



BRIEFING PAPER

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Prison Reform: Recent Developments

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Summary

The 2015-17 Conservative government published a white paper on Prison Safety and Reform in November 2016. It set out proposals which aimed to deal with increasing levels of violence and self-harm in prisons and the persistently high levels of reoffending. A central proposal was greater autonomy for prison governors which was being piloted in six 'reform prisons'.

Other key proposals included were:

- 'sharper' inspection and scrutiny arrangements
- Additional funding with 2500 more prison officers by 2018
- More extensive drug testing, including on entry to and exit from prison
- New prison league tables covering public protection, safety and order, time out of cells and prisoners' progress in education, health and work
- A stronger role for Her Majesty's Inspectorate of Prisons
- A new duty for the Secretary of State to intervene when prisons are failing
- All prisoners to be allocated a dedicated officer to oversee their progression through custody.

The white paper was followed by the introduction of the Prisons and Courts Bill published in February 2017. The Bill contained provisions relating to a number of the reforms set out in the white paper which required legislation. The Bill had second reading in March 2017 but did not complete committee stage, falling at the dissolution of Parliament in May 2017.

The Prisons and Courts Bill 2016-17 contained clauses concerning:

- the statutory purpose of prisons;
- the role of the Secretary of State in relation to prisons;
- the role and powers of Her Majesty's Inspectorate of Prisons;
- the status and powers of the Prisons and Probation Ombudsman;
- disruption of unlawful mobile phone use; and
- testing for new psychoactive substances.

For detail regarding the Bill see the Library briefing [The Prison and Courts Bill – Prison aspects](#), 15 March 2017, prepared for second reading. Also: Justice Committee, [Prison reform: Part 1 of the Prisons and Courts Bill](#), HC 1150, 28 April 2017.

The Conservative party manifesto for the 2017 general election included measures on prison reform. No prison reform legislation was announced in the 2017 Queen's Speech on 21 June 2017. Some expressed disappointment, including the Chief Inspector of Prisons who called it a missed opportunity. In an open letter published on the same day the newly appointed Justice Secretary, David Lidington, said that work on prison reform would continue. In October 2017 he stated that the Government was developing an update to the 2016 white paper and would soon be publishing a prison safety strategy and action plan.

Prisons policy is a devolved matter in Scotland and Northern Ireland.

1. Background to the white paper

1.1 Government policy 2015-2016

2015 Conservative manifesto commitment on prison reform

Before the 2015 general election the Conservative party manifesto promised a number of reforms to prisons:

Despite making savings in the prison budget, there are around 3,000 more adult male prison places today than in 2010. We will make further savings by closing old, inefficient prisons, building larger, modern and fit-for-purpose ones and expanding payment-by-results. And we will introduce widespread random testing of drug use in jails, new body scanners, greater use of mobile phone blocking technology and a new strategy to tackle corruption in prisons.¹

David Cameron's February 2016 speech

In February 2016, the then Prime Minister, David Cameron, gave a speech in which he set out the principles of the reform he wanted to see, including:

- Much greater autonomy for professionals working in public services, bringing “the academies model that has revolutionised our schools to the prisons system.” This “reform prison” model would give total discretion over spending to prison governors, and allow them to “tailor their own regimes”
- Greater accountability and transparency with “meaningful metrics” measuring “the things that really count: reoffending levels compared to a predicted rate; employment outcomes for prisoners; whether or not the offender went into permanent accommodation; and what progress was made on basic literacy and key skills.” This data would be developed into “new Prison League Tables that allow us to easily compare different institutions.”²

Michael Gove's policy as Justice Secretary

In July 2015, Michael Gove, then Justice Secretary, gave a speech at the Prisoners Learning Alliance in which he spoke of “liberating prisoners through learning”, focusing on giving prison governors greater autonomy. He argued that prisoners and prison staff did not have the right incentives:

I am attracted to the idea of earned release for those offenders who make a commitment to serious educational activity, who show by their changed attitude that they wish to contribute to society and who work hard to acquire proper qualifications which are externally validated and respected by employers.

¹ Conservative Party, [The Conservative Party Manifesto 2015](#), p59

² Prime Minister's speech to Policy Exchange, [Prison Reform](#), 8 February 2016

I think more could be done to attach privileges in prison to attendance and achievement in education. But I believe the tools to drive that change need to be in the hands of Governors.

At the moment I fear that one of the biggest brakes on progress in our prisons is the lack of operational autonomy and genuine independence enjoyed by Governors. Whether in state or private prisons, there are very tight, centrally-set, criteria on how every aspect of prison life should be managed. Yet we know from other public services - from the success of foundation hospitals and academy schools - that operational freedom for good professionals drives innovation and improvement. So we should explore how to give Governors greater freedom - and one of the areas ripest for innovation must be prison education.

At the moment, Governors don't determine who provides education in their prisons, they have little control over quality and few effective measures which allow them to hold education providers to account. If we gave Governors more control over educational provision they could be much more imaginative, and demanding, in what they expect of both teachers and prisoners.

A more rigorous monitoring of offenders' level of educational achievements on entry, and on release, would mean Governors could be held more accountable for outcomes and the best could be rewarded for their success.

Giving Governors more autonomy overall would enable us to establish, and capture, good practice in a variety of areas and spread it more easily.³

Mr Gove outlined his plans for reform to Parliament in January 2016:

I want to see governors who are currently in the system — people who joined the National Offender Management Service because of their idealism — given more freedom within the state sector to do what they do best. Baldly, my model is one of academy principals or of the chief executives and clinical directors of NHS foundation trusts who have shown that, with increased autonomy within a structure of clear accountability, they can achieve significant improvements.⁴

The then Justice Secretary expanded on his proposals for prison reform in his [evidence session before the Justice Committee](#) on 16 March 2016. He confirmed that a prison reform bill, to improve the management and performance of prisons, would be included in the May 2016 Queen's Speech.

1.2 The Future Prison project

The Future Prison project by the RSA and Transition Spaces looked into how 21st century prisons could better support rehabilitation. A [scoping paper](#) was published in May 2016 with a preface from then Justice Secretary Michael Gove. A final report, [A Matter of Conviction](#), was published in October 2016 with [ten key recommendations](#). These included calls for the government to prioritise a 2017-20 National Rehabilitation Strategy to include a new legal rehabilitation duty on

³ [The treasure in the heart of man - making prisons work](#), 17 July 2015

⁴ [HC Deb 27 January 2016 cc344-5](#)

prisons; urgent investment in staffing numbers and skills, and devolution of powers to community-based prisons.

1.3 Justice Committee report on prison safety May 2016

The Justice Committee's May 2016 report on prison safety examined the Government's response to what the Committee identified as "the ongoing and rapid deterioration in prison safety in England and Wales which began in 2012". The Committee noted that the Ministry of Justice and the National Offender Management Service have sought to improve prison safety through a wide range of legislative, operational and staff recruitment measures, including the creation of new offences of possession of new psychoactive substances and knife possession in prison and action to address violence through the use of body worn cameras and to improve safeguarding procedures. The Committee concluded that:

Notwithstanding these considerable efforts, together with those of staff in prisons striving to keep prisoners and themselves secure and unharmed, overall levels of safety in prisons have not stabilised as the Ministry had hoped, let alone improved and continue to deteriorate significantly.⁵

The Committee stated that the matter was of great concern and that improvement was urgently needed. The Committee's central recommendation was that the Ministry of Justice and the National Offender Management Service⁶ together produced an action plan for improving prison safety, addressing the underlying rises in violence, self-harm and suicide.

An initial response from the then Justice Secretary Michael Gove was sent to the Committee by letter. Mr Gove stated that, in addition to the £5 million which had been committed to rolling out body worn cameras and additional CCTV, he had allocated an additional £10 million to deal with prison safety issues.⁷ In June 2016 a further letter from Michael Gove stated that prison level allocations for the funding had been agreed and governors had been notified of the increases to their 2016-17 budgets. He said:

The £10m is new funding for prison safety, and will be supplemented by £2.9m from existing budgets. The £2.9m funding had been previously identified within the NOMS budget for 2016/17 to deliver initiatives for improving safety levels, but had not yet been allocated to establishments, and will now be allocated to establishments at the same time as the additional £10m. Taken together, the £12.9m funding will give a significant number of Governors facing the greatest safety challenges a real opportunity to improve safety levels in their establishments. We are targeting the additional funding at prisons with the most

⁵ Justice Committee, [Prison safety](#), HC 625, 16 May 2016, p24

⁶ Since April 2017 NOMS has been replaced by a new executive agency, [Her Majesty's Prison and Probation Service](#).

⁷ Justice Committee, [Letter dated 19 May 2016 from Rt Hon Michael Gove MP, Lord Chancellor and Secretary of State for Justice, to Robert Neill MP, Chair, Justice Committee, on the Justice Committee Report on prison safety](#).

concerning levels of violence and self-harm, where it can have the greatest impact.⁸

The [Government provided its full response](#) to the Committee's report in September 2016 in a letter from the then Justice Secretary Liz Truss who stated that "decisive action" was needed:

The Government has an ambitious agenda to modernise the prison estate, improve education and empower governors, so that we can tackle issues, like drugs and violence, which are key to cutting reoffending and keeping staff and prisoners safe. By creating purposeful regimes that rehabilitate offenders, prisoners will be less likely to reoffend when they are released, meaning there will be fewer victims in the future. This is a key part of the Government's commitment to deliver a justice system that works for every one of us.

We agree with the committee that it will take a variety of measures to achieve a safer prison estate, and these should be brought together into a single plan. The Government will publish a comprehensive prison safety and reform plan this autumn. In addition to the areas identified by the committee, this plan will also include the longer term reforms necessary to improve the prison system as a whole.⁹

1.4 Coates review of education in prison

In September 2015 the Secretary of State for Justice asked Dame Sally Coates to lead a review of education in prison and make recommendations as to how it could be improved. The report was published in May 2016: [Unlocking Potential: A review of education in prison](#). Dame Sally said:

Education is more than a service provided by OLASS providers in classrooms or workshops. All areas of the prison regime should be considered suitable for learning.

She set out her holistic vision for prison education to include:

- basic skills development in maths, English and ICT,
- high quality vocational training and employability skills that prepare individuals for jobs on release
- Personal and Social Development (PSD), including behaviour programmes, family- and relationship-learning, and practical skills (e.g. parenting, finance, and domestic management);
- proper support for the needs of prisoners with Learning Difficulties and Disabilities (LDD);
- provision of arts, music and sport activities;
- enterprise and self-employment support and training;
- self-directed study;

⁸ Justice Committee, [Letter dated 30 June 2016 from Rt Hon Michael Gove MP, Lord Chancellor and Secretary of State for Justice, to Robert Neill MP, Chair, Justice Committee, on prison safety](#).

⁹ Justice Committee, [Prison safety: Government Response to the Committee's Sixth Report of Session 2015–16](#), HC 647, 12 September 2016

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- learning facilitated by ICT, including distance-learning that can support qualifications from entry level up to degree level;
- advice and guidance that ensures individuals make informed choices about education and future employment and career options; and
- 'through the gate' support so that individuals can continue to progress through education, training and employment on release.

Her report set out the approach she would like to see taken in key areas including: prison governor autonomy in education, a new 'people' culture in prison, a personalised approach in developing education, raising aspiration and improved ICT Digital systems.

A summary of the recommendations was included on page 6 of the report and a full list in annex A of the report.

The white paper (discussed in the section below) committed to implementing a number of recommendations from the review, and said that further plans would be set out in a detailed education strategy to be published in 2017.

2. The white paper: Prison Safety and Reform

The white paper [Prison Safety and Reform](#) was published in November 2016. It stated that it built on the plans set out in the Conservative 2015 manifesto and the Queen's Speech in May 2016.

It identified the challenges facing prisons, including

- The significant increases in recent years of rates of violence and self-harm, fuelled in part by the "recent flood of psychoactive drugs into our prisons"
- Security challenges, including a rise of mobile phones and drones
- Blurred and unclear lines of accountability between bodies commissioning or running prisons or holding prisons to account, resulting from piecemeal development of oversight arrangements.

The white paper was structured into the following themes:

- The right framework for improvement
- Raising standards
- Empowered governors
- Safe and secure prisoners
- Developing leaders and staff
- Building the right estate for reform

2.1 The right framework for improvement

The white paper stated that because of the piecemeal fashion in which oversight arrangements for the prison system have grown, accountability is blurred. This, it said, has blunted the teeth of commissioners and inspectors and left too many distinct functions located in the MoJ and its agencies. The MoJ and its agencies (under the Secretary of State) act as commissioner, provider and route of accountability with no clear split between these different roles.

The white paper set out to address this by reforming the framework through which the prisons system is run.

A statutory purpose

It stated the Government's intention to legislate to introduce a clear statutory purpose for the prisons system. This, it said, will provide an aim for the system as a whole to unite behind and a clear sense of what prisons will be held to account for.

The role of the Secretary of State

With regard to the role of the Secretary of State, the white paper said this currently lacks clarity. It set out the functions that will continue to lie with the Secretary of State. It stated the Government's intention to legislate to reform the requirements for the Secretary of State to report

to Parliament on the prisons system. It said that legislation will link the Secretary of State's reporting duties to the new statutory purposes of the prisons system.

The white paper stated that the Government envisages a system where:

- the Secretary of State reviews the overall performance of prisons and makes decisions on priorities and resources based on this;
- a transparent funding formula allocates resources to prisons based on their function;
- each prison (publicly or privately-run) negotiates an appropriate performance agreement, which sets out the prison's population, funding and performance expectations against each of the standards set out in chapter 3, agreed with Ministers;
- mandatory basic requirements are set in order to ensure prisons are secure, safe and decent and run in accordance with the law;
- delivery against the performance agreement is monitored;
- governors are held to account for their performance; and
- decisive action is taken if performance is of serious concern.¹⁰

Sharper inspection and scrutiny arrangements

The white paper proposed that inspections undertaken by Her Majesty's Inspectorate of Prisons (HMIP) take account of the extent to which prisons are achieving the statutory purposes which were to be set out in legislation. Inspections would also include, the white paper said, consideration of how the leadership of a prison is contributed to the achievement of the outcomes it inspects.

The Government states in the white paper that it wishes to sharpen the responses to inspections. As a starting point, a requirement would be created for the Secretary of State or governor to respond to findings within a certain timescale.

Where prisons are failing to deliver, it said, there will be a formal rectification process where the inspectorate's finding can act as a trigger to the Secretary of State to intervene in the worst cases.

The white paper stated that the government is exploring ways of putting the Prisons and Probation Ombudsman (PPO) on a statutory footing.

Improved use of evidence and data

The white paper stated that to build on the range of sources of evidence already provided to governors, the Government is exploring the option for a new 'what works' resource to support the full and effective use of evidence.

¹⁰ Ministry of Justice, [Prison Safety and Reform](#), November 2016, p16

2.2 Raising standards

The white paper set out the Government's vision for what effective prisons should deliver and how performance will be measured. It stated that the prison system is responsible for four important things:

- 1 Public protection
- 2 Safety and order
- 3 Reforming offenders
- 4 Preparing prisoners for life after prison.

The white paper proposed performance measures for each purpose and publishing a subset of these in a new prisons league table. It also proposed including each of the measures in prison performance agreements with specific standards set for every prison.

The white paper set out the performance measures the government intended to be used in 2017/18. These are grouped into four standards and include:

Public protection

- Number of escapes from closed prisons and rate of absconds from open prisons
- Rate of prisoner compliance with release on temporary licence (ROTL) and the number of offences committed whilst on ROTL
- Measures on compliance with key parts of security processes

Safety and order

- Rates of assaults on prison staff and on prisoners
- Rate of self-harm by prisoners
- Staff and prisoner perceptions of safety
- Rate of incidents of disorder

Reform

- Average rate of positive drugs tests
- Number of medical appointments cancelled due to non-availability of prisoners

Preparing for life after prison

- Number of hours worked in industry
- Attainment in English and maths compared on release compared to those at the start of custody
- Number of qualifications, courses, accreditations achieved by prisoners
- Rate of prisoners in employment on release compared to before they entered custody
- Rate of prisoners in suitable accommodation on release compared to before they entered custody

- Rate of prisoners in education after release compared to reception into custody.

Further measures were mentioned to be developed in future years.

The white paper proposed that the most important of these measures be published in a new league table so it is 'quick and easy' to see how prisons are performing.

2.3 Empowered governors

In 2016 a trial was undertaken involving six 'reform prisons' giving significantly greater authority to prison governors. Executive governors in these prisons have, the white paper said, unprecedented operational and financial authority to:

- Spend budgets more flexibly to prioritise the issues that matter in a particular prison
- design new strategies to recruit, manage, develop and recognise staff so they attract the right people and retain them;
- manage staff more flexibly to increase frontline numbers and support safety, security and rehabilitation;
- decide which goods and services they buy locally and who supplies them; and
- decide who they partner with and what services they commission.¹¹

The white paper stated that this is a change the government wants to bring about across all prisons and sets out a proposed phasing in. From April 2017, it said governors were to be given greater authority in the regarding accredited programmes, health, work, staff budgets and the operating framework. During the course of 2017 and 2018 other areas, education, family ties and contracts would be added:

Further detail was given in a written ministerial statement on 23 February 2017, [Prison governor empowerment and accountability](#):

If we are to hold governors to account for meeting this new standards, they must be given the power to deliver change. We are devolving key operational policies to give governors greater flexibility, and have already cancelled 101 policies to help reduce bureaucracy for prisons. We will also remove current restrictions so that from 1 April 2017, governors have the freedom to:

- Design their regime to meet local delivery needs and target training and work in prisons to match the local labour market. Prisoners could, for example, work shift patterns to deliver new commercial contracts. This would help them to meet the standards to reform offenders and prepare prisoners for life on release.
- Decide their workforce strategy, including their staffing structure, to support meeting the standards. They could bring in specialists to work with particular types of

¹¹ Ministry of Justice, [Prison Safety and Reform](#), November 2016, para 104

prisoners, and tailor their staffing to support the prison regime they have designed.

- Control how they spend their resource budget. They could choose, for example, to pay for increased dedicated police officer time to reduce criminal activity in prison to improve safety and protect the public.
- Plan and take decisions about health services jointly with local health commissioners, through a co-commissioning framework.

Over the coming months, we will build on these essential freedoms even further by giving governors additional scope to:

- Decide what education opportunities they offer. Over 2017 and 2018, we will give governors control of the education budget, so that they can overhaul education and training to match the skills and qualifications prisoners need in the local labour market.
- Control how family support services work. From autumn 2017, governors will control budgets for family services, like visitors' centres and parenting skills classes, so they can choose the right way to support family relationships.
- Have more say on the goods and services in their prison. As each national contract ends, for example on food or equipment, we will determine how to devolve responsibility to governors.

2.4 Safe and secure prisoners

The white paper noted the decline in prison safety since 2012. It identified a number of personal and situational factors that have driven this increase in violence, self-harm and self-inflicted deaths since 2012:

172. Our analysis identifies a number of personal and situational factors that have driven this increase in violence, self-harm and self-inflicted deaths since 2012. We know that younger, male prisoners are more likely to be involved in violent incidents, as are those with a history of violent offending as well as current or previous drug use and gang membership. Anti-social attitudes and poor self-control also increase the risk of violence in custody. Longer term shifts in the nature of the prison population are likely to have played some part in the increased violence in the prison estate. In 1993, violence against the person, sexual offences and drug offences together accounted for around two in every five sentenced prisoners (including the recall population). By 2016, this had increased to three in five.

173. More recent developments have made these challenges much harder to manage. Since 2012, the use of psychoactive substances in prisons has risen dramatically, which presents our prison staff with real challenges. Their effects in prisons have made some already dangerous offenders even more volatile, and their reactions more difficult to manage. We know that local prisons with higher rates of drug finds have higher rates of violence. But until this year, there have been no effective tests available to establish whether prisoners have taken these drugs.

174. Dealing with the effects of these substances has made it more difficult for many prisons to run full and purposeful regimes, occupying prisoners in activity to help their journeys to reform. It

has made it more difficult for staff to build constructive relationships with prisoners, through which they can combine supervision with helping them to change their behaviour and attitudes. Conflict in prisons can also come about under highly controlling regimes, which prison staff may be forced to impose when they have to manage serious incidents. In turn that leads to frustration if rules are seen as being applied unevenly, or when prisoners do not accept the fairness of staff decisions.

175. Levels of self-harm and self-inflicted deaths are also rising. Women are more likely to self-harm than men, and to do so more frequently – although the seriousness of self-harm is greater among men. People with mental health problems are also at greater risk of harming themselves in custody. Both violence and self-harm are more common in the early days of a custodial sentence, and prisons holding more short-sentenced prisoners have higher rates of violence.

The white paper noted steps that have already been taken to address the issue, such as the roll out of body worn video cameras, but notes that these interventions in themselves cannot reverse the trend of worsening safety.

The white paper acknowledged that more frontline staff were needed to address prison safety:

176. These changes have come after a period of change for the prison workforce as a result of making efficiencies. The number of Band 2 to 5 frontline operational staff reduced from 29,660 on 31 March 2012 to 23,080 on 31 March 2016. As violence has increased it has become harder to retain existing staff, thus creating a vicious cycle of staff pressure and violence.

177. While it was right to seek to operate prisons more efficiently, the destabilising effect of changes in the operating environment, such as the introduction of new psychoactive substances – described as a ‘game-changer’ by the Prisons and Probation Ombudsman – means we must now reconsider staffing levels. Our analysis shows a statistical correlation between the numbers of staff and the level of violent incidents. We now need more frontline staff, and we need to change the way they work to better support offenders and respond to new threats as they arise.

Supporting prisoners to reform

The white paper proposed that each individual prisoner has a dedicated officer to support mentor and challenge them, with each officer having a caseload of around six prisoners. To deliver this the paper said the Government would increase staff to prisoner ratios and invest in 2500 additional prison officers in the public sector with training in the new dedicated officer role. A case manager function would also be created to properly co-ordinate the delivery of prisoner interventions.

To underpin these changes, the paper stated the strategic responsibility for sentence planning and supporting prisoners serving sentences of 12 months or more will be moved from probation services to prison governors. As an immediate step the paper stated that an extra £14million would be made available to bring in these new ways of working at ten public sector prisons with among the worst levels of violence and self-harm.

Addressing security threats

The white paper included actions to be taken to address security threats.

Improving intelligence capability

The white paper said the Government is investing £3 million a year to recruit an extra 50 intelligence staff who will work in a new national command unit. The new function will work with the National Crime Agency and others to support intelligence led efforts to tackle serious and organised crime as well as gang related offending and those behind the illicit economy in prisons.

Reducing the supply of and demand for illicit items in prisons

With regard to drugs the white paper set out ways in which existing measures will be strengthened in the short term. This included introducing legislation to simplify which psychoactive substances are covered by existing testing processes and adding psychoactive substances to the list of items that are a criminal offence to smuggle into prisons. In the longer term the white paper stated the government will fundamentally reassess its existing strategy for tackling the supply and demand for controlled substances.

On mobile phones, the government will work with partners to implement new technology to stop illicit mobile phones working in prisons and use Telecommunications Restriction Orders to permanently disconnect mobile phones operating in prisons.

The white paper said the government is looking at a number of options to strengthen searching capability including increasing the number of national teams and regional teams.

Strengthening the ability to respond to criminal behaviour in prisons.

On drones, the white paper stated that the government has commissioned a programme of work to find ways of detecting and blocking them.

With regard to violence against staff, the white paper made proposals including:

- Reviewing the processes involved in administering the prison discipline system that deals with low level disorder
- Work with other parts of the criminal justice system to develop training for staff who collect evidence
- Encouraging governors to take restorative approaches to low level violence where appropriate
- Ensuring that the [protocol regarding crime in prisons](#) (agreed between the MoJ, the Crown Prosecution Service and the police is adhered to consistently).

Also, a new strategy to take corruption is being developed and a serious and organised crime and gang teams to be set up.

On extremism in prisons, the white paper mentioned the development of a joint unit with the Home Office to strengthen the response to extremism and radicalisation in prisons.

2.5 Developing leaders and staff

The white paper stated the government's ambition for working in prisons to be seen as a first choice career for the most talented members of society. To achieve this it proposed:

- Giving greater control to governors and senior managers in how they run their prisons and invest growing their capabilities
- Investing in recruitment and retention and training so as to fully implement the new dedicated officer role
- Launching a new campaign to increase the number of former service personnel working in prisons
- Developing a long term plan to attract and retain high calibre candidates.

The white paper also included details of a new prison officer apprenticeship scheme and a new graduate recruitment scheme.

2.6 Building the right estate for reform

The white paper noted that the current prison estate needs urgent investment and reform. It contained the following actions and promises further information about prison closures in due course.

- Open HMP Berwyn near Wrexham in February 2017
- Invest £1.3 billion to build up to 10,000 adult prison places
- Build and open five new community prisons for women, and
- Close prisons that are in poor condition and those that do not have any long term future in the estate.

3. Reactions to the white paper

Responses to the white paper from interested groups generally welcomed its proposals but also raised questions and concerns.

The [Howard League for Penal Reform](#) questioned whether measuring performance would distract from tackling issues in prisons:

There are welcome commitments on accountability and improving outcomes, although there is a danger efforts to measure performance will distract from tackling the daily carnage we are seeing in prisons across the country. The Howard League will be responding in detail on how to avoid this and focus efforts on what is actually going to work.¹²

The [Prison Reform Trust](#) found details on implementation to be lacking:

The government has rightly set its sights high for our prison system. But it can only deliver on that ambition if it accepts its unique responsibility to tackle the issue of demand, and if it engages comprehensively with the detail of implementation that is missing from every section of the white paper.¹³

The [Prisoner Learning Alliance](#) were pleased that some elements of the Coates review on education in prisons had been included but were disappointed that others had not:

We welcome the elements of the Coates Review Final Report which have been mentioned in the White Paper, in particular: empowered Governors, use of ROTL, personalised learning plans, leadership and staff development and the new Apprenticeship Pathway. (...)

We are disappointed that some key recommendations from Unlocking Potential are not included in the White Paper, namely: higher level learning, technology, personal development and support for prisoners with Learning Difficulties and/or Disabilities (LDD). The Government must use the 'detailed education strategy' promised next year to push some of the more far-reaching measures advocated by Coates, even if this requires a bold statement of why they are important and justified.¹⁴

[Clinks](#) questioned the lack of focus on the underpinning philosophy and approach to enable individual reform:

Clinks very much welcomes the white paper's focus on prison safety and its promise of increased staffing – 2,500 new officers – to support this objective. The paper clearly recognises that safety is of critical importance, not only for the wellbeing of staff and prisoners, but also to maintain a productive atmosphere of order and purposeful normality.

(...)

Equally welcome is the white paper's focus on reform – a reformed system that delivers better education, health care, employment and resettlement (operational reform), and that does more to help people in prison to turn their lives around (individual

¹² Howard League for Penal Reform, press release, [Howard League responds to prison reform proposals](#), 3 November 2016

¹³ Prison Reform Trust, [Prison Reform Trust Response to the White Paper Prison Safety and Reform](#), 27 November 2016

¹⁴ Prisoner Learning Alliance, [Briefing on the Ministry of Justice White Paper: Prison Safety and Reform](#), November 2016

reform). However, while the paper talks a lot about operational reform (the 'what'), it says much less about the underpinning philosophy and approach that will support and enable individual reform (the 'how'). The word 'rehabilitation' is used very sparingly, and 'desistance' only twice. Instead, individual governors are to decide for themselves 'what works' and design their own regimes, whilst delivering measurable outcomes across a core set of activities – education, employment, drugs and mental health services. It is therefore hoped the promised legislation setting out the purpose of prison will provide a much more unifying vision and framework for individual reform (a theory of change), clearly focused on rehabilitation and describing qualitatively as well as quantitatively how prisons will be expected to actively support individual desistance.

The [Prison Governors Association](#) offered conditional support:

The Government has requested the support of the PGA for the White Paper, which we have given. The re-empowerment of governors to manage their prisons is the right way forward and what have been calling for. The support the PGA has given is not unconditional. The damage caused by slashing staffing, overcrowding, new psychoactive substances, restricted management structures, outsourcing and constant tinkering is deep and will take years to put right. The support given to the White Paper is therefore conditional on safety and decency being restored, which additional staff in post will help with along with the other measures being introduced.¹⁵

¹⁵ Prison Governors Association, [Response to the Justice Secretary's White Paper](#), 3 November 2016

4. Justice Committee report on governor empowerment and prison performance April 2017

Within an overarching inquiry into the Government's prison reform programme, the Justice Committee held a short 'sub-inquiry' into the plans for governor empowerment and prison performance. A [report was published in April 2017](#) before the Committee closed the overarching inquiry due to the general election.¹⁶

Governor empowerment

The Committee heard evidence regarding the government's intentions to give governors greater autonomy and flexibility, emphasising the role of prisons in rehabilitation. The report said that whilst most witnesses supported these intentions some also expressed concerns about the lack of clarity on the practical implications and some questioned whether the reforms would address the current crisis in prisons.

The report expressed concern about the separation of responsibility for commissioning and policy (the MoJ) from responsibility for operational management of prisons (the new HM Prisons and Probation Service). It raised the possibility of governors and the Secretary of State receiving conflicting advice from MoJ and HMPPS.

The Committee's report said that whilst it was generally supportive of the principle of greater governor empowerment, it had not seen any evidence that it would necessarily lead to better outcomes for prisoners. It noted that the six initial reform prisons will only be evaluated after the reforms take effect across the prison estate.

The Committee noted that the Prison Governors Association had advised its members not to sign the proposed service level agreements between the Justice Secretary and prison governors. The PGA had said that the agreements were introduced without consultation, that the performance standards lacked clarity and that there is a risk that governors will be scapegoated for failing to produce results in a context where their authority and budgets are limited.¹⁷

The Committee said that there remains considerable uncertainty around how the Government's plans will apply to the privately managed prison estate, and how the new offender management model, with one keyworker overseeing the casework of six prisoners, will work in practice.

Performance

With regard to a common performance framework for prisons the Committee says this was broadly welcomed by witnesses though some had questioned the extent to which the new measures differed

¹⁶ Justice Committee, [Prison reform: governor empowerment and prison performance](#), HC 1123, 7 April 2017

¹⁷ Prison Governors Association, press release, [NOMS Restructure](#), 8 February 2017

significantly from existing ones. The Committee also sought information on the manner in which the performance measures have been tested.

Commissioning

On commissioning the Committee raised concerns that giving governors greater involvement in commissioning services in their prisons could lead to a lack of alignment of services across the estate, and an increase in the overall cost of service provision. It recommend the Government decides on the appropriate level at which to commission services and goods on a case by case basis.¹⁸

¹⁸ Justice Committee, [Prison reform: governor empowerment and prison performance](#), HC 1123, 7 April 2017
See also: Justice Committee press release, [Prison governor empowerment: greater clarity needed](#), 7 April 2017

5. Implementation of the reforms

5.1 The previous government

The November 2016 white paper contained both legislative and non-legislative changes. Some of the non-legislative proposals had begun to be implemented by the previous government.

The new HM Prisons and Probation Service was established in April 2017, with responsibility for the operational management of offenders in custody and the community.¹⁹ This was announced to coincide with prison governors being given greater control of establishments.

In April 2017 the MoJ announced that a specialist squad of prison and police officers has been formed to tackle the threat drones pose to prison security²⁰ and that a new unit had been created to combat radicalisation in prisons.²¹

In early June 2017 it was reported in the Guardian that Wandsworth, one of six pilot reform prisons, had lost its reform prison status. The article stated that the MoJ had declined to comment on this due to the period known as *purdah* prior to the general election. Andrew Neilson, of the Howard League for Penal Reform, said that the loss of reform prison status for Wandsworth did not bode well for the initiative in general.²²

The Prisons and Courts Bill 2016- 2017

The legislative changes contained in the November 2016 white paper were brought forward in the Prisons and Courts Bill 2016-17. The Bill had second reading in March 2017 but did not complete committee stage, falling at the dissolution of Parliament in May 2017.

The Prisons and Courts Bill 2016-17 contained clauses concerning:

- the statutory purpose of prisons;
- the role of the Secretary of State in relation to prisons;
- the role and powers of Her Majesty's Inspectorate of Prisons;
- the status and powers of the Prisons and Probation Ombudsman;
- disruption of unlawful mobile phone use; and
- testing for new psychoactive substances.

For detail regarding the Bill see the Library briefing [The Prison and Courts Bill – Prison aspects, 15 March 2017](#), prepared for second reading. See also, Justice Committee, [Prison reform: Part 1 of the Prisons and Courts Bill](#), HC 1150, 28 April 2017.

¹⁹ MoJ press release, [Justice Secretary launches HM Prison and Probation Service](#), 7 April 2017

²⁰ MoJ press release, [New squad formed to tackle drone threat to prisons](#), 17 April 2017

²¹ MoJ press release, [New Counter-Extremism Taskforce to help tackle extremism behind bars](#), 2 April 2017

²² [HMP Wandsworth loses reform prison status](#), *Guardian*, 4 June 2017

5.2 Conservative manifesto 2017

The Conservative manifesto for the 2017 general election promised prison reform, including legislation:

Prisons should be places of reform and rehabilitation, but we should always remember that incarceration is punishment for people who commit serious crimes.

The £15 billion annual cost to society of reoffending shows we have so much more to do to make the penal system work better. Prisons must become places of safety, discipline and hard work, places where people are helped to turn their lives around. They should help prisoners learn English, maths and the work skills they need to get a job when they leave prison, whilst providing the help prisoners require to come off drugs and deal with mental health problems.

We will invest over £1 billion to modernise the prison estate, replacing the most dilapidated prisons and creating 10,000 modern prison places. We will reform the entry requirements, training, management and career paths of prison officers. We will create a new legal framework for prisons, strengthening the inspectorate and ombudsman to provide sharper external scrutiny.²³

5.3 No prison reform legislation announced in the 2017 Queen's Speech

The [Queen's Speech](#) on 21 June 2017 did not contain any announcement on legislation concerning prison reform. Other elements of the Prisons and Courts Bill 2016-2017 concerning courts and civil liability were included in the speech to be introduced in separate bills.

The Chief Inspector of Prisons, Peter Clarke, voiced his concern about the lack of a bill on prison reform, calling it a missed opportunity:

I am very disappointed that prison reform has not found a place in the Queen's speech. The Prisons and Courts Reform bill, introduced last year, enjoyed broad parliamentary support and had made real progress through parliament until it was lost when the general election was called.

This is a missed opportunity to forge ahead with prison reform. The law would have required the government to respond to our findings. We will continue to report the harsh reality of what we find in our prisons – all too many of which are dangerous for prisoners and staff alike and are failing in their duty to rehabilitate and reform prisoners. We will continue to press for strong leadership and a real commitment to reform.²⁴

Others expressed disappointment. Peter Dawson of the Prison Reform Trust said:

It is immensely disappointing that the government has dropped its commitment to a prison reform bill. There was cross party support for this long overdue legislation. The decision puts even more pressure on the new justice secretary to find ways to stop our chronic overuse of prison so that this hardest pressed of public

²³ Conservative Party, [Forward Together: The Conservative and Unionist Party Manifesto 2017](#)

²⁴ [HM Chief Inspector of Prisons' response to Queen's Speech](#), 21 June 2017

services can start to repair the damage his predecessors have inflicted upon it.

He should start by spending the money earmarked for new prisons on measures that would make them unnecessary. That means supporting people in their communities and helping the people who really do need to be in prison to get out on time and stay out for good.²⁵

Frances Crook of the Howard League for Penal Reform commented:

I hope that the omission from the Queen's Speech does not mean that penal reform has been abandoned. (...)

Without legislation, the secretary of state will have to rely on bold and clear leadership. He will have to act quickly too, as people are dying every day in prison, being failed on release and recalled to already crowded prisons and the taxpayer is footing the bill. His responsibility is to keep us all safe and that means the public but it also means prison staff and prisoners. Reform of a failing system can do that.²⁶

5.4 An open letter from the Justice Secretary

In an [open letter](#) published on the same day as the Queen's Speech, the newly appointed Justice Secretary David Lidington said that work on prison reform would continue:

The work to make our prisons true places of reform and rehabilitation is already under way – and it will continue unabated.

(...)

...as the new Secretary of State, I am committed to building on the essential reforms that are already under way to make prisons places of safety and reform.

He went on to discuss prison staffing:

That has to start with the numbers of prison officers available to support offenders. More staff will provide the capacity for them to give more time to directly supervising offenders, through one-to-one support from a key worker. This engagement will be a key measure in reducing the currently unacceptable levels of assaults, self-harm and suicides.

My predecessor has already secured a £100 million a year investment for an extra 2,500 prison officers. The most recent figures show the number of prison officers in post has increased by 515 compared with the previous quarter and we are on track to deliver all 2,500 prison officers by December 2018. They will join thousands of dedicated and hard-working prison officers who undertake such important work, day in day out, to keep our prisons and the public safe.

Regarding prison security he talked about measure to tackle drugs, drones and mobile phones:

On drugs, we have introduced testing for psychoactive substances across the estate, the first jurisdiction in the world to do so. We have also trained more than 300 dogs to detect these substances,

²⁵ Prison Reform Trust, press release, [Queen's Speech](#), 21 June 2017

²⁶ Howard League for Penal Reform blog, [The Queen's Speech and prison reform](#), 22 June 2017

and have introduced tough new laws to deal with people smuggling the substances into prison.

On drones, we are working with the police to catch and convict criminals using drones to smuggle contraband into prisons. We have also established a new team of prison and police officers to directly tackle the threat posed by drones.

On mobile phones, we are working with mobile network operators to tackle illicit use of phones. We have now fitted out every single prison across the estate with hand-held mobile phone detectors and detection poles to step up the detection of illegal phones on the landings. More than 150 mobile phones have been cut off since the introduction of new powers through the Serious Crime Act.

5.5 Government responses to the Justice Committee

In October 2017 the Justice Committee published the [Government responses](#) to two of the Committee's reports on prison reform from the 2016/17 session. In a covering letter to the Committee, David Lidington stated that the Government was developing an update to the 2016 white paper and would soon be publishing a prison safety strategy and action plan:

We are currently developing an update to the 2016 White Paper which will outline what we have achieved since November 2016 and it will also set out our priorities and plans for further reform over the next 12 months. Alongside this 12-month forward look, we will soon be publishing a prison safety strategy and action plan that focuses on further enhancing our approach to making our prisons safe. This will include further detail on the Offender Management in Custody model which is key to our vision to improve safety in prison, and will help us to develop rehabilitative prisons that deliver a supportive environment for offenders.²⁷

On 1 December 2017 the Justice Committee [published a letter from David Lidington](#) responding to points raised about prisons during an evidence session with the Committee on 25 October 2017.²⁸ On governor empowerment he said that governors had already been empowered in a number of areas (such as the power to make changes to their core day; the organisation of their staffing structure; greater flexibility over their delegated budget; the industries provided in their prison and which offender behaviour programmes they run) and would, over the next year, be given increased responsibility for the education provision in their prisons.

Regarding the prison estate, he noted the Government's intention, [announced in March 2017](#), to build four prisons: adjacent to HMP Full Sutton in Yorkshire, in Port Talbot in Neath, at HMP and YOI Rochester in Kent and at HMP and YOI Hindley, in Greater Manchester.

²⁷ Justice Committee, [2nd Special Report - Government Responses to the Committee's Reports of Session 2016–17 on \(a\) Prison reform: governor empowerment and prison performance \(b\) Prison reform: Part 1 of the Prisons and Courts Bill](#), HC 491, 23 October 2017, p2

²⁸ Justice Committee, [Letter from Rt Hon David Lidington MP, relating to the Work of the Ministry of Justice](#), November 2017, published 1 December 2017

5.6 Urgent notification process

On 30 November 2017 the Ministry of Justice [announced](#) a new urgent notification process which it described as part of a package aimed at improving the safety of people in prisons. A press release from the MoJ stated that the Secretary of State will be directly alerted by HM Chief Inspector of Prisons “if an urgent issue needs addressing to ensure that recommendations are acted upon immediately”.²⁹

The Secretary of State will publish his response and a plan of action within 28 days. There will then be a longer term plan for sustained improvement. Both the Chief Inspector’s letter to the Secretary of State, and the Secretary of State’s response, will be published online.³⁰

²⁹ Ministry of Justice, press release, [Justice Secretary enforces robust action to improve prison safety](#), 30 November 2017. See also [HMCI Prisons Protocol](#), November 2017

³⁰ Ministry of Justice, [Guidance: urgent notification](#)

6. Further reading

Commons Library Briefing Paper 7467, [*Commons Library analysis: Safety in prisons in England and Wales*](#), December 2017

Commons Library Briefing Paper 5646, [*Building prisons in England and Wales: The bigger the better?*](#), 12 February 2016

House of Lords Library In Focus, [*HM Government's proposals for prison reform*](#), LIF 2016/002, 18 January 2016

Ministry of Justice, [*Review of the Youth Justice System: An interim report of emerging findings*](#), (the Taylor Review) 9 February 2016

Ministry of Justice, [*Review of the Youth Justice System in England and Wales By Charlie Taylor*](#), December 2016

Ministry of Justice, [*The government response to Charlie Taylor's Review of the Youth Justice System*](#), Cm 9382, December 2016

Ministry of Justice, [*Unlocking Potential: A review of education in prison*](#), Dame Sally Coates, May 2016

Ministry of Justice press release, [*Review puts education at heart of prison service*](#), 18 May 2016

Justice Committee, [*Prison Safety*](#), 16 May 2016, HC 625 2015-16

Justice Committee, [*Prison safety: Government Response to the Committee's Sixth Report of Session 2015-16*](#), HC 647, 12 September 2016

Justice Committee, [*Prisons: Planning and policies*](#), HC 309 2014-15, 18 March 2015

Ministry of Justice, [*Prisons: planning and policies: Government response to the Committee's Ninth Report of Session 2014-15*](#), Cm 9129, 20 July 2015

Justice Committee, [*Prison reform: governor empowerment and prison performance*](#), HC 112, 7 April 2017

Justice Committee, [*2nd Special Report - Government Responses to the Committee's Reports of Session 2016-17 on \(a\) Prison reform: governor empowerment and prison performance \(b\) Prison reform: Part 1 of the Prisons and Courts Bill*](#), HC 491, 23 October 2017

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