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An Comhchoiste um Dhlí agus Ceart

Tuarascáil maidir leis an nGrinnscrúdú Réamhrechtach ar Scéim Ghinearálta an Bhille um Sheirbhís Phríosúin na hÉireann, 2023

Nollaig 2023

Joint Committee on Justice

Report on Pre-Legislative Scrutiny of the General Scheme of the Irish Prison Service Bill 2023

December 2023

33/JC/45

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CATHAOIRLEACH'S FOREWORD

In August 2023, the Minister for Justice, Ms. Helen McEntee TD, forwarded the General Scheme of the Irish Prison Service Bill 2023 to the Joint Committee on Justice in accordance with Standing Orders for the purpose of pre-legislative scrutiny.

The Committee notes the intention of this legislation to place the Irish Prison Service (IPS) on a statutory footing, which has been a long-standing intention since the IPS was established in 1998. The provision of oversight and support from an independent non-executive board, which will ensure high standards of governance and accountability, is also welcomed.

Having [previously examined the topic of the rehabilitative opportunities available to prisoners](#), the Committee welcomes, in particular, that the General Scheme lists the provision of supports to prisoners to help with their rehabilitation, as a specific function of the IPS, among them provision of education and development opportunities and the provision of activities to promote the health and well-being of prisoners.

In undertaking pre-legislative scrutiny, the Committee has sought to scrutinise the proposed legislation and provide recommendations on areas where it believes change or amendments are warranted. Among the areas identified for further examination within the General Scheme include proposals relating to the Director General under Part 2 and Part 6 of the General Scheme; Membership of the Board [Head 23]; Code of ethics for staff of the Service (Head 31); and provisions relating to the temporary release of prisoners (Head 15).

The Committee has made a number of recommendations and a copy of this report and recommendations will be sent to the Minister for Justice. I would like to express my appreciation to all the witnesses for their contributions and to the Members of the Committee for their work on this subject.

Finally, I hope that this report will help to inform the legislative process and make a valuable contribution to the forthcoming legislation.



James Lawless TD (FF) [Cathaoirleach]
December 2023

COMMITTEE MEMBERSHIP

Joint Committee on Justice

Deputies



James Lawless TD (FF) [Cathaoirleach]



Colm Brophy TD
(FG)



Patrick Costello TD
(GP)



Alan Farrell TD
(FG)



Pa Daly TD
(SF)



Aodhán Ó Ríordáin TD
(LAB)



Mark Ward TD
(SF)



Thomas Pringle TD
(IND)



Niamh Smyth TD
(FF)

Senators



Robbie Gallagher
(FF)



Vincent P. Martin
(GP)



Michael McDowell
(IND)



Lynn Ruane
(IND)



Barry Ward
(FG) [Leaschathaoirleach]

Notes:

1. Deputies nominated by the Dáil Committee of Selection and appointed by Order of the Dáil on 3rd September 2020.
2. Senators nominated by the Seanad Committee of Selection and appointed by Order of the Seanad on 25th September 2020.
3. Deputy Jennifer Carroll MacNeill elected as Leas-Chathaoirleach on 6 October 2020.
4. Deputy James O'Connor discharged and Deputy Niamh Smyth nominated to serve in his stead by the Fifth Report of the Dáil Committee of Selection as agreed by Dáil Éireann on 19th November 2020.
5. Deputy Michael Creed discharged and Deputy Alan Farrell nominated to serve in his stead by the Fifteenth Report of the Dáil Committee of Selection as agreed by Dáil Éireann on 28th June 2022.
6. Deputy Brendan Howlin discharged and Deputy Aodhán Ó Ríordáin nominated to serve in his stead by the Nineteenth Report of the Dáil Committee of Selection as agreed by Dáil Éireann on 8th November 2022.
7. Deputy Jennifer Carroll MacNeill was discharged, pursuant to Standing Order 34, on 21st December 2022.
8. Senator Barry Ward was elected as Leas-Chathaoirleach at the Committee meeting on 15th February 2023.
9. Deputy Colm Brophy nominated to serve on the Committee by the Twenty First Report of the Dáil Committee of Selection as agreed by Dáil Éireann on 7th March 2023.
10. Deputy Martin Kenny discharged and Deputy Mark Ward nominated to serve in his stead by the Twenty-Third Report of the Dáil Committee of Selection as agreed by Dáil Éireann on 26th April 2023.

COMMITTEE RECOMMENDATIONS

The following recommendations were made by the Committee in relation to the topic:

1. The Committee recommends that Head 34 be amended, to guarantee the independence of the Director General of the Irish Prison Service (IPS), by removing the limits placed on them from expressing opinions on Government policy. This Head should also align with similar provisions applied to other statutory public bodies.
2. The Committee recommends that the legislation should state explicitly that appointments to membership of the Board of the IPS will be made through a public competition, managed by the Public Appointments Service (PAS).
3. The Committee recommends the inclusion of Board members of IPS that have human rights expertise.
4. The Committee recommends that, in recognition of the expertise afforded to those with lived experience, consideration be given to enable past prisoners or those with previous convictions to become members of the Board.
5. The Committee recommends that an Advisory Committee be established, with regard to the views of those with lived experience, to ensure transparency and accountability in decisions relating to governance and finance.
6. The Committee recommends that the General Scheme should examine and clarify the implications of placing the code of conduct for prison staff on a statutory footing and that prison staff should be informed of any changes to their role arising from the placement of this code on a statutory basis.

7. The Committee recommends that the potential to allow prisoners to provide their feedback on the development of a code of conduct for prison staff should be examined.
8. The Committee recommends that the General Scheme should provide more clarity on the role of prison staff in the context of their status as civil servants.
9. The Committee recommends that provisions under Head 7(1) (e) and Head 7(3) (a) should be amended, to guarantee the principle that all efforts should be made to provide inmates with access to education and should not be contingent on the length of the sentence, remand status or the available resources at a given time.
10. The Committee recommends that the General Scheme should clarify under Head 15, whether the Minister for Justice or the IPS is ultimately responsible for the operation of the temporary release system and that there should be clear and consistent structures around how prisoners can obtain temporary release.
11. The Committee recommends the establishment of a 'Culture Committee,' (Committee related to the culture of the institution) which would allow everyone in the prison, prisoners and staff, to provide insight in relation to the code of conduct and other relevant matters.
12. The Committee recommends that the inclusion of the provision under Head 52, which permits the Minister for Justice to redact, in full or in part, the Annual Report of the IPS, be removed.
13. The Committee recommends that decisions relating to whether a prisoner is moved to an open centre should be based more on the prisoners' history, rather than the offence for which they have been imprisoned.

14. The Committee recommends that open prisons should operate a waiting list system for their available places.
15. The Committee recommends that consideration be given under Head 12, in relation to the potential role of the Director General in research and development.
16. The Committee recommends clarification regarding the role of the Victim Liaison Officer (VLO) within the IPS and whether a legal basis would be required to facilitate this involvement.

CHAPTER 1 - Introduction

This is the report on pre-legislative scrutiny of the General Scheme of the Irish Prison Service Bill 2023, which intends to place the Irish Prison Service (IPS) on a statutory footing and provide it with defined functions and responsibilities.¹

Purpose of the Bill

The IPS was set up in 1998 under a Government decision which approved its establishment on an initial administrative basis, with the intention to introduce legislation that would put the IPS on a statutory basis. The General Scheme of the Irish Prison Service Bill 2023 proposes to fulfil that intention, providing the statutory basis for the IPS to function as a service delivery body, that delivers a Government service, on behalf of, and in the name of, the Minister. The purpose of the Bill is to create a full statutory basis for the functions and responsibilities of the IPS and to ensure a best-practice framework for its governance and accountability. It would place the role of Director General on a statutory basis, who would be responsible to the Minister for Justice. The Minister would continue to be politically accountable for the performance of the prison system.

The General Scheme also proposes to create a non-executive Board, which would provide oversight and support to the Director General, to ensure strong internal governance and to assist in the implementation of policies and the development and implementation of corporate strategy relating to the IPS.

The General Scheme would also assign the staff of the IPS as civil servants of the Government, without introducing any changes to their terms and conditions of service, for example, regarding their salary or grading.²

¹ [gov.ie](http://www.gov.ie) - Irish Prison Service to be established as a statutory State body (www.gov.ie)

² [gov.ie](http://www.gov.ie) - Irish Prison Service to be established as a statutory State body (www.gov.ie)

Procedural basis for scrutiny

Pre-legislative consideration was conducted in accordance with Standing Order 174A, which provides that the General Scheme of all Bills shall be given to the Committee empowered to consider Bills published by the member of Government.

Engagement with stakeholders

The Joint Committee on Justice invited submissions from stakeholders on the General Scheme of the Irish Prison Service Bill 2023.

On 3rd October 2023 the Committee held a public engagement with several of these stakeholders, as laid out in the table below:

Table 1: List of public engagements with Stakeholders

Organisation	Witnesses	Date of appearance
Prison Officers' Association	Mr. Karl Dalton, General Secretary Mr. Gabriel Keaveny, Deputy General Secretary	3 rd October 2023
Irish Penal Reform Trust (IPRT)	Ms. Saoirse Brady, Executive Director Dr. Helen Kehoe, Legal & Public Affairs Manager	3 rd October 2023
Department of Justice	Mr. Paul O'Farrell, Principal Officer, Criminal Legislation Mr. Gerard Teehan, Administrative Officer, Criminal Legislation	3 rd October 2023

The primary focus of this meeting was to allow for an engagement between the Members and stakeholders to discuss areas of the General Scheme which may require amending.

This report summarises the engagement and the key points considered by the Committee when drafting the recommendations set out in this report.

A link to the full transcript of the engagement can be found [here](#).

CHAPTER 2 - Summary of Evidence

In the course of the public hearing, a number of important points were raised.

A summary of the main areas discussed in evidence to the Committee follows.

1. Director General (Part 2 and Part 6)

Members and witnesses discussed the role and independence provided to the Director General of the Irish Prison Service (IPS) under the General Scheme.

The Committee was informed that the Minister for Justice retains responsibility for areas of the draft legislation that should be under the responsibility of the Director General. For example, it was pointed out that under Part 4 of the General Scheme, the board of the IPS would be appointed by the Minister for Justice rather than by an independent body ([see Point 2](#)). Members also referred to the annual report under Head 52 and provisions which would allow the Minister to redact, in part or in full, the publication of the annual report of the IPS, highlighting that this provision does not apply to the publication of annual reports by other statutory bodies ([see Point 7](#)).

Members also commented on other areas of the General Scheme where the Director General's role and independence is curtailed, with particular reference made to Head 34, which forbids the Director General from questioning or expressing opinions in relation to Government policy. The Committee was told that, as currently drafted, this Head would limit the essential independence of the Director General and it was pointed out that this provision does not apply to other independent public bodies, like the Irish Human Rights and Equality Commission (IHREC), who are limited only in the opinions they may express only before the Public Accounts Committee but not before other Committees.

Witnesses also highlighted that the Director General should be responsible for laying out the priorities of the IPS for the year, rather than the Minister being responsible for this. One noted that staff are led by the pillars identified within the strategic plan. The Committee heard concerns regarding the potential interference with such process, given the length of time it takes at present to initiate change within the prison system.

Some other witnesses argued that it would be better for the IPS to either become fully independent from the Department of Justice, or not at all, rather than having ambiguity around the level of independence of the IPS.

In response to points raised by witnesses, the Department of Justice clarified that the purpose of this Bill is to place on a statutory basis the Irish Prison Service and its functions as a service delivery body, which delivers a Government service on behalf of the Minister for Justice.

The General Scheme does not propose to make any specific changes to the role of the Director General of the IPS as being responsible for the everyday delivery of services. The legislation will place the code of conduct for prison staff on a statutory footing and also put in place a framework for governance and accountability of the IPS, with the Minister for Justice responsible for the accountability of the IPS and of its performance.

2. Membership of the Board [Head 23]

Members and witnesses expressed concerns that the members of the Board would be appointed by the Minister for Justice and it was suggested that the legislation must specify that appointments to membership of the Board must be made through a public competition, that would be managed by the Public Appointments Service (PAS). The Committee heard that outlining this intention within the explanatory notes of the General Scheme would not suffice, being that such notes would not be considered should legislation be subject to interpretation by the Courts.

Others pointed out that this Head does not specify whether individuals with previous convictions may be eligible to serve on the Board or not. It was suggested that these individuals could be allowed to serve on the board, to ensure that membership of the Board includes those with lived experience of the prison system. Witnesses noted that this could be achieved by seeking a dispensation from the High Court. Regardless of this outcome, it was suggested that an advisory board could be established, where those with lived experience of the prison system could provide their feedback and insight.

Witnesses recommended that board membership would benefit from having members with human rights expertise. The Committee also heard that some are in favour of restorative justice practices across the Prison Service. The prospect of having the Victim Liaison Officer (VLO) role within the Board was also considered.

3. Code of ethics for staff of the Service (Head 31)

Members questioned the impact on prison staff, of placing the code of conduct for prison staff on a statutory basis.

Representatives from prison staff organisations did not oppose placing these codes on a statutory basis, but requested that any changes arising from this are explained to prison staff, e.g. what is expected of them under the code and their obligations under the code.

Other witnesses highlighted that the establishment of a culture committee within the prison system could work to address broader issues relating to prison culture and allow staff to provide their perspectives on prison culture.

It was also recommended, as provisions are made to allow consultation with groups like IHREC in relation to the code of conduct, that provisions should also be made to allow prisoners to provide their feedback into the development of this code, as it will also impact them.

4. Staff of the service (Head 10)

Witnesses stated that they are seeking further clarify on the implications for prison staff on becoming civil servants of the Government, rather than civil servants of the Minister, or the State under Head 10 of the General Scheme.

Issues they are seeking clarity on included:

- Further clarity on the powers provided to the Director General in relation to the appointment of staff and agreeing the terms and conditions of the employment of staff. Witnesses questioned whether this Head would impact on the collective agreements that already exist for members, in relation to pay and conditions, or the process through which these collective agreements are reached;
- Clarity around the specific functions which the Director General and/or the Minister can delegate to subordinate staff members, and whether this would include delegating the power to suspend or dismiss staff. Witnesses highlighted that in the rest of the Civil Service the Secretary General of a Department is the person responsible for this function and witnesses argued that this should remain the case for the operation of the IPS.
- Clarity around mobility and the potential of staff being able to move around once granted the status of a civil servant.

5. Education and training of prisoners

Members and witnesses discussed provisions within the General Scheme relating to training and education.

Members and witnesses discussed the significant rise in prisoners being held on remand and questioned what education opportunities are made available for these prisoners.

Members pointed out that Head 7(1) (e), as currently phrased, could allow for arguments that if a prisoner's sentence is too short, or if they are expected to be transferred, it will not be possible to provide an education programme for this prisoner. It was recommended that this provision should be removed, as it is important that the legislation would uphold the principle that all efforts should be made to provide inmates with access to education.

Members also raised questions regarding the impact of external pressures on the provision of education within prisons, for example, that the use of prison staff as court escorts impacts on the availability of training.

The Committee was informed that a regime management plan is in place in prisons, which is intended to provide a safe approach to work for staff when there are staff shortages. The main priority of this plan is to ensure the continuation of structured activities, including schools and workshops.

Witnesses outlined that engaging prisoners in these structured activities results in overall benefits for the prison, as prisoners who engage in these activities are less likely to cause injury to others or staff members, resulting in less disturbance in prisons and a more peaceful prison atmosphere.

Witnesses highlighted that providing these educational services has an impact on prisoner behaviour and can help prisoners on their journey towards rehabilitation and eventual release.

Witnesses told the Committee that "the services lead into the behaviour, the behavioural pattern leads into the incentivised regime, and the incentivised regime

leads into the ability to get temporary release and to have a constructive time in prison.”

The Committee heard that Budget 2023 stated there would be 100 extra officers available for the provision of prison education, however, they were uncertain if these 100 extra officers had been appointed yet.

Witnesses also pointed to a reference in the General Scheme that the Service would provide its functions ‘with full regard to the resources that are available to it’.

It was underlined that IPS has a duty of care to those who are in its custody and therefore, relevant services must be provided to prisoners and should not be contingent on the available resources at a given time.

6. Temporary release (Head 15)

Witnesses recommended that the General Scheme should clarify whether the Minister for Justice or the IPS is ultimately responsible for the operation of the temporary release system. The Committee heard that, as it stands, legislation adds further confusion. One witness stressed concern regarding the power afforded to the Minister, whereby she/he may, in writing, delegate responsibility and also rescind such delegation.

Witnesses said that currently, there is an inconsistent approach towards the operation of this system between different prisons. It was suggested that the approach for how a prisoner would qualify for temporary release should be related to or based on the behavioural pattern of the prisoner.

Witnesses highlighted that it is also important for there to be clarity around the process for obtaining temporary release, as this supports the approach of the IPS in implementing a clear rehabilitation plan for each prisoner upon entering prison.

7. Additional measures to strengthen the legislation

- **Annual Report (Head 52)**

Witnesses highlighted Head 52, which permits the Minister for Justice to redact the Annual Report of the IPS, either in part or in full.

Witnesses commented that this proposal appears strict, particularly given that this does not apply to the annual reports published by other statutory bodies, for example, the Irish Human Rights and Equality Commission (IHREC).

It was recommended that this provision be re-considered, as it is important to guarantee the independence of the IPS.

- **Open Prisons**

Members discussed open prisons and questioned if it may be possible to move certain prisoners to an open prison at an earlier stage of their prisons sentence. Members commented that often prisoners may have completed more than half of their prison term before they are transferred to an open prison.

In response witnesses stated the IPS has a policy which guides decisions around the movement of prisoners to open prisons and that the numbers of prisoners in open centres stands at roughly 10% of the prison population.

It was highlighted that, in recent times, there have been difficulties in prisoners being approved to move to open centres. However, recent issues relating to overcrowding in prisons has resulted in more prisoners being permitted to move to open prisons.

Witnesses suggested that there should be a waiting list in place for each of the open prisons. Decisions relating to whether a prisoner is moved to an open centre should be based on the that individual's behavioural history, whilst in prison and rehabilitative efforts they have made, rather than the offence for which they have been imprisoned.

Witnesses also suggested that the Grove area in Castlerea could be used for prisoners who have not yet met the criteria to be approved for movement to an open prison centre.

CHAPTER 3 - Summary of Submissions

This note summarises the key issues raised in the submissions received.

The Committee received submissions from the following Stakeholders.

- The Prison Officers' Association
- Irish Penal Reform Trust (IPRT)

The submissions provided commentary in relation to several heads of the General Scheme, in particular, provisions relating to the Director General [Part 2 and Part 6]; code of ethics for staff of the Service (Head 31); and lack of any statutory provisions within the General Scheme in relation to prison culture.

- **The Prison Officers' Association**

The Prison Officers' Association raised the following points in relation to the General Scheme

- The Prison Officers' Association ('the Association') underlined that they are seeking further clarification on the impact, if any, that the General Scheme may have on the status of their members as civil servants and whether it will have any impact on the collective agreements their members have in relation to the terms, conditions and remuneration of staff. They highlighted that the Minister for Justice is obligated to notify all relevant trade unions in advance of transferring the employee status of staff of Governor Grade, Prison Officers and associated staff of the Department of Justice to staff of the Irish Prison Service (IPS).
- The Association said they have requested a meeting with the Department of Justice to clarify this and other provisions within the General Scheme.
- The Association also noted the powers assigned to the Director General of the IPS under the General Scheme, in particular, the power under Head 13 to allow the Director General to delegate their functions to members of staff of the Service, under certain conditions. They questioned whether the Director General would therefore be entitled to assign the ability to dismiss a staff member to a lower grade.
- Part 5 of the General Scheme deals with standards of integrity, codes of ethics and codes of conduct and the Association highlighted that the Board is obligated to consult with various bodies, including trade unions, before issuing their code of ethics.

- **Irish Penal Reform Trust (IPRT)**

The Irish Penal Reform Trust (IPRT) raised the following points in relation to the General Scheme:

- **General Observations**

IPRT welcomed the intention of the General Scheme to place the Irish Prison Service (IPS) on a statutory footing, highlighting that they have advocated for this since the IPS was first established.

IPRT underlined the need to address the serious issue of overcrowding within the prison system, in order for the non-executive board to be able to carry out its functions effectively. However, IPRT stressed that increasing the capacity of prisons or increasing the capital investments into prison capacity should not be viewed as the solution to prison overcrowding. IPRT pointed out that, despite references to increasing the number of prison beds contained within the General Scheme's press release, the Government's 'Review of Policy Options and Penal Reform' provided an opportunity to change the current approach to the penal system, with one of the report's central objectives being to reduce the number of people incarcerated for short sentences and find suitable alternatives to short prison sentences.

- **Functions of the Service [Head 7]**

IPRT highlighted that it will be necessary for the IPS to receive adequate funding, in terms of capital funding and resourcing of its staff, to ensure that it can carry out the functions assigned to it under this Head.

- **Director General (Part 2 and Part 6)**

While the IPRT welcomed some provisions relating to the Director General, including proposals under Heads 12-14 of the draft legislation, concerns were expressed in

relation to the provisions under Head 34(3) forbidding the Director General from questioning or expressing opinions in relation to Government policy.

IPRT noted that, while similar provisions are contained within legislation regarding the Director of the IHREC and legislation regarding the Ombudsman for Children, these individuals are only limited in commenting on Government policy when they present before the Public Accounts Committee of the Oireachtas.

IPRT supported the removal of proposals to restrict the Director General from commenting on Government policy when appearing before an Oireachtas Committee.

- **Board of the Service (Part 4)**

IPRT expressed concerns at the proposal that all members of the Board are to be appointed by the Minister for Justice. It was recommended that, given the wide range of experience and expertise needed by applicants, all appointments should be made from a public competition organized by the Public Appointments Service (PAS).

It was suggested that the list of experience and expertise for applicants could also include experience in penal policy and/or human rights and experience in the area of healthcare.

- **Annual report (Head 52)**

IPRT referred to the statutory power granted to the Minister for Justice under Head 52, allowing the Minister to redact in part or in full the annual report published by the IPS.

IPRT expressed concern at the severity of the approach, arguing that a similar statutory provision does not apply in relation to the annual reports of others statutory bodies as GSOC or the IHREC.

It was recommended that the inclusion of this provision be reconsidered, taking into account the improved accountability of the Director General and improved governance structures of the IPS under the General Scheme.

- **Statutory Committee: Audit Committee (Heads 37-38)**

IPRT suggested that a statutory provision could be included in this legislation to establish a standing statutory 'risk' committee for risk management of the IPS. Alternatively, the audit committee could be re-designed as the 'audit and risk' committee to address both of these areas.

- **Code of ethics for staff of the Service (Head 31)**

It was recommended that the General Scheme should evaluate how a code of ethics could be applied to the conduct of staff when undertaking their duties.

- **Lack of any statutory provision regarding temporary release**

IPRT pointed out that as this legislation proposes a new governance structure for the IPS, the General Scheme should clarify where the responsibility for overseeing and administering the temporary release process falls between the Minister for Justice and the IPS.

- **Lack of any statutory provisions regarding prison culture**

In its submission, IPRT stressed the importance of prison culture, which encompasses the promotion of working relationships between staff and prisoners, staff and management and all other work-related relations.

IPRT underlined that a prison culture that respects complaints and that reacts promptly to solve issues or misconduct would be of crucial support to any system of accountability within the IPS. It was pointed out that international research, including the '2017 Concluding Observations for Ireland' report, from the UN Committee against Torture had recommended that the complaints system within prisons should be amended and an independent complaints mechanism be introduced, in order to align with best practice. However, IPRT underlined that any modifications to the prison

complaints system would only be effective if there is not a supportive prison culture behind it.

IPRT highlighted that the draft legislation does not include provisions to introduce a permanent or standing committee for prison culture in the IPS, despite a report from the Office of the Inspector of Prisons Report on Culture and Organization, which outlined the ineffective and problematic organisational and work culture within the IPS.

IPRT recommended that a statutory requirement be introduced, to ensure that regular consultations occur with between the IPS, prisoners and staff, as this would be helpful in relation to the management and operation of IPS. As an example of how to undertake these consultations, submissions referred to the 'Measuring Quality of Prison Life MQPL+ survey'.

APPENDICES

APPENDIX 1- ORDERS OF REFERENCE OF THE COMMITTEE

Standing Orders 94, 95 and 96 – scope of activity and powers of Select Committees and functions of Departmental Select Committees

Scope and context of activities of Select Committees.

94.(1) The Dáil may appoint a Select Committee to consider and, if so permitted, to take evidence upon any Bill, Estimate or matter, and to report its opinion for the information and assistance of the Dáil. Such motion shall specifically state the orders of reference of the Committee, define the powers devolved upon it, fix the number of members to serve on it, state the quorum, and may appoint a date upon which the Committee shall report back to the Dáil.

(2) It shall be an instruction to each Select Committee that—

(a) it may only consider such matters, engage in such activities, exercise such powers and discharge such functions as are specifically authorised under its orders of reference and under Standing Orders;

(b) such matters, activities, powers and functions shall be relevant to, and shall arise only in the context of, the preparation of a report to the Dáil;

(c) it shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Joint Committee on Public Petitions in the exercise of its functions under Standing Order 125(1)³; and

³ Retained pending review of the Joint Committee on Public Petitions

(d) it shall refrain from inquiring into in public session or publishing confidential information regarding any matter if so requested, for stated reasons given in writing, by—

(i) a member of the Government or a Minister of State, or

(ii) the principal office-holder of a State body within the responsibility of a Government Department or

(iii) the principal office-holder of a non-State body which is partly funded by the State,

Provided that the Committee may appeal any such request made to the Ceann Comhairle, whose decision shall be final.

(3) It shall be an instruction to all Select Committees to which Bills are referred that they shall ensure that not more than two Select Committees shall meet to consider a Bill on any given day, unless the Dáil, after due notice to the Business Committee by a Chairman of one of the Select Committees concerned, waives this instruction.

Functions of Departmental Select Committees.

95. (1) The Dáil may appoint a Departmental Select Committee to consider and, unless otherwise provided for in these Standing Orders or by order, to report to the Dáil on any matter relating to—

(a) legislation, policy, governance, expenditure and administration of—

(i) a Government Department, and

(ii) State bodies within the responsibility of such Department, and

(b) the performance of a non-State body in relation to an agreement for the provision of services that it has entered into with any such Government Department or State body.

(2) A Select Committee appointed pursuant to this Standing Order shall also consider such other matters which—

(a) stand referred to the Committee by virtue of these Standing Orders or statute law, or

(b) shall be referred to the Committee by order of the Dáil.

(3) The principal purpose of Committee consideration of matters of policy, governance, expenditure and administration under paragraph (1) shall be—

(a) for the accountability of the relevant Minister or Minister of State, and

(b) to assess the performance of the relevant Government Department or of a State body within the responsibility of the relevant Department, in delivering public services while achieving intended outcomes, including value for money.

(4) A Select Committee appointed pursuant to this Standing Order shall not consider any matter relating to accounts audited by, or reports of, the Comptroller and Auditor General unless the Committee of Public Accounts—

- (a) consents to such consideration, or
- (b) has reported on such accounts or reports.

(5) A Select Committee appointed pursuant to this Standing Order may be joined with a Select Committee appointed by Seanad Éireann to be and act as a Joint Committee for the purposes of paragraph (1) and such other purposes as may be specified in these Standing Orders or by order of the Dáil: provided that the Joint Committee shall not consider—

- (a) the Committee Stage of a Bill,
- (b) Estimates for Public Services, or
- (c) a proposal contained in a motion for the approval of an international agreement involving a charge upon public funds referred to the Committee by order of the Dáil.

(6) Any report that the Joint Committee proposes to make shall, on adoption by the Joint Committee, be made to both Houses of the Oireachtas.

(7) The Chairman of the Select Committee appointed pursuant to this Standing Order shall also be Chairman of the Joint Committee.

(8) Where a Select Committee proposes to consider—

- (a) EU draft legislative acts standing referred to the Select Committee under Standing Order 133, including the compliance of such acts with the principle of subsidiarity,
- (b) other proposals for EU legislation and related policy issues, including programmes and guidelines prepared by the European Commission as a basis of possible legislative action,
- (c) non-legislative documents published by any EU institution in relation to EU policy matters, or
- (d) matters listed for consideration on the agenda for meetings of the relevant Council (of Ministers) of the European Union and the outcome of such meetings, the following may be notified accordingly and shall have the right to attend and take part in such consideration without having a right to move motions or amendments or the right to vote:
 - (i) members of the European Parliament elected from constituencies in Ireland,
 - (ii) members of the Irish delegation to the Parliamentary Assembly of the Council of Europe, and
 - (iii) at the invitation of the Committee, other members of the European Parliament.

(9) A Select Committee appointed pursuant to this Standing Order may, in respect of any Ombudsman charged with oversight of public services within the policy remit of the relevant Department consider—

- (a) such motions relating to the appointment of an Ombudsman as may be referred to the Committee, and

(b) such Ombudsman reports laid before either or both Houses of the Oireachtas as the Committee may select: Provided that the provisions of Standing Order 130 apply where the Select Committee has not considered the Ombudsman report, or a portion or portions thereof, within two months (excluding Christmas, Easter or summer recess periods) of the report being laid before either or both Houses of the Oireachtas.⁴

⁴ Retained pending review of the Joint Committee on Public Petitions.

Powers of Select Committees.

96. Unless the Dáil shall otherwise order, a Committee appointed pursuant to these Standing Orders shall have the following powers:

(1) power to invite and receive oral and written evidence and to print and publish from time to time—

(a) minutes of such evidence as was heard in public, and

(b) such evidence in writing as the Committee thinks fit;

(2) power to appoint sub-Committees and to refer to such sub-Committees any matter comprehended by its orders of reference and to delegate any of its powers to such sub-Committees, including power to report directly to the Dáil;

(3) power to draft recommendations for legislative change and for new legislation;

(4) in relation to any statutory instrument, including those laid or laid in draft before either or both Houses of the Oireachtas, power to—

(a) require any Government Department or other instrument-making authority concerned to—

(i) submit a memorandum to the Select Committee explaining the statutory

Instrument, or

(ii) attend a meeting of the Select Committee to explain any such statutory instrument: Provided that the authority concerned may decline to attend for reasons given in writing to the Select Committee, which may report thereon to the Dáil,

and

(b) recommend, where it considers that such action is warranted, that the instrument should be annulled or amended;

(5) power to require that a member of the Government or Minister of State shall attend before the Select Committee to discuss—

(a) policy, or

(b) proposed primary or secondary legislation (prior to such legislation being published),

for which he or she is officially responsible: Provided that a member of the Government or Minister of State may decline to attend for stated reasons given in writing to the Select Committee, which may report thereon to the Dáil: and provided further that a member of the Government or Minister of State may request to attend a meeting of the Select Committee to enable him or her to discuss such policy or proposed legislation;

(6) power to require that a member of the Government or Minister of State shall attend before the Select Committee and provide, in private session if so requested by the attendee, oral briefings in advance of meetings of the relevant EC Council (of Ministers) of the European Union to enable the Select Committee to make known its views: Provided that the Committee may also require such attendance following such meetings;

(7) power to require that the Chairperson designate of a body or agency under the aegis of a Department shall, prior to his or her appointment, attend before the Select Committee to discuss his or her strategic priorities for the role;

(8) power to require that a member of the Government or Minister of State who is officially

responsible for the implementation of an Act shall attend before a Select Committee in relation to the consideration of a report under Standing Order 197;

(9) subject to any constraints otherwise prescribed by law, power to require that principal office-holders of a—

(a) State body within the responsibility of a Government Department or

(b) non-State body which is partly funded by the State,
shall attend meetings of the Select Committee, as appropriate, to discuss issues for which they are officially responsible: Provided that such an office-holder may decline to attend for stated reasons given in writing to the Select Committee, which may report thereon to the Dáil;

and

(10) power to—

(a) engage the services of persons with specialist or technical knowledge, to assist it or any of its sub-Committees in considering particular matters; and

(b) undertake travel;

Provided that the powers under this paragraph are subject to such recommendations as may be made by the Working Group of Committee Chairmen under Standing Order 120(4)(a).'

APPENDIX 2 - LIST OF STAKEHOLDERS AND SUBMISSIONS

The Committee received submissions from the following stakeholders:

- Prison Officers' Association
- Irish Penal Reform Trust (IPRT)

[Submissions are available in the online version of the Committee's Report, which will be accessible at <https://www.oireachtas.ie/en/committees/33/justice/>].



8th September 2023

Mr. Alan Guidon
Clerk to the Committee
Joint Committee on Justice
Leinster House
Dublin 2

Dear Alan

Thank you for your invite on behalf of the Joint Committee on Justice to make a written submission on the General Scheme of the Irish Prison Service Bill.

The submission we are presenting is subject to our seeking a meeting with the Department of Justice to clarify a number of issues including the matter of the status of our members as civil servants and the impact of the General Scheme of the Irish Prison Service Bill on their status.

The Irish Prison Service by way of email outlined the following:

- The Scheme has no effect on the civil service status or terms and conditions of staff, other than that they will become civil servants of the Government rather than officers of the minister.

On 25th July in response to a question in the Dáil on the proposed Bill the Minister for Justice stated:

*“I understand that IPS management have provided the relevant union representatives with an outline of the main proposals, including those relating to staff. The General Scheme of the **Irish Prison Service Bill provides that the staff of the IPS will retain their civil service status**, with the Director General being designated as the Appropriate Authority for staff within the meaning of the Public Service Management (Recruitment and Appointments) Act 2004 and the Civil Service Regulation Acts 1956 to 2005.*

*Following approval by Government, the General Scheme of the Bill will be published and referred to the Oireachtas Committee on Justice for pre-legislative scrutiny and to the Office of Parliamentary Counsel for drafting. **At that point there will be an opportunity for engagement with staff representatives on any queries or concerns they may have”.***

In addition, we will require further legal advice following the meeting we are seeking with the Department of Justice, which in turn may require an additional submission.

Notwithstanding the above please see attached our initial submission.

Yours sincerely

On behalf of the Prison Officers' Association

A handwritten signature in black ink, appearing to be 'KD' followed by a long horizontal stroke and a small upward flick at the end.

Karl Dalton
General Secretary

**Submission on behalf of the Prison Officer's Association on the
General Scheme of the Irish Prison Service Bill**

- A. Assurances regarding our members' civil service status going forward.
- B. Delegation of functions to the Director General (including the power to dismiss).
- C. Any other matters that may impact upon your members.

A. Assurances regarding your members' civil service status going forward.

On 25th July in response to a question in the Dáil on the proposed Bill the Minister for Justice stated:

"I understand that IPS management have provided the relevant union representatives with an outline of the main proposals, including those relating to staff. The General Scheme of the Irish Prison Service Bill provides that the staff of the IPS will retain their civil service status, with the Director General being designated as the Appropriate Authority for staff within the meaning of the Public Service Management (Recruitment and Appointments) Act 2004 and the Civil Service Regulation Acts 1956 to 2005.

Following approval by Government, the General Scheme of the Bill will be published and referred to the Oireachtas Committee on Justice for pre-legislative scrutiny and to the Office of Parliamentary Counsel for drafting. At that point there will be an opportunity for engagement with staff representatives on any queries or concerns they may have".

I am unclear what contact there has been in connection with the proposals, however we note the Minister's comments that there should now be an opportunity for engagement and perhaps a meeting could be sought to facilitate such engagement at this stage.

Head 10(2) of the draft Scheme provides as follows:

"A member of staff of the Service shall be a civil servant in the Civil Service of the Government".

Head 10(1) provides that each prison officer and member of the staff of the Department designated by order of the Minister shall be transferred to and become a member of the staff of the Service. The Service itself shall be a body corporate with perpetual succession¹. There appears to be a typographical error in Head 10(3) which states:

1 Per Head 5(2)

2 Per Section 3(2) of the Civil Service Regulation Act 1956

3 Per Head 10(5)

“Subject to Heads 30(6) and 31(3), members of staff of the Service shall be subject to the direction and control of the Director General in carrying out their functions (including any functions held by virtue of the grade of a member of staff)”.

In fact, the references to Heads 30(6) and 31(3) appear to be in error as we note that there is no Head 30(6) while Head 31(3) relates to a Code of Ethics.

Head 10(4) provides that the Director General is the appropriate authority within the meaning of the Public Service Management (Recruitment and Appointments) Act 2004 and the Civil Service Regulation Acts 1956 to 2005 in relation to the staff of the Service.

This designation is important as it means that the “*appropriate authority*” or its nominee may act as a “*suspending authority*.” A suspending authority is authorised to suspend a civil servant pursuant to Section 13 of the Civil Service Regulation Act 1956 and similarly the appropriate authority is empowered to deal with disciplinary measures under Section 15 of that Act (as amended).

It will be noted that the Minister is required to notify in writing any recognised Trade Union of the Minister’s intention to designate each Officer of Governor Grade, Prison Officer and member of the staff of the Department before they are transferred to become a member of the staff of the Service. In addition, the Minister is required to consider any representations made by the Trade Union in relation to the matter. In order to fulfil this requirement, we are seeking a meeting with the Department of Justice to clarify a number of issues to enable us to properly submit our position.

Head 10(6) provides that those staff transferring to the Irish Prison Service shall not receive a lesser scale of pay or less beneficial terms and condition of the Service than that which they were entitled to prior to the transfer “*except in accordance with a collective agreement negotiated with any recognised Trade Union or staff association concerned.*” It is important to note that Head 10(6) and Head 10(7) are intended to protect the terms, conditions and remuneration of staff transferring to the Service so that they do not receive lesser terms that they were previously on (unless this has been provided for in a collective agreement). In the circumstances it will be important to review and clarify the collective agreements in existence with the Department and the impact on these agreements as a result of any change to our members’ status as civil servants

B. Delegation of functions to the Director General (including the power to dismiss)

The Director General is given wide ranging powers in relation to the appointment of staff under the Bill and fixing the terms and conditions of employment of such staff and their grades and the numbers of staff in each grade. In this regard you will note this is provided for explicitly in Head 10(9). In addition, the Director General is also responsible for assigning all other staff of the Service to particular prisons and other workplaces within the Service.

Head 12(1)(c)(v) provides that the Director General shall ensure appropriate arrangements are in place for “*recruitment, training, development and performance management of staff*”, what changes are envisaged to existing performance management arrangements, *vis-à-vis* or current status as civil servants.

Head 13 provides the Director General may delegate his/her functions to members of staff of the Service specified by grade, position, name or otherwise (other than for the provision of submissions to the Oireachtas Committees (Head 36) which is reserved to the Director General). Does this provision allow the Director General to Designate the power to dismiss to a lower grade. If so, this would be a major departure from our current position as civil servants.

C. Any other matters that may impact upon your Members.

We note that Part 5 of the Bill deals with standards of integrity, codes of ethics, codes of conduct and unauthorised disclosure of information. In particular Head 31 deals with a code of ethics for staff of the Service. This provides that the Board shall issue a code of ethics including standards of conduct and practice for staff of the Service and provisions to encourage and facilitate reporting by staff of wrongdoings. The Board is required to consult with various parties prior to issuing a code⁴ and in particular the Board is required to consult *“any recognised Trade Union or staff association representing members of staff of the Service.”*

4 Per Head 31(4)

We note that the Prison Service currently has a code of ethics for staff however this provision will put the code on a statutory basis. Agents note that the provisions are based on the Policing Security and Community Safety Bill 2023 and in particular, Section 78 of that Bill.

In light of the above and the Minister’s statement in the Dáil that following publication of the Scheme there would be an opportunity for engagement we are requesting a meeting with the Department to address any concerns arising from the above.



**Submission by the Irish Penal Reform Trust to the Joint Committee on Justice on the General
Scheme of the Irish Prison Service Bill**

7 September 2023

The Irish Penal Reform Trust

Established in 1994, the Irish Penal Reform Trust (IPRT) is Ireland's leading civil society organisation campaigning for rights in the penal system and the progressive reform of Irish penal policy. Our vision is one of respect for human rights in the penal system, with imprisonment used only as a sanction of last resort. We work towards progressive reform of the penal system based on evidence-led policies and a commitment to combating social injustice. IPRT publishes a wide range of policy positions and research documents; we campaign across a wide range of penal policy issues; we work constructively with all stakeholders; and we have established IPRT as the leading independent voice in public debate on the Irish penal system.

Contact Details

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MACRO, 1 Green Street
Dublin 7

Phone: + 353 1 874 1400

Website: www.iprt.ie

Email: info@iprt.ie / director@iprt.ie

Introduction

1. The Irish Penal Reform Trust (IPRT) sincerely thanks the Joint Committee on Justice ('the Committee') for the welcome opportunity to make a submission on the General Scheme of the Irish Prison Service Bill 2023.
2. IPRT is Ireland's principal independent non-governmental organisation working for systemic penal reform and change. Our vision is a just, humane Ireland where prison is used as a last resort. Our mission is to advocate for a progressive criminal justice system that prioritises alternatives to prison, upholds human rights, and champions reintegration. We do this through conducting research, campaigning and changing attitudes.
3. To this end, we hold the State to account by calling out human rights issues within the system and push for the highest possible standards of human rights recognition and compliance within the criminal justice system.
4. By way of further information, IPRT's most recent flagship report - '[Progress in the Penal System 2022](#)' ('PIPS 2022')¹ provides an overview of conditions in the Irish penal system as of the end of 2022. This publication is the latest in a series of annual reports that began in 2017. The PIPS series benchmarks the rate of progress in the Irish penal system against a set of standards that are informed by international human rights standards and best practice in penal reform.

The General Scheme of the Irish Prison Services Bill: General Observations

5. IPRT welcomes the publication of the draft [General Scheme of the Irish Prison Service Bill 2023](#) ('the General Scheme'). IPRT has long called for the placement of the Irish Prison Service (IPS) as an independent prisons authority on a statutory basis - a recommendation first made in 1997 by an expert group, chaired by Dan McAuley ('the McAuley Report'), when the Irish Prison Service was established on an administrative basis as an agency of the Department of Justice.² Placing it on a statutory footing is essential to ensuring that the highest of standards are maintained in governance and accountability in the IPS.
6. Accountability and oversight structures have a different significance in the 'closed world' of prisons. Accountability in the prison system encompasses much more than the prevention of human rights violations behind closed doors: it involves ensuring the prison system meets its own mission to provide "safe and secure custody, dignity of care and rehabilitation to

¹ IPRT, *Progress in the Penal System 2022* (May 2023). Access [here](#).

² Irish Prison Service Strategy Statement 2001-2003. Access [here](#). This provides some of the history to the establishment of the IPS.

prisoners”³ and that it does everything it can to minimise the harmful effects of imprisonment on people so held.⁴

7. While the publication of the General Scheme is welcome, though long overdue, it must be recognised that what must follow is a firm commitment to adequate investment in the proposed governance and audit structures of the IPS. Governance does not begin and end with the establishment of an independent board: governance infrastructure comprises capacity to monitor, review, report and evaluate.
8. From the outset, and contrary to the Government press release that accompanied the publication of the General Scheme, IPRT also wishes to state emphatically that increasing prison capacity should not be the primary solution proposed to the current crisis of overcrowding in the prison estate, nor should it be the *focus* of any capital investment. The Government has accepted and recognised this position in principle, in its ‘[Review of Policy Options and Penal Reform](#)’ (*‘Review of Penal Policy Options’*). The Review of Penal Policy Options offers an opportunity to wholly transform the approach to the penal system by developing innovative and evidence-based approaches in policy and practice, with the stated aim of reducing the number of people sent to prison on short-sentences. It is worth noting that, each year, approximately two-thirds of all people committed to prison are for periods of less than 12 months.⁵
9. The publication of the General Scheme comes at a time when there is deepening pressure on the IPS, with increasing levels of overcrowding along with other issues, such as the high proportion of people with mental health difficulties in the prison system. These critical issues will have a bearing on oversight and governance for any new board structure, because without a commitment to address overcrowding in the prison system more generally, there is an inherent risk that the new board will become a firefighting operation.

Heads of The General Scheme: Specific Comments

Statutory Functions of the IPS (Head 7)

10. IPRT welcomes that there will be key statutory functions of the IPS, as set out in Head 7(1)(c) – (f), focussing on the provision of humane custody conditions with an emphasis on the well-being of those in custody.
11. These statutory obligations are “to treat prisoners with humanity and respect”, “provide ... services and activities...(to promote) the health, self-respect and spiritual, moral, and mental well-being of prisoners”, “to afford education, training and other developmental opportunities to prisoners”, and to “co-operate and collaborate with other State bodies and

³ Irish Prison Service, *Mission and Values* <https://www.irishprisons.ie/about-us/mission-and-values/>

⁴ Irish Penal Reform Trust, *Progress in the Penal System 2019*, ‘Accountability within the ‘closed world of prisons (2019)’, access [here](#).

⁵ IPRT, *Progress in the Penal System 2022* (May 2023), p. 19, 60. Access [here](#).

with relevant Departments of State in the interests of prisoner welfare, the reduction of offending and an efficient and effective criminal justice system”.

12. There is a conditional element added to the nature of these statutory obligations. Subhead (3)(a) notes that these functions “shall” be performed “with full regard to the resources that are available to it for the purpose of such performance and the need to secure the most beneficial, effective and efficient use of those resources”, while having to comply with, for example (see (subhead (3)(b))), Minister or Government policies and objectives and statutory obligations under section 42 of the IHREC Act 2014 and human rights law generally.
13. Therefore, while these are most welcome by way of statutory obligations on the IPS, it must be ensured that the IPS is adequately funded by way of both capital investment and resourcing for staffing to enable the fulfilment of these obligations.
14. Head 8 (arrangements with external service providers) is also to be welcomed. Clarifying the legal basis on which arrangements can be made with external service providers will embed good practice in this respect.

Director General (Part 2 and Part 6)

15. Heads 12-14 of the General Scheme, establishing the role of the Director General of the IPS as a statutory role with core functions and statutory procedures of appointment, etc., are welcome.
16. The statutory appointment of the Director General as the accounting officer for the IPS, at Head 34, is also welcome. This has been long called for by IPRT⁶ and others, including the Office of the Inspector of Prisons (OIP) in its report entitled ‘*Culture and Organisation in the Irish Prison Service*’ of 2015 (‘the *OIP Report on Culture and Organisation*’).⁷ It is a considerable step forward in governance standards to see that the Director General “shall be accountable to the Public Accounts Committee for the appropriate account and other matters”; with the objective of facilitating “enhanced accountability given that the day-to-day management of the Vote is carried out by the IPS” (as per the ‘Notes’ for Head 34).
17. However, there remains some matter for concern in that Head 34(3) also explicitly prohibits the Director General from “questioning” or “expressing an opinion” “on the merits of any policy of the Government or a Minister”. While the ‘Notes’ state that this is “largely modelled on section 72 of the Policing, Security and Community Safety Bill 2023”, that is an untested piece of legislation. While similar provisions do appear in legislation relating to the Director

⁶ IPRT, *10 Penal Policy Directions 2016-2021* (26 February 2016). It stated: “8. Ensure Prison Accountability - Establish the Irish Prison Service as a fully independent Prisons Authority on a statutory basis, with the Director General as Accounting Officer” Access [here](#).

⁷ Office of the Inspector of Prisons, *Culture and Organisation in the Irish Prison Service, A Road Map for the Future*, November 2015 (Judge Michael Reilly, Inspector of Prisons, and Professor Andrew Coyle), at p. 8. Access [here](#).

of IHREC and the Ombudsman for Children, IPRT notes that these provisions only limit these individuals' ability to comment on a Government policy when appearing before the Public Accounts Committee (and not other Oireachtas committees).⁸ It is not clear why the Director General should be limited in their comments on Government policies before any Oireachtas committee., and IPRT would urge the Committee to closely consider whether restriction in this manner is appropriate or necessary.

Board of the IPS (Part 4)

18. Similarly, Part 4 of the General Scheme regarding the statutory establishment of a Board of the IPS is welcome. This was called for in the *OIP Report on Culture and Organisation*.⁹
19. Head 23 deals with membership of the Board, a chairperson and 8 ordinary members, with "experience and expertise" in (to paraphrase subhead 4) in some or all areas relating to the functions of the IPS, organisational governance, public administration, or financial matters.
20. To ensure a broad representation of expertise for the benefit of the Board in fulfilling its broad statutory obligations (as under Head 7(1)), IPRT suggests that a welcome and useful inclusion in the list of "experience and expertise" could be "penal policy and/or human rights". Similarly, an added area of "experience and expertise" that would be helpful to the fulfilment of statutory obligations would be the area of healthcare.
21. The *OIP Report on Culture and Organisation* called for consideration to be given to some non-executive members being appointed to the Board. The IPRT commends the decision to have the 'ordinary membership' at this non-executive level, as a person is deemed ineligible to be appointed as a member if they are a member of staff of the IPS (Head 25(1) amongst other grounds of ineligibility).
22. However, IPRT notes with concern that all members are to be appointed by the Minister for Justice (Head 23(2)). In addition to which, the Minister "may appoint one of his or her officers as an ordinary member of the Board" (Head 23(3)).
23. Given the broad criteria of the required "experience and expertise" for appointment, IPRT urges the Committee to consider whether it could be clarified further that appointments, in whole or in part, are to be made pursuant to a public competition managed by the Public Appointments Service. The 'Notes' to this Head states as follows: "(It is envisaged that the appointments will be made in accordance with the generally applicable open process for the appointment of persons to State boards.)" (Emphasis added.) However, this needs to be reflected in the wording of the legislation itself.

⁸ See: sections 22-23 of the Irish Human Rights and Equality Commission Act 2014, access [here](#) ; and sections 18-19 of the Ombudsman for Children Act 2002, access [here](#) .

⁹ Office of the Inspector of Prisons, *Culture and Organisation in the Irish Prison Service, A Road Map for the Future*, November 2015 (Judge Michael Reilly, Inspector of Prisons, and Professor Andrew Coyle), at p. 8. Access [here](#).

Annual report (Head 52)

24. IPRT notes that there may be circumstances where greater ministerial oversight will be required considering the potentially extreme or severe nature of public safety and/or security issues that may arise in the nature of the work of the IPS. This greater oversight and close relationship between the Department of Justice and the IPS is particularly reflected in Heads 49 (Power of Minister to issue general directives and guidelines), 50 (Power of Minister to give direction to the Director General), and 52 (Duties of Director General to inform and assist the Minister), amongst others. However, IPRT is concerned that the statutory power of the Minister, as set out in Head 52, to redact in part or in full the publication of the annual report of the IPS seems particularly stringent. Given the enhanced accountability of the Director General and the enhanced governance structures of the IPS, it is difficult to envisage when such a power would have to be applied. There is no equivalent statutory provision regarding the annual reports of other statutory bodies, such as GSOC¹⁰ or IHREC¹¹. IPRT suggests that the Committee consider the need for such a statutory provision, particularly given the importance of protecting the independence of the IPS.

Statutory Committee: Audit Committee (Heads 37-38)

25. Head 37 sets out the parameters for the establishment of an ‘audit committee’, comprised of 2/3 members of the Board and 4/5 other persons, deemed to have “the skills and experience necessary” to carry out the functions of the audit committee. The functions of the audit committee are set out in Head 38 and include advising the Director General on governance and financial matters, advising the Board on financial matters relating to its function, and reporting in writing annually to the Director General and the Board (copying the Minister for Justice).
26. One of the specific areas of advice to be provided by the audit committee relates to the “appropriateness, effectiveness and efficiency of the Service’s procedures” relating to “risk management” (Head 38 2(c)(iv)).
27. However, IPRT is disappointed to observe that there is no statutory provision for the establishment of a permanent statutory committee for risk management in the IPS. The ‘Notes’ regarding Head 37 are contradictory on this point as it states that it is not proposed to have a combined audit and risk committee, despite the audit committee being tasked with also advising on risk management, nor is it intended to have a separate risk committee despite this being advised for larger “agencies”. The following extract is most relevant:

“It is not proposed to provide for a combined audit and risk committee given the Code’s advice that a separate risk committee may be more appropriate for larger

¹⁰ <https://revisedacts.lawreform.ie/eli/2005/act/20/revised/en/html#SEC46>

¹¹ <https://revisedacts.lawreform.ie/eli/2014/act/25/revised/en/html#SEC28>

agencies. (However, the committee’s functions under Head 38 include advising on the appropriateness of the risk management procedures within the IPS.)”

28. This is also contrary to the previous position of the Department of Justice in 2019 regarding its plans for placing the IPS on a statutory footing. In July 2019, following publication of a report by the Inspector of Prisons (investigating allegations of wrongdoing in the IPS),¹² the then Minister for Justice and Equality announced that a Prison Service Board was to be established, with an independent chairperson, and **three committees** dealing with **audit, risk and culture**.¹³ It stated:

“In particular, a new audit committee will report directly to the Board. Two other committees, dealing with risk and culture, will also report to the Board. An internal audit function will also be established which will review and help improve key internal controls and control systems on a continual basis. The audit committee will advise the Board on the strategic processes for internal control and governance. Announcing these developments, the Minister commented: ‘The establishment of a new Prison Service Board, with an independent chair, along with new audit, risk and culture committees, will significantly strengthen governance of the Irish Prison Service, and enhance accountability, efficiency and effectiveness. This approach is consistent with the review of the governance relationship with Justice Agencies that is taking place alongside the very significant Transformation Programme in my Department – it is a further important step in the development and modernisation of the Prison Service. I am taking steps to put a Board in place as soon as possible.’”

29. IPRT urges the Committee to consider whether a statutory provision ought to be included to establish a permanent statutory ‘risk’ committee or to at least clarify whether the audit committee ought to be more clearly specified as an ‘audit *and* risk’ committee.

Head 31 – ‘Code of ethics for staff of the Service’

30. IPRT welcomes Head 31, which provides that there shall be a “code of ethics for staff”, to include “standards of conduct and practice for staff” and “provisions to encourage and

¹² Inspector of Prisons, ‘Preliminary Investigation by the Inspector of Prisons Pursuant to Section 31(2) of the Prisons Act 2007 into Allegations of Wrongdoing in the Irish Prison Service contained in Supplemental Affidavit to Judicial Review 785JR/2018’, 12 March 2019. Access [here](#). (“In an affidavit which emerged through court proceedings in November 2018, it was alleged that a small number of personnel in the OSG carried out improper surveillance in the Midlands prison as well engaging in other wrongdoing such as the deliberate monitoring of solicitor/client consultations and the placing of a tracker device on the private car of a prison officer.” See related statement by Minister for Justice and Equality on publication of the report [here](#).)

¹³ See ‘Statement by Minister for Justice and Equality, Mr. Charlie Flanagan T.D. accompanying the publication of the report by Inspector of Prisons pursuant to section 31(2) of the Prisons Act 2007 into allegations of wrongdoing in the Irish Prison Service’. Access [here](#).

facilitate the reporting by staff of wrongdoing”. Subhead 4 requires the Board to consult with a variety of bodies regarding the “content of the code”.¹⁴

31. However, it is not clear whether the conduct of staff under the Code will form part of any performance assessments for staff. Subhead 8 states that the Director General “shall take such steps ... necessary to ensure” that staff have “read and understood” the code and that “a record is kept of the steps taken” in this respect, for each staff member. IPRT would urge the Committee to consider in finer detail how any code of ethics would be applied to the conduct of staff in the performance of their duties.

Head 15 - Temporary Release

32. IPRT would suggest that thought be given to the process of how temporary release is to be granted within this new governance structure of the IPS. The benefits of temporary release to supporting reintegration into the community is widely accepted.¹⁵ However, while the Criminal Justice Act 1960, as amended Criminal Justice (Temporary Release of Prisoners) Act 2003, states that the Minister for Justice “may direct” that temporary release be granted, it is unclear how the procedure sits between the IPS and the Minister for Justice. The application process for temporary release ought to be clear; the General Scheme could provide an opportunity to clarify where the responsibility for overseeing and administering this process lies.

Lack of any statutory provisions regarding prison culture

33. Head 28 provides that the Board “may ... establish committees to assist and advise it” regarding its functions. This is a much-needed statutory provision and is welcomed. However, it does make up for the lack of statutory provision for a permanent or standing committee for prison culture in the IPS. This encompasses working relationships between staff and management, and between staff and prisoners – all working relationships in prison being related.
34. The importance of prison culture cannot be overstated. Access to education, healthcare, psychology, and other services are core elements of supporting rehabilitation and reintegration. However, meeting the basic needs of prisoners, providing decent living conditions, and ensuring constructive relationships between prison staff and prisoners are arguably even more fundamental to the success of any rehabilitative programmes. Recent

¹⁴ In December 2021, the IPS introduced a new Code of Ethics for staff, which set expectations as to how all staff work together, with prisoners, with their families and with other stakeholders, to create a professional and healthy working environment. See Irish Prison Service, Irish Prison Service Code of Ethics (IPS 2021). Access [here](#). The IPS Protected Disclosures Policy was also updated on 1 January 2023 and considerable efforts appear to have been made to promote access to protected disclosures, including assigning a dedicated protected disclosures manager, a dedicated portal on the staff intranet, information notices and training. See Irish Prison Service, Protected Disclosures Policy (IPS 2023). Access [here](#).

¹⁵ PIPS 2021, at p.p.88-89. Access [here](#).

research has found that prisoners' low expectations of prison life create a disconnect between international and national human rights standards and how prisoners perceive the prison environment. As a result, people in prison may not see what happens in prison as a breach of those standards.¹⁶ These elements of day-to-day life and treatment in prison can create a pervasive culture whereby people in prison tolerate poor conditions rather than challenging them in order to realise their rights.

35. Culture is also of importance when it comes to accountability within the penal system. In recent times, there has been increased activity and output by the OIP. This is welcome, but creating an effective system of accountability requires not only robust independent oversight, but also the shaping of a prison culture that respects complaints, acts swiftly to address any wrongdoings, and harnesses data and information to drive progress. Accountability is not a singular entity, one office, or one practice. While the increased output of the OIP will hopefully encourage reforms and greater accountability, this ultimately needs to be championed and driven internally by IPS management, governors, officers, and everyone who works within the prison system. Placing the IPS on a statutory footing – if properly resourced – provides an invaluable opportunity to improve governance structures within the IPS.
36. On a related note, and for context, regarding the importance of accountability in the functioning of any institution, IPRT wishes to advise the Committee that the Department of Justice review of the Prison Rules 2007 (SI no. 252/2007) ('the Rules') remains ongoing.¹⁷ The Rules touch on almost all aspects of prison conditions including, admission, accommodation, health, education, discipline, etc. Included in this review is a commitment to amend the Rules to allow for a streamlined complaints process and for the Office of the Ombudsman to take jurisdiction of prisoner complaints (as a form of independent review and oversight of how prisoner complaints are handled).¹⁸
37. This is also against the backdrop of international best practice. In 2017 Concluding Observations for Ireland, the UN Committee against Torture noted the "deficiencies" of the existing complaints system in Ireland, observing that the State "should consider establishing" an independent complaints mechanism for prisoner complaints and a "new individual

¹⁶ Sophie van der Valk and Mary Rogan, 'Complaining in Prison: "I suppose it's a good idea but is there any point in it?"' (2023) 264 Prison Service Journal www.crimeandjustice.org.uk/sites/crimeandjustice.org.uk/files/PSJ%20264%20January%202023_0.pdf accessed 28 April 2023.

¹⁷ Kildare Street, 'Prison Service' (13 June 2023). Access [here](#): "The Department has been working closely with the Office of Parliamentary Counsel to progress the amendments since November of 2020, however, progress has been intermittent due to a number of factors, including the impact of the pandemic and priority legislation taking precedence. Drafting of the amendments is now at an advanced stage and it is anticipated that this work can be completed in the coming months."

¹⁸ Kildare Street, 'Prison Service' (15 February 2023) - access [here](#). See also Kildare Street, 'Prison Service' (13 June 2023) - access [here](#).

The Office of the Ombudsman has long called for this jurisdiction to be added to its remit. (Press Release, 'Ombudsman calls for extension of remit to include prisons' IPRT, 4 February 2011. Access [here](#).)

complaints procedure”.¹⁹ Similarly, the Council of Europe has also emphasised the importance of an effective complaints procedure for both staff and prisoners, and for the Committee for the Prevention of Torture “the importance of effective grievance and inspection procedures in helping prevent ill-treatment in prisons is a recurrent theme”.²⁰

38. However, any new complaints system cannot be effective without conditions in place that support it, including the promotion of a positive culture. Prisoners are largely reliant on staff in order to access their rights and, as such, relationships play a crucial role in the prison environment.²¹ A robust complaints system in which staff and prisoners have confidence would support better management of prisons and better outcomes for everyone.
39. Prison culture can also be described as work culture, as it concerns the cultivation and promotion of good working relationships between management, staff, and prisoners.²² There are longstanding issues of ineffective and problematic organisational or work culture in the IPS, as summarised in the *OIP Report on Culture and Organisation*.²³
40. Appearing before the UN Committee against Torture in 2017, the IPS stated that it had conducted a benchmarking Measuring Quality of Prison Life (MQPL+) survey in seven prisons, with the intention to carry out repeat surveys in three to four years to measure the effects of changes in policy on the attitudes of **prisoners and staff** in prisons.²⁴ There is no public information to indicate whether or not this has happened. IPRT urges the Committee to consider whether there ought to be a statutory obligation to consult with prisoners and staff in prison on a periodic basis (for example, by way of a ‘Measuring Quality of Prison Life MQPL+ survey), as certainly the insights provided would be particularly helpful in the management and operation of the IPS, for staff and prisoners.
41. The involvement of prison staff in decision-making processes is a key element in supporting good communication. In staff surveys completed by the OIP, the majority of respondents stated that they did not feel involved in COVID-19 decision-making.²⁵ While this is a narrow metric with which to assess whether staff in Irish prisons feel involved in decision-making, in

¹⁹ UN Committee against Torture, Concluding Observations on the second periodic report of Ireland (CAT/C/IRL/CO/2) 31 August 2017, at paras. 21-22.

²⁰ Council of Europe, ‘Combating Ill-Treatment in Prison, A handbook for prison staff with focus on the prevention of ill-treatment in prison’ (2016) at p. 80. Access [here](#).

²¹ Crewe et al., ‘Staff-Prisoner Relationships, Staff Professionalism, and the Use of Authority in Public- and Private-Sector Prisons’ 40(2) Law & Social Inquiry 309. Accessed [here](#) 6 September 2023.

²² IPRT, *Progress in the Penal System 2022* (May 2023). Access [here](#). See Standard 30, ‘Developing positive relationships and work culture’, at p. 74.

²³ Office of the Inspector of Prisons, *Culture and Organisation in the Irish Prison Service, A Road Map for the Future*, November 2015 (Judge Michael Reilly, Inspector of Prisons, and Professor Andrew Coyle), at p. 5. Access [here](#). The executive summary of this report provides a stark overview of the history of organisational inefficiencies and “disconnect” within the IPS up to its time of publication in 2016. Chapter 2 provides an ‘Overview of the culture of the Irish Prison Service’.

²⁴ UN Web Tv, ‘Consideration of Ireland (Cont’d) – 1551st Meeting 61st Session Committee Against Torture’ (28 July 2017), 00:24:42 <https://media.un.org/en/asset/k1x/k1xjagg18m>. Accessed 10 March 2023

²⁵ Office of the Inspector of Prisons, COVID-19 Prison Staff Survey (OIP 2021). Access [here](#).

the absence of more detailed information, it could indicate that prison staff do not feel heard in IPS decision-making processes.

42. While prison oversight is often primarily considered a tool for protecting the rights of people detained, oversight also offers benefits to the prison management and prison staff by promoting best practice and contributing to the creation of better prison conditions.²⁶ However, recent Irish research exploring perceptions of oversight among prison management posited that negative perceptions of oversight appeared to stem from the wider organisational culture, which participants described as a 'blame game culture'. Although participants acknowledged that this culture was improving, the research suggested that, at present, the IPS organisational culture has not developed strong cultural norms towards oversight and accountability.²⁷
43. The research highlights the need for the IPS to explore where oversight obligations sit within the wider organisational culture by exploring the potential benefits of oversight for the organisation, fostering positive attitudes toward oversight, and potentially addressing perceived blame cultures.²⁸
44. The General Scheme offers an excellent opportunity by which a culture committee could be established, on a statutory basis, to address these issues and embed a progressive and inclusive governance structure within the IPS. Prison or work culture is vital to ensure good relationships between management, staff, and prisoners, and good working relationships ensures a positive prison environment.²⁹
45. IPRT again thanks the Committee for inviting its submission on the General Scheme and is more than willing to assist the Committee in any way possible in its deliberations.

Ends.

²⁶ Andrew Coyle, 'Professionalism in corrections and the need for external security: An international overview' (2010) 30(5) Pace Law Review <https://digitalcommons.pace.edu/cgi/viewcontent.cgi?article=1751&context=plr> Accessed 8 March 2023

²⁷ Sarah Curristan and Mary Rogan, 'When an Inspector Calls: Perceptions of Oversight among Prison Management' (2022) 263 Prison Service Journal www.crimeandjustice.org.uk/sites/crimeandjustice.org.uk/files/PSJ%20263%20November%202022.pdf Accessed 3 February 2023.

²⁸ Ibid.

²⁹ IPRT, *Progress in the Penal System 2022* (May 2023). Access [here](#). See Standard 30, 'Developing positive relationships and work culture', at p. 74.

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