



ACTION FOR  
CHILDREN AND FAMILIES  
OF PRISONERS

Prison Rules Review  
Irish Prison Service  
Ballinalee Road  
Longford Town  
Co. Longford  
N39 A308

14<sup>th</sup> October 2021

To whom it may concern,

We are writing to make a brief submission on behalf of the Action for Children and Families of Prisoners Network to the Irish Prison Service Prison Rules Review. The Network has been granted an extended deadline of 14<sup>th</sup> October 2021 to make a submission to the Review.

The Action for Children and Families of Prisoners Network was established in August 2020 by the Centre for Criminal Justice and Human Rights, School of Law, University College Cork (UCC) and the Irish Penal Reform Trust (IPRT). The Network has an overall aim to provide a unified voice for positive policy change for children and families affected by imprisonment, with an overarching goal of a cross-departmental strategy led by the Department of Children. You can find more information about the Network's most recent activities on our newly established website: [www.actionforfamilies.ie](http://www.actionforfamilies.ie).

We would like to thank you in advance for taking the time to consider the following submission. If you wish to discuss the content of this submission in further detail, please do not hesitate to contact the co-chairs of the Network (details outlined below).

Kind regards,

**For the Action for Children and Families of Prisoners Network**

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## General Principles to Inform the Prison Rules:

The Network strongly advocates for children and families to be supported so that they can maintain frequent and direct contact with their family member in prison. This premise is widely supported within the UN Convention on the Rights of the Child,<sup>1</sup> the Mandela Rules,<sup>2</sup> and the European Prison Rules,<sup>3</sup> all underlining the value of such contact. It is also recommended by the Council of Europe to Member States in its *Recommendation CM/Rec (2018)5 of the Committee of Ministers to member States concerning children with imprisoned parents* ('the CoE Recommendation').<sup>4</sup> Family contact can improve wellbeing for children and families as well as people in prison. Moreover, while the Action for Children and Families Network firmly assert that the responsibility of successful reintegration of a family member in prison should never be placed upon children and families, evidence suggests that family contact has positive rehabilitative outcomes.

When reviewing the Prison Rules 2007, additional work needs to be carried out to ensure that staff values and practices are aligned with any amendment to the Rules so that the culture matches up with the law applicable to the Irish Prison Service. This should include children's rights training, training on the impact of imprisonment and the prison setting on children, training on how to support imprisoned parents and their children and better understand the specific problems they face, and training on how to make visits child-friendly and how to search children in a child-friendly manner. Moreover, further attention and commitment to family contact should not only be prioritised in the review of the Prison Rules but included throughout the overall strategy of the IPS.

## The Rules Pertaining to Mothers and Babies in Custody:

The Action for Children and Families Network fundamentally believe that prison is no place for women who offend and should only be used as a sanction of last resort, particularly for women who are pregnant or have young babies. The Network uphold that women who offend should be dealt with through gender-specific community-based sanctions which are frequently and robustly monitored. Women who offend often end up in prison due to issues such as poverty and deprivation as well as discrimination,<sup>5</sup> which may be at the hands of people closest to them such as partners, family members and their community.<sup>6</sup> Women are also more likely to commit non-violent petty offences

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<sup>1</sup> United Nations Office of the High Commissioner (OHCHR), (1989). *Convention on the Rights of the Child* Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989. [Online]. OHCHR. Available from: <https://www.ohchr.org/Documents/ProfessionalInterest/crc.pdf>. [11 August 2021]. P.10. **Article 9 states:** *State parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.*

<sup>2</sup> United Nations Office on Drugs and Crime (UNODC), (2015). *The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*. [Online]. UNODC. Available from: [https://www.unodc.org/documents/justice-and-prison-reform/Nelson\\_Mandela\\_Rules-E-ebook.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf). [12 October 2021]. **Rule 58 states:** *Prisoners shall be allowed, under necessary supervision, to communicate with their family and friends at regular intervals: (a) By corresponding in writing and using, where available, telecommunication, electronic, digital and other means; and (b) By receiving visits.*

<sup>3</sup> Council of Europe, (2006). *European Prison Rules*. [Online]. Council of Europe. Available from: <https://rm.coe.int/european-prison-rules-978-92-871-5982-3/16806ab9ae>. [11 August 2021]. **Rule 24 states:** *Loss of liberty should not entail loss of contact with the outside world. On the contrary, all prisoners are entitled to some such contact and prison authorities should strive to create the circumstances to allow them to maintain it as best as possible.*

<sup>4</sup> Council of Europe, (2018). *Recommendation CM/Rec (2018)5 of the Committee of Ministers to member States concerning children with imprisoned parents*. [Online]. Council of Europe. Available from: [https://childrenofprisoners.eu/wp-content/uploads/2019/12/CoE\\_Rec20185.pdf](https://childrenofprisoners.eu/wp-content/uploads/2019/12/CoE_Rec20185.pdf). [14 October 2021]. **Rec 17 states:** *Children should normally be allowed to visit an imprisoned parent within a week following the parent's detention and, on a regular and frequent basis, from then on. Child-friendly visits should be authorised in principle once a week, with shorter, more frequent visits allowed for very young children, as appropriate.*

<sup>5</sup> British Association for Counselling and Psychotherapy (BACP), (2013). *Women in the Criminal Justice System*. [Online]. BACP. Available from: <https://www.bacp.co.uk/media/2130/bacp-women-in-criminal-justice-system-briefing-nov13.pdf> [20 July 2021].

<sup>6</sup> United Nations Office on Drugs and Crime (UNODC), (2014). *Handbook on Women and Imprisonment. Criminal Justice Handbook Series*. [Online]. UNODC. Available from: [https://www.unodc.org/documents/justice-and-prison-reform/women\\_and\\_imprisonment\\_-\\_2nd\\_edition.pdf](https://www.unodc.org/documents/justice-and-prison-reform/women_and_imprisonment_-_2nd_edition.pdf) [20 July 2021].

such as theft and fraud, often linked to poverty and economic survival.<sup>7</sup> Furthermore, women are more likely to be primary caregivers than their male counterparts. As a Network, we stress that pregnant women should never end up in prison. However, in extreme cases when they do, the Prison Rules relating to mothers with babies in custody must be reviewed and addressed to ensure that they have access to the best possible support.

The Network recommends that in circumstances where a mother ends up in custody with her baby, that they only be accommodated in a unit specifically for mothers and babies and that **Rule 17** is expanded to include this. The Network also recommends that a designated child protection policy must be in place which guides all decisions on matters relating to the mother and baby during the term of imprisonment. This designated policy is of particular importance to mothers who have had no previous involvement with social work. The Network proposes the expansion of **Rule 17** to include the requirement to develop and adhere to such a policy. This change would bring the rules into line with principle 37 of the CoE Recommendation, which goes further in stating that arrangements for infants in prison should “safeguard the child’s welfare and promote their healthy development, including provision of ongoing health-care services, and arranging for appropriate specialists to monitor their development in collaboration with community health services”. The Network would also encourage **Rule 17** to be developed to include effective access to appropriate health care services for both babies and new mothers.

On review of the above rules relating to mothers with babies in custody, the Network strongly recommends adherence to minimum standards set in the Bangkok Rules as they relate to pregnant women,<sup>8</sup> the safeguarding of the relationship between mother and child,<sup>9</sup> and the environment in which the child is raised.<sup>10</sup>

### The Rules Pertaining to Letters:

The Network recommends that **Rule 43 (1)**, concerning sending and receiving letters, be updated to include a fixed standard timeline for distributing post and parcels. In-person visits and phone calls are short in duration, and it is often difficult for family members to get across all of the information they wish to share in such a short space of time. Letters are key to addressing this issue as there are no limits on the amount of information that can be transferred through letters between people in prison and their family members. Providing guarantees that these letters will be sent and received in adequate time, that closely reflects the timing of the postal service outside of prison, is imperative.

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<sup>7</sup> United Nations Office on Drugs and Crime (UNODC), (2014). *Handbook on Women and Imprisonment. Criminal Justice Handbook Series.* [Online]. UNODC. Available from: [https://www.unodc.org/documents/justice-and-prison-reform/women\\_and\\_imprisonment\\_-\\_2nd\\_edition.pdf](https://www.unodc.org/documents/justice-and-prison-reform/women_and_imprisonment_-_2nd_edition.pdf) [20 July 2021].

<sup>8</sup> United Nations Human Rights Office of the High Commissioner (OHCHR), (2011). *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules).* [Online]. OHCHR. Available from: <https://undocs.org/A/RES/65/229>. [12 October 2021]. **Rule 48 (2) States:** *Women prisoners shall not be discouraged from breastfeeding their children, unless there are specific health reasons to do so.*

<sup>9</sup> United Nations Human Rights Office of the High Commissioner (OHCHR), (2011). *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules).* [Online]. OHCHR. Available from: <https://undocs.org/A/RES/65/229>. [12 October 2021]. **Rule 50 States:** *Women prisoners whose children are in prison with them shall be provided with the maximum possible opportunities to spend time with their children.*

<sup>10</sup> United Nations Human Rights Office of the High Commissioner (OHCHR), (2011). *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules).* [Online]. OHCHR. Available from: <https://undocs.org/A/RES/65/229>. [12 October 2021]. **Rule 51 (2) States:** *The environment provided for such children’s upbringing shall be as close as possible to that of a child outside prison.*

## The Rules Pertaining to Phone Calls:

The Network recommends the removal of language from **Rule 46 (1)** which provides prison management with the power to allow a prisoner to communicate via telephone with a member of his or her family – “*the Governor may permit*” and “*as the Governor shall determine*”. In 1992, Ireland ratified the United Nations Convention on the Rights of the Child (UNCRC). Article 9 of the UNCRC explicitly states that a child separated from a parent(s) has the right to “*maintain personal relations and direct contact with parents on a regular basis.*”<sup>11</sup> Furthermore, according to the European Convention on Human Rights, Article 8, “*Everyone has the right to respect for his private and family life, his home and correspondence*”<sup>12</sup> – this includes people in prison. Thus, it is the fundamental right of people in prison, as well as their children and families, to maintain regular contact and prison management should not have the power to forgo such rights. The CoE Recommendation stresses the need to ensure that telephone calls are not used to replace other forms of contact but are complimentary.<sup>13</sup>

As outlined above, family contact is a fundamental right. People in prison should be able to exercise their right to family contact regardless of “*availability of facilities*” and this right should not be subject to “*reasonable limitations as the Governor may impose*”. To this end, the Network also advocates for the removal of such language throughout **Rule 46**.

The Network also recommends the addition of rules which protect the minimum rights of people in prison and their family members in relation to telephone calls. These additional rules should set out the minimum duration of telephone calls allowed to people in prison, and set standards for timing of telephone calls to ensure that people in prison can access flexible and family-friendly hours for making such calls i.e., outside of school and work hours.

In accordance with Public Sector Duty, amendments to the Rules around telephone calls should reflect the specific needs of cohorts at-risk of discrimination. For example, foreign national prisoners with family members abroad should be entitled in the Prison Rules to additional phone calls as a supplement for the lack of in-person visits. Furthermore, people in prison with a number of children should also be entitled in the Rules to longer and/or additional phone calls to facilitate quality contact with each of their children.

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<sup>11</sup> United Nations Office of the High Commissioner (OHCHR), (1989). *Convention on the Rights of the Child Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989*. [Online]. OHCHR. Available from: <https://www.ohchr.org/Documents/ProfessionalInterest/crc.pdf>. [11 August 2021]. **Article 9 States:** *State Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.*

<sup>12</sup> Council of Europe, (1953). *European Convention on Human Rights*. [Online]. Council of Europe. Available from: [https://www.echr.coe.int/documents/convention\\_eng.pdf](https://www.echr.coe.int/documents/convention_eng.pdf). [12 October 2021]. **Article 8 States:** *Everyone has the right to respect for his private and family life, his home and his correspondence.*

<sup>13</sup> Council of Europe, (2018). *Recommendation CM/Rec(2018)5 of the Committee of Ministers to member States concerning children with imprisoned parents*. [Online]. Council of Europe. Available from: [https://childrenofprisoners.eu/wp-content/uploads/2019/12/CoE\\_Rec20185.pdf](https://childrenofprisoners.eu/wp-content/uploads/2019/12/CoE_Rec20185.pdf). [14 October 2021]. **Recs 25-26 States:** *The child's right to maintain contact between visits via alternative means such as telephone calls or more modern forms of instant communication is as important as face-to-face visits. The responses to the questionnaire (see appendices below) indicate that many countries are experimenting with Skype-type communication as well as with the use of restricted access mobile phones for prisoners (although neither are currently authorised in many countries). In some countries, telephone calls may be unduly expensive and are therefore effectively inaccessible to many prisoners. For many children, being able to phone their parents when something significant happens in their daily lives, e.g., after a hard time at school, or when they have scored a great goal at football, can be important in terms of affirming their relationship with their parent.*

## The Rules Pertaining to Visits:

The Network are aware that as visits recommence with the easing of COVID-19 restrictions, people in prison are allowed no more than two individuals per visit with a maximum of one child. The Network acknowledge the challenges surrounding infection control but strongly recommends that this number is increased immediately and in line with the practices adopted in similar settings outside of prison (such as nursing homes). Furthermore, to safeguard people's future entitlements, the Network recommends a number of additions/amendments to **Rule 35** pertaining to visits:

- An amendment of the Rule to allow at least one child-friendly visit per week with shorter, more frequent visits allowed for very young children, as appropriate. This would bring the Prison Rules in line with principle 17 of the CoE Recommendation which states that children should be allowed visit an imprisoned parent within one week of detention and on a regular and frequent basis from then on.<sup>14</sup>
- The inclusion of a minimum number of visitors permitted per visit within **Rule 35 (5) (a. ii)**, to solidify a minimum entitlement for people in prison and their children and families.
- The inclusion of an additional rule which entitles people in prison with more than one child to additional and longer in-person visits to accommodate family contact with each of their children. The addition of this rule is of particular significance during more restrictive periods such as the COVID-19 pandemic period, where only a maximum of one child is allowed per visit.
- The amendment of **Rule 35 (7)** to specify the obligation of the IPS to publish the exact dates and times of visits both in prisons and on the IPS website.
- The amendment of **Rule 35 (9) and (10)** to ensure that any person in prison denied a visit under this rule is provided with: detailed information regarding the reasons for the denial of a visit; an appropriate appeals mechanism through which to challenge the denial of a visit; and supplemented forms of alternative family contact i.e., telephone calls or video link calls, during the period in which visitation is denied. The CoE Recommendation states at principle 31 that *"a Child's right to direct contact shall be respected, even in cases where disciplinary sanctions or measures are taken against the imprisoned person."*<sup>15</sup>

The Network acknowledges that many of the Prison Rules concerning the scheduling and operations of visits are in place to ensure safety, security and good order of the prison and acknowledges the challenges in removing or relaxing specific rules around scheduling and operations. However, families and children need to be treated with dignity and rights to privacy.<sup>16</sup> Notwithstanding, the Network recommends the following improvements to **Rule 36** which balance the safety and security of the IPS with the rights of people in prison and their children and families:

- The amendment of **Rule 36 (1)** to ensure visitation is scheduled flexibly with families in mind i.e., outside of school and work hours. The scheduling of visitation should not be *"designated by the Governor"* but be applied according to a designated policy on visiting conditions

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<sup>14</sup> Ibid., at Rec 17, which states: *Children should normally be allowed to visit an imprisoned parent within a week following the parent's detention and, on a regular and frequent basis, from then on. Child-friendly visits should be authorised in principle once a week, with shorter, more frequent visits allowed for very young children, as appropriate.*

<sup>15</sup> Ibid., at Rec 31 which states: *A child's right to direct contact shall be respected, even in cases where disciplinary sanctions or measures are taken against the imprisoned parent. In cases where security requirements are so extreme as to necessitate non-contact visits, additional measures shall be taken to ensure that the child-parent bond is supported.*

<sup>16</sup> Ibid., at Rec 21 which states: *Measures should be taken to ensure that the visit context is respectful to the child's dignity and right to privacy, including facilitating access and visits for children with special needs.*

adhered to by prison management. This would comply with The CoE Recommendation which requires that *“Visits shall be organised so as not to interfere with other elements of the child’s life, such as school attendance. If weekly visits are not feasible, proportionately longer, less frequent visits allowing for greater child-parent interaction should be facilitated.”*<sup>17</sup>

- Amendment to the language of **Rule 36** to re-balance the rights of people within the Rule. For example, **Rule (36) (7) (b)** states that *“the Governor may allow physical contact between a prisoner and a visitor when he or she is satisfied that such contact will not facilitate the entry into the prison of controlled drugs or other prohibited articles or substances”*. The Network recommends altering the language to ensure that the physical contact is the standard and the withholding of physical contact is the exceptional circumstance.
- Amendment to **Rule 36** to include the requirement to further specify which type of exceptional circumstances may necessitate the denial of physical contact. This rule should be further amended to ensure that any denial of physical contact under exceptional circumstances is explained to the person in prison and their family member in a way that does not reveal private intelligence, and that an appeals process is in place to dispute such restrictive measures.
- Amendment of **Rule 36** to ensure that during the visitor search process, the specific needs of the child are prioritised. In this regard, the Network recommends expanding **Rule 36** to include a requirement for separate, child-friendly search mechanisms and for staff to be specifically trained in engaging with children in this context. Recommendation 23 of the CoE Recommendation states clearly that *“Any security checks on children shall be carried out in a child-friendly manner that respects children’s dignity and right to privacy, as well as their right to physical and psychological integrity and safety. Any intrusive searches on children, including body cavity searches, shall be prohibited.”*<sup>18</sup>
- Amendment of **Rule 36** to acknowledge that if children and families accept and adhere to rigorous security measures on entry to prison, that in turn, they are entitled to high-quality family visits which include physical contact.

### Concluding Remarks:

The Action for Children and Families Network strongly support the revision and updating of the Prison Rules 2007. The review of the Rules presents an opportunity to increase recognition of the rights and needs of children and families of prisoners in Ireland. The acceptance of the above suggested additions/amendments to the Prison Rules would signify a commitment from the IPS to promoting the importance of family contact and fostering a culture of respect and support for the hidden victims of the justice process – children and families of prisoners.

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<sup>17</sup> Ibid., at Rec 18 which states: *Visits shall be organised so as not to interfere with other elements of the child’s life, such as school attendance. If weekly visits are not feasible, proportionately longer, less frequent visits allowing for greater child-parent interaction should be facilitated.*

<sup>18</sup> Ibid, at Rec 23 which states: *In the vast majority of cases, prison staff screen all visitors, including children, for drugs, weapons and other non-authorized objects on entry. However, it is important to remember that all security checks need to be carried out in a manner that is respectful of children’s needs and rights, in particular, the child’s rights to protection from harm, and to privacy and dignity.*<sup>38</sup> Children can be psychologically harmed if they are searched insensitively. Staff should be appropriately trained to enable them to carry out searches in a child-sensitive manner, as this may be a highly stressful experience for children (taking away their favourite toys, checking diapers and clothes, checking their caregiver accompanying them, etc.). Officers, who are sensitive to children, often develop their own ways of searching children in a playful manner, preserving their integrity in as unobtrusive a manner as possible; 36. Le Relais Enfants Parents is part of the Francophone network Fédération des Relais Enfants Parents (FREP). 37. For examples, see: EuroPris, op. cit., ‘Visiting facilities and pretending to look for treasure, for example, or using their electronic search baton as a fairy wand. Analogies with searches for air travel can be useful in normalising the process and destigmatising the need for such checks and offering them with dignity.