

## Prison Reform Trust Briefing on the Criminal Justice Bill House of Commons, Report Stage, 15 May 2024

This briefing has been prepared for the House of Commons report stage of the Criminal Justice Bill and focuses on key amendments including:

- New Clause 28: complicity in joint enterprise cases
- Amendments 58 – 62 to clauses 33-35 on provisions for the transfer of prisoners to foreign prisons.

Proposals to transfer prisoners to foreign prisons was announced by Alex Chalk in October 2023 at the Conservative party conference as a measure to mitigate the prison capacity crisis.<sup>1</sup> He subsequently announced a range of further emergency measures both to increase capacity and reduce demand on the system.<sup>2</sup> PRT supported the introduction of emergency measures as a necessary response to dangerous and growing levels of overcrowding. However, we are not convinced by the measures in this bill as an answer to the capacity crisis. Examples of where similar policies have been implemented by other countries to relieve problems of overcrowded and limited capacity have shown mixed results.<sup>3</sup> The provisions also raise questions regarding the parity of regime prisoners will enjoy including access to healthcare and family visits. They also raise human rights concerns including over which disciplinary authority and criminal jurisdiction would apply in relation to alleged acts of torture or ill-treatment which may be committed by prison staff, as well access of monitoring mechanisms, and investigatory competencies in cases of such allegations.”<sup>4</sup>

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<sup>1</sup> Ministry of Justice. (2023). Foreign prison rental to ensure public protection. 3 October 2023. [Foreign prison rental to ensure public protection - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/foreign-prison-rental-to-ensure-public-protection)

<sup>2</sup> Ministry of Justice. (2023). The Government’s approach to criminal justice. The Lord Chancellor, the Rt Hon Alex Chalk KC MP, gave a statement to the House of Commons on criminal justice in England & Wales. 16 October 2023. [The Government's approach to criminal justice - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/speeches/the-government-s-approach-to-criminal-justice)

<sup>3</sup> 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>

<sup>4</sup> UN Committee against Torture. (2023). *Concluding observations on the eight periodic report of Denmark*.

## **Amendment 58**

**We urge MPs to support amendment 58.**

### **Clause 33, page 39, line 14**

at end insert —

“(2A)

The Secretary of State may not issue a warrant under subsection (2) where—

- (a) the prisoner has less than 180 days to serve of the requisite custodial period;
- (b) the prisoner is serving an indeterminate sentence of imprisonment or detention for public protection; or
- (c) the Secretary of State is satisfied that the prisoner should continue to be detained in a domestic prison for the purposes of—
  - (i) receiving instruction or training which cannot reasonably be provided in a prison in the foreign country, or
  - (ii) participating in any proceeding before any court, tribunal or inquiry where it is not reasonably practicable for the participation or to take place in a prison in the foreign country.”

### **Purpose**

This probing amendment would exclude certain types of prisoners from being issued with a warrant to serve their sentence in a foreign country.

### **Background**

Clause 33 provides for the Secretary of State to issue a “warrant” for the transfer of a prisoner to or from a foreign prison. This amendment would exclude certain prisoners from being issued with a warrant. These include:

1. **Prisoners with less than 180 days (six months) of their custodial period left to serve.** Releasing prisoners from foreign prisons back into the community in the UK would pose severe challenges for probation and other services in ensuring that the necessary resettlement support is in place on their return. Services and support prisoners typically need on release include accommodation, welfare and employment support, ongoing treatment of drug and alcohol addictions, health and social care. Arrangements to effectively monitor and supervise the individual on licence in the community also need to be put in place ahead of release. Making arrangements for the provision of these services requires effective coordination between the prison offender manager and community offender manager. In England and Wales, both roles are provided by HMPPS. However, releasing an individual directly from a

foreign prison into the UK would require coordination between services based in two separate jurisdictions. This would present considerable logistical challenges and may lead to mistakes being made and the necessary support not being put in place. This could put the individual and others at risk and increase the likelihood of reoffending. Excluding prisoners with less than 180 days to serve from being issued with a warrant would help ensure that prisoners continue to be released from UK prisons into the community.

2. **Prisoners serving an indeterminate sentence of imprisonment or detention for public protection.** While the IPP and DPP sentences were abolished in 2012, this was not retrospective, meaning that today thousands of people remain in prison yet to be released or having been recalled back to custody. The plight of these prisoners serving a sentence which parliament has not deemed fit to remain on the statute book has been well documented in the authoritative report of the cross-party justice committee.<sup>5</sup> In 2022, there were nine self-inflicted deaths of IPP prisoners – the highest number of self-inflicted deaths among the IPP prison population since the sentence was introduced. As of December 2023, there have been 86 self-inflicted deaths of IPP prisoners since the sentence was introduced in April 2005. This is 6% of all self-inflicted deaths during this period.<sup>6</sup> Forcing IPP and DPP prisoners to serve their sentences abroad would represent an additional injustice and could increase further the risk of suicide and self-harm. Furthermore, it would make it extremely difficult for them to access the courses and interventions they need to demonstrate reduced risk; and access timely legal advice and support through the parole process.

The amendment would also enable the Secretary of State to exclude a prisoner from being issued with a warrant if he is satisfied that the prisoner should continue to be detained in a domestic prison for the purposes of:

1. Receiving instruction or training which cannot reasonably be provided in a prison in the foreign country. This might include prisoners who are engaged in higher education which could only be provided in the UK. Or prisoners involved in an employment scheme with the prospect of further training or a job opportunity on release in the UK.
2. Participating in any proceeding before any court, tribunal or inquiry where it is not reasonably practicable for the participation or to take place in a prison in the foreign country. Transferring prisoners abroad would impact on a prisoner's access to legal advice, legal remedies for prison-related issues, or their ability to participate in any ongoing legal processes related to their conviction or sentence at home, including the parole process. This is contrary to European Prison Rules 23, Mandela Rules 41 and 61 which give the right

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<sup>5</sup> Justice Committee. (2022). IPP sentences – Report Summary.

<https://publications.parliament.uk/pa/cm5803/cmselect/cmjust/266/summary.html>

<sup>6</sup> Table 1.7. Ministry of Justice. (2024). Safety in custody: Quarterly update to December 2023.

to accessible, timely and confidential legal advice. Being sent abroad would have a significant impact on someone being able to meaningfully participate in any legal process. Though technology now allows for remote access to legal advice and court proceedings, this will not be appropriate in all instances, and cannot be relied on as a like-for-like alternative for prisoners transferred to foreign prisons. There is a history in the immigration context of the government legislating to say that people can pursue appeals against being removed/deported, but then having to do so after actually being removed from their home countries. In these cases, the courts have ruled that in practice this is not possible and therefore a breach of the HRA/ECHR.

We are further concerned that certain groups of vulnerable prisoners could be issued with a warrant to serve their sentence in a foreign country. This includes those with health issues such as individuals who are pregnant, disabled or those who have mental health or learning difficulties. There are currently no explicit safeguards or guarantees to protect against this.

In addition, we are concerned that prisoners with primary caring responsibilities could be issued with a warrant to serve their sentence in a foreign country. Transferring UK prisoners abroad will have a significant impact on their ability to maintain family ties. The Farmer Review found family relationships to be the “golden thread” to help reduce reoffending.<sup>7</sup> The impact assessment recognises the need to “ensure prisoners’ rights to family life are protected in accordance with Article 8 of the European Convention on Human Rights, including access to visitation on par with what would be provided in HMPPS”. However, it also states “it has not been determined who would bear the cost of these visits”. Families and loved ones already struggle to meet the costs of visits to prisons in the UK.<sup>8</sup> They are unlikely to be able to meet the additional costs or logistical challenges involved in visits abroad.

### **We encourage MPs to ask the following questions:**

1. How would the minister ensure effective resettlement arrangements under these provisions?
2. How would the minister ensure UK prisoners held in foreign prisons have access to legal advice and are able to participate in any legal processes?
3. Will the minister guarantee that the children and families and loved ones of those imprisoned abroad will not be disadvantaged and will be able to access financial support to visit their loved ones?
4. Will the minister guarantee that women are expressly excluded from this provision?

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<sup>7</sup> Lord Farmer. (2017). *The Importance of Strengthening Prisoners’ Family Ties to Prevent Reoffending and Reduce Intergenerational Crime*. Ministry of Justice. [6.3664\\_Farmer Review Report \(publishing.service.gov.uk\)](https://www.gov.uk/government/publications/the-importance-of-strengthening-prisoners-family-ties-to-prevent-reoffending-and-reduce-intergenerational-crime)

<sup>8</sup> PACT. (2023). Serving a hidden sentence: The financial and emotional impact of a loved-one’s imprisonment. [Serving a hidden sentence report \(prisonadvice.org.uk\)](https://www.prisonadvice.org.uk/reports/serving-a-hidden-sentence-report/)

5. In the committee stage debate on the bill, the minister confirmed that prisoners will be repatriated for the ‘final section’ of their sentence.<sup>9</sup> Will the minister confirm what time-frame the government considers ‘the final section’?
6. Given the population pressures at the heart of the reasoning for this provision, can the minister guarantee there will be prison spaces available for all prisoners to be repatriated for the final section of their prison sentence?

## **Amendment 59**

**We urge MPs to support amendment 59.**

### **Clause 35, page 40, line 41**

at end insert—

“(c) report to the Secretary of State on any breaches of the arrangement made between the United Kingdom and a foreign country.”

### **Purpose**

This amendment would require the Controller to make a report to the Secretary of State on any breaches of the arrangement between the foreign country and the UK.

### **Background**

Clause 35 provides for the Secretary of State to appoint a “controller” role to keep under review, and report on the running of any rented prison spaces abroad; as well as extending the power of HM Chief Inspector of Prisons to inspect and report on the conditions of any such space. This amendment requires the controller additionally to report on any breach of the arrangement between the foreign country and the UK.

The minister confirmed during the committee stage debate the government’s commitment to “ensuring parity for prisoners – that they have access to the same regime and the same rehabilitation opportunities – as part of any agreement”.<sup>10</sup> However, the bill currently puts no safeguards in place to guarantee this. As it stands, the bill places a great deal of unaccountable authority in the hands of the executive to make provision for any arrangement by means of secondary legislation. It is silent on how those subject to this arrangement will be treated and provides no guarantee that the Prison Rules (secondary legislation governing crucial issues including use of force, segregation, complaints) would apply.

Given the potential human rights implications, any agreement made between the UK and a foreign state should be subject to full Parliamentary scrutiny and oversight, and subject to guarantees of compliance with existing human rights standards and obligations.

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<sup>9</sup> See [Criminal Justice Bill \(Ninth sitting\) - Hansard - UK Parliament](#)

<sup>10</sup> [https://hansard.parliament.uk/commons/2024-01-18/debates/a99cce27-a564-4d85-b0e8-b214b9beb137/CriminalJusticeBill\(NinthSitting\)](https://hansard.parliament.uk/commons/2024-01-18/debates/a99cce27-a564-4d85-b0e8-b214b9beb137/CriminalJusticeBill(NinthSitting))

Furthermore, the implementation of any agreement by a foreign state will need careful monitoring and oversight to ensure compliance. It will also be vital to ensure that any breach of the agreement by the foreign state is promptly reported and acted upon. This amendment would help enable this by requiring the controller to report any breaches of the arrangement to the Secretary of State.

The bill should also be amended to ensure that it is the UK's responsibility to investigate and bring to justice any ill treatment or torture should it occur under this arrangement, in line with the UK's obligations under the Human Rights Act and UN Convention against Torture. It should also require that any prisoner transferred to serve their sentence in a foreign country would have to be held in conditions and have access to equivalent conditions and the same quality and range of services afforded to prisoners held in England and Wales as mandated under Prison Rules 1999. As it stands, nothing in the bill and related documents give any indication that the same legal standards and rights in relation to treatment of prisoners (as set out in the Prison Rules) would apply.

## **Amendment 60**

**We urge MPs to support amendment 60.**

### **Clause 35, page 41, line 3**

leave out "may" and insert "must"

#### **Purpose**

This amendment would ensure that the prisons inspectorate must conduct the duties specified in new section 5A(5D) of the Prisons Act 1952 and ensures its consistency with the legislative basis for its role in England and Wales.

#### **Background**

We are concerned that the oversight of both the controller and HM Inspectorate of Prisons (HMIP) will ultimately be subject to negotiation with a relevant partner country. Reflecting this, the wording in the bill relating to the powers of HM Inspectorate of Prisons differs from the Prisons Act in that it states the chief inspector "may inspect", rather than "shall inspect". The implication is that inspections could only take place by invitation of the foreign state rather than as a statutory requirement. This leaves open to future negotiation crucial terms of HMIP's role and methodology such as its ability to conduct unannounced inspections, to speak to prisoners in private, to access records (such as those relating to use of force).<sup>11</sup>

This would mean a lower standard of independent scrutiny would be applied to the treatment and conditions for UK prisoners held under such arrangements. It would fall short of the UK's obligations under the Optional Protocol to the Convention

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<sup>11</sup> See also <https://committees.parliament.uk/writtenevidence/126237/html/>

against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) (which establishes requirements for independent detention monitoring, to be conducted by a National Preventive Mechanism). In the UK, the National Preventive Mechanism was established in 2009 and HMIP is one of the bodies designated to it. Amending the bill to ensure that HMIP's role can be performed in accordance with its duties under OPCAT would provide an important safeguard to ensure rigorous independent scrutiny of the treatment and conditions for prisoners held under these arrangements.

**We encourage MPs to ask the following question of the minister:**

1. Will the minister guarantee that HMIP will be able to conduct its crucial role to the same standards we would expect for any inspection on home soil, with unfettered access to prisoners, their records and staff?

## **Amendment 61**

**We urge MPs to support amendment 61.**

**Clause 35, page 41, line 4**

after "prisons" insert "and escort arrangements"

**Purpose**

This amendment would ensure that HM Inspectorate of Prisons can inspect escort arrangements under which prisoners are transferred to foreign prisons.

**Background**

Clause 35 specifies that the Chief Inspector may inspect or arrange for the inspection of any prisons where prisoners are detained under an arrangement between the UK and a foreign state. This amendment would bring the legislation into line with inspectorate's powers in relation to prisons in England and Wales by also enabling it to inspect or arrange for the inspection of escort arrangements. The inspectorate's powers to inspect escort arrangements were made by amendments to the Prisons Act in the Immigration, Asylum and Nationality Act 2006 (s.46).

It is particularly important that the inspectorate should be able to inspect the escort arrangements for the transfer of UK prisoners to foreign prisons. A foreign state with which the UK makes an agreement could potentially be many thousands of miles from the UK. The transfer of prisoners could involve a lengthy journey with a variety of modes of transport involved, including potentially prison vans, planes, trains and ferries. As countless HMIP inspection reports show, escort, particularly when a person is being transferred against their will, can pose risks to prisoners,<sup>12</sup> including:

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<sup>12</sup> <https://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2014/12/Transfers-and-escorts-thematic-review-2014.pdf>

- The mixing of men, women and children in the same transport
- Poor information sharing with escort services of the needs and risks presented by prisoners
- Poor conditions
- Poor escort safety and lack of seat belts
- Risk of suicide and self-harm, which may be exacerbated by long journeys under stress
- Lack of food and drink and comfort stops
- Poor treatment by escort staff
- Failure to address health and welfare needs
- Overuse of restraints,<sup>13</sup> with potentially fatal consequences<sup>14</sup>
- Poor complaints processes and accountability<sup>15</sup>
- Damage to prisoners' property

**We encourage MPs to ask the following question of the minister:**

2. Will the minister guarantee that HMIP's powers will be in line with those in England and Wales, and confirm that HMIP will be able to conduct inspections of escort arrangements?

## **Amendment 62**

**We urge MPs to support amendment 62.**

### **Clause 35, page 41, line 8**

at end insert—

“(4) In section 1 of the Coroners and Justice Act 2009, after subsection 2(c) insert—

“(d) the deceased died while in custody or otherwise in state detention in a foreign country pursuant to a warrant issued by the Secretary of State under section 26 of the Criminal Justice Act 2024 (warrant for transfer of prisoner to or from foreign prison).””

### **Purpose**

This amendment would clarify how the government intends to apply its obligations under Article 2 (right to life) of the Human Rights Act, through ensuring the duties of the coroner also apply to any death involving a prisoner subject to a transfer agreement with a foreign country.

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<sup>13</sup> <https://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2022/12/Zimbabwe-escort-web-2022.pdf> (para 1.7)

<sup>14</sup> Inquest. (2013). Coroner for the inquest into the death of Jimmy Mubenga publishes critical rule 43 report. <https://www.inquest.org.uk/jimmy-mubenga-coroner-rule-43-report-published>

<sup>15</sup> Border Criminologies. (2023). Use of Force by Immigration Escorts: The Legal Framework and its Problems. <https://blogs.law.ox.ac.uk/border-criminologies-blog/blog-post/2023/07/use-force-immigration-escorts-legal-framework-and-its>

## Background

It is our view that the nature of the arrangement to send individuals to overseas prisons will establish the UK's jurisdiction over any deaths that occur. Given the unprecedented nature of these arrangements, we think it is crucial that the responsibility of coroners to investigate overseas deaths be established clearly in advance, otherwise they would invite significant uncertainty and likely legal challenge were any individual to die while imprisoned overseas. Furthermore, it will ensure the coronial system is prepared to address the practical challenges of holding such an inquest, which are likely to include challenges including in obtaining evidence and witness statements.

## New Clause 28: complicity in joint enterprise cases

**We urge MPs to support New Clause 28.**

To move the following Clause –

### **“Complicity in joint enterprise cases**

In section 8 (abettors in misdemeanors) of the Accessories and Abettors Act 1861, after “shall” insert “, by making a significant contribution to its commission,.”

## Purpose

The new clause would clarify the definition of “joint enterprise” (or secondary liability) so that only a person who makes a “significant contribution” to an offence committed by another may be criminally liable.

## Background

The new clause would amend Victorian-era legislation - the Accessories and Abettors Act 1861 - to provide that only a person who directly commits, or who makes a “significant contribution” to, the commission of an offence may be held criminally liable. The new clause would address concerns that the law is being used far more widely than initially intended.<sup>16</sup> The Supreme Court ruled, in a landmark judgement in 2016, that the law had taken “a wrong turn” with joint enterprise 30 years ago which needed “correction”.<sup>17</sup> But despite the court restoring proper law of intention, little has changed in practice. As it stands, the law continues to operate as a criminal justice “drag-net”, sweeping up large numbers people (especially young people from Black and minority ethnic groups) into criminal prosecutions because of their social networks and associations, rather than active involvement in criminality.<sup>18</sup>

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<sup>16</sup> For more information see: [Actors, academics and legal experts amongst 170 signatories of an open letter to back my Bill — Kim Johnson MP](#)

<sup>17</sup> [Joint enterprise law wrongly interpreted for 30 years, court rules | Joint enterprise | The Guardian](#)

<sup>18</sup> Prison Reform Trust. (2016). More clarity needed in joint enterprise cases. [More clarity needed in joint enterprise cases | Prison Reform Trust](#)