

## **Briefing on the Prisons and Courts Bill**

**House of Commons, Second Reading, 20 March 2017**

### **Key points**

- The Bill is not ambitious enough to have a significant impact on the prison system. There is nothing in the Bill that will begin to tackle the high prison population and chronic overcrowding which must be responded to if progress is to be made. The Bill is silent on important issues including high rates of recall, use of additional days, improving the release process and sentence inflation.
- On 8 March it was announced that the Ministry of Justice will be required to reduce its budget from £6.9 billion to £6 billion over the remainder of this parliament. Without action to ease the pressure on the prison system conditions will worsen.
- Clear statutory purposes of the prison system are welcome, although the impact of new statutory purposes alone should not be overstated. Some crucial elements are missing from the listed purposes, including the importance of decent and purposeful conditions and ensuring prisoners are ready for release after the shortest appropriate period of time.
- Strengthening the role of Her Majesty's Inspectorate of Prisons (HMIP) is a positive step. The provisions in the Bill could be enhanced by reducing the time periods within which the Secretary of State must respond to HMIP reports and urgent concerns. Safeguards are needed to ensure that HMIP continues to inspect prisons on the basis of human rights standards and not the policy agenda of the government of the day.
- The provisions in the Bill relating to mobile phone and psychoactive substance use focus on supply and not on demand. Mobile phone possession would reduce if prisoners had access to private and affordable landlines. Drug use in prison would reduce if prisoners had access to a full and purposeful regime.

### **Issues to raise at the second reading**

MPs may wish to raise the following policy changes, which would have a real impact on prisons by easing overcrowding and reducing pressure on the system:

- Ending recall eligibility for people released after short prison sentences of less than 12 months
- Reviewing the life licence which applies to people serving Imprisonment for Public Protection (IPP) sentences and has already led to 1,000 IPP prisoners being recalled to prison mainly for administrative reasons
- Reviewing the release test for prisoners serving indeterminate sentences
- Increasing opportunities for earned release
- Ending the use of additional days being added to sentences for breaking prison rules

MPs should consider the following additions to the list of what prisons must aim to do:

- Prepare prisoners for life outside prison in the **shortest appropriate period of time**
- Maintain an environment that is safe, secure, **decent and fair** and engenders a respect for justice

MPs should seek assurances that Her Majesty's Inspectorate of Prisons will continue to focus on the treatment and conditions prisoners are subject to and not move towards monitoring prison performance against government targets.

MPs should question what is being done to reduce demand for mobile phones and drugs in prisons.

## **Background to the Bill**

The prison system is in crisis. Our prisons are violent, overcrowded and understaffed. Deaths, assaults and self-injury are all at record highs. In 2016, 354 people died in prisons, 119 of whom died by suicide. There were 37,784 recorded incidences of self-harm and 25,049 assaults. 80 prisons (69 per cent) are overcrowded. Reoffending rates amongst those released from prison are high, with 45 per cent being convicted of an offence within a year of release.

The Ministry of Justice acknowledges the parlous state of prisons in England and Wales and the Prison and Courts Bill is part of its response. The Ministry of Justice also plans to restore to governors' control over budgets, the provision of work, education and healthcare in prisons. The proposals around governor control and autonomy do not require legislative change.

This briefing focuses only on clauses 1-22, which concern the prison system.

## **Tackling the prison crisis**

Many of the changes contained in the Bill are sensible and welcome, but will do little to arrest the decline in prisons. The crisis has been caused by the overuse of imprisonment and consequent overcrowding, cuts to staffing and underfunding. The Bill is silent on all of these issues.

In the Spring Budget it was announced that the Ministry of Justice's budget will be reduced by a further £0.9 billion, bringing the department's total budget to £6 billion by 2020. Underfunding will therefore not be resolved; indeed prison budgets look set to be squeezed further. It is crucial that steps are taken to reduce demand on the system if improvements are to be made. The only way to achieve safer and more purposeful prisons is by reducing the population.

England and Wales imprisons people at a higher rate than any other country in Western Europe. There are many ways that the number of people in prison could be reduced, whilst creating a more effective system that keeps people safe. The Ministry of Justice should look to reduce the very high rate of recall to custody, reduce the number of extra days added to sentences for breaches of prison rules and make the release process for people serving indeterminate sentences more efficient.

## **Clause 1: Purpose of prisons**

The Howard League supports the principle of clear statutory purposes for the prison system. Clarity of purpose could help, and certainly will not hinder, those in operational

and policy roles work to improve conditions in our prisons. However, new statutory purposes are unlikely to have a major impact, particularly in the short to medium term.

There are some important omissions in the list of purposes that the prison system must aim to achieve. The first is the absence of any timescale for achieving the stated aims of rehabilitation and preparation for life outside prison. The way in which the prison system and sentencing regime operates in England and Wales means that what happens in prisons has a large impact on when people are released. For example, there are 12,092 people in prison serving either IPPs or life sentences. Whether they will be released at or near to their earliest possible release date depends, in large part, on whether they have been able to access work, education and offender behaviour courses and to move through the prison system into less secure conditions. Many eligible prisoners are not released on Home Detention Curfew as their case is not reviewed or the necessary arrangements have not been put in place in time.

There are thousands of prisoners clogging up the system as insufficient attention is placed on preparing people for release at their earliest eligible date. Thousands are held in higher security (and more expensive) prisons than they need to be or are stuck in prisons which do not offer the courses they need to progress. The requirements in clause 1 that prisons rehabilitate prisoners and prepare them for life outside prison would have greater impact if accompanied by a requirement to do so in the shortest appropriate period of time.

The second notable absence is decent conditions. Providing fair and decent conditions is an important part of achieving safer prisons with fewer deaths, incidents of self-harm and violent assaults. The purposes of prisons would be strengthened if decent and fair conditions were added to the list.

The Bill correctly omits punishment as a purpose of the prison system. Whilst punishment is a purpose of sentencing, as set out in the Criminal Justice Act 2003, the prison system should not seek to inflict further punishment and should focus on humane detention and preparation for life after prison.

The statement that the Secretary of State has overall responsibility for prisons is welcome. However, further detail is required about what practical impact this will have.

## **Clause 2: Her Majesty's Chief Inspector and Inspectorate of Prisons**

The Howard League welcomes the strengthening of the role of HMIP. The requirement for the Secretary of State to respond to each report published by HMIP and the ability of the Chief Inspector to make an urgent notification when he or she has serious concerns about a prison are positive steps forward. However, the length of time that the Secretary of State has to respond to HMIP (90 days in the case of an ordinary report, and 28 days following an urgent notification) could undermine the effectiveness of these new provisions. It should be considered whether these time periods should be shortened.

Whilst requiring HMIP to comment on the leadership of prisons and the extent to which prisons are achieving their statutory purposes is not unreasonable, caution should be taken to ensure that this does not undermine HMIP's role as an independent body inspecting the treatment and conditions under which prisoners are held according to international human rights standards. HMIP should not become involved in the monitoring of prison performance, which is a responsibility of the Ministry of Justice.

Assurances should be sought that these additional requirements will not replace any of the human rights based criteria against which HMIP currently inspects prisons.

### **Clauses 4-20: The Prisons and Probation Ombudsman**

The Howard League supports placing the Prison and Probation Ombudsman on a statutory footing.

### **Clause 21: Interference with Wireless Telegraphy**

Whilst the Howard League does not disagree with clause 21, which enables the Secretary of State to authorise a public communications provider to interfere with wireless telegraphy, it is concerned that it will have a limited impact on reducing mobile phone use in prisons.

Demand reduction is crucial in tackling the number of mobile phones in prisons. Most prisoners have mobile phones because they provide an affordable and convenient way to keep in touch with their families and friends. Prisoners cannot receive incoming calls and the cost of using prison pay phones is high. Short phone calls to landlines can use up large proportions of prisoners wages. Ensuring prisoners can access reasonably private and affordable pay phones would have a significant impact on demand for mobile phones.

### **Clause 22: Testing prisoners for psychoactive substances**

Whilst the Howard League does not oppose expanding the range of substances that prisoners can be tested for, drug testing alone does little to reduce drug use in prisons. Recent HMIP reports have found that overcrowding and a shortage of officers mean that intelligence-led drug tests often do not take place. Whether drug testing can keep up with the pace of change in composition of psychoactive substances is another question.

Paying closer attention to reducing demand would have greater impact. Ensuring prisoners have access to a full and purposeful regime would reduce drug use. To achieve such a regime, steps must be taken to ease the pressure on the prison system and reduce overcrowding.

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