Memorandum of Understanding

Memorandum of understanding on the investigation and prosecution of offences committed in Prison Service Establishments between the Northern Ireland Prison Service, the Police Service of Northern Ireland and the Public Prosecution Service for Northern Ireland.

Offences.
This section sets out those offences that should be referred. References to substantive offences should be taken to include attempts and conspiracy to commit them.

A. Assault.
1. Alleged offences and attempted offences of murder, manslaughter, non-consensual buggery or rape and threats to kill where there appears to be genuine intent.

2. Other alleged assaults if any kind of the following elements are present:
   - The use of a weapon likely to cause, or causing, serious injury;
   - The occasioning of serious injury by any means;
   - The use of serious violence against any person (providing that more than minor injury was the intended or likely outcome of such assault);
   - Personal sexual violation other than rape.
   - Any alleged assault that amounts to unlawful imprisonment (hostage taking).

B. Escape.
3. Any alleged escape or attempt to escape from a closed establishment or secure escort.
4. Any other serious case where the means of escape have been found and where referral is needed to discover how they are obtained and to prosecute those responsible; the nature and category of the prisoner will be relevant in deciding whether referral is justified.
5. Any alleged escape or abscond from open conditions (for instance an outside work party) where the prisoner has been absent for a substantial period of time (normally any period over eight weeks).

C. Possession of Unauthorised Articles.
   - Weapons.
6. Alleged possession of firearms or explosives.
7. Alleged possession of other offensive weapons (knives, kitchen or workshop implements, homemade weapons, etc) if there is evidence to suggest that the weapon was intended for use in the commission of a further serious criminal offence (such as serious assault or escape).

   - Drugs.
8. Class A drugs: alleged possession, alleged supply / possession with intent to supply.
9. Class B drugs: alleged possession, alleged supply / possession with intent to supply unless there is only a small scale supply for no payment; alleged possession when the quantity is substantial.
Note;
Class B drugs: alleged possession of a small quantity of drugs should not normally be referred.
Class C drugs: alleged possession and alleged supply / possession with intent to supply should not normally be referred.

In order to ensure a consistent approach, the Officer in charge of the Drugs Squad should ensure that there is regular contact with staff at Prison Service Headquarters to confirm the thresholds that should be applied before an offence is referred to the Police. This information should be disseminated within the Prison Service to the adjudicating Prison Governors. In cases of doubt, the Drugs Squad can be contacted to offer advice.

D. Criminal Damage / Arson.

Criminal Damage.
10. Destroying or damaging property.
11. Destroying or damaging property with intent to endanger life.
12. Destroying or damaging property being reckless as to whether life would be endangered.
13. Threatening to destroy or damage property.
14. Possessing anything with intent to destroy or damage property.

Note:
These offences should be referred where damage to property of the prison or other prisoners is serious, normally to a value in excess of £2000; evidence of a concerted action by a group of prisoners will strengthen the case for referral; it will be appropriate to obtain an estimate of the damage caused.

Arson.
15. Destroying or damaging property by fire, unless it is clear that there was no risk of the fire taking hold.
16. Destroying or damaging property by fire with intent to endanger life.
17. Destroying or damaging property by fire being reckless as to whether life would be endangered.

Note:
Governors should be aware of the possibility that cell fires may in fact be evidence of a prisoner's highly disturbed suicidal state of mind. Acts that amount in reality to attempts at self-injury should not normally be referred to the police nor dealt with under the prison rules.

E. Robbery.
Where the alleged theft is accompanied by the use of threat of serious violence of a weapon.

F. Major Disturbances.
18. Incidents involving a number of prisoners where the Governor has lost or was in danger of losing control of all or part of the establishment.
19. Incidents involving the use or threat of violence resulting in assaults or criminal damage serious enough to be referred under A or D above or in the commission of other serious criminal offences.
Note:
The following should not be referred:

- Small localised incidents where no criminal offence is committed and which the Governor is able to control without difficulty.
- Passive disobedience, even on a large scale, where it is clear that the prisoners are protesting about a particular grievance and where there seems to be no intention to overthrow lawful authority.
- Other disturbances for which the Governor believes his or her powers under the disciplinary system to be adequate.

G. Failure to Return from Temporary Release.
Any alleged failure to return where the prisoner was unlawfully at large for a substantial period of time (normally any period over eight weeks).

Note:
The prison should have already informed the police that the prisoner has failed to return from temporary release. The process of referral under this circular involves a request that the police investigate the alleged offence (in this case being unlawfully at large) with a view to prosecution.
Further alleged offences committed whilst the prisoner was unlawfully at large may make it preferable to refer the whole incident to the police for investigation even if the failure to return in itself is not particularly serious.
Prisoners who have a reasonable excuse for failure to return on a time after a period of temporary release should not normally be referred (a reasonable excuse might include any case where the prisoner’s failure to return was not intentional but was due to unforeseen circumstances or factors beyond his or her control).