



IPRT Submission to the Irish Prison Service
Public Consultation on the Review of Prison Rules

5th November 2021

About IPRT

Established in 1994, the Irish Penal Reform Trust (IPRT) is Ireland's leading non-governmental organisation campaigning for rights in the penal system and the progressive reform of Irish penal policy. Our vision is one of respect for human rights in the penal system, with prison as a sanction of last resort. We are committed to respecting the rights of everyone in the penal system and reducing imprisonment. Our work is underpinned by an emphasis on evidence-based policies and a commitment to tackling social injustice.

IPRT publishes a wide range of policy positions and research documents; we campaign vigorously across a wide range of penal policy issues; and we have established IPRT as the leading independent voice in public debate on the Irish penal system.

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INTRODUCTION

1. IPRT welcomes the Irish Prison Service (IPS) decision to review and update the Prison Rules 2007, and particularly welcomes the public consultation held in respect of this review. This submission supplements the brief general remarks made by IPRT on 30th September 2021 (attached at Appendix 1 for ease of reference), and provides detailed proposed changes in respect of a number of specific rules.
2. **It is important to state at the outset that this submission does not address each and every rule in its entirety.** In particular, IPRT’s understanding is that the IPS will be considering, and incorporating in full, the minimum standards set by the updated European Prison Rules (EPR), as well as Council of Europe recommendations introduced since the introduction of Prison Rules 2007, within the new Irish Rules.¹ While this submission does not accordingly address every single aspect of the Irish Rules that needs to be changed in order to accord with the EPR, it is assumed that the IPS’s review will do so.
3. IPRT has taken the opportunity to address in this submission the key areas within the Rules that we consider in need of reform, and which fall within our particular expertise. In reviewing the Rules, we have been guided by the standards set out in IPRT’s *Progress in the Penal System (PIPS)* reports.
4. The structure of the submission is that it follows (for ease of reference) the current formatting of the Irish Prison Rules, followed by a brief section outlining the additional areas which IPRT considers should be covered by the Irish Rules. The order in which each rule / issue is addressed should not be taken as a comment on the relative importance of the proposed amendment.
5. IPRT also reiterates at the outset of this submission the following points:
 - a. Much of the language used in the current Prison Rules is overly conditional and generalised. The Rules are littered with phrases such as “*in so far as is practicable*” and “*subject to the maintenance of good order and safe and secure custody*” and “*wherever possible*” etc. These types of phrases should be removed or at least used sparingly, only where exceptions may be reasonable. Some examples are highlighted in this submission but there are many others which should be reconsidered (e.g. see the use of such terms in rr 15(1)-(2), 34(1), 45(4), 47(1), 48(1)-(2), 79(1), 85(8) and 112).
 - b. There are many examples where the protections provided to prisoners could be strengthened by a requirement that the Governor (or relevant individual responsible for making a decision or carrying out an action) record in writing the reasons for their decision and/or the efforts made to carry out the action. See e.g. rr 5(4), 25(5)-(6), 45(2), 53(1)-(2) and 73(4) as rules where such a requirement could be inserted.
 - c. In updating the Prison Rules, it is important to ensure that they are – to the greatest possible extent – accessible to prisoners in terms of the language used. This is in addition to the production of a “plain English” version of the revised Prison Rules in due course.
 - d. The review should consider the significant research that has been done on trauma-informed practices since the 2007 Rules were first implemented,² and the devising of

¹ This understanding is based on the information provided by the IPS in regards the planned review, see Department of Justice, *Public Consultation on the Review of Prison Rules* (2021), available at: https://www.justice.ie/en/JELR/Pages/Review_of_Prison_Rules.

² There are too many sources to cite here but some examples include e.g. Jane Mulcahy, *Daring to Ask “What Happened to You?” - Why Correctional Systems Must Become Trauma-Responsive* (Advancing Corrections Journal, 2018), available at:

the new rules should be guided by such practice. This is work that the IPS has already started, e.g. see reference to developing a “*best fit model of trauma informed correctional care*” in the IPS Strategic Plan 2019-2022,³ and this update provides a unique opportunity to fully embed such practices within the prison system. As former Director General Michael Donnellan has noted, in using such research to inform how the IPS works with people who come into contact with the criminal justice system, the IPS can contribute to “*creating less victims now and in the future.*”⁴

6. **A note on terminology.** Throughout this submission, reference is made to the following acronyms: EPR, NMR and BPR. These refer to the following:
- a. EPR = the European Prison Rules (as updated 2020).
 - b. NMR = the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).
 - c. BPR = the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules).

https://www.researchgate.net/publication/324531733_Daring_to_Ask_What_Happened_to_You_-_Why_Correctional_Systems_Must_Become_Trauma-Responsive; Jane Mulcahy, *Re-storying Offending Behaviour: A Normal Response to an Overdose of Trauma?* (2021), available at: https://www.researchgate.net/publication/352464909_Re-storying_Offending_Behaviour_A_Normal_Response_to_an_Overdose_of_Trauma; Vincent J. Felitti, *Origins of the ACE Study* (American Journal of Preventive Medicine, 2019), available at: [https://www.ajpmonline.org/article/S0749-3797\(19\)30100-X/pdf](https://www.ajpmonline.org/article/S0749-3797(19)30100-X/pdf); Bessel van der Kolk, *The Body Keeps the Score: Brain, Mind, and Body in the Healing of Trauma* (Viking Press, 2014); and Gabor Mate, *In the Realm of Hungry Ghosts: Close Encounters with Addiction* (Penguin, 2018). The conference report from the Fifth Annual Irish Criminal Justice Agencies (ICJA) Conference in 2018 is also likely to be of assistance, see ACJRD, *Toward a Trauma-Responsive Criminal Justice System: Why, How and What Next?* (2018), at p.4, available at: https://www.acjrd.ie/images/PDFs/icja/ICJAC_REPORT_2018_-_Toward_a_Trauma-Responsive_Criminal_Justice_System_Why,_How_and_What_Next.pdf.

³ IPS, *Strategic Plan 2019-2022* (2019), at p.14, available at: https://www.irishprisons.ie/wp-content/uploads/documents_pdf/Irish-Prison-Services-Strategy-2019-2022.pdf.

⁴ See remarks of Director General Michael Donnellan at the Fifth Annual ICJA Conference in 2018, see ACJRD, *Toward a Trauma-Responsive Criminal Justice System: Why, How and What Next?* (2018), at p.4, available at: https://www.acjrd.ie/images/PDFs/icja/ICJAC_REPORT_2018_-_Toward_a_Trauma-Responsive_Criminal_Justice_System_Why,_How_and_What_Next.pdf.

PART 1

PRELIMINARY AND GENERAL

Rule 1: Citation and commencement

Rule 2: Interpretation

Proposed Change

IPRT recommends that general principles of respect for human rights, non-discrimination and commitment to the rehabilitative aspects of imprisonment, are included in Part 1 of the revised Prison Rules. Specifically, **IPRT seeks explicit recognition of all of the following overarching principles:**

- All persons deprived of their liberty shall be treated with respect for their human rights, due to their inherent dignity and value as human beings (NMR 1; EPR 1).
- The Rules shall be applied impartially, without discrimination on any ground such as gender, marital status, family status, sexual orientation, religion, age, disability, race or membership of the Travelling community.⁵ This does not mean that the Rules must be applied uniformly and without due regard to particular cohorts' specific vulnerabilities e.g. women or members of minority or indigenous groups (BPR 1, 54). In implementing the Rules, the IPS shall have due regard to its obligations under the Public Sector Duty⁶ and ensure non-discrimination and equal access to services to people with disabilities in prison (NMR 5.2),⁷ as well as a positive commitment to eliminating discrimination, harassment and victimisation on the grounds previously mentioned. The Scottish Prison Rules may provide a useful example.⁸
- Prisoners retain all rights that are not lawfully taken away by the decision to sentence or remand them into custody i.e. the deprivation of a person's liberty is the punishment and conditions within prison shall not be used as further punishment nor shall they unnecessarily infringe on prisoners' additional rights (NMR 3; EPR 2, 4, 102.2).
- Prisons shall be managed in such a manner as to facilitate individuals' reintegration into free society and to minimise to the greatest extent possible the differences between life in prison and life outside of prison (NMR 4, 5.1; EPR 5-7, 72.3).
- Acknowledgement of the importance of subjecting all prisons in Ireland to regular inspection and independent monitoring (EPR 9, 92-93) and an explicit statement of cooperation and facilitation of such monitoring.

Rationale

⁵ See s.3 of the Equal Status Act 2000, available at: <https://revisedacts.lawreform.ie/eli/2000/act/8/front/revised/en/html>. See also NMR 2 and EPR 13.

⁶ See s.42 of the Irish Human Rights and Equality Commission Act 2014, available at: <https://revisedacts.lawreform.ie/eli/2014/act/25/section/42/revised/en/html>.

⁷ See also Recommendation 6 in IPRT, *Making Rights Real for People with Disabilities in Prison* (2020), at p.5, available at: https://www.iprt.ie/site/assets/files/6565/people_with_disabilities_in_detention_-_single_pages.pdf.

⁸ See, by way of example, rule 6 of the Prisons and Young Offenders Institutions (Scotland) Rules 2011, available at: <https://www.legislation.gov.uk/ssi/2011/331/contents>.

Inclusion of the above principles will bring the Irish Rules in line with international minimum standards and reinforce the IPS commitment to implementing the Public Sector Duty and eliminating discrimination, promoting equality of opportunity and protecting the human rights of those to whom it provides services.⁹

⁹ IPS, *Equality, Diversity & Inclusion Unit*, available at: <https://www.irishprisons.ie/information-centre/equality-diversity-inclusion-unit/>.

PART 2

RECEPTION AND REGISTRATION

Rule 4: Recording of prisoners' details

Proposed Change

Rule 4 should include a specific commitment to keeping records of prisoners' details in a safe and secure manner, so as to protect the privacy of each individual committed to prison.

Rationale

Inclusion of an explicit commitment to keeping such details safe would reflect the IPS obligations under the General Data Protection Regulation (GDPR) and the Data Protection Act 2018 (which did not exist in its current form at the time the Prison Rules were last updated).¹⁰ It would also help assure people of the security of the data that is being recorded when they are committed to prison.

This principle is also not currently reflected in rr 50-52 of the Prison Rules, which deal with 'Privacy' more generally.

Proposed Change

Rule 4 should be supplemented by a requirement that the ethnicity of each prisoner is recorded upon committal, using a standardised ethnic identifier (in line with the national census) and with sufficient safeguards in place (e.g. ensuring that such recording is done in line with human rights principles and conducted by staff who have received appropriate training on the collection of such data).

Rationale

IPRT has previously noted the scarcity of statistical data on the number of migrants and people from ethnic minority backgrounds caught up in the Irish penal system, and the lack of robust ethnic equality monitoring by all criminal justice agencies (including the IPS).¹¹ The absence of this data makes it hard to identify any disparities in treatment and/or potentially discriminatory practices within the prison system, which in turns makes it difficult to address such issues. IPRT has accordingly recommended that ethnic equality monitoring be carried out across the Irish criminal justice system, including prisons.¹² This echoes a similar recommendation made by the Anti-Racism Committee in their *Interim Report to the Minister for Children, Equality, Disability, Integration and Youth*.¹³

¹⁰ IPS, *Data Protection*, available at: <https://www.irishprisons.ie/data-protection/>.

¹¹ IPRT, *IPRT Submission to the National Anti-Racism Committee: Towards a National Action Plan Against Racism for Ireland Public Consultation 2021* (2021), at pp.2-3, available at: https://www.iprt.ie/site/assets/files/7005/iprt_submission_to_the_national_anti-racism_committee.pdf.

¹² *Ibid.*, at p.3. See also IPRT, *Access to Rights and Justice for Migrants and Ethnic Minority People in the Penal System* (forthcoming).

¹³ Anti-Racism Committee, *Interim Report to the Minister for Children, Equality, Disability, Integration and Youth* (2021), at p.14, available at: <https://www.gov.ie/pdf/?file=https://assets.gov.ie/132151/ed3f39e2-4aa1-4991-aa06-52beae8310db.pdf#page=null>.

Rule 5: Informing family member or friend

Proposed Change

Rule 5(1) should provide a specified period (of no more than 24 hours) within which a person will be facilitated in informing their family member or nominated person of their committal etc, instead of simply saying it will be done “*as soon as may be after his or her committal*” and “*as soon as is practicable*”.

Rationale

The phrases “*as soon as may be*” and “*as soon as is practicable*” are unduly vague.

IPRT has previously reported family members’ experience of not being told of a loved one’s transfer to a different prison until they arrive on a visit to the wrong prison¹⁴ and EPR 24.8 states that prisoners “*shall be allowed to inform their families immediately of their imprisonment, their transfer to another institution*” (emphasis added) (with NMR 68 requiring something similar).

It is therefore important that a person’s right to inform a loved one of their committal or transfer is strengthened, and that they are guaranteed they will be given this notification opportunity within a specified period of time. Given the importance of the information in question, IPRT recommends that the specified period is no more than 24 hours.

Proposed Change

Rule 5(1) should be amended to specify the routes (e.g. an additional phone call) by which a person will be facilitated in informing their family member or nominated person of their committal, readmission or transfer.

Rationale

As it stands, r 5(1) is unduly vague in explaining exactly how a person is to be facilitated in informing their family member or nominated person of their admission to prison. Detailing within the rule how this contact is to be facilitated would strengthen the rule and provide prisoners with a stronger basis upon which to assert their right to inform their loved ones of their imprisonment.

Rule 6: Searching

Proposed Change

Rule 6 should be amended to:

¹⁴ IPRT, *Piecing it Together: Supporting Children and Families with a Family Member in Prison in Ireland* (2021), at p.34, available at: https://www.iprt.ie/site/assets/files/6958/piecing_it_together_supporting_children_and_families.pdf.

- include an express prohibition on non-medical prison staff carrying out internal physical searches of a prisoner and a requirement that any such internal physical search is only carried out by a medical practitioner; and
- make clear that any intrusive searches, including strip and body cavity searches, should be undertaken only if absolutely necessary, and in a manner that protects the person’s dignity.

Consideration should also be given to including a requirement that the use of alternative screening methods, such as scans, be used in order to replace strip searches and invasive body searches wherever possible.

Rationale

Such restraints on the power of non-medical staff to carry out searches is required by EPR 54.6-54.7 and NMR 52.1-52.2. An explicit statement on the position in respect of intimate and invasive physical searches would further help clarify what is precisely permitted under the Irish Rules; as it stands, the wording within r 6(3)(b)(ii) is somewhat vague in its reference to the “*examination of the prisoner’s body*” and the prohibition on invasive searching within r 6(9) appears to extend only to situations where force is required.

Inclusion of reference to alternative screening methods would comply with BPR 20.

Proposed Change

Rule 6 should be amended to include an explicit requirement that all staff receive adequate training in how to conduct searches, and specifically how to conduct searches in a manner that allows them to detect prohibited articles while also protecting the dignity of those being searched to the greatest possible extent.

Rationale

Inclusion of a specific clause relating to staff training on searches would bring the Irish Prison Rules in line with EPR 54.3.

Proposed Change

Rule 6(5) should be:

- supplemented to make clear that transgender persons should be given a choice as to the gender of the person conducting a search; **or**
- amended to make clear that a person shall only be searched by a prison officer of the same gender identity (unless there are exceptional reasons why this cannot be done, the reasons for which are recorded in writing and approved by the Director General).

Rationale

The Office of the Inspector of Prisons (OiP) recently raised concerns in regards the search procedures used for transgender women detained in Limerick Prison, noting that the women concerned had told the OiP that male officers were sometimes present when searches were undertaken.¹⁵ As the OiP has stated, international best practice indicates that transgender prisoners should be given a choice as to the gender of any person carrying out a search.¹⁶

¹⁵ See OiP, *COVID-19 Thematic Inspection of Limerick Prison 6 - 7 April 2021* (2021), at p.34, available at: <https://iopdev.wpengine.com/wp-content/uploads/2021/08/Limerick-Prison-COVID-19-Thematic-Inspection-Report-2021.pdf>

¹⁶ See UN Office on Drugs and Crime, *Mapping of Good Practices for the Management of Transgender Prisoners: Literature Review* (2020), at p.vi, available at: <file:///C:/Users/Molly%20Joyce/Downloads/UNDP-TH-the-mapping-of-good-practices-for-the-management-of-transgender-prisoners.pdf>.

An amendment along the above lines would accordingly bring the Irish Rules in line with such international best practice or, at a minimum, reflect principle 9(H) of the updated *Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity* ('the Yogyakarta Principles'), which makes clear that policies should be implemented which combat discrimination and harm on the grounds of gender identity and expression including with respect to issues such as "body or other searches".¹⁷

Rule 7: Articles found in search and offences

Rule 8: Prisoner's property

Rule 9: Prohibited articles

Proposed Change

Close consideration should be given to clarifying, and potentially strengthening, the protection currently provided to legally privileged information by r 7(2). Such protection might include a strict prohibition on prison officers or members of An Garda Síochána from seizing or retaining such documentation, even where the document was created for multiple purposes (e.g. the document was created for the dominant purpose of obtaining / giving legal advice but also includes reference to another, unrelated, purpose such as facilitating contact with a family member).

Rationale

IPRT does not have expertise on the legal protections to be provided to legally privileged information, but is concerned that the current wording of r 7(2) is unduly vague and weak in its protection of a prisoner's legally privileged documents. It is also worth noting that NMR 53 makes clear that prisoners should be permitted to keep in their possession, without access by the prison administration, documents relating to their legal proceedings.

Proposed Change

Rule 7(4) should be expanded to also include a requirement that the Governor (or other suitable individual) create a record of any search carried out pursuant to r 6, including details as to the reason for the search; the identities of those who carried out the search; and any results of the search.

Rationale

Creation of such search records is required by NMR 51 for the purposes of accountability.

Proposed Change

Rule 8(7) should be amended to extend:

- the notice period required where a Governor plans to sell or dispose of a prisoner's property (following their release), from 3 months to 6 months; and

¹⁷ See *The Yogyakarta Principles plus 10* (2017), at p.18, available at: http://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5_yogyakartaWEB-2.pdf.

- the length of time before which a Governor can decide to sell or dispose of a prisoner's property in circumstances where they have been unable to contact them, again from 3 months to 6 months.

Rationale

Leaving prison is one of the most vulnerable periods for prisoners and it can often be a chaotic time, as people try to re-enter the community and rebuild their lives.¹⁸ It would accordingly be fairer and more proportionate to give individuals at least 6 months before disposing of any property they may have left at the prison.

Proposed Change

Rule 9(3) should be amended to also require the Governor to record and inform a prisoner of the reason why it was considered appropriate to return the article to the person who sent it and/or dispose of the article.

Rationale

It would greatly assist individuals who struggle with literacy (and might therefore have difficulty in understanding the list of permitted articles published *per* r 8) to understand the reasons behind any return / disposal. This in turn might assist in reducing any unnecessary distress caused to the individuals concerned.

Rule 10: Measurements, photographs, fingerprints and palm prints

Proposed Change

Rule 10(2) should be amended so as to require a Governor to inform the relevant person that their measurements, photographs, fingerprints or palm prints has been provided to An Garda Síochána (unless it is not possible in the interests of security or in circumstances where it might impede an ongoing criminal investigation).

Rationale

While IPRT does not have expertise in data protection law and requirements, it appears to us that a person's right to privacy encompasses a right to transparency, including a right to know how their data is being processed.¹⁹ Unless there are specific and good reasons why a prisoner should not be informed of the transfer of their information to An Garda Síochána, they accordingly should be informed about how their personal biometric data (a special category of data *per* Article 9 GDPR) is being processed.

¹⁸ IPRT, *Progress in the Penal System: A framework for penal reform* (2019), at p.109, available at: <https://pips.iprt.ie/site/assets/files/Progress-in-the-Penal-System-2019.pdf>.

¹⁹ See e.g. Data Protection Commissioner, *Principles of Data Protection*, available at: <https://www.dataprotection.ie/en/individuals/data-protection-basics/principles-data-protection>.

Rule 11: Medical examination

Proposed Change

The phrase “*Save in the most exceptional circumstances*” should be removed from r 11(2).

Rationale

A prisoner should always receive a medical screening, if even just a preliminary screening, on the day of their committal to prison.²⁰ There is no basis for departing from this procedure in any circumstances and this caveat should accordingly be removed from r 11.

Proposed Change

Rule 11(4) should be supplemented by a requirement that the prison doctor ensure that prisoners continue to receive all necessary medication, without interruption, upon their committal to prison.

Rationale

IPRT research indicates that, on some occasions, prisoners’ access to medication is automatically discontinued upon their committal to prison and/or the continuation of such medication is delayed.²¹ This clearly can have serious effects on a person’s wellbeing and health, and prison doctors should be under a duty to ensure that all necessary medication is continued, without disruption, for individuals when they enter prison.

Rule 13: Explanation of prisoner’s entitlements, obligations and privileges

Rule 14: Meeting with Governor

Proposed Change

The following phrases should be removed:

- r 13(3) – “*and in so far as is practicable*”;
- r 13(4) – “*in so far as is practicable*” (and subsequent amendment of r 13(5) as necessary);
- r 13(7) – “*take all reasonable measures to*”.

Rationale

²⁰ The importance of adequate medical screening was underlined to some extent by the remarks of the CPT in their 2020 report on Ireland, where they discussed the importance of adequate recording of injuries during the preliminary medical examination conducted upon admission, see CPT, *Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 23 September to 4 October 2019* (2020), at pp.44-45, available at: <https://rm.coe.int/1680a078cf>

²¹ See IPRT, *Making Rights Real for People with Disabilities in Prison* (2020), at pp.4, 39, available at: https://www.iprt.ie/site/assets/files/6565/people_with_disabilities_in_detention_-_single-pages.pdf

The above phrases weaken the entitlements that people in prison, and particularly foreign national prisoners and prisoners with literacy difficulties, have to receive information about the Prison Rules. IPRT research has identified the difficulties that certain cohorts, such as those with disabilities in prison, have in understanding the Prison Rules²² and it is accordingly crucial that the Rules are strengthened so as to ensure everyone in prison is given full information about the Rules in a manner that they can understand. This would further align the Rules with Articles 5(3) and 9 of the UN Convention on the Rights of Persons with Disabilities (UNCRPD), which specifically require state parties to provide reasonable accommodations to people with disabilities and ensure all persons with disabilities can access, on an equal basis with others, information, communications and other services.²³

Provision of information in a manner that individuals can properly understand, without caveat, is further required by NMR 55 and EPR 30.

Proposed Change

Rule 14 should be amended so as to also require the Governor to record in writing the date and time on which such a meeting has been completed.

Rationale

The requirement that the Governor meets every prisoner following their committal, and satisfies themselves that the prisoner has been informed of, and understands, their obligations, entitlements and privileges, is very much a welcome inclusion within the Rules. It would help strengthen this rule, and ensure that such meetings take place, to further require a Governor (or their delegate as permitted by r 76) to record in writing that the meeting has occurred.

Proposed Change

Rule 14 should be supplemented by a requirement that the Governor continues to check each prisoner's understanding of their entitlements, obligations and privileges at regular intervals during the prisoner's sentence (e.g. every 3 months).

Rationale

The importance of good communication for effective prison management cannot be overestimated.²⁴ It would therefore be helpful if Governors were required to check-in with every prisoner as to their understanding of their obligations and privileges after the initial admission phrase, and at regular intervals, in order to ensure that prisoners do actually understand their various rights and obligations. This would also provide an opportunity to make prisoners aware of any changes to the Rules or general prison policies of relevance to them, and help provide prisoners with a greater sense of security and control in their daily lives.

Rule 15: Release date

²² See IPRT, *Making Rights Real for People with Disabilities in Prison* (2020), at p.51, available at: https://www.iprt.ie/site/assets/files/6565/people_with_disabilities_in_detention_-_single_pages.pdf. See also IPRT, *Access to Rights and Justice for Migrants and Ethnic Minority People in the Penal System* (forthcoming).

²³ See UNCRPD, at pp.7, 9, available at: <https://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>.

²⁴ See e.g. McGuckin, Halai, Yagunov, *Prison Management Booklet* (2017), at pp.21, 91-92, available at: <https://rm.coe.int/prison-management-booklet-eng/16807185bd>.

Proposed Change

Rule 15 should:

- include a broad statement of the IPS’s commitment to implementing tailored sentence management plans for individual prisoners at the outset of their sentence;
- require that a prisoner committed to prison under sentence be informed of the IPS Integrated Sentence Management system;²⁵ and
- recognise that particular attention must be paid to providing appropriate sentence plans and regimes for life-sentenced and long-sentenced prisoners.

Rationale

NMR 86-88, 91-92, 96, 98-99 sets out guiding principles to inform the rehabilitation of people in prison and NMR 94 requires a “*programme of treatment*” to be prepared for each prisoner as soon as possible after admission. EPR 102-107 similarly sets out guiding principles on how sentenced prisoners should be managed, with EPR 103.2-103.3 specifically requiring reports to be drawn up for sentenced prisoners as soon as possible after admission, including proposed sentence plans for each individual, and EPR 104.2 requiring procedures for the regular review of individual sentence plans for prisoners. EPR 103.8 in turn notes that particular attention must be paid to those prisoners serving life or long-sentences.

As it stands, the Rules do not reflect the importance of sentence management nor is there a requirement that prisoners are informed of the IPS Integrated Sentence Management (ISM) system. To ensure buy-in, it is crucial that prisoners (and their families, where appropriate) are facilitated and actively involved in their sentence planning from the very beginning of their sentence.²⁶ This is particularly important for life-sentenced prisoners, insofar as it provides longer term structure which can help ameliorate the impact of an indeterminate sentence²⁷ and will ensure that these prisoners are facilitated in taking part in treatment, education and training programmes (a relevant factor in the new Parole Board’s decision as to whether or not to grant parole).²⁸

Rule 17: Child of female prisoner

²⁵ See IPS, *Integrated Sentence Management*, available at: <https://www.irishprisons.ie/prisoner-services/integrated-sentence-management/>.

²⁶ See IPRT, *Progress in the Penal System: A framework for penal reform* (2017), at p.52, available at: https://www.iprt.ie/site/assets/files/6431/progress_in_the_penal_system_compressed.pdf; and IPRT, *Progress in the Penal System (PIPS): A framework for penal reform 2019* (2019), at pp.108-109, available at: <https://pips.iprt.ie/site/assets/files/Progress-in-the-Penal-System-2019.pdf>.

²⁷ See IPS, *Examination of the Sentence Management of people serving Life Sentences* (2017), at pp.3-5, available at: https://www.irishprisons.ie/wp-content/uploads/documents_pdf/Life-Sentenced-Prisoner-Report-Final-April-2017.pdf

²⁸ See s.27(2)(h) of the Parole Act 2019, available at: <https://www.irishstatutebook.ie/eli/2019/act/28/section/27/enacted/en/html#sec27>.

At the outset, IPRT wishes to make clear that we fully endorse the recommendations made by the Action for Children and Families of Prisoners Network in regards the treatment of mothers and babies in prison, as set out in their submission to this Review.²⁹

Proposed Change

Consideration should be given to including within r 17 broad principles recognising the vulnerabilities of women and children admitted into prison under the rule, as well as potentially requiring the recording of full details of a woman's children (both those being admitted into the prison as well as those who are not) (subject to safeguards on the confidentiality and further use of such information).

Rationale

BPR 2-3 require that: particular attention be given to the vulnerabilities of women and children during the admission process; and the number and personal details of the children of a woman admitted to prison are recorded.

Proposed Change

Rule 17 should include:

- a specific requirement that any child of a female prisoner admitted into prison undergo a health screening to determine any particular treatment / medical needs they have; and
- a statement of general principle that any child admitted will receive suitable health care, on a basis at least equivalent to that available in the community.

Rationale

Inclusion of these specific points is required by BPR 9.

Proposed Change

Rule 17 should include a requirement that basic training in child protection, child healthcare and child development be provided to any staff working in an area of the prison where children may be permitted to stay with their mothers.

Rationale

Such training is a specific requirement set out in BPR 33.3.

Proposed Change

Rule 17(5) should be amended to require the Governor to provide relevant health information to a female prisoner who is pregnant and/or whose child is with them in prison (e.g. such information might include nutritional guidance, information on breastfeeding etc).

Rationale

Provision of such information would assist women in providing the best care they can to their child, and is referenced by BPR 48.1.

Proposed Change

Rule 17 should be amended to include explicit recognition of the following:

²⁹ See Action for Children and Families of Prisoners Network, *Submission to the Irish Prison Service Prison Rules Review* (2021), at pp.2-3, available at: <https://www.actionforfamilies.ie/2021/10/14/submission-to-the-review-of-prison-rules/>.

- the fact that a child admitted to prison with their mother is not to be treated as a prisoner;
- the need to give women whose children are in prison with them the maximum possible opportunities to spend time with their children;
- the need to provide ongoing health-care services to any child living with their mother in prison, and also an environment that is as close as possible to that of a child outside prison; and
- the need to ensure that mothers and their children are accommodated in designated parts of a prison designed for that purpose in all circumstances.

Rationale

Insertion of the above principles would bring the Irish Rules in line with BPR 49-51.

In regards the question of accommodation, the 2017 Dóchas Visiting Committee Annual Report noted that women and babies had, on occasion, been removed from the dedicated unit designed specifically for their needs and placed instead in ordinary rooms.³⁰ This was apparently for “disciplinary reasons”.³¹ This was a matter of huge concern for the Visiting Committee and is similarly a concern for IPRT. It is accordingly important that the Prison Rules explicitly set out the requirement that mothers and children are accommodated in a part of the prison specially designed for that purpose in all circumstances.

³⁰ See Department of Justice, *Report of the Dóchas Visiting Committee 2017* (2019), available at: https://justice.ie/en/JELR/Pages/Prison_Visiting_Committee_Annual_Reports_2017.

³¹ *Ibid.*, at pp.3-4.

PART 3

TREATMENT OF PRISONERS

Basic Provisions

Rule 18: Certification of cells or rooms

Proposed Change

Rules 18(1)-(2) should be amended to explicitly set out the minimum standard for personal living space as follows:

- each prisoner is entitled to a minimum of 6m² of living space for a single-occupancy cell plus a sanitary facility;
- each prisoner is entitled to a minimum of 4m² of living space for a multiple-occupancy cell plus fully-partitioned sanitary facility;
- all cells must have at least 2m between the walls and at least 2.5m between the floor and the ceiling.

Rationale

The adequacy of cell conditions in Ireland has been repeatedly raised as a concern by both international bodies such as the Council of Europe European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)³² and national bodies such as the OIP.³³ The above minimum standards are set by the CPT³⁴ and should be incorporated into the Irish Prison Rules as the minimum standard expected of all cells used in the Irish prison estate.

Proposed Change

Rule 18 should be amended to:

- include a presumption that every prisoner is accommodated within a single-occupancy cell; and
- state explicitly that, in circumstances where a prisoner wishes to share a cell and/or cell-sharing is unavoidable, the Governor is required to (a) carry out a careful risk assessment to ensure prisoners are suitable to associate with each other in those conditions and (b) monitor and regularly review those cell-sharing arrangements to ensure the conditions remain suitable.

³² See e.g. the CPT's comments in respect of multiple-occupancy cells in Arbour Hill, Cork, Midlands and Cloverhill Prisons in its 2020 report on Ireland in CPT, *Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 23 September to 4 October 2019* (2020), at pp.38-39, available at: <https://rm.coe.int/1680a078cf>.

³³ See e.g. the OIP's comments in respect of multiple-occupancy cells in Cloverhill Prison in OIP, *COVID-19 Thematic Inspection of Cloverhill Prison 18 - 19 March 2021* (2021), at pp.17-19, available at: <https://www.justice.ie/en/JELR/Pages/COVID-19-Thematic-Inspections-of-Prisons-2021>.

³⁴ CPT, *Living space per prisoner in prison establishments: CPT standards* (2015), at p.1, available at: <https://rm.coe.int/16806cc449>.

Rationale

The importance of single-cell accommodation is illustrated by previous investigation reports which have detailed how inappropriate cell-sharing has contributed to the death of individual prisoners.³⁵ Several high-profile reports have further recommended that enforced cell-sharing be eliminated³⁶ and the goal of “one person, one cell” be actively pursued,³⁷ and IPRT has repeatedly reinforced the importance of single-cell accommodation in its *PIPS* reports.³⁸

EPR 18.5-18.7 and NMR 12.1 further make clear that single-cell accommodation should be the default position across all prisons.

Proposed Change

Rule 18 should be amended by:

- inserting a further explicit requirement that all cells certified for use by prisoners must respect human dignity and privacy; and
- setting out the minimum requirements of lighting, heating, ventilation, sanitation and cell-fittings which are required in respect of all cells before they are certified (as opposed to simply leaving it up to the Minister to decide).

Rationale

The importance of a prisoner’s right to be treated with respect, dignity and humanity, and to have access to decent living conditions, is implicit within many international human rights instruments to which Ireland has signed up.³⁹ The cell conditions within which a person is living is crucial to vindicating these rights, and the minimum standards expected of all cells should accordingly be made explicit in the Irish Prison Rules.

This is further required by EPR 18.3, which states that “[s]pecific minimum requirements in respect of the matters referred to in [18.1 and 18.2] shall be set in national law”.

Rule 19: Insufficient Accommodation

Proposed Change

³⁵ See e.g. OïP, *A report by the Inspector of Prisons Judge Michael Reilly into the circumstances surrounding the death of Prisoner B in the Midlands Prison on 12 February 2013* (2015), at pp.12-13, 21-22, available at: <https://www.oip.ie/wp-content/uploads/2019/11/Report-into-the-death-of-Prisoner-B-2013.pdf>.

³⁶ Gráinne McMorow SC, *Report of the Commission of Investigation into the Death of Gary Douch - Volume Two - Final Report* (2014), Rec 3.1, at p.449, available at: <https://www.justice.ie/en/jelr/pages/pb14000112>.

³⁷ Joint Committee on Justice and Equality, *Report on Penal Reform and Sentencing* (2018), Rec 5, at p.54, available at: https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_justice_and_equality/reports/2018/2018-05-10_report-on-penal-reform-and-sentencing_en.pdf.

³⁸ See Standard 9: Every prisoner has access to single-cell accommodation, IPRT, *Progress in the Penal System (PIPS): A framework for penal reform* (2017), at p.24, available at: https://www.iprt.ie/site/assets/files/6431/progress_in_the_penal_system_compressed.pdf.

³⁹ See e.g. Article 3 of the European Convention on Human Rights, Article 7 on the International Covenant on Civil & Political Rights, Article 16 of the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 37 on the UN Convention on the Rights of the Child. See also IPRT, *Progress in the Penal System (PIPS): A framework for penal reform* (2017), at p.37, available at: https://www.iprt.ie/site/assets/files/6431/progress_in_the_penal_system_compressed.pdf.

Rule 19(2) should be amended so as to require the Governor to notify both the Minister and the OiP in circumstances where a prisoner has had to be accommodated otherwise than in a certified cell or room for more than 24 hours.

Rationale

The importance of regular monitoring and inspection of prison establishments is made clear by EPR 9, 92-93 and NMR 83-85.⁴⁰ As it stands, and until such time as the Optional Protocol to the Convention against Torture (OPCAT) is ratified, the OiP remains the only national oversight body in Ireland with the power to inspect and investigate Irish prisons.⁴¹ In order to allow the OiP do its job as effectively as possible it is crucial that they are notified of significant matters relating to conditions in prison, such as that in issue in this rule.

Proposed Change

Consideration should be given to outlining within Rule 19 the measures that are in place to ensure that minimum cell conditions are not breached as a result of overcrowding within the prison estate. For example, this might involve setting out a requirement that 'safe custody limits' be established in respect of each prison and, where such limits are breached, requiring notification of, and/or sign off from, the Minister.

Rationale

EPR 18.4 requires that national law shall provide "*mechanisms for ensuring that these minimum requirements are not breached by the overcrowding of prisons*". It may be that the Prison Rules are not best placed to incorporate this particular requirement, but IPRT would advise that consideration is given to how the commitment to preventing overcrowding, and minimising the harmful effects of overcrowding, might be included within the Irish Rules.⁴²

Rule 20: Prison hygiene

Proposed Change

Rule 20 should be amended to insert:

- a statement to the effect that, upon admission to a prison, prisoners shall be allocated a cell or room that is clean;
- a requirement that a prisoner shall be provided, free of charge, with such articles as are necessary for maintaining their cell in a clean and hygienic state; and

⁴⁰ See also PIPS Standard 24: Structures are in place for the regular inspection and monitoring of prisons. Inspection reports are made publicly available within a clear timeframe, IPRT, *Progress in the Penal System (PIPS): A framework for penal reform* (2017), at p.25, available at: https://www.iprt.ie/site/assets/files/6431/progress_in_the_penal_system_compressed.pdf

⁴¹ See e.g. s.31 of the Prisons Act 2007 and OiP, *Office of the Inspector of Prisons Mission and Values*, available at: <https://www.oip.ie/>.

⁴² In particular, it is worth noting Standards 3 and 4 of PIPS, which set out the need to ensure all prisons are operating under their maximum capacity and that the numbers within each prison are kept below 300 people, see IPRT, *Progress in the Penal System (PIPS): A framework for penal reform* (2017), at pp.33-34, available at: https://www.iprt.ie/site/assets/files/6431/progress_in_the_penal_system_compressed.pdf.

- a requirement that all parts of a prison regularly used by prisoners shall be properly maintained and kept clean at all times.

Rationale

Insertion of the above will bring the Irish Prison Rules in line with EPR 19 and NMR 17.

Rule 21: Clothing

Proposed Change

Rule 21(3) should be amended to reflect a prisoner’s right to be provided with clothing of a kind appropriate to their gender identity (as opposed to simply their gender).

Rationale

IPRT has previously noted the importance of respect for a person’s right to gender expression, which will including ensuring that gender-appropriate clothing is provided to transgender prisoners.⁴³ This is underpinned by principle 9 of the updated Yogyakarta Principles, which set out the broad human rights principles applicable in circumstances where a transgender person is detained.⁴⁴ As noted above, this principle makes clear that policies should be implemented which combat discrimination on the grounds of gender identity / expression, including with respect to issues such as “*items to express gender*”.⁴⁵

Rule 22: Bedding

Proposed Change

The following should be further inserted at the end of r 22(1): “*and replaced at regular intervals*” (or words to this effect).

Rationale

In recent reports, the OiP noted a number of concerns in regards the quality of the bedding being provided to prisoners, remarking that pillows were sometimes “*aged and yellow*”, and some mattresses were in terrible states of disrepair and/or extremely old.⁴⁶ It is clear that bedding

⁴³ See IPRT, *Out on the Inside The Rights, Experiences and Needs of LGBT People in Prison* (2016), at p.20, available at: <https://www.iprt.ie/iprt-publications/out-on-the-inside-the-rights-experiences-and-needs-of-lgbt-people-in-prison/>.

⁴⁴ For more information on the Yogyakarta Principles, see <http://yogyakartaprinciples.org/>.

⁴⁵ See *The Yogyakarta Principles plus 10* (2017), at p.18, available at: http://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5_yogyakartaWEB-2.pdf.

⁴⁶ See OiP, *COVID-19 Thematic Inspection of Cloverhill Prison 18 - 19 March 2021* (2021), at p.18; and OiP, *COVID-19 Thematic Inspection of Wheatfield Prison 6 - 7 April 2021*, at p.17, both available at: <https://www.justice.ie/en/JELR/Pages/COVID-19-Thematic-Inspections-of-Prisons-2021>.

materials will become extremely worn over a period of prolonged use (often by multiple different individuals) and it should accordingly be made explicit in the Rules that there is an expectation that bedding will be replaced on a regular basis. This is further required by EPR 21 and NMR 21.

Proposed Change

Rule 22(2) should be amended to state that a prisoner shall not be required to sleep without a bed (as opposed to simply a mattress).

Alternatively, and at a minimum, r 22(2) should be amended to require the Governor to notify the Minister and the OiP if circumstances require the accommodation of a prisoner on a mattress on the floor for a period of more than 24 hours.

Rationale

The CPT has identified significant concerns in regards the use of mattresses in Irish prisons, remarking in their 2020 report on Ireland that they met a prisoner in Midlands Prison who had spent almost a month on a mattress on the floor.⁴⁷ The CPT made clear that this was unacceptable from their perspective, and recommended that steps be taken to ensure that prisoners do not have to sleep on a mattress on the floor and that they are provided with their own bed.⁴⁸

EPR 21 and NMR 21 further make clear that, at a minimum, prisoners should be provided with their own bed, and the OiP has specifically noted that the current wording of r 22(2) does not align with “*minimum international human rights standards*”.⁴⁹ It is thus clear that this rule ought to be amended so as to meet minimum standards, but as an alternative – and as an absolute minimum - a duty should be imposed on Governors to notify the Minister and the OiP if a situation arises whereby a prisoner has been sleeping on a mattress on the floor for more than 24 hours.

Rule 23: Food and drink

Proposed Change

Rule 23 should be supplemented by a requirement that communal dining within each prison is facilitated to the greatest extent possible.

Rationale

IPRT has long observed that communal dining within prisons can promote normalisation and general life skills, and should accordingly be facilitated wherever possible.⁵⁰ Despite IPRT recommendations on this point, however, the numbers of prisoners who have access to such

⁴⁷ CPT, *Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 23 September to 4 October 2019* (2020), at p.39, available at: <https://rm.coe.int/1680a078cf>.

⁴⁸ Ibid.

⁴⁹ See OiP, *COVID-19 Thematic Inspection of Cloverhill Prison 18 - 19 March 2021* (2021), at p.18, available at: <https://www.justice.ie/en/JELR/Pages/COVID-19-Thematic-Inspections-of-Prisons-2021>.

⁵⁰ See Standard 18 of PIPS, IPRT, *Progress in the Penal System (PIPS): A framework for penal reform* (2017), at p.53, available at: https://www.iprt.ie/site/assets/files/6431/progress_in_the_penal_system_compressed.pdf

communal dining has remained low.⁵¹ The above amendment would help redress this by emphasising the importance of such dining arrangements within the Irish Rules.

Proposed Change

Rule 23(1) should be amended to include a specific requirement that prisoners be provided with three meals a day with reasonable intervals between them.

Rationale

Numerous reports have noted the concerns of prisoners in regards the irregular nature of mealtimes.⁵² Amendment of r 23(1) to include the above requirement would address these concerns and also incorporate EPR 22.4 into the Irish Rules.

Proposed Change

Rule 23(2) should be amended to remove the phrases “*subject to the maintenance of good order and safe and secure custody*” and “*in so far as is practicable*”.

Rationale

Forthcoming research commissioned by IPRT has identified some concerns in regards the commitment to providing prisoners with food appropriate to their religious observance (although it was acknowledged that the IPS is generally very good in this respect).⁵³ EPR 22.1 makes clear that prisoners must be provided with a diet that takes account of their religion and culture; this requirement should not therefore be watered down by making such a right subject to any caveats.

Rule 24: Sanitary and washing facilities

Rule 25: Personal cleanliness

Proposed Change

Rule 24(1) should be amended to:

- remove the phrase “*[i]n so far as is practicable*” insofar as it applies to sanitary facilities being provided in a prisoner’s cell or room; and
- make clear that all sanitary facilities should be hygienic and provide adequate privacy to prisoners.

⁵¹ See e.g. IPRT, *Progress in the Penal System (PIPS): A framework for penal reform 2019* (2019), at p.73, available at: <https://pips.iprt.ie/site/assets/files/Progress-in-the-Penal-System-2019.pdf>. This would appear to be further compounded by the impact of recent Covid-19 restrictions see e.g. OIP, *Covid-19 Thematic Inspections of Prisons 2021*, available at: <https://www.justice.ie/en/JELR/Pages/COVID-19-Thematic-Inspections-of-Prisons-2021>, where it was noted that many prisoners receive their food in their cell.

⁵² See CPT, *Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 23 September to 4 October 2019* (2020), at p.39, available at: <https://rm.coe.int/1680a078cf>; and OIP, *COVID-19 Thematic Inspection of Mountjoy Men’s Prison 1 - 4 March 2021* (2021), at p.12, available at: <https://www.justice.ie/en/JELR/Pages/COVID-19-Thematic-Inspections-of-Prisons-2021>. This was a point also made by the OIP in the Covid-19 Thematic Inspection reports for Limerick, Cloverhill and Wheatfield Prisons.

⁵³ See IPRT, *Access to Rights and Justice for Migrants and Ethnic Minority People in the Penal System* (forthcoming).

Rationale

IPRT has long advocated for an end to the practice of “slopping out” and – while a lot of work has been done to eliminate this practice – it remains the case that a small percentage of those in prison in 2021 continue to slop out.⁵⁴ EPR 19.3 makes clear that prisoners are entitled to sanitary facilities which are hygienic and respect privacy (echoed by NMR 15), and the CPT has specifically advised that “*all in-cell toilet facilities should be fully partitioned up to the ceiling to provide a degree of privacy and dignity for prisoners sharing the same cell*”.⁵⁵ The updated Irish Prison Rules should reflect these minimum standards.

Proposed Change

Rule 25(2) should be amended so as:

- to make clear that a prisoner shall normally be permitted to take a hot shower or bath once a day; and
- to entitle a prisoner to a hot shower or bath at least twice a week.

Rationale

The above amendment will bring the Irish Rules in line with the minimum requirements of EPR 19.4.

Association and Activity

Rule 27: Out-of-cell time and authorised structured activity

Proposed Change

Rule 27 should be amended to specifically address the practice of solitary confinement and set out the applicable limits for such practice. Specifically, r 27 should:

- explain the meaning of ‘solitary confinement’ as being the confinement of a prisoner in a cell for 22 hours or more a day;
- explicitly set out the maximum period for which solitary confinement may be imposed, with that period being no longer than 15 consecutive days;
- expressly safeguard against the successive use of shorter periods of solitary confinement, so that a person cannot be held in solitary confinement for a period of less than 15 days, removed for a period of 24 hours, and then returned to solitary confinement;
- state that solitary confinement shall never be imposed on (a) pregnant women or women with a child in prison and (b) any prisoner with mental or physical disabilities;

⁵⁴ IPS, *Census Prison Population April 2021 – Cell occupancy – In-Cell Sanitation* (2021), available at: https://www.irishprisons.ie/wp-content/uploads/documents_pdf/April-2021-In-Cell.pdf.

⁵⁵ CPT, *Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 23 September to 4 October 2019* (2020), at p.21, available at: <https://rm.coe.int/1680a078cf>.

- make clear that solitary confinement should only ever be used as a measure of last resort and in exceptional circumstances, which are clearly set out, and should be used for as short a period as possible;
- make clear that solitary confinement shall not be imposed as a disciplinary punishment, other than in exceptional cases and then only for a specified period which shall be as short as possible;
- set out that any prisoner who is held in solitary confinement shall be visited daily by a doctor and mental health professional;
- make clear that a prisoner held in solitary confinement is entitled to at least one hour of exercise in the open air each day *per r 32(1)*;
- require that the reasons why a person is being held in solitary confinement, and the length of time for which they have been held in such conditions, is recorded;
- require that the IPS routinely publish, as part of their general census statistics and appropriately anonymised, details of the length of time individual prisoners have been held in solitary confinement; and
- require the Governor to notify the following individuals in circumstances where a person has been held in solitary confinement for a period of more than 48 hours: the person's next of kin and/or solicitor; the prison Visiting Committee; the prison chaplain; the OiP; and (in circumstances where the person concerned is awaiting transfer to the Central Mental Hospital (CMH)) the Office of Inspector of Mental Health Services.

Rationale

IPRT has long advocated for the elimination of the practice of solitary confinement in Irish prisons,⁵⁶ with research showing that such conditions can have extremely damaging physical and psychological effects on a person.⁵⁷ We know, however, that the practice continues, with recent census figures in April 2021 showing that 334 individuals were being held in such conditions, a reported increase of 51% since the commencement of this survey in 2013.⁵⁸

While IPRT welcomed the amendments made to r 27 by the Prison (Amendment) Rules 2017 (SI No. 276/2017), it remains the case that the current Irish Prison Rules do not set out any explicit limits on the use of solitary confinement, contrary to the minimum standards set out by EPR 60 and NMR 43.1, 44-45. This is a major oversight and must be addressed by the current review.⁵⁹

It is further crucial that appropriate oversight mechanisms are imposed on the use of solitary confinement, and that explicit requirements are included within the Rules so as to ensure the relevant individuals / authorities are informed when a person is being held in such conditions. By

⁵⁶ See e.g. PIPS Standard 26: Solitary confinement is used as a last resort and only in exceptional circumstances. It is used for the shortest period possible and for a maximum of 15 days. Reasons for and lengths of time a prisoner is held in solitary confinement must be recorded. IPRT, *Progress in the Penal System (PIPS): A framework for penal reform* (2017), at p.25, available at: https://www.iprt.ie/site/assets/files/6431/progress_in_the_penal_system_compressed.pdf

⁵⁷ See e.g. IPRT, *'Behind the Door': Solitary Confinement in the Irish Penal System* (2018), at pp.16-18, available at: https://www.iprt.ie/site/assets/files/6439/solitary_confinement_web.pdf.

⁵⁸ IPS, *Census of Restricted Regime Prisoners April 2021* (2021), available at: https://www.irishprisons.ie/wp-content/uploads/documents_pdf/April-2021-Restriction.pdf.

⁵⁹ Former TD Clare Daly's Prisons (Solitary Confinement) (Amendment) Bill 2016 may also provide some ideas as to how to strengthen the protections against the use of solitary confinement: it is available here: <https://www.oireachtas.ie/en/bills/bill/2016/95/?tab=bill-text>.

way of contrast, for example, in circumstances where a person is in an approved centre is placed in seclusion for more than 72 hours, the Inspector of Mental Health Services must be notified.⁶⁰

Proposed Change

Rule 27(3) should be amended to:

- delete the phrase “[i]n so far as is practicable” or, at a minimum, make clear that where it has not been possible to permit a prisoner five hours of authorised structured activity, the reasons for this must be recorded in writing; and
- make clear that every prisoner is guaranteed a minimum 12 hours out-of-cell time (i.e. that a prisoner is entitled, in addition to the five hours engagement in authorised structured activity, an additional seven hours (minimum) out-of-cell time).

Rationale

IPRT has detailed the importance of out-cell-time in successive editions of *PIPS*⁶¹ while Visiting Committee reports have previously detailed the harmful impact that a lack of out-of-cell time can have on prisoners.⁶² EPR 25.2 makes clear that the prison regime should allow all prisoners “to spend as many hours a day outside their cells as are necessary for an adequate level of human and social interaction”. As the OiP has previously noted, a lack of resources should not be used as an excuse for failing to provide adequate out-of-cell time to all prisoners.⁶³ As a wealthy country, Ireland should be striving to provide the greatest possible number of hours out-of-cell to all prisoners and this should be reflected in the Prison Rules. A commitment to longer periods of out-of-cell time will further assist in fulfilling EPR 5-6 and NMR 4-5.

Rule 32: Exercise

Proposed Change

Rule 32A should be removed in its entirety.

Alternatively, and at a minimum, the rule should be limited in scope by either:

- a. inserting a sunset clause at which time this provision shall cease to have effect; or
- b. inserting additional safeguards to limit the power granted to the Director General and Governor e.g. by requiring the reasons for any decisions made under r 32A to be recorded

⁶⁰ See Rule 6.3 of the Mental Health Commission *Rules Governing the Use of Seclusion and Mechanical Means of Bodily Restraint* (2009), at p.22, available at: <https://www.mhcirl.ie/sites/default/files/2021-01/Rules%20Governing%20the%20Use%20of%20Seclusion%20and%20Mechanical%20means%20of%20bodily%20Restraint.pdf>.

⁶¹ See Standard 16: Every prisoner is unlocked for a minimum of 12 hours per day, including a minimum of five hours per day engaged in structured meaningful activity for five days a week. IPRT, *Progress in the Penal System (PIPS): Assessing progress during a pandemic* (2020), available at: <https://pips.iprt.ie/progress-in-the-penal-system-pips-2020/part-2-measuring-progress-against-the-standards/2-prison-conditions-and-regimes/16-out-of-cell-time/>.

⁶² See e.g. Mountjoy Prison Visiting Committee, *Annual Report to The Minister for Justice Charles Flanagan T.D. of the Mountjoy Prison Visiting Committee 2019* (2021), at pp.18, 20, available at: https://www.justice.ie/en/JELR/Pages/Prison_Visiting_Committee_Annual_Reports_List_2019. See also IPRT, *Visiting Committee Annual Reports 2019* (2021), available at: <https://www.iprt.ie/latest-news/visiting-committee-annual-reports-2019/>.

⁶³ OiP, *An Assessment of the Irish Prison System By the Inspector of Prisons Judge Michael Reilly* (2013), at p.13, available at: <https://www.oip.ie/wp-content/uploads/2020/04/Assessment-of-the-Irish-Prison-System.pdf>.

in writing, requiring a review of any such decision within a set period of time, and requiring any such decision to be notified to the OIP and National Preventive Mechanism, when established.

Rationale

Rule 32A was inserted by the Prison (Amendment) Rules 2020 (SI No.250/2020) in July 2020, in response to the Covid-19 pandemic. IPRT has outlined our concerns in regards the scope of the powers provided to the Director General and individual Governors by this new rule, and our view is that this rule should be removed as soon as possible and no later than at the same time as other Covid-related regulations are repealed.⁶⁴ This is a view echoed by the Trinity College Dublin Covid-19 Legal Observatory⁶⁵ and we know that other jurisdictions have included sunset clauses in similar provisions.⁶⁶

Support Services

Rule 33: Entitlement to Health Services

Proposed Change

Rule 33 should further explicitly state that:

- gender-specific healthcare services, at least equivalent to those available in the community, shall be provided to women prisoners;
- transgender prisoners are entitled to medical care that is at least equal to the level of care they would receive in the community; and
- foreign national prisoners are entitled to the services of an independent and competent interpreter when meeting with medical staff in prison.

Rationale

The first amendment will bring the Irish Rules in line with BPR 10.1.

The second amendment will make explicit what is apparently already the general policy of the IPS, namely that transgender prisoners who were receiving treatment in the community will continue to have access to such treatment after their detention.⁶⁷ It would also align the Irish Rules with the

⁶⁴ See IPRT, *Irish Prisons and Covid-19: One Year On* (2021) , at p.9, available at: https://www.iprt.ie/site/assets/files/6901/covid-19_in_prisons_one_year_on.pdf.

⁶⁵ See TCD, *Public Health Law During the COVID-19 Pandemic in Ireland: A Public Policy Report of the COVID-19 Legal Observatory* (2021) at pp.50-51, 66-67, available at: <https://www.tcd.ie/law/2020.21/COVID-19%20Public%20Health%20Law%20Report.pdf>.

⁶⁶ See e.g. Rule 3 of the Prisons and Young Offenders Institutions (Coronavirus) (Scotland) Amendment (No. 2) Rules 2021, available at: <https://www.legislation.gov.uk/ssi/2021/289/contents/made>. A note explaining in some detail the structure of the amendments to the Scottish Prison Rules in response to Covid-19 is available here: <https://www.parliament.scot/~media/committ/850>.

⁶⁷ See IPRT, *Out on the Inside The Rights, Experiences and Needs of LGBT People in Prison* (2016), at p.20, available at: <https://www.iprt.ie/iprt-publications/out-on-the-inside-the-rights-experiences-and-needs-of-lgbt-people-in-prison/>

approach taken by our neighbours e.g. guidance from the Scottish Prison Service makes clear the importance of adequate access to medical treatment for transgender prisoners.⁶⁸

The third amendment would make clear that all foreign national prisoners shall have the right to an interpreter when meeting with medical staff within the prison. IPRT is aware of circumstances arising where foreign national prisoners have to rely on other prisoners for interpretation services, including when meeting with medical staff.⁶⁹ This clearly breaches these prisoners' right to keep their medical information private and should be addressed by the Rules. Such an amendment would further align the Irish Rules with EPR 38.3 and NMR 80.2.

Contact with Outside Community

Rules 35 – 49

At the outset, IPRT wishes to make clear that we endorse the recommendations made by the Action for Children and Families of Prisoners Network in regards the rules relating to visits, phone calls and correspondence, as set out in their submission to this Review.⁷⁰

Proposed Change

The section 'Contact with Outside Community' should be supplemented at the outset by an overarching and explicit statement that a prisoner shall be allowed to communicate as often as possible – by letter, telephone or other forms of communication – with their families, other persons and representatives of outside organisations, and to receive visits from these persons.

Rationale

Inclusion of this statement will align the Irish Rules with EPR 24.1.

Proposed Change

This section 'Contact with Outside Community' should include the following additional rules:

- an explicit requirement that all prisoners are enabled to participate in elections, referenda and other aspects of public life, and proactively facilitated by the IPS in engaging in such activity; and
- explicit recognition of the fact that prisoners are allowed to communicate with the media unless there are compelling reasons to forbid this.

Rationale

⁶⁸ See Scottish Prison Service, *Gender Identity and Gender Reassignment Policy for those in our Custody* (2014), at p.7, available at: <https://www.sps.gov.uk/Corporate/Publications/Publication-2561.aspx>.

⁶⁹ See e.g. IPRT, *Access to Rights and Justice for Migrants and Ethnic Minority People in the Penal System* (forthcoming).

⁷⁰ See Action for Children and Families of Prisoners Network, *Submission to the Irish Prison Service Prison Rules Review* (2021), at pp.3-6, available at: <https://www.actionforfamilies.ie/2021/10/14/submission-to-the-review-of-prison-rules/>.

The above principles reflect minimum standards set out by EPR 24.11-24.12 and should be included within the Irish Prison Rules.

Rule 35: Ordinary visit

Proposed Change

Rule 35 should be amended to:

- explicitly recognise the importance of maintaining a prisoner's relationship with their family and close significant others; and
- include a specific commitment to arranging visits in such a way as to allow prisoners to maintain and develop close significant relationships in as normal a manner as possible.

Rationale

A prisoner's right to respect for their family life is well established under international human rights law (see e.g. Article 8 ECHR; Article 23.1 ICCPR) and Article 41(1) of the Irish Constitution recognises the role and rights of the family more generally. The rights of a prisoner's child are also protected by the UN Convention on the Rights of the Child (UNCRC), various provisions of which make clear that children must not be discriminated against on the basis of the status of their parent and that a child separated from their parent has the right to regular contact with them.⁷¹

Inclusion of the above statements of principle will accordingly recognise these rights and align the Irish Prison Rules with EPR 24.4-24.5, NMR 58 and 106, and Articles 2 and 9 UNCRC.

Proposed Change

Rule 35(7) should be amended to:

- require the Governor to also publish the days and times on which visits may take place on the IPS website; and
- include a commitment to providing visits at a variety of times and days, so as to accommodate family visits to the greatest extent possible.

Rationale

The importance of providing up-to-date and accurate information on visits to families cannot be overestimated.⁷² The days / times of visits for each prison are already published on the IPS website but it would be sensible to recognise this as a specific obligation by including a requirement for such publication within the Irish Prison Rules.

⁷¹ See Articles 2 and 9.3 UNCRC, available at: <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>.

⁷² See e.g. a discussion on the effects of poor communication with families as follows: IPRT, *Piecing it Together: Supporting Children and Families with a Family Member in Prison in Ireland* (2021), at p.34, available at: https://www.iprt.ie/site/assets/files/6958/piecing_it_together_supporting_children_and_families.pdf

On the issue of the variety of days / times offered for visits, IPRT has repeatedly noted the need for evening and weekend visits for children and families⁷³ and detailed the hardships that inflexible visiting arrangements can inflict on families.⁷⁴ Inclusion of an overarching commitment to providing visits at a variety of times and days would accordingly assist in the move towards a more flexible approach to visits, as well as reflect the principles set out in EPR 24.4.-24.5 and NMR 58 and 106.

Rule 36: Regulation of visits

Proposed Change

Rule 36(7) should be amended so as to make visits which permit physical contact the default, with screened visits only being used in circumstances where the Governor has reasonable grounds to believe that it is necessary to restrict such contact.

Rationale

IPRT has previously reported on the distress caused by screened visits⁷⁵ and it is an issue that has been further reported on by prison Visiting Committees and chaplaincy reports.⁷⁶ While it is acknowledged that screened visits will sometimes be required, such visits should be the exception and the default position should be that all prisoners receive a physical contact visit with their families / children, unless there is a specific reason why that cannot be facilitated. Such an approach would bring the Irish Prison Rules in closer alignment with EPR 24.2, which makes clear that any restrictions imposed on visits and communication “*shall nevertheless allow an acceptable minimum level of contact.*”

Proposed Change

Rules 36(10)-(18) should be supplemented as follows:

- a requirement that detailed procedures for searching visitors, and children in particular, are established and that these procedures must be followed by all staff;
- a requirement that all staff responsible for searching visitors are specially trained in the rights of families / children and how to conduct searches of families / children in a child-friendly and respectful manner;
- explicit recognition that the obligation to protect safety and security is to be balanced against the privacy of visitors visiting the prison;

⁷³ See e.g. IPRT, *Progress in the Penal System (PIPS): A framework for penal reform 2019* (2019), at p.52, available at: <https://pips.iprt.ie/site/assets/files/Progress-in-the-Penal-System-2019.pdf>; and IPRT, *Progress in the Penal System (PIPS): A framework for penal reform 2018* (2018), at p.56, available at: <https://www.iprt.ie/site/assets/files/6470/pips2018.pdf>.

⁷⁴ See e.g. IPRT, *Piecing it Together: Supporting Children and Families with a Family Member in Prison in Ireland* (2021), at pp.44-45, available at: https://www.iprt.ie/site/assets/files/6958/piecing_it_together_supporting_children_and_families.pdf

⁷⁵ See IPRT, *Piecing it Together: Supporting Children and Families with a Family Member in Prison in Ireland* (2021), at p.41, available at: https://www.iprt.ie/site/assets/files/6958/piecing_it_together_supporting_children_and_families.pdf

⁷⁶ See e.g. Department of Justice, *Annual Report for 2019 To the Minister for Justice Charles Flanagan TD From Cloverhill Visiting Committee* (2021), at p.4; Department of Justice, *Annual Report to The Minister for Justice Charles Flanagan T.D. of the Mountjoy Prison Visiting Committee 2019* (2021), at p.5; Department of Justice, *Prison Visiting Committee Annual Report 2018 Limerick Prison* (2020), at p.2; Department of Justice, *Visiting Committee Midlands Prison Annual Report 2018* (2020), at p.4, all available at: <https://www.justice.ie/en/JELR/Pages/Prison-Visiting-Committee-Annual-Reports>. See also IPS, *Annual Chaplaincy Report 2020 – Portlaoise* (2021), at p.3, available at: <https://www.irishprisons.ie/information-centre/publications/chaplains-reports/>.

- a requirement that appropriate records are kept of all visitor searches, including the identities of staff carrying out the searches and the results of any such searches; and
- a requirement that where a visitor has been refused an ordinary visit following search (e.g. because a search dog has detected the scent of drugs) that they are offered a screened visit instead of simply being refused access.

Rationale

IPRT made a number of recommendations to improve visiting procedures and conditions for children and families in its recent report, *Piecing it Together: Supporting Children and Families with a Family Member in Prison in Ireland*.⁷⁷ These recommendations were made in response to visitors' negative experiences of search procedures in prisons in Ireland.⁷⁸ The updated Prison Rules should reflect these concerns by strengthening the protections provided to visitors. This would further bring the Irish Rules in line with EPR 54.1, 54.3-54.4, 54.9 and NMR 60.2.

Proposed Change

Rule 36A should be removed in its entirety.

Alternatively, and at a minimum, the rule should be limited in scope by either:

- a. inserting a sunset clause at which time this provision will cease to have effect; or
- b. inserting additional safeguards to limit the power granted to the Director General and Governor e.g. by requiring the reasons for any decisions made under r 36A to be recorded in writing, requiring a review of any such decision within a set period of time, and requiring any such decision to be notified to the OiP.

Rationale

Similar to r 32A, r 36A was inserted by the Prison (Amendment) Rules 2020 (SI No.250/2020) in July 2020, in response to the Covid-19 pandemic. As detailed above, IPRT is of the view that this rule should be removed as soon as possible and no later than at the same time as other Covid-related regulations are repealed.

Rule 38: Visit by legal adviser or relating to court appearance

Rule 39: Visit to foreign national

Rule 40: Visit by Probation and Welfare Officer relating to reports for court or other relevant purpose

⁷⁷ IPRT, *Piecing it Together: Supporting Children and Families with a Family Member in Prison in Ireland* (2021), at p.6, available at: https://www.iprt.ie/site/assets/files/6958/piecing_it_together_supporting_children_and_families.pdf

⁷⁸ Reported negative experiences are detailed in *Piecing it Together*, *ibid*, at p.38, but also in the following reports: O'Dwyer, K., Kelliher, S. and Bowes, J., *Prisoners Returning Home: Prisoners and Family Reintegration* (2019), at pp.51-52, available at: <https://www.cdi.ie/wp-content/uploads/2019/12/CDI-Prisoners-Returning-Home-min.pdf>; and Department of Justice, *Annual Report to The Minister for Justice Charles Flanagan T.D. of the Mountjoy Prison Visiting Committee 2019* (2021), at pp.5, 8, 19, available at: <https://www.justice.ie/en/JELR/Mountjoy%20Prison%20Visiting%20Committee%20Annual%20Report%202019.pdf/Files/Mountjoy%20Prison%20Visiting%20Committee%20Annual%20Report%202019.pdf>.

Proposed Change

Rule 38(3) should be amended to remove the word “*may*” and instead require the Governor to allow the attendance of an interpreter when requested.

Rationale

Forthcoming research to be published by IPRT indicates that the provision of interpreters within the prison system is haphazard.⁷⁹ EPR 38 and NMR 61 require the provision of an independent and competent interpreter to a prisoner who does not speak the local language, and this right should be explicitly set out, without caveat, within the Irish Rules.

Proposed Change

The following should be inserted into r 39:

- a requirement that foreign national prisoners must be informed, without delay and in a language they understand, of their right to request contact and be allowed reasonable facilities to communicate with the diplomatic or consular representative of their State;
- a statement that prison authorities shall co-operate fully with diplomatic or consular officials representing foreign national prisoners.

Rationale

Inclusion of the above will bring the Irish Rules in line with EPR 37.3 and 37.5.

Proposed Change

Rule 40(3) should be amended to remove the word “*may*” and instead require the Governor to allow the attendance of an interpreter when requested.

Rationale

The rationale for this amendment is as set out above in respect of r 38(3).

Rule 42: Video links

Proposed Change

Rule 42(1) should be amended to make explicit that video calls may be permitted not only as an alternative to ordinary visits under the Rules, but in addition to such visits.

Rationale

Such an amendment will reflect the anticipated continuation of video calls, in addition to in-person visits, beyond the Covid-19 pandemic and into the future.⁸⁰

⁷⁹ See IPRT, *Access to Rights and Justice for Migrants and Ethnic Minority People in the Penal System* (forthcoming).

⁸⁰ See e.g. Minister Naughton’s comments to the effect that video calls will be retained for prisoners upon the resumption of physical visits, Department of Justice, *Parliamentary Questions, PQ 1097, 15 June 2021* (2021), available at: <https://www.justice.ie/en/JELR/Pages/PQ-15-06-2021-1097>. See also the most recent IPS visiting procedures, which permit both an in-person visit and a video visit, IPS, *The Recommencement of Physical Visits* (2021), available at: <https://www.irishprisons.ie/recommencement-physical-visits/>; and IPRT, *Remarks*

Proposed Change

Rule 42(1) should be amended to make clear that video calls may be permitted as an alternative to telephone calls for persons with disabilities in prison.

Rationale

IPRT research has noted that deaf prisoners in particular are at a significant disadvantage insofar as telephone calls are inaccessible to them, with a 2020 report finding that the “*lack of video call facilities for Deaf prisoners who communicated through sign language was concerning*”.⁸¹ This amendment would accordingly make clear that those prisoners who need such video calls are entitled to them as a matter of right. It would also align the Irish Rules with Articles 5(3) and 9 UNCRPD.

Rule 44: Letter to authorities

Rule 46: Telephone calls

Rule 47: Contact in case of emergency, or death of prisoner

Proposed Change

Rule 44 should be amended by the insertion of an explicit recognition that communications about legal matters between prisoners and their legal advisers are entirely confidential.

Rationale

Given the importance of lawyer-client privilege, it is important to make explicit the confidentiality of all communications between a prisoner and their legal adviser. This amendment would further align the Irish Rules with EPR 23.4 and NMR 61.1.

Proposed Change

Rule 46(7) should be amended to make clear that telephone calls between a prisoner and their legal adviser will not be intercepted under any circumstances.

Rationale

The rationale for this amendment is as set out above in respect of r 44.

Proposed Change

Rule 47 should be amended as follows:

- the phrase “*as soon as may be*” should be removed from r 47(1) and replaced with the word “*immediately*”;

by Caron McCaffrey at the Launch of the IPRT Progress in the Penal System Report 2020 (2021), at p.2, available at: https://www.iprt.ie/site/assets/files/6836/caron_mccaffrey_iprt_pips_2020_launch.pdf.

⁸¹ IPRT, *Making Rights Real for People with Disabilities in Prison* (2020), at pp.31-33., available at: https://www.iprt.ie/site/assets/files/6565/people_with_disabilities_in_detention_-_single-pages.pdf

- the phrase “[s]ubject to the Governor being satisfied that it would not compromise the safe and secure custody of the prisoner and subject to paragraph (3)” should be removed from r 47(2);
- the phrase “as soon as may be thereafter” should be removed from r 47(2) and replaced with the word “immediately”.

Rationale

Failure to notify a prisoner’s next of kin about a prisoner’s severe illness has been identified as an issue in previous OiP reports.⁸² These amendments would go some way to addressing these concerns in IPS practice, as well as bring the Irish Rules in line with EPR 24.9, which makes clear that the relevant family member should be notified “*immediately*” if a prisoner dies, becomes seriously ill or suffers a serious injury, and NMR 69, which says a prisoner’s death should be communicated to the next of kin “*at once*”.

Proposed Change

Rule 47(5) should be amended by removing the phrase “*as soon as may be after becoming so aware*” and instead make clear that the Governor must inform a prisoner of their family member’s death/illness/injury promptly.

Rationale

EPR 24.6 makes clear that any information received in regards the death or serious illness of any near relative shall be “*promptly communicated to the prisoner*”. NMR 70 makes clear that a prisoner shall be informed of a family member’s serious illness or death “*at once*”. The above amendment will accordingly bring the Irish Rules closer in line with EPR and NMR standards.

Proposed Change

Rule 47(6) should be amended to require the Governor to proactively ensure that the prisoner is provided with access to the prison chaplain (if the prisoner so wishes).

Rationale

The chaplaincy service provides an important function in Irish prisons and specifically can assist prisoners in times of distress, including where a loved one has passed away.⁸³ It would accordingly be helpful if there is an express requirement for such services to be provided to a prisoner in situations where they have been told of a loved one’s death, serious illness or serious injury.

Proposed Change

Rule 47(6) should be supplemented by an explicit statement to the effect that, where circumstances allow, a prisoner should be authorised to leave the prison under escort or alone in order to visit a relative or attend a funeral.

Rationale

Express recognition of this right to be released from prison for a short period of time in order to attend a sick relative or funeral would align the Irish Rules with EPR 24.7 and NMR 70.

⁸² See e.g. OiP, *Investigation Report into the Circumstances Surrounding the Death of Mr I 2018, Aged 53* (2020), at pp.22-23, available at: <https://www.oip.ie/wp-content/uploads/2020/11/Office-of-the-Inspector-of-Prisons-Death-in-Custody-Investigation-Report-Mr-I-2018.pdf>.

⁸³ See e.g. IPS, *Chaplaincy Service*, available at: <https://www.irishprisons.ie/prisoner-services/chaplaincy-service/>.

Privacy

Rule 51: Breach of confidence

Proposed Change

Rule 51 should be amended to:

- remove the phrase “*or in the interests of justice*”; and
- strengthen the obligations of confidence expected of all prison staff by specifying that any disclosure of information that is unrelated to the performance of an official duty shall constitute serious misconduct *per* the Civil Service Disciplinary Code.

Rationale

IPRT has detailed the significant negative impact that adverse media attention can have on prisoners and their families.⁸⁴ It is imperative that the protections provided to prisoners are strengthened by making clear within the Irish Rules that information about a prisoner should never be disclosed other than in the course of official duty and that any such breach of confidence will likely amount to serious misconduct (as is clear from the Civil Service Disciplinary Code).⁸⁵

Rule 52: Separation of male and female prisoners

Proposed Change

Rule 52(1) should be amended to include:

- an express requirement that all prisoners, where relevant and possible, are able to participate in decisions regarding the place of their detention as appropriate to their gender identity; and
- specific reference to the need for prison-wide policies aimed at combatting violence, discrimination and other harm on grounds of gender identity or gender expression, including with respect to issues such as placement within the prison estate.

Rationale

As it stands, r 52 does not recognise the need for specific consideration of a prisoner’s gender identity / expression. It should accordingly be amended as above in order to incorporate the

⁸⁴ IPRT, *Piecing it Together: Supporting Children and Families with a Family Member in Prison in Ireland* (2021), at p.35, available at: https://www.iprt.ie/site/assets/files/6958/piecing_it_together_supporting_children_and_families.pdf

⁸⁵ See Department of Public Expenditure and Reform, *Civil Service Disciplinary Code* (2016), at pp.25-26, available at: [file:///C:/Users/Molly%20Joyce/Downloads/Circular-19-of-2016-Civil-Service-Disciplinary-Code%20\(1\).pdf](file:///C:/Users/Molly%20Joyce/Downloads/Circular-19-of-2016-Civil-Service-Disciplinary-Code%20(1).pdf).

Yogyakarta Principles.⁸⁶ This suggestion echoes recommendations made by the OiP in regards the need for a national policy on the safe custody of transgender men and women.⁸⁷

Searches and Prohibitions

Rule 53: Search of prisoner's property

Proposed Change

Rule 53 should be amended to include a specific requirement that:

- prisoners are present when their personal property is being searched, unless there is a good reason why this is not possible; and
- records are kept of any search carried out in respect of a prisoner's cell, including details of the reasons for the search, the identities of those who conducted the search and the results of the search.

Rationale

The above amendments would provide greater protections to prisoners in circumstances where their cells and possessions are being searched and would align the Irish Prison Rules with EPR 54.8 and NMR 51.

Grievance Procedures

Rules 55-57

Proposed Change

Rules 55-57 should be updated to reflect the new IPS prisoner complaints policy and processes, and should incorporate – at a minimum – the standards set out in EPR 70, NMR 56-57 and BPR 25.1, as well as the principles set out by the CPT in its *Complaints mechanisms* guidance.⁸⁸

Rationale

⁸⁶ More information on the Yogyakarta Principles is available here: <http://yogyakartaprinciples.org/>. See specifically Principle 9, 'The Right to Treatment with Humanity while in Detention'.

⁸⁷ See OiP, *COVID-19 Thematic Inspection of Limerick Prison 6 - 7 April 2021* (2021), at pp.33-34, available at: <https://iopdev.wpengine.com/wp-content/uploads/2021/08/Limerick-Prison-COVID-19-Thematic-Inspection-Report-2021.pdf>.

⁸⁸ See CPT, *Complaints mechanisms* (2018), at pp.3-5, available at: <https://rm.coe.int/16807bc668>.

IPRT has repeatedly called for overhaul of the current prisoner complaints system, to address the numerous deficiencies identified in the system by bodies such as the OIP⁸⁹ and CPT,⁹⁰ and implement a more robust, efficient and independent appeals mechanism.⁹¹ Despite repeated promises to introduce this new complaints and appeals mechanism (with a commitment to specifically provide access to the Office of the Ombudsman),⁹² this has still not been done. Recent updates indicate that it is necessary to amend the Prison Rules in order to introduce the new complaints mechanism, and work is ongoing to do this.⁹³ While IPRT is clear that these specific amendments should not be further delayed as part of the current review, it is crucial that the new complaints process introduced reflects the minimum standards required under international principles.

Long Term Prisoners

Rule 58: Prisoners serving long sentences

Proposed Change

Rule 58(1) should be amended to reduce the time within which a Governor must first meet a prisoner serving a term of imprisonment of five years or more, so that the Governor is required to meet the prisoner within e.g. three months of the prisoner commencing their term of imprisonment, and every year thereafter.

Rationale

IPRT has long emphasised the importance of robust sentence management from the start of a prisoner's sentence,⁹⁴ and both EPR 103 and NMR 92 and 94 make clear that the regime for sentenced prisoners must commence as soon as the prisoner has been committed to prison under sentence, with reports drawn up in respect of that prisoner as soon as possible after admission. The time within which a Governor must see a long-sentenced prisoner should therefore be reduced significantly, in order to ensure that a prisoner is made aware of all services and facilities as soon as possible.

⁸⁹ See OIP, *Review, Evaluation and Analysis of the Operation of the present Irish Prison Service Prisoner Complaints Procedure* By Judge Michael Reilly Inspector of Prisons April 2016 (2016), available at: <https://justice.ie/en/JELR/Pages/Review-Evaluation-and-Analysis-of-the-Operation-of-the-present-Irish-Prison-Service-Prisoner-Complaints-Procedure-April-2016>. More recently, the OIP has described the current complaints system as "not fit for purpose", see OIP, *Annual Report 2020* (2021), at p.24, available at: <https://www.oip.ie/wp-content/uploads/2021/06/OIP-Annual-Report-2020.pdf>.

⁹⁰ See most recently CPT, *Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 23 September to 4 October 2019* (2020), at pp.23-24, available at: <https://rm.coe.int/1680a078cf>.

⁹¹ See Standards 22 and 23 of PIPS for more detail, IPRT, *Progress in the Penal System (PIPS) A framework for penal reform (2017)* (2017), at p.25, available at: https://www.iprt.ie/site/assets/files/6431/progress_in_the_penal_system_compressed.pdf.

⁹² See e.g. Department of Justice and Equality, *Tánaiste accepts recommendation to give Ombudsman a role in prison complaints* (2016), available at: <https://justice.ie/en/JELR/Pages/PR16000125>; Department of Justice and Equality, *Parliamentary Questions, PQ 148, 30 January 2019* (2019), available at: <https://www.justice.ie/en/JELR/Pages/PQ-30-01-2019-148>.

⁹³ Department of Justice and Equality, *Parliamentary Questions, PQ 1359, 27 July 2021* (2021), available at: <https://www.justice.ie/en/JELR/Pages/PQ-27-07-2021-1359>.

⁹⁴ See e.g. Standard 34 of PIPS, IPRT, *Progress in the Penal System (PIPS) A framework for penal reform (2017)* (2017), at pp.25, 81, available at: https://www.iprt.ie/site/assets/files/6431/progress_in_the_penal_system_compressed.pdf

Proposed Change

Rule 58 should be amended to include as follows:

- a particular emphasis on the need to provide appropriate sentence plans and regimes for life-sentenced prisoners, with such planning to commence within a minimum period of time (e.g. within six months of the person being sentenced);
- reference to the ISM system and the minimum standards expected of this system including e.g. recognition of the need for regular review of individual sentence plans for prisoners, with such reviews to take place at least once a year.

Rationale

The IPS introduced the ISM system in 2008⁹⁵ but its roll-out across the prison estate appears to have been uneven since then.⁹⁶ Including a specific reference to ISM, and the minimum standards to be delivered by the system, within the Prison Rules would help strengthen its status within the prison regime. Any such minimum standards should further:

- incorporate the standards expected of the prison regime applicable to sentenced prisoners *per* EPR 102-107 and NMR 86-108; and
- acknowledge the importance of starting sentence planning as early as possible and regularly reviewing such plans (a point reinforced by the IPS in its 2017 *Examination of the Sentence Management of People Serving Life Sentences* report).⁹⁷

Remission, Transfer and Release

Rule 59: Remission

Proposed Change

Rule 59 should be amended to explicitly recognise that sentenced foreign prisoners are entitled to full consideration for early release as soon as they are eligible.

Rationale

This amendment would align the Irish Rules with EPR 37.8.

Proposed Change

⁹⁵ See IPRT, *Progress in the Penal System (PIPS) A framework for penal reform (2017)* (2017), at p.52, available at: https://www.iprt.ie/site/assets/files/6431/progress_in_the_penal_system_compressed.pdf/.

⁹⁶ See e.g. Department of Justice, *Annual Report to The Minister for Justice Charles Flanagan T.D. of the Mountjoy Prison Visiting Committee 2019* 30 March 2020 (2021), at pp.11-12, available at: https://www.justice.ie/en/JELR/Pages/Prison_Visiting_Committee_Annual_Reports_List_2019; and IPRT, *Progress in the Penal System: A framework for penal reform* (2019), at pp.71-72, available at: <https://pips.iprt.ie/site/assets/files/Progress-in-the-Penal-System-2019.pdf>.

⁹⁷ See IPS, *Examination of the Sentence Management of people serving Life Sentences* (2017), at pp.3, 27-29, available at: https://www.irishprisons.ie/wp-content/uploads/documents_pdf/Life-Sentenced-Prisoner-Report-Final-April-2017.pdf.

Rule 59(1) should be amended to increase standard remission from one-quarter to one-third, and r 59(2) amended to increase enhanced remission from a maximum one-third to a maximum one-half.

Rationale

The standard rate of remission of one-quarter is low when compared to neighbouring countries,⁹⁸ and it is clear that enhanced remission can play an important role in incentivising prisoners' engagement in rehabilitative services.⁹⁹ Increasing the rate of remission has been considered and recommended as far back as 2013 by various reports;¹⁰⁰ the current review provides an opportunity to expand the rehabilitative potential offered by the policy of remission by amending the Prison Rules accordingly.

Rule 61: Basic provision on release

Proposed Change

Rule 61 should be amended by inserting an explicit requirement that the Governor shall, in the lead up to and at the time of a prisoner's release, work closely with relevant services and agencies that supervise and assist released prisoners. This should further include specific obligations that the Governor will engage with services such as health and housing to ensure that all prisoners receive continuity of healthcare upon release as well as full support in accessing stable accommodation.

Rationale

IPRT has long emphasised the importance of inter-agency cooperation in order to ensure the successful reintegration of people upon their release.¹⁰¹ The need for prison authorities to work closely with other agencies is further underpinned by EPR 107.4. This amendment would accordingly strengthen the obligations of the prison in regards this duty of cooperation and also align the Irish Rules with the EPR.

⁹⁸ See IPRT, *Position Paper 9 Reform of Remission, Temporary Release and Parole* (2012), at pp.10-11, available at: https://www.iprt.ie/site/assets/files/6315/iprt_position_paper_reform_of_remission_tr_parole_oct_2012.pdf. For example, in Scotland, prisoners sentenced to a short term sentence (less than 4 years) will be automatically released after serving half their time in prison, see Scottish Sentencing Council, *Prison sentences*, available at: <https://www.scottishsentencingcouncil.org.uk/about-sentencing/prison-sentences/>. In England & Wales, most prisoners sentenced to a determinate sentence are automatically released halfway through the sentence, see Sentencing Council of England & Wales, *Determinate prison sentences*, available at: <https://www.sentencingcouncil.org.uk/sentencing-and-the-council/types-of-sentence/determinate-prison-sentences/>.

⁹⁹ See Ian O'Donnell, *An Evidence Review of Recidivism and Policy Responses* (2020), at pp.11, 47-49, available at: https://www.justice.ie/en/JELR/Pages/An_Evidence_Review_of_Recidivism_and_Policy_Responses.

¹⁰⁰ See Joint Committee on Justice, Defence and Equality, *Report on Penal Reform* (2013), at p.9, available at: <https://www.drugsandalcohol.ie/19618/1/Penal-Reform-Report-13-March-2013-Final.pdf>; and Department of Justice, *Strategic Review of Penal Policy* (2014), at pp.82-84, available at: <https://www.justice.ie/en/jelr/pages/pb14000244>.

¹⁰¹ See e.g. Standard 35 of PIPS, IPRT, *Progress in the Penal System (PIPS) A framework for penal reform (2017)* (2017), at pp.81-82, available at: https://www.iprt.ie/site/assets/files/6431/progress_in_the_penal_system_compressed.pdf. See also Standards 13 and 14 of PIPS e.g. in IPRT, *Progress in the Penal System (PIPS) A framework for penal reform (2019)* (2019), at pp.54-58, 63-64, available at: <https://pips.iprt.ie/site/assets/files/Progress-in-the-Penal-System-2019.pdf>.

PART 4

CONTROL, DISCIPLINE AND SANCTIONS

Control

Rule 62: Removal of prisoner from structured activity or association on grounds of order

Rule 63: Protection of vulnerable prisoners

Proposed Change

Both r 62 and r 63 should be amended to include:

- an explicit recognition of all prisoners' right to a minimum one hour of exercise in the open air each day (*per* r 32) and a minimum two hours out-of-cell time with the opportunity for meaningful human contact (*per* 27); and
- a requirement that full and accurate records are kept of the out-of-cell time and association each prisoner detained on restricted regime has received.

Rationale

The number of prisoners held on restricted regime within Irish prisons has long been an issue identified by IPRT,¹⁰² with figures pre-pandemic indicating that almost 15% of the prison population were on a restricted regime¹⁰³ and more recent figures from April 2021 showing a total of 743 prisoners (20%) on restricted regime.¹⁰⁴ In regards the most recent figures, when the number of prisoners on restricted regime for Covid-related reasons is removed, the percentage of individuals on restricted regime was around 15% (i.e. it has not changed significantly since before the pandemic).

In its 2020 report, the CPT identified a number of concerns in regards how prisoners on restricted regimes were being managed.¹⁰⁵ It particularly noted that the IPS policy to eliminate solitary confinement (which details several recording requirements in regards the out-of-cell time offered to prisoners being held under r 62 or r 63)¹⁰⁶ was laudable but was not always being met, with the effect that some prisoners were being held in *de facto* solitary confinement but without their situation being recorded as such. The CPT accordingly recommended that the Irish authorities

¹⁰² See e.g. Standard 16 of PIPS, IPRT, *Progress in the Penal System (PIPS) A framework for penal reform (2017)* (2017), at pp.50-51, available at: https://www.iprt.ie/site/assets/files/6431/progress_in_the_penal_system_compressed.pdf

¹⁰³ IPS, *Census of Restricted Regime Prisoners January 2020* (2020), available at: <https://www.irishprisons.ie/information-centre/statistics-information/census-reports/>.

¹⁰⁴ IPS, *Census of Restricted Regime Prisoners April 2021* (2021), available at: <https://www.irishprisons.ie/information-centre/statistics-information/census-reports/>.

¹⁰⁵ CPT, *Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 23 September to 4 October 2019* (2020), at pp.26-33, available at: <https://rm.coe.int/1680a078cf>.

¹⁰⁶ IPS, *Elimination of solitary confinement* (2017), at pp.2-3, available at: https://www.irishprisons.ie/wp-content/uploads/documents_pdf/Elimination-of-solitary-confinement-Policy.pdf.

“reiterate to prison management and prison officers the importance of ensuring an accurate recording of out-of-cell time for persons placed on restricted regimes.”¹⁰⁷

Including an explicit recognition of the out-of-cell time due to prisoners under rr 62 and 63, as well as an express requirement to record the out-of-cell time and association provided to such prisoners, within the Irish Prison Rules would assist in implementing the CPT’s recommendation and strengthening the entitlements of those prisoners held on restricted regimes. It would further align the Irish Prison Rules with EPR 53A(a) and 53A(g).

Proposed Change

Rules 62 and 63 should be amended by inclusion of the following broad principles:

- a requirement that any decision to separate an individual shall take into account their health and any disabilities that they may have which might render them more vulnerable to the adverse effects of separation, with a corresponding requirement that the use of such measures is ultimately signed off by prison healthcare staff;
- a requirement that, where separation appears to be adversely affecting a prisoner’s physical or mental health, action is taken to suspend the separation or replace it with a less restrictive measure;
- express acknowledgement that the cells used for separation shall meet the minimum standards applicable in these rules to other accommodation for prisoners;
- a commitment to take additional steps to mitigate the negative effects of a prisoner’s separation the longer that the prisoner is separated from others (e.g. by maximising their contact with others and providing them with additional facilities and activities);
- a requirement to provide any prisoners who are separated under these rules with reading materials and other forms of entertainment (that particularly are accessible to prisoners with literacy difficulties);
- a requirement that the Governor visit every prisoner who is subject to separation under these rules on a daily basis; and
- a commitment to taking measures to alleviate the potential detrimental effects of a prisoner’s confinement in circumstances where the prisoner has been separated.

Rationale

The potentially harmful impacts of limited out-of-cell time have long been detailed by IPRT in successive *PIPS* reports,¹⁰⁸ as well as various Visiting Committee and chaplaincy reports.¹⁰⁹ Previous research has also noted the potential over-use of restricted regimes in respect of people with disabilities, and the particularly harmful effects of such measures on this cohort.¹¹⁰ It is accordingly

¹⁰⁷ CPT, *Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 23 September to 4 October 2019* (2020), at p.26, available at: <https://rm.coe.int/1680a078cf>

¹⁰⁸ See Standard 16 of *PIPS*, and the commentaries provided under each edition (2017-2020).

¹⁰⁹ See e.g. Prison Visiting Committee reports for the year 2018, where the impact of limited out-of-cell time was a recurrent theme, Department of Justice, *Prison Visiting Committee Annual Reports 2018* (2020), available at: https://www.justice.ie/en/JELR/Pages/Prison_Visiting_Committee_Annual_Reports_2018. See also Department of Justice, *Annual Report to The Minister for Justice Charles Flanagan T.D. of the Mountjoy Prison Visiting Committee 2019 30 March 2020* (2021), at p.18, available at: https://www.justice.ie/en/JELR/Pages/Prison_Visiting_Committee_Annual_Reports_List_2019; and IPS, *2018 Annual Chaplaincy Report: April 3, 2019 Wheatfield Place of Detention* (2019), at p.4, available at: <https://www.irishprisons.ie/information-centre/publications/chaplains-reports/>.

¹¹⁰ See IPRT, *Making Rights Real for People with Disabilities in Prison* (2020), at pp.52-53., available at: https://www.iprt.ie/site/assets/files/6565/people_with_disabilities_in_detention_-_single_pages.pdf. This report recommended that the

important to alleviate to the greatest extent possible the harmful effects of detaining prisoners under rr 62 and 63 by setting out the above minimum standards applicable whenever a person is held on restricted regime. These amendments will further align the Irish Rules with EPR 53A and NMR 38.

Proposed Change

Rule 62 should be amended so as to include the following:

- express acknowledgement that a prisoner has the right to complain in regards a decision under r 62 and/or the use of such measures; and
- a requirement that, in addition to being informed in writing of the reasons why they are being removed from structured activity or association under r 62(5), a prisoner shall also be told how they can challenge the decision / measures in a language and format that they understand.

Rationale

As it stands, r 62 does not provide any mechanism by which a prisoner can challenge the decision of a Governor or the Director General to keep them on a restricted regime. The CPT identified this as a particular issue of concern, stating its view that “*there is insufficient oversight of the placement and review procedures for keeping a prisoner on Rule 62*” and describing the 21-day review under r 62(9) as “*little more than a rubber-stamping exercise*”.¹¹¹ The CPT accordingly recommended that Irish authorities put in place an effective review process for all r 62 placement and extension decisions.¹¹² Access to such complaint and appeal mechanisms is further required by EPR 53.5-53.6, 53.9 and 53A(j). The lack of any oversight in regards the use of r 62 is a major gap in the current Rules and must be addressed as a matter of priority.

Proposed Change

Rule 63 should be amended to reflect the requirements of r 62(7) i.e. prisoners separated for their own protection should similarly be required to be seen by a prison doctor and kept under regular review by such doctor.

Rationale

The most recent figures on the use of restricted regimes indicates that the vast majority of these individuals (556 out of 743) are being held in such conditions pursuant to r 63 (i.e. for reasons of protection / vulnerability).¹¹³ Those prisoners who have requested separation are particularly less likely to report any detrimental impacts that such separation is having on them. It is therefore imperative that these individuals are provided with all safeguards available, including access to regular checks by a prison doctor.

Proposed Change

Rule 63 should be supplemented by a requirement that a robust and comprehensive risk-assessment and/or investigation is carried out by the Governor before a decision is made to separate a prisoner on the grounds of protection.

IPS conduct a review on the use of restricted regimes to identify whether people with disabilities are disproportionately represented, see Rec 7, at p.6.

¹¹¹ CPT, *Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 23 September to 4 October 2019 (2020)*, at p.30, available at: <https://rm.coe.int/1680a078cf>

¹¹² *Ibid.*, at p.31.

¹¹³ See IPS, *Census of Restricted Regime Prisoners April 2021 (2021)*, available at: <https://www.irishprisons.ie/information-centre/statistics-information/census-reports/>.

Rationale

Research demonstrates that there is often a difference between a person's perceived lack of safety, as compared to their actual lack of safety.¹¹⁴ Before placing a person under such measures, it is therefore imperative that the IPS engage with the person as to their reasons for concern, advise them fully of the implications of being placed on protection and further give proper consideration to whether the measures are necessary through either comprehensive risk-assessing and/or investigation (which might further involve engagement with external services in the community, including Gardaí). This type of approach has previously been recommended by the Strategic Review on Penal Policy,¹¹⁵ and further aligns with IPS proposals as mentioned in previous strategic plans.¹¹⁶

It is important to emphasise, however, that the person concerned should be involved in the decision-making at all stages.

Proposed Change

Rule 63(2) should be amended to remove the words "*if the Governor considers that such participation in authorised structured activity is reasonably likely to be beneficial to the welfare of the prisoner concerned*", so as to make clear that prisoners separated on the basis of their protection must be facilitated in participating with other prisoners in authorised structured activity.

Rationale

The CPT has noted that prisoners on protection should not be "*de facto punished*" by virtue of their situation, and should be provided with "*appropriate conditions and treatment; access to activities, educational courses and sport should be feasible.*"¹¹⁷ The Rules should reflect this recommendation and make clear that prisoners on protection are entitled to participate in authorised structured activity, such as education, training etc, in all circumstances.

Rule 64: Use of special observation cells

Proposed Change

Rule 64 should be amended to include the following additional safeguards in regards the use of special observation cells:

- inclusion of the various safeguards outlined above at pp.39-41 and as required by EPR 53A;

¹¹⁴ See e.g. Ferraro, K. F., *Fear of crime: Interpreting victimization risk* (State Univ. of New York Press, 1995); Vanderveen, G., *Interpreting fear, crime, risk and unsafety: conceptualisation and measurement* (Boom Juridische Uitgevers, 2006); and Farrall, S.D., Jackson, J., Gray, E., *Social Order and the Fear of Crime in Contemporary Times* (Oxford University Press, 2009).

¹¹⁵ See e.g. reference to the importance of inter-agency work with An Garda Síochána and the Probation Service in dealing with those prisoners on protection *per r 63*, at Department of Justice, *Strategic Review of Penal Policy: Final Report* (2014), at pp.56-58, available at: <https://www.justice.ie/en/JELR/Pages/PB14000244>.

¹¹⁶ See e.g. reference to establishing protocols with stakeholders such as An Garda Síochána in regards protection arrangements, at IPS, *Three Year Strategic plan 2012-2015* (2012), at p.48, available at: <https://www.irishprisons.ie/information-centre/publications/strategy-statements/>.

¹¹⁷ CPT, *Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 23 September to 4 October 2019* (2020), at p.28, available at: <https://rm.coe.int/1680a078cf>

- explicit recognition of all prisoners’ right to a minimum one hour of exercise in the open air each day (*per r 32*) and a minimum two hours out-of-cell time with the opportunity for meaningful human contact (*per 27*);
- an explicit requirement that any prisoner held for more than 24 hours in a special observation cell is entitled to a shower;
- an explicit requirement that a care and treatment plan is drawn up for a prisoner accommodated in a special observation cell (although it should be emphasised that prisoners detained in ‘close supervision cells’ should not be there for reasons of self-harm and/or care *per se*);
- an explicit requirement that prisoners being held in a special observation cell are offered increased access to chaplaincy and psychology services;
- an explicit requirement that records regarding a prisoner’s detention in a special observation cell include reference to whether the prisoner has been offered a shower, outdoor exercise and out-of-cell time, and food/ drink; and
- an explicit requirement that, where a prison doctor becomes aware of any signs of torture or other cruel, inhuman or degrading treatment or punishment, they shall document and report such cases to the competent medical, administrative or judicial authority.

Rationale

In its 2020 report, the CPT was extremely critical of the current operation of special observation cells in Irish prisons and made a number of recommendations for their improvement.¹¹⁸ In reviewing r 64, the entirety of the CPT’s observations should be very closely considered (particularly their comments in regards the confusion between ‘close supervision cells’ and ‘safety observation cells’) but the above suggestions set out some of the key aspects of r 64 which should now be amended.

Proposed Change

Rule 64 should be amended to include:

- a requirement similar to that of r 65(4)(c)-(d) i.e. requiring the Governor to notify the relevant prison Visiting Committee and chaplain of a direction to detain a person (or continue to detain a person) in a special observation cell;
- a requirement that the Governor also notify the following individuals of a decision to detain a person (or continue to detain a person) in a special observation cell: the person’s next of kin and/or solicitor; the OiP if the person’s accommodation in such a cell exceeds 72 hours; and the Office of Inspector of Mental Health Services if the person is on a waiting list for transfer to the CMH and their accommodation in such a cell exceeds 72 hours;
- an explicit requirement that the IPS routinely publish, as part of their general census statistics and appropriately anonymised, details of the length of time individual prisoners have been held in special observation cells.

Rationale

As it stands, there is extremely limited oversight of the use of special observation cells in Irish prisons. The above amendments would go some way to addressing this, by ensuring independent,

¹¹⁸ See CPT, *Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 23 September to 4 October 2019* (2020), at pp.34-38, available at: <https://rm.coe.int/1680a078cf>.

external, parties are notified of the use of special observation cells in specific instances and more generally providing transparency on the use of such cells throughout the prison estate. In particular, IPRT has previously advocated for publication of the length of time people are being held in such cells,¹¹⁹ with former Director General Michael Donnellan committing in 2017 to the publication of such details in respect of ‘safety observation cells’.¹²⁰ To date, however, no such data has been made routinely available.

Rule 65: Use of restraints

Proposed Change

Rule 65 should be amended to include as follows:

- a general requirement that restraints are to be used only as a measure of last resort;
- a requirement that the alternative measures considered before restraints were used are recorded in writing;
- a presumption that conflict resolution and de-escalation techniques are to be deployed by staff in the first instance and before the use of restraints is considered;
- explicit recognition that any methods of restraint used shall be the least intrusive that is necessary and reasonably available to control the prisoner’s movement, based on the level and nature of the risks posed;
- the general principle that instruments of restraint shall never be used on women during labour, during childbirth or immediately after childbirth;
- a requirement that the use of instruments of restraint be systematically recorded in a register; and
- an explicit statement to the effect that the use of chains, irons and other instruments of restraint which are inherently degrading shall be prohibited.

Rationale

Despite research suggesting that approaches based on de-escalation and conflict resolution can have significant positive impacts in reducing violence,¹²¹ there has historically been limited training of prison officers in de-escalation and conflict resolution techniques as compared to control and restraint techniques.¹²² This has improved in recent years, with a greater number of prison officers

¹¹⁹ See e.g. Action 13.1 in IPRT, *Progress in the Penal System (PIPS) A framework for penal reform (2017)* (2017), at p.45, available at: https://www.iprt.ie/site/assets/files/6431/progress_in_the_penal_system_compressed.pdf; and IPRT, *Progress in the Penal System (PIPS) A framework for penal reform (2018)* (2018), at pp.63-64, available at: <https://www.iprt.ie/site/assets/files/6470/pips2018.pdf>.

¹²⁰ See UN Web TV, Consideration of Ireland (Cont’d)-1551st Meeting 61st Session Committee Against Torture at 12.29-12.38, available at: <https://media.un.org/en/asset/k1x/k1xiagg18m>.

¹²¹ See e.g. the case study detailing peer mediation in Castlereau Prison, RJS4C, *Peer Mediation in Castlereau Prison* (2021), available at: <https://restorativejustice.ie/peer-mediation-in-castlereau-prison/>.

¹²² See State Claims Agency, *Review of Assaults on Operational Prison Staff by Prisoners* (2016), at pp.34-36, available at: <https://stateclaims.ie/uploads/publications/Review-of-Assaults-on-Operational-Prison-Staff-by-Prisoners-November-2016.pdf>.

trained in such non-physical de-escalation techniques,¹²³ but it would still be helpful to make clear within the Prison Rules the exceptional nature of restraint techniques and ensure greater safeguards against the inappropriate use of such measures. The above amendments would assist in doing this, and also align the Irish Rules with EPR 68 and NMR 47-48.

Proposed Change

Rule 65(14) should be amended to make explicit that handcuffs shall not be used except if deemed necessary, through individualised risk assessment, as a precaution against escape during a transfer, and provided that they shall be removed when the prisoner appears before a judicial or administrative authority unless that authority decides otherwise.

Rationale

This amendment will bring the Irish Rules in line with EPR 68.4.

Discipline

Rule 66: Breach of prison discipline

Rule 67: Inquiry into breach of prison discipline

Rule 68: Notification of Appeal Tribunal Decisions

Proposed Change

Rules 66-68 should be supplemented by the following broad principles:

- a statement to the effect that disciplinary procedure are to be used as a mechanism of last resort and that, wherever possible, disputes shall be resolved through alternative dispute resolution mechanisms (such as mediation and restorative practices);
- any punishment imposed for a proven breach of prison discipline shall be proportionate to the breach;
- a prisoner shall never be punished twice for the same act (principle against double jeopardy);
- no prisoner shall be employed or given authority in a disciplinary capacity within the prison;
- healthcare personnel shall have no role in the imposition of disciplinary sanctions; and
- in cases involving an alleged serious breach of prison discipline, a prisoner has a right to legal assistance in defending themselves.

Rationale

¹²³ See e.g. IPRT, *Progress in the Penal System: A framework for penal reform* (2019), at p.102, available at: <https://pijs.iprt.ie/site/assets/files/Progress-in-the-Penal-System-2019.pdf>

These amendments would bring the Irish Rules in line with EPR 56, 59(c) and 60.2 and NMR 38.1, 39.1-39.2, 40, 41.3 and 46.1.

Proposed Change

Rules 66-68, and Part 3 of the Prisons Act 2007 as required, should be amended so as to make clear that:

- any punishment imposed as a result of a proven disciplinary breach shall not include a prohibition on family contact; and
- solitary confinement (i.e. lock up for 22 hours or more in one day) shall not be imposed as a disciplinary punishment in any circumstance.

Rationale

Given the importance of a prisoner's rights to contact with their family (detailed above at p.28) and the known harmful effects of solitary confinement (detailed above at p.24), the Irish Rules and relevant provisions of the 2007 Act should be amended so as to make clear that denial of family contact and solitary confinement are never appropriate punishments to impose in respect of a disciplinary breach. This would further align the Irish Rules with EPR 60.4 and 60.6(c) and NMR 43.3.

Proposed Change

Rules 66-68 should be amended to include:

- a specific provision requiring the Governor, before imposing a disciplinary sanction, to consider whether and how a prisoner's mental illness or disability¹²⁴ may have contributed to his or her conduct and the commission of the offence or act underlying the disciplinary charge; and
- an explicit statement to the effect that the Governor shall not sanction any conduct of a prisoner that is considered to be the result of his or her mental illness or any form of disability.

Rationale

IPRT research has raised concerns in respect of the failure of the prison regime to recognise or adapt to the needs of prisoners with disabilities, and the failure to consider how forms of behaviour related to disability might be interpreted as a breach of prison discipline.¹²⁵ This resulted in a recommendation that the IPS carry out a review of disciplinary sanctions in prison to ensure that no one is punished for behaviours that relate to their disabilities,¹²⁶ particularly as such behaviours can be a response to a prison environment that is unsuited or not accessible to the person's needs.

The current review provides an opportunity to implement this recommendation (which would further emphasise the IPS commitment to the Public Sector Duty) and the rules relating to discipline should accordingly be amended as above. Such an amendment would also bring the Irish Rules in line with NMR 39.3 which sets out such a requirement.

Proposed Change

¹²⁴ A broad interpretation of "disability" should be used in this regard, taking account of Article 1 UNCRPD. This would include e.g. autistic or neurodiverse people, see IPRT, *Making Rights Real for People with Disabilities in Prison* (2020), at p.10., available at: https://www.iprt.ie/site/assets/files/6565/people_with_disabilities_in_detention_-_single-pages.pdf

¹²⁵ IPRT, *Making Rights Real for People with Disabilities in Prison* (2020), at pp.51-52., available at: https://www.iprt.ie/site/assets/files/6565/people_with_disabilities_in_detention_-_single-pages.pdf.

¹²⁶ *Ibid.*, at p.6 (see Rec 7).

Paragraph 4(b)-(d) and 5 of Schedule 1 (as referenced in r 66(1)) should be amended as follows:

- para.4(b) should be amended to remove “*himself or herself or*”;
- para.4(c) should be removed in its entirety;
- para.4(d) should be amended to remove “*has in his or her possession or buys*”; and
- para.5 should be removed in its entirety.

Rationale

All of the above paragraphs essentially make the taking of drugs or alcohol in prison a disciplinary offence (as opposed to the selling of drugs or alcohol). Categorising this type of activity as a breach of prison discipline contradicts two of the three central principles of the *IPS Keeping Drugs out of Prisons*, namely the commitment to (1) encouraging and supporting prisoners to develop a responsible attitude to drugs through measures such as education and counselling and (2) offering prisoners who are addicted to drugs every reasonable care and assistance.¹²⁷ It further undermines any efforts to help people in prison tackle their drug addiction (a recognised part of the services to be offered by the IPS).¹²⁸ Such activity should accordingly be removed from the list of possible disciplinary offences.

Proposed Change

Rule 66(3) should be amended by removing the words “*[s]ubject to Rules 62 to 65*”.

Rationale

Insofar as IPRT understands, the use of restricted regimes and/or special observation cells and/or restraints under rr 62-65 are not disciplinary measures and should not ever be considered for use as disciplinary measures. The current wording in r 66(3), however, suggests that such measures do amount to “*disciplinary action*” and should accordingly be amended and/or clarified to make clear what is meant by this wording.

Proposed Change

Rule 67(1) should be amended to make clear that a prisoner shall be given notice of the allegation in writing and in a language that they can understand.

Similarly, r 67(12) should be amended by removing the phrase “*and in so far as is practicable*”, so as to make clear a prisoner’s absolute right to an interpreter where it is needed for the inquiry.

Rationale

It is a basic premise of procedural fairness that a person is properly notified of an allegation made against them, and can fully understand and respond to that allegation¹²⁹. The Irish Rules must therefore make explicit the right of an individual to receive information in regards an alleged breach

¹²⁷ See IPS, *Keeping Drugs out of Prison* (2006), at p.3, available at: <http://www.irishprisons.ie/wp-content/uploads/documents/drugspolicy.pdf>.

¹²⁸ See e.g. IPS & Probation Service, *Review of Drug and Alcohol Treatment Services for Adult Offenders in Prison and in the Community* (2016), available at: https://www.justice.ie/en/JELR/PS_IPS_Probation_Review_of_treatment_for_offenders.pdf/Files/PS_IPS_Probation_Review_of_treatment_for_offenders.pdf. It was noted in this report that both the Probation Service and IPS have recognised “*the role drugs and alcohol play in criminality and recidivism and both have invested heavily in developing a system of provision to address drug and alcohol addictions*” and the report detailed how the prison environment in particular offers a unique opportunity to support individuals to address their addiction, see at p.7.

¹²⁹ See e.g. Mary Rogan, *Prison Law* (Bloomsbury, 2014), at pp.195-196.

of discipline in a language they can understand as well as their right to an interpreter during any inquiry held. This would further align the Prison Rules with EPR 59(a) and (e) and NMR 41.2-41.3.

Proposed Change

Consideration should be given to amending r 67(2)(a) so as:

- to remove the wording “*unless the Governor has reasonable grounds for believing that delaying the holding of an inquiry would threaten the maintenance of good order or safe or secure custody*”; and
- to hold an inquiry at least three days after the prisoner has been given notice or, at a minimum, to provide a prisoner with a right to ask for additional time before the holding of the inquiry.

Rationale

The current wording of r 67 does not give a prisoner a lot of time to consider the allegation made against them and/or prepare their defence. This is contrary to EPR 59(b) (a prisoner shall “*have adequate time and facilities for the preparation of their defence*”) and NMR 41.2 (prisoners shall “*be given adequate time and facilities for the preparation of their defence*”), and should accordingly be amended so as to ensure prisoners are given sufficient time to prepare their response before an inquiry is held.

Proposed Change

Rule 67(7)-(8) should be amended by removing the following phrase from r 67(7), “*and, with the consent of the Governor,*” and deleting r 67(8) in its entirety.

Rationale

EPR 59(d) makes clear that prisoners shall be allowed to request the attendance of witnesses and examine them or have them examined on their behalf. This aspect of r 67 should accordingly be amended so as to make clear the absolute nature of the prisoner’s right in this regard.

Proposed Change

Rule 68 and ss.14-16 of the Prisons Act 2007 should be amended so as to provide prisoners with a general right of appeal to an independent/external body against a finding of a breach of prison discipline and/or the sanction imposed (as opposed to a right of appeal only in cases where the sanction imposed is a forfeiture of remission of a portion of a sentence, as is the case *per* s.15 of the 2007 Act as currently enacted).

Rationale

EPR 61 makes clear that a prisoner who is found guilty of a break of prison discipline “*shall be able to appeal to a competent and independent higher authority*”. The current limitations on a prisoner’s right of appeal should accordingly be broadened so as to align the Irish Rules with the EPR.

PART 6
PRISONERS NOT SERVING SENTENCE

Rule 71: Separate accommodation

Proposed Change

Rule 71 should be amended to remove the phrase “*in so far as is practicable and subject to the maintenance of good order and safe and secure custody*” and “*as far as is practicable*”.

Rationale

Article 10(2)(a) ICCPR makes clear that accused persons should, save in exceptional circumstances, be separated from convicted persons and subject to different treatment “*appropriate to their status as unconvicted persons*”. As IPRT has noted during successive editions of *PIPS*, remand prisoners have not been found guilty of their alleged offence and they should accordingly be held separately from sentenced prisoners.¹³⁰

The above caveats should accordingly be removed from r 71 in order to make clear that prisoners on remand are not to be detained in the same areas as sentenced prisoners. In the alternative, and at a minimum, r 71 should be amended to make clear that the detention of remand prisoners alongside sentenced prisoners is only permitted in exceptional circumstances. Such an amendment would align the Irish Rules with international human rights law, EPR 96 and NMR 112.1.

Rule 72: Authorised structured activity

Rule 73: Private healthcare – request by unconvicted prisoner

Rule 74: Payment by unconvicted prisoner for private healthcare

Proposed Change

Rules 72-74 should be supplemented by the following additional rules:

- an explicit recognition that unconvicted prisoners are to be presumed innocent and a requirement that such prisoners shall be treated as such;
- a requirement that unconvicted prisoners are given the option of accommodation in a single cell;

¹³⁰ See e.g. IPRT, *Progress in the Penal System: A framework for penal reform* (2019), at p.48, available at: <https://pips.iprt.ie/site/assets/files/Progress-in-the-Penal-System-2019.pdf>

- unconvicted prisoners must be informed explicitly of their right to legal advice and should be provided with all necessary facilities to assist them in preparing their defence and meeting their legal representatives;
- a requirement that, in addition to arranging their own private healthcare, unconvicted prisoners shall be entitled to arrange for their own food within the prison and to procure particular materials such as books, writing materials etc (all at their own expense and subject to the security and good order of the prison).

Rationale

The above amendments would bring the Irish Rules in line with EPR 96, 98 and 99(C) and NMR 111.2, 113, 114, 117 and 120.

PART 8

PRISON OFFICERS

Rule 93: Use of force

Proposed Change

Rule 93 should be amended to include as follows:

- an explicit statement to the effect that prison officers shall not use force against prisoners except as a measure of last resort and only in cases of self-defence, attempted escape or active/passive physical resistance to a lawful order;
- a requirement that there are detailed procedures for the use of force that must be followed by all prison officers;
- a requirement that all prison officers who deal directly with prisoners are trained in de-escalation and conflict resolution techniques, as well as techniques that enable the minimal amount of force to restrain a prisoner; and
- an explicit requirement that the reasons for a decision not to use de-escalation and conflict resolution techniques, and instead use force, are recorded in full as part of r 98(4).

Rationale

IPRT has long advocated for an increased emphasis on prison protocols that promote de-escalation and conflict resolution approaches.¹³¹ As mentioned at pp.44-45, while there have been some improvements in staff training on such measures, it is important that the Irish Rules reflect the increased emphasis on non-physical forms of de-escalation and minimise the use of force to the greatest extent possible. The above amendments will assist in achieving this and will also align the Irish Rules with EPR 64.1, 65-66 and NMR 82.

Proposed Change

Rule 93(1) should be amended to replace the phrase “*such force only as is reasonably necessary and proportionate to achieve that purpose*” with wording that makes clear that the amount of force used shall be the minimum necessary and shall be imposed for the shortest necessary time.

Rationale

This amendment would align the Irish Rules with EPR 64.2.

¹³¹ See e.g. Standard 31, IPRT, *Progress in the Penal System: A framework for penal reform* (2017), at pp.75-76, available at: https://www.iprt.ie/site/assets/files/6431/progress_in_the_penal_system_compressed.pdf

PART 9

HEALTHCARE

Rule 99: Provision of healthcare services

Proposed Change

Rule 99 should be amended generally to reflect a shift of the responsibility for healthcare services within prisons to the Department of Health and Health Service Executive (HSE), rather than such responsibility remaining with the Department of Justice and Minister for Justice.

In the alternative, and at a minimum, r 99 should be amended to explicitly state as follows:

- medical services in prison shall be organised in close relation to general health administration in Ireland;
- health policy in Irish prisons shall be integrated into, and compatible with, national health policy; and
- prison healthcare services will be subject to the same standards and independent monitoring and oversight mechanisms as health services in the community.

Rationale

IPRT has long called for the governance of prison healthcare to be transferred to the Department of Health/HSE.¹³² This recommendation has been similarly put forward by the OIP¹³³ and is an approach favoured by the World Health Organisation (WHO).¹³⁴ In a submission to Crowe Consulting in November 2020, IPRT set out numerous reasons why such an approach is preferable to current arrangements for prison healthcare services and it is anticipated that this question of transfer will be addressed by the forthcoming ‘Health Needs Assessment’ (due to be published in the near future).¹³⁵ In the event that this Assessment recommends the transfer of governance mechanisms, the Irish Rules will need to be updated accordingly.

In the alternative, and if it is the case that no such transfer will take place, the Rules should be amended to reflect – at a minimum – EPR 40 and NMR 24.

Proposed Change

Rule 99 should be amended to make explicit as follows:

- prisoners shall have access to the full range of health services available in Ireland without discrimination on the basis of their legal status;

¹³² See e.g. Standard 12 of PIPS, IPRT, *Progress in the Penal System: A framework for penal reform* (2017), at pp.43-44, available at: https://www.iprt.ie/site/assets/files/6431/progress_in_the_penal_system_compressed.pdf

¹³³ OIP, *Healthcare in Irish Prisons Report by Judge Michael O’Reilly Inspector of Prisons* (2017), at p.23, available at: http://www.justice.ie/en/JELR/Healthcare_in_Irish_Prisons_Report.pdf/Files/Healthcare_in_Irish_Prisons_Report.pdf.

¹³⁴ World Health Organisation, *Leaving No One Behind in Prison Health, The Helsinki Conclusions* (2020), at p.11, available at: https://www.euro.who.int/_data/assets/pdf_file/0005/441761/prison-health-Helsinki-Conclusions.pdf.

¹³⁵ See e.g. reports of delays in publication of the Health Needs Assessment as follows: The Medical Independent, *Health needs assessment for Irish prisons still awaited* (2021), available at: <https://www.medicalindependent.ie/health-needs-assessment-for-irish-prisons-still-awaited/>.

- prisoners shall enjoy – at a minimum – the same standards of healthcare that are available in the community;
- prisoners should, insofar as possible, receive healthcare that goes beyond the mere ‘equivalence of care’ principle and should have access to a full range of preventative services and continuity of healthcare into the community; and
- gender-specific healthcare services, at least equivalent to those in the community, must be provided to women prisoners.

Rationale

Various international instruments make clear Ireland’s obligation to provide a level of healthcare to prisoners that is at least equal to that enjoyed by the general population,¹³⁶ and this should be reflected in the Irish Rules. However, it must also be recognised that the healthcare needs of the prison population are often higher than those of the general population and so the level of service needs to go beyond that minimum offered within the community.¹³⁷ Reference to gender-specific standards in healthcare would further align the Irish Rules with BPR 10.

Proposed Change

Rule 99 should be amended to make explicit that:

- every prison shall have in place a healthcare service sufficient to evaluating, promoting, protecting and improving the physical and mental health of prisoners, including the services of an adequate number of qualified medical practitioners (as proportionate to the size of the prison); and
- every prisoner shall have available to them the services of a qualified dentist and optician.

Rationale

Such an amendment would align the Irish Rules with EPR 41 and NMR 25.

In regards the numbers of staff specifically needed in each prison, it is anticipated that the forthcoming ‘Health Needs Assessment’ may also form the basis for a staffing needs analysis, as recommended by the OIP in their 2016 report on healthcare.¹³⁸

Rule 100: Performance of functions by healthcare professionals

Proposed Change

Rule 100 should be amended to include as a specific function of a healthcare professional that they:

¹³⁶ See e.g. NMR 24, EPR 40, as well as documents such as the International Covenant on Economic, Social and Cultural Rights,.

¹³⁷ See e.g. IPRT, *Progress in the Penal System: A framework for penal reform* (2017), at p.43, available at: https://www.iprt.ie/site/assets/files/6431/progress_in_the_penal_system_compressed.pdf; see also WHO, *Leaving No One Behind in Prison Health: The Helsinki Conclusions* (2020), at p.13, available at: https://www.euro.who.int/data/assets/pdf_file/0005/441761/prison-health-Helsinki-Conclusions.pdf.

¹³⁸ OIP, *Healthcare in Irish Prisons Report by Judge Michael O’Reilly Inspector of Prisons* (2017), at pp.17-20, available at: http://www.justice.ie/en/JELR/Healthcare_in_Irish_Prisons_Report.pdf/Files/Healthcare_in_Irish_Prisons_Report.pdf

- record and report on any sign or indication that prisoners may have been treated violently or subjected to an excessive use of force; and
- deal with withdrawal symptoms resulting from the use of drugs, medication or alcohol, and arrange for appropriate, individualised, medical care accordingly.

Rationale

These amendments would align the Irish Rules with EPR 42.3(c)-(d) and NMR 30(b)-(c). Given that a significant portion of the prison population struggles with alcohol/drug addiction issues,¹³⁹ it is particularly important to include explicit reference to the management of such health conditions within the Irish Rules.

Rule 103: Recommendations of prison doctor

Proposed Change

Consideration should be given to removing r 103(2)-(4) in their entirety, so as to make it mandatory for a Governor to implement a prison doctor’s recommendation. In the alternative, the authority to reconsider such a recommendation should be assigned to the Director of Prison Healthcare Services (or ‘Clinical Director’ as the role is now known), as opposed to the Director General.

Rationale

Such an amendment would bring the Irish Rules in line with the OIP’s previous recommendation that provision of healthcare to prisoners should be the sole responsibility of medical professionals, and must not be dependent on operational considerations.¹⁴⁰ This recommendation was made in response to a case where a prisoner died as a result of operational issues taking precedence over the decisions of medical staff.¹⁴¹

Rule 105: Information to Governor on state of health of prisoner

Proposed Change

¹³⁹ With some estimates being that approx. 70% of the prison population have addiction issues, see comments of former Director General Michael Donnellan, Houses of the Oireachtas, *Committee of Public Accounts Debate - Comptroller and Auditor General and Appropriation Accounts Special Report No. 93: Annualised Hours of the Prison Service* (2017), available at: https://www.oireachtas.ie/en/debates/debate/committee_of_public_accounts/2017-02-02/5/.

¹⁴⁰ OIP, *A report by the Inspector of Prisons Judge Michael Reilly into the circumstances surrounding the death of Prisoner F in the Mater Hospital on 26 July 2014 while in the custody of Mountjoy Prison* (2015), at p.33, available at: <https://www.oip.ie/wp-content/uploads/2020/03/Report-into-the-death-of-Prisoner-F-of-2014.pdf>.

¹⁴¹ Ibid.

Rule 105 should be supplemented by a requirement that a prisoner who is terminally ill shall be released to a setting that can provide appropriate end-of-life care.

Rationale

A recent chaplaincy report in respect of Midlands Prison detailed concerns in regards how elderly and terminally ill prisoners, in need of end-of-life care, are dealt with by the current prison system.¹⁴² This report recommended that such persons receive palliative care *“in an appropriate manner and in a setting outside of the prison.”*¹⁴³ Inclusion of the above amendment would assist in implementing this recommendation and ensuring that such prisoners are treated with dignity and respect.

¹⁴² IPS, *Midlands Prison Chaplaincy Annual Report 2020* (2021), at p.13, available at: <https://www.irishprisons.ie/wp-content/uploads/documents/pdf/Midlands-Prison-Chaplaincy-Annual-Report-2020.pdf>.

¹⁴³ *Ibid.*

PARTS 12 AND 13
EDUCATION AND VOCATIONAL TRAINING

Rule 110: Education and library services

Rule 111: Provision of vocational training

Proposed Change

Rules 110 and 111 should be amended by removing phrases such as the following:

- “[i]n so far as is practicable” (r 110(1));
- “[s]ubject to the maintenance of good order and safe and secure custody, each prisoner shall, in so far as is practicable, be permitted to participate in education as provided in the prison” (r 110(2)(3));
- “[i]n so far as is practicable” (r 110(2)(6));
- “as far as is practicable” (r 111(1));
- “in so far as is practicable” (r 111(2)).

Rationale

IPRT is clear that all forms of education in prison should be facilitated as a right.¹⁴⁴ Given concerns raised by the OIP in regards the impact of operational decisions (such as staff deployment or being held on protection) on prisoners’ access to education,¹⁴⁵ it is crucial that the right of each prisoner to educational services of the same standard and quality as available in the community is strengthened and made explicit within the Irish Rules.

¹⁴⁴ IPRT, *Progress in the Penal System: A framework for penal reform* (2019), at p.75, available at: <https://pips.iprt.ie/site/assets/files/Progress-in-the-Penal-System-2019.pdf>.

¹⁴⁵ See OIP, *Annual Report for the years 2015 and 2016* (2017), at p.21, available at: <https://www.oip.ie/wp-content/uploads/2020/04/Annual-Report-2015-2016.pdf>.

PART 14

PSYCHOLOGY SERVICE

Rule 112: Provision of psychology service

Rule 113: Performance of functions by psychologist

Proposed Change

Rules 112-113 should be supplemented by an explicit statement to the effect that:

- persons diagnosed as suffering from severe mental illness should be accommodated in a specialist mental health facility, and arrangements to transfer such a person from prison to an appropriate therapeutic establishment shall be made within a specified period (e.g. 14 days from the time of assessment to transfer);
- in circumstances where such persons are nevertheless exceptionally held in prison, there shall be special procedures and oversight mechanisms in place that take account of their needs; and
- prisoners shall be provided with psychology and psychiatry services and treatment as needed, as well as all other necessary care (which might include e.g. occupational therapy), and the prison authorities shall pay special attention to self-harm reduction and suicide prevention.

Rationale

The ongoing mental health crisis in Irish prisons is well documented,¹⁴⁶ with recent studies suggesting that the prevalence of people with severe mental illness is four times that of the general population¹⁴⁷ and figures indicating that nearly a third of the prison population are on a waiting list for psychology assessment or intervention (as of July 2021).¹⁴⁸ IPRT has also repeatedly emphasised the issues arising in respect of delayed transfer of individuals from prison to the CMH.¹⁴⁹ The Prison Rules should set out the applicable standards expected in regards the treatment of mentally ill prisoners. Consideration should particularly be given to setting out a maximum timeframe within which a person assessed as needing treatment in a therapeutic setting is to be transferred, an

¹⁴⁶ See e.g. the comments of the CPT to the effect that the treatment of mentally ill prisoners in Ireland is one of the “most pressing issues within Irish prisons”, CPT, *Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 23 September to 4 October 2019* (2020), at p.37, available at: <https://rm.coe.int/1680a078cf>; the OIP’s comments in regards D2 Wing at Cloverhill Prison, OIP, *COVID-19 Thematic Inspection of Cloverhill Prison 18 - 19 March 2021* (2021), at pp.27-29, available at: <https://iopdev.wpengine.com/wp-content/uploads/2021/08/Cloverhill-Prison-COVID19-Thematic-Inspection-Report-2021.pdf>. The crisis of mental health in Irish prisons has been further recognised by the Government, with the High Level Task Force to consider the mental health and addiction challenges of persons interacting with the criminal justice system established in April 2021 specifically to address these concerns, see Department of Justice, *Inaugural meeting of the High Level Taskforce on mental health and addiction challenges of persons interacting with the criminal justice system* (2021), available at: <https://www.justice.ie/en/JELR/Pages/PR21000113>.

¹⁴⁷ Gulati, Cusack, Kelly, Murphy, Kilcommins & Dunne, *Trans-institutionalisation in Ireland: New and Emerging Congregated Settings for People with Disabilities* (2021), available at: <https://www.hhrjournal.org/2021/08/trans-institutionalisation-in-ireland-new-and-emerging-congregated-settings-for-people-with-disabilities/>.

¹⁴⁸ Department of Justice, *Parliamentary Questions, PQ 579, 13 July 2021* (2021), available at: <https://www.justice.ie/en/JELR/Pages/PQ-13-07-2021-579>.

¹⁴⁹ See e.g. IPRT, *Progress in the Penal System: Assessing progress during a pandemic* (2020), available at: <https://pips.iprt.ie/progress-in-the-penal-system-pips-2020/part-2-measuring-progress-against-the-standards/3-physical-health-and-mental-health/13-mental-healthcare/>.

approach that has been taken in England and Wales.¹⁵⁰ The above amendments would go some way in doing this, and would also incorporate EPR 12, 47 and NMR 109 into the Irish Rules.

¹⁵⁰ See e.g. NHS, *The transfer and remission of adult prisoners under the Mental Health Act 1983: Good practice guidance 2021* (2021), at pp.6-11 (and p.8 in particular), available at: <https://www.england.nhs.uk/wp-content/uploads/2021/06/B0229-iii-Transfer-and-remission-prison-guidance-080421.pdf>.

ADDITIONAL TOPICS TO BE COVERED IN THE IRISH PRISON RULES

The following topics are those that IPRT consider should be covered by the updated Irish Prison Rules

Inspections and Monitoring

Proposed Change

The Irish Prison Rules, further to the relevant provisions of the Prisons Act 2007 dealing with the powers of the OiP, should include a specific section detailing the inspection and monitoring mechanisms in place for Irish prisons. This section should set out the minimum standards expected of such inspection/monitoring mechanisms, including:

- an explicit requirement that the independent inspection monitoring body has the right to decide which prisoners and prison staff they will interview, and to conduct those interviews in full privacy and confidentiality;
- an explicit requirement that the independent inspection monitoring body has unimpeded access to all prisons and offices of the IPS, as well as all records, documents and data connected with the management of a prison(s) and/or the IPS;
- a requirement that the national authorities/prison administration must inform the inspection monitoring body of the actions being taken in response to any recommendations made by that body;
- express recognition that no prisoner, prison staff member or other person may be subjected to sanction or any form of adverse treatment for providing information to an independent monitoring body;
- a commitment to empowering the inspection monitoring body to directly publish their reports and recommendations (rather than being reliant on the Minister for such publication, as is currently the case *per* ss.31-32 of the 2007 Act); and
- a requirement that civil society organisations are facilitated in making visits to prisons, and are able to publish reports in regards their visit.

Rationale

A key strand of IPRT's work is the promotion of a more robust prison inspection and monitoring regime in Ireland.¹⁵¹ In reviewing and updating the Prison Rules, specific reference to this important part of prison life should be included so as to bring the Irish Rules in line with EPR 92-93 and NMR 83-85. Any such amendments should reflect the likely role of the OiP in the new National Preventive Mechanism (NPM)¹⁵² and take the opportunity to also strengthen the powers of the OiP in this regard (taking into account the many recommendations made in the 2018 external review of the

¹⁵¹ See e.g. Standard 24 of PIPS, IPRT, *Progress in the Penal System: Assessing progress during a pandemic* (2020), available at: <https://pips.iprt.ie/progress-in-the-penal-system-pips-2020/part-2-measuring-progress-against-the-standards/4-oversight-accountability-and-complaints/24-inspections-and-monitoring/>.

¹⁵² Government commitments have been to ratify OPCAT by end of 2021, see Government of Ireland, *Programme for Government Our Shared Future* (2020), at p.86, available at: <https://www.gov.ie/en/publication/7e05d-programme-for-government-our-shared-future/>. It appears likely that the OiP will form part of a new 'Inspector of Places of Detention' for the criminal justice system, see e.g. comments made in the recent Public Jobs announcement for the role of Chief Inspector at the OiP, <https://www.publicjobs.ie/restapi/campaignAdverts/144419/booklet>.

OiP structure and operations).¹⁵³ On the point relating to access to prisons by civil society organisations, this was a specific recommendation from the UN Committee against Torture in its *Concluding observations on the second period report of Ireland in 2017* and should be addressed by the updated Prison Rules.¹⁵⁴

The Rights and Needs of Foreign National Prisoners

Proposed Change

The Rules should include specific reference to the rights and particular needs of foreign national prisoners. Measures to be incorporated might include:

- an explicit recognition of the need to take positive measures to address the needs of this cohort of prisoners;
- the need to pay special attention to the maintenance and development of the relationships of foreign national prisoners with the outside world; and
- the need to inform foreign national prisoners, in a language they understand, of their right to request transfer to another country (where they can serve the remainder of their sentence).

Rationale

Forthcoming IPRT research on the experiences of foreign national prisoners has identified that they are particular at-risk in several areas including e.g. their access to full information on the Prison Rules / prison regimes (in a language they can understand), family contact and temporary release measures.¹⁵⁵ It is accordingly necessary to recognise these vulnerabilities and the needs of this cohort explicitly within the Irish Rules. Such amendments would further bring the Irish Rules in line with EPR 37-38.

Publication of Reports

Proposed Change

Rules 84, 107(3) and 119(1) respectively require:

- a Governor to prepare and submit to the Director General an annual report in relation to the operation of the prison, with that report required to be further submitted to the Minister (r 84);
- a prison doctor to prepare and submit to the Director of Prison Healthcare Services (or, as it is now known, the ‘Clinical Director’) and the Governor of relevant prison an annual report on the operation of prison healthcare services in the prison to which they have been appointed (r 107(3));

¹⁵³ See OiP, *Review of Operational Structure and Resources: Final* (2018), at pp.10-21, available at: <https://www.oip.ie/wp-content/uploads/2021/02/OiP-PA-Consulting-Report-2018.pdf>.

¹⁵⁴ See Rec 8(b) of the Committee against Torture, *Concluding observations on the second periodic report of Ireland* (2017), at p.3, available at: https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/IRL/INT_CAT_COC_IRL_28491_E.pdf.

¹⁵⁵ IPRT, *Access to Rights and Justice for Migrants and Ethnic Minority People in the Penal System* (forthcoming).

- a chaplain to prepare and submit to the Director General and the Governor an annual report on matters relevant to the provision of chaplaincy services in the prison (r 119(1)).

None of these rules require publication of the annual reports (although the chaplain reports do appear to be published each year).¹⁵⁶ These rules should accordingly be amended so as to require the publication of all of these annual reports, and potentially to require publication of an overarching report from the head chaplain (as opposed to individual reports from each chaplain).

Rationale

IPRT has paid close attention to the chaplain reports published and regards them as an important source of information as to what is happening in Irish prisons.¹⁵⁷ These reports were not always published, however, with a gap of some nine years (between 2010 and 2019) where no such report was made public. The absence of these reports, along with the Governor and prison doctor reports mentioned above, is a massive gap in transparency and should be rectified by amending the Rules so as to require publication in all circumstances.

In regards the proposed amendment on publication of the chaplain reports, it would arguably be better practice to require publication of an overarching report from the head chaplain, rather than individual reports from each chaplain.

¹⁵⁶ See e.g. IPS, *Chaplains Reports*, available at: <https://www.irishprisons.ie/information-centre/publications/chaplains-reports/>. A review of these reports indicates that these are the reports prepared and submitted according to rule 119(1), see e.g. the Mountjoy Chaplaincy Service report 2020, at p.1, available here: https://www.irishprisons.ie/wp-content/uploads/documents_pdf/Mountjoy-Chaplaincy-Annual-Report-2020-Revised.pdf.

¹⁵⁷ See e.g. IPRT, *Prison Chaplain Annual Reports 2020* (2021), available at: <https://www.iprt.ie/latest-news/prison-chaplain-annual-reports-2020/>.

APPENDIX 1

Prison Rules Review

Irish Prison Service

Ballinalee Road

Longford Town

Co. Longford

N39 A308

30th September 2021

Dear Sir/Madam,

I am writing to make a very brief initial submission on behalf of the Irish Penal Reform Trust (IPRT) to the Irish Prison Service Prison Rules Review in advance of the deadline of 5pm today.

As agreed, IPRT has an extended deadline to make full submissions to the Review and this letter will be followed by a more detailed and formal submission in due course. We wanted, however, to take the opportunity to make some initial observations on the Prison Rules Review and highlight the key principles that we believe the IPS should consider in undertaking this review.

1. Sources to be Considered in Revision of the Rules

IPRT welcomes the Irish Prison Service (IPS) commitment to taking account of the 2020 revised European Prison Rules (EPR) in the planned review of the Irish Prison Rules.¹ As the IPS has acknowledged, the EPR are a global reference in this field and contain important minimum standards on rules relating to the treatment of women prisoners and foreign nationals, solitary confinement, the use of safety measures such as separation, and the need for adequate levels of independent monitoring.

It is important to note, however, that the EPR is not the only international document of significance. Other sources of international law which set out principles and minimum standards of relevance to the treatment of people in prison include:

- a. The United Nations Standard Minimum Rules for the Treatment of Prisoners ('the Nelson Mandela Rules').
- b. The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders ('the Bangkok Rules').
- c. The United Nations Convention on the Rights of Persons with Disabilities (CRPD).
- d. The United Nations Convention on the Elimination of Racial Discrimination (CERD).
- e. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) Standards and Tools for prisons, which includes principles

and standards in respect of a range of issues including the treatment of remand prisoners, the use of solitary confinement and the quality of healthcare services in prisons.ⁱⁱ

f. Case-law of the European Court of Human Rights.ⁱⁱⁱ

The above is a non-exhaustive list but includes the main international resources which IPRT believes are crucial for IPS consideration when updating the Irish Prison Rules. Failure to consider these documents, particularly the Mandela Rules and Bangkok Rules, would be a major oversight and a missed opportunity to bring Ireland's rules in line with international standards. IPRT notes that the IPS has made a previous commitment to "*review and put forward proposals to amend the Prison Rules 2007 for consideration to take into account international best practice with particular reference to the United Nations Standard Minimum Rules for the protection (sic) of Prisoners (Mandela Rules)*" in relation to prisoners requiring protection.^{iv} We would further reiterate that documents such as the EPR and Mandela Rules set out the minimum standards which are acceptable; where other international standards (e.g. such as those set out in the CPT documents) exceed those minimums, we would of course recommend that they be followed instead.

It is also important that national sources of principles and standards are taken into account when updating the Irish Prison Rules. For example, consideration should be given to legislation such as the *Assisted Decision-Making (Capacity) Act 2015*, in order to include provision for equal access to supported decision-making within the updated Prison Rules.^v This would ensure that when the relevant provisions of the 2015 Act are commenced, the Prison Rules are already in line with the legislation and can assist the IPS in implementing the changes required.

Other examples of relevant national sources for consideration by the IPS in this Review include the Constitution of Ireland, case-law of the Irish courts,^{vi} and reports of the Office of the Inspector of Prisons.^{vii} Again, IPRT reiterates the importance of taking this opportunity to ensure the updated Prison Rules are aligned with the most recent legislation and case authorities available, as well as best practice principles identified by experts such as the Inspector of Prisons.

2. The Language Used in the Prison Rules

IPRT is very concerned by the extensive use of conditional and overly generalised language in the current version of the Prison Rules. Caveats are included within many individual rules, with terms such as "*in so far as practicable*" and "*in the interests of justice*" and "*subject to the Governor being satisfied*" used throughout.

Examples where the phrase "*in so far as practicable*" is used include:

- a. Rule 13 deals with the explanations to be given to each prisoner in regards their entitlements, obligations and privileges, stating that each prisoner shall be given an explanatory booklet outlining their rights etc under the Rules. It goes on to say that foreign national prisoners will be given this booklet in a language they understand but only "*in so far as is practicable*" (r 13(4)).
- b. Rule 24 says that sanitary and washing facilities shall be provided in a prisoner's cell or room, but only "*[i]n so far as is practicable*" (r 24(1)).
- c. The Minister is required to make arrangements for the provision of such psychological services as they consider appropriate to provide for the psychological needs of prisoners, but only "*[i]n so far as is practicable*" (r 112).

The use of this phrase effectively means that whatever right / entitlement is provided within a given rule is immediately limited by virtue of the fact that it is only guaranteed where it is "practicable". It

is therefore imperative that the phrase is used sparingly and only where there is an express reason for doing so; to do otherwise would risk undermining the overall strength of the Rules.

The phrase “*in the interests of justice*” can be seen as follows:

- a. It is made clear that personal or private information relating to a prisoner cannot be disclosed by a Governor, prison officer or any person employed or providing services to prisoners except where such disclosure is necessary in the performance of official duty or “*in the interests of justice*” (r 51).
- b. In setting out the processes involved for an inquiry into an alleged breach of prison discipline, rule 67(10) states that the Governor may adjourn the inquiry “*where the interests of justice so require*”.

IPRT submits that this terminology is open to wide interpretation and is excessively vague. In the examples cited above, there is no designation of responsibility for deciding the appropriate threshold of what is “in the interests of justice” nor is there any explanation of how such an assessment is to be made.

Entitlements or processes explicitly made subject to a Governor’s satisfaction include:

- a. Rule 47 says that a Governor shall inform a family member (or such other person as a prisoner nominates) in situations where a prisoner becomes seriously ill or is seriously injured. This is subject, however, to the “*Governor being satisfied that it would not compromise the safe and secure custody of the prisoner*” (r 47(2)).
- b. Under Rule 67 (‘Inquiry into breach of prison discipline’), a prisoner is entitled to reply to an allegation that they have breached prison discipline and is entitled to call a witness to give evidence on their behalf, with the consent of the Governor (r 67(7)). The Governor in turn shall not withhold their consent for such a witness to be called “*unless he or she is satisfied, upon reasonable grounds that the evidence that the witness would propose to give would be of no assistance in furthering the inquiry.*” (r 67(8)).

Difficulties inherent in the above is that it means certain entitlements will only be met where a Governor is first satisfied of certain conditions. In the case of Rule 47, IPRT further submits that the circumstances in which informing a prisoner’s next of kin about their serious illness/injury would compromise the prisoner’s safety are extremely rare. By contrast, a number of Death in Custody reports from the Inspector of Prisons have identified failures by the IPS to inform next of kin about a prisoner’s injury/illness. IPRT would accordingly recommend that this caveat be removed from Rule 47 so as to ensure absolute clarity on the importance of informing a prisoner’s family member when they become seriously ill or injured.

The above are just a few examples where this type of heavily conditional and discretionary language is used within the Rules. IPRT acknowledges that it will be necessary, in some limited circumstances, to include caveats within the Rules. However, basic human rights must always be met. As the Inspector of Prisons has noted, a lack of resources cannot be used as a justification for failing to meet prisoners’ human rights and basic entitlements.^{viii} The current use of discretionary, vague, and overly conditional phrases is excessive, and makes it unduly difficult for a person in prison to challenge their treatment in a court of law.^{ix} IPRT accordingly invites the IPS to consider removing such terminology wherever possible when updating the Rules.

3. The Need to Include Broad Principles

The EPR, Mandela Rules and Bangkok Rules all contain introductory paragraphs, or substantive rules, which set out certain core principles which underpin the overall Rules. The inclusion of broad overarching principles at the outset of the revised Irish Prison Rules is an opportunity to enshrine core principles and the reintegrative purpose of imprisonment.

For example, Rule 1 of the Mandela Rules states that “*All prisoners shall be treated with the respect due to their inherent dignity and value as human beings*” and prohibits torture and other cruel, inhuman or degrading treatment or punishment without exception. Rule 2 prohibits discrimination on nine grounds. To this end, IPRT believes the Prison Rules should go further and include a positive duty to eliminate discrimination. The Scottish prison rules provide a useful example:

“Elimination of discrimination, harassment and victimisation:

6. ... the Governor must seek to eliminate within the prison discrimination, harassment and victimisation against prisoners on the grounds of—(a) age; (b) disability; (c) gender reassignment; (d) marriage and civil partnership; (e) pregnancy and maternity; (f) race; (g) religion or belief; (h) sex; (i) sexual orientation; or (j) other status.”^x

The need for inclusion of such overarching and positive principles is further underpinned by section 42 of the Irish Human Rights and Equality Commission Act 2014, which sets out the public sector duty that applies to the IPS. Section 42 makes clear that the IPS must have regard to the need to eliminate discrimination and protect the human rights of its members, staff and persons to whom it provides services. It would therefore make sense to include a statement to this effect within the Prison Rules, so as to make unambiguous that the Rules must be implemented in a manner compliant with the IPS’s public sector duty.

4. Consultation with People in Prison

IPRT welcomes proposals that the IPS will work with the Red Cross to run a consultation on the Prison Rules with current serving prisoners. As the IPS has previously recognised, it is “*important that the voices of prisoners are listened to*” in order to best respond to the needs of the prison population and “*provide safe and secure custody and rehabilitation in line with best practice.*”^{xi} The Irish Human Rights and Equality Commission (IHREC) has also pointed out the importance of consultation when it comes to assessing the implementation of the public sector duty;^{xii} carrying out such consultation while the review of the Prison Rules is still underway would demonstrate that the IPS is committed to fully embedding the public sector duty within the revised Rules.

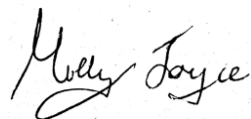
5. Concluding Remarks

It has taken 14 years for a full review of the Irish Prison Rules to be carried out and it is not unreasonable to expect that it may be a long time before the Rules are looked at again. IPRT would accordingly urge a comprehensive approach be taken to the current review: while it is important that the review takes place in a timely fashion, this must not come at the expense of the content of the Rules.

The current review provides an opportunity to devise Prison Rules which meet and, where possible, surpass both international and national minimum standards, and mark Ireland as a world leader in creating a prison system that respects human rights and dignity, provides the best conditions possible to those detained, and offers people the best possible chance of reintegration upon release. It would, in other words, support the Director General’s goal of providing a “*world class Prison Service*”.^{xiii} We

sincerely hope that the IPS will rise to meet this challenge and we look forward to further engaging in this process over the coming months.

Yours sincerely,



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Irish Penal Reform Trust

ⁱ Department of Justice, *Public Consultation on the Review of Prison Rules*, available at: http://www.justice.ie/en/JELR/Pages/Review_of_Prison_Rules.

ⁱⁱ The CPT standards relating to prison can be found as follows: <https://www.coe.int/en/web/cpt/standards#prisons>.

ⁱⁱⁱ A useful resource for obtaining information on prison-related cases considered by the European Court of Human Rights is as follows: European Court of Human Rights, *Guide on the case-law of the European Convention on Human Rights: Prisoners' Rights* (2021), available at: https://www.echr.coe.int/Documents/Guide_Prisoners_rights_ENG.pdf.

^{iv} See Irish Prison Service, *Irish Prison Service Strategic Plan 2016 – 2018* (2016), Goal 2.9, at p. 29, available at: http://www.irishprisons.ie/wp-content/uploads/documents_pdf/strategic_plan_2016.pdf.

^v IPRT has previously recommended that the IPS consider how it will facilitate the application of the 2015 Act when the legislation is fully commenced, see IPRT, *Making Rights Real for People with Disabilities in Prison* (2020), at p.6, available at: https://www.iprt.ie/site/assets/files/6565/people_with_disabilities_in_detention_-_single-pages.pdf.

^{vi} While it is not possible to provide an exhaustive list of all of the relevant judgments dealing with prison conditions and/or treatment of prisoners, a useful starting point for a summary of some of the key cases would perhaps be Professor Mary Rogan's 2014 *Prison Law* textbook.

^{vii} Examples of reports which may be of particular interest to examine include: the Inspector's Annual Reports, available at: <https://www.oip.ie/annual-reports/>; Inspector of Prisons, *Review, Evaluation and Analysis of the Operation of the present Irish Prison Service Prisoner Complaints Procedure* (2016), available at: <https://www.oip.ie/wp-content/uploads/2020/04/Review-Evaluation-and-Analysis-of-the-Operation-of-the-IPS-Prisoner-Complaints-Procedure.pdf>; and Inspector of Prisons, *Healthcare in Irish Prisons* (2016), available at: <https://www.oip.ie/wp-content/uploads/2020/04/Healthcare-in-Irish-Prisons.pdf>;

^{viii} See e.g. Inspector of Prisons, *Report of the Inspector of Prisons covering period 15th March 2009 - 10th September 2010* (2010), at para.1.8, available at: <https://www.oip.ie/wp-content/uploads/2020/04/Report-of-the-Inspector-of-Prisons-covering-period-15th-March-2009-10th-September-2010.pdf>; and Inspector of Prisons, *Report on an Inspection of Mountjoy Prison by the Inspector of Prisons* (2009), at para.1.9, available at: <https://www.oip.ie/wp-content/uploads/2020/04/Inspection-of-Mountjoy-Prison-2009.pdf>.

^{ix} See e.g. the comments of Damien Coffey and David Perry BL at IPRT's February 2021 Prison Law Seminar on the Irish Prison Rules, available at: <https://www.iprt.ie/upcoming-events/prison-law-seminar-the-prison-rules/>. A recording of the seminar is available as follows: <https://www.youtube.com/watch?v=pRQ3NtTMvk0>.

^x The Prisons and Young Offenders Institutions (Scotland) Rules 2011, Art 6: <https://www.legislation.gov.uk/ssi/2011/331/article/6>

^{xi} IPS, “Ameliorating the impact of cocooning on people in custody Report” Response by the Irish Prison Service – July 2020, at p.3, available at: https://www.irishprisons.ie/wp-content/uploads/documents_pdf/IPS-Response-29-July-2020.pdf.

^{xii} See IHREC, *Implementing the Public Sector Equality and Human Rights Duty* (2019), at pp.25-26, available at: https://www.ihrec.ie/app/uploads/2019/03/IHREC_Public_Sector_Duty_Final_Eng_WEB.pdf.

^{xiii} IPS, *Annual Report 2018* (2018), at p.4, available at: https://www.irishprisons.ie/wp-content/uploads/documents_pdf/Annual-Report-2018.pdf.