



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

Northern Ireland Prison Service consultation on the Review of the Separated Regime

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,¹ advising on legislative and other measures which ought to be taken to protect human rights,² advising on whether a Bill is compatible with human rights³ and promoting understanding and awareness of the importance of human rights in Northern Ireland.⁴ 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 'soft law' standards developed by the human rights bodies.
2. The Commission welcomes the opportunity to respond to this review of the regime for prisoners in HMP Maghaberry who have chosen to be separated. It is regrettable that the consultation period, which was rather brief, was not more widely publicised and partly coincided with a postal strike. The Commission would encourage the Northern Ireland Prison Service to take account of submissions arriving after the stated closing date.

¹ Northern Ireland Act 1998, s.69(1).

² *Ibid.*, s.69(3).

³ *Ibid.*, s.69(4).

⁴ *Ibid.*, s.69(6).

3. The Commission notes that in this instance the Prison Service is consulting on only two issues (in the form of eight questions) rather than on the totality of recommendations arising from the review. The Commission was unclear why the consultation was so narrow and is choosing here also to make comment on some of the substantive issues raised by the review.
4. In responding to the consultation the Commission's key concerns are around the fundamental human rights of the right to life, including the right to be safe and secure (Article 2 ECHR); the right to be free from inhuman and degrading treatment (Article 3 ECHR) and the right to private and family life (Article 8 ECHR).
5. The Commission welcomes the fact that the review took place and especially welcomes the consultation with prisoners and prison groups. The incorporation of prisoner views in the documentation is very useful. Given the seriousness of the issues raised by the review, the Commission recommends that an independent review of the separated regime be carried out in the near future.
6. The consultation asked:
Do you think the proposals for a two-tier regime are the right way forward?

The Commission has concerns about the operation of the three-tiered regime in the prison system as a whole. In its report on women in prison in Maghaberry, *The Hurt Inside*, the Commission expressed concerns that prisoners were not getting their full entitlements under the tiered regime and 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 time, length and frequency of visits, and telephone access should not be determined by regime progression' (recommendation 8).

7. In relation to the separated regime, there is insufficient evidence provided of the need to establish a tiered disciplinary system. Tiered disciplinary systems tend to cause friction and a sense of grievance among prisoners, and the introduction of such a system for the separated regime may cause more problems than it will solve. The Commission's preference would be that a higher baseline be established to entitle all prisoners to

8. The consultation asked:
Do you agree with the criteria (paragraph 6.5) which must be met for prisoners to increase to the second tier, in particular the requirement to undergo drug testing?

The Commission has serious concerns about the proposed linking of drug testing to access to visits and education. The right of prisoners' families to as full as possible a private and family life should not be dependent on the willingness of the prisoner to undergo drug testing, particularly in relation to visits by children.

9. It is noticeable that drug finds have been extremely rare in Roe House in comparison to Bush House. The proposed policy might be regarded as disproportionate in terms of requiring prisoners in Roe to undergo drug testing in order to qualify for incentives.
10. The Commission recognises that drugs in prison raise issues of safety for both prisoners and staff. However, where possible it considers that the approach to dealing with this problem should primarily be based on education and prevention work where appropriate. In any areas of the prison where there does not appear to be a problem, the introduction of drug testing appears to be an unnecessary restriction on privacy.
11. Are there any other comments you would like to make regarding the new proposals for regime levels?

The Commission would simply reaffirm its position that to introduce a disciplinary tiered system to the separated regime may increase tensions which would not be conducive to safety and security. The Commission prefers the approach of raising the base line of service provision for all prisoners.

12. Given that the exercise yards would not be available for approximately one month during construction, and taking into account the other facilities available, do you agree that they should be extended?

The review finds that the present exercise yards are not satisfactory (p31) so clearly this must be remedied to ensure prisoners' right to health. Efforts should be made to ensure that prisoners in Roe and Bush get sufficient access to exercise in safe conditions during the disrupted period.

13. The recreation rooms contain a range of equipment, including cardiovascular equipment, which will not be available for use during the time showers are being installed. Bearing this in mind do you agree that showers should be installed?

The Commission agrees that showers should be installed so that prisoners can shower prior to returning to their cell. The Prison Service should ensure that prisoners have adequate safe access to health and fitness equipment during this period.

14. Are there any other comments you would like to make regarding proposals for recreation?

The Commission is pleased to note the enhancements that have been made to the separated regime since March 2004 in terms of fitness and leisure including provision of fitness equipment, purpose built gymnasium, five-a-side football pitches and arrangements whereby prisoners can buy their own television sets. Considering that the current regime for separated prisoners includes very lengthy periods of lock up it is especially important that prisoners have as much access as possible to ways of keeping fit and healthy.

15. Do you believe that any of the proposals will have an adverse impact on individuals within the scope of section 75? If so, are there any measures that should be implemented to mitigate against adverse impact on people in the section 75 equality groups?

As noted above, the Commission considers that the introduction of a tiered regime has the potential to have adverse impacts on republican or loyalist prisoners in different ways depending partly on the response of prisoners to the introduction of such a regime. We therefore recommend a fuller equality impact assessment of the proposal to introduce a two tiered regime.

16. The Commission is concerned that the review does not address the needs of female prisoners who may apply to be held in

17. The Commission considers that the proposed new entry criteria including that criteria that “he is a member or supporter or a proscribed organisation connected with the affairs of Northern Ireland” may have an adverse impact on people charged or found guilty of terrorist charges not related to Northern Ireland. At the time of the Steele Review on the safety of prisoners and prison staff, the Commission supported the separation option for republican and loyalist prisoners on the grounds of safety and protection of the right to life, and the same principles may apply to prisoners charged with terrorist offences not related to Northern Ireland who may find themselves in danger in the integrated regime. Safety of the prisoner should be a key criterion for separation.
18. Given the availability of this option for prisoners who identify as republican or loyalist, there would need to be serious consideration of any justification for refusing access to the regime for a prisoner who similarly claims political motivation, such as one currently in Maghaberry whom we understand to have requested a transfer to one of the separated houses.

General comments

19. The Commission wishes to comment more generally on the findings of the review. These are preliminary comments, given the short time scale for consultation, and the Commission may wish to make fuller comments at a later stage.
20. **Full searching:** The Commission is concerned about the high levels of full searching (or ‘strip searching’ as the practice is more generally referred to). The Commission acknowledges the duty on the Prison Service to keep both prisoners and staff safe and free from death or injury. However, ‘full searching’ poses serious restrictions on a person’s right to dignity and privacy and should be avoided to the greatest extent safely possible. The Commission considers that the present review does not

21. The Commission notes the recent judicial review taken by Karen Carson on the issue of strip searching in Hydebank Wood, in which the court accepted that the experience of strip searching put forward by Ms Carson was humiliating and that having failed to have proper and explicit regard to Ms Carson's human rights the policy of strip searching was disproportionate and unnecessary. The Commission considers that given the potentially humiliating aspect of strip searching (as suggested by prisoners and their representatives) the practice should be restricted as far as possible and where possible other forms of searching such should be used.
22. The Commission is concerned that the proposal to develop a purpose built facility for strip searching on the landings has the potential to increase, rather than decrease the use of strip searching.
23. The Commission, however, welcomes the reduction in number of rub down searches which prisoners will undergo going to the recreation rooms, classrooms or leaving the house unit (recommendation 1).
24. The Commission considers that the request of prisoners that they be present during cell searches is reasonable and should be granted.
25. The Commission has concerns about the process whereby if one member of a visiting party is stopped by the 'drugs dog' then the whole party (with the exception of that person) is offered a closed visit. The Commission recognises that the court ruled against Mr McBride in his judicial review on this matter but urges the Prison Service to reconsider this policy which potentially punishes the prisoner and their whole family on the grounds that one person has been stopped by the dog.
26. **Controlled movement:** while again recognising the paramount need to keep prisoners and staff safe, the Commission continues to have serious concerns about the highly restrictive nature of controlled movement within the separated regime. The Commission is concerned that such restricted movement may be detrimental to prisoners not only in terms of the right to

27. **Daily regime:** the Commission is extremely concerned at the high levels of 'lockdown' for separated prisoners. As noted in the review the outline regime provides for a minimum out of cell time in group activities or association of between one and a half and five and a quarter hours per day. Even taking into account time spent in education, visits etc. it appears that prisoners can be locked up or in their cells for over 20 hours on some days. Prisoners note that on a 'bad day' they can be in their cells for 21 or 22 hours and that "there are four bad days in the week". The Commission considers this amount of lockdown potentially threatening to prisoners' health and would welcome an independent assessment of the situation. In the meantime it urges the Prison Service to address the problem and ensure that prisoners are not subject to such lengthy periods of lockdown.
28. The Commission is unhappy with the situation whereby prisoners in the separated regime are required to eat in their cells.
29. **Visits:** the Commission considers that prisoners should be encouraged to maintain as full contact with their family as possible while in prison. The Commission would support any increase in the number of visits. The Commission is concerned that the visits area is operating to capacity at weekends and considers that increased provision may be necessary to ensure that prisoners can see their families at weekends if desired.
30. The Commission welcomes the proposed introduction of a van so that prisoners can travel to the legal visits area in safety.
31. The Commission welcomes the expansion of provision of visits for political representatives. The provision of visits by outside agencies and bodies has a potentially positive aspect by 'opening up' the prison to the outside world and is to be encouraged.
32. The same level of provision of child centred visits should be available to separated prisoners as prisoners in the integrated regime.
33. **Education:** the Commission considers that the Prison Service should be working towards ensuring that education provision for

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