



Joint Committee on Human Rights

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From Rt Hon Harriet Harman MP, Chair

Rt Hon Elizabeth Truss MP
Lord Chancellor and Secretary of State for Justice
102 Petty France
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30 March 2017

Dear Elizabeth,

Prisons and Courts Bill

The Joint Committee on Human Rights is currently scrutinising the Prisons and Courts Bill in light of the requirements of human rights law. It is also, as you know, conducting an inquiry into Mental Health and Deaths in Prison. It is becoming clear from the evidence that the Committee has received in that inquiry that the Bill provides an opportunity to do something about the urgent problem of the shocking rise in the number of people with mental health problems who lose their lives while in prison.

The Committee is grateful to your Department for the detailed ECHR Memorandum that it has provided summarising the Government's consideration of the Bill's provisions in light of the ECHR. It is also grateful to the members of the Bill team who made themselves available to meet the Committee's Legal Advisers.

The Committee notes those aspects of the Bill which have the potential to enhance the UK's compliance with various of its duties under human rights law. However, I would be grateful if you could answer the following questions which will help my Committee with its scrutiny of the Bill's human rights implications, including whether opportunities to improve the legal framework are being taken.

A. PRISONS

(1) The purpose of prisons (clause 1)

The Bill's clause stating the purpose of prisons is welcome from a human rights perspective, but it does not, as currently drafted, reflect the obligations on the State to treat prisoners with humanity, fairness and respect for their dignity. As the Minister observed during the Bill's Second Reading, the Human Rights Act already requires prisoners to be treated in a way which respects their basic human rights.

However, the principle of subsidiarity requires those rights to be given effective protection in national law, by more detailed and specific provision in the relevant legal framework, and this Bill presents that opportunity. The Committee welcomes the indication of the Minister for Courts and Justice, Sir Oliver Heald, that this is something that can be examined further in Committee (HC Deb 20 March 2017 c740).

Q1: Will the Government agree to amend the purpose clause in the Bill to make explicit that one of the aims of prison is to treat prisoners with humanity, fairness and respect for their dignity? If not, why not?

(2) Specific improvements to the legal framework on prisons

In my speech on Second Reading of the Bill (HC Deb 20 March 2017 cc686-689) I identified six specific improvements to the legal framework that have emerged from the evidence the Committee has received in its inquiry.

The Committee welcomes the acknowledgment by the Minister, at the Bill's Second Reading, that these are "important points", and the undertaking he gave to look at the Prison Rules to see whether any of the specific improvements that I asked for in my speech can be achieved by way of secondary legislation (HC Deb 20 March 2017 c 740).

Q2: Please specify precisely how the Government proposes to make the following specific improvements to the legal framework, including whether it proposes to do so by way of amendment to the Bill or changes to the Prison Rules:

- **A prescribed legal maximum for the number of prisoners to prison officers**
- **A prescribed legal maximum to the time a prisoner can be kept in their cell**
- **A legal obligation for the Prison Service to ensure that each young prisoner or adult prisoner with mental health problems has a key worker**
- **A legal obligation that the relatives of a suicidal prisoner should be informed of and invited to contribute to the ACCT reviews (unless there is a reason that it should not be the case)**
- **A legal obligation to ensure that all young offenders or suicidal prisoners have a card with a pre-programmed number to enable them to call home**
- **Where a prisoner needs to be transferred to a secure hospital, a legal maximum time between the diagnosis and the transfer.**

- **A mechanism to ensure the Secretary of State's accountability to Parliament for overcrowding.**

(3) Content and status of Prison Rules

The Bill introduces a new framework for prisons, including an important new purpose clause, and, in the words of the Minister at Second Reading, "everything follows from it" (HC Deb 20 March 2017 c739). However, the Bill makes no provision for a comprehensive review of the Prison Rules in light of the new statutory purpose of prisons that the Bill will introduce.

Q3: Will the Government undertake to conduct a comprehensive review of the Prison Rules in light of the new statutory statement of the purpose of prisons in the Bill, to be completed within a fixed time from the Bill receiving Royal Assent?

The Prison Rules contain important standards, yet their precise legal status is unclear. The Bill provides an opportunity to clarify the legal enforceability of the Prison Rules.

Q4 Will the Government amend the Bill to clarify and strengthen the legal status of the Prison Rules, for example by introducing a new duty to act in accordance with the Prison Rules?

(4) Institutional machinery

(a) National Preventive Mechanism

The Bill inserts into the legal framework governing prisons a welcome reference to the Optional Protocol to the Convention Against Torture ("OPCAT").

Q5: Will the Government agree to including in the Bill express reference to the National Preventive Mechanism ("NPM"), which the UK is required to have by OPCAT, so as to provide it with a legal basis as recommended by the UN Subcommittee for the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment?

(b) Lesson-learning mechanism

The Children and Social Work Bill contains a lesson-learning mechanism in relation to the deaths of children in care, in response to concerns that mistakes were too often being repeated and lessons not being learnt about such deaths. Lord Harris's Report identified the need for such a national oversight mechanism in relation to deaths in prison. The Committee has also received evidence in its inquiry supporting that recommendation, and advocating the creation of a national oversight mechanism with a duty to collate, analyse and monitor learning outcomes and their implementation arising out of deaths in prison.

Q6: Will the Government consider amending the Bill to provide for a national lesson-learning mechanism analogous to that contained in the Children and Social Work Bill in relation to deaths of children in care?

(5) Prison security – mobile phones (clause 21)

The Bill's provisions for interfering with mobile phones in prison are welcome in principle because they could contribute to making prisons a safer environment. However, safeguards are required to ensure that the powers do not disproportionately interfere with the rights of third parties in or near prisons.

Q7: Will the Government undertake to consult the Information Commissioner about the necessary safeguards and report back to Parliament when it has done so?

B. COURTS

(1) The procedure for automatic online conviction and standard statutory penalty (Clauses 35-36)

Concerns have been expressed that vulnerable individuals, who have not received legal advice, may plead guilty to offences under the new online system, even in circumstances where they have a valid defence, or may have some other mitigating circumstances.

Q8 What safeguards will be put in place to ensure that individuals have received appropriate legal advice; and how will it be ascertained that reasonable adjustments have been made where, for example, an individual is disabled?

Q9: Given that the scheme is to apply to some of the most minor offences, which do not involve dishonesty (such as failure to produce a ticket for a train or tram, and fishing with a rod and line without a licence), was any consideration given to taking these matters outside the ambit of the criminal justice system and treating them administratively? If not, why not, since a fine could still be imposed without the need to impose a criminal record.

Q10: Was any consideration given to foreshortening the length of any criminal record imposed under this procedure?

(2) The prohibition of cross-examination in person in family proceedings (Clause 47)

This provision, which seeks to prevent an alleged perpetrator of abuse from cross-examining their alleged victim in family proceedings, has the potential to be a rights enhancing measure as it would protect vulnerable victims. In terms of the practical operation of this provision, we pose two questions:

Q11: The new clauses which would be inserted into the Matrimonial and Family Proceedings Act 1984 appear to treat parties differently if they are able to instruct their own lawyers to conduct cross-examination, or if the court instructs a 'qualified legal representative'. In particular, a qualified legal representative appointed by the

court "is not responsible to the party". What accounts for this apparent difference in treatment between those who can afford to instruct a lawyer and those who have to rely on a court appointed lawyer?

Q12: Can the Government confirm that, in circumstances where a party is excluded from cross-examination and is represented by a court appointed lawyer, the court appointed lawyer would be obliged to meet with the party before the cross-examination to take instructions and would advise the party about any consequential issues following the cross-examination? Can the Government also confirm that the lawyer would be properly remunerated for these associated activities?

(3) Damages for whiplash injuries (Clause 62)

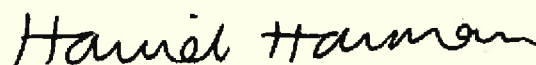
The new tariff proposed by the Government for whiplash injuries is significantly lower than the compensation payable under Judicial College Guidelines.

Q13: Can the Government explain the rationale for departing from the Judicial College Guidelines? How were the new tariffs compiled?

The Department has indicated that it believes that there will be no interference with rights under Article 1, Protocol 1 to the ECHR on the basis that the changes will only be prospective in effect. This would mean that the courts would be obliged to use two different tariffs, for a significant period, depending solely on the date of injury.

Q14: Is this the intention of the proposed reform and how does the Government justify this difference in treatment?

It would be helpful if we could receive your reply by **13 April 2017**. I would also be grateful if your officials could provide the Committee secretariat with a copy of your response in Word format, to aid publication. I look forward to hearing from you.



**Rt Hon Harriet Harman MP
Chair**