

Prison Reform Trust briefing: Prison-related measures included in the King's Speech - November 2023

Introduction

The government has committed to legislating on a range of criminal justice matters. It has promised to introduce a sentencing bill and a criminal justice bill. It has also carried over the victims and prisoners bill from the previous session. Below we provide an analysis of the proposed measures and highlight our key concerns.

For further information contact: Mark Day, Deputy Director, Prison Reform Trust, mark.day@prisonreformtrust.org.uk

The prison capacity crisis

Very little of the proposed legislation will address the primary issue confronting the prison service – a capacity crisis which has brought the prison system dangerously close to breaking point. The Ministry of Justice has no clear strategy to safely and effectively manage the prison population. Over the last three decades there has been no shortage of legislative and policy change to ensure that more people spend longer in prison. Many of provisions the government has committed to legislating on in this King's Speech will add to this trend. Successive governments have been extremely effective in delivering on their promises to “toughen” sentences, but without any serious consideration of the effectiveness of such measures or their impact on demand for prison capacity.

The majority of factors behind the current crisis in capacity were foreseen at least since 2020 and could have been properly planned for and mitigated against. A significant and sustained rise in the prison population was first predicted in the 2020 prisons population projection, which estimated that the population would rise to 98,700 by September 2026.¹ The National Audit Office also warned in 2020 that “demand for prison places could exceed supply between October 2022 and June 2023” and that this was further exacerbated by plans to increase the minimum sentence length for the most serious offences.²

This lack of strategic approach means that the prison service has been forced to operate in an almost perpetual state of crisis. To cope, it has pursued short-term expediency over effective long-term planning. This has included a reprieve of prison accommodation which should have been decommissioned decades ago; the use of police cells; the rapid construction of temporary cells; and a staff recruitment scheme working flat out to keep officer numbers stable. This is not the sign of a clear strategy or coordinated plan for the justice system.

¹ Ministry of Justice. (2020). *Prison population projections 2020 to 2026, England and Wales*. https://assets.publishing.service.gov.uk/media/5fbf83ae8fa8f559e44d2dad/Prison_Population_Projections_2020_to_2026.pdf

² National Audit Office. (2020). Improving the prison estate. In *National Audit Office*. <https://www.nao.org.uk/reports/improving-the-prison-estate/>

Any hope that the government would be able to build its way out of the capacity crisis has been dashed following the revelation that we are now out of prison places. What had been clear to any objective observer monitoring progress with the government's prison building plans was belatedly acknowledged in September by "a Whitehall source" that they were unlikely to be completed until 2030.³ In the face of a crisis in prison capacity, the introduction of emergency measures to reduce demand on the system was unavoidable. It remains to be seen whether these combined measures will now enable the government to meet the projected demand for prison places in the short and medium term. It will also be vital to ensure that the probation service has sufficient resource and capacity to meet the additional pressure of having to supervise a greater number of people in the community.

Put simply, the current crisis might be seen as a consequence of five principal policy failures:

1. In sentencing policy, a failure to articulate the purpose of imprisonment as the punishment of last resort;
2. A failure to articulate the expected conditions for the humane and decent treatment of prisoners;
3. A failure to specify the investment and resources necessary to meet these expectations;
4. A failure to account for the impact of criminal justice policy on future demand for prison places and the resources needed to meet minimum expectations of imprisonment; and
5. A failure to plan for and meet projected demand for prison capacity.

We welcome the commitment made by Alex Chalk in his statement on prison capacity to the House of Commons on Monday 16 October 2023 to introduce a new annual statement of prison capacity to be laid before both Houses of Parliament: "This will include a clear statement of current prison capacity, future demand, the range of system costs that would be incurred under different scenarios and our and our forward pipeline of prison build."⁴ We hope this will be the start of process by which Parliament and Government begin to take greater responsibility for the impact of their decisions on prisons and penal policy. The proposed annual statement on prison capacity should be placed on a statutory footing, along with a requirement that the government must not enact policy which will increase prison numbers without assurance that it can provide sufficient capacity and meet minimum standards of decent and humane imprisonment. We would also recommend strengthening the remit of the Sentencing Council to report independently on the impact of sentencing changes made by the government on sentencing practice and the demand for prison capacity.

³ Syal, R. (2023, September 29). Plan for 20,000 more prison places in England and Wales won't be complete until 2030. *The Guardian*. <https://www.theguardian.com/society/2023/sep/29/plan-for-20000-more-prison-places-in-england-and-wales-wont-be-complete-until-2030>

⁴ Hansard HC Deb. vol.738 cols.59-60, 16 October 2023. <https://hansard.parliament.uk/commons/2023-10-16/debates/50D29A75-C1E4-4FFC-A77D-11BBC20BCD99/PrisonCapacity>

Victim and Prisoners Bill

A carry-over motion for the Victims and Prisoners Bill was agreed on 15 May 2023. The bill began in the House of Commons and has completed its committee stage. We expect the bill to complete its remaining Commons stages in December and enter the House of Lords in the new year.

We are very concerned by the proposed changes to the parole system put forward in the Victims and Prisoners Bill. Part three of the bill takes forward proposals in the government's root and branch review of the parole system.⁵ This includes provision for the creation of a "precautionary approach" to the release of a "top tier" of prisoners convicted of murder, rape, certain terrorist offences or who have caused or allowed the death of a child. For these prisoners, the bill provides for:

- A new power and procedure to usurp the Parole Board's decisions in certain serious cases.
- A new appeal route to the Upper Tribunal where the Secretary of State has used the new decision-making power.
- A new power to enable the Secretary of State or the Upper Tribunal to set or direct licence conditions.
- Part 3 also makes provision for the following:
 - Disapplication of section 3 of the Human Rights Act to prisoners as a group;
 - A new power for the Secretary of State to remove the chair of the Parole Board if the Secretary of State considers it necessary to do so for the maintenance of public confidence in the Board; and
 - New provisions to stop whole life tariff prisoners getting married or having a civil partnership.

Several of the measures raise significant constitutional questions regarding the independence of the judiciary and compliance with human rights obligations. If enacted, they are also likely to be subject to further legal challenge. Many victims' representatives have publicly expressed concern about the introduction of controversial parole measures into the bill, as an unhelpful distraction from provisions elsewhere to improve the rights and entitlements of victims.⁶ We share the view expressed by many victims' representatives and other organisations in the wider criminal justice sector that the majority of the provisions of part three should be removed and the bill returned to its original purpose as a victims bill.

For a full analysis of our concerns in relation to part 3 of the bill, please see our evidence to the House of Commons public bill committee. Available here:

<https://prisonreformtrust.org.uk/wp-content/uploads/2023/05/Victims-and-prisoners-bill-HoC-committee-stage-PRT-written-evidence.pdf>

⁵ Ministry of Justice. (2022). *Root and Branch Review of the Parole System*.

<https://www.gov.uk/government/publications/root-and-branch-review-of-the-parole-system>

⁶ *The Domestic Abuse Commissioner responds to Victims and Prisoners Bill*. (2023, March 29). Domestic Abuse Commissioner.

<https://domesticabusecommissioner.uk/the-domestic-abuse-commissioner-responds-to-victims-and-prisoners-bill/>. See also *Victim Support responds to the Victims and Prisoners Bill*. (2023, March 29). Victim Support.

<https://www.victimsupport.org.uk/victim-support-responds-to-the-victims-and-prisoners-bill/>. See also Waxman, C. (2023, March 23). *Comment on the Victims and Prisoners Bill*. Twitter. <https://twitter.com/LDNVictimsComm/status/1641016895716327425>

IPPs

While we oppose the majority of provisions in part three, the bill presents an opportunity to introduce much needed reform to address the injustice faced by people serving the Imprisonment for Public Protection (IPP) sentence. In particular, it is a chance for the government to review its inadequate response⁷ to the justice committee inquiry on the IPP⁸ and introduce amendments to the bill to take forward the recommendations of the committee's report. In a debate on the committee's report in Westminster Hall on 27 April, the chair of the committee Sir Bob Neill MP promised to bring forward an amendment to the bill to enact the recommendations of the committee for a resentencing exercise.⁹

We urge parliamentarians to support the amendment.

In addition, we would welcome an amendment which takes forward the committee's recommendation to reduce the qualifying period for a licence review from 10 to five years, as well as provision to terminate the IPP licence after a set period. In his evidence to the Justice and Home Affairs Committee, Alex Chalk stated: "The recommendation was that the 10-year period should be curtailed to five years. There are grounds for looking at a five-year period or even at whether one could go further than that."¹⁰

Sentencing Bill

The presumption that short sentences of less than 12 months will be suspended

Alex Chalk has promised to: "Legislate for a presumption that custodial sentences of less than twelve months in prison will be suspended, and offenders will be punished in the community instead, repaying their debt within communities, cleaning up our neighbourhoods and scrubbing graffiti off walls."¹¹

We welcome the government's intention to introduce a presumption that custodial sentences of less than 12 months will be suspended. It has long been recognised that short prison sentences do more harm than good¹² and that suspended sentences and community orders are more effective at reducing reoffending.¹³ The Ministry of Justice's own evidence shows that reconviction rates are lower for people on suspended sentenced and community orders

⁷ House of Commons Justice Committee. (2023). *IPP sentences: Government and Parole Board Responses to the Committee's Third Report*. Ninth Special Report of Session 2022-23. <https://committees.parliament.uk/publications/33927/documents/185861/default/>

⁸ Justice Committee. (2022). *IPP sentences – Report Summary*. <https://publications.parliament.uk/pa/cm5803/cmselect/cmjust/266/summary.html>

⁹ Hansard WH Deb. vol.731 cols.443-445, 27 April 2023. Available at <https://hansard.parliament.uk/commons/2023-04-27/debates/e48be1a1-4c7b-4109-b93a-d2974eb00d4e/WestminsterHall>

¹⁰ House of Lords Justice and Home Affairs Committee. (2023). *Uncorrected oral evidence: Lord Chancellor and Secretary of State for Justice (Ministry of Justice evidence session)*. <https://committees.parliament.uk/oralevidence/13748/pdf/>

¹¹ Hansard HC Deb. vol.738 cols.60-61, 16 October 2023. <https://hansard.parliament.uk/commons/2023-10-16/debates/50D29A75-C1E4-4FFC-A77D-11BBC20BCD99/PrisonCapacity>

¹² Gormley, J. et al. (2022). *The Effectiveness of Sentencing Options on Reoffending*. The Sentencing Council. <https://www.sentencingcouncil.org.uk/wp-content/uploads/Effectiveness-of-Sentencing-Options-Review-FINAL.pdf>

¹³ Eaton, G. & Mews, A. (2019). *The impact of short custodial sentences, community orders and suspended sentence orders on reoffending*. Ministry of Justice. (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/814177/impact-short-custodial-sentences.pdf)

than short sentences¹⁴, and the positive impact is even more marked for people with mental ill-health.¹⁵

Suspended sentences are a robust and credible alternative to a short prison sentence. Unlike imprisonment, they allow for maintenance of family ties, jobs, and childcare responsibilities – all factors which reduce the risk of reoffending. Conditions can be attached to a suspended sentence including unpaid work, a curfew, or treatment for drug and alcohol addictions.

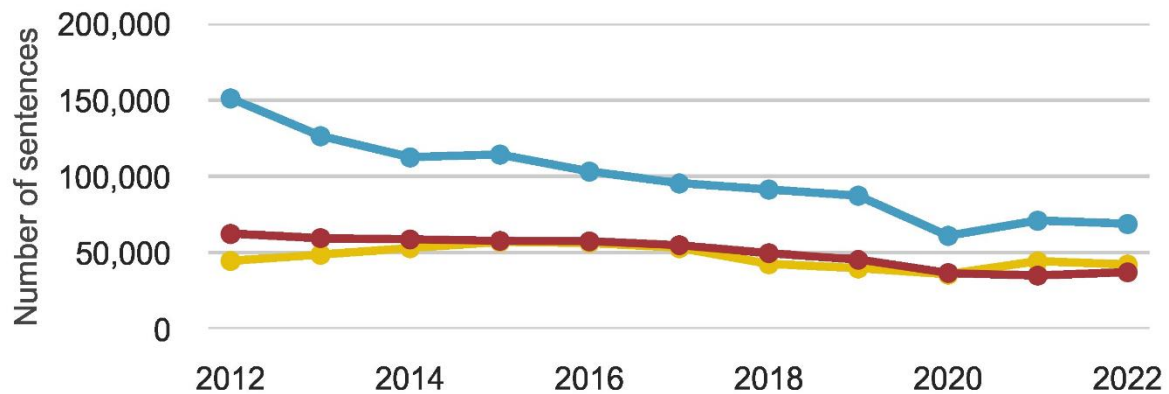


Table 5.1b and Table 5.4, Ministry of Justice (2023). Criminal justice statistics quarterly: December 2022. Overview tables. Ministry of Justice.

Suspended sentences /Community orders /Prison sentences of less than 12 months

The use of community sentences has dropped by almost half (48%) for women, and 50% for men in the last decade. The use of suspended sentences has fluctuated, but account for just 4% of all sentences.¹⁶

If the offender does not comply with the requirements or is convicted of another offence during the time of their suspended sentence, they are likely to serve the original custodial term as well as the sentence they get for the new offence. Furthermore, a presumption does not forbid a court from passing a short prison sentence if it is merited in a particular case.

A presumption to suspend short prison sentences is a good thing in and of itself and has the potential to lead to a reduction in the number of short sentences passed and an increase in the uptake of suspended sentences and community alternatives. This would not only reduce overall demand on the prison system but also lead to better outcomes. However, we must be careful not to simply shift the prison crisis to an already overburdened probation service. A high quality probation service with sufficient capacity and resources will be vital to meet the additional pressures of supervising a greater number of people in the community.¹⁷

¹⁴ Ministry of Justice. (2013). *2013 Compendium of re-offending statistics and analysis*. Ministry of Justice Statistics bulletin. <https://assets.publishing.service.gov.uk/media/5a7b826fe5274a7202e17a13/compendium-reoffending-stats-2013.pdf>

¹⁵ Hillier, J. & Mews, M. (2018). *Do offender characteristics affect the impact of short custodial sentences and court orders on reoffending?*. Ministry of Justice. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/706597/do-offender-characteristics-affect-the-impact-of-short-custodial-sentences.pdf

¹⁶ Table Q5.1b. and Q5.4. Ministry of Justice. (2023). *Criminal justice statistics quarterly December 2022*.

¹⁷ Fox, A. (2023). *The government's plans to address the crisis in prison capacity – welcome first steps, but more to be done*. Clinks. <https://www.clinks.org/community/blog-posts/governments-plans-address-crisis-prison-capacity-welcome-first-steps-more-be>

Extending home detention curfew to those sentenced to four years or more

The bill will legislate to extend eligibility for home detention curfew to those sentenced to four years or more. Currently, only those serving a sentence of less than four years are eligible for consideration. The same exclusions that prevent people convicted of violent, sexual and terrorist offences and those convicted of domestic abuse from being eligible for the scheme will continue to apply. This proposal is eminently sensible and a policy PRT has long advocated.¹⁸ It will mean more prisoners gain the rehabilitative benefits of release under curfew and also relieve immediate population pressures.

The Home Detention Curfew (HDC) scheme was introduced in 1999. It enables eligible prisoners to serve the final part of their prison sentence in the community subject to electronic monitoring. The aim of the scheme is to assist the transition from custody to the community and ease population pressures on the prison estate.

When HDC was introduced in 1999 it was only available to people serving prison sentences of four years or less – a criteria which was fixed in the legislation and remains in place to this day. However, sentence inflation over the past two decades has contributed to higher numbers of people receiving sentences of four years or more. In 1999, an offender who had committed a crime that would have seen them receive a sentence of four years or less could now receive a significantly longer sentence for the same offence. In June 1993, 54% of the sentenced prison population were serving sentences of less than four years. This proportion had dropped to 50% by June 2003, and as of June 2016 only around 1 in 3 (34%) sentenced prisoners were serving less than four years.¹⁹

This Sentencing Council of England and Wales acknowledges the impact of sentence inflation on the increase in the prison population over the past 25 years:

“In recent years the population has broadly stabilised at current levels but with a shift in that, though fewer offenders are sentenced to immediate custody than before, they are sentenced for longer. Within the overall figures, the MoJ data show that the biggest shift has been from those serving sentences of four or more years: in 1993 over half of the ‘sentenced prison population’ were serving sentences of ‘less than four years’, whereas by 2016 this had reduced to about a third.”²⁰

The length of prison sentences and the size of the prison population have grown in a way which the originators of the HDC scheme did not foresee. As a result, its eligibility criteria have become an anachronism and are excluding the very people for whom the scheme was originally intended for.

Expanding the eligibility criteria for HDC would be a means of significantly increasing the number of prisoners who could benefit from the scheme. It would also address the inequity that has arisen as a result of sentence inflation over the past two decades.

¹⁸ See https://www.prisonreformtrust.org.uk/wp-content/uploads/old_files/Documents/HDC%20briefing%20FINAL.pdf

¹⁹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/541667/prison-population-story-1993-2016.pdf

²⁰ <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/justice-committee/prison-population-2022-planning-for-the-future/written/78134.pdf>

Rape sentences (whole term)

Alex Chalk said he would, “bring forward legislation to keep rapists, as well as the most serious sexual offenders, behind bars for the entirety of their sentences, making sure perpetrators of this awful crime do not walk out of prison before the last day of their custodial term.”²¹

Our principal concerns regarding this proposal are as follows:

1. **Making people convicted of rape and other serious sexual offences serve the full length of their sentence in custody could undermine effective arrangements for public protection.**

Under existing legislation, most offenders convicted of serious sexual offences and sentenced to a determinate prison sentence of four years or more are liable to serve two thirds of the sentence in custody. The remainder is served on licence in the community. A period of supervision on licence is important for the process of resettlement and reintegration. It allows licence conditions to be imposed and risk factors to be managed and monitored, with the potential for recall back to custody if the terms of a licence are breached. Requiring serious sexual offenders to serve the full term of the sentence in custody would result in them being released without any licence conditions. Registered sex offenders can still be monitored for the duration of their registration under multi-agency public protection arrangements. However, this does not allow for the direct statutory supervision of the individual by probation under licence conditions.

2. **Alex Chalk has said that commencement of this provision will be dependent on there being sufficient prison capacity.**²²

The Ministry of Justice has not provided any assessment of the impact of this provision on the need for additional prison places. Furthermore, the impact of the provision will be felt over the longer term, with the additional cost inherited by future administrations to whom this government is not accountable. At a time when the prison system is in a capacity crisis, it is irresponsible to be legislating for changes in sentencing policy which will further inflate prison numbers.

3. **We already have a confusing mess of sentencing legislation.**

Some prisoners are released at the two-thirds point of their custodial sentence whilst others are released at the halfway point depending on the length of sentence and crime committed. This provision will add a further level of complexity. Such measures are unlikely to improve public understanding of and confidence in sentencing.²³

4. **Rape prosecutions represent a small percentage of all reported rapes.**

There has effectively been a collapse in rape prosecutions in England and Wales despite a record number of cases.²⁴ This is a more pressing problem. More attention should be paid upstream to increase the number of successful prosecutions, rather than looking to increasing the time those convicted spend in prison for the offence.

²¹ Ministry of Justice. (2023). Prison reforms will cut reoffending and put worst offenders behind bars for longer. <https://www.gov.uk/government/news/prison-reforms-will-cut-reoffending-and-put-worst-offenders-behind-bars-for-longer>

²² Hansard HC Deb. vol.738 cols.60-61, 16 October 2023. <https://hansard.parliament.uk/commons/2023-10-16/debates/50D29A75-C1E4-4FFC-A77D-11BBC20BCD99/PrisonCapacity>

²³ See <https://committees.parliament.uk/committee/102/justice-committee/news/198089/public-debate-on-sentencing-is-stuck-in-a-dysfunctional-and-reactive-cycle-justice-committee-warns/>

²⁴ BBC. (2022). *Why do so few rape cases go to court?*. <https://www.bbc.co.uk/news/uk-48095118>

Sentencing: Whole life orders

The government has said it will legislate, at the earliest opportunity, to provide that whole life orders should be mandatory in circumstances where a whole life order is currently the starting point for sentencing, unless there are exceptional circumstances.²⁵

The House of Lords library has provided a helpful explanation of the proposed provision:²⁶

In the most serious cases of murder the courts can impose a whole life order. These orders mean that the offender will spend the rest of their life in prison (subject only to the possibility of compassionate release in exceptional cases). For all other life sentences, the judge sets the minimum term that must be served in prison.

When deciding whether to impose a whole life order or a minimum term, the court must have regard to the starting points for different types of murder set out in Schedule 21 of the Sentencing Act 2020. The judge will identify the appropriate starting point and can adjust up or down to take account of any aggravating and mitigating factors.

The proposed legislation would mean that a judge would be required to impose a whole life order in any case where that is the appropriate starting point. They would not be able, except in exceptional circumstances, to instead decide a minimum term to be served.

The government also intends to legislate to provide that murders of a single adult victim involving sexual or sadistic conduct should be subject to a mandatory whole life order unless there are exceptional circumstances.²⁷ It was reported in the press that these measures will be included in a forthcoming crime and justice bill.

The government has announced that these reforms will apply retrospectively. It intends that people who have committed an offence but are yet to be sentenced will have the new law applied to them when they are sentenced even if the offence was committed before the new law is commenced.²⁸

We object in principle to mandatory sentences, particularly in cases involving the imposition of the most serious form of custodial sentence a court can impose. The number of whole life orders imposed by the courts has increased dramatically in recent years, and currently stands at 67 individuals.²⁹ The whole life order is legally contentious and has been subject to appeal in the European Court of Human Rights. In such cases, it is vital that the court is able to take account of all aggravating and mitigating factors which may be relevant to the sentence. This provision will limit the discretion of the court in being able to reach a just and proportionate sentence which takes account of all the circumstances of the case.

²⁵ Chalk, A. (2023). *Whole lifer order announcement*. 25 August 2023 [Letter]. <https://data.parliament.uk/DepositedPapers/files/DEP2023-0697/108320.pdf>

²⁶ This section is taken from the House of Commons's library research briefing on the King's Speech 2023 <https://researchbriefings.files.parliament.uk/documents/CBP-9869/CBP-9869.pdf>

²⁷ Ministry of Justice. (2023). *PM announces new plans so society's most depraved killers will face life behind bars*. 26 August 2023. https://www.gov.uk/government/news/pm-announces-new-plans-so-societys-most-depraved-killers-will-face-life-behind-bars?utm_medium=email&utm_campaign=govuk-notifications-topic&utm_source=4f631e5e-0feb-45b2-8125-ec91f26b62c2&utm_content=daily

²⁸ Ministry of Justice. (2023). *Whole Life Order reforms to be applied to active cases*. 3 October 2023. <https://www.gov.uk/government/news/whole-life-order-reforms-to-be-applied-to-active-cases>

²⁹ Table 1.9a. Ministry of Justice. (2023). *Offender management statistics quarterly: April to June 2023*.

Criminal Justice Bill

Refusal to appear at sentencing hearings

The government announced in August 2023 that it would legislate to create a new power for judges to order offenders to attend sentencing hearings. It said offenders convicted of an offence for which the maximum sentence is life imprisonment who refused to attend could receive an additional penalty of up to two years in prison.³⁰

The government has said the legislation will make clear that force can be used in appropriate circumstances by prison staff and prisoner escort and custody services staff where they consider it necessary, reasonable, and proportionate to bring offenders to hearings.³¹ However, this will not be a blanket rule and it has been reported that judges will still have discretion to “decide whether to force convicted criminals to come to court for sentencing” because of the risk of those convicted using this as a propaganda exercise.³² It has been reported in the press that the measures will be included in the King’s Speech.³³

We have a number of concerns regarding this proposal:

1. Courts already have the power to hold defendants in contempt of court if they do not attend.

The power is rarely used. The sanction for contempt of court is up to two years’ custody. This has little bite for those facing significant minimum terms attached to a life sentence. The government’s proposal that offenders convicted of an offence for which the maximum sentence is life imprisonment who refused to attend could receive an additional penalty of up to two years in prison seems to be essentially a restatement of the existing position which the law already provides for.

2. Under existing policy custody officers can use reasonable force to make people convicted by the courts attend sentencing hearings.³⁴

The prison transport services employ officers trained and equipped to force prisoners to comply with a court’s demands. The government proposes new powers to specifically set out in law that they can use reasonable force when it comes to people appearing at sentencing hearings in the dock or via videolink. The government has made clear that the court will have discretion on whether to order a defendant to attend a hearing. Nonetheless, we have the following concerns about setting existing use of force policy in law in relation to forcing people to attend sentencing hearings:

- a. It may create an expectation among victims and the wider public that prisoners must be forced to attend hearings, even when it is not safe for staff or prisoners to do so or would undermine the decorum of the court.
- b. It may have a knock-on effect on use of force policy in prisons more generally, undermining the necessary safeguards and protections that need to be in place. The policy is currently under review and a new policy framework is yet to be published.

³⁰ Ministry of Justice. (2023). *Offenders to be ordered to attend sentencing*. 30 August 2023.

<https://www.gov.uk/government/news/offenders-to-be-ordered-to-attend-sentencing>

³¹ House of Commons written question 198871, 19 September 2023. <https://questions-statements.parliament.uk/written-questions/detail/2023-09-11/198871>

³² Hymas, C. (2023). *Not all criminals will be forced to attend sentencing to avoid propaganda in court*. 26 October 2023. [Not all criminals will be forced to attend sentencing to avoid propaganda in court \(telegraph.co.uk\)](https://www.telegraph.co.uk/news/2023/10/26/not-all-criminals-will-be-forced-to-attend-sentencing-to-avoid-propaganda-in-court/)

³³ Malnick, E. & Sawyer, P. (2023). *Law that forces killers to attend sentencing will be in King’s Speech*. The Telegraph. <https://www.telegraph.co.uk/politics/2023/08/19/law-change-kings-speech-killers-must-face-sentencing/>

³⁴ See <https://prisonreformtrust.org.uk/wp-content/uploads/2021/03/25-Use-of-Force-info-sheet.pdf>

Renting prison places abroad

The government has announced it will legislate to allow the government to rent prison cells overseas. In a press release the government said prisoners would be allowed to be moved to another country's prison estate provided the facilities, regime and rehabilitation are to the same standard as those in England and Wales.³⁵ The government has said it will legislate on this issue as soon as parliamentary time allows. This provision is part of a wider package of measures the government has announced in response to the current prison capacity crisis to increase the number of available prison places as well as to reduce demand.³⁶ A number of concerns have been raised regarding the specific proposal to rent foreign prison places:

3. Such arrangements raise a number of difficult constitutional issues including what laws and policies apply to individuals held in foreign prisons under such agreements, how complaints from these prisoners will be handled, and what access and oversight scrutiny bodies such as the prisons inspectorate and prisons and probation ombudsman will have. Louise Finer, a freelance researcher and a former head of the UK's National Preventative Mechanism has warned of a worrying accountability gap and legal vacuum which could open up for prisoners held under any agreement leaving them without sufficient protection from potential ill-treatment.³⁷
4. Sending UK prisoners abroad raises serious moral and ethical concerns. The charity Prisoners Abroad has spoken out against the proposals, highlighting the levels of "isolation and trauma" caused by "being excluded from opportunities to work and participate in effective rehabilitation programmes".³⁸
5. Renting out prison places from foreign states has been tried in a small number of countries. In the past decade, both Norway and Belgium have rented prison places in the Netherlands in order to handle problems of overcrowding and limited capacity. The experiment in both countries had mixed results.³⁹ Ultimately, neither Norway nor Belgium extended their contracts with the Netherlands. The Norwegian scheme ran for three years from 2015-2018 and the arrangements in Belgium for seven years from 2009-2016. In the case of Belgium, the arrangement did not reduce overcrowding – which continued to get worse. In Norway, demand on limited prison capacity was managed through a 'prison queue' system where convicted individuals waited for a period of time before beginning their sentence. The length of time individuals were being forced to wait before starting their prison term had become an issue of political controversy. Therefore, the decision to rent out prison places in the Norwegian case was more to do with reducing the length of this queue than levels of overcrowding.

³⁵ Ministry of Justice. (2023). *Foreign prison rental to ensure public protection*. 3 October 2023.

<https://www.gov.uk/government/news/foreign-prison-rental-to-ensure-public-protection>

³⁶ See <https://prisonreformtrust.org.uk/prt-comment-alex-chalks-statement-on-prison-capacity/>

³⁷ Finer, L. (2023). *Renting prison space overseas: an accountability gap waiting to happen*. 9 October 2023.

<https://www.thejusticegap.com/renting-prison-space-overseas-an-accountability-gap-waiting-to-happen/>

³⁸ Prisoners Abroad. (2023). *Prisoners Abroad's comment on Alex Chalk's speech*. 4 October 2023.

<https://www.prisonersabroad.org.uk/news/prisoners-abroads-comment-on-alex-chalks-speech-uk-plans-to-rent-space-in-foreign-prisons>

³⁹ Liebling, A. et. al. (2021). "Where Two 'Exceptional' Prison Cultures Meet: Negotiating Order in a Transnational Prison". *The British Journal of Criminology*. 61(1), pp. 41-60.

<https://academic.oup.com/bjc/article/61/1/41/5892706>