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Justice, 2016

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The year opened with the escalation of an ongoing, violent feud on the streets of Dublin. On 5 February a 33-year-old man, David Byrne, was shot dead at a Dublin hotel. On 8 February another man, 59-year-old Eddie Hutch Snr, was shot dead at his home. These killings were the first in a year in which ‘gangland’ crime again became a familiar term in political and media discourse. Following the shootings, the Department of Justice and Equality sought to offer a ramped-up security presence in Dublin city centre through the establishment of saturation policing, which involved rolling checkpoints and patrols. Measures continued to be introduced throughout the year to adequately resource Gardaí to respond to these threats. In December, for example, a new Garda Armed Support Unit was announced for the Dublin area.

Following the upheavals within the Department of Justice and Equality in 2014, the post of secretary general was finally filled in 2016. Noel Waters, who had held the position of acting secretary general since Brian Purcell’s departure in 2014, was appointed to the permanent role. Related to the tumultuous events of 2014 also, the O’Higgins Commission report was released in May. This report dealt with Garda failures in Cavan and Monaghan, which came to light following allegations by Sergeant Maurice McCabe. The Minister for Justice and Equality stated that the report revealed ‘real problems’, but highlighted the extensive programme of reform ongoing within An Garda Síochána as a result of these events.

On 7 March the Hon Mr Justice Adrian Hardiman, a Supreme Court judge, passed away. Mr Justice Hardiman had practised as a barrister for twenty-six years before being appointed to the Supreme Court in 2000. On 26 November Judge Michael Reilly passed away. Judge Reilly had been the Inspector of Prisons since 2008; in this role he instigated and oversaw significant improvements in the Irish prison system. The role of Inspector of Prisons urgently needs to be filled in 2017 to continue Judge Reilly's work in this area.

Crime

The Central Statistics Office (CSO) published *Review of the Quality of Crime Statistics 2016*, following its initial review published in 2015. The CSO reviews follow the publication of *Crime Investigation* by the Garda Inspectorate in 2014, which raised significant issues relating to the recording of crime on PULSE (Police Using Leading Systems Effectively). The 2016 review found that 16–17 per cent of crime reported to the Gardaí was not entered on PULSE, 6.4 per cent of all offences were entered on PULSE more than a week after they were first reported, the figure of 63 per cent of crimes marked as 'detected' was actually lower than reported and 21 per cent of invalidated crimes lacked sufficient explanation as to why they had been invalidated (CSO, 2016). However, despite these ongoing issues, the CSO reported that the impact of the problems identified was substantially less than that identified in the initial 2015 review. The CSO is continuing to work with An Garda Síochána to improve the reliability of data.

The full recorded crime figures for 2015 were released in March. There was a reduction in eight of the fourteen crime categories, and the minister particularly welcomed the decrease in the number of burglary and related offences. Following an 8.4 per cent rise in burglary or related offences in 2015, increased concern about this issue saw legislation to tackle burglary passed: the Criminal Justice (Burglary of Dwelling) Act, 2015, commenced in January and provides for consecutive sentences for burglary offences and a provision to refuse 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. The minister cited positive operational feedback on this, and particularly the early impact of Operation Thor. Under this operation, €5 million was allocated to the implementation

of targeted policing, with widespread anti-crime patrols and checkpoints, which led to over 1,000 burglary-related arrests in the months following its commencement. The release of the CSO's official recorded crime statistics for quarter 2 (Q2), 2016, revealed that burglary and related offences continued the downward trend with a reduction of 26.3 per cent. In December CSO figures comparing crime trends for the twelve months ending September 2016 with the previous twelve-month period showed a 31 per cent drop in the level of burglary crime, as well as drops in other property crime, including theft and robbery.

Despite positive news on the 2015 and 2016 Q2 figures for burglary and related offences, other categories of crime showed increases. In the 2015 crime figures, there was an 11.8 per cent rise in assaults and related offences. There was also a 15 per cent increase in sexual offences. These same offences continued to show increases in 2016 Q2 figures, with assault and related offences up 4 per cent and sexual offences up 13 per cent. The Criminal Law (Sexual Offences) Bill, 2015, discussed in greater detail below, is currently progressing through the Oireachtas; its provisions seek to address some outstanding issues relating to the trial of sexual offences. The minister has stated that passing this legislation is one of her top priorities.

The Joint Agency Response to Crime Initiative (J-ARC) continued to develop in 2016.¹ In September the new Joint Strategy for the Management of Offenders was announced, and the initiative was extended to Dundalk, Limerick City and Waterford City. The initiative places particular emphasis on the management of high-volume offenders, sex offenders and domestic violence offenders, and is implemented with a strong focus on the rights of victims of crime.

In 2016 the Department of Justice and Equality launched a consultation on 'the digital age of consent', which will consider how children access social media. This is an EU-wide policy which will allow member states to set a minimum age at which children can sign up to websites and give their personal information. Relatedly, and in the wake of increased concern about new offences facilitated by digital media and twenty-first-century technology, the Law Reform Commission published its *Harmful Communications and Digital Safety* report. The report recommended, inter alia, the extension of the existing legislation on harmful communications to cover all forms of

¹ J-ARC is a combined response to crime that joins the Probation Service, the Irish Prison Service and An Garda Síochána.

communication; an updated offence of harassment that can be committed indirectly or by any means of communications; the enactment of a separate offence of stalking; the enactment of a new offence of distributing a threatening, false, indecent or obscene message; and the enactment of a new offence of distributing or threatening to distribute an intimate image without consent. The Law Reform Commission also recommended establishing the Office of a Digital Safety Commissioner to promote digital and online safety, and to oversee a system of 'take down' orders (Law Reform Commission, 2016).

An Garda Síochána

The year 2016 saw further investment in An Garda Síochána following the increased visibility of serious criminal activity. Through the year, an additional €55 million was provided to the Gardaí. This follows the increased investment and recruitment to An Garda Síochána in 2015 as well. Through 2016, capital investment in policing continued. Under the government's Capital Investment Plan for 2016–21, €46 million has been provided for new Garda vehicles, as well as significant investment in ICT and airborne surveillance. A Garda workforce of 21,000 by 2021 is projected under the plan (comprised of 15,000 Garda members, 2,000 Garda reserve members, as well as 4,000 civilians). As noted above, in December a new Garda Armed Support Unit was established for the Dublin area, which will operate in addition to the existing Emergency Response Unit. This joins other measures introduced to tackle organised crime, such as the Proceeds of Crime (Amendment) Act, 2016, which gives greater powers to Gardaí to immediately seize assets.

In Budget 2017, funding for the Justice and Equality sector totalled €2.54 billion, including funding for the recruitment of 800 new Garda recruits and up to 500 civilians. Additionally, €71.5 million was allocated for Garda overtime to assist with tackling 'gangland' crime, Operation Thor, and continuing to fight European terrorism.

The year also brought ongoing issues related to industrial action, as the organisation continued to highlight the problems of pay and conditions, particularly for new recruits. In December the Horgan review (conducted by Mr John Horgan, former Chair of the Labour Court) stated that industrial relations had broken down, and that significant reforms were needed to repair the relationships between Gardaí and government. The Horgan review recommended that

Gardaí should be able to join trade unions, through the transformation of existing representative bodies into registered trade unions, with collective bargaining power. The review stated that if agreement cannot be reached, Gardaí should be able to access the Workplace Relations Commission and the Labour Court. However, the review also recommended that penalties should be imposed if Gardaí strike. The review recommended that Gardaí who go on strike should forfeit the right to build up their pension entitlements for five years. In December the Association of Garda Sergeants and Inspectors voted to accept proposals on pay made by the Labour Court. Of 2,000 members, 95 per cent voted to accept the proposals. Three-quarters of the 10,500 rank-and-file members in the Garda Representative Association also voted to accept these measures. Gardaí had threatened to withdraw labour in October.

The Policing Authority commenced work in 2016, led by Chairperson Josephine Feehily.² In May the powers of the new authority with regard to civilian recruitment were commenced. Later in 2016 the authority published a report on An Garda Síochána protected disclosure policy.

Also, new Garda Youth Diversion Projects were announced, and increased investment in youth justice was secured from the Dormant Accounts Fund.

Victims

The *Second National Strategy on Domestic, Sexual and Gender-based Violence 2016–2021* was launched in early 2016 by Cosc, the National Office for the Prevention of Domestic, Sexual and Gender-based Violence. The strategy provides for various actions to be taken by both state and non-state actors, including significant input from voluntary organisations. The strategy outlines the role of Gardaí in undertaking risk assessment for all victims of domestic violence, as well as a focus on domestic and sexual offender recidivists. New measures will be outlined for Garda responses to domestic and sexual offences, including personally calling the victim. There are also provisions regarding the training and education of persons who work with victims of domestic and sexual violence, including legal professionals.

² The authority was established under the Garda Síochána (Policing Authority and Miscellaneous Provisions) Act, 2015.

As part of this strategy, in November the government launched a new national awareness campaign on domestic and sexual violence. The ‘What would you do?’ campaign on domestic violence, for which €950,000 funding was secured for 2016 and 2017, is aimed at prevention, and carries the message that there must be a collective refusal to accept or tolerate domestic violence. It is intended that the campaign will run for six years, with the first three years focusing on domestic violence and the final three years on sexual violence. The campaign saw high-impact advertisements on television, and received significant public and media attention.

Under the new strategy, various pieces of legislation will be enacted, such as the Criminal Justice (Victims of Crime) Bill, published in late December, which is intended to implement the EU Victims’ Directive,³ the Domestic Violence Bill and the Sexual Offences Bill. However, as a continuing issue, although the government has signed the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (the Istanbul Convention), it is yet to be ratified.

The Criminal Law (Sexual Offences) Bill 2015 proposes new procedures for the giving of evidence by victims, particularly children. The bill will also provide for new criminal offences to protect children against online grooming and sexual exploitation. Further, the bill proposes harassment orders, which would protect victims of sexual offences from being contacted by their attacker. This bill also includes provisions criminalising the purchase of sexual services.

The bill is currently progressing through the Oireachtas and is likely to be enacted early in 2017. Many commentators and NGOs had been critical of the absence of a statutory definition of consent in the bill when it was introduced. Following the handing down of a significant Supreme Court judgment on the interpretation of mens rea and consent in rape law in November,⁴ the minister announced in December that she favoured a system whereby a list of circumstances which do not amount to consent would be introduced into a statutory formula defining consent. These would include circumstances where someone was sleeping or incapacitated, or where force or threat of force was used. In these circumstances, there would be no consent present. However, a non-exhaustive list of circumstances was not favoured by all TDs. In addition, a definition of consent as ‘voluntary agreement to engage in sexual activity’ was discussed.

³ The EU Victims’ Directive (2012/29/EU) came into effect in late 2015.

⁴ *DPP v O’R* [2016] IESC 64.

In October Ireland's *Second National Action Plan to Prevent and Combat Human Trafficking in Ireland* was launched. The plan contains sixty-five actions to combat human trafficking, as well as a comprehensive review of the victim identification process, and promotes greater public awareness to enhance detection. Between 1 January 2009 and 31 December 2015, 417 victims of human trafficking were reported to or detected by the Gardaí. In November Professor Siobhan Mullally was re-elected to the Council of Europe's Group of Experts on Action against Trafficking in Human Beings (GRETA).

Prisons

The *Irish Prison Service Annual Report* for 2015 was released in July. It revealed an increase of 8.8 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 13,987 committals in 2015, compared to 12,853 in 2014, including 9,883 persons who were committed for the non-payment of fines. The majority of the 13,987 persons committed to prison in 2015 (89.6 per cent) were sent for periods of less than a year, and 10,229 served sentences of less than three months. However, 2015 also saw the average daily number in custody continue to fall, down from 3,915 in 2014 to 3,722 in 2015. This represents a continued fall since 2011. In 2015 also, 712 persons were involved with the Community Return or Community Support scheme.

The Irish Prison Service published its *Strategic Plan 2016–2018*. The strategy is organised around four central areas: staff support, prisoner support, victim support and enhancing organisation capacity. The plan notes the progress that has been made in modernising the prison system through implementation of the previous three-year plan. Within the four discrete areas outlined, the strategy also takes into account the findings from the 2015 report *Culture and Organisation in the Irish Prison Service – A Road Map for the Future*. As a means of addressing the serious issues raised in that report, the strategic plan is supported by five new organisational values – team work, integrity, potential, safety and support.

The year 2016 saw the ending of slopping out at Cork Prison, as the new prison was officially opened by the minister in July. The new prison has a capacity of 296 and has in-cell sanitation in all cells. Additionally, the prison provides green outdoor spaces and family visiting facilities. This follows significant injection of funds in 2015, intended to modernise the infrastructure of the Irish prison estate, and

end slopping out in all Irish prisons. In 2015 funding was made available to provide for essential building works, and refurbishment plans for Limerick and Portlaoise Prisons are now at an advanced stage.

In June the Inspector of Prisons' review of the newly established complaints mechanism was published, titled *Review, Evaluation and Analysis of the Operation of the Present Irish Prison Service Prisoner Complaints Procedure*. This is the first review of the new complaints system since it was formally established in June 2014 (although it had operated on an ad hoc basis since January 2013).

The inspector identified 'significant deficiencies relating to the operation of the prisoner complaints procedure'. The aims of the complaints procedure are set out in an Irish Prison Service policy document as follows: to deal with all complaints in confidence; to deal with them in a timely, robust and transparent manner; and to ensure procedural fairness for all prisoners wishing to make a complaint. Prisoners must have an 'accessible and effective' means of making a complaint.

There are six categories of complaint, and each has a specific procedure for investigation. These are outlined in more detail in the inspector's review. The inspector examined all complaints files, across six prisons, from July 2014 to January 2016, for Category A, B, C, and D complaints. A total of 556 complaints were recorded in this period. Seventy-three complaints were Category A, the most serious category, 78 were Category B, 371 were Category C and the remaining 34 were Category D.

The inspector found that timelines for investigation were exceeded in 38 per cent of cases, and he identified further failures to investigate serious incidents alleged in complaints. There was also widespread confusion among prison officers about how the complaints procedure operated and who was in charge. The inspector noted with concern that prison officers felt isolated in the process. The inspector also heard from prisoners who said that they did not have faith in the complaints procedures and that they were often encouraged not to make, or to withdraw, complaints.

Overall, the inspector found 'a litany of failures' in how the system operated. He concluded that 'as presently operating, the Irish Prison Service does not seem capable of exercising operational control of a complaints system which should be robust, fair and have the confidence of staff, prisoners and the general public' (Office of the Inspector of Prisons, 2016). The inspector recommended that the

Ombudsman should have a role on the complaints system, a recommendation that was accepted by the minister in June.

In October an article in *The Irish Times* revealed that 51 prisoners were being held in solitary confinement for 22 hours a day (McCracken, 2016a). Of these, 24 had been held in solitary confinement for more than 100 days, and 9 had been in this form of accommodation for over a year. Although in Ireland the term 'solitary confinement' is not used, prisoners can be accommodated in regimes of this nature, which are called instead 'segregation' or 'on protection'; for example, if requested by an individual prisoner.

In advance of the UN Committee on Torture's visit to Ireland in July 2017, Special Rapporteur Juan Mendez sounded a note of concern that Ireland was breaching international human rights instruments and emerging standards (McCracken, 2016b). In the *Irish Prison Service Annual Report 2015*, the Irish Prison Service committed to reducing the use of solitary confinement to extreme cases only, and 'where absolutely necessary for security, safety or good order reasons and for the shortest possible time' (Irish Prison Service, 2016). The Solitary Confinement Group, chaired by Director General Michael Donnellan, successfully reduced the number of prisoners in solitary confinement from 211 to 78 in October 2015. An external committee has been established to examine the wider context of how solitary confinement is used. The UN has recommended that solitary confinement should be applied for no more than 15 consecutive days.

The Strategic Review of Penal Policy Implementation Oversight Group's report was published in November. The Penal Policy Review Group (PPRG) was established in 2012, following recommendations made by the Thornton Hall Project Review that there should be an all-encompassing strategic review of penal policy. The implementation status of recommendations made by the PPRG is monitored by the Strategic Review of Penal Policy Implementation Oversight Group, which is chaired by Dr Mary Rogan of Trinity College Dublin. The Implementation Oversight Group reports to the minister every six months on the implementation status of the PPRG recommendations. Dr Rogan reported that of fifty-one recommendations made by the PPRG, the Implementation and Oversight Group has determined that three have been completed, twenty-one are 'not complete' and twenty-seven are within the 'on track' category. The recent focus has been on inter-departmental and inter-agency working, and a workshop to further this goal was held early in 2016 and attended by members of the key stakeholders.

Serious issues continued with respect to the operation of the National Children Detention Campus at Oberstown. Scheduled industrial action took place at Oberstown as part of ongoing trade disputes in which staff expressed serious concerns about the increasing incidence of assaults at the centre. Children detained at the centre were kept in their rooms while the industrial action took place; once the action had ended, some children started a fire in the centre, and took part in a rooftop protest. Ending the practice of imprisonment of children in Ireland was a key commitment in the programme for government, and the Minister for Children and Youth Affairs, Katherine Zappone, TD, has also committed to ending the imprisonment of children.

Following investment in the National Children Detention Campus at Oberstown, all under-18s can now be remanded by the courts to this facility. However, some older children continue to be detained through the prison estate, and on 30 August nine 17-year-old boys were being detained under sentence at Wheatfield. The Irish Penal Reform Trust reported that 171 males under the age of 18 were in custody through 2015. In September the Department of Children and Youth Affairs announced that a review of the facility at Oberstown would be conducted by two international experts, Professor Barry Goldson and Professor Nick Hardwicke.

The *Parole Board Annual Report 2015* was released in October. The Chairman of the Parole Board, John Costello, was critical of the lack of mental health supports in the community, which meant that some prisoners were denied temporary release or parole. In June a Private Members' Bill was introduced, the Parole Bill 2016, which intended to place the Parole Board on a statutory footing. The minister indicated that the bill would not be opposed. Mr Costello recommended that, in addition to this, the Parole Board should be adequately resourced in terms of personnel and technology, as well as information; for example, through provision of the sentencing comments of judges. Through 2015 new cases concerning 76 prisoners were referred to the Parole Board. The total caseload for 2015 (including new and ongoing cases) was 352.

Following the Second UN Universal Periodic Review, released in May, the government pledged to support the majority of the prison-related recommendations, including: ratification of the Optional Protocol to the Convention Against Torture (OPCAT) and the establishment of a national preventative mechanism; improvement of the living conditions and treatment of prisoners; reduction in slopping

out and overcrowding; separation of remand and sentenced prisoners, adult and juvenile detainees, and immigration detainees; implementation of an impartial investigation system for allegations of abuse and mistreatment by prison officers; closure of St Patrick's Institution; and human rights training for 'enforcement officials', including prison officers.

In July the minister announced the opening of a recruitment campaign for new recruit prison officers, the first competition since 2008. The Irish Prison Service expects to appoint approximately 120 officers over the next three years.

Courts and legal

The new Legal Services Regulatory Authority held its first meeting in October, under the direction of the Chairperson, Dr Don Thornhill. The body, which will have independent oversight for both barristers and solicitors, was established under the Legal Services Regulation Act, 2015. There will be a phased roll-out of other reforms under the Act, including an independent complaints system, a Legal Practitioners' Disciplinary Tribunal, reforms regarding legal costs, and public consultation on new business models such as partnerships between solicitors and barristers, or between barristers themselves.

The Fines (Payment and Recovery) Act, 2014, was finally commenced in 2016. Since January 2016 persons are no longer sent to prison for the non-payment of fines. The legislation provides for the facility to pay court-ordered fines by instalment. Imprisonment is now a last resort for fines default. As the *Irish Prison Service Annual Report 2015* demonstrated, imprisonment for non-payment of fines accounted for a significant number of prison committals (9,883), and represented a considerable waste of resources.

In April Mr Justice Moriarty in the High Court held that Section 99 of the Criminal Justice Act, 2006, was unconstitutional. This measure related to the statutory power to suspend sentences, and provided that someone subject to a suspended sentence could have this sentence reactivated upon commission of another offence. The government is consulting with the Attorney General on Justice Moriarty's ruling, which held that the subsection provided for significantly different treatment of persons before the law, especially in relation to their right of appeal. The Criminal Justice (Suspended Sentences of Imprisonment) Bill, 2016, is currently progressing through the Oireachtas.

The year also saw the long-awaited commencement of legislation relating to spent convictions in Ireland. The Criminal Justice (Spent Convictions and Certain Disclosures) Act, 2016, commenced in April, and provides that minor convictions will be ‘spent’ after a period of seven years. It is estimated that around 85 per cent of convictions will become spent after seven years as a result of the Act. The legislation sees Ireland join other EU jurisdictions in providing for the rehabilitation and reintegration of persons convicted of offences who are moving on with their life. Under the Act:

- All convictions in the District Court for motoring offences which are more than seven years old will be spent (with restrictions on convictions for dangerous driving).
- All convictions in the District Court for minor public order offences which are more than seven years old will be spent.
- Where a person has only one conviction (other than a motoring or public order offence) which resulted in a term of imprisonment of less than twelve months (or a fine), that conviction will also be spent after seven years. This applies to convictions in the District Court and the Circuit Court.

Miscellaneous

The Irish Defence Forces received the European of the Year Award. Throughout 2016 the Irish Naval Service patrol vessels continued to be deployed through the Mediterranean as part of Operation Pontus, in response to the ongoing European-wide refugee and migrant crisis. Since May 2015 the Irish Naval Service has rescued over 13,400 people from the Mediterranean Sea. On a visit to Greece, the minister said that Ireland will have welcomed at least 1,100 asylum seekers from that country by September 2017. Ireland is also receiving refugees from Lebanon and Syria as part of the country’s commitment to accept 4,000 refugees under the Irish Refugee Protection Programme.

A progress update on reforms to the direct provision system was released in 2016. In 2015 the report of the Working Group on Improvements to the Protection Process, including Direct Provision and Supports for Asylum Seekers, was released. This report made 173 recommendations, of which 91 have been implemented. The International Protection Act was signed into law in December 2015, but has yet to be commenced in its entirety. This Act will provide for a single application procedure in an attempt to address the length of

time applicants spend in the process, and consequently in the direct provision system. In July the Irish Refugee Council published a study entitled *Transition: from Direct Provision to Life in the Community*. The government has committed to reforming the direct provision system, particularly with respect to the very negative impact it has on children and families.

In the wake of the outcome of the UK referendum on the EU, talks began between the UK and Ireland, particularly concerning the question of the border between Northern Ireland and the Republic of Ireland. In October the minister met with Commissioner Michel Barnier, who was appointed as Chief Negotiator for the European Commission with regard to the UK exit from the EU. The minister discussed issues of key concern, such as Northern Ireland, the peace process and the common travel area. At the meeting also, the minister raised issues which were particularly related to crime and justice, such as the need for cooperation between the EU and the UK, and inclusion of the UK in the European Arrest Warrant. In the immediate wake of the referendum result, the minister stated that the close links between policing north and south of the border would continue.

Legislation

The National Vetting Bureau (Children and Vulnerable Persons) Act, 2012, was commenced. The Act places on a statutory footing obligations to disclose relevant criminal convictions for those working with children.

The Misuse of Drugs (Amendment) Act, 2016, contains new provisions to deal with the illegal sale of prescription drugs.

Key bills published or progressed in 2016

The Criminal Justice (Victims of Crime) Bill, 2016, was published in late December.

The General Scheme of the Independent Reporting Commission Bill was published. This will establish an Independent Reporting Commission, which will promote progress towards ending paramilitary activity in Northern Ireland.

The General Scheme of the Judicial Appointments Commission Bill was published.

The General Scheme of the Summons Printing and Fixed Charge Notice Bill, 2016, was published.

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