

# 12 Sentences, Prisons and Probation

## Introduction

- 12.1** In this chapter we examine the arrangements for dealing with adult offenders after their conviction in the courts; and we touch upon the position of those who are remanded in custody before trial. We look at sentencing options available to the courts including the administration of indeterminate sentences, and at some issues surrounding the custodial arrangements for prisoners; and we consider the structural arrangements for ensuring that sentences of the court are carried out, that is the organisation of the Northern Ireland Prison Service and the Probation Board for Northern Ireland. However, we should stress that this chapter does not purport to be a comprehensive review of correctional policy: such an exercise would be an enormous undertaking in its own right.
- 12.2** In looking at these issues we are conscious of the very great difficulties experienced by the Prison Service and the Probation Board in providing services within a divided society at a time of civil strife. In the circumstances it was inevitable that much of the focus of the Prison Service should have been on the challenge of controlling large numbers of paramilitary prisoners against a backcloth of associated campaigns inside and outside prison. This has had a profound effect not only within prison but also on the lives of prison staff and their families outside. It is to the credit of the staff that the Prison Service was not only sustained throughout the past 30 years but that there has been a positive record of improvement in the delivery of services to prisoners and their families.
- 12.3** Staff of the Probation Board have worked with individuals and communities in circumstances where tensions and strife have created a most difficult climate in which to operate. Yet they have a reputation for commitment and innovation which has engendered confidence in them and their work from within all sections of the community. With the changing environment in Northern Ireland, both the prison and probation services are entering upon a new period of challenge and opportunity.

## Human Rights Background

**12.4** When offenders are entrusted by the courts to the prison or probation services, there is inevitably an element of coercion in the process. In such circumstances the protection of human rights assumes particular importance, especially where a custodial sentence is involved. A number of human rights instruments deal with the position of people following conviction and are relevant in relation to issues of prisons, probation and sentence. Among the instruments are non-binding conventions (such as the *Standard Minimum Rules for the Treatment of Prisoners* and the *European Prison Rules*) which deal with prisons issues in considerable detail. The purpose of this section is not to rehearse all the instruments which impact on prisons, probation and sentence, but instead to draw attention to those instruments whose provisions are particularly relevant for the evaluation and recommendations that follow.

**12.5** A number of conventions deal directly or indirectly with the impact of prison sentences and the regime inside prison. The starting point is that the *European Convention on Human Rights* requires that “no one shall be subjected to torture or to inhuman or degrading treatment or punishment” (Article 3) and the *International Covenant on Civil and Political Rights* requires that “all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person” (Article 10(1)). In general prisoners retain their rights while in prison except those which they explicitly forfeit by virtue of the fact that they are serving a custodial sentence. As set out in *European Prison Rules*,<sup>1</sup> “imprisonment is by the deprivation of liberty a punishment in itself. The conditions of imprisonment and prison regimes shall not, therefore, except as incidental to justifiable segregation or the maintenance of discipline, aggravate the suffering inherent in this” (Rule 64). Instruments such as the *European Prison Rules* not only require prison regimes to be organised to ensure that conditions are compatible with human dignity and so as to minimise the detrimental effect of imprisonment, but set standards to be met, for example in relation to such detailed matters as heating, lighting, ventilation and hygiene.

**12.6** The separation of certain classes of prisoners within prisons is dealt with by the various instruments. There is variation, however, in the descriptions of the separation required. The separation of children from adults is dealt with in the *International Covenant on Civil and Political Rights* which says, “accused juvenile persons shall be separated from adults” and “juvenile offenders shall be segregated from adults” (Article 10). However, the *Convention on the Rights of the Child* says, “every child deprived of his liberty shall be separated from adults unless it is considered to be in the child’s best interests not to do so” (Article 37). The separation of remand prisoners from sentenced prisoners is dealt with in the *International Covenant on Civil and Political Rights* which says, “accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to

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<sup>1</sup> *The European Prison Rules* (1987), Council of Europe.

separate treatment appropriate to their status as unconvicted persons” (Article 10). The separation of male and female prisoners is dealt with in the *European Prison Rules* which say, “males and females shall in principle be detained separately, although they may participate together in organised activities as part of an established treatment programme” (Rule 2).

- 12.7** Internal prison disciplinary arrangements are also covered by human rights instruments. The requirements of due process (*European Convention on Human Rights*, Article 6) apply to any determination of civil rights and obligations and criminal charges against prisoners, although the extent to which prison disciplinary proceedings are subject to Article 6 safeguards would appear to depend on whether they meet certain criteria set out in the European Court of Human Rights’ judgment in the case of *Engel*.<sup>2</sup> As for punishment, the *Standard Minimum Rules for the Treatment of Prisoners* require that “discipline and order should be maintained with no more restriction than is necessary for safe custody and well-ordered community life” (Rule 27); that prisoners are not punished twice for the same offence; and that corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading treatment should be prohibited (Rule 31).
- 12.8** Under the *European Convention on Human Rights* persons deprived of their liberty are entitled to have the lawfulness of their detention decided by a court (Article 5(4)). European case law suggests that in certain circumstances prisoners who are serving indeterminate sentences should be able to test their continued detention and that decisions should be taken by a judicial body.<sup>3</sup>
- 12.9** The overarching requirement of Article 3 of the *European Convention on Human Rights* (“No one shall be subjected to torture or to inhuman or degrading treatment or punishment”), applies to non-custodial disposals as much as to imprisonment. More detailed guidance is contained in the *United Nations Standard Minimum Rules for Non-custodial Measures* (The Tokyo Rules). Among its principles are: the protection of the offender’s dignity (Rule 3.9); the protection of the offender’s rights against unauthorised restrictions (Rule 3.10); and respect for the privacy of the offender and the offender’s family (Rule 3.11). As for the non-custodial measures themselves, they should be “used in accordance with the principle of minimum interventions” (Rule 2.6) and “should be part of the movement towards depenalisation and decriminalisation instead of interfering with or delaying efforts in that direction” (Rule 2.7).

2 *Engel and Others v Netherlands*, 8 June 1976, Series A, No 22 1 EHRR 647.

3 For example *Thynne, Gunnell and Wilson v United Kingdom* 25 October 1990, Series A No 190, 13 EHRR 666.

## Current Arrangements – Sentences

**12.10** The main options available to the courts following conviction of adult offenders (that is those aged 17 or older) and the numbers sentenced by the courts in 1997 are set out in the table.

<b>Sentencing of Adult Offenders by the Courts in Northern Ireland in 1997</b>	
<b>Court Disposal</b>	<b>Numbers Sentenced</b>
<b>Immediate Custody</b>	
Prison	1464
YOC	508
Training School Order	5
<b>Total Immediate Custody</b>	<b>1977</b>
<b>Suspended Custody</b>	
Prison (Suspended)	1,726
YOC (suspended)	496
<b>Total Suspended Custody</b>	<b>2,222</b>
<b>Supervision in the Community</b>	
Attendance Centre Order	4
Community Service Order	576
Probation Order	898
<b>Total Supervision in the Community</b>	<b>1,478</b>
<b>Fine</b>	<b>21,274</b>
<b>Conditional Discharge</b>	<b>1392</b>
<b>Other</b>	
Recognizance	1,235
Absolute Discharge	420
Disqualified	2
Other	9
<b>Total Other</b>	<b>1,666</b>
<b>TOTAL</b>	<b>30,009</b>

Notes: 1. Custody probation orders were not available to sentencers in 1997.

2. Sentencing data is based on the most severe penalty imposed by the court for the principal offence.

3. Training school orders and attendance centre orders are juvenile disposals. Adults given these disposals would have been juveniles when proceedings commenced.

Receptions to prisons and the young offenders centre by sentence length are set out in the table.

Receptions to Prisons and the Young Offenders Centre April 1998 to March 1999	
Imprisonment	Receptions
Fine default	1950
Up to 3 months	242
3 to 6 months	297
6 to 12 months	309
12 months to 2 years	198
2 to 5 years	196
Over 10 years	18
Life and Secretary of State's pleasure	24

Note: Fine defaulters will normally serve a small number of days in prison.

Judges and magistrates have the option of deferring sentence by up to six months to enable them to have regard to conduct after conviction and to any change in circumstances.

**12.11** A probation order may be made for between six months and three years. It may be freestanding, requiring the offender to report to the probation officer on a regular basis; or the court can attach conditions, for example participation in programmes designed to address offending behaviour. A community service order may be imposed, requiring the offender to undertake supervised work in the community for 40-120 hours if the offender is 16 and 40-240 hours for 17 year olds and over. The combination order is a relatively new sentence, introduced by the Criminal Justice (Northern Ireland) Order 1996 and enables the court to combine a probation order with a community service order. The Probation Service also produces pre-sentence reports on offenders, to assist the court in the sentencing process.

**12.12** So far as custodial sentences are concerned, the key issue we considered was release mechanisms. We describe here the arrangements for prisoners with fixed, determinate sentences and go on to look at the position in relation to indeterminate sentences.

## FIXED SENTENCES

**12.13** There is no parole board in Northern Ireland to consider the release of fixed (determinate) sentence prisoners. Instead all such prisoners serve the period determined by the court, less remission. In practical terms prisoners will be released having served half the sentence as pronounced unless they have lost remission as a result of disciplinary infractions while in prison. Release is unconditional, although prisoners who are convicted of further offences while on remission may, and in some cases must, be required to serve the unexpired portion of their previous sentence before serving their subsequent sentence. (There are slightly different arrangements for scheduled offenders serving five or more years for offences after

March 1989.<sup>4</sup> They are automatically released but are on licence until the two-thirds point of their sentence.) Determinate sentence prisoners are not subject to statutory supervision on release, except as described in the following paragraph. These arrangements contrast with England and Wales where, for prisoners with sentences of over four years, there is discretion to release between the half and two-thirds point of the sentence; and once released, there is a period spent under supervision by the Probation Service in the community, during which time the offender may be required to meet certain conditions and is at risk of recall. For sentences of under four years release takes place once half the sentence is served, as in Northern Ireland.

- 12.14** There are two other types of sentence which should be mentioned. Under the Criminal Justice (Northern Ireland) Order 1996 judges may sentence offenders who consent to community supervision to a mixed custodial/probation sentence, a custody probation order. This would normally be instead of a longer custodial sentence. The custodial element of the sentence is treated in the same way as other determinate sentences, that is to say prisoners will benefit from remission in the normal way. The probation element is subject to conditions set at the point of sentence. There is also provision under the 1996 Order allowing the court to provide for the supervision under licence of persons convicted and imprisoned for sexual offences. The licensed supervision begins at the point of release and lasts until the end of the sentence period.

## **INDETERMINATE SENTENCES**

- 12.15** Indeterminate (or life) sentences are where there is no fixed date for release from prison. Release from these sentences, should it happen, is currently a decision of the executive rather than the courts.
- 12.16** An indeterminate sentence is mandatory where an offender is found guilty of murder but may be given (and therefore is discretionary) for other serious offences, for example attempted murder or rape. A person convicted of a very serious offence while under the age of 18 may be sentenced to a period of detention at the pleasure of the Secretary of State and must be so sentenced if the offence is murder. Although there is no fixed date for release, in practice most offenders will be released at some point from their indeterminate sentences, although they remain on licence and are subject to recall to prison if they are a risk to the public.
- 12.17** In Northern Ireland the mechanisms for considering the release of all indeterminate sentence offenders, including those held at the pleasure of the Secretary of State, are broadly the same.

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<sup>4</sup> Scheduled offenders are those convicted in Diplock courts of offences scheduled in the Northern Ireland (Emergency Provisions) Act 1996.

Release on life licence is the responsibility of the Secretary of State who is advised by the Life Sentence Review Board. In cases of murder the Secretary of State must also consult the Lord Chief Justice and trial judge if available before deciding on release.

- 12.18** The Life Sentence Review Board comprises senior officials of the Northern Ireland Office and the Prison Service and has available to it the advice of probation, psychiatry and psychology professionals. The Board reviews cases on a regular basis and will either recommend release or will set a date for further review. The Board may also make recommendations about case management. Although decisions to release are taken by Ministers, in practice the Board has a major role in that it decides, albeit within policy set by Ministers, when cases should be reviewed and more importantly, when they should be referred for ministerial decision.
- 12.19** In Northern Ireland, unlike England and Wales, there is no separate tariff for retribution and deterrence after which risk of re-offending becomes the major factor in determining whether or not the individual should be released. Instead issues of retribution, deterrence, risk of re-offending and the public interest are matters which are relevant, albeit to varying degrees, at all points of sentence. One implication of this is that there is a standard timetable for the consideration of cases. Thus, unless there are significant aggravating circumstances, an adult murderer will have his or her case considered by the Board for the first time no later than the 10 year point in sentence. Pleasure cases will be considered no later than the eight year point.
- 12.20** In Northern Ireland there is a system of phased release from life and pleasure sentences. Offenders will spend a period of three months during which they attend work from prison during the week and have home leave at weekends. They then spend a period of six months in the community reporting fortnightly to prison before they receive their licence. Following release, non-scheduled licensees are supervised in the community by probation; scheduled licensees are normally not supervised.

## **NORTHERN IRELAND (SENTENCES) ACT 1998**

- 12.21** As a consequence of the Belfast Agreement, a statutory scheme has been put in place for the accelerated release of scheduled offenders, provided that they are not affiliated to an organisation that is not maintaining a ceasefire. It is not for us to address the workings of this scheme that derives from the Belfast Agreement. However, it is of interest to note that the Sentence Review Commissioners, appointed by the Secretary of State to take decisions under the scheme, are independent and include people with a background in criminal justice and penal matters. Panels of Commissioners considering life sentence cases must include at least one person with expertise in psychiatry or psychology. The rules under which the Commissioners operate are very similar to those of the Parole Board in England and Wales. However, the Northern Ireland Sentence Review Commissioners do not include a judicial element.

## Current Arrangements – The Prison and Probation Services

### NORTHERN IRELAND PRISON SERVICE

- 12.22** The Northern Ireland Prison Service is a separate prison service within the United Kingdom. Its main statutory duties are set out in the Prison Act (Northern Ireland) 1953 (and prison rules made under that Act) and in the Treatment of Offenders Act (Northern Ireland) 1983. The Secretary of State is accountable to Parliament for its operation.
- 12.23** Since April 1995 the Prison Service has been a next steps agency within the Northern Ireland Office. This means that Ministers set the policy framework within which the agency operates, allocate resources and approve its corporate and business plans. Ministers may also issue directions on matters of concern. The Director General is responsible for the day to day management of the Prison Service, except for those areas that the Minister does not delegate to him in relation to the freedom of certain offenders (for example the permanent release of life sentence prisoners). The Director General is also the Minister’s principal adviser on policy matters relating to prisons.
- 12.24** The mission, aims and objectives of the Northern Ireland Prison Service were set out in the strategy document *Serving the Community*, published in 1991.<sup>5</sup> It defined the aim of the Northern Ireland Prison Service as being “to hold in secure and humane confinement persons who have been given in to custody by the courts and to reduce the risk of re-offending by encouraging them to take full advantage of the opportunities offered during their confinement”. Within that aim its specific objectives are to keep prisoners in custody and to produce them at court or release them as required; to provide prisoners with all the necessities of life, including the opportunity to engage in constructive activity; to enable prisoners to retain family ties and to assist sentenced prisoners in their preparation for release; to treat prisoners as individuals regardless of beliefs and political opinions and to allow them the opportunity to serve their sentences free of paramilitary influence; and to manage resources efficiently and effectively and to enhance the morale and abilities of staff.
- 12.25** The Northern Ireland Prison Service has four custodial institutions: HM Prisons Maghaberry, Magilligan and Maze and HM Young Offenders Centre, Hydebank. Magilligan and Maze house exclusively adult males. Maghaberry is primarily an adult male prison. However, there is within its walls separate purpose built accommodation, Mourne House, which houses all Northern Ireland’s female prisoners including remands, convicted prisoners and young female offenders. The prison population and staffing levels in 1998-99 were as follows:

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5 *Serving the Community: the Northern Ireland Prison Service in the 1990’s* (1991), Northern Ireland Prison Service.

Establishment	Staff in Post	Average Prison Population 1998-99	
		Male	Female
Magilligan	452	340	-
Maghaberry	860	477	25
Maze	909.5	387	-
Young Offenders Centre	289	173	-
Court Escort Group	98	-	-
Prison Service Headquarters	255.5	-	-
Prison Service College	52.5	-	-
<b>Total</b>	<b>2955.5</b>	<b>1377</b>	<b>25</b>

- 12.26** The management of individual prisons is the responsibility of the governor. Under Northern Ireland prison rules, the governor is “in command of the prison” and “responsible for prisoners’ treatment according to the law”.<sup>6</sup> However the governor must operate within prison rules and standing orders and the overall policies set by Prison Service headquarters. Services within prisons are provided by Prison Service staff and other specialists including chaplains, medical practitioners, nurses, probation officers and psychologists.
- 12.27** Each adult prison has a Board of Visitors; each young offenders centre a Visiting Committee. These bodies, comprising members of the public, are required to satisfy themselves as to the treatment of prisoners including their health and welfare, the facilities available, and the cleanliness and adequacy of prison premises.<sup>7</sup>
- 12.28** Arrangements for prison discipline and control are set out in prison rules that give governors powers both before and after adjudication.<sup>8</sup> Following adjudication by a governor, a number of punishments are available. The most severe of these is loss of remission of up to 28 days. More serious offences can be referred to the Secretary of State (in effect Prison Service headquarters) who can delegate his powers to the Boards of Visitors (or Visiting Committees). More severe sanctions are available to a Board: it can, for example, impose a loss of remission of up to 90 days.
- 12.29** Criminal offences in prison are investigated by the police. A protocol is being developed between the police, DPP and Prison Service defining offences that fall outside the system of prison disciplinary arrangements, and are therefore subject to police investigation.
- 12.30** We note that in 1997 there was a series of incidents in the Maze prison culminating in the murder of the loyalist prisoner, Billy Wright. These were investigated by a team led by Mr Martin Narey, from the Home Office. Subsequently Maze was subject to an inspection by Sir

<sup>6</sup> *The Prison and Young Offenders Centre Rules (Northern Ireland) 1995*, Rule 116.

<sup>7</sup> *The Prison and Young Offenders Centre Rules (Northern Ireland) 1995*, Rule 124.

<sup>8</sup> *The Prison and Young Offenders Centre Rules (Northern Ireland) 1995*, Rules 31-50.

David Ramsbotham, Her Majesty's Chief Inspector of Prisons. Both reports focused on the management of paramilitary prisoners and we do not consider it necessary to go into these matters further for purposes of this review.

- 12.31** We should emphasise that the Prison Service is in the throes of major change. As a result of releases already made the number of prisoners eligible for release under the accelerated release arrangements flowing from the Belfast Agreement has rapidly diminished. All but a handful should be released by the end of July 2000, the second anniversary of the enabling legislation coming into effect. This has big implications for the focus and ethos of the Service; for its size, with staff numbers expected to reduce by about 1100; and for its estate, with the Maze prison expected to close around July 2000. The Service's forecast budget for 1999/2000 is £160.7 million of which £20 million represents the costs of the staff reduction programme.

## **PROBATION BOARD FOR NORTHERN IRELAND**

- 12.32** Until 1982 the Probation Service was an integral part of the Northern Ireland Office, having previously been part of the Ministry of Home Affairs. In 1979 the Black Report noted:

“The service (probation) is currently administered directly by the Northern Ireland Office and from an administrative point of view this may well be satisfactory. However, if the service is to enjoy fully the confidence of the community, which will be essential if it is to carry out its work successfully, we consider that this can be best achieved if the community participates directly in the management of the service. We recommend therefore that the probation service be administered by a Board drawn from a wide spectrum of the community in Northern Ireland.”<sup>9</sup>

There was a desire to ensure community involvement in the development of policy as well as to distance the Probation Service from central government (and from what was perceived to be the security-oriented Northern Ireland Office). Following on from this the Probation Board was established.

- 12.33** The Probation Board for Northern Ireland is a non-departmental public body established under the Probation Board (Northern Ireland) Order 1982. It is appointed by and is accountable to the Secretary of State. The 1982 Order gives the Probation Board both mandatory and discretionary functions. Its mandatory functions are to provide an adequate and efficient probation service (this includes supervision in the community of offenders who are the subject of a probation or community service order and the provision of pre-sentence reports on offenders to assist the courts in determining the most suitable method of dealing with them); to make arrangements for offenders to perform work under community service

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<sup>9</sup> *Report of the Children and Young Persons Review Group - Legislation and Services for Children and Young Persons in Northern Ireland* (1979).

orders; to undertake such social welfare duties in prisons as the Secretary of State considers necessary; and to take on such other duties as may be prescribed. The Board's discretionary functions, which it may undertake with the Secretary of State's approval, are to provide probation hostels, bail hostels and other establishments for use in connection with the supervision and assistance of offenders; and to operate schemes for the supervision and assistance of offenders and the prevention of crime.

**12.34** In practice the Board sees its main activities as: providing reports to the courts to help inform the sentencing process; supervising offenders subject to community orders; providing welfare services to prisoners and their families; and assisting prisoners with resettlement after release. It has carried out non-statutory supervision of some offenders on a voluntary basis, but this work has had to be curtailed to make way for an increasing statutory workload at a time of financial stringency. The Probation Board also funds services provided by the voluntary sector and community initiatives aimed at supporting the statutory supervision of offenders in the community and the prevention of offending. In 1998/99 it spent almost £1.9 million on grants to voluntary bodies, nearly half of which was on accommodation services and employment services.

**12.35** As a non-departmental public body, the Probation Board operates at arm's length from government. However, it is accountable to the Secretary of State through the Northern Ireland Office which, on a basis approved by Ministers, sets out the policy framework within which the Board is expected to work; provides an annual strategic steer; provides the Board with its financial resources; and ensures that the Board operates within the set policy and resources framework. The Government's three primary aims for probation work are:

- (i) to protect the public by helping reduce crime through the prevention of re-offending by supervising offenders effectively;
- (ii) to provide high quality information, assessment and related services to the courts; and
- (iii) to provide value for money whilst maintaining fairness and high standards of service delivery.

**12.36** The development of probation policy is the responsibility of the Northern Ireland Office. It is advised on probation matters by the criminal justice unit of the Social Services Inspectorate which also, as the name suggests, is responsible for the inspection of probation work.

**12.37** The Probation Board consists of a Chairman, a Deputy Chairman and no less than 10 nor more than 18 other members. The Chairman is paid a salary, based on one day's work a week, whilst the other members, who attend monthly Board meetings and sit on various sub-committees, receive an attendance allowance plus expenses.

**12.38** During the year 1998/99 the Probation Board employed 287 people, of whom 196 were in probation grades. Its statutory case load, as at March 1999, was as follows:

Probation Orders	1925
Community Service Orders	767
Custody Probation Orders	263
Combination Orders	143
Juvenile Justice Centre Orders	18
<b>Total</b>	<b>3116</b>

In addition there were a number of clients being supervised on a voluntary basis. In 1998/99 the Probation Service received 7239 requests for pre-sentence reports from the courts. Its total budget for 1999/2000 is £11,875,000, which includes £11,578,000 received from the Northern Ireland Office.

- 12.39** The Probation Service operates out of 37 offices, 10 of which are in Belfast, four in prisons, and the remainder in the main urban centres of Northern Ireland.

## Views Expressed during the Consultation Process

- 12.40** During our consultation seminars there was some discussion of issues relating to sentences, prisons and probation. They tended to be considered alongside issues to do with crime prevention and the treatment of victims.
- 12.41** A number of themes emerged. There was recognition that certain offenders, particularly serious ones, required punishment, for purposes of retribution, deterrence and protecting the public. But there was also a strong emphasis on the need for rehabilitation and the need for systems to focus on the individual needs of offenders. Offenders should be encouraged to change their behaviour, for example through programmes designed to address offending behaviour (although there was no consensus whether these should be compulsory or otherwise). Although post-release supervision of prisoners on its own had advocates, others felt that offenders upon release from prison required support in the community that should amount to more than supervision. Accommodation difficulties, especially for people released from prison, were mentioned.
- 12.42** A number of those not familiar with the criminal justice system were surprised to learn that there was no parole board operating in Northern Ireland. There was speculation that the introduction of a parole system might provide a useful incentive to offenders and encourage them to make better use of their time in and out of prison.

- 12.43** Mixed views were expressed about sex offenders. There were concerns that the system was not dealing adequately with the risk that they posed. On the other hand there was a view that the pendulum had swung too far against them to the extent that their human rights were being threatened.
- 12.44** A number of important themes emerged in written and oral submissions. Many of those who wrote or spoke to us advocated closer working relationships between the authorities working with offenders. For example, there needed to be closer co-ordination of effort on the development of programmes, evaluation and setting targets, and better arrangements for joint working (including arrangements to ensure continuity between prisons and the community). An important aspect of better co-ordination would be in relation to the development of accredited offending behaviour programmes for delivery in prison and in the community. As to the possible amalgamation of the Prison and Probation Services, those who addressed the issue did not favour this option.
- 12.45** There was disquiet about the mechanisms for release from indeterminate sentences. The current system was regarded as lacking transparency and openness. Various models for a new system were suggested: for example, the Parole Board for England and Wales and the Northern Ireland Sentence Review Commissioners.
- 12.46** There were mixed views on whether there should be an element of discretionary release for determinate sentence prisoners. Some felt that the combination of a parole board and discretionary release would give offenders the incentive to make better use of their time in prison. On the other hand it was also suggested that the period of time to be served in prison should be set by the court at the time of sentence and that the management of prisoners might become more difficult if there were uncertainties about the timing of release.
- 12.47** We also take account of issues raised by the Northern Ireland Affairs Committee. In 1998 the Northern Ireland Affairs Committee conducted an inquiry into the efficiency and effectiveness of the Northern Ireland Prison Service.<sup>10</sup> It examined management issues, including those arising out of agency status, but also looked at the effects of the Belfast Agreement, including the effects of early releases and reduction in size of the Prison Service. The Committee's recommendations have been broadly endorsed by the Government. Some of the issues were examined further by us. These included the holding of juvenile females in Mourne House and the adjudication function of Boards of Visitors. The Committee also suggested that the Secretary of State for Northern Ireland should consider "how best to improve links between the Northern Ireland Prison Service and the Northern Ireland Probation Service", perhaps as part of our review.<sup>11</sup>

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10 Northern Ireland Affairs Committee: *Fourth Report: Prison Service in Northern Ireland*, House of Commons, 1998.

11 *op cit* paragraph 71.

## Research and International Experience

- 12.48** We commissioned research on the roles and functions of prisons and probation, including the international experience. The resulting research report<sup>12</sup> gives a description of the structures in Northern Ireland and, for comparative purposes, descriptions of the systems operating elsewhere in the British Isles and in some Commonwealth and western European jurisdictions. The report also looks at offending behaviour programmes and the implications, including for structures, of their further development.
- 12.49** During our visits to other jurisdictions we looked at prisons and probation issues. We spoke to staff working in the correctional field in Canada (at both federal and provincial level), Germany, the Netherlands, New Zealand and South Africa. Among the issues we addressed were: structural arrangements; inspections and complaints procedures; parole and conditional release; the arrangements for programmes to address offending behaviour; and the problems of dealing with small populations of female offenders. While we were in Alberta we had the privilege of visiting two provincial prisons (as well as a juvenile institution) where we were able to speak directly to practitioners and inmates, and to see at first hand mixed facilities for males and females.
- 12.50** We have drawn on the lessons learned in these jurisdictions in the evaluation that follows. We would like to draw particular attention to the work done by the Correctional Service of Canada in the development of programmes to address offending behaviour. It has developed cognitive-based offending behaviour programmes and, against a background of rigorous research, assessment and evaluation, has been expanding their use in custodial and community settings.

## Evaluation and Recommendations

### SENTENCES AND THE TREATMENT OF OFFENDERS

#### Sentencing Options

- 12.51** We received few representations concerning the adequacy or otherwise of the sentencing options available to the courts in respect of adult offenders. The adequacy of sentencing powers is not a matter that we have examined in any depth and accordingly we do not wish to make recommendations in this area, save in one respect.

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12 Blair, Research Report 5.

**12.52** We have focused on restorative justice in the context of juveniles (see Chapter 9 above) but believe that it can also be applicable in suitable cases involving adults, especially young adults. A comprehensive court-based scheme for adults, involving conferencing and court orders based on conference outcomes, is unlikely to be viable in the short term. However, the option of a restorative intervention should be available, especially as confidence in restorative justice increases, as we believe it will once it becomes embedded in the juvenile justice system. Accordingly, **we recommend that the current sentencing framework for adults be reviewed to establish whether it could adequately accommodate restorative interventions where appropriate and, if not, to consider what changes might be made in order for it to do so.** One area of examination would be the possible use of deferred sentences in a way that enabled restorative options to be tried before final sentence.

## **CUSTODIAL SENTENCES AND RELEASE FROM CUSTODIAL SENTENCES**

**12.53** During consultation a number of concerns were expressed about the nature of custodial sentences available in Northern Ireland. We considered a number of possible changes in relation to both determinate and indeterminate sentences.

### **Determinate Sentences**

**12.54** We considered whether there should be a parole board for Northern Ireland, together with an element of discretionary release for certain categories of prisoner, and whether there was a case for introducing mandatory supervision in the community after release.

**12.55** Although the evidence is limited, recent research would suggest that a period of parole in the community has a positive impact on reducing re-offending. We note, however, that the reasons behind this “parole effect” are not entirely clear, in particular, whether it is a result of the licence itself, supervision, treatment (through programmes delivered in the community) or deterrence, or some combination of all these factors. If the effect is primarily a result of treatment, we note that there is already a mixed custodial/probation sentence available in Northern Ireland under the Criminal Justice (Northern Ireland) Order 1996, the use of which is increasing (233 custody probation orders were made in 1998/99 and 263 clients were under supervision in March 1999). We are also aware that the introduction of discretionary release would require not only setting up a parole board, which has never operated in Northern Ireland, but also new mechanisms to collect the information necessary to feed into its decision making. The argument has been put to us that with determinate sentences there are benefits to be had from there being a clear, fixed release date to work towards. These benefits are from the perspective of the prisoner, the prison authorities and, sometimes, the victim. On balance we do not think that a sufficiently strong case has been made for the introduction of discretionary release for determinate sentence prisoners.

- 12.56** However, although research is not conclusive, we considered the separate question of whether there should be a period under supervision in the community following release. This is the norm for non-scheduled life sentence prisoners and it may be that supervision, and the active support from probation staff that goes with it, would benefit particularly those prisoners who have served longer sentences. We do not think that a sufficient case has been made to warrant introducing statutory supervision of all prisoners released after serving sentences of, perhaps, two years or more. However, we can see that certain types of prisoner might benefit from voluntary supervision or support on release, as has been the position in the past. **We recommend that it should be a recognised function of the Probation Service to provide aftercare and support, including supervision, to discharged prisoners and that the service should be adequately resourced to this end. Our expectation is that the Prison and Probation Services should work together to prepare release packages for prisoners. These arrangements should be evaluated with a view to considering whether compulsory supervision should be introduced.**
- 12.57** During consultation a number of people expressed concern at the public's confusion about sentencing and the bewildering disparity between the sentence as pronounced in court and the period of time a person actually serves in prison. There have been a number of cases where offenders found guilty of serious offences have, to the consternation of the public, been released shortly after conviction.
- 12.58** Part of the reason for the confusion is the fact that, quite properly, time spent in prison awaiting trial will count towards the period of imprisonment, a fact that is not always taken fully into account in press reports. But the other reason for confusion is that, as noted above, in most instances under Northern Ireland's remission arrangements an offender will serve only half the sentence as pronounced.
- 12.59** We considered whether to suggest changes in the level of remission. Some remission is clearly necessary: the main sanction in relation to offences in prison is the capacity to reduce the period of remission. However it is not clear that 50% remission is necessary for this purpose: other prison systems manage with less. On the other hand Northern Ireland's remission rate has been in operation for a long period of time and is well understood by those involved in the system. Any reduction in the remission rate might lead to an increase in prisoner numbers (judges do not take account of remission rates when sentencing) but it is not obvious that it would have a commensurate impact on levels of offending or that it would simplify matters. We concluded therefore that there was not a sufficient case to suggest a change in remission rates.
- 12.60** However, the degree of public confusion remains an issue and it can have a particular impact on victims. We consider that this can be better dealt with by means of greater transparency at the point of sentencing. **We recommend that judges when sentencing should explain in greater detail and in simple language the impact of the sentence, including the fact that, with remission, the offender may be eligible for release having served half the**

**sentence and that time spent in prison awaiting trial may count towards the period served.** In this context we note that in England and Wales there is already a practice direction in which Lord Chief Justice Bingham enjoined sentencers to give “clear and accurate” explanations of this kind.<sup>13</sup>

### **Indeterminate Sentences**

**12.61** Throughout the consultation period there were criticisms of the arrangements for the release of life sentence prisoners. The present system was thought to lack openness and transparency and there were concerns that it was subject to undue political involvement. The Life Sentence Review Board mechanism was compared unfavourably with the much more open system for certain prisoners that had been set up under the Northern Ireland (Sentences) Act 1998.

**12.62** We consider that the present arrangements are unsatisfactory for a number of reasons:

- the Life Sentence Review Board arrangements apply equally to mandatory, discretionary and pleasure cases. This is despite European case law which suggests that there are aspects of discretionary and pleasure cases which require to be considered by a body with judicial input.
- the involvement of politicians in the decision making process leads to a perception that political considerations may affect decisions;
- the system does not sit easily with our desire to achieve transparency in the criminal justice system;
- the rights of individuals are better protected when courts decide on retribution rather than politicians or civil servants acting on their behalf;
- issues of retribution and deterrence are difficult for the Life Sentence Review Board to determine in non-Diplock cases. In Diplock cases, the Board has access to the detailed reasoning of the court and its findings of fact and will take these into account when making its decisions. These are not available where there has been a jury trial and it is often difficult to know what evidence has been accepted by the court in reaching its verdict;
- although it is possible to make good guesses about the period of time that life prisoners are likely to serve in prison, there can be no certainty. It is therefore difficult to manage the sentence and prepare for possible release without creating expectations that might not be met.

**12.63** There is already a model in Northern Ireland for a different system. The Sentence Review Commissioners set up under the 1998 Sentences Act operate a system which is independent of Ministers and which is more open in its procedures, including allowing prisoners to make representations in person.

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13 Custodial Sentences: Explanations 1998 1 WLR 278.

- 12.64** We recommend that the current Life Sentence Review Board be replaced by an independent body that is not part of the Northern Ireland Prison Service or the proposed Department of Justice. Its membership should include individuals with an expertise in psychiatry or psychology and it should have a judicial input that would enable it to act as a tribunal for dealing with discretionary and Secretary of State's pleasure cases. Its membership might also include individuals with expertise in criminology.
- 12.65** In relation to all indeterminate sentence cases, including mandatory life sentence cases, we recommend that judges when sentencing should be required to set a period for retribution and deterrence (equivalent to the tariff set in England and Wales). In most cases the period would be a fixed term of years, although it must be envisaged that some offences might be so serious that a whole life period would be appropriate. The period would be announced in open court and would be appealable. Once this period had been served, it would be the responsibility of the independent body to determine, primarily on grounds of risk, when the prisoner should be released. Based on the experience of the Sentence Review Commissioners, an independent body would cost about £354,000 per annum. It could in due course take over the remaining functions of the Sentence Review Commissioners.

## **PRISON REGIME ISSUES**

- 12.66** During consultation our attention was drawn to a number of aspects of the prison regime where there were perceived to be issues affecting public confidence. These were matters concerning prison adjudication and the arrangements for female offenders.

### **Adjudication**

- 12.67** Currently offences against prison discipline are dealt with either by prison governors or by a panel drawn from the prison's Board of Visitors (or young offenders centre Visiting Committee). Governors carry out the vast majority of adjudications. However, Boards of Visitors have more severe penalties available to them (they may award a loss of up to 90 days remission for each offence compared to prison governors whose maximum award is 28 days) and Boards will be used to adjudicate in more serious offences where it is felt that the sanctions available to governors are inadequate.
- 12.68** There are a number of concerns about the current system. First, there is the role of the Boards of Visitors. Given the infrequency with which they are called upon to adjudicate, there have been questions raised about the quality of the process. More pertinently a number of people, including members of Boards of Visitors, have argued that the adjudication function sits uneasily with the other aspects of the Boards' role that are to do with

monitoring the treatment of prisoners, their facilities and the adequacy of prison premises.<sup>14</sup> The argument in favour of Boards of Visitors is that they constitute an independent tribunal (see the findings in *Campbell and Fell v United Kingdom*<sup>15</sup>). That may be necessary to satisfy Article 6 of the European Convention on Human Rights.

**12.69** We think it is undesirable that members of Boards of Visitors should be perceived by prisoners, however wrongly, as having a punitive role. We also note the relative inexperience that can arise from infrequent adjudications. **We recommend that the practice of Board of Visitors adjudication should end.** This change might need to be supplemented by some increase in the sanctions available to prison governors. (In England and Wales when Boards of Visitors lost their adjudicatory function, governors there were given the authority to make awards equivalent to the loss of 42 days remission.)

**12.70** The second, more significant, concern about the current system has to do with due process. There is the question whether the prosecution of offences within prison generally should attract the safeguards under Article 6 of the *European Convention on Human Rights*; in other words whether they should be treated as criminal offences rather than as offences against prison discipline. And, even if it is accepted that there is a need for a separate prison disciplinary system, there are two further questions: whether the penalties available within the disciplinary system are too onerous; and whether there are offences within the disciplinary system which should more properly be dealt with as criminal matters.

**12.71** The European Court accepts that there are practical and policy reasons for establishing special disciplinary regimes within the prison context. It cites as examples “security considerations and the interests of public order, the need to deal with misconduct by inmates as expeditiously as possible, the availability of tailor-made sanctions which may not be at the disposal of the ordinary courts and the desire of the prison authorities to retain ultimate responsibility for discipline within their establishments”.<sup>16</sup> However the Court has stated that, although states may make a distinction between criminal law and disciplinary law, this is subject to certain conditions<sup>17</sup> and states may not, through defining offences as disciplinary, deprive individuals of the safeguards inherent in Article 6.

**12.72** In a number of cases, including the case of *Campbell and Fell v United Kingdom*, the Court has set out the factors to be taken into account in the prison setting in deciding whether or not a matter is criminal. These are the domestic classifications as criminal or disciplinary; the nature of the offence itself and whether it would normally appear in the criminal code; and

14 *The Prison and Young Offenders Centre Rules (Northern Ireland) 1995*, Rule 124.

15 *Campbell and Fell v United Kingdom* 28 June 1984 7 EHRR 165 Series A No 80.

16 *Campbell and Fell v United Kingdom* 28 June 1984 7 EHRR 165 Series A No 80, paragraph 69.

17 *Engel and Others v Netherlands* 8 June 1976, Series A, No 22 1 EHRR 647.

the nature and severity of the penalty faced.<sup>18</sup>

**12.73** As to the application of these principles the Court concluded in relation to the applicant Campbell that the loss of a total of 570 days remission (and a range of other privileges) for the offences of mutiny or incitement to mutiny and doing gross personal violence to an officer was such as to constitute a criminal matter. By contrast, in the earlier case of *McFeeley v United Kingdom*<sup>19</sup> the Court had concluded that the harshness of accumulated disciplinary awards did not detract from the disciplinary nature of the offences. Although assaults on prison officers belonged to both the criminal and disciplinary sphere, they could be regarded as disciplinary, provided the punishments imposed did not alter the characterisation of the offences. (McFeeley, held in the Maze prison, had been adjudicated upon at 14 and later 28 day intervals for refusing to wear prison uniform or to work, losing 14 and later 28 days remission at each adjudication. He was also adjudicated on twice for assault, losing four months and three months remission.)

**12.74** It is difficult to extract from the Court's findings on the facts of relatively few cases, general principles which can form the basis of a practical system to ensure that future offences are dealt with in a manner that complies with the Convention. In saying this we are conscious that there are other United Kingdom cases currently before the European Court which fall between the boundaries set by *Campbell and Fell* and *McFeeley*.<sup>20</sup>

**12.75** We draw two main conclusions. First, recognising the overlap between criminal and disciplinary offences, there is a need for practical guidance on where the line should be drawn in individual cases. **We understand that the Prison Service, RUC and DPP are currently considering a protocol that would guide the prison authorities on the circumstances in which the RUC and DPP should be brought in to deal with prison offences, and we recommend that this protocol be speedily completed and published.** Secondly, we are conscious that removing adjudications by Boards of Visitors will result in a very significant reduction in the sanctions available within the prison disciplinary system (a reduction from loss of 90 days remission to 28 days). We are conscious that the prison discipline system exists as a safeguard for staff and for other prisoners, and that the sanctions available must be adequate for the task. **We recommend some increase in the penalty available to governors, which would need to be consistent with European Court findings (including in relation to cases currently before the European Commission).**

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18 *Campbell and Fell v United Kingdom* 28 June 1984 7 EHRR 165 Series A No 80 (see also *Engel and Others v Netherlands* 8 June 1976, Series A, No 22 1 EHRR 647).

19 *McFeeley v United Kingdom* 15 May 1981 3 EHRR 161.

20 For example, *Application No 39665/98 lodged by Okechukwiw Ezeh* (Ezeh, a prisoner in England, was given an award including 40 additional days for using threatening, abusive or insulting words or behaviour).

## Female Prisoners

**12.76** Our attention was drawn to the problems surrounding the holding of female prisoners in Northern Ireland. They are all held in Mourne House which forms part of HM Prison Maghaberry. There are very few such prisoners. In recent months the numbers imprisoned have averaged less than 20. However this small number may contain all classes of prisoner: high security, low security; long sentence, short sentence; convicted, unconvicted; adult, young offender and even on rare occasions juvenile. Clearly it may be difficult for the prison authorities to devise a regime which provides separation between certain types of prisoners (for example between young offenders and adults, or remand and sentenced prisoners) without running the risk that some females may be held in what amounts to solitary confinement. There is the added problem that the prison authorities must not discriminate in the treatment they give to male and female prisoners. Thus it is difficult for them to take specific measures designed to suit the regime for a small class of female prisoners unless they are prepared to extend equivalent treatment to a very much larger class of male prisoners whose needs may be very different.

**12.77** It is difficult to know what remedial action could be taken. In this context we note with interest the discussion about issues of separation which appears in the explanatory memorandum attached to the European Prison Rules.<sup>21</sup> These Rules have been relaxed to allow contacts between classes of prisoners (see Rule 11). The explanatory memorandum notes that recent experience has modified views about the need for segregation and continues:

“Thus there may be some value to younger prisoners, in certain circumstances, in the stability that can result from participation in regime activities with older prisoners. The same may apply in regard to participation by men and women in the same treatment programme. Similarly it may be helpful to untried prisoners, for whom work or other regime experience may be unavailable or limited, to have the opportunity to enjoy that which is available to sentenced categories of prisoners.”<sup>22</sup>

**12.78** There are no easy solutions to the problems that arise because of the small number of female prisoners at Mourne House. We conclude that the issue should be kept under review not only generally but more specifically in the light of the needs of the prisoners actually being held in Mourne House at any time. One possibility might be to enable female prisoners to share certain facilities and participate in programmes with male prisoners. We expect that the establishment of adequate secure accommodation for girls on the juvenile justice side will obviate the need to hold juveniles in Mourne House.

21 *The European Prison Rules* 1987, Council of Europe.

22 Explanatory Memorandum, *The European Prison Rules*, Council of Europe 1987.

## OFFENDING BEHAVIOUR PROGRAMMES

**12.79** During consultation there was support for the development of offending behaviour programmes, particularly those aimed at sexual offending. Although such programmes are not panaceas, research evidence suggests that they are effective with certain prisoners at certain times. The importance of these programmes was highlighted in our research<sup>23</sup> and in our visits to other jurisdictions.

**12.80** In our view it is very important that offending behaviour programmes are widely available within Northern Ireland, in both community and custodial settings. We are aware that the Prison Service in co-operation with the Probation Board has already developed mechanisms for accrediting, monitoring and evaluating offending behaviour programmes in Northern Ireland prisons. **We recommend that a mechanism be set up to oversee programmes in both prisons and the community with a view to ensuring continuity and consistency, and also ensuring that evaluations are published and, where appropriate, form the basis for the roll-out of successful schemes. We discuss later in this chapter structures to facilitate this end.**

## ELECTRONIC MONITORING

**12.81** During consultation we heard some suggestions that electronic monitoring (electronic tagging) should be introduced in Northern Ireland. This technique, which typically involves an offender wearing a small electronic transmitter on wrist or ankle, is used in a number of European and North American jurisdictions to monitor the location of offenders within the community, for example to ensure that they are at home or at work within specified times.

**12.82** Electronic monitoring will not in itself prevent offending. However the ability to know quickly whether a tagged person is abiding by conditions can act as a deterrent and may allow intervention by the authorities before misbehaviour gets out of hand. It follows that electronic monitoring may be a useful adjunct to other techniques and disposals. Electronic monitoring is currently used:

- as an alternative to a prison sentence (for example schemes in the Netherlands and Sweden);
- as a mechanism to allow the earlier release of sentenced prisoners (for example in the Netherlands and newly introduced in England and Wales);
- as a condition of bail allowing an alternative to remand in custody (attempted in England and Wales in 1989 and reintroduced there in pilot form in 1998); and

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23 Blair, Research Report 5.

- as an additional community sentence to be used alongside existing community sentences such as probation orders and community service orders (piloted in England and Wales since July 1995 and in Scotland from August 1998).

**12.83** Electronic monitoring was not an issue that we were able to pursue in detail. We are conscious that there may be benefits in certain circumstances in using the technology, particularly where the alternative might be imprisonment. However, there are human rights implications that would need to be considered. It could be argued that the wearing of tagging devices amounts to a degrading form of punishment and that where its use imposes undue hardship on members of the tagged individual's household this might infringe the right to privacy and family life. Its use in certain circumstances in Northern Ireland might also have the effect of putting offenders at risk. We are also aware that private contractors in England and Wales have been used to run electronic monitoring schemes, an approach that would need careful consideration in the Northern Ireland context. **We conclude that electronic monitoring is a technique that should be kept under review in the light of developing experience elsewhere, including in England and Wales. It is an issue which could be remitted to the Criminal Justice Issues Group.**

## THE PRISON AND PROBATION SERVICES

**12.84** In this section of the chapter we examine the case for closer links between or amalgamation of the Prison and Probation Services; we address some issues concerning the structures and management of the Northern Ireland Prison Service; we go on to look at the organisation of the Probation Board and make some recommendations aimed at enhancing the co-operation and co-ordination between the two services.

### Closer links between the Prison and Probation Services

**12.85** The Northern Ireland Affairs Committee in its report on the Northern Ireland Prison Service suggested that we should “consider how best to improve links between the Northern Ireland Prison Service and the Northern Ireland Probation Service”,<sup>24</sup> This we did when we took evidence from both organisations. The issue was also examined in the research report on prisons and probation that we commissioned.<sup>25</sup>

**12.86** There are obvious distinctions between the roles of the Prison Service, which is about custody, and those of the Probation Service, which is community orientated. However, increasingly there is overlap in their areas of work. In addition to holding prisoners securely, the Prison Service mission requires it to prepare prisoners for release. It shares with the Probation Service this role of rehabilitating offenders and seeking to prevent further

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24 Northern Ireland Affairs Committee: *Fourth Report: Prison Service in Northern Ireland*, 1998, House of Commons.

25 Blair, Research Report 5.

offending. Indeed probation staff are among those involved in the delivery of the programmes within prisons which seek to achieve these ends. Furthermore, some prisoners will come under the supervision of the Probation Service when discharged from prison. In the past this group was confined to certain life sentence prisoners who were supervised as part of their licence but the size of the group is growing with the introduction of combined sentences of imprisonment and probation supervision.

**12.87** The reality is that some probation clients will become prisoners (and *vice versa*) in the course of their lives. All of this underlines the need for a common correctional policy in which the disposals available to sentencers and the services provided by prisons and probation are directed at the common ends of protecting the public, preventing offending and re-offending, and rehabilitating the offender. However, although co-operative working patently exists between the Prison Service and the Probation Service as evidenced by the joint protocol between the two organisations and the service level agreements within prisons, both organisations agree that there is room for further development.

**12.88** We detect a number of factors that militate against the closer working of the two organisations:

- the Prison Service and the Probation Service are different in the way that they relate to government. The Prison Service is a next steps agency and, although this status gives it a degree of independence in its day to day operation, it is under the direct responsibility of Ministers and acts with the authority of the Secretary of State. By contrast the Probation Service is a non-departmental public body whose relationship with Ministers, and with its Board, is governed by statute. Although the Director General of the Prison Service may have less autonomy, he is nevertheless the main adviser to Ministers on prisons issues. By contrast, advice to government on probation policy and standards is a matter for a policy division in the Northern Ireland Office, often drawing on assistance from the Social Services Inspectorate, rather than from the Probation Service;
- under Northern Ireland Prison Rules,<sup>26</sup> the governor is “in command of the prison” and “responsible for prisoners’ treatment according to the law”. This arrangement, which is necessary for good order and discipline, is not always comfortable for staff operating within the prison environment, such as probation officers, whose organisational or professional accountability lies elsewhere;
- under the Probation Board (Northern Ireland) Order 1982 the statutory involvement of probation staff in prison is the provision of welfare services to prisoners and their families. Although in practice a more comprehensive service is provided, other work in prison does not have the same statutory imperative. At the same time there is an acknowledged role for Prison Service staff in providing welfare services;

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26 *The Prison and Young Offenders Centre Rules (Northern Ireland) 1995*, Rule 116.

- there is no consensus on which profession should take the lead in the development and delivery of offending behaviour programmes. The professions of probation, psychology, psychiatry and social work all have an interest, as indeed do custodial professionals.

But at the heart of the issue is the fact that there are two organisations, each with its own ethos, operating in an area where old boundaries are becoming increasingly blurred.

**12.89** We considered whether to recommend unifying the two organisations. Such an arrangement would help to ensure the development of common policies and a more coherent direction in the correctional field generally. There are many precedents for such an arrangement, including in a number of the jurisdictions that we visited (for example there are combined correctional services in Canada at both federal and provincial level and in New Zealand).

**12.90** However unification is not a panacea. Even in unified correctional services there remain organisational tensions between community and custodial staff. In the Northern Ireland context there is a very real danger that the Prison Service with its larger staff, larger budget and higher profile would tend to dominate the unified organisation to the detriment of community working. We would be concerned that the community ethos and credibility achieved by the Probation Service might be put at risk if such an amalgamation took place at this stage or within the foreseeable future. Also, we were concerned that the process of amalgamation would be difficult to manage, particularly in circumstances when the Prison Service was having to focus on staff reductions and restructuring. We considered that it was not necessary or desirable to combine the Prison and Probation Services in Northern Ireland at this time. However, many of the recommendations in the following paragraphs are aimed at developing new, parallel structures for the two services which would put them on an equal footing in organisational terms and facilitate close working between them.

## **Prisons**

**12.91** We are aware that the Northern Ireland Prison Service is currently undergoing its quinquennial review, a process that takes place with all next steps agencies. For our part, we consider that the Service is suited to agency status and would not wish to recommend any change. However, there may be a case for some outside ventilation in the management of the service. **We suggest that consideration be given to recruiting a small number of non-executive members to the management board of the Service. They might be selected on the basis of the particular managerial skills that they would bring to the board.**

**12.92** We considered possible arrangements to bring about community input at local establishment level, for example local consultative committees, but concluded that no formal change should be recommended. The nature of the Northern Ireland prison system is such that there are no local prisons – all prisons draw their populations from Northern Ireland as a whole. Moreover the Boards of Visitors or Visiting Committees appointed to each establishment ensure the direct involvement of members of the public in the work of individual

establishments. However, **we recommend that prison governors should be expected to consider programmes of outreach into nearby communities**, something which despite the efforts they have made in the past (for example initiatives taken by successive governors of HM Prison Magilligan), has been very difficult to do for security and related reasons.

**12.93** Given the change process already affecting the Northern Ireland Prison Service, and in the light of the work already done on this by the Northern Ireland Affairs Committee, we did not think it appropriate for us to get involved in detailed considerations of internal staffing and management issues. However, for reasons which are understandable, it is noteworthy that there is a significant imbalance in community representation amongst prison service staff, by way of religious affiliation; moreover in a contracting service it will be difficult to bring about any significant short term change to this situation by way of recruitment strategies. In such circumstances, **we attach great importance to the training of prison staff in cultural awareness; furthermore, given the extent of change being experienced by the Service, we endorse the view that particular emphasis should be given to training in new roles and skills to enhance the ability of prison officers to work effectively with prisoners.** It is important that resourcing, manning and rostering arrangements allow sufficient time for training and development.

**12.94** Within prisons, the Prison Service should continue to sustain a neutral working environment and we believe that, on foot of this, attention should be paid to the uniform. More generally, **we consider that this would be an opportune time for the Northern Ireland Prison Service to look at its uniform requirements.** We are aware that in some prisons elsewhere in the United Kingdom different types of uniform are worn. We are also aware that the current uniform developed at a time when the focus of prison staff was on control and when interaction between prison officers and prisoners was not a major consideration. A different style of uniform might be more consistent with the role of the modern prison officer whose focus is on the development of positive and constructive relationships with prisoners.

### **Probation**

**12.95** In assessing whether the Probation Service should remain a non-departmental public body, we looked at the reasoning behind its establishment as one in 1982; considered whether the objectives behind its establishment had been achieved; asked whether these objectives would remain valid in a peaceful Northern Ireland with a devolved government; and looked at the pros and cons of any change in status. We also took account of two relatively recent developments: the quinquennial review of the Probation Board in 1996/97; and the outcome of the prison-probation review that began work in England and Wales in 1997.

**12.96** In 1996-97 the Probation Board was subject to a comprehensive review as part of the normal review cycle for non-departmental public bodies. The review, undertaken by external consultants, comprised a prior options study of all the functions of the Probation Board and a review of its planning, financial and control framework. The consultants recommended that

the Board remain a non-departmental public body, although they noted that, if probation services had still been integrated within the Northern Ireland Office, next step agency status would have been an attractive option. They did however speculate that given the unique democratic framework in Northern Ireland and the “complexities of the various communities”, non-departmental public body status would probably still have been favoured. The consultants suggested some changes in the accountability framework, recommending that a management statement be prepared. This statement would provide a clear framework of responsibilities and accountabilities, a mechanism for strategic monitoring by the Northern Ireland Office and an aid to the development of more meaningful performance indicators for the Probation Board. The management statement was published in April 1999.<sup>27</sup>

**12.97** In England and Wales a prison-probation review was set up in July 1997 to look at the better integration of probation and prison services and at ways to improve their efficiency and effectiveness. The review considered a number of options including the amalgamation of the two services. Following consultation the Home Office announced its conclusions in April 1999. The services were to remain separate but work more closely together. A unified Probation Service led by a National Director of Probation was to be created. Chief Probation Officers were to be transferred to the employ of the Home Office. There would be a reduction in the number of local probation committees, which would be restructured to form Probation Boards, with boundaries that facilitated effective working with the Prison Service.

**12.98** We believe that the decision to establish a Probation Board in 1982 was taken for sound reasons and that it has been largely vindicated by subsequent experience. Probation has distanced itself from central government and the NIO, with its security associations; and we believe that it has benefited from the involvement of committed people from outside government in its management. This has proved particularly significant given the democratic deficit associated with direct rule and the importance of securing local input into a community based organisation. On the other hand, that distance from government has a number of disadvantages.

**12.99** We recognise that it is difficult to secure membership of a board such as this that is truly representative in terms of background, judged by such measures as gender, religion, class and geography. Also it is not always easy to determine whether the key driver behind the Board is to provide community input into the running of probation services or to give a management and strategic lead; the management statement would suggest the latter. We are conscious that the current structure makes for lines of accountability that are at the very least open to interpretation and debate, given the respective roles and responsibilities of the Secretary of State, NIO, Board and professional staff; this has to a large extent been addressed by the publication of the management statement. In terms of the relationship with the Prison Service, it has not always been easy to resolve issues about the respective responsibilities of

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<sup>27</sup> *Probation Board for Northern Ireland Management Statement* (1999) Northern Ireland Office, Probation Board for Northern Ireland.

the two services. There are also the problems that arise from the original legislation having lists of mandatory and discretionary functions which do not necessarily align with the actual priorities of the Probation Board as they have evolved or been changed since 1982.

- 12.100** On balance we believe that non-departmental public body status was the best option for Probation while political responsibility for criminal justice matters remained with the Government at Westminster and the NIO, as its sponsoring department, remained closely associated with security policies. However, looking ahead to devolution, the balance of arguments begins to change. There will no longer be a democratic deficit and, given the involvement of locally elected representatives in government on an agreed basis across the community, the arguments about distancing the service from government become much less compelling. Moreover, the involvement of a board, with responsibility for delivering the service, a local sponsoring department, a Minister and an Assembly and scrutiny committee could make for complex accountability arrangements which could militate against efficient, effective and co-ordinated working.
- 12.101** We are also conscious of some potential benefits of establishing the Probation Service as a next steps agency, on the same basis as the Prison Service. It would facilitate co-operation between the two services and give probation equal status within the relevant department of a devolved administration, when it came to consideration of policy issues and priorities in the criminal justice sphere. Lines of accountability would be clearly delineated in the framework document that governs relationships between an agency, its sponsoring department and the Minister. There would be a clearly defined framework for standards, target setting and monitoring of performance.
- 12.102** This is a suitable point to stress our belief that the Probation Service has an important and developing role to play. In this chapter and elsewhere in our report we highlight functions in which it will have a significant role, for example in the development of offending behaviour programmes in the community, new arrangements for dealing with youth offending and new arrangements for community safety. The service must be allowed to evolve to meet these challenges. **The Probation Service must, on the basis of it being able to demonstrate value for money and efficient working, be properly resourced to reflect its workload and its continuing need to support voluntary organisations working alongside it.** In particular, it would be a false economy to bear down on the capacity of probation to the point where sentencers did not feel able to use community sanctions to the full, and to the point where the Probation Service lost the capacity to work on a voluntary basis with offenders and those at risk of offending.
- 12.103** **We recommend that, on devolution of criminal justice matters, the Probation Service be reconstituted as a next steps agency. This would mean that responsibility for probation services would lie directly with the relevant Minister, on the same basis as the Prison Service. Both agencies would be supported by small management boards comprising senior staff. A senior officer of the Probation Service should sit on the**

**prisons management board and a senior prisons official should sit on the probation management board.** We believe that this would improve the quality of decision making and assist co-operative and strategic working in the correctional field. As far as the Prison Service is concerned, it would also ensure that all the major professions operating within prisons could have representation on its management board.

**12.104** We consider that, with a devolved administration in Northern Ireland, some of the reasons for having an independent Probation Board will disappear. However, we are conscious of the value of retaining a diverse input to the development of probation services and of retaining a “challenge” function from outside government and believe that there should be a formal structure to achieve this. We equally believe that it would be desirable to have such a wide-ranging input to the development of correctional policy more generally, reflecting the need for a more “joined up” approach. **We recommend that the responsible Minister be supported by an advisory board which would advise on all matters to do with probation, prisons and juvenile justice (see also Chapter 10). It would comprise the heads of the three organisations and members with an interest in correctional and related matters drawn from the voluntary and community sector, children’s organisations and social and related services. The advisory board would assist the Minister in considering strategic and policy issues, determining priorities, setting standards and monitoring service delivery. The board would have a special interest in ensuring co-ordination and co-operation on the delivery of services where appropriate.**

**12.105** We are aware that this arrangement would result in probation staff becoming civil servants and there may be fears that the new status would compromise their professional integrity. However, there are many precedents for professional staff working within the civil service in a manner which is entirely satisfactory. **The framework document determining the relationships between the Probation Agency and the core department should make clear that operational decisions in relation to individual cases are entirely a matter for the professional staff. It should also make clear that, although these decisions may be scrutinised in the course of inspection, neither administrative civil servants in the core department nor the Minister would play a part in them, unless consulted by the professionals.**

**12.106** In order to foster closer links and more co-operative working between prisons and probation, we recommend that particular consideration be given to the following:

- staff exchanges between the organisations;
- joint training programmes; and
- joint approaches to the development of offending behaviour programmes that can be delivered in the custodial and community settings, together with arrangements for accrediting, monitoring and evaluating them (with evaluations being published).

We believe that such an approach will be particularly beneficial given that the ethos and culture of the two organisations is likely in any event to become much closer in future years. If that process can be accelerated, then so much the better.