

## Irish Prison Service Bill 2023

## Regulatory Impact Analysis

## 1. Summary RIA

Summary of Regulatory Impact Analysis (RIA)	
Department/Office: Department of Justice	Title of Legislation: Irish Prison Service Bill 2023
Stage: Approval of General Scheme of Bill	Date: April 2023
Related Publications: None	
Available to view or download at: <a href="http://www.gov.ie">gov.ie - Search results (www.gov.ie)</a> (when published)	
Contact for enquiries: Criminal Legislation Department of Justice	Telephone: 01-6028202
<p>Policy Objectives</p> <ul style="list-style-type: none"> <li>To cement the identity and continuity of the Irish Prison Service (IPS) as a key agency in the criminal justice system by establishing it as a statutory State body with defined functions and responsibilities (including the provision of safe and secure custody, upholding human rights and dignity, and promoting the reduction of offending through appropriate services to prisoners and collaboration with other relevant public bodies).</li> <li>To facilitate the enhanced governance and performance of the IPS by providing it with the dedicated accountability and support structures – including an expert non-executive Board, audit committee and internal audit unit – that are warranted for an agency of such size, responsibility and inherent complexity, and which require a statutory underpinning if they are to operate as envisaged.</li> <li>To provide the post of IPS Director General with the authority of a 'true CEO' to match the responsibilities of the post, while accordingly strengthening the accountability of the office. This includes establishing the role as a statutory office with defined functions, power and accountabilities, and making the Director General the Accounting Officer for the Prisons Vote and the Appropriate Authority for its staff within the meaning of the Civil Service Regulation Acts 1956-2005 and the Public Service Management (Recruitment and Appointments) Act 2004.</li> </ul>	

Policy Options		
1. Do nothing - maintain the status quo.		
2. Introduce new legislation (Irish Prison Service Bill) to meet each of the policy objectives outlined above.		
Preferred Option: Option 2 is the preferred option as it is the only one that is capable of achieving the desired policy objectives.		
Analysis of Option 1 - Do nothing		
COSTS	BENEFITS	IMPACTS
<p>No direct financial costs to the Exchequer</p> <p>Inefficiencies arising from requirement to deal with issues that either would not arise under a statutory framework for IPS or that could be addressed without the Department's involvement</p> <p>Intangible future costs arising from continuance of inadequate framework for corporate governance and performance oversight of the prison system</p>	<p>None identified</p>	<p>Militates against best-practice designation of the Director General as Accounting Officer for the Prisons Vote and as the 'true CEO' of the IPS with clear authority and accountability for the management of all organisational resources (financial and human).</p> <p>Requires role of Accounting Officer for the Prisons Vote to remain with the Secretary General of the Department, despite the fact that she has no day-to-day involvement in the running of the prison system.</p> <p>Effectively precludes the establishment of an appropriately empowered non-executive oversight board and (despite the IPS having its own Vote) a dedicated audit committee and internal audit function independent of the Department - all of which would provide the dedicated, expert, independent oversight and guidance that the IPS needs as a matter of good corporate governance practice.</p>

		<p>Generates additional administrative overheads and risks in the assignment and/or management of corporate responsibility for data protection, the discipline and dismissal of staff, legal actions, protected disclosures and prisoner complaints <i>inter alia</i>. This is suboptimal for the IPS but also for the Department, which – to the detriment of higher-level strategic oversight and penal policy development – is obliged to involve itself actively in issues which, if the IPS were a statutory body, would either not arise or else could be addressed wholly or primarily at board and/or agency level.</p> <p>Impedes efforts to enhance the IPS cultural environment and to engender among staff the sense of belonging to a genuine, unified organisation with a clear and undisputed overall leader.</p>
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Analysis of Option 2 – introduce Irish Prison Service Bill

COSTS	BENEFITS	IMPACTS
<p>A relatively small additional annual outlay arises from the proposed establishment of a Board, an Audit Committee, such other committees as the Board may reasonably see fit to establish, a dedicated internal audit function, and a small additional resource to support the Accounting Officer</p>	<p>Greater clarity and transparency as to the respective roles of the Minister, the IPS and the Director General and to the reporting relationship between the Director General and prison governors</p> <p>Enhanced corporate governance, risk management, strategic guidance and performance oversight through new supports and accountability</p>	<p>Enhanced effectiveness in the delivery of penal services, ultimately yielding positive impacts on prisoner well-being, recidivism and the safety of prisoners, staff and communities</p> <p>Positive impact on IPS cultural climate – enhanced sense of purpose and certainty</p>

<p>function. The overall additional cost is estimated at approximately €425,000 per annum.</p> <p>Some once-off project costs would also arise from the work involved in transitioning to a statutory IPS. These will be the subject of consultation with D/PENDPDR but it is not anticipated that these once-off costs will exceed €200,000.</p>	<p>arrangements including an independent, expert board, a dedicated audit committee and internal audit unit, a statutory code of ethics for staff, and a statutory strategic plan, annual business plan, capital plan and governance framework</p> <p>IPS governance structures brought in line with Code of Practice for the Governance of State Bodies and aligned with arrangements in comparably-sized State agencies</p> <p>IPS Director General provided with the authority of a 'true CEO' to match the responsibilities of the post, while accordingly strengthening the accountability of the office</p> <p>Accountability to the Oireachtas enhanced by making the Director General the Accounting Officer for the Prisons Vote</p> <p>Greater efficiency and effectiveness in the management of capital, financial and human resources</p> <p>Strengthens the identity and operational certainty of IPS as a key agency in the criminal justice system</p> <p>Department better positioned to focus on high-level strategic oversight and penal policy</p>	<p>arising from establishing IPS as a true and unified State body with firm statutory foundations and defined functions</p> <p>There are no adverse impacts for Employment, North-South, East-West Relations, Gender Balance, Poverty Proofing, Industry Costs, Rural Communities or Quality Regulation.</p>
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## 2. Policy Context and Objectives

The proposed Bill seeks to give effect to an identified need to reform the corporate governance and support structures for the Irish Prison Service (IPS), which is currently a non-statutory executive office of the Department of Justice with responsibility for managing the prison system. The IPS is a large and operationally complex entity with over 4,000 staff, a Vote of over €420m in 2023 and the challenging responsibilities of ensuring the safe, secure and humane custody of all prisoners, seeking to reduce recidivism and managing large capital and current expenditure budgets.

### Background

The origins of the IPS lie in a 1998 Government decision which approved its establishment on an initial administrative basis to help prepare the ground for an intended statutory Prisons Authority. However, the planned legislation did not materialise at that time and the IPS has since operated as a largely autonomous branch of the Department, without legal personality or statutory functions. As a result there is no statutory accountability framework in place for the IPS, and the responsibility for supporting, monitoring and appraising its corporate governance and performance rests entirely with other areas of the Department. Such arrangements are unusual for a large agency that operates in a complex and inherently high-risk environment (and which manages its own Vote), and are not in alignment with the Code of Practice for the Governance of State Bodies.

The Department has long been conscious of a need to enhance the governance structures of the IPS, and there have been previous efforts to do so on an administrative basis. In 2016 the Department wrote to the Department of Public Expenditure, NDP Delivery and Reform (D/PENDPDR) seeking its agreement for the designation of the IPS Director General as Accounting Officer for the Prisons Vote and as the Appropriate Authority for IPS staff within the meaning of the Civil Service Regulation Acts and the Public Service Management (Recruitment and Appointments) Act. D/PENDPDR rejected the proposal to designate the Director General as Accounting Officer, on the grounds that it would not have the desired effect unless the IPS and the Director General were put on a statutory footing. While D/PENDPDR were agreeable to designating the Director General as Appropriate Authority, this has not yet come to pass pending an envisaged Civil Service Regulation (Amendment) Bill which would include such a provision.

In 2018, the Effectiveness and Renewal Group for the Department recommended that boards (whether statutory or advisory) should be established for the Department's medium- to large-sized executive agencies. In 2019, the then Minister for Justice announced his intention to establish, on an administrative basis, a 'Prisons Board' with substantial powers of oversight and direction. However, a subsequent internal assessment and consultation with D/PENDPDR found that, without a legislative underpinning, such a board could not exert the intended powers and could only act in an advisory capacity.

A Departmental review in 2020, conducted in consultation with the IPS, noted that the continued absence of a statutory basis for the IPS has the following adverse impacts:

- It militates against the designation of the Director General as Accounting Officer for the Prisons Vote and as a 'true CEO' with authority and accountability for the management of all resources (financial and human) in the IPS.
- It effectively precludes the establishment of an appropriately empowered non-executive oversight board and (despite the IPS having its own Vote) a dedicated audit committee and internal audit function independent of the Department, all of which would provide the dedicated, expert independent oversight and guidance that the IPS needs as a matter of good corporate governance practice.
- It is an impediment to efforts to enhance the IPS cultural environment and, in particular, to engender among staff the sense of belonging to a genuine, unified organisation with a clear and undisputed overall leader.
- It has generated additional administrative overheads across a range of matters including the assignment and/or management of corporate responsibility for data protection, the provision of directions to prison governors, the discipline and dismissal of staff, legal actions, protected disclosures and prisoner complaints *inter alia*. This is suboptimal for the IPS but also for the Department, which – to the detriment of higher-level strategic oversight and policy development activities – is obliged to involve itself actively in issues which, if the IPS were a statutory body, would either not arise or else could be addressed wholly or primarily at board and/or agency level.

In January 2021 the Minister approved the initiation of a process to develop detailed proposals for a statutory Irish Prison Service (IPS) with a non-executive oversight board. To this end a cross-functional working group was established with senior representatives of the Department's Criminal Justice Governance, Policy and Legislation functions and the IPS. The group reported back to the Minister in December 2021 with its recommendations, which formed the basis of a subsequent Government decision in June 2022 approving the preparation of the General Scheme of an Irish Prison Service Bill.

#### *Policy objectives*

The key aims of proposed legislation are to:

- Cement the identity and continuity of the IPS and clarify its responsibilities by establishing it as a self-contained statutory body with defined functions.
- Facilitate best-in-class internal governance, risk management, financial (including capital) management and service delivery by providing the corporate governance supports and accountability structures that are warranted for an agency of such size, responsibility and inherent complexity.
- Provide the office of Director General with the authority of a 'true CEO' to match the existing responsibilities of the post, while accordingly strengthening the accountability of the office.
- Create a statutory footing for the accountability of prison governors (as an existing statutory role) to the Director General.

- Expressly preserve the Minister's overall authority in strategic and policy matters (including, but not limited to, the key issue of prison capacity), and ensure that s/he is kept informed of key issues and developments arising in the prison system.

### 3. Identification and Description of Options

The following options were considered:

- A. Do nothing.
- B. Legislate to establish IPS and Director General on a statutory footing with defined functions and new oversight and accountability structures

### 4. Analysis of Costs, Benefits and Impacts for ALL Options

#### *Option A. Do nothing*

The IPS has a highly committed and competent workforce and has successfully navigated a number of difficult periods, most notably the recent pandemic. However, since the IPS came into being a quarter of a century ago, the governance landscape and the wider environment in which it operates have become more complex and demanding, and the prison system faces substantial challenges over the coming years. These include mental health and addiction problems among the prisoner population, an ageing prison estate, and a growing capacity issue as committals continue rising on foot of general population growth and increased policing and courts activity. In the interests of a safe, secure and well-functioning prison system, the IPS will need to be in the strongest possible position to address these and other issues through the efficient management of future capital investment and an increasingly strategic approach to managing the prisoner population. To meet these and other challenges head-on while also ensuring meaningful accountability for its performance, the IPS needs the dedicated and expert support, advice and oversight that can only be provided by reforming the governance of the prison system in line with the Code of Practice for the Governance of State Bodies. Doing nothing is clearly not a tenable option, and legislation is necessary to give effect to the measures required.

Maintaining the status quo would have no direct cost implications, and it could be argued that it would have the benefit of sparing the prison system the level of uncertainty and challenge that transitioning to new structures can involve. However, it would perpetuate the uncertain status of the IPS as a quasi-agency whose authority and accountability are inadequately defined and which lacks the dedicated and independent governance and support structures that are standard for a State agency of comparable size and complexity. This situation has been assessed as carrying significant strategic, reputational and operational risks which outweigh any risks associated with transitioning to a statutory IPS and which can only be satisfactorily mitigated by legislating on the lines now envisaged. This is considered to nullify any argument that there is a benefit in doing nothing.

Compared with the 'do nothing' option, one aspect of the proposed legislation that may generate some concern or criticism is that it could be perceived (or otherwise depicted) as reducing democratic accountability by distancing the Minister from responsibility for the prison system. From a related but different perspective, there may also be some concern at a perceived loss of Ministerial control over the system. However, the reality is that day-to-day management and decision-making is already largely (and necessarily) delegated to the IPS but without the dedicated oversight and clear accountability structures that would normally be expected to apply in such circumstances. The proposed legislation aims to remedy this by (inter alia) defining the functions of the IPS in law, formally vesting in the Director General the responsibility for the management of the prison system, creating a statutory footing for the accountability of prison governors to the Director General, making the Director General statutorily responsible to the Minister, and providing for an expert oversight board with a strong consultative, advisory, monitoring and appraisal role in respect of the development and implementation of IPS strategy and governance.

As is the case with all services provided by Government bodies, political accountability will continue to reside with the Minister and the Government. To that end, the General Scheme has been designed to explicitly preserve the Minister's overall authority in matters of policy and strategy, including the crucial matter of determining capacity in the prison system. The Scheme provides that both the Board and the Director General will be appointed by (and may be removed by) the Minister. Provision is also made that the Minister may issue general policy directives and guidelines and give specific directions to the Director General on any relevant matter. The Scheme additionally provides that the IPS strategic plan, annual business plan, capital plan and governance framework must be approved by the Minister (with or without amendment), and that the Minister may direct the IPS to prepare a capital plan for his/her approval. The Scheme also includes a strong onus on the Director General to keep the Minister informed of significant developments and issues arising in the system, and of matters relevant to the Government's accountability to the Oireachtas. Further provision is made that the Director General must, on request, provide the Minister with any document in the power or control of the IPS.

*Option B: Legislate to establish IPS and Director General on a statutory footing with defined functions and new oversight and accountability structures*

This option involves legislating to enable and establish a reformed governance framework for the IPS, on the lines endorsed by the Government in June 2022. The proposed statutory framework includes the following components:

- Establishing the IPS as a statutory body with defined functions and objectives;
- Establishing the Director General as a statutory office with clearly defined authority and accountability, including as the Accounting Officer for the Prisons Vote;
- Formalising the accountability of prison governors to the Director General;
- Establishing an independent non-executive expert board that will advise on and appraise the implementation of corporate strategies and plans and provide a strong level of corporate governance oversight;



- Clearly preserving the Minister's overall authority in matters of policy and strategy (including on the key issue of prison capacity);
- Placing a statutory duty on the Director General to keep the Minister informed of significant developments and to provide a report to the Minister on any matter where so requested;
- Providing a statutory basis for IPS multiannual strategic plans, annual business plans, governance frameworks and annual reports;
- Providing for a statutory capital plan;
- Establishing a dedicated audit committee and providing for the Board to establish other expert committees as it sees fit; and
- Providing a statutory basis for the Code of Ethics for IPS staff.

In conclusion, option B will establish the IPS as a State body with defined functions and operational certainty, formalise the respective roles and responsibilities of the Minister, the Director General and prison governors, and facilitate enhanced performance and accountability in the prison system by instituting a modern, best practice corporate governance oversight and support framework that aligns with the Code of Practice for the Governance of State Bodies. As indicated above, the anticipated costs are low and the benefits are substantial. This is the preferred option as it is the only one capable of achieving the reforms that have been identified as necessary.

## 5. Consultation

The General Scheme is the result of detailed deliberation and consultation, initially by a joint Department of Justice/IPS working group and subsequently through further consultation with the IPS and with the Department of Public Expenditure, NDP Delivery and Reform. Publication of the General Scheme will facilitate wider stakeholder input and scrutiny including by the Oireachtas.

## 6. Enforcement and compliance

Compliance with the applicable statutory frameworks will in the first instance be the responsibility of the Director General, with a robust monitoring and appraisal role for the Board, the audit committee and a dedicated IPS internal audit unit. Having regard to the Minister's political accountability for the prison system, the General Scheme includes a range of tools to support his or her accountability to the Oireachtas in relation to the performance of the IPS. These include requirements to prepare governance frameworks, multiannual strategic plans and an annual business plan (all of which are to be prepared by the Director General, in consultation with the Board, for approval by the Minister with or without amendment); a statutory code of ethics for staff, along with codes of conduct for the Board and for consultants and advisers; and (if requested by the Minister) the preparation of capital plans for the Minister's approval.

The Scheme also provides that the Board will be responsible to the Minister for its performance, and requires the Director General to inform the Minister of significant developments and issues and of matters relevant to the Government's accountability to the Oireachtas. Further provision is made that the Director General must, on request, provide the Minister with any document in the power or control of the IPS.

Accountability to the Oireachtas will be enhanced by making the Director General the Accounting Officer for the Prisons Vote and requiring him/her to attend before the Public Accounts Committee and other Oireachtas Committees on request.

The statutory requirements outlined above will be supplemented by the continuation of existing administrative arrangements based on the Code of Practice for the Governance of State Bodies (2016). This includes the Department's oversight role in accordance with the Code of Practice for the Governance of State Bodies. As required by the Code, the Department already concludes multiannual oversight agreements with the IPS which set out the broad governance and administrative accountability framework within which the IPS is to operate, and defining the key statutory and administrative roles, responsibilities and commitments that underpin its relationship with the Department. Performance Delivery Agreements are also drawn up annually, setting out the key metrics and associated targets by which the performance of the IPS is to be measured during the year in question. Several formal governance meetings will continue to be held each year between the Department and the senior leadership of the IPS. In addition to these fixed points of engagement, the Department will continue to engage regularly with the IPS to monitor its compliance and performance and to identify and address any issues arising.

## 7. Review

The operation of the Bill will be kept under ongoing review in consultation with stakeholders.

## 8. Publication

This Regulatory Impact Analysis will be published on the Department's website.