

Report of an Investigation
on the use of 'Special Cells'
in Irish Prisons

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Judge Michael Reilly
Inspector of Prisons

26th August 2010

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Chapter 1

Introduction

- 1.1 Since taking up my position as Inspector of Prisons on 2 January 2008, I have been concerned as to the use being made of 'special cells' in Irish prisons.
- 1.2 There are three types of cells in Irish prisons:- accommodation cells, holding cells and 'special cells'. I use the generic word 'special cells'. 'Special cells' have always been in existence in Irish prisons. Traditionally, they were referred to in a myriad of ways including, *inter alia*, isolation cells, time-out cells, cladded cells, padded cells, strip cells and assessment cells. It seems that the name assigned to the cell depended on the particular prison.
- 1.3 In 2005 it was recognised that in order for these cells to be part of a modern and humane prison system and to adhere to the highest international standards they required substantial renovation and reclassification. The Irish Prison Service undertook a thorough review of international best practice relating to 'special cells' and their use.
- 1.4 It was the intention of the Irish Prison Service that the types and use of 'special cells' would be standardised across the prison estate. It was decided that two types of 'special cells' would be provided. These were to be safety observation cells and close supervision cells.
- 1.5 Safety observation cells were designed to accommodate prisoners who required frequent observation for medical reasons or because they were a danger to themselves. Such prisoners would in the past have been accommodated in 'padded cells' as they were then described.
- 1.6 Close supervision cells were designed to accommodate prisoners who were a danger to others in the prison or who were disruptive and in the opinion of management needed to

be separated from other prisoners in order to maintain a safe and secure custodial environment.

- 1.7 I stated at paragraph 1.1 that I was concerned as to the use being made of 'special cells'. It became clear to me that safety observation cells were not being used solely to accommodate prisoners who required frequent observation for medical reasons or because they were a danger to themselves. They were also being used for accommodation and management purposes.
- 1.8 In Chapter 2, I set out the characteristics that should apply to and be found in all safety observation cells.
- 1.9 In Chapter 3, I set out the characteristics that should apply to and be found in all close supervision cells.
- 1.10 In Chapter 4, I analyse the obligations this country owes to prisoners who must be accommodated in 'special cells'. Many of our obligations to prisoners in safety observation and close supervision cells overlap. Additional obligations are owed to prisoners accommodated in safety observation cells. Our domestic obligations are to be found in our Constitution, the Irish Prison Rules, the Irish Prison Service Health Care Standards and the *Standards for the Inspection of Prisons in Ireland* that I published. Our international obligations are to be found in 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 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).
- 1.11 I carried out a comprehensive analysis of the use made of safety observation cells in each of our prisons covering a 15 month period. In Chapter 5, I give the results of such analysis. This was a time-consuming exercise. I have not carried out a comprehensive analysis of the use made of close supervision cells. My hope is that it will not be

necessary to carry out such an analysis as this report should give guidance to all prisons as to the use to be made of such cells and the obligations owed to prisoners accommodated therein. If, after the publication of this report, I detect any misuse of such close supervision cells I will immediately embark on a comprehensive analysis of their use. I will furnish a report of the results of such analysis to the Minister.

- 1.12 In Chapter 6, I give guidance to the Irish Prison Service and prison management on 'housekeeping matters' which, if followed, will ensure that proper use is being made of such cells and that appropriate records are kept which would aid inspections by any regulatory authority.
- 1.13 I stated in paragraphs 1.3 and 1.4 that the Irish Prison Service made a decision that 'special cells' would be divided into two categories namely:- safety observation and close supervision cells. The Irish Prison Rules 2007 do not reflect this reclassification. In Chapter 7, I give some guidance as to the form such amendments should take.
- 1.14 During the course of this investigation I became aware that in certain instances prisoners on punishment were being accommodated in random cells meant for accommodation purposes but which were stripped of such things as television and other amenities. I could not find any record relating to the detention of such prisoners in such stripped out cells. I refer to this in greater detail in paragraph 6.11.
- 1.15 During the course of this investigation I became aware of prisoners spending excessive periods of time in 'holding cells'. I refer to this in more detail in paragraph 6.12.

Chapter 2

Characteristics of safety observation cells

- 2.1 When the decision was made in 2005 to standardise safety observation cells it was not possible in the existing prisons to have all such cells comply in all respects with the exact specifications - the main area of difference was cell size. All new safety observation cells now comply with all defined criteria.
- 2.2 The walls and floors of safety observation cells are covered in a non-porous material known as Gold Medal Safety Padding. This material was specifically designed for use in hospitals and prisons to provide safe accommodation for those classed as at risk of self harm including suicide. This material is fungus and moisture resistant and has a class zero fire rating. The bed plinth is also covered in Gold Medal material. The material is easily cleaned. Although Gold Medal is a highly resilient material it was designed to be used in areas where prisoners had been subjected to a body search and had been given special clothing and therefore would not have access to any type of implement that could damage the material.
- 2.3 Safety observation cells should all have the following characteristics:- in-cell sanitation, a Limerick style window that allows light and air into the cell, an integral blind for the window, enclosed television, fire detection and sprinkler system, bed on plinth, mattress, floor drainage, lighting, call bell and a safety glass door. The glass in the door should be shatter proof. A number of cells in old prisons adapted as safety observation cells do not have in-cell sanitation because of their original design. In these cases sanitation facilities are located in an ante-room and prisoners are unlocked as necessary.
- 2.4 In new prisons the safety observation cells are heated through a system known as the building management system (BMS). This system is electronically controlled and monitors the temperature in the cell at regular intervals. I am satisfied that this is an efficient system. In older prisons the heating is controlled manually.

2.5 I was informed that the initial cost of providing safety observation cells in 2005 was approximately €130,000 per cell. The cost of repairing such cells is considerable. I have been informed that the cost of repairing one cell in Mountjoy Prison which was recently damaged is approximately €20,000.

Chapter 3

Characteristics of close supervision cells

- 3.1. When the decision was made in 2005 to standardise close supervision cells it was not possible in the existing prisons to have all such cells comply in all respects with the exact specifications - the main area of difference was cell size. All new close supervision cells now comply with all defined criteria.
- 3.2 The close supervision cells have tiled floors. The walls are covered in a material known as 'Velstone'. This is a non-porous, solid and durable material which has a class zero fire rating. The 'Velstone' material is highly resilient and is not easily damaged even if prisoners are in possession of sharp implements. These cells can be easily cleaned.
- 3.3 Close supervision cells should all have the following characteristics:- in-cell sanitation, a Limerick style window that allows light and air into the cell, an integral blind for the window, enclosed television, fire detection and sprinkler system, bed on plinth, mattress, floor drainage, lighting, call bell, observation door, a facility for electric sockets and a built in table and bench. A number of cells in old prisons adapted as close supervision cells do not have in-cell sanitation because of their original design. In these cases sanitation facilities are located in an ante-room and prisoners are unlocked as necessary.
- 3.4 In newer prisons the close supervision cells are heated through a system known as the building management system (BMS). This system is electronically controlled and monitors the temperature in the cell at regular intervals. I am satisfied that this is an efficient system. In older prisons the heating is controlled manually.

Chapter 4

Obligations to prisoners in 'special cells' (safety observation and close supervision cells)

- 4.1 I have stated at paragraph 1.10 that obligations to prisoners in safety observation and close supervision cells overlap. In this chapter I do not propose, except in a number of instances, differentiating between such obligations as this would entail duplicating narrative.
- 4.2 The Irish Constitution, the European Convention on Human Rights, the International Covenant on Civil and Political Rights, the European Court of Human Rights, the European Prison Rules, the Irish Prison Rules, the Irish Prison Service Health Care Standards and Reports of the CPT give guidance on the care that should be afforded to prisoners in 'special cells'.
- 4.3 In a prison setting it is acknowledged that the potential for abuse occurring or a breach of prisoners' rights is greatest when prisoners are placed in *de facto* solitary confinement even if it is only for a very short period of time. An even higher standard of care is owed to prisoners in safety observation cells by reason of their inherent vulnerability.
- 4.4 It is firmly established that the deprivation of liberty is a punishment in itself. Prisoners still retain all of their human rights which are not lawfully taken from them. The underpinning principle of our prison system ought to be that all persons deprived of their liberty should be treated with humanity and with respect for the inherent dignity of the human person as contained in **Article 10 of the International Covenant on Civil and Political Rights**. This applies with equal or greater force to prisoners accommodated in safety observation cells.
- 4.5 As regards placement in a safety observation cell for medical purposes Articles 2 and 3 of the European Convention on Human Rights are of particular importance and the Irish Prison Service should be cognisant of the obligations that arise from them.

4.6 **Article 2 of the European Convention on Human Rights** confers a positive obligation on the state authorities to take steps to protect the lives of individuals who are actually known or ought to be known to be at risk¹. All prisoners appropriately placed in safety observation cells are known to be at risk.

4.7 Reports from the CPT regarding the placement of prisoners in a 'special' type of cell for medical reasons are helpful.

- The CPT has accepted that 'special' type cells are required in prison but only so long as they are not used arbitrarily and there are rules which govern their use².
- The CPT has stated that the placement of a person in a special cell for medical reasons must be done only on the authority of a doctor, or a nurse reporting to a doctor, not a prison staff member. The CPT is further of the view that only a doctor can authorise the continued detention of a prisoner in such a cell. It, therefore, follows that the removal of a prisoner who is accommodated in a 'special cell' for medical purposes can only be done on the authorisation of a doctor.
- The CPT has noted that prisoners who have mental health problems are at times accommodated in 'special cells' as a substitute for placement in a proper psychiatric hospital. The danger of accommodating prisoners who are mentally ill in a 'special cell' is that it can exacerbate the symptoms or illness.

4.8 **Article 3 of the European Convention on Human Rights** prohibits prisoners from being subjected to torture or inhuman or degrading treatment or punishment. The European Court of Human Rights has addressed the issue of the treatment and conditions of prisoners in solitary confinement in the context of applications under Article 3 of the

¹ Osman v UK (Application No. 87/1997/871/1083) Judgement of the European Court of Human Rights on 28 October 1998

² CPT 2nd General Report (CPT/Inf (92) 3) at para. 56. See also Rule 53 of the European Prison Rules

Convention. Prisoners may be in solitary confinement for a number of reasons i.e. disciplinary, security, prisoner safety, health and mental health. Prisoners in safety observation and close supervision cells are in solitary confinement *albeit* for a short period of time. It is therefore necessary that the added safeguards that apply to prisoners in solitary confinement should also apply to those prisoners placed in such cells.

4.9 In a community clinical setting people with a mental illness would not be accommodated in effective solitary confinement. They would, in most cases, be cared for in a high support unit. The staff working in such units would be healthcare professionals and have specific training in mental health issues. In Irish prisons, prisoners in safety observation cells are monitored by and large by prison staff who have not received appropriate training to deal with such a coterie of prisoners.

4.10 The following cases from the **European Court of Human Rights** are of relevance:-

Iorgov -v- Bulgaria³ at paragraph 86 the Court, when referring to solitary confinement, stated:-

"..... the stringent custodial regime to which the applicant was subjected after 1995 and the material conditions in which he was detained must have caused suffering exceeding the unavoidable level inherent in detention".

Rohde -v- Denmark⁴ at paragraph 99 the Court reviewed earlier authorities which dealt with the monitoring of a prisoner's mental health as follows:-

"The court recalls that the authorities are under an obligation to protect the health of persons deprived of liberty and the lack of appropriate medical care may amount to treatment contrary to Article 3..... in the case of mentally ill persons, the assessment of whether the treatment or punishment concerned is

³ Application No. 40653/98, Judgement of 7 July 2004

⁴ Application No. 69332/01, Judgement of 21 July 2005

incompatible with the standards of Article 3 has, in particular, to take into consideration their vulnerability and their inability, in some cases, to complain coherently or at all about how they are being affected by any particular treatment".

4.11 **Article 40 of the Irish Constitution** is of primary importance.

4.12 **The European Prison Rules 2006** give guidance as follows:-

Rule 43.3 states:-

"The medical practitioner or a qualified nurse reporting to such a medical practitioner shall pay particular attention to the health of prisoners held under conditions of solitary confinement, shall visit such prisoners daily, and shall provide them with prompt medical assistance and treatment at the request of such prisoners or the prison staff".

Rule 47.1 states:-

"Specialised prisons or sections under medical control shall be available for the observation and treatment of prisoners suffering from mental disorder or abnormality who do not necessarily fall under the provisions of rule 12".

Rule 47.2 states:-

"The prison medical service shall provide for the psychiatric treatment of all prisoners who are in need of such treatment and pay special attention to suicide prevention".

Rule 52.1 states:-

"As soon as possible after admission, prisoners shall be assessed to determine whether they pose a safety risk to other prisoners, prison staff or other persons working in or visiting prison or whether they are likely to harm themselves".

Rule 53.1 states:-

"Special high security or safety measures shall only be applied in exceptional circumstances".

Rule 53.2 states:-

"There shall be clear procedures to be followed when such measures are to be applied to any prisoner".

4.13 The **Irish Prison Rules 2007** give further guidance. I point out in Chapter 7 changes and additions to these Rules that I consider necessary to differentiate between safety observation and close supervision cells which would reflect the *de facto* position in Irish Prisons and the obligations that this country owes to its prisoners. The following rules either in their present form or as amended, as I propose, are of relevance:-

Rule 18(3)

I suggest at paragraph 7.5 that this Rule should be amended to reflect the difference between safety observation and close supervision cells but in all other respects the tenor of this Rule should remain the same.

Rule 18(4) states:-

"Each cell or room used to accommodate prisoners shall be fitted with a mechanism by which a prisoner locked inside may attract the attention of a prison officer and each such mechanism shall be capable of being operated by such a prisoner at all times".

Rule 64

This Rule in its present form gives some guidance. If the Rule were amended, as I suggest in paragraph 7.6, specific guidance would be given as to the use to be made of safety observation cells, the prisoners to be placed in such cells, the obligations of medical personnel, the duties of the prison governor and staff and the rights of a prisoner to, *inter alia*, visits, requests etc.

I suggest a new Rule in paragraph 7.7 which would give specific guidance on the use to be made of close supervision cells, the prisoners to be placed in such cells, the obligations of medical personnel, the duties of the prison governor and staff and the rights of a prisoner to, *inter alia*, visits, requests etc.

Rule 101(3) states:-

"Subject to directions that may be issued by the Director of Prison Healthcare Services, a prison doctor shall liaise with the health service executive and other agencies, as he or she considers appropriate, to facilitate the provision of medical or other healthcare services to prisoners that are not normally provided within the prison healthcare system".

- 4.14 The changes to the Irish Prison Rules which I suggest in Chapter 7 would, if implemented, better reflect this country's obligations to prisoners.
- 4.15 The European Prison Rules do not have statutory authority but must be considered persuasive. There is divided legal opinion as to whether the Irish Prison Rules have statutory authority. While they are 'secondary legislation' I am persuaded as to their status as explained in the case of *State (Walsh and McGowan) -v- Governor of Mountjoy*⁵, by O'Higgins CJ when dealing with the Irish Prison Rules 1947 (being then in force) when he stated that "*having been made under the authority of the various Prison Acts, they have statutory effect and must be so regarded*".
- 4.16 The **Irish Prison Service Healthcare Standards** were developed by the Irish Prison Service in 2006 and revised in 2009. These standards provide healthcare workers in prisons with specific guidance of relevance to a prison environment. They are supplementary to the National Healthcare Standards and Codes which regulate the various healthcare professions.

4.17 **Standard 3.3.6** states:-

⁵ Unreported, High Court, 12th December 1975

"Prisoners considered to be suicidal will be cared for in appropriate accommodation."

4.18 **Standard 3.3.7** states:-

"Seclusion should be used strictly in accordance with the Prison Rules 2007 and best clinical practice and in the case of prisoners considered to be at risk of suicide only as a short term measure of last resort".

4.19 **Healthcare Policy A/16** - 'Special Observation Lists (Medical)' which is included as a supplement to the Irish Prison Healthcare Standards provides:-

"Special observation on medical grounds must be authorised by a doctor (the prison doctor, visiting psychiatrist or other appropriate doctor). Where, on the grounds of urgent need, another member of staff initiates special observation procedures (citing medical reasons) the doctor must be consulted as soon as possible. The doctor should review the circumstances necessitating the special observation and, if appropriate, authorise it in writing".

The Healthcare policy proceeds as follows:-

"The rationale for special observation (on medical grounds) should be entered in the prisoner's medical file and, subject to the requirements of medical confidentiality be communicated to the Governor and other relevant staff. Communication with staff should offer advice regarding the frequency and method of observation".

These policies would appear to be at variance with the Irish Prison Rules 2007 but they do reflect best practice.

4.20 I published *Standards for the Inspection of Prisons in Ireland* in July 2009. These standards are based on international best practice, United Nations standards, Council of

Europe standards, jurisprudence of the Irish Courts and the European Court of Human Rights, CPT Standards and National Standards.

- 4.21 In common with the Irish Prison Rules 2007 these standards do not differentiate between safety observation and close supervision cells but refer to 'special cells'. Standards 187 to 190 are of particular relevance to prisoners accommodated in both types of cells.
- 4.22 It is my intention to revise these standards to reflect the differentiation between safety observation and close supervision cells which I have referred to in my standards by the generic term - 'special cells'. This chapter should be read in conjunction with and should act as an explanatory memorandum of the standards set out at paragraph 4.21 above.
- 4.23 Every prison has its own 'local' rules which are generally in the form of Governors' or Chiefs' Orders and are binding on the particular prison from which they emanate. In certain prisons such rules refer to safety observation cells and close supervision cells (in some cases by colloquial names). In no circumstances should these rules attempt to override the appropriate use of such cells or to undermine the obligations of particular prisons towards the prisoners placed in such cells.
- 4.24 It is clear from this Chapter that safety observation cells should only be used for medical purposes. In order to give guidance as to what this means I have defined 'medical purposes' in paragraph 5.4(a) as follows:-

"Prisoners who require frequent observation for medical/psychiatric reasons (including those experiencing withdrawal symptoms from drugs or alcohol) and/or because they are a danger to themselves or are suspected of having ingested drugs or other contraband".

Chapter 5

Analysis of Safety Observation Cells

- 5.1 Since taking up my position as Inspector of Prisons I have been concerned as to the use being made of safety observation cells. It appeared to me that the use of such cells was not consistent across the entire prison estate. It became clear to me that they were being used for accommodation and management purposes in addition to medical purposes in many of the prisons. I decided to carry out an in-depth investigation as to the use being made of such cells covering a period January 2009 to March 2010.
- 5.2 There are no safety observation cells in Loughan House or Shelton Abbey Open Centres or in the Training Unit. I have been informed that there is not a need for such cells in these institutions.
- 5.3 I inspected the records in all prisons that had safety observation cells and ascertained the number of times such cells had been used in the period under examination. It became clear to me at an early stage of my investigation that there was no general clear policy for the use of such cells. It also became clear that comprehensive records were not kept and that only minimal information was recorded in such records.
- 5.4 In order to carry out my review I decided that 'medical purposes', 'accommodation purposes' and 'management purposes' should be defined in order that my final conclusions as to the use being made of safety observation cells would be consistent across the prison estate. The definitions that I have agreed with prison management and which I use in this report are as follows:-

(a) Medical purposes - prisoners who require frequent observation for medical/psychiatric reasons (including those experiencing withdrawal symptoms from drugs or alcohol) and/or because they are a danger to themselves or are suspected of having ingested drugs or other contraband.

(b) Accommodation purposes - *this is self-explanatory.*

(c) Management purposes - *prisoners who are a danger to others or who are causing disruption in the prison and who in the opinion of management require separation for a short period of time in order to maintain a safe and secure custodial environment in the prison.*

5.5 I met with the Governor, senior staff and medical personnel of all prisons for the purpose of ascertaining the number of times the safety observation cells were used in the relevant period and the reasons why prisoners were placed in such cells. I pointed out in each case the criteria from which I was working. I am satisfied that I was given all appropriate information and that, therefore, my findings at paragraphs 5.6(a),(b),(c),(d), 5.9 and 5.10 are accurate.

5.6 For the purpose of my exercise I have taken Arbour Hill, Castlerea, Cork, the Midlands, Mountjoy, Wheatfield Prisons and St. Patrick's Institution together. I deal with the remaining prisons separately. My findings are as follows:-

(a) The safety observation cells in these prisons were used on 1592 occasions in the relevant period. The time span of each period of use ranged from as short as a couple of hours to a number of days. The usage of such cells ranged from 510 times in Mountjoy Prison to 16 times in Arbour Hill Prison.

(b) On average they were used 72% of the time for medical purposes ranging from 100% in a number of prisons to 24.5% in Mountjoy Prison.

(c) On average they were used 18% of the time for accommodation purposes ranging from 0% in certain prisons to 51.75% in Mountjoy Prison.

- (d) On average they were used 25% of the time for management purposes ranging from nearly 0% in Cork Prison to 47% in St Patrick's Institution.
- (e) All of the designated safety observation cells in the institutions mentioned in this paragraph with the exception of three cells in Mountjoy Prison comply with the characteristics for safety observation cells as set out in Chapter 2.
- (f) The safety observation cells in Castlerea, the Midlands and Wheatfield Prisons and St. Patrick's Institution have an automatic heating system. Arbour Hill, Cork and Mountjoy Prisons have a manual heating system. I have been informed that the automatic heating system has on occasions broken down but that now procedures are in place to ensure this does not reoccur. The level of heat in the cells operated by the automatic system was within the range acceptable for such cells on all of my visits. The level of heat in the cells operated by the manual heating system varied considerably from a low of 17°C to a high of 27°C in Mountjoy Prison.
- (g) There are two cells in the B Base of Mountjoy Prison designated by management as safety observation cells which do not comply with the characteristics of safety observation cells as set out in Chapter 2. These cells are totally inadequate and not fit for purpose. I have been informed by the Building Services Division of the Irish Prison Service that they were never designed as safety observation cells. However, local management used them as though they had been designated as such cells. These cells should be taken out of commission. There is one cell in the Medical Unit designated by management as a safety observation cell which does not meet the criteria set out in Chapter 2. This cell should either be designated as a close supervision cell or adapted to comply with the criteria for safety observation cells.

- (h) All safety observation cells in the prisons mentioned above with the exception of a number in Mountjoy Prison were generally clean on all of my visits. Some cells required minor repairs.
- (i) The majority of safety observation cells in Mountjoy prison were dirty on all of my visits, one had human excrement on a wall, a number required major repair work, showers in certain areas were not working (I am satisfied that this was not an isolated malfunction), in two instances call bells were not working. Prisoners were accommodated in these cells in the conditions in which I found the cells. This paints a gloomy picture of this prison. As a result of recent visits subsequent to the period under investigation I am satisfied that many of the faults that I found are being attended to.

5.7 Cloverhill Prison is a remand prison. This means it has a transient population. Many of the prisoners suffer from medical/psychiatric problems. There is a medical unit on D Wing which caters in the main for vulnerable prisoners. The In Reach Team from the Central Mental Hospital has a constant presence on this wing. There are two safety observation cells on this wing. The standard of care afforded to prisoners in this prison is comparable to that afforded to persons in the community. The medical personnel in the prison operate the whole unit as one. I am satisfied that the safety observation cells in this unit are operated in accordance with the criteria set out in this Report. On all of my visits the cells were clean and the temperature was within an acceptable range. This is the only prison in the system which has such a unit. In common with all other prisons the records did not contain sufficient information.

5.8 The Dóchas Centre has a medical unit. This, in addition to having 2 safety observation cells, has other facilities which should assist with the management of female prisoners who, experiencing difficulties, need time on their own. The Dóchas Centre is permanently overcrowded and the medical unit is never able to cope with the numbers. Practically every day a majority of prisoners in this unit are there for purely

accommodation purposes. I examined the records for the medical unit and in particular for the safety observation cells. The records are incomplete. This might suggest ambivalence on the part of management or staff but this would give a misleading impression. It would be practically impossible to maintain records that could be termed accurate due to the overcrowding issue. The safety observation cells in this unit were clean during all of my visits and the temperature was within an acceptable range.

- 5.9 Limerick male prison has two cells which are classed as safety observation cells. These do not comply with the criteria for safety observation cells as set out in Chapter 2. They more accurately resemble close supervision cells. These cells were used 187 times in the relevant period - 54% for medical purposes, 12% for accommodation purposes and 34% for management purposes. On all of my visits the cells were clean. There is a manual heating system for the two cells described above. The temperature in the cells was within an acceptable range. At least two safety observation cells complying with the criteria set out in Chapter 2 should be constructed in Limerick male prison. The existing cells should be maintained as close supervision cells.
- 5.10 Limerick female prison has one cell classed as a safety observation cell. This does not comply with the criteria for safety observation cells as set out in Chapter 2. It is of the same construction as the cells in the male prison described at paragraph 5.9. This cell was used 28 times in the relevant period - 82% for medical purposes, 4% for accommodation purposes and 14% for management purposes. The cell was clean on all of my visits and the temperature (controlled manually) was within an acceptable range. Limerick female prison is due to expand with the opening of 14 additional cells. It is therefore necessary that at least one safety observation cell complying with the criteria set out in Chapter 2 should be constructed in Limerick female prison. The existing cell should be maintained as a close supervision cell.
- 5.11 Portlaoise Prison has seen many changes in the recent past. A new wing has opened in the period covered by my investigation. It was, therefore, not possible to get accurate statistics as to the use made of special observation cells in this prison for the relevant

period as the changes mentioned above occurred during this period. On an examination of the records maintained in the 'old prison' I am satisfied that the safety observation cells were operated in accordance with the criteria set out in this Report. This may well have been because there was at that time, and still is, surplus capacity in the prison. The safety observation cell in the new wing complies in every respect with the criteria set out in Chapter 2.

- 5.12 I have pointed out at paragraph 5.1 that prisoners were placed in safety observation cells in the relevant period for three reasons -medical purposes, accommodation purposes and management purposes. In the majority of prisons the personal clothing of prisoners is removed when they are placed in such cells. They are issued with rip proof clothing. In these cases it is the designation of the cell that dictates the clothing worn. In certain prisons prisoners placed in such cells for accommodation purposes are allowed wear their own clothes.
- 5.13. In all prisons the records maintained for safety observation cells are inadequate in that there is not sufficient information, in particular medical information, recorded. In certain cases inattention to detail by prison officers and medical personnel has resulted in a failure to record important information.

Chapter 6

Guidance and recommendations

- 6.1 In paragraph 4.24, I have given guidance as to the prisoners who should be accommodated in safety observation cells. These prisoners, because of their state of health, should wear non rip clothing of appropriate material to ensure their safety.
- 6.2 Prisoners who are a danger to others or who are causing disruption in the prison and who in the prison management's opinion require separation for a short period in order to maintain a safe and secure custodial environment in the prison should never be placed in safety observation cells.
- 6.3 Prisoners should not be placed in safety observation cells for accommodation purposes.
- 6.4 Safety observation cells should be clean at all times. They should be thoroughly cleaned after each prisoner's use. A record should be maintained for inspection.
- 6.5 All members of staff from Governor grade to Prison Officer should be aware of their obligations when dealing with prisoners in safety observation cells.
- 6.6 Doctors, who are outside contractors, should be specifically made aware of their obligations when dealing with prisoners in safety observation cells.
- 6.7 Appropriate records including medical records should be kept in each prison relating to the detention of prisoners in safety observation cells. Such records should be comprehensive and standardised across the prison estate.
- 6.8 The Irish Prison Service should:-
 - (a) Carry out an evaluation to determine if there are sufficient numbers of safety observation cells in each prison. The time period for such an

evaluation should not exceed three months. The result of such evaluation should be published.

- (b) Carry out an audit of existing safety observation cells to determine their present condition and where necessary carry out remedial works. A timeframe of four months should be sufficient for such work to be carried out.
- (c) Safety observation cells should be constructed in relevant prisons that do not have such cells at present. A timeframe of six months should be sufficient for such work to be carried out.
- (d) Ensure that the temperature control in all safety observation cells meets acceptable standards.
- (e) Formulate guidelines for the use of safety observation cells. These guidelines should be comprehensive to ensure a common standard of use of safety observation cells across the prison estate. It is not within my mandate to engage in the formulation of such guidelines. This is a matter for the Irish Prison Service. A timeframe of six months should be sufficient for the formulation of such guidelines. These guidelines should be published.
- (f) Carry out unannounced frequent inspections to ensure that the guidelines mentioned at paragraph 6.8(e) are being adhered to. A record of such inspections should be maintained for inspection by any regulatory body.

6.9 Although I have not carried out a forensic examination of close supervision cells I have given sufficient guidance in this report to prison management and the Irish Prison Service as to the use that can be made of such cells and the obligations owed to the prisoners in

such cells. Prisoners should not be placed in close supervision cells for medical, accommodation or punishment purposes.

- 6.10 From the date of the publication of this Report 'special cells' should be referred to as either 'safety observation cells' or 'close supervision cells' and not by any colloquial name. This should be made abundantly clear to all members of staff from governor to prison officer by the Irish Prison Service. Any failure in this regard should be taken seriously. Cells should be appropriately marked.
- 6.11 I stated at paragraph 1.14 that I had come across instances of prisoners on punishment being kept in 'accommodation cells' that were stripped of their normal amenities. I stated that I could not find records of such detentions. I have not had an opportunity to investigate this matter. I would, at this juncture, draw the attention of prison management in particular prisons, and, the Irish Prison Service to their obligations to such prisoners as set out in Chapter 4. Records of detentions for punishment purposes and the location of prisoners so detained should be maintained in each prison in order that the Irish Prison Service or any regulatory body could ascertain the whereabouts of such prisoners without having to conduct a trawl through the prison.
- 6.12 I stated at paragraph 1.15 that I had come across instances of prisoners being held in 'holding cells' for excessive periods. I have not had an opportunity of investigating this matter. The holding of prisoners in 'holding cells' should be for the shortest duration possible. Such cells should never be used for 'medical', 'accommodation' or 'punishment' purposes. I will expect that the highlighting of this issue in this report will be sufficient to alert local prison management and the Irish Prison Service as to their obligations in this regard.
- 6.13 All future safety observation cells and close supervision cells must comply with the criteria for such cells as set out in Chapters 2 and 3.

Chapter 7

Possible changes to the Irish Prison Rules 2007

- 7.1 I stated at paragraph 1.13 that the Irish Prison Rules 2007 do not distinguish between the different types of 'special cells' namely 'safety observation cells' and 'close supervision cells', referring only to 'special observation cells'. I consider it necessary to change the Rules in order that they reflect the *de facto* position in the Irish prisons, the criteria for such cells as set out in Chapters 2 and 3 and comply with our obligations to prisoners as set out in Chapter 4.
- 7.2 The Rules are secondary legislation and can be amended by Ministerial Order.
- 7.3 It is not within my mandate to re-draft the offending Rules as this is a matter for the Minister but in order to be helpful I make the following suggestions as to how the Rules might be amended. I also suggest a new rule which I will refer to as Rule 64(b).
- 7.4 The interpretation section of the Rules will need to be amended in order to draw attention to the important difference between safety observation and close supervision cells. I suggest the following:-

"Safety observation cell" means a cell so constructed and designed, and incorporating such exceptional safety features, furnishings and methods of observation, as to afford enhanced safety for accommodating prisoners who for medical reasons are subject to a direction given under Rule 64(a).

"Close supervision cell" means a cell so constructed and designed, and incorporating such exceptional safety features, furnishings and methods of observation, as to afford enhanced safety for accommodating prisoners who for security/management reasons and/or in order to preserve the good order of the prison are subject to a direction given under Rule 64(b).

7.5 Rule 18(3) will need to be amended to reflect the different design requirements for safety observation and close supervision cells. I suggest the following:-

The Minister shall, in relation to a prison or part of a prison, designate particular cells or rooms, to be used only for the purposes of the safe observation or close supervision of prisoners in accordance with the provisions of Rules 64(a) and 64(b). Each cell shall be designated by the Minister for use as either a safety observation cell or a close supervision cell. Such cells or rooms must comply with the design requirements approved by the Minister for each type of cell.

7.6 Rule 64 should be totally rewritten to clarify the use to be made of safety observation and close supervision cells, the prisoners to be placed in such cells and the differing obligations owed to prisoners so accommodated. The Rule should be in two parts - 64(a) dealing with safety observation cells and 64(b) dealing with close supervision cells.

A revised Rule 64(a) should provide, *inter alia*, for the following:-

- (a) Authorisation for the accommodation of a prisoner should be by a doctor (or a nurse reporting to a doctor). Only such prisoners as defined in paragraph 5.4(a) should be placed in such cells. The initial period should not exceed 24 hours.
- (b) Any extension over 24 hours should be authorised by the doctor having taken advice from other healthcare professionals, if relevant.
- (c) A prisoner should not be accommodated for longer than authorised by the doctor. The prisoner should only be removed from the cell on the authorisation of the doctor.
- (d) The doctor should record, *inter alia*, the reason for the prisoner's placement in a safety observation cell, complaints or requests made by the

prisoner, marks on or injuries to the prisoner, whether such marks or injuries are consistent with any allegations made by the prisoner, the duration of such placement, his/her findings following any visit made to the prisoner and the reason for the ultimate discharge of the prisoner from the safety observation cell.

- (e) Prison Officers monitoring a prisoner in a safety observation cell should be aware of the reasons for such monitoring subject to reasonable medical confidentiality. They should be given advice regarding the frequency and methods to be employed in such monitoring.
- (f) Under no circumstances should a prisoner be accommodated in a safety observation cell for management purposes.

The main import of the above is to provide that the doctor and not the Governor is the moving party in the placement of prisoners in safety observation cells and their discharge from such cells.

A new Rule 64(b) should provide, *inter alia*, for the following:-

- (a) The Governor would authorise such placement for the reasons set out in paragraph 5.4(c). The initial placement would be for a maximum period of 24 hours. Prisoners should not be accommodated in close supervision cells as a punishment.
- (b) A prisoner placed in a close supervision cell should be examined by a doctor as soon as practicable after he/she has been so accommodated. The doctor should note his/her observations of the prisoner. He/she should also note any observations, complaints or requests made by the prisoner. If a prisoner complained of an assault the doctor should note the complaint

and injuries, if any, and whether such injuries are consistent with such complaint.

- (c) If the doctor advises that a prisoner should be accommodated other than in accordance with a direction of the Governor the Governor should consider the matter and should, if he or she decided against the advice of the doctor, record the reasons for his or her action.

The provisions set out in the existing Rule 64 of the present Irish Prison Rules 2007 should be mirrored in this new rule except in so far as they do not accord with (a) to (c) above.

- 7.7 If the Irish Prison Rules 2007 are being amended my observations in paragraph 4.19 regarding the Irish Prison Service Healthcare Standards are relevant.