



## Prison Reform Trust Briefing on the Offender Rehabilitation Bill

House of Commons Second Reading  
11 November 2013

### Background

On 9 January 2013, the Ministry of Justice published a consultation paper entitled *[Transforming Rehabilitation: A revolution in the way we manage offenders](#)*. The consultation paper proposed a number of reforms to the existing legislation regarding the sentencing and release of offenders, including the introduction of mandatory supervision on release for offenders serving custodial sentences of less than 12 months and changes to the requirements available to the court as part of community orders and suspended sentence orders. The Bill implements the sentencing and release reforms set out in the government's response to the consultation.

### Key points

- The Prison Reform Trust supports new Clause 1 to ensure effective Parliamentary scrutiny and oversight of the government's reforms to the probation service.
- In the transition to the new probation arrangements, MPs will want to ensure continuity of supervision of offenders and that public safety and accountability are not compromised.
- The proposal to extend mandatory supervision to short sentenced prisoners will add a further year within the ambit of the criminal justice system for all those sentenced to custody for any period over one day and up to two years.
- The government estimates that the introduction of 12-month mandatory supervision will result in around 13,000 offenders being recalled or committed to custody, giving a prison place increase of around 600 additional places, at a cost of £16m per year.<sup>1</sup>
- MPs will want to consider whether the proposals are fair and proportionate and whether the proposed new arrangements should be voluntary or mandatory. Greater discretion could be given to sentencers in setting the length of the licence and supervision periods.
- MPs will want to ensure sufficient discretion for supervisors in setting licence conditions appropriate to the individual needs of the offender; and flexibility in arrangements for breach and recall.
- The Prison Reform Trust is concerned that the proposals could undermine effective transition arrangements for young people and significantly increase the likelihood of breach and recall to custody for this group.
- We are further concerned that the proposal to extend mandatory supervision will disproportionately affect women and have the unintended consequences of driving up the female prison population.

**Contact: Mark Day, Head of Policy and Communications; tel 020 7689 7746;  
email [mark.day@prisonreformtrust.org.uk](mailto:mark.day@prisonreformtrust.org.uk)**

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<sup>1</sup> Ministry of Justice (2013) Updated impact assessment of the Offender Rehabilitation Bill, 20 June 2013

## **Probation service reform: Parliamentary approval (Clause 1)**

Clause 1 of the Bill was introduced as a result of a successful amendment in the House of Lords Report Stage of the Bill. It specifies that no alteration or reform may be made to the structure of the probation service unless the proposals have been laid before, and approved by resolution of, both Houses of Parliament.

The Prison Reform Trust supports the purpose of the new clause to ensure effective Parliamentary scrutiny and oversight of the government's reforms to the probation service. Under the government's proposals the management of low and medium risk offenders, comprising around 70% of the current probation caseload, will be competed out to the private and voluntary sector. Providers will be commissioned nationally in 21 contract package areas to deliver resettlement and rehabilitation services; and paid on a payment by results basis according to their success at reducing reoffending. The public probation service will be significantly reduced and reconfigured as a national service focussed on the supervision of high risk offenders.

**The reforms are taking place at considerable speed and there is a lack of transparency and proper information regarding the costs and associated risks of this massive change programme.** The government has refused to publish its own risk assessment of the proposals and, on the grounds of commercial confidentiality, has withheld its estimate of the projected savings from the outsourcing of probation services. This is despite the fact that the savings are required to meet the costs of extending 12 month statutory supervision to short sentenced prisoners.<sup>2</sup>

**In the transition to the new arrangements, MPs will want to ensure continuity of supervision of offenders and that public safety and accountability are not compromised.** The start of the first phase of competition was announced in September 2013. On the current timetable, Probation Trusts will be abolished and replaced by Community Rehabilitation Companies (CRCs) and the new National Probation Service (NPS) by April 2014. The changes are expected to be fully operational by Autumn 2014.<sup>3</sup> The Probation Chiefs Association has warned of "serious risks of an unacceptable fall in probation service quality" if the transitory infrastructure is not implemented carefully or fully tested before the new arrangements "go live" on 1 April 2014.<sup>4</sup> As the outgoing Chief Inspector of Probation, Liz Calderbank, has said: "the scale and pace of the change is considerable and we are concerned as an inspectorate, that it is taken forward and implemented without any drop in performance".<sup>5</sup>

Furthermore, the Probation Chiefs Association and Probation Association have expressed concern that the proposal to split provision for high and medium/low risk offenders between the public and private/voluntary sectors could lead to a fragmented service which compromises accountability and puts public safety at risk. Liz Calderbank warned in the Inspectorate's response to the Transforming Rehabilitation consultation that "Any lack of contractual or operational clarity between the public and private sector providers will, in our view, lead to systemic failure and an increased risk to the public."<sup>6</sup>

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<sup>2</sup> Ibid.

<sup>3</sup> Ministry of Justice (2013) Target Operating Model: Rehabilitation Programme, London: Ministry of Justice. Available at <http://www.justice.gov.uk/downloads/rehab-prog/competition/target-operating-model.pdf>

<sup>4</sup> PCA (2013) Briefing – the views of the Probation Chiefs Association on the Transforming Rehabilitation programme

<sup>5</sup> HM Inspectorate of Probation: Changes must be implemented carefully, 16 July 2013. Available at <http://www.justice.gov.uk/news/press-releases/hmi-probation/hm-inspectorate-of-probation-changes-must-be-implemented-carefully>

<sup>6</sup> HMIP (2013) Response to the Transforming Rehabilitation consultation. Available at <http://www.justice.gov.uk/downloads/about/hmiprob/transforming-rehabilitation-response.pdf>

### **Post-release supervision for short sentenced prisoners (Clauses 2 and 3)**

Clauses 2 and 3 of the Bill extend statutory monitoring and supervision to offenders serving short sentences for a mandatory period of up to 12 months. The new legislation will provide that all those released from short custodial sentences will now: first be subject to a standard licence period for the remainder of their custodial sentence served in the community; and then be subject to an additional supervision period for the purpose of rehabilitation. The licence period and supervision period together will last for 12 months.

The Prison Reform Trust welcomes the principle of focusing on rehabilitation and extending support to short sentenced prisoners. However, the proposal to add an additional mandatory statutory supervision period on top of the licence period for short sentenced prisoners represents a disproportionate and unfair punishment; adding a further year within the ambit of the criminal justice system for all those sentenced to custody for any period over one day and up to two years. As the Bill currently stands, a 12 month supervision period will be mandatory, regardless of the length of custodial sentence imposed. **MPs will want to consider whether the proposals are fair and proportionate and whether greater discretion could be given to sentencers in setting the length of the licence and supervision periods.**

The proposals will result in a significant increase in the number of people breached and recalled to custody. The government estimates that around 13,000 offenders will be recalled or committed to custody, giving a prison place increase of around 600 additional places, at a cost of £16m per year.<sup>7</sup> The estimated rise in numbers of recalls will place additional strain on an already over stretched and under-resourced prison service. Reforms introduced by the Criminal Justice Act 2003, which increased the length of the licence period served by most determinate sentenced prisoners, resulted in the recall population rising by 5,300 between 2005 and 2009, responsible for 16% of the rise in the overall population.<sup>8</sup> **MPs will want to ensure sufficient discretion for supervisors in setting licence conditions appropriate to the individual needs of the offender; and flexibility in arrangements for breach and recall.**

Furthermore, it is unclear whether the introduction of mandatory supervision will reduce reoffending by short sentenced prisoners. Research evidence suggests that desistance from crime is dependent on an individual's preparedness to change and take personal responsibility. A long and disproportionate additional period of statutory supervision is unlikely to achieve the rehabilitative outcomes the government is seeking. The Peterborough pilot, often cited by the government in support of the proposal, is a voluntary scheme and so its participants are self-selecting. As such, it provides very little evidence for the likely impact of a mandatory period of statutory supervision on rates of reoffending.

**Instead of seeking to route rehabilitation through prison, the government should build on the evidence of what works by prioritising effective community solutions and a cross-government approach to reducing crime.** Prison is expensive and has a poor record of reducing reoffending, with 58% of short sentenced prisoners reconvicted within one year of release.<sup>9</sup> Ministry of Justice figures show that court ordered community sentences are nearly seven percentage points more effective at reducing reoffending, with a matched sample of offenders, than a short prison term.<sup>10</sup>

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<sup>7</sup> Ministry of Justice (2013) Updated impact assessment of the Offender Rehabilitation Bill, 20 June 2013

<sup>8</sup> Ministry of Justice (2013) Story of the prison population: 1993 - 2012 England and Wales, London: Ministry of Justice

<sup>9</sup> Table 18a, 19a and 7a, Ministry of Justice (2013) Proven re-offending quarterly October 2010 - September 2011, London: Ministry of Justice

<sup>10</sup> Table A1, Ministry of Justice (2013) 2013 Compendium of reoffending statistics and analysis, London: Ministry of Justice

Polling evidence suggests widespread public support for effective community solutions to crime. An ICM telephone poll of 1,000 members of the public, commissioned by the Prison Reform Trust and conducted one month after the 2011 riots in England, revealed widespread support for a range of measures to tackle crime and disorder.<sup>11</sup> Most people (84%) felt that better supervision of young people by parents would be effective in preventing crime and disorder, and large majorities back better mental health care (80%) or making amends to victims (79%). Unpaid community work (76%) and treatment to tackle drug addiction (74%) also received strong support.<sup>12</sup> Only 65% thought a prison sentence would be effective. One in four thought expressly that it would not be effective.<sup>13</sup>

### **Impact of post-release supervision on people with learning disabilities and difficulties**

The introduction of a new period of statutory supervision, with its own requirements, in addition to the licence period, adds an extra element of complexity into a person's sentence. People with particular disabilities, such as learning disabilities, are likely to need additional support in understanding and meeting the requirements. Individuals with conditions that can affect communication, comprehension, memory or organisation skills should be enabled to understand fully the terms of their supervision requirements, and what might happen if they do not follow them. It will also be important to ensure that individuals who experience such difficulties receive (rather than simply be sent) routine reminders of the requirements placed on them in such a way that is accessible to them and will help them to comply.

During the House of Lords Committee Stage (Day One) debate on the Bill, Lord Bradley tabled an amendment to clarify provision for people with learning disabilities under the new arrangements.<sup>14</sup> In response the spokesperson for the government Lord Ahmad gave assurances that appropriate training will be provided for supervisors and revised guidance issued to public and private sector providers. The Minister committed to issuing an easy-read version of the supervision requirements.

**MPs will want to ensure that the government meets its commitments and that the needs of people with learning disabilities are identified and met under the new arrangements. The Prison Reform Trust, the WI and the Care not Custody coalition welcome the government's commitment to roll out a national liaison and diversion scheme, backed by an initial £50 million funding from the Department of Health and working in partnership with Ministry of Justice.<sup>15</sup> MPs will want to be assured of progress in roll out of the national liaison and diversion service.**

### **Supervision of young offenders (Clauses 5 and 7)**

Clauses 5 and 7 make provision for offenders who are under the age of 18 at the point of sentence, but who reach the age of 18 before release from custody, to receive the same minimum length of statutory supervision as those who are sentenced as adults. Under the government's proposals, young people could be transferred from youth justice services to private providers who do not know them, and subject to long periods of supervision according to adult expectations and demands. **The proposals could undermine effective transition arrangements for young people and significantly increase the likelihood of**

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<sup>11</sup> ICM (2011) Theft and vandalism survey, 2-4 September 2011

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

<sup>14</sup> Offender Rehabilitation Bill, Committee: 1st sitting: House of Lords 5 June, 2013 (Hansard 5 Jun 2013 : Column 1196)

<sup>15</sup> Crispin Blunt MP, the former prisons minister, said in a statement in the House of Commons on 15 February 2011: "As we made clear in the Green Paper, we will, with the Department of Health, have invested £50 million by 2014 in establishing a liaison and diversion service, both in the police stations and in courts, to ensure that people who should more appropriately be treated in the health service do not go to prison." See

<http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110215/debtext/110215-0001.htm>

**breach and recall to custody, due both to technical failures to comply and the risk of reoffending.**

The point of transfer from youth to adult justice services is a critical time for a young person and for the justice professionals who must work to ensure that a young person's welfare is properly safeguarded and that any risks they pose to the public are minimised. There is a growing body of research evidence, endorsed by the Barrow Cadbury Trust's T2A initiative, which shows that a young adult's developmental maturity should be taken into account throughout the criminal justice process, and should be regarded as at least as important as their chronological age.<sup>16</sup> This is necessary because variation in maturity may be directly related to offending and the ability to comply with statutory requirements, such as community sentences or licence conditions.

In recent years, there have been some welcome improvements in the transition arrangements of under 18s into the adult justice system. The YJB and partners are making good progress in developing relationships and promoting agreements between Youth Offending Teams (YOTs) and probation services. Recent developments include publishing a 'Youth to Adult Transitions Framework', and creating the 'Youth to Adult Portal' which is used to transfer a young person's information securely from a YOT to probation. The marked reductions both in the numbers of children in custody and in youth offending are to be welcomed by all.

**It should be noted that among those aged 18–21 (24 if in full-time education) there will be a number of people who were previously 'looked after' and who will be entitled to 'leaving care services' under the Children Act 1989 and Leaving Care Act 2000.** Fewer than 1% of all children in England are in care,<sup>17</sup> but looked after children make up 30% of boys and 44% of girls in custody.<sup>18</sup> Care leavers may be subject to increased risks and are entitled to further support from children's services on release from custody.

Multi-agency Youth Offending Teams based in the local authority are often best placed to meet the needs of young people with 'looked after' status. Young people receiving leaving care services should have a pathway plan outlining the level of continued engagement which the local authority will have with them, as well as aspirational plans, mapping educational pathways, for example, which the young person hopes to achieve. YOTs must identify these young people and inform probation trusts so that adult services are aware and can cater for those with 'former relevant' status.<sup>19</sup> Probation Trusts must actively establish contact with leaving care workers and the young person's personal advisor where appropriate.<sup>20</sup> **MPs will want to ensure care leavers are able to exercise their entitlements under the new arrangements.**

The Offender Rehabilitation Bill provides discretion for either Community Rehabilitation Companies (CRC), the National Probation Service (NPS) or YOTs to supervise those aged 18 or over during the top-up period of supervision. Following concerns raised by Peers in the House of Lords stages of the Bill, the government has given assurances that the priorities of the Youth Justice Board (YJB) and local Youth Offending Teams will be taken into account to inform commissioning decisions at Contract Package Area (CPA) level. It has confirmed that existing transition arrangements will be retained under the new system, with staff seconded between YOTs and the NPS to help ensure an integrated approach.

<sup>16</sup> Prior, D et al (2011) *Maturity, young adults and criminal justice: A literature review*, Birmingham: University of Birmingham

<sup>17</sup> Department for Education (2012) *Children looked after by local authorities in England year ending 31 March 2012*, London: DfE, and Office for National Statistics, 2011 Census for England and Wales

<sup>18</sup> Murray, R. (2012) *Children and Young People in Custody 2011–12*, London: HM Inspectorate of Prisons and Youth Justice Board

<sup>19</sup> Department for Education, *The Children Act 1989 Guidance and Regulations, Volume 3: Planning Transition to Adulthood for Care Leavers*. London: Department for Education.

<sup>20</sup> Ministry of Justice (2012) *Youth to Adult Transitions Framework*, London: Ministry of Justice

**Despite these assurances, there is a lack of clarity regarding how the priorities of the Youth Justice Board and local Youth Offending Teams will be taken into account to inform commissioning decisions. There is a need for greater clarity as to the process for deciding between a YOT and the National Probation Service as to whether to transfer a young person to a Community Rehabilitation Company. A YOT should *always* be party to the decision to transfer a young person to a CRC. National standards, training and guidance will be needed to ensure the appropriate treatment of young adults transferred to CRCs. Sufficient resources will need to be made available to YOTs to deliver 12 months statutory supervision for the young people they retain.**

### **Arrangements for supervision and rehabilitation: female offenders (Clause 11)**

The government was persuaded before the summer recess (with the support of the Prison Reform Trust and its Chair Lord Woolf and others) to amend the Offender Rehabilitation Bill. New Clause 11 requires the Secretary of State to ensure that contracts or other arrangements providing for the supervision or rehabilitation of offenders must (a) state that the Secretary of State has complied with the public sector equality duty in section 149 of the Equality Act 2010 as it relates to female offenders; and (b) identify anything in the arrangements that is intended to meet the particular needs of female offenders.<sup>21</sup>

Reiterating the Secretary of State's obligation to comply with the Public Sector Equality Duty in other legislation is unusual but research has shown that "a comprehensive understanding of the equality duty and particularly its role in ensuring that different needs are met and that disadvantage is properly addressed by public services is not yet fully in place."<sup>22</sup> The government must ensure that providers of supervision services understand they need to comply with the equality duty.<sup>23</sup> Other provisions in the Equality Act 2010 that allow for women-only and women-specific services should also be profiled in guidance for contractors.<sup>24</sup> **MPs will want to ask the government to commit to providing clear guidance as part of its tendering documentation.**

**The commitment to comply with the Equality Duty in the Bill in relation to provision for female offenders is important given the lack of attention paid to women in the Transforming Rehabilitation proposals.** Chair of the Justice Select Committee Rt Hon Sir Alan Beith MP said in tabling the Committee's report on women offenders: "The government's Transforming Rehabilitation reforms have clearly been designed with male offenders in mind. This is unfortunately symptomatic of an approach within the Ministry of Justice and National Offender Management that tends to deal with women offenders as an afterthought."<sup>25</sup>

**The government has confirmed that it will not be publishing an equality impact assessment of the Bill.<sup>26</sup> It has not yet provided any gender disaggregated analysis in its impact assessment of the Bill.<sup>27</sup> MPs will want to ensure that the likely**

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<sup>21</sup> Clause 11 ORB, adopted 9 July 2013

<sup>22</sup> Hirst A and Rinne S (2012) The impact of changes in commissioning and funding on women-only services, Research report 86, London: Equality and Human Rights Commission <http://www.equalityhumanrights.com/publications/our-research/research-reports/research-reports-81/>

<sup>23</sup> See the Technical Guidance on the Public Sector Equality Duty England, Equality and Human Rights Commission, 2012 [http://www.equalityhumanrights.com/uploaded\\_files/PSD/technical\\_guidance\\_on\\_the\\_public\\_sector\\_equality\\_duty\\_england.doc](http://www.equalityhumanrights.com/uploaded_files/PSD/technical_guidance_on_the_public_sector_equality_duty_england.doc)

<sup>24</sup> Equality Act 2010 Schedule 3 paragraphs 26-27

<sup>25</sup> Justice Committee (2013) Women offenders: after the Corston report, London: The Stationary Office. Available at <http://www.parliament.uk/business/committees/committees-a-z/commons-select/justice-committee/news/women-offenders-report-published/>

<sup>26</sup> Grayling, C (2013) Letter to De Hywel Francis MP, Chair, Joint Committee on Human Rights, 19 September 2013. Available at [http://www.parliament.uk/documents/joint-committees/human-rights/Letter\\_from\\_Chris\\_Grayling\\_MP\\_191013.pdf](http://www.parliament.uk/documents/joint-committees/human-rights/Letter_from_Chris_Grayling_MP_191013.pdf)

<sup>27</sup> Ministry of Justice (2013) Updated impact assessment of the Offender Rehabilitation Bill, 20 June 2013

consequences of the proposals for women are given “due regard” as required under the Public Sector Equality Duty.<sup>28</sup>

**Women offenders will be disproportionately affected by the proposals as they are more likely to be low risk and to serve very short sentences for comparatively minor offences.** In 2012, those entering prison to serve sentences of 12 months or less accounted for 71% of all women entering prison under an immediate custodial sentence in 2012, whereas the proportion for men was 57%.<sup>29</sup> More than 4,500 women entered prison to serve sentences of 6 months or less:

- more than half of them (2,458) were given sentences of 3 months or less;
- more than 1 in 10 were sentenced to 4 weeks or less;
- 22 women received sentences of 10 days or less.<sup>30</sup>

The government estimates that extending statutory supervision to short sentenced prisoners is likely to result in up to 13,000 people being recalled to custody for breach of licence conditions. **Unless monitoring and supervision arrangements accommodate women’s specific needs and circumstances there is a strong likelihood that more women will end up recalled to custody for breach, already a significant driver of women’s imprisonment.**

Over half of all women in prison report having experienced emotional, physical or sexual abuse as a child, compared to a quarter of men, and the majority of women in prison are primarily responsible for dependent children. Because women will comprise a very small proportion of all offenders subject to the new statutory supervision requirement, there is a risk that their needs will be overlooked or marginalised in the contracting process.

**The contracting out of probation services threatens to undo the progress in the development and funding of women-specific services that has been made in recent years.** Specialist service providers working with women offenders are likely to be disproportionately disadvantaged under the new payment by results commissioning. This is because the small number of women offenders means it is difficult to produce statistically significant evidence in support of gender-specific interventions when making the case for their services to first-tier contract holders. As the Justice Committee report says: “Funding arrangements for provision for women appear to be being shoehorned into the payment by results programme, resulting in the likelihood of a loss of funding.”<sup>31</sup>

These organisations are likely to become Tier 3 providers, sub-contracted or grant funded by Tier 1 providers. It is unclear how these arrangements will work, or whether these small organisations will be able to sustain themselves under these funding arrangements. It is also unclear whether organisations that work with women offenders will be able to work with vulnerable women as well and help prevent them entering the criminal justice system in the first place. The report by the National Audit Office for the Justice Committee highlighted the impact on women’s centres of the continuing uncertainty over their funding.<sup>32</sup> That report also emphasised that measuring reductions in reoffending fails to recognise distance travelled by individuals and wider benefits to society such as the improved health of the users of women’s services.<sup>33</sup>

<sup>28</sup> See [http://www.equalityhumanrights.com/uploaded\\_files/EqualityAct/PSED/essential\\_guide\\_update\\_nov.pdf](http://www.equalityhumanrights.com/uploaded_files/EqualityAct/PSED/essential_guide_update_nov.pdf)

<sup>29</sup> Table A2.3, Ministry of Justice (2013) *Annual tables – Offender management caseload statistics 2012 tables* London: MoJ

<sup>30</sup> Ministry of Justice Freedom of Information number 82495 May 2013

<sup>31</sup> Justice Committee (2013) *Women offenders: after the Corston report*, London: The Stationary Office. Available at <http://www.parliament.uk/business/committees/committees-a-z/commons-select/justice-committee/news/women-offenders-report-published/>

<sup>32</sup> NAO (2013) *Funding of women centres in the community*, London: NAO. Available at <http://www.nao.org.uk/wp-content/uploads/2013/05/Funding-of-Womens-Centres-in-the-Community.pdf>

<sup>33</sup> *Ibid*, p.16

Centrally-allocated funding for women's centres is due to run out in March 2014, but contracts with first-tier providers operating in the 21 contract package areas may not be finalised until autumn 2014. Prior to the government's review of the women's custodial estate and the announcement that HMP Downview would be re-roled to the men's secure estate, the Secretary of State committed to ensuring that some of the savings arising from the closure of women's prisons would be reinvested in preventing women from ending up in prison.<sup>34</sup> **MPs will want to clarify what steps are being taken to ensure existing women's services survive the transition to the new system; what are the estimated savings from the closure of HMP Downview; and will they be reinvested in preventative services offered by women's centres.**

Lord McNally gave a commitment during a debate on 25 March 2013 to report back to Parliament in March 2014 on progress towards improved provision for women offenders.<sup>35</sup> **Given the significance of the impending changes to community supervision to the delivery of its strategic objectives for female offenders, we would like a government commitment to report annually on the sustainability of women's community services in the new commissioning environment. There is a strong case for exempting women all together from the proposals and instead developing specific arrangements for women designed to reduce offending.**

**MPs will want to clarify what weighting will be given in the contracting process to the provision of women-specific services and whether bidders will be fully scrutinised for their offer to women offenders. We would welcome clarification of the contractual safeguards which will be put in place to protect against perverse incentives.**

The recent HM Inspection report on HMP Holloway Prison noted that 44 agencies provided services to HMP Holloway Resettlement Unit. Under the new arrangements, unless a provider is in the contract supply chain they may not be authorized to deliver services to offenders. **MPs will want to ensure that women's community organisations who are not in the contract supply chain will be able to provide resettlement and through the gate services to women in prison.**

### **New drug appointment requirement (Clause 13 and Schedule 1)**

Clause 13 and Schedule 1 introduce a new 'drug appointment requirement' as a licence condition or requirement for the new supervision period. Drugs are a major cause of offending and reoffending, particularly in regard to acquisitive crime. A recent Prisons Inspectorate survey found that 29% of prisoners reported having a drug problem when they arrived in custody and 6% said they had developed a drug problem since their arrival.<sup>36</sup> Drug use amongst people in custody is reported to be high. A Home Office study found that four out of 10 prisoners said they had used drugs at least once whilst in their current prison, a quarter had used in the past month and 16% in the past week.<sup>37</sup>

The Transforming Rehabilitation Strategy outlines a new "through the gate" approach which will be delivered in a number of resettlement prisons in partnership with the Department of Health. It is clearly important for people to be enabled to continue treatment on release from prison and avoid relapse. The most effective way to achieve this is to ensure that people take responsibility for maintaining treatment and are motivated to break their addiction. Compelling people into taking up treatment can be counterproductive. To achieve successful outcomes requires the Department of Health and health and addiction charities to take the lead in engaging former prisoners in effective treatment.

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<sup>34</sup> HC Deb, 2 July 2013, c750

<sup>35</sup> Hansard HL, 25 March 2013, c916

<sup>36</sup> HM Chief Inspector of Prisons for England and Wales (2012) Annual Report 2011-12, London: The Stationery Office

<sup>37</sup> Singleton et al (2005) The impact and effectiveness of Mandatory Drugs Tests in prison, Findings 223 London: Home Office

**MPs will want to be sure that these proposals do not blur the professional and ethical boundaries between health and punishment.** Although the emphasis in the proposed legislation is on complying with appointments, the appointments could be construed by offenders and health professional as mandatory medical appointments. A number of jurisdictions, including the US, prohibit the use of medical testing as a form of punishment. The American Medical Association states that “Physicians can ethically participate in court-initiated medical treatments only if the procedure being mandated is therapeutically efficacious and is therefore undoubtedly not a form of punishment or solely a mechanism of social control.”<sup>38</sup> The proposals need to be assessed carefully against agreed international UN standards<sup>39</sup> of medical ethics and practice in the treatment of offenders and detainees.

### **Community orders and suspended sentence order (Clauses 15 – 18)**

The Prison Reform Trust welcomes the intention of the government to build on the increased flexibility in the community sentencing framework to strengthen the rehabilitative impact of community orders. Many offenders serving short prison sentences or community orders have complex and multiple needs. It is essential that courts have a range of effective options available and the discretion to match requirements to the particular needs and circumstances of each individual case. **We welcome the additional flexibility introduced by Clauses 15 and 16 of the Bill. It is also vital that sufficient resources are available locally to meet the full range of requirements.**

However, the flexible approach sought by the Ministry of Justice seems at odds with the more rigid and centralised approach to community sentences adopted by the Crime and Courts Act, which introduces a mandatory punitive element to every community order.<sup>40</sup> This will limit the discretion of judges in setting an appropriate sentence and creates an unhelpful and unnecessary distinction between punitive and rehabilitative requirements. The government’s own impact assessment of the proposals acknowledged that they could have an adverse impact on reoffending rates by causing primarily rehabilitative requirements to be substituted with primarily punitive ones.<sup>41</sup> **MPs will want to ensure that the uptake of the new rehabilitation and programme requirements by the courts is not limited by the duty on the courts to impose a mandatory punitive element with every community order.**

**MPs will want to be certain that the provisions of Clause 18 to require an offender subject to a community order or suspended sentence order to seek the permission of the responsible officer or court before changing their place of residence does not result in unnecessary and unworkable restrictions which increase the likelihood of breach and recall to custody.** Courts can already specify as a condition of community orders and suspended sentence orders restrictions on an offenders’ residency if it is deemed appropriate. It is unclear why a mandatory requirement is necessary. The proposal could result in unnecessary bureaucracy and red tape and impose disproportionate restrictions on an individual’s freedom of movement.

Another area where greater flexibility would be welcome is in dealing with non-compliance and breach. 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.<sup>42</sup> For the large number of offenders with particular support needs such as mental

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<sup>38</sup> Opinion 2.065 - Court-Initiated Medical Treatments in Criminal Cases

<sup>39</sup> Eg the UN Principles on Medical Ethics

<sup>40</sup> Schedule 15, Part 1, Crime and Courts Act (2013)

<sup>41</sup> Ministry of Justice (2012) Consultation on sentences in the community and the future shape of probation services: Impact Assessment 04/01/2012, London: Ministry of Justice

<sup>42</sup> Table 6.9, Offender Management Caseload Statistics 2009, London: Ministry of Justice

health problems, learning disabilities and difficulties and substance misuse problems, an inflexible approach to dealing with technical breach of licence is counterproductive.

We welcomed the increased flexibility the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act (2012) allowed a court in dealing with breaches of community sentences. It introduced the option of the offender appearing before the court to account for his actions, but taking no action if that were deemed appropriate. We are concerned that the Crime and Courts Act removed this uncommenced provision<sup>43</sup> and would encourage the government to reinstate this measure. A rewording of the clause could be considered, from “take no further action” to the court will “review progress, call the offender to account and restate the requirements of the order with which the offender must comply”.

It is important that courts have the flexibility to impose sentencing requirements which take into consideration the particular abilities and support needs of individual offenders to avoid unreasonable or unrealistic expectations being made. Linked to this is the importance of early identification and information sharing across and between criminal justice and health and social services.

A key problem which reduces the flexibility of the courts in matching requirements to the particular circumstances and needs of the individual offender is the variable availability of different rehabilitative requirements across the country. A number of potentially useful rehabilitative options already exist but are not being sufficiently utilised. For instance, the mental health treatment requirement is significantly under-used in community sentencing despite very high levels of mental illness among the probation caseload.<sup>44</sup> In 2010 only 783 mental health treatment requirements were commenced, constituting less than 1% of all community sentences.<sup>45</sup> Although the LASPO Act introduced new flexibilities around mental health treatment requirements, there are a number of complex factors that contribute to their under-use.<sup>46</sup> If these barriers, including a lack of confidence among sentencers about the support people will receive as part of this requirement, are not addressed people will not be able to access the treatment and support they need.

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<sup>43</sup> Schedule 15, Part 5, Crime and Courts Act (2013)

<sup>44</sup> Recent evidence suggests that at least a quarter of probation service clients have a mental health condition, more than half use alcohol problematically and one in eight misuse drugs: Brooker C et al 2011 An investigation into the prevalence of mental health disorder and patterns of health service access in a probation population. Available at <http://www.magnacartalincoln.org/cjmh/RfPB%20Executive%20Summary.pdf>

<sup>45</sup> Ministry of Justice (2012) Consultation on sentences in the community and the future shape of probation services impact assessment Fig. 1

<sup>46</sup> See Centre for Mental Health (2009) A Missed Opportunity? Community sentences and the Mental Health Treatment Requirement