

Appendix A

Draft General Scheme of an Irish Prison Service Bill 2023

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PART 1 – PRELIMINARY

Head 1 Short title and commencement

Provide that –

- (1) This Act may be cited as the Irish Prison Service Act 2023.
- (2) This Act shall come into operation on such day or days as may be fixed by order or orders made by the Minister, either generally or by reference to any particular purpose or provision, and different days may be so fixed for different purposes or different provisions.

Notes

This is a standard provision which sets out the short title of the proposed Act and makes provision for its commencement whether in full or in part.

Head 2 Interpretation

Provide that –

(1) In this Act, unless the context otherwise requires, the following definitions apply:

“Annual business plan” has the meaning assigned to it by Head 44;

“Annual report” has the meaning assigned to it by Head 52;

“Audit committee” means the committee established under Head 37;

“Board” means the board established under Head 21;

“Capital plan” has the meaning assigned to it by Head 47;

“Chairperson” means the chairperson of the board established under Head 21;

“Department” means the Department of Justice;

“Director” means a member of staff of the Irish Prison Service appointed to serve in that grade;

“Director General” means the person appointed in accordance with Head 14;

“Establishment day” means the day appointed under Head 4;

“External service provider” means a person involved in the provision [(other than for profit)] of services which, in the opinion of the Service, are consistent with the Service’s functions under Head 7(1)(d);

“Governor in Charge” has the meaning assigned to it by Head 11;

“Governance framework” has the meaning assigned to it by Head 39;

“Minister” means the Minister for Justice;

“Oireachtas committee” means—

(a) a committee appointed by either House of the Oireachtas or jointly by each House of the Oireachtas (other than the Committee of Public Accounts, the Committee on Members’ Interests of Dáil Éireann or the Committee on Members’ Interests of Seanad Éireann), or

(b) a subcommittee of a committee specified in *paragraph (a)*;

“Performance framework” has the meaning assigned to it by Head 40;

"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" means a place of custody administered by the Irish Prison Service on behalf of the Minister and includes –

- (a) a place provided under section 2 of the Prisons Act 1970, or
- (b) a place specified under section 3 of the Prisons Act 1972;

"Prison estate" means all custodial facilities established under the Prison Acts 1826-1972 and all land and buildings used or acquired for the purposes to which the functions of the Service assigned by this Act relate;

"Prison Rules" means any rules for the government of prisons made under section 35 of the Prisons Act 2007 or other enactment and in force at a material time;

"Strategic plan" has the meaning assigned to it by Head 41;

(etc.)

(2) All references in or under any other enactment to –

- (a) the Irish Prison Service,
- (b) the Director General of the Irish Prison Service, or
- (c) the governor of a prison,

shall be interpreted in accordance with this Act.

Notes

This is a standard provision which defines some of the terminology used in the Scheme.

Head 3 Expenses

Provide that –

The expenses incurred in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Public Expenditure, National Development Plan Delivery and Reform, be paid out of monies provided by the Oireachtas.

Notes

This is a standard provision.

PART 2 – IRISH PRISON SERVICE AND DIRECTOR GENERAL

Head 4 Establishment day

Provide that –

The Minister shall by order appoint a day to be the establishment day for the purposes of this Act.

Notes

This a standard provision to enable the Minister to designate a day as the establishment day for the purposes of the Act.

Head 5 Establishment of Irish Prison Service

Provide that -

- (1) There shall stand established on the establishment day a body which shall be known as *An Seirbhís Príosúin na hÉireann* or, in the English language, the Irish Prison Service (in this Act referred to as “the Service”) to perform the functions conferred on it by this Act.
- (2) The Service shall be a body corporate with perpetual succession and an official seal, and may sue and be sued in its corporate name, and shall, with the consent of the Minister and the Minister for Public Expenditure, National Development Plan Delivery and Reform, have power to acquire, hold and dispose of land or an interest in land, and to acquire, hold and dispose of any other property.
- (3) The seal of the Service shall be authenticated by—
 - (a) the signatures of both the Director General and a member of the Board authorised by the Board to act in that behalf, or
 - (b) the signatures of a member of the staff of the Service authorised by the Director General to act in that behalf and a member of the Board authorised by the Board to act in that behalf.
- (4) Judicial notice shall be taken of the seal of the Service and any document purporting to be an instrument made by, and to be sealed with the seal of, the Service shall, unless the contrary is shown, be received in evidence and be deemed to be such instrument without further proof.

Notes

This Head establishes the IPS as a body corporate and makes a range of related provisions which are of a standard nature.

Head 6 Continuance of legal proceedings

Provide that –

Where the Minister is a party to any legal proceedings which are pending immediately before the establishment day and relate to a matter to which a function of the Service relates, those proceedings shall be continued with the substitution of the Service for such party in those proceedings in so far as they relate to that matter.

Notes

Rule 75 of the Prison Rules (S.I 252/2007) provides that the Governor is responsible for the management of the prison for which he/she is Governor. Legal proceedings relating to prisons name the Governor of the relevant prison and the Minister as defendants (along with Ireland and the Attorney General).

This Head has been included for the avoidance of doubt in such legal proceedings and is modelled on section 27 of the Irish Sports Council Act 1999. It provides for the continuation of legal proceedings initiated against a prison governor and the Minister while substituting the IPS for the Minister in such proceedings. Similar precedents can be found in section 37(1) of the Civil Defence Act 2002.

Head 7 Functions of the Service

Provide that-

- (1) In addition to the functions assigned to it under any other provision of this Act or any other enactment, and subject to the functions and powers reserved to the Minister under this or any other Act, the functions of the Service are:
 - (a) to contain any person committed to prison in safe and secure custody until expiry of his or her sentence or until he or she is otherwise lawfully discharged or released,
 - (b) to maintain good order and control throughout the prison system,
 - (c) to treat prisoners with humanity and respect, and to uphold their human rights and dignity at all times,
 - (d) to provide prisoners with services and activities appropriate to the objects of promoting the health, self-respect and spiritual, moral and mental well-being of prisoners,
 - (e) insofar as the length of time in prison permits, to afford educational, training and other developmental opportunities to prisoners, with the objects of enabling them to spend their time in prison constructively and preparing them to lead law-abiding and purposeful lives following release,
 - (f) to co-operate and collaborate with other State bodies and with relevant Departments of State in the interests of prisoner welfare, the reduction of offending and an efficient and effective criminal justice system,
 - (g) to manage and maintain the prison estate, and
 - (h) in accordance with the approved capital plan or such approvals or directions as may be given by the Minister under Head 20, to manage all matters pertaining to the construction, opening, extension, refurbishment or closure of prisons.
- (2) The Service shall have all such powers as are necessary or expedient for the performance of its functions.
- (3) The Service shall perform its functions -
 - (a) with full regard to the resources that are available to it for the purpose of such performance and the need to secure the most beneficial, effective and efficient use of those resources, and
 - (b) in compliance with-

- (i) the policies and objectives of the Government or any Minister of the Government insofar as they may affect or relate to the functions of the Service,
 - (ii) its obligations under section 42 of the Irish Human Rights and Equality Commission Act 2014 and under international and domestic human rights law generally, and
 - (iii) its obligations to relevant persons and groups of persons in the management of personal data, complaints, protected disclosures, health and safety, protection of children and vulnerable persons, and compliance with related laws, codes and standards.
- (4) The Minister, with the consent of the Minister for Public Expenditure, National Development Plan Delivery and Reform, may by order assign to the Service such additional functions as the Minister considers to be incidental to or consequential on the functions assigned to it by this Act.
- (5) Any order made by the Minister under this Head shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order is passed by either such House within the next 21 days on which the House has sat after the order is laid before it, the order shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Notes

This subhead sets out the core statutory functions of the Service and a number of related matters. The IPS currently operates within a statutory framework comprising the Prison Acts 1826-2015, relevant provisions in other statutes such as the Criminal Justice Acts, and Rules for the Government of Prisons 2007 (S.I. 252/2007 as amended).

Paragraphs (a)-(e) of subhead (1) set out various functions relating to the provision of safe, secure and humane custody and of appropriate services to prisoners with a focus on their well-being and rehabilitation. Paragraph (f) provides that the IPS shall co-operate and collaborate with other relevant State bodies in the interests of prisoner welfare, the reduction of offending and an efficient and effective criminal justice system. Paragraphs (g) and (h) provide for the management of the prison estate and the construction, opening, extension, refurbishment and closure prisons in accordance with the Service's approved capital plan or any directions given by the Minister.

Subhead (3) provides that the Service shall have full regard both to the level of resourcing available to it and to relevant Government objectives and policies.

Subheads (4) and (5) are standard provisions which respectively empower the Minister to make an order assigning additional related functions to the IPS and provide that any such order shall be laid before the Oireachtas.

Head 8 Arrangements with external service providers

Provide that—

- (1) The Service may, subject to its available resources and in accordance with the required levels of service identified in the strategic plan or annual business plan and any relevant directions or directives issued by the Minister under this Act, enter, on such terms and conditions as it considers appropriate, into an arrangement with an external service provider (in this Head referred to as a “provider”) for the provision of services pursuant to Head 7(1)(d) or (e).
- (2) Before entering into an arrangement under subhead (1), the Service shall determine, in respect of a financial year of the Service, the maximum amount of funding that it proposes to make available during the course of that year under such an arrangement and the level of service it expects to be provided for that funding.
- (3) A provider shall, subject to subhead (5)—
 - (a) keep in such form as may be approved by the Service in accordance with any general direction issued by the Minister, all proper and usual accounts and records of income received and expenditure incurred by it,
 - (b) submit such accounts annually for audit, and
 - (c) supply a copy of the audited accounts and the auditor’s certificate and report on the accounts to the Service within such period as may be specified by the Service.
- (4) The expenses of an audit of accounts submitted in accordance with subhead (3) are payable by the provider submitting them for audit.
- (5) Subhead (3) does not apply to a provider—
 - (a) who in any financial year receives from the Service in respect of services provided on foot of an arrangement entered into under subhead (1) an amount of money that does not exceed an amount of money or a percentage of the annual income of that provider as may be determined by the Board with the approval of the Minister, or
 - (b) who belongs to a category of provider specified in writing by the Minister.
- (6) The Service may make such arrangements as it considers appropriate to monitor—
 - (a) the expenditure incurred in the provision of services by a provider exempted under subhead (5), and
 - (b) the provision of those services by such providers.

- (7) A provider referred to in subhead (6) shall facilitate arrangements made by the Service under that subhead.
- (8) The Service may request from a provider any information that it considers material to the provision of a service by that provider, and the provider shall comply with that request.
- (9) Where a provider fails to comply with a request under subhead (8)—
- (a) the Service shall not enter into an arrangement under subhead (1) with that provider, and
 - (b) where such an arrangement has been entered into, the Service may terminate the arrangement concerned.
- (10) When requested to do so by the Minister, the Service shall supply the Minister with any information obtained in response to a request under subhead (8).
- (11) The Minister may prescribe requirements in respect of—
- (a) the expenditure incurred by the Service in the provision of services by providers, and
 - (b) the provision of those services by providers.
- (12) For the avoidance of doubt, an arrangement under this Head shall not give rise to an employment relationship between a provider, its employees or agents on the one hand and the Service on the other.
- (13) In this Head “provider” means a person, other than a State body, involved in the provision of services which, in the opinion of the Service, are consistent with the functions of the Service under Head 7(1)(d) or (e).

Notes

This Head is modelled on section 56 of the Child and Family Agency Act 2013. Its purpose is to ensure that there are appropriate assurance and accountability arrangements in place to govern the use of public monies for prisoner services delivered by third parties (other than State bodies) on behalf of the IPS, and more generally to ensure a consistent approach to accounting for such monies.

Head 9 Consultants and advisers

Provide that –

- (1) The Director General, with the approval of the Minister given with the consent of the Minister for Public Expenditure, National Development Plan Delivery and Reform, may engage such consultants or advisers as the Director General considers necessary to assist in the performance of his or her functions.
- (2) Any fees due to a consultant or adviser engaged under this Head are payable by the Service out of funds at its disposal.

Notes

This Head provides that the Director General may engage consultants or advisers. This is a standard provision (see e.g. section 55 of the Child and Family Act 2013, section 41 of the Policing, Security and Community Safety Bill 2023).

Head 10 Staff of the Service

Provide that–

- (1) Each officer of governor grade, each prison officer and each member of the staff of the Department designated by order of the Minister for the purposes of this Head shall, on being so designated, be transferred to and become a member of the staff of the Service.
- (2) A member of staff of the Service shall be a civil servant in the Civil Service of the Government.
- (3) Subject to Heads 30(6) and 31(3), members of staff of the Service shall be subject to the direction and control of the Director General in carrying out their functions (including any functions held by virtue of the grade of a member of staff).
- (4) The Director General is the appropriate authority, within the meaning of the Public Service Management (Recruitment and Appointments) Act 2004 and the Civil Service Regulation Acts 1956 to 2005, in relation to the staff of the Service.
- (5) Before making an order for the purpose of subhead (1), the Minister shall—
 - (a) notify in writing any recognised trade union concerned of the Minister's intention to do so, and
 - (b) consider, within such time as may be specified in the notification, any representations made by that trade union in relation to the matter.
- (6) Except in accordance with a collective agreement negotiated with any recognised trade union or staff association concerned, a person who is transferred under this Head to the staff of the Service shall not, while in the service of the Service, receive a lesser scale of pay or be made subject to less beneficial terms and conditions of service than the scale of pay to which he or she was entitled and the terms and conditions of service to which he or she was subject immediately before the transfer of that person.
- (7) Until such time as the scale of pay and the terms and conditions of service of a person transferred under this Head to the staff of the Service are varied by the Service, with the agreement of the Minister and the Minister for Public Expenditure, National Development Plan Delivery and Reform following consultation with any recognised trade union or staff association concerned, the scale of pay to which he or she was entitled and the terms and conditions of service, restrictions, requirements and obligations to which he or she was subject immediately before the transfer of that person shall continue to apply to him or her and may be applied or imposed by the Service while he or she is a member of the staff of the Service, and no such variation shall operate to worsen that scale of pay or those terms or conditions of service applicable to such person immediately

before the transfer of that person, except in accordance with a collective agreement negotiated with any recognised trade union or staff association concerned.

- (8) The Director General may appoint such number of persons to be members of staff of the Service as may be approved by the Minister with the consent of the Minister for Public Expenditure, National Development Plan Delivery and Reform.
- (9) The Director General shall, with the approval of the Minister given with the consent of the Minister for Public Expenditure, National Development Plan Delivery and Reform, determine in relation to appointments made under subhead (8) –
 - (a) the terms and conditions of employment (including terms and conditions relating to remuneration and allowances) of such staff, and
 - (b) the grades of such staff and the numbers of staff in each grade.
- (10) The Director General shall be responsible for assignment of governors in charge and all other staff of the Service to particular prisons and other workplaces within the Service.

Notes

This Head sets out the status of the staff of the statutory IPS. Subhead (1) provides that all governors, prison officers and Departmental staff so designated by order of the Minister shall be transferred to the IPS and become members of its staff. Subhead (2) provides that they shall be civil servants of the Government.

Subhead (3) is adapted from section 56(a) of the Policing, Security and Community Safety Bill 2023 and provides that all IPS staff shall be subject to the direction and control of the Director General. Subhead (4) provides that the Director General will be the Appropriate Authority within the meaning of the Public Service Management (Recruitment and Appointments) Act 2004 and the Civil Service Regulation Acts 1956 to 2005, in relation to staff of the Service.

Subhead (5) provides that before making an order for the purposes of subhead (1), the Minister will notify the relevant trade unions and consider any representations made in response.

Subheads (6) and (7) are standard provisions to protect the terms and conditions of staff transferred to the IPS under this Head.

Subheads (8) and (9) are standard provisions concerning the appointment of staff and the setting of their grades and terms and conditions.

Subhead 10 clarifies that the Director General shall have responsibility for the assignment of governors in charge and all other staff to specific prisons and other workplaces.

Head 11 Governor in charge

Provide that-

- (1) The Director General may, following a selection competition undertaken for such purpose in accordance with the provisions of the Public Service Management (Recruitment and Appointments) Act 2004, appoint, with the approval of the Board, a person or persons to the grade of governor in charge.
- (2) The governor in charge is the officer in charge of a prison.
- (3) All references to the governor of a prison in or under any other enactment, including under rules made by the Minister under section 35 of the Prisons Act 2007, shall be taken as referring to the governor in charge as described in subhead (2).
- (4) A person who, immediately prior to the coming into operation of this Head, held the appointed position of governor in accordance with section 28 of the General Prisons (Ireland) Act 1877 (as adapted by section 11 of the Adaptation of Enactments Act 1922) shall be deemed to have been appointed as a governor in charge under this Head.
- (5) A governor in charge, or any member of staff designated under subhead (7) or (8) to perform the functions of that post, shall be accountable to the Director General for the performance of his or her functions.
- (6) Notwithstanding subhead (2) and any provision of [or under] any other enactment, the governor in charge shall comply with any reasonable direction given –
 - (a) by the Director General in the exercise of his or her functions under this or any other enactment, or
 - (b) by the member of staff to whom the Director General has under Head 13 delegated the function to which the direction relates.
- (7) The functions of a governor in charge may be performed during his or her absence by such other member or members of staff assigned to the prison concerned as may be designated in writing by the governor in charge (or, where a governor in charge is incapacitated or suspended from duty, by the Director General).
- (8) When a post of governor in charge is vacant, the functions of the post may be performed by such other member or members of the staff of the Service as the Director General may designate in writing.

Notes

This Head sets out key provisions concerning the appointment and accountability of persons appointed to the post of governor in charge (i.e. in charge of a prison). 'Governor in charge' is a new statutory title to avoid any confusion with the various subordinate governor grades. The governor in charge is a key management post in the prison system, the duties of which are set out in Prison Rule 75 (S.I. 252/2007).

Subhead (1) provides that the Director General may appoint a person or persons to the position of Governor in Charge, with the approval of the Board. This will replace the existing statutory mechanism for appointment of prison governors by the Minister, which dates back to the General Prisons (Ireland) Act 1877 as amended.

Subhead (4) provides that a person who, immediately prior to the enactment of this Act, held the position of governor in accordance with section 28 of the General Prisons (Ireland) Act 1877 shall be deemed to have been appointed as a governor in charge under this Head.

Subhead (5) provides that a governor in charge or staff member designated to act in that capacity will be accountable to the Director General for the performance of his or her functions, while subhead (6) provides that the governor in charge shall comply with any reasonable direction given by the Director General or other member of staff to whom the Director General has delegated the function to which the direction relates in accordance with Head 13. These provisions have been included for the avoidance of any doubt as to the ultimate responsibility and authority of the Director General for the management of the prison system (as per Head 12).

Head 12 Director General

Provide that –

- (1) The Service shall have a Director General whose functions, in addition to such other functions as are specified in or under this Act and other enactments, are to –
 - (a) ensure that the Service carries out its functions,
 - (b) carry on and manage, and control generally, the administration and business of the Service,
 - (c) ensure that appropriate arrangements are in place within the Service –
 - (i) to enable compliance with the policies (whether set out in codes, guidelines or other documents, or any combination thereof) of the Government or a Minister of the Government to the extent that those policies may affect or relate to the functions of the Service,

and
 - (ii) for the internal management and accountability of the Service in respect of its—
 - I. performance of its functions under this and all other enactments,
 - II. achievement of its objectives under the strategic plan and the annual business plan,
 - III. risk management, governance internal control, and compliance with related laws, codes and standards,
 - IV. financial management, accounting and reporting, including the management of capital projects and the reporting of related expenditure,
 - V. recruitment, training, development and performance management of staff,
 - VI. compliance with section 42 of the Irish Human Rights and Equality Commission Act 2014 and under international and domestic human rights law generally,
- and
- (d) communicate effectively on behalf of the Service with the general public, public representatives, interest groups and relevant domestic and international oversight bodies.

- (2) The Director General shall be responsible to the Minister for the performance of his or her functions.
- (3) The Director General shall not be a member of the Board but may, in accordance with procedures established by the Board, attend meetings of the Board and may speak and give advice at such meetings.
- (4) The Director General shall be assisted in carrying out his or her functions by directors.
- (5) Subject to subhead (6), the functions of the Director General may be performed during his or her absence by such director or directors as may from time to time be authorised in that behalf by the Director General.
- (6) A director designated for such purpose by the Minister may perform the functions of the Director General –
 - (a) during any absence, incapacity or suspension from duty of the Director General, or
 - (b) during any vacancy in the office of Director General.
- (7) The director so designated under subhead (6) shall carry the title of Acting Director General for the period of the designation.
- (8) Where and insofar as he or she considers it practicable to do so, the Minister shall consult the Board before making a designation under subhead (6).
- (9) The provisions of this Head apply to an Acting Director General as they apply to the Director General.

Notes

This Head establishes a statutory basis for the role of Director General and sets out his/her core functions and responsibility for the overall management of the IPS.

Subhead 1(a), which is modelled on section 33(1)(a) of the Policing, Security and Community Safety Bill, tasks the Director General with ensuring that the Service carries out its functions.

Subhead (1)(b) is a standard provision, while subhead (1)(c) vests in the Director General the responsibility for ensuring that the IPS is compliant with Government policy and with a range of important administrative and governance obligations. Subhead (1)(c) mirrors the matters which the Board must, under Head 22(1), satisfy itself are in place.

Subhead (1)(d) assigns to the Director General the additional responsibility of communicating on behalf of the IPS with the public and other stakeholders.

Subhead (2) provides that the Director General shall be responsible to the Minister for the performance of his/her functions.

Subhead (3) provides that the Director General will not be a member of the Board but will be entitled to attend Board meetings and speak and provide advice at such meetings. This is a standard provision.

Subhead (4) provides that the Director General shall be assisted in performing his/her functions by directors. IPS Directors are not currently referenced in prison legislation with the exception of Rule 99 of the Prison Rules 2007 (S.I. 252/2007) which provides for the appointment of a person to carry on and manage, and control generally, the administration of the prison healthcare services.

Subheads (5) to (9) comprise a range of mainly standard provisions for the performance of the DG's functions in his/her absence. Subhead (5) provides that the Minister may appoint a director to perform the functions of Director General during the absence, incapacity or suspension from duty of the Director General or during a vacancy in the office. This is consistent with Head 14(5), which provides that the Director General shall be appointed by the Minister.

Head 13 Delegation of powers, functions, or duties of Director General

Provide that –

- (1) The Director General may, in writing, delegate any the functions assigned to him or her under this Act (other than the functions assigned under Head 36) or any other enactment to members of staff of the Service specified by grade, position, name or otherwise.
- (2) A delegation under this Head may—
 - (a) relate to the performance of a function either generally or in a particular case or class of case or in respect of a particular matter,
 - (b) be made subject to conditions or restrictions, and
 - (c) be revoked or varied by the Director General at any time.
- (3) Where a delegation under this Head relates to the performance of a function assigned to the Director General by or under an enactment other than this Act, the Director General may not delegate that function without the prior consent of the Minister in writing.
- (4) The delegation of a function does not preclude the Director General from performing the function.
- (5) Where the Director General's functions under a provision of this or any other Act are delegated to a person, any references in that provision to the Director General are to be read as references to that person.
- (6) An act or thing done by a person pursuant to a delegation under this Head has the same force and effect as if done by the Director General.
- (7) A delegation under this Head shall not cease to have effect by reason only of a change in the person lawfully acting as, or performing the functions of, the Director General.

Notes

The purpose of this Head is to provide that the Director General may formally delegate particular statutory functions to specified members of staff. The Head is based on section 39 of the Policing, Security and Community Safety Bill 2023.

Head 14 Appointment, suspension and removal of Director General

Provide that-

- (1) Subject to subhead (4), the Minister, having consulted with the Board, shall appoint a person recruited in accordance with the Public Service Management (Recruitment and Appointments) Act 2004 and the Civil Service Regulation Act 1956 to be the Director General for a period not exceeding 5 years.
- (2) Notwithstanding subhead (1), where the term of office of the Director General expires by the effluxion of time it may be extended by the Minister, having consulted with the Board, for a maximum period of 2 years.
- (3) Subject to subhead (4), a person appointed as Director General holds office on such terms and conditions, including those relating to remuneration, allowances and superannuation, as the Minister may approve with the consent of the Minister for Public Expenditure, National Development Plan Delivery and Reform.
- (4) The person who, immediately before the commencement of this Head, holds the appointed position of Director General pursuant to section 4(1)(i) of the Public Service Management Act 1997 shall be deemed to have been appointed under this Head and shall continue in office in accordance with the existing terms and conditions of his or her employment.
- (5) The Minister may at any time, for stated reasons, suspend from duty or remove from office a person who holds the office of Director General.
- (6) The Minister shall consult with the Board before removing a person from office under subhead (6).
- (7) As soon as practicable after a person is removed from office under subhead (5), the Minister shall cause a statement of the reasons for the removal to be laid before each House of the Oireachtas.

Notes

This Head provides for the appointment, suspension and removal of the Director General by the Minister.

Subhead (1) provides that the Minister shall appoint as Director General a person recruited in accordance with the Public Service Management (Recruitment and Appointments) Act 2004 and the Civil Service Regulation Act 1956. This provision is based on section 11(1) of the Tailte Éireann Act 2022, but with the added provision that Minister will consult with the Board before making the appointment. The initial

appointment shall be for a period not exceeding 5 years, with subhead (2) providing that the appointment may subsequently be extended for up to 2 further years. Subheads (2) and (3) are adapted from section 26 of the Policing, Security and Community Safety Bill 2023.

Subhead (1) is subject to subhead (4) which provides that the person holding the appointed role of Director General when this Head commences shall be deemed to have been appointed thereunder.

Subhead (5) provides that the Minister may suspend or remove the Director General for stated reasons and is based on section 12(2) of the Tailte Éireann Act 2022.

Head 15 Temporary release

Provide that –

- (1) The Minister may, in writing and subject to such conditions and exceptions as he or she may from time to time specify, delegate to the Director General the power provided for in section 2(1) of the Criminal Justice Act 1960 as amended by section 1 of the Criminal Justice (Temporary Release of Prisoners) Act 2003.
- (2) The Minister may at any time in writing rescind a delegation made under subhead (1) or vary the conditions or exceptions to which such delegation is subject.

Notes

The purpose of this Head is to provide a statutory basis for the delegation of temporary release from the Minister to the Director General, without providing for its full devolution. This reflects a policy view that this significant and sensitive statutory power should remain with the Minister, who may then (as currently occurs on an administrative basis) formally delegate the bulk of temporary release decisions to the Director General while reserving the power in respect of certain categories of offender as he or she sees fit.

PART 3 – PRISON ESTATE AND RELATED MATTERS

Head 16 Transfer of prison estate to the Service

Provide that–

- (1) The Minister may by order direct that all or any specified parts of the prison estate which immediately before the commencement of that order stood vested in the Minister shall, without any further conveyance, transfer or assignment stand vested in the Service for all the estate or interest for which immediately before the vesting day it was vested in the Minister but subject to all trusts and equities affecting the land subsisting and capable of being performed.
- (4) The Minister may on his or her own initiative, and shall on the application of the Service, issue a certificate in respect of specified land stating, as the Minister thinks proper, that such land vested in the Service under subhead (1), or did not so vest, and the certificate shall be evidence of the facts so stated.
- (5) Every right and liability transferred to the Service by this Head may, on or after the day it has been transferred, be sued on, recovered or enforced by or against the Service in its own name and it shall not be necessary for the Service to give notice to a person whose right or liability is transferred by this Head of the transfer.
- (6) Section 12 of the Finance Act, 1895 shall not apply in respect of the transfer of land to the Service under subhead (1).

Notes

The purpose of this Head is to enable the transfer to the IPS of some or all such parts of the prison estate (i.e. the relevant land and buildings) as are currently vested in the Minister. The Head is partly based on legislative precedents (in particular, section 20 of the Marine Institute Act 1991) but adapted such that the Minister may specify by order which parts of the prison estate are to be transferred, thus giving the Minister the option to retain parts of the estate that are not currently in use for penal purposes and which the Minister may consider should be put to another use in either the short or the long term.

By way of background, the General Prisons (Ireland) Act 1877 transferred all existing prisons to the General Prisons Board for Ireland (GPB) and empowered it to make rules for the government of prisons, to alter, improve prisons and to build new ones. Following the foundation of the State, the GPB was abolished and its jurisdiction, land and premises, powers and functions were vested in the Minister under the General Prisons Board (Transfer of Functions) Order 1928. Ireland's 12 prisons/places of detention are vested in the Minister, as are the land on which the IPS training college in Portlaoise is situated, a site adjacent to IPS HQ in Longford, 156 acres of land at Thornton Hall, Co. Dublin, and a small site adjacent to Cloverhill Prison, Dublin 22.

Head 17 Transfer of land from the Service

Provide that –

The Minister may at any time by order direct that any land (or a part of any land) vested in the Service under Head 16 or acquired by the Service under Head 5(2) shall, without any further conveyance, transfer or assignment, be transferred to the Minister or to another State body for all the estate or interest for which immediately before the date of commencement of said order it was vested in the Service, but subject to all trusts and equities affecting the land subsisting and capable of being performed.

Notes

The purpose of this Head is to empower the Minister to direct, by order, that land vested in the IPS be transferred to the Minister or to another State body. This could, for example, arise where land has been acquired by (or transferred by the Minister to) the IPS for a prison development but the Government or the Minister subsequently decides that the land, or part of it, should be used for another purpose.

Head 18 Transfer of other property to the Service

Provide that-

- (1) On the establishment day all property other than that referenced in Head 16, but including choses-in-action, which immediately before that day was the property of the Minister and was used for the purposes of implementing the functions of the Minister corresponding to the functions of the Service, shall be vested in the Service without any assignment.
- (2) The Minister may on his or her own initiative, and shall on the application of the Service, issue a certificate in respect of specified property stating, as he or she thinks proper, that the property vested in the Service under this Head did or did not so vest and the certificate shall be evidence of the facts so stated.
- (3) Every chose-in-action transferred by subhead (1) to the Service may, after the establishment day, be sued on, recovered or enforced by the Service in its own name and it shall not be necessary for the Service or the Minister to give notice to a person bound by the chose-in-action of the transfer effected by that subhead.

Notes

This Head provides for the transfer of applicable property (other than land and buildings, which form the prison estate as referenced in Head 16) from the Minister to the IPS. It is modelled on section 38 of the Civil Defence Act 2002.

Head 19 Transfer of rights and liabilities to the Service

Provide that-

- (1) All rights and liabilities of the Minister arising by virtue of any contract or commitment (expressed or implied) entered into by him or her before the establishment day in relation to a function of the Minister corresponding to a function of the Service shall, on that day, be transferred to the Service.
- (2) The Minister may on his or her own initiative, and shall on the application of the Service, issue a certificate in respect of a specified contract or commitment stating, as he or she thinks proper, that the rights and liabilities of the Minister thereunder were transferred on the establishment day to the Service under this Head or were not so transferred, and the certificate shall be evidence of the facts so stated.
- (3) Every right and liability transferred by subhead (1) to the Service may, on and after the establishment day, be sued on, recovered or enforced by or against the Service in its own name and it shall not be necessary for the Service or the Minister to give notice to the person whose right or liability is transferred by this Head of such transfer.

Notes

This Head transfers the applicable rights and liabilities of the Minister to the IPS. It is modelled on section 39 of the Civil Defence Act 2002. (A similar but more recent example can be found in section 30 of the National Shared Services Office Act 2017.)

Head 20 Development of prisons and related matters

Provide that –

- (1) The Minister may, having consulted with the Board and the Director General, and with the consent of the Minister for Public Expenditure, National Development Plan Delivery and Reform, give directions to the Service regarding –
 - (a) the construction, opening, extension, alteration or refurbishment of a prison, or
 - (b) the acquisition by the Service of land in connection with any of the functions of the Service,
 - (c) the usage of land (or part of any land) which has been vested in the Service under Head 16(1) or otherwise acquired by the Service,
 - (d) the disposal of land (or part of any land) which has been vested in the Service under Head 16(1) or otherwise acquired by the Service,and the Service shall comply with such directions.
- (2) The Service may open a prison only with the prior approval of the Minister.
- (3) The Service may close a prison or part of a prison only where so directed in a closure order issued by the Minister under section 2(1) of the Prisons Act 1933 (in this Head referred to as “the Act of 1933”).
- (4) The Minister shall consult with the Board and the Director General prior to issuing a closure order under section 2(1) of the Act of 1933.
- (5) The Service shall –
 - (a) transfer a prison or part of a prison to a local authority where, and only where, the Minister so directs either in a closure order made under section 2(1) of the Act of 1933 or in a subsequent order made by the Minister under this subhead, or
 - (b) transfer a prison or part of a prison to another State body where, and only where, the Minister so directs by either in an order made under this subhead simultaneously with, or subsequent to, a closure order made under section 2(1) of Act of 1933.
- (6) The Minister may from time to time, pursuant to a recommendation from the Director General or otherwise, and having consulted with the Director General, give a direction in writing as to the number of prisoners that may ordinarily be accommodated in a specified prison.

- (7) A direction given under subhead (6) may include such conditions or qualifications as the Minister considers necessary or appropriate and may specify a period of time during which the direction shall be in effect.
- (8) The Minister may in writing at any time, pursuant to a recommendation from the Director General or otherwise, and having consulted with the Director General, vary or rescind a direction given under subhead (6).

Notes

The purpose of this Head is to explicitly provide, for the avoidance of any doubt, that (notwithstanding any transfer of prison lands to the IPS under Head 16 and the power vested in the IPS to acquire land under Head 5(2)) the Minister shall solely retain the powers to:

- institute the construction, opening, extension or refurbishment or closure of a prison,
- direct the acquisition, usage or disposal of land in connection with any of those purposes, and
- determine the numbers of prisons that may ordinarily be accommodated within individual prisons.

This Head is informed by a firm view that it should remain the responsibility of the Minister to determine overall and individual prison capacity, both as a key policy instrument and as a matter of political and financial accountability. However, this does not preclude the Director General or the Board (or, of course, external stakeholders) from making recommendations to the Minister in this regard, and provision is made that the Minister shall consult with the Director General (and, in most cases, the Board) before issuing any directions in such matters.

The specific purpose of subhead (1)(c) is to enable the Minister to give directions as to the usage of any part of the prison estate which is not currently in use (nor planned for use) in connection with the functions of the IPS – e.g. the Minister might want to direct that undeveloped or mothballed land should be leased or, conversely, that it cannot be leased without the Minister's permission.

The purpose of subhead (3) is to clarify that the transfer of a closed prison/ part of a prison to a local authority remains solely a decision for the Minister in accordance with the Prisons Act 1933 but shall now fall to be implemented by the IPS. In addition, subheads (4) and (5) broaden the Minister's powers under the 1933 Act by providing that he or she may:

- direct such a transfer *subsequent to* any closure order and not just *as part of* such a closure order as currently appears to be the case; and

- direct that a closed prison/part of a prison be transferred to a State body other than a local authority.

The purpose of subheads (6) to (8) is to provide an explicit Ministerial power (in line with current administrative practice) to give a direction, whether on foot of recommendations from the Director General or otherwise (but in either case having consulted with the Director General), as to the numbers of prisoners that may ordinarily be accommodated within individual prisons. The use of the term 'ordinarily' (and the provision that the Minister may qualify any directions given) is intended to reflect the reality that the official capacity of particular prisons is unavoidably exceeded from time to time, owing to the levels of committals from the courts.

PART 4 – BOARD OF THE SERVICE

Head 21 Establishment of Board

Provide that -

The Service shall have a board to be known as Bord an Seirbhís Príosúin na hEireann or, in the English language, as the Board of the Irish Prison Service (in this Act referred to as “the Board”).

Notes

This Head is in standard form and provides for the establishment of a Board of the Irish Prison Service to strengthen the internal governance and management of the organisation and provide assurance to the Minister in this regard.

Head 22 Functions of the Board

Provide that -

- (1) In addition to such other functions as are conferred on it under this Act, the Board shall have the following functions:
 - (a) to advise the Director General regarding, and to monitor and assess –
 - (i) the development and implementation of the strategic plan, the annual business plan and the governance framework;
 - (ii) the management by the Service of major capital expenditure and investment, including by reference to any capital plan approved by the Minister;
 - (iii) the implementation by the Service of joint strategies and agreements between the Service and other bodies; and
 - (iv) the implementation by the Service of applicable recommendations issued by the Inspector of Prisons/Places of Detention, Prison Visiting Committees and relevant international bodies, where such recommendations have been formally accepted by (as applicable) the Government, the Minister or the Director General,
 - and
 - (b) to satisfy itself that the Director General has put appropriate arrangements in place in accordance with the provisions of Head 12(1)(c).
- (2) The Director General shall provide the Board with all such information and assistance as is necessary for the Board to perform its functions effectively.
- (3) Subject to this Act, the Board may do anything that it considers necessary or expedient to enable it to perform its functions.
- (4) The Board shall inform the Minister in writing of any matter that it considers to require the Minister's attention.
- (5) The Board is responsible to the Minister for the performance of its functions.
- (6) Nothing in this Act shall be construed as enabling the Board to exercise any power or control in relation to the performance, in a particular case or in particular circumstances, of a function assigned to the Service or to the Director General under this Act or any other enactment.

Notes

This Head sets out the core functions of the Board and related matters. These functions are based partly on section 12 of the Policing, Security and Community Safety Bill 2023 and partly on section 16P of the Health Act 2004 as amended, although some are unique. The key functions of the Board under subhead (1) include:

- Advising on, monitoring and assessing the development and implementation of the IPS strategic plan, and annual business plan
- Monitoring and assessing the management of major capital projects
- Monitoring and assessing the implementation by the IPS of recommendations from relevant monitoring/inspection bodies
- Satisfying itself that the Director General has put in place the arrangements necessary to meet its corporate governance, performance and human rights obligations and to comply with Government policy

The Scheme elsewhere provides that the Board shall issue codes of ethics/conduct for staff, consultants and advisers and oversee their implementation. The Scheme also provides for a range of significant matters on which the Minister or the Director General shall consult with the Board.

Subhead (2) provides that the Director General shall provide the Board with all such information and assistance as it needs in order to perform its functions effectively.

Subhead (3) provides that the Board may take whatever actions are necessary to perform those functions. This is a standard provision.

Subhead (4) provides that Board shall inform the Minister in writing of any matter that, in its view, requires the Minister's attention. This is modelled on section 16P of the Health Act 2004 (as amended).

Subhead (5) provides that the Board is responsible to the Minister for the performance of its functions. It is based on section 14(1) of the Policing, Security and Community Safety Bill 2023.

The purpose of subhead (6) is to clarify, for the avoidance of any doubt, that the Board may not exercise any power or control over a statutory function of the IPS or the Director General. This subhead is modelled on section 10(5) of the *Tailte Éireann Act 2022*.

Head 23 Membership of the Board

Provide that –

- (1) The Board shall comprise a chairperson and 8 ordinary members.
- (2) The chairperson and all other members of the Board shall be appointed by the Minister.
- (3) The Minister may appoint one of his or her officers as an ordinary member of the Board under subhead (2).
- (4) When appointing a person to be a member of the Board, the Minister shall satisfy himself or herself that the person has sufficient experience and expertise in–
 - (a) matters connected with the functions of the Service, or
 - (b) matters of organisational governance, management or public administration, or
 - (c) financial matters including the allocation and management of, and accountability for, the effective use of capital and other financial resources,to enable him or her to make a substantial contribution to the carrying out of the Board's functions under this Act.
- (5) In appointing members of the Board the Minister shall satisfy himself or herself that the Board collectively has sufficient experience and expertise in the matters referenced in subheads 4 (a), (b) and (c) to perform its functions effectively.
- (6) The Minister shall, insofar as practicable, endeavour to ensure that among the members of the Board there is an equitable balance between men and women.
- (7) Subject to subhead (8), the chairperson of the Board shall be appointed by the Minister from among the members of the Board.
- (8) The Minister may, before the coming into operation of this Head, designate a person to be appointed as the first chairperson of the Board.
- (9) Where, immediately before the coming into operation of this Head, a person stands designated under subhead (8), that person shall, on such coming into operation, stand appointed as the first chairperson of the Board.
- (10) The Minister may, before the coming into operation of this Head, designate persons to be appointed as the first ordinary members of the Board.

- (11) Where, immediately before the coming into operation of this Head, a person stands designated under subhead (10), that person shall, on such coming into operation, stand appointed as an ordinary member of the Board.

Notes

This Head provides for the membership of the Board. It is largely modelled on section 15 of the Policing Security and Community Safety Bill 2023, while also drawing on statutory precedents including section 16N of the Health Act 2004 (as amended) and section 19 of the Child and Family Agency Act 2013.

Subhead (1) provides that the Board will comprise 9 members in total including a Chair. The size is intended to ensure the efficient and effective operation of the Board.

Subhead (2) provides that the members will be appointed by the Minister. (It is envisaged that the appointments will be made in accordance with the generally applicable open process for the appointment of persons to State boards.)

Subhead (3) gives the Minister the option to appoint one of his or her own officers (i.e. a staff member of the Department) as an ordinary member of the Board.

Subheads (4) and (5) are partly modelled on section 19(2) of the Child and Family Agency Act 2013. They aim to ensure that the Board is composed of persons with experience and expertise in some or all of the following broad areas:

- matters connected with the functions of the IPS
- organisational governance, management or public administration
- financial management and accountability (bearing in mind the size of the Prisons Vote and the capital management functions of the IPS)

Criterion (a) could, for example, include persons with operational or policy expertise in aspects of the penal or wider criminal justice system while (b) could include persons with experience or expertise in human resource management, corporate governance compliance, organisational design, performance measurement, information and communications technology etc.

Subhead (6) is a standard provision in relation to gender balance.

Subhead (7) provides that the Minister shall appoint the Chair from among the Board members. This is subject to subhead (8) which provides that the Minister may appoint a Chair-designate prior to the coming into operation of this Head. Subhead (10) is a similar enabling provision in respect of Board members-designate. These provisions are modelled on equivalents in section 15 of the Policing Security and Community Safety Bill 2023.

Head 24 Terms of appointment and conditions of office of members of Board

Provide that –

- (1) Subject to subhead (2) a member of the Board shall hold office for such period, not exceeding 4 years from the date of appointment, as the Minister shall determine.
- (2) Of the ordinary members of the Board as first constituted under this Act –
 - (a) Such 4 members as are determined by the Minister shall hold office for a period of 3 years from the date of their respective appointment as ordinary members, and
 - (b) The remaining 4 members shall hold office for a period of 4 years from the date of their respective appointment as ordinary members.
- (3) Subject to subhead (4), a member of the Board whose term of office expires by the efflux of time shall be eligible for reappointment to the Board.
- (4) A person who is reappointed to the Board in accordance with subhead (3) shall not hold office for periods the aggregate of which exceeds 7 years.
- (5) The chairperson and ordinary members of the Board shall—
 - (a) hold office upon such terms and conditions (including terms and conditions relating to remuneration and allowances for expenses) as may be determined by the Minister, with the consent of the Minister for Public Expenditure, National Development Plan Delivery and Reform, and
 - (b) be paid out of moneys at the disposal of the Service.
- (6) A member of the Board may resign from office by letter sent to the Minister and the resignation shall take effect on the date the Minister receives the notice, or, if a date is specified in the notice and the Minister agrees to that date, on said date.

Notes

This Head is modelled on section 17 of the Policing, Security and Community Safety Bill 2023. It sets out the key terms and conditions of appointment and reappointment to the Board, in particular the duration of appointments. Consistent with best corporate governance practice, subhead (2) provides for staggered durations to ensure that the Board does not have to be replaced *en masse* and hence continues to have the necessary experience to discharge its responsibilities effectively. Also consistent with best practice, subhead (4) provides that no member shall serve more than two consecutive terms totalling 7 years' service.

Head 25 Ineligibility for appointment, disqualification from office, cessation of membership, etc.

Provide that –

- (1) A person is not eligible for appointment as a member of the Board or a committee of the Board if the person is—
 - (a) nominated as a member of Seanad Éireann,
 - (b) elected as a member of either House of the Oireachtas or to be a member of the European Parliament,
 - (c) regarded pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act 1997 as having been elected to that Parliament,
 - (d) elected or co-opted as a member of a local authority,
 - (e) a member of staff of the Service,
 - (f) a member of a Prison Visiting Committee,
 - (g) the Inspector of Prisons/Places of Detention or a member of the Inspector's staff.
- (2) A person who is for the time being entitled under the Standing Orders of either House of the Oireachtas to sit therein or who is a member of the European Parliament or a local authority shall, while he or she is so entitled or is such a member, be disqualified for membership of the Board or a committee of the Board.
- (3) A member of the Board or a member of a committee thereof shall cease to hold office if, while serving on the Board or a committee thereof, he or she—
 - (a) is sentenced by a court of competent jurisdiction to a term of imprisonment,
 - (b) is convicted on indictment of an offence,
 - (c) is convicted of an offence involving fraud or dishonesty,
 - (d) has a declaration under section 819 of the Companies Act 2014 made against him or her or is deemed to be subject to such a declaration by virtue of Chapter 5 of Part 14 of that Act,
 - (e) is subject or is deemed to be subject to a disqualification order, within the meaning of Chapter 4 of Part 14 of the Companies Act 2014, whether by virtue of that Chapter or any other provision of that Act, or

- (f) is removed by a competent authority for any reason (other than failure to pay a fee) from any register established for the purpose of registering members of a profession in the State or another jurisdiction.
- (4) A member who does not, for a consecutive period of 6 months, attend a meeting of the Board shall, at the end of that period, cease to hold office unless the member demonstrates to the Minister's satisfaction that the failure was due to ill-health or other unavoidable cause.

Notes

The purpose of this Head is set out the circumstances in which a person is ineligible for appointment as a member of the Board or of a committee of the Board and the circumstances in which a person is disqualified from membership. It also enumerates those eventualities which will result in cessation of membership of the Board or a committee.

This is largely a standard provision in that it sets out the prohibitions on members of the Board or a committee of the board holding political office at local, national or European level and provides that a member ceases to hold office if they do not attend a Board meeting for a consecutive period of 6 months. See e.g. section 16Q of the Health Act 2004 (as amended) and section 18 of the Policing, Security and Community Safety Bill 2023.

There is also a prohibition on the appointment of a member of IPS staff to the Board, as it is intended that the Board be wholly comprised of non-executive members.

Head 26 Removal of member of Board from office

Provide that –

- (1) The Minister may at any time remove from office a member of the Board if, in the Minister’s opinion—
 - (a) the member has become incapable, through ill-health or otherwise, of performing his or her functions,
 - (b) the member has committed stated misbehaviour,
 - (c) the member’s removal is necessary for the effective and efficient performance by the Board of its functions,
 - (d) the member has contravened provisions of this Act relating to standards of integrity, codes of conduct or an applicable provision of the Ethics in Public Office Act 1995, or
 - (e) in performing functions under this Act, the member has not been guided by a code of conduct that has been drawn up under section 10(3) of the Standards in Public Office Act 2001 and that relates to the member.
- (2) In this Head, “applicable provision of the Ethics in Public Office Act 1995”, in relation to a member, means a provision of that Act that, by virtue of a regulation under section 3 of that Act, applies to that member.

Notes

The purpose of this Head is to set out the circumstances in which the Minister may remove a member of the Board from office. This is a standard provision (see e.g. section 16R of the Health Act 2004 (as amended), section 15 of the Health Act 2007, section 23 of the Child and Family Agency Act 2013).

Head 27 Removal of all members of Board from office

Provide that –

- (1) The Minister may remove all the members of the Board from office where—
 - (a) the Board fails to achieve a quorum for 3 consecutive meetings,
 - (b) the Board does not comply with a judgment, order or decree of any court,
 - (c) the Board does not comply with any other requirement imposed on it by or under any enactment including this Act, or
 - (d) the Minister is of the opinion that the Board’s functions are not being performed in an effective and efficient manner.

- (2) Before removing all the members of the Board from office under subhead (1)(d), the Minister may appoint a person—
 - (a) to conduct an independent review of any matter giving rise to that opinion, and
 - (b) to submit a report to the Minister on the results of the review.

- (3) The Board and the Director General shall co-operate with a review under subhead (2) and give the person conducting it all reasonable assistance, including access to such premises, equipment and records as the person may require for the purposes of the review.

Notes

The purpose of this Head is to enumerate the circumstances in which the Minister may remove the entire Board. It also allows the Minister, where if of the opinion that the whole Board should be removed, firstly to appoint a person to conduct a review of any matter giving rise to that opinion.

This is a standard provision (see e.g. section 16S of the Health Act 2004 (as amended), section 17 Health Act 2007 and section 24 of the Child and Family Agency Act 2013).

Head 28 Committees of Board

Provide that –

- (1) The Board may, in addition to the audit committee, establish committees to assist and advise it in relation to the performance of any of its functions (in this Head referred to as “committees of the Board”).
- (2) A committee of the Board—
 - (a) shall consist of such number of members as the Board may determine, and
 - (b) may, subject to Head 25, include persons who are not members of the Board.
- (2) In appointing members of a committee of the Board, the Board shall have regard to the knowledge and experience necessary for the proper, effective and efficient discharge of the functions of the committee.
- (3) The chairperson of a committee of the Board shall be appointed by the Board from among the members of the committee.
- (4) A member of a committee of the Board shall—
 - (a) hold office upon such terms and conditions (including terms and conditions relating to remuneration and allowances for expenses) as may be determined by the Minister, with the consent of the Minister for Public Expenditure, National Development Plan Delivery and Reform, and
 - (b) be paid out of moneys at the disposal of the Service.
- (5) The Board may at any time remove a member of a committee of the Board for stated reasons.
- (6) The Board may determine the terms of reference and, subject to this Act, regulate the procedures of a committee of the Board.
- (7) A committee of the Board may act notwithstanding one or more than one vacancy in its membership.
- (8) The acts of a committee of the Board shall be subject to confirmation by the Board unless the Board otherwise determines.
- (9) A committee of the Board shall provide the Board with such information as the Board may from time to time require, in respect of that committee’s activities and operations, for the purposes of the performance by the Board of its functions.
- (10) The Board may at any time dissolve a committee of the Board.

Notes

This Head enables the Board to set up committees (in addition to the audit committee) to advise and assist it in its work. Board members and other persons who have knowledge and experience relevant to the purposes of the committee may be appointed to such committees. This is a standard provision – see e.g. section 16T of the Health Act 2004 (as amended), section 25 of the Child and Family Agency Act 2013.

Head 29 Meetings and procedures of Board

Provide that –

- (1) The Minister, in consultation with the Board, shall fix the date, time and place of the first meeting of the Board.
- (2) The Board shall hold such and so many meetings as may be necessary for the due fulfilment of its functions, but in each year shall hold at least five meetings which shall include not less than one meeting in each period of 3 months.
- (3) In addition to a meeting with all participants physically present, the Board may hold or continue a meeting by the use of any means of communication by which all the participants can hear and be heard at the same time (in this Head referred to as a “remote meeting”).
- (4) A member of the Board who participates in a remote meeting shall be taken for all purposes to have been present at the meeting.
- (5) The chairperson may call a meeting of the Board at any reasonable time.
- (6) At a meeting of the Board—
 - (a) the chairperson, shall, where present, chair the meeting, or
 - (b) where and so long as the chairperson of the Board is not present or if that office is vacant, the other members of the Board who are present shall choose one of their number to chair the meeting.
- (7) The quorum for a meeting of the Board shall be 5 unless the Minister otherwise directs.
- (8) Subject to subhead (7), the Board may act notwithstanding one or more than one vacancy in its membership.
- (9) Each member of the Board present at a meeting of the Board shall have a vote.
- (10) Every question at a meeting of the Board shall be determined by a majority of the votes of those members of the Board present and voting on the question and, in the case of an equal division of votes, the chairperson of the meeting shall have a second or casting vote.
- (11) Subject to this Act, the Board shall regulate its procedures by rules or otherwise.

Notes

The purpose of this Head is to provide for the holding of meetings by the Board and related arrangements. The provisions are of a standard nature (see e.g. section 18 of the Health Act 2007, section 22 of the Child and Family Agency Act 2013 and schedule 2 to the Health Act 2004 (as amended)).

Inter alia, the Head sets the minimum number of meetings per year at 5 and provides for the number of members required to be present to have a quorum, how matters are to be determined at meetings, and that the Board may regulate its procedures and business.

Head 30 Remuneration and expenses of members of Board and committees

Provide that –

- (1) The Minister may, with the consent of the Minister for Public Expenditure, National Development Plan Delivery and Reform, determine the remuneration and expenses payable under this Head.
- (2) The remuneration and allowances for expenses, if any, determined in accordance with subhead (1) are payable by the Service out of funds at its disposal to –
 - (a) the members of the Board, and
 - (b) the members of the audit committee and any other committee of the Board.
- (3) The remuneration and allowances for expenses, if any, determined in accordance with subhead (1) are payable by the Minister out of money provided by the Oireachtas to a person appointed under Head 27(2) to conduct an independent review.

Notes

This Head provides for the remuneration and expenses of members of the Board and of committees of the Board to be paid by the IPS from funds at its disposal at such rates as the Minister may determine with the consent of the Minister for Public Expenditure, NDP Delivery and Reform.

Subhead (3) provides for the Minister to pay the remuneration and expenses of a person appointed to conduct an independent review under Head 27(2), and to submit a report to the Minister on the results of the review.

This Head is based on section 16U of the Health Act 2004 (as amended).

PART 5 – STANDARDS OF INTEGRITY, CODES OF ETHICS, CODES OF CONDUCT, UNAUTHORISED DISCLOSURE OF INFORMATION

Head 31 Code of ethics for staff of the Service

Provide that –

- (1) In performing functions under this or any other enactment as a member of staff of the Service, a person shall maintain proper standards of integrity, conduct and concern for the public interest.
- (2) For the purposes of subhead (1), the Board shall prepare and issue a code of ethics that includes—
 - (a) standards of conduct and practice for staff of the Service, and
 - (b) provisions to encourage and facilitate the reporting by staff of wrongdoing in the Service.
- (3) A code of ethics issued under subhead (2) applies to the Director General as it does to the staff of the Service.
- (4) The Board shall, before issuing a code of ethics under subhead (2), consult with the following in relation to the content of the code:
 - (a) the Minister;
 - (b) the Minister for Public Expenditure, National Development Plan Delivery and Reform;
 - (c) the Director General;
 - (d) the Inspector of Prisons/Places of Detention;
 - (e) any recognised trade union or staff association representing members of staff of the Service;
 - (g) the Irish Human Rights and Equality Commission;
 - (h) the Standards in Public Office Commission;
 - (i) any other person or body appearing to the Board to have an interest in the matter.
- (5) In preparing a code of ethics under subhead (2), the Board shall have regard to—
 - (a) the standards, practices and procedures applicable to the conduct of prison officers and other prison staff, and to prison administration staff, in Member States of the European Union other than the State, and

- (b) any relevant recommendations of the Council of Europe.
- (6) The Board may amend a code of ethics issued under subhead (2) and references in this Head to issuing a code of ethics shall, unless the context otherwise requires, be construed as including references to amending such a code.
- (7) The Board may revoke a code of ethics issued under this Head.
- (6) Whenever the Board issues a code of ethics under subhead (2) it shall provide the Minister with a copy of the code so issued and the Minister shall, as soon as practicable after he or she receives it, cause a copy of it to be laid before each House of the Oireachtas.
- (7) The Service shall publish a code of ethics issued under subhead (2) on the website of the Service or in such other manner as the Board considers appropriate.
- (8) The Director General shall take such steps as are necessary to ensure—
 - (a) that all staff have read and understood a code of ethics issued under subhead (2), and
 - (b) that a record is kept of the steps taken under paragraph (a) in relation to each member of staff.

Notes

The IPS already has a code of ethics for staff which is issued on an administrative basis. This Head provides for a new statutory code, to be prepared and issued by the Board in consultation with various interested parties (and laid by the Minister before the Oireachtas). The Head is based on section 78 of the Policing, Security and Community Safety Bill 2023 which provides that the Policing, Security and Community Safety Authority shall assume responsibility for issuing a code of ethics for Garda personnel.

Head 32 Standards of integrity, codes of conduct for members of Board or committee, advisers etc.

Provide that-

- (1) In performing functions under this or any other enactment as—
 - (a) a member of the Board or a committee of the Board,
 - (b) a person engaged as a consultant or adviser under Head 9, or
 - (c) an employee of a person referred to in paragraph (b),a person shall maintain proper standards of integrity, conduct and concern for the public interest.
- (2) Subhead (1) applies to a person referred to in subhead (1)(c) in respect only of duties of employment relating to the purposes for which the Board or the Service has engaged that person.
- (3) For the purposes of subhead (1), the Board shall issue codes of conduct for the guidance of persons to whom that subhead applies.
- (4) A code of conduct issued under this Head shall indicate the standards of integrity and conduct to be maintained by a person in performing their functions under this or any other enactment.
- (5) A person to whom a code of conduct issued under subhead (3) applies shall act in accordance with the code in performing his or her functions under this Act.
- (6) Where a person is an employee of a person engaged as a consultant or adviser under Head 9, his or her terms and conditions shall be deemed to include the requirements that apply to the employer under subhead (5).
- (7) Subject to subhead (8), the Board shall, as soon as practicable after issuing a code of conduct under subhead (3), make the code available to persons to whom subhead (1) applies.
- (8) The Director General shall provide a copy of a code of conduct issued under subhead (3) to a person engaged as a consultant or adviser under Head 9 and the person so engaged shall make that copy available to his or her employees or contractors to whom subhead (1)(b) applies.
- (9) A document purporting to be a code of conduct issued under subhead (3) is, in the absence of evidence to the contrary, to be taken to be such a code and shall be admissible as such in any proceedings before a court or other tribunal.
- (10) Any provision of a code of conduct issued under subhead (3) that appears to a court or other tribunal to be relevant to a question in proceedings before the

court or tribunal, as the case may be, may be taken into account by it in determining the question.

Notes

The main purpose of this Head is to provide that the Board shall issue codes of conduct to specified persons performing functions under this Scheme or any other enactment. It is modelled on section 79 of the Policing, Security and Community Safety Bill 2023.

The issuance of codes of ethics or conduct is a standard function of State boards, with such codes typically encompassing committee members, the chief executive and staff, advisers and consultants and their employees (see e.g. section 25 of the Health Act 2004, section 82-83 of the Health Act 2007, section 37-38 Child and Family Agency Act 2013). IPS staff are not included under this Head as they will be subject to the Code of Ethics to be issued separately by the Board under Head 31.

Head 33 Unauthorised disclosure of confidential information

Provide that –

(1) Except in the circumstances specified in subhead (2), a person shall not disclose confidential information obtained while performing functions as—

- (a) a member of the Board or a committee thereof,
- (b) the Director General or a member of staff of the Service,
- (c) a person engaged as a consultant or adviser under Head 9, or
- (d) an employee of a person referred to in paragraph (c).

(2) A person shall not contravene subhead (1) by disclosing confidential information if the disclosure—

- (a) is made to or authorised by the Board or the Service,
- (b) is made to the Minister by or on behalf of the Board or the Service or in compliance with this Act, or
- (c) is required by law.

Notes

This Head prohibits, with certain exceptions, the disclosure by specified persons of confidential information obtained in the performance of their functions. This is a standard provision (see e.g. section 40 of the Child and Family Agency Act 2013, section 70 of the Maritime Area Planning Act 2021).

PART 6 – ACCOUNTABILITY

Head 34 Accountability of Director General for accounts of the Service

Provide that–

- (1) The Director General is the accounting officer in relation to the appropriation accounts of the Service for the purposes of the Comptroller and Auditor General Acts 1866 to 1998.
- (2) Whenever required to do so by the Committee of Public Accounts, the Director General shall give evidence to it on the following matters:
 - (a) the regularity and propriety of the transactions recorded or required to be recorded in any book or record of account subject to audit by the Comptroller and Auditor General;
 - (b) the economy and the efficiency of the Service in using its resources;
 - (c) the methods, procedures and practices employed by the Service for evaluating the effectiveness of its operations;
 - (d) any matter affecting the Service that is referred to in—
 - (i) a special report of the Comptroller and Auditor General under section 11(2) of the [Comptroller and Auditor General \(Amendment\) Act 1993](#), or
 - (ii) any other report of the Comptroller and Auditor General that is laid before Dáil Éireann in so far as the report relates to a matter specified in any of paragraphs (a) to (c).
- (3) In carrying out duties under this Head, the Director General shall not –
 - (a) question or express an opinion on the merits of any policy of the Government or a Minister of the Government or on the merits of the objectives of such a policy, or
 - (b) be required to give account for the exercise of any function of the Minister or for any matter—
 - (i) discussion of which might be detrimental to the privacy or safety of any person, or to the security of any particular prison or of the prison system generally;
 - (ii) about which the provision of evidence might prejudice or impair the prevention, detection or investigation of offences, the apprehension or prosecution of offenders or the effectiveness of lawful methods, plans or procedures employed for the purposes of the matters aforesaid.

Notes

This Head provides that the Director General shall be the Accounting Officer for the Prisons Vote and hence shall be accountable to the Public Accounts Committee for the appropriation account and other matters. These responsibilities are currently assigned to the Secretary General of the Department of Justice and their reassignment to the Director General is intended to facilitate enhanced accountability given that the day-to-day management of the Vote is carried out by the IPS. It is also consistent with the authority and responsibility vested in the Director General under Head 12 and with the policy intent that the Scheme should have the effect of making the Director General the 'true CEO' of the IPS.

The Head is largely modelled on section 72 of the Policing, Security and Community Safety Bill 2023. Subhead 3(b) specifies a number of matters for which the Director General will not be required to give account, having regard to the role of the Minister and also the need to protect the privacy or safety of individual persons (including prisoners), the security of prisons, and the need to avoid compromising any relevant criminal investigations or prosecutions.

Head 35 Attendance of Director General before other Oireachtas committees

Provide that –

- (1) Subject to subhead (2), the Director General shall, at the request in writing of a committee, attend before it to give an account of the general administration of the Service.
- (2) The Director General shall not be required to give account before a committee for any matter that which is, has been, or may at a future time be, the subject of proceedings before a court or tribunal in the State.
- (3) The Director General shall, if of the opinion that subhead (2) applies to a matter about which he or she is requested to give account before a committee, inform the committee of that opinion and the reasons for the opinion.
- (4) The information required under subhead (3) shall be given to the committee in writing unless it is given when the Director General is before the committee.
- (5) If, on being informed of the opinion of the Director General about the matter, the committee decides not to withdraw its request relating to the matter, the High Court may, on application under subhead (6), determine whether subhead (2) applies to the matter.
- (6) Either the Director General or the committee may apply in a summary manner to the High Court for a determination under subhead (5), but only if the application is made within 21 days after the date on which the Director General is informed of the decision of the committee not to withdraw its request.
- (7) Pending the determination of an application under subhead (6), the Director General shall not attend before the committee to give account for the matter that is the subject of the application.
- (8) If the High Court determines that subhead (2) applies to the matter, the committee shall withdraw its request insofar as it relates to the matter, but if the Court determines that subhead (2) does not apply, the Director General shall attend before the committee to give account for the matter.
- (9) In carrying out duties under this Head, the Director General shall not
 - (a) question or express an opinion on the merits of any policy of the Government or a Minister of the Government or on the merits of the objectives of such a policy, or
 - (b) be required to give account for the exercise of any function of the Minister, or for any matter–

- (i) discussion of which might be detrimental to the privacy or safety of any person, or to the security of any particular prison or of the prison system generally;
 - (ii) about which the provision of evidence might prejudice or impair the prevention, detection or investigation of offences, the apprehension or prosecution of offenders or the effectiveness of lawful methods, plans or procedures employed for the purposes of the matters aforesaid.
- (10) With the permission of the chairperson of the Oireachtas Committee making the request under subhead (1),
- (a) the chairperson of the Board, or
 - (b) a member of staff of the Service nominated by the Director General,

may attend before the Committee in place of the Director General to give an account of the general administration of the Service, and in that case a reference in subheads (2) to (9) to the Director General is to be read as a reference to the person attending in his or her place.

Notes

This Head provides for the attendance by the Director General before an Oireachtas committee other than the Public Accounts Committee. While the provisions are largely standard, the structure and wording of the Head is largely modelled on section 73 of the Policing, Security and Community Safety Bill 2023.

Subhead (1) provides that the Director General shall, at the request in writing of an Oireachtas committee other than the Public Accounts Committee, attend before it to give an account of the general administration of the IPS. "The general administration of" the organisation in question is the standard formulation.

Subhead (2) provides that the Director General shall not be required to give account before a committee for any matter that is, has been, or may at a future time be, the subject of proceedings before a court or a tribunal in the State.

Subheads (3) - (8) set out the procedure to be followed where there is a difference of opinion between the Director General and the relevant Oireachtas committee as to whether a matter comes within the exemption set out in subhead (2).

Subhead (9) identifies matters that the Director General is prohibited from questioning, or not required to give account for, when attending an Oireachtas committee. The restrictions are the same as apply under Head 34(3) in relation to attendance before the Public Accounts Committee.

Subhead (10) provides that with the consent of the Oireachtas committee chairperson concerned, either the chairperson of the Board or a member or IPS staff nominated by the Director General may attend before the committee in the place of the Director General.

Head 36 Provision of submissions and observations to Oireachtas committees

Provide that –

(1) Where the Public Accounts Committee or another Oireachtas committee invites either the Director General, the Board or the chairperson of the Board to make written or oral submissions or observations on any matter, neither the Director General, the Board or the chairperson of the Board shall, in making any such submissions or observations—

- (a) question or express an opinion on the merits of any policy or decision of the Government or a Minister of the Government or on the merits of the objectives of such a policy or decision,
- (b) question or express an opinion on for the exercise of any function of the Minister,
or
- (c) provide information or comments which—
 - (i) concern any matter that is, has been, or may at a future time be, the subject of proceedings before a court or tribunal in the State
 - (ii) might be detrimental to the privacy or safety of any person, or to the security of any particular prison or of the prison system generally;
 - (iii) might prejudice or impair the prevention, detection or investigation of offences, the apprehension or prosecution of offenders or the effectiveness of lawful methods, plans or procedures employed for the purposes of the matters aforesaid.

Notes

The purpose of this Head is to extend to submissions/observations made to Oireachtas committees (whether by the Director General, the Board or its Chair) the subject matter restrictions specified in Heads 34(3) and 35(9). This is provided for in the interests of ensuring a consistent approach to engagement with Oireachtas committees in line with the principles that underpin Heads 34(3) and 35(9).

Head 37 Audit committee

Provide that –

- (1) As soon as practicable after the commencement of Head 21, the Board shall establish an audit committee to perform the functions specified in Head 38.
- (2) The audit committee shall be appointed by the Board and shall consist of—
 - (a) Not fewer than 2 and not more than 3 members of the Board, and
 - (b) Not fewer than 4 and not more than 5 other persons who, in the opinion of the Board, have the skills and experience necessary to perform the functions of the audit committee, at least one of whom shall hold a professional qualification in accountancy or auditing and none of whom shall be staff of the Service.
- (3) The Board shall designate one of the persons appointed pursuant to subhead (2)(b), other than a member of staff of the Service, to be the chairperson of the audit committee.
- (4) A member of the audit committee shall—
 - (a) hold office upon such terms and conditions (including terms and conditions relating to remuneration and allowances for expenses) as may be determined by the Minister with the consent of the Minister for Public Expenditure and Reform, and
 - (b) be paid out of moneys at the disposal of the Service.
- (5) The Board may at any time remove a member of the audit committee for stated reasons.
- (6) The Board may determine the terms of reference and regulate the procedure of the audit committee.
- (7) A member of the audit committee may resign from the committee by notice in writing addressed to the Board and the resignation shall take effect on the date the Board receives the notice, or, if a date is specified in the notice and the Board agrees to that date, on that date.
- (8) The audit committee shall provide the Board with such information as the Board may from time to time require, in respect of the committee's activities and operations, for the purposes of the performance by the Board of its functions.
- (9) The audit committee may act notwithstanding one or more than one vacancy in its membership.

Notes

This Head is largely modelled on section 74 of the Policing, Security and Community Safety Bill 2023. Its purpose is to require the Board to establish an audit committee and to provide for its membership and related matters. It reflects a policy view that the size of the Prisons Vote and the nature of the IPS's functions (including the management of a substantial capital budget) warrant the establishment of a dedicated audit committee on a statutory basis, as has been done in the case of other large and complex agencies such as the HSE and An Garda Síochána.

The Head is in accordance with the key applicable provisions of the Code of Practice for the Governance of State Bodies (September 2016). For instance, it provides for the committee to have a mix of Board members and non-Board members to ensure that it has the broad range of skills necessary to perform the functions of the committee effectively. It is not proposed to provide for a combined audit and risk committee given the Code's advice that a separate risk committee may be more appropriate for larger agencies. (However, the committee's functions under Head 38 include advising on the appropriateness of the risk management procedures within the IPS.)

Subhead (1) provides that the Board shall establish an audit committee as soon as practicable.

Subhead (2) provides for either two or three of the nine-person Board to be members of the committee, along either four or five persons with relevant skills and experience (at least one of whom is to hold a professional qualification in accountancy or auditing).

Subhead (3) provides that the Board shall appoint one of the non-board members of the committee as its chairperson. While there is no prohibition on a member of IPS staff serving on the committee, subhead (3) provides that such a person shall not serve as the chairperson of the committee. This is in keeping with best corporate governance practice.

Subheads (4) to (9) are standard provisions.

Head 38 Functions of audit committee

Provide that –

(1) The audit committee shall have the following functions:

(a) to advise the Director General on governance and financial matters relating to his or her functions under this Act and any other enactment;

(b) to report in writing at least once in every year to the Director General on the matters referred to in *paragraph (a)* and on the activities of the committee in the previous year and provide a copy of that report to the Board and the Minister;

(c) to advise the Board on financial matters relating to its functions;

(d) to report in writing at least once in every year to the Board on the matters referred to in paragraph (c) and provide a copy of that report to the Minister.

(2) The functions of the audit committee under paragraphs (a) and (c) of subhead (1) shall include the provision of advice regarding the following matters:

(a) the proper implementation of Government guidelines on governance and financial issues;

(b) compliance by the Service and the Director General with their respective powers and obligations under Heads 5(2), 20(1) and (5), 44(5), 46(2), 47 and 48 and with any other obligations imposed by law relating to financial matters;

(c) the appropriateness, effectiveness and efficiency of the Service's procedures relating to–

(i) public procurement,

(ii) seeking sanction for expenditure and complying with that sanction,

(iii) the acquisition, holding and disposal of assets,

(iv) risk management,

(v) financial reporting,

(vi) internal audits,

(vii) the prevention of fraud,

(viii) the prevention of corruption,

(ix) protected disclosures, and

- (x) such other matters as the Board may determine.
- (2) The audit committee shall meet at least 4 times in each year and may invite any person it considers appropriate (whether or not that person is a member of staff of the Service) to attend a meeting of the committee.
- (3) The Director General shall—
 - (a) ensure that the audit committee is provided with all of the Service's audit reports, audit plans and monthly reports on expenditure, and
 - (b) if he or she has reason to suspect that there may have occurred any material misappropriation of the money for which he or she is accounting officer, or any fraudulent conversion or misapplication of property owned by the Service or managed by the Service on behalf of the Minister, report that matter to the audit committee as soon as practicable.
- (4) The Director General shall furnish to the audit committee information on any financial matter or procedure necessary for the performance of its functions when requested to do so by the audit committee, including where such information relates to—
 - (a) any contract into which the Service proposes to enter which commits the Service to expenditure above a specific threshold (with such threshold to be specified by the audit committee with the approval of the Board and having consulted with the Director General), and
 - (b) any legal proceedings or prospective legal proceedings against the Service.

Notes

This Head sets out the functions of the Audit Committee and a number of related procedural matters. The functions of the Committee will include the provision of advice on a range of governance and financial matters to the Director General and the Board. The Head is based partly on section 40I of the Health Act 2004 (as amended) and partly on section 75 of the Policing, Security and Community Safety Bill 2023.

Head 39 Governance Framework

Provide that—

- (1) The Director General shall, as soon as practicable after the establishment day, and in consultation with the Board, prepare and submit to the Minister a document (hereafter “the governance framework”) outlining—
 - (a) the guiding principles applicable to the Service as a public body having regard to the functions conferred on it by this Act and under other enactments,
 - (b) the managerial, organisational and governance structures of the Service,
 - (c) the processes and guidelines to be followed to ensure compliance with the reporting requirements imposed on the Director General under this Act or any other enactment, and
 - (d) the internal controls of the Service, including its procedures relating to internal audit, risk management, public procurement, financial control and reporting, and protected disclosures.
- (2) The Minister shall, as soon as practicable after a governance framework is submitted to him or her under subhead (1), approve, with or without amendment, the governance framework.
- (3) In consultation with the Board, the Director General shall, periodically and at such other times as may be specified by the Minister, review the governance framework and, as soon as practicable thereafter, submit a report to the Minister outlining the findings of the review and recommending either –
 - (a) the renewal of the framework without amendment, or
 - (b) the making of specified revisions to the framework.
- (4) In reviewing the governance framework and making a recommendation to the Minister under subhead (3), the Director General shall have regard to the views of the Board and to any relevant directions given by the Minister or any relevant directives issued by the Minister under this Act.
- (5) Subheads (2) and (6) shall apply, with the necessary modifications, to the renewal or amendment of a governance framework further to subhead (4).
- (6) Following the Minister's approval of the governance framework, the Director General shall arrange for the publication of the framework on a website maintained by or on behalf of the Service or in such other manner as the Minister may specify.

- (7) The Board, having consulted with the Director General, shall provide the Minister with its assessment of the implementation of a governance framework—
- (a) in the annual report, and
 - (b) in such other manner and at such intervals as the Minister may direct.

Notes

This Head is adapted from section 50 of the Child and Family Agency Act 2013. It requires the Director General, in consultation with the Board, to prepare an IPS governance framework document to be submitted to the Minister for approval with or without amendment. As a Vote-holding body, the IPS has already produced such a document on an administrative basis in line with the Corporate Governance Standard for the Civil Service. Creating a statutory obligation in this regard – as has been done in the case of Tusla and several other large State bodies – will support transparency and clarity regarding the internal governance of the IPS, assist in identifying enhancements or updates, and provide assurance to the Minister, other stakeholders and the wider public as regards the structures, policies and procedures in place to support good governance within the organisation.

The Head provides for specific matters to be included in the governance framework and for its publication by the Director General following approval by the Minister. It also provides for the review, renewal and amendment of the framework, and that the IPS annual report shall include the Board's assessment of the implementation of the framework.

Head 40 Performance Framework

Provide that-

- (1) The Minister shall develop a document (in this Act referred to as the “Performance Framework”) to provide the Director General with policy guidance, direction and prioritisation parameters for the preparation and adoption of the strategic plan of the Service.
- (2) The Minister shall provide a Performance Framework developed under subhead (1) to the Director General –
 - (a) at least 3 months before the Director General is due to submit the first strategic plan under Head 41, or
 - (b) in respect of a subsequent strategic plan, at least three months before the end of the period to which the current strategic plan relates.
- (3) The Minister may consult with any other Minister or Ministers of the Government before developing a Performance Framework which includes matters that relate to the functions of such Minister or Ministers.

Notes

This Head is largely based on section 41 of the Child and Family Agency Act 2013. Its purpose is to enable the Minister, at specified times, to develop a multiannual ‘Performance Framework’ document to provide the IPS with policy guidance, direction and prioritisation parameters to inform its multiannual strategic plan. The intention is to ensure that the Minister’s views are both provided and taken on board in a clear, structured and timely manner, and to support the expeditious approval of the subsequent strategic plan.

Subhead (3) provides that the Minister may consult with any relevant Ministerial colleague before developing a Performance Framework which includes a matter relevant to the functions of that Minister.

Head 41 Strategic Plan

Provide that -

(1) Subject to subhead (4), the Director General shall, within 6 months after the coming into operation of Head 21 and not later than the expiration of each subsequent 3 year period following that coming into operation, prepare and submit to the Minister a strategic plan for the Service in respect of the period of 3 years immediately following the year in which the plan is so submitted.

(2) A strategic plan shall -

(a) be prepared in a form and manner in accordance with any directions issued from time to time by the Minister,

(b) specify in relation to the period to which the plan relates—

(i) the main objectives (including the reasons for each objective) of the Service,

(ii) the strategies that will be pursued in order to achieve the main objectives,

(iii) where reasonably practicable, the outcomes by which the achievement of the main objectives may be measured,

(iv) the uses for which the Director General proposes to apply the resources of the Service, and

(v) any other information connected with the functions of the Service which the Director General considers appropriate,

(c) except in the case of the first such plan, include a review and evaluation of the work of the Service in the performance of its statutory functions in the previous 3 years, and

(d) be consistent with—

(i) the policies of the Government or any Minister of the Government, to the extent that those policies may affect or relate to the functions of the Service,

(ii) the Performance Framework provided by the Minister in relation to that strategic plan, and

(iii) any general directives or guidelines issued by the Minister under Head 49.

- (3) The Director General shall, before preparing a strategic plan, consult with the Board and with such persons as he or she considers appropriate.
- (4) In preparing a strategic plan, the Director General shall have regard to –
 - (a) the views of the Board and of such other persons as may be consulted under subhead (3), and
 - (b) the resources reasonably and prudently expected to be available to the Service for the period to which the strategic plan relates, and the need to ensure the most effective and efficient use of those resources.
- (5) Within 2 months after receiving a strategic plan under this Head, the Minister shall—
 - (a) approve the plan, or
 - (b) give a direction to the Director General regarding amendments to the proposed plan and the period of time within which an amended plan is to be submitted to the Minister for approval.
- (6) The Minister may refuse to approve a strategic plan where it is not amended in accordance with any directions that he or she has given under subhead (5)(b).
- (7) An approved strategic plan may be amended—
 - (a) by the Minister at any time having consulted with the Board and the Director General, or
 - (b) by the Director General, where he or she (having consulted with the Board) submits an amendment to the Minister for approval and that amendment is approved by the Minister.
- (8) Nothing in a strategic plan shall to be taken to prevent or limit the performance by the Director General of his or her functions under this Act.

Notes

This Head is based partly on section 42 of Child and Family Agency Act 2013 and partly on section 63 of the Policing, Security and Community Safety Bill 2023. Its purpose is to provide for the preparation and adoption of a three-year strategic plan for the IPS and its submission to the Minister for approval.

Subhead (1) provides that the Director General shall submit a strategic plan to the Minister for approval, with or without amendment, for the ensuing 3 years.

Subhead (2) provides that the plan must be prepared in a form and manner that accords with any directions issued by the Minister and that it should include (inter alia) the key objectives of the IPS, the strategies that will be pursued to achieve those objectives, and the intended outcomes by which success can be measured. It also provides that the plan is to be consistent with the Performance Framework issued by the Minister, with Government policy, and with any guidelines or general policy directives issued by the Minister.

Subhead (3) provides that in preparing the plan, the Director General shall consult with the Board and with such other stakeholders as the Director General considers appropriate.

Subhead (4) specifies a number of matters to which the Director General is to have regard when preparing the plan. These include any views provided by the Board and any other persons consulted under subhead (3).

Subheads (5) - (7) concern the approval and amendment of the plan. Subhead (5) is modelled on section 63(6) of the Policing, Security and Community Safety Bill 2023. It provides that the Minister shall, within 2 months of receipt, either approve the plan or issue directions on its amendment. Subhead (6) provides that the Minister may refuse to approve the plan where the plan is not amended in accordance with any directions he or she has given. Subhead (7) provides for the amendment of the plan from time to time by either the Minister or (with the Minister's approval) by the Director General, in either case following consultation with the Board.

Head 42 Publication and implementation of approved strategic plan

Provide that –

- (1) Subject to subhead (2) the Minister shall cause a copy of an approved strategic plan to be laid before each House of the Oireachtas—
 - (a) as soon as practicable after the plan is approved by the Minister, and
 - (b) if the plan is amended under Head 41(7), as soon as practicable after –
 - (i) in the case of an amendment made by the Minister, the making of the amendment, or
 - (ii) in the case of an amendment made by the Director General, the amendment is approved by the Minister.
- (2) The Director General shall ensure that, as soon as practicable after copies of the strategic plan are laid before the Houses of the Oireachtas, the plan, as laid, is published on the website of the Service or in such other manner as the Minister may specify.
- (3) The Director General shall provide the Minister with an update on the implementation of an approved strategic plan—
 - (a) in the annual report, and
 - (b) in such other manner and at such intervals as the Minister may direct.
- (4) The Board, having consulted with the Director General, shall provide the Minister with its assessment of the implementation of an approved strategic plan—
 - (a) in the annual report, and
 - (b) in such other manner and at such intervals as the Minister may direct.

Notes

This Head provides for the laying and publication of the approved strategic plan and the submission by the Director General of progress reports on its implementation. It is adapted from section 64 of the Policing, Security and Community Safety Bill 2023.

Subhead (1) is a standard provision. It provides that the Minister shall lay the approved plan before both Houses of the Oireachtas as soon as practicable.

Subhead (2) provides that the Director General shall arrange for publication of the approved plan (and any subsequent amended version) as soon as practicable after it has been laid before the Oireachtas.

Subhead (3) provides that the Director General shall provide the Minister with progress reports on implementation of the strategic plan, as part of the IPS annual report and in such other manner as the Minister may direct.

Subhead (4) provides that the Board shall provide its assessment of the implementation of the strategic plan, as part of the IPS annual report and in such other manner as the Minister may direct. This seeks to reflect the role of a State board in evaluating the implementation of strategic plans as recommended by the Code of Practice for the Governance of State Bodies.

Head 43 Statement of priorities

Provide that –

(1) The Minister shall develop an annual statement (in this Act referred to as the “Statement of Priorities”) to provide the Director General with specific policy guidance, direction, prioritisation and resource parameters in respect of each year for the preparation and adoption of its annual business plan.

(2) The Minister shall provide the Statement of Priorities to the Director General as soon as practicable following the publication by the Government of the Estimates for Public Services.

(3) The Statement of Priorities shall have regard to the Performance Framework in effect at that time.

Notes

This Head is largely based on section 44 of the Child and Family Act 2013. It provides that the Minister will annually provide the Director General with a Statement of Priorities consisting of policy guidance, direction, prioritisation and resource parameters for the purposes of the IPS annual business plan.

Head 44 Annual business plan

Provide that –

- (1) Before the expiry of the specified period, and having consulted with the Board, the Director General shall prepare and submit to the Minister an annual business plan for the Service for the following year.
- (2) For the purpose of subhead (1), the specified period is–
 - (a) the period ending 42 days following receipt of the Statement of Priorities in respect of the year concerned, or
 - (b) such other period as the Minister may allow.
- (3) The Minister may, in writing, give a direction to the Director General as respects the form and manner in which the annual business plan is to be prepared and any information that is to be included in the plan.
- (4) The annual business plan shall be prepared in a form and manner which is consistent with any direction issued by the Minister under subhead (3) and shall–
 - (a) accord with the Statement of Priorities in respect of the year concerned,
 - (b) outline the Service's proposed activities for the period to which the business plan relates and the proposed performance targets relating to those activities,
 - (c) contain estimates of the income and expenditure of the Service for the period to which the plan relates,
 - (d) detail the proposed allocation of the total resources (both financial and human) of the Service for the period to which the plan relates,
 - (e) indicate any capital expenditure proposed by the Service,
 - (f) be consistent with –
 - (i) the strategic plan in operation at that time,
 - (ii) the policies and objectives of the Government or any Minister of the Government to the extent that those policies may affect or relate to the functions of the Service, and
 - (iii) the resources reasonably and prudently expected to be available to the Service for the period to which the plan relates,

and

- (g) contain any other information specified by the Minister under subhead (3).
- (5) Within 28 days after receiving an annual business plan under this Head, the Minister shall—
- (a) approve the plan,
 - (b) approve the plan with such amendments as the Minister, having consulted with the Director General, may determine, or
 - (a) give a direction, in writing, to the Director General regarding amendments to the plan and the period of time within which an amended plan is to be submitted to the Minister for approval.
- (6) The Minister may direct the Director General to amend an annual business plan submitted to him or her under this Head where, in the opinion of the Minister, the plan is in some respect inconsistent with subhead (4).
- (7) The Minister shall, not later than 21 days after the submission to him or her of an annual business plan amended in accordance with a direction given under this Head, approve the plan.
- (8) Where an annual business plan is the subject of a direction given under this Head to amend it, the Minister may refuse to approve the plan unless it is amended in accordance with the direction.

Notes

This Head provides for the submission of an annual business plan as adopted by the Board to the Minister within a defined time period. The Head draws on statutory precedents including section 31 of the Health Act 2004 and section 65 of the Policing, Security and Community Safety Bill 2023.

Subhead (1) requires the Director General to prepare an annual business plan and submit it to the Minister. The plan is to be submitted within a “specified period” defined in subhead (2) as 42 days after the provision of the Minister’s Statement of Priorities under Head 43 or such other period as the Minister may allow.

Subhead (3) provides that the Minister may give a written direction to the Director General on the form and manner in which the annual business plan is to be prepared and on any information to be included in the plan.

Subhead (4) sets out key details to be included in the business plan including an outline of proposed activities and associated performance targets, and how the human and financial resources of the Service are to be allocated. The subhead also provides that the plan is to accord with the Statement of Priorities issued by the Minister and must be consistent

with the strategic plan, Government policy and the resources expected to be available to the Service for the period concerned.

Subheads (5) to (8) deal with the approval and amendment of the annual business plan. Subhead (5) provides that the Minister may approve the plan with or without amendment or direct that it be amended, with subhead (6) providing that the Minister may direct the amendment of the plan if it is, in the Minister's view, inconsistent with subhead (4). Subhead (7) provides that the Minister will approve a duly amended plan within 21 days, while subhead (8) provides that the Minister may refuse to approve a plan if it is not amended as directed.

Head 45 Amendment of annual business plan

Provide that –

- (1) The Minister may at any time direct the Director General to submit an amended business plan and shall specify in the direction the manner in which the plan is to be amended and the period of time within which the amended plan is to be submitted.
- (2) The Director General may, subject to subhead (3), and having consulted with the Board, amend an annual business plan that has been approved by the Minister.
- (3) Subheads (3) to (8) of Head 44 shall apply with the necessary modifications in respect of an amendment of an annual business plan under subheads (1) or (2) above.

Notes

This Head is based in part on section 66 of the Policing, Security and Community Safety Bill 2023 and in part on section 46(7) of the Child and Family Agency Act 2013. It provides that the Minister may at any time direct the amendment of the annual business plan, and also that the Director General may amend the plan. In either case the relevant provisions of Head 44 regarding submission of the business plan to the Minister will apply with the necessary modifications.

Head 46 Implementation of annual business plan

Provide that –

- (1) The Director General shall manage the services set out in the annual business plan so as to ensure, in so far as practicable, that those services are delivered in accordance with the plan and in a manner that does not exceed the resources available to the Service for the period to which the plan relates.
- (2) The Director General shall, as soon as practicable after he or she forms the opinion that any actions, proposed actions, omissions or proposed omissions by him or her will have the effect of the Service exceeding the resources available to it for the period to which the annual business plan relates, so inform the Board and the Minister.
- (3) The Director General shall report to the Minister on the implementation of the business plan—
 - (a) in the annual report, and
 - (b) in such other manner and at such intervals as the Minister may direct.
- (4) The Board, having consulted with the Director General, shall provide the Minister with its assessment of the implementation of the business plan—
 - (a) in the annual report, and
 - (b) in such other manner and at such intervals as the Minister may direct.

Notes

Subhead (1) requires the Director General to manage the services set out in the business plan in accordance with that plan and within the resources available.

Subhead (2) provides that the Director General shall inform the Board and the Minister if he or she believes that expenditure will, as a result of an action or proposed action by him or her, exceed the funding available. This reflects current practice with the exception of the addition of a requirement to inform the Board.

Subheads (3) and (4) provide for the Director General to report on, and for the Board to assess, the implementation of the business plan, via the IPS annual report and in such other manner as may be directed by the Minister. They mirror the processes provided for in subheads (3) and (4) of Head 42 in respect of the implementation of the strategic plan.

Head 47 Capital plan

Provide that –

- (1) The Minister may, having consulted with the Minister for Public Expenditure, National Development Plan Delivery and Reform, request the Director General to submit to him or her a plan for capital expenditure by the Service (in this Act referred to as a “capital plan”).
- (2) A capital plan shall be prepared in such form and contain such information, and relate to such period, as the Minister may direct.
- (3) A capital plan shall be consistent with—
 - (a) the resources reasonably expected to be available to the Service for the period to which the plan relates, and
 - (b) any priorities of relevance to such a plan that may be communicated by the Minister for the period to which the plan relates.
- (4) In preparing the capital plan Director General shall consult with the Board and have due regard to its views.
- (5) The Director General shall submit the capital plan to the Minister within 3 months after receiving a request from the Minister under subhead (1) or within such longer period as the Minister may allow.
- (6) The Minister shall, not later than 42 days after receiving a capital plan —
 - (a) approve the plan,
 - (b) approve the plan with such amendments as the Minister, having consulted with the Director General, may determine, or
 - (c) give a direction to the Director General under subhead (6) to amend the plan.
- (7) The Minister may direct the Director General to amend a capital plan submitted to him or her under this Head where, in the opinion of the Minister, the plan—
 - (a) is not in compliance with subhead (2), or
 - (b) has been prepared without sufficient regard to the matters referred to in subhead (3).
- (8) The Minister may at any time direct the Director General to amend an approved capital plan.

- (9) The Director General may, subject to subhead (10), amend a capital plan.
- (10) Subheads (3) to (8) shall apply, with the necessary modifications, to a capital plan amended under subhead (9).

Notes

The purpose of this Head is to provide a structured approach to the development of capital plans within the IPS and its engagement with the Minister and Department in these matters. It is largely based on section 68 of the Policing, Security and Community Safety Bill 2023, while drawing to a degree on statutory precedents including section 33B of the Health Act 2004.

Subhead (1) provides that the Minister may request the Director General to submit a capital plan to the Minister for approval with or without amendment. Subhead (2) provides that the Minister may specify the form in which the capital plan is to be prepared, the information it is to contain, and the period to which it is to relate.

Subhead (3) specifies that the plan is to be consistent with the resources expected to be available for the period concerned, and with any relevant priorities communicated by the Minister.

Subhead (4) provides that the Director General shall, in preparing a capital plan, consult with the Board and take due account of its views.

Subheads (5) to (9) deal with the submission, approval and amendment of the capital plan. Subhead (7) provides that the Minister may direct the amendment of a submitted plan if, in his or her view, it does not meet the requirements of subheads (2) or (3). Subhead (8) provides that the Minister may at any time direct the amendment of an approved plan. Subhead (9) provides that the Director General may amend the plan, subject to observing the requirements of subhead (3) to (8) (including the requirement for the Minister's approval) with the necessary modifications.

Head 48 Implementation of capital plan

Provide that –

- (1) The Director General shall take steps to ensure that the expenditure under a capital plan does not exceed the resources available to the Service for such expenditure for the year or years to which the plan relates.
- (2) The Director General shall so inform the Minister and the Board as soon as is practicable after he or she forms the opinion that that any actions, proposed actions, omissions or proposed omissions by him or her will have the effect of causing capital expenditure to exceed the resources available to the Service for the year or years to which a capital plan relates.
- (3) The Director General shall report to the Minister on the implementation of a capital plan—
 - (a) in the annual report, and
 - (b) in such other manner and at such intervals as the Minister may direct.
- (4) The Board, having consulted with the Director General, shall provide the Minister with its assessment of the implementation of a capital plan—
 - (a) in the annual report, and
 - (b) in such other manner and at such intervals as the Minister may direct.

Notes

The purpose of subheads (1) and (2) is to oblige the Director General to take steps to ensure that capital expenditure does not exceed the resourcing available under a capital plan, and to inform the Minister and the Board if he or she forms the opinion that an action or proposed action by him or will result in the available resources being exceeded. This reflects current practice, with the addition of the requirement to inform the Board. These subheads are based on section 34A of the Health Act 2004 (as amended).

Subheads (3) and (4) respectively provide for the Director General to report on, and the Board to assess, the implementation of any capital plan, via the IPS annual report and in such other manner as may be directed by the Minister.

Head 49 Power of Minister to issue general directives and guidelines

Provide that –

- (1) Notwithstanding any other provision of this or any other Act, the Minister may from time to time, in writing, issue to the Director General such general directives or guidelines as the Minister considers appropriate in relation to—
 - (a) penal policy,
 - (b) changes in prioritisation of commitments under the strategic plan or capital plan, or
 - (c) codes of practice for governance or other such codes that may be issued from time to time by a Minister of the Government,
- (2) In performing his or her functions the Director General shall comply with any general directives issued under subhead (1) and have regard to any guidelines issued under that subhead.
- (3) The Minister shall provide to the Board a copy of any directives or guidelines issued under subhead (1).

Notes

The principal aim of this Head is to provide, for the avoidance of any doubt, that the Minister retains overall authority in matters of policy and strategic prioritisation and can issue general directives to that end with which the Director General shall comply, and guidelines to which the Director General is to have regard. The Head is partly based on section 12 of the Higher Education Authority Act 2022, which (along with various other precedents) contains similar provisions in relation to the issuance of Ministerial guidelines.

The statutory issuance by a Minister of general directives in a given policy area has precedent in (inter alia) section 7 of the Civil Legal Aid Act 1995, section 29 of the Planning and Development Act 2000 and, more recently, section 11 of the Regulation of Providers of Building Works and Miscellaneous Provisions Act 2022.

Head 50 Power of Minister to give direction to the Director General

- (1) Notwithstanding any other provision of this or any other Act, the Minister may at any time give a direction in writing to the Director General for any purpose relating to this Act and concerning—
 - (a) any matter or thing referred to in this or any other Act, or
 - (b) the implementation of any policy or objective of the Minister or the Government,and the Director General shall comply with such a direction.
- (2) The Director General shall, within the time specified by the Minister in a direction given under subhead (1), inform the Minister of the specific measures taken to comply with that direction.
- (3) The Minister may, by direction, in writing, amend or revoke a direction given under subhead (1).
- (4) The Minister shall provide to the Board a copy of any direction given under subheads (1) or (3).

Notes

This Head empowers the Minister to give a direction to the Director General for any purpose relating to this Scheme and concerning any matter encompassed under the Scheme or any other enactment, or the implementation of any policy or objective of the Minister or the Government. The Head is based on recent precedents including section 11 of the Higher Education Authority Act 2022 and section 47 of the Child and Family Act 2013. (See also section 37 of the Policing, Security and Community Safety Bill 2023, which provides that the Minister may issue directives to the Garda Commissioner concerning any matter relating to An Garda Síochána.)

Head 52 Duties of Director General to inform and assist the Minister

Provide that –

- (1) The Director General shall provide all information and assistance that the Minister may require for the purposes of discharging the Minister’s functions under this Act or any other enactment.
- (2) The Director General shall keep the Minister and the Secretary General of the Department informed of the following:
 - (a) Any matter likely to give rise to significant public concern including, but not limited to—
 - (i) the escape from custody of any person,
 - (ii) serious disturbances (including any disturbances resulting in injury to persons or damage to property),
 - (iii) the death of any person in custody,
 - (iv) any developments that might reasonably be expected to affect adversely public confidence in the administration of a prison;
 - (b) matters relevant to the accountability of the Government to the Houses of the Oireachtas;
 - (c) any other matters that, in the opinion of the Director General, should be brought to the Minister’s attention.
- (3) Whenever required by the Minister, the Director General shall submit to the Minister--
 - (a) A report on any matters connected with the management of a prison or prisons generally or the performance of such other functions of the Director General or the Service as may be specified in the requirement, and
 - (b) any document in the power or control of the Service, including material in the form of records, reports and statements made by staff of the Service and by other persons.
- (4) A report under subhead (3) shall—
 - (a) address matters of general or specific concern that are specified in the Minister’s requirement, and
 - (b) be made in the form and within the period, if any, specified in the requirement.
- (5) The Minister may publish all or part of a report submitted under subhead (3).

- (6) Nothing contained in an enactment, and no rule of law, which would require obtaining the consent of a person in order for the Director General to furnish the Minister with information or documents referred to in subhead (1), shall operate to prohibit or render such furnishing unlawful.
- (7) Nothing contained in an enactment, and no rule of law, relating to the non-disclosure or confidentiality of information or documents, shall operate to prohibit the Director General from furnishing the Minister with information or documents under this Head, or render such furnishing unlawful.

Notes

This Head draws largely from section 36 of the Policing, Security and Community Safety Bill 2023, which places similar duties on the Garda Commissioner to provide information to the Minister and the Secretary General of the Department of Justice.

The purpose of the Head is to continue to ensure that that the Minister and Department are kept appropriately informed, and able to inform themselves, of developments in the prison system for the purposes of supporting the full discharge of the Minister's functions and the Government's accountability to the Oireachtas.

Subhead (1) provides that the Director General shall provide the Minister with all information and assistance that he or she may require for the purpose of carrying out his or her functions.

Subhead (2) provides that the Director General shall inform the Minister and the Secretary General of specified matters likely to give rise to public concern and of any matters relevant to the Government's accountability to the Oireachtas. The subhead does not specify the manner in which the Director General is to keep the Minister and the Secretary General informed. It may be done verbally or in writing as the circumstances require.

Subhead (3) obliges the Director General to submit a report, wherever so required by the Minister, on any matter concerning the management of a prison or prisons or the performance of the functions of the Director General or the IPS. It also requires the Director General to supply to the Minister any requested document in the possession of the Service (this latter provision is drawn from section 35(2) of the Policing, Security and Community Safety Bill 2023, while a similar provision is contained in section 15(2) of the Child and Family Agency Act 2013).

Subheads (6) and (7) are modelled on subsections (3) and (4) of section 15 of the Child and Family Agency Act 2013.

Head 52 Annual Report

Provide that –

- (1) The Director General shall, not later than 4 months after the end of each year, submit to the Minister a report on the performance of the Service during the preceding year (in this Act referred to as the “annual report”).
- (2) An annual report shall not be submitted under subhead (1) unless it has been adopted by the Board.
- (3) The annual report shall, in addition to such matters as are specified elsewhere in this Act, include –
 - (a) a general statement of the services provided during the preceding year by the Service and of its activities in that year,
 - (b) a report on the implementation of the approved strategic plan during the year,
 - (c) a report on the implementation of the approved annual business plan including the achievement of the objectives set out therein,
 - (d) a report on the implementation of the capital plan during the year,
 - (e) an indication of the Service’s arrangements for implementing and maintaining adherence to its governance framework,
 - (f) a report on the implementation of any directives given or general directives issued by the Minister under this Act,
 - (g) any other matters that the Director General or the Board thinks fit,
 - (h) any matters that the Minister may request for inclusion, and
 - (i) a report from the chairperson of the Board which includes an account of the Board’s activities during that year and any related matters that the Board thinks fit.
- (4) Subject to subhead (4) the Minister shall ensure that copies of the annual report are laid before both Houses of the Oireachtas as soon as practicable after he or she receives the report.
- (5) The Minister may exclude from the copy of the annual report to be laid before each House of the Oireachtas any matter that, in his or her opinion—
 - (a) might prejudice the interests of the security of a prison or prisons generally,
or

- (b) might facilitate the commission of an offence, prejudice a criminal investigation or be detrimental to the privacy or safety of any person.
- (6) The Director General shall ensure that, as soon as practicable after copies of the annual report are laid before the Houses of the Oireachtas, the report, as laid, is published on the website of the Service or in such other manner as the Minister may specify.

Notes

This Head provides for the preparation by the Director General of an annual report for the IPS, its adoption by the Board, and its submission to and publication by the Minister.

Subhead (2) specifies a range of matters to be included in the report; these are largely derived from section 70(3) of the Policing, Security and Community Safety Bill 2023. Special provision is made for the annual report to incorporate a report from the Board giving an account of its activities during the year.

Subhead (5) provides that the Minister may redact certain material from the copy of the annual report as laid before the Houses of the Oireachtas i.e. any material which, in the Minister's view, might prejudice the security of any prison or prisons generally or might facilitate an offence, prejudice a criminal investigation or be detrimental to any person's privacy or safety. This is considered a necessary safeguard given the sensitive environment in which the management of prisons and prisoners occurs.

PART 7 – AMENDMENTS, ETC.

Head 53 Amendments to General Prisons (Ireland) Act 1877

Provide that–

The General Prisons (Ireland) Act 1877 is hereby amended by the deletion of sections 5, 6, 8, 11, 15, 16, 17, 18, 19, 27, 28, 29, 43, 45, 46 and 50.

Notes

The purpose of this Head is to delete various provisions of the General Prisons (Ireland) Act 1877 (as adapted by section 11 of the Adaptation of Enactments Act 1922) which either appear obsolete or which provide particular Ministerial powers and functions that, by virtue of provisions of this General Scheme, need to be removed. These include the appointment and payment of staff; the vesting of the prison estate in the Minister; the power to acquire land to “improve prisons and build new ones”; the maintenance, repair etc of prisons; the appointment, assignment, salary and tenure of prison officers; litigation etc.

Head 54 Amendment of section 17 of Criminal Justice Administration Act 1914

Provide that-

Section 17 of the Criminal Justice Administration Act 1914 is amended in each of subsections (1), (3) and (6) by the substitution of “Director General of the Irish Prison Service” for “Secretary of State”.

Notes

The purpose of this Head is to amend section 17 of the Criminal Justice Administration Act 1914 (*as modified by section 43 of that Act and as adapted by section 11 of the Adaptation of Enactments Act, 1922*) so as to transfer from the Minister to the Director General the function of specifying the prisons to which persons may be committed. The exercise of this function involves the making of an order (the “Consolidated Committal Order”) specifying the particular prisons to which prisoners (both remand and sentenced) may be committed having regard to the applicable Court area, geographical considerations and the jurisdiction of certain courts (such as the Special Criminal Court). The function in question is purely operational and is considered suitable to be vested by law in the Director General.

Head 55 Amendments to Prisons Act 1933

Provide that –

- (1) Section 2(1) of the Prisons Act 1933 (in this section referred to as “the Act of 1933”) is amended-
 - (a) by inserting “, having consulted with the Director General of the Irish Prison Service,” after “The Minister may”, and
 - (b) in paragraph (c), by inserting “or, as the case may be, of the Irish Prison Service” after “the estate and interest of the Minister”.
- (2) Section 3 of the Act of 1933 is amended –
 - (a) in subsection (1), by substituting for “the Minister shall retain such prison or part of a prison except so much (if any) thereof as is directed by such order to be transferred to the local authority” the following:

“such prison or part of a prison, except so much (if any) thereof as is directed by such order to be transferred to the local authority, shall be retained by the Minister or, if hitherto vested in the Irish Prison Service under section 16(1) of the Irish Prison Service Act 2023, immediately transfer to and be vested in the Minister without any further transfer, conveyance or assignment”, and
 - (b) In subsection (2) by inserting “or, as the case may be, the Irish Prison Service” after the “Minister for Justice”.
- (3) Section 4(1) of the Act of 1933 is amended by inserting “or transferred to” after “retained by”.

Notes

This Head amends the Prisons Act 1933 (as amended by section 23 of the Prisons Act 2015), which deals with the closure of prisons. The main amendments are to provide that the Minister shall consult with the Director General before issuing a prison closure order and that, if not transferred to a local authority, a prison which is the subject of a closure order will be retained by the Minister (or transfer back to the Minister if it had hitherto been vested in the IPS under Head 16). See also Part 3 of this Scheme and in particular Head 20(5), which broadens the Minister’s powers in respect of the transfer of a prison to another State body on foot of a closure order under the 1933 Act. The interaction between Part 3 of this Scheme and the 1933 Act (and whether the latter could potentially be repealed) will be considered further at the drafting stage.

Head 56 Amendment of section 10 of the Criminal Justice Act 1960

Provide that –

Section 10 of the Criminal Justice Act 1960 is amended by substituting “Director General of the Irish Prison Service” for “Minister”.

Notes

The purpose of this Head is to amend section 10 of the Criminal Justice Act 1960, which provides that the Minister may direct that a remand prisoner be transferred to another remand institution or to a prison proper. The proposed amendment will formally vest this administrative function in the Director General (in line with current delegated practice).

Head 57 Amendment of section 5 of Prisons Act 1970

Provide that-

Section 5 of the Prisons Act 1970 is amended by substituting “Director General of the Irish Prison Service” for “Minister”.

Notes

The purpose of this Head is to amend section 5 of the Prisons Act 1970, which provides that the Minister may direct the transfer of a prisoner from a prison to a place of detention (as defined in that Act). The proposed amendment will formally vest this operational function in the Director General (in line with current delegated practice).

Head 58 Amendments to Criminal Law (Insanity) Act 2006

Provide that –

- (1) Section 15 of the Criminal Law (Insanity) Act 2006 (in this Head referred to as “the Act of 2006”) is amended by substituting “Director General of the Irish Prison Service” for “Minister” throughout.
- (2) Section 17(b) of the Act of 2006 is amended by substituting “Director General of the Irish Prison Service” for “Minister” throughout.

Notes

The purpose of this Head is to amend sections 15 and 17(b) of the Criminal Law (Insanity) Act 2006 which respectively provide that the Minister is copied on notifications relating to transfers of prisoners to and from designated mental health centres, and that the Minister is involved in decisions as to the prison to which a prisoner should be transferred back where they refuse treatment at a designated centre or following a case determination by the Review Board or by the relevant clinical director. The proposed amendments will formally substitute the Director General for the Minister in these operational matters.

Head 59 Amendments to Prisons Act 2007

Provide that –

(1) Section 5 of the Prisons Act 2007 (in this Head referred to as “the Act of 2007”) is amended –

(a) in subsection (1), by substituting “the Director General of the Irish Prison Service (in this Act referred to as ‘the Director General’) may, with the approval of the Minister given with the consent of the Minister for Public Expenditure, National Development Plan Delivery and Reform” for “The Minister may, with the consent of the Minister for Finance and the approval of the Government”;

(b) by substituting for subsection (2) the following:

“(2) The terms and conditions of an agreement to which subsection (1) is to apply shall be as approved by the Minister with the consent of the Minister for Public Expenditure, National Development Plan Delivery and Reform.”; and

(c) in subsection (3), by substituting “Director General” for “Minister”.

(2) Section 6 of the Act of 2007 is amended–

(a) in subsections (1), (3), (4), (5), (6), (8), (10), (11), (12), (13) and (14), by substituting “Director General” for “Minister”; and

(b) in subsection (2), by substituting –

(i) “determined by the Director General with the approval of the Minister” for “determined by the Minister”, and

(ii) “as the Director General may reasonably require” for “as the Minister may reasonably require”.

(3) Section 7 of the 2007 Act is amended by substituting “Director General” for “Minister” throughout.

(4) Section 9(1)(a) of the Act of 2007 is amended by substituting “Director General” for “Minister”.

(5) Section 10 of the Act of 2007 is amended –

(a) by substituting “Director General” for “Minister” throughout, and

(b) by adding a new subsection (2)(A) as follows:

“Copies of a report submitted under subsection (2) shall be forwarded by the Director General to the Minister and to the Board”.

- (6) Section 13(1)(ii) of the 2007 Act is amended by adding “, a member of staff of the Irish Prison Service so authorised by the Director General” after “healthcare professional”.
- (7) Section 14 of the 2007 Act is amended by substituting “Director General” for “Minister” throughout.
- (8) Section 39 (1) of the 2007 Act is amended by substituting “Director General” for “Minister”.

Notes

This Head makes a range of necessary or appropriate amendments to the Prisons Act 2007.

Subheads (1) to (5) makes a number of amendments to sections Part 2 of the 2007 Act (in sections 5 to 10), which provides for the outsourcing of prisoner escorts. The proposed amendments substitute the Director General for the Minister in various matters relating to the contracting out of prisoner escort services, the functions and certification of escort officers, revocation of such certificates etc, while also providing that the Minister must approve any such outsourcing. Part 2 of the Act has not been used to date.

Subhead (6) adds “a member of staff of the Irish Prison Service so authorised by the Director General” to the list set out in section 13(1)(iii). The list comprises the exempted cases where a prisoner is otherwise prohibited (as a disciplinary sanction) from receiving visits.

Subhead (7) substitutes the Director General for the Minister in section 14 of the Act, which provides that a prison may petition the Minister against a disciplinary sanction and that the Minister may alter or revoke the sanction.

Subhead (8) formally devolves to the Director General the Minister’s operational power under section 39 (1) of the 2007 Act to order the short-term removal of a prisoner to a specified person or place either on compassionate grounds, to assess suitability for early release or to assist with an investigation.

Head 60 Amendment of section 24(4)(a) of Prisons Act 2015

Provide that –

Section 24(4)(a) of the Prisons Act 2015 is amended by substituting “given to the Director General and transmitted by the Director General to the governor in charge of the prison concerned” for “given to the governor of the prison concerned”.

Notes

This Head amends Section 24(4)(a) of the Prisons Act 2015 so as to provide that a Ministerial direction to remove a prisoner for deportation shall be given to the Director General, who will transmit it the governor concerned (in place of the current provision that the direction shall be given to the governor by the Minister).

Head 61 Amendment of Schedule to National Archives Act 1986

Provide that –

The Schedule to the [National Archives Act 1986](#) is amended by the addition of “the Irish Prison Service”.

Notes

This is a standard provision to bring the records of the IPS (as a statutory public body) within the ambit of the National Archives Act.

Head 62 Preservation of existing statutory powers of Minister

Provide that-

- (1) All powers vested, by statute or otherwise, in the Minister in relation to the operation of prisons and the administration of sentences prior to the coming into effect of this Act remain so vested unless otherwise provided by this Act.
- (2) Any instrument made under an enactment that relates to a function of the Service established by this Act and that is in force immediately before the establishment day shall, on and after the establishment day, continue in force unless it is otherwise amended or revoked.

Notes

The purpose of this Head is to clarify, for the avoidance of any doubt, that all relevant powers of the Minister remain vested in the Minister unless otherwise provided by this Scheme, and that all relevant statutory instruments remain in force.