

# Prisons and Courts Bill

## Prisons

### Introduction

1. The issues in our prisons are serious and long-standing. Violence and self-harm are at record levels, and reoffending by prisoners costs society £15bn a year. The Prison Safety and Reform White Paper published in November set out a clear plan to reform our prisons: investing in an additional 2,500 more prison officers across the estate by the end of 2018; taking robust action to address emerging threats to prison security such as drones, drugs and mobile phones; empowering governors to drive forward improvements in their prisons, and holding them to account properly for their performance; and strengthening the inspection and scrutiny regime.
2. We are making good progress in delivering that plan. We have made job offers for 389 of the 400 additional prison officer posts we committed to recruit in 10 of our most challenging prisons by March of this year. We are investing more than £100m a year to recruit an extra 2,500 frontline prison officers by the end of 2018. From 1 April, governors will have new freedoms in a wide range of areas including regimes, staffing, budgets and health co-commissioning.
3. We are also tackling the criminality and contraband that undermines security in our prisons:
  - We have introduced testing for psychoactive substances across the estate, the first jurisdiction in the world to do so.
  - We are working with mobile network operators to tackle illicit use of phones and are already equipping all prisons with portable and fixed detectors.
  - We are working with the police to catch and convict criminal using drones to smuggle contraband into prisons, and testing physical and technological countermeasures to stop incursions.
  - We have enhanced our intelligence capability to identify security threats early on by recruiting an extra 50 intelligence staff to form a new national command supported by regional units.
4. The Prison and Courts Bill is another step in our path to reform. It will set a new framework and clear system of accountability for prisons which – for the first time – enshrines into law the purpose of prison and sets out that a key aim for prisons is to reform offenders. Under this framework, the Justice Secretary will account to Parliament for progress in reforming offenders, and a strengthened inspectorate and ombudsman will provide sharper external scrutiny of the system. This framework will be supported by new standards and league tables, a new commissioning structure, and new powers for governors. Together, this will create a more focused prison system where governors are clear what they need to deliver and empowered to do so.

### **Statutory purpose for prisons and the role of the Secretary of State.**

#### **What is the current position?**

5. As it stands, there is no statutory requirement for prisons to do anything other than hold those sentenced by the courts. This means that there is no focus around which everyone working within the prison system can unite. The existing legislation requires the Secretary of State simply to 'make the contracts and do the other acts necessary for the maintenance of prisons and the maintenance of prisoners'. It is outdated and focuses on the administrative running of the system. What is missing is clarity over what that system as a whole should be delivering.
6. The current way in which the duty on the Secretary of State to superintend prisons and maintain prisons and prisoners is framed is outdated. There is no clear distinction between the Secretary

of State's role in managing the prison system as a whole and the operational running of individual prisons that is rightly for governors and their staff.

### **What are the proposed changes?**

7. The provisions in the Bill reform the framework of the prison system, providing aims for the system as a whole to unite behind, clarifying the role of the Secretary of State and sharpening accountability.
8. The provisions introduce a clear statutory purpose for prisons. The provisions recognise that prisons give effect to sentences or orders imposed by courts for imprisonment or detention, and in doing this, prisons must concentrate on four aims:
  - Protect the public;
  - Reform and rehabilitate offenders;
  - Prepare prisoners for life outside prison; and
  - Maintain an environment that is safe and secure.
9. These provisions will be supported by new standards for governors, introduced from April 2017, with league tables measuring prisons on key areas linked to these aims, such as reducing assaults on prison staff and prisoners and the number of incidents of self-harm.
10. The legislation modernises the Secretary of State's overarching responsibility for prisons, to help make clear the distinction between her role in managing the prison system as a whole and the operational running of individual prisons that is rightly for governors and their staff, such as the governor's responsibility for progress made in substance misuse and health.
11. It will also require the Secretary of State to report on the extent to which prisons are meeting their purposes, such as success in reforming and rehabilitating offenders, so enabling the Secretary of State to be held to account against them by Parliament and more broadly.

### **Strengthen the role of the Inspectorate and put the PPO on a statutory footing.**

#### **What is the current position?**

12. Her Majesty's Inspectorate of Prisons (HMIP) inspects and provides independent reports on the conditions and treatment of those in custody.
13. The Prisons and Probation Ombudsman (PPO) investigates complaints and deaths in custody. The PPO does not have a statutory basis.

#### **What are the proposed changes?**

14. Provisions will add to the remit of HMIP so that in addition to their broad focus on the treatment of prisoners, they must take into account the statutory purpose of prisons when producing inspection reports. Inspections must also include consideration of how the leadership of a prison is contributing to the achievement of outcomes. To increase the impact of inspections there is a new requirement for the Secretary of State to respond to findings of an inspection within a certain timescale. The Chief Inspector will be able trigger a response from the Secretary of State in cases where the Chief Inspector has identified prisons of concern where urgent action needs to be taken. The legislation is providing HMIP with statutory powers to enter premises or access documents so it has the right tools to conduct inspections.
15. The Prisons and Probation Ombudsman performs the critical functions of investigating deaths and complaints in custody. The legislation puts the Ombudsman on a statutory footing, giving it permanence and the powers to require information to fulfil its investigations.

## **Interference with wireless telegraphy to more effectively combat illegal mobile phones in prison**

### **What is the current position?**

16. Under the Prisons (interference with Wireless Telegraphy) Act 2012, the Secretary of State, or Scottish Ministers in Scotland, can authorise the person in charge of a relevant institution to interfere with wireless telegraphy by preventing, detecting or investigating the use of mobile phones. A relevant institution is a prison in England, Wales or Scotland, a youth offender institution in England or Wales, a young offender's institution in Scotland or a secure training centre in England or Wales. The person in charge is the governor or the director in the case of a contracted-out institution.

### **What are the proposed changes?**

17. The proposed change would allow the Secretary of State to authorise public communication providers (PCPs) to interfere with wireless telegraphy in prison in addition to the existing authority that can be given to governors or directors. The rationale is that PCPs are the technical experts and have the knowhow and capability to interfere more effectively with illegal mobile phones. While this can currently be achieved through authorisation given to a governor or director, via the PCP operating as their agent, the change will see a clearer line of accountability set down in legislation to allow MNOs to act more independently if that is necessary and appropriate and ensure adequate safeguards apply where the PCP is effecting interference.

## **Testing for psychoactive substances**

### **What is the current position?**

18. The current legislative framework for drugs testing in prison allows tests to be carried out for controlled drugs under the Misuse of Drugs Act (MDA) and for "specified drugs". "Specified drug" means any substance or product specified in prison rules for the purposes of section 16A of the Prison Act 1952. If a new drug is identified that is not a controlled drug for the purposes of the MDA, it can be added to the list in the prison rules by secondary legislation.

### **What are the proposed changes?**

19. The proposed change would allow us to adopt the generic definition of a psychoactive substance contained in the Psychoactive Substances Act 2016. This would mean that in future tests can be carried out for controlled drugs and for any psychoactive substances covered by the definition in the 2016 Act, without the need to add each newly identified psychoactive substance individually using secondary legislation. This change would enable us to more quickly respond to and test for any new drug or substance identified.