Legal Aid, Sentencing & Punishment of Offenders Bill House of Lords, Committee Stage - January 2012

The Ministry of Justice's *Breaking the Cycle* Green Paper presented a coherent programme of legislative reform to reduce unnecessary use of imprisonment and to reduce offending. Such reform is designed to make better use of scarce public funds and ameliorate the damaging effects of populist criminal justice legislation from the past two decades that has resulted in record numbers of people in prison and unacceptable reconviction rates.

The Bill contains many important features of the Green Paper. It has, however, lost a little of its clarity of purpose. We hope that the debates in the House of Lords will provide an opportunity to scrutinise the Bill in greater detail than was achieved in the House of Commons, enabling it to be strengthened to help create a fairer and more effective justice system. This briefing focuses on key clauses to Part 3 (Sentencing):

Chapter 1
- Community Sentences – Learning Disabilities & Breach (Clauses 61-63)
- Curfews (Clauses 67 & 75)
- Young Adults - Intensive Community Orders (New Clause 177AA)
- Youth Referral Orders (Clause 73)

Chapter 2
- Remand & Bail (Clause 83 & Schedule 11)

Chapter 3
- Remands to youth detention accommodation (Clauses 91, 92, 93 & 94)

Chapter 5
- Imprisonment for Public Protection (Clause 113 & 117)
- Life Sentence for Second Listed Offence (Clause 114)
- Extended Sentences (Clauses 115 & 116)

Chapter 7
- Youth Cautions (Clauses 124-127)

Chapter 8
- Knife Crime (Clause 128)

New Clauses
- Women in the criminal justice system (New Clauses 182A, 182B, 182C)
- Restorative Justice (New Clause 177DAA)
- Rehabilitation of Offenders Act 1974 (New Clause xx)

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Community Sentences (Part 3, Chapter 1)

The Prison Reform Trust welcomes the reforms to Community Orders allowing greater discretion for supervising officers and more flexibility in relation to drug rehabilitation and alcohol treatment requirements. In 2008, community sentences were 8 per cent more effective at reducing one year proven reoffending rates than custodial sentences of less than 12 months for similar offences. The National Audit Office estimates that reoffending by former short-sentenced prisoners in 2007-08 cost the economy £7bn to £10bn a year.

Clause 61 - Duty to give reasons for a sentence (Amendment 172C)

> Clause 61, page 43, line 34, at end insert –
>
> '(2A) In complying with subsection (1), where the sentence is a custodial sentence and the duty in subsection (2) of section 152 is not excluded by subsection (1)(a) or (b) or (3) of that section, the court must state that it is of the opinion referred to in section 152(2) and why it is of that opinion.'

Clause 61 removes the specific duties in section 174 of the Criminal Justice Act 2003 for the court to explain its consideration of the thresholds for imposing a custodial sentence or community order. The clause does maintain the duty required by the Criminal Justice and Immigration Act 2008 for the court to explain its reasons for passing a youth rehabilitation order or custodial sentence for under-18s.

If prison is genuinely to be a punishment of last resort, it should only be imposed after careful consideration of all other options and with a clear statement as to why a community sentence is not appropriate. We understand the need to remove unnecessary administrative burdens on courts, but remain concerned that removing the specific duty to explain when the custody threshold has been passed has the potential to weaken the seriousness with which a custodial sentence is considered.

Learning disabilities (Amendments 172B, 178ZA & 178ZB)

> Clause 61, page 43, line 33, after 'ordinary language' insert 'appropriate to the intellectual ability and understanding of the individual offender'
>
> Clause 86, page 65, line 38, after "language" insert "appropriate to the intellectual ability and understanding of the individual child"
>
> Clause 95, Page 74, line 1, after "language" insert "appropriate to the intellectual ability and understanding of the individual child"

The term 'ordinary language' is imprecise; what is 'ordinary' to a magistrate or a judge may not be 'ordinary' to the individual offender. Research demonstrates that more than half of children who offend have speech, language and communication difficulties. Around 23 per cent of children who offend have learning disabilities. There is no routine screening to identify children with communication difficulties or learning disabilities so that appropriate support, to ensure effective participation in court, can be put in place.

The Government rejected as “technically flawed”an amendment tabled by Helen Goodman MP raising these concerns during the Bill Committee Stage in the House of Commons. This new amendment addresses those flaws, while improving the wording in subsection (2) to ensure that those with learning disabilities are able to participate in court and understand its decisions. We hope the Government will accept it.

New clause after clause 61 – Court/Probation liaison (Amendment 176ZAA)

> Insert the following new Clause—
>
> “Awareness of sentencing options
>
> The Lord Chancellor must make arrangements to ensure that each Probation Trust provides to all magistrates in the area for which it has responsibility—
>
> (a) information about all programmes and options for which it is responsible, and
>
> (b) opportunities to observe such programmes.”

A reduction in liaison and communication between courts and magistrates and their local probation services is thought to have impeded sentencers in their work to pass a fair and proportionate sentence on a defendant found guilty, particularly those whose offending falls, according to sentencing guidelines, on the cusp between a community and a custodial penalty. This new clause would ensure that courts and magistrates are fully informed and complement the work of the Local Crime Community Sentence (LCCS) initiative, run by the Magistrates Association and the Probation Association and endorsed by the Lord Chief Justice, to build public confidence in sentencing and raise awareness of the effectiveness of community penalties.

New clause after clause 61 - Short prison sentences (Amendment 176ZB)

Insert the following new clause — “Short prison sentences

> “A court may not pass a sentence of imprisonment for a term less than six months unless it considers that no other method of dealing with the offender is appropriate and must state the reasons for its opinion in open court in accordance with the provisions of section 174 of the Criminal Justice Act 2003 (duty to give reasons for, and explain effect of, sentence).”

This amendment would require that a court may pass a sentence of less than six months only when all other appropriate measures had been considered and state its reasons for passing the sentence. The Prison Reform Trust supports Make Justice Work in its drive for better use of community sentences and welcomes this proposed amendment. In 2008, community sentences were more effective (by 8 per cent) at reducing one year proven reoffending rates than custodial sentences of less than 12 months for similar offences. This is achieved at a fraction of the budget for incarceration.

A report published by the National Audit Office in 2010 revealed that 60 per cent of short-sentenced prisoners commit another crime within a year of release, costing the country between £7 billion and £10 billion a year. It found that around 60,000 people are jailed for less than 12 months each year, costing taxpayers £300 million. Often they are homeless, unemployed and addicted to drugs or alcohol. The majority spend 45 days or

less in custody and are not given "appropriate assistance" to help them turn their lives around.

Edward Leigh MP, former chairman of the Public Accounts Committee, said the report showed that short prison terms served, *"little purpose over and above taking the offenders in question out of the community for a short time. The uncomfortable truth is that they are not working, studying or doing almost anything constructive with their time. Indeed, half of them spend all day, every day sitting in their cells."*

Clause 63 - Breach of community orders (Amendments 176A & 176B)

Clause 63, page 47, line 6, at end insert –
"(c) omit sub-paragraph (c)"

Clause 63, page 47, line 19, at end insert –
"(c) omit sub-paragraph (c)"

The law currently allows a court to sentence an offender to custody for breach of a community order even if the original offence was non-imprisonable. This power is contained in paragraph 9(1)(c) of Schedule 8 to the Criminal Justice Act 2003. Figures published for the calendar year 2009 show that 3,996 people were received into prison establishments in England and Wales for breach of a community sentence. This amendment would delete para 9(1)(c), so that courts would only be able to imprison an offender for breach of a community order if the original offence was an imprisonable one.

The Prison Reform Trust welcomes the flexibility the Bill would allow a court in dealing with breaches of community sentences through the new options of taking no action and fining an offender in relation to a breach. Such measures recognise that a return to court can of itself prove a sufficiently salutary experience in many cases. To guard against the excessive use of custody in breach cases, the Prison Reform Trust favours an amendment to remove the power allowing a court to re-sentence someone to custody even if the original offence was not serious enough to justify a custodial sentence.

Clauses 67 & 75 – Curfews (Amendments 177ZA & 177CA)

Clause 67, page 50, line 19, leave out subsection (2)

Clause 75, page 57, line 21, leave out subsection (2)

Clauses 67 and 75 extend the maximum duration of curfews for adults and children respectively from 12 to 16 hours a day and from six to 12 months. Responding to the debates on amendments to clauses 67 and 75 in Bill Standing Committee in the House of Commons, Prisons & Probation Minister, Crispin Blunt MP has argued that the extensions are needed to enable the courts to use curfews creatively and flexibly.

Research suggests that many children have difficulties complying with curfews as a result of factors including lack of parental support, domestic violence and living in unsafe accommodation. As Kate Green MP, former chief executive of the Child Poverty Action Group, in the House of Commons' committee stage debate on the bill, said: "12 months is an exceptionally long time in a young persons' life." The Prison Reform Trust is concerned that this provision could result in courts setting offenders, especially children, up to fail and an increased occurrence of breach of community sentences and Youth Rehabilitation Orders (YRO).

The courts already have the flexibility the Minister appears to be seeking. The current 12 hours does not have to be for a single period, it can be for two or more blocks of time if the court feels that is appropriate. And it can be for a longer period at weekends than during the week. Given that, we believe the case is not yet made for the extension of curfews and hope Ministers will accept these amendments retaining the current maximum of 12 hours and a period no longer than six months.

New clause after clause 71 - Intensive Community Order for Young Adults (Amendment 177AA)

(1) In section 177 of the Criminal Justice Act 2003, after paragraph (l) insert – "(la) an intensive community supervision requirement,".

(2) The court, if it makes a community order which imposes an activity requirement, may specify in relation to that requirement a number of days which is more than 90 but not more than 180.

(3) An activity requirement made under subsection (2) is referred to in this Part of the Act as an "intensive community supervision requirement".

(4) A community order which imposes an intensive community supervision requirement must also impose –

(a) a supervision requirement and
(b) a curfew requirement (and accordingly, if so required, an electronic monitoring requirement).

(5) community order which imposes an intensive community supervision requirement (and other requirements in accordance with subsection (4) is referred to in this part of the Act as "a community order with intensive community supervision" (whether or not it also imposes any other requirement).

Young men aged 18-20 years-old are disproportionately represented in the prison population. While pockets of good practice exist, figures show that prison is not effective in reducing reoffending by this age group, especially those serving short sentences. Her Majesty's Chief Inspector of Prisons has raised concerns about young adults sentenced to Detention in a Young Offenders Institution (YOI), describing his impression of *"young men sleeping through their sentences"* in HMYOI Rochester [1] and a lack of engagement in work, education and training opportunities across the YOI estate.[2]

The criminal justice system is clearly failing to divert impressionable young men and women from falling into a pattern of offending in the first place and doing little to help them turn their lives around when they do. For the sake of future victims of crime, a more focussed and intensive approach to rehabilitating young adult offenders is needed.

The Prison Reform Trust has been impressed by the success of the Intensive Alternative to Custody (IAC) schemes run by Greater Manchester Probation Trust and West Yorkshire Probation Trust, which are tailored to the specific needs of young adults. They are achieving good compliance rates and the early indications are that they are also

[1] Report of an announced inspection of HMYOI Rochester, HMCIP (June 2011)
[2] HM Chief Inspector of Prisons – Annual Report 2010/11

successful in reducing reoffending rates. Experienced probation officers describe the IACs as the first real opportunity that they have had to create requirements that will change offending behaviour. Local magistrates also support the IAC approach.

We believe the Bill should be amended to introduce a requirement to extend the IAC model to young adults under other probation services.

Clause 73 - Referral Orders for Young Adults (Amendments 177B & 177C)

Clause 73, page 53, line 9, at beginning insert –

(1) In section 16(1) of the Powers of Criminal Courts (Sentencing) Act 2000 (duty or power to refer certain young offenders to youth offender panels) for "18" substitute "21".'

Clause 73, page 53, line 17, at end insert –

(2A) In section 18 of that Act (making of referral orders: general) –

(a) in subsection (1)(a) after "team" insert "or probation trust", and
(b) in subsection (2) after "team" insert "or probation trust".

(2B) In section 21 of that Act (establishment of panels) –

(a) in subsection (3)(a) after insert "or probation trust",
(b) in subsection (3)(b) after "team" insert "or probation trust",
(c) in subsection (5) after "team" wherever it appears insert "or probation trust",
(d) in subsection (6)(a) after "team" insert "or probation trust",
(e) in subsection (6)(b) after "team" wherever it appears insert "or probation trust" and
(f) in section (6)(c) after "team" insert "or probation trust".

(2C) In section 27(1) of that Act (final meeting) after "team" insert "or probation trust".

(2D) In section 29(1) of that Act (functions of youth offending teams) –

(a) in subsection (1) after "team" insert "or probation trust",
(b) in subsection (2)(a) after "team" insert "or probation trust", and
(c) in subsection (3) after "team" insert "or probation trust"

Referral orders were piloted between 1999/2000 and 2001/02 and became available across England and Wales in April 2002. The referral order's primary aim is to prevent young people reoffending and provide a restorative justice approach within a community setting. Data on reoffending rates for 2009 showed that the proportion of juveniles who reoffended following a referral order was 37.1 per cent and the frequency rate of reoffending was an average of 94.7 offences per 100 offenders. These are the lowest reoffending rates of all juvenile court imposed sentences.[3]

[3] Reoffending of juveniles: results from the 2009 cohort (England & Wales) Ministry of Justice

The Prison Reform Trust welcomes the reform in Clause 73 requiring that the court no longer has to choose between making a Referral Order and absolutely discharging the young offender. As a result, the court will now be able to choose to conditionally discharge the offender instead. It also allows offenders to receive a Referral Order if they have had one in the past. This gives courts the flexibility needed to respond to individual offences and the specific support needed to reform a child's behaviour. We would support a similar approach being taken with young adults (18-20 year-olds).

Bail and Remand (Part 3, Chapter 2)

Clause 83 & Schedule 11 – Amendment to Bail Enactments

Over 53,000 people are sent to prison each year to await trial. By law, someone appearing before a court to face charges is entitled to a presumption in favour of bail, unless they are charged with serious offences such as murder, manslaughter or rape. However, unlike sentencing, which is proportionate to the seriousness of the offence, bail decisions can be based on the perceived risk that the defendant will fail to appear for trial, intimidate witnesses, or commit further offences.

- In 2009, 39 per cent of people remanded into custody did not go on to receive a custodial sentence, including around 11,000 who were acquitted.
- Just under two-thirds of people received into prison on remand awaiting trial are accused of non-violent offences.
- Remand prisoners make up around 15 per cent of the prison population, but they accounted for 50 per cent of self-inflicted deaths in 2010.

Time on remand is a punishment with harmful effects that go beyond the loss of liberty. In 2009, the average time spent on remand was 15 weeks. As remand prisoners are held in local prisons, which are typically older and more overcrowded, they are more likely to be locked up for most of the day, more likely to be confined two to a cell, and less likely to have opportunities to work. Moreover, even a relatively short period in custody can result in homelessness, family breakdown and loss of employment.

Clause 83 and Schedule 11 establish a test of a reasonable probability that the offence is imprisonable as a criterion of whether the court can deny bail. The “no real prospect test” would mean that defendants should not be remanded to custody if the offence is such that they are unlikely to receive a custodial sentence. The test will not restrict custodial remand for serious crimes, nor where there is a risk that the person will, if released on bail, engage in domestic violence. We hope Peers will support this reform.

Clauses 91-94 - Remands to youth detention (Amendments 178ZAA, 178ZAB, 178ZAC & 178ZAD)

Clause 91, page 69, line 22, leave out ‘twelve’ and insert ‘fourteen’

Clause 92, page 70, line 19, leave out ‘twelve’ and insert ‘fourteen’

Clause 93, page 71, line 40, leave out ‘twelve’ and insert ‘fourteen’

Clause 94, page 72, line 36, leave out ‘twelve’ and insert ‘fourteen’

One third of children remanded to youth detention accommodation are subsequently given community sentences, and so the Prison Reform Trust backs the reforms in clauses 91, 92, 93 and 94, placing two clear sets of conditions on the court before a child can be remanded. We also support the simplified Single Remand Order to address the anomaly of 17 year-olds being treated as adults in remand legislation. As with electronic monitoring, we believe the minimum age for remand to youth detention accommodation should be raised from 12 to 14 years.

Chapter 5 – Dangerous Offenders (Imprisonment for Public Protection)

Clause 113 – Abolition of certain sentences for dangerous offenders

The Prison Reform Trust welcomes clause 113, which abolishes the indeterminate sentence of Imprisonment for Public Protection (IPP) and the equivalent sentence of Detention for Public Protection (DPP) for under-18s. It addresses the consequences of ill drafted legislation which has left thousands of people sentenced to a bureaucratic limbo with little or no hope of gaining legitimate release. As of November 2010, there were 6,375 prisoners serving an IPP or DPP sentence. 3,173 of these prisoners are held beyond their tariff expiry date.[4] Between implementation of the Act in 2005 and the end of 2010, just 202 people serving IPPs have been released from custody.[5]

Sheer weight of numbers, an overstretched and risk averse Parole Board and a lack of availability and access to offending behaviour courses are principle reasons for the extremely low rate of release from the sentence. In December 2009, over half of those IPP prisoners who were over tariff were still awaiting a Parole Board review of their case or a decision from a review.[6] Of the 2,468 people being held beyond tariff in January 2010, 466 had completed no accredited offending behaviour programmes.[7] People suffering from a mental illness and those with an IQ below 80 are barred from attending offending behaviour programmes and so cannot attest to their reduced risk.

The Coalition Government's *Breaking the Cycle* Green Paper consulted on reform of the IPP and DPP sentences. The Prison Reform Trust put forward a case for their replacement by determinate sentences which provide greater clarity and transparency. Therefore, we welcome the Government's decision now to abolish the IPP and DPP and to reform the release test for prisoners serving IPP sentences.

Clause 114 - Life Sentence for Second Listed Offence

This clause would require the courts to impose a mandatory life sentence on a person aged 18 or over convicted of a specified offence which is serious enough to justify a sentence of imprisonment of 10 years or more; and who, has previously been convicted of a specified offence for which they were sentenced to imprisonment for life or for a period of 10 years or more. Mandatory life sentences are currently restricted to convictions for murder. To depart from this principle, even with the allowances for the exercise of discretion by the courts built into the new provisions, could be seen as the thin end of the wedge. Mandatory sentences limit the ability of sentencers to take the specific circumstances of the individual case fully into account. Long, determinate sentences are already available for serious offences and judges should be allowed discretion to utilise them.

Clause 115 and Schedule 18 - New Extended Sentences

The Prison Reform Trust would like to see the IPP and DPP sentences replaced by determinate sentences and revert to the use of the discretionary life sentence for adults who genuinely pose a grave risk to society and whose crime merits a life sentence. A return to the 'just deserts' model would enable all concerned to see that the severity of

[4] House of Commons, Official Report, 29 March 2011: column 234W
[5] Table A3.4, Offender Management Caseload Statistics 2010, Ministry of Justice (2011)
[6] Letter from Maria Eagle MP to Andrew Stunnell MP, 19 January 2010
[7] House of Commons, Official Report, 26 January 2010: column 732W

the sentence was proportionate to the seriousness of the offence, taking into account aggravating and mitigating factors.

The calculation of the new Extended Sentence is complex, which could undermine the Government's desire for clarity and transparency in sentencing. Peers may wish to consider whether the new provisions contained in clause 115 and schedule 18 meet the demands of fairness and proportionality. To ensure proper planning and provision we would like to see a comprehensive resource assessment that sets out the potential impact of these proposals.

Clause 116 - Extended Sentences: release on licence (Amendment 179BA)

Clause 116, page 95, line 40, leave out "two-thirds" and insert "half"

While we welcome the decision to abolish the IPP sentence, we have concerns about the impact of the new extended sentence. In particular, the provision that offenders should serve a minimum of two-thirds of the sentence in custody could result in people being subject to a shorter period of post-release supervision on licence. This amendment seeks to address this anomaly and would bring the new extended sentence into line with the minimum custodial terms of other determinate sentences.

Clause 117 – Power to change test for release on licence of certain prisoners

The Prison Reform Trust's Advice & Information Service hears from many IPP prisoners who, because of lack of resources for risk-reduction courses, cannot gain a place on programmes that act as a condition of release. The situation is even worse for prisoners who are mentally ill and those with learning disabilities because they are barred from attending offending behaviour programmes. In June 2010, the Prisons Minister said that many IPP prisoners *"cannot get on courses because our prisons are wholly overcrowded and unable to address offending behaviour. That is not a defensible position."*

To address the difficulties and injustice of holding well over 3,000 people beyond tariff, clause 117 provides the Secretary of State with the powers to change the test for release on license of certain prisoners, namely those serving an IPP sentence or the new proposed extended sentence. However, there is no detail on how this will operate on the face of the Bill and Ministers have not specified their intensions. Peers may want to satisfy themselves that the enabling power in Clause 117 provides a sound basis for a just and fair release test for people serving IPP and extended sentences.

Youth Cautions (Clause 124) (Amendment 185A)

Page 106, line 12, at end insert—

(6A) Within three years of the commencement of this section, the Secretary of State must review and report to Parliament on the operation of youth cautions, in particular, the use of appropriate adults in the cautionary processes and whether it should be extended to 18 year olds.

(6B) At any point following a report being made under subsection (6A), the Secretary of State may by order extend the appropriate adult provisions in this section to a person given a youth caution, where that person is under the age of 18.

The Prison Reform Trust supports the simplified approach and extra flexibility provided by the new framework for youth cautions in clauses 124-127, particularly the freedom to offer a youth caution to a young person even if (s)he has previously been convicted of an offence or given a youth conditional caution. We also welcome the requirement to refer a young person who has received a caution to the Youth Offending Team (YOT), as this offers the best hope of diverting them from a pattern of offending behaviour.

The Police and Criminal Evidence (PACE) Act 1984 establishes that only those under the age of 17 years old are to be treated as children and therefore questioned or interviewed in the presence of an "appropriate adult". Seventeen year-olds do not, therefore, enjoy the same safeguards as younger children. Given that Ministers are using this Bill to resolve the historic anomaly of treating 17 year-olds as adults for the purposes of Bail, we hope they will resolve this anomaly for youth cautions too.

Knife Crime (Clause 128) (Amendments 186 and 187)

Page 109, leave out lines 6 to 19

Page 110, leave out lines 15 to 28

Clause 128 was added to the Bill to introduce a mandatory minimum six month sentence for adults convicted of using a knife or offensive weapon to threaten and endanger. The Justice Secretary brought forward a further amendment at Report Stage in the House of Commons, introducing a mandatory minimum four month Detention and Training Order (DTO) for 16 and 17 years olds convicted of the same offence. There is understandable public concern about knife crime. Young people themselves are most likely to be the victims of this offence. However, mandatory prison sentences fetter the discretion of judges and magistrates. The courts already have the power to sentence an under-18 year-old to a term of up to four years in prison for possession of a knife in a public place. The latest statistics show that the number of such offences by children in the last quarter reduced by 27 per cent in the past two years.

We hope that Peers will support the removal of the extension of the new sentence to 16 and 17 year-old children. Imprisonment should be used only as a last resort and for the shortest possible time. The impact assessment for this extension suggests that 200-400 more children are likely to be imprisoned as a result. Given that over 70 per cent of children are reconvicted within a year of leaving custody, evidence suggests that imprisonment is rarely rehabilitative for this age group and that other measures, including restorative justice, could be used to much better effect.

New clause - Women's Justice Strategy Commission (Amendment 182A)

Insert the following new Clause—

"Women's Justice Strategy Commission

(1) There shall be body known as the Women's Justice Strategy Commission for England and Wales ("the Commission").

(2) The Commission shall consist of no less than 10 and no more than 20 members appointed by the Secretary of State.

(3) The members of the Commission—

(a) shall include persons representative of government departments and public bodies whose responsibilities have relevance to the treatment of female offenders and the prevention of offending by women (including, but not limited to, responsibilities for criminal justice, housing, education, employment, benefits, social services and health services), and
(b) shall work with specialists who have the experience and knowledge to provide the necessary expert advice.

(4) The Commission shall have the following functions, namely—

(a) to develop a strategy to reduce offending by women and for the delivery of appropriate and effective services to women in the criminal justice system,
(b) to monitor the extent to which the aims of that strategy are being met,
(c) to set standards with respect to the specification, commissioning and provision of services to women in the criminal justice system and services to reduce offending by women,
(d) to make grants, with the approval of the Secretary of State, to bodies to enable them to develop good practice in the provision of services to women in the criminal justice system and the prevention of offending by women.

(5) The Commission shall provide an annual report to Parliament relating to its discharge of the functions specified in subsection (4)."

New clause – Women's Justice Board (Amendment 182B)

Insert the following new Clause—

"Women's Justice Board

(1) There shall be body corporate known as the Women's Justice Board for England and Wales ("the Board").

(2) The Board shall consist of 10, 11 or 12 members appointed by the Secretary of State.

(3) The members of the Board shall include persons who appear to the Secretary of State to have extensive recent experience of the treatment of female offenders and women at risk of offending.

(4) The Board shall have the following functions, namely—

(a) to develop a strategy to reduce offending by women and the delivery of appropriate and effective services to women in the criminal justice system,

(b) to monitor the extent to which the aims of that strategy are being met,
(c) to advise the Secretary of State on the operation of the criminal justice system in relation to women, the provision of services to women in the criminal justice system and the steps which might be taken to prevent offending by women,
(d) to set standards with respect to the specification, commissioning and provision of such services,
(e) to make grants, with the approval of the Secretary of State, to bodies to enable them to develop good practice in the provision of services to women in the criminal justice system and the prevention of offending by women.

(5) The Board shall provide an annual report to Parliament relating to its discharge of the functions specified in subsection (4)."

New clause - Women in the criminal justice system (Amendment 182C)

Insert the following new clause—

"Treatment of women in the criminal justice system

(1) The Secretary of State shall—

(a) in each year, publish a strategy designed to promote the just and appropriate treatment of women in the criminal justice system, and
(b) appoint a person with responsibility for leading and co-ordinating the implementation of that strategy.

(2) Publication under subsection (1)(a) shall be effected in such manner as the Secretary of State considers appropriate for the purpose of bringing the strategy to the attention of persons engaged in the administration of criminal justice and of the public."

Over the last 15 years, the number of women in prison has more than doubled. Most serve short sentences for non-violent crime. Almost two-thirds of those serving less than 12 months are reconvicted within a year of release. The Home Office commissioned review by Baroness Corston in 2007, made it clear that there are sound social and economic reasons to reform women's justice. The independent Women's Justice Taskforce has called for greater ministerial accountability and a cross-government strategy to divert women from crime and reduce the women's prison population.

When women are sentenced to custody it has a profound impact on family life. Imprisonment will cause a third of women to lose their homes and around 18,000 children are separated from their mothers each year. Just 5 per cent stay in their own homes when their mum goes to jail. Many women offenders have themselves been victims of serious crime, domestic violence and sustained sexual abuse. In 2009, women accounted for 43 per cent of the 24,114 incidents of self-harm in prisons, despite representing just 5 per cent of the prison population.

With clear leadership it should be possible to reduce offending by women and prison numbers. But addressing the multiple and complex needs of women offenders requires close co-operation across government departments and between national and local

agencies. Experience shows this is unlikely without effective governance. Amendments present options for ensuring cross-government oversight and accountability for women's justice. Reform is supported by the National Federation of Women's Institutes (WI) and the National Council of Women.

New clause - Restorative Justice for Victims (Amendment 177DAA)

(1) Subject to subsection (2) where –

(a) at his first hearing a defendant pleads or has pleaded guilty to an offence,
(b) and there is an identifiable victim of that offence,

the court may remand the case in order that the victim shall be offered the opportunity to participate in a process of restorative justice involving the offender and any person or persons affected by the offence.

(2) A court may not remand the case for the purpose specified in subsection (1) unless it is satisfied that arrangements for a process of restorative justice can be or have been made in the area where the offender will reside.

(3) Where a court does not remand the case for the purpose specified in subsection (1) at the first hearing it may do so at a subsequent hearing.

Restorative justice brings victims and offenders into communication, so that victims can tell offenders the impact of their crime and receive an apology; and so that offenders take responsibility and make amends. Restorative justice is now embedded within the youth justice system. However, according to the charity Victim Support, fewer than one per cent of victims of adult crime currently have access to restorative justice. A Home Office research study showed that:

- Most victims agreed to participate in a face to face meeting with the offender;
- 85 per cent of victims said they were satisfied with the process;
- Participation in restorative justice reduced re-offending by 14 per cent.

The Restorative Justice Council has estimated that using restorative justice pre-sentence, with 70,000 adult offenders would produce savings of £185 million from reductions in re-offending alone. In its March 2010 Report*, Cutting Crime: The case for justice reinvestment*, the Justice Select Committee, concluded, *"We urge the Justice Secretary to take immediate action to promote the use of restorative justice."*

The Coalition Government made clear its commitment to restorative justice in its Green Paper, and in a recent speech Minster of State, Lord McNally, said: "Restorative justice is not a soft option …. Facing up to wrongdoing can be a difficult and unpleasant process, perhaps even more challenging in some ways than some of the more traditional criminal disposals …. We're looking across a range of possibilities, including improving use in community resolution to better tackle low-level crime, and embedding the role of victims in restorative justice." This Bill is the best opportunity to fulfill these ambitions. We hope Ministers will amend the bill so that victims are offered restorative justice where such services are available.

Rehabilitation of Offenders Act 1974

Under the current provisions, an adult who had been sentenced to less than six months in prison would see their conviction become “spent” after seven years; an adult who had been sentenced to between six months and 30 months in prison would not see their conviction become “spent” until ten years after conviction. Anyone who receives a sentence of more than 30 months finds that their conviction is never “spent”. For those under-18, the “rehabilitation period” would be half that of adults. Some posts, such as those working with children or vulnerable adults, or in legal or financial positions are rightly exempt from the 1974 Act and so convictions must always be disclosed.

Employment is one of the keys to reducing reoffending. Yet, for most offences, job applications disclosing a criminal record will be rejected for around half of all vacancies. Given recent increases in sentence length, and what is now known about the key drivers to reducing reoffending, the Rehabilitation of Offenders Act 1974 no longer strikes the right balance between protection and resettlement. Despite commitments to reform from a succession of previous Ministers, the Act remains unchanged and former offenders continue to face serious difficulties securing employment.

Lord McNally confirmed the Government’s intention to use this Bill to reform the 1974 Act during the Second Reading debate: “I can also announce today that the Government intend to introduce reforms to the Rehabilitation of Offenders Act 1974, the outdated operation of which inhibits rehabilitation. We intend to bring forward amendments to achieve the right balance between the need to protect the public while removing unnecessary barriers that prevent reformed offenders contributing to society.”The Prison Reform Trust welcomes this commitment and looks forward to seeing the Government’s proposed amendments.