

Ms. Helen McEntee T.D.,
Minister for Justice,
51 St. Stephen's Green,
Dublin 2

Eighth Progress Report of the Implementation Oversight Group to oversee implementation of the recommendations of the Penal Policy Review Group

Dear Minister McEntee,

As you will be aware, it is now six years since the report of the Penal Policy Review Group was published. This report represented a critical and novel moment in the history of Irish penal policy, resulting in 43 recommendations on how to create much-needed reform of penal policy. A key feature of the group was its ability to achieve consensus amongst senior officials from your Department and criminal justice agencies, health professionals, representatives of penal reform organisations, representatives of groups representing and supporting victims of crime, members of the judiciary, and legal professionals.

The Penal Policy Review Group reported at a time when the penal system was undergoing a crisis. This was a crisis of increasing numbers and an overcrowded and dilapidated penal estate and sub-optimal use of alternatives to custody. It was also a crisis of direction for penal policy and incoherence in policy objectives.

The Penal Policy Review Group's report represented a vision for penal policy which was based on foundational principles reflecting an Irish approach to criminal justice – one based on compassion, on a commitment to scholarship and evidence, and human rights principles. This vision sought to ensure that those who are victims and survivors of crime are treated with the justice and care that they deserve. It also sought to ensure that our resources are used in the most effective way, that our policies are the best they can be, and that we do not use imprisonment unnecessarily.

Six years on, the Implementation and Oversight Group responsible for reporting on the status of the implementation of the Penal Policy Review Group's report, has taken stock of the progress which has been made and the areas which remain outstanding. This is an opportune moment given the recent reorganisation of your Department.

Our view is that some of the goals of the Penal Policy Review Group have been achieved, notably the transposition of the Victims' Directive into Irish law, and the renovation or replacement of some of the worst parts of the Irish penal estate. Efforts have also been made by the Probation Service to raise awareness of the value of non-custodial sanctions. Many of its recommendations have not seen the same level of progress. In particular, principles which are at the core of the vision for penal policy described in the Penal Policy Review Group Report have not been embedded. For example, the principle that prison should be a measure of last

resort has not been incorporated into statute. The principle that all decisions which might affect the numbers of people on criminal sanctions should involve an assessment of what those effects might be has also not been implemented. The principle that no new mandatory minimum sentences be introduced has, in fact, been breached.

The Implementation and Oversight Group is also aware of other policy developments in the interim, such as the report of the Commission on the Future of Policing, moves towards ratifying OPCAT, and international developments. In addition, other reports on penal policy have been published, including that of the Joint Oireachtas Committee on Sentencing and Penal Reform and the Irish Penal Reform Trust's Progress in the Penal System Reports. Perhaps most notably, the transformation agenda in your Department represents an opportunity for a renewed focus on the policy direction laid out in the Penal Policy Review Group report, which remains highly relevant and its recommendations current and pressing.

The Implementation Oversight Group has therefore decided to engage in an analysis of the recommendations it is charged with reporting on the implementation of. The purpose of this analysis is:

1. To identify any recommendations which are in need of updating or reassessment in light of more recent developments;
2. To suggest a possible prioritisation of the most immediately pressing overdue recommendations in light of the increasing numbers of people in prison in recent months, a matter which originally drove the establishment of the Penal Policy Review Group itself

Increasing prison numbers are a manifestation of the non-implementation of aspects of the Penal Policy Review Group concerning alternatives to custody and penal policy planning. While having the most direct and acute effects on the Irish Prison Service, the numbers of people coming into custody is outside that body's control. These figures are also placing pressure on other aspects of the system, including the Courts Service.

In the document which follows, we first address the immediate and pressing concerns of increasing numbers of people in prison. We direct your attention to recommendations of the Penal Policy Review Group which were designed to address this issue in 2014 and seek your Department's re-dedication to them. This may be thought of as a prioritisation of the Penal Policy Review Group's recommendations to address a matter of growing concern. We then provide an analysis of the status of the Penal Policy Review Group's recommendations and areas in which they could be amended. On this, we are asking for your agreement and that of your Department to the updated recommendations, on which the Implementation and Oversight Group would then continue to report to you on a six-monthly basis. By way of assistance, we reproduce in an appendix to this letter those recommendations from the original PPRG report which we consider most urgent in light of the worsening situation concerning rising prison numbers and overcrowding:

Finally, we wish to seek a recommitment and rededication of the Department to the policies outlined in the Penal Policy Review Group and a dissemination strategy concerning its recommendations and approach amongst relevant stakeholders. The history of penal policy in Ireland teaches us, unfortunately, that times of great promise and reform can be followed by periods of drift and stagnation, and ultimately regression. We will not let that happen on our watch. We also do not wish to fall out of line with European principles in this area, which emphasise the need to reduce the size of the prison population, and to promote a rehabilitative approach. A strategy of awareness-raising of the report's recommendations amongst all relevant stakeholders would also be very welcome.

Recent reorganisation in your Department has led to some changes concerning the Implementation Oversight Group. I would like to take this opportunity to thank Noel Dowling for his commitment to supporting the work of the IOG and wish him the best in his new role. I would like to record my particular thanks to Keith Lynn, with whom I have worked closely in his role as secretary to the IOG, for his unfailing professionalism, courtesy and patience.

I have briefly met with your new Criminal Policy team and am looking forward to working with them on the Government's agenda of progressive penal reform.

Mary Rogan
Chairperson of the Implementation Oversight Group
November 2020

Prison Numbers

According to the research on prison numbers undertaken by the Irish Prison Service (IPS) the number of persons in custody has shown some fluctuation since 2006. The number of persons in custody peaked in 2010 at **4,257** before falling back to **3,554** in 2014. Since 2016 however, the number of persons in custody has been steadily increasing.

From December 2016 to December 2019 there was a **10%** (+355) increase in the number of persons in custody rising from 3,595 to 3,950.

The direction of trends in temporary release figures somewhat mirror the trends in the numbers in custody - rising when custody numbers increase and declining when custody numbers decrease. Between December 2016 and December 2019 there was a **33%** (+76) increase in the number of persons on Temporary Release from 232 to 308.

In December 2019 the combined total number of persons in custody and those on temporary release (who remain prisoners while in the community) was **5,258**. This is a stark increase of **11%** (+431) since December 2016 when the combined total of persons was **4,827**.

The combined number on 11 March 2020 before measures to combat the effects of Covid19 in prisons were implemented was **4,235** in custody and **343** on temporary release (**4,578 total**) .

Appendix

Recommendation 8: The Review Group recommends the adoption of a strategy to reduce prisoner numbers to a safe level subject to the need to ensure proper protection of the public. This requires a focus on alternative approaches to the treatment of offenders. However, to achieve a reduction of prisoners in custody requires a level of collaboration and cooperation between all relevant Departments and agencies, including the IPS, Probation Service, An Garda Síochána, Irish Youth Justice Service, Department of Health and local authorities.

Recommendation 9: The Review Group recommends the development and expansion of the use of community sanctions in particular those that address the underlying causes of offending.

Recommendation 10: The Review Group supports the Fines (Payment and Recovery) Act 2014 and welcomes the positive impact that such legislation will have on fine defaulters and prison administration. The Review Group recommends the early and full implementation of this legislation.

Recommendation 24: The Review Group recommends that gender appropriate community sanctions and programmes should continue to be developed.

Recommendation 26: The Review Group recommends that all offenders must have the opportunity to avail of any necessary services or programmes to aid their rehabilitation and reintegration. A renewed focus on how best to approach the rehabilitation and reintegration of offenders is required. In particular, the importance of providing appropriate social services such as accommodation, education and training and addiction treatment or counselling must be acknowledged. In this regard, the Review Group recommends an increased focus on the provision of suitable accommodation, including step down facilities to ease the reintegration of offenders.

Recommendation 28: The Review Group recommends the greater use of structured temporary release. The Group recommends that there should be a consistent and transparent application of provisions, based on fair procedures, permitting offenders to earn remission of up to one third of the sentence imposed if such discretionary remission is to be retained.

Recommendation 29: The Review Group recommends a new focus on the management of temporary release with equity and monitoring of the application of temporary release.

In particular, the Review Group recommends that the prohibition on temporary release for those offenders who receive the presumptive mandatory sentence for a drugs or firearms offence should be removed.

Recommendation 30: The Review Group recommends the continuation and the expansion of the Community Return Programme (CRS) and Community Support Scheme (CSS).

Recommendation 32: In order to use prisons most justly and effectively, we should break with the idea that prison is the only real form of punishment. The Group recommends that imprisonment be regarded as a sanction of last resort and that this principle be incorporated in statute. The Group further recommends that non-custodial sanctions should become the default position in dealing with less serious offenders.

Recommendation 34: The Review Group recommends that no further mandatory sentences or presumptive minimum sentences should be introduced.

Recommendation 40: The Review Group strongly recommends that all future policy decisions in the area of criminal justice should be pre-assessed with a view to determining, where possible, impacts on prisoner numbers and numbers to be subject to other forms of sanction.

Recommendation 42: The Review Group recommends that the Minister for Justice and Equality establish a Consultative Council to advise on issues relating to penal policy. This Committee should consult with relevant partners – at Government, local authority and non-governmental level, as appropriate – on issues as they arise or are referred to them.