

Progress in the Penal System (PIPS)

*Assessing progress during a pandemic
(2020)*

Guiding Principles of Penal Reform

1. Imprisonment is viewed as a sanction of last resort
2. Recognition of the harms and costs associated with imprisonment
3. Adherence to the 'Deprivation of Liberty' principle where the loss of freedom is viewed as the punishment
4. Balance the security and protection of prisoners with provision of a safe and purposeful regime
5. Protection and promotion of human rights, equality and social justice
6. Focus on rehabilitation, desistance and reintegration.

Values of the Penal System

- Safety, protection of life and a duty of care
- Respect, dignity and protection from inhumane, discriminatory or degrading treatment
- Accountability and transparency
- Consistency and promotion of fairness and equality
- Promotion and maintenance of good relationships between prisoners, staff and management



The Irish Penal Reform Trust is an independent non-governmental organisation campaigning for the rights of everyone in the penal system, with prison as a last resort.

Irish Penal Reform Trust
MACRO Building,
1 Green Street,
Dublin 7, Ireland.

T: +353 (0)1 874 1400

E: info@iprt.ie

W: www.iprt.ie

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Many thanks to the Irish Prison Service, particularly Caroline Finn and Alan O'Callaghan, who worked with us to provide relevant information to the project. Thanks also to Dr. Conor O'Neill from the National Forensic Mental Health Service (NFMHS) for providing data to support the project.

The PIPS project is also not possible without the wide level of engagement from various stakeholders that inform and contribute to IPRT's work.

The ambitious *Progress in the Penal System 'PIPS'* report and overall project would not come to its full fruition without the dedication and commitment of the whole IPRT team.

This report is dedicated to those in prison and their families during the Covid-19 pandemic. We hope that the impact of Covid-19 on prison systems will be taken as an opportunity to progress positive long-term penal policy change in Ireland.

Responsibility for the content of the report and any omissions lies with IPRT.

Michelle Martyn,

Policy and Research Manager, Irish Penal Reform Trust

List of acronyms

| | |
|--------|--|
| BSS | Bail Supervision Scheme |
| CMH | Central Mental Hospital |
| CPT | European Committee for the Prevention of Torture |
| CSO | Community Service Order |
| CTT | Contract Tracing Teams |
| ECHR | European Convention on Human Rights |
| EPR | European Prison Rules |
| HIQA | Health Information and Quality Authority |
| HSE | Health Service Executive |
| IASIO | Irish Association for Social Inclusion Opportunities |
| ICCPR | International Covenant on Civil and Political Rights |
| ICESCR | International Covenant on Economic, Social and Cultural Rights |
| IHREC | Irish Human Rights and Equality Commission |
| IOG | Implementation Oversight Group |
| IPS | Irish Prison Service |
| NPHE | National Public Health and Emergency Team |
| NPM | National Preventive Mechanism |
| OiP | Office of the Inspector of Prisons |
| OPCAT | Optional Protocol to the Convention against Torture |
| PICLS | Prison In-Reach and Court Liaison Service |
| PPE | Personal Protective Equipment |
| PPRG | Penal Policy Review Group |
| PRILA | Prisons: the Rule of Law, Accountability and Rights |
| PQ | Parliamentary question |
| QNPMHS | Quality Network for Prison Mental Health Services |
| VC | Visiting Committee |
| WHO | World Health Organization |
| WTE | Whole-Time Equivalent |

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Executive Summary

Coinciding with the start of a new cycle of *Progress in the Penal System (PIPS)*, 2020 has been an extraordinary year to examine penal reform, given the context of the pandemic.

At the end of the first three-year cycle of *PIPS (2017–2019)*, our overall assessment was that progress in the penal system in Ireland was underway, albeit at a slower pace than the project originally envisioned. An emergency period, the Covid-19 pandemic, has shown how rapidly positive change can occur – most notably, there was a substantial reduction in prisoner numbers within a month of the pandemic being declared.

The State must now build upon the progress it has made in a time of crisis and sustain this positive change. It must also work to address shortcomings outlined in *PIPS 2020*.

Part One

PIPS 2020 provides an overview of the penal system's initial response to Covid-19 in Ireland. Compared with neighbouring jurisdictions, the Irish Prison Service (IPS) did exceptionally well in keeping Covid-19 out of Ireland's prisons. There were zero Covid-19 cases in prisons during Ireland's first lockdown. This achievement is widely recognised. However, it must not be the only measure used to determine success. This section outlines the importance of meeting minimum human rights obligations, and underlines that any measures that may impinge on human rights must be proportionate, necessary and time-limited.

Prisoners experienced more than the *deprivation of liberty* throughout the pandemic; the rehabilitative purpose of imprisonment was vastly diminished. Any regress that has occurred due to the pandemic must not become the accepted norm in future. As the pandemic continues to unfold, consideration of its impact on prisons and people imprisoned should be included in decisions relating to sentencing and release.

There are several lessons to be learned from Ireland's response:

1. Strong leadership can make penal reform a reality
2. Penal moderation is possible
3. Safe custody limits are imperative
4. Prison health is public health
5. Confinement has negative consequences for physical and mental health
6. Restrictive measures must be continually reviewed
7. Technology has the potential to transform prisons
8. Good communications support safer prisons
9. Lack of published information means lack of accountability
10. Collaboration and community engagement benefits everyone

These lessons are fully explored in Part One, and should inform decision-makers on future directions of penal reform.

Part Two

The second part of *PIPS 2020* focuses on 12 of 35 standards that a best practice penal system must meet, grouped into four interconnected thematic areas. The statistical data obtained for this project primarily relates to the period mid-2019 to mid-2020.

1. Reducing the use of imprisonment

'Progress' has been identified under *Standard 1: Progressive Penal Policy*. This includes several penal reform commitments in the *Programme for Government*, and the publication of evidence reviews by the Department of Justice. The *PIPS* standards informed the new *Framework for the Inspection of Prisons in Ireland*.

Standard 2: Imprisonment as a last resort provides evidence of Ireland's long-term trend (in the wrong direction) of sending people to prison for short periods. This standard receives a 'mixed' rating because positive measures were introduced by the State to significantly reduce the prison population during the pandemic. These measures must continue to be applied.

Finally, the remand population's continued annual growth is identified as 'regress' under *Standard 10: Pre-trial detention as a last resort*.

Actions that should be taken to reverse negative trends are identified, including: enshrining imprisonment as a last resort in legislation; the operationalisation of the Consultative Council to advise on penal reform; and the development of bail supports.

2. Prison Conditions and Regimes

Poor prison conditions and regimes should never be used as an additional form of punishment. The Covid-19 pandemic exposed chronic issues in prison systems worldwide, such as overcrowding. There has been little insight into Ireland's prison conditions due to the absence of published inspections and monitoring reports.

Immediately prior to the pandemic, there was regress on the goal of single-cell occupancy (*Standard 9*) with new beds added in three prisons. The number of prisoners sharing cells was reduced during the pandemic. The reduction in prisoner numbers provides an opportunity to implement a single-cell accommodation policy that supports men and women's dignity in prisons.

The right to family life is explored under *Standard 11: Family Contact* and receives a 'mixed' assessment. The roll-out of video calls and in-cell phone provision in parts of the prison estate are positive features that emerged from the crisis, and should be retained as supplementary to prison visits. Amendments were made to prison rules, which allow for the suspension of entitlements to prison visits in certain circumstances. An Oireachtas Committee on Human Rights should be established and should examine the human rights implications of such changes.

Out-of-cell time (*Standard 16*) is assessed as 'regress'. An increased number of prisoners experienced restricted regimes during 2020 due to medical reasons. Just five hours of out-of-cell time was available to the general prison population in some prisons. Restrictions must be proportionate, medically necessary, and time-limited.

There was also 'regress' in terms of an increase in the number of persons held in solitary confinement (*Standard 26*). A change to the European Prison Rules requests States to set a maximum period in which solitary confinement can be allowed. This should be incorporated into Irish law.

3. Health & Mental Health

Public health has been a global concern in 2020. While the Irish Prison Service must be commended for taking a public health-led approach to infection control and keeping the prison population largely Covid-free, there has been less progress in the area of mental health.

The prison health needs assessment undertaken in 2020 represents 'progress' (*Standard 12*). The final report must be published and its findings implemented to address gaps in healthcare services.

Between 20 and 33 prisoners were on a waiting list for the Central Mental Hospital every month from July 2019 to July 2020. IPRT welcomes the establishment of a cross-departmental taskforce to address mental health, addictions and imprisonment. Progress in the area of mental health is therefore assessed as 'mixed' (*Standard 13*).

These progressive developments must come to full fruition in 2021.

4. Oversight, Accountability, and Complaints

There has been no significant change to prison oversight and inspection over 2019/2020, with no inspection reports published. While additional resourcing of the Office of the Inspector of Prisons; the publication of the *Framework for Inspection of Prisons*; and commitments to reform prison visiting committees and ratification of OPCAT in the *Programme for Government* are all welcome, gaps in accountability mechanisms means the human rights of people in our prison system are exposed to potential abuse. This is especially acute during a time of a national and global emergency. Prisoners are still without access to a fully independent complaints mechanism.

Only through a rigorous inspection and monitoring regime, along with an independent complaints mechanism, can the rights of people in prison be safeguarded. Where prisoners have no access to independent avenues for redress, this fundamentally weakens access to their rights, undermines trust and creates tension within the prison.

Conclusion

Assessment of the 12 standards is summarised below:

| Assessment of Standards | 2020 |
|-------------------------|------|
| Progress | 2 |
| Regress | 4 |
| Mixed | 4 |
| No change | 2 |
| Insufficient Data | 0 |

Prison as a last resort must be the bedrock of penal policy; only then can the State ensure humane prison conditions and rehabilitative regimes. The prison population's physical and mental health deserves significant attention, given the enduring impact of Covid-19 restrictions. Urgent steps need to be taken to ensure robust oversight at this time.

In November 2020, after this report was finalised, the European Committee for the Prevention of Torture published a report on its 2019 visit to inspect places of detention in Ireland. The findings and recommendations contained within the report have significant implications for the protection of human rights of people detained in Ireland. The pandemic response should add impetus and, we hope, the political will to act on these recommendations.

Out of the Covid-19 crisis comes an opportunity to act with immediacy and bring about change, towards fulfilling the PIPS vision. PIPS 2020 offers a roadmap to get there.



Foreword

In a year characterised by changes to daily life and emergency responses to a global pandemic, the importance of the *Progress in the Penal System* project cannot be overstated. It assesses the daily realities and human rights of people in prison across Ireland – a group too often forgotten. It comes at a time when the impact of the pandemic continues to be felt by those detained and their loved ones outside.

At the outset of the pandemic, media attention turned to commitments from governments to release large numbers of people from prison. However, many of these did not come to fruition leaving overcrowding levels high and the risk of transmission of Covid-19 and other infectious diseases a real threat.

Now, as I write this at the beginning of 2021, the reported number of people in prison globally who have been infected with Covid-19 stands at more than 311,279 across 118 countries and around 2,753 people in prison have reportedly died due to Covid-19 in 40 countries.¹ We believe that due to the lack of data and testing, compounded by a lack of transparency in some places, this is just the tip of the iceberg.

Responses in prisons globally have focused largely on reducing contact between people within facilities, and the suspension of visits, programmes and education opportunities, with many people locked in a cell for up to and exceeding 23 hours a day for weeks or months on end. In many cases measures have violated human rights, and at the very least, made time in prison much harsher and burdensome, sometimes bringing mental health to crisis point – as also highlighted in this report.

The timely steps taken by the prison service in Ireland to mitigate the impact of Covid-19 on people in prison are rightly commendable and should be looked upon for future crisis planning by other prison systems.

The task now is to identify the good practices and innovations and ensure these measures are sustained or developed, and to identify ongoing and emerging systemic issues that require urgent reform to protect the health and human rights of all in contact with the criminal justice system. In this regard, this report serves as a vital resource as a roadmap for Ireland to build on the achievements to date and renew efforts to not only meet international standards but exceed them for a more effective, humane system.

Olivia Rope

Executive Director

Penal Reform International

January 2021

1 Justice Project Pakistan, *Covid-19 and Prisoners*, <https://www.jpp.org.pk/covid19-prisoners/>



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Introduction:

The first planning meeting of *Progress in the Penal System (PIPS) 2020* took place on 13th March 2020, two days after the World Health Organisation (WHO) declared the outbreak of Covid-19 as a pandemic,² one day after schools across Ireland were closed³, and one day before children's visits to prisons in Ireland were suspended.⁴ At that point in time, a disruption of 2 to 4 weeks was anticipated. Eight months on, Covid-19 has brought many unforeseen challenges – but also unexpected opportunities for reform. It is against the backdrop of this unprecedented global emergency that we present *Progress in the Penal System 2020*.⁵

Progress in the Penal System 2017–2019

Since 2017, the IPRT PIPS project has set out a clear vision for the future of the penal system. Its ambition is for Ireland, a small country, to offer leadership as a model of international best penal practice. In order to support progress towards making this vision a reality, IPRT devised 35 standards for the penal system. These were informed by international and European human rights best practice, and they aimed to assess our progress in the areas of penal policy, prison conditions, regimes, oversight and reintegration. The PIPS project aimed to shine a spotlight on how Ireland treats men and women behind bars and locked doors, and to hold the State to account on its human rights obligations. Over its initial three-year period, the PIPS project identified progress in a number of key areas – and regress in others.⁶ Overall, the pace of progress was slow, but travelling in the right direction.

Progress in the Penal System 2020

This year, *PIPS 2020* necessarily takes a different approach. While we remain dedicated to achieving the 35 standards across Ireland's penal system, it is not possible to measure progress in the same way as previous years. On the one hand, increasing rates of imprisonment have been reversed – this is welcome but it has not been brought about through implementation of policy reform. On the other hand, the concept of the 'porous prison' cannot be facilitated during a pandemic – this is not due to a lack of progressive thinking but rather adherence to national public health guidance.

PIPS 2020 seeks to capture the positive reforms that have been implemented, reflect on how these reforms were achieved, and outline the longer-term benefits to wider society so that these progressive reforms will be retained into the future.

At the same time, *PIPS 2020* shines a spotlight on how the pandemic has exacerbated the pains of imprisonment. It details how people in prison are being "doubly punished," subject to harsher restrictions within an already restricted environment.⁷ It asks whether sufficient measures have been taken to minimise the impact of Covid-19 related restrictions, and outlines how the pandemic response risks normalising human rights breaches.

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- 2 World Health Organisation (2020) *Coronavirus disease (COVID-19) pandemic*, available at: <https://www.euro.who.int/en/health-topics/health-emergencies/coronavirus-covid-19/novel-coronavirus-2019-ncov>
 - 3 Department of Education, *Covid-19 – Statement from the Department of Education and Skills*, <https://www.education.ie/en/Press-Events/Press-Releases/2020-press-releases/12-march-2020-statement-from-the-department-of-education-and-skills.html>
 - 4 Thejournal.ie, *Coronavirus: Talks underway to reduce number of people in prison in a 'controlled manner'*, <https://www.thejournal.ie/prisons-ireland-coronavirus-5046229-Mar2020/>
 - 5 The Economic Times, *Coronavirus pandemic is an unprecedented global crisis: WHO's Tedros Adhanom*, <https://economictimes.indiatimes.com/news/international/world-news/coronavirus-pandemic-is-an-unprecedented-global-crisis-whos-tedros-adhanom/videoshow/75361462.cms>
 - 6 IPRT *Progress in the Penal System (PIPS): A Framework for Penal Reform (2019), Executive Summary*, <https://pips.iprt.ie/progress-in-the-penal-system-pips/executive-summary/>
 - 7 Office of the Inspector of Prisons and Maynooth University (2020) *Ameliorating the impact of cocooning on people in custody – a briefing*, <https://www.oip.ie/wp-content/uploads/2020/07/Ameliorating-the-impact-of-cocooning-on-people-in-custody-a-briefing.pdf>

It asks whether imprisonment has become purely punitive, what ‘rehabilitation’ means during a pandemic, and the implications for policy and public safety in the future. *PIPS 2020* also recognises the disproportionate impact of the pandemic on certain groups, and how the response has deepened inequalities in society.

Structure of the report

Part 1 of *PIPS 2020* reflects on the *PIPS* vision in the context of Covid-19, exploring the human rights framework within which the pandemic has unfolded, and drawing together key lessons on which to progress reforms in the future.

Part 2 focuses on the four thematic areas that have been of most significance during the Covid-19 pandemic, and includes analysis of 12 standards that are both interconnected and central to achieving the overall *PIPS* vision. The four thematic areas are:

1. Reducing the use of imprisonment
2. Prison conditions and regimes
3. Health and mental health
4. Oversight, accountability and complaints

Assessment of Progress

IPRT uses a wide variety of research methods to gather the evidence on which to base our annual assessment, including: a comprehensive desk review of published information and reports; requesting information directly from stakeholders; parliamentary questions and debates; and more.

On the basis of the evidence gathered, we make a top-line assessment and then apply one of the following categories to each standard regarding progress made over the 12-month period September 2019 to August 2020: progress; regress; mixed; no change; and insufficient data. These are explained below.

| | |
|---------------------------|--|
| Progress: | Where there has been identified and significant movement towards attainment of the standard. |
| Regress: | Where there has been identified and significant movement away from the attainment of the standard. |
| Mixed: | Where there has been both progress towards the standard in some areas and regress away from it in others. |
| No change: | Where there has been neither significant progress nor regress. |
| Insufficient data: | Where sufficient or adequate data is not available to make a reliable assessment of progress towards the standard. |

Thematic Area 1: Reducing the use of imprisonment

| Standard | Theme | Assessment | Rationale |
|----------------------|---|-----------------|---|
| S1 | Progressive Penal Policy | Progress | Several penal reform commitments are included in the <i>Programme for Government</i> . The Department of Justice published evidence-based reviews and facilitated open consultations on various strategies. PIPS standards informed the <i>Framework for the Inspection of Prisons in Ireland</i> . |
| S2 | Imprisonment as a last resort | Mixed | The annual trend of sending people to prison for short sentences continued in 2019. |
| S10 (updated) | Pre-trial detention as an exceptional measure | Regress | The remand population has increased by 21% since 2017. |

Thematic Area 2: Prison Conditions & Regimes

| Standard | Theme | Assessment | Rationale |
|------------|---------------------------|----------------|--|
| S9 | Single cell accommodation | Regress | Before the pandemic, additional bed capacity was created in three prisons in Ireland. |
| S11 | Family contact | Mixed | The roll-out of video calls nationally and in-cell phone provision in some parts of the prison estate are welcome innovations. Children and families had little or no in-person visits with their family member in prison due to public health restrictions. |
| S16 | Out of cell time | Regress | Out-of-cell time was significantly reduced for the prison population due to the Covid-19 restrictions. The general prison population also had reduced daily out-of-cell time, averaging six hours. |
| S26 | Solitary Confinement | Regress | Based on Census figures, solitary confinement increased from 40 in January 2019 to 75 in January 2020. One hundred twenty-seven people were on a restricted regime of 22 or more hours per day in April 2020; this number includes medical-related isolation. |

Thematic Area 3: Healthcare

| Standard | Theme | Assessment | Rationale |
|------------|-------------------|-----------------|--|
| S12 | Healthcare | Progress | The Irish Prison Service must be commended for keeping Covid-19 out of prisons during the initial lockdown. The prison health needs assessment is significant for informing long-term healthcare policy in Irish prisons. |
| S13 | Mental healthcare | Mixed | The establishment of a Taskforce between the Department of Health and the Department of Justice to address the prison population's mental health and addiction needs is welcome. There continues to be a similar number of prisoners awaiting transfer to the Central Mental Hospital (CMH) as there was in 2019. |

Thematic Area 4: Oversight, Accountability, and Complaints

| Standard | Theme | Assessment | Rationale |
|----------|---|------------|---|
| S22 | Complaints system | No change | While the Irish Prison Service has made changes to the internal complaints system, it has not met its implementation timeline. |
| S23 | Independent complaints and appeal mechanism | No change | Prisoners still have no access to an independent complaints and appeals mechanism. |
| S24 | Inspections & monitoring | Mixed | Some positive developments include additional resourcing of the Office of the Inspector of Prisons, the publication of the <i>Framework for the Inspection of Prisons in Ireland</i> , and commitments in the <i>Programme for Government</i> to ratify the Optional Protocol to the Convention against Torture (OPCAT) and reform prison visiting committees. The absence of published inspection and monitoring reports is acute during a time of a national and global emergency. |



PART 1:

Penal Reform in a time of Pandemic

1.1 Irish penal system response to Covid-19

On 11th March 2020, the World Health Organisation (WHO) declared Covid-19 to be a pandemic.⁸ It swiftly turned its attention to prison settings, publishing its guidance *Preparedness, prevention and control of COVID-19 in prisons and other places of detention*⁹ on 15th March 2020. This identified people in prison as especially vulnerable to the virus for two primary reasons:

1. Living in close proximity of each other in confined conditions and over prolonged lengths of time was a situation described by the WHO as one that may “act as a source of infection, amplification and spread of infectious diseases within and beyond prisons.”¹⁰
2. The prison population was identified as a group with poorer levels of health and underlying health conditions than the general population, making them more vulnerable to the disease:

In addition to demographic characteristics, people in prisons typically have a greater underlying burden of disease and worse health conditions than the general population, and frequently face greater exposure to risks such as smoking, poor hygiene and weak immune defence due to stress, poor nutrition, or prevalence of coexisting diseases, such as blood-borne viruses, tuberculosis and drug use disorders.”¹¹

The WHO called on governments to take a whole-of-government and whole-of-society approach in their responses, outlining that the transmission of the disease within prisons would further amplify the risks associated with the pandemic. This point was reinforced by the UN ODC, which stated:

“The scenario of a rapidly increasing transmission of COVID-19 within prison systems will have an amplifying effect on the epidemic within the general public.”¹²

In Ireland, emergency response planning by the Irish Prison Service was already underway. In the final week of February 2020, an Emergency Response Planning Team, with expertise in the areas of operations, healthcare and infection control, had been established and assigned the task of stopping the spread of the virus in prison settings.¹³ Refresher training in infections control and the use of personal protective equipment (PPE) was commenced.

An early action taken by the Department of Justice and the Irish Prison Service was to bring about a 10% reduction in the prison population through the granting of temporary release. On 11 March 2020, there were 4,235 persons in custody.¹⁴ This was reduced to 3,807 by 10 April 2020.¹⁵ The reduction in numbers allowed for greater physical distancing in prisons and supported an effective infections control regime. The practice of ‘cocooning’ was introduced in prisons in line with public health advice.¹⁶ Cocooning in prison meant that vulnerable prisoners reduced their face-to-face interaction with other prisoners and staff, and stayed in their cells for a longer number of hours.

The Irish Prison Service introduced a number of innovations to reduce the impact of restrictions. These included: the rollout of video calls as a substitute for suspended prison visits;¹⁷ in-cell

8 World Health Organisation (2020) *Coronavirus disease (COVID-19) pandemic*,

<https://www.euro.who.int/en/health-topics/health-emergencies/coronavirus-covid-19/novel-coronavirus-2019-ncov>

9 World Health Organisation (2020) *Preparedness, prevention and control of COVID-19 in prisons and other places of detention*, <https://www.euro.who.int/en/health-topics/health-determinants/prisons-and-health/publications/2020/preparedness,-prevention-and-control-of-covid-19-in-prisons-and-other-places-of-detention,-15-march-2020>

10 Ibid, p.1.

11 Ibid, p.2.

12 United Nations Office on Drug and Crime (2020) *COVID-19 Preparedness and Responses in Prisons*, p.2.

https://www.unodc.org/documents/justice-and-prison-reform/UNODC_Position_paper_COVID-19_in_prisons.pdf

13 Department of Justice & Equality, *Information regarding the Justice Sector COVID-19 plans*, (update on 24th July 2020), http://www.justice.ie/en/JELR/Pages/Information_regarding_the_Justice_Sector_COVID-19_plans

14 Irish Prison Service, *2020 Prison Populations*,

<https://www.irishprisons.ie/information-centre/statistics-information/2015-daily-prisoner-population/2020-prison-populations/>

15 Ibid.

16 Department of Justice & Equality, *Information regarding the Justice Sector COVID-19 plans*,

http://www.justice.ie/en/JELR/Pages/Information_regarding_the_Justice_Sector_COVID-19_plans

17 Irish Prison Service, *Important notice regarding the introduction of family video visits in Irish prisons*,

telephones for prisoners restricted due to cocooning, isolation and quarantine; tele-psychology services; an in-cell television channel to provide information to prisoners; provision of materials and activities in-cell; and a new An Post Billpay card to allow families to lodge money in prisoners' accounts for use in tuck shops.¹⁸

Longer periods between sign-in were provided for prisoners on temporary release in order to reduce footfall in and out of the prisons. Changes were also required of the Probation Service. For example, probation supervision was mainly undertaken through telephone contact and those at high risk of offending were prioritised.¹⁹ Digital tools were used to enhance probation practices.²⁰

The role that the Care and Rehabilitation Directorate, Executive Clinical Lead, and Head of Infections Control played in bringing a preventative public health approach in prisons deserves particular recognition, along with the prison staff, management and prisoners who worked together to keep prisons largely free from Covid-19. Nevertheless, the protection of physical health cannot be at the expense of mental health or human rights. Systems should be set up so that they meet minimum human rights standards at all times, especially in a time of global emergency.

1.2 Human rights in detention during a pandemic

Inside and outside prison walls, restrictions imposed across society for reason of public health protection have given rise to important questions on rights, responsibilities and obligations during an emergency period. From the onset of the pandemic, human rights bodies joined the WHO in publishing statements and guidance on the protection of people in detention settings.

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) issued a statement in which it outlined the basic principle that its Member States ought "to take all possible action to protect the health and safety of all persons deprived of their liberty."²¹ The CPT also reminded Member States that any steps taken should ensure the absolute prohibition of torture and inhuman or degrading treatment. In a follow-up statement, the CPT sent a clear message to Member States that they must put human rights first at all times:

*The CPT must stress that the ongoing crisis demonstrates the clear need to put human rights first, in decision-making in the context of the pandemic and beyond. Each measure taken by the authorities of member States should be based on a thorough assessment of its concrete implications for the human rights of all persons concerned. In short, respect for human rights should become a reflex for all officials.*²²

The United Nations Sub-Committee for the Prevention of Torture (SPT) also highlighted that the State should take full account of the rights of persons deprived of their liberty, their families, detention and healthcare staff when taking measures to combat the pandemic.²³

https://www.irishprisons.ie/wp-content/uploads/documents_pdf/Important-notice-regarding-the-introduction-of-family-vid-eo-visits-in-Irish-Prisons.pdf

18 Department of Justice, *Oireachtas COVID-19 queries for answer by 11 May 2020*, see question 5.114 <http://www.justice.ie/en/JELR/Queries-for-11-May-2020.pdf/Files/Queries-for-11-May-2020.pdf>

19 Department of Justice & Equality, *Information regarding the Justice Sector COVID-19 plans*, http://www.justice.ie/en/JELR/Pages/Information_regarding_the_Justice_Sector_COVID-19_plans

20 O'Neill J and Mc Greevy G. Reflections on a Pandemic: How COVID-19 impacted upon probation practice in Northern Ireland, *IRISH PROBATION JOURNAL* Volume 17, October 2020 https://www.pbni.org.uk/wp-content/uploads/2020/12/09-IPJ-Vol-17_ONeill_McGreevy.pdf

21 European Committee for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment (2020) *Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic*, <https://www.coe.int/en/web/portal/-/covid-19-anti-torture-committee-issues-statement-of-principles-relating-to-the-treatment-of-persons-deprived-of-their-liberty->

22 CPT/Inf (2020) 21 *Follow-up statement regarding the situation of persons deprived of their liberty in the context of the ongoing COVID-19 pandemic*, <https://rm.coe.int/16809ef566>

23 Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment *Advice of the Sub-committee on Prevention of Torture to States Parties and National Preventive Mechanisms relating to the Coronavirus Pandemic (adopted on 25th March 2020)*, <https://www.ohchr.org/Documents/HRBodies/OPCAT/AdviceStatePartiesCoronavirusPandemic2020.pdf>

There is a positive obligation on the State to support the right of everyone to enjoy the highest attainable standard of physical and mental health (Art. 12, ICESCR).²⁴ In respect of people deprived of their liberty, States' positive obligations "to protect life and bodily and mental integrity are amplified".²⁵ In the context of the threat to life and health presented by Covid-19, these positive obligations mean that "exceptional" measures may be justified. However, such measures are subject to legality limits within the European Convention on Human Rights (ECHR), and measures that amount to infringements on human rights must be necessary and proportionate, and subject to regular and rigorous oversight and review.²⁶

"While the imperative to protect individuals from grave harms is very strong and may justify or even require a range of 'exceptional' measures, it does not require or give licence to States to act in ways that are unlawful under the Convention."

The prevention of harm and human rights violations during the pandemic through urgent and systemic reforms²⁷ was adopted as a key focus for penal reform campaigners in Ireland and around the world. It remains a dominant concern. Our position remains clear: if basic human rights cannot be met for all people in prison, then the State is obliged to take steps to further reduce numbers in prison.

1.3 Prison for punishment or rehabilitation?

The Covid-19 pandemic placed severe restrictions on the whole population,²⁸ with settings ranging from luxury cruise ships to people's own homes compared with prison. However, such comparisons fail to comprehend the deprivation of liberty as experienced by men, women and children in penal detention. They do not consider the lack of agency, autonomy, and contact with the outside world that is inherent (although not inevitably so) in penal detention. As highlighted by the WHO:

*"People in prisons and other places of detention are already deprived of their liberty and may react differently to further restrictive measures imposed upon them."*²⁹

Severely reduced contact with families and community; lack of purposeful activity, including very limited access to education, work, training and other regimes; long hours spent in cells with little access to exercise and fresh air; and increased levels of anxiety and other mental health difficulties have all compounded the "pains of imprisonment".³⁰ Men and women detained in prison during the pandemic have received a level of punishment that could not have been anticipated in their initial sentencing. Indeed, some court cases in England, Wales and Scotland have taken into account the impact of Covid-19 restrictions as a relevant factor in sentencing.³¹ However, there has been a notable absence of debate on this issue in Ireland. Given that the principle of proportionality is the cornerstone of Irish sentencing law,³² and that harsher punishment has been served during the pandemic than intended by the sentencing

24 International Covenant on Economic, Social and Cultural Rights, available at: <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx> This obligation under Art. 12 also extends to taking steps "necessary for the prevention, treatment and control of epidemic, endemic, occupational and other diseases."

25 Mavronicola, N (2020) *Positive Obligations in Crisis*, Strasbourg Observers, available at: <https://strasbourgobservers.com/2020/04/07/positive-obligations-in-crisis/>

26 Ibid.

27 Penal Reform International (2020) *Coronavirus: Preventing harm and human rights violations in criminal justice systems*, <https://cdn.penalreform.org/wp-content/uploads/2020/07/Coronavirus-briefing-July-2020.pdf>

28 RTÉ, 'Stay at home' - Taoiseach announces further Covid-19 restrictions, <https://www.rte.ie/news/2020/0327/1126904-taoiseach-announces-restrictions/>

29 World Health Organisation (2020) *Preparedness, prevention and control of COVID-19 in prisons and other places of detention*, p.1 <https://www.euro.who.int/en/health-topics/health-determinants/prisons-and-health/publications/2020/preparedness,-prevention-and-control-of-covid-19-in-prisons-and-other-places-of-detention,-15-march-2020>

30 Crewe B., (2011) 'Depth, weight and tightness: Revisiting the pains of imprisonment', *Punishment and Society*, 13, 509-529, <https://journals.sagepub.com/doi/10.1177/1462474511422172>

31 Dingwall, G. 'Covid-19 and the Pains of Imprisonment: Should Sentencing Decisions Take Account of the Deterioration in Prison Conditions?', 9th July 2020, Webinar organised by Maynooth University, <https://www.maynoothuniversity.ie/news-events/webinar-covid-19-and-pains-imprisonment-should-sentencing-decisions-take-account-deterioration> See case law, *R v Manning* [2020] EWCA Crim 592 <https://www.criminalsolicitor.co.uk/blog/coronavirus-mitigation-r-v-manning-attorney-generals-reference-2020-ewca-crim-592/>, *R v Jones* [2020] EWCA 764 <http://www.bailii.org/ew/cases/EWCA/Crim/2020/764.html>

32 Law Reform Commission (2020) *Report on Suspended Sentences*, p. 69, https://www.lawreform.ie/_fileupload/Reports/LRC%20123-2020%20Suspended%20Sentences.pdf

Courts, consideration should now be given to reducing sentences, for example through increased remission.³³

It remains the case that the punitive nature of imprisonment has been intensified during the pandemic, while its rehabilitative purpose has been significantly eroded by virtue of the imposition of Covid-19 restrictions.

1.4 PIPS vision in the context of Covid-19

A common perspective shared by commentators on prison issues is that many criminal justice systems were in crisis before the pandemic and that Covid-19 only brought this reality further to the fore.³⁴ This was forcefully articulated by the CPT:

“As regards the situation of prisoners, the CPT is now witness to a pandemic crisis taking place against the background of pre-existing flaws in various criminal justice systems. As the responses from member States have shown, resolute action is only now being taken – in crisis mode – on some issues that have been the subject of CPT recommendations for very many years.”³⁵

This was also the case in Ireland, notwithstanding progressive policy development and reforms since 2011. Many of the issues that arose during the Covid-19 pandemic already existed but were exacerbated by the pandemic itself. For example, practices such as restricted regimes had steadily become normalised in prison systems,³⁶ including in Ireland. Chronic and persistent issues such as overcrowding, long hours spent in cells, and limited access to meaningful activity, had been documented over successive editions of PIPS (and in Part 2 of this report).

IPRT acknowledges the significant work done by the Irish Prison Service to keep the prison system Covid-free during the pandemic. However, had the standards outlined and demanded by PIPS been met previously, the lives of prisoners, their families, prison staff and management could well have been a good deal easier and the impact of Covid-19 less severe. Prisoners would have had access to better living conditions, including single-cell accommodation. Families would have been accustomed to communicating with their family member in prison using digital technology. Prisoners would have transitioned smoothly from school to virtual classrooms. Prison staff and management would not have had to manage the pandemic in the context of crowded prisons, and the impact on life in prison would have been minimised.

A unique opportunity now exists to capture

33 This was previously recommended by the Joint Oireachtas Committee on Justice, Defence and Equality in its 2013 *Report on Penal Reform*, <https://webarchive.oireachtas.ie/parliament/media/penal-reform-report-13-march-2013-final.pdf>

34 Penal Reform International, *Covid-19: Pushing criminal justice systems to crisis point*, <https://www.penalreform.org/covid-19/>

35 CPT/Inf (2020) 21 *Follow-up statement regarding the situation of persons deprived of their liberty in the context of the ongoing COVID-19 pandemic*, p.2 <https://rm.coe.int/16809ef566>

36 Presentation by Prof Malcolm Evans at the IPRT/ZMT seminar *Human Rights and Detention in the time of Covid-19* on 29th April 2020, <https://www.iprt.ie/upcoming-events/human-rights-and-detention-in-the-time-of-covid-19-uk-and-ireland/>

innovations introduced and maximise positive developments brought about in response to the pandemic. IPRT echoes the CPT when it states:

“The Committee urges the relevant authorities of all member States to progressively move from the management of risks to seizing opportunities that the pandemic has created. Certain emergency measures put in place temporarily must be made sustainable. This applies in particular to the increased use of alternatives to deprivation of liberty, with a view to putting an end to the phenomenon of overcrowding.”³⁷

The parallel challenge is to ensure there is no regression on progress achieved in the Irish penal system since PIPS 2017, and restrictive measures introduced to protect against the virus do not become the norm. To this end, IPRT sets out the lessons that have been learned in the next section.

1.5 Lessons from the pandemic in Ireland

Lesson 1: Strong leadership and political will can make penal reform a reality

The process and speed by which the right decisions were taken and implemented in the early stages of the pandemic should be documented and replicated. For example, the swift reduction in prison numbers, which had been recommended over many years by numerous expert groups,³⁸ was brought about in the space of weeks. This demonstrates what can be achieved when there is leadership and political will.

Lesson 2: Penal moderation is possible

Early action to alleviate prison overcrowding was crucial to Ireland’s success in keeping Covid-19 out of prisons. Overcrowding undermines safety and health in prisons in ordinary times, and elevates risk during a pandemic. This was outlined in a joint statement by WHO, United Nations Office on Drugs and Crime (UNODC), The Joint United Nations Programme on HIV/AIDS (UNAIDS) and the Office of the High Commissioner for Human Rights (OHCHR):

“In the light of overcrowding in many places of detention, which undermines hygiene, health, safety and human dignity, a health response to COVID-19 in closed settings alone is insufficient. Overcrowding constitutes an insurmountable obstacle for preventing, preparing for or responding to COVID-19.”³⁹

At the outset of the pandemic, there were over 4,200 prisoners in custody in Ireland.⁴⁰ This meant the majority of closed prisons across the estate were overcrowded or at capacity. The Irish Prison Service and the Department of Justice took action to reduce the prison population by 10% to 3,807 within a month of the declaration of the pandemic.⁴¹

However, while Ireland showed leadership in moving to reduce its prison population, it could

37 CPT/Inf (2020) 21 Follow-up statement regarding the situation of persons deprived of their liberty in the context of the ongoing COVID-19 pandemic, p.2

38 See Strategic Review of Penal Policy, *Final Report 2014*, <http://www.justice.ie/en/JELR/Strategic%20Review%20of%20Penal%20Policy.pdf/Files/Strategic%20Review%20of%20Penal%20Policy.pdf>; Houses of the Oireachtas, Joint Committee on Justice & Equality, *Report on Penal Reform and Sentencing May 2018*, 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; and Houses of the Oireachtas, Joint Committee on Justice, Defence & Equality, *Report on Penal Reform*, <https://webarchive.oireachtas.ie/parliament/media/penal-reform-report-13-march-2013-final.pdf>

39 World Health Organization, UNODC, WHO, UNAIDS and OHCHR joint statement on COVID-19 in prisons and other closed settings, <https://www.who.int/news-room/detail/13-05-2020-unodc-who-unaid-and-ohchr-joint-statement-on-covid-19-in-prisons-and-other-closed-settings>

40 Irish Prison Service, *Prisoner Population on Wednesday 11th March 2020*, https://www.irishprisons.ie/wp-content/uploads/documents_pdf/11-March-2020.pdf

41 Irish Prison Service, *2020 Prison Populations, 10th April 2020*, <https://www.irishprisons.ie/information-centre/statistics-information/2015-daily-prisoner-population/2020-prison-populations/>

have gone further. Countries that released a higher percentage of people from prison include: Turkey (35%), Cyprus (16%), Slovenia (16%), Portugal (15%) and Norway (13%).⁴²

The majority of prisoners released were those serving a sentence of less than 12 months (almost two-thirds of those released⁴³) or had fewer than six months left on their sentence.⁴⁴ These prisoner releases were described by the Department of Justice as 'low risk'.⁴⁵ However, there were other persons in the system who could be categorised as low risk to the community but who were not considered for early release within the criteria set.⁴⁶

In particular, the removal of the statutory bar on temporary release for those sentenced for certain drugs and firearm offences, as recommended in 2014 by the Penal Policy Review Group (PPRG),⁴⁷ should have been implemented.

Importantly, the reduction in the prison population did not compromise public safety. Of 852 prisoners released from the beginning of the pandemic to June 2020, only 6% were returned to prison; some of these were returned solely on the basis of non-compliance with temporary release conditions.⁴⁸ This presents an opportunity to radically rethink responses to less serious offending, with a view to abolishing short custodial sentences completely.

Continuing to reduce prisoner numbers is essential to achieving a best practice penal system in Ireland.⁴⁹ The judiciary, the probation service, and the prison service all play an important role in

achieving this together. **Necessary actions include the commuting of short sentences to community sanctions, and enshrining the principle of imprisonment as a last resort in legislation and in sentencing principles. The use of remand detention must be an exceptional measure, and criteria for temporary release must be reviewed to ensure the primary focus is on actual risk to public safety.**⁵⁰ It is only through sustained penal moderation that humane and rehabilitative regimes in prisons can be achieved.'

Lesson 3: Safe custody limits are imperative

Since 2017, the *PIPS* project has stressed that to ensure safe custody, every closed prison should operate at least 10% below its maximum capacity.⁵¹ The experience of the pandemic reinforced the critical importance of meeting this standard at all times, so that prisons have the flexibility to respond to emergency situations such as the demands of an infectious disease.⁵²

A repeated action recommended in *PIPS 2017*, *PIPS 2018* and *PIPS 2019* was for the Office of Inspector of Prisons to update and publish maximum custody limits for all prisons by end 2020.⁵³ In 2019, IPRT further recommended that the Irish Prison Service should publish operational capacities that reflect actual capacity due to cell or wing closures.⁵⁴

Furthermore, maximum prison capacities should be calculated on the basis of single occupancy of

42 Penal Reform International, *Coronavirus Preventing harm and human rights violations in criminal justice systems*, <https://cdn.penalreform.org/wp-content/uploads/2020/07/Coronavirus-briefing-July-2020.pdf>

43 Irish Prison Service, *Irish Prison Service response to requests for PIPS 2020 07.08.2020*.

44 Department of Justice & Equality, *Information regarding the Justice Sector COVID-19 plans*, http://www.justice.ie/en/JELR/Pages/Information_regarding_the_Justice_Sector_COVID-19_plans

45 Ibid.

46 Office of Inspector of Prisons and Maynooth University, *Ameliorating the impact of cocooning on people in custody – a briefing*, p.7 <https://www.oip.ie/wp-content/uploads/2020/07/Ameliorating-the-impact-of-cocooning-on-people-in-custody-a-briefing.pdf>

47 Strategic Review of Penal Policy, *Final Report*, Recommendation 29 <http://www.justice.ie/en/JELR/Strategic%20Review%20of%20Penal%20Policy.pdf/Files/Strategic%20Review%20of%20Penal%20Policy.pdf>

48 Houses of the Oireachtas, *Prisoner Releases, Tuesday 23rd June 2020*, <https://www.oireachtas.ie/en/debates/question/2020-06-23/317/?highlight%5B0%5D=thomas&highlight%5B1%5D=pringle&highlight%5B2%5D=release&highlight%5B3%5D=release>

49 IPRT provides further analysis on this issue in Part 2. See Standard 2, Imprisonment as a last Resort.

50 In England and Wales, the Prisons & Probations Ombudsman has said: "Risk assessments associated with applications for compassionate release should be contextual, and based on an assessment of actual risk given the prisoner's current health condition." See Prisons & Probations Ombudsman (2017) *Learning from PPO investigations: Older Prisoners*: https://s3-eu-west-2.amazonaws.com/ppo-prod-storage-1g9rkjhkjmgw/uploads/2017/06/6-3460_PPO_Older-Prisoners_WEB.pdf

51 Standard 3, *Progress in the Penal System (PIPS)*

52 "Correctional facilities should not operate at (or even near) 100% capacity - must have room to respond to the demands of an infectious disease." Williams, B. (2020) 'COVID-19: Lessons from the US Prison Experience', paper presented at Australia OPCAT Network on 7th Sept 2020.

53 See IPRT (2017) *Progress in the Penal System: 2017*, Action 3.2; IPRT (2018) *Progress in the Penal System: 2018*, Action 3.2; and IPRT (2019) *Progress in the Penal System: 2019*, Action 3.1. All editions available at: <https://pips.iprt.ie>

54 Ibid 2019, Action 3.3.

cells.⁵⁵ To achieve single-cell occupancy across the prison estate, prisoner numbers need to be below 3,200. At its lowest, the daily prison population stood at 3,672 on 19th June 2020; this had increased to 3,744 on 7th August 2020.⁵⁶ The prison population was above 3,800 at end of November 2020.

Single-cell accommodation is best practice in ordinary times, and was the norm across the Irish prison estate until 1983⁵⁷. In the context of a life-threatening pandemic, providing access to single-cell accommodation across the entire prison estate should be an obligation, and doubling up of cells in 2019 and 2020 must be reversed.

Lesson 4: Prison health is public health

A positive outcome of the pandemic was the clear recognition of the continuum between prison health and public health, and between prisons and the community. Prisons were included among relevant residential settings in national health guidance and daily case number announcements, and the IPS Executive Clinical Lead was appointed to the National Public Health Emergency Team (NPHE) Vulnerable Persons Subgroup.⁵⁸

Public health had something to learn from prison health in 2020. A feature of prison healthcare in Ireland is its experience of dealing with infectious diseases. Following an outbreak of tuberculosis in Cloverhill prison in 2011,⁵⁹ a dedicated infection

team was set up⁶⁰ and a Head of Infections Control appointed. Early planning, prevention and training in Personal Protective Equipment (PPE) and infections controls made a critical difference. Up to August 2020, there had been no confirmed cases of Covid-19 among prisoners in Ireland, and no deaths. This was in contrast to other residential settings in Ireland, which had recorded over 1,000 Covid-19 related fatalities by end May 2020.⁶¹

The Irish Prison Service received national and international praise for how it managed its response to Covid-19. The IPS submitted a paper on its contract tracing system to the World Health Organisation as a model of best practice.⁶² It highlighted the benefits of the collaborative approach taken by the Irish Prison Service and the Health Service Executive (HSE), which led to the rapid creation of in-prison contact tracing teams in every prison.

Continuity of care between prison and public healthcare plays a vital role in addressing health inequalities, as articulated by the WHO⁶³ and in the UN Mandela Rules⁶⁴. *In PIPS 2017, PIPS 2018 and PIPS 2019, IPRT recommended better integration between prisons health and public health through the transfer of responsibility for prison healthcare to the Department of Health.*⁶⁵ **The experience of the pandemic in 2020 shows the benefits for the wider community of a joined-up healthcare approach, along with investment in prisons healthcare.**⁶⁶

55 Standard 9, *Progress in the Penal System (PIPS)*

56 Irish Prison Service, *2020 Prison Populations*, <https://www.irishprisons.ie/information-centre/statistics-information/2015-daily-prisoner-population/2020-prison-populations/>

57 Rogan M. (2013) *Prison Policy in Times of Austerity: Lessons from Ireland*, *Prison Policy in Times of Austerity: Lessons from Ireland* (tudublin.ie)

58 Gov.ie, *National Public Health Emergency Team (NPHE) COVID-19 Subgroup: Vulnerable People*, <https://www.gov.ie/en/collection/301f5e-the-national-public-health-emergency-team-nphet-subgroup-vulnerable-/#nphet-covid-19-subgroup-vulnerable-people-membership>

59 The Irish Times, *Tuberculosis in Irish prisons: 35 cases reported to HSE*, <https://www.irishtimes.com/news/politics/tuberculosis-in-irish-prisons-35-cases-reported-to-hse-1.3829563>

60 Thejournal.ie, *'Everyone had to play their part': How Ireland kept Covid-19 out of its prisons*, <https://www.thejournal.ie/covid19-prison-5119437-Jun2020/>

61 Up to end May 2020, there had been 1,030 Covid-19 related deaths in 167 residential facilities for older people including community hospitals, long-stay units, residential institutions and nursing homes. The Irish Times, *The human cost of Covid-19: Ireland's care homes with most deaths revealed*, <https://www.irishtimes.com/news/ireland/irish-news/the-human-cost-of-covid-19-ireland-s-care-homes-with-the-most-deaths-revealed-1.4264170>

62 Irish Prison Service, *Irish Prison Service submits paper on best practice for Contact Tracing to World Health Organisation*, <https://www.irishprisons.ie/irish-prison-service-submits-best-practice-paper-world-health-organisation/>; Clarke, M., Devlin, J. Conroy E. & S. Sturup-Toft (2020), *Establishing prison-led contact tracing to prevent outbreaks of COVID-19 in prisons in Ireland*, *Journal of Public Health*, <https://academic.oup.com/jpubhealth/article/doi/10.1093/pubmed/fdaa092/5860596?guestAccessKey=1cf37da2-ee58-452a-bccb-b72d39ac68f0>

63 "Prisons can contribute to the health of communities by helping to improve the health of some of the most disadvantaged people in society." World Health Organisation, *Health in Prisons: A WHO Guide to the essentials in prison health*, p.2, https://www.euro.who.int/__data/assets/pdf_file/0009/99018/E90174.pdf

64 "Health-care services should be organized in a close relationship to the general public health administration and in a way that ensures continuity of treatment and care". Rule 24.2 of the *United Nations Standard Minimum Rules for the Treatment of Prisoners*, https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf

65 See IPRT (2017) *Progress in the Penal System: 2017*, Action 12.1; IPRT (2018) *Progress in the Penal System: 2018*, Action 12.2, and IPRT (2019) *Progress in the Penal System: 2019*, Action 12.2. All editions available at: <https://pips.iprt.ie>

66 Caruana, S. (2020) *COVID-19: Civil liberties and the role of the state, Prisons and human rights in the time of COVID-19*,

Lesson 5: Confinement has negative consequences for physical and mental health

Isolation, loneliness and reduced contact with the outside world, including children and families, has impacted on the mental health and wellbeing of men and women in prison during the Covid-19 restrictions. While the pandemic was initially seen as a physical health crisis, the United Nations has highlighted that the Covid-19 crisis “...has the seeds of a major mental health crisis as well, if action is not taken.”⁶⁷ These concerns are particularly acute in Ireland given the pre-existing high prevalence of mental health difficulties and illnesses among the prison population.

Restrictions on out-of-cell time, including access to fresh air and exercise, also impact on physical health. In its analysis of amendments to the Scottish Prison Rules in response to the Covid-19 situation, the Scottish Prisoner Advocacy and Research Collective observed that:

“in the context of coronavirus, care of people in prison is being reconceptualised purely in terms of protection from coronavirus and health is being reconceptualised only as bare physical survival.”⁶⁸

Indeed, there is evidence that isolation and solitary confinement not only causes psychological difficulties but also affects physical health. Physical effects of solitary confinement include “gastro-intestinal and genito-urinary problems; deterioration of eyesight; lethargy, weakness and fatigue; heart palpitations; migraines; weight loss; back and joint pains.”⁶⁹ Solitary confinement also has disproportionate effects on older prisoners, many of whom are in poor physical health, “through lack of exercise increasing risks of arthritis, heart disease and diabetes. Lack of sunlight may create deficiency in vitamin D, exposing prisoners to fractures.”⁷⁰

Increased numbers of people in prison were placed on a restricted regime during the pandemic. This included medical practices, such as ‘cocooning’, ‘quarantining’ and ‘isolation’.

The imposition of further restrictive measures on people already deprived of their liberty⁷¹ has been a harsh experience. Additional restrictions imposed for people cocooning⁷² were viewed by some prisoners as a ‘double punishment.’ This was captured by a qualitative research project with men and women cocooning in prison conducted by the Inspector of Prisons and Maynooth University:

“It often feels that the small group I go to the yard with [...] are the only prisoners in the place. This virus has sucked the life out of everything, even this prison.”⁷³

Others reflected:

‘I surprise myself I have become so depressed since being cocooned: I feel that I am isolated and solitary. I am also surprised that I am unable to lift myself out of this depression. There is only a few times in my life when I felt suicidal and this is one of them. [...] Certainly my sleep is affected by lack of activity.’⁷⁴

‘I realise prison service is doing its best, and the priority is in preventing us oldies catching the virus, for which we must be thankful. When will it end?’⁷⁵

The extracts from prisoners’ journals offer an invaluable insight into the impact of restricted regimes, including solitary confinement. The findings have relevance for all people in prison placed on a restricted regime for any reason. Human beings are ‘wired to connect’ and a lack of wider social contact and contact with the outside world can have deep, lasting and damaging effects on a person’s mental wellbeing. **The recommendations of the Report should therefore be acted on, and all measures taken to minimise the negative effects of isolation, and to ensure it is used for the minimum time possible.** Mitigating

<https://www.news.uwa.edu.au/2020051412082/uwa-public-policy-institute/covid-19-prisons-and-human-rights-time-covid-19?page=show>

67 United Nations (2020) *Policy Brief: COVID-19 and the Need for Action on Mental Health*,

<https://unsdg.un.org/sites/default/files/2020-05/UN-Policy-Brief-COVID-19-and-mental-health.pdf>

68 Scottish Prisoner Advocacy and Research Collective (2020) *SPARC Statement on Changes to Prison Rules*, 9 April 2020, <https://scottishprisoneradvocacy.com/2020/04/09/sparc-statement-on-changes-to-prison-rules/>

69 IPRT (2020) *Behind the Door: Solitary Confinement in the Irish Penal System*, p. 16–18, https://www.iprt.ie/site/assets/files/6439/solitary_confinement_web.pdf

70 Ibid.

71 World Health Organisation, *Preparedness, prevention and control of COVID-19 in prisons and other places of detention*, p. 1 <https://www.euro.who.int/en/health-topics/health-determinants/prisons-and-health/publications/2020/preparedness,-prevention-and-control-of-covid-19-in-prisons-and-other-places-of-detention,-15-march-2020>

72 Health Service Executive, *Cocooning*, <https://www2.hse.ie/conditions/coronavirus/cocooning.html>

73 Office of the Inspector of Prisons and Maynooth University, *Ameliorating the impact of cocooning on people in custody-a briefing*, p.3 <https://www.oip.ie/wp-content/uploads/2020/07/Ameliorating-the-impact-of-cocooning-on-people-in-custody-a-briefing.pdf>

74 Ibid.

75 Extracts taken from *Ask an Expert: Monitoring of Prisons during the COVID-19 pandemic*, with Patricia Gilheaney, Inspector of

against the negative mental health impacts of Covid-19 measures and developing mental health crisis plans must be a priority, along with longer-term mental health provision as restrictions ease.⁷⁶

Lesson 6: Restrictive measures must be continually reviewed

Court cases reported in the media provide further insight into the severity of restrictions imposed on prisoners during the Covid-19 pandemic. A prisoner who showed a symptom of Covid-19 and was kept in his cell 24 hours a day challenged his treatment in the High Court. It was argued that keeping the man in his cell for 24 hours a day was contrary to the *Prison Rules, 2007*⁷⁷ and disproportionate. In this case, the judge found that there was no absolute right to guarantee a prisoner's access to one hour's exercise as outlined in the *Prison Rules, 2007* ('the Rules').⁷⁸ The *Rules* were later amended through a statutory instrument in July 2020 that gave powers to the Director-General of the Irish Prison Service and the Governor of a prison to allow the suspension of access to physical exercise along with visits.⁷⁹ This amendment was made to the *Rules* to prevent or limit the spread of an infectious disease. **IPRT regrets the lack of consultation on these amendments to the Prison Rules, which are linked with public health advice but do not include safeguards such as maximum time limits nor place additional requirements on prisons to mitigate the suspension of exercise or visits.**

In this regard, Principle 4 of the CPT guidance is relevant:

*"Any restrictive measure taken vis-à-vis persons deprived of their liberty to prevent the spread of COVID-19 should have a legal basis and be necessary, proportionate, respectful of human dignity and restricted in time."*⁸⁰

The lack of a meaningful human rights impact assessment of Covid-19-related restrictions on people in prison is a significant gap. Parliamentary committees on justice and on human rights in England and Wales and in Scotland played an important role during the Covid-19 pandemic in holding the Government to account across areas of the criminal justice system including prison, probation and courts systems. This included scrutiny of pandemic-related amendments to existing rights, such as daily access to showers, under the Scottish Prison Rules; and the disproportionate impact of curtailments of prison visits on the rights of children whose mothers are in prison in England and Wales.⁸¹ There is no such record of Oireachtas scrutiny of amendments to the *Rules* introduced in Ireland in response to the pandemic in July 2020. Parliamentary oversight acts to promote human rights whilst also supporting transparency, accountability and public confidence in the justice system. **IPRT echoes the recommendation of the Irish Human Rights and Equality Commission (IHREC) that an Oireachtas Committee on Human Rights, Equality and Diversity should be established, which would have a cross-departmental mandate to examine the legal, social and economic rights implications of Covid-19.**⁸² A human rights impact assessment should be conducted on Covid-19 related measures introduced in prisons.

Prisons, Ireland' COVID-19 Law and Human Rights Observatory Blog (8 June 2020)

<https://tcdlaw.blogspot.com/2020/06/ask-expert-monitoring-of-prisons-during.html>

76 Penal Reform International, *Coronavirus Preventing harm and human rights violations in criminal justice systems*, <https://cdn.penalreform.org/wp-content/uploads/2020/07/Coronavirus-briefing-July-2020.pdf>

77 Irish Statute Book, *Prison Rules, 2007*, (see Rule 32.1) <http://www.irishstatutebook.ie/eli/2007/si/252/made/en/print>

78 The Irish Times, *Prisoner loses action over being put into isolation due to Covid-19 fears in prison*, <https://www.irishtimes.com/news/crime-and-law/courts/high-court/prisoner-loses-action-over-being-put-into-isolation-due-to-covid-19-fears-in-prison-1.4228945>

79 Irish Statute Book, *Prison (Amendment) Rules 2020*, <http://www.irishstatutebook.ie/eli/2020/si/250/made/en/print>

80 European Committee for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment *Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic*, <https://rm.coe.int/16809cfa4b>

81 IPRT (2020) *Submission to Oireachtas Special Committee on COVID-19 Response*, https://www.iprt.ie/site/assets/files/6785/iprt_submission_to_oireachtas_covid-19_1_sept_2020-1.pdf

82 Irish Human Rights and Equality Commission, *Statement from the Irish Human Rights and Equality Commission on COVID-19 oversight in respect of Human Rights and Equality*, <https://www.ihrec.ie/statement-from-the-irish-human-rights-and-equality-commission-on-covid-19-oversight-in-respect-of-human-rights-and-equality/>

All international human rights bodies are clear: any restrictive measures introduced in response to Covid-19 in prisons must be clinically necessary, proportionate and time-limited. As Independent Monitoring Boards (IMBs) in England & Wales have noted, “the longer it takes for prison life to return to normal, the worse the long-term prospects for prisoners”.⁸³ **Restrictions imposed to contain the spread of the virus must be continually reviewed to ensure they are proportionate, and “must be lifted as soon as they are no longer required”.**⁸⁴ **As Covid-19 will remain a threat for the foreseeable future, the State must invest in additional measures to ensure that prisoners’ rights are met.**

Lesson 7: Technology has the potential to transform prisons

Another positive development during the pandemic was the roll out of technology in Irish prisons, including in-cell telephony and the introduction of video calls⁸⁵ on 11th April 2020⁸⁶ as a substitute for physical prison visits. This was an important step towards maintaining prisoners’ contact with their children and families during Covid-19 restrictions, following the suspension of visits in March 2020.⁸⁷

Digital technology was also used to facilitate education when schools in prisons were closed due to the pandemic. For example, some students participating in Open University were provided with in-cell laptops to continue their studies.⁸⁸ While the virtual classroom is not a substitute for the important role that schools play in supporting learning, civic engagement and personal development in prisons, technology has an important role in supporting education, self-development and normalisation. It also supports engagement with wider educational communities.

In *PIPS 2017* and *PIPS 2018*, IPRT had recommended action on facilitating secure access to technology in prison as part of educational development,⁸⁹ which is becoming the norm internationally. **In-cell digital technology should be retained and further developed, including hybrid models of interactive digital education, to facilitate education with the overall aim of supporting rehabilitation and normalisation.**

An initial review of changes to practices undertaken by the Probation Service has also found that digital tools could enhance services in future,⁹⁰ although it should not replace face-to-face contact. An opportunity now exists to explore new methodologies and ways of working,⁹¹ in order to enhance the delivery of community sanctions and community supervision, reduce imprisonment, and support better access and engagement with education in prison.

83 IMB, *Send 2019/2020 annual report published*, <https://www.imb.org.uk/send-2019-20-annual-report-published/>

84 “This relates, in particular, to limitations on arrangements for detained persons to contact the outside world and reductions in the range of activities available to them.” See CPT/Inf (2020) 21 *Follow-up statement regarding the situation of persons deprived of their liberty in the context of the ongoing COVID-19 pandemic*, <https://rm.coe.int/16809ef566>

85 COVID-19 Law and Human Rights Observatory Blog (8 June 2020), *Ask an Expert: Monitoring of Prisons during the COVID-19 pandemic, with Patricia Gilheaney, Inspector of Prisons, Ireland* <https://tcdlaw.blogspot.com/2020/06/ask-expert-monitoring-of-prisons-during.html>

86 Irish Prison Service, *Irish Prison Service response to requests for PIPS 2020 07.08.2020*.

87 Visits with children were suspended from 12th March 2020 and all visits were suspended from 27th March 2020.

88 Irish Prison Service, *Family Information Booklet*, https://www.irishprisons.ie/wp-content/uploads/documents_pdf/Family-Information-Booklet-13-July-2020.pdf

89 See IPRT (2017) *Progress in the Penal System: 2017*, Action 19.4 and IPRT (2018) *Progress in the Penal System: 2018*, Action 19.6. Both editions available at: <https://pips.iprt.ie>

90 O’Neill J and Mc Greevy G. Reflections on a Pandemic: How COVID-19 impacted upon probation practice in Northern Ireland, *IRISH PROBATION JOURNAL* Volume 17, October 2020 https://www.pbni.org.uk/wp-content/uploads/2020/12/09-IPJ-Vol-17_O'Neill_McGreevy.pdf

91 See CEP, ‘Covid-19 probation practice’: <https://www.cep-probation.org/knowledgebases/covid-19-probation-practice/>

Lesson 8: Good communications supports safer prisons

Good communications, and a ‘whole of prison approach’ that engaged prisoners and staff, was central to keeping Covid-19 out of prisons in Ireland.⁹² The role that the Irish Red Cross Prisoner Volunteers played in informing and updating the prison population through the development of regular information leaflets was viewed as instrumental.⁹³ Proactive communications received positive comment from prisoners who were ‘cocooning’:

“I have 6 leaflets from the IPS re: the virus. Communication is very good, explaining why normal prison routine has been so drastically changed. [...] Info sheet[s] from the IPS encouraging us to keep our minds busy [...] are very useful.” (Journal 37)⁹⁴

The Inspector of Prisons noted the enhanced level of communication in prisons by way of the provision of weekly newsletters to prison and staff, and recommended it should continue post-pandemic.⁹⁵ In its response to *Ameliorating the Impact of Cocooning on People in Custody*, the IPS recognised the importance of its enhanced communication with prisoners, stating:

*“It is essential that this enhanced communication system includes listening to the feedback and concerns of our prisoner population. The Service recognises that it is important that the voices of prisoners are listened to, so that we can respond to the needs of the prison population and continue to provide safe and secure custody and rehabilitation in line with best practice.”*⁹⁶

IPRT strongly welcomes this statement and commitment by the Irish Prison Service. This should include action on increasing prisoner representative groups, as recommended in PIPS 2017 and PIPS 2018.⁹⁷ Proactive external communications by the IPS through digital media and a telephone helpline for families were also positive developments, and should be built on in future.

Lesson 9: Lack of published information means lack of accountability

PIPS 2019 set out a clear statement on the critical role that robust inspections, monitoring and complaints mechanisms play in ensuring accountability across the penal system, including behind prison walls.⁹⁸ Transparency and accountability is essential to the protection of human rights. **The complete lack of published prison inspection or monitoring reports in Ireland during the pandemic period is a major gap in accountability.** It means that prevailing conditions in Irish prisons are unknown, and it does not support public scrutiny and confidence in the penal system.

Independent prison monitors across Europe adapted their practices from early in the pandemic to comply with the ‘do no harm’ principle. Adaptations included reduced time in prisons and interviewing prisoners after release. In Ireland, the Inspector of Prisons undertook one-day visits to prisons with particular focus on out-of-cell time and provision of meaningful contact,⁹⁹ and maintained a ‘do no harm’ approach. However, no prison inspection reports were published during 2020. In comparison, in England and Wales, HM Inspectorate of Prisons undertook and published reports on ‘short scrutiny visits’ that shone a light on conditions for prisoners during the Covid-19 pandemic.¹⁰⁰

92 Thejournal.ie, ‘Everyone had to play their part’: How Ireland kept Covid-19 out of its prisons, <https://www.thejournal.ie/covid19-prison-5119437-Jun2020/>

93 Department of Justice & Equality, *Information regarding the Justice Sector COVID-19 plans*, http://www.justice.ie/en/JELR/Pages/Information_regarding_the_Justice_Sector_COVID-19_plans

94 Office of Inspector of Prisons and Maynooth University, *Ameliorating the impact of cocooning on people in custody – a briefing*, <https://www.oip.ie/wp-content/uploads/2020/07/Ameliorating-the-impact-of-cocooning-on-people-in-custody-a-briefing.pdf>

95 *Ask an Expert: Monitoring of Prisons during the COVID-19 pandemic, with Patricia Gilheaney, Inspector of Prisons, Ireland* COVID-19 Law and Human Rights Observatory Blog (8 June 2020) <https://tcdlaw.blogspot.com/2020/06/ask-expert-monitoring-of-prisons-during.html>

96 Irish Prison Service (2020) “Ameliorating the impact of cocooning on people in custody Report” Response by the Irish Prison Service – July 2020, https://www.irishprisons.ie/wp-content/uploads/documents_pdf/IPS-Response-29-July-2020.pdf

97 See IPRT (2017) *Progress in the Penal System: 2017*, Action 21.1 and IPRT (2018) *Progress in the Penal System: 2018*, Action 21.4. Both editions available at: <https://pips.iprt.ie>

98 IPRT (2019) *Progress in the Penal System: 2019*, <https://pips.iprt.ie>

99 COVID-19 Law and Human Rights Observatory Blog (8 June 2020), *Ask an Expert: Monitoring of Prisons during the COVID-19 pandemic, with Patricia Gilheaney, Inspector of Prisons, Ireland* <https://tcdlaw.blogspot.com/2020/06/ask-expert-monitoring-of-prisons-during.html>

100 HM Inspectorate of Prisons, *Our reports*, <https://www.justiceinspectorates.gov.uk/hmiprison/inspections/>

In May 2020, the Minister for Justice published prison visiting committee annual reports for the year 2018.¹⁰¹ This significant time delay in publication meant the reports bore no relevance to conditions in Covid-19. In comparison, the Independent Monitoring Boards (IMBs) in England and Wales published details on the severe impact of Covid-19 on the prison population in July 2020.¹⁰²

Robust systems of inspections, monitoring and complaints are even more important during a period in which those held in closed settings were at increased risk of having their rights violated with fewer external eyes overall. While the increased budget for the Office of the Inspector of Prisons in 2021 is positive,¹⁰³ **the ratification of OPCAT and the establishment of a National Preventive Mechanism (NPM) would have provided additional human rights protections and safeguards to people detained during the pandemic. This should now be a priority.**

Lesson 10: Collaboration and community engagement benefits everyone

The need for stronger inter-agency co-operation around release has been a recurring recommendation of the PIPS project,¹⁰⁴ along with strengthening of links between prisons and the community to better support reintegration.¹⁰⁵ In 2020, improved planning around structured releases between the Irish Prison Service and community-based organisations was reported during the pandemic's early stages. This aimed to prevent people from coming out of prison and into homelessness. Factors cited as having helped to address homelessness during this period included the expansion of housing provision, alongside swift decisive actions from all sectors¹⁰⁶:

“When these various factors coalesced, including top level institutional and political support, clear coordination coupled with command and control decision making capabilities, existing organisational capacity and a willingness and ability to adapt this, and the sheer dedication and bravery of front line service workers, decisions that would normally take many months or years were effected within days and weeks.”¹⁰⁷

Services such as the Irish Association for Social Inclusion Opportunities (IASIO) were designated as ‘frontline’ services,¹⁰⁸ and additional resettlement coordinators were employed by the Irish Prison Service.¹⁰⁹ Phone support services provided by IASIO were extended to remand prisoners to improve access to essential services.¹¹⁰ The provision of telephone access to prison psychology, prison chaplaincy, IASIO, and Merchants Quay Ireland was positive. However, wider community involvement, including access to services that support reintegration, has not been adequately facilitated:

“Projects who are linking in with people in prison are concerned because they don’t have any arrangement for one-to-one access at the moment to check how people are getting on.

101 Department of Justice and Equality, *Prison Visiting Committee Annual Reports 2018*, http://justice.ie/en/JELR/Pages/Prison_Visiting_Committee_Annual_Reports_2018

102 IMB, *Send 2019/2020 annual report published*, <https://www.imb.org.uk/send-2019-20-annual-report-published/>

103 See Department of Justice, *A record 3 billion budget to modernise, reform and Covid-equip justice sector announced by Minister McEntee*, <http://www.justice.ie/en/JELR/Pages/PR20000237>

104 See IPRT (2017) *Progress in the Penal System: 2017*, Action 34.1; IPRT (2018) *Progress in the Penal System: 2018*, Action 35.1; and IPRT (2019) *Progress in the Penal System: 2019*, Action 35.1. All editions available at: <https://pips.iprt.ie>

105 See Standards 20, 21, 34 and 35 in IPRT (2017) *Progress in the Penal System: 2017*; IPRT (2018) *Progress in the Penal System: 2018*; and IPRT (2019) *Progress in the Penal System: 2019*. All editions available at: <https://pips.iprt.ie>

106 The London School of Economics and Political Science, *Saving Lives in the time of COVID-19 Case Study of Harm Reduction, Homelessness and Drug Use in Dublin, Ireland*, p.4 <http://www.lse.ac.uk/united-states/Assets/Documents/Harm-Reduction-in-the-time-of-COVID19.pdf>

107 Ibid, p.4.

108 IASIO, *IASIO Highlights and Financial Reports 2019*, <http://www.iasio.ie/information-centre/annual-reports/>

109 Prisoners freed under Covid-19 plan ‘homeless’, *The Irish Examiner*, <https://www.irishexaminer.com/news/arid-30989935.html>

110 IASIO, *IASIO Highlights and Financial Reports 2019*, p. 12, <http://www.iasio.ie/information-centre/annual-reports>

Prison Link Workers are finding an inconsistent approach across the prisons to making remote access available to them so they can provide continuity of care.”¹¹¹

Organisations such as Citywide and the National Traveller Women’s Forum, among many others, play a vital role in supporting people’s needs in prison and ensuring continuity of care between prison and community. This is reflected in PIPS Standard 20, which emphasises the importance and benefits of engagement between civil society and prisons.¹¹² Strengthening links with the community on the outside supports rehabilitation. It also acts as an additional safeguard in terms of prison oversight.

Early pandemic responses demonstrated what can be achieved through a joined-up approach across agencies and community-based organisations. This should be replicated into the future to achieve the best possible outcomes for those leaving prison, for their communities, and for all society.

111 Citywide, *Submission on behalf of Community Sector to Rapid Assessment of Impact of Covid on National Drugs Strategy*, https://www.citywide.ie/assets/files/pdf/community_sector_submission_to_rapid_assessment_of_impact_of_covid_on_nds_.pdf

112 IPRT (2019) *Progress in the Penal System: A Framework for Penal Reform*, see Standard 20: Community Engagement and Involvement, 20: <https://pips.iprt.ie/progress-in-the-penal-system-pips/part-2-measuring-progress-against-the-standards/c-regimes/20-community-engagement-involvement/>

Conclusion

The Irish penal system response to the Covid-19 pandemic illustrates how swiftly positive change can be implemented. Reducing prisoner numbers has been key to keeping prisons and people in prison safe from Covid-19. This must be maintained. Keeping prisoner numbers low is also necessary to ensure the human rights of men and women detained are met. All stakeholders, including legislators, the judiciary and the Probation Service, have a role to play in achieving this.

The introduction of digital technology into prisons is another positive example. This has enormous potential to support various aspects of prison life, such as contact with the outside world, family life and education. This in turn supports rehabilitation.

The Covid-19 pandemic has adversely affected all society. However, the imposition of additional restrictions on people already deprived of their liberty has resulted in extremely harsh conditions. This includes excessively long hours spent in cells, reduced access to rehabilitative programmes, and almost no in-person contact with children, family and friends since March 2020. The mental health needs of the prison population must also be supported given these protective factors have been diminished. It is important that restrictive measures are proportionate to risk, and subject to regular review.

There have been no published prison inspection and monitoring reports ten months on from the start of the pandemic. This is of serious concern. Timely publication of reports is essential to protect against potential human rights violations, especially during an emergency.

The deprivation of liberty is the punishment. Additional restrictions to prison life can be viewed, and experienced, as a disproportionate level of punishment. Therefore, IPRT calls for the significant impact of Covid-19 on prison life to be taken into account in all decision-making processes, from remand and sentencing decisions to decisions relating to remission, early release and addressing parole delays. It is neither fair nor just that men and women in prison should be detained for longer or in harsher conditions for reasons outside their control.

The State must now consider the socio-economic impact of Covid-19 and its implications for the criminal justice system. It is vital that the State invests in measures to support those disproportionately affected by the crisis and protect against deepening inequality. This will make all of society safer for everyone.

The Covid-19 crisis presents an opportunity to move away from a reactive approach and instead address the need for systemic 'root and branch' change within the wider criminal justice system in Ireland. Enshrining the principle of imprisonment as a last resort in law should be at the centre.

The ways that Covid-19 has impacted on the world is an opportunity now to re-think and re-sharpen our focus on shaping a world-class penal system grounded in human rights and best practice, that supports broader social justice and criminal justice reforms.



PART 2:

The 35 Standards

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| Standard 1: | Penal policy is continually monitored, implemented, evaluated and evolving. |
| Standard 2: | Imprisonment is used as a last resort. This principle is enshrined in domestic legislation, with focus on the promotion and proportionate use of alternatives to custody. |
| Standard 3: | Every closed prison is operating at least 10% below its recommended maximum capacity. |
| Standard 4: | Each prison is limited to a maximum prisoner population of 250. |
| Standard 5: | Prisoners are detained in the least restrictive prison security setting, as determined through risk assessment. |
| Standard 6: | Open prisons comprise 30%-35% of the prison estate. |
| Standard 7: | Every prisoner is treated with respect, dignity and humanity and has access to decent living conditions. |
| Standard 8: | Every prisoner has 24-hour access to toilet facilities that respect the dignity and privacy of the individual. |
| Standard 9: | Every prisoner has access to single-cell accommodation. |
| Standard 10 (Updated): | Pre-trial detention as an exceptional measure. |
| Standard 11: | Every prisoner is encouraged and facilitated to maintain positive family and close, significant relationships. |
| Standard 12: | The healthcare needs of individual prisoners are met. Every prisoner has access to healthcare that goes beyond the 'equivalence of care' principle, with a full range of preventative services and continuity of healthcare in the community. |
| Standard 13: | People with serious mental health issues are diverted from the prison system and receive the appropriate treatment and supports in a timely manner. |
| Standard 14: | People with addiction issues are diverted from the prison system and receive the appropriate treatment. Where imprisonment is the only appropriate response, treatment is made available within prison, with a continuum of care upon release. |
| Standard 15: | A prisoner's right to privacy, and that of his/her family members, is respected and protected. |
| 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. |
| Standard 17: | Every prisoner and his/her family members, where desired, are facilitated and actively involved in his/her sentence planning from the beginning of sentence through to the point of release. |
| Standard 18: | Prisoners are encouraged and facilitated to develop and maintain life skills and assume personal responsibility while in prison. |
| Standard 19: | Every prison provides each prisoner with access to a range of educational activities that meet the individual's needs and take into account their aspirations. |

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| Standard 20: | Civil society access to prisons is encouraged, and there are opportunities for prisoners to participate and engage in the community through structured forms of temporary release. |
| Standard 21: | Prisoners are encouraged to engage with their political and civic rights. |
| Standard 22: | Prisoners have access to a robust and effective complaints mechanism. All complaints are dealt with in a timely manner, and the outcome of a decision is clearly communicated to the prisoner, with a satisfactory resolution if the complaint is upheld. |
| Standard 23: | Prisoners have access to an external, independent complaints and appeal mechanism, including access to a prisoner ombudsman or equivalent. |
| Standard 24: | Structures are in place for the regular inspection and monitoring of prisons. Inspection reports are made publicly available within a clear timeframe. |
| Standard 25: | The death of, or serious incident involving, a prisoner is investigated by an independent body immediately, and the investigation report published promptly. |
| 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. |
| Standard 27: | Prisoners and everyone in the prison system feel safe and protected from violence in the prison environment. |
| Standard 28: | The health and welfare of prisoners is prioritised while they are under escort. |
| Standard 29: | All staff receive relevant ongoing training and supports in order to effectively carry out their duties to a high standard. |
| Standard 30: | Good relationships between management, staff and prisoners are facilitated and encouraged. Management ensures that a positive working culture is created in the prison. |
| Standard 31: | Prison protocols emphasise de-escalation and conflict resolution approaches. Use of force and restraint are a measure of last resort. |
| Standard 32: | Management in the prison system takes a proactive approach towards protecting anyone who is at risk of discrimination due to their age, gender, ethnicity, sexuality, disability or other. |
| Standard 32.1: | A gender-sensitive approach should be adopted across the criminal justice system to respond to the distinct needs of women who offend. |
| Standard 33: | The parole system is fair, transparent and removed from political control. |
| Standard 34: | All prisoners have comprehensive preparation and structured plans for release. National policy and legislation provides for a structured release system. |
| Standard 35: | Protocols are in place for inter-agency co-ordination in order to ensure the successful reintegration of prisoners on release. |



PART 2:

Measuring Progress against the PIPS Standards

This section examines developments throughout mid-2019 to mid-2020 to assess to what extent progress has taken place in the penal system. *PIPS 2020* takes a different approach to previous years, focusing on 12 standards grouped into four core thematic areas.

1. **Prison as a last resort**

(Standard 1: Progressive Penal Policy, Standard 2: Imprisonment as a last resort, and an updated Standard 10: Pre-trial detention as an exceptional measure)

2. **Prison conditions and regimes**

(Standard 9: Single-cell accommodation, Standard 11: Family contact, Standard 16: Out-of-cell time, and Standard 26: Solitary Confinement)

3. **Healthcare**

(Standard 12: Access to healthcare services and Standard 13: Mental healthcare)

4. **Oversight and accountability**

(Standard 22: Complaints system, Standard 23: Independent complaints and appeal mechanism, Standard 24: Inspections and Monitoring)

These areas are interconnected, and form key pillars to bringing about the systemic change needed in Ireland's penal system – even more so within the context of Covid-19.

Thematic Area 1: Reducing the use of imprisonment

The core guiding principle of penal reform is that prison must be a sanction of last resort. This is because periods of imprisonment can have a profoundly damaging impact on people through the loss of family contact, housing, employment and disruption in access to services. In terms of public safety, as an evidence review of recidivism published by the Department of Justice in 2020 demonstrates, short terms of imprisonment are less effective than community sanctions.¹¹³ Furthermore, short terms of imprisonment are much more expensive to administer than community sanctions.¹¹⁴

Given the significant social and economic costs of imprisonment, IPRT has long campaigned for prison to be used sparingly and reserved for serious offending. However, successive PIPS reports identified the slow implementation of policy recommendations on decarceration and increased use of alternatives to custody.

In 2020, the picture has been very different. In response to the outbreak of the Covid-19 pandemic in Ireland, the prison population was reduced over a 4-week period (from 4,235 on 11 March 2020 to 3,807 on 10 April 2020).¹¹⁵ Numbers were then maintained below 3,800 until end of October 2020. This welcome and swift reduction in the prison population demonstrates what can be achieved, and contrasts starkly with a continued year-on-year trend of increasing prisoner numbers since 2017. (See *Standard 2, Imprisonment as a last resort.*)

The trend of sending increasing numbers of people to prison for short sentences continues to be a significant stain on Ireland's progressive penal policy framework. In 2019, 76% of all committals under sentence were for 12 months or less.¹¹⁶ This stark figure shows that prison is too often the default response. This is despite empirical evidence that demonstrates that the risk of recidivism increases when an individual is sentenced to imprisonment.¹¹⁷ It is a particularly acute issue for the female prison population – up to one third of women in prison under sentence are serving sentences of less than 12 months,¹¹⁸ with successive short sentences described as serving ‘a *life sentence by instalment.*’

A parallel trend of equal concern is the increasing numbers of committals on remand. (See *Standard 10, Pre-trial detention as an exceptional measure.*) In previous editions of PIPS, we monitored the separation of remand from sentenced prisoners, which is required under international human rights treaties. However, the continued increase in numbers held in pre-trial detention means this requirement cannot be met. There has been a 21% increase in the daily average number of people held on remand in Ireland since 2017.¹¹⁹ This increase mirrors global prison trends.¹²⁰ However, this is not a trend that Ireland should continue to follow.

A number of opportunities arising in 2020 and 2021 can support the vision of progressive penal policy and, in particular, the use of prison as a last resort. (See *Standard 1, Progressive Penal Policy.*) The Sentencing Guidelines and Information Committee established on 30 June 2020 under the *Judicial Council Act 2019* should consider including ‘prison as a last resort’ as a sentencing principle.¹²¹ The constitutional basis for this principle was considered by the Law Reform Commission in its 2020 Report on Suspended Sentences.¹²²

113 O'Donnell I. (2020) *An Evidence Review of Recidivism and Policy Responses*, http://www.justice.ie/en/JELR/An_Evidence_Review_of_Recidivism_and_Policy_Responses.pdf/Files/An_Evidence_Review_of_Recidivism_and_Policy_Responses.pdf

114 The average annual rate of an available staffed prison space in 2019 was €75,349. Irish Prison Service, *Annual Report 2019*, p.10 <https://www.irishprisons.ie/information-centre/publications/annual-reports/>

115 Irish Prison Service, *2020 Prison Populations*, <https://www.irishprisons.ie/information-centre/statistics-information/2015-daily-prisoner-population/2020-prison-populations/>

116 Irish Prison Service, *Annual Report 2019*, p.2 <https://www.irishprisons.ie/information-centre/publications/annual-reports/>

117 Cid, J. 2009. 'Is Imprisonment Criminogenic? A Comparative Study of Recidivism Rates between Prison and Suspended Prison Sanctions', *European Journal of Criminology*, 6(6): 459-480.

118 Irish Prison Service, *Monthly Information Note, October 2020*, <https://www.irishprisons.ie/information-centre/statistics-information/monthly-information-note/>

119 Irish Prison Service, *Annual Report 2019*, p.2, https://www.irishprisons.ie/wp-content/uploads/documents_pdf/IPS-Annual-Report-2019-Web.pdf

120 Penal Reform International, *Global Prison Trends 2020*, p.17 <https://cdn.penalreform.org/wp-content/uploads/2020/05/Global-Prison-Trends-2020-Penal-Reform-International-Second-Edition.pdf>

121 The Judicial Council, *Sentencing Guidelines Committee*, <https://judicialcouncil.ie/sentencing-guidelines-committee/>

122 See 4.23 in Law Reform Commission (2020) *Report on Suspended Sentences*: https://www.lawreform.ie/_fileupload/Reports/LRC%20123-2020%20Suspended%20Sentences.pdf

Prison as a last resort should be a shared common goal across all criminal justice stakeholders, with community sanctions promoted as a direct alternative to imprisonment. This objective should be reflected in the first *Criminal Justice Sectoral Strategy* led by the Department of Justice.¹²³

It would instil focus and identify the role and responsibilities that various criminal justice stakeholders hold in achieving this objective.

Political developments during 2020 support reforms in this area. Important commitments in the 2020 *Programme for Government*¹²⁴ include a commitment to progress the work of the Consultative Council to advise on penal policy issues. This was a recommendation made by the Penal Policy Review Group in 2014,¹²⁵ and should now be acted upon as a priority.¹²⁶ **It is important that the Consultative Council is established to cast a critical eye on the impact of the Covid-19 pandemic on wider penal policy, in order to avoid short-term thinking and maintain focus on long-term systemic reform.**

Above all, the Covid-19 pandemic has demonstrated that positive change can happen at pace when there is political will and impetus. IPRT believes that this is something that all stakeholders should reflect upon and work towards. The pandemic shows the importance of reducing prisoner numbers, ensuring prisons are below capacity to protect those within them. Now is the time that key criminal justice stakeholders can look at the learnings in order to avert future crises and use the Covid-19 pandemic as an opportunity to move forward in the implementation of progressive penal policy.

123 Department of Justice, *Criminal Justice Sectoral Strategy*, <https://www.gov.ie/en/consultation/d8def-criminal-justice-sectoral-strategy-public-consultation/>

124 The Green Party, *Programme for Government - Our Shared Future*, https://www.greenparty.ie/wp-content/uploads/2020/06/ProgrammeforGovernment_June2020_Final.pdf

125 Recommendation 42 of the Strategic Review of Penal Policy, *Final Report July 2014*, <http://www.justice.ie/en/JELR/Strategic%20Review%20of%20Penal%20Policy.pdf/Files/Strategic%20Review%20of%20Penal%20Policy.pdf>

126 See Recommendation 42, 'Timelines and milestones' in Implementation of Penal Policy Review Group Recommendations, Seventh Report of the Implementation Oversight Group to the Minister for Justice and Equality, http://www.justice.ie/en/JELR/IOG_Seventh_Report_of_the_Implementation_Oversight_Group_to_the_Minister_for_Justice_and_Equality.pdf/Files/IOG_Seventh_Report_of_the_Implementation_Oversight_Group_to_the_Minister_for_Justice_and_Equality.pdf

Standard 1: Towards a progressive penal policy

**Standard 1:
Penal policy is continually monitored,
implemented, evaluated and evolving.**

Rationale

Penal policy in Ireland should reflect the guiding principles and values of penal reform. At the same time, policy should maintain a level of flexibility to adapt to emerging issues, the needs of the prison population and the changing penal environment. Therefore, implementation, regular review and evaluation of penal policy are imperative.

Current Context:

Publication of reports by the Implementation Oversight Group, which was set up to monitor progress on recommendations of the Penal Policy Review Group, has stalled.¹²⁷ The most recent report published was in February 2019, evidence that this substantial delay preceded the Covid-19 pandemic.

In the letter that accompanied the seventh progress report, the Chairperson stated that:

*“The Group will review the overall implementation process to date and assess possible ways forward to ensure the promise of the Penal Policy Review Group’s vision is fulfilled.”*¹²⁸

In September 2020, the Minister for Justice outlined penal reform as a priority issue.¹²⁹ The Minister stated that a review is underway to examine the progress made since the establishment of the Penal Policy Review Group and its 43 recommendations.¹³⁰ The recommendations made by the Joint Committee on Justice and Equality in its

report on *Penal Reform and Sentencing* will also be examined.¹³¹ This review, alongside the eighth progress report of the Implementation Oversight Group, is expected to be published by the end of 2020.¹³²

One of the core recommendations made by the Penal Policy Review Group¹³³ was to establish Consultative Council to advise on penal policy. A commitment to establish the Consultative Council is contained in the 2020 *Programme for Government - Our Shared Future*.¹³⁴ The Consultative Council is intended to provide a forum for consultation with various external experts in penal policy and provide oversight in the implementation of penal policy commitments. It could also play an important role in refuting reactive legislative and policy proposals that are not grounded in evidence. The Consultative Council is one mechanism through which the vision of the Penal Policy Review Group can be progressed.

A number of other progressive policy and legislative commitments related to penal reform are outlined in the 2020 *Programme for Government*,¹³⁵ including:

- *Ratify and implement the Optional Protocol to the Convention against Torture within 18 months of the formation of the Government.*
- *Establish a high-level cross-departmental and cross-agency taskforce to consider the mental health and addiction challenges of those imprisoned and primary care support on release.*
- *Review the existing functions, powers, appointment procedures and reporting processes for prison visiting committees.*
- *Review the Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016 to broaden the range of convictions that are considered spent.*

127 Seventh Report of the Implementation Oversight Group to the Minister for Justice and Equality - February 2019, http://www.justice.ie/en/JELR/IQG_Seventh_Report_of_the_Implementation_Oversight_Group_to_the_Minister_for_Justice_and_Equality.pdf

128 Letter from Chairperson of the Implementation Oversight Group to the Minister for Justice and Equality - February 2019, http://www.justice.ie/en/JELR/Pages/Penal_Policy_Review

129 Kildare Street.com, *Written Answers, Wednesday 23rd September 2020, Department of Justice and Equality, Penal Policy Review Group*, <https://www.kildarestreet.com/wrans/?id=2020-09-23a.437>

130 *Strategic Review of Penal Policy, Final Report*, <http://www.justice.ie/en/JELR/Strategic%20Review%20of%20Penal%20Policy.pdf>

131 Joint Committee on Justice and Equality (2018) *Report on Penal Reform and Sentencing*, 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

132 Kildare Street, Department of Justice and Equality, *Penal Policy Review Group*, <https://www.kildarestreet.com/wrans/?id=2020-09-23a.437>

133 See Recommendation 42 of the *Strategic Review of Penal Policy*, <http://www.justice.ie/en/JELR/Strategic%20Review%20of%20Penal%20Policy.pdf>

134 *The Green Party, Programme for Government - Our Shared Future*, https://www.greenparty.ie/wp-content/uploads/2020/06/ProgrammeforGovernment_June2020_Final.pdf

135 *Ibid*, p.86.

- *Work with all criminal justice agencies to build capacity to deliver restorative justice, safely and effectively.*

IPRT has welcomed and endorsed all of these commitments.¹³⁶

Further positive developments in the area of policy include the delivery and publication of commissioned research by the Department of Justice as part of its *Data and Research Strategy 2018-2020*.¹³⁷ In particular, IPRT welcomes the publication of *An Evidence Review of Recidivism and Policy Responses*.¹³⁸ The review demonstrates that community sanctions are more effective than short-term prison sentences in reducing re-offending. It also identifies 'dynamic' (i.e. where intervention is possible) risk factors associated with recidivism such as unemployment and substance misuse. The importance of procedural fairness is also highlighted, whereby if people in conflict with the law believe they have been treated fairly, the likelihood of reoffending may be reduced:

*"The evidence suggests that prisoners behave better when they feel that they are being listened to; treated respectfully and courteously; given an opportunity to state their view; and subjected to equitable rule enforcement. If this improved behaviour continues in the community it is to everyone's benefit."*¹³⁹

The research found that procedural unfairness communicates disrespect leading to further alienation, resistance and noncompliance. Early release programmes were also found to reduce reoffending; this was linked with trust. The findings of *An Evidence Review of Recidivism and Policy Responses* should form an important basis for future policy development.

An Evidence Review of Confidence in Criminal Justice Systems was also commissioned by the Department of Justice.¹⁴⁰ This identified a number of interventions to improve confidence in the

criminal justice system. The review similarly identified the importance of applying procedural justice principles, along with the development of strategies to improve community policing and the use of restorative justice.

The Department of Justice also published a literature review that identified best practices in relation to victims' interaction with the criminal justice system, including: the need for effective communication and information sharing, victim-centred responses, clearly-defined victim participation schemes, tailored approaches for victims with specialist needs (such as victims of sexual violence), and equal access and enforcement of rights.¹⁴¹

All of the above reviews will support evidence-led policymaking in the criminal justice system in Ireland. However, further investment is needed to provide an evidence-based research infrastructure. As identified by one of the leading Professors of Criminology in Ireland:

*"Those of us with an interest in criminology and criminal justice in Ireland — mine stretches back more than 30 years at this stage — have long been frustrated by the lack of research infrastructure, reliable data and expert analysis. This has adversely impacted the quality of the debate about crime and punishment and puts us at a great disadvantage when it comes to, first, deciding how to respond and, secondly, deciding whether any response has had the desired effect."*¹⁴²

These reviews should set the context for larger pieces of independent, empirical research, which should be properly funded by the State.

During 2020, the Department of Justice undertook consultations on its first *Criminal Justice Sectoral Strategy* with various stakeholders including non-governmental organisations.¹⁴³ This wider external engagement in agenda setting is something PIPS

136 See IPRT's 5 Key Recommendations for the Programme for Government 2020+, <https://www.iprt.ie/elections-2020/5-key-recommendations-for-the-programme-for-government-2020/> and in relation to reform of prison visiting committees, see Action 24.3 of *Progress in the Penal System (PIPS): A Framework for Penal Reform (2019)*, <https://pips.iprt.ie/progress-in-the-penal-system-pips/part-2-measuring-progress-against-the-standards/d-complaints-accountability-and-inspections-mechanisms/24-inspections-and-monitoring/>

137 Department of Justice and Equality, *Data & Research Strategy 2018-2020 Supporting delivery of "A safe, fair and inclusive Ireland"*, http://www.justice.ie/en/JELR/Department_of_Justice_and_Equality_Data_and_Research%20_Strategy_2018-2021.pdf/Files/Department_of_Justice_and_Equality_Data_and_Research%20_Strategy_2018-2021.pdf

138 O'Donnell I. (2020) *An Evidence Review of Recidivism and Policy Responses*, http://www.justice.ie/en/JELR/An_Evidence_Review_of_Recidivism_and_Policy_Responses.pdf/Files/An_Evidence_Review_of_Recidivism_and_Policy_Responses.pdf

139 Ibid, p.91.

140 Hamilton C. & L. Black (2019) *An Evidence Review of Confidence in Criminal Justice Systems*, [http://www.justice.ie/en/JELR/An_Evidence_Review_of_Confidence_in_Criminal_Justice_Systems_\(2019\).pdf/Files/An_Evidence_Review_of_Confidence_in_Criminal_Justice_Systems_\(2019\).pdf](http://www.justice.ie/en/JELR/An_Evidence_Review_of_Confidence_in_Criminal_Justice_Systems_(2019).pdf/Files/An_Evidence_Review_of_Confidence_in_Criminal_Justice_Systems_(2019).pdf)

141 Healy D. (2019) *Exploring Victims' Interactions with the Criminal Justice System: A Literature Review*, http://www.justice.ie/en/JELR/Victim_Interactions_with_the_Criminal_Justice_System.pdf/Files/Victim_Interactions_with_the_Criminal_Justice_System.pdf

142 O'Donnell I. (2020) Reducing Reoffending: Choices and Challenges*, *Irish Probation Journal*, Volume 17, p.9 October 2020.

143 Department of Justice, *Criminal Justice Sectoral Strategy*,

has previously called for.¹⁴⁴

The publication of the *Draft Youth Justice Strategy* in May 2020 is also promising, in particular proposals for diversion programmes for 18-24 year olds.¹⁴⁵ Evidence shows that the right interventions at the right points in time can lead to a reduction in offending rates among young adults.¹⁴⁶ The *Programme for Government* also commits to examining the potential to increase the age limit for the Garda Youth Diversion Programme to 24 years.¹⁴⁷

Finally, at the outset of the Covid-19 pandemic, the Irish Prison Service and the Department of Justice adapted their penal policy approach through granting temporary release to low risk prisoners assessed on a case-by-case basis.¹⁴⁸ **This positive action shows how the system could adapt, respond, and evolve during an emergency, and should be both maintained and extended.** (See *Standard 2, Imprisonment as a last resort*).

➔ Indicators for Standard 1

Indicator S1.1:

Establishment of a Consultative Council

The first meeting of the Consultative Council has yet to take place. However, IPRT welcomes the renewed commitment to establish a Consultative Council in the 2020 *Programme for Government – Our Shared Future*.¹⁴⁹ The Minister for Justice has stated, “officials within my Department are expected to have concluded an examination of how best to take the commitment forward by the end of this year.”¹⁵⁰

Indicator S1.2:

Number of Penal Policy Review Group (PPRG) recommendations that have been fully implemented

There have been no Implementation Oversight Group reports published by the Minister for Justice to assess progress on recommendations made by the Penal Policy Review Group since February 2019.¹⁵¹ The Minister has stated that a review is underway to examine progress, and this will be accompanied by the eighth Implementation Report published before the end of 2020.¹⁵²

Indicator S1.3:

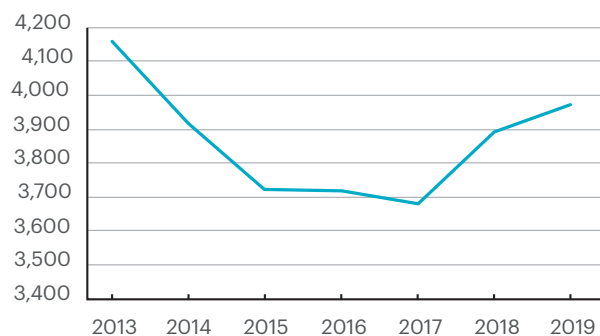
Number of recommendations of Joint Committee on Justice, Defence and Equality (2013) Report on Penal Reform that have been implemented

There have been no substantive progressive developments in relation to the five key recommendations made by the Joint Committee on Justice, Defence and Equality, and there has been significant regress on its recommendation to decarcerate:

1. Reduce the prison population by one-third over ten years:

There continues to be an upward annual trend on the daily average number of persons in custody since 2017.

Daily Average Number of Persons in Custody



2. Commute sentences of less than six months for non-violent offences: no change

<https://www.gov.ie/en/consultation/d8def-criminal-justice-sectoral-strategy-public-consultation/>

144 See Action 1.2 of *Progress in the Penal System (2019): A Framework for Penal Reform*,

<https://pips.iprt.ie/progress-in-the-penal-system-pips/part-2-measuring-progress-against-the-standards/a-an-effective-and-humane-penal-system/1-towards-a-progressive-penal-policy/>

145 See Department of Justice, *Draft Youth Justice Strategy 2020-2026*, [http://www.justice.ie/en/JELR/Draft_Youth_Justice_Strategy_2020_\(Public_Consultation\).pdf/Files/Draft_Youth_Justice_Strategy_2020_\(Public_Consultation\).pdf](http://www.justice.ie/en/JELR/Draft_Youth_Justice_Strategy_2020_(Public_Consultation).pdf/Files/Draft_Youth_Justice_Strategy_2020_(Public_Consultation).pdf)

146 IPRT (2015) *Turnaround Youth: Young Adults (18-24) in the Criminal Justice System: The case for a distinct approach*, <https://www.iprt.ie/site/assets/files/6357/iprt-turnaround-web-optimised.pdf>

147 The Green Party, *Programme for Government - Our Shared Future*, https://www.greenparty.ie/wp-content/uploads/2020/06/ProgrammeforGovernment_June2020_Final.pdf

148 Department of Justice and Equality, *Covid-19 Information regarding the Justice Sector Covid-19 plans*, http://www.justice.ie/en/JELR/Pages/Information_regarding_the_Justice_Sector_COVID-19_plans

149 The Green Party, *Programme for Government - Our Shared Future*, https://www.greenparty.ie/wp-content/uploads/2020/06/ProgrammeforGovernment_June2020_Final.pdf

150 Kildare Street, *Written answers, Thursday, 15 October 2020, Department of Justice and Equality, Penal Policy Review Group*, <https://www.kildarestreet.com/wrans/?id=2020-10-15a.683>

151 Department of Justice and Equality, *Penal Policy Review*, http://justice.ie/en/JELR/Pages/Penal_Policy_Review

152 Kildare Street, *Written answers, Wednesday, 23 September 2020, Department of Justice and Equality, Penal Policy Review Group*, <https://www.kildarestreet.com/wrans/?id=2020-09-23a.437>

3. **Increase remission to 33% for all sentences over one month and establish an enhanced remission scheme up to half sentence:** no change
4. **Introduce a single piece of legislation that would form the basis of a structured release system:** no change
5. **Address overcrowding and prison conditions with increased use of open prisons:** while overcrowding was reduced during the Covid-19 pandemic (see *Thematic Area 2: Prison Conditions and Regimes*), there has been no long-term policy change in addressing this issue. The use of open prisons remains static.

Indicator S1.4:

Number of recommendations of the Joint Committee on Justice and Equality (2018) Report on Penal Reform and Sentencing¹⁵³ that have been implemented.

Out of 29 recommendations made by the Joint Committee on Justice and Equality, many remain outstanding, including: the phasing out of solitary confinement, the capping of prison numbers, an accommodation policy of one person per cell and the establishment of an independent complaints system. (Some of these areas are further examined under the relevant standards in this report.) The Minister for Justice has stated that progress on recommendations by the Joint Committee on Justice and Equality will be included in the review underway on progress made on penal reform.¹⁵⁴

Indicator S1.5:

Publication of relevant data and research to inform evidence-led criminal justice policy

Three research reviews were commissioned and published by the Department of Justice over 2019/2020 including: *An Evidence Review of Recidivism and Policy Responses*¹⁵⁵, *An Evidence Review of Confidence in Criminal Justice Systems*¹⁵⁶ and *Exploring Victims' Interactions with the Criminal Justice System: A Literature Review*.¹⁵⁷ The Draft Youth Justice Strategy published by the Department of Justice in 2020 takes an evidence-led approach.¹⁵⁸ IPRT welcomes this evidence-based policy direction, along with the open public consultation processes on a number of strategies during 2020.¹⁵⁹

Indicator S1.6:

Adoption and implementation of PIPS standards

There has been no formal adoption and implementation of PIPS standards by criminal justice bodies. However, IPRT welcomes that the PIPS standards are taken into account in the Office of the Inspector of Prisons new inspection framework, *A Framework for the Inspection of Prisons in Ireland*.¹⁶⁰

153 Houses of the Oireachtas (2018), Joint Committee on Justice and Equality, *Report on Penal Reform and Sentencing*, 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

154 Kildare Street, *Written Answers, Wednesday 23 September 2020, Department of Justice and Equality, Penal Policy Review Group*, <https://www.kildarestreet.com/wrans/?id=2020-09-23a.437>

155 O'Donnell I. (2020) *An Evidence Review of Recidivism and Policy Responses*, http://www.justice.ie/en/JELR/An_Evidence_Review_of_Recidivism_and_Policy_Responses.pdf/Files/An_Evidence_Review_of_Recidivism_and_Policy_Responses.pdf

156 Hamilton C. & L. Black (2019) *An Evidence Review of Confidence in Criminal Justice Systems*, [http://www.justice.ie/en/JELR/An_Evidence_Review_of_Confidence_in_Criminal_Justice_Systems_\(2019\).pdf/Files/An_Evidence_Review_of_Confidence_in_Criminal_Justice_Systems_\(2019\).pdf](http://www.justice.ie/en/JELR/An_Evidence_Review_of_Confidence_in_Criminal_Justice_Systems_(2019).pdf/Files/An_Evidence_Review_of_Confidence_in_Criminal_Justice_Systems_(2019).pdf)

157 Healy D. (2019) *Exploring Victims' Interactions with the Criminal Justice System: A Literature Review*, http://www.justice.ie/en/JELR/Victim_Interactions_with_the_Criminal_Justice_System.pdf/Files/Victim_Interactions_with_the_Criminal_Justice_System.pdf

158 Department of Justice, *Draft Youth Justice Strategy 2020-2026*, [http://www.justice.ie/en/JELR/Draft_Youth_Justice_Strategy_2020_\(Public_Consultation\).pdf/Files/Draft_Youth_Justice_Strategy_2020_\(Public_Consultation\).pdf](http://www.justice.ie/en/JELR/Draft_Youth_Justice_Strategy_2020_(Public_Consultation).pdf/Files/Draft_Youth_Justice_Strategy_2020_(Public_Consultation).pdf)

159 See Irish Penal Reform Trust submissions at www.iprt.ie/iprt-submissions

160 Office of the Inspector of Prisons, *A Framework for the Inspection of Prisons in Ireland*, <https://www.oip.ie/wp-content/uploads/2020/09/OIP-Inspection-Framework-Single.pdf>

Emerging Practice: Restorative Practice in Penal Policy

In 2018, the Council of Europe published a recommendation encouraging member States to use restorative justice¹⁶¹. 2019 saw the wider application of restorative justice in the practices of the Probation Service, which co-hosted a National Symposium on *Implementing Restorative Justice in Law, Policy and Practice* with the Centre for Crime, Justice and Victim Studies in the University of Limerick in November 2019.¹⁶² Restorative justice has also been included in the Victims Charter¹⁶³ and other relevant reviews.¹⁶⁴

A commitment to restorative justice is also included in the *Programme for Government*¹⁶⁵, the *Action Plan for the Joint Management of Offenders*¹⁶⁶, and as part of the Office of Inspector of Prisons *Framework for the Inspections of Prisons in Ireland*¹⁶⁷, for prison staff to use restorative justice principles to prevent and resolve conflicts. The use of restorative practice was also recommended in prisons during the Covid-19 pandemic:

*“Restorative practices could be used to give prisoners and staff a meaningful opportunity to express themselves and play a role in determining what should happen in relation to protocols for visits, relaxing regimes, and the provision of ongoing support.”*¹⁶⁸

161 Council of Europe, *Recommendation CM/Rec (2018) 8 of the Committee of Ministers to member States concerning restorative justice in criminal matters*, https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016808e35f3

162 The Probation Service, *Probation Service Annual Report 2019*, p.14
<https://www.gov.ie/en/publication/5ba4c-probation-service-annual-report-2019/>

163 Government of Ireland, *Victims Charter*,
<https://www.victimscharter.ie/wp-content/uploads/2020/04/Victims-Charter-22042020.pdf>

164 Department of Justice and Equality (2020) *Supporting a Victim's Journey, A plan to help victims and vulnerable witnesses in sexual violence cases*, http://www.justice.ie/en/JELR/Supporting_a_Victims_Journey.pdf/Files/Supporting_a_Victims_Journey.pdf

165 The Green Party, *Programme for Government – Our Shared Future*,
https://www.greenparty.ie/wp-content/uploads/2020/06/ProgrammeforGovernment_June2020_Final.pdf

166 Department of Justice, An Garda Síochána, The Probation Service and the Irish Prison Service, *Action Plan for the Joint Management of Offenders*, <http://www.justice.ie/en/JELR/action-plan-for-the-joint-management-of-offenders.pdf/Files/action-plan-for-the-joint-management-of-offenders.pdf>

167 Office of the Inspector of Prisons (2020), *A Framework for the Inspection of Prisons in Ireland*, <https://www.oip.ie/wp-content/uploads/2020/09/OIP-Inspection-Framework-Single.pdf>

168 Ibid, p.6.

Status of Standard 1: Progress

Rationale for Assessment



There has been very little reported progress on the implementation of penal policy recommendations and reforms over 2019/2020. This lack of progress in penal policy occurred prior to the Covid-19 pandemic. However, much progress is evident in other areas including the publication of research to inform evidence-based policymaking in Ireland. Nevertheless, a better research infrastructure to drive and inform policy-making is needed. The commitment to establish the Consultative Council and other penal reform commitments included in the 2020 *Programme for Government* are welcome. There was also swift, adapted policymaking evident in reducing the prison population by the Irish Prison Service and the Department of Justice at the outset of the pandemic.

Actions required



- Action 1.1: The Department of Justice and Equality should publish the terms of reference, including the budget and powers of the Consultative Council. Following this, a date must be set for the Consultative Council's initial meeting to advise on issues related to penal policy. **[Repeated]**
-
- Action 1.2: The Department of Justice and Equality should publish its review of penal policy implementation within its committed timeline of end 2020.

Standard 2: Imprisonment as a last resort

Standard 2:
Imprisonment is used as a last resort. This principle is enshrined in legislation, with focus on the promotion and proportionate use of alternatives to custody.

Rationale

One of IPRT's core guiding principles is 'imprisonment as a last resort'. The damaging impact of imprisonment on the individual, as well as its ripple effects on families and communities, is enormous. Separation from family can lead to a breakdown in relationships, while the experience of imprisonment itself can result in institutionalisation. Imprisonment can also act as a barrier to employment upon release, as well as a significant barrier in accessing other supports such as housing.

Community sanctions, by contrast, can motivate and provide individuals with a sense of purpose by participating in, and making a contribution to society, while also allowing those who have caused harm to 'pay back' or make reparation directly to the community.¹⁶⁹

Current Context:

PIPS 2019 reported that Ireland's imprisonment rate in July 2019 was 82 per 100,000.¹⁷⁰ As of July 2020, Ireland's imprisonment rate was 75 per 100,000.¹⁷¹ This 7% reduction is attributed to the increased number of prison releases and a decrease in prison committals that occurred during the initial period of the Covid-19 pandemic,¹⁷² and is not linked with long-term policy or sentencing reform.

Custodial sentences

Annual figures reveal a continual increase in prison population numbers in Ireland since 2017. There was a 2% increase in the daily average number of people in custody from 3,893 in 2018 to 3,971 in 2019.¹⁷³ There was again a significant increase in the number of people committed to prison for short sentences:¹⁷⁴

- Those committed under sentence of less than 3 months increased by 75 or **12.1%**, from 618 in 2018 to 693 in 2019.
- Those committed under sentence of 3 to less than 6 months increased by 116 or **7.8%** from 1,491 in 2018 to 1,607 in 2019.
- Those committed under sentence of 6 to less than 12 months increased by 158 or **15.9%** from 995 in 2018 to 1,153 in 2019.

There was a total of 3,453 committals on short sentences (excluding committals for fines default) in 2019. By comparison, 2,791 community service orders were carried out in the same year.¹⁷⁵

In 2019, there was another decrease on numbers participating in early release programmes from prison, from 218 in 2018 to 206 in 2019.¹⁷⁶ Compliance rates for community return remain high at 89%. There has been a revision of the qualification time from 50% of total sentence to 50% of remitted sentence for eligible cases serving sentences of less than three years. However, the Irish Prison Service failed to meet its own target of 250 releases.¹⁷⁷ Planned and structured early release, including parole, for prisoners is important.

169 IPRT Discussion Paper, *Community Service in Ireland, A qualitative exploration of one alternative to short-term imprisonment*, https://www.iprt.ie/site/assets/files/6445/iprt_discussion_paper_-_community_service_in_ireland_final.pdf

170 See Standard 2 Imprisonment as a last resort, <https://pips.iprt.ie/progress-in-the-penal-system-pips/part-2-measuring-progress-against-the-standards/a-an-effective-and-humane-penal-system/2-imprisonment-as-a-last-resort/>

171 World Prison Brief, *Ireland, Republic of*, (at end of July 2020) <https://prisonstudies.org/country/ireland-republic>

172 Department of Justice, *Information regarding the Justice Sector COVID-19 plans*, http://www.justice.ie/en/JELR/Pages/Information_regarding_the_Justice_Sector_COVID-19_plans

173 Irish Prison Service, *Annual Report 2019*, p.51 https://www.irishprisons.ie/wp-content/uploads/documents_pdf/IPS-Annual-Report-2019-Web.pdf

174 Ibid, p.25.

175 The Probation Service, *Probation Service Annual Report 2019*, [http://www.probation.ie/EN/PB/0/DoF9CB8CA4151F85802585BB005D109B/\\$File/Probation%20Annual%20Report%202019%20Final%20Version%20A4.pdf](http://www.probation.ie/EN/PB/0/DoF9CB8CA4151F85802585BB005D109B/$File/Probation%20Annual%20Report%202019%20Final%20Version%20A4.pdf)

176 Ibid, p.55.

177 Irish Prison Service, *Irish Prison Service response to requests for PIPS 07.08.2020*.

As highlighted by O'Donnell (2020):

“the act of placing trust in prisoners and holding them to their word leads to an improvement in behaviour.”¹⁷⁸

2019 also saw the number of committals for the non-payment of court-ordered fines almost double from 455 in 2018 to 861 in 2019.¹⁷⁹ The operation of the *Fines (Payment and Recovery) Act 2014*¹⁸⁰ should be reviewed to inform further development and implementation of alternative sanctions to imprisonment.

Non-custodial sentences

Community sanctions must be accessible and available nationwide so that the judiciary has full confidence in applying these sanctions. The Probation Service plays an important role in providing the judiciary with pre-sanction and community service reports.¹⁸¹ In 2019, an inter-agency group comprising key stakeholders across the justice sector was established to focus on improved effectiveness in the area of pre-sanction assessment reports. The group considered a broad range of issues and made proposals. These proposals should be published, to help inform the development and administration of community sanctions.¹⁸²

During the Covid-19 pandemic, the Probation Service, like other criminal justice agencies adapted its way of working, including developing specific targeted responses for those at most risk of offending.¹⁸³ However, generally, there has been less information made publicly available on how the Probation Service and community sanctions have operated during the pandemic. During the

initial lockdown, community service sites were closed for health and safety reasons. The Probation Service used telephone and video contact during this period.¹⁸⁴ Since then, as a result of Covid-19 restrictions such as social distancing, community service sites are operating but at reduced capacity.

In March 2020, 2,376 people were on a Community Service Order. In July 2020, there was a 26% decrease in the number of people on Community Service Orders at 1,747.¹⁸⁵ Over the same period, there was a 22% increase in the numbers on Community Return¹⁸⁶, i.e., prisoners returning to the community through a structured early release programme. Seventy-nine people were on Community Return in March 2020, with numbers rising every month, reaching 97 in July 2020.¹⁸⁷

There will be a need for ongoing review of how community sanctions operate in the context of the pandemic, with a need for innovative solutions to avoid any potential negative impact on the prison population.

Need for analysis

Analysis is needed to examine why increasing numbers of short sentences continue to be handed down in the Courts, when legislation – the *Criminal Justice (Community Service) Amendment Act 2011*¹⁸⁸ – requires the court to first consider community service as an alternative. Such analysis should examine whether there have been ‘net widening effects’ (i.e. where community sanctions are being used for low-risk offenders who would otherwise have received lighter sanctions) in the criminal justice system, since a reduction in short-term prison sentences has not coincided with an increased use of community service orders. The

178 O'Donnell I. (2020) *An Evidence Review of Recidivism and Policy Responses*, p.47 http://www.justice.ie/en/JELR/An_Evidence_Review_of_Recidivism_and_Policy_Responses.pdf/Files/An_Evidence_Review_of_Recidivism_and_Policy_Responses.pdf

179 Irish Prison Service, *Annual Report 2019*, https://www.irishprisons.ie/wp-content/uploads/documents_pdf/IPS-Annual-Report-2019-Web.pdf

180 Irish Statute Book, *Fines (Payment and Recovery) Act 2014*, <http://www.irishstatutebook.ie/eli/2014/act/7/enacted/en/html>

181 Community Service Reports are shorter reports and can be facilitated on same day basis. However, it does not contain the same level of detail as pre-sanction reports. For more on this, See Maguire, N. & N. Carr (2017) *Individualising Justice: Pre-Sentence Reports in the Irish Criminal Justice System*, The Probation Service.

[http://www.justice.ie/EN/PB/0/5CE45CF7C900AB48802581A9002E00CF/\\$File/INDIVIDUALISING%20JUSTICE%20Pre-Sentence%20Reports%20in%20the%20Irish%20Criminal%20Justice%20System%20Online%20Edition.pdf](http://www.justice.ie/EN/PB/0/5CE45CF7C900AB48802581A9002E00CF/$File/INDIVIDUALISING%20JUSTICE%20Pre-Sentence%20Reports%20in%20the%20Irish%20Criminal%20Justice%20System%20Online%20Edition.pdf)

182 The Probation Service, *Annual Report 2019*, p.18 [http://www.probation.ie/EN/PB/0/97C8BC2BB20C1AD2802585BB00388D6C/\\$File/Probation%20Annual%20Report%202019%20Final%20Version%20A4.pdf](http://www.probation.ie/EN/PB/0/97C8BC2BB20C1AD2802585BB00388D6C/$File/Probation%20Annual%20Report%202019%20Final%20Version%20A4.pdf)

183 Department of Justice, *Information regarding the Justice Sector COVID-19 plans*, http://www.justice.ie/en/JELR/Pages/Information_regarding_the_Justice_Sector_COVID-19_plans

184 Information provided by the Probation Service, 8 October 2020.

185 The Probation Service, *Point in Time Statistical Update (1 March 2020) and (1 July 2020)*, <http://www.probation.ie/EN/PB/sectionpage?readform>

186 Community Return is a structured early release programme for qualifying prisoners. More information about Community Return here: <http://www.probation.ie/en/PB/Pages/WP16000037>

187 The Probation Service, *Point in Time Statistical Update (1 March 2020) and (1 July 2020)*, <http://www.probation.ie/EN/PB/sectionpage?readform>

188 Irish Statute Book, *Criminal Justice (Community Service) (Amendment) Act 2011*, <http://www.irishstatutebook.ie/eli/2011/act/24/enacted/en/print>

analysis should also examine the effectiveness of community sanctions with a view to strengthening confidence in their operation across the country, in order to reduce the use of short-term custodial sentences. Where barriers to the use of community sanctions by the Courts are identified, these must be addressed. The proposed analysis should also examine the use of structured release programmes such as the Community Support Scheme and the Community Return Programme, with a view to enhancing and expanding successful programmes.

Sentencing Data and Guidelines

In 2020, a Sentencing Guidelines and Information Committee was established, as required by the Judicial Council Act 2019.¹⁸⁹ The functions of the Committee include: drafting and amending sentencing guidelines; monitoring the operation of sentencing guidelines; and collating information on sentences imposed by the courts. The systematic collation and publication of sentencing data will be important to inform policy and enhance public confidence in the justice system. However, it is important that the introduction of sentencing guidelines does not impact adversely on penal policy. In this respect, imprisonment as a sanction of last resort should be enshrined as a core sentencing principle, as previously recommended by the Penal Policy Review Group¹⁹⁰.

The principle of imprisonment as a last resort is outlined in the 2020 *Review of Suspended Sentences* published by the Law Reform Commission:

“The basic premise of the principle of last resort is that a custodial sentence should not be imposed unless no other penalty or sanction would be sufficient to reflect the seriousness of the offending behaviour. The development of this principle has received much less attention in the Irish courts than other sentencing principles, such as proportionality. However, it has been suggested that the constitutional principle of proportionality implies that prison should only be used as a last resort. As all sentences must be proportionate to the gravity of the offence and the personal circumstances

*of the offender, it therefore follows that, in order for this principle to be observed, the most serious form of punishment available under Irish criminal law – the deprivation of personal liberty – should only be reserved for the most serious offending behaviour.*¹⁹¹

The Commission recommended that part suspended sentences rank below a term of imprisonment and above the Community Service Order on the scale of severity and above a fully suspended sentence. It examined mitigating factors relevant to whether a sentence should be suspended. This included factors such as: illness/physical/mental disability and family circumstances including pregnant women or women with dependent children.¹⁹² The Commission recommended that these factors could be set out in a sentencing guideline by the Sentencing Guidelines and Information Committee.

IPRT recommends that the principle of parsimony in punishment (i.e., that the use of prison should be minimised, and that sentences should be no longer than absolutely necessary) should also inform the future development of sentencing guidelines. These proposed principles would counteract the potential risk of sentence inflation that, at least for some offences, may have been linked with the development of sentencing guidelines in other jurisdictions.¹⁹³

189 See section 23 of the Judicial Council Act 2019, <http://www.irishstatutebook.ie/eli/2019/act/33/section/23/enacted/en/html#sec23>

190 Strategic Review of Penal Policy, *Final Report*, July 2014, <http://www.justice.ie/en/JELR/Strategic%20Review%20of%20Penal%20Policy.pdf/Files/Strategic%20Review%20of%20Penal%20Policy.pdf>

191 Law Reform Commission (2020) *Report on Suspended Sentences*, at 4.23 <https://publications.lawreform.ie/Portal/External/en-GB/RecordView/Index/61649>

192 Ibid, p.117–118.

193 While it is not clear that there is always a direct causal relationship between sentence severity and sentencing guidelines, research from England and Wales has suggested that the introduction of guidelines in that jurisdiction may bear some responsibility for increases in sentence severity for certain offences. See Pina-Sanchez J., Gosling J.P., Chung H.I., Bourgeois E., Geneletti S. & I. Marder (2019), Have The England and Wales Guidelines Affected Sentencing Severity? An Empirical Analysis Using a Scale of Severity and Time-Series Analyses, *The British Journal of Criminology*, Volume 59, Issue 4, July 2019, Pages 979–1001, <https://academic.oup.com/bjc/article-abstract/59/4/979/5366297?redirectedFrom=fulltext>

Covid-19 Releases

During the Covid-19 pandemic, the categories of prisoner targeted by the Department of Justice and the Irish Prison Service for release were those serving sentences of less than 12 months for non-violent offences and those who had less than six months remaining to serve¹⁹⁴.

Full temporary releases 2018–2020¹⁹⁵:

| Year | January | February | March | April | May | June |
|------|---------|----------|-------|-------|-----|------|
| 2018 | 139 | 173 | 188 | 173 | 199 | 172 |
| 2019 | 281 | 271 | 225 | 291 | 289 | 282 |
| 2020 | 220 | 199 | 470 | 178 | 137 | 121 |

Temporary releases doubled in March 2020 (in response to the Covid-19 pandemic) compared to March 2019. Of the 470 people granted full temporary release in March 2020, 64% were serving a sentence of less than 12 months.¹⁹⁶ The number of temporary releases for females increased from 23 in March 2019 to 56 in March 2020. For males, temporary releases doubled from 202 to 414 in the same period.¹⁹⁷

While these actions were necessary and strongly welcomed by IPRT, there may have been other prisoners who were suitable for release but who were excluded from the eligibility criteria. At the outset of the pandemic, and in line with calls from international human rights bodies, IPRT had called for the release of particularly vulnerable cohorts of prisoner, such as the elderly, subject to public safety risk assessment.¹⁹⁸ This was echoed by the Office of Inspector of Prisons and Maynooth University in July 2020:

“Criteria for release included the remaining length of sentence and whether the offence was violent in nature. However, there are still persons who could arguably be categorised as of a low risk to the community, but who were not considered for release within the existing criteria. The current circumstances provide an opportunity to review these early release criteria. We urge that mechanisms for early release and alternatives to custody are used to the widest extent.”¹⁹⁹

For those prisoners who have remained in prison during the pandemic, the harmful effects of imprisonment were exacerbated through the imposition of Covid-19 restrictions, including: greater isolation from family and social networks, limited out-of-cell time, a lack of purposeful activity, with wider uncertainty of the situation including its impact on sentence management and reintegration.

194 Houses of the Oireachtas, *Prisoner Releases*, Tuesday 23rd June 2020, <https://www.oireachtas.ie/en/debates/question/2020-06-23/317/>

195 Irish Prison Service, *Irish Prison Service response to requests for PIPS 2020*, 07.08.20

196 Ibid.

197 Ibid.

198 IPRT (2020) *Irish Prisons and Covid-19 Proposed Measures*, <https://www.iprt.ie/iprt-submissions/irish-prisons-and-covid-19-proposed-measures/>

199 Office of the Inspector of Prisons and Maynooth University, *Ameliorating the impact of cocooning on people in custody*, p.7, <https://www.oip.ie/wp-content/uploads/2020/07/Ameliorating-the-impact-of-cocooning-on-people-in-custody-a-briefing.pdf>

Progressive Practice: PASS

The extended Presumption Against Short Sentences (PASS) (from sentences of less than 3 months to 12 months) came into effect on 4 July 2019 in Scotland under the *Presumption Against Short Periods of Imprisonment (Scotland) Order 2019*.²⁰⁰ The purpose of PASS is to give greater use to encouraging community sanctions.

Based on monitoring information published by the Scottish Government for the period of July 2019 to December 2019 (the first six months of the extended presumption), there is emerging evidence that the number of short custodial sentences has been reduced in Scotland.

- The number of community disposals reached their highest level in October 2019 (since April 2017) when 24% of disposals were community orders.
- Custodial disposals have been decreasing since April 2019 and reached a low in November/December 2019.
- The number of sentences of 12 months or less was estimated to be approximately 665 in November and December 2019 (lowest since April 2017).
- The proportion of disposals accounted for by custodial sentences of 12 months or less had fallen from 12.8% in April 2019 to 9.5% in November 2019

While caution must be taken in accrediting changes in sentencing patterns directly to the extended presumption, short-term prison sentences of less than 12 months are decreasing in Scotland, which is a promising result.²⁰¹ However, caution must be taken to ensure that this does not lead to further net widening of people in the criminal justice system.

Emerging Evidence

An international review commissioned by the Department of Justice found growing evidence that community service and suspended sentences are more effective than short terms of imprisonment in terms of reducing re-offending,²⁰² among other positive outcomes. One study in the Netherlands showed that recidivism rates were 46.8% lower for those who completed community service compared with recidivism after imprisonment.²⁰³ The review also found a lack of evidence to support the deterrence effect of short-term sentences.

IPRT's research previously found a null effect in rates of re-arrest after serving a community service order and short prison sentence.²⁰⁴ A comprehensive review of how community service is currently operating in Ireland should be undertaken in order to identify areas for improvement, and support public and judicial confidence in the efficacy of non-custodial sanctions.

200 UK Legislation, *The Presumption Against Short Periods of Imprisonment (Scotland) Order 2019*, <https://www.legislation.gov.uk/sdsi/2019/9780111042281/contents>

201 Scottish Government, *Data on effects of presumption against short sentences*, <https://www.gov.scot/news/data-on-effects-of-presumption-against-short-sentences/>

202 O'Donnell I. (2020) *An Evidence Review of Recidivism and Policy Responses*, http://www.justice.ie/en/JELR/An_Evidence_Review_of_Recidivism_and_Policy_Responses.pdf/Files/An_Evidence_Review_of_Recidivism_and_Policy_Responses.pdf

203 Ibid, p.42.

204 O'Hara, K (2016) *Examining the comparative use, experience, and outcomes of community service orders as alternatives to short prison sentences in Ireland*, https://www.iprt.ie/site/assets/files/6446/koh_final_phd_thesis_-website1.pdf

Status of Standard 2: Mixed

Rationale for Assessment



Annual trends show a continued increase in the use of short-term sentences in 2019. While there has been an increase in the number of Community Service Orders carried out, this has not been met with a reduction in short-term prison sentences. All of the indicators show long-term regress. However, the short-term reduction of prison numbers by 10% in 2020 is an opportunity that should be capitalised on. There should be a continued focus on the structured early release of people from prison, which would in turn support a reduction in the number of people on a restricted regime and facilitate greater access to rehabilitative services for those in prison. Early release programmes have also been shown to reduce recidivism. The impact of Covid-19 restrictions on the operation of community sanctions will need to be monitored and responded to going forward.

Actions required



- Action 2.1: The Sentencing Guidelines and Information Committee should consider including the principle of imprisonment as a last resort and parsimony as sentencing principles.
-
- Action 2.2: The Department of Justice should include imprisonment as a sanction of last resort as an overarching principle in its first Criminal Justice Sectoral Strategy.
-
- Action 2.3: The Department of Justice should commission a comprehensive evaluation of the use of community sanctions and relevant legislation.
-
- Action 2.4: The Department of Justice and the Irish Prison Service should increase access to early-release programmes that have been evaluated as supporting rehabilitation.

Standard 10: Pre-trial detention as an exceptional measure (Updated)

Standard 10:
Pre-trial detention is used as an
exceptional measure.²⁰⁵ Remand
prisoners are held separately from
sentenced prisoners across the entire
prison estate.²⁰⁶

Rationale

Pre-trial detention should be used as an exceptional measure. To justify the detention of a person who is presumed innocent, there must be “a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty”.²⁰⁷ The CPT has noted that remand prisoners ‘are all too often held in dilapidated and overcrowded cells and frequently subjected to an impoverished regime.’²⁰⁸ Remand detention can have severe psychological effects, with suicide rates higher among remand detainees than sentenced prisoners.²⁰⁹ Research in Ireland has also shown that self-harm rates among the prisoner population are consistently higher for remand prisoners than those sentenced.²¹⁰

Article 10.2(a) of the International Covenant on Civil and Political Rights (ICCPR) makes clear that remand prisoners should be held separately from sentenced prisoners, as remand prisoners have not been found guilty of an offence.

Current Context:

There has been attention on the increased use of pre-trial detention around the world, described as ‘too often the norm, not the exception.’²¹¹ In Ireland in 2019, of 8,939 committals to prison more than one-third, 3,366 were on remand.²¹² The average number of people being held on remand is growing annually: 584 in 2017, 677 in 2018 and 707 in 2019.²¹³

This sustained increase in the number of people held on remand means it is a challenge to detain the remand prison population separately from the sentenced prison population. In the meantime, the State maintains its reservation to ICCPR Article 10.2, stating:

“Ireland accepts the principles referred to in paragraph 2 of article 10 and implements them as far as practically possible. It reserves the right to regard full implementation of these principles as objectives to be achieved progressively.”²¹⁴

Overcrowding continues to be cited as a barrier to its full implementation. The State’s only dedicated remand facility, Cloverhill prison has a maximum capacity of 431. Therefore, a reduction in the number of people being held on remand is needed to allow the State to comply with ICCPR Article 10.2. The new Limerick Prison will allow for both male and female remands and sentenced prisoners to be separated, though the Irish Prison Service has stated that this will be dependent upon operational or prisoner population constraints.²¹⁵

The increasing seriousness of charges has been cited as a particular feature of remand prisoners by the Director General of the Irish Prison Service, who has said that remand prisoners are required to be

205 See Article 5 of the *European Convention on Human Rights* and Article 9 of the *International Covenant on Civil and Political Rights*.

206 See Article 10 2.(a) of the *International Covenant on Civil and Political Rights*, <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

207 *Ilijkov v Bulgaria* (2001) cited in IPRT (2018) Opening Statement on Bail (Amendment) Bill 2017, 3 December 2018, https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_justice_and_equality/submissions/2018/2018-12-05_opening-statement-irish-penal-reform-trust-iprt_en.pdf

208 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) *Remand detention*, p.1 <https://rm.coe.int/168070d0c8>

209 Ibid.

210 In 2017, the rate of self-harm among the prison population was 7.4 compared to 3.1 among sentenced prisoners. The gap narrowed in 2018 at 5.0 compared to 3.7 per 1000. See Irish Prison Service, *Self-Harm in Irish Prisons 2018 Second Report from the Self-Harm Assessment and Data Analysis (SADA) Project*, https://www.irishprisons.ie/wp-content/uploads/documents_pdf/Self-harm-in-Irish-Prisons-2018-Second-report-from-the-SADA-Project.pdf

211 Penal Reform International, *Global Prison Trends 2020*, p.4 <https://www.penalreform.org/resource/global-prison-trends-2020/>

212 Irish Prison Service, *Annual Report 2019*, p.31 https://www.irishprisons.ie/wp-content/uploads/documents_pdf/IPS-Annual-Report-2019-Web.pdf

213 Ibid, p.2.

214 Law Reform Commission Discussion Paper, *Domestic Implementation of International Obligations*, p.145 https://www.lawreform.ie/_fileupload/Reports/LRC%20124%202020%20-%20Domestic%20Implementation%20of%20International%20Obligations.pdf

215 IPS response to IPRT Data Clarifications for PIPS 2020, 18 August 2020.

held for much longer periods and at higher levels of security.²¹⁶ However, there is no published data available to interrogate this. Further publication of data and analysis is required to understand the reasons for the increasing use of pre-trial detention in Ireland, and introduce interventions to reverse these trends.

Remand detention should also be contextualised within broader economic and social issues. In 2019, 7.8% (697) of all people committed to prison declared they were of 'no fixed abode'.²¹⁷ This is likely to be an under-estimate of the true number of homeless people ending up in prison. The Jesuit Centre for Faith and Justice highlighted that homelessness should never be used as a deciding factor on whether to impose a custodial remand sentence, and, that in such cases, conditions must be attached such as the Department of Housing, Planning and Local Government must be obliged to provide suitable accommodation so the person can be placed on bail.²¹⁸

The first confirmed case of Covid-19 in Irish prisons was on 21 August 2020, of a young homeless woman remanded into custody charged with the offence of threatening and abusive behaviour.²¹⁹ This raises significant questions about the type of offences for which women are committed to prison, not to mention the risks associated with prison committals during a pandemic.

An IPS interim report on women on remand showed a 37% increase in the number of female remand committals over the period of 2013-2019.²²⁰ The proportion of female committals on remand has increased steadily from 62% in 2013 to 71% of all female committals in 2017. The analysis shows that a number of women are being remanded into custody multiple times in one year, tripling from 43 women in 2013 to 125 women in 2019. The analysis also shows that from 2016-2019, over one-quarter (26.6%) of women on remand had a charge in the category of 'theft and related offences' as their most serious offence. This figure compares to 13% for men.

A reduction in the use of pre-trial detention can be brought about through the introduction of relevant supports to help people comply with bail conditions. The benefits of bail supports schemes include:

- allow the accused to remain within their community
- address offending-related behaviour where that is relevant
- encourage attendance at court
- increase court efficiency
- decrease the number of remands and
- result in cost savings

There are gender-specific bail programmes in other jurisdictions such as Glasgow Women's Supported Bail Service in Scotland.²²¹ This programme helps to keep women out of prison through addressing issues that contribute to offending behaviour such as addiction, mental health, housing and homelessness.

In Ireland, the Bail Supervision Scheme (BSS) has successfully reduced the number of children remanded into custody. On average, the children enrolled on the BSS had a reduction in reoffending almost twice that of the control group.²²² While addressing child offending is different to that of the adult population, an age-appropriate adaptation of the scheme would support young adults (18-24) transitioning into adulthood and reduce the use of remand detention. IPRT has proposed that this should be further explored as part of the Draft Youth Justice Strategy, which commits to developing specific protocols for the management of young adults.²²³

During the Covid-19 pandemic, those on remand were most likely to have experienced harsher prison conditions. The rights of remand prisoners are further described in the next section.

216 Irish Prison Service, *Annual Report 2019*, p.2 https://www.irishprisons.ie/wp-content/uploads/documents_pdf/IPS-Annual-Report-2019-Web.pdf

217 Ibid, p.29.

218 Jesuit Centre for Faith and Justice, *Covid 19: Reducing Remand Population*, <https://www.jcfj.ie/wp-content/uploads/2020/03/FINAL-COVID-19-Reducing-Remand-Population-.pdf>

219 The Irish Independent, *Woman (23) becomes first positive Covid-19 case in Irish prison system*, <https://www.independent.ie/irish-news/woman-23-becomes-first-positive-covid-19-case-in-irish-prison-system-39469801.html>

220 Finn G.C *Women on Remand-Interim Report for IPRT Analysis of PIMS*, 13/08/20.

221 Aberlour, *Glasgow Women's Supported Bail Service*, <https://www.aberlour.org.uk/services/supported-bail-service/>

222 Department of Children, Equality, Disability, Integration and Youth, *Evaluation of The Bail Supervision Scheme for Children (Pilot Scheme)*, <https://www.gov.ie/en/publication/0a6bc8-evaluation-of-the-bail-supervision-scheme-for-children-pilot-scheme/>

223 IPRT (2020) *Submission to the Department of Justice on the Draft Youth Justice Strategy 2020-2026*, https://www.iprt.ie/site/assets/files/6745/final_iprt_submission_to_dje_on_draft_youth_justice_strategy.pdf

► Indicators for Standard 10

New Indicator S10.1:

Average monthly number on remand:

| Month | 2016 | 2017 | 2018 | 2019 | 2020 |
|-----------|------|------|------|------|------|
| January | 475 | 541 | 667 | 714 | 761 |
| February | 532 | 566 | 657 | 704 | 794 |
| March | 517 | 545 | 623 | 660 | 791 |
| April | 530 | 532 | 670 | 696 | 790 |
| May | 514 | 555 | 674 | 692 | 779 |
| June | 511 | 555 | 697 | 705 | 729 |
| July | 488 | 559 | 674 | 688 | 671 |
| August | 484 | 561 | 643 | 653 | 676 |
| September | 549 | 618 | 696 | 699 | 730 |
| October | 584 | 658 | 725 | 778 | 747 |
| November | 574 | 685 | 723 | 773 | --- |
| December | 547 | 627 | 680 | 723 | --- |

Indicator S10.2:

The number of remand prisoners held alongside people serving a prison sentence: The Irish Prison Service has stated that it is not possible to extract an accurate account of the number of remand prisoners sharing a cell with sentenced prisoners from the system. ²²⁴

Status of Standard 10: Regress

Rationale for Assessment



There has been a sustained increase in the use of pre-trial detention in Ireland over recent years. Further analysis is needed to examine the reasons for the increase in the number of people being held on remand, particularly women, with a view to tailoring supports and community-based interventions to reduce the number of remand committals.

Actions required



Action 10.1: The Department of Justice and Equality, in conjunction with An Garda Síochána, the Courts Service, the Director of Public Prosecutions, the IPS and the Central Statistics Office, should compile comprehensive statistics relating to the use of pre-trial detention, with a view to enhancing knowledge and understanding of statistical trends.
[Repeated]

Action 10.2: Bail support schemes should be developed, in particular for women, young adults and repeat offenders who are committed on remand to prison for less serious offences. This will require strong inter-agency co-operation from departments such as housing and health.



Thematic Area 2: Prison Conditions and Regimes

The principle that it is the loss of liberty that is the punishment is a core tenet of penal reform. An individual who is sentenced to prison loses their freedom, but they still retain their basic human rights. As outlined under Rule 1 of the UN Mandela Rules, “All prisoners shall be treated with the respect due to their inherent dignity and value as human beings.”²²⁵ Poor prison conditions and regimes should never be used as an additional form of punishment.

Prison conditions have been under the global spotlight during the pandemic. Prisons, and in particular poor prison conditions, such as overcrowding, cell sharing and a lack of access to proper hygiene standards, are high-risk environments for the transmission of infectious diseases. As highlighted by one expert report in England and Wales:

“Overcrowding, unsanitary conditions, poor ventilation in a prison will likely increase the speed with which an epidemic unfolded.”²²⁶

Reducing prison numbers is essential to creating good prison conditions and regimes. (See *Thematic Area 1, Prison as a last resort.*) In 2019 and early 2020, overcrowded conditions in the Irish prison system saw people across the prison estate sleeping on mattresses on floors.²²⁷ The number of people sleeping on mattresses peaked at 75 in March 2020. However, this declined to single-digit numbers (to nine) within one month (13 April 2020) of the declaration of the pandemic.²²⁸ On the 1 June 2020, there was one man sleeping on a mattress in Cloverhill Prison.²²⁹ **Alleviating overcrowding in prisons is essential to keeping people in custody safe not only during Covid-19 but at all times, given its adverse impact on the welfare**

of prisoners and its negative impact on prison conditions and regimes.

There have been no prison inspections or monitoring reports published in 2020. Therefore, there has been little insight into prison conditions and regimes during the pandemic-related restrictions, and the consequent impact on minimum rights. However, information contained in a letter from the Minister for Justice and Equality in April 2020 indicated that some prisoners were locked in their cells 24 hours a day while awaiting coronavirus test results, with no access to showers during this period.²³⁰ This does not meet minimum entitlements, as set out in the Prison Rules 2007:

“A prisoner shall be permitted to take a hot shower or bath as often as is reasonably practicable and shall be entitled to, and may be required to, take a hot shower or bath at least once a week.”²³¹

Under Rule 19.4 of the European Prison Rules, it states that:

Adequate facilities shall be provided so that every prisoner may have a bath or shower, at a temperature suitable to the climate, if possible daily but at least twice a week (or more frequently if necessary) in the interest of general hygiene.²³²

There are currently 849 in-cell showers across the prison estate, of which 20 are within Safety Observation and Close Supervision Cells.²³³ This compares against a prison population of 3,765.²³⁴

Ireland should be striving for better prison conditions with single-cell accommodation available to all, along with the provision of in-cell showers. In order to protect prisoners from Covid-19, ‘the first priority is to establish physical distance among prisoners.’²³⁵ Reducing the prison population to IPRT’s target of 3,100 will make single-

225 United Nations Office on Drugs and Crime, *The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*, p.2 https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf

226 Coker, R. *Expert Report: Covid-19 and prisons in England and Wales*, p.2 https://howardleague.org/wp-content/uploads/2020/04/2020_04_01_COKER_Report_HL_PRT.pdf

227 Progress in the Penal System (2019) *Humane Prison Conditions*, <https://pips.iprt.ie/progress-in-the-penal-system-pips/part-2-measuring-progress-against-the-standards/b-prison-conditions/7-humane-prison-conditions/>

228 Response by the Irish Prison Service to IPRT Data Clarifications & Additional Requests for PIPS 2020, 18.08.20

229 Ibid.

230 The Irish Times, *Inmates with Covid-19 symptoms kept in 24-hour lock-up*, <https://www.irishtimes.com/news/crime-and-law/inmates-with-covid-19-symptoms-kept-in-24-hour-lock-up-1.4236286>

231 Irish Statute Book, *Prison Rules, 2007*, Section 25 (2) <http://www.irishstatutebook.ie/eli/2007/si/252/made/en/print>

232 Council of Europe, *Recommendation Rec(2006)2-rev of the Committee of Ministers to member States on the European Prison Rules*, https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016809ee581

233 Irish Prison Service, *Irish Prison Service response to requests for PIPS 2020 07.08.2020*.

234 Irish Prison Service, *Prisoner Population on Tuesday 27 October 2020*, https://www.irishprisons.ie/wp-content/uploads/documents_pdf/27-October-2020.pdf

235 Open Justice Society Initiative, *The Right to Health Care in Prison during the COVID-19 Pandemic*, p.4 <https://www.justiceinitiative.org/uploads/7696dcfd-12e1-4ace-8f28-2a37f4a3c26b/brief-access-to-health-care-in-prisons-07082020.pdf>

cell accommodation achievable, while supporting physical distancing and keeping prisoners safe from Covid-19 (See *Standard 9, Single-cell accommodation*.)

A report on the experience of prisoners who were cocooning also offered valuable insight into the harshness of restrictions experienced by vulnerable cohorts in prison, and their concerns about deteriorating mental health: “*the levels of despair across the journals made for very grim reading indeed*”.²³⁶ The journals written by prisoners cocooning showed the mental health implications of the restrictions, and the impact on chronic physical disease. Prisoners missed social contact and the report highlighted the importance of positive staff-prisoner interactions during this time. There was limited access to purposeful activities such as education and employment. Yard time was particularly important to cocooners. One prisoner described feelings of punishment on this regime.

The findings of the report are of relevance beyond ‘cocooners’ to the conditions experienced by all prisoners held on restricted regimes, and the recommendations should be implemented widely.

Conditions for those quarantining or in medical isolation should not constitute solitary confinement.

Limited out-of-cell time has been a feature of the Covid-19 restrictions, with the general prison population locked up for an average of 19 or more hours a day in some prisons. (See *Standard 16, Out-of-cell time; Standard 26, Solitary confinement*.) Previous PIPS reports highlighted limited out-of-cell time and issues with accessing education and workshops due to staff shortages,²³⁷ but this has been exacerbated due to the pandemic.

Access to prison by community-based organisations has been absent or severely limited during the Covid-19 restrictions,²³⁸ and the restrictions have impacted on the number of people accessing daily temporary release, which plays an important role in rehabilitation. The State must now take steps to ensure that rehabilitation, a key objective of imprisonment, is not further diminished. **If prison conditions during Covid-19 result in breaching the ‘deprivation of liberty’ principle, this may amount to disproportionate punishment and this should be considered by the Courts in sentencing and in increasing access to early-release schemes.**

The right to family life and the rights of the child as set out under the Constitution and in international human rights obligations should also be taken into account when imposing restrictions on visits. (See *Standard 11, Family contact*.) Minimum entitlements of remand prisoners have been eroded beyond those of sentenced prisoners. Those newly remanded into custody were subject to quarantine for 14 days. Remand prisoners are entitled to receive a minimum of three 15-minute visits a week, and to make five phone calls a week.²³⁹ These minimum entitlements simply could not have been adhered to during the Covid-19 lockdown. Indeed, there is some evidence that visitation entitlements were not always adhered to prior to the pandemic. For example, a report by the Inspector of Prisons found that a remand prisoner on protection did not receive his visitation entitlements because of the high number of prisoners on protection with difficulties in scheduling safe visits.²⁴⁰ In response, the Inspector recommended that the Irish Prison Service ensure that prisoners receive the visitations they are entitled to under the *Prison Rules, 2007*.²⁴¹

236 Office of the Inspector of Prisons and Maynooth University (2020) *Ameliorating the impact of cocooning on people in custody – a briefing*, p.5

<https://www.oip.ie/wp-content/uploads/2020/07/Ameliorating-the-impact-of-cocooning-on-people-in-custody-a-briefing.pdf>

237 See Standard 19 Education, *Progress in the Penal System (PIPS), A framework for penal reform (2018)*,

<https://www.iprt.ie/site/assets/files/6470/pips2018.pdf>

238 Houses of the Oireachtas, *Dáil Éireann debate-Wednesday, 15 July 2020*,

<https://www.oireachtas.ie/en/debates/debate/dail/2020-07-15/23/>

239 Irish Statute Book, *Prison Rules, 2007*, <http://www.irishstatutebook.ie/eli/2007/si/252/made/en/print#article46>

240 Office of the Inspector of Prisons, *Investigation Report into the circumstances surrounding the death of Mr.H*, http://justice.ie/en/JELR/Office_of_the_Inspector_of_Prisons_Death_in_Custody_Investigation_Report-Mr_H_2018.pdf/Files/Office_of_the_Inspector_of_Prisons_Death_in_Custody_Investigation_Report-Mr_H_2018.pdf

241 Ibid.

It is important to ensure that basic prisoner entitlements are not eroded during a public health emergency. The UK Parliament Human Rights Committee examined issues for the rights of people in detention and recommended that lockdown restrictions in these settings must be subject to a reasoned and transparent proportionality assessment, used for the minimum time necessary.²⁴² It also recommended that the Ministry of Justice should carry out a full evaluation of its Covid-19 policy in prisons. In Ireland, IHREC has previously called for a Joint Oireachtas Committee on Human Rights to be established.²⁴³ **In this respect, IPRT advocates that an Oireachtas Committee on Human Rights and Equality be established, and its programme for work should include an examination of the human rights implications of responses to the pandemic for people in prison, as well as their children and families.**

The Department of Justice should also carry out a full evaluation of its Covid-19 policy, not only in prisons but also in all areas of the criminal justice system, examining the responses of the Courts and the Probation Service, to inform planning for the near and longer-term future. Covid-19 has created serious concerns related to rights, regimes and conditions in prisons – but it also presents a real opportunity to progress penal policy and practice.

242 UK Parliament Committees, *The Government must urgently consider the human rights implications of Covid-19 measures, says Joint Committee on Human Rights*, <https://committees.parliament.uk/work/218/the-governments-response-to-covid19-human-rights-implications/news/119291/the-government-must-urgently-consider-the-human-rights-implications-of-covid19-measures-says-joint-committee-on-human-rights/>. The report is available from here: <https://publications.parliament.uk/pa/jt5801/jtselect/jtrights/265/26502.htm>

243 RTÉ News, *Recommendations on upholding human rights during Covid-19 crisis*, <https://www.rte.ie/news/2020/0427/1134967-human-rights-covid-19/>

Standard 9: Single-cell accommodation

Standard 9: Every prisoner has access to single-cell accommodation.

Rationale

It is important that prisoners have the choice of single-cell accommodation. Access to single-cell accommodation promotes a prisoner's right to privacy, and helps to reduce violence.

Current Context:

The PIPS vision of a best-practice prison system is one where single-cell accommodation is the default option. Where people choose to share cells, a thorough risk assessment should be undertaken on a regular basis. Single cell accommodation may act as a safeguard against violence.²⁴⁴ The Mountjoy Visiting Committee has observed that: *"The value of single cell accommodation cannot be overstated, reflecting a commitment to the dignity and privacy of the person."*²⁴⁵

Single-cell accommodation also acts to protect health particularly within the context of infectious diseases such as Covid-19. Public health guidance reiterates the importance of 'social distancing' (i.e. keeping two metres apart) to prevent transmission of the coronavirus. Social distancing cannot occur when prisoners are cell-sharing. Cellmates are described as 'close contacts' of quarantined prisoners and therefore have to be quarantined too.²⁴⁶ Provision of single-cell accommodation would help uphold prisoners' rights to parity of medical care and a right to bodily integrity, despite restrictions in their liberty.²⁴⁷

During the Covid-19 pandemic, the number of prisoners sharing cells reduced by 8% from 1,892 in January 2020 to 1,746 in April 2020.²⁴⁸ This reduction was brought about through the overall reduction in prison numbers.

Prior to the pandemic, in December 2019, the Irish Prison Service had increased its bed capacity in the main women's prison, the Dóchas Centre by 41 from 105 to 146.²⁴⁹ This followed an audit described by the Director General as identifying cells *"capable of holding two prisoners that are only occupied by one."*²⁵⁰ The Midlands Prison bed capacity increased by 30 and Wheatfield Prison increased capacity by 60.²⁵¹ This increase in bed capacity was achieved merely through the addition of extra beds, and not through any increase in prison size or any improved access to regimes. **This is regressive penal policy, which must be re-considered – particularly in light of the Covid-19 pandemic and of the requirement to facilitate social distancing.**

The Mental Health Commission also highlighted the significant risks associated with shared accommodation, in particular dormitory-style accommodation in mental health care facilities, during the Covid-19 pandemic. The CEO of the Mental Health Commission called for a national review of shared accommodation to address accommodation that is not compliant with Infection Prevention and Control standards.²⁵² This recommendation is also of relevance to prison settings where both dormitory style accommodation and shared accommodation exists within the estate.

Given the reduced number of people in prison, there is now an opportunity to work towards provision of single-cell accommodation throughout the estate. This would also allow for people in prison to access toilets in private.

244 In late 2019, a man held in Cloverhill prison was strangled to death in his cell by his cellmate. The findings of the investigation into the circumstances of this death have yet to be published. See The Irish Times, *Man strangled in Cloverhill Prison names as Mark Lawlor (37)*,

<https://www.irishtimes.com/news/crime-and-law/man-strangled-in-cloverhill-prison-named-as-mark-lawlor-37-1.4093509>

245 Mountjoy Prison Visiting Committee, *Annual Report 2017*, p.6,

https://ptfs-oireachtas.s3.amazonaws.com/DriveH/AWDData/Library3/JUQdocslaid08032017i_130711.pdf

246 Irish Prison Service response to requests for PIPS 2020, 07.08.2020.

247 Gulati G., Dunne C.P & B.D Kelly, *Prisons and the COVID-19 pandemic*, Ir J Psychol Med. 2020 May 27 2020: 1–2.

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7294073/>

248 Irish Prison Service, *Census Reports*, <https://www.irishprisons.ie/information-centre/statistics-information/census-reports/>

249 Irish Prison Service, *Prisoner Population on 11th December 2019*,

https://www.irishprisons.ie/wp-content/uploads/documents_pdf/11-December-2019.pdf & 12th December 2019,

https://www.irishprisons.ie/wp-content/uploads/documents_pdf/12-December-2019.pdf

250 The Irish Examiner, *Two prison units opened and 100 cells doubled up to tackle overcrowding*,

<https://www.irishexaminer.com/news/arid-30921697.html>

251 Irish Prison Service, *Irish Prison Service response to requests for PIPS 2020 07.08.2020*. The cell audit will not be published for operational and security reasons according to the Irish Prison Service.

252 Mental Health Commission (2020) *Mental health service concerns must be addressed to protect patients from Covid-19*, https://www.mhcirl.ie/File/PR_140720.pdf

Access to single-cell accommodation is essential in order to meet compliance with infection and prevention control standards including facilitating social distancing, a public health measure likely to continue for the foreseeable future.

► Indicators for Standard 9

Indicator S9.1:

Number and percentage of people accommodated in a single cell.²⁵³

| Cell | April 2017 | April 2018 | April 2019 | April 2020 |
|---------------------------------|-------------------------|-------------------------|-------------------------|-------------------------|
| No. (%) in a single cell | 2,040 (54%) | 2,047 (53%) | 2,021 (50%) | 2,080 (54%) |
| No. in a double cell | 1,396 (in 698 cells) | 1,364 (in 682 cells) | 1,581 (in 791 cells) | 1,400 (in 700 cells) |
| No. in a triple cell | 240 (in 80 cells) | 333 (in 111 cells) | 342 (in 114 cells) | 264 (in 88 cells) |
| No. in a quadruple cell* | 74 (in 16 cells) | 150 (in 38 cells) | 99 (in 25 cells) | 82 (in 20 cells) |

Progressive Practice: Single-cell Accommodation, Norway

In response to the Covid-19 pandemic, Norway is abolishing the use of double and multi-occupancy cells.²⁵⁴ Single-cell accommodation is being used in order to prevent the spread of infection. This is possible as a result of low imprisonment and recidivism rates.

253 Irish Prison Service, *Census of Cell Occupancy and In-Cell Sanitation Reports for April*, <https://www.irishprisons.ie/information-centre/statistics-information/census-reports/>

254 Europris, *Directorate of Norwegian Correctional Service, Prevention Measures in European Prisons against Covid-19*, <https://www.europris.org/directorate-of-norwegian-correctional-service-no/>

Status of Standard 9: Regress

Rationale for Assessment



Single-cell accommodation is a measure that promotes and protects the health and safety of prisoners. The reduction in prisoner numbers in March 2020 has increased the number of prisoners with access to single-cell accommodation. However, it is disappointing that additional beds were added within three prisons following the completion of the Irish Prison Service cell audit at the end of 2019. This should now be reviewed particularly in light of what has emerged during Covid-19, and the necessity of running prisons below design capacity.

Actions required



- Action 10.1: The Irish Prison Service should reverse the increase in bed capacities in Dóchas, Midlands and Wheatfield prisons.
-
- Action 10.2: Legislators should introduce a provision under the *Prison Rules, 2007* that single-cell accommodation must be available across the prison estate.

Standard 11: Family contact

**Standard 11:
Every prisoner is encouraged and facilitated to maintain positive family and close significant relationships.**

Rationale

Children and families affected by imprisonment are often referred to as the ‘hidden’ or ‘forgotten’ victims of crime. While families and children have committed no crime themselves, they are punished indirectly for the actions of their parent or family member. Children have the right to maintain regular and direct contact with their parent. Every member of the family maintains a right to family life. Maintaining positive family contact is also a crucial factor in the rehabilitation and desistance process.

Current Context:

Children’s rights, in particular the right to direct contact with their parents, as outlined under the UN Convention on the Rights of the Child,²⁵⁵ have been significantly impacted by the Covid-19 pandemic.

Family visits were suspended from March until July 2020, when prison visiting re-commenced on a phased basis.²⁵⁶ (This was later than other residential settings, where visits generally recommenced from end June.²⁵⁷) Initially only one adult was permitted to visit their family member. From 17 August 2020, a maximum of one child was allowed to visit a parent/family member in

prison.²⁵⁸ The plight of families, in particular having to choose only one child in the family to bring to visit their parent in prison – after 5 months without any physical contact – was documented in a survey conducted by IPRT.²⁵⁹ From end August 2020, the reintroduction of local and national restrictions in response to infection rates in the community saw further suspension of visits at county and national level.²⁶⁰ By 6 October 2020, in-person prison visits were again suspended across the country.²⁶¹

While data on prison visits is not published on an annual basis, in 2018 there were 239,769 visitors to the prison estate of whom 50,592 were children.²⁶² In the first four months of 2019, there were 78,423 visitors to prisons of whom 16,207 were children.²⁶³ These figures provide an estimate of the scale of visits affected by the restrictive measures imposed during the lockdown.

In the UK, legal action is being taken by a mother concerning her child’s lack of access to their father during the pandemic. The mother’s lawyers are arguing that a ban on visits and problems with video calls are a breach of children’s rights.²⁶⁴ In Ireland, a High Court challenge is also being brought over the reduction in prison visits.²⁶⁵

A number of positive measures were introduced by the Irish Prison Service in an effort to maintain family contact during the pandemic period. This included the roll-out of video calls as a substitute for visits to prisons.²⁶⁶ The use of digital technology is particularly important for prisoners whose families may have never been able to visit, for example foreign prisoners whose families live abroad, and those with elderly relatives.

255 Article 9 (3) of the *Convention on the Rights of the Child*, <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

256 Irish Prison Service, *Irish Prison Service Announcement on Recommencement of Physical Family Visiting*, <https://www.irishprisons.ie/irish-prison-service-announcement-recommencement-physical-family-prison-visiting/>

257 Government of Ireland, *Roadmap for Reopening Society and Business*, <https://www.gov.ie/en/press-release/e5e599-government-publishes-roadmap-to-ease-covid-19-restrictions-and-reope/#phase-3-29-june>

258 Irish Prison Service, *Irish Prison Service Announcement on Recommencement of Physical Family Visiting*, <https://www.irishprisons.ie/irish-prison-service-announcement-recommencement-physical-family-prison-visiting/>

259 IPRT Survey (2020) *The experiences of people with a family member in prison during Covid-19*. <https://www.iprt.ie/covid-19-in-prisons/i-am-worried-about-the-lasting-impact-this-will-have-the-experiences-of-people-with-a-family-member-in-prison-during-covid-19/>

260 Irish Prison Service, *Important Notice – Physical Visits Suspended in Portlaoise and Midlands Prisons - August 7th, 2020*, <https://www.irishprisons.ie/important-notice-physical-visits-suspended-portlaoise-midlands-prison/>

261 Irish Prison Service, *Suspension of Physical Visits to all Prisons, 6 October 2020*, <https://www.irishprisons.ie/suspension-physical-visits-prisons-06-october-2020/>

262 Houses of the Oireachtas, *Prison Visiting Regulations, 16 May 2019*, <https://www.oireachtas.ie/en/debates/question/2019-05-16/27/>

263 Ibid.

264 The Guardian, *Mother sues MoJ over child’s lack of access to father in jails lockdown*, <https://www.theguardian.com/society/2020/aug/31/mother-sues-moj-over-childs-lack-of-access-to-father-in-jails-lockdown>

265 The Irish Times, *High Court challenge brought over reduction of prisoner visits due to Covid-19*, <https://www.irishtimes.com/news/crime-and-law/high-court-challenge-brought-over-reduction-of-prisoner-visits-due-to-covid-19-1.4366884>

266 Irish Prison Service, *Important notice regarding the introduction of family video visits in Irish Prisons*. https://www.irishprisons.ie/wp-content/uploads/documents_pdf/Important-notice-regarding-the-introduction-of-family-video-visits-in-Irish-Prisons.pdf

In a snapshot survey carried out by IPRT, 71% of respondents said they had issues with using ‘alternatives forms of contact’ including video calls.²⁶⁷ Reasons cited for this included both financial and technical difficulties.²⁶⁸ The Irish Prison Service responded to these issues by providing information sheets and a telephone helpline for families. The Irish Prison Service has been proactive in its communications throughout the pandemic, including assurance for friends and families around local outbreaks of Covid-19, and this is welcome.

Other positive developments included the installation of phones in cells in Cork Prison. Prisoners quarantining and isolating across the estate also had access to in-cell telephones.²⁶⁹

As restrictive measures associated with Covid-19 continue to prevail, the right to family contact and a child’s direct contact with their parent in prison requires scrutiny by the Government. In the UK, arising from an inquiry into the implications for human rights of the Government’s Covid-19 response, the Joint Committee on Human Rights concluded that the right to privacy for both mothers in prison and their dependent children risks being breached.²⁷⁰ The Committee recommended:

*“In order to comply with Article 8 of the ECHR, they must ensure that any restriction on visiting rights is necessary and proportionate in each individual case. Children must be allowed to visit their mothers in prison on a socially distanced basis, where it is safe for them to do so.”*²⁷¹

More generally, there were no reported national policy or legislative developments to support children and families affected by imprisonment from late 2019 to early 2020.

267 IPRT Survey (2020) *The experiences of people with a family member in prison during Covid-19*.
<https://www.iprt.ie/covid-19-in-prisons/i-am-worried-about-the-lasting-impact-this-will-have-the-experiences-of-people-with-a-family-member-in-prison-during-covid-19/>

268 Ibid.

269 Irish Prison Service, *Irish Prison Service response to requests for PIPS 2020 07.08.2020*

270 Joint Committee on Human Rights, *Human Rights and the Government’s response to Covid-19: children whose mothers are in prison*,
<https://publications.parliament.uk/pa/jt5801/jtselect/jtrights/518/518.pdf>

271 Ibid., p.15.

► Indicators for Standard 11

Indicator S11.2:

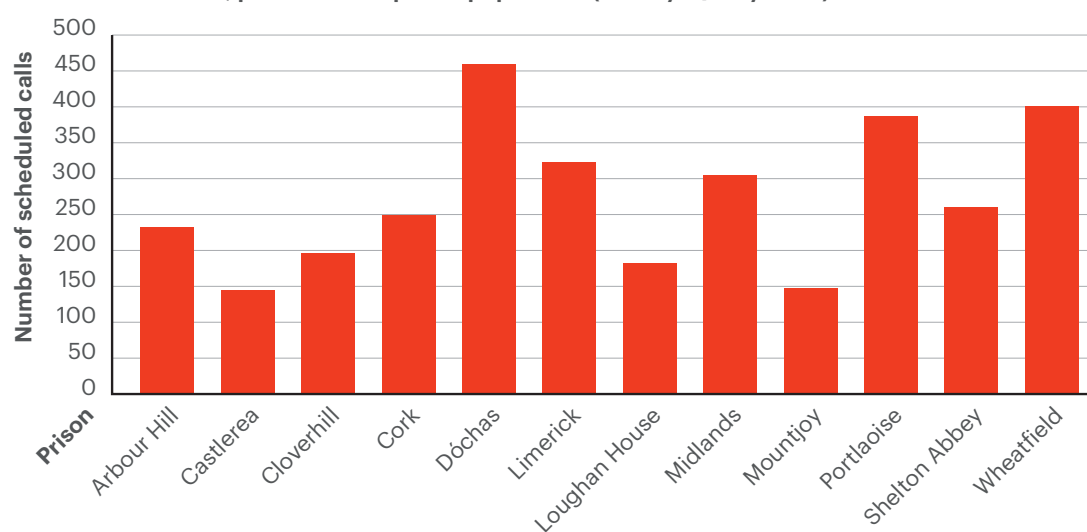
Regular family contact, specifically via phone calls, video conferencing and contact visits.

The table below provides a snapshot of the use of video calls by prison from 26 May 2020 to 7 July 2020 with an 87% success rate.²⁷² The use of video calls has expanded considerably in response to the pandemic; a total of 227 prisoner video calls took place between August 2018 and July 2019.²⁷³

The data shows inconsistencies across the prison estate in the use of video calls, for example, one-fifth of phone calls were unsuccessful from Wheatfield Prison and there were a disproportionately low number of scheduled calls in Mountjoy Prison, considering its large population.

| Location | Number of Scheduled Calls | Number of Successful Calls | Number of Unsuccessful Calls | Avg. prison pop. June 2020 | Scheduled calls, per 100 of the prison population (26 May – 7 July 2020) |
|---------------|---------------------------|----------------------------|------------------------------|----------------------------|--|
| Arbour Hill | 312 | 289 | 23 (7%) | 134 | 232.8 |
| Castlerea | 437 | 383 | 54 (12%) | 299 | 146.2 |
| Cloverhill | 665 | 581 | 84 (12%) | 338 | 196.7 |
| Cork | 663 | 597 | 66 (9%) | 266 | 249.2 |
| Dóchas | 482 | 439 | 43 (8%) | 105 | 459.0 |
| Limerick | 692 | 575 | 117 (16%) | 215 | 321.9 |
| Loughan House | 194 | 163 | 31 (15%) | 106 | 183.0 |
| Midlands | 2375 | 2165 | 210 (8%) | 781 | 304.1 |
| Mountjoy | 952 | 815 | 137 (14%) | 640 | 148.8 |
| Portlaoise | 867 | 787 | 80 (9%) | 226 | 383.6 |
| Shelton Abbey | 262 | 236 | 26 (9%) | 101 | 259.4 |
| Wheatfield | 1978 | 1567 | 411 (20%) | 496 | 398.8 |
| Total | 9879 | 8597 | 1282 (12%) | 3707 | 273.6 |

Scheduled calls, per 100 of the prison population (26 May – 7 July 2020)



272 Kildare Street, Written answers, Tuesday 14th of July 2020, Department of Justice and Equality, Prisoner Data, <https://www.kildarestreet.com/wrans/?id=2020-07-14a.2592>

273 See Indicator 11.2 under PIPS Standard 11 Family Contact, <https://pips.iprt.ie/progress-in-the-penal-system-pips/part-2-measuring-progress-against-the-standards/b-prison-conditions/11-family-contact/>

Progressive Practice, In-Cell Telephones

In an evaluation of digital technology in prisons carried out by the Ministry of Justice in England and Wales, in-cell telephones were seen as contributing to prisoners' relationships with families outside the prison, particularly those with young children. Prisoners reported having more privacy and time to make calls. The overarching view was that the introduction of digital technology, in particular, in-cell telephones had contributed to an improvement in the psychological well-being of prisoners.²⁷⁴

HM Inspectorate of Prisons in England and Wales has welcomed the gradual roll-out of in-cell telephone provision as well as electronic kiosks, which makes it easier for prisoners to arrange healthcare appointments, visits and make complaints.²⁷⁵

In Cell Phone Provision and Video-Calls in Irish Prisons

A positive development has been in-cell phone provision. The main women's prison, Dóchas Centre, was the first prison in the country to have phones in cells to allow for continued family support throughout Covid-19.²⁷⁶ Feedback to this development has been very positive.²⁷⁷ In IPRT's small-scale survey, providing in-cell telephones was rated by family members as the most helpful measure to support family contact while restrictions were imposed.²⁷⁸ The importance of video visits for family members was also highlighted in IPRT's survey.

Status of Standard 11: Mixed

Rationale for Assessment

The impact of Covid-19 restrictions has been particularly harsh for children and families of prisoners. During the initial lockdown, these restrictions were considered necessary and in the interests of public health. However, further scrutiny by Government is required to ensure that current restrictions are proportionate and meet the rights of prisoners, families, and their children. IPRT welcomes the roll-out of video calls across the prison estate and increased in-cell phone provision. These measures should be seen as additional means to strengthen family contact in the future, not as a replacement for in-person prison visits.

Actions required

- Action 11.1:** The Irish Prison Service should expand in-cell phone provision across the prison estate to facilitate and strengthen family contact.
- Action 11.2:** The Irish Prison Service should retain virtual visits as a supplement to physical visits in future in order to promote and facilitate family contact post-pandemic.
- Action 11.3:** Government should scrutinise the necessity and proportionality of blanket restrictions on in-person visits between children and their parents in prison through a human rights lens.

274 Palmer, M., RM Hatcher & M.Tonkin (2020) *Evaluation of digital technology in prisons*, p.5 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/899942/evaluation-digital-technology-prisons-report.PDF

275 HM Inspectorate of Prisons, *HM Chief Inspector of Prisons for England and Wales Annual Report 2018-19*, p.11 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/814689/hmip-annual-report-2018-19.pdf

276 Irish Prison Service, *Irish Prison Service response to requests for PIPS 2020 07.08.2020*

277 Ibid.

278 IPRT Survey (2020) *The experiences of people with a family member in prison during Covid-19*. <https://www.iprt.ie/covid-19-in-prisons/i-am-worried-about-the-lasting-impact-this-will-have-the-experiences-of-people-with-a-family-member-in-prison-during-covid-19/>

Standard 16: Out-of-cell time

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.

Rationale

Out-of-cell time is crucial to support the principle of normalisation. It is also of particular importance in facilitating and encouraging prisoners to partake in meaningful activity during their sentence. In England and Wales, HM Inspectorate of Prisons (HMIP) has developed a number of standards associated with out-of-cell time.²⁷⁹ These include:

- Prisoners have regular and predictable out-of-cell time that is sufficient to promote rehabilitation and mental well-being.
- Prisoners are expected and encouraged to use out-of-cell time constructively, including at weekends.
- Prisoners, including inpatients, those on the basic regime, and those in segregation, are able to spend at least one hour in the open air every day.
- Prisoners benefit from regular access to a suitable library, library materials, and additional learning resources that meet their needs.
- Prisoners are encouraged to participate in physical education and fitness provision that meets their needs.
- Prisoners can access creative activities that promote learning and well-being and support rehabilitation.

Current Context:

Out-of-cell time with access to purposeful activity is central to the rehabilitation process. In 2020, the impact of Covid-19 restrictions within prisons have meant delays for prisoners progressing in the system. Due to reduced access to activities such as school and day programmes, the rehabilitative purpose of prison has deteriorated.

In 2020, despite being identified as an action in *PIPS 2019*,²⁸⁰ there has been no regularly published information on the out-of-cell time available to people in prison.²⁸¹ Therefore it is not possible to assess whether there has been any progress on IPRT's target that all prisoners should be receiving 12 hours out-of-cell time. However, it was reported that, prior to the pandemic, out of cell time had decreased by 32% from 11 hours and 10 minutes to 7 hours and 35 minutes in the main female women's prison.²⁸²

The impact of limited out-of-cell time on prisoners was a recurrent theme in prison visiting committee reports published in 2020 for the year 2018.²⁸³ The Mountjoy Prison Visiting Committee Annual Report described negative impact of limited out-of-cell time on mental health, in which some prisoners on restricted regimes developed "*disrupted sleeping patterns*." The Committee also reported that some prisoners declined to leave their cells for the two hours guaranteed out-of-cell time (under the Prison Rules, 2007) and "*may become disoriented and confused*."²⁸⁴

Prior to the pandemic, the most recent census by the Irish Prison Service shows that almost 15% of people in prison were on a restricted regime (i.e. with less than five hours daily out of cell time).²⁸⁵ As a result of the Covid-19 pandemic, the number of prisoners on restricted regime increased by 30.8% from 589 in January 2020 to 770 in April 2020.²⁸⁶ Of the 770, 201 were restricted due to Covid-19 infection control measures. This increased by a further 8% in July 2020 to a total of 833 prisoners,²⁸⁷

279 HM Inspectorate of Prisons, 'Time out of cell', <https://www.justiceinspectorates.gov.uk/hmiprisons/our-expectations/prison-expectations/purposeful-activity/time-out-of-cell/>.

280 IPRT, Progress in the Penal System (PIPS) 2019, *Out-of-cell-time*, <https://pips.iprt.ie/progress-in-the-penal-system-pips/part-2-measuring-progress-against-the-standards/c-regimes/16-out-of-cell-time/>

281 There was a considerable delay in the publication of the *IPS Census of Restricted Regimes* for April 2020 and July 2020 (since the beginning of the pandemic). These reports are typically published within two months, but were published November 2020. See Irish Prison Service, *Census Reports*, <https://www.irishprisons.ie/information-centre/statistics-information/census-reports/>

282 See Dóchas Centre Chaplain's Report 2019, p.5 <https://www.irishprisons.ie/information-centre/publications/chaplains-reports/>

283 Department of Justice and Equality, *Prison Visiting Committee Annual Reports 2018*, http://www.justice.ie/en/JELR/Pages/Prison_Visiting_Committee_Annual_Reports_2018

284 See *Mountjoy Visiting Committee Annual Report 2018*, p.17 http://www.justice.ie/en/JELR/Pages/Prison_Visiting_Committee_Annual_Reports_2018

285 Irish Prison Service, *Census of Restricted Regime Prisoners January 2020*, https://www.irishprisons.ie/wp-content/uploads/documents_pdf/January-2020-Restriction.pdf

286 Irish Prison Service, *Census of Restricted Regimes Prisoners April 2020*, <https://www.irishprisons.ie/information-centre/statistics-information/census-reports/>

287 Irish Prison Service, *Census of Restricted Regimes Prisoners July 2020*, <https://www.irishprisons.ie/information-centre/statistics-information/census-reports/>

of whom 287 were restricted due to Covid-19 infection control measures.

While IPRT acknowledges that practices such as ‘cocooning’, ‘quarantining’, and ‘isolation’ (see *Standard 12, Healthcare*) were for medical reasons (Rule 103 of the Prison Rules)²⁸⁸, the number of people in prison impacted by limited out-of-cell time during the Covid-19 pandemic period has been immense. Journals were provided to 88 people who were cocooning across seven prisons to capture their lived experiences.²⁸⁹ The journals depicted harsh prison conditions, including severely limited access to daily yard time to allow for exercise and fresh air, as described by one prisoner below:²⁹⁰

*“Yesterday, we were let out to the yard at approx. 10:30am [and] today we are out at 6:30pm. That is a long time to be left in a small cell. [...] 30 hrs in cell [is] very hard to do.”*²⁹¹

Prisoners described feeling like a ‘leper’ or a ‘pariah’ because of being spoken to through a closed door. The significant value of this journalling project extends beyond cocooning, and its findings and recommendations should be applied to conditions experienced by the 15% of the prison population who were held on restricted regimes pre-pandemic.

Snapshot figures (see Indicator S16.1) during the Covid-19 pandemic demonstrate that general out-of-cell time was severely limited. Prisoners from the general population in Dóchas, Cork and Castlerea were subject to similar periods of 19-hour lock-up, while Mountjoy Prison reported 19.5-hour lock up as a standard practice, meaning just 4.5 to 5 hours out of their cell every day.²⁹²

Movement of prisoners around prisons was severely restricted, with impacts on out-of-cell and yard time. Prison schools were closed from March to August 2020. Prison gym facilities for prisoners remained open, albeit on a reduced schedule.

New initiatives were developed to bring education into the cell, such as education modules for an in-cell TV channel, and other resources such as quizzes and mindfulness books.²⁹³ However, more must be done to develop modes of interactive learning in prisons. This is more important given that class sizes have had to be reduced as a result of the pandemic, meaning prisoners have reduced hours access to the schools. Prior to the pandemic, participation rates varied across the prison estate, with Arbour Hill Prison highest at 71.4%, followed by Mountjoy Prison at 35.2%, Wheatfield at 38.3% and Castlerea at 39.2% in February 2020.²⁹⁴ The overall education participation rate across the prison estate was 42.4% in February 2020.

Easing of Restrictions

In its follow-up statement issued in July 2020, the CPT emphasised that: *“Importantly, temporary restrictions imposed to contain the spread of the virus must be lifted as soon as they are no longer required.”*²⁹⁵ This relates, in particular, to limitations on arrangements for detained persons to contact the outside world and reductions in the range of activities available to them.

It is important that any ongoing restrictions are proportionate, medically necessary, time-limited and relaxed when it is safe to do so. To this end, it is important that any plans to unwind restrictions are implemented as soon as it is safe to do so.

288 “Where a prison doctor believes there is a serious risk to the health of a prisoner and makes a recommendation in writing on medical grounds in relation to that prisoner to the Governor, the Governor shall, subject to paragraph (2), implement the recommendation as soon as may be thereafter.” See Irish Statute Book, *Prison Rules, 2007*, <http://www.irishstatutebook.ie/eli/2007/si/252/made/en/print#article103>

289 Office of Inspector of Prisons and Maynooth University, *Ameliorating the impact of cocooning on people in custody – a briefing*, p.5 <https://www.oip.ie/wp-content/uploads/2020/07/Ameliorating-the-impact-of-cocooning-on-people-in-custody-a-briefing.pdf>

290 A concept that applied to people over the age of 70 or those with medical conditions during the pandemic.

291 Office of the Inspector of Prisons and Maynooth University, *Ameliorating the impact of cocooning on people in custody-a briefing*, p.3, <https://www.oip.ie/wp-content/uploads/2020/07/Ameliorating-the-impact-of-cocooning-on-people-in-custody-a-briefing.pdf>

292 Kildare Street, *Written Answers, Tuesday 14th July 2020*, <https://www.kildarestreet.com/wrans/?id=2020-07-14a.2592>

293 Information received by prison education on 20.10.20.

294 *Response by the Irish Prison Service to IPRT Data Clarifications & Additional Requests for PIPS 2020*, 18.08.20

295 Council of Europe (July 2020) Follow-up statement regarding the situation of persons deprived of their liberty in the context of the ongoing COVID-19 pandemic, available at: <https://rm.coe.int/16809ef566>

► Indicators for Standard 16

Indicator S16.1:

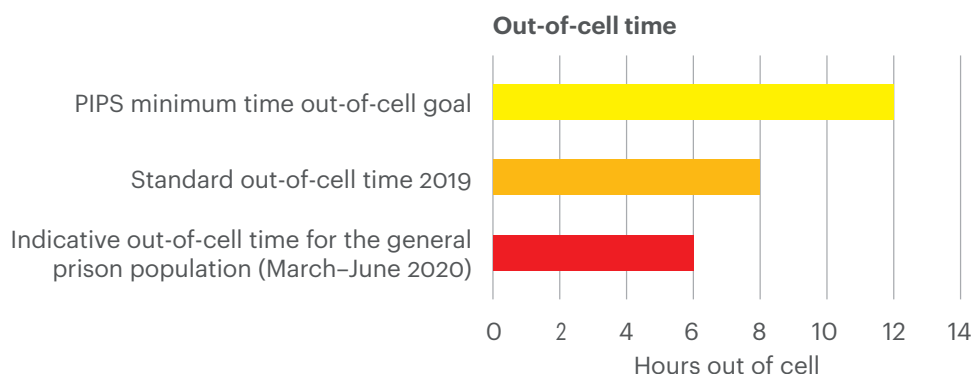
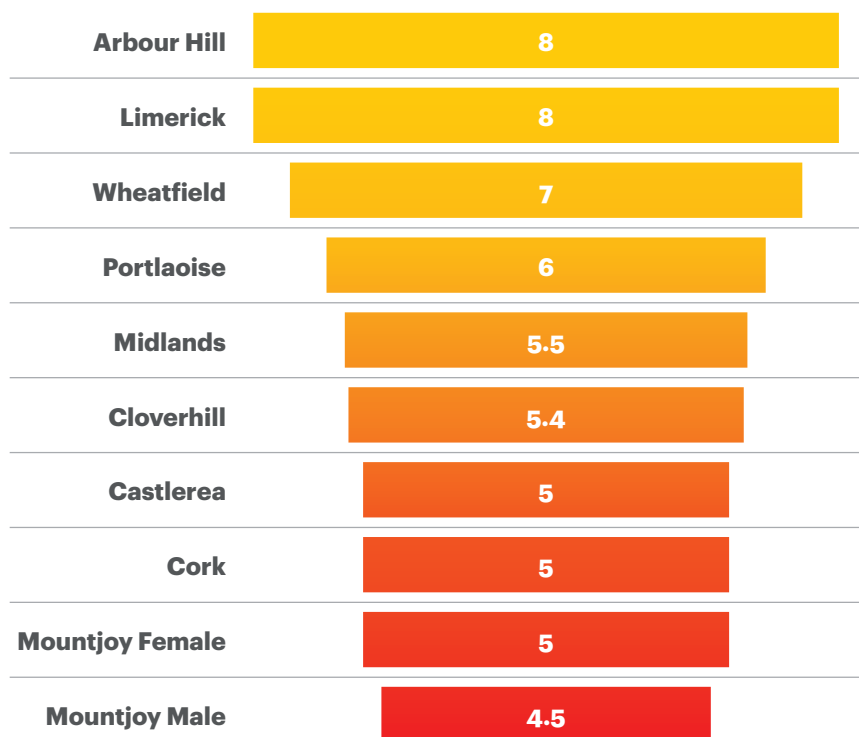
Hours out-of-cell for all prisoners, including prisoners on a restricted regime.

IPRT requested figures on the number of people on all forms of restricted regimes for March – April 2020 at the beginning of Covid-19 restrictions. However, the Irish Prison Service only began to collate figures related to confinement status on 27 April 2020.²⁹⁶

Outlined below is an indicative list of the average out-of-cell time broken down by each closed prison during the Covid-19 restrictions (12 March 2020 to 29 June 2020).²⁹⁷

As expected, out-of-cell time was reduced for the general prison population during the pandemic. However, this data is only a snapshot depiction. The Irish Prison Service did not collate data related to the length of time people were held in confinement during the beginning of the pandemic.²⁹⁸ Further oversight is needed on the lengths of time people are being held in their cells. The Office of Inspector of Prisons and Maynooth University have recommended that prisons should keep track of the extent to which exercise and meaningful human contact are given to people who are subjected to any restricted regime.²⁹⁹

Indicative average out-of-cell time, per closed prison (March–June 2020)



296 Irish Prison Service, *Irish Prison Service response to requests for PIPS 2020 07.08.2020*

297 Kildare Street, *Written Answers, Tuesday 14th July 2020*, <https://www.kildarestreet.com/wrans/?id=2020-07-14a.2592>

298 Irish Prison Service, *Irish Prison Service response to requests for PIPS 2020 07.08.2020*

299 Office of the Inspector of Prisons and Maynooth University (2020) *Ameliorating the impact of cocooning on people in custody-a briefing*,

<https://www.oip.ie/wp-content/uploads/2020/07/Ameliorating-the-impact-of-cocooning-on-people-in-custody-a-briefing.pdf>

Status of Standard 16: Regress

Rationale for Assessment



The general prison population has had limited levels of out-of-cell time during 2020 as a consequence of the pandemic. While this may have been proportionate and necessary during the initial lockdown, there is limited information available to assess the out-of-cell time and access to purposeful activity for prisoners throughout the year. More transparent data is required. Continued increases in the use of restricted regimes has meant that one of the primary purposes of prison - rehabilitation - has been diminished. These types of regime must not become normalised, and reductions in out-of-cell time in response to the pandemic must be proportionate, time-limited and medically necessary.

Actions required



Action 16.1: The Irish Prison Service should systemise the collation of data on the extent to which prisoners have access to out-of-cell time, including outdoor exercise and meaningful human contact, as part of the *Census of Restricted Regimes*.

Action 16.2: The Irish Prison Service and Education and Training Boards should invest in technology to ensure a continuum of access to education for all people in prisons, particularly those on a restricted regime, in order to promote and support digital literacy more widely.

Standard 26: Solitary confinement

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.

Rationale

Solitary confinement has damaging physical and psychological effects on an individual. Medical research demonstrates that the denial of meaningful human contact can lead to 'isolation syndrome' with a range of symptoms including anxiety, depression, anger, self-harm and suicide. As highlighted in IPRT's 2018 report on solitary confinement:

*"the exceptional and devastating harm to prisoners' mental health that can be caused by extended periods of isolation means the practice of holding any category of prisoner on 22- or 23-hour lock up must be abolished."*³⁰⁰

Current Context:

Irish Prison Service Census figures in January 2020 show that 75 people were held in solitary confinement in Irish prisons.³⁰¹ This figure compares with 40 people in the census for January 2019.³⁰² Of the 75 in solitary confinement in January 2020, 22% were young adults between the ages of 18–24. This is particularly concerning given the neuro-scientific evidence that brain development

continues well into the mid-twenties, and the particularly damaging effects of isolation and lack of access to meaningful activity for this age group.³⁰³

Census figures for April and July 2020 show a dramatic increase to 127 and 273 respectively of people on a restricted regime of 22 or more hours per day.³⁰⁴ However, these figures include people in quarantine and medical isolation. Therefore, the numbers being held in solitary confinement for non-medical reasons, such as protection, is not known.

Media reports in 2020 suggest that prisoners suspected of having Covid-19 have been held in conditions akin to solitary confinement during the pandemic.³⁰⁵ Similarly, in a report published by the Office of Inspector of Prisons and Maynooth University, one prisoner who was cocooning described his experience thus:³⁰⁶

'My punishment by the courts was prison, now doing my punishment cocooning is like doing my time in solitary confinement. Being punished now for having a chronic, obstructive, pulmonary disease.'

Some prisoners may hide symptoms to avoid being housed in conditions akin to solitary confinement even if only temporarily.³⁰⁷ Therefore, it is important that any restricted regime imposed is distinct to that of solitary confinement. This highlights the importance of oversight in our prisons during exceptional circumstances and ensures that these circumstances do not become the norm.³⁰⁸

In July 2020, the Committee of Ministers of the Council of Europe adopted a recommendation on the revised European Prison Rules, which includes that States should set in their national legislation the maximum period for which solitary confinement may be imposed.³⁰⁹

300 Irish Penal Reform Trust (2018) *'Behind the Door': Solitary Confinement in the Penal System*, https://www.iprt.ie/site/assets/files/6439/solitary_confinement_web.pdf

301 Irish Prison Service, *Census of Restricted Regime Prisoners January 2020*, https://www.irishprisons.ie/wp-content/uploads/documents_pdf/January-2020-Restriction.pdf

302 Irish Prison Service, *Census of Restricted Regime Prisoners January 2019*, <https://www.irishprisons.ie/information-centre/statistics-information/census-reports/>

303 IPRT (2015) *Turnaround Youth: Young Adults (18-24) in the Criminal Justice System*, <https://www.iprt.ie/site/assets/files/6357/iprt-turnaround-web-optimised.pdf>

304 Irish Prison Service, *Census Reports*, <https://www.irishprisons.ie/information-centre/statistics-information/census-reports/>

305 The Irish Times, *Inmates with Covid-19 symptoms kept in 24-hour lock-up*, <https://www.irishtimes.com/news/crime-and-law/inmates-with-covid-19-symptoms-kept-in-24-hour-lock-up-1.4236286>

306 Office of Inspector of Prisons and Maynooth University, *Ameliorating the impact of cocooning on people in custody – a briefing*, p.5 <https://www.oip.ie/wp-content/uploads/2020/07/Ameliorating-the-impact-of-cocooning-on-people-in-custody-a-briefing.pdf>

307 Amend (2020) *The Ethical Use of Medical Isolation-Not Solitary Confinement-to Reduce Covid-19 Transmission in correctional settings*, p.3, https://amend.us/wp-content/uploads/2020/04/Medical-Isolation-vs-Solitary_Amend.pdf

308 The Guardian, *The loss of UK prisoners' rights is the forgotten injustice of the Covid-19 crisis*, https://www.theguardian.com/commentisfree/2020/aug/08/the-loss-of-uk-prisoners-rights-is-the-forgotten-injustice-of-the-covid-19-crisis?CMP=Share_AndroidApp_Tweet

309 See Rule 60.6.d 'The maximum period for which solitary confinement may be imposed shall be set in national law.' In

➔ Indicators for Standard 26

Indicator S26.1:

The number of prisoners on 22–24 hour lock up

75 people were held in solitary confinement in January 2020.³¹⁰ 127 people were on a restricted regime of 22 or more hours per day in April 2020; this included medical-related isolation.³¹¹

Indicator S26.2:

Number of prisoners on 22 hours + lockup for 15 days or over

The Irish Prison Service has stated that the service does not collate this data.³¹²

Progressive Practice, Revised European Prison Rules 2020³¹³

The revised European Prison Rules in 2020 provide a number of stipulations related to solitary confinement. One of the key provisions is that the maximum period in which solitary confinement may be imposed for should be set in national law.³¹⁴ This also includes that where solitary confinement has been imposed, its execution should be stopped if the prisoner's mental or physical health has deteriorated.³¹⁵ Moreover, it should not be imposed on prisoners with mental or physical disabilities when their condition would be exacerbated by it.

While the European Prison Rules are non-binding, the Rules are referenced by the European Court of Human Rights (ECtHR) and the European Committee for the Prevention of Torture (CPT). These Rules apply across 47 Member States.³¹⁶

Recommendation Rec(2006)2-rev of the Committee of Ministers to member States on the European Prison Rules, 1st July 2020, available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016809ee581

310 Irish Prison Service, *Census of Restricted Regime Prisoners January 2019*,

<https://www.irishprisons.ie/information-centre/statistics-information/census-reports/>

311 Irish Prison Service, *Census Reports*, <https://www.irishprisons.ie/information-centre/statistics-information/census-reports/>

312 *Response by the Irish Prison Service to IPRT Data Clarifications & Additional Requests for PIPS 2020*, 18.08.20

313 Council of Europe, *Recommendation Rec(2006)2-rev of the Committee of Ministers to member States on the European Prison Rules*, https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016809ee581

314 See Rule 60.6.d Council of Europe, *Recommendation Rec(2006)2-rev of the Committee of Ministers to member States on the European Prison Rules*, https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016809ee581

315 Ibid.

316 Prison Insider, *European Prison Rules: "progressing the conversation"*, <https://www.prison-insider.com/en/articles/european-prison-rules-progressing-the-conversation>

Status of Standard 26: Regress

Rationale for Assessment



The number of people in solitary confinement had increased prior to the pandemic, and numbers locked up for 22 or more hours per day has more than doubled since. Data on the lengths of time people are being held in prolonged solitary confinement of more than 15 days is neither collated nor published, which was a recommended action in *PIPS 2019*.³¹⁷ This information should be routinely available. The absence of this information frustrates proper prison monitoring.

Actions required



Action 26.1: In line with the revised European Prison Rules, the maximum period for which solitary confinement may be permitted should be set out in national law. This should be no more than a maximum of 15 days.³¹⁸

Action 26.2: Data should be routinely collected and published by the Irish Prison Service on the lengths of time that prisoners are spending in solitary confinement.
[Repeated]

Action 26.3: Given the developmental needs of young adults, solitary confinement should be prohibited for young adults aged 18-24.

317 Progress in the Penal System (PIPS) Solitary Confinement, see Action 26.1, <https://pips.iprt.ie/progress-in-the-penal-system-pips/part-2-measuring-progress-against-the-standards/e-safety-and-protection-in-irish-prisons/26-solitary-confinement/>

318 See Rule 44 of the *UN Standard Minimum Rules for the Treatment of Prisoners*, https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf



Thematic Area 3: Physical health and mental health

Public health has been the central concern of the nation during 2020, a concern that has dominated every aspect of our daily lives. The particular situation of prisons – closed residential settings, accommodating people with higher rates of chronic ill health, in close proximity to each other – means prison healthcare has been at the forefront of the Covid-19 response. **The Irish Prison Service is to be commended on its significant success in keeping the prison population largely safe from Covid-19**, notwithstanding a small number of confirmed cases among prisoners and confirmed cases among staff.

The right of everyone to the enjoyment of the highest attainable standard of both general physical and mental health is outlined under Article 12 of the International Covenant on Economic, Social and Cultural Rights.³¹⁹ This extends to people in prison, and the right of prisoners to be kept safe from the coronavirus, and the inter-relationship between public health and prison health, was recognised from the outset of the pandemic, both internationally and at national level. International bodies such as the World Health Organisation (WHO) have played an important role during the pandemic in delivering the core message that prison health is public health.³²⁰

In Ireland, strong and close co-operation between prison health and national public health services has been a feature of the pandemic response, including the representation of the Irish Prison Service Executive Clinical Lead on the Covid-19 NPHET Sub-group on Vulnerable People.³²¹

It is also important to recognise the expertise in infections controls that the IPS brought to the public health stage. For example, the Irish Prison Service National Infection Control Team commenced a programme to train contract-tracing teams (CTTs) within prisons. The aim of this programme was to enable the IPS to support public health in the early identification of people that may have been exposed to Covid-19 and take action to prevent further transmission.³²² This is one example of a joined-up approach taken by prison and public healthcare authorities, which yielded positive results to protect the health of the prison population, their families and the general public from Covid-19.³²³ Up to 22 August 2020, the prison population remained Covid-free.³²⁴ The same joined-up approach to healthcare can and should be taken more broadly to address the general physical and mental healthcare needs of the prison population, ensuring equivalence of healthcare for those in prison. **The Health Needs Assessment of the prison population underway in 2020 should give guidance on how best to align prison health care with the broader health system in future.**³²⁵ (See *Standard 12, Access to healthcare services.*)

However, measures introduced to protect the prison population from the threat to physical health that Covid-19 presents must be examined in terms of the wider impact on the mental health of those in prisons (See *Standard 13, Mental Healthcare.*) The restrictive measures introduced for people who have already been deprived of their liberty, and their associated impact on mental health, is much greater than for the general population.³²⁶

During the initial lockdown period, prisoners who were in isolation were on a more restrictive regime while testing was being completed. Prisoners in isolation did not have access to outdoor exercise,³²⁷ and in some cases did not have access to showers

319 See Article 12 of the *International Covenant on Economic, Social and Cultural Rights*, <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>

320 World Health Organisation (2020) *Preparedness, prevention and control of COVID-19 in prisons and other places of detention Interim guidance*, https://www.euro.who.int/_data/assets/pdf_file/0019/434026/Preparedness-prevention-and-control-of-COVID-19-in-prisons.pdf?ua=1

321 Department of Health, *National Public Health Emergency Team (NPHET) Covid-19 Subgroup: Vulnerable People* <https://www.gov.ie/en/collection/301f5e-the-national-public-health-emergency-team-nphet-subgroup-vulnerable-/#nphet-covid-19-subgroup-vulnerable-people-membership>

322 Clarke M, Devlin J, Conroy E, Kelly E, Sturup-Toft S, Establishing prison-led contact tracing to prevent outbreaks of COVID-19 in prisons in Ireland, *Journal of Public Health*, <https://static.rasset.ie/documents/news/2020/06/journal-of-public-health-covid19-irish-prisons.pdf>

323 Ibid.

324 The Irish Examiner, *Prison system has its first-ever case of Covid-19*, <https://www.irishexaminer.com/news/courtandcrime/arid-40036202.html>; The Irish Examiner, *Prison system reports second case of Covid-19*, <https://www.irishexaminer.com/news/arid-40039571.html>

325 Irish Prison Service, *Irish Prison Service response to requests for PIPS 2020 07.08.2020*

326 World Health Organisation, *Mental Health*, <https://www.euro.who.int/en/health-topics/health-determinants/prisons-and-health/focus-areas/mental-health>

327 Irish Prison Service, *Irish Prison Service response to requests for PIPS 2020 07.08.2020*

for up to 14 days.³²⁸ The importance of fresh air, exercise and showers to a person's physical and mental well-being cannot be overstated. Similarly, a report on the experience of prisoners who were cocooning offered valuable insight into the harshness of restrictions experienced by vulnerable cohorts in prison, and their concerns about deteriorating mental health.³²⁹

The uncertainty of Covid-19 has further impacted on the mental health and well-being of prisoners – particularly given that protective factors, such as family contact and access to purposeful activity, have been greatly reduced. The *Programme for Government* commitment to establish a task force to address mental health, addiction and imprisonment is positive. It is crucial that this task force also addresses the longer-term mental health impact Covid-19 has had on the men and women in prison, and on their families in the community.

328 The Irish Times, *Prisoner loses action over being put into isolation due to Covid-19 fears in prison*, <https://www.irishtimes.com/news/crime-and-law/courts/high-court/prisoner-loses-action-over-being-put-into-isolation-due-to-covid-19-fears-in-prison-1.4228945>

329 Office of Inspector of Prisons and Maynooth University, *Ameliorating the impact of cocooning on people in custody – a briefing*, p.5 <https://www.oip.ie/wp-content/uploads/2020/07/Ameliorating-the-impact-of-cocooning-on-people-in-custody-a-briefing.pdf>

Standard 12: Access to healthcare services

Standard 12:
The healthcare needs of individual prisoners are met. Every prisoner has access to healthcare that goes beyond the 'equivalence of care' principle, with a full range of preventative services and continuity of healthcare from and into the community.

Rationale

The right to healthcare in prison is equal to that enjoyed by the general population. This is laid out in the Mandela Rules, the Bangkok Rules, and the European Prison Rules. The healthcare needs of the prison population are in fact higher than those of the general population. These needs must be met, particularly because of the lack of autonomy prisoners face in access and choice of healthcare. Imprisonment takes away an individual's liberty but not their right to healthcare.

Current Context:

In 2019, an independent prison health needs assessment was commenced³³⁰ in line with recommendations made by the CPT³³¹ in 2011 and 2015 on the need for a whole system review of healthcare in prisons and by the Inspector of Prisons in 2016.³³² The independent review aims to determine future health service requirements, while also considering the views of prisoners and their families. A number of prison visits as part of the assessment had taken place in February 2020.³³³ However, due to Covid-19 restrictions, the project has had to be adapted. The review is expected to establish the current levels of service provision. The final report is expected to be completed by the end of 2020.³³⁴

Covid-19 response

The Irish Prison Service established an Emergency Response Planning Team (ERPT) with expertise in a number of areas including: operations, healthcare and infection control. The purpose of the ERPT was to prevent the spread of Covid-19 into a prison setting.³³⁵ The IPS Executive Clinical Lead was appointed to the National Public Health Emergency Team (NPHET) Vulnerable Persons Subgroup.³³⁶ This action demonstrates the joint approach between prison health and public health during the pandemic.

The Irish Prison Service followed guidance of the World Health Organisation and has received national and international praise for how it managed its response to Covid-19. A paper on its contract tracing system was submitted to the World Health Organisation as a model of best practice.³³⁷ It highlighted the benefits of the collaborative approach taken by the Irish Prison Service and the Health Service Executive, which led to the rapid creation of in-prison contact tracing teams in every prison.

330 Kildare Street, Written answers Thursday 13 June 2019, *Department of Justice and Equality, Prison Medical Service*, <https://www.kildarestreet.com/wrans/?id=2019-06-13a.296>

331 CPT/Inf (2011) 3 *Report to the Government of Ireland on the Visit of Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 25 January 2010 to 5 February 2010*, <https://rm.coe.int/1680696c98> and CPT/inf (2015) 38 *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)*, <https://rm.coe.int/pdf%20/1680727e23>

332 Inspector of Prisons, *Healthcare in Irish Prisons Report by Judge Michael Reilly Inspector of Prisons November 2016*, http://www.justice.ie/en/JELR/Healthcare_in_Irish_Prisons_Report.pdf/Files/Healthcare_in_Irish_Prisons_Report.pdf

333 Irish Prison Service, *Irish Prison Service response to requests for PIPS 2020 07.08.2020*

334 Ibid.

335 Department of Justice, *Information regarding the Justice Sector Covid-19 plans*, http://www.justice.ie/en/JELR/Pages/Information_regarding_the_Justice_Sector_COVID-19_plans

336 Department of Health, *NPHET COVID-19 Sub-Group- Vulnerable People Membership*, <https://www.gov.ie/en/collection/301f5e-the-national-public-health-emergency-team-nphet-subgroup-vulnerable-/#nphet-covid-19-subgroup-vulnerable-people-membership>

337 Irish Prison Service, *Irish Prison Service submits paper on best practice for Contact Tracing to World Health Organisation*, <https://www.irishprisons.ie/irish-prison-service-submits-best-practice-paper-world-health-organisation/> and see Clarke M, Devlin J, Conroy E, Kelly E, Sturup-Toft S. (2020) and Establishing prison-led contact tracing to prevent outbreaks of COVID-19 in prisons in Ireland, *Journal of Public Health*, <https://academic.oup.com/jpubhealth/article/doi/10.1093/pubmed/fdaa092/5860596?guestAccessKey=1cf37da2-ee58-452a-bccb-b72d39ac68f0>

Records show that 212 prisoners were tested for Covid-19 between 6 April 2020 and 6 August 2020.³³⁸ There were no confirmed cases among the prison population until the end of August 2020.³³⁹ Following this, there were a small number of individual cases confirmed among the prison population in Dóchas, Cloverhill, and Limerick prisons and a contained outbreak in Midlands Prison.³⁴⁰

There were three health-led interventions introduced by the Irish Prison Service during the Covid-19 pandemic: cocooning, quarantine and isolation.

'Cocooning' in prison

In line with public health guidance, the Irish Prison Service established a 'cocooning' regime for prisoners aged 70+ and for those who were deemed medically vulnerable to the virus. Other identified vulnerable groups of prisoners included those with: cancer, severe respiratory diseases such as severe COPD, rare diseases and pregnant women with cardiovascular diseases. Cocooned prisoners were removed from free association but could associate with each other in specific areas.

The practice of cocooning in prisons started on 25 March 2020 and ceased at the end of June 2020 (in line with the easing of public health restrictions), with the exception of a small number who were removed from this regime by early July 2020.³⁴¹ Prisoners who had been cocooning, and who were concerned about the virus, could request to be placed on a restricted regime.³⁴²

Approximately 3-4% of the total prison population were 'cocooning' on a weekly basis with the highest number of prisoners cocooning in Midlands, Dóchas, and Arbour Hill prisons. These populations are likely to have included people more vulnerable to the disease, such as the elderly, and pregnant women with cardiovascular diseases.³⁴³ At one point, the highest number of prisoners cocooning were women in the Dóchas Centre, comprising 52% of the prison population in that prison.³⁴⁴ This reflects the high level of health needs among the female prison population.

338 Irish Prison Service, *Irish Prison Service response to requests for PIPS 2020 07.08.2020*

339 Breaking News, *First prisoner tests positive for Covid-19* <https://www.breakingnews.ie/ireland/first-irish-prisoner-tests-positive-for-covid-19-1014738.html>

340 The Irish Examiner, *Prison system reports second case of Covid-19*, <https://www.irishexaminer.com/news/arid-40039571.html>, Covid-19 outbreak at Midlands Prison in Portlaoise, *RTE News*, <https://www.rte.ie/news/coronavirus/2020/1030/1174982-covid-midlands-prison/>, Irish Prison Service, *Prisoner test positive for Covid-19 Limerick Prison*, <https://www.irishprisons.ie/prisoner-test-positive-covid-19-limerick-prison/>

341 Irish Prison Service, *Irish Prison Service response to requests for PIPS 2020 07.08.2020*

342 Kildare Street, *Written answers, Tuesday, 14th July 2020, Department of Justice and Equality, Prisoner Data*, <https://www.kildarestreet.com/wrans/?id=2020-07-14a.2592>

343 Department of Justice, *Information regarding the Justice Sector COVID-19 plans, 7th August 2020*, http://www.justice.ie/en/JELR/Pages/Information_regarding_the_Justice_Sector_COVID-19_plans

344 Irish Prison Service, *Irish Prison Service response to requests for PIPS 2020 07.08.2020*

Number of Prisoners 'Cocooning' (1 May to 3 July 2020):³⁴⁵

| Prison | 01/05 | 08/05 | 15/05 | 22/05 | 29/05 | 12/06 | 19/06 | 26/06 | 03/07 |
|----------------------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| Arbour Hill | 13 | 13 | 13 | 13 | 13 | 13 | 13 | 13 | 2 |
| Castlerea | 7 | 5 | 7 | 7 | 7 | 6 | 6 | 5 | 0 |
| Cloverhill | 3 | 3 | 4 | 3 | 2 | 2 | 2 | 1 | 0 |
| Cork | 1 | 1 | 1 | 1 | 1 | 2 | 1 | 1 | 0 |
| Limerick | 0 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 |
| Loughan | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Midlands | 64 | 63 | 64 | 64 | 62 | 63 | 61 | 62 | 0 |
| Dóchas Centre | 36 | 37 | 36 | 37 | 24 | 27 | 24 | 22 | 1 |
| Mountjoy Male | 3 | 3 | 3 | 2 | 3 | 0 | 0 | 0 | 0 |
| Portlaoise | 3 | 4 | 3 | 3 | 3 | 3 | 3 | 3 | 3 |
| Shelton | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 0 |
| Wheatfield | 7 | 7 | 7 | 7 | 7 | 7 | 7 | 7 | 0 |
| Total | 138 | 138 | 140 | 139 | 124 | 125 | 119 | 116 | 7 |

% of Prisoners Cocooning per week:³⁴⁶

| | 01/05 | 08/05 | 15/05 | 22/05 | 29/05 | 05/06 | 12/06 | 19/06 | 26/06 | 03/07 |
|-----------------------------------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| Total Population | 3,789 | 3,774 | 3,779 | 3,688 | 3,732 | 3,725 | 3,707 | 3,672 | 3,702 | 3,708 |
| As a % of total population | 3.7 | 3.7 | 3.7 | 3.8 | 3.4 | NA | 3.4 | 3.3 | 3.2 | 0.2 |

Quarantining in Prison

Quarantining is the practice of placing newly committed prisoners into confinement for 14 days before being transferred into the general population. Quarantine should be used only as medically necessary, and these procedures should result in living conditions clearly distinct from those found in solitary confinement.³⁴⁷ The highest numbers quarantining, as would be expected, in the

committal prisons: Cloverhill, Midlands, Cork and Mountjoy.

The purpose of this measure was to reduce the risk that a new committal who might potentially be incubating the virus could spread it to the general prison population.³⁴⁸ Lengths of time in quarantine were dependent on the return of tests, which at the height of the pandemic took 10-14 days. This has been reduced in line with waiting times in the community,

³⁴⁵ The Irish Prison Service has stated that figures have not been available for the 5 June due to an update on the Prison Information Management System. See Houses of the Oireachtas, *Prisoner Data*, Tuesday 14 July 2020 see 'Covid-19 Data', <https://www.oireachtas.ie/en/debates/question/2020-07-14/945/>

³⁴⁶ Ibid.

³⁴⁷ Amend (2020), *The Ethical Use of Medical Isolation-Not Solitary Confinement-to reduce Covid-19 Transmission in Correctional Settings*, https://amend.us/wp-content/uploads/2020/04/Medical-Isolation-vs-Solitary_Amend.pdf

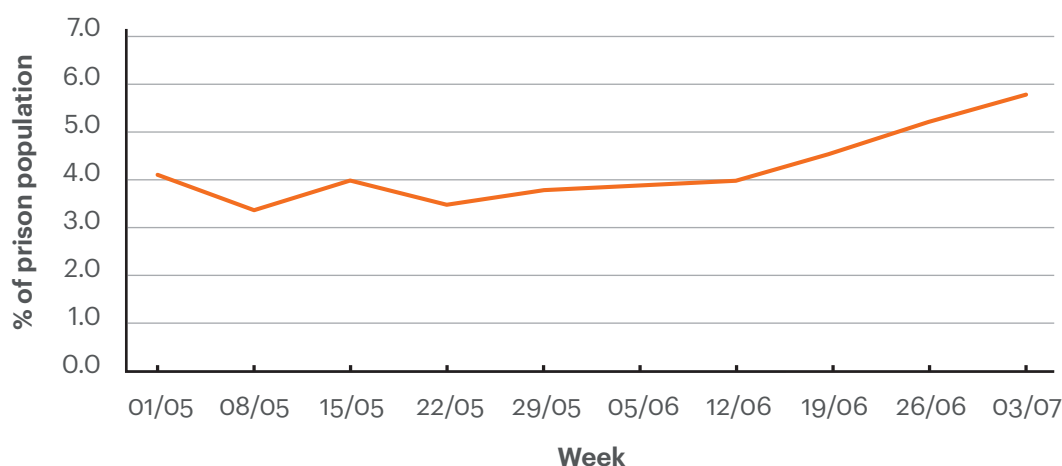
³⁴⁸ Kildare Street, *Written answers*, Tuesday, 14th July 2020, *Department of Justice and Equality, Prisoner Data*, <https://www.kildarestreet.com/wrns/?id=2020-07-14a.2592>

with a turnaround time of 24 to 36 hours.³⁴⁹

The table below outlines the number of people quarantining in prisons from May to July 2020³⁵⁰:

| | 01/05 | 08/05 | 15/05 | 22/05 | 29/05 | 12/06 | 19/06 | 26/06 | 03/07 |
|----------------------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| Arbour Hill | - | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Castlerea | 25 | 17 | 19 | 21 | 25 | 24 | 21 | 24 | 21 |
| Cloverhill | 65 | 69 | 74 | 56 | 60 | 49 | 54 | 70 | 84 |
| Cork | 16 | 15 | 19 | 12 | 18 | 22 | 19 | 26 | 25 |
| Limerick | 12 | 7 | 11 | 10 | 13 | 19 | 20 | 20 | 16 |
| Loughan House | 0 | 0 | 0 | 0 | 0 | 1 | 2 | 1 | 0 |
| Midlands | 9 | 10 | 9 | 7 | 4 | 11 | 11 | 11 | 30 |
| Dóchas Centre | 10 | 4 | 12 | 8 | 9 | 5 | 10 | 14 | 13 |
| Mountjoy Male | 12 | 4 | 4 | 11 | 11 | 8 | 16 | 19 | 21 |
| Portlaoise | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Shelton Abbey | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Wheatfield | 6 | 3 | 3 | 4 | 2 | 9 | 9 | 4 | 5 |
| Total | 155 | 129 | 151 | 129 | 142 | 148 | 162 | 189 | 215 |

% of People Held in Quarantine, weekly (1 May – 3 July 2020)



Those either cocooning or in quarantine had access to services and activities including psychological supports, phone calls, television, tuck shop and chaplaincy services. Family contact was also increased through the provision of telephone services and video visits. However, these categories

of prisoners were typically served meals in their cells and had access to one hour out of cell time, either on their own or with another prisoner depending on their status. Conditions varied across the prison estate, for example, quarantined prisoners in Loughan House were issued with a mobile phone.³⁵¹

³⁴⁹ Irish Prison Service, *Irish Prison Service response to requests for PIPS 2020 07.08.2020*.

³⁵⁰ Houses of the Oireachtas, *Prisoner Data*, 14 July 2020, see 'Covid-19 Data', <https://www.oireachtas.ie/en/debates/question/2020-07-14/945/>. The Irish Prison Service has stated that figures have not been available for the 5 June due to an update on the Prison Information Management System.

³⁵¹ Irish Prison Service, *Irish Prison Service response to requests for PIPS 2020 07.08.2020*

During the initial lockdown period, prisoners who were in medical isolation were on a more restrictive regime while testing was being completed. Prisoners in medical isolation did not have access to outdoor exercise.³⁵² In the weeks between May and July 2020, 0.2% to 0.8% of the prison population were isolating, with a peak in numbers self-isolating (27) in the third week of May.³⁵³ A dedicated isolation unit was created in Cloverhill Prison for a confirmed case among the prisoner population; this unit is currently being used to accommodate symptomatic prisoners who are suspected of having Covid-19. Prisoners continue to be isolated in this unit until cleared from isolation through the Covid-19 testing process.³⁵⁴

While the practices of ‘cocooning’, ‘quarantining’ and ‘isolation’ all formed part of the prison service’s response to the serious risk that Covid-19 presents to the physical health of the prison population, the practices share similarities with general restricted regimes. Therefore, oversight of the ongoing use of these practices, including regular review and tests for proportionality, is important.

Covid-19 Implications on General Health

Covid-19 is likely to have resulted in increased delays in accessing external medical appointments by the prison population. In 2018, 54 external medical appointments were recorded as missed in the Midlands Prison in 2018.³⁵⁵ This information came to light in an investigation report that highlighted serious concerns regarding the delayed transfer of a terminally-ill man in prison to hospital to receive urgent medical attention. Non-medical staff shortages were given as a reason for the delay in the man’s transfer to hospital. This was described as a “major failing” by the Inspector of Prisons³⁵⁶, and it may have amounted to inhuman or degrading treatment.

People with disabilities

Significant issues faced by prisoners with

disabilities were identified in research published by IPRT in 2020, including the inaccessibility of the prison environment, as well as information and communication inaccessibility.³⁵⁷ The research highlighted concerns by prisoners, staff and people working in the criminal justice system about access to the healthcare service. This included its inability to address health inequalities; limited access to specialist services such as physiotherapy; and a lack of continuity of care between prison and the community, demonstrating the need for a more joined up healthcare approach.

IPRT welcomes that in 2019, the Irish Prison Service appointed a lead person to oversee the promotion of equality and diversity in the Service.³⁵⁸ The Irish Prison Service must ensure that reasonable accommodations are in place to support equal access of prisoners with disabilities to all aspects of prison life, in line with the Public Sector Duty.³⁵⁹ Otherwise, the prison environment is directly contributing to a diminished standard of health among prisoners with disabilities and further exacerbating existing impairments.³⁶⁰

Women’s health

In 2019, a new Women’s Health Taskforce was set up by the Department of Health³⁶¹. The taskforce aims to improve women’s health outcomes and their experiences of healthcare. This is an opportunity to develop a continuum of healthcare from community to prison and prison back to the community. It is worth emphasising that, in the initial stages of the pandemic, the highest number of prisoners designated as ‘cocooners’ in any prison were in the main female prison, the Dóchas Centre. This is Ireland’s second smallest closed prison, and a small proportion of the women detained are aged over 50. At one point, 52% of the population in Dóchas were cocooning.³⁶² It has been reported that 97% of the Dóchas Centre population require prescription medication.³⁶³ This demonstrates the high levels of healthcare needs among this group.

352 Ibid.

353 Houses of the Oireachtas, *Prisoner Data, Tuesday 14 July 2020*, <https://www.oireachtas.ie/en/debates/question/2020-07-14/945>

354 Parliamentary Question 116 in *Oireachtas COVID-19 Queries for answer by 11 May 2020*, <http://www.justice.ie/en/JELR/Queries-for-11-May-2020.pdf/Files/Queries-for-11-May-2020.pdf>

355 *Office of the Inspector of Prisons Death in Custody Investigation Report Mr. I 2018*, http://www.justice.ie/en/JELR/Pages/Office_of_the_Inspector_of%20Prisons_Death_in_Custody_Investigation_Report-Mr_I_2018

356 Ibid.

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

358 IPS response to *IPRT Data Clarifications for PIPS 2020*, 18 August 2020.

359 Section 42 of the *Irish Human Rights and Equality Commission Act 2014*, <http://www.irishstatutebook.ie/eli/2014/act/25/section/42/enacted/en/html>

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

361 Government of Ireland, *Women’s Health Taskforce*, <https://www.gov.ie/en/campaigns/-womens-health/>

362 Irish Prison Service, *Irish Prison Service response to requests for PIPS 2020 07.08.2020*

363 The Irish Independent, *Two prisons will spend €1.9 million for drug service*,

➔ Indicators for Standard 12

Indicator S12.1:

Responsibility for prisoner healthcare is held by the Health Service Executive (HSE), with independent inspections by the Health Information and Quality Authority (HIQA).

Responsibility for healthcare in prisons continues to be governed by prison healthcare. There are no independent inspections carried out by the Health Information and Quality Authority.

Indicator S12.2:

Publication of an annual report on prison medical services as recommended by the CPT.

There has been no annual report published on prison medical services.

Indicator S12.3:

Ratio of medical staff to prisoners, including GPs and nurses³⁶⁴

The number of GPs slightly increased in February 2020 from PIPS reporting in 2019, from 12³⁶⁵ to 13.6³⁶⁶ Whole Time Equivalent doctors, while there was an increase in the number of Whole Time Equivalent nurses from 127.5³⁶⁷ to 141.³⁶⁸

| | Number in Custody | Nurses | Ratio Nurses to prisoners | General Practitioners | Ratio GPs to Prisoners |
|----------------------|-------------------|--------|---|-----------------------|------------------------|
| Portlaoise | 241 | 8 | 1:30 | 1 | 1:241 |
| Shelton Abbey | 100 | 2 | 1:50 | 0.23 WTE | 1:435 |
| Dóchas Centre | 148 | 7 | 1:21 | 0.5 | 1:296 |
| Wheatfield | 536 | 18 | 1:30 | 1 | 1:536 |
| Arbour Hill | 136 | 6 | 1:23 | 0.26 WTE | 1:523 |
| Cloverhill | 400 | 18 | 1:22 | 2 | 1:200 |
| Mountjoy | 704 | 25 | 1:28 | 2.4 | 1:293 |
| Midlands | 889 | 22 | 1:40 *supported by 5 Health Care Assistants | 3 | 1:296 |
| Limerick | 266 | 11 | 1:24 | 0.43 WTE | 1:619 |
| Cork | 327 | 11 | 1:30 | 1 | 1:327 |
| Castlerea | 323 | 11 | 1:29 | 1 | 1:323 |
| Loughan House | 135 | 2 | 1:68 | 0.77 WTE | 1:175 |

<https://www.independent.ie/irish-news/crime/two-prisons-will-spend-19m-for-drug-service-39672479.html>

³⁶⁴ Houses of the Oireachtas, *Prison Staff*, Tuesday 7th July 2020, <https://www.oireachtas.ie/en/debates/question/2020-07-07/651/>

³⁶⁵ Kildare Street, *Written Answers Thursday 13 June 2019, Department of Justice and Equality, Prison Medical Service*, <https://www.kildarestreet.com/wrans/?id=2019-06-13a.296>

³⁶⁶ Houses of the Oireachtas, *Prison Staff*, Tuesday 7th July 2020, <https://www.oireachtas.ie/en/debates/question/2020-07-07/651/>

³⁶⁷ Kildare Street, *Written Answers Thursday 13 June 2019, Department of Justice and Equality, Prison Medical Service*, <https://www.kildarestreet.com/wrans/?id=2019-06-13a.296>

³⁶⁸ Houses of the Oireachtas, *Prison Staff*, Tuesday 7th July 2020, <https://www.oireachtas.ie/en/debates/question/2020-07-07/651/>

Status of Standard 12: Progress

Rationale for Assessment



The Irish Prison Service is to be commended for keeping prisons Covid-free during the initial lockdown period of the pandemic. (See Part 1.)

The prison healthcare needs assessment has commenced and is expected to be completed by the end of 2020. The ratios of medical staff to meet the needs of the prison population have improved, but are still too low to meet the healthcare needs of a population characterised by disproportionately poor health.³⁶⁹

Actions required



Action 12.1: The prison Health Needs Assessment should be published by the end of 2020, and an action plan on its findings and recommendations developed and implemented.

Action 12.2: The Department of Justice and the Department of Health should oversee a joint strategy to provide a continuum of healthcare between prison health and public health. Transfer of responsibility for prison healthcare to the Department of Health should be considered.

Action 12.3: The Irish Prison Service and Prison Healthcare should ensure that reasonable accommodations for prisoners with disabilities are provided. Prisoners with disabilities should have full access to the medical and rehabilitative supports that they had prior to entering prison and upon return to the community.

Action 12.4: Healthcare interventions such as 'cocooning', 'quarantining', and 'isolation' should be subject to strict oversight and tested for proportionality by the Office of Inspector of Prisons.

Standard 13: Mental healthcare

Standard 13:
People with serious mental health issues are diverted from the prison system and receive appropriate treatment and supports in a timely manner.

Rationale

It is well-established that the prison environment exacerbates mental health issues.³⁷⁰ Mental illness in the context of prison must be viewed as a health issue requiring an effective and prompt health intervention, including diversion to appropriate treatment services outside prison.

Current Context:

People with mental health issues are ending up in the prison system due to a lack of access to appropriate services in the community. In 2020, the Mental Health Commission criticised an ‘almost total absence’ of community supports such as crisis houses, intensive care high support units, rehabilitation high support units and specialist rehabilitation units in each mental health area.³⁷¹

In PIPS 2019, IPRT recommended that a high-level cross-departmental and cross-agency Task Force on Mental Health and Imprisonment should be established, with a focus on progressing short-, medium- and long-term solutions.³⁷² To this end, IPRT strongly welcomes the inclusion of a commitment in the *Programme for Government* to:

Establish a high-level cross-departmental and cross-agency taskforce to consider the mental health and addiction challenges of

*those imprisoned and primary care support on release.*³⁷³

The Task Force should have a particular focus on identifying and addressing gaps in legislation and community supports to support increased diversion of people with a mental health need away from the criminal justice system. It should also consider the need for additional mental health supports for the prison population, particularly given the impact of restricted regimes and Covid-19 in 2020.

A number of relevant initiatives are outlined in the new National Mental Health Policy, *Sharing the Vision: A Mental Health Policy for Everyone*.³⁷⁴ These include: the development of the new mental health facility in Portrane; the endorsement of the *New Connections*³⁷⁵ report, including talking therapies in prisons; and the continued work of the Prison In-Reach Court Liaison Services (PICLS).

Prison In-Reach and Court Liaison Service (PICLS)

From 2006 to 2014, 1,548 people were diverted from the criminal justice system to healthcare settings by the Prison In-Reach and Court Liaison Service (PICLS). 916 diversions were to outpatient settings, 436 related to general psychiatric hospitals and 196 were admitted to the Central Mental Hospital.³⁷⁶ From 2015-2019, PICLS arranged almost one-third (47/153) of all admissions to the Central Mental Hospital and a further 191 admissions to general psychiatric hospitals.³⁷⁷

Since 2016, PICLS Cloverhill has been part of the Quality Network for Prison Mental Health Services (QNPMHS). The mental health service at Cloverhill Remand Prison has seen an increase in compliance against the QNPMHS standards of 74% to 89% over three cycles.³⁷⁸ These standards relate to a number of areas including: admission and assessment, case management and treatment, referral, discharge and transfer, patient experience, environment, workforce capacity, workforce training and governance.

370 See Standard 13: Mental Healthcare in *Progress in the Penal System (PIPS) (2019)*, <https://pips.iprt.ie/progress-in-the-penal-system-pips/part-2-measuring-progress-against-the-standards/b-prison-conditions/13-mental-healthcare/>

371 Mental Health Commission (2020) *Access to Acute Mental Health Beds in Ireland, A discussion paper analysing bed availability for adults, including international comparisons*, https://www.mhcirl.ie/File/Acutebeds_report_Feb2020.pdf

372 Irish Penal Reform Trust, *5 Key Recommendations for the Programme for Government 2020+*, https://www.iprt.ie/site/assets/files/6649/irish_penal_reform_trust_key_recommendations_for_programme_for_government_2020.pdf

373 The Green Party, *Programme for Government - Our Shared Future*, https://www.greenparty.ie/wp-content/uploads/2020/06/ProgrammeforGovernment_June2020_Final.pdf

374 Government of Ireland, *Sharing the Vision, A Mental Health Policy for Everyone*, <https://www.gov.ie/en/publication/2e46f-sharing-the-vision-a-mental-health-policy-for-everyone/>

375 Report Commissioned by Irish Prison Service, “*New Connections*” *Embedding Psychology Services and Practice in the Irish Prison Service*, http://www.irishprisons.ie/wp-content/uploads/documents_pdf/porporino_report.pdf

376 Information provided by the Prison In-Reach and Court Liaison Service, 9 September 2020.

377 Ibid.

378 Georgiou M. & K. Townsend (2019) Quality Network for Prison Mental Health Services: reviewing the quality of mental health provision in prisons, *The Journal of Forensic Psychiatry and Psychology*, <https://www.tandfonline.com/doi/full/10.1080/14789949.2019.1637918>

Both general admissions and discharges to the Central Mental Hospital have declined in recent years as demonstrated by the information below ³⁷⁹:

| Year | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 |
|-------------------------|------|------|------|------|------|------|------|------|------|------|------|------|------|
| Total Admissions | 41 | 50 | 61 | 56 | 52 | 57 | 74 | 52 | 45 | 30 | 27 | 23 | 28 |
| Total Discharges | 33 | 41 | 52 | 55 | 62 | 61 | 76 | 52 | 47 | 30 | 26 | 18 | 21 |

Further analysis is needed on the reasons for this. The National Forensic Mental Health Service currently has two secure forensic beds per 100,000, this compares with 10 secure forensic beds per 100,000 by comparison with other European states.³⁸⁰

The development of Intensive Care Rehabilitation Units (ICRUs) in Ireland has been deemed as urgent: *'in the absence of ICRUs, there will continue to be limited diversion to local services of those charged with minor offences but suffering major mental illness.'*³⁸¹ Provision of four ICRUs was an unfulfilled recommendation in the previous national mental health policy, *A Vision for Change*.³⁸² The new national mental health policy outlines that an Intensive Care Rehabilitation Unit (ICRU) will be built, which will have dual registration as an approved centre under the *Mental Health Act* and the *Criminal Law Insanity Act*.³⁸³ This will accept persons found Not Guilty by Reason of Insanity who do not require the level of care provided in the Central Mental Hospital. However, the development of three other ICRUs is not contained in current capital plans.³⁸⁴

Disability in prison

The new mental health policy also states that the profile of the mental health needs of the prison population needs to be explored to gather prevalence data on autism, intellectual disability and needs relating to addiction and dual diagnosis, stating that this would allow for a more joined-up approach by professionals in delivering care in prison settings.³⁸⁵ In 2020, IPRT's research on disabilities in prison looked at prevalence data on disability among the prison population. Some studies suggest the increasing criminalization of people with disabilities, while others point to increasing rates in which people acquire disabilities in prison settings. The research explored the experiences of access to mental health treatment, in which participants felt that there was a lack of access to psychology supports and a lack of alternatives to prison psychiatry.³⁸⁶

379 Information provided by the Prison In-Reach and Court Liaison Service, 9 September 2020.

380 Ibid.

381 Gulati G & B.D Kelly (2018) Diversion of Mentally Ill Offenders from the Criminal Justice System in Ireland: Comparison with England and Wales. <http://imj.ie/diversion-of-mentally-ill-offenders-from-the-criminal-justice-system-in-ireland-comparison-with-england-and-wales/>

382 Government Publications Office, *A Vision for Change Report of the Expert Group on Mental Health Policy*, <https://www.hse.ie/eng/services/publications/mentalhealth/mental-health---a-vision-for-change.pdf>

383 Government of Ireland, *Sharing the Vision, A Mental Health Policy for Everyone*, p.51 <https://www.gov.ie/en/publication/2e46f-sharing-the-vision-a-mental-health-policy-for-everyone/>

384 The Irish Examiner, *Support units for new Central Mental Hospital not on capital works plan*, <https://www.irishexaminer.com/news/arid-40030409.html>

385 Government of Ireland, *Sharing the Vision, A Mental Health Policy for Everyone*, p.51 <https://www.gov.ie/en/publication/2e46f-sharing-the-vision-a-mental-health-policy-for-everyone/>

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

Incidents of Self-Harm

The second annual report on self-harm by the Irish Prison Service, published in 2020, shows that in 2018, an episode of self-harm was recorded for 4% of the prison population.³⁸⁷ The rate of self-harm was 5.7 times higher among females than male prisoners. The rate of self-harm was also higher for those on remand than for sentenced prisoners (5.0 compared with 3.7 per 100). Among the sentenced prison population, 28% of self-harm incidents happened amongst those serving sentences of less than a year.

In 45.6% of cases, mental health issues were cited as a primary contributory factor; this predominantly related to the presence of mental disorders (17%) and substance misuse (16%). 32.7% of cases related to 'environmental' issues (e.g. accommodation issues/legal issues) and 22.1% to 'relational' issues (e.g. difficulties with staff and/or family). 'Procedural' issues such as a recent cell move, change in regime or security level were also highlighted in 24.3% of cases. This is an important point, as an evidence review of recidivism and policy responses highlights:

*"Procedural unfairness communicates disrespect and disregard and leads to further alienation, resistance and noncompliance."*³⁸⁸

IPRT welcomes that the Irish Prison Service has stated that the self-harm data will be used to develop a prison-specific approach with leading specialists in the field over the next year.³⁸⁹

Mental health and Covid-19

Many have said that the crisis that comes after the Covid-19 pandemic will be that of a mental health crisis.³⁹⁰ The impact of Covid-19 on the mental health of prisoners has yet to be fully understood, however, this is a key concern raised by prisoner family members.³⁹¹ During the first three months of the Covid-19 pandemic (12 March 2020 to 29 June 2020), provisional figures show there were 36 reported incidents of self-harm across the estate. Of these 33 were among the male prison population and three among the female prison population.³⁹²

At the outset of the pandemic, the Irish Prison Service introduced measures to support the mental health needs of prisoners in the absence of face-to-face psychology supports. This included tele-psychology, which consisted of 20-minute telephone sessions. A national telephone line was also established to allow prisoners access to some services.³⁹³ A total of 550 referrals were received from tele-psychology between 12 March 2020 and 30 June 2020. A total of 891 calls were made to the national helpline to contact chaplaincy, IASIO, psychology or psychiatry services between 11 April and 30 June, of which 135 were made to prison psychology services.³⁹⁴ There were 180 prisoners seen in a mental health clinic in March 2020, 172 in April 2020 and 203 in May 2020.³⁹⁵

In an analysis of journals of cocooning prisoners, a key conclusion by the Office of the Inspector of Prisons and Maynooth University was:

*"We need to learn from these perceptions of feeling disadvantaged and punished, and consider how best to alleviate these feelings and prepare, if measures are needed again later, to limit the impact on mental health..."*³⁹⁶

The Office of the Inspector of Prisons and Maynooth University also called for shorter- and longer-term plans to support all people in custody

387 Irish Prison Service (2020), *Self-Harm in Irish Prisons 2018, Second report from the Self-Harm Assessment and Data Analysis (SADA) Project* https://www.irishprisons.ie/wp-content/uploads/documents_pdf/Self-harm-in-Irish-Prisons-2018-Second-report-from-the-SADA-Project.pdf

388 O' Donnell I (2020) *An Evidence Review of Recidivism and Policy Responses*, p.10 http://www.justice.ie/en/JELR/Pages/An_Evidence_Review_of_Recidivism_and_Policy_Responses

389 Irish Prison Service, *Briefing Note – Publication of 2nd SADA Project Report Self Harm in Irish Prisons 2018*, https://www.irishprisons.ie/wp-content/uploads/documents_pdf/Press-Release-SADA-2018-Report.pdf

390 Effects of the COVID-19 pandemic on the mental health of prisoners, *The Lancet*, [https://www.thelancet.com/pdfs/journals/lanpsy/PIIS2215-0366\(20\)30241-8.pdf](https://www.thelancet.com/pdfs/journals/lanpsy/PIIS2215-0366(20)30241-8.pdf)

391 IPRT survey on the impact of Covid-19 restrictions on families of prisoners., <https://www.iprt.ie/covid-19-in-prisons/i-am-worried-about-the-lasting-impact-this-will-have-the-experiences-of-people-with-a-family-member-in-prison-during-covid-19/>

392 Kildare Street, *Prisoner Data, Tuesday 14th July 2020*, <https://www.kildarestreet.com/wrans/?id=2020-07-14a.2592>

393 Ibid.

394 *Irish Prison Service response to requests for PIPS 2020 07.08.2020*

395 Ibid.

396 Office of Inspector of Prisons and Maynooth University, *Ameliorating the impact of cocooning on people in custody – a briefing*, p.4 <https://www.oip.ie/wp-content/uploads/2020/07/Ameliorating-the-impact-of-cocooning-on-people-in-custody-a-briefing.pdf>

and staff, as prisons and the country as a whole transition to a ‘new normal’ – considering that, for some, reduced restrictions may heighten their anxiety.³⁹⁷ Penal Reform International (2020) have also highlighted the need for mental health plans to be put in place:

“Prison administrations should continue to facilitate mental healthcare provision and undertake specific efforts to mitigate negative mental health impacts of COVID-19 measures, including by working with community-based services. Mental health crisis plans, and longer-term mental health provision needs to be prioritised as restrictions ease. Plans should be developed by healthcare staff and developed together with people detained and staff.”³⁹⁸

► Indicators for Standard 13

New S13.1:

The number of people diverted from prison

In 2019, there were 118 diversions by the Prison In-Reach and Court Liaison Service from Cloverhill to community treatment. Of this number, 49 were community admissions, 59 were community outpatient diversions, and 10 were admissions to the Central Mental Hospital.³⁹⁹ This compares with 106 diversions in 2018 of which 40 were community admissions, 56 were community outpatient diversions and 10 were admissions to the Central Mental Hospital.

Indicator S13.2:

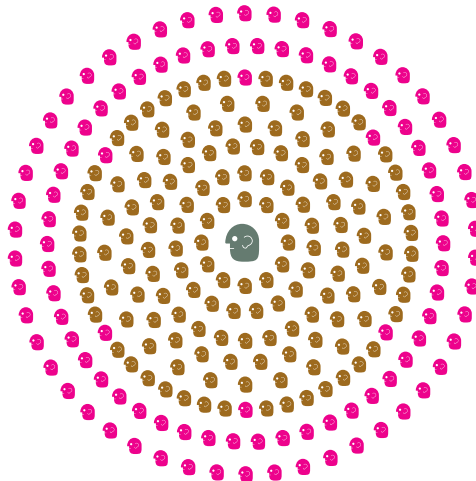
The number of prisoners awaiting transfer to the CMH

There continues to be people with severe mental illness in prison awaiting transfer to the Central Mental Hospital. From July 2019 to July 2020, the lowest number on the waiting list was 20 and the highest number was 33.⁴⁰⁰

Indicator S13.3:

Ratio of one psychologist to 150 prisoners

PIPS 2019 reported a ratio of 1:251 psychologists to prisoners, this ratio was recorded as 1:205 on 31 December 2019.⁴⁰¹ If all sanctioned posts were filled, the ratio would have been 1:203.⁴⁰² However, the gap widened again in 2020 with the ratio of filled sanctioned posts at **1:256** in June 2020.⁴⁰³ This is far from the target ratio of **1:150** recommended in 2015.⁴⁰⁴



397 Office of Inspector of Prisons and Maynooth University, *Ameliorating the impact of cocooning on people in custody – a briefing*, p.5 <https://www.oip.ie/wp-content/uploads/2020/07/Ameliorating-the-impact-of-cocooning-on-people-in-custody-a-briefing.pdf>

398 Penal Reform International (2020) *Coronavirus Preventing harm and human rights violations in criminal justice systems*, <https://cdn.penalreform.org/wp-content/uploads/2020/07/Coronavirus-briefing-July-2020.pdf>

399 Information provided by the Prison In-Reach and Court Liaison Service, 9 September 2020.

400 Irish Prison Service response to requests for PIPS 2020, 07.08.20

401 Ibid.

402 Ibid.

403 Ibid.

404 Report Commissioned by Irish Prison Service, *“New Connections” Embedding Psychology Services and Practice in the Irish Prison Service*, p.25 http://www.irishprisons.ie/wp-content/uploads/documents_pdf/porporino_report.pdf

Progressive Practice: Introduction of a Sentencing Guideline when sentencing offenders with mental disorders, developmental disorders, or neurological impairments.⁴⁰⁵

As of 1st October 2020, the Sentencing Council in England and Wales introduced a sentencing guideline to apply when sentencing offenders who, at the time of the offence and/or at the time of sentencing, had a mental disorder.

The guideline states that where an offender has an impairment or disorder it should always be considered by the court. In deciding upon whether the impairment or disorder has any impact on sentencing, the approach to sentencing should be individualistic. The guideline sets out what sentencers should consider in sentencing:

- Some mental disorders can fluctuate and an offender's state during court proceedings may not be representative of their condition at the time the offence was committed
- An avoidance of assumptions whereby many mental disorders, neurological impairments or developmental disorders are not easily identifiable
- No adverse conclusion should be drawn if an offender had not been formally diagnosed or willing to disclose an impairment or disorder

The guideline also notes the importance of considering relevant cultural, ethnicity and gender considerations of offenders within a mental health context.

Where the offender is or appears to be mentally disordered at the date of sentencing, the court must obtain and consider a medical report before passing a custodial sentence. Where a custodial sentence is passed, the court should forward the relevant reports to prison authorities along with other information relevant to the offender's physical and mental health.

The main classes of mental health disorders covered under this guideline include psychotic illnesses, such as schizophrenia and bi-polar disorder and non-psychotic illness such as post-traumatic stress disorder and developmental disorders such as intellectual disability, autism, and dementia. Personality disorder is also included in the list of common disorders likely to be relevant in court. While personality disorder affects between 4-11% of the general population, personality disorders are much more prevalent among the prison population, affecting approximately 60-70% of the prison population.⁴⁰⁶ This is currently not considered in mental health legislation in Ireland.⁴⁰⁷

405 Sentencing Council, *Sentencing offenders with mental disorders, developmental disorders, or neurological impairments - Effective from 1 October 2020*, <https://www.sentencingcouncil.org.uk/overarching-guides/magistrates-court/item/sentencing-offenders-with-mental-disorders-developmental-disorders-or-neurological-impairments/>

406 Presentation by Dr. Maggie McGovern at the National Disability Authority Conference 2020 *Facilitating the effective and equal participation of persons with disabilities in the Irish criminal justice system (Article 13 UNCRPD)* on 21st October 2020, <http://nda.ie/Policy-and-research/Conference-reports/NDA-Annual-Conferences/NDA-Conference-2020-Presentations.html>

407 Section 8 of the *Mental Health Act 2001*, <http://www.irishstatutebook.ie/eli/2001/act/25/enacted/en/print#sec3>

Status of Standard 13: Mixed

Rationale for Assessment



IPRT welcomes action on a specific *PIPS 2019* recommendation to establish a cross-agency Task Force to address mental health, addiction and imprisonment, as included in the *Programme for Government*. This joined up approach is required to address current gaps. IPRT welcomes policy commitments to address the mental health needs of the prison population in the new mental health policy, *Sharing the Vision*.

However, the ratio of psychologists to prisoners needs to be further narrowed, and waiting lists persist for the transfer of severely mentally ill people to the Central Mental Hospital, and transfer to a local mental health service. Concerted action needs to be taken on diversion of people with an acute mental health need away from the criminal justice system. This may require changes to mental health law and increased community based mental health supports. These should be addressed as part of the work of the Taskforce.

Actions required



- Action 13.1: The new Task Force on mental health, addictions and imprisonment should be progressed with urgency. Its programme of work should include a review of gaps in mental health law, including an examination of the classification of personality disorders. It should also identify clear diversion pathways for people with an acute mental health need to access an appropriate service.
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- Action 13.2: The Irish Prison Service should publish data on the number of people awaiting transfer to the Central Mental Hospital and the lengths of time awaiting transfer.
[Repeated]
-
- Action 13.3: All prisoners experiencing mental health difficulties should be offered a range of appropriate non-psychiatric responses (including access to psychology, counselling, social care and survivor-led peer support).



Thematic Area 4:

Oversight, accountability and complaints

Introduction

Ireland is obliged to treat all persons in any form of detention with dignity and with respect for their human rights. Monitoring and inspection of places of detention, as well as the establishment of an independent external complaints mechanism, are thus central to the protection and promotion of the human rights of people in prison.⁴⁰⁸ Prisons are closed institutions and, as such,

*[the] exceptional nature of the powers taken by the State over confined individuals makes effective external scrutiny of their use a matter of particular urgency.*⁴⁰⁹

However, the State has failed to act with urgency in prioritising independent oversight of places of detention. This is evident across a number of areas. Ireland is one of the four remaining EU Member States that have yet to ratify the Optional Protocol to the UN Convention against Torture⁴¹⁰ (see *Standard 24, Inspections and Monitoring*) and both inspection (Office of the Inspector of Prisons) and monitoring (Prison Visiting Committees) bodies cannot publish directly, but must submit their reports to the Minister for Justice for publication. This undermines their independence.

The lack of published up-to-date information from oversight bodies means the general public has little knowledge of the situation inside prisons. This is even more significant during an emergency situation such as the Covid-19 pandemic. The Inspector of Prisons outlined key issues and responses, and the risk of ill treatment in prisons during the pandemic⁴¹¹:

“The ‘usual’ routine in a prison is completely

*changed very quickly, and frequent communication to people in custody and staff explaining what is happening and why is of particular importance. Protective measures may require additional restrictions, which, if used inappropriately could amount to ill-treatment.”*⁴¹²

While the Inspector of Prisons undertook one-day visits to all prisons during the initial lockdown (13 March 2020 to 29 June 2020), with particular focus on out-of-cell time and meaningful activity, the lack of published inspection reports means the public has no insight into the findings of these visits.⁴¹³ This is unacceptable given the adverse impact, including limited contact with the outside world, of Covid-19 restrictions on the prison population. By contrast, a number of inspection reports have been published in the UK since the onset of the pandemic. These reports have identified issues of concern such as time out-of-cell, while also showcasing examples of positive practice across the prison estate.^{414 415} These timely reports provide transparency, accountability and an impetus for continued improvement in daily prison life.

Delays in the publication of reports raise serious concerns about the rights of those in custody.

This is not unique to the Covid-19 pandemic, nor is it unique to prison inspection reports.

It also extends to death in custody reports. A total of ten investigation reports into deaths in custody have been published by the Minister for Justice in 2020, however, eight of these deaths occurred in 2018.⁴¹⁶ In order to be considered effective, investigations into deaths in custody must be prompt so that systemic failures can be identified and addressed as outlined under Article 2 of the European Convention on Human Rights.

Furthermore, it took two years for an investigation report to be submitted to the Minister for Justice in relation to the death of a terminally-ill prisoner who experienced delays in accessing urgent

408 See IPRT Position Paper 7, *Complaints, Monitoring and Inspection in Prisons*,

https://www.iprt.ie/site/assets/files/6157/iprt_position_paper_7_-_complaints_monitoring_and_inspection_in_prisons.pdf

409 Maguire, M. et al. (1985) *Accountability and prisons: opening up a closed world*. London: Tavistock Publications, p.2.

410 Other countries include: Belgium, Slovakia and Latvia. See United Nations Human Rights Office of the High Commissioner, *Status of Ratification of Interactive Dashboard*, <https://indicators.ohchr.org/>

411 *Ask an Expert: Monitoring of Prisons during the COVID-19 pandemic, with Patricia Gilheaney, Inspector of Prisons, Ireland* COVID-19 Law and Human Rights Observatory Blog (8 June 2020) <https://tcdlaw.blogspot.com/2020/06/ask-expert-monitoring-of-prisons-during.html>

412 Ibid.

413 Ibid.

414 HM Inspectorate of Prisons, *HM Chief Inspectorate of Prisons for England and Wales Annual Report 2019-2020*, https://www.justiceinspectors.gov.uk/hmiprison/wp-content/uploads/sites/4/2020/10/HMI-Prisons_Annual-Report-and-Accounts-2019-20-WEB.pdf

415 HM Chief Inspector of Prisons, *Notable Practice Found on Short Scrutiny* <https://www.justiceinspectors.gov.uk/hmiprison/wp-content/uploads/sites/4/2020/06/22jun-farrar-notablepractice.pdf>

416 Office of the Inspector of Prisons, *Death in Custody-Report by Year of Publication*, <https://www.oip.ie/death-in-custody/death-in-custody-report-by-year-of-publication/>

medical treatment.⁴¹⁷ Delays in the preparation and publication of these reports are not justified by extensive detail. The Office of the Inspector of Prisons has noted the lack of detail recorded and provided by staff. In this respect, one of the Inspector's recommendations was that the Irish Prison Service "should instruct all staff that their written records and verbal evidence in respect of Deaths in Custody and other significant incidents must be fully detailed and specific in relation to all factual aspects of the event including timing and job roles."⁴¹⁸ However, a recent positive development is the publication of Irish Prison Service action plans alongside the reports. In these action plans, the Irish Prison Service outlines steps taken to implement the Inspector's recommendation(s), including assigning responsibility for the implementation of action(s) and a timeline.⁴¹⁹

Reform of prison visiting committees is also required. The Prison Visiting Committee Annual Reports for 2018 were published on 25 May 2020.⁴²⁰ This is a substantial delay, with inconsistent quality in reporting across the committees. **It would be all but purposeless to publish information on prison conditions during the height of the Covid-19 pandemic on a similar timeline, which would be May 2022.**

It is clear that there is much to be done to increase, improve and strengthen the accountability and oversight structures that provide oversight of the prison system. Ireland must ratify the OPCAT. The Office of the Inspector of Prisons must be able to publish inspection reports independently of the Minister in order to improve transparency and support credibility. Prison visiting committees must be reformed. A robust and effective internal complaints system must be introduced, and prisoners must have access to an independent external complaints mechanism. **All of these calls have been made in previous editions of PIPS, and in the context of the pandemic, they have never been more urgent than they are today.**

417 Office of the Inspector of Prisons, *Report into the death of Mr.I 2018*, <https://www.oip.ie/death-in-custody/death-in-custody-report-by-year-of-publication/>

418 Ibid, p.5.

419 Office of the Inspector of Prisons, *Death in Custody-Report by Year of Publication, 2020 Published Reports*, <https://www.oip.ie/death-in-custody/death-in-custody-report-by-year-of-publication/>

420 Department of Justice and Equality, *Publications*, <http://www.justice.ie/en/JELR/Pages/Publications?OpenDocument&start=11&year=2020>

Standard 22: Complaints system

Standard 22:
Prisoners have access to a robust and effective complaints mechanism. All complaints are dealt with in a timely manner with the outcome of decisions clearly communicated to the prisoner with a satisfactory resolution if the complaint is upheld.

Rationale

Having access to a robust and effective complaints mechanism is of particular importance for individuals detained in closed institutions in order to protect against human rights violations. A number of potential barriers to prisoners making complaints have been identified, including: the absence of an effective complaints system; the slow nature of complaints procedures and response mechanisms; feelings that the problems faced in prison are inevitable; distrust in the complaints system; feelings of shame; fear of reprisal; and absence of legal safeguards.⁴²¹

Current Context:

The Committee for the Prevention of Torture (CPT) outlines the basic principles of an effective complaints mechanism as follows: availability,

accessibility, confidentiality/safety, effectiveness and traceability.⁴²² It is important that the prison complaints system meets these principles.

The introduction of a revised prison complaints system in the Irish prison system is overdue. The Irish Prison Service did not meet its own timeline for the introduction of an internal complaints system by the third quarter of 2019.⁴²³ However, measures introduced since reporting on this area in *PIPS 2019* include: the establishment of a new Complaints Unit, staff training, and amendments to the *Prison Rules, 2007* which are currently being finalised with the expected roll out of the new complaints system before a new timeline of end 2020.⁴²⁴

In 2019, there was a 25% decrease in the number of 'Category A'⁴²⁵ complaints from 80 in 2018⁴²⁶ to 60 in 2019.⁴²⁷ Category A complaints are the most serious form of complaints and are investigated by persons outside the Irish Prison Service.⁴²⁸ However, a decrease in the number of complaints in a closed setting cannot be assumed to be a positive indicator⁴²⁹, given the lack of faith and confidence in the complaints system highlighted in various reports.⁴³⁰ For example, in a chaplaincy report for the Dóchas Centre, it was reported that:

*"In most cases, the women involved did not feel safe to make complaints in writing to the governor for fear of further penalisation from the staff involved."*⁴³¹

The CPT outlines the importance of the establishment of a national system for compiling

421 Penal Reform International and Office for Democratic Institutions and Human Rights (2018), Guidance Document on the Nelson Mandela Rules, Point 136, p. 32, <https://www.penalreform.org/resource/guidance-document-on-the-nelson-mandela-rules/>

422 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *Complaints Mechanism*, <https://rm.coe.int/16807bc668>

423 Department of Justice & Equality, *Parliamentary Questions*, <http://www.justice.ie/en/JELR/Pages/PQ-30-01-2019-148>

424 Houses of the Oireachtas, *Prisoners Complaints Procedures*, 30th June 2020, <https://www.oireachtas.ie/en/debates/question/2020-06-30/317/>

425 Category A complaints are the most serious type of complaints. Category A complaints are those "alleging assault or use of excessive force against a prisoner, or ill-treatment, racial abuse, discrimination, intimidation, threats or any other conduct against a prisoner of a nature and gravity likely to bring discredit to the Irish Prison Service." See Irish Prison Service, *Complaints Categories*, http://www.irishprisons.ie/wp-content/uploads/documents_pdf/complaints_cat_poster.pdf

426 Houses of the Oireachtas, *Prisoner Complaints Procedures*, 18 June 2019, <https://www.oireachtas.ie/en/debates/question/2019-06-18/233/>

427 Houses of the Oireachtas, *Prisoner Complaints Procedures*, 30 June 2020, <https://www.oireachtas.ie/en/debates/question/2020-06-30/317/>

428 Irish Prison Service, *Prisoner Complaints*, <https://www.irishprisons.ie/prisoner-services/prisoner-complaints/#:~:text=If%20the%20complaint%20is%20a%20Category%20A%20complaint,are%20available%20below%3A%20Irish%20Prison%20Service%20Complaints%20Policy.>

429 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment (CPT), *Complaints Mechanisms*, paragraph 91 <https://rm.coe.int/16807bc668>

430 See Inspector of Prisons (2016) *Review, Evaluation and Analysis of the Operation of the present Irish Prison Service Prisoner Complaints Procedure By Judge Michael O'Reilly Inspector of Prisons 2016*, <http://www.justice.ie/en/JELR/Review,%20Evaluation%20and%20Analysis%20of%20the%20Operation%20of%20the%20OIPS%20Prisoner%20Complaints%20Procedure.pdf/Files/Review,%20Evaluation%20and%20Analysis%20of%20the%20Operation%20of%20the%20OIPS%20Prisoner%20Complaints%20Procedure.pdf>

431 See Dóchas Centre Chaplain's Report 2019, p.8 <https://www.irishprisons.ie/information-centre/publications/chaplains-reports/>

statistics on complaints and outcomes⁴³².

This would identify trends and inform future policies aimed at improving the functioning of the complaints system. At the time of writing, information related to all other categories of complaints made by prisoners was not made available.

Prison Visiting Committees have a role in hearing individual complaints from prisoners,⁴³³ and if requested, hear these complaints in private.⁴³⁴ They have a role in seeking informal resolutions, however they do not have the power to formally resolve prisoners' complaints.⁴³⁵ There is no information available on how prison visiting committees in Ireland met their duties during the Covid-19 lockdown (13 March 2020 to 29 June 2020). By contrast, Independent Monitoring Boards (the equivalent to Prison Visiting Committees) in the UK published information on alternative remote working arrangements due to the pandemic.⁴³⁶

► Indicators for Standard 22

Indicator S22.1:

Data on the number of internal complaints, in particular 'Category A' complaints (upheld, resolved and dismissed), including the length of time it takes to complete and communicate outcomes of a decision to a prisoner

In 2019 only 5% of Category A complaints were upheld. This equates to a similar number of Category A complaints upheld in 2018.

| Category A complaints | 2018 | 2019 | 2020 (as of 25 th June) ⁴³⁷ |
|--------------------------|------|------|---|
| Complaints received (n.) | 80 | 60 | 24 |
| Upheld | 4 | 3 | 0 |
| Not upheld | 46 | 18 | 2 |
| Not proven | 4 | 0 | 0 |
| Terminated | 3 | 0 | 0 |
| Incomplete | 12 | 26 | 21 |
| Withdrawn | 9 | 7 | 1 |
| Discontinued | | 2 | 0 |
| Recategorised | | 1 | 0 |

While 55% of Category A complaints were resolved within 3-6 months in 2019, none were resolved within less than three months, and 43% were classified as 'outstanding investigations'. 87% of Category A complaints in 2020 were categorised as 'outstanding investigations'. This delay is attributed to the non-facilitation of investigators accessing the prison in March 2020 during the Covid-19 pandemic.⁴³⁸ Investigators were reported to have resumed their work in prison in early July 2020.

432 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *Complaints Mechanism*, <https://rm.coe.int/16807bc668>

433 Rule 56 of *Prison Rules, 2007* <http://www.irishstatutebook.ie/eli/2007/si/252/made/en/print#article56>

434 See section 3 1(a) *Prison Visiting Committees Act, 1925*, <http://www.irishstatutebook.ie/eli/1925/act/11/enacted/en/print>

435 Van Der Valk, S. & M.Rogan (2020) Experiencing human rights protections in prisons: The case of prison monitoring in Ireland, *European Journal of Criminology*, 1-19

436 Independent Monitoring Boards, *Board reporting during Covid-19*, <https://www.imb.org.uk/>

437 Houses of the Oireachtas, *Prisoners Complaints Procedures, 30th June 2020*, <https://www.oireachtas.ie/en/debates/question/2020-06-30/317/>

438 Ibid.

Status of Standard 22: No change

Rationale for Assessment



While there have been some positive changes to the operation of the internal complaints system by the Irish Prison Service, the timeline for the introduction of a new internal complaints system has not been met. Access to a robust internal complaints mechanism is a critical safeguard for the protection of human rights of prisoners at all times but especially during a pandemic, when prisoners have reduced access to regimes and there are fewer external eyes on prisons. New and innovative ways of ensuring confidential access to a trusted complaints system must be delivered to ensure timely, impartial and fair investigations of complaints in the prison system.

Progressive Practice-Freephone Hotline⁴³⁹, England

A confidential hotline was set up by the Independent Monitoring Boards (IMB) in response to Covid-19 restrictions. Similar in function to visiting committees in Ireland, IMBs monitor prisons in England. The hotline was an additional way for prisoners to get in touch and make a complaint, known as ‘applications’, during the Covid-19 pandemic. Prisoners across 13 prisons were able to call from their cell or a communal phone. Lines were open from 7am to 7pm for seven days a week with a backup voicemail service. Calls were confidential and not recorded by the prison service.

Between the launch in April and early August 2020, over 3,080 calls were received; this resulted in 1,200 prisoner applications being sent to and followed up by monitoring boards at a local level.

By August, the scheme had been rolled out to over 60 prisons. Healthcare (physical, mental and social care) was the biggest issue raised by prisoners.⁴⁴⁰

By contrast, data on individual complaints is not published by prison visiting committees in Ireland.

Actions required



Action 22.1: The Irish Prison Service should publish the new internal complaints policy by the end of 2020.

Action 22.2: The Irish Prison Service should introduce a national system for compiling statistics on complaints, relevant proceedings and outcomes in line with a recommendation made by the CPT.⁴⁴¹

Action 22.3: Prison visiting committees should introduce innovative ways to meet their duty to hear prisoner complaints in private, such as a confidential phone line, and track and publish information on the issues raised by prisoners.

439 Independent Monitoring Boards, *Independent monitors launch new hotline for prisoners to report concerns during pandemic*, <https://www.imb.org.uk/independent-monitors-launch-new-hotline-for-prisoners-to-report-concerns-during-pandemic/>

440 Independent Monitoring Boards, *IMB National Annual Report 2019/2020*, p.38 <https://s3-eu-west-2.amazonaws.com/imb-prod-storage-10cod6bqkyOvo/uploads/2020/10/IMB-national-annual-report-201920-amended-FINAL-.pdf>

441 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Complaints Mechanisms*, <https://rm.coe.int/16807bc668>

Standard 23: Independent complaints and appeal mechanism

Standard 23:
Prisoners have access to an external independent complaints and appeal mechanism, including access to a prisoner ombudsman or equivalent.

Rationale

As prisoners are detained in a closed environment, they are at increased risk of having their human rights violated. Prisoners' confidence in the complaints system is promoted by the existence of an external independent complaints and appeals mechanism.

Current Context:

Prisoners in Ireland still have no access to a fully independent complaints and appeals mechanism. The Office of the Ombudsman's jurisdiction is expected to be extended to prisons. However, the new internal prison complaints system must be implemented prior to the authorisation of the extension of the Office of the Ombudsman's remit to prisons by the Department of Public Expenditure and Reform.⁴⁴² This is now expected to occur 12 months after the introduction of the Irish Prison Service internal prisoner complaints system, which would be end 2021.⁴⁴³

During 2019, officials from the Office of the Ombudsman accompanied staff from the Irish Prison Service on visits to the Northern Ireland Prison Service and the Prisoner Ombudsman for Northern Ireland. It is of note that the Northern Ireland Prisoner Ombudsman in 2018-2019 received 408 individual complaints, an increase of 74% from 2017-2018.⁴⁴⁴

► Indicators for Standard 23

Indicator S23.1:

Prisoners' access to an independent external complaints mechanism.

Prisoners still have no access to a fully independent, external complaints mechanism.

Status of Standard 23: No change

Rationale for Assessment



It was recommended that prisoners have access to the Ombudsman as far back as the *Whitaker Report* in 1985⁴⁴⁵. More recently, in 2016, the Minister for Justice accepted the Inspector of Prisons' recommendation that the Ombudsman have a role in prisoner complaints.⁴⁴⁶ The current expected timeline is end 2021. This is a disappointing delay in implementation of a fundamental safeguard in the protection and promotion of human rights.

Actions required



Action 23.1: The Department of Public Expenditure and Reform should ensure the Office of the Ombudsman is resourced to receive complaints appeals from prisoners.

442 Office of the Ombudsman, *Annual Report 2019*, p.15
<https://www.ombudsman.ie/publications/annual-reports/Ombudsman-AR-2019-ENG-WEB.pdf>

443 The Irish Examiner, *Prison role is delayed for a year*,
<https://www.pressreader.com/ireland/irish-examiner-saturday/20201107/281917365598857>

444 The Prisoner Ombudsman for Northern Ireland, *Annual Report 2018-2019*,
<https://niprisonerombudsman.gov.uk/publications/annual-reports>

445 The Report of the Committee of Inquiry into the Penal System (1985) Government of Ireland, Dublin.

446 Department of Justice and Equality, *Tánaiste accepts recommendation to give Ombudsman a role in prison complaints*,
<http://justice.ie/en/JELR/Pages/PR16000125>

Standard 24: Inspections and monitoring

Standard 24:
Structures are in place for the regular inspection and monitoring of prisons. Inspection reports are made publicly available within a clear timeframe.

Rationale

Monitoring and inspection of places of detention is central to the protection of human rights. In order to prevent human rights abuses occurring in prisons, regular independent monitoring and inspections are crucial to increasing levels of accountability and transparency within the prison system.

Current Context:

Inspection and monitoring is vital to the protection of human rights of prisoners. A number of factors can increase the vulnerability to breaches in human rights of people held in a prison environment:

“The protection of human rights in prison gives rise to unique challenges. The power differentials and dynamics involved, the need to balance considerations of security with those of dignity, and the lack of openness to the outside world mean that the implementation of human rights principles takes on a particular importance in these environments. International human rights law has increasingly emphasized the importance of external oversight of prisons as a way to prevent torture and ill-treatment and to uphold fundamental rights more generally.”⁴⁴⁷

New research by Prisons: the Rule of Law, Accountability and Rights (PRILA) has found evidence of a lack of awareness and deficit of trust among the prison population in Ireland towards prison monitoring.⁴⁴⁸ Qualitative research conducted in three prisons found that prisoners were largely unaware of the Inspector of Prisons. Despite this, prisoners viewed the concept of monitoring as a good way to protect rights. The visibility of monitors, clarity in their roles and powers, and ensuring that a variety of voices are heard by monitoring bodies are important elements of a good system of prison oversight.⁴⁴⁹ Key aspects of good prison monitoring as perceived by prisoners included: access (to all parts of the prison including the yard or landing), *visibility*, and *confidentiality* – particularly in the context of making a complaint. Key recommendations from the research are:

- Inspection and monitoring bodies should consult with prisoners on what is important *from their perspective* for human rights standards and the protocols of monitoring bodies
- The freedom of a body to walk around without any limitations is valued by prisoners
- Further research into the experience of particular categories of prisoners, including women, older people and people with disabilities, of prison inspection and monitoring would be valuable

447 Van Der Valk, S. & Rogan, M. (2020) Experiencing human rights protections in prisons: The case of prison monitoring in Ireland, *European Journal of Criminology*, p.1.

448 Ibid.

449 Ibid.

Ratification of the Optional Protocol to the Convention against Torture (OPCAT)

The State has failed to ratify the OPCAT and there has been no establishment of a National Preventive Mechanism. Almost all EU Member States have signed and ratified the OPCAT with the exception of Ireland, Belgium and Slovakia who have signed but not ratified, and Latvia.⁴⁵⁰ For the third year in a row, the Department of Justice and Equality has stated that the General Scheme of the legislation required is expected to be ready for formal drafting before the end of the year.⁴⁵¹

The 2020 *Programme for Government* commits to the ratification and implementation of OPCAT within 18 months of the formation of government. This is welcome. However, if Ireland had ratified OPCAT prior to the pandemic, it may have supported stronger oversight during the Covid-19 pandemic for all people deprived of their liberty. In New Zealand, for example, the work of the Chief Ombudsman was described by the Secretary of Justice as an ‘essential service’ during Covid-19. A report on prisons and recommendations by the Ombudsman were accepted by the Ministry for Justice in New Zealand,⁴⁵² and a Statement of Principles was created by the Ombudsman to guide staff in managing the Covid-19 crisis.⁴⁵³

Office of the Inspector of Prisons

IPRT welcomes the additional resourcing of the Office of the Inspector of Prisons in 2020, including recruitment of three additional positions: a Data Analyst, Inspector and Senior Inspector.⁴⁵⁴ The Office launched its new *Framework for the Inspection of Prisons in Ireland* in September 2020.⁴⁵⁵ IPRT welcomes the framework, which is informed by international human rights standards. There are five focus areas of inspection including: safety and security, respect and dignity, health and wellbeing, rehabilitation and development, and resettlement. In particular, IPRT welcomes the Office’s commitment to engage with both prisoners and staff through surveys and interviews.⁴⁵⁶ This is particularly important given the findings of the PRILA research.

During the Covid-19 pandemic, the Inspector of Prisons continued visiting prisons. All prisons received a one-day visit with specific emphasis on out-of-cell time and provision of meaningful contact.⁴⁵⁷ However, the complete absence of published inspection reports means the public has very little knowledge of how prisons have operated during the pandemic. This was an issue prior to the pandemic. The last prison inspection report was published in 2017.⁴⁵⁸ Since 2008, there has been no published prison inspection report of Cloverhill, Cork, Midlands, Portlaoise or Wheatfield prisons.⁴⁵⁹

450 United Nations Human Rights Office of the High Commissioner, *Status of Ratification Interactive Dashboard*, <https://indicators.ohchr.org/>

451 Kildare Street, *Written answers Wednesday, 13 May 2020, Department of Justice and Equality, UN Conventions*, <https://www.kildarestreet.com/wrans/?id=2020-05-13a.1047>

452 Office of the Ombudsman, OPCAT COVID-19 report, *Report on inspections of prisons under the Crimes of Torture Act 1989*, https://www.ombudsman.parliament.nz/sites/default/files/2020-06/Report_on_inspections_of_prisons_under_the_Crimes_of_Torture_Act_1989_062020.pdf

453 International Ombudsman Institute, *NEW ZEALAND | OPCAT inspections and visits during COVID-19 pandemic – statement of principles*, <https://www.theioi.org/ioi-news/current-news/opcat-inspections-and-visits-during-covid-19-pandemic-statement-of-principles>

454 Office of the Inspector of Prisons, *Announcement and News*, <https://www.oip.ie/announcements-and-news/>

455 Office of the Inspector of Prisons (2020) *A Framework for the Inspection of Prisons in Ireland*, <https://www.oip.ie/wp-content/uploads/2020/09/OIP-Inspection-Framework-Single.pdf>

456 Ibid.

457 COVID-19 Law and Human Rights Observatory Blog (8 June 2020), *Ask an Expert: Monitoring of Prisons during the COVID-19 pandemic, with Patricia Gilheaney, Inspector of Prisons, Ireland* <https://tcdlaw.blogspot.com/2020/06/ask-expert-monitoring-of-prisons-during.html>

458 Office of the Inspector of Prisons, *Inspection of Prison Reports*, <https://www.oip.ie/inspection-of-prisons-reports/>

459 Ibid.

| Year | Inspection Report |
|------|--|
| 2014 | Inspection of Loughan House Open Centre An overview of Mountjoy Prison Campus with particular emphasis on the Separation Unit |
| 2015 | No published inspection reports |
| 2016 | No published inspection reports |
| 2017 | Report on an Inspection of the Training Unit, 2017 |
| 2018 | No published inspection reports |
| 2019 | No published inspection reports |
| 2020 | No published inspection reports |

In addition, no annual report for 2019 has been submitted despite the requirement in laws that the Inspector should submit a report by 31 March.⁴⁶⁰

Prison Visiting Committees

There has been no change to the structure of prison visiting committees in Ireland. IPRT welcomes a commitment in the *Programme for Government* to: “Review the existing functions, powers, appointment procedures and reporting processes for prison visiting committees.”⁴⁶¹ (For more on the role of prison visiting committees in the complaints process, see Standard 22.)

The Minister for Justice published annual prison visiting committee reports for 2018 on 25 May 2020.⁴⁶² When the publication of reports is substantially delayed, it renders the reports as less relevant as they do not reflect the current daily life of people in prisons in Ireland.

► Indicators for Standard 24

Indicator S24.1:

The State’s ratification of OPCAT and establishment of an NPM.

Ireland has yet to ratify OPCAT and establish an NPM, and is one of the last four EU Member States to do so.⁴⁶³

Indicator S24.2:

Frequency of publication of OiP reports.

There have been no prison inspection reports published over the last 12 months.

Indicator S24.3:

Reform of Prison Visiting Committees:

There has been no reform in this area, however there is a commitment to reforming Prison Visiting Committees contained in the 2020 *Programme for Government*.

460 Kildare Street, *Written answers Tuesday 20 October 2020, Department of Justice and Equality, Inspector of Prisons*, <https://www.kildarestreet.com/wrans/?id=2020-10-20a.1385>

461 The Green Party, *Programme for Government - Our Shared Future*, https://www.greenparty.ie/wp-content/uploads/2020/06/ProgrammeforGovernment_June2020_Final.pdf

462 IPRT, *Reform of Prison Visiting Committees is urgently needed*, <https://www.iprt.ie/latest-news/reform-of-prison-visiting-committees-is-urgently-needed/>

463 United Nations Human Rights Office of the High Commissioner, *Status of Ratification Interactive Dashboard*, <https://indicators.ohchr.org/>

Progressive Practice: Publication of Short Scrutiny Visits

Short Scrutiny Visits by HM Inspectorate of Prisons in England and Wales were undertaken and published during the Covid-19 pandemic. These reports were published in a timely manner and provided a description of the harsh conditions prisoners were exposed to. Prisoners were held in their cells for 22.5 hours for a three-month period. The Inspectorates found staff punishing behaviour by withdrawing an individual's access to a shower for a day or more. The report also found that there was little evidence of the relaxation of restricted regimes in tandem with the community and highlighted:

*"There was an obvious need to engage prisoners once again in some meaningful activity out of their cells. So far there has been a degree of understanding and goodwill on the part of most prisoners, but there is growing evidence that this is now being severely tested."*⁴⁶⁴

The findings and publication of these reports are particularly important to ensure oversight of prison systems during a pandemic.

Independent Monitoring Boards (IMB), England

During the Covid-19 pandemic, IMBs continued to operate, albeit remotely and through a Freephone line. A key issue raised in the 2019/2020 annual report published during Covid-19 was healthcare, specifically the inability to access treatment and medication. As highlighted in the report itself:

*"The importance of independent monitoring during such exceptional times was shown when boards' monitoring or the freephone applications line revealed unpublicised or questionable practices."*⁴⁶⁵

These monitoring reports also allowed for further insight into prison conditions in England and Wales, and highlighted:

*"Moving from a culture of containment back towards one of rehabilitation and purposeful activity, and ensuring prisoners' wellbeing while continuing to control infection, will be both essential and demanding. Boards will continue to monitor this closely, both in terms of the pace and the direction of travel."*⁴⁶⁶

This is particularly important given the evolving situation and state of uncertainty that Covid-19 has brought.

464 HM Inspectorate of Prisons, *Report on short scrutiny visits to Local prisons by HM Chief Inspector of Prisons*, p.8
<https://www.justiceinspectors.gov.uk/hmiprisoners/media/press-releases/2020/07/mens-local-prisons-during-covid-19-prisoners-understanding-of-regime-restrictions-severely-tested/>

465 Independent Monitoring Board, *IMB National Annual Report 2019-2020* p.33
<https://www.imb.org.uk/prisons-remained-tightly-stretched-pre-covid-says-independent-national-monitoring-report-2019-20/>

466 Ibid, p.5.

Status of Standard 24: Mixed

Rationale for Assessment



There has been no significant change to prison oversight and inspection over 2019/2020, with no inspection reports published. While additional resourcing of the Office of the Inspector of Prisons; the publications of the *Framework for Inspection of Prisons*; and commitments to reform prison visiting committees, and ratification of OPCAT in the *Programme for Government* are all welcome, the lack of inspection and oversight leaves the human rights of people in our prison system highly exposed. This is especially acute during a time of a national and global emergency. Only through a rigorous inspection and monitoring regime, along with an independent complaints mechanism, can the rights of people in prison be safeguarded. Where prisoners have no access to independent redress, this fundamentally weakens access to their rights, undermines trust and creates tension within the prison.

Actions required



Action 24.1: Government must meet its stated timeline and ratify OPCAT by end 2021.

Action 24.2: Legislators should strengthen the powers of the Office of the Inspector of Prisons to publish inspection reports directly, and remove the powers of redaction of prison inspection reports from the Minister for Justice.

Action 24.3: Inspection and monitoring reports during the Covid-19 pandemic should be compiled by the Office of Inspector of Prisons and by prison visiting committees and published by the Minister for Justice within one month of submission.

Action 24.4: The Department of Justice should commence consultations on the reformation of prison visiting committees.

