



Prison Service Order

ORDER NUMBER 4625

Date of Issue / Amendment	
12/02/2002	
Amendments can be tracked in the Numerical Index.	
PSI Amendments should be read before and in conjunction with PSO	

INTRODUCTION FROM THE DIRECTOR OF RESETTLEMENT

1. This Prison Service Order (PSO) is being issued to provide essential instructions and guidance to staff in prisons who are involved in the production of prisoners to court in civil cases, particularly on the need to take account of prisoners' right to a fair trial under Article 6 of ECHR as incorporated in the Human Rights Act 1998. This PSO replaces the references to productions in civil cases in the Productions Manual.

Performance Standards

2. This PSO does not underpin any Standard.

Output

3. This PSO aims to equip officers who are considering requests for production at court in civil proceedings, with information on the factors, including the Human Rights Act 1998, which are to be taken into account in deciding whether a prisoner should be produced.

Impact and Resource Assessment

4. Officers involved in civil productions will need to be aware of the guidance, be able to access it and apply it to decisions in the future. This should not add to their duties, or require additional resources to be dedicated to this area. In fact, the PSO is intended to offer guidance which should make the decision making process simpler. There is no change in policy, the PSO clarifies existing policy and practice.

Implementation

5. This PSO comes into effect immediately.

Mandatory Action

6. The following mandatory actions are contained in this PSO:
 - *This Order must be held by or made available to all staff who are involved in the consideration of requests for production to court in civil proceedings, and made available to all prisoners.*
 - *All staff involved in considering requests for productions must be aware of and take into account Article 6 of the Human Rights Act 1998 and decide cases on their own merit. (See Chapter 2).*
 - *The primary consideration when dealing with a request to produce a prisoner to attend at a civil hearing, must be whether it is in the interests of justice that he or she should attend. (See Chapter 3).*
 - *The prisoner's ability or willingness to pay for production must not be a factor in deciding whether the prisoner is produced at court. That decision must be based solely on whether it is in the interests of justice that the prisoner attend the proceedings, balanced with security constraints. (See Chapter 5).*
 - *When a decision has been made that the interests of justice require production at court, the normal security considerations (e.g. risk to the public) must be taken into account. (See Chapter 4).*

Contact points

7. Further information is available on the following numbers in Prisoner Administration Group:

Carrie Cannings 020 7217 2933
Kyriacos Lingi 020 7217 6692

NOTE FOR ESTABLISHMENT LIAISON OFFICERS

*ELOs must record the receipt of the Prison Service Order - **Productions in Civil Proceedings** in their registers as issue 147 as set out below. The PSO must be placed with those sets of orders mandatorily required in Chapter 4 of PSO 0001.*

Issue no.	Date	Order no.	Title and / or description	Date entered in set	ELO signature
147	12/02/02	4625	Productions in Civil Proceedings		

Ken Sutton
Director of Resettlement

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CHAPTER ONE : INTRODUCTION

Purpose and Scope of the Order

- 1.1 This Order provides guidance to establishments on the factors (e.g. The Human Rights Act 1998) to be taken into account when deciding whether to produce a prisoner at court for a civil proceeding. Guidance on productions in criminal proceedings is in the Productions Manual and PSO 1801, Production of Prisoners at the Request of the Police. This PSO also introduces a simple system for charging on those occasions when it is decided that a prisoner can afford to contribute to the costs of the production.
- 1.2 Throughout the Order, references to the Governor apply equally to the Directors and Controllers of contracted-out prisons.

Legal Authority for Productions

- 1.3 The statutory basis for production is set out in the Crime (Sentences) Act 1997. The Secretary of State's power to produce the prisoner, which is discretionary, has in most cases, been delegated to Governors. The Governor, on the Secretary of State's behalf must decide if the attendance of the prisoner at court is "desirable in the interests of justice"; and if it is, he must exercise his discretionary powers under the Act to produce the prisoner. This involves balancing the prisoner's right of access to the court on one hand and security and cost to the Prison Service on the other.

Policy

- 1.4 The Human Rights Act 1998 has emphasised the importance of carefully considering a request for production to avoid the Prison Service being vulnerable to a challenge under Article 6 (Right to a Fair Trial). This applies to civil rights and obligations as well as criminal charges - see chapter 2 for further details.
- 1.5 It remains the Governor's decision (*except in the case of Category A prisoners see 4.3*) whether or not to produce the prisoner. This guidance aims to assist the decision making process.

Types of Proceedings for which Production may be requested

Courts

- 1.6 The most common types of civil proceedings are :
 - Family matters, e.g. divorce proceedings, access and custody matters;
 - Applications by local authorities for care orders in respect of children;
 - Wardship proceedings in respect of children;
 - Injunction applications; and
 - Applications for affiliation or maintenance orders.

There may also be requests involving re-possession, eviction and bankruptcy proceedings, applications to appear as parties to civil proceedings or private prosecutions.

Quasi Judicial proceedings

1.7 Applications may also be received for production to quasi-judicial proceedings, such as:

- Criminal Injuries Compensation Authority hearings;
- Employment Tribunals;
- Hearings of professional disciplinary bodies e.g. General Nursing/Medical Councils; and
- The production of prisoners for medical examination in connection with a civil claim for damages.

Access to the Order

1.8 *This Order must be held by or made available to all staff who are involved in the consideration of requests for production to court in civil proceedings, and to all prisoners.*

CHAPTER TWO : IMPLICATIONS OF THE HUMAN RIGHTS ACT 1998

2.1 *All staff involved in considering requests for productions must be aware and take account of Article 6 of the Human Rights Act 1998 and decide cases on their own merit.*

Article 6 : Right to a Fair Trial

2.2 Article 6 of the Human Rights Act is relevant to productions in civil proceedings because it conveys an entitlement to a fair and public hearing, within a reasonable time of the determination of civil rights and obligations (as well as criminal charges). Part I of Article 6 is reproduced at Annex A. The rest of the Article is about criminal proceedings. Prisons must decide whether for the proceedings as a whole to be fair, the prisoner must attend personally at court for the relevant stage of the proceedings. If it appears that the prisoner's case will suffer detriment if they do not attend, this would be a strong case for allowing the production. But it may not be necessary for him/her to attend at all stages. It will be difficult to make this judgement if the prisoner has a solicitor and is not prepared to discuss his case with the prison. In such cases an assessment can only be made on the basis of available information.

Checklist of points considered to be taken into account in relation to Article 6

2.3 The following checklist is a guide to the points officers should take into account in relation to Article 6 when considering civil production requests.

- **Is Article 6 relevant ?**

- the proceedings must be making a decision on one of the prisoner's rights or responsibilities, (eg the right to own property or responsibilities regarding child care). Judicial review (i.e. a private individual taking action against a public body e.g the Prison Service) is the other area of civil actions for which prisoners may request production. Access to Court to argue a case is one of the most important Article 6 rights, for without such access an individual is unable to vindicate his other convention rights.

- **Is personal attendance at court by a prisoner necessary?**

An individual's rights under Article 6 are not absolute. – They can be restricted provided this does not mean that the trial is unfair – i.e. if we restrict a prisoner's access to the court, we must be able to show that we did not restrict his ability to bring or defend his case (e.g., a production request might be refused if the prisoner is legally represented).

Restrictions must be for a legitimate reason and proportionate, e.g. a refusal on security grounds must be necessary for the risk identified

- **Is the prisoner legally represented?**

If the prisoner is legally represented and is not needed to provide personal evidence (i.e. about character or conduct) or answer questions at Court, a refusal to produce is unlikely to infringe Article 6.

Where a prisoner is representing himself, personal attendance is likely to be necessary to allow him/her to defend him/herself.

- **Is the case arguable?**

Article 6 is only engaged where the prisoner has an arguable claim. A refusal to produce a prisoner whose claim is frivolous would not infringe Article 6 rights. One indication that a case is frivolous might be a refusal of legal services funding.

- **Alternatives to production at court**

Many stages of the proceedings (particularly preliminary) can be dealt with in writing or by telephone if there are serious security concerns. The Court can advise on those hearings which must have the prisoner in attendance, and those which can be dealt with by other means.

Make use of the video links system. This is to become more widely available and is being rolled out to selected magistrates' courts (based on those which receive the most escorts) and the remand estate. Even establishments which are not due to have the video link installed themselves, may be able to transfer the prisoner temporarily to a nearby prison which does have the facilities.

CHAPTER THREE : THE INTERESTS OF JUSTICE

3.1 *The primary consideration when dealing with a request to produce a prisoner to attend at a civil court hearing, must be whether it is in the interests of justice that he or she should attend.*

3.2 Factors Relevant to the Interests of Justice

- **Does the Prisoner want to attend?**

The prisoner may have no interest in the proceedings or no desire to attend court. If a prisoner is unwilling to appear at the proceedings, and the authority or individual requesting production still wishes the prisoner to attend, they will need to obtain a subpoena or court order which must be served on the prisoner before the production may be arranged.

- **What is the nature of the case?**

The nature of the case may determine how important it is that the prisoner attends, but there are certain categories where it will usually be desirable to produce the prisoner:

- cases where arrangements for children are to be made;
- cases involving prisoner's finances, such as bankruptcy; and
- any other domestic cases, for example divorce, restraining orders.

- **Who is the defendant in the case ?**

The Prison Service must be particularly careful that any decision to prevent a prisoner from attending court when the case is against the Prison Service (e.g. in judicial review) or the police, can be justified.

- **Has the prisoner got legal representation or is he/she representing him/herself?**

Personal attendance by a legally represented prisoner may not be necessary (see chapter 2). If in doubt about the nature of the hearing or the need for attendance, officers should speak first to the court who should be able to advise on the necessity of attendance.

If the prisoner has received public funding to pursue the action, the details of the claim will have been examined and a decision made as to the likelihood that the action will be successful. The changes in public funding (see PSO 2605 The Role of the Legal Services Officer) mean that solicitors are unwilling to take on cases which they do not have a good chance of winning.

Even where a prisoner is representing him or herself, it may not be necessary to attend all stages of the action, as certain stages can be dealt with in correspondence or over the phone. Officers should decide each application for production on its own merit.

- **What is the purpose of the hearing?**

The need for personal attendance varies according to the stage in the proceedings. The Court can advise on the stage the action has reached and how important it is that the prisoner attends.

- **What is the prisoner's role: defendant, claimant or witness?**

The prisoner's role can have a bearing on the importance of attending at various stages in the proceedings. Obviously a witness need only attend when their evidence is required, (see below). Where the prisoner is bringing an action, he/she may need to give their legal representative instruction during a hearing. Likewise, where the prisoner is defending an action, they may be required to give evidence or answer points at various stages.

Production as a Witness in Another Individual's Action

- 3.3 In cases where the prisoner has been called as a witness in another party's action, unless he/she does not wish to attend, the same considerations of the interests of justice should be taken into account. If the prisoner is a prosecution witness in a criminal proceeding, it is obvious that his/her attendance would be in the interests of justice, civil cases are more difficult. In those cases where the Prison Service is the defendant and a large number of prisoners and staff are called as witnesses for both sides, it is worth considering requesting the court convenes at a suitable location within the prison.
- 3.4 Witness production costs in civil proceedings should be paid by the side which calls the prisoner as a witness.

CHAPTER FOUR: SECURITY AND ESCORTING

- 4.1 *When a decision has been made that the interests of justice require production at court, the normal security considerations (e.g. risk to the public) must be taken into account.*

Security

- 4.2 A prisoner does not have to be produced if the risk assessment indicates that the security risk outweighs the interests of justice. To defend a challenge under Article 6, we must be able to show that the decision is reasonable in all the circumstances – (alternatives to production should be considered – see chapter 2).

Category A prisoners

All movement of Category A prisoners outside the prison must be authorised by the Directorate of High Security Prisons.

- 4.3 Chapters 37 and 38 of the Security Manual (PSO 1000) give instructions on escorting and security at court, with particular reference to Category A prisoners. These instructions must be followed.

Security at quasi judicial proceedings

- 4.4 Particular attention needs to be given to the security aspects of a production at such proceedings, the location for which may be insecure. Examples of such proceedings are outlined in para 1.7. Any doubts about the level of security available should be discussed with the court or other body conducting the proceedings. It may be possible for the proceedings to be transferred to a secure venue if this is considered necessary.

Escorts

- 4.5 In most situations the prisoner can be escorted under the contract with your local contractor. The following should however be considered:
- Is the court is a long way from the prison. If so, consider using the Inter Prison Transfer system to move the prisoner to a prison nearer to the court prior to the day of the court appearance.
 - If the case is likely to spread over several days, it might be worth transferring the prisoner to a nearer prison to reduce daily travelling.
 - If the prisoner is an immigration detainee, the Immigration Service has a separate contract which covers productions at Immigration Tribunals for detainees.
 - The prison can be held in contempt, if the prisoner has been ordered to appear at court and does not attend. It is suggested that prisoners at open establishments are escorted to court rather than being allowed to make their

own way there. As the prison was asked for the production of the prisoner, the prison becomes responsible for his/her attendance.

CHAPTER FIVE : PRISONER'S CONTRIBUTION TO THE COST OF PRODUCTION

- 5.1 *The prisoner's ability or willingness to pay for production must not be a factor in deciding whether the prisoner is produced at court. That decision must be based solely on whether it is in the interests of justice that the prisoner attend the proceedings, balanced with security constraints.*
- 5.2 The standard charge in 5.3 below is being introduced to simplify the process of charging and thus reduce the burden of administration on establishments. It will not represent the true cost of production in many cases, but will recoup a portion of the cost of productions. Where the entire production can be managed without incurring additional costs, e.g. the prisoner is taken to court on transport that is taking other prisoners there, no charge should be made to the prisoner.

Standard charge

- 5.3 The standard charge for escorting a prisoner to civil proceedings from the date of this PSO is:
- £40 flat fee for the escort day
 - Variable cost of £1 per mile in excess of 9 miles (calculated in advance)
- 5.4 The standard charge represents a contribution towards the cost of the escort (against the existing escorting contract) based on a "call out" charge of £30, plus a £10 contribution towards mileage. This will cover 9 miles which is likely to be the minimum length of any escort. The £1 charge per mile is based on the escort provider's charge for additional journeys. The charge is sufficiently low for prisoners to afford, but high enough to deter frivolous applications.
- 5.5 Alternatively, if the production is carried out by a different method, for example prison officers escorting in a taxi, the prisoner can be asked to reimburse the additional costs of the escort, i.e. travel costs, subsistence for the officers and prisoner. The cost of the officers' salary is not an additional cost, however if overtime is paid for officers called in from a rest day, this can be considered as part of the charge. Productions to Immigration Tribunals should use the Immigration Service contract, and in any case, will not incur a charge to the prisoner as they have the right to attend tribunals and appeals.

Ability to pay

- 5.6 Once it has been decided that a production should go ahead, consideration can be given to whether it is reasonable to ask the prisoner to contribute towards the production. It is the Governor's decision whether the prisoner should be asked to contribute, and where the prisoner cannot afford to fund the full standard charge, it is within the Governor's discretion to charge a lower sum within the prisoner's means.
- 5.7 Sources of funding include private cash, earnings, funds available from outside the prison (bank account etc.) or paid through the prisoner's solicitor if public funding has been obtained for the action.

- 5.8 Any contribution towards the cost of a production should be paid into FOCUS code 4144-1 (Miscellaneous receipts – running costs expenditure).

If the prisoner refuses to contribute

- 5.9 When a prisoner refuses to contribute towards the production costs even though they appear to have sufficient funds, the Governor must decide whether to produce. There will still be cases where the production is so clearly in the interests of justice that it should go ahead despite the prisoner's refusal to pay. In others, the Governor will need to weigh the need to produce against the refusal to pay. However, this has not yet been tested under ECHR, and it is suggested that Governors err on the side of caution and produce in those cases where there is doubt.

**The Human Rights Act – Convention Rights
Article 6 – Right to a Fair Trial**

The first paragraph of Article 6 states:

“1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgement shall be pronounced publicly, but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.”