

IRELAND'S NEW INSPECTOR OF PRISONS SET TO MAKE HIS MARK

International human rights lawyer Mark Kelly has become the new Inspector of Prisons and is due to take up his position on 15 August. His appointment comes at a time with plans in the pipeline to expand the role of the office to include independent monitoring of detention across the criminal justice sector in Ireland. Report by Grace Heneghan.



In making the announcement recently Minister for Justice Helen McEntee said that the role of the Inspector of Prisons was “an essential element of the oversight and evaluation structures within Ireland’s penal system”.

The Inspector of Prisons is a statutory officer appointed by the Minister for Justice under the Prisons Act 2007 and is independent in carrying out this work. The key role will be to carry out regular inspections of all prisons in Ireland and to present a report on each institution inspected to the Minister for Justice.

In addition, under Part 5 of the Prisons Act 2007, the Inspector of Prisons is required to carry out investigations into any matter relating to the operation and management of a prison as requested by the Minister for Justice.

The Inspector of Prisons may also, of their own volition, decide to investigate any matter they consider to be of concern. Furthermore, since April 2012 all deaths in custody are subject to an independent investigation by the Inspector of Prisons.

“The Department of Justice and the Irish Prison Service strive to develop and evolve in how we manage our prisons, and the Inspector of Prisons plays a vital role in ensuring this work is carried out to the highest human rights standards and international good practice.”

The Minister added that Mark Kelly’s human rights experience both in Ireland and abroad would be of “great benefit to the work of the Office and he joins an excellent team at the Office of Inspector of Prisons, which under his leadership and guidance will only go from strength to strength.”



International human rights lawyer Mark Kelly takes up his new role as Inspector of Prisons on 15 August 2022.

CHIEF INSPECTOR REAPPOINTED

He will replace Mark Toland, who had stepped in as interim Inspector of Prisons in February 2022, following the sudden resignation of Patricia Gilheaney, and while the recruitment process was being completed by the Public Appointments Service. During this time, Toland also continued to serve in his position as Chief Inspector of the Garda Inspectorate.

Mark Toland has been reappointed to that position following the Government's approval and the Justice Minister thanked him for his work as Chief Inspector since 2017.

"He has worked effectively, and his experience and hard work will continue to benefit the Garda Inspectorate and the wider policing system over the next crucial period," she noted.



Mark Toland, who had stepped in as interim Inspector of Prisons in February 2022, has been reappointed in his position as Chief Inspector of the Garda Inspectorate.

This will see the landmark Policing, Security and Community Safety Bill being brought forward, in addition to merging the existing functions of the Garda Inspectorate and the oversight function of the Policing Authority into the new Policing and Community Safety Authority.

INDEPENDENT INVESTIGATIONS

The law underpinning the role of Inspector of Prisons is set out in Part 5, Sections 30 to 32 of the Prisons Act 2007; Section 30 provides for the appointment of the Inspector, Section 31 sets out the functions of the Inspector and Section 32 specifies the requirement to submit an Annual Report to the Minister for Justice, by 31 March in any year.

Under Section 31 of the Act the Inspector of Prisons is obliged to carry out regular inspections of prisons and for this purpose may:

- Enter any prison or any part of a prison at any time.
- Request and obtain from the Governor a copy of any books, records, other documents, or extracts from such documents.
- During an inspection or arising out of an inspection, bring any issues of concern to the notice of the governor of the prison concerned, the Director General of the Irish Prison Service or the Minister as the Inspector considers appropriate.

The Inspector may, and must upon receiving a request from the Minister, investigate any matter arising out of the management or operation of a prison and shall submit to the Minister a report on any such investigation.

Governors, prison officers, other persons employed in prisons and prisoners, must as far as reasonably practicable, comply with any request for information that the Inspector may make in the performance of his or her functions.

Since April 2012, the Inspector of Prisons has been tasked by the Minister with the independent investigation into the circumstances surrounding all deaths in custody and those within one month of temporary release from custody.

In addition to the legislative authority derived from the Act, the Inspector has specified functions under Prison Rules 2007-2013 in relation to the Irish Prison Service Prisoner Complaints Procedure (Rule 57B) and letters from prisoners (Rule 44(1)(h)). The Inspector of Prisons may also, of his/her own volition decide to investigate any matter considered to be of concern.



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HUMAN RIGHTS ADVOCATE

Mark Kelly said he was looking forward to joining the Inspectorate team and to building on the work of his predecessors to establish truly independent inspection of places of detention.

"I especially welcome the plans to expand the role of the office to include independent monitoring of detention across the criminal justice sector in Ireland, in line with the requirements of the Optional Protocol to the UN Convention Against Torture (OPCAT)."

The international human rights lawyer has gained vast international experience as well as practical experience in the areas of monitoring prisons, police custody and administrative detention.

In 2014, he was elected to the Committee for the Prevention of Torture of the Council of Europe, of which he was Vice-President from 2017-2021 Prior to this in 2013, he was appointed as a Commissioner of the Irish Human Rights Commission and a member of the Board of the Equality Authority, pending the creation of the Irish Human Rights and Equality Commission, to which the President of Ireland appointed him Commissioner on 31 October 2014.



Portlaoise Prison – Under Section 31 of the Prisons Act 2007 the Inspector of Prisons is obliged to carry out regular inspections of prisons and for this purpose may enter any prison or any part of a prison at any time.

Kelly was also a member of the Committee for the Prevention of Torture of the Council of Europe Secretariat from 1991-2000 and is a former Executive Director of the Irish Council for Civil Liberties. He will commence his position as Inspector of Prisons on 15 August 2022.

IRISH PENAL REFORM TRUST
Welcoming the appointment of Mark Kelly as the new Inspector of Prisons, the Irish Penal Reform Trust (IPRT) has called on him to prioritise the frequency of prison inspections when he takes up his new role.

Saoirse Brady, Executive Director of the IPRT, stated: “His previous membership of the European Committee for the Prevention of Torture will undoubtedly bring a unique perspective to the role, given that Mark has visited, monitored, and has intricate knowledge of prison systems and other places of detention throughout Europe.”

Commenting on the current gaps in inspection and monitoring of prisons in Ireland, Brady continued: “While Covid-19 thematic inspections of all prisons in Ireland were conducted during 2021 and were published recently, we have not seen the

publication of a general prison inspection report of an operational prison since 2014.

“We know how important these inspections are for shining a light on what goes on behind locked walls, on ensuring compliance with human rights standards, and in driving necessary improvements. However, in the absence of published reports, we remain in the dark about what is happening to people in prison.”

She said that the IPRT particularly looks forward to working with him during the imminent ratification of the Optional Protocol to the Convention against Torture (OPCAT). “The Office of the Inspector of Prisons will require adequate resources to complete its work, especially in relation to its anticipated future enhanced remit. Almost 15 years have passed since Ireland signed up to the OPCAT. If the State is committed to upholding the rights of all people deprived of their liberty, it must ratify OPCAT without further delay,” noted Brady.



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