

Inspector of Prisons
Standards for the Inspection of
Prisons in Ireland -
Women Prisoners' Supplement

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Chapter 1

Foreword

I published a document entitled “*Standards for the Inspection of Prisons in Ireland*” in July 2009 which benchmarks the conditions of prisons and treatment of prisoners that I expect to find during my inspections of prisons. It applies to all categories of prisoners. This document contains further standards of importance relating to the rights of women prisoners. Some of the standards contained in the “*Standards for the Inspection of Prisons in Ireland*” which relate to women prisoners are duplicated in this document. The reason for the duplication is that an omission of such standards from this stand alone document might give an impression of incompleteness of this document.

The two prisons in the State which accommodate women prisoners are the Dóchas Centre, which is a purpose built women’s prison, and a wing in Limerick Prison (E Wing). Women prisoners must be treated differently to male prisoners in certain respects. The State has particular obligations to women prisoners emanating from international obligations, domestic laws and best practice, all of which have informed the standards included in this document.

I would like to acknowledge the time consuming and accurate work done by Ms. Aoife Watters who is responsible for researching standards in other jurisdictions, researching relevant international and domestic obligations, conventions and rules, assisting me in the drafting of these standards and the painstaking work of referencing each standard to its appropriate source(s).

I will keep these standards under review taking into consideration my inspection experiences in the Dóchas Centre and Limerick Women’s Prison and developments both nationally and internationally. In this regard I will welcome any constructive comments. I will elaborate on and/or update these standards as appropriate.

Judge Michael Reilly

Inspector of Prisons

1st February 2011

Chapter 2

Introduction

- 2.1 The purpose of this document is (a) to highlight the fact that women prisoners warrant treatment different to that of male prisoners in certain respects, and, (b) to inform the Irish Prison Service, management and staff in the State's two women's prisons, prisoners, visitors to those prisons and the general public of the standards that I will expect to see implemented in these two prisons.
- 2.2 The standards in this document are not to be taken as exhaustive. They are but a first step designed to give guidance to the Irish Prison Service and prison management on the most important aspects of best practice in relation to the detention of women prisoners and the management of women's prisons.
- 2.3 The most fundamental principle with regard to the treatment of prisoners is that all persons deprived of their liberty are treated with humanity and with respect for the inherent dignity of the person¹. Traditionally, due to the small number of women prisoners, prison rules and regimes were formulated, in most cases, with the male prisoner in mind². It is now accepted that a gender specific approach is required for women in prison.
- 2.4 International research indicates that the characteristics of a women's prison population differ to those of a male prison population³. The small number of women prisoners usually result in a small number of women's prisons. The same is true with regard to the Irish prison population. In Europe women make up a small percentage of the overall prison population, on average constituting between 4.5% and 5% of the total prison population⁴. Women prisoners represent approximately 4% of the total prison population in Ireland⁵.

¹ Article 10(1), International Covenant on Civil and Political Rights

² Corston, J., (2007) *The Corston Report: a review of women with particular vulnerabilities in the criminal justice system*, London: Home Office, at p.2

³ Penal Reform International, "*Women in prison: incarcerated in a man's world*", 2008(1), PRI, at p.2

⁴ Dunkel, F. et al., "International Study on Women's Imprisonment- Current situation, demand analysis and "best practice", at p.3- accessed at www.rsfs.uni-greifswald.de/index.php?id=1152

⁵ On the 25th January 2011 there were 179 female prisoners out of a total population of 4,541 prisoners which amounts to 3.94% of the prison population.

- 2.5 Traditionally, the small number of women prisoners has meant that women are often accommodated far from home. In Ireland women prisoners are accommodated in prisons where security considerations do not take account of the threat posed by such prisoners. High risk women prisoners are accommodated with women prisoners posing little or no risk. There are no open women's prisons in Ireland.
- 2.6 International research shows that in general women prisoners have complex physical and mental needs⁶. A significant number of these prisoners will have suffered some form of abuse; be it of a physical, mental or sexual nature. Many women prisoners have addiction problems. International studies show that women prisoners are more likely to self-harm than male prisoners.⁷ A significant characteristic of the women's prison population is that many women prisoners are mothers of children under 18 years of age. A study⁸ in the United Kingdom illustrated that 66% of women in prison were mothers and one third of them were the sole carers of minor children before being imprisoned. Further research showed that only 5% of children were cared for in their home when their mother was sent to prison but the majority of children continue to be cared for in the home when a father is imprisoned⁹.
- 2.7 International research suggests that the effects of imprisoning women are different to the effects of imprisoning men. International research on women in prison identifies that many women lose their homes within the first few weeks of being imprisoned¹⁰ and in many cases their children are more likely to be placed in care¹¹.

⁶ Social Exclusion Unit, *Reducing Re-offending by Ex-prisoners*, (2002) London: Social Exclusion Unit

⁷ In England and Wales women represent only 6% of the prison population but are 14% more likely than men to self-harm whilst in prison, see Palmer, J., "Special health requirements for female prisoners", in *Health and prisons: a WHO guide to the essentials in prison health*, (2007) WHO, at p.157

⁸ Social Exclusion Unit, *Reducing Re-offending by Ex-prisoners*, (2002) London: Social Exclusion Unit

⁹ Cited in Jewkes, Y. (ed.), (2007) *Handbook on Prisons*, Devon: Willan Publishing at page 256

¹⁰ A study in the UK showed that many women prisoners lost their home within 42 days of being imprisoned. Cited at p. 7 in Penal Reform International (2008) *ibid* at fn 3.

¹¹ See *ibid* at fn 8.

- 2.8 Treating women prisoners the same as men is not tantamount to achieving equality of gender. Indeed, “*the concept of equality means much more than treating all persons in the same way. Equal treatment of persons in unequal situations will operate to perpetuate rather than eradicate injustice*”¹².
- 2.9 Specific standards for women prisoners are required to highlight the specific needs of this cohort of prisoners but they are not to be taken as discriminatory towards male prisoners or towards any other cohort of prisoners.

Obligations and Best Practice

- 2.10 In my “*Standards for the Inspection of Prisons in Ireland*” I outlined in detail the binding and non-binding international instruments and national instruments which regulate the treatment of prisoners, many of which impose binding obligations on this State. It would be repetitive to repeat them in this document but these obligations apply with equal force to women prisoners.
- 2.11 Since I published the “*Standards for the Inspection of Prisons in Ireland*” the United Nations General Assembly adopted the **Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders**, otherwise known as the “**Bangkok Rules**”, on the 21st December 2010. The Rules provide guidance for the treatment of women in prison and the management of women’s prisons on, *inter alia*, healthcare, safety and security, contact with families, staff training, pregnant women and mothers with children in prison. The standards contained in Chapter 4 of this document have been significantly informed by the “**Bangkok Rules**”.

¹² Office of the High Commissioner for Human Rights, “*Fact Sheet No. 22- Discrimination against Women: The Convention and the Committee*”, Geneva, undated as accessed at <http://www.ohchr.org/Documents/Publications/FactSheet22en.pdf>

Concluding

2.12 I have carried out and will continue to carry out regular inspections of the two women's prisons to monitor the State's compliance with its obligations towards women prisoners. During such inspections I will benchmark the conditions and treatment of these prisoners and the management of the women's prisons against the "*Standards for the Inspection of Prisons in Ireland*" which include the standards contained in this document.

Chapter 3

The Format of the Standards

- 3.1 These standards do not follow the same format as the “*Standards for the Inspection of Prisons in Ireland*”. This document contains supplementary standards applicable to women prisoners. These standards are listed under nine headings, each of which is of fundamental importance to the rights of women prisoners.
- 3.2 The standards in Chapter 4 of this document are numbered 230 – 263 for ease of reference in later reports. Standards 1 – 196 are contained in the “*Standards for the Inspection of Prisons in Ireland*”. Standards 197 – 229 are contained in the “*Standards for the Inspection of Prisons in Ireland – Juvenile Supplement*”. All three documents should be read as one.
- 3.3 The source of each standard is referenced beneath the standard in abbreviated form.
- 3.4 The appendix contains the long form of the abbreviations referred to at paragraph 3.3 above.

Chapter 4

Standards

Basic Principle

- 230** These standards recognise that account has to be taken of the specific needs of women prisoners and therefore shall not be regarded as discriminatory towards male prisoners.

BOP 5.2, BKR 1,

Admission to prison

- 231** Women prisoners who are the sole carers of minor children shall be facilitated, in so far as is practicable, on committal to make custody arrangements for their children.

ICESCR 10(1), CRC 3 & 5, BKR 2.2, ECHR 8, *Nielsen v Denmark (1988)* ECt.HR

- 232** On committal the details of the minor children of women prisoners including, *inter alia*, their names, dates of birth, guardianship status, location and the name(s) of their carer(s) shall be recorded, unless the recording of such information is expressly forbidden by such women prisoners. This information shall be treated as confidential and if used, shall take into consideration the best interests of the child/children.

ICCPR 17, CRC 3 & 16, BKR 3, ECHR 8, *Yousef v Netherlands (2002)* ECt.HR

- 233** Prison staff should be aware that women prisoners are particularly vulnerable in the days following committal and adequate attention shall be given to newly committed prisoners.

ICCPR 6(1), UDHR 3, BKR 2.1, ECHR 2, R (98) 7: 33, EPR 52.1, CPT Inf/E (2002) 1- Rev. 2010 at pg. 79, CoI 40.3.2 *McGee v AG (1974)*, *Edwards v UK (2002)* ECt.HR,

Accommodation

- 234** When choosing where to accommodate women prisoners risk assessments and the categorising of women prisoners shall take into account the particular risks and needs associated with such women prisoners. If a woman prisoner is assessed at being at risk such risk shall be managed.

ICCPR 6, UDHR3, SMR 63(1) & (2), BKR 40 & 41, ECHR 2, EPR 52.2, 25.4, 34.1, 51.3, 51.4, & 52.1, CoI 40.3.2, *McGee v AG (1974)*, *Edwards v UK (2002)* ECt.HR

- 235 The security classification of women prisoners shall be decided on a case by case basis.**

SMR 63(1) & (2), BKR 40 & 41, EPR 51

Health and Welfare

- 236 Gender specific healthcare facilities and services for women prisoners shall be available in women's prisons and shall be equivalent to those available to women in the community.**

ICESCR 12, CEDAW 12, SMR 22(1), PME1, BKR 10.1, R(98) 7: 8, 10, 11, 12 & 19, EPR 40, IPR 33(1) & (2), HCS 2

- 237 Where appropriate and possible, women prisoners shall have access to a female doctor and/or female nurse. If a male medical practitioner undertakes an examination of a woman prisoner contrary to her wishes a female member of staff shall be present during such examination.**

CEDAW 12, BOP 5(2), BKR 10.2, R (98) 7: 8

- 238 Provision shall be made for the sanitary needs of women prisoners that respects their privacy.**

ICCPR 10(1), CEDAW 12, BOP 1, BPTP 1, SMR 15, BKR 5, EPR 19.7

- 239 The particular needs of women prisoners who have suffered physical, mental or sexual abuse shall be provided for in women's prisons.**

SMR 59, BKR 2.1, 7 & 42.4, EPR 25.4

- 240 Subject to serious security considerations, women prisoners shall not be placed in restrains (including handcuffs) when undergoing any medical procedure. Prison officers accompanying women prisoners at any medical consultation, examination or procedure shall (a) be aware of the need for medical confidentiality and shall, in all cases, act to preserve such confidentiality, and (b) respect and safeguard the privacy and dignity of such women prisoners.**

ICCPR 10, SMR 33, 34 & 28, BKR 8 & 11, ECHR 8, R (98) 7: 13, EPR 51.1, 68, 72.4, 75 & 81.4, IPR 51

Pregnant women and mothers with babies in prison

241 Pregnant women prisoners shall receive a level of care equivalent to that available in the community.

ICESCR 10(2) & 12(1), CEDAW 12(2), SMR 22(1) & 23(1), PME1, BKR 10.1, R(98) 7: 8, 10, 11, 12 & 19, EPR 34.3 & 40, IPR 33(1) & (2), HCS 2

242 No prisoner shall be placed in restraints during labour, during birth or immediately after giving birth.

ICESCR 10(2), SMR 33 & 34, BKR 24, EPR 51.1 & 68

243 Following the birth of her child, a woman prisoner shall not be returned to prison unless such return is authorised by a doctor.

ICESCR 10(2)

244 The best interests of the child shall guide all decisions on whether to allow babies stay with their mothers in prison.

CRC 3, BKR 49, R (98) 7: 69 & 71, R 1469 (2000) 5:iv, EPR 36.1, *Yousef v Netherlands* (2002) *ECt.HR*

245 When a mother and baby are to be separated and the mother is to remain in prison the separation shall be planned in advance of the separation date. All necessary support shall be provided to the mother both before and after the separation. The interests of the child shall be taken into account when such separation is planned.

CEDAW 10(2), CRC3, BKR 49 & 52

246 Healthcare facilities and services in women's prisons where babies are accommodated, appropriate to babies, shall be equivalent to those available in the community.

CRC 3 & 24, BKR 51, R 1469 (2000) 5:iv, EPR 5

247 Consideration should be given to the provision of a mother and baby unit in all women's prisons where mothers and babies are accommodated.

SMR 23(2), R (98) 7: 70, R 1469 (2000) 5:iv, EPR 36.2 & 36.3

248 A clear and comprehensive child protection policy shall be in place in all women's prisons where mothers and babies are accommodated. All staff and prisoners shall be aware of such policy.

CRC 3 & 19, R 1469 (2000) 5: iv & vi, EPR 36.3

249 Relevant programmes designed for pregnant women, nursing mothers and women with babies in prison shall be available.

SMR 59 & 60(1), BKR 42.3, EPR 5 & 36.2

Contact with children and families

250 Having due regard to the best interests of the child, women prisoners shall be facilitated, to the extent possible, to fulfill their right as parents to participate in parental decisions relating to their minor children's welfare.

CRC 3 & 5, BKR 26, ECHR 8, *Nielson v Denmark* (1988) *ECt.HR*, *Yousef v Netherlands* (2002) *ECt.HR*

251 Contact between women prisoners and their families, especially their children, shall be fostered, encouraged and facilitated.

ICCPR 23(1), UDHR 16(3), SMR 37, 79 & 80, BOP 19, BKR 26, ECHR 8, EPR 24.1, 24.2 & 24.5, CoI 41.1, IPR 35, 43, 46 & 75(3)(ii), *McCotter v UK* (1992) *ECt.HR*

252 Prison visits involving children shall, subject to the maintenance of good order and safe and secure custody, allow physical contact between mother and child in appropriate surroundings.

SMR 79, BKR 28, EPR 24.4

253 Having due regard to the best interests of the child, contact between women prisoners and their children shall not be withdrawn as a disciplinary action.

CRC 3, SMR 27, 79 & 80, BKR 23, EPR 24.2 & 60.4

254 Consideration should be given, at the earliest possible opportunity during their prison sentence, to the transfer of non-resident foreign national women prisoners to their home country (particularly those who have minor children in their home country) provided a successful application has been made, the prisoner consents and relevant protocols have been put in place with the receiving country.

CRC 3, SMR 79 & 80, BKR 53.1, EPR 24.5

255 Women prisoners who are in a prison far from their home and who cannot receive regular visits from their children and immediate family

members shall be compensated by allowing longer visits when feasible or additional telephone calls.

SMR 79 & 80, BKR 26, EPR 24.5

Education, training and rehabilitation

- 256 Educational and training programmes shall be available in women's prisons which take account of the gender specific needs of women prisoners. These should not merely consist of traditional stereotypical programmes but should aim to facilitate such prisoners' re-integration into the community.**

ICCPR 10(3), SMR 65, 66, 71, 77 & 78, BOP 28, BPTP 6 & 8, BKR 42.1, R (89) 12, EPR 25, 26.3, 26.5, 26.7, 28, 34.1 & 106.1, IPR 27(2), 110 & 111

- 257 Prison management, in conjunction with appropriate and relevant organisations, shall be proactive in assisting women prisoners with their rehabilitation efforts through the provision of, *inter alia*, pre-release programmes, temporary release and access to services in the community. Particular regard shall be had to the health, welfare and psychological needs of the women prisoners.**

ICCPR 10(3), SMR 64, 66, 80 & 81, BPTP 10, BKR 45, 46 & 47, R (89) 12, EPR 6, 33.3, 34.1, 103.2, 103.4, 103.6 & 107, IPR 75(6), 109(2) (c) & (f)

Safety

- 258 When women prisoners are being searched their dignity shall be respected and protected. Only female officers, appropriately trained in such search techniques, shall carry out such searches.**

ICCPR 10(1), BOP 1, BPTP 1, BKR 19 & 33.1, ECHR 3, EPR 34.4, 54.3, 54.5 & 81.3, IPR 6(4) & (5)

- 259 Subject to the maintenance of good order and safe and secure custody, women prisoners shall not be required to remove their underwear when being searched. If they are required to remove their underwear their respect and dignity shall be protected.**

BKR 19 & 20, EPR 54.4

Staff

- 260 Management and all staff working in women’s prisons shall receive training which takes into account the gender needs of women prisoners.**

CCLEO 2, SMR 53, BKR 32 & 33, R (2000) 1469: 5 (vi), EPR 76, 81.3, IPR 85(3)(c)

- 261 Prison staff shall be trained in the identification of vulnerable women prisoners, in how to deal with incidents of self-harm among women prisoners, in all cases in how to be supportive of such prisoners and, where necessary, in referring such prisoners to appropriate authorities.**

BKR 35, R(98) 7: 33, EPR 86(1)(c)

- 262 Clear protocols shall be in place in women’s prisons governing the conduct of prison staff and others working in the prison which endeavour to protect both staff and women prisoners against false allegations of bullying/harassment/abuse of a physical, sexual or verbal nature.**

BKR 31

- 263 Protocols and work practices of prison staff and others working with women prisoners should be continuously updated to take account of evolving best practice.**

BKR 32 & 33, EPR 81.2, 81.3 & 83.a

Appendix

Abbreviations

• **International Human Rights Instruments**

- CEDAW** Convention on the Elimination of All Forms of Discrimination against Women, G.A. res. 34/180, 34 UN GAOR Supp. (No. 46) at 193, Doc.A/34/46 (entered into force 3 September 1981)
- CRC** Convention on the Rights of the Child, G.A. res. 44/25, annex, 44 UN. GAOR Supp. (No. 49) at 167, UN Doc.A/44/49 (1989) (Entered into force 2 September 1990)
- ECHR** Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol No.11 (Rome, 4.XI.1950)
- ICCPR** International Covenant on Civil and Political Rights, G.A res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (entered into force March 23, 1976)
- ICESCR** International Covenant on Economic, Social and Cultural Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3 (entered into force January 3, 1976)

Normative

- BKR** Rules for the Treatment of Women Prisoners and Non- Custodial Measures for Women Offenders (the Bangkok Rules)
- BOP** Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, G.A. res. 43/173, annex, 43 U.N. GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (1988)
- BPTP** Basic Principles for the Treatment of Prisoners, G.A. res. 45/111, annex, 45 U.N. GAOR Supp. (No.49A) at 200, U.N. Doc. A/45/49 (1990)
- CCLEO** Code of Conduct for Law Enforcement Officials, Adopted by General Assembly resolution 34/169 of 17 December 1979
- EPR** Recommendation No. R (2006) 2 of the Committee of Ministers to Member States on the European Prison Rules (adopted by the Committee of Ministers on 11 January 2006 at the 952nd meeting of the Ministers' Deputies)

- PME** Principles of Medical Ethics Relevant to the Role of Health Personnel, Particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. res. 37/194, annex, 37 U.N. GAOR Supp. (No. 51) at 211, U.N. Doc. A/37/51 (1982)

- R (89)12** Recommendation No. R (89) 12 of the Committee of Ministers to Member States on Education in prison (adopted by the Committee of Ministers on 13 October 1989 at the 429th meeting of the Ministers' Deputies)

- R (98)7** Recommendation No R (98) 7 of the Committee of Ministers to Member States Concerning the Ethical and Organisational Aspects of Health Care in Prison (adopted by the Committee of Ministers on 8 April 1998 at the 627th meeting of the Ministers' Deputies)

- R (2000) 1469** Recommendation (2000) 1469 on Mothers and Babies in Prison (adopted by the Council of Europe Parliamentary Assembly on 30 June 2000 at the 24th sitting)

- SMR** Standard Minimum Rules for the Treatment of Prisoners, adopted Aug. 30, 1955 by the First United Nations Congress on the Prevention of Crime and Treatment of Offenders, U.N. Doc. A/CONF/611, annex I, E.S.C. res. 663C, 24 U.N. ESCOR Supp. (No.1) at 11, U.N. Doc. E/3048 (1957), amended E.S.C. res. 2076, 62 U.N. ESCOR Supp. (No. 1) at 35, U.N. Doc. E/5988 (1977)

- UDHR** Universal Declaration on Human Rights 1948

- **CPT Report**

CPT/Inf/E (2002) 1- Rev. 2010 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)-CPT Standards

- **National Law**

CoI Bunreacht na hÉireann (Constitution of Ireland) 1937

- **National Secondary Legislation**

IPR Irish Prison Rules 2007

- **National Authority Standards**

- **Relevant cases decided by the Irish Courts**

McGee v Attorney General (1974) I.R 284

- **Relevant cases decided by the European Court of Human Rights**

Edwards v UK (2002) 35 E.H.R.R. 19

McCotter v UK (1993) 15 E.H.R.R. CD98

Nielson v Denmark (1989) 11 E.H.R.R. 175

Yousef v Netherlands (2003) 36 E.H.R.R. 20