



## Justice Committee

**The Rt Hon Alex Chalk KC**  
**Lord Chancellor & Secretary of State for Justice**

By email only

29 November 2023

Dear Alex,

I write on behalf of the Justice Committee regarding the need to strengthen parliamentary oversight in the Criminal Justice Bill and the Sentencing Bill.

### **Transfer of prisoners to foreign prisoners**

We are concerned that the provisions in the Criminal Justice Bill to enable the transfer of prisoners to foreign prisons do not provide for adequate parliamentary oversight of any potential future arrangement between the United Kingdom and a foreign country.

Setting aside the merits of the policy of transferring prisoners abroad, it is clear that whether or not an arrangement would be acceptable would depend on the country in question and the substance of any arrangement. However, under the current proposals in the Criminal Justice Bill, there is a real risk that a future government could enter into agreement with a foreign country and then implement that agreement through the power in Clause 29 without either the House of Commons or the House of Lords having had the chance to decide whether to assent to the agreement. It is difficult to see how Members can assess these provisions without knowing which countries prisoners might be sent to. As a result, we would suggest that legislative safeguards should be included in the Bill to allow scrutiny of any agreement made with a foreign country to transfer prisoners.

We are concerned that an agreement on prisoner transfer would not necessarily take the form of an international treaty which is subject to ratification and therefore would not trigger the requirements set out in Part 2 of the Constitutional Reform and Governance Act 2010 (CRAG). If the Government were to use a Memorandum of Understanding as opposed to a treaty which is subject to ratification, then this would provide limited opportunities for parliamentarians and civil society to scrutinise any proposed agreement. The recent example of the Government's Memorandum of Understanding between the UK and Rwanda for the provision of an asylum partnership arrangement is instructive. We would concur with the House of Lords International Agreements Committee's conclusion that "there is a substantial lacuna in the parliamentary scrutiny of international agreements as significant MoUs are not subject to any formal scrutiny processes". Given the potential significant human



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rights implications of any prisoner transfer agreement, we would like to seek a reassurance that any agreement under this Bill would take the form of a treaty to which CRAG applies rather than a memorandum of understanding.

To strengthen parliamentary oversight of any future transfer of prisoner agreement with a foreign country, we would also ask that the Government include a provision in the Criminal Justice Bill to require that any agreement on prisoner transfer be laid before each House of Parliament and be approved by a resolution of the House of Commons before the power in Clause 29 can be used.

### **A statutory requirement for the Lord Chancellor to make a statement on prison capacity**

On 16 October, you set out that as part of the Government's proposals on sentencing and prison capacity that "a new annual statement of prison capacity will be laid before both Houses". In explaining this statement, you made reference to the fact that the Courts Act 2003 places an obligation on the Lord Chancellor to lay before both Houses of Parliament a report on the way that he or she has undertaken his or her duty to ensure that there "is an efficient and effective system" to support the courts. You explained to the House that the proposed prison statement would "include a clear statement of current prison capacity, future demand, the range of system costs that will be incurred under different scenarios and our forward pipeline of prison build". We would welcome such an annual statement.

We have noted that neither the Criminal Justice Bill nor the Sentencing Bill contain a requirement equivalent to that in section 1 of the Courts Act 2003 to require the Lord Chancellor to give an annual statement on prison capacity. The current prison capacity crisis highlights the need for the proposed statement on prison capacity, to ensure that the Government takes a transparent approach to the situation facing prisons, so that parliamentarians and the public can have a clear understanding of the number of prison places available. We believe that it is important that the Lord Chancellor is subject to a statutory duty to provide such a statement, otherwise there is a risk that future governments will seek to resile from such a commitment, especially when the situation is politically difficult. The prison capacity statement should require the Lord Chancellor to provide a straightforward assessment of capacity that includes the points you made in your statement on 16 October. We would ask that such a statutory requirement is included in either the Criminal Justice Bill or the Sentencing Bill.

I do hope that you will consider our suggestions. We look forward to working with you on both the Criminal Justice Bill and the Sentencing Bill. I would be happy to meet to talk about this in more detail.



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Yours sincerely,

A handwritten signature in black ink, appearing to read 'R. Neill', written on a light-colored background.

**Sir Robert Neill MP  
Chair  
Justice Committee**