



# THE COUNTESS

## Gender and Sex in Irish Prisons

**Policy Paper**  
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## Introduction

The issue of trans-identified prisoner accommodation in women's prisons is one of the key flash points in the conflict of rights brought about by the government's approach to gender recognition. As a women's rights organisation, The Countess is particularly concerned about the impact this has on women in Irish prisons, who are among the most vulnerable and marginalised in Irish society. Rates of trauma within this population are high, and most women in Irish prisons have suffered often profound levels of domestic, intimate partner, and sexual violence in their lives.

Owing to the unique nature of imprisonment, the State has a direct role (through the Irish Prison Service) in managing the acute level of complex need and vulnerability among this population. It is vital that it does so in a way that affords those housed in Irish prisons dignity and respect.

### Segregation by Sex

Segregating prisoners by sex has been one of the key primary mechanisms for safeguarding female prisoners since the introduction of the Prisons (Ireland) Act, 1826. This measure was initially introduced to address the sexual victimisation experienced by women and girls in mixed sex prisons and to recognise and provide for the differing needs of men and women in prison settings. This approach has become standard practice across the developed world, being upheld across a range of international mechanisms including the Bangkok Rules (UNODC 2011), Tokyo Rules (OHCHR 1990), and Mandela Rules (see footnote 2 below).

Since the Gender Recognition Act, 2015 (GRA) was introduced, ambiguity has arisen over how those with Gender Recognition Certificates (GRC) are to be housed in the context of single sex prison environments. This presents a complex challenge as it creates a conflict of rights that must be addressed on a policy level to bring about certainty, transparency, security, and dignity for all who are housed in Irish prisons. Given that the origins of the practice of segregating offenders by sex is to protect women and girls from sexual victimisation and to cater to their unique needs, it is vital that the State's approach to accommodating the needs of the small (albeit growing) minority of trans-identified prisoners does not undermine or over-rule this long-standing and well-recognised norm.

This paper sets out the position of The Countess on this most vital of issues with respect to the safety and dignity of women housed in Irish prisons.

## About Us

The Countess is a non-profit, volunteer-led organisation formed to promote the rights and interests of women and children in Ireland. Inspired by her significant contribution to Irish public life, we take our lead and our name from Countess Constance Georgine Markiewicz who, as Minister for Labour in the First Dáil, was the first female cabinet minister in all of Europe.

Countess Markiewicz blazed a trail for women's rights at a time when they were severely restricted. She was at the vanguard of a social revolution that envisioned an Ireland that cherished all her children equally, irrespective of socio-economic status, religion, sex, or other social markers used to limited life choices and chances. A fundamental part of the Irish revolution championed by Markiewicz and her contemporaries was achieving equality for women and affording adequate social and economic protection to all children. Sadly, though Ireland's statehood was eventually won, the rights of women and safeguarding of children have remained elusive for much of our first century as an independent State. The Countess was formed to address this through campaigning, awareness raising, policy development, advocacy, and constructive dialogue.



## Our Work

Though we have a broad interest in women's rights and child safeguarding, The Countess was initially established in 2019 to focus attention on the conflict of rights and child safeguarding issues emerging from the self-ID approach to gender recognition introduced through the Gender Recognition Act 2015.

We promote constructive, respectful, and rights-focused dialogue on this issue, and wish to see a balanced approach to gender recognition that will:

- Vindicate the rights of women,
- Achieve best practice in safeguarding for children and young people,
- Defend the hard-won rights of same sex attracted people to love who they love, and
- Ensure those with gender questioning identities are treated equally to all others in society.

At our core is the belief that by virtue of our common humanity, all groups in society must be afforded the ability to live with dignity, respect, and safety.

## Membership

Our membership is a diverse cross-section of people concerned by the conflict of rights and child safeguarding issues arising out of gender self-ID. It is made up of a wide spectrum of professions including doctors, lawyers, writers, IT specialists, students, carers, full-time parents, and anyone willing to contribute their time and skills to further our mission. We are volunteer-led, self-funded, and not affiliated with any political party or religion.

## Definitions

As an organisation, The Countess is concerned with preventing the erosion or erasure of clear, sex-based terms that are important to how most people describe and think of themselves to enact their own meaning. With that in mind, and for the avoidance of doubt, the following are the interpretations of those words applied in this submission and in all our work that have become contested within debates around gender and sex. They are:

- Woman: 'Adult Human Female'
- Man: 'Adult Human Male'
- Girl: 'Female child or adolescent'
- Boy: 'Male child or adolescent'
- Sex: 'Either of the two categories (male and female) into which humans and most other living things are divided on the basis of their reproductive functions'

To use any other interpretation of the terms listed above, in our view, would make it impossible to guarantee enduring clarity and consistency in the use and interpretation of the language used to craft law or State policy. The discussion in this paper, therefore, applies these meanings to these words.



## Summary of Conclusions & Recommendations

Any approach to prisoner management that involves housing trans-identified men with female prisoners, or trans-identified women with male prisoners, is not appropriate to meet the needs of most prisoners. Such an approach undermines the ability to provide for the most basic form of safeguarding for women in Irish prisons, i.e., a single sex space absent of risk from male patterns of violent and sexual offending.

There is strong evidence to suggest that the concentration of sexual offending among trans-identified male prisoners is, in fact, significantly higher than either that of the general male or female prison population (Freedman, Stock and Sullivan 2021). From a risk assessment standpoint, this indicates that housing trans-identified men in women's prisons significantly increases the risk of violence, sexual victimisation, intimidation, and harassment for the women housed in such facilities. This risk is likely also to translate to the female prison staff that work with the offenders in question as has been reported recently with respect to a specific prisoner housed in Limerick Women's Prison.

As that is the case, we suggest it is more appropriate to address any assessed vulnerability of individual trans-identified prisoners through existing approaches to safeguarding vulnerable prisoners rather than risking the safety of the broad female prison population by undermining the integrity of single sex segregation in Irish prisons.

The Countess advocates the following measures regarding the treatment of trans-identified males in the Irish Prison System:

1. In line with the Mandela Rules (see footnote 2 below), prisons should be segregated by sex, a policy first put forward in 1777 by prison reformer and prison architect John Howard and adopted uniformly through the Prisons (Ireland) Act, 1826.
2. As a matter of urgency, the Gender Recognition Act, 2015 must be suspended or amended in relation to prisons whilst a fuller debate and discussion takes place. In any review of this Act, prisons must be directly considered as this is one of the areas in which women have significantly diminished agency and cannot remove themselves from threatening situations.
3. Until such time as the Gender Recognition Act, 2015 is amended, prison policy should explicitly state that biological male prisoners will be searched by biological male prison guards. This approach acknowledges the importance of privacy, safety, and the potential emotional impact on both prisoners and workers during search procedures. Implementing such guidelines can help mitigate potential legal challenges and promote a more inclusive and respectful environment within prison settings.

Or, alternatively,

In accordance with Rule 20 of the Bangkok Rules (UNODC 2011), screening methods, such as scans, should be developed to replace strip searches and invasive body searches, to avoid the harmful psychological and possible physical impact of invasive body searches.

We would be most happy to provide supporting or additional information should it be needed in addressing this vital topic.

## Gender and Sex in Irish Prisons

The Gender Recognition Act, 2015 (GRA) has resulted in unintended consequences for the Irish Prison Service (IPS), those living in Irish prisons, and those working within them. This is most acutely felt in women's prisons, where a small but increasing number of trans-identified males (i.e., men identifying as women) are being housed. This situation adds to the complexity of need within the prison estate, which has direct consequences for those living and working in Irish prisons. It also has an impact on already strained resources at a time of immense pressure in the prison system.

### Profile of Women in Irish Prisons

The ratio of male to female prisoners in the Irish prison population is consistent with other jurisdictions, with between 24 and 28 convicted male prisoners for every one female prisoner,<sup>1</sup> as compared, for example, with a ratio of 25 to 1 in the UK. In the Irish case, however, the committal rate is notably higher for women than it is for men.

Most women in prison are there for relatively minor crimes that could be dealt with by non-custodial means, as set out in The Tokyo Rules (OHCHR 1990) adopted by the UN General Assembly in 1990. While women represent between 3% and 4% of the prison population in Ireland, they accounted for 9.4% of committals to prison in 2021, with the highest rate of 20.6% occurring in 2015. This is explained by the fact that most women serve short sentences or are remand prisoners (Irish Prison Service 2021).

Of a total 378 female prisoners held over the course of 2021, 322 were serving sentences of less than one year: 106 for sentences of three to six months, and 125 for less than three months. There is a clear overuse of custodial sentences and intramural remands in the Irish prison system that disproportionately impacts women.

The type of offences committed by women are indicative of the clear differences in the nature of the prison population. On November 30<sup>th</sup>, 2021, (Irish Prison Service 2023):

- 15 women were under sentence for homicide offences, compared to 387 men.
- 15 attempts/threats to murder, assaults, harassment, and related offences compared to 446 for men.

Of the remainder, most were crimes of poverty or addiction:

- 47 for theft and related offences.
- 7 for burglary and related offences.
- 5 for controlled drug offences.

Like the UK prison system, the problem of overcrowding in Irish prisons has not been solved despite a recent prison building programme. The women's estate suffers a greater rate of overcrowding than the men's estate. On May 1<sup>st</sup>, 2023, the occupancy rate in the women's unit at Mountjoy (Dóchas) was 171% of capacity, compared to 104% for the entire prison system. These figures may be even worse than reported due to issues with how capacity is recorded.

The ideal cell occupancy rate is one prisoner per cell, as laid out in the Mandela Rules.<sup>2</sup> However, in Limerick Prison, where some trans-identified men are held in the women's wing, just 13 women had cells to themselves,

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<sup>1</sup> Figures are taken from [www.irishprisons.ie](http://www.irishprisons.ie), own calculations.

<sup>2</sup> The United Nations Standard Minimum Rules for the Treatment of Prisoners were first adopted in 1957, and in 2015 were revised and adopted as the Nelson Mandela Rules. The Standard Minimum Rules are often regarded by states as the primary – if not only – source of standards relating to treatment in detention, and are the key framework used by monitoring and inspection mechanisms in assessing the treatment of prisoners. They are supplemented by the UN Bangkok Rules on women prisoners. [The United Nations Standard Minimum Rules for the Treatment of Prisoners \(unodc.org\)](http://www.unodc.org)



with 16 doubling up and nine sharing three person cells. Of the 13 women cited as having cells to themselves, it is presumed that in fact two of them are men. The women's wing of the prison has 29 usable cells with 38 prisoners. Without the men and the non-use of other cells contiguous to them, the prison would be in a far better position to cope with overcrowding.

## Impact on Female Prisoners

Housing men in a women's prison exacerbates the problem of overcrowding, with men taking up spaces in already extremely overcrowded conditions. In Limerick Prison, these trans-identified men are housed on a separate landing in the women's wing, with the cells contiguous to their cells left empty. The security that pertains to these prisoners and the need to protect the female population from them is a drain on resources in terms of staff, but also on the management of prison routines, spaces, exercise, rehabilitative programmes, and so forth. In this way, there are practical impacts on the lives of women housed alongside trans-identified male prisoners.

For example, in the specific case of Limerick Prison, where one of the trans-identified men in the female prison estate is a convicted child abuser, it creates additional problems in managing mothers whose children can stay with them in prison up to the age of 12 months. Were calls for this term to be lengthened further to three years to be accommodated, as is the case in most other European prison systems, the presence of a convicted child abuser in the same wing, albeit on a different landing, would create additional barriers and risks. This would include but not be limited to the anxiety it is likely to evoke for the mothers in question and the potential safety risks for their children.

Several broad forms of impact are also being felt or may be felt because trans-identified men are being housed in the women's estate:

### Psychological Impact

Although the trans-identified males are not currently given access to the women's landing, female prisoners have reported instances where these men can be heard shouting abuse and taunting female prisoners. This is a form of psychological abuse and has no place in a modern prison system that aims to protect and rehabilitate the prisoner. Given that many prisoners already experience mental health difficulties, the prison system should not add further pressure on the prisoner in that regard, other than that which naturally arises from being confined within an institution. In other jurisdictions, particularly in the USA but also in Britain, trans-identified male prisoners housed in the women's estate have in some prisons been given free access to the female population, with predictable results, including but not limited to rape and instances of pregnancy among female prisoners.

### Rates of Assault

In 2020, Dr Michael Biggs, Associate Professor of Sociology at the University of Oxford, in his written submission to the UK Parliamentary Women and Equalities Committee hearing on the Reform of the Gender Recognition Act (UK), remarked on the number of sexual assaults and rapes carried out by trans-identified males in the women's estate in Britain (Biggs 2020). He pointed out that the data did not provide a full picture of the levels of violence, because those assaults carried out by men with a GRC – who were automatically transferred to the women's estate – were recorded as female crimes. Those trans-identified males without a GRC – whose requests for transfer to the women's estate were considered on a case-by-case basis – were 17 times more likely to commit a sexual assault than other prisoners in the women's estate. Dr Biggs predicted at the time that,



“If the Gender Recognition Act 2004 is amended to make it even easier to obtain a Gender Recognition Certificate, then many more males will enter the women’s estate — and sexual assaults will increase accordingly.” (ibid.)

### Potential for Largescale Impact on Female Prison Populations

Professor Biggs also noted that if only 4.5% of the total male prison population in the UK identified as women, they would outnumber the total female prison population. A similar scenario exists in Ireland, where only one in every 25 males would have to declare themselves to be a woman to outnumber the total female prison population.

When we look at types of crimes, just under one in every four male sex offenders would have to identify as women to double the population of the entire women’s estate, with 445 male sex offenders held on November 30<sup>th</sup>, 2021, compared to the total female prison population of 104 for November 2021. According to official figures released by the UK Ministry of Justice in March/April 2019 relating to trans-identified male prisoners, **58.9% of trans-identified males in UK prisons (76 out of 129) were recorded as sex offenders** (Freedman, Stock and Sullivan 2021). **Among the general male prison population in the UK, 16.8% (13,234 out of 78,781) were recorded as sex offenders. In comparison, 3.3% of female prisoners (125 out of 3,812) were recorded as sex offenders.**

These statistics highlight a higher proportion of sex offenders among trans-identified males compared to the general male prison population, and a far higher proportion compared to the female prison population. This emphasises the extreme risk of housing trans-identified males in women’s prisons. Indeed, the current protocol for housing trans-identified male prisoners in the women’s estate, which sees them locked in their cells for 23 hours per day, merely demonstrates the dangers of housing them in the women’s estate.

### Basis in International Law for Addressing the Conflict of Rights

While the Irish Prison Service may be bound by law to treat trans-identified males who are in possession of a GRC as women, they are also bound by the *Bangkok Rules*, or formally, *The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders*, a set of 70 rules focused on the treatment of female offenders and prisoners adopted by the United Nations General Assembly on 22 December 2010 (UNODC 2011). This followed the Secretary-General’s in-depth study on all forms of violence against women in 2006, when the UN General Assembly adopted resolution 61/143 on the intensification of efforts to eliminate all forms of violence against women. The UN General Assembly stressed that violence against women meant any act of gender-based violence resulting in, or likely to result in, physical, sexual, or **psychological harm or suffering** to women. While the GRA might complicate the issue, there are possible measures that can be taken to ensure female prisoner safety is not jeopardised. It may be argued that the weight of international law concerning the treatment of prisoners is in favour of such an approach.

### Accommodating Vulnerable Male Prisoners

Several existing measures are used to assess and manage risk to vulnerable male prisoners. These could be used as an alternative means of safeguarding trans-identified male prisoners rather than housing them in the women’s estate:

#### Individualised Care Plans

Vulnerable male prisoners in Ireland, including those at risk, are managed in men’s prisons through a series of strategies focused on their safety and well-being. One crucial aspect is the development of **individualised care plans**. These plans are tailored to address the specific needs and risks of each





vulnerable prisoner, taking account of factors such as mental health difficulties, self-harm or suicide risk, substance misuse, and risks from other prisoners. By creating individualised care plans, prison staff can provide the necessary support and protective measures required for the safety and rehabilitation of at-risk male prisoners.

### Enhanced Supervision

This is another vital component in the management of vulnerable male prisoners. Prison staff implement increased monitoring and regular check-ins to closely observe and ensure the well-being of at-risk prisoners. This heightened level of supervision helps prevent potential harm or self-destructive behaviour by promptly identifying and responding to any concerning signs. By maintaining a close watch on vulnerable prisoners, staff can provide immediate intervention and support when needed, promoting their safety within the prison environment.

### Segregation

In some cases, vulnerable male prisoners may be housed in **separate units or designated areas** within the prison. These specialised units are designed to meet the unique needs of at-risk individuals. By creating segregated spaces, prison authorities can provide a controlled environment where additional support and interventions are readily available. These units may be specifically tailored for prisoners with mental health difficulties, those at risk of self-harm or suicide, or those requiring protection from other inmates. Through such separation or special units, vulnerable prisoners receive focused care and attention, minimising potential risks and promoting their overall well-being in the men's prison estate.

## Upholding the Integrity of Evidence-based Policymaking

One of the most obvious impacts of recording trans-identified males with GRCs as women is the effect on the accuracy of data about men and women in Irish prisons. This undermines the evidence available to identify challenges and develop policy solutions to solve them. Recording a trans-identified male as a woman, or likewise a trans-identified female as a man, without reference to their trans-identified status, obscures the existence of trans-identified people. This is problematic as it makes it impossible to know with any methodological certainty the proportion of the prison population made up of trans-identified individuals. In turn, this obscures their experiences, their patterns of offending and behaviour, and, vitally, their needs.

Similarly, by including trans-identified individuals within the broader statistics relating to those born to the sex they wish to be associated with, sex-based statistics are skewed, as is their reliability as a measure of experiences, needs, and patterns of offending and behaviour. The result is that we cannot rely on the integrity of the data to reflect the reality of behavioural and offending patterns and life for men and women in Irish prisons. This undermines our ability to respond appropriately to the unique needs of men and women as distinct categories.

### Importance of Recording Sex

The very different experiences and offending profiles of men and women must be understood if the distinct needs of these two broad groups are to be addressed and any risks they pose identified and managed. We must have an accurate understanding of any behavioural or offending patterns that exist among offenders to ensure that immediate risks can be identified, addressed, and managed. We also require accurate and detailed insights into the backgrounds and drivers of law breaking and criminal behaviour to devise and deploy preventative and rehabilitation measures. Retaining the integrity of data collection on offending, prisons and those housed in them is therefore vital, and ensuring sex is recorded accurately is a key part of this.



## Data Concerning Instances of Sexual Offending Among Male and Female Prisoners

Sexual offending is a form of offending that demonstrates the importance of accurate sex-based data collection. The proportion of the female prison population imprisoned for sexual offences is traditionally low. In 2015, for example, there was just one female prisoner in jail for sexual offences and, though it remains low, this grew to four in 2023. In absolute terms, this sounds like a modest number, but relative to such numbers any marked increase in rates of sexual offending attributed to female prisoners has the potential to significantly impact our understanding of female patterns of sexual offending more broadly.

It is true that women can and do engage in sexual abuse, but their patterns of abuse tend to differ from those of men, with women more commonly engaging in the facilitation of male abusers and procuring access to victims. The distinction in these patterns of offending is important, as knowing and understanding the different roles performed by men and women in sexual abuse and exploitation (and indeed any kind of offending) is crucial to identifying, investigating, prosecuting, and rehabilitating those involved.

As of 1<sup>st</sup> February 2023 there were four people housed in Limerick women's prison for sexual offences (Irish Prison Service 2023), at least two of whom were trans identifying males housed in the women's estate (Houses of the Oireachtas 2023). One of these offenders was convicted on ten counts of sexual assault and one of child abuse concerning their four-year-old stepson. The other is best known as Barbie Kardashian, who was convicted on seven counts of threatening to kill, rape, torture, or cause serious harm to his mother. It is unclear what the profiles of the other two offenders are or whether they are natal women or trans-identified males as there is now no difference in how such offenders are recorded.

This lack of clarity impacts policy on sex offender programmes in and outside prisons. Equally, it makes it impossible to know whether there is a real rise in sexual offending rates among women, or whether any rise in numbers is solely attributable to trans-identified males being categorised as female prisoners. If such a rise has come about in female offenders, this signifies a worrying new trend that requires analysis and an urgent policy response. But it will only be possible to know if this is the case if reliable and accurate data is captured at source; at its core this means distinguishing between men, women, and trans-identified men and women.

By recording the crimes of trans identifying men as attributable to women, we muddy the waters of this source of evidence on offending patterns, thereby undermining our ability to address serious crimes at all points in the chain of events. We also limit our ability to respond to the needs of past and future victims and survivors of such crimes as we undermine our ability to identify the form of danger that exists for them. It is, therefore, vital that data be captured that clearly identifies birth sex and any adopted variation in gender as reflected in a GRC. On this point, the interests of the common good must over-ride the rights of the individual.

## Threat of Litigation

In housing trans-identified male prisoners in the women's estate, the State has exposed itself to a tri-fold risk of litigation in the context of female prisoners who may experience verbal abuse from trans-identified males in prison settings. In an interview conducted outside Limerick Prison by former RTÉ broadcaster Paddy O'Gorman, Leanne Casey, on her release from prison, shed light on the distressing reality faced by female inmates, recounting instances where the trans-identified male prisoners shouted abusively from their landing above. Such verbal abuse not only violates the rights and dignity of female prisoners, but it creates an environment that perpetuates fear, intimidation and emotional harm, in direct violation of the Bangkok Rules (UNODC 2011). The failure to address this issue exposes the Irish Prison Service to the risk of litigation, as affected individuals may seek justice for the emotional and psychological distress they were forced to endure during their incarceration.



Another aspect that contributes to the tri-fold risk of litigation is the confinement conditions imposed on the trans-identified males in the women's wing of Limerick Prison, who are confined to their cells for approximately 23 hours a day – in breach of the Mandela Rules (see footnote 2 above). This extended period of isolation can be detrimental to the mental well-being and rehabilitation prospects of individuals in custody. Prolonged periods of confinement without adequate opportunities for meaningful human interaction, exercise, or access to educational and therapeutic programmes can exacerbate feelings of isolation and despair and can result in a deterioration of mental health. The potential for legal action arises when these conditions are deemed inhumane or when they violate the rights of prisoners, including their right to be free from cruel and unusual punishment, potentially leading to legal challenges and claims against the Irish Prison Service.

Additionally, the involvement of female prison officers in the searching of trans-identified males presents another avenue for potential litigation. Given that these prisoners are 'male-bodied', the requirement for female officers to conduct searches on them can be deeply distressing for the female officers. This represents a violation of their rights and compromises their well-being. This situation raises concerns about privacy, safety, and the potential for emotional harm to female officers involved in these procedures. The failure of prison policies to adequately address this issue and provide appropriate guidelines and support for both prisoners and staff could expose the Irish Prison Service to legal challenges regarding violations of rights and discriminatory practices.

The only internationally accepted best practices that come close to dealing with these issues are the Mandela Rules (see footnote 2 above), Rule 52 of which states that 'Intrusive searches shall be conducted in private and by trained staff of the same sex as the prisoner.'

### **Potential Policy Guidance on Accommodating Trans-Identified Prisoners**

When considering policy changes, it makes sense to examine solutions explored by the UK, given the more progressed status of deliberations on this matter. A specific instance in Scotland of a male rapist being housed in the women's estate triggered the adoption of a new policy for the treatment of trans-identified male prisoners across the UK in February 2023. Under the new rules, men who identify as women will not, in future, be held in the general women's estate if they retain male genitalia or have been convicted of a violent or sexual offence (Justice, Service and Rabb MP 2023) – unless explicitly approved at the highest level in the most exceptional cases.

Such a policy works in the UK because, according to the Deputy Prime Minister, Lord Chancellor and Justice Secretary, Dominic Raab MP, 'there is currently no obligation to place a transgender prisoner according to their preference, and where individuals are held is based purely on risk'. A similar policy would not work under Irish law because, unlike the UK, we do have a legal obligation to place trans-identified male prisoners according to their self-declared legal identity once they have obtained a GRC. To enact such a policy in an Irish context would require legislative amendment. If this were to be done, The Countess recommends that the focus of such amendment be on protecting the rights of women and girls in line with the origins and purpose of the policy of segregating prisoners according to sex.

Certain aspects of the new UK policy can, however, work in an Irish setting, such as the measures for managing vulnerable male prisoners. Under the new policy, trans-identified male prisoners who cannot be safely housed in a men's prison can be imprisoned in a specialist unit.



## Conclusions & Recommendations

The Countess advocates the following measures regarding the treatment of trans-identified males in the Irish Prison System:

1. In line with the Mandela Rules (see footnote 2 above), prisons should be segregated by sex, a policy first put forward in 1777 by prison reformer and prison architect John Howard and adopted uniformly through the Prisons (Ireland) Act, 1826.
2. As a matter of urgency, the Gender Recognition Act, 2015 must be suspended or amended in relation to prisons whilst a fuller debate and discussion takes place. In any review of this Act, prisons must be directly considered as this is one of the areas in which women have significantly diminished agency and cannot remove themselves from threatening situations.
3. Until such time as the Gender Recognition Act, 2015 is amended, prison policy should explicitly state that biological male prisoners will be searched by biological male prison guards. This approach acknowledges the importance of privacy, safety, and the potential emotional impact on both prisoners and workers during search procedures. Implementing such guidelines can help mitigate potential legal challenges and promote a more inclusive and respectful environment within prison settings.

Or, alternatively,

In accordance with Rule 20 of the Bangkok Rules (UNODC 2011), screening methods, such as scans, should be developed to replace strip searches and invasive body searches, to avoid the harmful psychological and possible physical impact of invasive body searches.

We would be most happy to provide supporting or additional information should it be needed in addressing this vital topic.



## References

- Biggs, Michael. 2020. "Written evidence submitted by Dr Michael Biggs." *Women and Equalities Committee: Reform of the Gender Recognition Act Evidence submitted by Dr Michael Biggs, November 2020*. London: UK Houses of Parliament. <https://committees.parliament.uk/writtenevidence/16943/pdf/>.
- Freedman, Rosa, Kathleen Stock, and Alice Sullivan. 2021. *Evidence and Data on Trans Women's Offending Rates*. Written Evidence, London: UK Houses of Parliament. <https://committees.parliament.uk/writtenevidence/18973/pdf/>.
- Houses of the Oireachtas. 2023. "Written Answers: Prison Service." *Dáil Debates*. Dublin: Houses of the Oireachtas. 194.
- Irish Prison Service. 2021. *Annual Report: Creating a Better Environment*. Annual Report, Dublin: Irish Prison Service. [https://www.irishprisons.ie/wp-content/uploads/documents\\_pdf/IPS-Annual-Report-21\\_Final.pdf](https://www.irishprisons.ie/wp-content/uploads/documents_pdf/IPS-Annual-Report-21_Final.pdf).
- Irish Prison Service. 2023. *SNAPSHOT Offence Group Year 2007 to 2021*. Snapshot, Dublin: Irish Prison Service. [www.irishprisons.ie/wp-content/uploads/documents\\_pdf/SNAPSHOT-Offence-Group-Year-2007-to-2021.pdf](http://www.irishprisons.ie/wp-content/uploads/documents_pdf/SNAPSHOT-Offence-Group-Year-2007-to-2021.pdf).
- Justice, Ministry of, HM Prison and Probation Service, and Rt Hon Dominic Rabb MP. 2023. *New transgender prisoner policy comes into force*. Press Release, London: UK Government. Accessed <https://www.gov.uk/government/news/new-transgender-prisoner-policy-comes-into-force#:~:text=With%20these%20sensible%20new%20measures,approved%20at%20the%20highest%20level>.
- OHCHR. 1990. *United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules)*. UN Report, New York: United Nations. <https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/tokyorules.pdf>.
- UK MOJ, UK Ministry of Justice. 2020. *Ministry of Justice 2020 Data*. Ministry of Justice 2020 Data, UK Ministry of Justice.
- UNODC. 2011. *The Bangkok Rules*. UN Report, New York: UNODC. [https://www.unodc.org/documents/justice-and-prison-reform/Bangkok\\_Rules\\_ENG\\_22032015.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf).



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