

Crime and Courts Bill - Schedule 15

House of Lords, Ping Pong – 25 March 2013

Schedule 15 of the Crime and Courts Bill, Dealing non-custodially with offenders, develops proposals contained in the Ministry of Justice's consultation *Punishment and reform: effective community sentences*. Legislation presents an opportunity to build on the success of community sentences which are now outperforming short prison sentences and are 8.3% more effective in reducing re-offending rates. This briefing, prepared by the Prison Reform Trust with the assistance of Paul Cavadino, is intended to assist Peers in the consideration of government amendments to Schedule 15 made in the House of Commons:

- Provision for female offenders (Amendment 133)
- Restorative Justice (Amendment 132)

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Provision for female offenders (Amendment 133)

Page 269, line 16, leave out paragraph 29

Amendment 133 seeks to strike out Part 7 of Schedule 15, which provides much needed statutory protection for women offenders. Part 7 was successfully introduced into the Bill during 3rd Reading stage following an amendment by Lord Woolf, but was subsequently struck out in Committee stage in the House of Commons without further debate.

The original amendment was worded as follows:

- (1) Contracts made by the Secretary of State with probation trusts shall require each probation trust to make appropriate provision for the delivery of services to female offenders.
- (2) Provision under sub-paragraph (1) shall include provision for women to carry out unpaid work and participate in programmes designed to change offending behaviour with the particular needs of women in mind.”

The government expressed sympathy with the purpose of Lord Woolf’s amendment during the Committee stage, with Damien Green explaining that they “readily acknowledge that there are many complex factors associated with women’s offending, including domestic violence, sexual abuse, substance misuse and homelessness”. Therefore, it is disappointing that the Government chose to strike out Part 7 despite a majority in the House of Lords and cross-party support for requiring women’s community provision. The amendment would help to ensure appropriate community provision for women that takes account of their different offending profile, addresses the complex causes of their offending and the impact of separating children from primary carers.

The government published its promised *Strategic objectives for female offenders*¹ on 22 March. The priorities laid out in the strategy are:

1. *Ensuring the provision of credible, robust sentencing options in the community that will enable female offenders to be punished and rehabilitated in the community where appropriate. We are committed to ensuring all community orders include a punitive element. Other options such as tagging and curfews can also be used to provide greater monitoring and structure to offenders’ lives.*
2. *Ensuring the provision of services in the community that recognise and address the specific needs of female offenders, where these are different from those of male offenders.*
3. *Tailoring the women’s custodial estate and regimes so that they reform and rehabilitate offenders effectively, punish properly, protect the public fully, meet gender specific standards, and locate women in prisons as near to their families as possible; and*
4. *Through the transforming rehabilitation programme, supporting better life management by female offenders ensuring all criminal justice system partners work together to enable women to stop reoffending.*

¹ Ministry of Justice (2013), *Strategic objectives for female offenders*, London: Ministry of Justice

To support delivery of these priorities, the Minister Helen Grant announced that she will chair a new Advisory Board for Female Offenders. The Board “will bring together key stakeholders, criminal justice partners and senior officials from across Whitehall.” The Board is intended to support the Minister “in providing strong leadership on delivery of our strategic priorities.”

The Prison Reform Trust welcomes the publication of the strategy and the establishment of the Advisory Board, which we hope will be a catalyst for coordinated cross-Government action to reduce women’s prison numbers. However, it does not obviate the need for statutory measures to ensure that the distinct needs of women in the justice system are prioritised and met. History shows that, in the absence of specific legislative measures, good intentions to address women’s different needs are often not realised, and momentum can quickly be lost as ministers come and go. We are conscious that there have been 10 previous reports across the UK on the matter of women in the justice system. These include seminal reviews by Professor Dorothy Wedderburn, the Fawcett Society, Cabinet Office, HMCIP thematic and Baroness Corston’s review commissioned by the Home Office following deaths of six women at Styal prison. None has been implemented in full.

In light of the publication of the strategy, Peers will want to gain assurances about:

- **How the Ministry of Justice intends to ensure that all contracting areas have provision which is appropriate to the particular needs of women**
- **How will the government ensure that progress is sustained and built on without statutory protection. Lord Ramsbotham has tabled an amendment (133A) to reinsert Part 7 of Schedule 15 into the Crime and Courts Bill.**
- **The government should provide regular updates to Parliament on their progress in delivering and implementing their objectives, beyond responding to the Justice Committee’s inquiry on women offenders and the review by the National Audit Office.**
- **The government should ask the Probation Inspectorate to carry out a review of the appropriateness of provision for women and of progress on the women's strategy after a year or so.**

Throughout the passage of the Crime and Courts Bill, and the Legal Aid, Sentencing and Punishment of Offenders Bill before it, the government has argued that there is no need for a legislative requirement to meet the specific needs of women offenders, and no mention whatsoever has been made of women in the criminal justice system. They have argued that a strategy on women offenders and appointment of a ministerial champion obviate the need for statutory protection.

It is a matter of regret that without debate in the House of Commons today’s debate is now scheduled to take place late in the evening due to the placing of the amendment on the Marshalled List. Some Peers, including Lord Woolf, will be at Passover.

The government sought to clarify its position during Committee stage, stating that it objected to Lord Woolf’s original amendment because it plans to reform the

management and rehabilitation of offenders in the community, and that as such it would be “*unhelpful and confusing to introduce legislation specifying commissioning duties on trusts at this stage*”. The *Transforming Rehabilitation* consultation paper asks for views on **how** providers should make appropriate provision for female offenders - but there is no dispute that probation trusts (and any other providers) should do this. It should be possible in debate to indicate that the requirement “to make appropriate provision for the delivery of services to female offenders” can be interpreted widely to cover all commissioners and contractors providing community justice services including probation trusts.

The government has given these reasons for not taking this legislative opportunity to deal effectively with women who offend:

1. **The ‘embedding’ of funding for women’s services to probation trusts.** This funding is not ringfenced for service provision delivered by women’s centres or women’s services. A number of them fear significant funding cuts, even closure. This undermines the stability and viability of skilled voluntary sector organisations that have been working to provide services which tackle the underlying causes of women’s offending. There is currently a great deal of uncertainty about the future funding of many of these centres which were hailed as a significant advance when first established. It is also important to note that funding has declined each year since the announcement of £15.6 million for diverting women from custody in 2009. The budget for 2013/14 is £3.78m with no guarantee that it will be allocated to specialist women’s services. Unless funding for these services is continued, the progress they have made in recent years, and the opportunity to build the evidence base on what works for women, will be wasted. It is ironic that these services are under threat when they are being regarded internationally as a model approach to women’s offending (e.g. in Australia).²
2. **Probation commissioning intentions.** The inclusion in the NOMS Commissioning intentions for 2013-14 of an intention that “provision should take into account the specific needs of women offenders”³ falls far short of any statutory guarantee of women-specific provision. There is evidence that commissioning procedures and outcomes have already had a negative impact on the funding of women-only services, including services for women offenders and those at risk of offending, in recent research published by the Equality and Human Rights Commission⁴. The risk is that without a statutory requirement to provide appropriate services and programmes for women, they will be squeezed out. In the *Strategic objectives for female offenders*, the government “recognise that the relatively small number of female offenders presents particular challenges.”⁵ Unless there is statutory underpinning for women’s community provision there is a risk that this will result in continued neglect.
3. **A women’s strategy.** The government’s strategy has now been published and it has been cited repeatedly as a reason why legislation is not required. We

² Hirst, A. And Rinne, S. (2012) *The impact of changes in commissioning and funding of women-only services*, London: Equality and Human Rights Commission

³ See p.36, para 6a of NOMS Commissioning Intentions for 2013-14 Negotiation Document, October 2012

⁴ Hirst and Rinne (2012) *The impact of changes in commissioning and funding of women-only services*, London: EHCR

⁵ See Strategic priority 2 of Ministry of Justice (2013), *Strategic objectives for female offenders*, London: Ministry of Justice

maintain that underpinning the strategy with legislation remains the most appropriate way to support its delivery and ensure that momentum isn't lost. This can only complement and strengthen any strategy to improve criminal justice outcomes for women. If it is not to become part of this Bill when will Government be prepared to legislate on this pressing matter?

4. **Perceived progress.** Restating previous announcements such as roll out of the Women's Staff Awareness Programme (WASP).⁶ Although the women's prison population has now stabilised after a 26% rise between 2000 and 2010, it's fair to say that provision for women offenders in the community is patchy and its future uncertain. Until, and unless, the courts are confident that effective community penalties are available in their area then vulnerable women will continue to be sent to custody to serve short sentences for non-violent crimes.

Supporting evidence

Over half the women in prison report having experienced domestic violence and one in three has been sexually abused.⁷ Most women serve very short sentences, with 58% sentenced to custody for six months or less. 81% of women entering custody under sentence had committed a non-violent offence, compared with 71% of men.⁸ They also accounted for 31% of all incidents of self-harm despite representing just 5% of the total prison population.⁹

The recent joint inspection report on the use of alternatives to custody for women offenders found a lack of women-specific provision for both unpaid work and offending behaviour programmes and noted that "women-only groups, where run, were often successful."¹⁰ It found that "women's community centres could play an important role in securing women's engagement in work to address her offending and promote compliance with her order or licence."¹¹

At the moment it looks as though Ministry of Justice funding for the national network of women's centres will be substantially reduced and for some it may run out this month. The future of the centres under payment by results commissioning is uncertain. Without adequate statutory underpinning and secure consistent funding, many centres are likely to cease being able to provide an important disposal for the courts and vital services for women offenders. The valuable collaborative and multi-agency work that they have pioneered, which includes involvement in ensuring compliance with court orders, is in jeopardy. Their closure would result in the immediate loss of expertise and support for a particularly vulnerable group in the justice system. By placing community provision for female offenders on a statutory

⁶ WASP was originally publicised in 2008 in the first government progress report to parliament 'Delivering the Government Response to the Corston Report'. Further progress on roll out was highlighted in the subsequent progress report in 2009 'A report on the government's strategy for diverting women away from crime'.

⁷ Social Exclusion Unit (2002), Reducing reoffending by ex-prisoners, London: Social Exclusion Unit

⁸ Table 2.2b, Ministry of Justice (2012), Offender Management Statistics Quarterly Bulletin, April to June 2012, London: Ministry of Justice

⁹ Table 3, Ministry of Justice (2012), Safety in custody statistics, Quarterly update to June 2012, London: Ministry of Justice

¹⁰ Criminal Justice Joint Inspection (2011), Thematic Inspection Report Equal but different? An inspection of the use of alternatives to custody for women offenders, London: CJI

¹¹ Ibid.

footing, the new part will help to protect the vital role played by women's centres and other local services in the effective delivery of community provision for women.

This letter was published in the Independent today, indicating cross-party support for legislation to put women's justice provision on a statutory footing:

Women in prison: reform is long overdue

Nigel Morris sets out new plans to reform women's justice ("Government to act on women prisoners", 22 March). The Justice Minister's welcome announcement could prove a catalyst for co-ordinated cross-government action to reduce women's prison numbers. So many of the solutions to women's offending do not lie behind bars.

Currently over 10,000 women are sent to prison each year, most to serve short sentences for non-violent crimes. Many women in prison have themselves been the victims of serious crime, including domestic violence, sexual abuse and rape. For far too long, our prisons have been full of women who have mental-health needs, suffer from drug and alcohol addictions, and struggle with debt. High levels of self-harm reflect their distress at separation from their children.

To underpin sound policy, the Government would be wise to place community provision for women in the justice system on a statutory footing. History shows that, in the absence of specific legislation, commitments to address women's different needs are often not realised, and momentum can be lost as ministers and officials come and go. Today, as the Crime and Courts Bill enters its final Parliamentary stages, the Ministry of Justice should seize the opportunity to give the full force of the law to its good intentions to reform women's justice.

Baroness Howe of Idlecote

Lady Jay of Ewelme

Chairman, The Pilgrim Trust

Baroness Linklater of Butterstone

Juliet Lyon CBE

Director

The Rt Hon Lord Woolf

Chairman

The Rt Hon Lord Hurd

President

The Prison Reform Trust

The Rt Hon Lord Beecham

Jan Hemlin, Chair of UK Programme Action Committee, Soroptimist International

*Subsequently the Rt Hon Baroness Corston, Lord Ramsbotham and Elsie Leadley, President of the National Council of Women, have confirmed to the Prison Reform Trust their support for this letter.

Restorative Justice (Amendment 132)

Page 263, line 2, at end insert—

“(5A) In a case where there is such a restorative justice requirement, a person running the activity concerned must in doing that have regard to any guidance that is issued, with a view to encouraging good practice in connection with such an activity, by the Secretary of State.”.

This welcome government amendment has been tabled in response to earlier amendments by Paul Goggins MP, former Prisons Minister, during Committee stage. It builds on Part 2 of Schedule 15 which allows the courts to defer at the pre-sentence stage in order for the victim and offender to be offered restorative justice at the earliest opportunity.

The amendment is a statutory footing which will enable the government to provide clarity, good practice, and safeguards for victims, in the use of pre-sentence restorative justice. The aim is to increase the confidence of the judiciary and help ensure that the legislation is fully implemented.

This is the most significant development for restorative justice in England and Wales since legislation introducing referral order panels to the youth justice system in 1999. The Restorative Justice Council, Victim Support, Prison Reform Trust, and Criminal Justice Alliance have all supported moves to establish a legislative framework for restorative justice. We are particularly grateful to MPs and Peers from all three main political parties who put the case for legislation during debates on the Legal Aid, Sentencing and Punishment of Offenders Bill.

There has not been a single instance of pre-sentence restorative justice in this country since the research trials closed in 2004. Yet pre-sentence restorative justice has been shown to work internationally and by positive evidence from a £7 million government research programme.¹² It provides the judiciary with better information to inform sentencing and can be introduced without causing delay in court proceedings.¹³ With 22% of victims who participated in restorative justice saying it should have been offered to them sooner, pre-sentence restorative justice provides victims with the earliest opportunity to participate.¹⁴

We would encourage Peers to support this amendment to ensure good practice and safeguard victims in the use of pre-sentence restorative justice.

¹² Ministry of Justice (2010), Green Paper Evidence Report: Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders, London: Ministry of Justice

¹³ Ibid.

¹⁴ Ibid.