

Report of the Inspector of Prisons
covering period
15th March 2009 - 10th September 2010

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Presented to the Minister for Justice and Law Reform pursuant to Part 5 of the Prisons Act 2007.

Judge Michael Reilly
Inspector of Prisons

16th September 2010

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Contents

Acknowledgements	4
<u>Chapter 1</u>	
Introduction	5
<u>Chapter 2</u>	
Standards for the Inspection of Prisons in Ireland	10
<u>Chapter 3</u>	
The Irish Prison Population - an examination of duties and obligations owed to prisoners.	11
<u>Chapter 4</u>	
Use of 'Special Cells' in Irish Prisons	13
<u>Chapter 5</u>	
Guidance on Best Practice relating to prisoners complaints and prison discipline	15
<u>Chapter 6</u>	
Miscellaneous issues	16
<u>Chapter 7</u>	
Work programme	19
<u>Appendix</u>	
Copy Minister's Press Release	21

Acknowledgments

It is clear from reading this Report, that I have submitted a number of Reports to the Minister for Justice and Law Reform during the timeframe covered by this Report. I have also published *Standards for the Inspection of Prisons*.

The compiling of the Standards and the preparation of the Reports entailed considerable research. I am indebted to Ms. Aoife Watters who is responsible for researching standards in other Jurisdictions, researching relevant International and Domestic Obligations, Conventions and Rules which have enabled me publish the Standards and write the Reports mentioned above.

In addition to the research referred to in the preceding paragraph considerable time was spent in prisons and elsewhere gathering relevant information to enable me give accurate details of the operating procedures in prisons. It also involved painstaking examination of records maintained in hard copy and electronic form. In addition to Ms. Watters I am indebted to the rest of my small team - Ms. Linda Larkin (Office Manager), Mr. Paul Dunne and Ms. Michelle Ryan not alone for their attention to office duties and inspections of prisons often during unsocial hours but also for their diligence in assisting me gather relevant information in prisons and elsewhere which has enabled me produce the Reports mentioned in this Report. They are a dedicated and interested team who worked long hours and for that I thank them.

I would also like to thank all the persons I met in connection with my work during the period covered by this report. They are too numerous to mention individually.

Judge Michael Reilly
Inspector of Prisons

16th September 2010

Chapter 1

Introduction

- 1.1 Throughout this Report the Minister for Justice and Law Reform shall be referred to as the 'Minister' and the Department of Justice and Law Reform shall be referred to as the 'Department'.
- 1.2 This Report deals with my activities from 15th March 2009 to the 10th September 2010.
- 1.3 The reasons for the delay in submitting this Report to the Minister were twofold - (a) In January 2010, I was asked by the Minister to undertake an investigation into an issue that had arisen which was of a serious and urgent concern. I attach, at **Appendix 1**, a copy of the press statement issued by the Minister relating to this investigation. I presented a Report on my investigation to the Minister on 11th May 2010. This was a time-consuming investigation. (b) I carried out two further investigations on behalf of the Department concerning incidents in two prisons.
- 1.4 In my first year as Inspector of Prisons I identified a number of issues that gave cause for concern, namely - overcrowding, health issues of prisoners, the use of 'special' cells, the procedure for dealing with prisoner complaints, the procedure for dealing with the disciplining of prisoners, the prevalence of drugs and the investigations of and reporting on deaths in custody. I pointed out that there were no standards against which inspections of prisons could be benchmarked.
- 1.5 It became clear to me that there was no clear policy across the prison estate for dealing with the issues raised in paragraph 1.4. Governors and senior management in individual prisons sought my advice on what I considered best practice in a number of areas. I decided that I would not give guidance to individual prisons but would give general guidance on a number of important issues. In order of importance I classed these issues as - overcrowding, prisoner health issues, the use of 'special' cells, the procedures for investigating prisoner complaints and for disciplining prisoners, the investigation of and

reporting on deaths in custody and the standard, relevance and value for money of the educational services provided in prisons. I decided initially to publish a set of standards against which I would benchmark prisons.

1.6 In order to give the general guidance referred to at paragraph 1.5, I have, since my *Annual Report 2008*:-

- (a) Published *Standards for the Inspection of Prisons* referred to in Chapter 2.
- (b) Submitted a Report to the Minister of an examination of duties and obligations owed to prisoners specifically dealing with overcrowding of prisons referred to in Chapter 3.
- (c) Submitted a Report to the Minister on the use of 'Special Cells' referred to in Chapter 4.
- (d) Submitted a Report to the Minister giving guidance on best practice relating to prisoners' complaints and prison discipline referred to in Chapter 5.

1.7 The *Standards for the Inspection of Prisons* and the contents of the Reports referred to in paragraph 1.6 give clear guidance to the Irish Prison Service and to individual prisons as to what is required of them to meet 'best practice'.

1.8 I am acutely aware of the grave economic difficulties that face this country. I accept that certain issues must be prioritised. However, neither of these should be accepted as an excuse for depriving prisoners of their basic human rights other than those removed by law.

1.9 On 13th August 2009, I presented a Report to the Minister of an Inspection of Mountjoy Prison. This Report gave a factual overview of the prison covering a period of eight months up to the 2nd July 2009. The Report dealt with, *inter-alia*, the history and design capacity of the prison, the existing programmes and facilities, the deficiencies in the prison,

regime changes, security, the investigation of prisoners' complaints and a Chapter on recommendations. I stated at paragraph 1.8 of that Report that I would submit a further report to the Minister on Mountjoy Prison within 12 months. Over the last number of months I have detected a marked improvement in certain aspects of the prison. For this reason I will defer submitting a further Report to the Minister on Mountjoy Prison until the end of this year when I will deal with, *inter alia*, all matters raised in my original report on the prison.

1.10 Since my Annual Report 2008, in addition to the matters referred to in paragraphs 1.3, 1.6 and 1.9, I have:-

- (a) Visited all of the prisons on a number of occasions both during the day and at night.
- (b) Had formal meetings with:-
 - The Minister for Justice and Law Reform
 - Secretary General, Department of Justice and Law Reform
 - Director General and Senior Management of Irish Prison Service
 - Senior Officials, Prison Policy Division, Department of Justice and Law Reform
 - Criminal Justice Inspector for Northern Ireland, Dr. Michael Maguire
 - Prisoner Ombudsman for Northern Ireland, Ms Pauline McCabe
 - Ombudsman for Children, Ms. Emily Logan
 - Governors' Group at Beladd House
 - Governors Quigley and Dowling re Sentence Management
 - Prison Chaplains
 - Inspection Delegation from the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter in this Report referred to as the 'CPT')

- (c) Presented a paper on the Role of an Inspector of Prisons to the 2010 Annual Conference of the International Penal and Penitentiary Foundation.
- (d) Was one of two guest speakers at a public forum on the White Paper on Crime (consultation seminar) organised by the Department of Justice and Law Reform in Dublin Castle.
- (e) Chaired an Irish Penal Reform Trust Open Forum on the 'Exploding Prisoner Numbers'.
- (f) Addressed Recruit Prison Officers in Beladd House.

1.11 In Chapter 6, I set out a number of issues that, while important in their own right, do not merit separate chapters.

1.12 In Chapter 7, I give an outline of my work programme for the next 16 months.

1.13 During the timeframe of this Report I have received total cooperation from the Irish Prison Service and the management of all prisons. It is now accepted by all that whenever I arrive at prisons, be it during the working day, at night or weekends, I am immediately admitted and all requests from me are complied with forthwith.

1.14 I am pleased to report that the Irish Prison Service and local management have been open to suggestions for dealing with local issues. Some of these issues were dealt with by Governors, others required the goodwill and active participation of the Irish Prison Service. I am confident that this cooperation will continue. It is in this spirit that I have sought to give further guidance through the reports referred to in this Report.

1.15 The following are examples of the issues that I have raised which have been attended to by the relevant agencies:-

- (a) The installation of additional CCTV cameras in St. Patrick's Institution.
- (b) The installation of enhanced microphones in the visiting areas of St. Patrick's Institution and other prisons.
- (c) Improved hygiene in certain prisons.
- (d) Improved painting regimes in certain prisons.
- (e) The installation of nets over yards at Mountjoy Prison to try to frustrate the supply of drugs and other contraband.
- (f) The reopening of the Separation Unit in Mountjoy Prison.
- (g) The upgrading of the Reception Area and laundry in Castlerea Prison.
- (h) The opening of the library in Castlerea Prison. This had been effectively closed for many years.
- (i) The closure of the recreation room in the Special Care Unit and 2 holding cells in Castlerea Prison as accommodation areas.
- (j) More structured visiting regimes in all prisons.
- (k) A willingness to embrace 'best practice' in relation to the use of 'special cells' and to maintain appropriate records of such use. My Report referred to at paragraph 1.6(c) gives guidance on this issue.
- (l) A willingness to embrace 'best practice' concerning prisoner complaints and prison discipline. My Report referred to at paragraph 1.6(d) gives guidance on this issue.

Chapter 2

Standards for the Inspection of Prisons in Ireland

- 2.1 Prior to my appointment as Inspector of Prisons Ireland did not have a set of Standards for the inspection of prisons.
- 2.2 International best practice, under Principle 29 of the Body of Principles for the Protection of Persons under any form of Detention or Imprisonment and Rule 55 of the United Nations Standard Minimum Rules for the Treatment of Prisoners, requires that a system of independent monitoring be established so that transparency and accountability of the prison system can be achieved.
- 2.3 Section **30(5) of the Prisons Act 2007** states that the Inspector of Prisons is independent in the performance of his or her functions.
- 2.4 I published *Standards for the Inspection of Prisons* in Ireland on the 24th July 2009 in order that prisoners, prison staff and the general public would have confidence in my independent oversight of prisons, would understand the inspection process employed by me in carrying out my mandate and the standards against which I benchmark prisons.
- 2.5 The standards are informed not alone by Domestic Laws and International Instruments to which this State has committed itself but also by relevant Decisions of the Irish Courts and the European Court of Human Rights, binding and non binding International Instruments emanating from the United Nations and the Council of Europe, the Reports of the CPT and my own observations of prisons.
- 2.6 I will keep these Standards under review in light of my inspection experiences and developments both domestically and internationally. I will elaborate on and/or update these Standards as appropriate.

Chapter 3

The Irish Prison Population - an examination of duties and obligations owed to prisoners

- 3.1 I stated in my *Annual Report 2008* that Irish Prisons were overcrowded. I drew attention to the design capacity of certain prisons *vis a vis* their actual capacity. I drew attention to the practice of 'slopping out' in a number of prisons. The prison population on the 6th May 2009, being the date of the submission of my Annual Report 2008, was 3926. The population had increased to 4473 on the 29th July 2010, being the date of the submission of my Report on the Irish Prison Population - An Examination of Duties and Obligations owed to Prisoners. During that period new prison places had come on stream but not sufficient to accommodate the increased number of prisoners.
- 3.2 This country has, and is entitled to have, an independent prison policy. It is entitled to order its prisons as it sees fit. It is entitled to enact relevant Laws and Rules which it does. It is, however, subject to outside scrutiny and regulation. Ireland as a country is subject to the many International Instruments to which it is a party. Applications can be made to the European Court of Human Rights if there is a breach of the European Convention on Human Rights. Ireland is subject to external examination by, *inter alia*, the CPT.
- 3.3 I decided that I should set out in clear and unambiguous terms the type of accommodation, the type and level of services and the regimes (including prisoner safety) that we as a country are obliged to provide for prisoners having regard to our International and Domestic obligations and acknowledged best practice. I have summarised our obligations by reference to our Domestic and International obligations and have, where relevant, referred to Rules, Judgments of Courts and Reports from relevant Regulatory Authorities.
- 3.4 In my Report I provide a commentary on each prison and point out the maximum numbers that should be accommodated in such prisons in order to be in compliance with our obligations.

3.5 My Report is intended to provide guidance to the Irish Authorities as to the type of accommodation, the type and level of services and the regimes (including prisoner safety) that we, as a country, are obliged to provide for prisoners.

Chapter 4

Use of 'Special Cells' in Irish Prisons

- 4.1 Since taking up my position as Inspector of Prisons in January 2008, I have been concerned as to the use being made of 'special cells' in Irish Prisons.
- 4.2 In 2005, after a thorough review of International Best Practice, the Irish Prison Service decided that two types of 'special cells' would be provided - 'safety observation' and 'close supervision' cells.
- 4.3 Safety observation cells are designed to accommodate prisoners who require frequent observation for medical reasons or because they are a danger to themselves. Such cells should be constructed to a common design.
- 4.4 Close supervision cells are designed to accommodate prisoners who are a danger to others in the prison or who are disruptive and, in the opinion of management, need to be separated from other prisoners in order to maintain a safe and secure custodial environment. Such cells should be constructed to a common design.
- 4.5 It became apparent to me that safety observation cells were being used for accommodation and management purposes in addition to medical purposes.
- 4.6 In my Report I analysed this countries' obligations to prisoners placed in 'special' cells having regard to our Constitution, the Irish Prison Rules, the Irish Prison Service Health Care Standards, the *Standards for the Inspection of Prisons in Ireland*, the European Convention on Human Rights, the International Covenant on Civil and Political Rights, Decisions of the European Court of Human Rights, the European Prison Rules and Reports of the CPT.
- 4.7 I carried out a comprehensive analysis of the use made of safety observation cells in each of our prisons covering a 15 month period.

4.8 My Report gives guidance to the Irish Prison Service and prison management as to the use to be made of such cells. I suggest changes to the Irish Prison Rules and other 'housekeeping' matters.

Chapter 5

Guidance on Best Practice relating to Prisoners' Complaints and Prison Discipline

- 5.1 Over a period of 18 months I have been investigating the operation of both the prisoners' complaints procedures and the disciplining of prisoners in our prisons. I found that the procedures fell short having regard to best practice.
- 5.2 Any complaints procedure or disciplinary procedure must be fair and transparent. There must be confidence in the systems.
- 5.3 My Report is divided into two sections - the first dealing with prisoner complaints and the second dealing with prison discipline.
- 5.4 I give an overview of the current procedures in my Report. I set out best practice having regard to our Domestic and International obligations. I refer to decisions from the European Court of Human Rights, various Prison Rules and statements from the CPT as authority for best practice.
- 5.5 I suggest changes to the Prisons Act 2007 and the Irish Prison Rules 2007 which, if implemented, would ensure that both procedures could be considered as reflecting 'best practice'.
- 5.6 My Report gives guidance to the Irish Prison Service and local prison management as to what should be expected in order that both procedures are fair and transparent and attract confidence from prisoners and public alike.

Chapter 6

Miscellaneous issues

6.1 The issues raised in this Chapter are important but do not merit separate chapters. The issues covered are, in the main, policy issues.

6.2 **Prison Education**

Education in Irish Prisons is provided by local Vocational Educational Committees. A wide variety of subjects is taught. I accept it is difficult, because of security issues, to ensure that prisoners attend classes on time or at all. My experience from visiting prisons and especially the schools in prisons is that the level of tuition differs greatly from prison to prison. In certain prisons classes appear to be operating to capacity, in others the contrary. In certain prisons prisoners are delivered to the school on time, in others this does not happen. In certain prisons classes have to be cancelled because of prison staff shortage or other issues. In all prisons the school day is of short duration as prisoners only have a limited period in which to attend class. By and large the 'school year' equates with the school year in schools in the community. In schools in the community pupils have holidays which provide them with opportunities for extra curricula activities. Holidays are considered essential for the development of such pupils. Prisons operate 365 days a year. If prisoners have 'holidays' from school they do not have the opportunities to engage in extra curricula activities. They have nothing to do.

An in depth audit should be carried out covering all aspects of the educational system in all prisons. This audit should, *inter alia*, examine the type of education being provided, the relevance of such education, the numbers being educated and the value for money being provided. I do not have the resources or expertise to carry out such an audit. The Irish Prison Service should consider commissioning such an audit. A realistic time limit should be placed on such an audit.

6.3 Accreditation of courses

I am aware that the Irish Prison Service is conducting a review of all courses in all of the prisons. Certain courses are not accredited at present. This can lead to prisoners who have completed courses being disadvantaged in the work place when they are released. The Irish Prison Service should take all steps to ensure that courses are accredited and should publish a timeframe within which this will be achieved.

6.4 Staff training and placement

I am aware that, when training, recruits receive some additional training to equip them to deal with juveniles, females, prisoners with a mental illness and vulnerable prisoners. Officers of all ranks who deal with these prisoners should have specific training to enable them deal with this coterie of prisoners. In certain cases staff suitability over seniority might be most appropriate. Such officers should also be aware of the different criteria that apply when dealing with such prisoners.

6.5 Courts Video Link System

I stated in paragraph 11.15 of my Report on The Irish Prison Population - an examination of duties and obligations owed to prisoners that there is a video link between Limerick Prison and Limerick District Court. The introduction of this service has led to considerable savings in both manpower and money as prison escorts to courts are very demanding on both resources. Consideration should be given to rolling out this service to other courts and the replicating of same in other prisons. The service could also be expanded to facilitate family contact between prisoners, either on remand or serving sentences, in different prisons.

6.6 Outsourcing

It appears to me that highly trained prison officers are engaged in certain activities in prisons that might be more appropriately outsourced to relevant agencies. An evaluation of the merits of this statement might be undertaken by the Irish Prison Service. Consideration might also be given to employing clerical staff in many areas of prisons which do not require the expertise of trained prison staff.

6.7 Prisoner Medical Record System

All prisons operating this system should have scanning facilities in order that all documents held in hard copy can be stored in electronic form.

6.8 Staff Identification

I stated at paragraph 10.8 of my *Annual Report 2008* and more recently at paragraph 4.13 of my Report titled Guidance on Best Practice relating to Prisoners' Complaints and Prison Discipline that prison officers should be readily identifiable. At present prison officers do not wear any personal identification. This can create difficulties for members of the public or prisoners to readily identify officers on duty should they have reason to do so. All prison officers should be assigned an identity number (similar to that issued to members of An Garda Síochána) or other like method of identification. These should be worn by officers at all times when on duty. This is an urgent matter which should be attended to without delay.

6.9 Drugs and contraband in prison

This is a continuing problem in all prisons. Drugs and contraband can only get into prisons in two ways - over the walls or smuggled in by either prisoners or people having access to the prisons. The Irish Prison Service and local management must continue to take all steps to reduce the incidents of drugs or contraband getting into prisons. Recent initiatives such as the installation of nets over the yards in Mountjoy Prison are to be welcomed.

6.10 Painting and maintenance

This should be ongoing and not dependent on the expected arrival of the Minister, the Inspector of Prisons or any other Regulatory Authority.

Chapter 7

Work programme

- 7.1 This work programme is to cover a period of 16 months from the date of the submission of this report to the 31st December 2011. The work programme is not exhaustive but is intended to inform the Minister, the Department, the Irish Prison Service, prison management, prison officers, prisoners and the general public as to what they might expect from my office over the period mentioned above.
- 7.2 I will submit a report to the Minister prior to the 31st December 2010 on the procedures to be followed when a death occurs in prison. This will deal, *inter alia*, with the procedure to be followed subsequent to a death, the persons to be notified and suggested changes to the Prisons Act 2007 and the Irish Prison Rules 2007. The report will refer to this countries obligations as set out in Domestic Laws, International Rules and Instruments, Court Decisions, Reports from relevant Regulatory Authorities and best practice. The purpose of the Report will be to give guidance to all prisons as to the procedure to be followed following a death in custody.
- 7.3 As I stated in paragraph 1.9, I intend submitting a report on Mountjoy Prison to the Minister prior to the 31st December 2010.
- 7.4 It is my intention, subject to no unforeseen circumstances arising, to submit my Annual Report for 2010 to the Minister early in 2011. This will be a short Report as it will cover the period from 10th September 2010 to the 31st December 2010.
- 7.5 I have stated in many Reports that a serious matter of concern to me is the standard of health care offered to prisoners in our prisons. This differs from prison to prison. I have been and will continue to carry out a forensic investigation of this matter in all prisons for the purpose of submitting a comprehensive report to the Minister within the timeframe of this work programme. I will examine work practices, records etc. Where appropriate I will seek expert medical assistance on issues that I am not qualified to deal with. I will expect

cooperation from all persons involved in the provision of health care in our prisons both those working for the Irish Prison Service and those contracted to provide services. I will expect to be given access to all documents and files whether held in hard copy or in electronic form that I consider relevant to my investigation. I will not give an opinion as to the 'value for money' of the service being provided as I do not have the relevant resources or expertise.

- 7.6 In Chapter 8 of my *Annual Report 2008*, I set out the compelling reasons for the sentence management of all prisoners serving sentences in excess of a certain minimum period. Sentence management is a complex issue. It is my intention to submit a comprehensive report to the Minister, hopefully, within the timeframe of this work programme.
- 7.7 I intend continuing my inspections of prisons. My visits will be both announced and unannounced and will take place not only during the working day but at night and at weekends. I will be paying particular attention to the areas and issues highlighted in this and earlier reports.
- 7.8 If and where relevant I will submit a report/reports to the Minister on individual prisons or other important issues.
- 7.9 I will report on progress/lack of progress in addressing the various important 'best practice' issues raised by me to date.

Appendix 1

Appointment of Judge Michael Reilly to investigate an issue of concern

Following the recent arrest and charge of a person in connection with a serious offence, it has transpired that the person charged was at liberty when in fact he had been sentenced to a significant term of imprisonment in respect of a prior and separate conviction which he is now serving.

Having consulted with the Attorney General, the Minister for Justice, Equality and Law Reform, Mr. Dermot Ahern T.D., is advised that he cannot publicly disclose any details of the offences or the identity of the individual involved as this would risk prejudicing his forthcoming trial on the charge which is of overriding importance.

In view of his grave concern and to prevent any possible recurrence, the Minister has requested Judge Michael Reilly, the Inspector of Prisons, to undertake an investigation of all the circumstances in this case across all the agencies who dealt with the matter to establish why the person concerned was at liberty and not in prison and to make any necessary recommendations.

Judge Reilly's report will be published (subject to any legal constraints) as soon as the trial has been completed but any recommendations made will be brought into effect as soon as possible.

13 January 2010