



BRIEFING PAPER

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Coronavirus: Prisons (England and Wales)

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1. The situation in prisons

March 2020

In March 2020 the Justice Secretary told the Justice Committee that the pressure on prisons in England and Wales due to coronavirus was acute.¹ The Chair of the Justice Committee described prisons as “a potential hotbed for viral transmission”, stating that “they are overcrowded, understaffed and often dirty”.² The Head of the Prison Governors Association told the Guardian:

... a combination of prison overcrowding, prisoner lockdown and staff shortages as a result of prison workers needing to isolate themselves meant that the system was facing unprecedented pressure.³

The physical health of the prison population, across a broad range of conditions, is much poorer than that of the general population.⁴ The proportion of prisoners aged over 50 increased from 7% in 2002 to 16% in March 2019.⁵ Living conditions across much of the prison estate are poor. As at February 2020, 60% (70) of prison establishments were crowded.⁶ These 70 prisons accommodated around 60,000 prisoners or 71% of the total prison population.

April and May 2020

On 27 April 2020 the Justice Secretary said that the numbers of coronavirus cases and deaths in prisons were lower than had been originally predicted and that “while we are not out of woods”, prisons were coping and dealing well with the threat of covid-19.⁷

A press release from the Ministry of Justice on the 28 April 2020 said that “jails are successfully limiting deaths and the transmission of the virus within the estate”.⁸

¹ Justice Committee, Oral Evidence, [The Work of the Lord Chancellor](#), HC 225, 24 March 2020

² Bob Neill, [We must help our prisons in the fight against coronavirus](#), The House, 19 March 2020

³ [Release inmates or face jail pandemic, say prison governors](#), Guardian, 25 March 2020

⁴ See Health and Social Care Committee, [Prison health](#), 1 November 2018

⁵ Library briefing, [UK Prison Population Statistics](#), July 2019

⁶ For further detail see the Library briefing, [The Prison Estate](#), December 2019 and the National Audit Office report [Improving the Prison Estate](#), February 2020. Prison population figures which can be used to estimate crowding are [released monthly](#), with the latest as of 8 April 2020 being those for February 2020

⁷ [HC Deb 27 April 2020 c93](#)

⁸ Gov.uk, [Update on COVID-19 in prisons](#), 28 April 2020

2 Coronavirus: Prisons (England and Wales)

As of 12 May, 404 cases had been confirmed amongst prisoners. 21 prisoners and 7 members of prison staff had died.⁹

Public Health England (PHE) reported on 24 April 2020 that data it had collected “suggests that the ‘explosive outbreaks’ of COVID19 which were feared at the beginning of the pandemic wave are not being seen. Instead, there is evidence of containment of outbreak”.¹⁰ PHE’s report stated that because access to testing for prisoners has been limited and variable, the number of confirmed cases reported “does not represent the true burden of infection in the prison system”. It states that in addition to the 304 laboratory-confirmed cases in prisoners in England and Wales (at the time the report was written) data showed there had been also over 1,783 possible/probable cases.

Looking to the future, the report said:

In the absence of a vaccine or effective treatment, risks of large outbreaks in the prison estate will remain. These risks may be escalated later in the year relating to relaxation of wider community restrictions, some return of normal police and court activities, with consequent impacts on prisoner flow.

2. Measures being taken

The Ministry of Justice has said HM Prison and Probation Service is working closely with Public Health England, the NHS and the Department of Health and Social Care to manage the challenges prisons face.¹¹

The prison system has been placed in “command mode”, whereby the response to a major incident can be coordinated nationally.¹²

2.1 Measures in prisons

Within prisons, restrictions on movements of prisoners have been put in place. The Justice Secretary has said efforts are being made within the prison estate to separate as many people as possible and create different cohorts of prisoners, so that, for example, new prisoners are not mixed with the existing population and that those who are particularly vulnerable, some of whom were convicted of serious and grave offences, are safe.¹³

Prisoners are spending more time in cells, gyms are closed, and non-essential work has been cancelled.¹⁴ The Chief Inspector of Prisons, Peter Clarke, described the extreme restrictions for prisoners in local prisons visited by inspectors:

The vast majority were locked up for nearly the whole day with usually no more than half an hour out of their cells. We found some examples of even greater restrictions. In one prison, a small number of symptomatic prisoners had been isolated in their cells without any opportunity to come out for a shower or exercise for up to 14 days.¹⁵

⁹ [PQ42884](#), 14 May 2020

¹⁰ Dr. Éamonn O’Moore, [Briefing paper- interim assessment of impact of various population management strategies in prisons in response to COVID-19 pandemic in England](#), 24 April 2020

¹¹ [Prisons: Coronavirus: Written question – 30086](#), 19 March 2020

¹² [Release inmates or face jail pandemic, say prison governors](#), Guardian, 25 March 2020

¹³ Justice Committee, [Summarised note of meeting with the Lord Chancellor](#), 7 April 2020

¹⁴ Gov.uk, [Coronavirus \(COVID-19\) and prisons](#)

¹⁵ HM Inspectorate of Prisons, press release, [Local men's prisons during COVID-19 – communications key to prisoner acceptance of severe restrictions](#), 18 May 2020

From 15 May 2020 amendments were made to the rules for prison and young offender institutions to allow them to continue to implement a restricted regime to manage the effects of coronavirus.¹⁶

Concerns are now being raised about how purposeful and rehabilitative activities can be resumed within prisons, particularly in light of PHE's assessment of risks of large outbreaks remaining in the absence of a vaccine or treatment. Peter Clarke has said that prisons face potentially greater challenges in the coming months as they try to ease restrictions and reintroduce more purposeful regimes.¹⁷

2.2 Visits suspended

On 24 March 2020 all visits to prisons were suspended. People can stay in touch with prisoners by using the Prison Voicemail Service, the email a prisoner service and by writing letters. HM Prison and Probation Service said prisons across the estate would receive 900 secure phone handsets as part of plans to maintain family contact.¹⁸ Prisons are providing extra phone credit to prisoners. Secure video calls are also being provided in some prisons and young offender institutions.¹⁹

A gov.uk page [Coronavirus \(COVID-19\) and prisons](#) provides guidance for families and friends of those in prison.

2.3 Temporary prison accommodation

The Ministry of Justice said in early April it was "working to identify publicly owned sites that could be used to house temporary prison accommodation to ease pressure on the permanent estate, further separate prisoners and reduce the spread of the virus".²⁰

The Ministry announced on 9 April that work to install 500 temporary, single occupancy cells within the existing, secure, prison estate had begun.²¹ On 29 April the Ministry announced that the recently closed Medway Secure Training Centre, would be temporarily reopened as an annex to nearby HMP Rochester, housing up to 70 category D adult prisoners.²²

2.4 Early release for some prisoners

Pregnant prisoners and women in prison with their children

On 31 March 2020 the Government announced that pregnant women and prisoners with their children in Mother and Baby Units would be temporarily released from prison where they were assessed not to pose a high risk of harm to the public.²³ As at 12 May 2020, 21 pregnant women had been released.²⁴

On 24 April 2020 the Ministry of Justice [published](#) the criteria for potential compassionate temporary release, which could include prisoners who are pregnant.

¹⁶ [The Prison and Young Offender Institution \(Coronavirus\) \(Amendment\) \(No.2\) Rules 2020](#)

¹⁷ HM Inspectorate of Prisons, press release, [Local men's prisons during COVID-19 – communications key to prisoner acceptance of severe restrictions](#), 18 May 2020

¹⁸ Gov.uk, press release, [Prison visits cancelled](#), 24 March 2020

¹⁹ Gov.uk, press release, [Secure video calls to help prisoners maintain family ties](#), 15 May 2020

²⁰ Gov.uk, press release, [Measures announced to protect NHS from coronavirus risk in prisons, 4 April 2020](#)

²¹ Gov.uk, press release, [Prison estate expanded to protect NHS from coronavirus risk](#), 9 April 2020

²² Gov.uk, press release, [Further expansion of prison estate to protect NHS](#), 29 April 2020

²³ Gov.uk, press release, [Pregnant prisoners to be temporarily released from custody](#), 31 March 2020

²⁴ Justice Committee, [Oral evidence: Ageing prison population](#), 12 May 2020, Q144

Low risk offenders within two months of release date

On 4 April 2020 the Government announced that selected risk-assessed prisoners who are within two months of their release date would be temporarily released.²⁵ A press release said:

- Selected low-risk offenders, within weeks of their release dates, will be electronically tagged and temporarily released on licence in stages
- Offenders can be recalled at the first sign of concern
- Violent and sexual offenders and those of security concern will not be considered

The Government estimated that up to 4000 prisoners would be eligible for the scheme.

Amendments to the Prison and Young Offender Institution Rules

A statutory instrument was laid on 6 April 2020 amending the Prison and Young Offender Institution Rules to allow for early release due to the Coronavirus: [The Prison and Young Offender Institution \(Coronavirus\) \(Amendment\) Rules 2020](#).

It authorises the Secretary of State to make a direction describing specified prisoners, or classes of prisoners and to subsequently release those prisoners on coronavirus restricted temporary release. The Secretary of State's direction may be made by reference to whatever matters are deemed appropriate. This could include, but is not restricted to, named prisons, named prisoners, or a group of prisoners within a specified description.

The new rules specify which prisoners may be released:

- those serving a standard determinate sentence, with an automatic release date and no Parole Board involvement; and,
- those committed to custody in default of payment of a sum adjudged to be paid by a conviction, or for contempt of court.²⁶

Those whose initial release is subject to Parole Board discretion must not be released. The following are therefore excluded:

- those serving indeterminate sentences, extended sentences or sentences for offenders of particular concern; and,
- offenders serving sentences for terrorist and terrorist related offences'

Other prisoners excluded from release under the scheme are:

- those excluded from Release on Temporary Licence;
- those committed to custody for trial or remanded by the courts;
- those who have committed offences whilst at large following temporary release;
- those who are being removed from the United Kingdom and who have exhausted their "in-country" rights of appeal against removal;
- those who will be subject to the notification requirements of Part 2 of the Sexual Offences Act 2003 ("registered sex offenders") and

²⁵ Gov.uk, press release, [Measures announced to protect NHS from coronavirus risk in prisons](#), 4 April 2020

²⁶ The new rules make the same provision for young offenders with the addition that those serving a Detention and Training Order may also be released

- prisoners whose security classification is Category A (males) or Restricted (females and young adults).

A prisoner released under this scheme may be recalled at any time, whether or not any conditions of release have been breached.

A further statutory instrument was laid to provide that prisoners released under the new scheme may be accommodated in Approved Premises.²⁷ An [Explanatory Memorandum](#) has been published. These instruments came into force on 7 April 2020.²⁸

On 24 April 2020 the Ministry of Justice [published](#) an overview of the eligibility criteria and the process for offenders to be released under the scheme, which it has called “End of Custody Temporary Release”.

Initial responses

The measures for temporary early release were welcomed, including by the [Prison Reform Trust](#) and the [Howard League for Penal Reform](#). They had written a [joint letter](#) to the Justice Secretary on 1 April 2020 stating that decisive action to release a substantial number of prisoners in England and Wales was required “in order to prevent loss of life on an unprecedented scale”.

Some raised questions and concerns about the Government’s plans. There was concern about whether there is sufficient suitable accommodation for those being released. The Prison Governors Association (PGA) questioned whether it was necessary to tag all prisoners being released early under this scheme and whether there was sufficient capacity to do so:

The decision to tag all early releases seems excessive, when at the normal release date this would not happen. We believe that currently tagging capacity is only around 2,000 and this decision will build in delay when we need to move at pace to make a difference.²⁹

The Justice Secretary responded to the question of the necessity of tagging those released early saying that tagging gave the public the reassurance they naturally looked for when the exceptional step of releasing prisoners on temporary licence was taken. On capacity he was confident of the ability to scale up tagging and said the Ministry of Justice was working with providers.³⁰

The PGA [stated](#) that the scheme would not result in enough prisoners being released to sufficiently ease overcrowding. The PGA urged the Government to “be braver and make significant reductions”. The [PGA said](#) the 4,000 figure was not achievable given the strict criteria set out and estimated that 2,000 would be released. It said this was nowhere near enough to free up the spaces in jails necessary. The PGA stated that official advice said 15,000 prisoners would have to be released to safeguard other inmates and prison staff.

Jo Farrar, Chief Executive of HM Prisons and Probation Service acknowledged this concern when she appeared before the Justice Committee on 7 April 2020. She said that the release of up to 4,000 prisoners was not the only plan in place. She said there would be

²⁷ [The Offender Management Act 2007 \(Coronavirus\) \(Approved Premises\) \(Amendment\) Regulations 2020](#)

²⁸ The Explanatory Notes note that these instruments both breach the 21 day rule for laying in Parliament because they are emergency legislation, see para 3.1

²⁹ Prison Governors Association, press release, [Early Release of Prisoners Announcement](#), 4 April 2020

³⁰ Justice Committee, [Summarised note of meeting with the Lord Chancellor](#), 7 April 2020

new accommodation in some prisons from the next week to provide enhanced facilities for vulnerable people, with better health care provision and more isolation and shielding. She said the strategy was a mixed plan of release, extra accommodation and more staffing.³¹

Jo Farrar said that between 10,000 and 15,000 prisoners would have to be released to achieve single cell occupancy, but that PHE advice was that it was best not to send prisoners between prisons to achieve single cell accommodation.

The Justice Secretary, Robert Buckland, said that he was seeking in some cases to accelerate release with suitable licence conditions, accommodation and other provision, in order to speed up efforts within the prison estate to separate as many people as possible. He said he was exercising powers such as compassionate release for those with life threatening illness or medical reasons for some prisoners who were vulnerable.

Temporary suspension

The end of custody temporary release scheme was temporarily suspended on 16 April before being restarted a few days later. The suspension was a response to 6 prisoners being released by mistake as a result, the Ministry of Justice said, of an administrative error. The prisoners who were mistakenly released all returned to prison.³²

Concern about delay and numbers released

Alarm has been growing about the delay in releasing prisoners and the low numbers released. On 27 April the Justice Secretary said he admitted progress had been careful and slow. He said 33 prisoners had been released altogether, including pregnant women.³³

On 12 May the Prisons Minister, Lucy Frazer, told the Justice Committee that 81 prisoners had been released early during lockdown. Of these 81 prisoners, 55 were released on the temporary release scheme, 21 were pregnant women and 5 were released on compassionate grounds.

The Howard League for Penal Reform and the Prison Reform Trust wrote to the Justice Secretary on 17 April stating that they were proposing to make an application for judicial review of the Government's response to coronavirus in prisons.³⁵ Following a response from the Government on 28 April, the charities decided that the information provided meant that it would not, at that time, be necessary for them to proceed to a judicial review.³⁶

The Government's letter stated that as of 28 April 2020 a further 200 people in prison had been approved for temporary release under the scheme and a further 300 prisoners were being considered with further information being awaited before a final decision could be made. The charities have published the information provided to them by the Government and stated that they will continue to monitor the situation closely.³⁷

³¹ Justice Committee, [Summarised note of meeting with the Lord Chancellor](#), 7 April 2020

³² [UK coronavirus prison plan on hold after six inmates freed in error](#), Guardian. 18 April 2020

³³ [HC Deb 27 April 2020 c92](#)

³⁴ Justice Committee, [Oral evidence: Ageing prison population](#), 12 May 2020, Q144

³⁵ Prison Reform Trust, press release, [Judicial Review: PRT and Howard League issue government with letter before action](#), 17 April 2020

³⁶ Prison Reform Trust, press release, [Government responds to PRT and Howard League letter before action](#), 29 April 2020

³⁷ Prison Reform Trust, press release, [PRT and Howard League publish government Covid-19 documents and call for further urgent action](#), 6 May 2020

Both charities continue to call for further releases which they say are needed to create the space to “manage the transition towards active regimes, rather than simply warehousing people”.³⁸

Support for released prisoners

The Justice Secretary said he was making sure accommodation was ready for those released and was working with the Department for Work and Pensions on universal credit provision, which was not previously available for those on temporary licence.³⁹ He said people were being sent out with £80 extra allowance to help them.

2.5 Testing

Prison staff have access to testing. The Justice Secretary said on 27 April 2020 that prison staff had been made a priority by the Secretary of State for Health and Social Care. He said he hoped testing would be extended to prisoners too, once capacity allowed.⁴⁰

2.6 Changes to inspections

HM Inspectorate of Prisons (HMIP) has announced “an adapted approach” to prison inspections, involving “short scrutiny visits – of one-day duration, involving two or three inspectors”. They said:

Inspectors will focus on issues which are essential to the safety, care and basic rights of those detained in the current circumstances. These include: healthcare, nutrition and hygiene; contact with families, friends and the outside world; legal rights; use of time and the need for meaningful human contact; support for those at risk of self-harm and suicide; and support and risk management for those being released.⁴¹

HMIP has published an [Alternative approach to scrutiny during the COVID-19 pandemic](#).

Reports on the short scrutiny visits undertaken are being published:

- [Report on visits to young offender institutions holding children](#), 7 May 2020
- [Report on visits to local prisons](#), 18 May 2020.

³⁸ Prison Reform Trust and Howard League for Penal Reform, [Letter to Robert Buckland: Covid19 and prisons: the next phase](#), 6 May 2020

³⁹ See: [The Social Security \(Coronavirus\) \(Prisoners\) Regulations 2020](#)

⁴⁰ [HC Deb 27 April 2020 c92](#). Further detail was given in a [letter from the Prisons Minister to the Justice Committee on 4 May 2020](#).

⁴¹ HM Inspectorate of Prisons, [COVID-19 update](#), 8 April 2020

3. Calls for further action

3.1 Reducing flow of people into prisons

There have been calls to reduce the number of people being sent or returned to prison. The Prison Reform Trust has said that alongside releases, it is vital that “the flow of people into prisons is also drastically reduced”.⁴²

The Centre for Crime and Justice Studies notes that governments in other countries have opted to postpone or suspend new prison sentences for some, or in some jurisdictions, all of those sentenced to immediate custody.⁴³

Recalls to prison

Frances Crook, CEO of the Howard League for Penal Reform, has said guidance on avoiding unnecessary recalls should be strengthened.⁴⁴ The Prison Reform Trust has said people should not be recalled to prison “in all but the most dangerous of circumstances”.

Short sentences

David Gauke, the former Justice Secretary, has called for a suspension on the use of short prison sentences. The Guardian reported:

“The advantage of not sending people inside for short sentences is that it reduces the churn,” Gauke said. “That is really important. There is a lot of churn in prisons, with people coming in and out. That creates a risk.”⁴⁵

Frances Crook has said the Government should send a message to judges and magistrates to consider avoiding short sentences, particularly for breaches, time in lieu for non-payment of fines and for non-violent and non-sexual offences.⁴⁶

The thinktank Reform has called for the use of short sentences to be suspended. It proposes preventing sentencers from passing a sentence of six months or less, with exemptions for violent and sexual offenders.⁴⁷

The Justice Secretary told the Justice Committee on 7 April 2020 that it was tempting to use the crisis as a pretext to change policy on sentencing. He said he was not persuaded that the short sentence option should be abolished. He said work on ensuring that community alternatives were as meaningful as possible would be done through a sentencing white paper and bill this year.⁴⁸

Remand

Frances Crook has said the Government should send a message to judges and magistrates that any decision to remand to custody should be subject to anxious scrutiny in light of the virus.⁴⁹

⁴² Prison Reform Trust, [Early release of prisoners](#), 25 March 2020

⁴³ Centre for Crime and Justice Studies, Helen Mills, [Prison sentencing needs to be part of the 'new normal'](#), 11 May 2020

⁴⁴ Howard League for Penal Reform, Frances Crook's blog, [Coronavirus in prison: Measures that could be considered](#), 18 March 2020

⁴⁵ [Prisons 'could see 800 deaths' from coronavirus without protective measures](#), Guardian, 21 March 2020

⁴⁶ Howard League for Penal Reform, Frances Crook's blog, [Coronavirus in prison: Measures that could be considered](#), 18 March 2020

⁴⁷ Reform, [Reducing the prison population: Extending Home Detention Curfew and scrapping short sentences](#), 20 March 2020

⁴⁸ Justice Committee, [Summarised note of meeting with the Lord Chancellor](#), 7 April 2020

⁴⁹ Howard League for Penal Reform, Frances Crook's blog, [Coronavirus in prison: Measures that could be considered](#), 18 March 2020

Children

The Howard League for Penal Reform highlights the difficulties for children in custody caused by the severely restricted regimes. Their [briefing](#) states that, were the severely restricted regimes to continue in the long term, children's rights would be contravened:

A continuation for up to a year of the severely restricted regimes that have been in place in child prisons since the end of March contravene children's rights under the UN Convention on the Rights of the Child and they are simply untenable long-term.⁵⁰

The Howard League argues that children should not be detained in such severely restricted conditions:

Unless and until arrangements are made to ensure children are guaranteed humane conditions in custody, they should not be detained, either on remand or under sentence.

3.2 Home Detention Curfew

Currently Home Detention Curfew (HDC) enables eligible prisoners serving between 12 weeks and just less than 4 years to be released up to 135 days before the half-way point in their sentence, subject to an electronically monitored curfew. The prisoner must have served at least a quarter of the sentence, and a minimum of 28 days.⁵¹

There have been calls for the use of HDC to be reviewed further. The think tank Reform argues that:

Government should consider using emergency legislation to transfer all prisoners currently serving a sentence of less than six months into the HDC population.⁵²

The Government had already planned to increase the amount of time eligible prisoners can spend on HDC from four and a half to six months. A Statutory Instrument was laid to implement this change in July 2019 and then withdrawn prior to the 2019 election.⁵³ A further statutory instrument was laid in March 2020.⁵⁴ It was due to come before the House on 12 May 2020 but did not. Prisons Minister, Lucy Frazer, was asked on 12 May why the plans had been "pushed back or dropped". She told the Justice Committee:

HDC is already in operation. It is an effective scheme that works well and is part of the toolkit we have. We are committed to the rehabilitation that it offers, but at the moment we are concentrating on dealing with covid in our prisons. The capacity issue has significantly changed since that instrument was laid.⁵⁵

⁵⁰ Howard League for Penal Reform, Children in prison during the Covid-19 pandemic: A briefing from the Howard League for Penal Reform, May 2020

⁵¹ HM Prison and Probation Service. [Home Detention Curfew \(HDC\) Policy Framework](#), 28 March 2019

⁵² Reform, [Reducing the prison population: Extending Home Detention Curfew and scrapping short sentences](#), 20 March 2020

⁵³ [The Criminal Justice Act 2003 \(Early Release on Licence\) Order 2019](#)

⁵⁴ [The Criminal Justice Act 2003 \(Early Release on Licence\) Order 2020](#)

⁵⁵ Justice Committee, [Oral evidence: Ageing prison population](#), 12 May 2020, Q145

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