

**the Howard League** for **Penal Reform**



# **Business behind bars**

Making real work in prison work



# Business Behind Bars:

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## Foreword

As of June 2009 there were 37,018 prisoners sentenced to a period of longer than 4 years in prison. At the end of April 2010 12,918 people were serving indefinite sentences; many may spend the rest of their lives in custody (Ministry of Justice 2010a). Every year a prisoner serves in jail costs the taxpayer an average of £45,000 (Hansard 2010a). Neither prisoners nor taxpayers benefit from this scenario.

Many long-term prisoners feel demotivated, they feel that prison life serves little purpose and that work is something for those outside custody. For many their time in custody is, “a life of enforced, bored idleness, where getting out of bed is optional” (Clarke 2010). The result is that prisoners leave custody unprepared for life outside. In 2008–09 only 27% of men and 13% of women entered any kind of employment on release from prison (Hansard 2009a).

Last October Kenneth Clarke, Secretary of State for Justice, told Conservative Party Conference that, “...we need to instill in our jails a regime of hard work” (Clarke 2010). The Secretary of State was referring to his “rehabilitation revolution,” a fundamental change in ethos, across the prison service; the objective of which is to change the prison landscape from one where prisoners are compelled to spend 20 hours a day on their bunks to one where prisoners can participate in a normal working day. This objective is also contained within the coalition agreement which states prisoners will engage in “properly paid work” (Cabinet Office 2010).

Such a policy will receive popular support, as the polling data published in this report reveals. In particular, there is support for prisoners paying tax and national insurance on their earnings, as well as contributing a proportion of their wages to a fund for victims.

The Howard League has pioneered the concept of real work for prisoners for many years and is the only organisation that has ever run a real business inside prison. Barbed was a commercial enterprise run by the Howard League inside Coldingley prison. The charity is committed to the principle that long-term prisoners should be properly employed, pay tax and support their families.

In early 2011 the Howard League for Penal Reform and Policy Exchange embarked on a collaborative project exploring the implementation of real work in prison. *Business Behind Bars* is published by the Howard League as our contribution to this project.

**Frances Crook**

**Director of the Howard League for Penal Reform**

## Key recommendations

This report makes the following recommendations:

### In the short term

- The Ministry of Justice should encourage and support private sector demand for working in prisons. The Ministry of Justice should work with the Department for Business Innovation and Skills to foster private sector interest in real work in prison and explore the issue of repatriating business back to Britain. To begin with some incentives might have to be used to encourage private industry to participate in real work in prison
- The prison service should earmark at least two category C training prisons that could house enterprises in the first instance. The prison industries unit should explore sites and decide which prisons are most appropriate based on capacity for industry
- The prison service should draft minimal eligibility criteria for prisoners to participate in real work in prison. These criteria should be based on the one outlined in section 3 (below). The prison service should calculate how many prisoners meet these criteria so that they comprehend the size of their potential workforce

### In the medium term

- The prison service should devolve greater powers to prison governors in prisons where real work is to take place to ensure their prisons are fit for business. Prison governors should be given the authority to empower staff, change the core day within their prison, tender for business and begin to build an ethos focussed around work
- The governors of earmarked prisons should develop strategies within their own prison to foster a working ethos focussed around creating a full working week
- The Ministry of Justice should create a clearly defined role for the prison industries unit in lobbying business on behalf of national government and extolling the virtues of real work in prison. The aim of the unit should be to support real work in prisons in the early days, e.g. developing standard contracts between business and prison. However the ultimate goal should be to create an atmosphere where private business demand for real work in prison is high and businesses are able to approach governors at the prisons themselves
- Within the next year at least three private companies should be in place across the two earmarked prisons. They should have signed contracts with individual prisons to run real businesses within prison. They should be in the process of actively recruiting employees from across the eligible estate. The prison service should make sure prisoners who are selected by private employers are transferred to the relevant real work prisons
- Governors in relevant prisons where real work is taking place must adopt an attitude of dynamic security that will improve conditions for prisoners and prison officers alike and make facilitating real work possible

- Prisoners recruited by private companies should sign contracts of employment with their employers
- The prison service, in co-operation with private businesses, should provide training to governors who need it on how to tender for business and how best to foster an appealing atmosphere for real work within prison
- The prison service, in conjunction with HMRC, should ensure prisoners are taxed and charged national insurance on their earnings
- Prisoners engaged in real work should make contributions to victims' funds based on agreements with their employer
- Prisoners engaged in real work in prison should be receiving a fair wage for the work done and contributing 25% of their gross salary to victims' funds. The remainder of their wages should be used in supporting dependants or saving for their release. Prisoners' charitable donations should be governed by agreements with their private employer
- Companies should be provided with a business friendly environment including contracts that provided commercial viability

### **In the long term**

- There should be at least two prisons where large numbers of prisoners are engaged in real work with a range of businesses. Businesses should develop a working relationship with prison staff and the prison governor
- The prison industries unit should begin to earmark further prisons where real work can take place
- The work of the prison industries unit in fostering a positive atmosphere for prison business should create a free market for real work in prison where businesses want to enter a prison and provide employment for prisoners based on a business case
- Infrastructure should be put in place so that businesses are able to approach prison governors and tender directly with them. Contracting support would continue to be provided by the prison industries unit. The unit would continue to trumpet the work of the real work prisons but negotiation would happen on a local level with local prison governors. Tendering for real work must be local, accessible and open
- The prison industries unit should publicise successful examples of real work in prison based on a business case. This should augment levels of demand for real work in prison
- The government should conduct a review as to how to reform benefits to prisoners and their families to allow for earnings made from real work in prison

## Polling data

In May 2011, the Howard League for Penal Reform commissioned market research company ICM to poll 1,000 respondents on the government's proposals to introduce real work into prisons.

The polling (ICM 2011) revealed that 51% of the public support the government's plans to make it easier to bring private companies into jails to employ prisoners in regular nine-to-five jobs. 26% oppose the policy, 19% neither support nor oppose the policy and 4% were recorded as 'don't know'.

But digging further down into public opinion reveals that:

- 87% agree that if such a proposal were adopted, prisoners employed by private companies should pay tax and national insurance on their earnings
- 82% agree that prisoners employed by private companies should contribute a proportion of their wages to a fund for victims
- 74% agree that prisoners employed by private companies should contribute a proportion of their wages to their families on the outside
- 79% agree that prisoners employed by private companies should put aside a proportion of their wages to save towards their return to the community
- 74% agree that prisoners employed by private companies should be paid the national minimum wage to avoid the prison workforce undercutting the local labour workforce

Even among those who oppose the proposals, support for elements of the policy if it were to go ahead was nonetheless high. For example, 73% of those who opposed the policy agreed that prisoners should be paid the national minimum wage if it were to go ahead; and 90% of those who opposed the policy agreed that prisoners should pay tax and national insurance.

The full data is available on the Howard League website.

# 1. Defining real work

The Howard League for Penal Reform set up a real business in Coldingley prison near Woking in 2005 (Howard League 2008). Barbed was a graphic design business and was the first commercial enterprise to be set up in a UK prison. It was established to make a profit for the charity. Prisoners were paid real and fair wages for the work undertaken. Prisoners were paid on the same scales as full-time Howard League staff with the same entitlements to annual leave and access to support as Howard League staff outside prison. They paid tax and national insurance. The design work was managed by a supervisor who was not a member of the prison staff and prisoners were treated as employees.

Before being recruited to work for Barbed design studio prisoners undertook interviews and the Howard League selected people they wanted to work for their company. Barbed was a real working environment in prison.

One employee of Barbed, Terry, stated (Howard League 2010a):

*“Barbed gave me a way to provide for my family and contribute in their lives positively. I was able to help pay bills, provide in new ways and support myself. I felt I was less of a burden to my family financially...”*

The definition of real work developed inside prison during Barbed was (Howard League 2008):

- Businesses would form their own contractual relationships with prisoners as their employees;
- Work would take place within the prison;
- Businesses would function within prisons to make a profit;
- Prisoners would be paid the rate for the job;
- Prisoners would make contributions from their earnings to a charitable fund and to victims; and
- Prisoners/employees must pay tax and national insurance.

Real work in prison looks to replicate, as closely as is possible, the experience of normal employment in the prison environment. An individual involved in real work in prison will be both employee and prisoner. In the former role there is a direct and legal relationship between the individual and the employer, while in the latter role there is the traditional relationship between the prisoner and prison. Real work seeks to keep the two as distinct as possible.

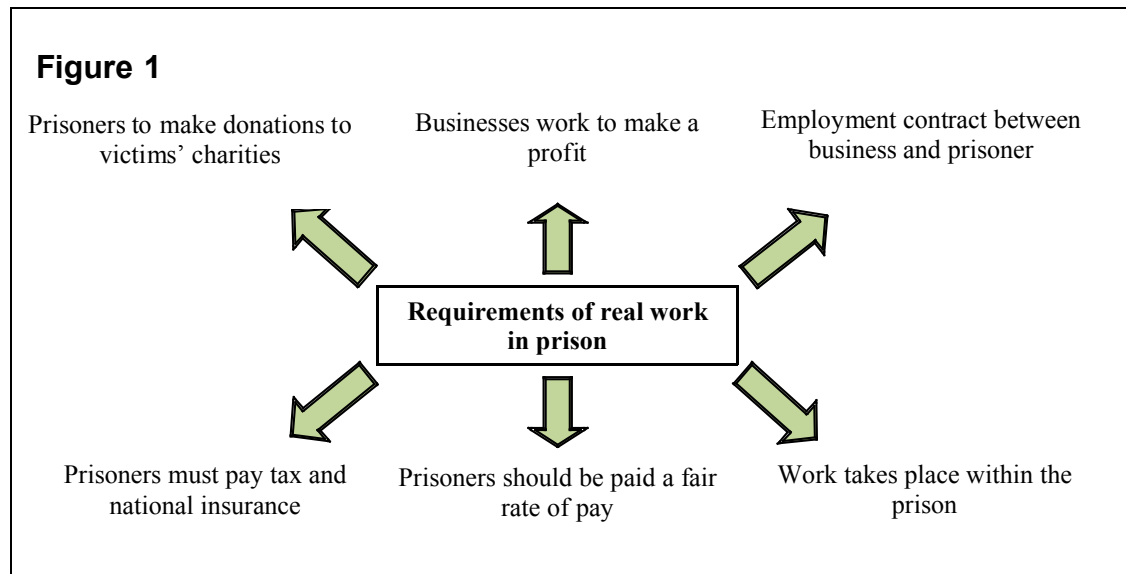
While prison will serve as the work place, the prison governor does not run the work or control hours worked. This is fundamentally different from what work opportunities are currently available in the secure estate.

Existing prison service work regimes have been criticised. Evelyn Shea found that many prisoners were critical of the work opportunities available to them. In particular, she noted prisoners ‘...desire to be given more responsibility and to be taken more seriously as competent workers’ (Shea 2007). Barbed demonstrates that real paid work with an external employer provides a normalised work context otherwise lacking from custody.



Reports following Barbed demonstrate that real paid work within prison motivates employees/prisoners and encourages work instead of the current ethos of enforced idleness. Its success will be measured in hours worked, time outside of cell and a company's profit.

Barbed demonstrated that real work can work for prisons across England and Wales. Despite obstacles from the prison service and the constraints of prison, Barbed highlighted that prisoners have a great capacity to work and business had a great capacity to transform. During Barbed the Howard League turned prisoners into graphic designers in just six months. Barbed shows that prisoners can be reintegrated into society through work. If real work is implemented properly and fully it will demonstrate that the prison service is capable of change to be more outcome effective.



### **Work in prison overseas**

The Howard League for Penal Reform is recognised internationally as having experience at setting up an enterprise within prison. We have worked with prison services and ministries in Finland, France, Germany and Estonia on the subject and have witnessed techniques employed by many nations to reproduce some form of employment within a prison context.

Real work in prison is a distinct idea that is not being employed anywhere else in England or across the rest of the world but it has generated interest from many prison services around the world. Table 1 below demonstrates some other practices that are taking place in other nations:

**Table 1**

<b>Country</b>	<b>Type of work</b>
<b>India – Deburma Prison</b>	Deburma Prison has set up a call centre within its walls. Regulations are in place to monitor use and internet uses heavily restricted. Prisoners are better paid for this work and engage more with it as such work is ‘useful on completion’ of the individual’s sentence (Guardian 2011). However, work is still largely regulated by the prison itself.
<b>France – general prison policy</b>	<p>All prisoners in French prisons are entitled to work and people on remand can work unless the Examining Magistrate decides not to authorise them to do so. Work depends on availability and nobody can be forced to work. Typically the work will be in industry or may include the assembly of small household or industrial products.</p> <p>The wages are, in practice, almost three or four times lower than outside and are paid by the state. The regulations dealing with social protection outside do not apply to work in prison. Wages are paid by the prison administration into the prisoner account as follows: 80% for canteen, 10% for gate money and 10% for victim compensation.</p> <p>The canteen money can be spent by the prisoner whilst in jail, whereas the gate money is only given to the prisoner on release. If there is no claim for victim compensation, these funds are added to the gate money (Prisoners Abroad 2009).</p>
<b>USA – Oregon Corrections Enterprises</b>	<p>Oregon Corrections Enterprises (OCE) began in 1995 when Oregon enacted a constitutional amendment that requires correctional institutions to actively engage inmates in full-time work or on-the-job training</p> <p>Over 1,100 inmates work in OCE programs throughout Oregon. In the past year these inmates were paid just under \$2 million in awards for their labour. Inmates contribute part of these earnings toward meeting their obligations for child support, state and federal taxes, court-imposed fines and victims’ assistance funds. Many inmates also help to support their families by sending home a portion of their earnings (Oregon 2011).</p>
<b>New Zealand – Otago Corrections Facility</b>	Prisoners participate in paid farming work. They are paid \$0.40-\$0.60 an hour for the work. The prisoners cultivate their own crops, including turnips for summer grazing. As skills allow, inmates also participate in pasture walks and contribute to developing feed budgets (Otago 2010).

While prisons in many jurisdictions are now exploring how to make prisons places of genuine industry, our experience suggests that no country has yet gone so far as implement real work in prison. Real work in prison will give England and Wales the opportunity to become a market leader in this emerging area of interest.

## 2. Businesses and markets

Markets for real work in prison come in all shapes and sizes. There are several factors to take into account if real work in prison is to succeed. Firstly, companies must want to work within prison in order for real work to take place. Furthermore, companies must gain a competitive advantage from choosing prison as the location from which to run their business, as is the case with any other business choosing a location. Finally, one must also consider the effect prison work would have on the external market.

### **RECOMMENDATION: Government should gauge the interest of the private sector in running a business within prison**

For an effective market to exist there must be demand. In this context private industry must be interested in running a business within prison. In order to gauge the interest of private companies in setting up businesses within prisons we recommend that the government undertake a demand study surveying private companies to see how willing or unwilling they would be to engage with those in prison.

There is no private business operating within a prison and directly paying their staff wages at the current time (Hansard 2011a). This makes business demand for real work in prison difficult to predict.

Despite this many firms currently do business with prisons. Statistics from the prison industries unit illustrate that over 100 firms, including Sony DADC, ASD Lighting and Travis Perkins, contract through NOMS to engage prisoners in work (Hansard 2011b). In this context prisoners are employed by the prison service and not by the company themselves. Despite this difference companies have clearly opted to use work within a prison setting. To demonstrate how effective the prison labour force can be, over the past two years NOMS has made £6.5 million from the contracts agreed with private clients (Prison industries 2010).

Further, certain companies, such as Timpson and the National Grid, have engaged with prisoners directly offering them paid training and work upon release (Ministry of Justice 2011a). While this is not real work in prison, their willingness to engage directly with prisoners in the context of employment shows an eagerness to engage with the prison system.

This evidence demonstrates that companies are willing to engage on a business level with prisons and prisoners. It will be important to draw upon these existing markets when creating demand for real work in prison.

### **RECOMMENDATION: Government should consider the incentives for businesses who wish to operate within a prison**

It is recommended that the government undertakes an audit of business incentives to consider how best to support businesses to work within the prison estate. This will be especially important when real work in prison is in its infancy, as government will be unable to point business to any specific success story since real work has not yet begun.

Businesses will want real work inside prison to function as well as business outside prison does and government will have to convince businesses this is the case.

Businesses willing to employ those in prison might enjoy some of the following benefits:

## Corporate social responsibility gains

Working within a prison gives a business an opportunity to demonstrate their corporate social responsibility. Other companies that are engaged in training projects in prison have experienced these gains. For example, Timpson run a training project in Wandsworth prison and have widely publicised their work alongside the Ministry of Justice (Ministry of Justice 2011a). The effect of such publicity is that Timpson creates positive gains for itself in the eyes of potential consumers by branding itself as a supportive employer. It is likely that any business who undertook real work in prison would enjoy similar gains.

However corporate social responsibility gains can be overstated. Ultimately a business does not function on goodwill alone, but exists to make a profit.

## Financial gains

Any business set up to engage in real work in prison must make sense as a business. Accordingly, it must make profit.

Dr Mary Harris of the National Grid Young Offender Training Scheme recognises this (BBC 2010):

*“We are talking about real jobs - this is not a charitable process - that are going towards the bottom lines of our companies. Their motivation has to be as high, or higher, than people who come to us through regular routes.”*

The same would be true for any real work business set up within prison. Employers would want an able and enthusiastic workforce capable of performing their jobs and creating a competitive advantage.

Employing prisoners creates numerous ways for companies to make financial savings. While prisoners must be paid a fair wage for the work done, prisoners engaging in real work are likely to be engaged in relatively low-skilled work and consequently some minimal pay savings could be made when compared with the community.

Savings will be more effectively created for businesses through reductions in capital expenditure. The ability to use pre-existing prison infrastructure will reduce or eliminate a significant proportion of the usual capital expenditure normally incurred at the onset of a new business venture. For example, prison buildings and workshops could be used rather than renting other premises outside the prison walls.

Government often provides inducements to corporations to locate in parts of the country that need regeneration, prison would fit this model. An inducement could be no requirement to pay for rent, light and heat. This is no mean cost saving.

Further cost savings and efficiencies might be created due to the incarcerated nature of the prison workforce. By employing those in prison a company might create a highly motivated workforce that is enthusiastic to work, as it represents a rare opportunity to spend time outside of cell.

When given the opportunity to work, such as through the social business Barbed, there has been clear motivation from the employees (Howard League 2008):

*“[The workforce would] love to stay longer... the lads can’t wait for the weekend to finish so that they can get back to work.”*

**Other business gains**

Government might wish to consider other ways in which they could encourage business to participate in real work in prison without harming the local economy. One such possibility includes favouring firms that take part in real work in prison when it comes to other government procurement deals.

Government should consider adding an, “evidence of supporting disadvantaged social groups” criteria to their procurement tendering checklist. This might encourage firms to run a business in prison in the early stages.

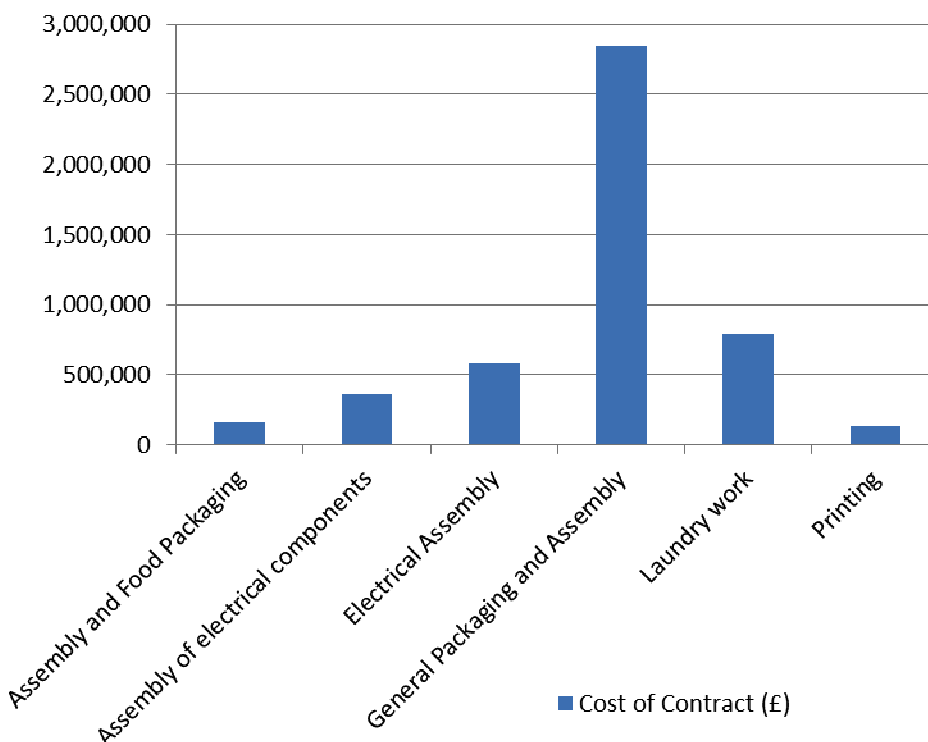
**RECOMMENDATION: Prison work should ensure that the local economy is not hindered through unfair competition**

It is important that business creation within prisons does not result in jobs being withdrawn from the local economy, in effect creating a zero-sum game. It is for this reason it is essential that prisoners receive a fair wage and prisons enterprises are therefore not in a position to undercut industry outside the prison walls.

There is some extent to which this argument can be overplayed. Evidence from the prisons industries unit within NOMS demonstrates that a great deal of work already takes place within prisons. It does so without damaging the local economy. Much of the work likely to be undertaken is low capital intensive work that is not prevalent within the local economy, for example, there is a great deal of packaging work done across the prison estate, this would likely be an expansion industry within prison work. The figure below demonstrates the current breakdown of employment tasks within the prison estate.

Figure 2 demonstrates that much of the work done within prisons at the current time is low paid work. While it is to be expected that real work in prison would bring further entrants to the market, it is likely that much of the work would be from a similar field. This is work that needs to be done and for which there are not sufficient suppliers in the UK market at the current time. Creation of further jobs in this sector is therefore unlikely to harm jobs elsewhere in the UK economy.

**Figure 2**



(Figures based on prison industries unit (2010))

### Skilled work

While it is likely that a large majority of real work in prison will be low skilled, one should not discount the possibility of prisoners undertaking higher skilled jobs should such a company wish to locate in a prison. Barbed design studio often received high praise from customers and work done was technical and challenging.

### **RECOMMENDATION: The Ministry of Justice should work with the Department for Business Innovation and Skills to explore the issue of repatriating business back to Britain**

Government should explore the possibility of on-shoring to create demand to run a prison business. Over the past two decades a number of manufacturing businesses have decided to off-shore their business, one such example is Dyson which moved large swathes of production to Malaysia in 2002 (BBC 2002). Given the rising price of logistics and fuel prices, the increased unionisation of overseas workforces and the demand for shorter run-time across sections of the manufacturing industry, off-shoring is not as appealing as it has been in the past. Companies that rely on manufacturing to satisfy retail demand have been eager to relocate back to Britain.

Another industry in which this point is particularly relevant is catalogue shopping, where supply chain costs represent the main expense. With lower consumer demand, higher duties for fuel, rising travel and transport costs, it is increasingly important that production is located closer to the distribution warehouses and the consumer base for companies to make a profit. Companies are beginning to compete to reduce costs in highly taxed areas, such as reducing their fuel emissions and carbon footprint (Guardian 2011b). Such companies are increasingly likely to repatriate their business back to England and Wales in an attempt to cut costs.

This hypothesis is supported by a 2009 survey conducted by the manufacturing trade body Engineering Employers' Forum (EEF) and accountancy firm Binder Dijker Otte & Co (BDO). A survey of 300 manufacturers showed that firms were beginning to move back to the UK. The survey suggested a number of motivating factors, including cost savings failing to meet expectations, a poor quality of goods produced and the slow speed of getting products to market (EEF 2009). The same survey stated that approximately 70% of businesses considered Britain to be a good place to run a manufacturing business.

Furthermore, a March 2011 report produced by the same organisations emphasised that growth within the manufacturing sector was continuing to increase. The report detailed that companies still planned to invest and recruit in the domestic manufacturing sector and that the first quarter of the year revealed better than expected figures (EEF 2011).

If the government can convince a select group of companies to repatriate work to the UK, this would avoid any negative press that real work in prisons was taking jobs away from those in the community.

While government allowing businesses to employ prisoners benefits prisoners, this does not mean that other groups in society will necessarily lose out. Indeed there is an economic benefit for all if prisoners have paid tax, if they are leaving custody

with savings after a period of employment or if they have remitted money to their families on the outside and reduced the burden on the welfare system. While care must be taken to avoid unfair competition, it does not automatically follow that improvements in prison work will lead to a detrimental impact for others in the community.

### 3. Markets within prison

Just as there must be sufficient business demand to work within prisons for real work to thrive there must be an adequate supply of able people capable of acting as employees. Companies will be looking for able staff and must be allowed to recruit freely from amongst the prison estate. Furthermore the prison estate must have sufficient facilities and structures to allow real work in prison to take place.

There were 126,000 people received into the prison estate in 2009 (Ministry of Justice 2010a). Not all of these individuals will be eligible to participate in real work in prison. This section of the paper will provide an estimate of the eligible prison population, making reductions from this original total.

From this final pool of employees it will be for employers to narrow down and choose employees, as is the case outside the custodial estate. In the section below we have suggested some criteria that private companies might wish to use to narrow down their selection of employees.

**RECOMMENDATION: The government should exclude prisoners on short-term sentences from real work in prison**

Real work in prison is not appropriate for the entire prison estate. In 2009 there were 50,442 prisoners who were received into prison for less than six months (Ministry of Justice 2010a). These people will not show up on most surveys of the prison population as they will not be in custody long enough to be counted in any static survey. This is evidence that such prisoners are in jail for too short a period of time to be of interest to a business who will want to train and develop their employees.

<b>Figure 3a: Running count of prisoners eligible to engage in real work</b>	
Total population in a prison cell in 2009	83,464
Total in prison for less than 6 months	5,114
Running eligible total	78,350
(Figures based on Ministry of Justice 2010a) (Continued in Figure 3b)	

**RECOMMENDATION: The government should look to place real work within the long-term prison estate for those serving sentences of more than four years**

The Howard League for Penal Reform, when running its business in prison, limited opportunities to work for those serving over four years in prison. This gave the business adequate time to train an employee and enjoy service for a period long enough to see a return.

Further to this, the selection of a sentence of four years or greater in prison creates time for those eligible prisoners to undergo drug treatment and offender management behaviour courses before beginning employment. Long-term prisoners normally complete their requisite courses early within their sentence and are then left to extended periods of idleness and unproductive time. It is this problem that real work will aim to resolve.



**Figure 3b: Running count of prisoners eligible to engage in real work**

Total number so far eligible	78,350
Total sentenced to four years or less	41,332
Running eligible total	37,018

(Figures based on Ministry of Justice 2010a)  
(Continued in Figure 3c)

**RECOMMENDATION: Prisoners eligible to work should be those within male category C prisons**

Male category C prisons represent the best recruitment area from which to gather potential employees for real work in prison.

While the Howard League does not preclude the possibility of real work being opened to women in long-term custody, there are greater pervasive problems with use of custody for women and the female prison estate that must be resolved before this can be considered (APPG 2011), and very few women serve long sentences.

Category C prisons are the lowest security closed prisons. Their inmates do not represent a risk of escape and are generally considered less likely to be violent than those in category A and B prisons. Those in category A and B prisons are unlikely to be suited to the stable 40 hour day working environment that is required for real work in prison. For this reason prisoners in category A and B prisons should be considered ineligible for real work in prison.

Category D prisons are often prisons with open conditions. While these prisons do represent the best recruitment ground on face value, the prisoners within them are often allowed to seek employment outside the prison gates. It is not appropriate to tie a prisoner to work within a prison when he or she might potentially be able to get work outside the prison. For this reason category D prisoners are ineligible for real work in prison.

In the interests of security across the prison estate and the commercial viability of those in business it is right that private business should be limited to recruiting employees from those serving long-term sentences within category C prisons.

**Figure 3c: Running count of prisoners eligible to engage in real work**

Total number so far eligible	37,018
Total of long-term prisoners not in a male category C prison	24,431
Final Eligible total	12,587

(Figures based on HMIP 2010a-r, HMIP 2009a-j, HMIP 2008a-e and HMIP 2007a-c)

The result of our narrowing down of the prison population suggests that there is a potential recruitment pool of 12,587 prisoners who:

- are not on a short-term prison sentence
- have been sentenced to four years or more
- and are currently housed in a male category C prison

**RECOMMENDATION: Potential employers should be allowed to recruit whoever they wish from the eligible pool of prisoners**

Like a real job, real work in prison requires that a private employer should be allowed to undertake interviews with their potential employees. Employers should be allowed to recruit from across the eligible estate without further restrictions from central government, selecting their employees just as they would in a real work environment. This will give employers faith in their workforce and normalise the working environment for those in custody.

When the Howard League employed prisoners in Coldingley interviews were conducted directly with potential employees in order to make the process of securing real work in prison as similar to securing work in the community as possible (Howard League 2008a).

The populist perception of the prison population is that prison is rife with people with social and disciplinary problems that private employers might well not be used to. This is true to an extent. Low literacy and numeracy skills, as well as drug and alcohol problems are commonplace within the custodial estate as a whole (Social exclusion unit 2002). However such problems are concentrated in the short-term sentenced population that has already been excluded from our eligible working population. It is abundantly clear that such problems do not exist to the same extent for long-term category C prisoners.

The following extract from Coldingley prison's recent HMIP report demonstrates this point (HMIP 2010i):

*"The positive random mandatory drug testing (MDT) rate for the six months to end May 2010 was quoted as 4.84%, which was lower than the target of 11%."*

This contrasts to the figure on drug use for the general prison population, where NOMS estimates that 55% of people entering prison have a serious drug problem (Hansard 2011c). Such a figure would be a serious bar to employment for certain inmates.

Consequently, it is recommended that private employers should be allowed to discern for themselves who they choose to employ, rather than having central government engage in a costly filtering process to eliminate employees based on artificially inflated criteria. An employer knows best who to employ, they understand the needs of their company and should be allowed to make this decision unfettered within the eligible population.

Private employers can be aided by the interview process and references from prison governors and staff. They will face some situations where an individual has literacy or learning difficulties. However, such situations need not necessarily exclude an employee from certain forms of employment. Further, should an employer wish to sift out individuals with drug or alcohol problems they would be able to do so using standard interviewing techniques and references. An extra

layer of bureaucracy to filter for social problems is not necessary when working with the long-term category C prison population.

The exclusion of those serving a short-term sentence will reduce the likelihood that a prisoner will be involved in alcohol and drug abuse. Furthermore, the criteria, that prisoners must have been sentenced to over four years in custody is likely to reduce the population with low literacy and numeracy skills as many will have undertaken a course to remedy this situation at the beginning of their sentence. This is the clear benefit of delimiting the eligible population to those serving a long-term sentence. It is likely that the eligible population for real work will be less troubled by social problems than the statistics for the general prison population suggest.

**RECOMMENDATION: The prison service should earmark at least two potential category C prisons that will house real work in prison in the first instance. The prison industries unit should explore sites and decide which prisons are most appropriate based on capacity for industry.**

In addition to the need for supply of a suitable workforce, real work will require suitable capital supply – in the form of buildings, work spaces and capacity.

It is important that whatever prison is used to house real work there is sufficient space for industry. It will be important to pick appropriate prisons for appropriate forms of work. However the prison estate has capacity to facilitate a wide array of work (prison service 2011):

*“There are over 300 workshops employing around 10,000 prisoners each week day in a range of disciplines including producing goods for the internal market, including complex and challenging production tasks such as clothing, window frames, woodwork, office furniture manufacturing, plastic injection moulding, printing, light engineering and laundries.”*

Category C training prisons are the most suitable institutions to house real work within the custodial estate. They already house a wide range of work and workshops. Below is a list of Category C training prisons that could be used as venues to house real work in prison. The fourth column of the table demonstrates that the prisons listed have the capacity to potentially be involved in real work on a large scale:

**Table 2**

<b>Appropriate prisons</b>	<b>Weekly hours of purposeful activity worked in 2000-2001</b>	<b>Weekly hours of purposeful activity worked in 2008-2009</b>	<b>Current working population</b>
<b>Channings Wood</b>	33.6	26.1	597 (82% employed)
<b>Coldingley</b>	40.9	26.8	505 (100% with employment possibility)
<b>Everthorpe</b>	27.1	25.3	652 employment, learning and skills places
<b>Featherstone</b>	24.3	26.6	There were sufficient full- and part-time work places (approximately 680) to meet the needs of the population and nearly all prisoners were employed. Contract workshops provided the majority of work places and the prison had contracts that provided real work skills and accreditation in many areas. These included welding and fabrication of cell doors and windows, furniture assembly, textile work and stores. The engineering workshop offered prisoners the chance to learn paint spraying and use computerised numerical control machinery for cutting. Waiting lists for construction courses were high and often exceeded 100 prisoners. The work ethic was poor in many workshops. Prisoners arrived up to 25 minutes late from lunch and then proceeded to make a drink. This was insufficiently challenged. During the inspection some workshops operated with only 75% of the available work places filled.
<b>Haverigg</b>	33.6	28.3	70% occupancy of the 396 places, which involved around 30% of the population
<b>Mount</b>	18.3	25.5	85% of prisoners were engaged in work activities. At the time of the inspection, 656 prisoners were in employment, education or training in the morning and 648 in the afternoon.

<b>Maidstone</b>	21.7	26.4	There were excellent opportunities to develop employment skills in the bricks, and printing and graphic design workshops. Prisons Information Communication Technology Academy (PICTA), recycling and horticulture, but only 27% of prisoners were employed in these areas which was low for a training prison. 18% were in low quality contract work in workshops and over 100 prisoners were employed as wing orderlies.
<b>Risley</b>	23.8	23.8	245 prisoners were not in work or education and there were 68 unfilled vacancies in workshops.
<b>Verne</b>	27.6	26.9	There were 550 workplaces available, mainly in contract workshops, stores, kitchen, waste reclamation, cleaning and orderly work.
<b>Wayland</b>	23.3	24.2	Only 80% of the population had access to some form of work or education and during our roll checks 30% of prisoners were not engaged in any purposeful activity.
<b>Wellingborough</b>	25.3	25.1	Levels of purposeful activity had improved and the number of work places had increased from 507 to 540 full-time equivalents. All prisoners had the opportunity to be engaged in some form of work, vocational training or education but a large proportion of the work was mundane and not appropriate for a category C training prison.

(Figures based on HMIP (2010h); HMIP (2010i); HMIP (2009c); HMIP (2009d); HMIP (2009e); HMIP (2009h); HMIP (2009f); HMIP (2008d); HMIP (2010p); HMIP (2009i); HMIP (2010q))

Finding appropriate space and an appropriate workforce will require some restructuring of the existing prison estate. Not all of the prisons above will be perfectly suited to provide real work. However two prisons of particular interest are Coldingley and Featherstone. Both started life as industrial prisons and are therefore built and designed to facilitate industry. Coldingley was responsible for production of road signs and Featherstone was designed to cater to the prison internal market, creating prisoner clothing and equipment.

According to the Coldingley section of the prison service website (Prison Service 2011b):

*“Coldingley is focused on the resettlement of prisoners. It provides a framework to support the achievement of realistic resettlement goals by offering opportunities to prisoners willing to work hard and accept responsibility for achieving those goals.”*

That is not to say the other prisons in the table above could not house real work but that there is much work to change them around. Take the most recent prison inspection of Risley prison as an example (HMIP 2008d):

*“For a training prison, Risley still had too little purposeful activity and well over a third of prisoners were found locked in their cells during the core day. Compounding this, available activity places were under-utilised, some work was menial and there were too few vocational training opportunities.”*

It would not be prudent for the prison service to attempt to begin real work in all category C training prisons at once as this would represent a significant burden on the prison service. For this reason we recommend that to start with prison business should be undertaken in a limited selection of prisons. It will be a role for the prison industries unit (see below) to explore which prisons should be used immediately for real work and which prisons might need more time to be converted into a possible place of real work.

Based on the information above it does not seem impossible that all 11 category C training prisons might eventually hold some real work.

In addition to the category C training prisons, discussed above, in the long-term consideration could be given to some category B prisons, that hold long-term prisoners facilitating real work in prison. Such a change might add several thousand more potential candidates to the eligible prison population. Further it may add several more eligible sites for hosting real work.

### **Exploring different ideas – dedicated work prisons**

Some organisations have suggested the creation of specialised working prisons, either by creating new build prisons or by dedicating whole prisons to real work. This proposal is likely to be unfeasible. Building new prisons is expensive and at a time of fiscal restraint such expense is unwise.

Further, the designation of set prisons as exclusively work prisons is problematic. At the current time, work takes place in greater quantity within some prisons than others but table 2 clearly demonstrates that very few prisons will have sufficient capacity to allow everyone within their prison the opportunity to undertake real work in prison.

Creating whole prisons where everyone is employed is likely to place too immediate and too extreme a burden on prison governors trying to manage their population. Furthermore, to designate certain training prisons as the only ones able to engage in real work will act as a form of protectionism, preventing businesses from being able to freely negotiate with a wide range of prison governors, who will compete between one another to become the best prison to run prison industry from. Such competition is to be encouraged as it will increase standards across category C training prisons.

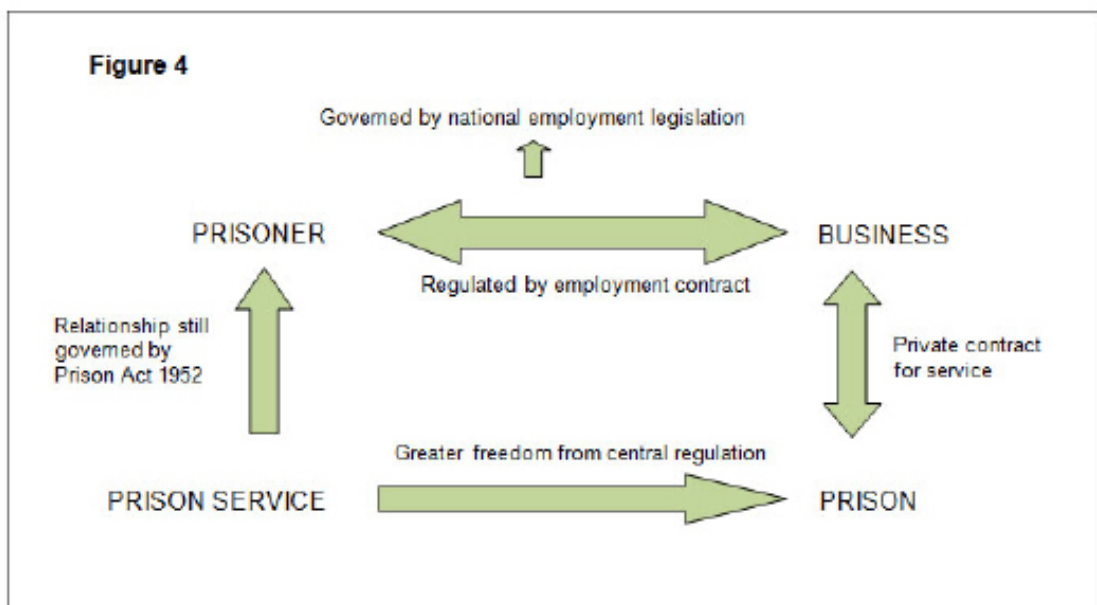
While government should originally authorise only a small selection of category C training prisons to engage in real work in prison, the aim should be for all category C training prisons to hold some real paid work in prison.

## 4. Regulation and prison governance

Real work in prison must be as similar to work in the community as possible. The relationship between prisoner and employer should be contractual. The relationship between business and prison should also be contractual. The use of orthodox private law arrangements as a framework for prison work will allow businesses to use structures with which they are already familiar. It will also serve to normalise the working experience as much as possible for prisoners, many of whom will not have experienced an orthodox working situation before.

Real work in prison requires a reduction in the role of the centre from prison life. For real work to function, businesses must have faith in the relationships they enjoy with both the prison and the prisoner. Further, the public must be reassured that the prison remains a secure environment with a priority on safety.

Figure 4 below maps out the web of relationships between prison, prisoner and employer within the framework of real work in prison:



This framework mapping sets the tone for much of what is to follow concerning the arrangements for real work in prison.

### **RECOMMENDATION: Prisons used as locations for real work in prison should improve security using a dynamic security approach**

Before discussing the appropriate reductions in centralised regulation required to make real work in prison function, it is important to consider the security implications such deregulation might entail. It is important to state that while the prison service is often considered overly bureaucratic, a great deal of bureaucracy and internal regulation is necessary given the ultimate purpose of prison as an institution. Security is a paramount issue for any prison. Prison governors and prison staff will therefore be rightly concerned about security issues in prisons where prisoners are working more regularly.

However real work presents an opportunity for the prison service to improve security and safety in prisons by moving to a model of more 'dynamic security'. Dynamic security is essentially a preventative approach to security which seeks to avoid incidents before they take place. Real paid work in prison would facilitate a dynamic security approach.

### Dynamic Security

Dynamic security was first introduced into prison service lexicon by Ian Dunbar. Dynamic security is an approach to establishment safety based on the relationship between staff and prisoners. In part, it means that everyone who works in prison has a responsibility for security and control. In practice however, 'dynamic security' means that staff should mix with prisoners and talk and listen to them while remaining alert to the atmosphere and potential for incidents.

(Extract from Jewkes (2007) at p. 263)

Dynamic security can be contrasted with 'static security', where bars, gates and the use of CCTV inhibit prisoner movement and reduce the time staff and prisoners spend in close contact with each other. Category C training prisons are already more dynamic institutions compared to the higher category jails. This is a result of the different make-up of those in the category C training prison population. The implementation of real work in prison would make such prisons more dynamic. In a sense the structure of the prison day would be dictated less by physical features of the institution and more by the demands of business and the working week.

Many years experience of working with prisons has proved to the Howard League that good relationships between prisoners and staff, as well as a busy and productive regime, reduces security risks and makes prisons safer. This point is proved by recent evidence presented to the Howard League during prison visits. It was demonstrated that the introduction of prison councils had significantly reduced the number of security incidents within prison. It is likely that real work in prison could function in a similar manner.

In the prison estate as a whole prison workers face significant problems:

**Table 3**

Serious incidents in prison	2007	2008	2009
Population	80,216	82,572	83,559
Assault incidents	15,272	15,959	15,180
Assault incidents per 1,000 prisoners	190	195	180
Serious assaults on prisoners	1,485	1,491	1,319
Serious assaults on staff	285	283	267

(Information from Ministry of Justice 2010b)

As discussed above disciplinary problems are less prevalent in the long-term category C estate than in the remainder of the general population. Nonetheless real work presents an opportunity to improve conditions for prison staff in such prisons still



further. For example, real work would arm prison governors and prison staff with more appropriate incentives and sanctions.

In the case of a serious assault that was proved and the prisoner was an employee a business would likely dismiss their employee and a prison governor would transfer the prisoner away from the prison. However such scenarios are rare in category C training prisons.

In the case of a minor infringement of prison rules, prison governors could consider the use of fines. Governors might still use punishments such as segregation and such sanctions would result in a “double whammy” effect as the employee would also be absent from work and could lose wages and/or face additional disciplinary action from their employer.

Further, punishments like segregation would still be available for prisoners at weekends, as would losses of other privileges. However, in the long-term prisoners would be keen to avoid such sanction for fear of losing their private employment.

The risk of a prisoner having their reputation tainted in the eyes of not just the prison authorities but their potential future employer provides substantial disincentive to prisoners not to engage in offending behaviour while in prison. Barbed proves that prisoners want to work provided work is meaningful.

Dynamic security works by incentivising good behaviour rather than providing ineffective disincentives against indiscipline. It will offer a radical improvement for prison officers and better value for money to the prison service that will not have to focus so heavily on enforcement across relevant prisons.

G4S has indicated that they can operate some prisons with a 38 hour working week (G4S 2011). The result was different risk assessments and different working practices but in the long-term an active working regime appeared to decrease security concerns. Prisoners who were engaged in long hours of work were more likely to be tired and less likely to pose a security risk.

Further, allowing prisoners to eat a packed lunch in the workshop created fewer security risks as individuals did not have to be moved around the estate and repeated counting in and counting out of the prison workshop did not take place.

Real work in prison can make prisons safer and more secure for those who work in them.

**RECOMMENDATION: Government should empower prison governors and allow them to run their prison to create a business-friendly ethos**

Governors of working prisons need a greater level of autonomy from central government and national agreements to run their prison and support companies willing to run a business. They should be given flexibility to co-ordinate the day-to-day workings of the prison and should only be constrained by a de minimis set of central standards, such as those on visitation rights, the prison service orders and by the contracts with the companies in their prisons.

During Barbed we encountered problems setting up a business within custody (Howard League 2008):

*‘Perseverance was required to deal with the culture of security, inertia and inflexibility endemic within the prison service’.*

Problems were encountered with the prison service attempting to exercise too great a control from the centre. Barbed eventually succeeded thanks to the support of Coldingley's former prison governor, Paul McDowell (now the chief executive of Nacro), who went out of his way to support the business. Indeed the Barbed studio was ultimately closed due to constant prison lockdowns, necessitating a halt in business due to centralised agreements and regulations.

A similar view was expressed by a Timpson representative when he spoke about setting up a training project within prison (Telegraph 2010):

*"It took a lot of organisation at the prisons, such bureaucratic places. Lots of businesses want to help but find it just isn't worth the effort."*

The pressures on the prison system are such that for too many establishments prisoners spend the bulk of their time in their cells and prisoners are separated by more than physical walls from the communities around them. Real work is about bringing the community into a prison and creating a normal work environment. Within that framework governors need discretion from the centre to shape the prison day around real work so as to make it feasible. They also need the power to make sure the prison is secure. This might involve changes to certain centralised regulations and working structures. Two such examples are described below.

### **The core day**

The prison core day is found in Prison Governor Instructions and means that prisoners are only available for work for four and a half days per week (Ministry of Justice 2009a). It was introduced as a cost-cutting measure, to lock prisoners in their cells and reduce staff. At present, governors have no discretion in this schedule. Prisoners are allowed out of cell for work on Monday, Tuesday, Wednesday, Thursday and on Friday mornings.

Further, a two hour lunch lock-down is often imposed. Friday afternoons are therefore not available for business. This was a continued problem throughout Barbed and contributed to the firm's closure. The effect of the core day on prisons' effectiveness and output has been negative.

A Ministry of Justice review of the core day demonstrated that 59 prisons had achieved less purposeful activity since the introduction of the core day and 37 prisons had experienced lower industrial output following introduction of the core day (Ministry of Justice 2009a)

This is likely to be unattractive to a business hoping to employ individuals within prison. The core day should be removed in relevant prisons so that governors can facilitate a working week that is as full as possible.

### **Prison staffing operations**

Prison officers' shifts and working times are governed by a national agreement called Bulletin 8 (POA 2010). This document potentially inhibits governors' discretion about how to structure working patterns. Bulletin 8 states that governors cannot split the shifts of officers and cannot extend shifts, save in exceptional circumstances.

In particular, Bulletin 8 could cause problems in creating a suitable working week, as shifts are fixed and agreed on a national level. This means governors might not be able to change patterns around a working week within relevant prisons. Bulletin 8 allows for minimum staffing allocation for set tasks which may result in insufficient priority being given to a relevant prison workshop.

Table 4

Business needs	Prison challenges
<b>A forty hour working week</b>	<p>A lot of attention has been paid to the difficulties in creating a 40 hour working week within prisons for business to function. However the average full-time worker outside prison does not work for this period of time. The Office of National Statistics states that the average UK worker worked 37.5 hours per week as of February 2011 (ONS 2011).</p> <p>However there remains a marked difference between a 37.5 hour working week and the amount of time spent working per week in category C training prisons. Table 2 (above) demonstrates that the highest average amount of hours of purposeful activity to take place in one prison was 28.3 hours per week. Purposeful activity is not synonymous with work but encompasses activities such as education. Clearly there is a long way to go.</p> <p>The core day and the staffing implications of bulletin 8 at lunch times will make it difficult to attain a 40 hour working week.</p>
<b>A stable working week</b>	<p>During Barbed prison lockdowns were often put into effect. The result was unpredictable working hours. Prisoners were not left in the workshop to work but had to be locked down due to staffing shortages.</p>
<b>Access to the prison</b>	<p>Prison gate operations are tightly controlled and the result is that business vehicles might not be able to pass as freely as they would otherwise like to. However Erlestoke prison permits daily pickups from a local company who provide some menial prison work within its walls. It is important that pickups are well co-ordinated but this problem is not insurmountable.</p>
<b>Access for business staff</b>	<p>There are understandable security checks that take place when an individual is permitted to enter a prison for the purposes of business. Howard League staff undertook background checks when they worked in Coldingley as part of Barbed. However the prison was willing to let Howard League staff conduct business and carry keys. This will be essential for any further real work in prison.</p>

Further, rigidly fixed rest periods often cause two hour lunch lockdowns that cause other problems discussed above, as prisoners must be locked down for a further hour after their own lunch break for the officers to have lunch themselves.

**Business needs**

It is difficult to imagine running a successful business within constraints such as those above. Businesses need to make profit and they require secure and guaranteed working practices. The table below demonstrates four possible needs of businesses should they engage in a real work in prison project.

## Greater discretion

None of the problems above are insurmountable; a forty hour week and a stable working week can be created within category C training prisons. Some prisons do create such a working week for prisoners who provide services to the prison, e.g. kitchen staff.

However governors require greater discretion from government so that they can adapt and react to the needs of businesses on the spot. Businesses must know that they have a direct relationship with the governor and can go to them if they have a problem that needs resolving in the interests of the business.

For example, issues cited above around the prison gate could be agreed between a governor and a business. However a prison governor would have to stick to the agreement once made, as businesses would rely on its accuracy. They would need to have sufficient power to assure they could stick to such an agreement.

Bulletin 8 must be reviewed to assure that it can fit alongside real work in prison. While workers' rights must be respected governors need sufficient flexibility to guarantee businesses minimal disruptions to working hours. For example, lunch hours need to be shorter and it might even be easier to allow prisoners to eat a packed lunch in the prison workshop, as is the case at Wolds prison (G4S 2011). It is possible that in certain circumstances governors might require a locally negotiated agreement to deal specifically with the needs of the prison and the businesses within them.

Certain prisons have already demonstrated their flexibility within the core day. Authorities at Erlestoke prison have had some success in reducing the lunch break; from two hours to one and a half hours in length. However it remains a burdensome problem to private companies who will want longer working hours when operating within prison.

However when asked specifically about the operation of the core day in a recent interview, Michael Spurr, chief executive of NOMS, stated that he might be willing to remove the core day to allow real work in certain prisons to take place for a sufficient number of business hours per week (Insight 2011). This type of change will be required in order to allow prisons to provide a business environment and culture where business comes first.

Governors must be given the authority to run a business in a manner conducive to business.

### **RECOMMENDATION: Governors should be put in charge of a small and localised tendering process that allows people to compete to set up businesses within prison**

The governors of working prisons must be given control of a simplified tendering process for real work opportunities. Governors know best which business suits their individual prison and it should be a matter for them, not central government, who should decide which companies operate within their prison walls.

Tendering should be open to all and accessible to all businesses regardless of whether they only operate within the local area. The market should be free and accessible without recourse to complex bidding procedures that favour national and international companies.

Simplified and localised tendering of real work opportunities does not seem to be caught by the provisions of the Public Contracts Regulations 2006 on a preliminary

reading and therefore does not seem to require the European-wide advertising that many public sector contracts do. In the case of real work there is no public service of value being contracted out. The item of value being tendered out by the public sector is the opportunity to do business on prison premises. Further, the state is not directly paying a private provider for the service.

Despite the apparent non-applicability of European regulations concerning tendering there are other matters surrounding tendering which are likely to apply. Judicial review processes require transparency in government decisions where private industries are involved; it is important that governors decide to award local contracts on a clear set of criteria. Such criteria could be drawn up by the prison industries unit (see below) and should be publicly available. They should leave governor's discretion and not be so onerous as to present a barrier to small and medium sized industries. Any criteria created should take into consideration:

- the best interests of the prison;
- the financial and technical merits of the business proposal;
- the firm's commitment to working in an ethical manner; and
- the possibility for prisoners to obtain long-term employment with the company upon release.

The notion of more diverse and localised tendering has been stressed in recent speeches by the Prime Minister when he decried "the public sector procurement managers who think that the answer to everything is a big contract with a big business and who shut out millions of Britain's small and medium-sized companies from a massive potential market" (Guardian 2011a).

Real work in prison will allow small and medium sized companies access to the competitive marketplace.

**RECOMMENDATION: The prison industries unit in co-operation with private businesses should provide training to governors who need it on how to tender with business and how best to foster an appealing atmosphere for real work in prison**

President of the Prison Governors' Association, Eoin McLennan-Murray, felt that while many governors would have the skills necessary to run a tendering process other governors might require further support and training.

Prison governors will need support when tendering business opportunities. Part of this support can be offered through a revitalised prison industries unit within NOMS. However prison governors might also wish to contract out the process of tendering business space within their prison to specialist brokerage firms.

As stated above, businesses operating within prisons will involve widespread changes in the operations of the prison service and the relevant prison itself.

For relevant prisons new discretion and powers will need to be placed in the hands of the governor, including some role in tendering and greater discretion regarding prison operations. This might well involve further training and resources for governors. When asked about further skills training, Eoin McLennan-Murray stated (text from Howard League interview with Eoin McLennan-Murray):

*"It is an area where support would need to be available for a number of governors."*

With such a fundamental change in ethos and greater freedom to govern it is inevitable that some upskilling and retraining will need to take place. Further, a greater level of support services might be needed to support prison governors in working prisons.

**RECOMMENDATION: The relationship between the prison and the private employer must be governed by a contract**

Businesses engaging in work should have a contract with the prison service and the governor of the relevant prison. The terms of the contract would be open for negotiation between the prison governor and the relevant business. This contract would serve as the primary framework that the prison governor would have to comply with; it would enforce the needs of the business enumerated above and give business sufficient confidence to employ prisoners on real work projects.

The core terms of any potential contract are listed in the table below.

**Table 5**

<b>Contractual Issue</b>	<b>Detail</b>
<b>Number of hours worked</b>	For businesses to engage in real work in prison they will need to be contractually entitled to a set number of business hours per week. The issue of how many business hours might be appropriate has been discussed above but it is for prison governors to guarantee the business an amount of hours that they believe to be appropriate and possible based on their individual regime.  In the case of non-compliance with the business hours there will need to be a compensation mechanism in place to reassure business about the merits of working in prison.
<b>Place of business</b>	Businesses will want assurances about the place of work and its availability for the purposes of the business.
<b>Permitted staff</b>	Businesses will require that certain prescribed staff members be allowed access to the prison and the prison workshop during working hours so that they can use their own supervising staff. Staff will have to be cleared by the prison authorities and there will need to be terms about how such individuals conduct themselves on prison property.
<b>Term of business</b>	The contract should include a time limit as to how long the business will continue in the relevant prison. While the exact length of the contract will depend on market demand, discretion for this term should lie with the prison governor. Contracts should last long enough to give businesses certainty in their business and the faith to participate in real work in prison.
<b>Employer will be permitted to pick his own workforce</b>	As stated above, the business involved in real work in prison will want to employ using its own interviewing process.
<b>Access to the outside</b>	Participating businesses would need a guarantee from the relevant prison that they could get access to the outside world. The Howard League experienced difficulty with fundamental matters, such as the installation of a phone line, in Coldingley prison. This is a matter that would be better resolved and costed in contractual negotiations rather than during the life of a business.

<b>Storage and transit</b>	Following production of goods such goods might have to be temporarily stored on the prison site for a brief period. The contract should contain terms about capacity and times for transit.
<b>Governor must retain the right to prevent an individual coming to work or the right to close down the workshop</b>	<p>The Prison Act 1952 rightly gives discretion to prison governors to maintain the security of their prison. In a situation where prison security is under threat prison governors must retain the power to prevent an individual or the prison as a whole from attending work if they feel that person is a danger to security.</p> <p>Contractually prison governors must retain this discretion. However, short of an emergency, the prison will face financial contractual penalties when they prevent an individual from attending work unnecessarily.</p> <p>If an individual is a threat to security and it affects his work then prison authorities should liaise with the prison business and the two could agree action between themselves as to an appropriate action given indiscipline, which could range from the governor fining the prisoner money from their wages to terminating employment (which would then result in transfer out of the prison). Equally, governors should be able to apply a similar of work-related penalties for prison indiscipline outside of working hours</p>
<b>The employer must not undermine the role of the governor</b>	This term was in the Howard League’s contract with Coldingley prison when it ran Barbed. It is important that a prisoner is not put in the compromising position of having to choose between the prison regime or his employment. Governors require the ability to run their prison and for employment to be successful it must be seen as distinct from the daily running of the prison regime.
<b>Confidentiality</b>	There might be issues around confidentiality that require addressing in a contract between a private business and the prison. These might include details of security and prison layout.
<b>Assignment</b>	A private industry will not be allowed to assign their right to conduct business within prison to a third party.

(Terms and conditions above based on the Howard League’s contract with Coldingley prison for Barbed)

Using orthodox contractual relations will breed business confidence that they will have remedies in case a prison regime breaches the agreement. This is the best way to reassure business that they are guaranteed appropriate business support when working in prisons.

**RECOMMENDATION: The prison industries unit must play a role in promoting and supporting prisons and businesses to run real work in prison**

The increased role of local governors described above necessitates a diminished role for central government in the running of prisons involved with real work in prison.

However the devolution of certain powers to local governors does not mean that there is no role for central government in co-ordinating real work in prison.

The prison industries unit, consisting of 54 FTE, is an entity that currently exists in the Ministry of Justice which (Hansard 2011d):

*“... provides overall management and production planning to ensure all prison industries are effective and efficient in supplying goods and services to both the internal Government market ... and external customers, while maximising the number and length of time prisoners are employed and, improving prisoners’ employment and resettlement prospects.”*

This unit’s focus is currently centred on private companies contracting with the prison service. This needs to change to a focus on promoting real work in prison and supporting the tendering process described above. Functionally the unit should work to draw up draft contracts between businesses and prisons, creating benefits from economies of scale.

The prison industries unit should work to provide guidance as well as technical and legal support when contracts are being drafted. In particular the centre might have to play a leading role when it comes to compensation clauses in case of business non-compliance (see above).

Further, they will play a role in advertising successful businesses on a national level. The Ministry of Justice has done this well in the past with successful work-training projects (Ministry of Justice 2011a).

While it is primarily envisaged that tendering would be undertaken on a local level. Some contracts might also still be agreed at a state level, where super-national companies might want a guaranteed working environment of more than one prison. Central government might reserve sufficient tendering powers to make such an agreement.

However, the prison industries unit will primarily be responsible for getting real work in prison off the ground and promoting it as a business opportunity in the first instance. They will be the key advocates for real work in prison within NOMS and will promote it as a feasible option for businesses.

### **Prison Transfers**

A crucial aspect of prioritising real work in prison concerns prison transfers. A problem was experienced at the Barbed studio in Coldingley with the (Howard League 2008):

*“...sudden and unannounced movement of staff (prisoners) to other prisons or their removal from the enterprise by the prison authorities without consultation with Barbed employer. Three Barbed employees [were] removed from either the job or the prison (and with it the job) without forewarning or even formally notifying the Studio Manager. ”*

In prisons with real work this should no longer be permitted. No employer will invest in training and equipment in prison only for the prison service to undermine their investment through instant prison transfers. It will be the role of the prison industries unit to reinforce across the prison service that an individual engaged in work could no longer be transferred away from his prison without a very strong security based reason and discourse with the employer.



**RECOMMENDATION: Prisoners recruited by private companies should have signed contracts of employment with their employers**

The business and the prisoner should enter into a normal private law employment contract. When the Howard League ran Barbed in Coldingley it was unable to enter into normal employment contracts with inmates as the prison service and HMRC felt this undermined the inherent powers of the prison governor as found in the Prison Act 1952. This act grants the governor wide discretion to run their prison. Instead the Howard League entered into compacts with the prisoners and paid the salaries of the employees to the prison governor to redistribute.

There is no reason why prisoners should not sign private law contracts with their employer like normal employees. This contract would entitle prisoners to normal protection under employment legislation. For example, they would have the right not to be unfairly dismissed after a year of employment (as per the Employment Rights Act 1996), they would have the right to work in safe work place (as per the Health and Safety at Work Act 1974) (the company would have to assure the prison complied with these obligations) and the right to enforce the terms of their contract. Importantly such a contract would give the prisoner a direct relationship with their employer.

There is no reason why such an employment contract should interfere with the power of the prison governor to run their prison securely and safety. For the avoidance of doubt a contractual term could be placed in the employment contract emphasising the rules contained in the Prison Act 1952 supersede the contractual obligations contained within it.

The use of a direct contract of employment would require private employers to pay prisoners directly. It would also mean that prisoners would be employees and therefore liable to pay taxation and national insurance, something that Barbed employees were not allowed to do. It would ensure that the prison service was complying with Prison Service Order (PSO) 4460 subsection 2.8.1 that states (PSOa):

*'Prisoners earning over the normal thresholds for Income Tax and National Insurance contributions are not exempted from these payments.'*

To date this PSO has only been applied to prisoners who are employed on the outside of prison and are serving their sentence under open conditions. This taxation has caused no problems or concerns for the prison service or HMRC and there is little reason why taxation should not happen for work done inside prison.

Allowing prisoners to be employees will cause minimal inconvenience to the prison regime and serve to allow prisoners to pay tax and national insurance. Paying these contributions is a strong lesson in social responsibility and therefore necessary for real work to occur. It is also right that prisoners should not be exempted from national insurance and tax when everyone else who works in the country must pay it.

**Prison service incentives**

Not a great deal has been written in this paper about the incentives for the prison service and prison governors. In our experience, prison governors are eager to make prisons a better place and will welcome real work. However real work in prison will save prisons money creating room in governor's budgets. Savings will be available to prison governors who engage in real work as a result of eliminating job repetition. Real work decreases the number of civilian staff needed to supervise in prison workshops as private employers will bring their own supervisors and work patterns.

## 5. Prisoner incentives and earnings

As is the case with work outside penal custody, prisoners involved in real work's primary incentive will be financial. Real work in prison will represent an opportunity for prisoners to receive a fair wage for work undertaken, support their families and prepare for release.

Prisoners are also likely to draw some incentive to work from the captive nature of their workforce. Prisoners who worked at Barbed expressed the feeling that they had escaped the prison environment when they engaged in work for a private employer (Howard League 2010a):

*"When I come in here it's like I'm away from the prison, it feels like a proper job – we have deadlines, it's a very different environment, you feel relaxed..."*

Escaping the monotony of prison life and working for a body that does not represent the institution of incarceration provides a strong and clear incentive for prisoners to fully engage in real work.

### Thinking through the gate

The Ministry of Justice should consider employment opportunities following an individual's release from prison when devising any potential real work in prison regime. Undertaking real work in prison with a private employer creates the prospect of being taken on full-time upon release by the same employer.

At the current time prisoners in category C training prisons are often relocated prior to release to category D prisons. It is often the case that these prisoners are held in closed conditions in these prisons for up to six months before becoming eligible for open conditions.

This means there is likely to be a six month break in an individual's employment with a private employer when they are transferred to a category D prison. Such a break in employment is needless and ineffective and the Ministry of Justice should explore ways to resolve this anomaly.

### **RECOMMENDATION: Prisoners must receive a fair wage for work undertaken or the rate for the job**

Prisoners are currently excluded from the National Minimum Wage Act 1998 (as per section 2). Legislative change on this matter would endanger current work that takes place in prison, such as work in the prison kitchens, and for this reason no legislative change is proposed.

However this does not mean that prisoners who engage in real work in prison cannot earn wages akin to or above the national minimum wage based on an individual contract. Real employment requires a real and equitable wage. A fair wage is essential for normalising prison work and allowing a prisoner to gain fulfilment from the work undertaken. Currently "actual pay levels leave little margin for taking care of family responsibilities or to reduce the debt burden that weighs on many inmates (Shea 2007)."

Prison governors already work to veto business proposals that involve paying prisoners exploitatively low wages and this role will continue to be essential as governors tender for real work opportunities within their prisons.

Real work in prison is likely to be better paid than current work that takes place across the prison estate. The current average pay for prison service work undertaken by prisoners is £9.60 per week (Hansard 2011a). Such an amount is derisory and provides little incentive to work.

Pay within prison should be a fair rate for the work done based on others who work for the relevant company. As is the case on the outside, the company might wish to account for differences in skills between workers using pay as a differential, thus creating a small cost saving for themselves when it comes to wage bills.

It is the Howard League's recommendation that wages within prison should not dip below the National Minimum Wage. This will guarantee that prisoners are not being exploited and will guarantee that businesses are not incentivised to take jobs away from local people to give them to prisoners.

**Figure 5a: Running total of prisoner pay details**

Assuming a prisoner engaged in real work earned the equivalent of the national minimum wage and worked a 40 hour week, the following would be true:

Gross Annual Salary	£12,334.40
Gross Monthly Pay	£1,027.87

(Continued in Figure 5b)

**Exploring different ideas – prison specific pay**

Prisoner specific pay that is substantially lower than a fair rate for the job presents significant dangers. Lower and punitive rates of pay, while encouraging businesses to engage in real work in prison, will disincentivise work for prisoners and serve only to exploit.

Further, from a market point of view, any wage that is significantly lower than the market rate for the job will harm local businesses within the community and could mean job losses for local people. It will provide an incentive for businesses to take jobs from those in the community and give them to people in prison; this is the wrong message to send. Real work in prison must compete on a level playing field with jobs in the community not detract from them.

At the beginning of the Howard League’s social enterprise, Barbed, workers paid national insurance on a voluntary basis. However it was subsequently decided that tax and national insurance could not be docked from prisoners’ pay due to a decision from HMRC and the prison service that stated (Correspondence from HMRC and the prison service to the Howard League):

*‘Prisoners working under prison rules have no rights of redress under civil law should a disagreement arise under one of these [work in prison] agreements... The Governor will decide what monies they are entitled to and the governor may also dock pay. The prisoner has no redress under civil law but can only ask to have the governor’s decision reviewed for reasonableness (under a process similar to judicial review). This means that the prisoner working under prison rules is not providing service under an enforceable contract of service and therefore cannot be treated as an employee for income tax and NICs...’*

Paying these contributions is a strong lesson in social responsibility and therefore necessary for real work to occur.

It is likely that prisoners being directly employed by a company will resolve this problem and result in prisoners being taxed, as they will gain employment status. Indeed the Prison Service Orders suggests that prisoners must be taxed on the money they receive. Prison Service Order (PSO) 4460 subsection 2.8.1 states (PSOa):

*‘Prisoners earning over the normal thresholds for Income Tax and National Insurance contributions are not exempted from these payments.’*

Prisoner tax is not a complicated matter and is less complex than the issue has been made by government actions surrounding Barbed. If prisoners are to work as employees then their employer will subtract tax from their salary to give to the Treasury, as is the case in normal employment. Prisoners who are released on temporary licence currently pay tax and national insurance, the situation should be the same for those working inside prison.

**Figure 5b: Running total of prisoner pay details**

Assuming a prisoner engaged in real work earned the equivalent of the national minimum wage and worked a 40 hour week, the following would be true:

Gross Monthly Pay	£1,027.87
Tax paid (Monthly)	£80.99
National insurance (Monthly)	£51.06
Remaining wage (Monthly)	£895.81

(Continued in Figure 5c)

### **RECOMMENDATION: Prisoners should make donations to victims' funds from their pay**

Prisoners being paid a real wage raises questions about how much of their wage prisoners should be allowed to keep. Prisoners' basic food and accommodation are subsidised by the state and it therefore seems unjust to allow prisoners to keep the whole of their wage less tax. It is right that real work in prison should mirror real work outside prison as much as possible and it is for this reason that prisoners should not be allowed to keep the entirety of their wage.

During Barbed prisoners were required to give 30% of their income to a charitable fund, this was meant to simulate the costs of living outside prison walls. The table below demonstrates how the average British person spends their income:

**Table 6**

<b>Category of Expenditure</b>	<b>% per week</b>
<b>Transport</b>	13
<b>Recreation and Culture</b>	13
<b>Housing, fuel and power</b>	13
<b>Food and non-alcoholic drinks</b>	12
<b>Restaurants and hotels</b>	8
<b>Miscellaneous goods and services</b>	6
<b>Clothing and footwear</b>	5
<b>Communication</b>	3
<b>Alcoholic drinks, tobacco and narcotics</b>	2
<b>Education</b>	2
<b>Health</b>	1
<b>Other</b>	16

(Extracted from ONS 2010)

The table demonstrates that 25% of total expenditure of those outside custody is spent on housing, bills and food provision. This statistic provides a good indication for a charge to support victims' charities and such an amount should be deducted from prisoners' salaries after tax to simulate life outside prison.

The government is committed to restorative justice and the idea that prisoners should make some reparation for the crime they have committed. To date the government has stated its intention to introduce the Prisoners' Earnings Act 1996 to achieve this objective. It makes such contributions the discretion of the governor and not the prisoner.

Implementation of this legislation would result in prison governors levying a fee from prisoners and then donating the funds to charity. This is an onerous and somewhat inelegant solution to the idea of restorative justice within custody.

A far more elegant solution would be to require prisoners to donate a proportion of their salary to a victim's fund as a condition of their employment. This better

represents restorative justice, as individuals are making reparations themselves rather than through compulsion, and it also keeps the prison governor from becoming too deeply involved in the individual prisoners' pay and employment, something that assists in keeping prison work and the running of the prison separate.

During Barbed we found that compulsory deductions are likely to be refused by victims' charities as the contribution is not truly 'voluntary'. While we subtracted 30% to simulate bed and board costs of life outside prison prisoners also gave further voluntary donations to Victim Support.

While the prison service should not mandate donations, it is possible that private companies could require that individual employees enter into contracts to donate a certain portion of their pay to victims' funds as a condition of their employment. The figure should represent an approximate amount for the cost of living not met by prisoners while in custody.

**Figure 5c: Running total of prisoner pay details**

Assuming a prisoner engaged in real work earned equivalent of the national minimum wage and worked a 40 hour week, the following would be true:

Remaining wage (Monthly)	£895.81
Notional contribution of 25% to victims (monthly)	£224
Final net wage	£671.81

(Continued in Figure 5d)

**Exploring different ideas – further deductions**

Reductions on account of victims' funds are justifiable on two counts. Firstly, as a principle of restorative justice it is right that prisoners are able to make amends to society. However, such deductions are also legitimate as they are designed to simulate real life costs that a prisoner does not have to incur.

To make further deductions from a prisoners' pay, to pay down the deficit or support other causes is both punitive and needlessly demoralising for the prisoner in question.

Prisoner pay should not be reduced too dramatically by contributions to various other funds. Prisoners must learn that work pays and must be entitled to keep a portion of their income.

## **RECOMMENDATION: Prisoners must be allowed to keep the remainder of their pay to support their family and help them upon release**

Prisoners must learn that work pays and therefore must be entitled to keep a portion of their income. This income would be paid into a bank account and for many prisoners it will be the first experience they have had of a business that is not a cash in hand industry (Howard League 2008).

A recent Prison Reform Trust report found that a third of people surveyed in prison said they did not have a bank account; and of these, 31% had never had one (Prison Reform Trust 2010). Working with a regular wage will therefore be a wholly new experience for many people in prison. Governors negotiating contracts with companies to engage in real work in prison might wish to ensure that employers of those in real work would have a responsibility to educate their employees about personal finance and banking.

Most importantly real work in prison would allow prisoners to continue to support their family and loved ones while inside prison. This would increase the connection between long-term prisoners and their family members. This point was raised by one of the employees at Barbed (Howard League 2010a):

“Barbed gave me a way to provide for my family and contribute in their lives positively. I was able to help pay bills, provide in new ways and support myself. I felt I was less of a burden to my family financially and this had a great impact on all our relationships.”

Strengthening family cohesion is especially important when a parent is in custody. At present 65% of boys with a convicted parent go on to offend themselves (Social Exclusion Task Force 2009). Real work for those inside would send a clear message to children of those in custody that it will always pay to work.

## **Spending more within prison**

For those earning a greater amount of money undertaking real work in prison, the government might wish to allow such prisoners to purchase a greater array of goods in the prison marketplace than is currently the case. Incentives and earned privileges schemes vary institutionally. However there is normally a maximum spending amount within an institution for prisoners. It is recommended that within category C training prisons where real work is taking place prisoners should be allowed to spend an increased amount on their personal comfort within prison. It would potentially allow the purchase of colour TVs, better bedding and higher education. This will further incentivise real work in prison.

## **Benefits**

Prisoners who earn a fair wage would also have to become liable for a range of costs that are currently absorbed by the state when they are sentenced to custody. At the present time the partner of someone in custody will be treated as a lone parent or single person and will be entitled to claim income support, income-based jobseeker's allowance, income-related employment and support allowance if they are sick or disabled or pension credit (Citizens' Advice Bureau 2010).

Many prisoners are currently exempt from child benefit payments due to their inability to earn a wage to support family members. If prisoners earned taxable income from paid work, it would clearly be unacceptable for them not to take financial responsibility for their children. It is likely the Child Maintenance and Enforcement Commission would expect prisoners in this situation to pay child maintenance through a family-

based arrangement or, if appropriate, the statutory scheme. It would be important that the children of prisoners gain the improved wellbeing that effective child maintenance arrangements can bring.

Certain state benefits would no longer be necessary if an individual was earning a fair wage and was able to support their family from within prison. A review of the benefits available to those in custody and partners of those in custody would be necessary if real work in prison progressed as planned. However it does seem likely that implementing real work in prison more widely might significantly reduce the benefit bill in England and Wales.



## 6. Conclusions

Real work in prison is not charitable. It is not a project and it is not training. It is real work that creates wealth and makes a profit. Real work in prison is an opportunity to change prison for good. It is an opportunity to redefine society's understanding of incarceration and the chance to prove that just because an individual loses their liberty this does not mean they cannot contribute to their family and society as a whole

The Howard League's implementation plan for real work in prison contained in this paper is based on years of research and the benefit of practical experience. The model of real work in prison laid out in this report involves minimal regulation. We have attempted to keep real work in prison as simple as possible by not adding extra layers of procedure and bureaucracy for Whitehall. Real work in prison should be like any other workplace in the community, with a few special considerations for setting and security.

It is tempting to try to load real work in prison with other agendas, such as punishment, funding for prisons and solving the reoffending crisis for those serving short-term sentences. However the positive impact of real work in prison is that it is one simple solution to one simple problem. It is a way to end the culture of forced idleness for long term prisoners. It supports family dynamics for those in prison, raises revenue for the Treasury and victims and will make some long-term prisons places of genuine industry rather than places of gloom and despair.

The beauty of real work in prison lies in the fact that radical change can be achieved with minimal additions to centralised bureaucracy. There is no new piece of legislation required, no difficult new taxation system to implement and adjust, no new arm in Whitehall, no costly rebranding exercise, no new expensive capital purchases and no new international tendering process that will cost millions of pounds and recruit the same international companies.

Real work represents ground up change and empowerment on a local level. It represents the philosophy that work matters and everyone should contribute to the society they live in. Real work represents a once in a generation opportunity to create profound change for thousands of people.

At a time of fiscal constraint, real work in prison is a policy that ticks every box. It is free to implement, generates income and is socially progressive. It represents an opportunity for England and Wales to lead the world in an emerging market. Real work, following the model outlined in this paper, should be a priority.

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