

Criminal Justice Policy - Review of Policy Options for Prison and Penal Reform 2022-2024

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Appendix 1: Additional detail on what is recommended to deliver on Actions 7 through 21

Action 7 – To review the Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016 to broaden the range of convictions that are considered spent

The Oireachtas Committee on Justice and Equality, called for a review of spent convictions legislation in the 2018 Report on Penal Reform and Sentencing. In addition, the Programme for Government commits to a review of the Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016 with a view to broadening the range of convictions that are considered spent.

The previous Government worked with Senator Lynne Ruane to try and achieve consensus on a Private Members Bill Senator Ruane brought forward which was intended to increase the scope and applicability of the 2016 Act.

Work to deliver on the Justice Plan 2021 commitment to “publish proposals to extend the range of the spent convictions legislation to widen the cohort who can benefit from greater employment opportunities” is advancing. A Policy Options Paper has been prepared setting out in detail recommendations to broaden the number of convictions that may be considered spent. The paper’s recommendations, based on the research and consultation undertaken are currently under consideration.

In light of the above the review group recommends that to deliver Action 7 this work should continue.

Action 8 – Work with all criminal justice agencies to build capacity to deliver restorative justice safely and effectively

It is accepted that restorative justice is compatible with traditional criminal justice systems and it has been shown to help victims in their recovery.

The review notes that the Programme for Government includes a commitment to work with all criminal justice agencies to build capacity to deliver restorative justice safely and effectively. The Probation Service has recognised restorative justice as one method within a suite of measures to provide an effective response to crime since the 1990s and there have been a number of key developments in this regard.

There are 5 actions in Justice Plan 2021 to deliver on the commitment with the first 4 having already been delivered (map the state of play of restorative justice; activate a website; develop options for an appropriate mechanism to create awareness and availability of restorative justice; consult with stakeholders on options). Next steps focus on action 162 which is to publish policy proposals. An initial options paper was approved by the Criminal Justice Strategic Committee (CJSC). Stakeholder consultation which took place in Q3 2021 provided a clear option to take forward. The recommendations from the consultation has informed the policy paper due to be published in Q3 2022, with sign-off by a newly convened subgroup of the CJSC. It is then intended to develop an implementation plan for the agreed policy approach, in line with Action 98 of the Justice Plan 2022.

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Action 9 – To review remission and temporary release to improve rehabilitation and reduce reoffending and overcrowding in prisons

The review notes that remission, a form of early release, applies to all prisoners except life sentence prisoners and prisoners serving sentences for contempt of court or as a debtor. A prisoner released, having served a sentence to which remission was applied, is released without condition.

Temporary Release is granted under certain conditions before a person has served a full sentence and the use of unstructured temporary release tends to increase in line with increasing prison numbers.

In 2014, the Penal Policy Review Group noted that Ireland, by comparison to other jurisdictions, has lower levels of automatic and enhanced remission. It recommended greater use of structured temporary release and a more structured approach to release with the aim of improving reintegration and rehabilitation of offenders.

In 2013, the Joint Oireachtas Committee on Justice and Equality recommended that standard remission be increased but did not make any further comment on this in its 2018 report.

Based on the above (and bearing in mind that no prisoner who poses an undue risk will be granted temporary release, that no one who is remanded for trial can be released, and that those who breach conditions can be rearrested and returned to prison) the group recommends that a policy review of remission and structured temporary release commence. In making the recommendation the group notes that the recent appointment of individual members of an appeals body to consider appeals against the removal of remission as a result of disciplinary (P19) procedures is a relevant factor to be considered in terms of the review of remission and how it interacts with incentivised regimes and the P19 system.

Action 10 – To review the impact of the Fines (Payment and Recovery) Act 2014 in particular with regard to the impact of short custodial sentences

The review notes that the primary purposes of the Fines (Payment and Recovery) Act 2014 was to provide for alternatives to imprisonment for the non-payment of fines. While the Act did eliminate the high numbers imprisoned for unpaid fines, the data generated indicates that the level of unpaid fines remains high with low levels of alternative sanctions being imposed on defaulters.

A review group has been established to look at maximising the effectiveness of the alternative sanctions and at ensuring that the integrity of the criminal justice process at this level is maintained and enhanced. In advance of the completion of that review, this review group recommends the implementation of the Act to the fullest extent possible. It also recommends that the Fines Act review takes into account the increased focus on alternatives to imprisonment which this review group is outlining so they can be a key part of any solutions proposed.

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Action 11 – To improve inter-agency working through the development and implementation of a Criminal Justice Sectoral Strategy and Community Safety Policy

The *Criminal Justice Sectoral Strategy* sets the direction of travel for the Criminal Justice System in Ireland for the future.

The scheme of the *Policing and Community Safety Bill* contains a provision placing an obligation on Departments and public service bodies to take account of the importance of supporting the delivery of community safety, including through prevention of crime and of harm, in particular to those who are vulnerable. It obliges bodies to co-operate as appropriate with An Garda Síochána and each other in relation to community safety and includes co-operation with the Department, Prison and Probation Service in respect of the management of offenders, community safety and the prevention of crime. Other actions included can also drive interagency cooperation at national and local level.

Inter-agency and inter-Departmental working was a key theme emerging from the Penal Policy Reform Group Report in 2014. Health and social issues, such as problems of drug addiction, mental health, poor education and homelessness increase the risk of people being drawn into the criminal justice system and present as problematic for those leaving custody. They must be addressed at an interagency level.

The Interagency Group on Cooperation for a Fairer and Safer Ireland is focussed on two major themes; that crime is a question of social as well as penal policy, and that all Governments and agencies need to consider the question of crime prevention when formulating policy, with a resulting need to promote inter-agency cooperation. It analysed the nature of the problems faced by offenders when released from custody and how better cooperation could assist in their reintegration. It has focused on the deficit of suitable accommodation, access to public services cards, medical cards, healthcare, access and the need for more research.

The review notes that the Prison Service aim that all releases from prisons are planned to ensure the effective transition of the offender to the community. The Prison and Probation Service has made a commitment as part of Rebuilding Ireland to work in partnership with other state agents to ensure that every reasonable effort is made to arrange for accommodation, welfare and health supports for prisoners prior to their release. There is a Local Authority Protocol for single point of contact implemented by the Prison Service to facilitate improved resettlement with several protocols in place with the Probation Service relating to post release.

The Prison Service, in conjunction with the Primary Care Reimbursement Scheme, HSE, have progressed access to the medical card scheme for all prisons. Many people under the supervision of the Probation Service have complex needs and require a broad range of support and assistance in the community from a range of services.

Based on the above and recognising that many of those interacting with the criminal justice system are already engaged with different state services (both Justice and non-Justice) and are, in effect, shared clients, the review group recommends that to deliver on action 10 that consideration is given to a more structured or formalised approach to promoting national

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and local co-operation in the following areas, **Education and Employment, Addiction and Homelessness.**

The review group also calls for a repeat of the 2005 study on the Number, Profile and Progression Routes of Homeless Persons before the Court and in Custody as part of new accommodation and support planning for females in conflict with the law and to identify current issues, challenges and opportunities. In terms of accommodation on leaving prison, the review group recommends that the examples of international best practice be considered further to identify options for enhanced step down facilities and the continuation of appropriate supports post-release. Further, the policy approach should be to maximise accommodation options through work with the Department of Housing, the County and City Management Association and Approved Housing Bodies with the consideration of joint commissioning of services to become a more focused strategy.

Action 12 – Take a comprehensive approach to the development of the Irish Prison Service’s next Capital Strategy, ensuring the availability of modern detention facilities with adequate capacity

Three main capital projects were undertaken in 2019, in addition to a range of smaller projects, including the redevelopment of Limerick Prison, Castlerea Prison Equine Unit and Refurbishment of the Training Unit. The refurbishment of the Military Compound project was also completed. The redevelopment of Limerick includes the construction of a facility for female prisoners. The design is based on the principle of rehabilitation and normalisation with a mix of units provided to accommodate 50 prisoners and provide enhanced facilities to support rehabilitation and engagement with services. This is expected to be completed by the end of Summer 2022 and the new accommodation will become operational by the end of Q4 of 2022. A range of smaller projects were also undertaken in the years 2020/21.

Building on the work already continuing under the Prison Service’s current capital strategy it is acknowledged that the development of the capital strategy for beyond 2022 will require a comprehensive approach to ensure appropriate facilities are in place to meet future demands. There was a decrease in the number of people in custody from 2019 to 2020¹ which may be an outlier when the steadily increasing numbers in the preceding five year period is taken into consideration.

Cloverhill Prison is the one facility in the State dedicated to remand prisoners and it has a bed capacity of 431. In 2020, the daily average number of prisoners on trial/remand exceeded the bed capacity for trial/remand prisoners by 307 (71%). Therefore, in order to accommodate the growing number of remand prisoners, as well as keeping them, where possible, close to their trial venue and/or their families, they must be “spread” across the estate.

There is a limit to what the current estate can accommodate. If committal numbers continue to increase and effective measures to provide stronger alternatives to imprisonment are not put in place, further capital investment may need to be considered. This would impact on

¹ The 2020 data reflects the effect of Covid-19 restrictions.

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annual operational costs. The development of the Capital Strategy post 2022 will be informed by the policy considerations to address the above challenges.

The group recommends an analysis of prosecution data for 2020 to establish the scale of cases that, ordinarily, would have been dealt with by the Courts and assessment of the projected impact on prison numbers in 2022 and beyond. An analysis of projected population trends and demographics should also be undertaken to establish the possible impact on the use of custody.

Action 13 – To review the Prison Rules 2007 in light of recent changes to the European Prison Rules

It is noted that the Prison Service operates within the parameters set out in Irish, European and international human rights law and operates with a clear statutory framework². The Prison Service also takes due account of various international human rights treaties, declarations, standards and recommendations, including the:

- Universal Declaration of Human Rights;
- European Convention on Human Rights;
- UN Standard Minimum Rules for the Treatment of Prisoners;
- European Prison Rules 2006;
- UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment;
- UN Covenant on Civil and Political Rights; and
- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

The Prison Service also takes due account of the reports and recommendations of the Inspector of Prisons (IoP).

The Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) inspects places of detention in the member countries of the Council of Europe (CoE). It has published standards comprised in the main of substantive sections of the CPT's General Reports. The CoE has adopted non-binding instruments, or recommendations, which possess great persuasive authority as they were approved by the Committee of Ministers and are accepted as best practice in the area. The main recommendation (Recommendation R (2006) 2 on the European Prison Rules) regarding the treatment of prisoners and conditions in prisons is the "Revised European Prison Rules". These Rules³ inform policy developments in the IPS and are of relevance to the remit of the statutory office of the IoP.

² Prisons Acts, including the Prisons Act, 2007; relevant provisions in other statutes such as the Prisons (Visiting Committees) Act, 1925, the Criminal Justice Act, 1960, the Criminal Justice (Miscellaneous Provisions) Act, 1997, the Criminal Justice Act, 2007, other criminal justice acts and the Transfer of Sentenced Persons Acts, 1995 and 1997; Prison Rules, 2007, as amended; Irish Human Rights & Equality Act 2014 (section 42) and European Convention on Human Rights Act 2003. For persons held on immigration related matters, the main legislative provisions are the Immigration Acts 1999, 2003 and 2004, their associated regulations, the Illegal Immigrants Trafficking Act 2000 and the International Protection Act 2015.

³ Key recommendations are:-

Recommendation (82) 17 - concerning the custody and treatment of dangerous prisoners

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In 2017, the Prison Rules 2007 were amended to take into account international best practice with particular reference to the UN Standard Minimum Rules for the Treatment of Prisoners (The Nelson Mandela Rules) in respect of the issue of solitary confinement. The Committee of Ministers adopted the European Prison Rules on 1 July 2020. The purpose is to create a more comprehensive and logical structure and revise some of the rules, primarily the ones on solitary confinement, women, complaints, etc. Some changes can be expected in order to align them to the most recent judgments of the ECHR and the “The Nelson Mandela Rules”. The Irish Prison Rules will need to be updated and amended and this work is ongoing. A first draft of the revised rules was submitted to the Director General in 2021, with observations that were considered by the Irish Prison Service Directorates. There are operational issues being factored into this draft and these are being finalised. A second draft was completed for further consideration in June 2022. The Director General will review this draft and meet with the various Directorates to discuss the proposed amendments. A public consultation was also conducted in August 2021. The outcome of the public consultation phase was considered and the proposed amendments were factored into the second draft. Following a review of the second draft the Irish Prison Service intends to submit a Report to the Department of Justice in Q3 2022.

Action 14 – To review the existing functions, powers, appointment procedures and reporting processes for prison visiting committees

The Programme for Government commits to review the existing functions, powers, appointment procedures and reporting processes for Prison Visiting Committees (PVCs). The main function of PVCs is to visit, at frequent intervals, the prison(s) to which they are appointed and to hear any complaints that may be made to them by any prisoner. PVCs have free access, either collectively or individually, to every part of the prison. They focus on issues such as quality of accommodation, catering, medical and recreation facilities. The Minister of Justice appoints the members of the PVCs under the provisions of the Prison (Visiting Committees) Act, 1925. While the Rules relating to the specific functions and operation of PVCs are set out in Regulations, PVCs have no statutory powers that allows them to take action on behalf of prisoners other than to bring matters to the attention of the Governor and/or Minister. A Cross Functional Team was established in September 2020 to look at how best to take forward the commitment. An initial review indicates that the system be maintained but reformed. Further consultation will be undertaken with stakeholders including the IoP, PVC members, the Irish Penal Reform Trust and academics. A

Recommendation (89) 12 - education in prison

Recommendation (97) 12 - staff concerned with the implementation of sanctions and measures

Recommendation (98) 7 - concerning the ethical and organisational aspects of healthcare in prisons

Recommendation (99) 22 - concerning prison overcrowding and prison population inflation

Recommendation (1469) 2000 - concerning mothers and babies in prison

Recommendation (2003) 22 - concerning conditional release (parole)

Recommendation (2003) 23 - management by prison administration of life sentence and other long-term prisoners

Recommendation (2004) 10 - concerning the protection of the human rights and dignity of persons with mental disorder

Recommendation (2006)- the (revised) European Prison Rules

Recommendation (2008) - European Rules for juvenile offenders subject to sanctions or measures

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key focus of the review is the establishment of a National Preventative Mechanism for the Justice Sector and a role for PVCs.

Action 15 – Post- implementation of the Parole Act 2019, examine the introduction of the Regulations necessary to determine eligibility for parole, including those serving long-term fixed sentences, under the new Statutory Board

The Minister for Justice established the new Parole Board on a statutory footing, to take account of the concerns of victims and survivors in August 2021.

While acknowledging that the Parole Board has only been in place since mid-2021, the review group recommends that the policy base for making Regulations under Section 24 of the new Parole Act which provides that, persons serving a fixed term sentence of imprisonment equivalent to or longer than such terms as are prescribed in Regulations made by the Minister under this Section shall be eligible for parole after serving such portion of the sentences as may be prescribed by the Minister, be examined as soon as possible.

Action 16 – Ratify the Optional Protocol to the UN Convention Against Torture

Ireland ratified the UN Convention against Torture in 2002. The Optional Protocol to the Convention (OPCAT) introduces a combined system of national and international inspection of places of detention with a view to preventing ill-treatment. Ireland signed the OPCAT in October 2007 and it applies to any place where people are deprived of their liberty⁴.

To be able to ratify the Optional Protocol the main obligation to fulfil is the setting up of an independent National Protection Mechanism (NPM) to undertake regular visits to places of detention and formulate recommendations to the authorities. The nature of the NPM to be established is not prescribed but it must be independent.

The Minister for Justice brought the General Scheme of the Inspection of Places of Detention Bill to Government on 21 June 2022 which was approved. The Draft General Scheme of the Bill has now been published. The Minister intends that the final Bill will be published by the end of 2022 so that it may proceed to enactment without undue delay, and allow for ratification of OPCAT in 2023.

It envisages a single NPM for the Justice Sector, to include Garda stations, courts, prisons, places of transport and transit between Garda stations, prisons and court. A Chief Inspector of Places of Detention is to be designated as the single NPM for the Justice Sector which will have a dual role, that of Inspector of Prisons and also as NPM for the Justice Sector under OPCAT. Additional financial and human resources will be required to ensure the new Inspectorate can perform its statutory functions effectively. The Bill currently provides that where the relevant Minister (e.g. Minister for Health, Minister for Defence etc.) considers it appropriate, they may designate a NPM from among existing inspection bodies for places of detention in their areas of responsibility.

In light of the above the review group has no further recommendations to make.

⁴Places of detention includes: the CMH and other Psychiatric units; Juvenile detention centres; Immigration detention centres and Garda Stations

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Action 17 – Review the policy of holding immigration detainees in prisons

The Committee for the Prevention of Torture (CPT) has recommended a review the policy of immigration detention and has called for a specifically designed centre for immigration detainees. Action 135 in the Justice Plan for 2022 contains a commitment to review the policy of holding immigration detainees in prisons. The lead on this is the Department of Justice's Immigration Service Delivery Function and a working group was established in Q2 2021 to take this work forward.

The review group recognises that there is unlikely to be any quick fix solutions to some of the issues highlighted by the CPT. The transfer of resources to the Ukraine response in Q1 2022 impacted work on the review. Consequently, the review finalisation and development of an action plan are now expected to be completed in Q3 2022.

Action 18 – Implement a new Youth Justice Strategy emphasising prevention, early intervention and inter-agency collaboration

A new Youth Justice Strategy 2021-2027 was published last year. Governance arrangements for implementation of the Strategy have been established under the oversight of a cross-agency Governance and Strategy Group, chaired by the Department of Justice.

The Strategy provides for dedicated arrangements to support evidence-based development of programmes and monitoring the effectiveness of implementation on an ongoing basis.

There is a strong focus on those who are harder-to-reach and more vulnerable to early involvement in offending behaviour, and development of entrenched patterns of offending. Special initiatives including the Bail Supervision Scheme, Greentown Pilot Projects and the Y-JARC approach and Probation Service supervision will be prioritised with a view to providing a range of interventions and approaches which can be tailored to local circumstances.

Based on the above the review group has no further recommendations to make.

Action 19 – Introduce a diversion approach for young adults of 18 to 24 years old, for certain offences, building on the experience of the Youth Diversion Programme, the adult caution and the pilot Health Diversion Programme in relation to possession of drugs for personal use

The Youth Justice Strategy 2021-2027 commits to developing a diversion approach for the 18-24 years age group, in line with a commitment in the Programme for Government, and as recommended by the Strategic Review of Penal Policy. This initiative is being led by the Department and is being progressed within the timeline of the Youth Justice Strategy. Work will be supported by appropriate expert advice, as required, to ensure a robust evidence-based approach to the design of a model for young adult diversion.

A discussion paper is being prepared to aid further consideration of the specifics – with a view to developing appropriate approaches for a young adult cohort in the community. A key issue will be to avoid any unintended consequences so a new approach will need to be developed cautiously, including with regard to how such an approach might be piloted in practice.

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The community based supports that may need to be provided for some, but perhaps not all cases, should reflect the needs of this age group, rather than simply applying the youth service model provided for 12 - 17 years by Youth Diversion Projects (YDPs) funded by the Department of Justice. There is scope for YDPs, or at least the community organisations that run them, to be centrally involved in working with this older age group. There is also scope for other community based programmes to have a role and this is being explored further. The approach for young adult diversion will also have to align with two other diversion approaches which are being developed under the leadership of the Department of Health. These relate to diversion for simple possession of drugs and diversion based on mental health issues. There is substantial commonality across all three initiatives, so the development of measures for the young adult cohort will need to be closely coordinated with the Department of Health led diversion approaches. The timeline for completion of this action is within the lifetime of the Youth Strategy 2021-2027 and it will be aligned with the overall development of diversion, crime prevention and community safety measures.

Based on the above the review group has no further recommendations to make.

Action 20 – Create the offence of grooming children to commit crimes

In January 2021 the Minister for Justice and the Minister of State for Law Reform announced the publication of the General Scheme of the Criminal Justice (Exploitation of Children in the Commission of Offences) Bill, which will outlaw the grooming of children into crime. It will create specific offences where an adult compels, coerces, induces or invites a child to engage in criminal activity.

While current law already provides that an adult who causes or uses a child to commit a crime can generally be found guilty as the principal offender, it does not recognise the harm done to a child by drawing them into a world of criminality. The Bill is designed to address that harm directly. Those found guilty of the new offences face imprisonment of 12 months on summary conviction and up to five years on indictment. The child concerned does not have to be successful in carrying out the offence for the law to apply.

It is also the intention that the offence of grooming a child into criminal activity will be prosecutable as a completely separate and additional offence to any crime committed by the adult using the child as their innocent agent. The new legislation will complement the ongoing work following the publication of the “Greentown Report” in December 2016, which examined the influence of criminal networks on children. The report, produced at the School of Law in the University of Limerick, outlines how the influence of criminal networks increases the level of offending by a small number of children and entraps them in offending situations.

As part of the wider “Greentown” project targeted interventions are to be piloted to protect children in Ireland from becoming involved in criminal networks. The project has also attempted to identify the scale of the problem and has designed a bespoke form of intervention, which is being trialled on a pilot basis in two locations. This work has been assisted by an international team of experts, together with Irish scientific, policy and practice expertise in child protection and welfare, drugs and community development, strongly supported by key State agencies, particularly An Garda Síochána.

In light of the above the review group has no further recommendations to make.

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Action 21 – Extend the pilot schemes of the Youth Joint Agency Response to Crime to more areas to target prolific repeat and vulnerable offenders

The Youth – Joint Agency Response to Crime Initiative (Y-JARC) is a multi-agency approach to manage and address the prolific offending and criminal behaviour of young people aged 16 to 21. Two pilot projects were launched in 2017 – in Cork and Blanchardstown. They provide an operational approach for co-ordinated and enhanced levels of co-operation between An Garda Síochána, Probation Service, the Prison Service, Oberstown Children Detention Campus, and Tusla.

The Action Plan for the Joint Management of Offenders (2019-2021) contains a commitment to conduct a formal evaluation of the two pilot Y-JARC initiatives and to "*Use the results of the evaluations to refine the JARC/YJARC programmes as required and to make evidence-based decisions on their future expansion to other locations*" by end 2021. The evaluation was carried out in 2021/2022 and the evaluation report will be finalised in Q3 2022. The report will be presented to the Youth Justice Governance and Strategy Group which oversees implementation of the Youth Justice Strategy. Once the evaluation is finalised, it will be used to inform decisions around the future roll-out of Y-JARC to additional locations. Y-JARC will be one of a number of approaches developed under the Youth Justice Strategy to provide options for engaging effectively with prolific youth offenders, in the context of local area needs and circumstances.

In light of the above the review group has no further recommendation to make.