

Written evidence submitted by the Ministry of Justice [FPP0034]

Executive summary

1. The first duty of any government is to keep its people safe. That's why the criminal justice system should imprison those who pose a danger to society and rehabilitate them so that those who are eventually let out turn their backs on crime and become contributing members of society.
2. The prison population of England and Wales is the highest per capita in Western Europe. The adult male prison estate, in particular, has been under acute pressure for the last 12 months, contributed to by a surge in the remand population which has grown by 6,000 since 2019 as well as a significantly higher number on recall. Projections indicate that the prison population will continue to grow in the coming years¹.
3. As well as delivering the largest prison building programme since the Victorian era providing 20,000 modern, rehabilitative prison places, we have taken decisive action to expand our existing estate by 2,700 places since September 2022 to help meet increasing demand.
4. We have also recently announced a further package of measures that will reform our approach to prisons and deliver our central mission to cut crime ensuring we continue to make best use of prisons to lock up dangerous criminals and give lower-level offenders the greatest chance to turn their lives around.

What changes are expected in the size and composition of the prison population in the short, medium and long term?

5. The prison population in England and Wales was 87,801 as at Friday 27th October 2023. This is the highest per capita in Western Europe. This has been predominantly driven by a surge in the remand population which has grown from 9,000 in 2019 to over 15,000 today.
6. Our prison population projections project that the total prison population will steadily increase to reach a central estimate of 94,400 (range of 89,400 – 98,400) prisoners by March 2025 and between 93,100 and 106,300 by March 2027¹.
7. These projections estimate the impact of plausible future trends in crime types and levels of police and prosecutorial activity. However, the ranges of potential growth are indicative of the susceptibility of the forecasts to future uncertainty. Three of the main sources of uncertainty include (a) how the Criminal Justice System continues to recover from the effects of the COVID-19 pandemic and the Criminal Bar Association strike in 2022, (b) the impact of the increases in police officer numbers; and (c) not yet fully realised or future policy changes which have the potential to change prison receptions or the amount of time offenders spend in custody. These projections were informed by the latest available published data and announced future policy changes at the time of publication in February 2023, however, the Government has announced a number of additional policy changes since then that will inevitably mean

¹ Prison population projections 2022 to 2027 ([Prison Population Projections 2022 to 2027.pdf](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/115444/Prison_Population_Projections_2022_to_2027.pdf)) (publishing.service.gov.uk)

the actual prison population in future years will differ to some degree from projections.

8. Whilst the recent increases have been driven by increases in the remand and recall populations, the projected rise in the determinate sentenced population (to 60,700 – 70,000 by November 2026) is the main driver for the long-term projected rise in the total population. The growth in this population is driven by the criminal courts working to reduce the backlog of outstanding cases that arose during Covid-19 and the Criminal Bar Association strike action, coupled with changes in sentencing policy keeping the most serious offenders in prison for longer. The impact of the court backlog reduction on the sentenced population also interplays with the projected falls in the remand population as falling backlogs should reduce the length of time spent on remand. Additionally, over the longer term, the additional police officers recruited by the Home Office are assumed to result in an increase to prison receptions as a result of increased charge volumes.
9. The recall population is also projected to increase (to 13,200 – 14,100 by November 2026), partly as a result of the expected growth of the determinate sentence population, resulting in a larger pool of offenders on licence (a proportion of which will be recalled to prison). Meanwhile, both the remand and indeterminate sentenced populations are projected to decrease (to 9,700 – 12,700 and 8,000 – 8,100, respectively) as the time taken for courts to process cases improves and the number of Imprisonment for Public Protection (IPP) offenders declines, respectively.

What is the Ministry of Justice's current strategy for safely and effectively managing the prison population, and how effective is it?

10. The adult male prison estate has been under acute capacity pressure for the last 12 months. To meet the pressing demand for prison space, we are building 20,000 modern, rehabilitative prison places, the largest prison build programme since the Victorian era, ensuring the right conditions are in place to rehabilitate prisoners, cut crime and protect the public. These places are being delivered through the construction of six new prisons, as well as the expansion and refurbishment of the existing estate and temporary accommodation. We have already delivered c.5,600 of these additional places, including through new prisons HMP Five Wells and HMP Fosse Way. In addition, we have recently announced up to £400m funding, enough for over 800 Rapid Deployment Cells as well as commissioning urgent work to assess new options for capacity, backed by an investment of £30m to start acquiring land and launch the planning process.
11. We have also taken decisive action to quickly increase capacity in the existing estate through doubling up cells where safe to do so, delaying non-essential maintenance and maximising transfers to the open estate. Through this action we have expanded capacity by 2,700 places since September 2022 while ensuring our prisons remain safe for staff and offenders. Meanwhile, crowding remains 2,000 lower than it was in 2010.
12. In addition, the Lord Chancellor has announced a package of further changes that will reform the way we do justice, keep the public safe and make prison work. This will include:

- Legislating to ensure that rapists, as well as those convicted of equivalent sexual offences, serve the entirety of the custodial term handed down by the courts.
 - Extending the Early Removal Scheme (ERS) so that we can deport more foreign national prisoners earlier.
 - Introducing a presumption that sentences of twelve months or less are suspended.
 - Legislating to allow prisoners to be held in overseas prisons matching our own standards.
 - Reviewing the incentives around early guilty pleas to save the courts time, spare victims the ordeal of giving evidence in court and cut the number of people in our prisons on remand.
 - Looking at options to tackle the injustice of the now abolished Imprisonment for Public Protection (IPP) sentence and how the licence period could be reduced to restore greater proportionality to the IPP sentence.
 - Reviewing our successful Home Detention Curfew (HDC) policy to increase the number of prisoners eligible.
 - Reviewing the use of recall for offenders on release who infringe the terms of their licence.
13. To ensure public confidence, bring transparency to our plans and set out the progress we are making, a new annual statement of prison capacity will be laid before 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 forward pipeline of prison build.
14. The Lord Chancellor also announced up to £400m of funding for more prison places (enough to buy 800 new Rapid Deployment Cells) and an investment of £30m of funding to allow the prison service to identify and purchase land in 2024 for new prisons.
15. In the immediate term, however, demand continues to grow and the pressure remains. Therefore, in order to retain the prison places we need and ensure safety in the prison estate, as of 16 October, the Lord Chancellor judged it necessary to use the power in s.248 of the Criminal Justice Act 2003 to move some offenders out of prison on licence up to 18 days before their automatic release date. This is a temporary operational measure to alleviate pressure in regions where it is absolutely necessary for capacity reasons. Public safety remains our priority and only less serious offenders - those serving a Standard Determinate Sentence and due for automatic release on licence at the half-way point - will be affected by this measure. More serious, higher-level offenders whose release is a matter for the Parole Board to assess will not be in scope. Additionally, anyone convicted of a sexual offence, a terrorism offence or a serious violent offence will not be eligible.

Is the Government's commitment to deliver 20,000 prison places by the mid-2020s achievable and sufficient to manage the projected demand for places?

16. We have already delivered c.5,600 additional places through the 20,000 prison places portfolio. This includes our two new c.1,700 place prisons, HMP Five Wells,

which opened last year, and HMP Fosse Way, which accepted its first prisoners at the end of May. It also includes, among others, c.380 Rapid Deployment Cells now in place across six sites, c.350 places brought online by re-roleing HMP Morton Hall, and a workshop at HMP High Down to support 90 new places which was delivered ahead of schedule in March 2023.

17. Outside of the 20,000 prison places portfolio, we have also delivered c.700 temporary places through modular units and extended the lease at HMP Dartmoor, maintaining 680 places from December 2023.
18. By the end of 2025, we will have delivered over 10,000 in total. This will include our third new prison, HMP Millsike, delivering c.1,500 places, new houseblocks at HMP Stocken and HMP Guys Marsh, and hundreds more RDCs.
19. Our prison builds are complex capital projects, which are being delivered within challenging market conditions. As with other construction programmes, prison expansion plans have been affected by high levels of inflation and market-led price increases over the last year, which have had a material impact on actual and estimated costs. Supplier vulnerability to wider economic conditions has also been an issue in the construction market – for example, we have seen a supplier and a sub-contractor go into administration, impacting delivery timelines. Securing planning permission is also a factor; we have submitted planning appeals following refusal of three applications for sites in Lancashire, Leicestershire and Buckinghamshire and await decisions. If planning is successful, these prisons would open as soon as possible to meet the pressing demand on prison places.

To what extent has the activation of Operation Safeguard and the rolling out of Rapid Deployment Cells helped to manage capacity pressures?

20. Operation Safeguard is a temporary contingency measure designed to create a valve for short-term management at a time where prisons have been running at very high occupancy levels. Operation Safeguard provides access to around 400 police cells for use for prisoners to spend a single night pending a suitable prison cell being identified. It is an established procedure, agreed with the National Police Chiefs' Council (NPCC) that has been used before to ensure that our prison system can operate effectively and safely during periods of high demand. It was previously triggered in 2006 and then in 2007–2008.
21. We routinely work with the police to use police cells when an offender is sentenced to prison late in the day and it is not possible to get them to prison that same day. Operation Safeguard has allowed us to do this in a more planned and strategic way alongside the Police ensuring we can continue to meet the order of the courts. When Operation Safeguard is active, tactical and operational governance reviews take place at regular intervals and we work closely with the police on how many cells we need ready at any time. Though there have been occasions where Safeguard places have been used at significant volumes in some areas, the average number of Safeguard places utilised per night over the period has been seven.
22. The Rapid Deployment Cells (RDC) Programme delivers capacity to the prison estate at pace and the units have been designed to help meet current demand while

permanent and long-term capacity is being built. RDCs are modern and decent, with an expected lifespan of 15 years. They also offer prisons a good option to manage progressive regimes (more independent living for those prisoners who are nearing the end of their term of risk assessed as not being a danger to themselves or others). So far, we have c.380 RDCs in use across six sites, with delivery of c.1,000 in progress. In addition, we have just announced up to £400m of funding, enough to build 800 more prison places through RDCs.

What are the implications of the rise in the prison population for the resources required to manage prisons safely and effectively?

23. The projected rise in the prison population will create an increased demand for staffing and higher target staffing figures across the country. Substantive recruitment efforts will continue at all sites where vacancies exist or are projected, with targeted interventions applied to those prisons with the most need. Staffing requirements will continue to be assessed and factored into vacancies up to 18 months in advance to ensure we recruit on time and build up the experience needed to continue to deliver safe and secure regimes. We will also continue to work with private providers to assess staffing demands across the estate.
24. Despite a challenging labour market, there are continuing indications of an improving picture nationally for both recruitment and retention of staff, with a substantial increase of 701 Full Time Equivalent (FTE) Band 3-5 prison officers in the 12 months ending June 2023. In the same period, we saw a 2.6 percentage point improvement in the resignation rate amongst Band 3-5 Prison officers, which fell from 11.5% in June 2022 to 8.9% as of June 2023.
25. HMPPS has launched schemes such as 'National First Time Officer' and 'Prison Officer Futures' to target applicants in the prisons with the most need, as well as an Alumni scheme to encourage former officers to return to the service, bringing with them their previous levels of experience. The HMPPS brand campaign has also been developed to drive awareness and interest in frontline roles, to both increase applications and build pride and confidence among staff.
26. Decisions on overall Departmental resourcing are a matter for future Spending Reviews, but broadly speaking published data shows that each additional prison place has an average annual running cost of £47,000 per year. Capital costs vary considerably based on the security category of the estate and other site-specific factors.

What is HM's Prison and Probation Service's current capacity to manage overcrowding safely and effectively?

27. In Spring 2022, HMPPS published a revised framework for the certification of prisoner accommodation, from which the useable operational capacity of the estate is derived. While most single cells in the prison system could physically hold two people, the determination of the maximum crowded capacity of a particular establishment is a matter of operational judgement, considering risks to safety and stability. In times of severe population pressure, establishments will be expected to hold as many prisoners as they can safely accommodate, but equally clear that that

number should be determined by the operational managers responsible for managing the prison, not by a central process or by wider supply and demand issues.

28. Operational capacity represents the maximum number of prisoners a prison can safely accommodate, including crowding. Prisons are never required to hold more prisoners than their operational capacity. Each prison has a Minimum Staffing Level (MSL) to promote safety and security, and prisons use Regime Management Plans (RMPs) to manage day-to-day operational pressures. If establishments feel that their staffing levels will impact stability, there are a number of ways they can maximise the use of their own resource and seek support from other establishments, through processes managed nationally at Department level.
29. Crowding levels are kept under regular review throughout the year. HMPPS also deploys a formal capacity challenge process, where senior operational leaders assess and agree safe and sustainable opportunities for crowding across the estate. As part of this formal process, a number of factors are considered including safety, stability, staff recruitment and retention and impacts on regime, activity and ancillaries. There are now around 2,000 fewer prisoners in crowded conditions than there were in 2010 – a result, in particular of closing some of the most crowded sites, the opening of new, uncrowded accommodation, the re-role of individual prisons to accommodate a higher risk population and removing the ‘tripling up’ of cells.
30. The 20,000 new prison places we are building will have a positive impact on lowering the proportion of crowding within the prison estate by providing accommodation that is safe, decent and uncrowded. However, the extent to which the proportion of prisoners held in crowded accommodation will ultimately reduce will always be dependent on levels of demand in the system.
31. In order to ensure safety and relieve pressure on some parts of the prison estate, as of 16 October, the Lord Chancellor has agreed to use an existing power to allow the prison service to move some less serious offenders on to licence up to 18 days before their automatic release date. This power will only be used for a limited period and only in the prisons where it is absolutely necessary for capacity reasons. Public safety remains our priority and only non-dangerous offenders - those serving a Standard Determinate Sentence and due for automatic release on licence at the half-way point - will be affected by this measure. More serious, higher-level offenders whose release is a matter for the Parole Board to assess will not be in scope. Additionally, anyone convicted of a sexual offence, a terrorism offence or a serious violent offence will not be eligible.
32. In addition, the Lord Chancellor has committed to ensure that when we legislate to keep rapists behind bars for the whole of their custodial term, that commencement is dependent on there being sufficient prison capacity. Moving forward, to ensure public confidence, a new annual statement of prison capacity will also be laid before both Houses of Parliament, including a clear statement of current prison capacity, future demand, the range of system costs that would be incurred under different scenarios and our forward pipeline of prison build.

What is the impact of an ageing infrastructure and are Victorian prisons fit for purpose?

33. Extensive investment has taken place across the prison estate in maintenance and the upgrading of facilities to ensure that the best possible regime and conditions at all sites. The 20k programme will provide a new generation of state of the art prisons and additional capacity in existing sites. It remains a long term ambition on the back of this investment; future expansion; and, measures to tackle the growth in the population to enable the refurbishment or closure of sites which require the greatest resource to maintain.
34. Over the five-year period FY 18/19 to FY 22/23, an annual average of c.570 places have been permanently lost to dilapidation in the adult male estate, and c.50 places in the adult women's estate.
35. We are continuing to invest in prison maintenance bringing 35,000 cells in line with modern fire safety standards ensuring that existing places remain in use and are safe for prisoners and staff. We are undertaking major refurbishments at sites including HMP Birmingham, HMP Liverpool and HMP Norwich, delivering c.800 cells between them. The wing-by-wing refurbishment at HMP Liverpool will see every cell renovated.
36. We are investing in a major accommodation refurbishment at HMP Coldingley, partial refurbishment at HMP Deerbolt, development of a major accommodation refurbishment at HMP Wymott, and major shower refurbishments at HMPs Belmarsh and Hewell.
37. We are also undertaking a major programme of fire safety improvement works across the estate, in line with our commitment to the Crown Premises Fire Safety Inspectorate to bring all prison accommodation up to current fire safety standards by the end of 2027.
38. To support delivery of the long-term vision for the prison estate, we are undertaking a programme of prison surveys to understand their detailed condition and levels of investment required to keep them in good working order and ensure prisoners and staff are kept safe. The surveys are due to complete by the end of 2023.

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