

2007/2008 Postal Voters List

The period for registration authorities to give public notice for applications for entry in the 2007/8 postal voters list	19 th January to 26 th January 2007
Last date for receiving applications to be entered in the 2007/8 postal voters list	14 th February 2007

3. **Public Notice (section 5 of 2006 Act)**

The registration authority must give public notice of the category of electors (prisoners) entitled to apply to be entered in the postal voters list, the manner in which, and the time before which, applications must be submitted, and the times and places at which application forms may be obtained. This notice must be given **by 26th January 2007 at the latest**, as set out above.

The method of giving public notice is a matter for the registration authority but it is suggested that it might take the form of advertisements in local newspapers and on local radio and at other suitable locations such as local authority offices, courthouses, libraries, post offices and Garda Stations etc. A suggested form of notice/advertisement is included in Appendix 4.

Registration authorities with responsibility for providing public notice and forms to prisons, as set out in Appendix 3 and outlined under Immediate Practical Arrangements in Circular F.1/07 should also arrange for a supply of information posters to every prison in their area for display there. In this regard, the sample form of public notice (Appendix 4) may provide a useful template for display purposes; if it is used for this purpose, the full List of Local Authority Offices should be displayed alongside it.

Registration authorities are urged to give consideration to availing of other opportunities to bring the prisoner postal voting facility to the attention of the public in addition to the formal public notice. Measures such as the issue of statements to the local press and local radio, and the supply of explanatory material and application forms to community information centres and support organisations, networks, groups or bodies catering for or representing prisoners, should also be considered.

4. **Application for entry onto postal voters list (sections 3 and 5 of 2006 Act)**

An application form for entry by prisoners in the postal voters list, Form RFG, is appended (Appendix 5). An Irish version of this form is currently being prepared and will be forwarded in due course.

Each registration authority is responsible for printing/copying their own supply of forms. Copies of the form **must** be provided at the times and places specified in the public notice. Supplies of the form must be made available, by **19th January 2007** at the latest, at these times and places; they should also, in particular, be made available, free of charge, at the offices of the county/city council, courthouses, libraries, post offices, Garda stations and other suitable locations.

As referred to in paragraph 3, relevant registration authorities should ensure forms are made available at all prisons situated in their area.

Application forms, duly completed and certified by the relevant official of the prison, must reach the registration authority by **14th February 2007**. If an application is received after this date it must be rejected and the applicant informed in writing. The applicant should however, also be advised that the application is being retained and will be considered with a view to inclusion in any supplement to be published to the postal voters list. (Later guidance for registration authorities will cover applications by prisoners for entry in the supplement to the postal voters list under section 10 of the 2006 Act).

5. **Checking Applications (sections 2, 4 and 6 of 2006 Act)**

- (i) When an application is received, the registration authority must check:
 - (a) that the particulars of the elector (name and address(es)) are supplied;
 - (b) that the elector states that the circumstances of their detention in prison are such as to render it likely that they will be unable to go in person to vote at their polling station;
 - (c) that the application form has been properly signed or marked; and
 - (d) that the appropriate certification has been provided by the relevant official of the prison that the circumstances of their detention in prison are such as to render it likely that they will be unable to go in person to vote at their polling station.

The registration authority must be satisfied that the applicant was ordinarily resident in the State prior to their imprisonment to avail of the postal voting facility.

Where there is any deficiency in the application or where further information is required, an appropriate enquiry should be issued as soon as possible.

- (ii) In order to be eligible for entry on the postal voters list, a person must be registered as an elector and included in the 2007/2008 register of electors. The registration authority must, therefore, check whether the applicant is included in the register and if, at any stage, a person is excluded from the register they must also be omitted from the postal voters list.

Where a person is not included in the 2007/2008 register but it would appear to the registration authority that he/she would, prima facie, be eligible for inclusion in the supplement to the register, a supplement application form, RFA4 for the 2007/2008 register (at Appendix 6), should be issued to the person concerned who should be advised that the application for entry on the postal voters list cannot be considered until the supplement form is returned to the registration authority and a determination has been given thereon. Section 12 of the 2006 Act makes specific legislative provision for applications by prisoners for entry in the supplement to the register. Otherwise, the existing general law relating to the supplement applies also to prisoners.

Where an application form received by a registration authority is not proper to them (because the applicant's home address indicates that he/she should be registered in another area), the form should be transmitted immediately to the appropriate registration authority and the applicant should be notified accordingly.

6. **Ruling on Applications (sections 2, 4 and 6 of 2006 Act)**

The registration authority must rule on each application for entry in the postal voters list provided for under section 2. The authority must be satisfied that the application form has been received by 14 February 2007 and that the applicant satisfies the criteria set out at paragraph 5 above. The applicant is obliged to supply any information or documents (in their possession or procurement) which the registration authority may require for this purpose. Any additional information or documentation required should be sought as early as possible. Particular regard should be had to the

circumstances of prisoners and ample time should be allowed for furnishing it. A formal deadline for reply should be specified (in the initial or subsequent correspondence) only where the time available for dealing with applications is running out – at least 7 days must be allowed. In this regard, authorities should also be conscious of the need to ensure prisoners are given every opportunity to be included in the postal voters list in advance of the forthcoming General Election.

Where a deadline is specified by the registration authority and the prisoner fails to supply the information or documents sought within that time, the application is deemed to have been withdrawn.

The fact that an application form may be fully completed and may appear regular and valid on the face of it does not oblige the registration authority to grant the application. If there are any doubts, appropriate checks should be carried out. In addition, the registration authority should arrange to have a spot check carried out on a random sample of applications to establish in each case if the application was in fact made by the elector and if the information given in it is correct. Registration authorities should monitor the process in its initial stages particularly with a view to ensuring that it is operating effectively.

Application Granted

If the registration authority is satisfied that the documentation is complete and the applicant is qualified for entry in the postal voters list, the word "GRANTED" should be marked on the top of the form and the entry initialled and dated by the responsible officer. The form should then be filed with the other granted applications, care being taken to enter the letter (S) in relation to the elector's name on the 2007/08 register. (Please refer to paragraph 12 below as regards the confidentiality of information relating to prisoners).

Application Refused

The application form should be marked "REFUSED" on the top and initialled and dated in the following circumstances:

- if the applicant's name is not included on the 2007/2008 register of electors and steps taken as at paragraph 5 above have not resulted in registration of the applicant within a reasonable time; or

- if the registration authority is not satisfied that the applicant is an elector to whom section 2 of the 2006 Act applies; or
- if the application form is not properly completed and supported by the appropriate certificate.

7. **Notification of Applicants (section 6 of 2006 Act)**

Each applicant must be informed of the ruling on his/her application. Where an application is granted, the applicant should be notified and informed that it is proposed to enter his/her name on the 2007/8 postal voters list pursuant to sections 2 and 6 of the 2006 Act. The notification should issue immediately.

Where an application for entry on the postal voters list is refused, the applicant should be informed immediately of the ruling and of the reason for it. The applicant should also be notified of their right to appeal to the County Registrar under section 6(6) of the 2006 Act.

8. **Postal Voters List – Part VI – Format (Rule 4 of Second Schedule to Electoral Act 1992)**

The list of electors entered in the postal voters list under the 2006 Act will be known as **Part VI** of the Postal Voters List. The list should be in six parts and the names entered in the relevant part, according to category (see Table below):

Category of Postal Voters	
I	Defence Forces
II	Garda Síochána
III	Diplomats and their spouses
IV	Persons with a physical illness or physical disability living at home
V	Persons unable to vote in person because of the circumstances of their occupation, service or employment, including students attending an educational institution in the State on a full-time basis
VI	Persons unable to vote in person because of the circumstances of their detention in prison pursuant to an order of a court

9. **Part VI (Rule 4 of Second Schedule to Electoral Act 1992)**

As with Parts I, II and III of the postal voters list, a list of names should be prepared for each Dáil constituency, or part of a Dáil constituency, contained in the registration area with separate sections

for each local electoral area. The list should be drafted in such a way that it is clear where each local electoral area begins and ends. In particular, it is important to show in what county electoral area each borough or town council is situated.

The names should be arranged under local electoral areas (**not under polling districts**) in alphabetical order of surnames. Each entry on Part VI should be numbered P1, P2 (i.e. "P" for prisoner) and so on continuously and opposite this number the elector's name only.

NB: For administrative purposes, registration authorities should separately keep related supporting information (i.e. address on register of electors, no. on register, polling district letters, prison address) which should issue only to Returning Officers as appropriate. This information, which is not part of the postal voters list, should be ordered according to the P1 etc. number and name of the elector. The list available in the public domain should include only the name and P1 etc. number of the prisoner and no other information – see paragraph 12 in this regard.

10. **Checking**

Care should be taken to ensure that Part VI of the postal voters list is accurate and comprehensive. Entries should be checked carefully by persons other than those who made the entries.

11. **Distribution of final postal voters list**

The final prisoners' postal voters list should be checked carefully against the Register, ensuring that each postal voter is denoted by the letter (S) on the Register. Part VI of the postal voters list should be printed/reproduced and included with Parts 1 to V so as to be available for elections/referenda which may be held during the currency of the 2007/2008 Register.

12. **Availability of Part VI of the postal voters list**

It is not necessary to publish formally the prisoners postal voters list but, as soon as it has been prepared, a copy (names and P1 etc. numbers only - no other information) should be available for inspection at the offices of the registration authority. A copy of the list (names and P1 etc numbers only – no other information) should be given on request to each person who is normally entitled to a copy of the Register.

Specific regard must be had to the particular issues of security and confidentiality in relation to prisoners. It is essential that no information other than their name and P1 etc. number be released into the public domain (i.e. register address, prison address, no. on register of electors, polling district letters should be excluded). Registration authorities must take all necessary steps to maintain the confidentiality of such information.

It is essential that only the names and P1 etc. number are available. No other information should be released even where a specific request is made.

Appendix 3

Prisons in the State

Prisons	Bed Capacity	Registration Authority responsible for public notice and forms
Governor, Arbour Hill Prison, Arbour Hill, Dublin 7	139	Dublin City Council
Governor, Cloverhill Prison, Clondalkin, Dublin 22	433	Dublin City Council
Governor, Mountjoy Prison, North Circular Road, Dublin 7	565	Dublin City Council
Governor, St Patricks Institution, North Circular Road, Dublin 7	217	Dublin City Council
Governor, The Training Unit, Glengariff Parade, Dublin 7	96	Dublin City Council
Governor, Wheatfield Prison, Clondalkin, Dublin 22	378	Dublin City Council
Governor, Cork Prison, Rathmore Road, Cork	259	Cork City Council
Governor, Midlands Prison, Portlaoise, County Laois	447	Laois County Council
Governor, Portlaoise Prison, Portlaoise, County Laois	188	Laois County Council
Governor, Limerick Prison, Mulgrave Street, Limerick	291	Limerick City Council
Governor, Castlerea Prison, Harristown, Castlerea, Co. Roscommon	228	Roscommon County Council
Open Prisons		
Governor, Loughan House, Blacklion, County Cavan	110	Cavan County Council
Governor, Shelton Abbey, Arklow, County Wicklow	60	Wicklow County Council