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Justice, 2015

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The year 2015 saw the Department of Justice and Equality continue to deal with the fallout from the events of 2014, a year in which Alan Shatter's resignation as minister was accompanied by the reassignment of Brian Purcell from the post of secretary general¹ and the retirement of Martin Callinan as garda commissioner. The shifts of 2014 followed allegations of improper practice regarding penalty points, the recording of phone calls to Garda stations and serious criticisms of how the department responded to these issues. In 2015 the repercussions of these events were still being felt as the department pledged to enhance accountability and restore public confidence. In this vein, the year brought further challenges for An Garda Síochána in the form of the highly critical Garda Inspectorate report, which recommended far-reaching reforms for the organisation.

Drawing on the external review of the department conducted in 2014,² the *Strategy Statement 2015–2017* was published, committing to a safe, secure Ireland; access to justice for all; an equal and inclusive society; an efficient, responsive and fair immigration, asylum and citizenship system; and implementation of a programme of fundamental and sustained organisational change (Department of Justice and Equality, 2015). In the spirit of reform also, the Minister

¹ The post of secretary general at the department has yet to be filled.

² Entitled *Report of the Independent Review Group on the Department of Justice and Equality*, this review was instigated by the Guerin report on Garda malpractice and allegations made by Sergeant Maurice McCabe.

for Justice and Equality, Frances Fitzgerald, TD, commenced open policy debate on the proposal for a Criminal Justice Inspectorate, as recommended by the Joint Committee on Justice, Defence and Equality.

The year also offered further occasion to remember the front-line role that members of An Garda Síochána play in our society. On 11 October Garda Tony Golden was killed while responding to a domestic incident in Omeath, Co. Louth. The killing, committed by Adrian Crevan Mackin, and during which Crevan Mackin's partner Siobhan Phillips was also shot and critically injured, occurred following Phillips' report of domestic violence against Crevan Mackin.

Crime

In June the Central Statistics Office (CSO) published its *Review of the Quality of Crime Statistics* (CSO, 2015). This review followed a 2014 Garda Inspectorate report that raised serious questions about the recording of crime on the PULSE system (Police Using Leading Systems Effectively) and prompted the CSO to cease publication of crime figures while a review of the system was undertaken. The 2015 review concluded that there were significant levels of under-recording of crime, delays in recording, incidents classified incorrectly as non-crime and incidents entered on the system with insufficient or incorrect information. The CSO also found that crime initially recorded elsewhere was not then recorded on PULSE: 16 per cent of crimes recorded initially on paper and 20 per cent through computer-aided dispatch were not officially entered into PULSE. In addition, the review found that the detection rate was lower than that recorded. However, following this review, the CSO resumed publication of the crime figures, while cautioning users to be aware of these issues and pledging to work with An Garda Síochána to improve recording.

In September, following resumption of publication, the latest recorded crime figures were released. They showed a fall in homicide offences from ninety-three to sixty in the twelve months prior to June 2015. Within this, of particular note, was the significant fall of 36.7 per cent in the number of murders recorded, from sixty to thirty-eight. However, the figures also showed a 3.3 per cent increase in sexual offences, within which offences of rape increased by 6.7 per cent while 'sexual assault (not aggravated)' increased by 6.5 per cent. 'Murder threat' offences increased by 52.6 per cent while 'other assault'

offences rose by 11.5 per cent. Overall, robbery, extortion and hijacking offences fell by 8.9 per cent; however, within this overall category, ‘carjacking, hijacking/unlawful seizure of aircraft/vehicle’ increased by 27.9 per cent, to 110. Meanwhile robbery from establishments/institutions, cash/goods in transit and the person fell by 5.5, 18.2 and 13 per cent, respectively.

There was an 8.4 per cent rise in burglary or related offences. Increased concern about this issue saw draft legislation to tackle burglary introduced through the year. The Criminal Justice (Burglary of Dwellings) Bill, which passed all stages in December, will provide for consecutive sentences for burglary offences and refusal of bail to those with repeat burglary convictions. The legislative response is complemented by an operational response, Operation Thor, led by An Garda Síochána, aimed at combating burglary in urban and rural communities.

In November the Joint Agency Response to Crime Initiative (J-ARC) was launched;³ J-ARC is multi-agency, with the participation of An Garda Síochána, the Irish Prison Service (IPS) and the Probation Service. The strategy seeks to reduce reoffending through targeting prolific offenders. The strategy already has pilot projects in operation, which target violent offenders (the Bridge Project, Ballymun), persons convicted of burglary offences (Acer3, Dublin south inner-city and Tallaght) and prolific offenders undermining community quality of life (Strive, Ballymun).

Gardaí

Investment and recruitment to An Garda Síochána were increased in 2015. Following the killing of Garda Tony Golden, Minister Fitzgerald announced that 600 new Gardaí would be recruited in 2016, in addition to the 550 already recruited (the first since the freeze instituted in 2009). In March Garda Commissioner Nóirín O’Sullivan also announced that more data analysts would be recruited. Budget 2016 will see an additional €89 million in current expenditure, bringing the total current expenditure in 2016 to €2.264 billion, with a further €130 million in capital expenditure.

In September the department outlined their planned investment in garda vehicles, new public-private partnership projects to deliver a

³ The joint protocol to bring this strategy into being was signed in November 2014.

Family/Children Courts Complex in Dublin and Garda station construction/refurbishment, as well as investment in ICT and in Forensic Science Ireland. In December contracts were signed for seven new courthouse developments, including the redevelopment of those in Cork, Mullingar and Waterford, and four new courthouses in Drogheda, Letterkenny, Limerick and Wexford. From November the DNA database system became operational, running out of Forensic Science Ireland in Phoenix Park, in accordance with the Criminal Justice (Forensic Evidence and DNA Database System) Act, 2014. Additional investment of €2.8 million in Garda youth diversion projects was also announced, with the funding being drawn from the Dormant Accounts Disbursement Scheme.

Continued attempts were made to strengthen accountability with An Garda Síochána. In May Judge Mary Ellen Ring was appointed as chairperson of the Garda Síochána Ombudsman Commission, while the Garda Síochána (Amendment) Act, 2015, sought to strengthen the powers of the Ombudsman. Further, the Garda Síochána (Policing Authority and Miscellaneous Provisions) Bill passed all stages of the Oireachtas in 2015. This bill will provide for the establishment of a new independent Policing Authority, which will be chaired by Josephine Feehily, who has said that the authority will be a 'critical friend' of the Gardaí. In January the Garda Professional Standards Unit reported on the Fixed Charge Payment System process, and Judge Matthew Deery was appointed to the position of Independent Oversight Authority. An interim report by the Fennelly Commission, established in 2014, was also released.⁴

Furthermore, the government announced that legislation was being drafted to provide for the independent monitoring of Garda stations under OPCAT, the Optional Protocol to the Convention Against Torture.

Finally, the Garda Inspectorate report *Changing Policing in Ireland: Delivering a Visible, Accessible and Responsive Service*, published in December, exposed serious failings within the organisation. Funding cuts in recent years have seen front-line policing impacted. The report

⁴ The Fennelly Commission was charged with investigating the practice of recording non-999 calls made to garda stations over a thirty-year period, the apprehension being that telephone calls made to Bandon Garda Station might indicate unlawful and improper conduct by Gardaí involved in the investigation of the killing of Sophie Toscan du Plantier in 1996, and in the circumstances surrounding the retirement of former Garda Commissioner Martin Callinan in the wake of these revelations.

recommended management cuts that could free up to 1,000 Gardaí for front-line duty, as well as the reduction in layers of management and the amalgamation of the two Dublin city centre divisions. The report also concluded that the IT capabilities of the organisation were inadequate, pointing to the fact that one-third of Gardaí did not have work email accounts, and recommended the creation of a Cybercrime Unit and a national Major Investigation Team to investigate all homicide offences and other serious crimes. The report was also critical of the failure to effectively implement reforms that had been recommended over the past number of years.

Victims

On 16 November the EU Victims' Rights Directive (2012/29/EU) came into effect. The year saw a number of measures introduced to respond to Ireland's obligations under this framework. In October Minister Fitzgerald announced that Budget 2016 would provide an increase of 33 per cent in the grant received by the National Women's Council of Ireland and a 21 per cent increase in funding for the Victims of Crime Office. In November the Minister announced that Garda victim services offices would be established in each of the twenty-eight Garda divisions throughout the country. Also in November the government signed the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (the Istanbul Convention), a step on the road to its eventual ratification.

The Criminal Justice (Victims of Crime) Bill will implement the EU Victims' Rights Directive, although the bill remained at draft stage at the date the directive came into force. The bill will provide for the greater provision of information to victims and their families. The Domestic Violence Bill will make it easier to obtain interim barring orders for persons in crisis situations. The Criminal Law (Sexual Offences) Bill, 2014, also seeks to make changes in this area, and proposes new procedures for the giving of evidence by victims, particularly children. This bill also provides for new criminal offences to protect children against online grooming and sexual exploitation. Further, the bill proposes harassment orders, which will protect victims of sexual offences from being contacted by their attacker. This bill also includes provisions criminalising the purchase of sexual services.

Prisons

The *Irish Prison Service Annual Report* for 2014 was released in May. The report noted an increase of 2.7 per cent in total committals to prison, largely attributed to a rise in persons committed to prison for the non-payment of fines. There were 16,155 committals in 2014, compared to 15,735 in 2013. However, 2014 also saw the average daily number in custody continue to fall, down 5.8 per cent from 4,158 in 2013 to 3,915 in 2014. This represents a continued fall since 2011. The target for the Community Return Programme was reached in 2014, and 455 persons were granted structured release. Despite the Criminal Justice (Community Service) (Amendment) Act, 2011, the number of community service orders continued to decrease in 2014.

In November the Inspector of Prisons released *Culture and Organisation in the Irish Prison Service: A Road Map for the Future*. The report followed a review conducted by the Inspector of Prisons, Judge Michael Reilly, along with Professor Andrew Coyle, Emeritus Professor of Prison Studies at the University of London. Judge Reilly noted that previous reports had exposed serious and continuing deficiencies, and suggested a culture that emphasised 'protection of the system' over 'rights of the individual'. The report recommended changes to the structure of the IPS and relocation of the IPS headquarters to make it more accessible. Among the findings in the report are the recommendations that the IPS should become an executive agency of the Department of Justice and Equality on a non-statutory basis; directors of the IPS should be constituted as a board; a director's post should be filled by open competition; a director of prison healthcare should be appointed; and the thirteen prisons should be divided into two regions, with a regional director responsible for each. The report also recommended a review of administrative staffing arrangements, the introduction of clear lines of accountability, clear allocation of responsibilities and the recognition of good performance by individuals. Further, the report suggested introducing a code of ethics for prison staff. It was also recommended that the training for new recruits should be reviewed, and that the former Higher Certificate in Custodial Care should be reintroduced and updated in cooperation with an academic institution (Office of the Inspector of Prisons, 2015).

In September funding was announced to facilitate the ending of slopping out across the Irish prison estate. Funding was made available to provide for essential building works at Limerick Prison,

including the replacement of A and B Wings, a new accommodation block for female prisoners and an adjoining Probation Service building. The main phase of construction at Limerick is expected to start in early 2017. Refurbishment work has also been announced for E Block in Portlaoise, which, along with the A Wing of Limerick Prison, houses those prisoners who are still slopping out. The completion of the new Cork Prison was delayed from the end of 2015 to early 2016.

Additional funding of €1.3 million has also been announced for the Probation Service to help reduce reoffending. The *Joint Irish Prison Service and Probation Service Strategic Plan 2015–2017* continues the commitment to joined-up services.

Serious issues were flagged at Oberstown Children Detention School through 2015. Health Information and Quality Authority reports raised concerns regarding the use of isolation as a punishment, as well as issues of staff morale. Through the year a number of teens detained in Oberstown absconded from the facility. In a move towards ending the detention of children in adult facilities, since 30 March 2015 boys aged seventeen can be remanded to Oberstown. In 2012 sixteen-year-olds were removed from St Patrick's Institution, which is situated on the Mountjoy Prison complex; however, on 16 October this year one boy aged sixteen was on remand in St Patrick's Institution, and thirteen boys aged seventeen were in Wheatfield Prison under sentence. The Children (Amendment) Act, 2015, will underwrite the end of the detention of children in adult facilities, while the Prisons Bill, which passed all stages in December, will provide for the definitive closure of St Patrick's Institution through the deletion of all statutory references to the institution.

In November the *Parole Board Annual Report 2014* was released. Chairperson John Costello was critical of the lack of therapeutic and psychological services being offered to persons serving long or life sentences. In 2014 the board handled 339 cases and made 86 recommendations to the minister, most of which were accepted in full. The Parole Board is currently engaged in efforts to encourage more prisoners to participate in the parole process.

The Council of Europe Committee for the Prevention of Torture (CPT) reported on its 2014 visit to Ireland. The CPT acknowledged the 'considerable steps' taken to reform the prison system, but highlighted the continued practice of slopping out and noted that inter-prisoner violence remained unacceptably high, fuelled by

feuding gangs and the high levels of illicit drug use in prison.⁵ The CPT was also concerned that the IPS may have failed in its duty to investigate the circumstances of prisoner deaths, but welcomed steps taken to improve the procedures in this area.⁶ The CPT also expressed concern at the variation in healthcare standards across the prisons. The report also noted that immigration detainees were held with persons on remand and under sentence at Cloverhill Prison, and found this to be unacceptable (CPT, 2015).

Dr Mary Rogan of Dublin Institute of Technology was announced as chair of the Penal Policy Implementation Oversight Group,⁷ and Prof Shane Kilcommins of the University of Limerick was appointed to chair a Consultative Council on Penal Policy, the creation of which satisfies one of the recommendations made by the 2014 Penal Policy Review Group.

Finally, in September, the remains of Thomas Kent were exhumed and removed from Cork Prison, where he had been buried following his execution during the events of the 1916 Easter Rising, and a state funeral was held in Kent's hometown of Castlelyons.

Courts and legal

The Legal Services Regulation Bill passed all stages of the Oireachtas in 2015, and Minister Fitzgerald announced her hope that the new Legal Services Regulatory Authority, which will act as independent statutory regulator for all legal practitioners, would be operational in early 2016. The legislation will attempt to institute independent regulation, improve access and competition, and make fees more transparent. However, the bill attracted considerable comment and controversy, particularly regarding the many amendments made to the draft legislation. The bill provides for radical reform of the legal system, and proposes new business models for solicitors and barristers. Some of the amendments concentrated on strengthening the powers of the new Legal Services Regulatory Authority. Other amendments

⁵ In 2015 a Review of Drugs and Alcohol Services to Offenders was announced, and a confidential telephone line was established to combat the illegal trafficking of drugs and firearms into prisons

⁶ These findings related to 2014. In May 2015 three prisoners died in custody in Mountjoy, Midlands and Cork Prisons. The stabbing of an inmate in Cork Prison on 16 May prompted a murder investigation.

⁷ This group was established following the final report of the Penal Policy Review Group, published in September 2014.

related to the proposal for ‘one-stop-shop’ multidisciplinary partnerships consisting of accountants, lawyers and other professionals. Concerns about this suggested model have seen the insertion of a six-month research period, to be followed by a further six months of consultation. A six-month consultation period was also inserted on legal partnerships, which would allow solicitors and barristers to work together. Further, the bill will allow for limited liability partnerships. The legislation will also provide for an independent public complaints regime, a new Disciplinary Tribunal for solicitors and barristers, and a new Office of the Legal Costs Adjudicator and regulatory measures relating to fees.

The minister also announced that the required changes to the ICT system to enable the implementation of the Fines (Payment and Recovery) Act, 2014, would be completed by the end of 2015; in December it was announced that from January 2016 persons will no longer be sent to prison for the non-payment of fines.

In November the President officially opened the new Court of Appeal in the Four Courts, which now occupies the former public records building. Immediately on its establishment, the Court of Appeal took on 660 appeals following the abolition of the Court of Criminal Appeal, and has so far taken 287 new appeals since summer 2015. The Court of Appeal is taking on average 60 new civil appeals each month, and the total number of civil appeals disposed of up to mid December was 468. The Department of Justice and Equality confirmed that a request for additional judges was under consideration (McDonald, 2015).

In February the High Court held, in *McDonnell v The Governor of Wheatfield Prison*, that an applicant’s constitutional rights had been breached as a result of being on 23-hour lock-up since February 2014.⁸ The court found that the lock-up regime amounted to solitary confinement, and breached the applicant’s rights to bodily and psychological integrity.

In October the department agreed to appoint seven judges to a second non-jury Special Criminal Court to handle a backlog of terrorism- and gang-related cases. This came in the wake of the killing of Garda Tony Golden and criticism of the delays experienced in cases coming before the court. In November a proposal was also approved to increase the number of High Court judges from thirty-five to thirty-

⁸ [2015] IEHC 112, Cregan, J., 17 February 2015.

seven. In December Mr Justice Peter Kelly was nominated as President of the High Court.

Finally, in April, a posthumous pardon, the first granted by the state, was granted to Harry Gleeson, who was executed in 1941 for the murder of Mary McCarthy.

Refugee crisis, immigration law and direct provision

In 2015 a European-wide refugee and migrant crisis saw thousands of persons displaced from areas of conflict attempt to reach Europe through unsafe means, across the Mediterranean Sea and overland. Through the year a developing European response sought to cope with the changing situation. In April the minister attended an emergency meeting on the evolving humanitarian crisis, held following the tragic loss of life of persons travelling from North Africa across the Mediterranean.

As the situation developed, Ireland committed to the resettlement of additional persons and deployed the Irish Naval Service patrol vessels *LÉ Eithne*, *LÉ Niamh* and *LÉ Samuel Beckett* throughout the year. In July Ireland agreed to an EU-wide proposal to resettle 40,000 persons and committed to relocating a total of 4,000 persons, which includes the figures of 600 and 520 it had already agreed to assist.

The 2014 High Court case on direct provision, *CA and TA (a minor) v Minister for Justice and Equality, Minister for Social Protection, the Attorney General and Ireland*, prompted further calls for reform of the system in 2015.⁹ In June the report of the Working Group on the Protection Process was published, the first assessment of the system since its inception 15 years ago. The report, chaired by former High Court Judge Bryan McMahon, flagged the issue of delay and offered recommendations aimed at ensuring greater respect for the dignity of persons in the system to improve their quality of life.

The International Protection Bill was published in November. The bill is targeted to reduce waiting times for asylum applicants in the

⁹ [2014] IEHC 532, Mac Eochaidh, J., 14 November 2014. Justice Mac Eochaidh found that direct provision was not in breach of Articles 3, 5 and 8 (inhumane and degrading treatment, right to liberty and security, right to privacy), and that the €19.10 payment and the operation of direct provision were not unlawful. However, he found in favour of the applicant regarding the complaints handling procedure and the Reception and Integration Agency's house rules. Mac Eochaidh also highlighted issues with other aspects of how the centre was run.

protection system, including those in direct provision, and is an implementation of key recommendations made in the Working Group's report. The bill will provide for a single procedure, and seeks to balance a consideration for the humanity of asylum seekers with efficient immigration procedures and safeguards.

Legislation

Key pieces of legislation passed in 2015

The Gender Recognition Act, 2015, represents a landmark piece of legislation which puts in place a process by which transgender persons can achieve full legal recognition of their gender, including the acquisition of a new birth certificate. The Act is based on self-declaration for persons over the age of eighteen and provides a court-assisted process for persons aged sixteen and seventeen.

The Marriage Act, 2015, enables couples to marry regardless of their sex, as provided for in Article 41.4 of the Constitution, following the referendum of 22 May.

The Children and Family Relationships Act, 2015, contains provisions on adoption, guardianship and custody, and donor-assisted reproduction. The Act has yet to be commenced in its entirety. Under changes made to the law on adoption, the Act will enable civil partners and cohabiting partners to adopt a child jointly.

Legislation amending section 37 of the Employment Equality Act was finally passed in December. The amendment prohibits discrimination against LGBT teachers or hospital workers.

On foot of the Quirke report, the Redress for Women Resident in Certain Institutions Act, 2015, provides enhanced medical cards to survivors of Magdalene Laundries.

The Personal Insolvency (Amendment) Act, 2015, among other functions, increases the ceiling for a debt relief notice under the Personal Insolvency Act, 2012, from €20,000 to €35,000.

Key bills published or progressed in 2015

The Bankruptcy (Amendment) Bill passed all stages of the Oireachtas in 2015. The bill will reduce the normal duration of bankruptcy from one year to three.

The Civil Debt (Procedures) Bill, 2015, will seek to implement the 2010 recommendations made by the Law Reform Commission regarding debt, and introduces new actions for debts between €500 and €4,000. The bill provides for a District Court order of attachment

to earnings or deductions from Social Welfare and introduces safeguards for those who cannot pay.

Published in July, the Bail Bill will, among its functions, require courts to give reasons for bail decisions, and give Gardaí power of arrest without warrant for breach of bail conditions.

In response to the terrorist attacks in Paris in November, Ireland committed to expediting participation in the Schengen Information System (SIS II), which relates to border security. The Criminal Justice (Mutual Assistance) Bill would allow Ireland to provide assistance to other EU member states in relation to terrorism and crime.

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