



NORTHERN  
IRELAND  
HUMAN  
RIGHTS  
COMMISSION

**RESPONSE TO NORTHERN IRELAND  
PRISON SERVICE CONSULTATION ON  
AMENDMENTS TO PRISON RULES**

**Summary**

This is a response to the consultation by the Northern Ireland Prison Service (NIPS) on proposed amendments to Prison Rules. The Commission has a particular interest in the detention regime and has carried out a number of investigations in this area.

In this response, the Commission welcomes many of the proposed amendments to the disciplinary Rules governing prisoners and young offenders in Northern Ireland, while calling for more attention to the specific needs of women, young people and at-risk prisoners. Concerns are also raised about restriction of association and complaint handling.

1. The Northern Ireland Human Rights Commission (the Commission) is a statutory body created by the Northern Ireland Act 1998. It has a range of functions including reviewing the adequacy and effectiveness of Northern Ireland law and practice relating to the protection of human rights,<sup>1</sup> advising on legislative and other measures which ought to be taken to protect human rights,<sup>2</sup> advising on whether a Bill is compatible with human rights<sup>3</sup> and promoting understanding and awareness of the importance of human rights in Northern Ireland.<sup>4</sup> In all of that work the Commission bases its

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<sup>1</sup> Northern Ireland Act 1998, s.69 (1).

<sup>2</sup> *Ibid*, s.69(3).

<sup>3</sup> *Ibid*, s.69(4).

<sup>4</sup> *Ibid*, s.69(6).

positions on the full range of internationally accepted human rights standards, including the European Convention on Human Rights (ECHR), other treaty obligations in the Council of Europe and United Nations systems, and the non-binding 'soft law' standards developed by the human rights bodies.

2. The Commission welcomes the consultation by the Northern Ireland Prison Service (NIPS) on proposed amendments to Prison Rules. The Commission has a particular interest in the detention regime and, as the Prison Service is aware, has carried out a number of investigations in this area.<sup>5</sup>
3. The proposed amendments touch on areas covered by a number of human rights treaties ratified by the United Kingdom, including:
  - European Convention on Human Rights (ECHR); in particular, Article 3 (the right to be free from torture or to inhuman or degrading treatment or punishment), Article 5 (the right to liberty and security), Article 6 (the right to a fair hearing), Article 8 (the right to private and family life), Article 9 (the right to freedom of thought, conscience and religion), Article 11 (freedom of assembly and association) and Article 14 (the right to non-discrimination)
  - International Covenant on Civil and Political Rights (ICCPR); in particular, Article 2 (the right to non-discrimination), Article 10 (the right to dignity), Article 14 (the right to a fair trial), Article 26 (the right to equality before the law) and Article 27 (the right to culture)
  - Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
  - Convention on the Elimination of All Forms of Racial Discrimination (CERD); in particular, Article 1 (meaning of racial discrimination), Article 2 (measures to eliminate racial discrimination) and Article 5 (the right to freedom from racial discrimination)
  - Framework Convention for the Protection of National Minorities (FCNM); in particular, Article 6 (the right to be protected from threats or acts of discrimination);
  - Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; in particular, Article 10 (training of personnel), and

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<sup>5</sup> Scraton P and Moore L (2005) *The Hurt Inside: The Imprisonment of Women and Girls in Northern Ireland* (2<sup>nd</sup> ed) NIHRC, Belfast; and (2007) *The Prison Within: The Imprisonment of Women at Hydebank Wood 2004-06*, NIHRC, Belfast.

- Convention on the Rights of the Child (CRC); in particular, Article 3 ('best interests' principle), Article 16 (the right to privacy and family life), Article 37 (on the treatment of children deprived of liberty) and Article 40 (3) (the establishment of laws, procedures, and institutions applicable to children alleged, accused, or recognised as having infringed the law).

## Women in prison

4. Bearing in mind the recent emphasis placed by NIPS and the Northern Ireland Office (NIO) on developing a strategy for the management of women offenders, together with the recently issued draft gender-specific standards for working with women prisoners, it is the Commission's view that more attention should be paid to the specific needs of women prisoners within the proposed amendments to Prison Rules. Scant attention is paid to the specific needs of women within the existing Prison Rules or in the proposed amendments, where one minor wording change is proposed at Rule 92. It is important that strategic planning and standards inform, at a practical level, the day-to-day running of the prisons.
5. The Draft Strategy for the management of women offenders seeks to develop a "women-centred integrative approach" and accords a central position to the Corston Review<sup>6</sup> in developing a distinct and co-ordinated approach to the management of women offenders in Northern Ireland. In the foreword to the draft gender-specific standards it is stated that the standards seek to address all areas of the regime from arrival through to discharge and in recognition of the fact that prison impacts on women differently, "making it appropriate to devise a specific standard for women prisoners". However, the Commission has previously raised concerns regarding the difficulties in providing therapeutic or rehabilitative supports within a secure prison environment where discipline and security is a prime function of imprisonment.<sup>7</sup> It is important that the application of Prison Rules does not undermine recent initiatives within NIPS to provide a more holistic response to the needs of women in prison.

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<sup>6</sup> The Corston Report, Home Office, March 2007.

<sup>7</sup> NIHRC response to the Draft Strategy for the management of women offenders, June 2009.

6. The Commission reiterates its view that detaining women in custody should be a measure of last resort and only in serious cases. It is also concerned by the lack of progress in taking forward recommendations for the building of a new discrete women's custodial facility and in the provision of alternatives to custody for low-level offences. Of particular concern is the large number of women who are imprisoned for fine default or remanded to custody pending trial.

## **Young Offenders' Centre (YOC)**

7. The Rules refer to the prisons and the Young Offenders' Centre (YOC). However, there is limited consideration for those in the YOC who are under the age of 21. Part XI (Rules 93 to 96) refers to "persons ordered to be detained in a Young Offenders Centre". This covers initial transfer to the centre, disciplinary awards (reducing the gravity of sanctions for those in YOC), and recreation. It does not cover other measures within the Rules that might be viewed as onerous, such as restriction of association and temporary confinement. We recommend that further consideration be given to ensuring that the health, safety and welfare of young offenders are fully addressed within the Prison Rules.

## **Children in the YOC**

8. International human rights standards, such as the CRC, define children as anyone under the age of 18. In Northern Ireland, boys under the age of 18 can be held on remand or sentence in the YOC. In certain circumstances, legislation still permits children as young as 15 years to be held on remand in the YOC.<sup>8</sup> Yet, the Prison Rules do not make any special provision for the treatment of children and young people. Serious concerns would arise if, for example, the rules relating to confinement and retrieval of unauthorised articles, such as Rule 32 (restriction of association) and Rule 47 (temporary confinement), were to apply equally to children as they do to adults. Bearing in mind international human rights standards and, in particular, the requirement that "Every child deprived of liberty [is] treated [...] in a manner which takes into account the needs of persons of his or her age" (Article 37(c) CRC), the Commission does not consider it appropriate to

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<sup>8</sup> See: Article 13(1)(b) of the Criminal Justice (Children) (Northern Ireland) Order 1998: where a court decides not to release a child on bail, it can make an order committing her or him to the YOC "if he is aged 15 or over and the court considers that he is likely to injure himself or other persons".

apply the Prison Rules in their current form, and without differentiation, to those who are under the age of 18. In addition, the Commission's advice to the Secretary of State on a Bill of Rights for Northern Ireland includes the following recommendations under 'The right to liberty and security'.<sup>9</sup>

Every child has the right not to be detained except as a measure of last resort, in which case, the child may be detained only for the shortest period of time, and has the right to be:

- a) kept separately from detained persons over the age of 18 years; and
- b) treated in a manner, and kept in conditions, that pays due regard to the child's age.

## Specific Rules

9. **Rule 32 (Restriction of association):** The amendments propose permitting restrictions (i) as punishment for the secretion of unauthorised articles and (ii) to "ensure the safety of officers, prisoners or any other person". It is the Commission's view that restriction of association should be limited to that absolutely necessary and only in accordance with the Prison Rules. It should not be permitted to facilitate "operational flexibility", for example to accommodate weekend leave for prison staff or public holidays, as is suggested in the 'Overview of Provisions'. The Commission notes that restriction for this reason is not permitted by the Prison Rules.
10. Increasing the time period of initial restriction from 48 to 72 hours is in keeping with rules applicable in England and Wales. However, in England and Wales, further restriction is only permitted on authorisation of the Secretary of State for not more than 14 days. In the Northern Ireland Prison Rules, this is permitted for double the time (that is, not more than one month). The Commission is concerned by this difference and requests clarification of the reasoning behind the proposed increase in the time period of initial restriction.

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<sup>9</sup> NIHRC (2008) *A Bill of Rights for Northern Ireland: Advice to the Secretary of State for Northern Ireland, 10 December 2008*, p 25.

11. The Commission welcomes the involvement of the former “board of visitors” within the provisions of Rule 32, and notes that this reference will be amended to read ‘Independent Monitoring Boards’ in the amended rules.
12. Attention is drawn to the Basic Principles for the Treatment of Prisoners which state: “efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged”. Further, the Standard Minimum Rules for the Treatment of Prisoners state that any punishment “that may be prejudicial to the physical or mental health of a prisoner” should not be inflicted unless the medical officer has examined the prisoner and certified in writing that the prisoner is fit to sustain it.
13. The Commission reiterates its serious concerns relating to the appropriateness of applying Rule 32 (restriction of association) to children and young people in the YOC. Further information regarding the justification for this provision is requested.
14. **Rule 38 (Offences against prison discipline):** The Commission requests information as to whether the new offences relating to provision of samples, and presence of alcohol or controlled drugs in a sample, will impact on voluntary drugs testing schemes. The Commission also requests information as to how the proposed amendment sits with NIPS policies and practice in relation to the care and treatment of prisoners with an alcohol or drug dependency.
15. **New Rules 48B and C (Compulsory testing for alcohol and controlled substances):** It is noted that the new rule appears to repeat provisions in England and Wales; however, it defines a sample as “a sample of urine *or any other description of sample* specified in the authorisation by the Secretary of State”. The Commission is concerned about the possibility that another type of sample may require a more invasive procedure and, as such, require greater safeguards. Again, clarification on this point is requested. Further, the Commission questions the suitability of the proposed new rules being applicable to children and young people in the YOC.

16. The Commission has previously recommended that “special provision should be available to women admitted to prison experiencing drugs, medication or alcohol withdrawal” (*The Prison Within*, page 86). An update on progress in the provision of support and treatment in this area is requested.
17. **Rule 68A (Interception of communication)**: The Commission questions the necessity of allowing other NIPS staff (that is, in addition to PO grades) to intercept communications and requests further information as to the justification behind this proposal.
18. **Rule 69 (Police interview)**: It is noted that this rule allows a police officer and any other law enforcement agency to interview a “willing” prisoner. Further information regarding the ‘voluntary’ aspect of this arrangement is sought and whether sufficient time will be built into procedures to allow the prisoner to access legal advice prior to and/or during interview. For example, are there mechanisms in place to ensure the willingness or otherwise of a prisoner prior to any interview? The Commission also notes the widening of this rule to allow a member of staff of the Serious Organised Crime Agency (SOCA), an officer of HM Revenue & Customs, or a member of the Security Service to have “the same access to prisoners as police officers have”. The Commission seeks assurance that proper safeguards will be in place if the proposed rule is implemented.
19. **Rule 73 (Control of visitors)**: It is noted that an amendment is proposed to delegate from the Secretary of State to the Governor authority to (i) impose a closed visit on a prisoner or a visitor suspected of using or carrying drugs; and (ii) ban a visitor from the prison. Such actions may carry serious implications for the prisoner and, as such, it is our view that authorisation should have independent oversight.
20. **Rule 75-79 (Complaints by prisoners)**: ‘health’ is removed from the subject matter of complaints under Rule 75. This is to accommodate new arrangements whereby the Department for Health, Social Services and Public Safety (DHSSPS) is responsible for health within prison. Complaints relating to health should now go to the DHSSPS and the Northern Ireland Ombudsman. The Commission understands the need for this amendment and asks that procedures are in place to ensure that all matters are appropriately dealt with. For example, there may be circumstances where a complaint appears to relate to health but later transpires as a matter for the

Northern Ireland Prison Service (NIPS). It is important to ensure that both NIPS and the DHSSPS have arrangements in place to deal with this. It is equally important to ensure that prisoners understand the different systems that exist for health related and non-health complaints, so it may be necessary to liaise with the relevant Patient Advocate and/or Health and Social Services Councils to ensure that prisoners have equal access to those mechanisms.

21. The removal of Rule 78, the third stage of the internal complaints process, is a positive development. It means that there are fewer stages required for internal resolution of complaints and more ready access to the Prisoner Ombudsman should the complainant wish to take the matter further.
22. However, it is imperative that the two stage internal complaints system is effective. The Commission refers to the most recent findings of Criminal Justice Inspection Northern Ireland on Maghaberry Prison. This report reveals several difficulties with the internal complaints system and makes the following recommendation, which is relevant for all prison establishments in Northern Ireland: "The complaints system should be revised to allow prisoners to make complaints without disclosing the matter to the residential staff, and all allegations about staff should be fully and impartially investigated at an appropriate senior level and to incorporate quality monitoring".<sup>10</sup>
23. The Commission welcomes the removal of Paragraph 6 in Rule 76, which permitted the residential officer to respond to a first stage complaint. Nevertheless, it is not clear that the new wording proposed for Paragraph 6 actually prevents the residential officer from responding to a complaint. The Commission requests clarification on this matter. In addition, it appears that the two-stage system will retain a key role for the residential officer because completed complaint forms must still be submitted to her or him. The Commission requests information on whether there are safeguards to ensure that when submitting a complaint, its contents are not disclosed to the residential officer.
24. Overall, while welcoming the reduction of the internal complaints system from three to two stages, the Commission

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<sup>10</sup> Criminal Justice Inspection Northern Ireland (2009) *Report on an unannounced full follow-up inspection of Maghaberry Prison 19–23 January 2009*, Belfast, Recommendation HP44.

finds that the rules relating to the internal complaints are complex. It is therefore crucial that the internal complaints system be subject to ongoing review and monitoring to ensure that individuals understand the complaints system and feel both able and confident to use it.

25. **Complaints to the Prisoner Ombudsman:** On exhaustion of the internal complaints system, it is equally important that individuals feel able and confident to make complaints to the Prisoner Ombudsman. It is the Commission's view that in order to secure actual and perceived independence, the role of Prisoner Ombudsman should be provided for in statute.
26. **Rules 79HA-79M (complaints by visitors):** The Commission welcomes Rule 79HA introducing an internal complaints procedure for visitors and Rule 79I permitting complaints by visitors to the Ombudsman. However, in relation to the internal complaints system, the Commission recommends that the determination of whether or not a complaint is vexatious, etc under Rule 79HE (treatment of vexatious, etc complaints) be made by a person who is independent and impartial in respect of the complaint. In addition, if it is determined that a complaint is vexatious (or otherwise falling within Rule 79HE) the decision-maker should be required to set out the reasons for her or his decision.
27. **Rule 79B (vexatious, etc complaints made by prisoners):** The Commission makes the same points as in paragraph 27 above: that the determination of whether or not a complaint is vexatious (or otherwise falling within Rule 79B) be made by an independent and impartial person and, in the event that it is so determined, reasons are provided for the decision.
28. **Rule 88A (Prisoners at risk of suicide and self-harm):** The Commission welcomes the removal of care reasons from Rule 47 on 'temporary confinement' and the creation of new rule 88A to provide for the accommodation of prisoners at risk of suicide or self-harm. The Commission requests further information regarding the design of cells designated for such care and supervision purposes. In particular, the Commission refers to Rule 10 of the Standard Minimum Rules for the Treatment of Prisoners, which states: "All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating

and ventilation". This is important in all instances and particularly so where the individual is placed in separate accommodation for care and supervision. Also, in relation to women prisoners, the Commission has previously recommended that "a ligature-free, safe cell should be available on each landing to enable women on observation to remain on general association" (*The Prison Within*, recommendation 28).

29. Rule 88A states that the decision to accommodate an 'at-risk prisoner' in a cell or room is made by a governor. The Commission recommends that as soon as practicable thereafter this decision be reviewed in consultation with a medical practitioner.
30. While welcoming new Rule 88A the Commission emphasises the continued need for NIPS to respond appropriately to prisoners who are at risk of suicide or self-harm. For instance, the use of separate accommodation and supervision may not always be appropriate. It is important that all decisions regarding the treatment and care of at risk prisoners are based on an individualised assessment of risk.
31. **Rule 94A (Inquiry into charge for minor offences)**: The Commission seeks assurances that prisoners located in the YOC would be provided with a clear explanation of the process and implications of the proposed new procedure for dealing with minor offences. Further, assurances are sought that appropriate safeguards will be in place governing the proposed procedure.

## **Positive aspects of the proposals**

32. The above points have outlined areas of concern and/or requested clarification in relation to the proposed amendments. However, the Commission also notes potentially positive provisions including proposed amendments to:
  - **Rule 39: (Governor's awards)**: It is noted that the proposed change is intended to ensure compliance with the (2002) European Court of Human Rights' judgment relating to the finding that the imposition of added days following disciplinary hearings was not human rights compliant.

- **Rule 47 (Temporary confinement):** As previously noted, this amendment together with new rule 88A will apply to vulnerable prisoners and will differentiate between confinement for (i) disciplinary; and (ii) care reasons.
- **Rule 51 (Work):** It is noted that the word 'unnecessarily' will be removed to assist with religious observance.
- **Rule 79HA-HH:** As noted above, the new rules will give NIPS and the Prisoner Ombudsman the power to investigate complaints by prisoners' visitors. This is viewed as being potentially positive (although as with prisoners' complaints, the procedure should be subject to ongoing review).
- **Rule 79K:** The amendment to Rule 79K permitting a complainant to submit an oral complaint to the Prisoner Ombudsman is noted as a positive development.

## Other relevant international standards

33. Finally, the Commission wishes to highlight that the body of non-binding 'soft law' standards that should be considered in relation to the formulation of the amended Prison Rules, including:
- UN Standard Minimum Rules for the Treatment of Prisoners (separation of categories, discipline and punishment, institutional personnel)
  - UN Basic Principles for the Treatment of Prisoners (General Assembly resolution 45/111, December 1990)
  - Revised European Prison Rules
  - UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment
  - Council of Europe Recommendation 1469 (2000) (mothers and babies in prison)
  - UN Rules for the Protection of Juveniles Deprived of their Liberty (1990), in particular, Article 6 (interpreter), Article 24 (information), Article 28 (conditions of detention), Article 37 (food), Article 38 (education), Article 48 (religion), Articles 59-62 (communication)
  - UN Code of Conduct for Law Enforcement Officials (1977), in particular, Provision 2 (dignity and human rights), and
  - UN Standard Minimum Rules for the administration of Juvenile Justice, 1995 (the Beijing Rules).

34. The Commission hope that these comments will help inform future deliberations on the proposed amendments and is willing to engage in further discussion in respect of any of the issues raised in this response.

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**Northern Ireland Human Rights Commission  
Temple Court, 39 North Street  
Belfast BT1 1NA  
Tel: (028) 9024 3987  
Textphone: (028) 9024 9066  
SMS Text: 07786 202075  
Fax: (028) 9024 7844  
Email: [information@nihrc.org](mailto:information@nihrc.org)  
Website: [www.nihrc.org](http://www.nihrc.org)**