



Ministry of Justice and Security

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**Legislation and Legal
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Our reference

2897268

Your reference

CPT/MG/2020/16

*Please quote date of letter and
our ref. when replying. Do not
raise more than one subject
per letter.*

Date 4 May 2020

Concerning Measures taken in the context of the coronavirus disease (COVID-19)

Dear 5.1.2e,

With reference to your letter of 6 April 2020 concerning the recently published Statement of Principles and the request to provide the CPT with the concrete measures taken by the relevant authorities in the context of the COVID-19 pandemic with respect to the treatment of persons deprived of their liberty, I have the honour to present the following response from the Dutch authorities.

Statement of Principles

Due note has been taken of the recently published Statement of Principles. This statement has been widely disseminated within the Ministry of Justice and Security and the Ministry of Health, Welfare and Sport and transmitted to organisations including the Custodial Institutions Agency (*DJI*), the National Police, the judiciary, the Public Prosecution Service and both Ministries' Inspectorates.

Concrete emergency measures

The COVID-19 pandemic has led to an unprecedented situation. The government has adopted extraordinary measures to protect citizens and overcome the crisis. Inevitably, these measures affect fundamental rights. The government is fully aware of the importance of limiting these measures to what is strictly necessary and aims to make sure that all measures adopted are proportionate and temporary in nature, are subject to regular scrutiny, respect fundamental rights and comply with international law obligations.

Parliament, stakeholders and the wider public are kept informed in various ways about the measures taken.¹ This includes the measures concerning persons who are deprived of their liberty. This letter outlines these measures during the period 13 March – 30 April 2020.

¹ The website of the national government has pages on the measures taken during the crisis (<https://www.rijksoverheid.nl/onderwerpen/coronavirus-covid-19>).

Custodial Institutions

In light of the major consequences that infection with COVID-19 can have for detainees and staff working in custodial institutions, protecting them is of paramount importance.

To that end, on 13 March 2020, the Minister for Legal Protection, after consulting the National Institute for Public Health and the Environment (*Rijksinstituut voor Volksgezondheid en Milieu, RIVM*), announced a set of measures to combat the possible spread of coronavirus within custodial institutions.² These measures apply to all custodial institutions including young offenders' institutions and forensic psychiatric centres for adults who are subject to an order for confinement in a custodial clinic.

A concise overview of the most relevant measures:

- As of 14 March, all visits were suspended. In order for family contacts to continue as far as possible, alternatives such as contact via telephone and video calls are being offered more than usual. The only visits allowed are those necessary in the context of the legal process, such as by lawyers (if contact via telephone or other digital tools is not possible). Young people in young offenders' institutions were still permitted to receive visits from their parents or legal guardians
- As of 14 March, leave has been suspended for all detainees. Where possible, individuals are compensated for the suspension and given extra opportunities to make telephone and video calls.
- For a small group of prisoners leave has been temporarily extended and combined with electronic supervision. This applies to detainees who are nearing the end of their sentences and who were already spending much of their time outside the custodial institution (working outside the institution and spending only the night there). The situation will be normalised after this measure is lifted.
- The influx of detainees has been limited by excluding certain groups of prisoners, amongst others, persons convicted of relatively minor offences carrying a short sentence and individuals who have to undergo detention in lieu of payment of a fine or performance of community service. This measure is intended not only to prevent infection but also to cope with potential staffing shortages.
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- On 31 March 2020, the government decided to extend the national measures until 28 April 2020.³ On 1 April 2020, the Minister for Legal Protection reaffirmed that this extension also applies to measures adopted by the Custodial Institutions Agency and announced supplementary measures.⁴ The announcements relevant in the context of the request for information include the following:

² Letter to Parliament from Minister for Legal Protection, 13 March 2020, 'Maatregelen aanpak coronavirus in justitiële inrichtingen' (reference: 2860198)

³ Minister of Health, Welfare and Sport, 'COVID-19 - Update stand van zaken,' Letter to House of Representatives, 31 March 2020, available at: <https://www.rijksoverheid.nl/documenten/kamerstukken/2020/03/31/kamerbrief-covid-19---update-stand-van-zaken-31-maart>. On 21 April 2020 the government has extended most measures until 19 May.

⁴ Minister for Legal Protection, 'Stand van zaken coronamaatregelen tenuitvoerlegging straffen en Maatregelen,' Letter to House of Representatives, 1 April 2020, available:

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- Fundamental rights such as food, medical services and access to open air are not affected by the measures.
- If it proves to be necessary, the program of daily activities for inmates can be restricted.
- Contact between inmates and lawyers is to take place by phone as much as possible.
- The temporarily measure announced earlier regarding leave for a small group of prisoners is continued. In addition, the placement of new prisoners in minimum security facilities (*zeer beperkt beveiligde inrichting; zzbi*) is suspended.
- As of 1 April 2020 young people in young offenders' institutions for juvenile offenders are no longer allowed to receive visits. In certain special circumstances the governor of an institution may allow visits. To continue contact with the outside world as much as possible, young inmates are offered more possibilities for contact via telephone and video calls.
- Additional call credit has been made available, allowing inmates to phone for an hour longer every week.
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- The measures taken have resulted in a sharp fall in the occupancy in custodial institutions, from over 98% to 85%. This has created more scope to place inmates in single cells. The use of multi-person cells has fallen from 30% to 15% in recent weeks.⁵
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- Police
- On 3 April 2020, the Minister of Justice and Security announced that the police had taken measures to limit physical contact between police officers and member of the public and among police officers as much as possible.⁶ The measures relevant to this information are as followed:
 - Where necessary police officers will have the possibility to use mouth shields on suspects during transport.
 - On 22 April 2020 legislation entered into force that allows police officers to demand suspects to give cellular material in order to test whether they are infected with the coronavirus.
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- Detention of migrants
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- On 9 April 2020 it was announced that the police, the Royal Military and Border Police (*Koninklijke Marechaussee*) and the Repatriation and Departure Service (*DT&V*) are taking an extremely cautious approach to detention of migrants.⁷ The current temporary obstacles to expulsion are

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⁵ Minister for Legal Protection, 'Reactie op open brief medewerkers DJI d.d. 9 april 2020', Letter to House of Representatives, 14 April 2020, available at: <https://www.rijksoverheid.nl/documenten/kamerstukken/2020/04/14/tk-reactie-op-open-brief-medewerkers-dji-d-d-9-april-2020>.

⁶ Minister of Justice and Security, 'Maatregelen politie naar aanleiding van het coronavirus', 3 April 2020, available at: <https://www.rijksoverheid.nl/documenten/kamerstukken/2020/04/03/kamerbrief-maatregelen-politie-naar-aanleiding-van-het-coronavirus>.

⁷ Minister for Justice and Security, Minister for Legal Protection and Minister for Migration,

being taken into account. However, new detention orders or the extension of detention can be supported by an overriding public interest.

- Due to the current crisis, transfers under the Dublin Regulation to and from all EU Member States have been suspended.⁸ This means that limited action can be taken on transfers. The detention of all Dublin claimants has therefore been suspended and the authorities are taking a very cautious approach to new detention orders for Dublin claimants.⁹
- The number of migrants in detention has dropped considerably from 460 persons in January 2020 to 300 on 16 April 2020.¹⁰
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Compulsory Healthcare for persons with a psychiatric disorder, mental disability or dementia

- General guidelines on mental healthcare during the COVID-19 crisis have been drawn up in cooperation with relevant parties. These guidelines also apply to compulsory mental healthcare and focus on keeping care delivery as close to normal levels as possible.¹¹
- On the basis of section 7 of the Public Health Act (*Wet publieke gezondheid*), visits to care homes for the elderly and people with dementia have been suspended. There has not been a general suspension of visits to institutions that provide care for persons with a psychiatric disorder or mental disability. Mental healthcare providers may adapt their house rules to the specific needs and circumstances of the patient population and to the setting of their facilities. To make these adjustments possible, relevant stakeholders have drawn up policy guidance on visits.¹²
- As a general rule, face-to-face contact between clients and their family members and/or representatives is preferable. If this is not possible, other alternatives for communication are provided (e.g. telephone or video communication). This is also the case for judicial hearings concerning compulsory mental healthcare, and for contact with a client's lawyer or patient advocate. The Dutch Parliament has passed temporary legislation providing an explicit legal basis for judicial hearings to take

'Stand van zaken coronamaatregelen in de justitie-, veiligheids- en Migratieketen', Letter to House of Representatives, 9 April 2020, available at:

<https://www.rijksoverheid.nl/documenten/kamerstukken/2020/04/09/tk-stand-van-zaken-coronamaatregelen-in-de-justitie-veiligheids-en-migratieketen>.

⁸ Minister for Migration, 'Uitwerking van de maatregelen in de asielketen met betrekking tot het coronavirus', Letter to the House of Representatives, 20 March 2020, available at:

<https://www.rijksoverheid.nl/onderwerpen/asielbeleid/documenten/kamerstukken/2020/03/20/tk-uitwerking-van-de-maatregelen-in-de-asielketen-met-betrekking-tot-het-coronavirus>.

⁹ Minister for Migration, 'Schriftelijk overleg uitwerking van de maatregelen in de asielketen met betrekking tot het coronavirus', Letter to the House of Representatives, 17 april 2020, available at: <https://www.rijksoverheid.nl/documenten/kamerstukken/2020/04/17/tk-schriftelijk-overleg-uitwerking-van-de-maatregelen-in-de-asielketen-met-betrekking-tot-het-coronavirus>.

¹⁰ There are currently no families with children in immigration detention.

¹¹ https://www.ggzstandaarden.nl/uploads/pdf/project/project_65a48ddb-87bc-4f22-ae4f-6f5269977fa7_ggz-en-corona-richtlijn_authorized-at_03-04-2020.pdf

¹² <https://www.ggznederland.nl/uploads/assets/Richtlijn%20GGZN%20en%20Valente%20bezoekersbeleid%20in%20tijden%20van%20Corona%2023-03-2020.pdf>

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place via a telephone or video link. The relevant legislation entered into force on 22 April 2020.¹³

- Patient advocacy and support organisations (MIND, the Foundation for Patient Advocates and the Foundation for Family Counsellors) are systematically involved in the corona-crisis structure for the mental healthcare field.

- **Rapid changes**

- Dutch policy aims to keep the healthcare system in operation while protecting vulnerable groups in society. The government has taken several measures to prevent the further spread of coronavirus and will continue to adjust its policy in accordance with the latest findings. If need be, new measures will be announced, current measures modified and where possible emergency measures lifted.

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Yours sincerely,

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¹³ https://www.eerstekamer.nl/wetsvoorstel/35434_tijdelijke_wet_covid_19.