PRISONS WITH A PURPOSE
OUR SENTENCING AND REHABILITATION REVOLUTION TO BREAK THE CYCLE OF CRIME

Security Agenda
Policy Green paper No.4
CONTENTS

Foreword by David Cameron ............................................................... 2

1. Introduction .......................................................................................... 5

2. Summary of our proposals ................................................................. 13

3. Old politics isn’t working
   3.1 Introduction ..................................................................................... 17
   3.2 Explaining the crisis ......................................................................... 18
   3.3 A failing penal system ........................................................................ 27
   3.4 Why are prisons failing? .................................................................... 34
   3.5 The poor record of community sentences ......................................... 39

4. Change required
   4.1 Our goals .......................................................................................... 45
   4.2 Principles of reform .......................................................................... 48

5. Our sentencing and rehabilitation revolution
   5.1 Honesty in sentencing ...................................................................... 51
   5.2 Putting public safety first ................................................................. 57
   5.3 Community sentences that work ..................................................... 59
   5.4 Reparation for victims ...................................................................... 64
   5.5 Our rehabilitation revolution .......................................................... 67
   5.6 Better prison regimes ....................................................................... 86
   5.7 Making sure we have the prison places we need ............................. 95
   5.8 A major reform plan for crime reduction ........................................ 103

Annex A – Rigorous research on reducing re-offending ...................... 106
Annex B – Funding the rehabilitation revolution ................................. 107
Since our Party Conference in October 2007, we have been setting out the policies which a Conservative Government would implement.

These policies fall into three broad agendas: our Opportunity Agenda to give people more power and control over their lives; our Responsibility Agenda to make families stronger and society more responsible; and our Security Agenda to make Britain safer and greener.

In November we published the first Green Paper from the Opportunity Agenda, setting out plans to give more powers to head-teachers and opening up the supply of education to make opportunity more equal.

In January we published the first Green Paper from the Responsibility Agenda, a comprehensive welfare reform plan to help millions of people off benefits and into work.

Today we publish the first Green Paper from the Security Agenda.

The primary responsibilities of the British government are to protect our nation from the threats of war, terrorism, climate change, energy insecurity, crime and economic instability.

This Green Paper sets out a central element in our approach to crime: prisons with a purpose.

In the 19th century prisons became the pioneers of social reform. Men and women like John Howard, Jeremy Bentham and Elizabeth Fry led the way in creating enlightened and humane institutions, designed not merely to imprison criminals but to reform them too – the first progressive institutions of the public sector.

In the 20th century prison reform stalled. Today many prisoners are still housed in Victorian buildings, in overcrowded conditions managed by overworked, often demoralised prison staff.
For too long, Labour have refused to build the prison places that are needed. And for too long, they have allowed prisons simply to warehouse criminals rather than reforming them. The result is our chronic rate of re-offending: two out of three ex-prisoners are reconvicted within two years of release.

Nick Herbert, Edward Garnier and their team have led the most thorough and fundamental review of prison policy in decades, involving dozens of visits to prisons. The plan they set out in this Green Paper is in the tradition of Bentham and Fry: a new principle of honesty in sentencing, a new generation of prisons and a new model of prison management. It is designed to deliver justice for victims and to ensure that prisoners both make restitution to society for their crimes, and leave prison with better skills and prospects than they had when they entered.

This is a vital step to make Britain more secure.

[Signature]
NEW WORLD

The most basic function of the government is to guarantee the safety of its citizens. The security provided by an effective State is the foundation for the freedom and opportunity we should all be able to enjoy.

Defence, policing and economic stability are the most basic responsibilities of government. The armed forces, the police, the Treasury and the Bank of England have a vital role in protecting Britain in the 21st century.

Today, however, ‘security’ is vastly more complicated than it used to be – because the threats we face are so much more numerous, various in type, and interconnected. We also face a wholly new threat – man-made climate change – which demands a wholly new set of responses.

National defence

21st century military operations involve highly sophisticated technology, both in surveillance and in the use of force. We need to remain at the forefront of these developments in order to ensure our safety against well-resourced enemies, including terrorists.

Military technology and human intelligence are vital for combating terrorism itself – but it is just as important to combat the ideas behind it. The terrorism practised by Al Qaeda and its imitators around the globe is rooted in an ideology which cannot be defeated by military means alone.

Therefore security must involve a concerted and long-term campaign to defeat the intellectual origins of the terrorists’ creed, and to promote the values of a liberal society.

This is vital both internationally and domestically. As we know from the tragedy of 7 July 2005, there are terrorists born and raised here in Britain, and more who sympathise with the separatist ideology which fosters hatred of our country. Our foreign and security policy must no longer be distinct from the whole range of domestic policy – from education and family policy to immigration law and welfare reform.
Crime
If national defence is more complicated today, so is another traditional function of the State: policing.

Property crime and violent crime remain unacceptably high, with violent crime, for instance, doubling under this Labour Government. But they have been joined by a host of problems which seem new to our age – from high-tech crime, including identity fraud, to the increasingly common and destructive phenomenon of anti-social behaviour.

Anti-social behaviour is the mark of a society facing breakdown: the pockets of Britain where it is prevalent are places where order has given way. It is in these places where the worst crimes of all are committed – such as the murder of 27 teenagers in London in 2007, the shooting of Jesse James in Manchester or Rhys Jones in Liverpool.

Anti-social behaviour is itself the consequence of a set of problems whose combination is unique to the modern world. They include widespread welfare dependency, family breakdown, misguided educational theories, the decline of traditional industrial occupations, and the universal availability of addictive and highly destructive drugs.

Economy
Economic security underpins a strong and secure society. Yet Britain’s security has been put at risk by a failure to prepare for economic turbulence.

We are the only developed economy to have seen a run on a bank, followed by nationalisation. We have the largest government borrowing of all major Western economies, and our competitiveness has slumped.

Poor financial and transport infrastructure, a decade of over-borrowing by both government and the public, and a steady decline in competitiveness have left us dangerously exposed to difficult economic times.
Economic security requires using good years to prepare and protect us from global storms.

Environment
Climate change is the most significant long-term challenge faced by our world – and not just for the threat it poses to nature. Phenomena like the expanding deserts of Africa or the increasingly frequent flooding of parts of Asia are prompting mass migrations across borders and continents. ‘Resource wars’ are a likely feature of the 21st century, as countries fight to acquire or preserve access to water and energy supplies.

Here in Britain we face growing pressure over the sources of our energy. Our reliance on fossil fuels from unstable or even unfriendly States means that energy security is likely to be one of the great challenges of the future.

At the same time Britain faces the real threat of food insecurity. Our self-sufficiency in food production is decreasing just as global production is put at risk by climate change and the increasing use of land to grow biofuels.
Old politics
Britain’s security apparatus is designed for an age that has passed: an age of concrete, visible threats and rational enemies, both foreign and domestic, military and criminal.

We need an apparatus which can cope with a multiplicity of threats, both visible and invisible, high-tech and low-tech, and with enemies motivated by rage, error or multiple deprivation. We need economic management which reflects the challenges of globalisation.

And we need to broaden our understanding of security beyond defence, policing and the economy, to include the great long-term challenge posed by climate change and energy and food shortages.

We do not have a security apparatus fit for the 21st century. Nor do we have a Government capable of creating it.

Labour’s approach to the security of Britain has two characteristics, representative of the old politics of the 20th century.

First, incompetent authoritarianism: illiberal centralisation of power combined with the ineffectiveness of top-down centralisation.

And second, short-sighted complacency: political failure of will to understand and engage with the long-term challenges our country faces.

Incompetent authoritarianism
Authoritarianism is the instinct of a Government which does not trust people, and which arrogantly believes that it alone is capable of judging; incompetence is the hallmark of a Government which cannot even manage its own operations properly.

Incompetent authoritarianism is the result: a Government which tries to control everything but cannot run anything.
This is what lies behind Labour’s belief that Britain’s energy needs can only be supplied by large power stations operating under a government monopoly – the ‘mainframe’ approach to power generation – rather than by a decentralised energy network of local micro-generators.

Incompetent authoritarianism lies behind the 3,000 new criminal offences created by Labour – and the steady rise in violent crime. It lies behind Labour’s ever-increasing prison population, without adequate education or rehabilitation for prisoners, and their failure to build enough prison places to house them safely.

Incompetent authoritarianism explains the disaster of the data scandal, in which the private records of 25 million citizens went missing due to systemic failure at HM Revenue and Customs. This was the body set up by Gordon Brown to ensure greater control over Britain’s tax system.

Incompetent authoritarianism is also why Labour, in spite of the data scandal, is pressing on with its plan to introduce a national identity database, and to make every citizen carry an ID card. This will not enhance national security, whereas it will expose individuals to greater risks of identity fraud.

And incompetent authoritarianism explains the Government’s continued wish to extend the period of detention without trial – already the longest of any comparable country – without producing the evidence that this will make us safer.

**Short-sighted complacency**

Gordon Brown’s short-sighted complacency is preventing Britain from adequately addressing the scale of the environmental threat that we face. Labour have not taken anything like the steps that are necessary to fulfil our international commitments. Taxes on pollution have actually gone down over the last ten years as a proportion of the tax take.
The Government’s short-sighted complacency means it will not face up to the ideological challenge of our times: the intellectual defeat of the terrorists’ creed and the vigorous and unashamed promotion of liberal British values among all our own young people. Labour is hobbled by the myth of multiculturalism – that the differences between communities are more important or ‘valid’ than our common Britishness.

Labour’s short-sighted complacency means they will not address the root causes of low-level crime and anti-social behaviour: family breakdown, drug abuse and welfare dependency in our most deprived communities.

Gordon Brown’s short-sighted complacency explains the economic incompetence that is now becoming increasingly clear. They have borrowed in a boom, leaving record debts which must be paid by future generations.
We are living in a new world, and our approach to safeguarding Britain’s security needs to reflect the defining characteristics of the threats we face: their complexity and interconnectedness.

‘Complexity’ means, literally, made of many parts. This must characterise our response to insecurity. Every part of our society, and every function of government, must play its part: the police, security services and armed forces, as well as business, local communities, families and individuals themselves.

We will take the tough long-term decisions that are necessary to ensure Britain’s security in the 21st century.

The State must do its job of managing defence, policing and the framework of the economy. It must develop more flexible armed forces with better provision for the brave men and women who defend our interests and promote our values abroad. It must untie the hands of the police and make them directly accountable to the local people they serve. And it must put sound money at the heart of the nation’s strategy for economic stability, ensuring that the UK economy is always prepared to respond to turbulence.

But security goes beyond this
A Conservative Government will recognise that our national defences depend as much on immigration policy and the state of community relations in Britain as they do on regional politics in the Middle East, Africa and Asia; and that even in those places we must rely as much on cultural diplomacy as on the projection of military force. The unashamed promotion of our values does not automatically entail a brutal insensitivity to others.

We will establish a National Security Council to co-ordinate all aspects of security both domestically and internationally.

A Conservative Government will work with other countries to deliver substantial cuts in greenhouse gas emissions, harnessing the new generation of energy technology to deliver green growth. This will mean the development of
decentralised energy and micro-generation, to avoid the wasteful reliance on large centrally-controlled power stations.

We will increase food security by reforming European agricultural subsidies and reducing regulations faced by British farmers.

The battle against crime and its causes requires a major reform of our criminal justice system – and of our welfare, family taxation and education systems too. A Conservative Government will approach these issues with a preference for social rather than statutory solutions: we believe that new schools and independent welfare-to-work providers will be more effective than large new state programmes.

Finally, we will underpin our economy with the stability that is the prerequisite for economic security. We will put stability first, reform the fiscal framework to limit government borrowing, and share the proceeds of growth between spending on public services and lower taxes for businesses and families.
Energy – We will make it easier for people to control the amount of energy they consume and pay for. Our plans for decentralised energy will transform the provision of electricity and usher in a culture of lower consumption.

Pollution – We will make sure that the polluter pays by shifting the burden of taxation away from families and towards taxes on pollution. We will replace the Air Passenger Duty with a new Airline Pollution Duty. We will tax energy inefficient cars.

Economic stability – We will entrench economic stability, by reforming the discredited financial architecture and fiscal rules, entrenching the independence of the Bank of England, and introducing independent statistics.

National Security – We will put Britain's security first and establish a new National Security Council to ensure co-ordination of all aspects of our national security, including foreign policy, defence, internal security, border control and social cohesion.

Armed Forces – We will review Britain’s defence activities and spending every five years, making sure that our armed forces are properly equipped, trained and housed, and are not asked to undertake missions that exceed their capabilities.

Crime – We will make police accountable to local people. We will scrap the Stop Form that police officers have to fill in every time they stop a member of the public. We will give more power to magistrates and set the police free to fight crime without being hampered by targets and bureaucracy.

Prisons – We will insist on honesty in sentencing, making sure that the punishment fits the crime. We will provide enough extra prison places to ensure that prisoners are not released early, and introduce proper rehabilitation so that we reduce re-offending.

Immigration – We will establish a dedicated border police force to protect Britain and limit inward migration so our public services can cope.

Transport – we will support new schemes to reduce congestion and improve public transport in our towns and cities, and pilot high speed rail.

Development – We will introduce mechanisms for openness and accountability in aid spending, and we will work to bring down unfair trade barriers.
Prisons are in crisis. The prison population has soared, jails have become seriously overcrowded, and re-offending rates have risen. Emergency measures have seen the early release of violent offenders, and community sentences command little public confidence.

The current prison system isn’t working. Building new prisons to accommodate all those sentenced by the courts and reduce overcrowding will be essential – but it is not an end in itself. Half of all crime is committed by previous offenders and one in five recorded crimes are committed by ex-prisoners. The right way to reduce the prison population is to break the cycle of re-offending and reduce crime.

Our goals are to restore confidence in the criminal justice system, re-design prisons for the 21st century, and launch a rehabilitation revolution.

We will introduce honesty in sentencing so courts set a minimum and a maximum period with no possibility of parole until the minimum has been served. Prison governors will decide when short to medium-term prisoners are released.

We will end automatic release for all determinate sentences so that no prisoner is automatically released from custody unless they have served their full term. Prisoners will earn their release dependent on their conduct and progress in custody.

Community and custodial sentences will be based on four pillars – punishment, rehabilitation and work for offenders, and reparation for victims.

We will make community sentences tough and effective by improving compliance, making them more visible, and introducing new sanctions for breaches, including benefit withdrawal for those who don’t attend.

We will enforce Drug Rehabilitation Requirements by contracting with private and third sector organisations to operate the treatment programmes and paying them by results.
Offenders will compensate victims of their crimes through contributions to a Victims’ Fund. Those serving custodial sentences will pay into the Fund through work in prison.

There is no clear accountability for the rehabilitation of prisoners. Fundamental reform is required based on the principles of decentralisation, clear accountability, greater use of the voluntary and private sectors, and introducing incentives through paying by results.

Public sector prisons will be decentralised to become independent fee-earning ‘Prison and Rehabilitation Trusts’, responsible for offenders after they are released as well as in prison, run by a single governor.

The Justice Secretary will appoint prison governors, but we will consult over whether this role could be assumed by our locally elected crime commissioners, who could also be responsible for the administration of community sentences and local probation services as well as the police.

Prison and Rehabilitation Trusts and private sector prisons will be paid by results – with a premium awarded on a national tariff if the offender or ex-prisoner is not reconvicted within two years.

We will trust professionals, giving governors new powers and freedoms to unlock the private and voluntary sectors to run rehabilitation services both in and out of prison.

Our rehabilitation revolution will unlock funding currently used to reconvict and accommodate offenders who commit more crime and end up back in prison. These savings will be re-invested to boost the money available for rehabilitation by up to £259 million a year by 2017, or £2,500 for every prisoner discharged.

Prison regimes will be transformed by our sentencing changes and rehabilitation reforms. Prisons will become places of education, hard work, rehabilitation and restoration.
- We will encourage social enterprises to expand prison industries where inmates can do proper work, learn skills and be paid.

- We will accelerate the deportation of foreign national prisoners before the end of their sentences and extend automatic deportation to non-EU prisoners serving less than a year.

- We will sell off old prisons and rejuvenate the prison estate, building smaller local prisons instead of the ‘titan’ prisons proposed the Government.

- Our redevelopment plans will increase prison capacity by more than 5,000 places over and above Labour’s plans, taking the total capacity to over 100,000, significantly reducing overcrowding and formally ending it by 2016.

- We will reduce long-term pressure on the prison population. Our rehabilitation revolution will first slow the growth of the prison population and then stabilise it. Whereas the prison population is currently expected to rise to 100,000 by the end of 2020, under our plans it will be at least 1,000 lower than this by 2015 and almost 6,000 lower by 2020.

- We will not give criminals a break. Unlike Labour, we will not let prisoners out early, shorten sentences or fetter judicial discretion. We will not put the public at risk. We will reduce the prison population over the long-term in the only acceptable way: by making sure there are fewer criminals committing fewer crimes.

- This is a major reform plan for crime reduction. We want to see a future where society is made safer because crime has fallen – so there will be fewer criminals who need to be sent to prison. In place of recurring prison crises and high rates of re-offending, we will achieve prisons with a purpose and falling rates of recidivism. Together with our plans for long term social action and reform of the police, this is a major reform plan for crime reduction, to make Britain a safer country.
3. OLD POLITICS ISN’T WORKING

3.1 INTRODUCTION

Prisons in England and Wales are in crisis. The Lord Chief Justice, Lord Phillips, has said:

‘We are in a critical situation. The prisons are full to capacity. Prisoners who go to court do not know if they will return to the same cell or even the same prison. Cells designed for one person that include a lavatory are being used by two, but prisons are still being forced literally to close their doors to any further admissions. After court, prisoners are being driven around for hours on end in a desperate search for a prison that can squeeze them in. As often as not, 200 or 300 are spending the night in police or court cells.’

Juliet Lyons of the Prison Reform Trust argues: ‘As overcrowded prisons have lurched from crisis to crisis, a series of unplanned, short-term measures have only made matters worse’. The Chief Inspector of Prisons, Anne Owers, explains: ‘That crisis was predicted and predictable: fuelled by legislation and policies which ignored consequences, cost or effectiveness, together with an absence of coherent strategic direction’. She concludes: ‘Our prison system is at a crossroads... There is a real risk we will move towards large scale penal containment, spending more to accomplish less, losing hard won gains and stifling innovation’.

The prison population stands at over 82,000, exceeding the total capacity of the prison estate. Hundreds of prisoners are being housed overnight in police cells, and, in some cases, holding cells in courts, without access to proper sanitation and catering facilities, let alone drug treatment, training courses, prisoner education or rehabilitative treatment. Over 18,000 prisoners have been released early since June 2007, resulting in over 300 crimes – including at least one murder – being committed by offenders who should have been in prison. Last year, over 90 prisoners took their own lives, including a 15 year old boy, almost 40 per cent...
more than in 2006. We also saw the first national strike in the seventy year history of the Prison Officers Association.

This year more than 30,000 prisoners are expected to be released early. From April, the new ‘core week’ will see prisoners effectively locked in their cells from Friday afternoon to Monday morning, with voluntary organisations locked out.

Over half of all prisons are overcrowded; 19 are literally full.6 65 per cent of prisoners are convicted of further serious offences within two years.7 Almost a third of those placed under probation supervision breach their order within six months.8 Over a third of those coming before the courts have ten or more previous convictions or cautions.9 The social and economic consequences of this failure are enormous. The criminal justice system is in crisis and the Government has failed to break the cycle of re-offending. It’s time for a new approach.

3.2 EXPLAINING THE CRISIS

There are three reasons for the current crisis. First, rising serious and violent crime means judges and magistrates are sending violent criminals to prison for longer. As Cindy Barnett, Chair of the Magistrates Association has said: ‘There is a rise in the seriousness and complexity of cases coming to court.’ Second, Labour ignored this trend and the consequences of its own legislation, and failed to provide sufficient prison capacity. Third, the imposition of inappropriate top-down targets and a failed bureaucratic experiment have paralysed prison governors and probation officers, frustrating the goal of end-to-end offender management.

The rising prison population

There is a complex interrelationship between the prison population, sentence lengths and the total number of offenders sentenced to custody. As a result, in trying to understand the rising prison population, it is very easy to draw invalid inferences from sentencing statistics.

For instance, most people sentenced to prison serve receive sentences of six months or less – almost 60,000 offenders in 2006.10 But these offenders have

7 Re-Offending by Adults: Results from the 2004 cohort, Home Office, 2007
8 Performance Report 24, National Probation Service, 2007
surprisingly little impact on the prison population. Because the average prisoner on a short sentence will serve less than seven weeks in jail, only a fraction will be in jail at any one time. Thus, whereas 8 per cent of prisoners are serving sentences of six months or less, over 87 per cent of sentenced prisoners are serving sentences of over twelve months (including indeterminate sentences). Substituting community punishments for those serving six months or less would mean watering down 60,000 sentences – to reduce the prison population by less than 7,000.

Another popular misconception is that prisons are full of people serving time for


11 The average custodial sentence in a magistrates’ Court is 2.9 months. In the Crown Court, the figure is likely to be around 3.5 months – but affecting only a fifth of the number of offenders.
non-payment of fines. In fact, fewer than a hundred people are in prison for non-payment of fines. On the last day for which data is available, no one was in prison for non-payment of a TV licence fine.

Nor is the current crisis caused by large numbers of first time offenders. Only 12 per cent of those sentenced to prison have no previous convictions. Over half of those sentenced have five or more convictions, and over a third have ten or more. Thus, saying that prison should be reserved for serious, violent or persistent offenders ignores the fact that prison already is essentially reserved for such offenders. Judges and magistrates do not jail first time offenders lightly. The few first time offenders that are jailed will invariably have committed serious offences.

Some have noted the impact of the new Indeterminate Sentence for Public Protection (IPP) on the current crisis. The Prison Reform Trust, for instance, has said ‘the reason [that the prison population continues to surge] is very simple... Prison is now being used increasingly not as a place of measured punishment but as a place of containment for public safety.’

However, those prisoners who have already received IPPs would otherwise have received determinate sentences resulting in the same prison time as the minimum tariff received under the IPP. The only IPP prisoners who could account for the current prison crisis are those who would otherwise have completed a determinate sentence and been released – i.e. those being held beyond their minimum tariff. On 8 October 2007, the Justice Secretary indicated that there were now ‘almost 400’ tariff-expired IPP prisoners – less than 0.5 per cent of the prison population. IPPs are not, therefore, the root cause of current overcrowding.

The principle that prison should be used to detain sexual and violent offenders while they continue to pose a serious risk to the public is sound. However, chronic overcrowding, combined with a failure to plan for this new class of prisoner, is causing a vicious cycle that may in time increase the burden on the prison system. It is essential to the operation of IPPs that the prison service should attempt to deal with those prisoners before the end of the minimum tariff, so that those who no longer pose a danger can be evaluated and released. Yet the overcrowded state

12 Population in Custody, Ministry of Justice, September 2007
13 Population in Custody, Ministry of Justice, December 2007
14 Hansard, 10 December 2007, Col. 185W
of the prison estate means that many IPP prisoners can neither get onto the requisite courses in their current prison nor be moved to another prison where a particular course, deemed necessary for the prisoner to show he is no longer a danger to the public, is available. Unable to demonstrate that they are safe to be released, these prisoners remain incarcerated adding to overcrowding. The current problem with IPPs is one borne of existing overcrowding.

Nor is it true to blame magistrates’ use of the suspended sentence order for the rising prison population. Comparing trends in sentencing in magistrates courts over the past five years, it is clear that both incarceration rates and use of community punishments have declined in absolute terms and remained constant in relative terms. In magistrates courts, suspended sentences still account for less than 2 per cent of disposals.17

Lord Carter’s report18 assumes that changing patterns of sentencing in the magistrates courts represent a hardening of magistrates’ sentences. But this is to neglect the fact that a greater number of lower level offences are now dealt with outside the judicial system. In 2006/07, over 200,000 penalty notices for disorder (PNDs) were issued, for precisely those offences, such as low-level criminal damage or shoplifting, that would often merit a fine rather than custody or community punishments. Since 2000 the number coming before magistrates with no previous convictions has fallen by a tenth, whereas the number with more than ten previous convictions has risen to over a third of all defendants. The proportion of violent offenders has risen by almost a half. As judges and magistrates increasingly faced prolific, persistent and violent offenders, it might have been expected that custody rates and sentence lengths would have risen. In fact, over the past four years, both have declined.

What has changed is the level and nature of crime in the UK. The Government likes to state that crime has fallen, citing the British Crime Survey in support. Whatever the merits of the BCS as a measure of overall crime (and it neglects certain categories of offence, including murder, which almost always result in a prison sentence), levels of recorded crime are far more relevant when assessing demand for prison facilities, for the simple reason that it is only crimes which are
brought to the attention of the prosecuting authorities which can result in convictions. If more crimes are reported, detected and prosecuted, then more prisons will be required, regardless of what is happening in society generally.

Since 1998/99, total recorded crime has risen by over 300,000 offences per year. Violent crime has doubled. Measures of more serious violent crime, which exclude common assault, show an increase of 66 per cent between 1997/98 and 2005/06; robbery has risen by 47 per cent over the same period. Against this backdrop, a rising prison population was inevitable. Indeed, this much is conceded by the Justice Secretary, Jack Straw, who has claimed that ‘There are now 60 per cent more violent and serious offenders in prison than in 1997, representing the bulk of the additional prisoners.’

Furthermore, base comparisons of the incarceration rate of different countries tell us little about whether levels of incarceration are too high, too low or about right. It is mistaken to suggest that ‘England and Wales has the highest imprisonment rate in Western Europe’ without controlling for the UK's higher levels of crime. Research by the think tank Civitas found that England and Wales actually incarcerate fewer criminals relative to the number of recorded crimes than the EU average.

Among comparable countries, Britain has a high prison population relative to the population of the country, but a low prison population relative to our crime rate – the simple, if uncomfortable, fact is that the UK is a high crime country. The International Crime Victim Survey (2000) placed England and Wales second for levels of crime in a survey of nineteen developed countries (including the United States). The UK is also an increasingly violent country. In the International Crime Victim Survey, England and Wales had the worst rating for the category ‘assault and threat’, and the highest levels of burglary.

Rising levels of crime and a consequent rise in the prison population have been exacerbated by a dramatic rise in the number of foreign prisoners. In 2000, there

19 Crime in England and Wales, Home Office, 2007, Table 2.04
21 Speech to the Prison Governors Association AGM, Buxton, October 2007
22 ‘Bromley Briefing’, Prison Reform Trust, December 2007
23 ‘Are Too Many People in Prison? How do we compare with Europe?’, Civitas, 2007
http://www.civitas.org.uk/data/prisonTooMany.php
were 5,587 foreign nationals in prison in England and Wales. By the end of 2007 there were 11,310. At least three prisons, Bullwood Hall, Canterbury and Morton Hall, have been switched to dedicated foreign national use. Within London, over a third of prisoners are foreign nationals.

**Failure to increase capacity**

The previous Conservative Government had built seventeen new prisons in the 1990s and overseen a programme of modernisation which had ensured all prisoners in England and Wales had access to night-time sanitation by April 1996, ending the practice of slopping out. In March 1997, the Conservative Government was able to promise three new prisons and 2,030 new prison places within six months and a further 6,000 to be provided within the next three years.

Nevertheless, when Labour came to power, prisons were already holding 7 per cent more prisoners than the cells available were intended to hold (‘certified normal accommodation’). Officials predicted that the prison population would reach 73,200 by 2004/05. By 2000, officials were predicting a population of up to 79,000 by 2006/07. However, a rising prison population would not have led to a crisis had Labour not failed to expand prison capacity sufficiently to accommodate this growth.

In 1997, Labour had good reason to expect the prison population to expand by around 21,000 places over the decade. And indeed, they frequently claim to have provided 20,000 new places. However, this figure includes 8,600 places planned or commissioned by the former Conservative Government. A further 3,000 have been ‘created’ by putting two prisoners in cells designed for one, or three prisoners in cells designed for two. Labour made overcrowding a central plank of their prisons policy, vastly increasing the use of doubling- and tripling-up in the prison estate.

When Jack Straw was Home Secretary, prison building tailed off as those places
planned under the Conservatives came to fruition. In Jack Straw’s first year as Home Secretary, prison capacity increased by 4,716 prison places; in his last year, 2000/01, only 640 were provided, a fall of 86 per cent.

Sources: Hansard, 16 April 2007, Col. 480W; Hansard, 16 October 2007, Col. 952W

It would be unfair to pin the blame for this failure solely at the feet of successive Home Secretaries. Constraining them was a refusal by Gordon Brown as Chancellor to sanction increases in the Home Office budget to pay for the construction of new prison places. Yet Ministers also failed to deliver on the replacement of antiquated Victorian prisons with new modern facilities, a
proposal made by Patrick (later Lord) Carter, in his 2001 review of prisons. In 2008, 26 prisons are in use that date from the reign of Queen Victoria. A further 16 predate her.

Waste and bureaucracy
The prison and probation services have been victims of Labour’s failed experiment in public sector reform through targets and central control. Labour confidently believed that central government could hold unwieldy departments to account using top-down targets, while efficiency would be improved with the aid of modern IT systems. Their confidence was misplaced. The Probation Service in particular has been burdened with too many targets. Monitoring has forced them to meet intermediate targets, leading to ineffective and demoralising box-ticking instead of productive and fulfilling work. And the IT systems that are supposed to make it all function have been invariably late and over budget.

Though the Government realised, rightly, that the split between prison and probation is the root cause of failure, their attempts to fix it have foundered. The first was the National Offender Management Service (NOMS), envisaged by Lord Carter as a new agency that would co-ordinate the prison and probation services. NOMS would assign a case officer – an ‘offender manager’ – to each criminal, who would follow their progress from the time they were sentenced until they were reintegrated into society, using a state-of-the-art computer system – C-NOMIS. But instead of drawing together prisons and probation, as Carter wanted, the Government created in NOMS an inflated bureaucratic monster that sat above the prisons and probation services, did little to facilitate co-ordination, but somehow sucked resources – eventually over £1.5 billion per year, more than the budget of the National Probation Service – from those available for offender management.

C-NOMIS was late and over budget, and the Ministry of Justice has now announced that a system that it previously described as ‘central to end-to-end offender management’ will not be rolled out to the Probation Service. Out of an initial budget of £234 million, £155 million had already been spent on the project by the time the decision was taken to restrict the scope of the project.31 Probation officers will now only have access to OASys, a more basic risk-assessment tool,
which does not interface with C-NOMIS.

As for NOMS, the Government has now decided to merge the top management of the Prison Service, Probation Service and NOMS, effectively subsuming a slimmed down NOMS into the Prison Service, but without integrating the delivery of the services on the ground. NOMS will continue to commission probation services on a regional basis, but as prisoners are moved long distances around the country, frequently outside their home regions, there is reduced opportunity for continuity of offender management pre- and post-release.

Meanwhile, Ministers have continually interfered in the running of prisons. The former Director General of HM Prison Service and Chief Executive of NOMS, Martin Narey, has said:

‘The Prison Service for some years has been an executive agency in name only. The autonomy, the ability of its Director General to get on and manage the organization has been significantly eroded .... I was spending 70 per cent of my time in my last year at the Home Office managing Ministers.’

For prison and probation services alike, targets have been focused on measurable levels and on throughputs, not (with the exception of private prisons) on success at tackling re-offending. This, as a recent NAO report found, creates perverse incentives and outcomes, stifles innovation, and ultimately restricts the ability of the Ministry of Justice to deliver on its own service level agreement to reduce re-offending. Labour’s approach suffers from two fundamental flaws: the chasm between prison and probation, which they have tried but failed to bridge, and the lack of incentives for people within the system, which they have not attempted to address. In essence, re-offending has not been reduced because it has been nobody’s job to reduce it.
3.3 A FAILING PENAL SYSTEM

Prisons should reduce crime in three principal ways: by incapacitating offenders, by punishing and thereby deterring others who would commit crimes, and by rehabilitating offenders. Yet on all three measures, the prison system in England and Wales is failing.

Incapacitation

Prison protects the public by keeping offenders off the streets. When comparing the re-offending rates for prison and community sentences it must be remembered that a prison sentence is not intended simply to reduce re-offending after release – it prevents offences being committed against the public during the period of incarceration. At present, some 80,000 offenders are kept off the streets at any one time. In its primary function of detaining offenders securely, prison generally works.

However, this incapacitation effect has been undermined by weakening sentences and early release schemes. Labour’s response to overcrowding has been to reduce the time offenders spend in prison. First, in the Criminal Justice Act 2003, the Government introduced automatic release at the halfway stage for prisoners serving sentences of four years or more, i.e. the more serious offenders in prison. Previously those serving four years or more were not eligible for automatic release at the halfway stage, but were instead required to apply to the Parole Board, where their individual situation, the extent to which they had been rehabilitated, and the risk posed if released, could be assessed. Removing the requirement for Parole Board consideration resulted in the earlier release of thousands of serious offenders, particularly those whose risk profile would have made them ineligible for parole.

Second, Labour has resorted to releasing many prisoners before the halfway point. It introduced Home Detention Curfew (HDC), in which prisoners can apply to be released up to six weeks early on a tag, subject to curfew and monitoring requirements. Most recently, in June 2007, the Government introduced early release on End of Custody Licence, under which most prisoners serving sentences
of under four years, with certain exceptions (such as sex offenders) are automatically released eighteen days before the end of their sentence without proper risk assessment. The cost of releasing prisoners early has been the commission of offences that would not have taken place had the offender been behind bars. Since the introduction of the Home Detention Curfew scheme in 1999, over 4,000 prisoners released early under it have re-offended, committing 7,119 crimes, including one murder, 56 woundings and more than 700 assaults.\(^{33}\) Prisoners on End of Custody Licence have already committed over 300 crimes – including at least one murder.\(^{34}\)

Third, overcrowding has also resulted in the transfer of inappropriate prisoners to open conditions from which it is possible to escape or abscond. Between April 1997 and 8 June 2006 there were 7,105 absconds from open prisons in England\(^{35}\) and prisoners continue to walk out of open prisons at the rate of 42 a month.

Generally, such offenders should pose a low risk of re-offending. However, to alleviate pressure on the secure estate, the Prison Service recommended in July 2002 the transfer of some dangerous and serious offenders from closed to open prisons. 280 prisoners who have been assessed as posing high risk of harm are currently housed in open conditions.\(^{36}\) A recent Prison Service memo requires governors to consider transferring foreign nationals serving under a year to open conditions even where immigration officials wish to remove the offender from the UK at the end of his sentence.

**Punishment and deterrence**

The fight against crime depends upon integrity in the criminal justice system: courts which deliver swift, effective justice, with punishments appropriate to the crime and the criminal. The current sentencing system lacks clarity and public confidence because sentences bear no resemblance to the time actually served in prison.

The public do not feel that current sentencing policies are delivering justice or adequately dealing with crime. When asked what the three most important issues...
are facing Britain today when it comes to crime, the most popular response in a 2007 Mori poll (26 per cent) was ‘punishment/sentences are too lenient/punishment doesn’t fit the crime.’\textsuperscript{37} In another survey, 71 per cent believed that prison sentences handed down by the courts should be served in full.\textsuperscript{38}

The 2003 Criminal Justice Act replaced the possibility of parole with automatic release at the halfway point for those serving sentences of four years or more, curtailing the sentences of over 5,000 very serious criminals per year. Moreover, the introduction of Home Detention Curfew and End of Custody Licence means that most prisoners serving less than four years routinely spend less than half their sentence in prison.

Automatic release at the halfway point of a determinate custodial sentence does not represent time off for good behaviour, nor is it a recognition of remorse, or a willingness on the part of the offender to make amends. Furthermore, there is no discretion on the part of prison authorities as to which offenders are prioritised for release, and when, because the release is automatic and unconditional. Automatic early release has three principal flaws.

First, it is dishonest. The rules under which prisoners are serving their sentences are unclear both to offenders and to the public. It damages the trust which victims and wider society place in the courts, and it encourages criminals to hold the system in contempt. Jack Straw has described the current system as a ‘benign deception’ of the public.\textsuperscript{39} But there is nothing benign about a policy which systematically gives false hope to victims and false reassurance to the public. Automatic release always translates into a shorter time actually served in prison than the victim and the public are led to believe at the time of sentencing. Second, automatic release removes incentives on inmates to reform. There is no incentive for the prisoner to earn his release through good behaviour and no motivation for him to take steps to reform his character to prepare for the outside world. Just as crucially, there is no serious penalty for bad behaviour or refusal to partake in productive activities like education, training and work. Third, automatic release can jeopardise public safety. The Government accepts that automatic release could lead to some prisoners given determinate sentences being released

\textsuperscript{38} ICM Research. ‘Crime and Punishment’, question 8, fieldwork 24-25 November 2005, n=1026
\textsuperscript{39} Hansard, 4 November 1996, Col. 917
automatically, even though they had been assessed in prison as constituting a risk to the public.\textsuperscript{40}

Measures in the Criminal Justice and Immigration Bill will exacerbate these problems. At present, days spent remanded in custody are deducted from the time to be served if the offender receives a custodial sentence. In this way, the criminal justice system aims to create equality of treatment between those prisoners who are remanded in custody and those who receive bail. However, the Criminal Justice and Immigration Bill will extend this principle to those who are bailed on tag and subject to a curfew. Such offenders will, unless the judge deems it unjust to do so, receive 50 per cent remission for each day spent tagged. The effect may well be that a person sentenced to immediate custody will have his whole sentence commuted. There is a world of difference between the restrictions on liberty entailed by incarceration on remand, and those of people who are subject to monitoring and conditions while on bail. The policy amounts to allowing one day off a prison sentence for every two nights an offender spends asleep in his own bed.

This incoherent approach to sentencing finds institutional expression in the Government’s latest policy for a Sentencing Commission. The Justice Secretary has approvingly cited Lord Phillips’ suggestion that ‘\textit{some method must be found of linking resources to the setting of the sentencing framework.}’\textsuperscript{41} However, the Government’s method of linking sentences and resources would allow this new Sentencing Commission to modify current guideline sentences ‘to take account of … the total impact on prison places and other penal services to ensure that they would come within a published financial envelope as set out by government.’\textsuperscript{42}

First and foremost, sentences should fit the crime, not jail capacity. The Sentencing Commission is simply a device to manage down the prison population over the long-term by requiring decisions on sentencing to be a function of future prison capacity. It is the responsibility of Ministers to provide the capacity to hold all those sentenced by the courts, not to contrive a mechanism to restrict judicial discretion and artificially lower the prison population.

\textsuperscript{40} 4.2: ‘The potential source of concern is a prisoner who has been sentenced to a standard determinate sentence but who is subsequently assessed whilst in prison as posing a serious risk to the public’ (\textit{Making Sentencing Clearer: a consultation and report of a review by the Home Secretary, Lord Chancellor and Attorney General}, Home Office, 2006).
\textsuperscript{41} Jack Straw, Speech to The Howard League for Penal Reform AGM, 21 November 2007
\textsuperscript{42} ‘Securing the future: Proposals for the efficient and sustainable use of custody in England and Wales’, Lord Carter, December 2007
Rehabilitation

In its third purpose, rehabilitation, prison is failing comprehensively. More than half of all crime in this country is committed by people who have been through the criminal justice system.\(^4\) 65 per cent of those discharged from prison are reconvicted within two years of release from prison.\(^4\) These are the averages of offenders who are subsequently caught and convicted. The real re-offending rate is likely to be far higher, and in the case of young offenders it is likely to be more than 90 per cent.

**Source:** Re-offending by Adults: results from the 2004 cohort, Home Office, 2007; Re-offending by Juveniles: results from the 2005 cohort, Ministry of Justice, 2007) Figures relate to male offenders.

43 Hansard, 9 February 2006, Column 1033 (Charles Clarke)
44 Re-offending of Adults: Results from the 2004 Cohort, Home Office, March 2007
Many ex-prisoners are on drugs, have no accommodation, no job and no employment skills, and they lack the ability to fend for themselves, let alone look after their dependants. At the end of their sentence, most prisoners are released onto the streets, with a small cash payment in their pockets but little other support. They are often immediately at the mercy of drug dealers or their former associates. Even those ex-offenders who do not find themselves back in prison are unlikely to find themselves in work and economic independence.

Current arrangements for the release of prisoners are inadequate, do not help the offender and put the public at risk. This situation has been exacerbated by the emergency introduction of End of Custody Licence, which means prisoners are routinely released eighteen days early. It is during these final days of a prison sentence in which vital work on housing, resettlement and continuity of treatment is done.

A recent survey conducted by ‘Inside Time’, the newspaper for prisoners, which attracted more than 2,000 responses, revealed that six out of ten men and almost half of women said prison had not helped them move towards ‘a law-abiding and useful life upon release’ and four out of five of prisoners within a year of release claimed they had been offered no help with resettlement. As the Chief Inspector of Prisons has observed:

‘Some prisons still did not have a current resettlement strategy and most did not have one that covered the specific needs of all the prisoner groups in their population.’

The Commons Home Affairs Select Committee found that two-thirds of prisoners have no job on release. According to a 2005 Home Office study, only one in five prisoners who need help with accommodation get support and advice and only 30 per cent of the approximately 90,000 prisoners released in England and Wales each year will have somewhere to live.

The result is high levels of re-offending by prisoners on licence. Over the last seven years the number of people recalled to prison has increased from 2,337 in

---

45 Annual Report 2005/6, HM Chief Inspector of Prisons for England and Wales, January 2007
48 Ibid
2000-1\textsuperscript{49} to 13,299 in 2007,\textsuperscript{50} and the proportion of the prison population who are in custody as a result of recall has risen from 3 per cent to 7 per cent.\textsuperscript{51} This in turn puts greater pressure on the crowded prison estate as offenders are returned to prison.

3.4 WHY ARE PRISONS FAILING?

Overcrowding

Overcrowding is the key cause of failure in the current prison system. By overburdening the prison estate, it inhibits the process of rehabilitation and attempts to reduce re-offending. British prisons have often in the past reached near to maximum capacity. However, never before has its capacity been exceeded. Prison overcrowding has now reached dangerous levels. At the end of January 2008, 85 out of 143 prisons were overcrowded, and more than 15 prisons were above the total number each could safely and securely hold.\textsuperscript{52}

Overcrowding has dramatic consequences both for prisoners and for the operation of prisons. Living and working conditions, the ability of prison officers to work effectively, inmates’ access to educational and training programmes, the success of and access to mental health, drug and other vital rehabilitative programmes, are all affected. Overcrowding also leads to long periods of time when prisoners are locked in their cells rather than engaged in purposeful activity. The Prison Service Annual Report says:

‘Crowding ... dilutes the resource available for constructive activity. High throughput and frequent daily movement impact directly on regime delivery by diverting staff resources and making it more difficult to assess prisoners and allocate them to appropriate interventions.’\textsuperscript{53}

\textsuperscript{49} NOMS Recall newsletter edition 7, annex A
\textsuperscript{50} Hansard, 4 Feb 2008, col. 944W
\textsuperscript{51} Hansard, 6 Feb 2008, col. 1195W
\textsuperscript{52} NOMS Monthly Bulletin, NOMS, January 2008
\textsuperscript{53} Annual Report and Accounts 2006/07, HM Prison Service, 2007
Another significant effect that overcrowding has on regimes can be seen in the correlation with poor mental health and rising suicide rates amongst inmates. As the Chief Inspector of Prisons has noted: ‘When the system comes under too much strain, the pressure exhibits itself in two ways. One is people hurting themselves; the other is people hurting others or causing disturbances.’ Suicides in crowded prisons have more than doubled since 1996. In 2005 all adult suicides within prisons took place in prisons that were overcrowded and in 2006/07 84 per cent of suicides in prison took place in prisons that were classified as overcrowded. Between January 2006 and April 2007 there were 97 suicides in prisons, making a total of 777 in our prisons since 1997. Overcrowding also compromises prison safety. The Mubarek report of June 2006 concluded that enforced cell sharing

Source: Hansard, 20 Feb 2007, Col. 629W

54 Interview with New Statesman, 5 June 2006
55 Hansard, 9 January 2007, House of Commons Written Answer to Edward Garnier QC MP
56 Hansard, 8 October 2007, House of Commons written answer to Edward Garnier QC MP
57 Hansard, 26 April 2007, House of Commons Written Answer to Edward Garnier QC MP
58 Hansard, 9 January 2007, House of Commons Written Answer to Edward Garnier QC MP
should be brought to an end as soon as attainable – a practical impossibility in the current state of overcrowding.

Quite apart from these more obvious implications, prison overcrowding also causes ‘churn’. Prisoners are moved to the available space, which means frequent moves from prison to prison. An inmate’s ability to settle in, maintain links with his family, establish a stable regime or receive continuous training and educational programmes is significantly reduced. NATFHE and the Association of College Lecturers have complained that only a third of education managers regularly receive prisoners’ records following transfers.  

Overcrowding has also undermined the measures taken to provide dignified living conditions within prison. The use of doubling and trebling up has increased over the past decade, and while prisoners may no longer have to sleep in a room with a bucket of their own waste, thousands have to sleep in a room containing another prisoner’s open lavatory. Some 17,000 prisoners are doubling up in cells – twice as many as when the current Government came to power. More than 1,000 cells designed for two people are occupied by three. That means that nearly a quarter of the entire prison population is housed in cells designed for one fewer person.

**Underperforming prison regimes**

Prison regimes are themselves another cause of failure. There are important exceptions, but generally prisoners spend far too much time doing nothing: they learn little; they eat badly; few expectations are made of good behaviour, and there is little constructive routine to speak of. The Home Affairs Select Committee found in 2004 that over 60 per cent of prisoners who took part in their Prison Diaries Project spent no time in vocational training or offending behaviour or drug treatment programmes, 47 per cent spent no time in education and 31 per cent no time in prison work. One in six spent no time during the week in sporting or gymnasium activities or in association.

The Government had a Key Performance Indicator for purposeful activity in prisons which encompassed various activities including time spent at work,
education, training, physical education and other activities such as offending behaviour programmes. The Prison Service hit this indicator only once between 1997 and 2005. The 2003 Prison Industries Review said this was ‘indefensible’. The response of the Prison Service was to abandon the target.

In 2007, prisons reported an average of 25.1 hours of purposeful activity per week. However, this figure needs to be treated with some caution. In her 2005/06 annual report, the Chief Inspector of Prisons found that ‘many prisons have inflated the amount of purposeful activity actually taking place’. In 2006/07 she found some prisons ‘producing figures that were frankly incredible,’ such as one which counted a fifteen minute meal time as 1.75 hours.60

The limited amount of purposeful activity is set to deteriorate further from April 2008. In order to save an estimated £60 million, the Government is to introduce a ‘standard core week’ which will entail an extra period where prisoners are locked in their cells on Friday afternoons. Paul Tidball, President of the Prison Governors’ Association, has said that the new proposal will reduce the average time spent out of cell each week by each prisoner to its lowest level for nearly 40 years. This will also impact very severely on the work done by voluntary organisations. The Prison Service has refused to allow governors to deviate locally from the core week in order to enable voluntary organisations to continue work with offenders on Friday afternoons and evenings.

There is also a lack of adequate work in prisons. Prisoners who currently work undertake a number of tasks but the work that does take place is all too often low-grade, menial and repetitive in nature, requiring little by way of skills or dedication. Organisations contract with the prison service to provide work (such as stuffing headphones or bagging nuts and bolts) and the prison then sets a number of people onto the task. These prisoners are paid more than they would for other prison activity (such as preparing food, or education) but there is normally no direct contact between the prisoner and the business and little prospect for development. No more than a third of prisoners will be engaged in work at any one time, and the Prison Service has acknowledged that prison industries have ‘rather got left behind by other developments within the system’
and that providing work opportunities for prisoners is ‘not currently a central and essential part of the prison regime.’

The record of education in prisons is also poor. Only one prisoner in five is able to complete a job application form. The opportunity to impart knowledge and basic literacy and numeracy skills to a captive audience is not properly focused. The issue is not resources. The amount of money to be spent on prison education has trebled in the last decade. But the money has not been accompanied by reforms to address well-documented deficiencies.

The Adult Learning Inspectorate reported in 2004 that ‘much of the learning provision [in prisons] was found to be inflexible or inappropriate, and involved too narrow a range of teaching methods to hold the attention of people who have often been discouraged from learning.’ Three years later, the Chief Inspector of Prisons was making almost identical criticisms: ‘much education continues to be low level and narrowly focused; and in general, education simply did not reach enough prisoners.’ Yet basic skills and learning can contribute to a 12 per cent reduction in re-offending: prisoners who do not take part in education or training while in custody are estimated to be three times more likely to re-offend on release.

The problem of drugs
The number of people in prison for drugs offences has nearly doubled in the last ten years from 4,256 in 1995 to 10,661 in 2005. However, there is a much larger group of prisoners whose offence is in some way drug related: 55 per cent of those received into prison are problematic drug users. Around 39,000 prisoners with a serious drug problem are present in custody at any one time.

Drug use does not end at the door of prison. Although figures from random drug testing show that 9 per cent of prisoners tested positive for drugs in 2007, Home Office research has indicated that such tests are likely to understate the extent of

---

62 ‘Reducing Re-Offending by Ex-Prisoners’, Social Exclusion Unit 2002
63 Annual Report 2006/07, HM Chief Inspector of Prisons for England and Wales, January 2008
64 ‘Reducing Re-Offending by Ex-Prisoners’, Social Exclusion Unit 2002
65 ‘Reducing Re-Offending by Ex-Prisoners’, Social Exclusion Unit 2002
67 Hansard, 19 July 2006
68 Hansard, 13 February 2006
drug use in prison.\textsuperscript{69} A 2005 Home Office study found that a quarter of prisoners said they had used drugs in the past month whilst in their current prison.\textsuperscript{70} The Government have also acknowledged that about one in five men who report using drugs first used them in prison.\textsuperscript{71} Not only is prison failing to get people off drugs, it is actually creating new addicts.

The overall aim of the Government’s Integrated Drug Treatment System is to ensure that ‘good quality’ treatment is available to all prisoners. Yet across the entire prison estate there are just four abstinence-based therapeutic communities, and only 300 prisoners entered such programmes in 2006/7. In addition, there are ten abstinence-based ‘12 step programmes’ (lasting six months) in dedicated wings run by RAPT, the main abstinence-based provider. However, the need is far greater. Unfortunately, overcrowding has impacted on the ability of the Prison Service to address substance dependency. For instance, the Chief Inspector of Prisons has found that ‘substance-dependent prisoners could be transferred having barely completed detoxification … as population pressure increased, it was difficult to match prisoner need to programme provision.’\textsuperscript{72}

The reality for the majority of those going into local and remand prisons is ‘clinical services’ to manage substance misuse. These comprise detoxification and maintenance prescribing programmes which are meant to be a prelude to broader based drug treatment interventions. In the main they are not. NHS research suggests that detoxification of a pre-set duration remains the option in the majority of local prisons of 14 to 21 days.\textsuperscript{73} The problem of drugs in prisons must be acknowledged and addressed, and more effective drug treatment provided.

\textsuperscript{69} ‘Home Office Findings 223: The impact and effectiveness of Mandatory Drugs Tests in prison’, Home Office, 2005
\textsuperscript{70} Ibid
\textsuperscript{71} Hansard, 14 November 2007, Col. 293W
\textsuperscript{72} Annual Report 2006-07, HM Chief Inspector of Prisons, January 2008
\textsuperscript{73} ‘Clinical management of drug dependence in an adult prisoner setting’, Department of Health, December 2006
3.5 THE POOR RECORD OF COMMUNITY SENTENCES

The state of prisons in England and Wales has led many to advocate the use of community punishments as an alternative to a custodial sentence. Jack Straw has recently said: ‘For people sentenced to under twelve months in prison, re-offending rates have long been too high, and this is the case regardless of exactly how long those prisoners are inside. Community sentences will, in many cases, be a better alternative.’ But ‘robust alternatives to custody’ have so far evaded the Government.

In the past decade, the Government has embraced community sentences as a way to divert criminals away from the ever more overcrowded prison estate. Five years ago, then Home Secretary David Blunkett talked about tough community sentences to ‘reduce the prison population at the lower end’. In the Criminal Justice Act 2003, the Government introduced the single Community Order to replace the separate community sentences which existed previously. In 2007-8, the Government expects to spend £500 million administering and delivering Community Orders. This growing preference for community sentences has taken them far away from their original intended purpose: community sentences are now given to over 40 per cent of violent offenders, and in the last three years, nearly 90 convicted rapists have received them.

The Government cites the lower two-year reconviction rate associated with community sentences as evidence that they are ‘more effective’ at reducing re-offending. But while the average two-year rate is typically lower, when comparing the rates for prison and community sentences it should be noted that a prison sentence is not intended simply to reduce re-conviction after release – it prevents offences being committed against the public during the period of incarceration. That the rate of proven re-offending is lower than that for prisoners almost certainly reflects the fact that the cohort of prisoners includes many of those who have already passed through, and failed to respond to, the gamut of community sentences. Furthermore, Home Office research on four types of community order...
suggested that when offender characteristics are controlled for, while two were associated with lower levels of re-offending than custody, the remaining two were associated with higher levels of re-offending than custody. \textsuperscript{80}

<table>
<thead>
<tr>
<th>Sentence Type</th>
<th>Re-offending rate %\textsuperscript{81}</th>
<th>Odds ratio\textsuperscript{82}</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prison</td>
<td>64.7</td>
<td>-</td>
</tr>
<tr>
<td>Community Rehabilitation Order</td>
<td>56.9</td>
<td>1.0</td>
</tr>
<tr>
<td>Drug Treatment and Testing Order</td>
<td>82.3</td>
<td>1.4</td>
</tr>
<tr>
<td>Community Punishment Order</td>
<td>37.9</td>
<td>0.8</td>
</tr>
<tr>
<td>Community Punishment and Rehabilitation Order</td>
<td>52.2</td>
<td>0.8</td>
</tr>
</tbody>
</table>

\textbf{Source:} Re-offending by Adults: results from the 2004 cohort, Home Office, 2007

Furthermore, a report from the National Audit Office in February 2008 found that ‘research is lacking on the effectiveness of some community order requirements in achieving a reduction in reconvictions, reforming and rehabilitating offenders and paying reparation to the victims of crime.’\textsuperscript{83} In particular, it questioned the evidence for the effectiveness of the two main community sentences used in England and Wales, the supervision requirement and unpaid work requirements. The evidence that these orders reduce re-offending was found to be weak or inconclusive.

If community punishments are to be made effective at reducing re-offending, they not only need strengthening, but enforcing. As the National Audit Office observes, ‘for unpaid work to be seen to be punishing and implemented properly, it needs to be demanding.’\textsuperscript{84} However, probation inspectors have found that only 63 per cent of unpaid work requirements were suitably demanding.\textsuperscript{85} The Ministry of Justice concedes that, while the maximum amount of work under such

\textsuperscript{80} ‘Re-offending by Adult Offenders: results from the 2004 cohort’, Home Office, 2006
\textsuperscript{81} The re-offending rate is the number of those receiving a particular sanction who are reconvicted for offences committed within two years of release from prison or two years of starting a community sentence.
\textsuperscript{82} The odds ratio is the relative likelihood of an offender being reconvicted within two years having received a particular community sentence, compared to a similar offender receiving a prison sentence. Thus an offender receiving a Drug Treatment and Testing Order is 40 per cent more likely to offend than a similar offender who receives a prison sentence. Note that the figure for the Community Rehabilitation Order is greater than 1, but rounds to 1.0.
\textsuperscript{83} ‘The National Probation Service: the supervision of community orders in England and Wales’, National Audit Office, January 2008
\textsuperscript{84} Ibid.
\textsuperscript{85} Ibid.
requirements can be up to 300 hours, the average is only around 100. Attendance rates are poor, with the punishments viewed by some as essentially optional. At present, a fifth of offenders do not even meet their offender manager within a week of sentencing. The National Audit Office found that of 686 decisions to excuse an offender for non-attendance at a required appointment, 11 per cent of cases involved the offender self-certifying sickness, while 9 per cent were classified as ‘forgot/confusion/slept in’.

In the same survey by the National Audit Office, around 18 per cent of community orders were breached with a three month period. There were 94,349 offenders who commenced unpaid work requirements under probation supervision during 2006-07 following sentence by the courts, but only 42,210 were completed. This failure to ensure compliance with community sentences has led to the growth of 'back-door sentencing', as breaches of requirements imposed on those receiving suspended sentences trigger recall to prison. There is also a problem of availability. The Community Order ostensibly allows magistrates and judges to create tailor-made orders for offenders for one or more of twelve possible requirements: supervision, unpaid work, accredited programmes, drug rehabilitation, curfew, specified activity, alcohol treatment, attendance centre, mental health treatment, prohibited activity, exclusion and residence. But many of the 12 sentence requirements are not available in certain areas and offenders often do not receive vital requirements if they are not available locally, in spite of evidence that suggests the wrong kind of interventions can increase the likelihood of re-offending.

The public remains rightly sceptical. While 81 per cent of victims of crime would be in favour of community sentences if they prevent a criminal re-offending, less than a third of the public believe that community sentences are more effective than prison in reducing re-offending. There is a place for community sentences to deal with offenders whose crimes do not warrant imprisonment and where treatment in the community offers a better prospect of rehabilitation than

88 Hansard, 17 September 2007, House of Commons Written Answer to Neil Gerrard MP
90 Adult Interventions Factsheet, Research Development Statistics NOMS, August 2007
91 ‘Law and Order’, ICM for the Sunday Telegraph, June 2006
incarceration. Such punishments can be useful insofar as they allow offenders to remain close to home, family and work, while affording opportunities to receive vital rehabilitation and skills. However, they cannot simply be used as an act of faith, and should not be used simply because the jails are full. The way to use community punishments to reduce the prison population is to make community punishment work to reduce re-offending, and so reduce the supply of criminals who will be sent to prison in future. The current regime of community sentences is failing in this crucial pre-emptive goal of arresting criminal behaviour before it escalates. As Jack Straw has conceded: ‘most people who end up in prison go there because community punishments have failed’.92

‘WE SIMPLY CANNOT GO ON LIKE THIS’

Labour’s serial incompetence is amply demonstrated by its record on prisons and community sentences. The prison population has soared, jails have become seriously overcrowded, and re-offending rates have remained stubbornly high. An expensive re-organisation of offender management failed to deliver and NOMS has now effectively been scrapped. The vast majority of prisoners released each year – those sentenced to a term of less than 12 months – leave prison with no supervision or support.\footnote{For sentences of less than 12 months, a prisoner is automatically released after serving half of their sentence, less any time spent in custody on remand. They are not released on licence and so they are not supervised by the Probation Service although a young person under 21 will be under supervision for at least three months after release.} Prison and probation staff are demoralised, and resources have been squandered on expensive, short-term measures as offenders are held in police cells and transported around the country. Labour has shown no strategic vision. Emergency policies have seen the early release of violent offenders, and community sentences are weak, poorly enforced, and do not command public confidence. The Government have announced a belated prison building programme, but have no new ideas when it comes to what prisons do, and how we can make prisons play their full and proper part in the crucial goal of reducing re-offending.

As the Lord Chief Justice, Lord Phillips, has said, ‘we simply cannot go on like this’.\footnote{Speech to the Howard League, 15 November 2007 http://www.judiciary.gov.uk/docs/speeches/lcj_howardleague151107.pdf} A new approach is desperately needed.

**OUR PRISONS ARE IN CRISIS**

- **65 per cent** of prisoners are convicted of further offences within two years of release
- **19,000 prisoners** are held in overcrowded accommodation
- **57,000 prisoners** are held in overcrowded prisons
- **34 per cent**: increase in the prison population since 1997
- **28 per cent**: increase in prison accommodation since 1997
- **60,953**: number of occasions in 2007 on which prisoners were housed in police cells under Operation Safeguard
- **£28 million**: cost of Operation Safeguard in 2007
- **92 prisoners** took their own lives in 2007, up from 67 the previous year
The Government’s first duty is to protect the public, and that duty requires it to provide adequate prison capacity. Prison has a number of purposes, not just to punish, deter and incapacitate offenders, but also to rehabilitate them. It cannot punish or deter effectively if sentences are foreshortened. But it is in respect of rehabilitation that prisons are failing most.

To date, the debate on prisons has been unhelpfully polarised. At one end, people say offenders should be locked up and the key effectively thrown away. That is plainly wrong – albeit that the most dangerous offenders should continue to be incarcerated indefinitely. At the other, people say that the prison population should be reduced through far more use of community sentences, regardless of their effectiveness, and by shortening custodial sentences. That is wrong, too. As we showed in Chapter 3, prison is already largely reserved for serious, violent and persistent offenders.

Crime will not be reduced by cutting the prison population. The prison population will be cut by reducing crime. Half of all crime is committed by previous offenders, and one in five recorded crimes are committed by ex-prisoners. So the immediate goal should be to reduce the re-offending rate, not the prison population. As the Government has admitted:

“Small improvements in reducing re-offending would very significantly reduce crime.”

A new approach should accept the role of prison in dealing with crime in an increasingly violent society, but also recognise that the current prison system isn’t working.

Breaking the cycle of re-offending cannot be achieved simply by building more prisons. It will require structural reform of our penal system – nothing less than the most fundamental shake-up of prisons for two centuries, in which the estate is renewed and re-organised, the role of prisons is fundamentally re-assessed, and a determined new emphasis is placed on rehabilitation.
4.1 OUR GOALS

- **Restored confidence in the criminal justice system**
  We need to rebuild public trust in sentencing. Victims need reassurance, and offenders need a clear signal about their future. The automatic early release of prisoners, End of Custody Licence and routine non-compliance with community sentences all undermine public confidence in the criminal justice system. Our proposals will introduce the principle of honesty in sentencing. Release from prison should not be automatic – it should be earned. Sentences should not be foreshortened as a result of the Government’s failure to plan. And community sentences can only be an alternative to custodial sentences where they are robust and enforced.

- **A new focus on rehabilitation**
  Whether offenders serve their sentences in the community or in custody, there should be a far stronger focus on rehabilitation. Community sentences must contain an element of punishment which is enforced – but they should also ensure that offenders get off drugs or alcohol dependency, and get into the world of work. Equally, prisons should be places of education, hard work, rehabilitation and restoration. Two thirds of offenders leaving prison each year received sentences of 12 months or less and so have no supervision by the probation service – and it is this group of offenders who have amongst the highest reconviction rates. Offenders leaving custody, especially short-term prisoners, need support to get resettled and find work.

- **Prisons for the 21st Century**
  The criminal justice system cannot function where one vital element, prisons, is so compromised by overcrowding that the daily routine collapses into containment and crisis management. A new framework for offender management must be premised on providing adequate prison capacity. There should be less ‘churn’ in the system, so that wasteful prison transfers can be minimised. The current system is organised around the ‘cascade’ of offenders through a series of prisons, resulting in instability, disrupted rehabilitation, multiple accountabilities for each prisoner, and the dislocation of prisoners
from their families (when we know that family links are a key determinate in reducing re-offending). New local prisons can be funded within the existing prison building programme and by selling off old, unsuitable prisons.

- **Making sure we have the prison places we need**
  As noted in Chapter 3, there is no correct level of imprisonment. A prison population is partly the consequence of the crime rate, and Britain is a high crime country. Artificially attempting to reduce the prison population by fettering judicial discretion over sentencing, shortening sentences or attempting to extend the use of unsuitable community sentences is the wrong approach. It undermines public confidence in the criminal justice system and potentially places the public at risk.

There are certain groups of offenders who could be removed from prison. Removing foreign national prisoners earlier will free capacity. Women could be held in more local units, and alternative forms of secure, treatment-based accommodation could be found for mentally ill and drugs offenders – although such measures would not reduce the population of offenders in some form of custody. But overall the right way to reduce the prison population is by:

- designing community punishments that are successful in reducing re-offending, so that the flow of offenders into the custodial system is reduced; and

- focusing on reducing re-offending by prisoners when they are released.

The criminal justice system should reflect these goals in the structure of sentencing and offender management. In relation to both custodial and non-custodial sentences, there should be four pillars of sentencing:

1. **Punishment** – sentences should fit the crime by punishing the offender adequately, to satisfy natural justice and to deter future offending by them and others.
2. **Reparation** – all offenders should be expected to make amends for their crime to victims, by financial means or through restorative justice approaches.

3. **Rehabilitation** – by accepting punishment and making amends an offender should earn the right to support and guidance to address their offending behaviour. They should learn how to take responsibility for living a crime-free life.

4. **Work** – offenders should be engaged in finding work and remaining in stable, lawful employment to aid their reintegration into society as law-abiding citizens.

### 4.2 PRINCIPLES OF REFORM

Labour’s approach will not achieve these goals. Top-down, centralised control has proved an expensive failure. A new approach must reach beyond administrative reform, small-scale pilots and bureaucratic tinkering. It requires fundamental structural reform.

- **A decentralised system**
  The central bureaucracy of the Prison Service and NOMS consumes resources and stifles local innovation. Decentralising the system will reduce central costs, minimise bureaucracy and give power to prison governors, enabling them to innovate and put in place local solutions which deliver a reduction in re-offending. Trusting professionals is a key theme of Conservative public service reforms. It should apply as much to the criminal justice system as to hospitals and schools.

- **Clear accountability**
  Public services need to be accountable to the public they serve. The lines of accountability in the prison and probation systems are multiple and confused. In spite of the introduction of ‘end-to-end offender management’, no individual is responsible for ensuring the progress of the prisoner towards rehabilitation in prison and after release. Prison governors should have the responsibility for overall offender management and be held accountable for
reducing re-offending, as well as ensuring prison security. And instead of being directed by Whitehall, local probation chiefs and prison governors could answer to locally elected politicians, so that the community has the ability to ensure safety in its own area.

- **The voluntary and private sectors unlocked**

  There is untapped enthusiasm and expertise in the voluntary sector that could be harnessed to help deliver rehabilitative services at low cost. At present, many charities are keen to expand their services, but they do not have access to the resources, while the NOMS commissioning arrangements shut them out. We want to end the stifling influence of central and regional bureaucracies, and create new opportunities for third sector groups to enter the field of offender management. Our new commissioning model will have a level-playing field which is locally based, allowing the energy and resources in the voluntary and private sectors to be unlocked for the first time.

  The private sector has already raised standards and brought efficiencies to the construction and operation of the prison system. Many private sector groups are keen for an expanded role where they have the freedom to invest and innovate. The old monopolies in the prison and probation system need to be opened up to create a far more diverse range of suppliers of criminal justice services.

- **New incentives – payment by results**

  In our *Work for Welfare* Green Paper we proposed a system of payment by results to help people get off out of work benefits and into paid employment. These programmes should be extended for offenders on community sentences and leaving prison. But we should go further. The principle of incentivising performance through payment by results, with success based on the absence of re-offending, should be introduced for prisons, the providers of community sentences and the providers of rehabilitation programmes – whether in the public, private or voluntary sector. With devolved responsibilities and new incentives, we can create a revolution in how offenders are managed, and drive down re-offending.
Our sentencing and rehabilitation revolution will enable us to restore confidence in the criminal justice system while simultaneously driving down re-offending rates. It will release capacity in prisons and arrest the long term growth in the prison population. These radical reforms will fundamentally change the way prisons are run in this country – and make a powerful contribution to building a safer society.
Serious penal reform is not just about structures and agencies. It is about the effects of the system on people who work in it, the offenders who do time in it and the public who pay for it. Our goals – to restore confidence in the criminal justice system, to bring a new focus to rehabilitation and to redesign our prisons estate for the 21st century – will be reflected in four pillars of sentencing: punishment, reparation, rehabilitation, and work.

Our sentencing changes will begin in the court-room. Where judges now frequently hand down prison sentences in the knowledge that prisoners will only spend half of the time stated behind bars, under a Conservative Government they will instead specify the minimum and maximum time the prisoner will spend inside. Victims and the public will be given the clear statement of the range of time someone is expected to spend in prison and offenders will earn their release.

The prisoners themselves will have very clear incentives to behave well, to get and stay off drugs and to learn the skills that they need to live a law-abiding life once they have paid their debt to society and made reparations to victims of crime. Once released, we will aid their resettlement and rehabilitation and transfer ex-prisoners straight away to the most intensive of our new work finding services (as described in Work for Welfare) because work, perhaps more than anything else, keeps people out of crime.

Our reforms will change the whole culture of the penal system. Where it is now divided into separate prison and probation silos, we will bring the system together, with the single goal of protecting community safety by reducing re-offending. The role of prison governors will change radically. Each governor will become responsible for a prisoner’s journey throughout the penal system, from the moment they are sentenced until they are re-integrated into the community. We will reward prisons by the results they get and give governors the freedom to break out of Labour’s straightjacket of targets, monitoring and guidance. We will unlock the voluntary sector – the hundreds of thousands of people and charities who do so much good work, but have been shut out by the Government’s centralised commissioning. We will release the potential of the private sector, which will be given commercial incentives to deliver the public good of turning offenders straight. And we will decentralise the whole structure to increase local accountability.
5.1 HONESTY IN SENTENCING

Labour came to power promising more honest sentences in their 1997 manifesto.¹ Yet judges and magistrates are not allowed to make any reference to automatic release when they hand down a sentence.² This leads to confusion for victims of crime and creates a prevailing sense of injustice when the public discover that a criminal will actually serve a much shorter period in prison than was specified in court.

When a criminal is incarcerated, we owe it to their victims, and to the public that are being protected, to be honest about how long they will spend in jail. So a Conservative Government will end the practice of letting prisoners out when they have only served half the time that everyone in court will have heard the judge sentence them to.

A new principle of ‘Earned Release’

Offenders in prison have forfeited their liberty and other rights as a punishment for their crime. But they remain responsible for their own actions and ultimately for choosing to live a law-abiding life on release.

At present, a prisoner’s release date bears little relation to what they themselves can take responsibility for. It is the result of sentencing rules, licence policy and occasionally, Ministerial executive order. We believe release from prison should be conditional. It should be in the hands not just of State authorities but in one sense of the individual prisoners themselves, who should have to earn, and should be able to earn, release from custody.

‘Earned Release’ would:

- **restore public trust** that sentences served are a proper punishment which reflects the conduct of the prisoner;
- **improve public safety** by keeping in prison for longer those who are least willing to reform and therefore most likely to re-offend;
- encourage **personal responsibility** on the part of prisoners – they can earn

---

¹ Labour Party Manifesto, 1997, p23
a shorter period of custody and are made agents of their own reform;

- provide a powerful incentive for prisoners to engage with rehabilitation – productive activities that reduce a prisoner’s risk of re-offending on release help increase a prisoner’s eligibility for release, and

- aid staff in maintaining order and discipline in prison – the threat of delayed release will be an effective sanction against misconduct and a strong incentive for good behaviour.

**Earned Release**

The principle of conditional release would have profound implications for the current prison system. Yet as a concept in penal policy, conditional or ‘Earned Release’ is not new in this country. The founding father of penal reform, Captain Alexander Maconochie, pioneered the principle of inmates earning their own release through work and good conduct in the nineteenth century. The majority of inmates in English prisons a century ago had their sentence lengths and privileges in jail linked to behaviour and willingness to work. Borstal detention in the second half of the twentieth century applied the same principle: young prisoners were sentenced to a period in custody of between 26 weeks and two years, with release conduct-dependent and at the Governor’s discretion.


**Min-max sentencing**

We will link rehabilitation with conditional or earned release by replacing all current determinate prison sentences with ‘min-max’ sentences. In future, judges and magistrates will specify a minimum and a maximum time for the prisoner to serve, with no prisoner eligible for release until the minimum period is completed. The minimum period will be half of the maximum and the maximum would be set at the current stated sentence length. The licence period will extend to all determinate sentences and would be the difference between the sentence eventually served (at or beyond the minimum) and the maximum point of the sentence (as under the 2003 Criminal Justice Act). The court will also be required to set down conditions that the prisoner has to fulfil before his or her release is approved.
The principal advantages of ‘min-max’ sentencing are two-fold. First, it will lead to clearer sentencing. Sentencing decisions in court will outline clearly to victims, witnesses and the wider public what a sentence actually means in practice. Judges will be required to state explicitly the terms of the ‘min-max’ sentence, so that everyone is aware that there is a clear minimum term, which the convicted criminal will serve, without possibility of parole. Second, ‘min-max’ sentencing will enhance judicial discretion. Courts will be able to specify the requirements that need to be fulfilled before release (for instance to complete drug rehabilitation programmes).

‘Earned Release’ under ‘min-max’ sentencing
Our plans will mean a fundamental change in how prisoners see their time in prison. Under our new sentencing regime, it will be up to them whether they serve the minimum or the maximum time. Prisoners will need to earn the right to be released before the maximum limit.

If prisoners want to bring the date when they will earn their freedom forward, they will need to behave well and do those things that will increase their chances of going straight: get off drugs, learn to read and write and train in skills that will help them get jobs. This way they will be forced to take responsibility for making themselves less of a danger to the public at whose expense they are incarcerated.

What earns a prisoner release?

Allowing for governor’s discretion in deciding when a prisoner should be released, to earn the minimum sentence, the prisoner will need to fulfil three key conditions:

- To abide by prison rules and to obey the law by refraining from drug-taking and criminal activity in prison;
- To take advantage of the opportunities to learn to read and write to an acceptable standard, and
- To fulfil any other requirements imposed at time of sentence.
Earned release for short-term prisoners

The majority (about 60 per cent) of the prisoners discharged each year have served sentences of less than twelve months. Because our principle of min-max sentences will apply to all determinate sentences, short-term prisoners, like long-term prisoners, will have to earn release if they want to serve less than the maximum sentence. This will significantly alter the attitude of short-term prisoners towards their stay in prison – which they typically regard at present as ‘time out’ rather than as the beginning of a rehabilitation process.

At present, short-term prisoners are not released on licence. The Government’s aborted plans for Custody Plus would have extended the supervision remit of the Probation Service to cover many short-term prisoners, placing a heavy new burden on probation staff. Under our plans, with the governor deciding on release for short-term prisoners, the period of a sentence that remains will constitute a form of licence, but we do not envisage a statutory role for the Probation Service in supervising short-term prisoners after release. Instead, we anticipate a large expansion in the ‘helping hand’ support services provided by resettlement charities and voluntary groups to aid short-term prisoners to find accommodation and work (see 5.6 below).

The focus of their work will be on resettling the ex-prisoners in the community, but because of the close contact these groups will have with ex-prisoners after release, they will also be able to play an informal supervisory role, and where necessary recommend to the governor that a short-term prisoner is recalled to serve out the rest of his or her sentence if there is evidence of a risk of re-offending.

Who decides when a prisoner has earned the right to be released?

For prisoners serving determinate, min-max sentences whose maximum limit is less than four years, it will be governors who decide who has earned the right to be released (provided, of course, they have served the minimum time and do not serve more than the maximum time). These prisoners will have a right of appeal to the Parole Board. Prisoners sentenced to terms whose maximum limits are higher than four years must apply, as most do now, to the Parole Board for
release, although we envisage a further enhanced role for the governor. The Parole Board will retain its current responsibilities for prisoners serving life sentences, indeterminate sentences for public protection (IPPs), and extended sentences.

Governors will also have the power to recall prisoners who have been released from prison but are serving the remainder of their sentence in the community. Even though they have been released from prison, offenders will know that they could be sent back if they fail to co-operate with their supervision and rehabilitation requirements.

It is important that decisions about release are fair and are seen to be fair. Legal challenges and case law have already eroded the Secretary of State's powers over the release and recall of prisoners. Increasing responsibility has been passed to the Parole Board and it has rightly come to adopt a quasi-judicial function. For this function to be exercised properly, the independence of the Board must be entrenched, a point underlined by the recent Court of Appeal judgement which found that the Board's relationship with the Executive was too close to guarantee real and perceived independence in sentencing decisions.3

Part of our proposals to reform sentencing arrangements will therefore include measures to formalise this independence and the evolving judicial nature of the Parole Board. We will create formal judicial oversight so the Parole Board operates like a public protection court. With this change will come the principles of transparency and public accountability, which go further than independent scrutiny. To enhance public trust in the system, there should be greater transparency, with appeal decisions made more frequently in a formal judicial setting open to the public.

How will ‘Earned Release’ affect the prison population?
Our purpose in ending automatic release is not to increase the length of sentences. It is to bring more honesty to the process.4 How long an individual prisoner actually serves in custody will depend on whether that prisoner takes the responsibility to earn his or her release and there will be the strongest of incentives to do so – earning their freedom.

Powerful though the incentive will be to leave prison sooner rather than later, we cannot rely on all prisoners choosing to earn remission at the earliest point. We therefore accept that these reforms will affect average sentence lengths and we have made an assumption that it will mean that more prisoners are likely to spend longer in custody, with the average length of all determinate sentences increasing by 10 per cent.  

The same impact of an average increase in sentences of 10 per cent could result from a relatively large increase in sentence lengths for those serving less than a year, but lower increases for medium to long-term prisoners. Short-term prisoners make up a minority of the prison population at any one time, so a lengthening of their average sentences would make much less of an impact on overall numbers than increases in average sentence lengths for long-term prisoners.

Those prisoners who show the least willingness to engage in rehabilitation programmes, to stay off drugs and to behave well while in prison, will, by their own conduct, spend the longest in custody. Some will end up serving their sentences in full. We believe these prisoners are likely to be the ones who will be hardest to rehabilitate and most likely to pose a risk to society. Under our system, these prisoners at least will spend longer behind bars than they would at present.

## 5.2 PUTTING PUBLIC SAFETY FIRST

### Bail

Over 15 per cent of prisoners are being held on remand awaiting trial. We are consulting on changes to the bail law that will put public safety at the heart of decisions to bail suspects, and will bring forward proposals in due course.  

The options include:

- making public safety an explicit component of bail decisions;
- removing the right to or reversing the presumption of bail for certain very serious offences;

5 We have calculated that the impact of these sentencing changes following legislation will be to increase the prison population after 2013. Other proposals in this Green Paper are calculated to reduce the growth in the prison population at the same time.

6 The consultation document – ‘Public Safety First’ is available at www.conservatives.com
• exempting those previously convicted of the most serious crimes from the right to bail;
• removing the right to or reversing the presumption of bail for certain persistent offenders;
• removing the presumption of bail for convicted but unsentenced offenders;
• reinforcing the sanctions for failure to abide by bail conditions;
• making greater use of conditional bail;
• improving the information on bail collected by Government and available to the courts, and
• creating an enhanced duty to give reasons for bail decisions.

The decision whether to detain or release a suspect charged with, but not yet convicted of, a serious violent or sexual offence can never be taken lightly. If a suspect is detained but subsequently cleared, or charges are not pursued, an innocent person will have been jailed, often for months, causing potentially irreparable damage to their lives and livelihood. But if a person is released pending trial and goes on to commit further offences, the consequences may be tragic.

In recent years, pressures on the prison system may have led to increased pressure on judges and magistrates to grant bail inappropriately. Decisions whether to bail or remand a suspect should be informed by the need to protect the public from dangerous criminals. It is important that any changes to bail law not only retain, but if possible extend, judicial discretion.

Dangerous offenders
The sentencing changes outlined in this chapter concern the majority of sentenced prisoners, who are on determinate sentences. However, we recognise that there remain serious questions about the sentencing arrangements with regard to the 10 per cent of the prison population on indeterminate (IPP) and life sentences. We will address separately the sentencing rules, release conditions and supervision arrangements that apply to dangerous offenders, lifers and those serving indeterminate sentences. We are also looking at sentencing for rapists as part of our ongoing review of the rape laws which David Cameron announced in November 2007. We will be guided by our aim to bring honesty to sentencing and the overriding priority to put public safety first.
5.3 COMMUNITY SENTENCES THAT WORK

Neither a decision to impose a community sentence nor a policy to promote them, can be an act of faith. In their current form they are usually unsuitable alternatives to imprisonment, not least because they are insufficiently robust. Community punishments need to become more robust and better enforced, both to reduce re-offending and to build public trust. To achieve this, we need to reform the way community sentences operate, making them more visible, introducing a streamlined disciplinary process with clearer and more effective sanctions for breaches, proper encouragement for offenders to engage, better support for offenders to find work, and a real incentive on those running community sentences to cut re-offending.

Better enforcement

Home Office research shows that stricter enforcement of community sentences has a positive impact on offenders and offending behaviour generally. Proper enforcement action shows an ‘unambiguous’ result, with a 9 percentage point average reduction in the reconviction rate amongst offenders on community sentences. However, the current mechanism for encouraging engagement and punishing non-compliance is inadequate because offender managers do not have the tools to do the job and are over-burdened with box-ticking and form-filling.

There should be clear outcomes-based incentives for administering community sentences – not a raft of process-based measures and performance targets. Providers should have new tools to manage breaches and ensure compliance, but failure of an offender to engage (or worse, an offender who re-offends), should have a financial cost for the offender management agency.

Effective sanctions

The majority of people given community punishments are young and male, and many will be in receipt of out-of-work benefits (Jobseekers Allowance and Income Support). Benefit withdrawal would be a strong incentive to comply with the community sentence. The principle is clear: community sentences are not optional. Offenders who choose not to comply should not continue to be
supported financially by the taxpayer regardless.

The Government itself legislated for a small pilot in 2001 (ending in 2005)\(^8\) and early results showed a small but positive effect in reducing the rate of breaches.\(^9\) After more than two years, Labour has still made no decision on a national roll-out.\(^10\) However, the Government’s scheme was complicated, slow and feeble. We will develop a new benefit withdrawal scheme which is straight-forward, fast and most importantly, punitive. For each day that an offender on out of work benefit fails to turn up for work under a community sentence, he or she will lose a set number of days of out of work benefit. So that the penalty is swift and efficient, delegated probation officers will be able to initiate suspension directly with the local Jobcentre Plus without resort to a court hearing.

### Streamlining the process

Currently, as well as actual re-offending, serious breaches of community orders are treated as infractions that require proof to a criminal standard and formal adjudication in court. This clogs up the courts, wastes time and costs money – and it also blunts the deterrent effect of the sanction. The Government consulted on whether individual probation officers should be given the extra-judicial authority to impose a sanction for breaches of community sentences, but subsequently backed away from this.\(^11\) We will reform the system so that offender managers are able to act independently to sanction more breaches. Serious breaches and re-offending will continue to be subject to a court process.

### Smart compliance

Another effective incentive to encourage compliance will involve changing how work requirements on community sentences are applied. Instead of the community punishment provider being required to go back to court in the event of a breach, he should be granted the power to vary the sentence according to attendance and compliance. For this to work, a community sentence would include a minimum and maximum envelope, to work in the same way as our proposals for custodial sentences. For example, an unpaid work requirement might have a minimum of 80 hours and a maximum of 120 hours. If the offender makes good progress,

---

8 Through the Child Support, Pensions and Social Security Bill
10 Hansard, 13 December 2007, House of Commons Written Answer to Mark Todd
complies with the requirement, and has good attendance, he may only have to complete 80 hours. But if his behaviour, progress and attendance are unsatisfactory, he may complete up to the 120 hours. Once again, the emphasis is placed on giving the offender an incentive to comply with the order.

This reform will give the community punishment provider the discretion to deal with an offender on an individual and personal basis, enabling him to be smart, and use his judgement in how to deal with a breach based on the circumstances and personal factors of the offender, without the need to submit the whole proceedings to a court. Naturally, a probation manager would need to give formal notice, there would be a duty to give reasons, and a right to respond.

A visible punishment
The Government has acknowledged the advantage of community sentences that are highly visible. Too many offenders on community sentences are essentially hidden from the public, and their activities go unnoticed. In a survey last year, 73 per cent of the public believed convicted criminals should have to wear recognisable uniforms to carry out community sentences.\textsuperscript{12} Better visibility would both maximise the deterrent effect and signal to local people where and when offenders were making amends for their crimes.

The Government’s current scheme is far too modest. Worse still, recent reports suggest that it might even be abandoned because offenders’ feelings are hurt by the increased exposure of wearing fluorescent jackets. We will ensure that all outside community work schemes require offenders to wear an instantly recognisable, high-visibility set of overalls as a mandatory requirement. Much of the work involved in these schemes is outdoors and physical in nature, so the clothing will have practical as well as symbolic benefits. To refuse to wear the regulation overalls while engaged in the work order will constitute a breach punishable by the new sanction methods we have outlined.

Engagement with work
Community sentences should have both a punitive and a rehabilitative element. A major rehabilitation focus for offenders on community sentences will be to find suitable employment. Only 12 per cent of offenders under probation supervision secure a job, and less than 9 per cent manage to remain in it for four weeks or

\textsuperscript{12} Populus poll for the BBC Daily Politics Show, February 2007
more. Research has consistently shown that finding employment is one of the best mechanisms for preventing re-offending. The importance of engaging in work cannot be under-estimated. The Government have said: ‘Research shows that employment reduces the risk of re-offending by between a third and a half’.13 Research also suggests that the unemployed are twice as likely to re-offend.14

Referral to a work agency will become a requirement of all community sentences where the offender is unemployed. Under our welfare reform proposals, a diverse range of private and voluntary sector providers will be on hand to step in (see our welfare reform Green Paper, Work for Welfare). They will be given freedom and autonomy to engage in finding work for offenders tailored to the local economy and, as with other aspects of our Work for Welfare programme, they will be paid by results. They will obtain full payment from DWP only if offenders find stable employment and are not reconvicted.

Improve the effectiveness of Drug Rehabilitation Requirements

Drug Rehabilitation Requirements (DRRs), involving drug testing, treatment and monitoring of offenders, represented 6 per cent of the total community sentencing requirements issued in 2006/07 and are highlighted in the Government’s recent Prison Policy Update as “a success”.15 We disagree.

- Of the 15,787 DRRs issued in 2006/07, less than half (44 per cent) are completed, yet completing the requirement is associated with a dramatic reduction in re-offending, from 91 per cent to 53 per cent over a two year period.16

- DRRs are only issued to a small minority of offenders who are given community sentences, as offenders have to give their consent to participate in the Requirement. From the Government’s own estimates, 27 per cent of those given community sentences are ‘assessed as having a problem with drugs’ so less than a quarter of those that need help are being given it.17

The shortfall is not one of funding. In 2006-07, £81 million was allocated for the treatment and supervision of DRRs, or an average cost per treatment of £5,000

13 ‘Reducing re-offending by ex-prisoners’, Social Exclusion Unit, 2002
15 Prison Policy Update, Ministry of Justice, January 2008
16 Ibid.
17 ‘Home Office Research Study 291: The impact of corrections on re-offending: a review of what works’, Home Office, 2005, Table 1
per offender. £45 million was wasted on programmes that were not completed.

What is lacking, as in many elements of community sentencing, is a clear focus on outcomes and responsibility. We will cut through the muddle by contracting with private and third sector organisations to operate abstinence-based treatment programmes. Payments will include process payments for completion of the programme and a success payment based on re-offending reduction. With these measures we will raise completion rates for the funded programmes to 66 per cent, meaning that an additional 3,500-4,000 people each year will complete their assigned DRRs and will commit at least 1,300 fewer crimes in the following two years as a result. This is likely to be a highly conservative estimate of any reduction in re-offending, not only because reconviction rates are always an underestimate of actual recidivism, but also because of the much higher volume of crime typically committed by drug-addicted offenders.

We will also explore making Drug Rehabilitation Requirements compulsory for all offenders assessed as having a problem with drugs and will review the additional costs of increasing the numbers of DRRs within the context of our overall offender rehabilitation budget. We have not accounted for the considerable decline in re-offending that would result from increasing the number of DRRs issued each year.

**Stemming the flow into prison from community sentences**

Labour has failed to make non-custodial sentences work, and the result is more crime, and more need for prison places. Our changes to make community sentences work will help stem the flow of offenders into custody by reducing the speed of the conveyer belt to crime. Currently tens of thousands of offenders every year go through the gamut of ineffective community sentences as their offending escalates, before finally being sent to prison because the courts feel they have no other option. Our reforms to toughen up community sentences will require legislation, so the first impacts will be felt no earlier that 2011, but we anticipate that they will lead to a 20 per cent reduction in the average reconviction rate over five years, which will in turn reduce the numbers being incarcerated.

18 Hansard, Written Answers 12 July 2007
19 The 2002 Halliday report – ‘Making Punishments Work: A Review of the Sentencing Framework for England & Wales’ – cited a 2000 Home Office self-report survey of prisoners which found that the average offender carried out 140 offences per year before prison. The variation was large, and offenders who admitted to a drug problem were committing up to 257 crimes per year: ‘There are substantial differences in the extent of drug related offending, ranging from 22 offences per person per year for those not taking any drugs to 257 for those who take drugs and admit to their drug taking being a problem.’
5.4 REPARATION FOR VICTIMS

It is victims of crime, and not the State, who directly experience the terrible effects of criminal behaviour and re-offending. The principle of offender reparation or restorative justice seeks to reflect this reality, by placing the victims of crime at the heart of the criminal justice process. We will reform sentencing to this end by making offenders pay financial reparation to the victims of crime.

Restorative justice

Increasingly accepted and employed around the world, restorative justice can take many different forms, such as victim-offender mediation, community restorative boards, communication through third parties and reparation payments.

While the precise methods of restorative justice may differ, they share a central truth: that justice requires more than a narrow administration of punishment by the State. Promoting constructive links between victims and offenders is mutually beneficial, as the former are given the opportunity to seek closure by confronting offenders with the consequences of their actions. In this way, criminals are made accountable and victims are restored to a far greater degree than is the case with many current community sentences.

There is compelling evidence to suggest that restorative justice is welcomed by victims and reduces re-offending. Given that most prisoners will re-enter society, it is prudent to maximise the means by which they may redefine themselves as law-abiding and productive citizens. Such a results-oriented and holistic approach – based on the needs of victims and offenders, marrying rehabilitation with restitution – may also help to reverse the collapse of public confidence in the criminal justice system.


Work to compensate victims

The prevalence of crime is first and foremost a failing of the State to fulfil a responsibility to keep the innocent and law-abiding free from fear and safe from aggression by others. It is therefore right that the State should oversee a mechanism whereby victims of this failure can see justice done. Unfortunately, of
those who come into contact with the criminal justice system, just 26 per cent believe it meets the needs of the victim.\textsuperscript{20}

However, there is another important symbolic duty to the victim by means of compensation, which satisfies natural justice and helps ameliorate the harm caused by the criminal. Financial reparations to crime victims are currently a fringe feature of the criminal justice system, and recent changes to enhance their role are not working. The new mandatory £15 ‘victims’ surcharge’, added to fines handed down by courts and intended to fund victim services, has raised only a tenth of what the Government expected, while criminals convicted of violent offences are not required to pay the surcharge at all.

Judges already can, and do, order compensation to be paid in criminal cases, but they are often reluctant to do so when an offender receives immediate custody, partly because there is no mechanism for it to be paid. Currently, prisoners do not pay back to their victims directly for the harm they have caused. The law-abiding taxpayer does that on their behalf. Funding for the Criminal Injuries Compensation Authority – the body that adjudicates on claims and allocates awards to victims of violent crime – while generous (£223 million last year), leaves out of the compensation loop those actually responsible for committing the crime in the first place.

We will compel offenders to compensate victims of their crimes through contributions to a Victims’ Fund, including deductions from earnings doing prison work or as part of a community sentence. This reform will change the moral basis of victim compensation from being merely an expression of public sympathy to being, at least in part, a product of offender reparation.
Prisoners compensating victims

In many American states, funding for crime victims compensation schemes is partly delivered by offenders themselves. Federal funding comes via an annual Victims of Crime Act (VOCA) grant but the schemes receive mixed-funding at State level from a variety of sources, including from prisoners who are working to make restitution. More than a dozen states, including New Jersey and Minnesota, have schemes which involve a deduction from prison industry wages to fund local victims’ compensation. This deduction is typically in the range of 5-15 per cent of inmate wages, or a fixed sum per offender (on probation or in custody) per month.

Source: www.nacvcb.org

Summary of sentencing reforms

- End automatic release for all determinate sentences. No prisoner will be automatically released from custody unless they have served their full term.
- Introduce conditional ‘Earned Release’. All releases will be conditional and the point of release will be dependent on the individual prisoner who will earn their own release by their conduct and progress in custody.
- Require judges and magistrates to set the minimum and maximum sentence for each conviction. The min-max sentencing envelope will be clearly explained in court, and no prisoner will be released until the minimum point of their sentence.
- Require courts to explain clearly what a sentence means in practice. This will include an explanation of what a prisoner will have to do to earn release after the minimum has been served.
- Put the release decision at the discretion of the prison governor. Governors will have the responsibility to decide which prisoners serving less than four years have earned early release.
- Give prison governors the right to recall paroled prisoners. Prison governors will have new powers to effect the immediate recall of those prisoners who have been granted early release on licence.
- Make community sentences work. Improve compliance with new sanctions for breaches; make community sentences more visible; introduce min-max community sentences, and pay a diversity of suppliers by results to raise performance in getting offenders off drugs and into long-term employment.
- Compel offenders to compensate victims of their crimes through contributions to a Victims’ Fund, including deductions from earnings doing prison work or as part of a community sentence.
5.5 OUR REHABILITATION REVOLUTION

Once criminals are convicted it is not an effective crime-reduction strategy simply to incarcerate them for a set period if commission of further crime begins as soon as they are released. We will not make Britain a safer society unless more criminals who encounter the criminal justice system emerge the other side as law-abiding citizens.

Why rehabilitation matters
Most offenders will eventually grow out of crime once they reach middle-age (average reconviction rates decline consistently with age), but most younger offenders who are released from prison do not leave crime behind them. They are likely to be prolific offenders. The Government’s Social Exclusion Unit estimated that one in five recorded crimes are committed by ex-prisoners.\(^21\) If reconviction rates can be reduced, crime reductions will follow.

Real reductions are possible. The current rate of reconviction in Britain is high – 65 per cent of offenders are reconvicted within two years of being released from prison. But it does not have to stay that high. Reducing recidivism is not easy, and interventions that attempt to reduce re-offending will not work for everyone. However, recidivism can be reduced. According to Lawrence Sherman, Wolfson Professor of Criminology at the University of Cambridge, ‘The best treatment programmes reduced recidivism by as much as 10 to 20 percentage points.’\(^22\)

Reconviction rates have fallen before in the UK. Research by the Government’s Social Exclusion Unit\(^23\) has shown that the reconviction rate of prisoners two years after release fell, under a Conservative Government, from approximately 65 per cent to 53 per cent, between 1982 and 1992. The Report attributed the subsequent increase in part to ‘erosion in the post-release support for short term prisoners,’\(^24\) which our proposals are specifically designed to address.

\(^{21}\) ‘Reducing Re-offending by Ex-Prisoners’, Social Exclusion Unit, 2002
\(^{23}\) ‘Reducing Re-offending by Ex-prisoners’, Social Exclusion Unit, 2002
\(^{24}\) Ibid.
Re-offending is lower in other countries. Although countries measure re-offending differently, making international comparisons difficult, re-offending is significantly lower in some other countries that also measure re-offending according to the two-year reconviction rate. According to research by the International Centre for Prison Studies, Denmark has managed to achieve a two-year reconviction rate of 45 per cent, while in three Australian states it was even lower, at 38 per cent.25

The Government believes re-offending can be reduced. In the Government report – ‘Managing Offenders, Reducing Crime’ – Lord Carter endorsed the view that that recidivism can be reduced, citing research that stated ‘the best treatment programs reduced recidivism by as much as 10 to 20 percentage points.’26 The Government’s review of sentencing policy, conducted by John Halliday, concluded that ‘well-designed’ programmes can ‘reduce reconviction rates by 5-15 percentage points.’27

---

This lesson appears to be reflected in the Government’s more recent publications. They have set a target of at least ‘a 10 per cent reduction in the volume of re-offending when comparing 2011 and 2004 levels’ and are worried the target may not be ‘suitably stretching.’28 This target is based on a new measure of ‘volume’ re-offending (yet to be published) that is different to the two-year reconviction rate previously used. This measure gives more weight to more serious and violent offences, which are increasing more quickly than other crimes. Therefore, a 10 per cent reduction in this figure will require a significantly greater than 10 per cent reduction in the two-year reconviction rate.

The right programmes have reduced re-offending significantly elsewhere in the world. According to a 2006 research project conducted by the Washington State Institute for Public Policy, which analysed all 571 studies of rehabilitation programmes published in English since 1970,29 significant progress is possible if the right programmes are chosen. Programmes of treatment-oriented intensive post-release supervision of offenders demonstrated an average reduction in recidivism of approximately 22 per cent. Vocational education programmes yielded a 12 per cent reduction, while large studies of more than 54,000 prisoners (equivalent to over half the UK prison population) demonstrated that drug treatment in the community achieved a 12 per cent cut in re-offending rates.30 These studies isolated the effect of the particular programmes. It is evident that some prisoners would benefit from several programmes. For instance, providing offenders with drug treatment and vocational education is likely to produce sizeable cumulative effects.

Since these figures are averages of a large number of studies of different programmes, approximately half of the programmes studied will have received better results than the averages. While some of this may be down to luck (a sample of prisoners particularly keen on being getting rehabilitated), much of it will be due to good programme design. For instance, the programme of vocational education used in Queensland delivered a 29 per cent reduction in recidivism.31 Meanwhile, in the United States, a study of 1,624 participants in the

30 See Annex A for a summary of this research.
31 ‘Vocational education and training provision and recidivism in Queensland correctional institutions’, National Center for Vocational Education Research (NCVER), 2005
American federal Prisoner Re-Entry Program (PREP) that combined industrial work in prison with apprenticeship shows that recidivism was, in this case, cut by 35 per cent.32

**Structural barriers to reducing re-offending**

If reduced recidivism is possible, why have the Government, despite their evident intention and the resources expended, failed to cut re-offending? Incompetent political management is partly responsible. Labour undertook to restructure the Prison and Probation services wholesale, introducing the National Offender Management Service (NOMS) in 2004, following Lord Carter’s report. Four years later it has now engaged in further restructuring that will essentially result in NOMS’s abolition. The NOMS headquarters consumed an annual budget of more than £1 billion, enough to build around 7,000 prison places and more than 50 times the amount of money spent on ‘drug rehabilitation’ in prison each year.33

And despite the organisation only existing for a short period, Peter Gershon, the Government’s reviewer of internal spending, identified £128 million of its spending as waste.34

This mismanagement has exacerbated deeper structural problems that have prevented the integration of rehabilitation inside and outside prison. Those working in our prison and post-prison services are given neither the freedom nor the incentives to implement programmes to reduce re-offending.

At present, most prisoners are sent (after an initial assessment at their local jail) to what is known as a ‘training’ prison – so called because these prisons purport to give prisoners training to help them reintegrate into society. In principle, prisoners stay at that ‘training’ prison until they are released, at which point responsibility for them is transferred to the Probation Service. Prisoners are assigned an ‘offender manager’ who is supposed to manage criminals’ progress through the system.

In practice, as the diagram shows, there is no clear accountability for the rehabilitation of the prisoner. No one person is to blame if the prisoner emerges from prison and rapidly re-offends. Instead, at least two separate governors, one or more probation officers and the ‘offender manager’ all share responsibility. And,

---

33 Business Plan 2006-7, NOMS, p26; Hansard, 18 February 2008, Col. 292WA.
even then, there is no real effort to measure the contribution that these people make to reducing re-offending. Prison governors do not at present even know what the re-offending record of their former prisoners is—and are given no incentive to concern themselves with such matters. This is part of the reason why many prisoners who sign up to drug treatment programmes, but are released halfway through them, are let out into the community with little or no support and so end up back on drugs. It is also part of the reason why there is little, if any, coordination of training and education inside and outside the prison walls. Three quarters of prisoners do not have a job when they leave prison, but they are not permitted to claim job-seeker’s allowance for another six weeks following release. It is almost as though the system is set up in the expectation that offenders will turn back to crime. It’s time for a change.

How we would change things
We propose fundamentally to recast the prison system in three ways: to make the people who run prisons accountable for reducing their prisoners’ re-offending, to bring the two stages of prison and probation together, and to ensure the market in offender management and rehabilitation services is fully opened up. We will:

35 ‘Reducing Re-offending by Ex-prisoners’, Social Exclusion Unit, 2002
• decentralise the system so that each public prison or cluster of prisons (except for the eight high security ones) will become an independent, fee-earning 'Prison and Rehabilitation Trust', responsible for supervising offenders after they are released as well as in prison;

• ensure that there is true diversity of provision, with private and voluntary sector organisations competing on a level playing field in the offender management marketplace, able to partner with probation and prison authorities to deliver effective rehabilitation and resettlement services, both inside and after prison, and

• make each new public 'Prison and Rehabilitation Trust' and each private prison accountable to a single governor. Both the prisons and the governor themselves will be paid in part according to how successful they are at reducing re-offending. This will give governors and those who work under them the incentive to implement effective rehabilitation techniques quickly. Newly-built private prisons and all public sector prisons will move onto this tariff basis immediately. Existing private sector prisons will migrate to the new system as contracts are renegotiated.

Payment by results

We are proposing a new and innovative payment mechanism to underpin the rehabilitation revolution and to unlock the potential of private and third sector providers of rehabilitation services.

For the first time, all institutions in the system – prisons, the probation service, public, private and voluntary agencies – will have one clear incentive: to stop individuals re-offending once they have left prison. If they are successful, they will be able to earn more money. If they are not, they will still receive payments to cover their costs.

To make this change, we will introduce a ‘payment by results’ mechanism that relies on a two-part tariff. For each prisoner entering the system, a basic tariff will be set to reflect the amount of money currently spent to secure and rehabilitate a prisoner with a particular re-offending profile. Prisoners who are harder to help or more likely to re-offend would attract a higher payment.
This payment would be made at regular intervals to Prison and Rehabilitation Trusts or private prisons and the way the tariff is calculated would give them strong incentives to reduce operating costs or seek the best value rehabilitation programmes.

In addition to the basic tariff, all Trusts or private prisons will also be able to earn a premium tariff payment, but this will only be paid if they are able to keep individuals from re-offending over a set time period after release. If they can keep an individual from re-offending for two years after release then they will receive a payment that reflects the direct costs of stopping that person from re-offending, including the avoided cost of prosecuting that person and the costs of re-incarcerating them in prison. The premium tariff will provide a strong incentive for the Trusts and private prisons to seek out the best value rehabilitation services and to monitor closely the behaviour of prisoners after release.

Public sector Prison and Rehabilitation Trusts and private prisons may choose to carry out rehabilitation activities themselves or enter into contracts with other providers from the public, third and private sectors to provide services and programmes to reduce re-offending and therefore pass along all or part of the premium tariff.

Avon Park Youth Academy, Florida: a prison rewarded by results

In 1998, Avon Park Youth Academy was opened in Florida to provide education and job training to male young offenders. G4S and the Florida Department of Juvenile Justice (DJJ) collaborated on a grant program – ‘Street Smart’ – to provide specialised resettlement assistant to youths leaving the 200-bed institution. Under the arrangements, the services provided by G4S included community job development and placement, family reunification, employment and living arrangement support.

Although the initial grant for ‘Street Smart’ expired in 2005, the Florida DJJ chose to award G4S a new three-year contract, a decision clearly influenced by the fact that reconviction rates after one year for participants in the program (under 30 per cent) are significantly lower than the State average for young offenders (40-50 per cent).
The program is now internationally recognised as a highly effective means of bridging the problematic gap between prison and the community.

Avon Park is a clear example that models are already in place elsewhere in the developed world that link a reduction in recidivism with financial incentives for companies involved in offender management – we want to see a similar model here.

Kansas: incentives for reduced recidivism

Many American states are facing difficult policy dilemmas in the face of high and still rising prison populations, high re-offending and recall rates, and stretched budgets. The state of Kansas is pioneering an innovative approach that puts the principle of reducing recidivism as a key goal of penal policy to prevent the unsustainable growth of the state inmate population in the long-term. In May 2007, the State Senate agreed cross-party legislation that rewards correctional agencies financially for achieving reductions in re-offending, measured by the number of ‘revocations’, or re-entries to prison (a local measure of recidivism). The legislation ear-marked a multi-million dollar performance-based grant programme for community corrections schemes to encourage agencies to design local strategies to reduce the number of offenders being returned to jail. Providers apply for grants and earn a premium (beyond a target) for every percentage point reduction in the average rate of re-entries to prison of offenders in the community.

The same legislation (Senate Bill No.14) also enables prisoners in State jails to earn remission by participating in rehabilitative programmes that would make them less likely to re-offend. It expanded the scope of conditional release for certain types of prisoners serving sentences for less serious offences, who are now able to earn an amount of ‘good time’ – up to a fifth off their sentence – by participating in prison rehabilitation programmes: ‘[P]rogram credits may be earned by inmates for the successful completion of a general education diploma, a technical or vocational training program, a substance abuse treatment program or any other program designated by the secretary which has been shown to reduce offender’s risk after release.’ After release on parole, any remainder of the original sentence still represents a licence period, but eligible ex-prisoners can earn release from parole supervision in the community at an earlier point on the same principle of ‘[an] offender’s compliance with conditions of supervision and overall performance while on post release supervision’.
The aim of the legislation was to create incentives on inmates and offender managers to reduce recidivism. This policy is designed to manage the growth of the prison population, save taxpayers money, and increase public safety. The Democrat Governor of Kansas, Kathleen Sebelius, has remarked: ‘Kansas is dedicated to smart and tough criminal justice policy .... By holding individuals who committed less-serious crimes accountable for completing treatment and vocational programmes, we will ensure we have space in our prisons to keep violent offenders behind bars.’


Decentralisation
For too long, it has been tempting to see prisons as institutions unrelated to the communities around them and solely the concern of the State. We disagree. A prison should be an integral part of the community it serves and whose safety it must work to secure. About 90 per cent of voluntary organisations that work with prisons are local, not regional or national. We therefore propose to decentralise the system and make most penal services locally accountable with local commissioning (although the most dangerous criminals serving long sentences will continue to be dealt with nationally).

The Government has acknowledged the advantages of coterminous boundaries in criminal justice. 36 Now that police force mergers have been abandoned, police forces, local criminal justice boards, Crown Prosecution Service areas, parole board areas and probation areas all have identical or near-identical boundaries. This alignment makes sense practically and improves efficiency. Unlike the 10 NOMS regions or 11 Prison Service areas, these 43 areas are more recognised as localities by the public they serve. We therefore believe it makes sense to devolve power to this level. These areas should become the basis of further structural reform to create a much more decentralised offender management model.

Accountability
We have previously stated 37 that a Conservative Government will make each police force accountable to an individual directly elected by the citizens of the
police force area. This individual – the Crime Commissioner or, where relevant, the elected Mayor – will set the force’s budget and strategy, and hold the Chief Constable to account. Crime Commissioners will seek re-election on their record, and answer to the public for their success or failure in reducing crime.

We will consult on the merits of expanding the Crime Commissioner’s remit to include local prison, probation and community punishment services. Either the Justice Secretary or the Crime Commissioner will be required to enter into contracts with the governors of Prison and Rehabilitation Trusts for the punishment and rehabilitation of offenders, which will be paid by results on the tariff system described above.

The governor

We will give governors responsibility not just for incarcerating prisoners, keeping them secure and deciding their point of release, but also for rehabilitating them. This will radically change a governor’s perspective on his or her job. At present, the principal objectives of a prison governor are containment and welfare: to prevent escapes, maintain order to avoid riots and disturbances, and to safeguard a prisoner’s welfare by preventing suicides.
Under our new model, governors will now look through the prison gates to the community the prison serves. We believe this radical change of perspective is crucial. The governor will be responsible for commissioning the full range of services the prisoner needs – from incarceration, through education and training to treatment (where necessary) and resettlement, and will connect prisoners, on release from jail, with the intensive welfare to work programmes that a Conservative Government will create (see our welfare reform Green Paper, *Work for Welfare*).

**The governor’s powers and responsibilities**

Under our proposals, prison governors will be:

- appointed by and answerable to the Justice Secretary or the local Crime Commissioner;
- given power to decide, subject to the minimum and maximum set down by the courts, how much of the sentence the prisoner serves in custody and how much in the community (the most serious cases would be dealt with by the Parole Board);
- able to recall a prisoner for violations of his or her release conditions;
- paid a set amount per offender (determined by a basic tariff) and a premium tariff which will be paid only if the offender is not reconvicted two years after his release; and
- given the responsibility for contracting with local voluntary and private organisations to provide the rehabilitation and resettlement services needed to reduce re-offending and has the discretion to target resources on those offenders most receptive to rehabilitative services, be they conducted in prison or after release.

These changes will not just be structural. They will be cultural. They will set in motion a process that will re-orientate the whole penal system towards tough rehabilitation with the aim of reducing re-offending and protecting the public. Governors will retain the cardinal duty to ensure security within their prisons. But they will also have the responsibility to think about how best to turn the lives of prisoners around, and they will have the freedom to expand greatly the work they do with dedicated third sector and private organisations who can deliver that goal.
Governors will be given real incentives to forge links with the local community and with local voluntary organisations so that they can apply the most suitable rehabilitation schemes to their own local conditions with the help of the people in the community that they serve.

What this means for the public sector prison service
A Conservative Government will make each public sector prison or cluster of prisons into an independent Prison and Rehabilitation Trust, which will operate like a foundation hospital trust does now. There may be several Prison and Rehabilitation Trusts in the larger police force areas, just as there are several hospital trusts. The public sector Prison and Rehabilitation Trusts will run alongside the private sector prisons that already operate as financially independent entities.

- Each trust will be headed by a governor whom the Justice Secretary or the local Crime Commissioner will appoint and be able to dismiss. The governor will have the freedom to appoint operational managers within prisons, and to contract with local State agencies (e.g. the local probation trust), third sector and for-profit organisations to deliver rehabilitation services – education, housing, work placement, drug rehabilitation, etc. both inside and outside prison.
- Each trust will receive its income through a basic tariff attached to each offender and a premium tariff which will be paid only if the offender is not convicted of another offence for two years after his release.
- The tariff will be paid for by bringing together all the funding that is presently spent on prisons, supervision and rehabilitation of ex-prisoners, education of prisoners (funded by the Learning and Skills Council), and drug treatment (from the Department of Health).
- The Justice Secretary or the Crime Commissioner will have a clear political incentive to dismiss the governor of a poorly performing trust, and to appoint a successor to drive change and raise performance.
- A successful Prison and Rehabilitation Trust will be able to reinvest resources as it sees fit, to improve performance further. This might include rewarding staff financially and improving other work conditions or job benefits.
- More autonomy for prisons will help raise morale among management and prison staff.
The role of the Ministry of Justice
Not all aspects of offender management can, or should, be directed locally. In certain cases, such as the secure incarceration of serious and violent offenders, we believe that national government should continue to take charge, while in others there are important economies of scale. These matters will remain the preserve of the responsible department, answerable to the Justice Secretary. Under our model, the Ministry of Justice will:

- manage the high-security prison estate – currently eight prisons;
- allocate prisoners, once they have been sentenced by the courts, to the nearest prison;
- commission services where great economies of scale can be found, in particular prisoner transport (though since prisoners will move around less under our system there will not be as much demand as there is now) and electronic tagging;
- set the national tariff which governs the payment by results mechanism;
- set minimum standards with which all prisons in the public and private sector must comply, and
- appoint governors, unless this power is devolved to locally-elected crime commissioners.

Enhanced Inspectorate
To guarantee effective oversight of this more localised model of offender management, we will expand the remit of Her Majesty’s Inspectorate of Prisons to monitor and report on Prison and Rehabilitation Trusts’ performance, both quantitatively as well as qualitatively. In order to secure its vital independence, we will make it answerable to Parliament, and give the Justice Select Committee the power to veto the appointment of the Chief Inspector.

Diversity of providers
Our ambition to achieve a step change in reducing re-offending cannot be met by the current structures and the conventional probation monopoly. We need to encourage a diversity of providers, as Lord Carter himself recognised when he said: ‘there is minimal contestability in the front-line provision of probation
services. However, internationally (especially in the United States) there is strong evidence of a wide range of potential providers – especially from the voluntary sector.\textsuperscript{38}

Since 2001-2 spending on probation services has risen by around 40 per cent in real terms, while staff numbers have increased by 50 per cent since 1997.\textsuperscript{39} The largest proportion of the current Probation Service budget is spent on managing community orders. Interventions to aid resettlement and reduce the risk of re-offending comprise a minority of the budget and staffing of the service, yet probation officers are frequently overwhelmed by their caseload and unable to provide the flexible and needs-sensitive attention an ex-offender requires.

We want to see new providers brought in to aid the probation service in that vital work, especially in the resettlement of short-term prisons where the probation service currently has no role, but where there is strong evidence that the lack of support for recently-released short-term prisoners is a key driver of re-offending.

Following the passage of the Offender Management Act 2007, some local probation boards have already begun to opt for a form of ‘trust’ status to contract with the third sector to manage interventions and other offender services. We want to ensure that the marketplace is fully opened-up to the voluntary and private sectors, including in the operation of community sentences.

Probation trusts will be an integral part of the new system which we have outlined. Their work in assessing and monitoring offenders before and during sentence and at the time of release will grow in importance, as it is these assessments that determine the tariff that is applied to each prisoner. We do not see a role for third sector providers in the core probation work of pre-sentence reports or risk assessments.

This realignment of the role for probation will require a much closer working relationship between prison and probation management, and probation staff and voluntary and private agencies in the community. The heavy burdens currently experienced by the Probation Service will be eased, because a diversity of

\textsuperscript{38} ‘Managing Offenders, Reducing Crime’, Strategy Unit, 2003
\textsuperscript{39} http://www.cbi.org.uk/pdf/partnersincrime07.pdf
providers will enter the marketplace and reduce the need for probation staff to be involved in every aspect of an offender’s journey. As our reforms take effect, they will begin to release the Probation Service from the bureaucratic straitjacket that has been imposed upon it by Labour. We will give probation staff more autonomy to work with prison governors and third sector groups, without the constant interference from central government and the endless paperwork and process-monitoring that the bureaucratic NOMS model required.

The potential for improvement under our new model is huge. By unlocking the resources and creativity of the voluntary and private sectors, we will encourage and enable innovation across the board, allowing the development of new programmes that would never see the light of day under Labour’s bureaucratic, top-down regime. It’s time to release the creativity of the voluntary and private sectors.

Unlocking the third sector
Currently, the Government spends a lot of time specifying precisely which services should be carried out in exactly which prison and probation area. Although, in theory, social entrepreneurs are free to bid for contracts to help rehabilitate prisoners and manage offenders on probation, the Government have insisted on commissioning those services at a regional level. Although some of the larger voluntary organisations may be able to formulate bids for contracts of that size, the smaller ones cannot cope with that level of bureaucracy. As a result, many have been frozen out. Currently, local probation boards sub-contract, on average, just 2-3 per cent (by value) of their budget for providing adult offender services, less even than their very modest 5 per cent target. In total, just £28 million was awarded to private and third sector providers by probation boards in this financial year, and the largest single awards were less than £1 million.

After our reforms are implemented, the local governor will engage directly with local voluntary and private organisations, cutting out the tiers of intermediate bureaucracy which this Government is so keen to create. Under our proposals, governors will be able to decide which programmes best suit the local conditions of their prisons and their offenders. The same charity, for example, could help

41 Probation circular 7/2006
42 Hansard, 18 February 2008, House of Commons Written Answer to Nick Herbert MP
educate a prisoner inside prison, and further work to improve his or her qualifications outside. Local construction firms could be contracted to train workers inside prisons and then employ them afterwards, with prison-based training linked to job opportunities in the local economy.

St Giles Trust

Since 1962, the St Giles Trust has worked directly in prisons and the community to break the cycle of crime and reduce re-offending. Since 30 per cent of its staff are ex-offenders, it is uniquely placed to offer informed and effective assistance to rehabilitate and resettle 15,000 people every year. Its new programme, ‘Straight to Work’, embodies the results-oriented approach that we believe should be central to penal policy. Specially trained peer advisors meet prisoners on the day of release, escort them to pre-arranged housing and provide them with ongoing support with a range of issues from employment to drug misuse to education:

Harry had been in and out of prison for 30 years before meeting a tutor from St Giles who encouraged him to achieve his first ever qualification - equal to two A-levels - and arranged housing for his release. With a new sense of purpose, he soon became an Outreach Advisor with the ‘Straight to Work’ project, and now helps hundreds of other prisoners to make equally radical life changes.

The St Giles Trust has made an immense contribution to transforming the lives of offenders and, in turn, creating a safer society for everyone. Unless the current commissioning arrangements are reformed, the growing demand for its expertise will remain unsatisfied.

Our system of payment by results will enhance the voluntary sector’s role in the process in a way that will play to the strengths of the many extremely dedicated small local charities that do so much valuable work in our prisons and with ex-prisoners. Instead of having to tender as part of an unwieldy regional commissioning process that locks small organisations out, the opportunities they have for entering into partnership will multiply as they will be able to partner with private companies or larger third sector organisations. Some of this already
happens – Serco works in partnership with the Rainer Foundation and the housing charity Shelter to help ex-prisoners from HMP Doncaster re-integrate into society, and G4S works with the CfBT Education Trust at Oakhill Secure Training Centre.

As a result of our rehabilitation revolution, the larger voluntary organisations and private companies, who have access to capital, will have greater incentives to involve smaller charities, who have the experience, commitment and local community involvement to make the programmes work. We see no need to waste valuable resources on government funded umbrella groups that force small organisations to play by rules designed for large corporations.

Unlocking the private sector

The involvement of the private sector in offender management is now well established and their record is a good one. Since 1991, 11 privately managed prisons have been opened, built and managed by companies like Serco and Kalyx. These institutions have consistently demonstrated their ability to provide high-quality services and effective resettlement, as well as saving taxpayers £200 million between 1991 and 2002 through greater efficiency. Lord Carter summarised the beneficial impact of the private sector in the prison system: 'The introduction of competition has provided a strong incentive for improvements in public sector prisons. The introduction of performance testing has been successful in driving down costs, changing the culture and enabling flexible staffing structures to be introduced.'

We want to see an expanded role for the private sector in prisons and offender management and agree with Lord Carter who said: ‘There is a danger that the full benefits of contestability will not be realised if the involvement of the private sector is limited to new and failing prisons. Private providers need to be given an incentive to invest if they are to continue to be a credible alternative to public sector providers.’ Under our new model, private companies would have the incentive to invest because of the payment by results mechanism. They would compete with public Prison and Rehabilitation Trusts on a level playing field and would be paid the same tariff. They would make profits if they succeeded in

43 ‘Transforming Criminal Justice’, CBI Brief, July 2006
44 ‘Returning to its roots: a new role for the third sector in probation’, Social Market Foundation, 2006
45 ‘Competition: a catalyst for change in the prison service’, CBI, 2003
reducing re-offending, lose money if they failed, and have their contracts cancelled by the Justice Secretary or local Crime Commissioner if they failed badly. Private prisons are already docked money if they fail to meet certain operational standards. Rewarding them for good performance is a sensible extension of that principle. The companies that currently run private prisons have told us they would be willing to compete for business where they were paid according to their ability to cut recidivism. Other companies involved in prisoner training and education have shown similar interest in the prospect of payment by results in offender management.

**Our rehabilitation goal**

By the ambitious structural reforms we outline and the new incentives that will permeate the entire system, we aim to achieve nothing short of a rehabilitation revolution. Our rehabilitation goal will be to reduce the two year re-conviction rate of prisoners by 20 per cent over five years, taking the current rate down from 65 to 52 per cent – a 13 percentage point reduction. International evidence supports the view that this scale of reduction is possible, and we believe the radical changes we implement, and the resources for rehabilitation that we will unlock as a result, will make this goal eminently achievable.

**More money for rehabilitation**

As our rehabilitation revolution is put in place, money that would, under Labour, be used to incarcerate and bring to trial ex-prisoners who have re-offended will be paid to providers of rehabilitation programmes. We calculate that the total amounts available for additional rehabilitation will rise to over £250 million a year by 2017 if Prison and Rehabilitation Trusts and private prisons succeed in achieving our target of a 20 per cent reduction in re-offending by that time. This would be equal to an additional £2,500 spent on rehabilitation for every prisoner discharged in that year.

Using conservative assumptions, it is reasonable to assume that this will give providers an incentive to invest at least half of that amount of money up front in the two years before they receive their final payment.
Year end 2011 2012 2013 2014 2015 2016 2017
Investments made in rehabilitation programmes (£m) 13 41 70 100 130 146 148
Payments made to providers (£m) if targets are met – – 27 83 140 199 259

Our rehabilitation revolution: summary

- Reducing re-offending rates would help reduce crime, but structural obstacles in the current system have prevented this from happening.
- We propose fundamentally to recast the prison system in three ways: to make the people who run prisons accountable for reducing their prisoners’ re-offending, to bring the two stages of prison and probation together, and to ensure the market in offender management and rehabilitation services is fully opened up.
- We will decentralise the system so that each public prison or cluster of prisons (except for the eight high security ones) will become an independent, fee-earning ‘Prison and Rehabilitation Trust’, responsible for supervising offenders after their release as well as in prison.
- Each Prison and Rehabilitation Trust and private prison will be run by a single governor who will be accountable to the Justice Secretary or, potentially, to a locally elected crime commissioner.
- We will pay by results so that each Trust and private prison will receive its income based on a tariff attached to each offender. The tariff will be paid in full only if the offender is not convicted of another offence for two years after his maximum release date.
- We will enhance the role of the governor and make them responsible for commissioning the full range of services a prisoner needs – from incarceration, through education and training to treatment (where necessary) and resettlement.
- We will unlock the private and voluntary sectors to engage fully in the rehabilitation and resettlement of offenders.
- The Ministry of Justice will maintain an important central role in managing the high-security prison estate, allocating prisoners, legislating for sentencing, commissioning national offender services, setting the tariff and enforcing minimum standards, alongside an enhanced Inspectorate.
- Our rehabilitation goal will be to reduce the two year re-conviction rate of prisoners by 20 per cent over five years, taking the current rate down from 65 to 52 per cent – a 13 percentage point reduction.
Our rehabilitation revolution will unlock funding currently used to reconvict and accommodate offenders who commit more crime and end up back in prison. These savings will be re-invested to boost the money available for rehabilitation by up to £259 million a year by 2017, or £2,500 for every prisoner discharged.

5.6 BETTER PRISON REGIMES

The changes that we intend to make to the structure of the prison system are designed to achieve the principal goal of reducing re-offending. To this end, they will impact greatly on prison regimes, which currently are not focused enough on this important goal because the pressures of overcrowding have overwhelmed all other day-to-day operations.

A crucial part of our rehabilitation revolution is about trusting professionals – in this case, the governors and prison staff who are responsible for inmates. Giving more freedom to them will naturally allow prisons to operate in different ways. Except for setting national minimum standards relating to security, welfare and hygiene, central government under our decentralised model would accept a greater degree of local diversification in prison operation.

However, when it comes to prison regimes, there are clear basic minimums that need to be realised as part of our sentencing reforms before prisoners serving ‘min-max’ sentences can be released. Improving discipline and basic education and work in prison, as well as reducing the use and supply of drugs into prisons will all be crucial components of better prison regimes. We want to see prisons transformed from unproductive human warehouses where idleness reigns and drugs are rife, to busy, constructive regimes where the environment is clean, and there is purposeful activity.

Incarceration can represent a unique opportunity to turn a person’s life around. Prison potentially involves a period of time away from the distractions and temptations of life outside, and better prison regimes would involve regular routine and the expectation of cleanliness, punctuality and courtesy; decent food
and a drug-free, alcohol-free environment; and most of all, opportunities for intensive drugs counselling, education and training.

**Drugs**

Prisons should be drug-free environments. It is unacceptable that in a place where the authority of the State should be absolute, the environment becomes infiltrated with illegal drugs and other illicit contraband. This undermines the rule of law and creates the impression among prisoners that real authority is absent. Furthermore, any work that is done to help prisoners get and stay off drugs through drug-treatment in prison is completely undermined if other prisoners can keep taking drugs and so create a climate where addiction is almost impossible to break.

Both improved security measures and a cultural change are required to introduce an intolerance of drug taking in Britain’s jails. Under our model, governors will have strong incentives to minimise the use and supply of drugs in prisons. They will also have the freedom to decide how best to punish drug use, be it through enforcing closed visits, the suspension of other privileges or a refusal to release the prisoner. Random Mandatory Drug testing does occur throughout the prison estate but this alone has proved an insufficient deterrent. The greatest deterrent available would come through the powers we give to governors and our sentencing reforms to introduce ‘Earned Release’. Prisoners will have a powerful new incentive to avoid drugs by making drug use a disciplinary factor when governors decide who has earned their release.

Robust measures to tackle drugs supply need to go hand in hand with effective drugs treatment. To aid governors in reducing the supply of drugs into prisons, it will be necessary to improve drug treatment in order to dampen demand. Voluntary organisations already play a huge role in helping to get prisoners off drugs and governors will have the means to expand their role. One such group is the national charity, the Rehabilitation for Addicted Prisoners Trust, or RAPt. Aftercare is also essential following release. This is an accepted fact across the entire substance misuse professional field. ‘Addaction’ has recently set up an immediate service outside Manchester Prison into which newly released prisoners can walk straight into on release. These kinds of services are currently rare, but would expand rapidly under our new commissioning model.
RAPt runs programmes designed to be as similar as possible to drug treatment outside prison. These are modelled on the 12-step abstinence programmes used by Alcoholics Anonymous and Narcotics Anonymous. They involve rigorous drug testing, and RAPt insists upon total abstinence from drugs and alcohol. Prisoners, who volunteer for the 10-12 week programmes which are carried out in dedicated prison wings, are expected to participate in a tough regime of group work, one-to-one therapy and written assignments. Aftercare and support services are provided to prisoners who have completed a programme to help addicts stay off drugs. The RAPt programmes are accredited by the Correctional Services Accreditation Panel. Here is how the programme changed one person’s life:

Julie M. became a professional burglar when she was 17. ‘I would nick anything’, she says. Addicted to heroin, she broke into houses in and around Plymouth, taking televisions until finally she was caught and given a custodial sentence. She went to Foston Hall, a closed prison near Derby, where drugs were easily available. She carried on using until a drug worker suggested she try a 12-step treatment programme. Julie transferred to HMP Send in 2002 where she took part in RAPt’s primary treatment course. She was released in 2003 at the age of 23 and began attending regular NA meetings. Happy and sober, she now works as an out-reach worker delivering drug education to young people in Wandsworth.

Prison work
We believe that all those prisoners who can work should work. Offenders should learn the value of work and the discipline needed to hold down a job. Prisoners who work are currently paid a very small amount of money – sometimes as little as £4 per week.\(^48\) Employment opportunities in most prisons are sporadic, and most do not constitute meaningful work.

In 2003, the Prison Service commissioned an internal review of prison industries. Its scope was to look at ways in which the use of prison industries could be expanded to increase the provision of purposeful work which at the same time better equipped prisoners for employment post-release. It concluded: ‘Industrial workshops are one of the best means, within prison walls, to reflect real working
life .... In order to advance the resettlement agenda prison work needs to be targeted at those who are least likely to want to work. These individuals should be allocated for work, particularly on work initially that requires little training.  

The last Conservative Government passed the Prisoners’ Earnings Act 1996 to allow deductions from prisoners’ earnings to be made. The deductions were to go towards victim support, make payments to dependents of the prisoner and to save for the benefit of the prisoner upon release. However, the Act has never been implemented. The present Government has claimed that ‘the Prison Service has done a great deal of work since the Act was passed in order to see how it could be made to work in practice. However contracts for work, which would pay the revenue necessary to support the scheme, have not been easy to obtain’.

We will act to implement this legislation so there is the appropriate mechanism for work in prison and for deductions from prisoner’s earnings to be made. This money will not be taxpayers’ money – it will have been earned legitimately by the efforts of prisoners working in custody.

To embody the principle of reparation in sentencing, a significant portion of the money prisoners earn should go into our proposed new Victims’ Fund. To allow adequate reparation for victims, we will require prisoners to contribute to the Fund as part of their sentence so that for every pound that a prisoner earns they will contribute at least half to the Fund. We can also use money earned in prison to help prisoners break out of the re-offending trap. Apart from a modest sum that could be spent in prison (as at present) the remaining portion of the money prisoners earn will be held in trust and only paid out to the prisoner after release. Currently, prisoners receive an initial £45 discharge payment and then have to wait for payment of any welfare benefits, sometimes for up to six weeks. This is the time that ex-prisoners are most vulnerable to the attractions of drugs and acquisitive crime. Our proposal would allow money earned by the prisoners while employed to be paid out periodically after release – perhaps on a weekly basis. This payment would continue either until the end of their sentence (if the ex-prisoner had earned release at an earlier point), or until the funds held in trust were exhausted. Release of any monies would be at the discretion of the governor and would cease if offenders were recalled to prison or were reconvicted.

49 Home Affairs Committee: Rehabilitation of Prisoners, December 2004
50 Home Affairs Select Committee written evidence from Home Office, 2004, including Hansard, 10th May 2006, House of Commons Written Answer to John Bercow MP
Within this context, prisoners could be paid more by employers in return for proper work. Social enterprises, such as Barbed, a graphic design studio where prisoners are paid the minimum wage, have shown there is scope for meaningful, skills-based work that can generate a profit. We need to ensure that there are no barriers to similar social enterprises operating in prisons. New opportunities for prison work should be driven by third sector organizations that can come into a prison and build up creative and profitable enterprises from a small base of willing participants. The scope for expansion is large and the investment and start-up costs could be paid for by the outside groups themselves, where possible in partnership with local companies bringing private sponsorship. At present, profit generated by prison workshops is not ring-fenced, which means it too often gets reabsorbed into general running costs. Social enterprises should be allowed to keep the money they make so that they can grow their operations and employ more prisoners.

**Barbed – HMP Coldingley**

In 2005, the Howard League for Penal Reform set up Barbed, a graphic design studio at HMP Coldingley. The prisoners are directly employed by the Prison Service, but on contracts set out by the Howard League. Prisoners undergo an intensive four month training programme before beginning work, and they can then undertake further training and receive qualifications to help them get work on release. The prisoners at Barbed receive minimum wage, of which, 30 per cent is deducted to replicate the costs of bed and board and put into a charitable fund to support prison related projects. Further money is deducted for National Insurance, but currently prisoners are not permitted to volunteer tax. Each prisoner working at Barbed also donates to victim support charities. Any money left can then be saved by the prisoner, or given to their families. Barbed enables prisoners, possibly for the first time, to experience what the real world of work is like. By earning a real wage and making real deductions they are better equipped to get employment on release, and by paying into a fund they can make reparations for their crime.

In 1995, in an attempt to encourage responsible behaviour and participation in hard work and constructive activity in prison, the Conservative Government set up the Incentives and Earned Privileges policy (IEP). Currently, the scheme as it has developed under the Labour Government, allows prisoners certain privileges
that they do not fully earn by their efforts in custody. The ‘standard’ privilege level applies to all new entrants to prisons in England and Wales, and includes automatic provision of in-cell televisions.51

Television in prison is a privilege, not a right. Access to in-cell televisions, DVD and compact disc players should become part of a reformed system of earned privileges where prisoners work to afford accessories, and can lose them if their conduct is unsatisfactory. The new prison at Jurby on the Isle of Mann is equipped to receive TV signals, but only prisoners who have earned the right to enhanced privileges receive a television in their own cells. Instead of a token amount of weekly rental paid out of money that isn’t earned, we will alter the arrangements to make televisions a reward, and over time where available, make it necessary for prisoners to pay for their own television sets through the proceeds of their work in custody. Prisoners who want to spend time in their cells watching television will need to earn the privilege, and those that don’t work will not have a television to watch.

Training and employment
Ex-prisoners are among the least qualified people in the jobs market, despite the time they have spent living in a public institution whose role is partly to train and educate.

Prison governors and officers are, of course, dealing with people who have been hardened by years of crime and punishment, and who have resisted the reforming efforts of other institutions. However, it is not acceptable that prisoners who arrive unable to read and write are all too often released back into the community in the same condition. This has to change. We see a strong role for third sector providers who can link basic education and training in prison, with realistic prospects for employment on release. Under our model, they will have the freedom to continue the training and employment support delivered in prison after release. In line with our principle of diverse provision, ex-prisoners who do not immediately return to work will be compelled, like those who have served community sentences, to register with welfare-to-work providers who have the superior skills and experience needed to find them suitable long-term employment.
A4E: Education and job placement

Working to design, develop and deliver programmes that effect social change, A4E delivers a broad portfolio of services to the public and private sector. They are one of the largest providers of education in prison and the community, with education contracts in 32 prisons currently and substantial experience in job placement work for ex-offenders. They have worked with 7,500 ex-offenders and placed them in over 3,500 organizations.

They provide a very important opportunity to link education and resettlement services more seamlessly and think that this is the missing link in the current service. ‘We educate offenders and support them in prison but...there is very limited support for offenders on release and this is the most critical time to provide the support that will stop them re-offending’.

Problems they face delivering services currently include churn, which is a big issue for educational programmes, and the incentives for other work in the prison which can work against the offender accessing the education that is available. “An offender in one prison workshop can earn up to £8 to attend a class—but more than £16 to make strawberry punnets”

A4E are developing an integrated and scalable model that includes all of the support services an offender might need both in custody and in the community, including education, health and rehabilitation, accommodation and employment. ‘We will take on the responsibility of case managing each offender, brokering other services as needed, accessing services that are currently funded and integrating the needs of the offender with all support available both in custody and in the community’. They believe that this will substantially reduce re-offending; ‘...with an integrated model we can reduce re-offending by 20 per cent’. 
Resettlement

‘Through the gate’ services are a key juncture in ‘end-to-end offender management’ but there is currently far too little preparation for release, and too little ‘after-care’ for prisoners on the outside. Resettlement services provided by the voluntary sector have considerable potential, but case workers are often unable to meet their clients until they leave prison, with the result that they lack the personal relationship which is vital for success. There is huge scope for improving resettlement. The Social Exclusion Unit suggests that stable accommodation can reduce re-offending by over 20 per cent.52 Prisoners who have accommodation arranged on release are also four times more likely to have employment, education or training arranged than those who do not.53 The scale of the resettlement challenge is formidable. Two in three prisoners are unemployed when they go to jail and, of those who are employed, two thirds lose their job while in prison. At present only about one in four released prisoners has the prospect of immediate employment.54 The resettlement support for short-term prisoners is almost non-existent, even though it has been strongly argued that the ‘erosion in the post-release support for short term prisoners’55 in the 1990s was a major factor contributing to a rise in reconviction rates.

The successful record of voluntary organisations and commercial companies which work with ex-offenders suggest that a lot more can be done to resettle people on release. Through our reforms, the cultural and regulatory barriers in the prison and probation services that currently prevent outside groups from working in prisons, and from being closely involved in preparing prisoners for release, will be removed. This will allow a large expansion in the ‘helping-hand’ support services for short-term prisoners.

Reduced overcrowding

The prison estate in England and Wales has been overcrowded every year since 1994. The biggest single improvement that can be made to prison regimes will come from reduced overcrowding. This would be a critical objective even without the structural changes to the prison system we are proposing. By reducing overcrowding and enabling most prisoners to stay in one location for the duration

52 ‘Reducing Re-Offending by Ex-Prisoners’, Social Exclusion Unit, 2002
54 Home Affairs Committee: Rehabilitation of Prisoners, December 2004
55 ‘Reducing Re-Offending by Ex-Prisoners’, Social Exclusion Unit, 2002
of their sentence, we will give prison staff and outside agencies the stability required to have maximum impact in reducing re-offending. How we will provide the necessary capacity to reduce overcrowding and enable our reforms, as well as what impact we expect our other changes to have on the future prison population, are outlined below.

Summary of our reforms to prison regimes

- Prison regimes will be transformed by our sentencing changes and rehabilitation reforms. Prisons should be places of education, hard work, rehabilitation and restoration. Barriers to entry for voluntary and private providers working with prisoners will be removed.
- We believe that all those prisoners who can work should work. We will encourage social enterprises to expand prison industries where inmates can do proper work, learn skills and be paid.
- Profit made by prison workshops should be ring-fenced. Social enterprises should be allowed to keep the money they make so that they can grow their operations and employ more prisoners.
- We will implement the Prisoners’ Earnings Act 1996 to allow deductions from prisoners’ earnings to be made to pay into a Victims’ Fund and aid resettlement.
- For every pound an inmate earns through prison work, at least half will go to fund victims of crime. Most of the remainder will be held in trust by the prison governor and only paid out after release if the offender is not reconvicted.
- Access to privileges like in-cell TVs will be linked to conduct in custody and in time, prisoners will have to pay for their own televisions through the proceeds of their work in custody.
- Ex-prisoners will be registered with welfare-to-work providers. Those who do not immediately return to work will be compelled, like those who have served community sentences, to register with welfare-to-work providers.
- Reduced overcrowding will enable most prisoners to stay in one location for the duration of their sentence to give prison staff and outside agencies the stability required to have maximum impact in reducing re-offending.
5.7 MAKING SURE WE HAVE THE PRISON PLACES WE NEED

Capacity

For ten years, the Government has failed to provide the necessary prison capacity. In 2002, the Home Office’s own civil servants warned Ministers that by 2007 we would need at least 88,000 prison places. This warning was ignored, with the result that we now have an overcrowded prison system with 82,000 prisoners in jails which have intended capacity of only 72,000.

In the wake of the report by Lord Carter of Coles, the Government have now belatedly announced £1.2 billion of additional funding, on top of £1.5 billion already committed, to deliver a further and extended building programme for an additional 10,500 prison places between now and 2014. In line with the Carter Report, the Government has said it favours the construction of ‘up to three’ so-called ‘Titan’ prisons to hold up to 2,500 inmates.

However:

• There is an immediate crisis, with the prison population having exceeded capacity for the first time. We cannot wait for this to be resolved in two years’ time by an incoming administration. The Government needs to act now to bring adequate new capacity on-stream immediately and to prevent its own building plans falling further behind schedule.

• While the new capacity promised should mean that future prison population growth will be accommodated in the medium term (after 2010), unless additional capacity is provided beyond the Government’s proposals, significant overcrowding will remain.

• If the prison population continues to rise at current rates, the accommodation provided will be inadequate in the long run, and another crisis will be reached by 2018.

57 Statement by the Secretary of State for Justice, 5 December 2007
58 The Government’s prison building programme has fallen behind schedule. The Home Office announced plans to build 2,500 prison places in 2007 (John Reid, statement of 16 February 2007). By 31 August 2007 this was revised down with the Ministry of Justice admitting that prison capacity would increase by only 2,200 places in 2007 (Prison Capacity Building Programme update, Ministry of Justice, 31 August 2007). In the event, the target was missed by a third and the total number of prison places increased in 2007 by only 1,667 (Prison Population and Accommodation Briefing, NOMS, 4 January 2008).
We therefore plan to provide substantial additional capacity in the medium term, and to reduce the growth in the prison population in the long term through reductions in re-offending.

Re-designing prisons
Our plans envisage a radical restructuring of the prison estate. Instead of the current practice, whereby longer-term prisoners cascade from a local prison, to a training prison and possibly to an open prison, often over long distances, our intention is that prisoners would be under the supervision of a single governor, who will have oversight of that prisoner’s progress. They will either serve their sentence at a single, local prison containing wings with differing grades of accommodation, or in a ‘cluster’ of nearby prisons. Each prison or cluster of prisons would be run by a single Prison and Rehabilitation Trust under a single governor, but might contain different types of unit.

The Government has already announced plans to merge HMP Blakenhurst, Brockhill and Hewell Grange to form HMP Redditch. The three prisons on the Isle of Sheppey (HMP Swaleside, Elmley and Standford Hill) already share some services.

The Government’s preference is for large ‘Titan’ prisons on a single site, possibly using ministerial powers to circumvent normal planning processes. Our preference is for smaller, local prisons, which provide better rehabilitation outcomes. We believe that clustering offers opportunities for economies of scale in contracting by governors for goods and services. This is not limited to services such as catering or prison-court transport. The wider role of governors in overseeing pre- and post-release rehabilitation means that they will also be able to secure economies of scale when contracting for rehabilitation services.

Re-developing the prison estate
Of the 143 prisons in England and Wales, only a fifth have been built in the last twenty years. A third were built during the 19th Century or earlier. Victorian local jails are in poor condition and are very expensive to maintain, with inadequate space for workshops, training and rehabilitation. This was recognised by Patrick Carter in a report commissioned for the Government: ‘a large part of the prison estate is worn out, poorly located, expensive to operate and unable to provide adequate regimes.”

According to research by Policy Exchange, it would be possible to redevelop some of our oldest prisons, many of which are also located on expensive inner city sites. The land they occupy could be sold for redevelopment and new prisons built on less expensive land elsewhere. We propose to begin a process of re-development and modernisation to rejuvenate the prison estate over the long-term.

We would look to finance the building of new prisons through the transfer of old prison sites for commercial development. In particular, a number of Victorian prisons in inner cities offer the potential for multi-storey mixed commercial/residential development. HMP Pentonville, built in 1842, was criticised last year by its Independent Monitoring Board for ‘endemic squalor’. Juliet Lyons of the Prison Reform Trust has asked of Pentonville, ‘should this London dungeon be closed down as unfit for human habitation?’ Yet it lies immediately between major regeneration projects in Kings Cross and Islington. HMP Oxford, closed in 1996, has recently reopened as a hotel and museum, which last year won the Royal Institute of Chartered Surveyors’ ‘Project of the Year’ award. The Institute described the HMP Oxford project as ‘everything a mixed use development should be ... a major catalyst for regeneration’.

Beginning with the oldest and most expensive to maintain prisons, we would allow companies to bid to replace that prison capacity on a new site or sites, close to the communities the prisons serve. These would be financed through contracts with private companies to construct new prison facilities. Once they had provided suitable alternative accommodation, these companies would receive the vacated land, to develop in a manner appropriate to the locality.

We are committed to the principle of a level playing field between the private and public sectors. In some cases best value would be obtained by contracting with private companies simply to construct new prisons – but these could be managed within the public sector. In other cases, winning bidders would receive the old site in exchange for a contract to construct and run the new prison or prisons (in line with our proposals for payment by results).

We have made conservative assumptions based on average regional land values.
vertical development, and the cost of providing new facilities. In fact, we expect that private contractors may well be able to provide facilities much more cheaply.

Our proposals envisage that the developers would be required to provide accommodation sufficient to house the prisoners currently accommodated by the existing population. However, at present many of these sites are overcrowded, and although within operational capacity are above their certified normal accommodation. We would require new capacity to be provided at uncrowded levels. Therefore, re-building existing provision would increase certified normal accommodation by over 1,500 places.

Building on Policy Exchange’s work, we calculate that even after allowing for the cost of providing uncrowded replacements for existing jails, re-developing up to 30 existing prisons would release up to £250 million. This money would provide almost 3,500 prefabricated brick and steel units, with a life expectancy of at least thirty years, to expand existing prison sites, and thereby relieve overcrowding throughout the estate.

Taking the additional 1,500 places in the new prisons, together with the 3,500 built with the money released from redevelopment, this programme would enable us to increase accommodation by a total of more than 5,000 places over Labour’s plans, taking the total operational capacity in the estate to over 100,000, in a re-building programme that would redevelop almost a fifth of the entire prison estate. The additional capacity will substantially reduce overcrowding and formally end it by 2016, so greatly improving the prospects of rehabilitation to help break the cycle of re-offending.

On current projections the additional capacity we plan to create will be sufficient.

63 We have assumed that vertical development will be limited to an average of 2.5 storeys, with the exception of a small number of inner-city sites that already exceed this height). In fact, most of the prisons are already three storeys or more, and therefore it is likely that it would be possible to develop at or above this height.

64 We have used a marginal cost per prisoner of £150,000 for new prisons – in line with that given in the Carter report, 20 per cent higher than Policy Exchange’s ‘high’ estimate and £40,000 more than a cost recently quoted by Justice Secretary Jack Straw (Address to the Prison Governors Association, Buxton, 8 October 2007). We have also assumed that brick and steel expansions at existing prison sites could be provided at a cost of £70,000 per prisoner (based on a cost given by the National Audit Office in 2006 of £63,000).

65 This modelling also recognises that there may be obstacles to the development of certain sites. For instance ownership of the land itself may not lie with the Government; the prison may be a historic or listed building; restrictive covenants may prevent development. Companies will not be expected to take on the existing prison site until permission for redevelopment has been secured.
to address overcrowding and accommodate the growth in prison numbers. However, prison population projections are recalculated annually and currently only run until 2014. We will re-assess the capacity requirement when we come to office, in the light of the latest prison population projections, the actual prison building programme and factors such as the rate of crime.

**Foreign national prisoners**

There are 11,310 foreign nationals in prison in England and Wales, accounting for 14 per cent of the prison population. The Government itself has admitted that foreign national prisoners should not be taking up prison capacity.\(^{66}\) We will modify existing law and make changes to sentencing to speed up the deportation of non-EU foreign nationals at an earlier point in their sentence to further ease overcrowding.

**Extending deportation of foreign offenders.** We will ensure that the Border and Immigration Agency are required to seek deportation of all eligible foreign nationals, not just those serving more than 12 months (who they currently have ‘no interest’ in deporting). This will mean a further 7,000 foreign nationals sentenced to jail every year would automatically face deportation proceedings.\(^ {67}\) Even if only 60 per cent of these offenders were to be deported, this would be more than double the number of foreign prisoners deported under Labour.

**Extending the early removal scheme.** At present, foreign national prisoners are eligible for removal from the UK 135 days before their scheduled release date. Labour has already announced plans to extend early removal to 270 days from spring 2008, with prisoners required to serve only a quarter of their sentence before removal.\(^ {68}\) We would increase the minimum that foreign nationals must serve before removal to two thirds of the minimum sentence given by the judge, thereby linking the discount most prisoners receive to the length of their original sentence. We would also increase the maximum discount to two years and introduce new restrictions to ensure that those serving sentences for serious

---

66 Listed as one category of people ‘in our prisons who should not be there’ in ‘Making Sentencing Clearer: a consultation and report of a review by the Home Secretary, Lord Chancellor and Attorney General’, Home Office, 2006

67 Multiplying the number of offenders receiving custodial sentences of less than 12 months (64,862) by the proportion of prisoners who are non-EEA nationals (11.9 per cent), and subtracting the number of prisoners receiving a sentence of less than 12 months who have already received a court recommendation for deportation (460), suggests that around 7,250 additional prisoners per year would face automatic deportation proceedings under this change.

68 Hansard, 21 February 2008, col. 58WS
sexual or violent crimes complete the minimum term set by the judge. Our new measures on deportation of foreign nationals would ensure that early deportation does not result in injustice to victims who rightly want to see offenders punished, regardless of their nationality. Any offender removed under this scheme who returned to the UK would be required to serve out the rest of their sentence. This policy would reduce the number of non-EU nationals serving sentences of under four years by an average of 20 per cent, and the number of foreign nationals serving sentences of four years or more by around 40 per cent. On conservative assumptions, we calculate that this would reduce the number of foreign nationals in prisons in England and Wales by around 1,000.

**Earlier consideration of deportation.** We would also ensure that deportation proceedings begin at the earliest possible opportunity. In the majority of cases, deportation proceedings would begin on conviction. At present, magistrates and judges are only able to recommend deportation for imprisonable offences. We would extend this to allow courts to recommend deportation when sentencing a person for any offence. By ensuring that removal and deportation proceedings start earlier, and by extending early removal, we would aim to ensure more prisoners were ready for removal at the earliest opportunity.

**Improving removal of foreign nationals.** There can be difficulty in persuading carriers to accept on flights those who might resist removal or for whom an escort would be necessary. A representative of Loss Prevention International, a company contracted by the Home Office to escort deportees out of the country, told the Home Affairs Select Committee in 2002: ‘If it were not for ... the support we get from British Airways, the number of scheduled flight removals that we would achieve out of this country would be virtually nil’. Airlines place on flights a limit of one escorted removal and three unescorted removals. We will investigate chartering aircraft for the exclusive use of the Prison

---

69 Covers those serving a determinate sentence for rape, attempted murder, manslaughter, or sexual offences against a child, or serving a determinate sentence of over four years for grievous bodily harm, or a life sentence or an indeterminate or extended sentence for public protection.

70 This estimate assumes that of 3,653 non-EEA nationals serving between one and four years, 78 per cent are from outside the EU, 60 per cent of those eligible are removed early, and the average discount is twenty percent; and assumes that of 4,614 foreign nationals serving determinate sentences of four years or more, 60 per cent of those eligible are removed early and average discount of 40 per cent. Although the scheme is open to those serving sentences of less than twelve months, any discount would be correspondingly short and therefore the effect on prison population has been disregarded. In the interests of robustness, these projections also assume that all EU nationals in the 1-4 year category would be ineligible, although in fact a significant proportion would be serving between 2 and 4 years and hence would be eligible for deportation.

71 Home Affairs Select Committee, Fourth Report: Asylum Removals 2002/03, HC 654, para. 104
Service and Border and Immigration Agency where large numbers of offenders can be deported to a single territory or area.

**End of Custody Licence**

The End of Custody Licence scheme (ECL), was introduced in June 2007 as an emergency measure to ease prison overcrowding. This policy grants prisoners serving sentences of less than four years a further 18 days off the length of their sentence, on top of automatic 50 per cent remission and any time spent on remand. Prisoners eligible for ECL are not individually risk-assessed. ECL will see the early release of more than 25,000 prisoners a year in order to free up 1,200 places.

This policy risks public safety, sends the wrong message to criminals and further undermines confidence in sentencing. So far one murder and more than 300 other alleged offences have been committed in the 18-day period when prisoners would otherwise have been incarcerated. ECL was an executive decision that resulted from inadequate prison capacity and Conservatives have consistently called for it to be scrapped. As new prison places come on stream, the Government have pledged to end the ‘temporary’ ECL scheme by June 2008 – and the consequent increase in the prison population is already built into the Government’s projections.

**Criminal Justice & Immigration Bill**

The Government is currently legislating to make emergency changes to sentencing rules in an attempt to artificially restrict the numbers of criminals being sent to prison. We have opposed their plans in the Criminal Justice & Immigration Bill to give prisoners remission of custody for time they have spent on remand while bailed. We have also opposed the unwarranted restriction of judicial discretion represented by plans to remove magistrate’s powers to impose a suspended sentence order. The Magistrates Association has said: ‘We see no logical reason for this proposal …. We believe this proposal may be driven by the current state of overcrowding in prisons.’ We will legislate to reverse these changes, and have built the effects of this reversal into our projections of prisoner numbers.

---

72 ‘End of Custody Licence Releases and Recalls Statistics (Monthly)’, Ministry of Justice, January 2008
73 Briefing on the Criminal Justice and Immigration Bill, Magistrates Association, September 2007
Mentally ill prisoners
The needs of mentally ill offenders are great and need careful consideration. Jurisdictions around the world have recognised the need to adapt penal policy to accommodate the unique challenges posed by mental illness and too many mentally-ill prisoners are being housed in jails because there is no alternative – exacerbating prison overcrowding. The Government have commissioned the Bradley Review to make recommendations on the issue. We will support any moves to make separate secure provision for seriously mentally-ill people currently held in our prisons.

Women prisoners
Women comprise a small but growing proportion of the prison population. We broadly accept the recommendations in the Corston Review and will support any moves by the Government to introduce the reforms.

Young offenders
The whole scope of criminal justice as it relates to young offenders – including the operation and effectiveness of the Youth Justice Board and Youth Offending Teams (YOTs) – is too wide to be given adequate consideration in this paper. Penal policy has for many decades acknowledged the unique position of young offenders and the distinct approaches needed to address their criminal behaviour. We will therefore examine the issue of youth crime and the penal and judicial policies that apply to young offenders separately.
5.8 A MAJOR REFORM PLAN FOR CRIME REDUCTION

We will ensure adequate prison capacity and reduce overcrowding. Those of our sentencing changes which add to the prison population will more than compensated by other changes which subtract from it, so that the overall effect between 2010 and 2015 will be to reduce the population by over 1,000. Our plans will increase capacity by more than 5,000 places, taking the total capacity to almost 100,000, significantly reducing overcrowding and formally ending it by 2016.

We will build prisons with a purpose. We will radically redevelop the prison estate, so that we can build modern local prisons, better suited to rehabilitation. We will develop a system under which the majority of offenders can be sent to one prison or cluster of prisons for the duration of their sentence, reducing unnecessary prisoner movements and giving clear accountability to a single governor. We will end the warehousing of prisoners and create purposeful regimes where prisoners are made to work and learn skills to make them more employable, as well as contributing into a Victims’ Fund to make reparation for their crimes.

We will reduce long-term pressure on the prison population. Our rehabilitation revolution will first slow the growth of the prison population and then stabilise it. Whereas the prison population is currently expected to rise to 100,000 by the end of 2020, under our plans it will be around 1,000 lower than this by 2015 and almost 6,000 lower by 2020. This will not be done by the use of artificial short-term measures that undermine trust and put the public at risk. We will reduce the prison population over the long-term in the only acceptable way: by making sure there are fewer criminals committing fewer crimes. We will create a virtuous circle of increasing rehabilitation and reducing recidivism.

We will not give criminals a break. We are opposed to the view that the way out of the prisons crisis is to let prisoners out early, or to foreshorten sentences, or to fetter judicial discretion. Foreign national offenders can be deported, and some groups of offenders such as women and the mentally ill can be held in
alternative forms of secure accommodation. By toughening up community sentences and dealing with drugs offenders we can also stem the flow of recidivists into the custodial system. But it is simply wrong to claim that there are large numbers of people in prison who can be dealt with elsewhere – under the current system the vast majority cannot, and to do so would unacceptably jeopardise public safety. Criminals who have been convicted will go to prison for longer under our sentencing changes, and we will reverse changes that Labour plans to give yet more criminals a break.

**This is a major reform plan for crime reduction.** This plan goes beyond the logistics of prison capacity. It provides an outline of how we achieve real change for the better. We want to see a future where society is made safer because crime has fallen – so there will be fewer criminals who need to be sent to prison. In place of recurring prison crises and high rates of re-offending, we will achieve prisons with a purpose and falling rates of recidivism. Together with our plans for long term social action and reform of the police, this is a major reform plan for crime reduction, to make Britain a safer country.
### Summary of impact on capacity of our proposals

<table>
<thead>
<tr>
<th>Proposal</th>
<th>Requires legislation?</th>
<th>Impact from</th>
<th>Prison places required/released in 2015</th>
<th>Prison places required/released to 2020</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction of min-max sentences and earned release</td>
<td>Yes</td>
<td>2013</td>
<td>+6,720</td>
<td>+7,241</td>
<td>10% assumed increase in average sentence length for all determinate sentences.</td>
</tr>
<tr>
<td>Repeal elements of the 2007 CJ&amp;I Bill</td>
<td>Yes</td>
<td>2012</td>
<td>+460</td>
<td>+500</td>
<td>Effect of repealing provisions (abolition of suspended sentence order/remission for bail tagging)</td>
</tr>
<tr>
<td>Make community sentences work</td>
<td>Yes</td>
<td>2012</td>
<td>-3,190</td>
<td>-4,298</td>
<td>Tougher regime from 2011, including benefit withdrawal and referral to work agency.</td>
</tr>
<tr>
<td>Improved Drug Rehabilitation Requirements</td>
<td>No</td>
<td>2012</td>
<td>-300</td>
<td>-322</td>
<td>Effect of doubling current completion rates for DRRs</td>
</tr>
<tr>
<td>Rehabilitation revolution</td>
<td>No</td>
<td>2013</td>
<td>-3,470</td>
<td>-7,487</td>
<td>Result of alignment of prison and rehabilitation services around the key measure of reduced recidivism; stronger accountability; use of payment by results and unlocking the private sector.</td>
</tr>
<tr>
<td>Deportation of some non-EU foreign nationals</td>
<td>Yes</td>
<td>2011</td>
<td>-1,370</td>
<td>-1,477</td>
<td>Earlier removal of foreign national prisoners and extending automatic deportation to non-EEA prisoners sentenced to less than 12 months.</td>
</tr>
<tr>
<td><strong>Total impact on prison population</strong></td>
<td></td>
<td></td>
<td><strong>-1,150</strong></td>
<td><strong>-5,843</strong></td>
<td></td>
</tr>
</tbody>
</table>
International studies demonstrate that well-designed rehabilitation programmes can cut re-offending, but at present, governors and offender managers have neither the freedom nor the incentives to set those programmes up across England and Wales. According to robust research conducted by the Washington State Institute for Public Policy, which analysed all 571 studies of rehabilitation programmes published in English since 1970, significant gains are possible. To qualify, studies had to include a control group and – in order to eliminate bias – had to measure the outcomes of those who started, not just those who completed the programmes. The Washington State Institute study is rigorous, and uses conservative estimates of the size of the effect a programme is alleged to have. The researchers reduced the size of the reported reductions in re-offending to ensure that results would correspond to results in the real-world rather than artificial experimental conditions, and to give more weight to studies that followed offenders over longer periods of time. The researchers were able to demonstrate the following reductions in re-offending:

<table>
<thead>
<tr>
<th>Programmes that work</th>
<th>No. studies</th>
<th>No. subjects</th>
<th>(% effect on recidivism</th>
</tr>
</thead>
<tbody>
<tr>
<td>Intensive supervision (treatment oriented)</td>
<td>10</td>
<td>2,156</td>
<td>-21.9</td>
</tr>
<tr>
<td>Vocational education in prison</td>
<td>3</td>
<td>1,950</td>
<td>-12.6</td>
</tr>
<tr>
<td>Drug treatment in the community</td>
<td>5</td>
<td>54,334</td>
<td>-12.4</td>
</tr>
<tr>
<td>Adult Drug Courts</td>
<td>56</td>
<td>18,957</td>
<td>-10.7</td>
</tr>
<tr>
<td>Cognitive Behavioural Therapy (CBT) for general prison population</td>
<td>25</td>
<td>6,546</td>
<td>-8.2</td>
</tr>
<tr>
<td>Prison industries</td>
<td>4</td>
<td>7,178</td>
<td>-7.8</td>
</tr>
<tr>
<td>In prison ‘therapeutic communities’ with community aftercare</td>
<td>6</td>
<td>1,989</td>
<td>-6.9</td>
</tr>
<tr>
<td>CBT in prison for ‘drug-involved offenders’</td>
<td>8</td>
<td>3,788</td>
<td>-6.8</td>
</tr>
<tr>
<td>Drug treatment in jail</td>
<td>9</td>
<td>1,436</td>
<td>-6.0</td>
</tr>
<tr>
<td>In prison ‘therapeutic communities’ without community aftercare</td>
<td>7</td>
<td>1,582</td>
<td>-5.3</td>
</tr>
<tr>
<td>Basic adult education in prison</td>
<td>7</td>
<td>2,399</td>
<td>-5.1</td>
</tr>
<tr>
<td>Employment training and job assistance in the community</td>
<td>16</td>
<td>9,217</td>
<td>-4.8</td>
</tr>
</tbody>
</table>

We are proposing a new and innovative payment mechanism to underpin the rehabilitation revolution and unlock the potential of private and third sector providers of rehabilitation services. We will introduce a new tariff-based payment mechanism with two parts. A basic payment will be made that reflects the amount of money currently spent to secure and rehabilitate a prisoner with a particular re-offending profile. Prisoners who are harder to help or more likely to re-offend would attract a higher payment. A premium payment will be made if providers can reduce re-offending in line with our targets. Funding for the premium payments will come directly from the marginal costs saved by that person not re-entering the justice and prison system. In addition to the tariffs, payments will also be made to individual prisons to reflect the fixed annual costs of operating the prison.

The new tariff
Each prisoner serving a determinate sentence will carry a tariff, with both a basic and premium component. This will be paid to the Prison and Rehabilitation Trusts or private sector prisons.

Calculating the basic payment
The basic payment will be calculated based on the following elements:

- **Incarceration cost.** The average variable cost of housing an individual in prison. Under this mechanism prisons will obviously have an incentive to drive their own cost levels below the average level of the estate.
- **In-prison rehabilitation cost.** The average variable cost of providing training and treatment for an individual over the course of their sentence. Governors would be guided to use this funding pool to provide prisoners with the courses they need to comply with the requirements for Earned Release.
- **After-prison rehabilitation cost.** The average variable cost of providing support and assistance for an individual prisoner after completion of sentence.

The fixed tariff would be paid on a monthly basis or as process milestones are reached and would be weighted according to the assessed likely re-offending profile of a prisoner.

Calculating the premium payment
The premium payment will reflect the success of the Prison and Rehabilitation Trust or private prison in achieving reduction in recidivism in line with our targets. The total amount of the payment will only reflect the marginal cost savings to the criminal justice system of a reduction in re-offending and will not capture the much larger, but more nebulous, benefit to society of reduced recidivism. The premium payment will only be paid if a prisoner does not re-offend over the measurement period.
The premium payment will be calculated as:

\[
\text{Avoided prison cost} + \text{Avoided trial cost} = \text{Total premium tariff}
\]

The marginal benefit of not incarcerating a prisoner

\[
= (a) \text{ marginal cost} \times (b) \text{ annual prisoner days avoided by not re-offending}
\]

The marginal benefit of avoiding a trial

\[
= (c) \text{ average cost per trial} \times (d) \text{ reduction in number of individuals going to trial}
\]

Calculating avoided prison cost

(a) Marginal cost per prisoner day. We will calculate the variable average cost of incarceration per prisoner day across the estate. The latest breakdown of Prison Service costs (see Table 1 below) indicates that approximately 68 per cent of the total cost of the service is variable. At 2006-07 prison population levels, the variable annual cost of incarcerating one prisoner was therefore £21,034.

Table 1: Calculation of fixed and variable cost of incarceration

<table>
<thead>
<tr>
<th>Fixed costs</th>
<th>£m</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accommodation and maintenance</td>
<td>135.4</td>
</tr>
<tr>
<td>Administration related staff wages/salaries</td>
<td>51.9</td>
</tr>
<tr>
<td>Fixed costs of programme-related staff</td>
<td>383.6</td>
</tr>
<tr>
<td>Other costs</td>
<td>90.9</td>
</tr>
<tr>
<td>Finance</td>
<td>0.5</td>
</tr>
<tr>
<td>Travel, subsistence, hospitality</td>
<td>15.9</td>
</tr>
<tr>
<td>Non-cash</td>
<td>32.7</td>
</tr>
<tr>
<td><strong>Total fixed cost</strong></td>
<td><strong>710.9</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Variable costs</th>
<th>£m</th>
</tr>
</thead>
<tbody>
<tr>
<td>Variable cost of programme-related staff</td>
<td>1,150.7</td>
</tr>
<tr>
<td>Rentals</td>
<td>2.7</td>
</tr>
<tr>
<td>Contracted out services</td>
<td>154.3</td>
</tr>
<tr>
<td>Prisoner related</td>
<td>156.0</td>
</tr>
<tr>
<td>Other staff related</td>
<td>37.5</td>
</tr>
<tr>
<td><strong>Total variable</strong></td>
<td><strong>1,501.2</strong></td>
</tr>
</tbody>
</table>

Total prisoners 2006-07 71,362

Total variable cost per prisoner (£) 21,034

Source: Annual Report and Accounts 2006-07, Her Majesty’s Prison Service

The marginal cost per prisoner day in this year would therefore be:

\[21,034 \div 365 \text{ or } £57.63\]

2 We estimate that the cost distribution of programme-related staff is 25 per cent fixed, 75 per cent variable

3 The two year reconviction rate for released prisoners is 65 per cent (‘Re-offending by Adults, Results from the 2004 Cohort’, Home Office, 2007).
(b) Annual prisoner days avoided through re-offending reduction. Three key inputs will drive this calculation:

- The targeted percentage reduction in the annual re-offending rate
- The rate at which subsequent convictions lead to another custodial sentence (the re-incarceration rate)
- The average length of sentence

As an example, assume a targeted 1.5 per cent reduction in the annual reconviction rate of 32.5 per cent\(^3\) and that the re-incarceration rate is 60 per cent.\(^4\) The average current sentence is 9.25 months\(^5\) or 281 days.

The avoided prisoner days would therefore be:
\[
1000 \times 0.015 \times 0.60 \times 281 = 2,192 \text{ prisoner days avoided}
\]

Calculating avoided trial cost

(c) Average cost per trial. If an offender is tried in a Crown Court, we assume court and legal costs are almost all variable.\(^6\) At current levels we estimate the total cost of a Crown Court trial to be £24,072.

Calculation of variable cost of trial on reconviction (£)

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Average legal aid in Crown Court</td>
<td>14,870</td>
</tr>
<tr>
<td>Average cost of trial in Crown Court</td>
<td>9,202</td>
</tr>
<tr>
<td><strong>Total variable cost</strong></td>
<td><strong>24,072</strong></td>
</tr>
</tbody>
</table>

Source: Final Public Sector Regulatory Impact Assessment: Giving the Environment Agency the power to apply ASBOs, Home Office, 2006

---

4 Sentencing Statistics 2006 gives a conviction: custody ratio for all individuals in the Crown Court was 55 per cent. We calculate (from ‘Re-offending by Ex-Prisoners’, Social Exclusion Unit, 2002 pp5), the weighted average re-incarceration ratio for adults and young offenders was 63 per cent.
(d) Reduction in individuals going to trial. This will be calculated based on:

- The targeted percentage reduction in the relevant re-offending rate applying in that year to that group of prisoners
- The rate at which re-offences are prosecuted (The Prosecution Ratio)

For example, assume that 1,000 prisoners are discharged from a prison, there is a targeted 1.5 per cent per annum decrease in the re-offending rate and 75 per cent of the re-offenders are prosecuted.

The reduction in individuals going to trial would therefore be:
1000 x 0.015 x 0.75 = 11 trials avoided

The total premium tariff payment made to the Prison and Rehabilitation Trust for the 1,000 discharged prisoners if re-offending targets were met would be:

<table>
<thead>
<tr>
<th>Avoided prison cost</th>
<th>Avoided trial cost</th>
<th>Total premium tariff</th>
</tr>
</thead>
<tbody>
<tr>
<td>£57.63 x 2,192 = £126,303</td>
<td>£24,072 x 11 = £264,792</td>
<td>= £391,095</td>
</tr>
</tbody>
</table>

Total premium tariff payments and transfer of risk
In order to reduce re-offending rates, providers of services will have to invest additional money in rehabilitation programmes while individuals are in prison and afterwards. However, payments will only be received when the expected reduction in re-offending is measured, which will be up to two years after release.

In order to generate sufficient return to compensate for this risk transfer, we expect providers to invest substantially less than the total amount of the expected premium tariff. As an illustration, if providers invested 50 per cent of the premium tariff they expected to receive two years in advance of payment, and achieved our targets for reduced re-offending (a 20 per cent reduction in the reconviction rate over 5 years from the current level of 65 per cent) then the cash flows would be as follows:

---

5 Weighted average of sentences served at discharge point, Sentencing Statistics 2006, Ministry of Justice, 2007
6 Around ninety per cent of the people in prison at any one time were convicted by Crown Courts. The cost of convicting the remainder in magistrates’ courts is very small so has been excluded from the calculation.
Illustrative cash flows of premium tariff

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Investments made in</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>rehabilitation programmes £m</td>
<td>13</td>
<td>41</td>
<td>70</td>
<td>100</td>
<td>130</td>
<td>146</td>
<td>148</td>
</tr>
<tr>
<td>Premium tariff payments</td>
<td>–</td>
<td>–</td>
<td>27</td>
<td>83</td>
<td>140</td>
<td>199</td>
<td>259</td>
</tr>
<tr>
<td>paid to providers £m</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

These tariff payments will be in addition to the substantial amounts of money already spent in the prison and probation services on rehabilitation. The existing funds will continue to be made available to governors as part of the Basic Tariff (the In Prison Rehabilitation Payments and the After Prison Rehabilitation Payment).

Measuring re-offending

The current two-year reconviction rate is a crude measure of all those who are reconvicted for any offence within that period, taking no account of the number of offences or their seriousness. We will therefore aim to develop a measure of re-offending based on a crime index to take the severity and frequency of recidivism into account.