



NORTHERN  
IRELAND  
HUMAN  
RIGHTS  
COMMISSION

**Response to Northern Ireland Prison Service Consultation on  
Progressive Regimes and Earned Privileges Scheme (Preps)**

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 in Northern Ireland of 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 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 or “soft law” standards developed by the human rights bodies.
2. The Commission welcomes the opportunity to respond to the Northern Ireland Prison Service consultation document, *Progressive Regimes and Earned Privileges Scheme (PREPS)*, and the accompanying draft Corporate Framework document on PREPS (Draft 1.0, June 2006, to which the paragraph numbers given in this commentary refer unless otherwise indicated).
3. The Commission welcomes the objective of PREPS as “a mechanism for “building up self-esteem and self-worth; it is not

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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).

a mechanism for punishing bad behaviour, self-harm or suicide attempts and therefore does not form part of the prisoner adjudication system" (paragraph 6). The Commission notes the Inspectorate's comments (in the Maghaberry 2005 inspection) that the PREP scheme should be used to "encourage and support prisoners in positive behaviour, rather than using the scheme as an opportunity to punish negative behaviour" (HMIP/CJI inspection report, para. 6.68).

4. The PREPS consultation document, however, presupposes the provision of adequate "constructive/developmental activity" (para. 11) in which prisoners may voluntarily engage. Recent inspection reports confirm the Commission's observations that this is not always the case in Northern Ireland's prisons. The October 2005 inspection of Maghaberry found that "time out of cell was poor when judged in terms of average provision across the prison. This was principally because there were not enough work, education and activity places." The Inspectorate found that the "core day was extremely short" and that "regime slippage" made the situation worse. Unemployed prisoners spent 22 hours locked in their cells each day and life-sentenced prisoners and those on remand were "particularly poorly served" (inspection report paras 5.50-5.54). The Inspectorate found that the basic regime involved "too much time locked in cell".
5. The most recent inspection of the Young Offenders Centre (YOC) at Hydebank Wood also found that the "advertised 10-hour core day for young prisoners was not routinely available" and that there was "insufficient work and training for young prisoners" (inspection introduction).
6. Similarly the inspection of Magilligan found that "prisoners could not be guaranteed regular and predictable access to regime activities: there was insufficient quality work and education" (introduction). Prisoners in Magilligan told the Inspectorate that they did not think the PREPs scheme was working fairly and the inspection found that there was no monitoring to ensure equitable treatment within the scheme (inspection para. 6.30).
7. In its 2005 report *The Hurt Inside: The Imprisonment of Women and Girls in Northern Ireland* this Commission recommended that "there should be an evidence-based review of the current framework of regime progression, with the intention of establishing a higher baseline level of service provision. Unlock

8. This is particularly true given that the consultation document concedes that “the availability of motivational incentives, including earnable privileges, will vary occasionally between establishments and different areas within prisons” (para. 33).
9. The Commission concurs with the recommendation from the Inspectorate that the scheme should be equitably applied to remand and sentenced prisoners. The need for equal treatment on the PREPS scheme for remand prisoners should be stated more explicitly in the section on unconvicted prisoners (paras 43-46).
10. For women on the enhanced level in Hydebank Wood there are many issues which have not been considered fully in the consultation document. For example, the limited range of accommodation means that female life-sentenced prisoners reaching enhanced level do not receive a similar regime to that of male life-sentenced prisoners in other establishments. There is a need to reassess what constitutes an enhanced regime for women in Hydebank Wood.
11. The Commission welcomes the commitment of the Prison Service that in cases of mothers and babies “the best interests of the child will have precedence” where a mother should be placed on the basic level and lose some of her visit entitlement. It questions the appropriateness, however, of the statement that the child’s best interests “will be delivered within organisational constraints” (para. 49). This is open to overly wide interpretation, whereas children’s rights under the UN Convention on the Rights of the Child (and other standards) provide a minimum baseline of expectation. It is unacceptable to subordinate the best interests of the child, which must be the paramount consideration, to such matters as the administrative inconvenience involved in (in the example provided) facilitating any additional visits that may be required by a baby’s care plan.

12. The Commission reiterates that the right to private and family life (Article 8 ECHR) is a human right of prisoners, and must be supported by the Prison Service to the greatest extent possible. Consequently, visits should not be determined by level on the progressive regime. There appears to be a fundamental misunderstanding here, in that Article 8 permits only such interference as is “necessary”; it does not countenance a presumption that the right is lost altogether upon lawful imprisonment and may then be given back in stages to reward good behaviour.
13. The Prison Service states that “young offenders are known to respond well to highly structured approaches such as points systems” (para. 50). This Commission’s research on children in juvenile justice centres (*In Our Care*, 2002) found to the contrary that children resented the points system in operation in Lisnevin and found it overly complicated. The Hydebank Wood YOC inspection (2005) found that the Incentives and Earned Privileges scheme (IEP) in operation was “complicated”, and that although young people seemed to understand it they “did not feel it operated fairly” (HP19).
14. The indication in the consultation that “Governors should ensure that the local scheme does not penalise behaviour which is the direct consequence of a disability, particular needs or age” (para. 52) needs to be expanded on. For example, there may be particular problems for a young person with learning difficulties in relation to the scheme. Young women in the adult prison may have particular difficulties in reaching enhanced level. All of these factors should be considered in the evidence based review, and advice to Governors developed accordingly.
15. More information would also be useful in relation to how the PREPS scheme will operate in relation to Vulnerable Prisoners (para. 53).
16. Foreign national prisoners should be supported in contacting family and friends outside this country and should be afforded flexibly timed opportunities to make telephone calls (para. 54). There are currently problems in relation to the cost of telephone calls to other countries from prisons in NI. There should be a strategy for foreign national prisoners which includes provision of support for family contact and this should not be linked to the PREPS.

17. Regarding “key earnable privileges”, unlock time, length and frequency of visits, and telephone access should not be determined by regime progression (para. 57). The Commission is concerned about length of time spent in cells throughout the prison estate and about inadequacies in service provision in relation to education, activities, recreation and access to fresh air. The baseline of service provision should be raised for all prisoners including those on basic and standard levels.
18. Lock up at 6.30pm for prisoners on basic level is too early (para. 58). The Commission is in general concerned at the high levels of lock up across the prison estate (see para. 71). Access to contact with family, especially children, is a right and not a privilege and should not be determined by position on the progressive regime (see para. 70).
19. The evidence based review of the Progressive Regime which the Commission recommends should include details of the extent to which prisoners face “non-availability of activity places” (paras 62 and 68).
20. The weekly amount payable to prisoners should be reviewed bearing in mind the apparently relatively high cost of telephone calls within prison establishments as compared to the community (paras 66 and 72). The Commission welcomes the review of telephone calls, especially in relation to calls outside the UK.
21. All prisoners should be encouraged to make as much use of the library as possible (para. 73).
22. All prisoners should have access to televisions (paras 75–80). TV should only be withdrawn from prisoners if there is a health and safety concern (para. 81) and not for reasons related to the privilege level.
23. The Commission welcomes the commitment to consider prisoners at risk from self-harm or suicide for in-cell TV irrespective of privilege level (para. 79). Similarly, the commitment to providing free of charge TV for prisoners in reception/induction/first night units is welcome (para. 80). Where there are no first night units, all prisoners should have TV on the first nights in prison, as they are particularly vulnerable during this time.

24. There is a danger that the PREPS will remain a “secondary punishment system” rather than a scheme to encourage and reward good behaviour positively (see Maghaberry Inspection report para 6.78). The section on demotion and reference to a “list of lesser offences” suggests this will remain the case.
25. The Commission welcomes the intention to implement the Inspectorate’s recommendation that prisoners on the basic regime for more than four weeks should be provided with help and support (para. 105 and Maghaberry Inspection para 6.84).
26. There appears to be a contradiction between the statement (in para. 6) that PREPS is “not a mechanism for punishment bad behaviour, self-harm or suicide attempts and therefore does not form part of the prisoner adjudication system” and the statement (in para. 106) that “while it would be preferential to have PREPS and Adjudications operating separately, the two are in reality inextricably linked due to loss of privileges”.
27. The policy states that demotions should only be made under PREPS as a result of a “pattern of poor behaviour”, and yet a prisoner can be demoted from enhanced to standard after only two adverse reports from a member of staff, or being found guilty of “two lesser offences” in any six month period. Two minor offences in a six month period hardly constitutes a pattern of behaviour.
28. Prisoners should be provided with independent advocacy support in preparing and making appeals against decisions (paras 110-112).
29. The Commission welcomes increased monitoring of the progressive regime. This should include any apparent imbalance in terms of all Section 75 categories and not only “different ethnic groups”. All apparent imbalances should be investigated.
30. The commitment to provide therapeutic interventions for prisoners failing drugs tests is welcome. Greater emphasis should be placed on drugs and alcohol education work and therapeutic support, rather than on drugs testing (even if voluntary).

31. The Commission welcomes the intention to provide accessible leaflets outlining the PREPS scheme in each residential unit. These should be available in a variety of languages and formats, including formats accessible to people with reading difficulties who are known to be over-represented in prison populations.
32. The Commission considers that the PREPS scheme raises significant equality issues including for women; babies and children whose parents are in prison; young prisoners; and on grounds of religion and ethnicity. A full equality impact assessment should therefore be carried out.

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