



DPE 022/007/2021

05th April 2022

To: Accounting Officers

DPER Circular: 10/2022

Minute of the Minister for Public Expenditure and Reform in response to the Committee of Public Accounts Report on the Examination of the 2019 Appropriation Accounts for Vote 24 - Justice and Equality; and Vote 21 – Prisons.

A Dhuine Uasail,

I am directed by the Minister for Public Expenditure and Reform to enclose, for your information and guidance, a copy of the Minute of the Minister for Public Expenditure and Reform in response to the Committee of Public Accounts Report on the Examination of Matters in relation to the 2019 Appropriation Accounts for Vote 24 - Justice and Equality; and Vote 21 – Prisons.

Issues raised

The Minute of the Minister addresses the following issues:

- Direct Provision;
- Detaining Individuals on Immigration offences;
- Protected Disclosures in the Irish Prison Service; and
- Catering and Ancillary Services in Prisons

Enquiries

Enquiries in relation to this Circular should be addressed to Government Accounting Unit, Department of Public Expenditure and Reform, telephone: +353 1 6767571 or email: govacc@per.gov.ie.

Mise le Meas,

David Moloney
Secretary General

**Committee of Public Accounts Report on the Examination of the 2019 Appropriation Accounts for
Vote 24 - Justice and Equality; and Vote 21 – Prisons**

The Minister for Public Expenditure and Reform has examined the Committee's Report and has taken account of its recommendations. In relation to the Committee's recommendations, the Department of Public Expenditure and Reform has engaged with the Department of Justice and the Irish Prison Service and the response to each recommendation is as follows:

Issue 1 – Direct Provision:

Direct Provision is the name used to describe the accommodation, food, and weekly cash allowance provided to those seeking international protection in Ireland i.e. asylum seekers.

At the time of the meeting, there were 44 Direct Provision centres providing accommodation for international protection applicants. Seven of these are State-owned while the remainder are leased from private companies. An additional 27 emergency centres were also in use, mainly in hotel-type settings.

In 2019, Vote 24 recorded expenditure of €130 million on accommodation for asylum seekers. This represents a 66% increase on this expenditure in 2018. Due to a lack of capacity in Direct Provision centres €35 million of this was spent on emergency accommodation, an increase of 25% from 2018. The Department attributed this to an increase in the number of asylum seekers accommodated in 2019.

In 2019, there was 4,781 applications for international protection, a 30% increase on the number of applications received in 2018. This is low by European standards and Ireland receives just 0.6% of all international applications made within the EU. The Department stated that the increase in applications resulted in greater reliance on emergency accommodation which is often more expensive.

The Committee is unsatisfied with the State's reliance on emergency accommodation, which is often provided in hotel settings. The Committee is of the opinion that this type of accommodation does not provide adequate facilities for those living there. For example, the Department stated that only 50% of those accommodated in Direct Provision have access to cooking facilities. While responsibility for the provision of accommodation for those seeking international protection transferred to the Department of Children, Equality, Disability, Integration and Youth in 2020, responsibility for processing applications for international protection remains with the Department of Justice.

According to the *Annual Report on Migration and Asylum 2019: Ireland*, the median processing time for international protection applications was 15.6 months. That report also stated the intention by the then Minister for Justice and Equality to reduce processing times to nine months. The Committee is of the opinion that there is a clear correlation between processing times and the amount of time individuals spend in Direct Provision and, therefore, on the amount spent on Direct Provision. The Committee also heard from the Department on the use of intermediaries in sourcing accommodation for direct provision. However, Members were not provided with the cost of or the rationale for utilising such intermediaries.

Recommendation 1 (a):

Given the costs associated with Direct Provision, the Committee recommends that the Department of Justice ensures that all applications for international protection are processed within nine months. The Committee also recommends that the Department provides the Committee with an update on current timeframes and the steps it is taking to reduce them.

Recommendation 1 (b):

In relation to the use of intermediaries in sourcing accommodation for direct provision, the Committee recommends that the Department of Children, Equality, Disability, Integration and Youth - to which responsibility transferred in 2020 - provides the Committee with a report on same to include:

- **the costs associated with this practice to date,**
- **the average cost as a component of total costs of direct provision, and**
- **Information on any continued use of intermediaries.**

The Minister for Public Expenditure and Reform is informed by the Department of Justice that it accepts this recommendation.

The Department of Justice informs the Minister for Public Expenditure and Reform that:

- Its overall objective is to have decisions made on applications from people seeking international protection as quickly as possible. This ensures that those found to be in need of protection in Ireland can receive it quickly and begin rebuilding their lives here with a sense of safety and security.
- However, ongoing work to improve processing times have been seriously impacted by Covid-19, which has reduced the output of decisions below that projected in advance of the pandemic.
- Despite the complex challenges presented by the pandemic, the International Protection Office (IPO) of the Department of Justice processed 2,667 applications for international protection to completion/closure in 2021. It recommended a grant of protection status or a decision to grant permission to remain at first instance in 1,527 cases during 2021 (57% of all cases processed). The number of cases processed in 2021 was 111% higher than 2020.
- The median processing time for all cases processed to completion in the IPO in 2021 was 23 months and 10 months for prioritised cases. The median processing time for cases completed in the Ministerial Decisions Unit in 2021 was 4 days.
- The Department of Justice is fully committed to implementing the key recommendations in the Expert Advisory Group Report to reduce processing times of both first instance decisions and appeals to 6 months respectively, as outlined in the White Paper to End Direct Provision and Establish a New International Protection Support Service.

- The White Paper proposes that the new system should be operational by 2024 and that the intervening period should provide an opportunity to progress improvements in the overall processing times for international protection.
- An end-to-end review of relevant international protection processes by a multi-disciplinary team from within the Department has now been completed and published. Over the last number of months, the Department has implemented measures to assist in meeting its overall objectives in this regard and improve on efficiencies and case throughput.
- One such measure is the careful identification of certain applications that may proceed without the need for an interview. While applicants for international protection are generally interviewed, the legislation allows a trained international protection officer to dispense with the interview if they are of the opinion that based on the available evidence, the applicant is a person that should be granted a refugee declaration.
- Other measures include the restructuring of teams within the International Protection Office (IPO) to allow for more efficient workflow, identification and streamlining of processes and ensuring that staff are directed to the areas where they can add most value.
- A case management process has oversight of applications to ensure they are moved through the process without unnecessary delay. Additional staff have also been trained to conduct interviews, which has increased interviewing capacity, and a revised, “plain English” approved, shorter international protection questionnaire is in place since 28 June 2021, and is available in a wide selection of languages. Applicants can also now fill in the questionnaire online and submit it by e-mail to the IPO. The online questionnaire is currently available in English, French and Arabic, with more languages to follow.
- The recently announced Regularisation Scheme for Long-Term Undocumented Migrants also includes a separate strand to implement the recommendation included in the Report of the Expert Advisory Group, led by Dr Catherine Day. Applicants who have an outstanding international protection application and have been in the asylum process for a minimum of two years are being invited to apply for consideration under this separate strand of the Scheme, which opened for applications on 7 February 2022.
- By October 2022 at the latest, the Department of Justice will commence a review of the progress made in reducing and improving processing times. Based on the outcome of that review, it will decide by the end of this year whether additional measures are required in order to ensure that the new system can come into operation without the overhang of any significant number of legacy cases.

- Since the commencement of the International Protection Act 2015, the best year for decisions output in the IPO was 2019, with an average of 286 first instance recommendations/decisions per month.
- The average monthly total of first instance recommendations/decisions in Q4 2021 was 389 (36% above the highest pre-COVID average in 2019 and 132% above the average of the first 9 months of 2021).
- The figure for the month of January 2022 is expected to exceed 400 closed cases, demonstrating the momentum created by some of the early innovations and efforts of staff, along with the above mentioned enhancements that have been made to the international protection process.

Recommendation 1(b):

In relation to the use of intermediaries in sourcing accommodation for direct provision, the Committee recommends that the Department of Children, Equality, Disability, Integration and Youth - to which responsibility transferred in 2020 - provides the Committee with a report on same to include:

- the costs associated with this practice to date,
- the average cost as a component of total costs of direct provision, and
- Information on any continued use of intermediaries.

The Department of Children, Equality, Disability, Integration and Youth have provided the following response to the Committee in respect of Recommendation 1.

In relation to the use of intermediaries in sourcing accommodation for direct provision the table below sets out the payments made to **Brimwood Ltd (previously Trenthall Ltd)** to provide accommodation for international protection applicants since September 2018. The table also sets out the cost of payments to this company as a component of total costs of direct provision from each year from 2018 to 2021.

While the payments to Brimwood Ltd. may have integrated a commission fee into the accommodation fee, no separate or additional payment was made to Brimwood Ltd. for sourcing the accommodation.

Payments to Brimwood Ltd (previously Trenthall Ltd) for the provision of accommodation for international protection applicants, 2018 – 2021

Year	€ paid	Overall Appropriation Account Costs for Asylum seeker accommodation	% Vs Overall DP Costs
2018	€0.95m	€78m	1.2%
2019	€10m	€129m	7.7%
2020	€16m	€183m	8.7%
2021	€15m	€190m	7.8%
Total	€41.95m	€580m	7.2%

Information on the use of intermediaries

In September 2018, at a time when demand for international protection accommodation was outstripping supply, the Reception and Integration Agency (RIA) of the Department of Justice and Equality approached Brimwood Ltd. (previously Trenthall Ltd.) to source accommodation on its behalf. The Department received the contact from the Dublin Regional Homeless Executive.

Brimwood Ltd. entered into contracts with RIA to provide accommodation for international protection applicants, either directly in its own hotels or indirectly by sourcing accommodation in other hotels and guesthouses.

In 2018 and 2019, the Department of Justice and Equality conducted expressions of interest (EOI) in order to seek emergency accommodation. Brimwood Ltd. replied to an EOI in January 2019.

Brimwood Ltd. was the only intermediary utilised by RIA (now the International Protection Accommodation Service) in the period 2018 to 2021.

The Department has not proactively sought intermediaries to source accommodation on its behalf since 2018. However, intermediaries have approached the International Protection Procurement Service (IPPS) more recently to offer accommodation. Where such accommodation is suitable for its needs, IPPS may contract accommodation identified in this way.

Issue 2 – Detaining Individuals on Immigration offences:

During the course of the meeting the Committee was informed that Ireland does not have a specific detention centre for individuals who are refused entry to the State, or for those arrested for immigration reasons. While individuals are awaiting deportation, they are housed within the prison system.

The Department of Justice informed the Committee that it aims to avoid detaining individuals in this manner and as a result, dedicated facilities are not provided for these occurrences. However, in information later supplied to the Committee, the Department stated that in 2019, 479 individuals were detained within the prison system for immigration reasons. The Committee notes that the number of those detained for these reasons has been increasing steadily since 2017. The Committee is of the opinion that this number is significant and that detaining individuals in prison for these reasons does not represent best practice.

Recommendation 2:

The Committee recommends that the Department of Justice examines the practice of detaining individuals within the prison system who are refused entry into the State. The Committee also recommends that the Department reports back to the Committee with its findings within six months.

The Minister for Public Expenditure and Reform is informed by the Department of Justice that it accepts this recommendation.

Justice Plan 2021 contains a commitment to review the policy of holding immigration detainees in prisons and work to complete this action is continuing.

There is a statutory obligation to return a person who is refused entry permission as soon as is practicable. Non-custodial measures, such as a requirement to report to a Garda Síochána station or a requirement to reside in a specified place, are widely used as alternatives to detention.

Section 5 of the Immigration Act, 2003 (as amended by the International protection Act, 2015) contains the main provisions dealing with the removal from the State of persons refused permission to enter.

It specifies that a person to whom this section applies may be arrested by an immigration officer or a member of the Garda Síochána and detained in a prescribed place of detention for the purpose of facilitating their removal from the State, which must be as soon as is practicable.

It also provides that a person may be detained for a period not exceeding 12 hours at the airport or port from which the person is due to depart.

When a person is refused leave to land at an airport, the priority is to return them on the next available return flight to the last point of embarkation. The reason for this is to avoid detaining people where possible. Staff have been trained on issues of vulnerability, including with regard to detecting if a person may be a victim of trafficking or if a person is in need of International Protection. People in these categories will not be returned and they are not detained.

In the case of persons refused leave to land to enter the State, arrangements are made by the Garda National Immigration Bureau (GNIB) to return them to their point of embarkation at the earliest opportunity, which may take a number of days.

With a view to reducing any detention period, where there is no return flight to the airport of embarkation, immigration authorities endeavour to return the person refused leave to land to a different airport in the same country if there is an earlier flight to that State.

Arrangements for the removal of persons refused permission to enter the State are essentially operational matters for the GNIB who work closely with the Department's immigration officers on these matters.

It is important to state that detention for immigration reasons only arises when all other possible options have been considered. Alternatives to detention are routinely used by immigration authorities in Ireland and this is decided on a case-by-case basis. Detention of a person refused entry to the State is only undertaken as a last resort.

The main considerations for a detention decision is the level of risk of absconding, whether the person poses a threat to public security, has committed a serious crime, or if the person has not made reasonable efforts to establish their identity.

Work has been completed on a new Block F in Cloverhill remand prison which was being considered as an option for use to accommodate people detained for immigration purposes to ensure they could be housed separately from people in remand. However, the outbreak of the COVID-19 pandemic required significant measures within the Irish Prison Service (IPS) to manage and control infection risk, which meant it was necessary to repurpose Block F as an isolation unit for those prisoners who have, or are suspected of having, the virus.

When the pandemic is over, consideration will be given to using Block F as a possible location for the accommodation of people detained for immigration purposes separate from people on remand. This consideration will be subject to the availability of staff and the impact on resources. While this option might address the situation in the immediate term, work is ongoing on the consideration of a longer-term sustainable solution.

For the information of the Committee, the number of people detained under immigration laws in Irish prisons for the years 2011-2020 is set out in the table below.

As indicated above, the Department accepts this recommendation of the Committee and is working to progress a review of the policy of holding immigration detainees in prisons. Once completed the outcome of this review and any proposal to progress recommendations made will be shared with the Committee.

Number of Persons detained under Immigration Laws in Irish Prisons 2011 - 2020

Year	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Number of Committals	423	400	396	407	342	421	418	414	490	247	86
Number of Detainees involved	395	385	374	390	335	408	396	406	477	245	83

Figures from IPS Annual Reports for 2011-2020. Figures for 2021 subject to confirmation in the Annual Report for 2021

Issue 3 – Protected Disclosures in the Irish Prison Service:

The Committee raised concerns regarding the process of reporting protected disclosures in the Irish Prison Service (IPS). In 2019 the IPS received eight disclosures that were deemed to be protected disclosures under the *Protected Disclosures Act 2014*. Of these, one was transferred to the Department of Justice and the remaining seven were sent for external investigation. At the time of the meeting, three of these investigations had concluded and one disclosure had been terminated by the investigator.

The IPS informed the Committee that when a disclosure is submitted, it is sent to an external examiner to determine whether it meets the criteria to be classified as a protected disclosure. If a complaint is determined to be a protected disclosure, it is then sent for external investigation.

However, the Committee is concerned that the Terms of Reference for investigating protected disclosures appear to be quite narrow and that cases cannot be sent to An Garda Síochána if criminality is suspected. While the Committee is aware that the Terms of Reference and the legal status of protected disclosure investigations are not determined by the Department of Justice or the IPS, it remains a matter of concern.

Furthermore, the Committee notes that a negative perception of the protected disclosures process could potentially deter individuals from making disclosures for fear of professional reprisal. The Department and the IPS stated that no staff member has been disciplined as a result of making a protected disclosure and that the IPS' Protected Disclosure Policy allows for individuals to make a complaint if they feel they have been disciplined for this reason. Nevertheless, the Committee is concerned that the Protected Disclosure Policy is not fully working in the way it was intended to and that disclosers are not fully protected by the process.

Recommendation 3:

The Committee recommends that the Department of Justice reviews the Protected Disclosure Policy currently applied in the Irish Prison Service with a view to ensuring that the policy is working as intended and that staff members can have confidence in the system. The Committee recommends that this review is carried out within six months and that it is furnished with a copy of the findings.

The Minister for Public Expenditure and Reform is informed by the Department of Justice and the Irish Prison Service that it accepts this recommendation in principle.

The Department of Justice and the Irish Prison Service will comprehensively review their Protected Disclosures policies in the context of the changed obligations arising from Directive (EU) 2019/1937 and to this end, are closely following the progress of the Protected Disclosures (Amendment) Bill 2021, which will transpose the EU Directive into Irish law. However, it is not possible to commit to completing the review within the six months suggested by the Committee, as this is dependent on the legislative process. The Protected Disclosures (Amendment) Bill 2022 was published on Wednesday 9th February.

Issue 4 – Catering and Ancillary Services in Prisons:

In the 2019 *Report on the Accounts of the Public Service*, the C&AG reported on catering and ancillary services in prisons. The Committee discussed this chapter alongside the Appropriation Account for Vote 21 - Prisons, focusing on Voluntary Mess Committees (VMCs) and tuck shops.

VMCs operate in most prisons and act as canteen facilities for prison staff. Kitchen facilities are provided to VMCs free of charge and prisoners prepare food under a training regime that is then sold to prison staff. VMCs purchase food from approved suppliers at prices agreed by the Irish Prison Service.

The C&AG informed the Committee that the relationship between the Irish Prison Service and the VMCs is not underpinned by a written agreement and the report found that adequate processes were not in place to ensure there was no subsidisation of food costs for the staff committees. The IPS stated that following publication of the C&AG's report, new oversight arrangements were agreed between the IPS and VMCs, including the signing of an annual service agreement.

Each prison also operates a shop to facilitate the purchase of personal items by prisoners. Most sales are processed electronically with money transferred directly from each prisoner's personal account for their purchases. However, the report also found that until April 2019 staff were able to make cash purchases in these shops resulting in cash being handled on site.

In 2019 gross profit of €1 million was recorded from sales of €7 million across the prison system. The C&AG found a number of issues in respect of the operation of the prison shops, including weaknesses in controls over stock and cash purchases and delays in the submission of accounts and bank reconciliations. The IPS explained that work was on-going to strengthen the operation and oversight of prison shops.

The Committee notes that many of the issues were previously discussed with the IPS and remains concerned that many of the issues highlighted by the C&AG have not been adequately addressed. Consequently, the Committee wrote to the Minister for Justice requesting an external investigation of the matters raised. In July 2021 the Minister informed the Committee that a review had been approved and provided the Committee with the Terms of Reference. The Committee welcomed this response from the Minister. The Department subsequently informed the Committee that the review would be completed by the end of 2021 and that it expects to be in a position to publish the report by the end of quarter one 2022.

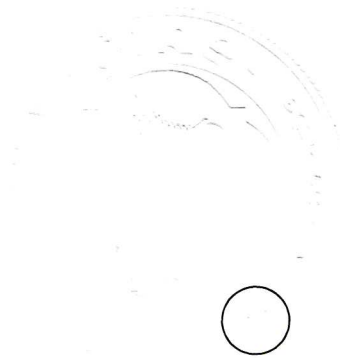
Recommendation 4:

The Committee recommends that the independent review of the operation of Voluntary Mess Committees in prisons is published by the end of quarter one 2022, as stated by the Department of Justice, and that the Committee is furnished with a copy of the report upon its completion.

The Minister for Public Expenditure and Reform is informed by the Department of Justice that it accepts this recommendation.

It is expected that the report will be published and provided to the Committee by the end of Quarter 1 2022. In the event of any unforeseen delay the Committee will be kept informed.

The Department further informs the Minister for Public Expenditure and Reform that the Irish Prison Service has confirmed that a contract for a new stock management system has been awarded and is currently being adapted for implementation in respect of the operation of prison shops. It is expected that it will be implemented in the first prison shop by end April 2022 with full implementation thereafter. This will further strengthen the control environment in relation to the operation of prison shops.



Given under the Official Seal of the Minister for Public Expenditure and Reform on this the 04 day of ~~March~~ April, 2022.

L.S.

David Moloney

Secretary General

Department of Public Expenditure and Reform