

**Mental Health (Criminal Law) Legal Aid
Scheme 2006**

Terms and Conditions

(INCLUDES APPLICATION FORM)

1. Introduction

- 1.1 The Mental Health (Criminal Law) Review Board (An Bord Athbheithnithe Meabhair-Shlainte (An Dli Coiriuil)) was established by order of the Minister for Justice, Equality and Law Reform on 27th September, 2006 in accordance with Section 11(1) of the Criminal Law (Insanity) Act 2006, as amended (hereinafter referred to as “the Act”). The Review Board is independent in the exercise of its functions under the Act and it is responsible for reviewing the detention of patients in a designated centre (currently the Central Mental Hospital is the only designated centre) who have been referred there arising from a decision by the courts that they are unfit to stand trial or found to be not guilty of an offence by reason of insanity. The Board will also review the detention of prisoners, including military prisoners suffering from mental disorders, who have been transferred to a designated centre from prison and military personnel who have been referred to a designated centre by tribunals under the relevant Defence Acts. Section 12(1)(c) of the Act requires the Board to assign a legal representative to a patient the subject of a review unless he/she proposes to engage one at their own expense.
- 1.2 Section 12(6)(a) of the Act requires that the Board make, with the consent of the Minister for Justice, Equality and Law Reform and the Minister for Finance, a scheme or schemes for the granting of legal aid to patients.
- 1.3 The arrangement through which the Board provides legal services is referred to as the Mental Health (Criminal Law) Legal Aid Scheme 2006 and is referred to hereinafter as “the Scheme”. The Scheme operates in relation to the provision of representation before the Mental Health (Criminal Law) Review Board. This document details the terms and conditions of the Scheme.
- 1.4 The Review Board shall provide legal services through legal representatives in private practice or through individual solicitors within firms.

2. Panel of Legal Representatives

- 2.1 The Review Board shall establish and maintain a panel of legal representatives or law firms who satisfy the criteria outlined in these terms and conditions and are willing to provide legal services in accordance with the provisions of the Criminal Law (Insanity) Act 2006, as amended, and the Scheme. The panel shall be known as the Mental Health (Criminal Law) Legal Representatives Panel and is referred to hereinafter as “the Panel”. The Board shall assign a legal representative from the Panel to act on behalf of each patient the subject of a review unless he/she proposes to engage one without availing of the Scheme at their own expense.
- 2.2 The Panel will be maintained on a national basis and will comprise the names of law firms/legal representatives, with the necessary experience and knowledge, whose applications for placement on the Panel have been approved.

3. Conditions

- 3.1 Any legal representative who wishes to have his/her name placed on the Panel shall:-
 - hold a current practising certificate from the Law Society of Ireland

- have professional indemnity insurance to cover an individual claim of up to €1.5m; and
- be a practising solicitor who has had not less than three years' experience as a practising solicitor ending immediately before application.

At the time of application and at all times throughout his/her tenure, the legal representative must be practising. Any law firm which wishes to participate in the Scheme must provide the above details for each legal representative who proposes to provide legal services on behalf of the firm under the Scheme.

3.2 Any law firm/legal representative who meets the conditions of the Scheme and who wishes to have his/her name placed on the Panel must:

- apply in writing to the Board on the approved application form which is attached to this document at Schedule 2;
- give an undertaking in the form appended hereto, that he/she will comply with these terms and conditions and the provisions of the Act, as amended, when providing legal services.

In the case of a law firm, the above conditions apply to each legal representative who may provide legal services under the Scheme on behalf of the firm.

3.3 Legal representatives will be expected to act in a fiduciary manner in relation to all patients and to provide a service in-keeping with the code of practice of their profession, (e.g. in the case of solicitors the Guide to Professional Conduct as issued from time to time by the Law Society of Ireland) and any specific practice directions issued by either the Board or their professional body in relation to the provision of a service in this area of law.

3.4 Legal representatives on the Panel must comply with the tax clearance procedures specified in the Department of Finance Circular 43/2006 entitled "Tax Clearance Procedures - Public Sector Contracts" or any such circular amending or replacing that circular. A copy of this circular is attached at Schedule 3.

3.5 Legal representatives/law firms on the Panel must have access to email facilities and must have IT software that is compatible with Microsoft Office software in order to ensure the effective and efficient administration of the Scheme.

3.6 The Panel will be reviewed formally by the Board every three years or as considered necessary by the Board. In order to remain on the Panel it will be necessary for the Board to be satisfied that law firms/legal representatives are providing a professional service. Membership is initially for a 12 month probationary period after which time confirmation will be issued, subject to satisfactory performance.

3.7 Every legal representative who has been accepted for membership of the Panel will be allocated a number to be known as a Legal Representative Number which must be quoted on all correspondence with the Board.

- 3.8 Nothing in these terms and conditions shall give rise to, or be construed as giving rise to, a relationship of employer and employee between the Review Board and any legal representative on the Panel.

4. Withdrawal of Legal Representatives from the Panel

- 4.1 Legal representatives who wish to withdraw from the Panel must inform the Board in writing of their intention to withdraw so that the Panel may be amended accordingly. Legal representatives are required to give a minimum of one month's notice of their intention to withdraw from the Panel subject to their obligation to either complete their involvement in existing cases, or in the alternative, satisfactorily enter into an arrangement with the Board to handover the conduct of such matters in a manner that is entirely satisfactory to the Board. Any such handover would be, if legal aid is to continue, to another Panel member nominated by the Board.

5. Nature and Extent of Legal Services to be provided

- 5.1 The legal services provided will generally involve the following activities:
- explaining the function of the Review Board to the patient;
 - taking instructions from the patient on one or more occasions. In some instances, patients may have communication difficulties due to their mental disorder. The legal representative will be expected to take time in such cases to ensure to the best of his/her ability that the patient is well informed and adequately represented;
 - carrying out any necessary research including;
 - finding out the facts of the case and obtaining corroborating evidence of these facts either from the patient's medical records or by interviewing witnesses if necessary;
 - carrying out a detailed review of the medical reports by consultant psychiatrists and any other expert reports which have been produced in relation to the case in order to identify the patient's current medical diagnosis and the past medical history;
 - researching relevant case law, if necessary; and
 - considering any other issues relevant to the particular situation;
 - representing the patient before the Review Board;
 - if necessary, explaining the Review Board's decision to the patient;
 - on request by the Review Board, explaining matters in relation to Section 13A(3)(b) of the Act, as amended, on behalf of the Board.
- 5.2 Given that the patient will be residing at a designated centre (currently the Central Mental Hospital), it will be necessary for the legal representative to visit the patient there in order to take instructions.
- 5.3 Depending on the nature and extent of the mental health disorder from which a patient may suffer, it may be necessary to visit the patient on more than one occasion in order for the legal representative to be reasonably satisfied that proper instructions have been obtained. Legal representatives will be expected to take time in such cases to ensure to the best of their ability that the patient is well informed and adequately represented.

- 5.4 Where a patient wishes to be provided with the services of a legal representative other than the one which the Board has assigned or proposes to assign, he or she may request the Board to assign a particular legal representative from the Panel and may apply to the Board to have the services of a legal representative who has already been assigned dispensed with. A request for a change of legal representatives will be considered by the Board.
- 5.5 Save as otherwise specifically provided for by this Scheme, the relationship between a legal representative and a patient who is in receipt of legal representation under this Scheme, and the rights and privileges arising out of such relationship, shall be the same as the relationship between and the rights and privileges arising out of a relationship between a legal representative and his/her client not being a patient who is in receipt of legal representation under this Scheme.

6. Operation of the Scheme

- 6.1 The Review Board shall assign a legal representative from the Panel to represent each patient under the Scheme before the Review Board unless he/she proposes to engage one without availing of the Scheme at their own expense. The assignment of legal representatives will generally be effected using a rota system. The Board will, however, endeavour to assign the same legal representative to a patient on subsequent occasions unless he/she requests a different legal representative to be assigned or the legal representative is unavailable. Initially the Board will contact the legal representative by phone or email to confirm whether he/she is in a position to take the case before forwarding papers. Once the legal representative confirms that he/she will take the case, the Board will assign the legal representative to the case and the necessary papers will be forwarded with a letter of authority outlining the patient's details and the matter authorised. In accordance with the Board's policy to assign the same legal representative to a patient on subsequent occasions, the Board will automatically assign the same legal representative to represent the patient without prior contact with the legal representative.
- 6.2 The letter of authority shall be the legal representative's authority to provide legal services on behalf of the Board under the Scheme.
- 6.3 Legal services may not be provided under the Scheme without a prior letter of authority from the Board.

7. Payment

- 7.1 Once a case has been determined, the legal representative may apply to the Board for payment of the fee using the claim form as approved by the Board from time to time. Care should be taken in completing claim forms as incomplete or improperly completed claim forms will be returned without payment.
- 7.2 A case shall be deemed to be determined when the Review Board has delivered its determination or, in the event of a case not going before the Review Board, when the Review Board has confirmed that the case will not be proceeding.

- 7.3 The completed claim form with an invoice should be sent to the Board's office at Montague Court, 7-11 Montague Street, Dublin 2, when the services specified in the letter of authority have been provided and the case has been either determined or is not proceeding.
- 7.4 Patients in receipt of legal services under the Scheme must not be charged any fees and must not be asked to discharge any expenses, costs or outlays by any legal representative on the Panel in relation to a case before the Review Board.

8. Fees Payable

- 8.1 Fees payable to legal representatives for legal representation under this Scheme will be as determined by the Board from time to time with the consent of the Minister for Justice and Equality and the Minister for Finance.
- 8.2 There shall be a standard scale of fees (set out in Schedule 1 attached) payable per case to legal representatives on the Panel for the provision of services in each Review Board case.
- 8.3 In the event that the case does not proceed, the Board may pay a proportion of the total fee depending on the work that has been done and such fees are outlined in Schedule 1.
- 8.4 Travel and subsistence expenses are not payable to legal representatives in Review Board cases.
- 8.5 The Board will only be liable for outlays or professional services which have been approved. The patient or his/her legal representative may seek approval by written application on the approved form not less than 5 working days in advance of the hearing. In cases where the Board approves the appointment of a barrister, it shall agree a fee in advance depending on the circumstances of the case. Such fees shall be subject to the approval of the Minister for Finance.

9. Removal from the Panel

- 9.1 The Chief Executive Officer may remove a legal representative from the Panel if he/she considers that:-
- a) his/her conduct when providing legal services or his/her professional conduct generally render him/her unsuitable, in the opinion of the Chief Executive Officer, to provide such services; or
 - b) he/she has failed to comply with these terms and conditions; or
 - c) he/she has not participated in the Scheme to a satisfactory level, including but not confined to, his/her refusal on a regular basis to accept a patient as a client or to give him/her appropriate legal representation.

- 9.2 The Chief Executive Officer shall be entitled to remove a legal representative from the Panel where he/she is of the opinion that his/her services are no longer required for the efficient administration of the Panel, provided that, when removing a legal representative from the Panel under this section, at least one month's notice in writing is provided to him/her.
- 9.3 If the Chief Executive Officer decides to exercise the right to remove a legal representative from the Panel, he/she will be notified in writing of the grounds for the decision. He/she may, within a period of one month from the date of such notification, appeal in writing to the Review Board querying the decision setting out the grounds of appeal in full. The Review Board will take a decision on the appeal and advise him/her of that decision. Depending on the particular circumstances, the Review Board reserves the right to remove cases already assigned to him/her and/or not to refer other cases to him/her whilst the appeal is under consideration.
- 9.4 The Review Board reserves the right, where an allegation comes to light that professional misconduct has taken place, to suspend the legal representative from the Panel. In such instances the Review Board shall report the allegation to the appropriate body or bodies responsible for professional regulation and to the Gardaí if there are reasonable grounds to suspect that a criminal act has been committed.

10. Quality Service

- 10.1 The Review Board is committed to the provision of a quality legal service to patients. Legal representatives should not take on a case unless they can provide a quality service within the specified time limits. If the work of an individual legal representative is considered not to meet the required standard, the legal representative will be notified of the issues of concern and, if these are not resolved, consideration will be given to removing him/her from the Panel.
- 10.2 Legal representatives shall keep a proper note and report of consultations, instructions, advice and of what transpires at Review Board hearings.

11. Taxation

- 11.1 It is each Panel member's responsibility to declare any payments to the Revenue Commissioners for the purposes of Income Tax. All successful applicants will be requested to furnish, throughout their membership of the Panel, a current Tax Clearance Certificate issued by the Revenue Commissioners. The Review Board operates the professional service withholding tax system for fees.

12. Confidentiality

- 12.1 Subject to the provisions of paragraph 12.2 below, no information furnished to the Board, to its staff or to any person whose services have been engaged by the Board for the purpose of providing legal services to any patient shall be disclosed otherwise than for the purpose of facilitating the proper performance by any person of functions under this scheme or by Court Order.
- 12.2 Paragraph 12.1 shall not prevent the disclosure of information for any purpose with the consent of the patient.

Exception to Confidentiality

- 12.3 As provided by the Law Society's Guide to Professional Conduct of Solicitors in Ireland, "Where the solicitor believes on reasonable grounds that there is a real risk of death or serious injury to the client himself or to a third party, confidentiality may be waived to the extent necessary."

13. Other relevant Legislation

- 13.1 Without prejudice to the Act, as amended, the Scheme shall conform with the provisions of the Freedom of Information Act, 1997, as amended, the Data Protection Act 1988, as amended, and other appropriate statutes.

Schedule 1

Fees for representation before the Review Board (exclusive of VAT)	Fee with effect from 01/03/2009
Representation before the Review Board for first review	€1,274.20
Representation before the Review Board for second and subsequent reviews	€356.96
Preparatory Work for first Review Board hearing	
In the event that the Review Board hearing is cancelled prior to hearing, and not reconvened, and all of the necessary preparatory work has been carried out by the legal representative on the case	€713.92
In the event that the Review Board hearing is cancelled and not reconvened, and some but not all of the preparatory work has been carried out by the legal representative, partial payment, which may not exceed the full case fee payable, will apply as follows:	
- A consultation with the patient has taken place	€204.24
- A second or more consultations with the patient have taken place	€152.72
- The papers in relation to the detention have been reviewed	€178.48
- The required research has been carried out, including interviewing of all appropriate witnesses	€178.48
In the event that the Review Board hearing is cancelled on the day of the hearing and not reconvened, and all of the necessary preparatory work has been carried out by the legal representative on the case	€1,019.36
In the event that the Review Board hearing is cancelled before any preparatory work has been carried out by the legal representative	Nil payment
Conditional Discharge	
Work on behalf of the Review Board in relation to Section 13A(3)(b) of the Act (a range of explanations to the patient)	€356.96

Schedule 2

APPLICATION

MENTAL HEALTH (CRIMINAL LAW) LEGAL AID SCHEME 2006

I hereby apply to have my name entered on the Panel of legal representatives (“the Mental Health (Criminal Law) Legal Representatives Panel”) maintained by the Mental Health (Criminal Law) Review Board and for which purpose I hereby apply to have the following information recorded on the Panel:

1. I can confirm that I am not currently and have never been the subject of any disciplinary proceedings relating to my professional conduct before any committee, tribunal, court or other similar body, other than proceedings in which the complaint has been found to be unwarranted.

Yes _____ No _____ if “No”, please provide further details on an additional page.

2. I confirm that I am willing to provide legal services in accordance with the Criminal Law (Insanity) Act 2006, as amended, and the terms and conditions of the Mental Health (Criminal Law) Legal Aid Scheme (2006).
3. I confirm that I hold a current practising certificate from the Law Society of Ireland and that I shall notify the Review Board immediately in the event of my ceasing to hold such a certificate at any time.
4. I confirm that I am covered by professional indemnity insurance for a claim of up to €1.5m and that I shall notify the Review Board in the event of this not being the case at any time.
5. I confirm that I have at least three years practising experience ending immediately before application and that I was admitted to the Roll of Solicitors in Ireland on ____/____/____
6. I confirm that I have access to email facilities and that the IT software used by me is compatible with Microsoft Office software.
7. I confirm that I will notify the Review Board of any potential conflict of interest that I may have in representing patients.

Signed: Date:

APPLICANTS MUST SIGN THIS FORM

PANEL OF LEGAL REPRESENTATIVES

APPLICATIONS MUST BE MADE USING THIS FORM
CV'S ARE NOT ACCEPTABLE

APPLICATION FORM

PLEASE USE BLOCK CAPITALS

SURNAME:

FIRST NAME:

Title: Mr Mrs Ms Other (Specify)

ADDRESS (for correspondence):

.....
.....
.....

Name of law firm, if appropriate:

TELEPHONE NO: MOBILE: FAX:

E-MAIL ADDRESS:

VAT Number:

Withholding Tax Number:

Bank account for payment:

Bank Name:

Branch name:

Account name:

Account number:

BIC number:

IBAN number:

Tax Reference Number: Access Number:

Personal Public Service (PPS) Number

EDUCATION

Schools/Colleges Attended	Dates From To	Details of Qualification	Date of Conferring

CAREER DETAILS

Dates From To	Employers Name And Address	Position Held	Details of Responsibilities

OTHER QUALIFICATIONS

Qualification	Awarding Institution	Date Awarded

MEMBERSHIP OF PROFESSIONAL BODIES

Official Name of Body	Grade of Membership	Dates of Membership

OTHER INFORMATION

Please provide here any other information which you would consider relevant to your application.

REFEREES

Please provide details of 2 referees to whom you are well known in a professional capacity (if you are in existing employment, one of the referees should be an existing employer).

Name:
Occupation/Designation:

Name:
Occupation/Designation:

Address:

Address:

E-Mail:
Phone No.

E-Mail:
Phone No.

DECLARATION

I hereby confirm that all the above details are correct and accurate.

Name: _____

Date: ____/____/____

Schedule 3

F49/235/06

CIRCULAR 43/2006: TAX CLEARANCE PROCEDURES **PUBLIC SECTOR CONTRACTS**

Notice to Government Departments and other public sector bodies **concerned with awarding public sector contracts**

Contents	Page
1. Introduction.....	2
2. Tax Clearance Procedures.....	2
3. Scope of Tax Clearance Procedures	2
4. Exclusion.....	3
5. Sub-contractors	3
6. Duration of Certificates	4
7. Application for Certificates	4
8. On-line verification facility.....	5
9. The Issue of Certificates.....	5
10. Other Issues.....	6
11. General Government Contracts Procedures.....	6
Appendix 1 – Contact Information	7
Appendix 2 – Section 1095 Taxes Consolidation Act.....	8

1. Introduction

1.1 The Minister for Finance has directed that the following revised procedures are to be followed in the operation of the tax clearance scheme with respect to the award of public sector contracts **with effect from 1 January 2007**. Department of Finance Circular 22/95 of July 1995 is accordingly rescinded.

1.2 Copies of this Circular are available on the Department of Finance website (www.finance.gov.ie).

1.3 A separate Circular **44/2006** sets out the tax clearance procedures in relation to the payment of grants, subsidies and similar type payments by Government Departments and other public sector bodies.

2. Tax Clearance Procedures

2.1 In the case of all public sector contracts of a value of €10,000 (inclusive of VAT) or more within any 12-month period, the contractor (and agent as appropriate) will be required to produce either a valid tax clearance certificate or a C2 certificate¹.

2.2 As an alternative to producing a valid tax clearance certificate a contractor may authorise the contracting authority to confirm electronically that he/she holds a valid tax clearance certificate using the on-line verification facility on the Revenue Commissioners' website www.revenue.ie. (See paragraph 8 for further details.)

2.3 It will not be necessary for a contractor to obtain a tax clearance certificate if he/she holds a current C2 certificate. Sub-contractors who do not already hold a C2 certificate should apply for a tax clearance certificate even where they are not legally required to produce a C2 for the purpose of the contract.

2.4 The Revenue Commissioners will, on application, issue a tax clearance certificate if satisfied that the conditions set out in section 1095 of the Taxes Consolidated Act, 1997 as amended (copy at Appendix 2) are being met by the applicant.

3. Scope of Tax Clearance Procedures

3.1 The public sector includes all Government Departments and Offices, Local Authorities, the Health Service Executive and other Health Agencies, Educational Bodies and all State Bodies whether commercial or non-commercial (statutory or otherwise) and in general all authorities (agencies/entities/bodies) who finance contracts out of public funds.

3.2 For convenience, the word contract is used in this circular but this should be interpreted to cover situations where public sector bodies are buying, hiring or leasing

¹ A 'C2 certificate' is a certificate of authorisation issued by the Revenue Commissioners, in accordance with the terms of section 531(11) of the Taxes Consolidation Act 1997, to qualifying subcontractors carrying out construction, forestry or meat processing operations as specified in that section. The certificate authorises a principal contractor to make arrangements to make payments to such sub-contractors without deduction of tax. In the absence of a C2 certificate, the principal contractor must deduct tax at the rate of 35% from payments to sub-contractors. Tenderers requiring further information on C2 certificates should contact their Local Revenue District.

goods, services or property or generally expending public monies including, for example, contracts for cleaning or security, consultancies for management, legal or design services, purchases of materials or commodities, leases of property, plant hire etc. It is not necessary that a contract be the subject of formal documentation or a tendering process for the tax clearance procedures to apply.

3.3 A contractor for the purposes of this circular includes any individual, partnership or company, whether resident in Ireland or not, in receipt of payments of €10,000 (inclusive of VAT) or more from a public sector body. (A tax clearance certificate is now issued to non-residents in situations where “statements of suitability” previously applied.)

3.4 Where a public sector body is making a payment to a third party, other than the contractor, as a result of ‘invoice selling’, ‘factoring’, ‘discounting’², or for any other reason, the contractor must first produce a valid tax clearance certificate to the public body.

3.5 Subject to the exclusion set out at paragraph 4, the procedures set out in paragraph 2 should be applied to all public sector contracts of a value of €10,000 (inclusive of VAT) or more. It should be noted that individual contracts with any person or firm with a cumulative value of €10,000 or more during any 12-month period are subject to the tax clearance procedures. A standing arrangement with a supplier as a result of which purchases of a value of €10,000 or more are made during any 12-month period is also within the scope of the scheme. If any public sector body is in doubt as to whether the procedures should apply the Department of Finance should be consulted as appropriate (see contact details in Appendix 1).

3.6 Tenders should be invited for public sector contracts in the normal way, but advertisements and tender documentation should state that it will be a condition for the award of a contract that a firm or individual must comply with the terms of this circular. Where an agent is acting on behalf of a potential contractor both the agent and the contractor will be required to comply with the terms of this circular.

3.7 Tenders or prices should be sought and assessed in the normal way. The tax clearance requirements under this circular should be applied by the contracting authority only to the person or firm submitting the successful tender. The requirements should not accordingly be applied in the case of all tenderers for contracts.

4. Exclusion

4.1 Contracts awarded and payments made by public sector bodies to other public sector bodies are excluded from the scope of these procedures.

5. Sub-contractors

5.1 In the case of sub-contractors on any public sector contract of a value of €10,000 (inclusive of VAT) or more, the contracting authority should, when advertising the main contract, state that it will be a condition for the award of the

² The original contractor cannot remove the requirement to produce a valid tax clearance certificate by agreeing, in whatever manner, that any payment(s) be made to a third party. No payment should be made by the Public Sector body if the contractor does not produce a valid tax clearance certificate

contract that all sub-contractors employed on the project must produce a tax reference number where payments exceed €650. Records of tax reference numbers must be kept by the contractor and be available for inspection where requested by the Revenue Commissioners. Where payments exceed €2,600 in any 12 month period the sub-contractor will be required to produce either a current tax clearance certificate or a current C2 certificate. It should be made clear to sub-contractors that payments under a contract are at all times conditional on compliance with these requirements.

5.2 It will be the responsibility of the relevant contractor to ensure that any sub-contractor employed by him complies with these requirements. In all cases contracting authorities must ensure that contractors have complied with these requirements. Any failure to comply with this requirement will affect a contractor's prospects of obtaining future public contracts.

5.3 It should be emphasised in the case of sub-contractors in the construction, forestry and meat processing industries that, in the absence of a C2 certificate, tax must continue to be deducted at source at the rate of 35 per cent in accordance with Section 531 of the Taxes Consolidation Act, 1997 as amended, notwithstanding the fact that a tax clearance certificate has been furnished under these arrangements.

6. Duration of Certificates

6.1 Successful applicants will be issued with a single tax clearance certificate valid for contracts awarded by any public sector body. Normally, the tax clearance certificate will be valid for 12 months.

6.2 Contracting authorities should take the necessary steps to ensure that contractors are in possession of a valid appropriate certificate at all times. Accordingly renewed certificates should be verified on-line in accordance with paragraph 8 or production of the new original certificate should be sought when an existing certificate expires and the contractor or subcontractor is still engaged on the contract. It should be made clear to contractors and to subcontractors that payments under a contract are at all times conditional on the contractors being in possession of a valid appropriate certificate.

7. Application for Certificates

7.1 Contractors, except for PAYE and Non-residents, should be advised that the application form (TC1) for a tax clearance certificate should be completed on-line on the Revenue Commissioner's website – www.revenue.ie. To facilitate all concerned, contractors should be encouraged to agree, on the on-line application form, to the on-line verification of any certificate issued to them (see paragraph 8). Contractors who do not have access to the internet may request an application form from their Local Revenue District.

7.2 Non-resident contractors cannot apply on-line for a tax clearance certificate but the following procedures apply:

7.2.1 Non-resident contractors who are registered for Irish tax and who do not have a permanent established place of business in the State should be advised to apply for tax clearance to Dublin City Centre Revenue District, 9/15 Upper O'Connell Street, Dublin 1.

7.2.2 Non-resident contractors who are registered for Irish tax and also have a permanent established place of business in the State should be advised to apply for tax clearance to the Revenue District in which the place of business is located.

7.2.3 Non-resident contractors who have neither an Irish tax registration nor a permanent established place of business in the State [i.e. foreign traders] should be advised to apply for tax clearance to Non-Residents Unit, Collector-General's Office, Sarsfield House, Francis Street, Limerick, fax 00353-61-401012 or e-mail nonrestaxclearance@revenue.ie

8. On-line verification facility

8.1 The Revenue Commissioners provide an on-line verification facility to confirm a contractor's tax cleared status. This allows contracting authorities to confirm electronically that a person holds a tax clearance certificate. It also eliminates the need for a taxpayer to produce the original tax clearance certificate.

8.2 The on-line verification facility can be found on Revenue's website at www.revenue.ie. The facility is secure and can only be accessed with the permission of the contractor who holds the tax clearance certificate. The contractor gives permission to confirm his/her tax cleared status by quoting the customer number and tax clearance certificate number which appear on the certificate. This allows contracting authorities to access the secure facility to confirm the position. The contracting authority can accept on-line confirmation that a contractor is in possession of a tax clearance certificate and there is no need for the contractor to produce the original certificate.

9. The Issue of Certificates

9.1 The issuing of tax clearance certificates is the responsibility of the Revenue Commissioners. Successful applicants will be issued with a tax clearance certificate, valid for contracts with any public sector body, if Revenue is satisfied that the applicant has met the conditions set out in Section 1095 Taxes Consolidation Act, 1997 as amended (copy at Appendix 2).

9.2 The contractor will retain his/her tax clearance certificate but, before awarding a contract, each authority must either confirm the contractor's tax clearance status through the Revenue Commissioner's website or see the original tax clearance certificate or an authorised duplicate. A print-out of the website screen or a copy of the original certificate, as appropriate, must be kept by the contracting authority for its own record. The Revenue Commissioners will issue duplicate certificates to a contractor where this is considered necessary and appropriate. On expiry, tax clearance certificates can be renewed on-line on the Revenue Commissioners' website at www.revenue.ie or by post.

9.3 In normal circumstances, the Revenue Commissioners will issue a tax clearance certificate to applicants whose affairs are in order within six working days from the receipt of the application for a certificate. In exceptional cases, e.g. where the taxpayer has not quoted proper references or their tax affairs are not up to date, the process will take longer.

9.4 A successful tenderer should be given ten working days to produce the tax clearance or C2 certificate. If they have not done so within that period, enquiries may be made in respect of tax clearance certificates by the contracting authority concerned from the relevant Local Revenue District as to the position. If there are bona fide reasons for giving the tenderer an extension of the ten-day period, this extension may be allowed at the contracting authority's discretion in the light of information received from the Revenue Commissioners. If not, a certificate should be sought from the person or firm that submitted the second most suitable tender and the process repeated. The contract should be awarded to the most suitable tenderer who can produce the appropriate certificate.

10. Other Issues

10.1 Should cases arise where only one tender is received and the firm involved cannot produce the appropriate certificate, it may be necessary for the contracting authority

- (i) to hold a new competition;
- (ii) if (i) is not possible, to exert pressure on the firm involved to make arrangements with the Revenue Commissioners to clear tax arrears before the contract is awarded: or
- (iii) to postpone the awarding of the contract.

10.2 A contract should not be awarded to any firm which cannot produce a tax clearance certificate except as a last resort. In such a case, the advance approval of the Department of Finance must be obtained.

10.3 A valid tax clearance or C2 certificate is not required to be produced where, under a Notice of Attachment issued under section 1002 Taxes Consolidation Act, 1997, payment is due to the Revenue Commissioners instead of to the contractor.

11. General Government Contracts Procedures

11.1 In addition to the tax clearance procedures set out in this circular, the procedures set down in 'Public Procurement Guidelines - Competitive Process' by the National Public Procurement Policy Unit of the Department of Finance (see www.etenders.gov.ie) should be followed by the bodies which it covers.

D. McNally
Second Secretary
21 December 2006

Appendix 1 – Contact Information

Contact Information

- (i) Tax clearance application forms are available on Revenue’s website www.revenue.ie. Further information in relation to C2 certificates can also be found on that site. Tax clearance certificates are issued by the relevant local Revenue District. The contact addresses and telephone numbers are available on the Revenue Website at www.revenue.ie and are also available in the State Directory Section of the Eircom phonebook. Forms and certificates for use by non-resident applicants are issued in accordance with paragraph 7.2 of this circular which also contains the contact details for non-resident contractors.
- (ii) Implementation and operational queries in relation to tax clearance governed by this circular should be directed to the local Revenue District or in the case of non residents, the procedures set out in paragraph 7.2 of this circular should be followed. As above at (i), the contact addresses and telephone numbers are available on the Revenue Website at www.revenue.ie and are also available in the State Directory section of the Eircom phonebook.
- (iii) Tenderers requiring further information on C2 certificates should contact their local Revenue District. As above at (i) the contact addresses and telephone numbers are available on the Revenue Website at www.revenue.ie and are also available in the State Directory section of the Eircom phonebook.
- (iv) Policy queries in relation to the tax clearance procedures covered by this circular should be directed to Tax Clearance Section, Department of Finance, Merrion Street, Dublin 2, Tel: (01) 6767571 Ext: 5597.

Appendix 2 – Section 1095 Taxes Consolidation Act

Taxes Consolidation Act, 1997. [No. 39.]

1095. Tax clearance certificates: general scheme.

(1) In this section—

‘the Acts’ means—

- (a) the Tax Acts,
- (b) the Capital Gains Tax Acts, and
- (c) the Value-Added Tax Act, 1972, and the enactments amending or extending that Act,

and any instruments made thereunder;

‘licence’ has the same meaning as in section 1094;

‘tax clearance certificate’ shall be construed in accordance with subsection (3).

(2) The provisions of this section shall apply in relation to every application by a person to the Collector-General for a tax clearance certificate other than an application for such a certificate made—

- (a) in relation to a licence, or
- (b) pursuant to the requirements of —
 - (i) the Standards in Public Office Act 2001, or
 - (ii) Regulation (6) of the Criminal Justice (Legal Aid) (Tax Clearance Certificate) Regulations 1999 (S.I. No. 135 of 1999).

(3) Subject to this section, where a person who is in compliance with the obligations imposed on the person by the Acts in relation to—

- (a) the payment or remittance of any taxes, interest or penalties required to be paid or remitted under the Acts, and
- (b) the delivery of any returns to be made under the Acts,

applies to the Collector-General in that behalf the Collector-General shall issue to the person a certificate (in this section referred to as a ‘tax clearance certificate’) stating that the person is in compliance with those obligations.

(4) A tax clearance certificate shall not be issued to a person unless—

- (a) that person and, in respect of the period of that person's membership, any partnership of which that person is or was a partner,
- (b) in a case where that person is a partnership, each partner, and
- (c) in a case where that person is a company, each person who is either the beneficial owner of, or able directly or indirectly to control, more than 50 per cent of the ordinary share capital of the company,

is in compliance with the obligations imposed on the person and each other person (including any partnership) by the Acts in relation to the matters specified in paragraph (a) and (b) of subsection (3).

(5) Where a person who applies for a tax clearance certificate in accordance with subsection (3) (in this section referred to as 'the first- mentioned person') carries on a business activity which was previously carried on by, or was previously carried on as part of a business activity by, another person (in this section referred to as 'the second-mentioned person') and—

- (a) the second-mentioned person is a company connected (within the meaning of section 10 as it applies for the purposes of the Tax Acts) with the first-mentioned person or would have been such a company but for the fact that the company has been wound up or dissolved without being wound up,
- (b) the second-mentioned person is a company and the first-mentioned person is a partnership in which—
 - (i) a partner is or was able, or
 - (ii) where more than one partner is a shareholder, those partners together are or were able,

directly or indirectly, whether with or without a connected person or connected persons (within the meaning of section 10 as it applies for the purposes of the Tax Acts), to control more than 50 per cent of the ordinary share capital of the company, or

- (c) the second-mentioned person is a partnership and the first-mentioned person is a company in which—
 - (i) a partner is or was able, or
 - (ii) where more than one partner is a shareholder, those partners together are or were able,

directly or indirectly, whether with or without a connected person or connected persons (within the meaning of section 10 as it applies for the purposes of the Tax Acts), to control more than 50 per cent of the ordinary share capital of the company,

then, a tax clearance certificate shall not be issued by the Collector-General under

subsection (3) to the first-mentioned person unless, in relation to that business activity, the second-mentioned person is in compliance with the obligations imposed on that person by the Acts in relation to the matters specified in paragraphs (a) and (b) of subsection (3).

(6) Subsections (5) to (9) of section 1094 shall apply to an application for a tax clearance certificate under this section as they apply to an application for a tax clearance certificate under that section.