



House of Commons  
Justice Committee

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# **Government Responses to the Committee's Reports of Session 2016–17 on:**

- **Prison reform: governor empowerment and prison performance**
- **Prison reform: Part 1 of the Prisons and Courts Bill**

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**Second Special Report of Session 2017–19**

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## Justice Committee

The Justice Committee is appointed by the House of Commons to examine the expenditure, administration and policy of the Ministry of Justice and its associated public bodies (including the work of staff provided for the administrative work of courts and tribunals, but excluding consideration of individual cases and appointments, and excluding the work of the Scotland and Wales Offices and of the Advocate General for Scotland); and administration and expenditure of the Attorney General's Office, the Treasury Solicitor's Department, the Crown Prosecution Service and the Serious Fraud Office (but excluding individual cases and appointments and advice given within government by Law Officers).

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### Publication

Committee reports are published on the Committee's website at [www.parliament.uk/justicecttee](http://www.parliament.uk/justicecttee) and in print by Order of the House.

### Committee staff

The current staff of the Committee are Nick Walker (Clerk), Danielle Nash (Second Clerk), Gemma Buckland (Senior Committee Specialist), Nony Ardill (Legal Specialist), Claire Hardy (Committee Specialist), Christine Randall (Senior Committee Assistant, and Liz Parratt (Committee Media Officer).

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## Second Special Report

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We have received the Government's Responses to the previous Justice Committee's Twelfth Report of Session 2016–17, *Prison reform: governor empowerment and prison performance*, HC 1123 and its Fourteenth Report of Session 2016–17, *Prison reform: Part 1 of the Prisons and Courts Bill*, HC 1150 . The Responses came in the form of a covering letter dated 12 October to the Chair of the Committee from Rt Hon David Lidington MP, Lord Chancellor and Secretary of State for Justice, with annexes constituting the Responses to each of the Reports. We publish this material as an Appendix to this Special Report.

### Appendix: Government Response

Thank you for your letter of 25 July, particularly regarding the Government responses to the Reports from the previous Justice Select Committee. In this letter, it is my intention to address the outstanding responses to the Twelfth Report of Session 2016–17: Prison Reform: governor empowerment and prison performance and the Fourteenth Report of Session 2016–17: Prison Reform: Part 1 of Prisons and Courts Bill.

I also wanted to take this opportunity to reassure you that I am firmly committed to making prisons places of reform and rehabilitation, which support offenders to turn their lives around. I acknowledge that the current prison system has faced significant challenges in recent years. The prison estate is old and costly to maintain or modernise. Across the last five years numbers of operational staff have decreased while we have seen a significant increase in prisoner use of new psychoactive substances. Levels of violence, self-harm and self-inflicted deaths have also risen. A combination of these factors means leaders and their staff focus on immediate priorities and, as a result, many prisons have been unable to offer as effective a regime for prisoners as they would like.

Twelfth Report of Session 2016–17: Prison Reform: governor empowerment and prison performance

Thank you for your recommendations laid out in the Twelfth Report of Session 2016–17: Prison Reform: Governor Empowerment and Prison Performance. I am aware of your previous communications with the Parliamentary Under Secretary of State for Justice, Sam Gyimah MP, and our responses to the recommendations laid out in your report accompany this letter (see Annex A).

You will notice in our response to your recommendations that action is being taken to develop the performance management of prisons. Alongside this, extensive engagement with governors and staff is helping to direct our empowerment policies to ensure they are fit for purpose. Furthermore, it is important to me to increase confidence in the prison system and the reforms that are taking place. Publication of data will be essential to that goal and as you will see from our response, we are making plans to publish evaluation results and action plans as the reforms are implemented.

Fourteenth Report of Session 2016–17: Prison Reform: Part 1 of the Prisons and Courts Bill

Thank you for your report on Part 1 of the former Prisons and Courts Bill. As you are aware, the provisions in Part 1 of the Bill are no longer being introduced. The most

pressing priorities for reform, such as recruitment, improving safety and security, and empowering governors, can be delivered without legislation through operational changes. Even though we are no longer pursuing legislation, I am pleased that you welcomed various elements of the Bill as we are still seeking to achieve the intent of the legislation across much of our prison policy. We remain committed to the four aims which make up the purpose of prison as set out in the legislation. We want to increase the impact of our independent scrutiny bodies, and have set up a new unit within HMPPS to make sure that our responses to independent reports are more rigorous and likelier to lead to changes. We are also continuing to take steps to reduce the use of illicit mobile phones and the harmful impact of new psychoactive compounds. Responses to the two recommendations are in Annex B.

It is my priority to continue building on the essential reforms that are already underway and to address the significant challenges to safety within our prisons. As set out in the White Paper, the reforms that have been proposed are radical and I am very aware of the need to monitor the progress of these reforms. We are currently developing an update to the 2016 White Paper which will outline what we have achieved since November 2016 and it will also set out our priorities and plans for further reform over the next 12 months. Alongside this 12-month forward look, we will soon be publishing a prison safety strategy and action plan that focuses on further enhancing our approach to making our prisons safe. This will include further detail on the Offender Management in Custody model which is key to our vision to improve safety in prison, and will help us to develop rehabilitative prisons that deliver a supportive environment for offenders.

## Annex A

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The Justice Select Committee made 21 recommendations in their report and the Ministry of Justice's (MoJ) response is below.

**1. Irrespective of the overall desirability and feasibility of the prison reforms, without support from the people who are operating prisons they are unlikely to be effective. We recommend that the Government seek productive engagement with prison staff and governors through regular meetings, enabling their concerns and ideas to feed into the implementation of the reforms. (see Paragraph 7)**

We completely agree with recommendation outlined; productive engagement is a high priority for ministers who meet staff and governors regularly. We have monthly forums with governors and trade union groups which allow effective consultation and feedback on implementing the reforms.

A team of HM Prison and Probation Service (HMPPS) managers, with recent operational experience, have also been seconded to the Prison Reform Team to support this.

**2. We recommend that the Government clarify how the relationships between governors, HMPPS and the Ministry will work in practice. (see Paragraph 11)**

- The White Paper envisaged a system where:
- the Secretary of State sets standards supported by MoJ policy and commissioning;
- each prison develops a performance agreement against those standards;
- HMPPS oversee delivery of these performance agreements and hold prisons to account for their performance.
- decisive action is taken if performance is of serious concern either based on performance against the standards set or information from an independent scrutiny body such as HM Inspectorate of Prisons (HMIP).

While some aspects of the model are still being fully developed, we have started to embed the new relationship and division of responsibility. The transfer of the commissioning function, from what was the National Offender Management Service, to a new Offender Reform and Commissioning Group (ORC) within MoJ was a direct response to the White Paper's commitment to improve the accountability, scrutiny and reform framework for prisons.

Consequently, HMPPS is now a delivery agency with responsibility for performance across all public and private providers. ORC is responsible for policy and commissioning activity. Success is dependent on close collaboration between the two groups and this has been the focus of both leadership teams as we transition to this new model.

**3. Performance agreements were supposed to be put in place in a third of prisons from April 2017, but the Prison Governors' Association advised its members against signing them; we recommend that the Ministry should include in its response to this report information on how many agreements have been signed, and how it will proceed if agreements are not signed. We also recommend that the Ministry urgently**

**provide clarity about the processes for managing poor performance, as well as about how accountability will be attributed in practice, particularly in cases where poor performance is caused by multiple factors which straddle the responsibilities of governors, the Ministry and HM Prison and Probation Service. (see Paragraph 14)**

Performance agreements are in place for all public-sector prisons. A third of these are three year agreements as envisaged in the White Paper. Given our ongoing discussions with the Trades Union, we have not signed agreements at this point. Nevertheless, all parties are working to deliver the performance agreements and HMPPS are managing prison's performance against the commitments they contain.

Performance management for public prisons is led by HMPPS through line or contract management arrangements. In the case of public sector prisons, the Governor's line manager will hold them to account for their performance, taking into account both how effectively they have delivered the targets in the Performance Agreement and how effectively they have met the requirements set by HMPPS to run an efficient and effective organisation.

HMPPS is responsible for privately managed prison contracts and each establishment has an HMPPS Controller onsite who is accountable for providing assurance that the contracts are delivered in accordance with agreed contractual delivery indicators, and that the prison provides safe, decent and secure services. Senior Contract Managers (SCMs) provide an additional level of operational assurance and support for the Controllers.

The terms of each contract include an agreed level of service and, in most contracts, financial remedies apply where a provider fails to achieve this. Performance points are awarded according to the severity of failure. If the total number of points exceeds the agreed baseline for the quarter or year, financial remedies are applied against the Contractor in accordance with the Contract.

In addition, the Permanent Secretary will chair a quarterly performance committee meeting that will monitor overall performance across the system (prisons and probation) to reach a properly evidenced assessment of performance both at individual prison level and across the system. The quarterly performance committee and a more detailed end of year review will be used to by HMPPS and MoJ to assess performance specifically where poor performance is caused by multiple factors.

In the case of underperformance, the committee will agree and direct any action necessary that had not already been taken through the management structure. This could include requesting a change to the commission of one or more prisons, or remedial action in the form of management support, provision of specialist input, a change of management or any other measure necessary to secure improvement.

The White Paper outlined the need for Her Majesty's Inspectorate of Prisons (HMIP) to be able to notify the Secretary of State of urgent issues within prisons they inspect. Considering the changes to the Prison and Courts bill, we will no longer be legislating on HMIP powers. However, we are currently developing a mechanism with HMIP to deal with serious concerns they may have about a prison through a fast-track process. We acknowledge the contractual differences with private prisons and will develop a system which works. However, all privately managed prisons have contractual mechanisms that allow the authority to address and remedy poor performance in relation to the safety

or security of an establishment. A process will be developed for each privately managed prison that could be implemented should urgent issues be identified by HMIP that results in them notifying the Secretary of State.

To drive improvement of underperforming prisons we need to make sure that they are given the support they need and that our new system is driving improvement that can be sustained.

**4. We welcome moves to simplify prison policies, but it is clear that the centre must continue to set minimum standards of expectations that apply consistently across prisons. We recommend that the Ministry put in place the necessary monitoring arrangements to ensure that local discretion does not result in unacceptable variation in the treatment of prisoners or serious security failures, and clarifies the role of HM Prisons and Probation Service in performance monitoring. (see Paragraph 17)**

We agree with the committee's recommendation; while deregulation will reduce the mandatory requirements placed upon Governors, policy frameworks are being developed to ensure that minimum required standards are in place and consistency is provided where this is deemed necessary. We will monitor compliance of these frameworks as part of robust assurance arrangements.

**5. There remains considerable uncertainty around how the Government's plans will apply to the privately managed prison estate. It is not clear to us how, or whether, the planned performance agreements will supplement existing contracts or whether they will simply reflect that which providers are already contractually obliged to deliver. Nor is it clear how the proposed intervention powers for the Secretary of State will apply to private sector prisons and how they will work alongside existing contractual remedies. We recommend that the Ministry clarify how the reforms will apply to private prisons in these respects. (see Paragraph 20)**

Privately managed prisons, in 2017/18, will continue to be held to account via their existing contracts. Each private prison has provided a delivery plan which sets out their ambition for their prison and reflects the plans and strategies developed by the rest of the estate. As in previous years which featured Service Delivery Requirements, all performance measures introduced into performance agreements in 2017/18 also apply to the privately managed estate (with the exception of hours worked in industry). The expectation is that there will be as much commonality in the commission for private and publicly managed prisons as is possible within the constraints of the existing contracts.

In general, empowerment applies to privately managed prisons in line with their contracts, however, it is down to private companies to decide the extent to which their prison directors (private sector equivalent of a Governor) enjoy discretion within their company policies. The following freedoms will apply to privately-run prisons:

- The deregulation of Prison Service Instructions and Prison Service Orders and replacement with policy frameworks, which will set out the minimum mandatory requirements to ensure a safe, decent and lawful system and these will be incorporated accordingly into the contracts;
- Approach to delivery of accredited programmes;

- Approach to co-commissioning (in line with contract requirements);
- For a small number of privately-run prisons which are contractually required to use specific nationally commissioned contracts such as catering; where such a contract expires, and is retendered, Directors will have the same flexibilities as prison Governors; and
- For privately-run prisons, which receive learning and skills services through the centrally-let OLASS contracts, Directors will be empowered to design education delivery in the prison in the same way as prison Governors

**6. The information currently available to us is not sufficient for us to reach any conclusions on the appropriateness of the management structures the Ministry or HM Prison and Probation Service intends to operate above individual prisons. We therefore ask that the Government set out its plans in more detail in response to this report. (see Paragraph 24)**

The Governor in operational command of a public sector establishment will be line managed by a Prisons Group Director and have a line of command through to the Executive Director of Prisons and the CEO.

Reform will entail devolving responsibility from the centre to both Prison Group Directors and Governors. The principal responsibilities of the Prisons Group Director are:

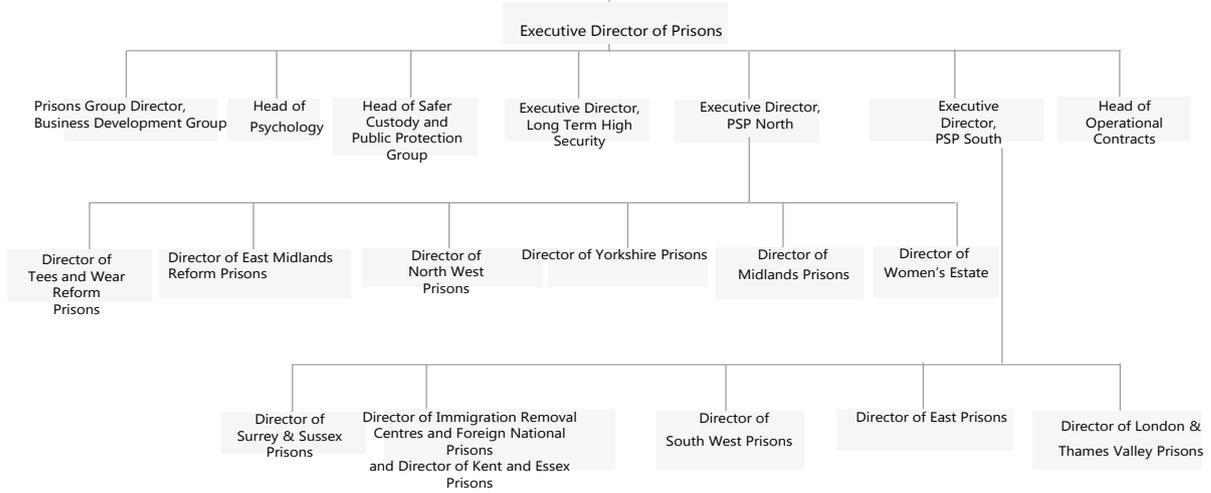
- Performance management and assurance
- Support and enablement
- Proactive intervention to support improvement as necessary (being directive only by exception)
- Line management functions of the individual
- Coordination of common approaches and strategic developments across the group of Prisons where this makes business sense/adds value

At Agency Board level, there is a new post of Executive Director of Prisons, reporting to the CEO, with responsibilities for public and private sector prisons in England, and Agency head of profession for prisons (ensuring strong links to prisons in Wales, which will be in the HMPPS Wales Directorate).

Three Executive Directors for Public Sector Prisons (PSP) in England will report to the Executive Director of Prisons – the Executive Directors for PSP North and PSP South who will each line manage the Directors of Prison Groups, and the Executive Director of Long Term High Security who will line manage the Governors in the LTHS Estate. We are increasing Executive Director bandwidth to enhance our management oversight, support and change management capacity. A Head of Operational Contracts is responsible for the contract management of private sector prisons, and also reports to the Executive Director of Prisons.

**A visual representation of the proposed management structure of HM Prison and Probation Service and the Ministry of Justice (above individual prisons)**

HMPPS Prisons in England from April 2017



We will adopt a flexible approach to determining structures, so that the size and composition of prison groups do not follow a rigid template but can flex to achieve the strongest operational coherence e.g. functional groups, geographical groups, some variation in scales of command as appropriate. In some cases, this will lead to functional groups being created across the country e.g. Long Term High Security; Women’s Estate; Immigration Removal Centres & Foreign National Prisoners Group.

We are investing in the management of prisons to facilitate the Prison Safety and Reform Programme. We believe that greater management capacity is needed in light of our operational challenges and reform ambitions. We are confident that these changes in structure will enhance management oversight, give greater support to Governors as they are increasingly empowered, and improve our change management capacity at a time of great demand.

In parallel, we recognise the need to enhance management capacity and capability at establishment level, which we will be doing through development programmes, additional first line management posts (at Custodial Manager level), and additional senior posts for offender management (through Senior Probation Officer posts in prisons) and learning and skills contract management.

**7. We welcome the Government’s commitment to ensuring governors get the support and development they need, but we are concerned that support structures will not be in place before the reforms begin to take effect in April. We have not seen detail of the geographical and functional clusters in which prisons will be arranged and of the processes by which governors can support each other within these groups. We recommend that the Ministry clarify what support will be available to governors from April in carrying out their new functions and how they will address potential skills gaps in the short term (see Paragraph 26).**

We have worked closely with Governors and other Senior Leaders to establish the type of support they would welcome. We have conducted an extensive series of interviews with Governors and their line managers as well as surveys to all Governors and Deputy Governors establishing capability levels and development needs. All this work has fed into the development of a Governor Leadership Programme for all existing Governors across all PSPs to enable professionalism and support empowerment and accountability in the context of delivery through a number of modules over a 12-month period. The programme will be launched in Autumn 2017 with the first cohort starting from October. We will use the learning and evaluation from the first and subsequent cohorts to continue refining the course content. The content will cover 9 modules derived from leadership research, as well as the interviews and focus group data but will be subject to on-going evaluation. The leadership programme will also be underpinned by the core Civil Service Learning (CSL) Leadership Offer and as part of the bespoke design of the programme Governors will have access to a suite of psychometric measures, enabling greater self-awareness of leadership strengths, coaching, action learning groups and internal electives / speakers as required.

In addition, Governors have always had access to support their learning and development through CSL as well as access to coaches and mentors which they continue to draw upon. There are also local initiatives supported by HR Business Partners and learning and development managers to ensure individual needs are supported. More recently PSP Directors have been working with organisational development specialists to support these new prison groups in carrying out their responsibilities.

The new HMPPS structure has been introduced to bring together prisons by functional category (e.g. high security or women's prisons) or geographical area. Each of these Groups is headed by a Prisons Group Director whose role is to support and empower Governors and to work as a Senior Management Team to better enable the sharing of capability and skills across the Group and more effective collaboration between the prisons. A 12-month Governor Leadership Programme will be for all existing Public Sector Governors to enable professionalism, support empowerment and accountability.

The structures that were established in April 2017 are transitional. Going forward we will develop groups with a smaller number of prisons which will enable greater support, more effective performance management and assurance, and improved capacity to meet the significant change management demands going forward. The pace of the move to these new smaller prison group commands will be considered in line with operational requirements during 2017–18.

**8. We agree with the Government and witnesses including the Prison Reform Trust that prisons must not be managed in isolation from society outside the prison gates. It is not clear to us, however, how the Government intends to ensure the contributions made by various agencies are, in fact, coordinated at a local level, nor how accountability will be apportioned for post-release outcomes between prison governors and probation services. We recommend that the Ministry set out its plans on local partnerships and the relationship between prisons and probation services in more detail. (Paragraph 29)**

We agree with the committee and Prison Reform Trust that prison governors and probation providers must be affiliated to ensure effective through the gate and resettlement delivery.

A key responsibility for prisons and probation is to rehabilitate and re-integrate prisoners from prison back into the community.

Those we imprison or hold on remand in resettlement prisons receive advice and support on finding employment, accessing training, education, finding accommodation, making benefit claims, and dealing with domestic abuse and the issues associated with sex working. However, once released, too many prisoners continue to re-offend with over half of all prisoners being reconvicted or recalled back to prison during the first year of release, and we know that resettlement services are not as effective as they should be. It is only by making sure reforms across the whole system are integrated and working – from courts through to prison and out to probation (Community Rehabilitation Companies and National Probation Service) we will build and achieve joined-up service delivery.

To tackle this, we are reviewing the delivery of resettlement services in prison and through the gate taking into consideration the recommendations from HMIP thematic report on Through the Gate (2016, 2017). As part of this we will look at how we provide greater clarity on the respective roles and responsibilities of prison and probation providers and on how we hold them to account. We will set out more detail in due course.

**9. We welcome the Government’s commitment to an evidence-based approach to the implementation of the reform programme. We recommend that the Ministry should ensure that local freedoms granted to governors are underpinned by clear minimum standards for the application of evidence and judgements about impact, drawn up to avoid restricting the delivery of particular activities in prisons, but to provide support to governors in exercising their new freedoms and ensuring that public money is spent on activities that take account of the evidence on what is effective in reducing the risk of re-offending. (Paragraph 31)**

In our guidance to prisons on the completion of their Performance Agreements we ask them to set out whether their strategy is driven by the needs of their population, whether it includes a clear evidence base or follows an evidence-based approach, and whether it describes how equality and inclusion will be addressed.

We provide governors with information on how risk, need and responsivity are distributed in their prison which, if tackled through appropriate services, will reduce the likelihood of reoffending for their groups of prisoners. We also provide them with access to the latest available evidence of what works to help inform their strategy.

The MoJ is committed to continually develop a system where key decision makers in delivering justice services have clear, accessible information about what does and does not work; that there is a flow of robust, timely and independent evaluations of innovative provision; and that practitioners are supported in embedding a culture where staff understand, use and generate good evidence. Existing mechanisms in place to generate and communicate what works evidence include the Justice Data Lab, Correctional Services Accreditation and Advisory Panel (CSAAP), Innovation Fund, syntheses of the evidence and communication events, and the HMPPS Performance Hub. Over the next 6–12 months we will bring together all of this available evidence and information in one place to enhance access for decision makers.

More broadly, our new Policy Frameworks will include references to data, management information and research evidence to inform the development of new policy frameworks;

the policy framework template is accompanied by guidance for policy owners on how to approach the deregulation of policies. This guidance identifies design principles to underpin the drafting of policy frameworks, specifically it sets an expectation of evidence based policy development.

Further guidance will be issued in shortly to guide Governors in how to plan for the local delivery of policy frameworks and will provide an opportunity to promote an evidence based approach to the development of local operational policy and to reflect upon the recommendations of the JSC.

**10. We recommend that the Government:**

- **publish an evaluation of the impact on performance of granting greater autonomy to governors after 12 months (that is, in April 2018)**
- **set out how it intends to ensure that the planned arrangements for governor autonomy, performance agreements and local discretion are achievable within current worst-case prison population projections**
- **set out in detail how future arrangements for mutual support between prisons and the command of serious incidents will be affected by the changes in organisational arrangements**
- **publish a detailed action plan that ties together safety and reform and sets out the benefits the reforms are intended to realise, as well as clear actions aimed at achieving them and key dates for completion. (see Paragraph 32)**

We are working to develop an evaluation strategy for the full Prison Reform programme, and empowerment will be part of that.

The current Prison Population projection covers the period 2016–2021 and was published in August 2016. Our plans for prison reform are based on the published projections.

Arrangements for mutual support between prisons and the command of serious incidents will not be affected by the changes to organisational structure and current incident management processes will continue to function. The government agrees with the committee's recommendation to publish an action plan and will do so later this year.

**11. We recommend that the Ministry:**

- **clarify the extent to which governors will have freedom to vary the ratio of one prison officer being responsible for the casework of six prisoners, and provide greater clarity about how the model will apply in private prisons:**
- **provide greater transparency on the methodology and evidence base used to determine the ratio**
- **set out in more detail the proposed case management role prison officers will undertake and how that role will be delivered in practice, including in terms of time and resource commitments**

- **undertake to report to this Committee at six-monthly intervals on the implementation of the keyworker model and how it is benefiting prisoners, measured for example through sentence progression and through using the Measuring the Quality of Prison Life survey (see Paragraph 35)**

Governors will have some freedom to vary the ratio for key workers to prisoners to fit local circumstances, for example taking into consideration the size of units and how they intend to deliver key work in their establishment. This will be done with the expectation that the ratios will be small and an approximate range of between 5–10.

Key workers are a fundamental part of the new case management system and will apply to both privately managed and public sector prisons. The MoJ are working with both the privately managed and public sector prisons to initially implement key workers followed by the case management part of the model next year. Proposals from the privately managed prisons on how the Offender Management Model will be delivered within their individual establishments will be considered to ensure that there is sufficient consistency to deliver a national system whilst allowing private providers to offer variations of the mode in line with their ability to deliver innovation.

Academic and operational experience strongly suggests that good relationships between front-line staff and prisoners make a real difference in ensuring safety and promoting positive rehabilitative outcomes. To make these relationships meaningful dedicated time has been provided for weekly or longer fortnightly session which has resulted in the suggested ratios of between 5–10 prisoners per key worker.

Key workers will not be undertaking the case management role. This will be provided by Prison or Community Offender Managers (which will depend on time left to serve in custody). Prison Offender Managers, a role to be undertaken as part of the new model by both probation officers and prison staff, will be responsible for risk and needs assessments, sentence planning, sequencing and coordinating sentence plans, delivering structured supervision and coordinating the handover to another prison or community.

We will undertake to report to the Committee about the implementation of the key worker model and how it is benefitting prisoners. The project is subject to usual formal governance project management processes including benefit realisation and evaluation.

**12. We welcome the inclusion of performance measures on staff and prisoner perceptions of safety. We recommend the Ministry examines whether other aspects of the Measuring the Quality of Prison Life survey for prisoners and the equivalent survey for staff could be used as lead indicators of performance. (see Paragraph 38)**

Staff and prisoner perceptions of safety is included within the performance measures; we are using responses to questions from the Measuring the Quality of Prison Life survey to gauge this for prisoners with a nationally set target.

We are currently exploring other equivalent surveys for staff perception of safety to ensure that a robust meaningful measure is developed.

We will be considering the feasibility and benefits of adding to the Measuring the Quality of Prison Life survey so that it can be used for other future performance measures.

**13. We welcome the Ministry’s assurances that their performance measures have been developed with rigour and note that they will be subject to ongoing testing, but we have not received sufficient evidence to verify the manner in which they have been tested. In the light of the challenges arising from the performance metrics for Transforming Rehabilitation, which had limited testing prior to implementation, we recommend that the Ministry explains fully the rigour it has applied to developing the measures in its response to this report, and publishes the results of its testing of them after the first year of use, including an assessment of any limitations of the measures. (see Paragraph 40)**

We will continue to test our rationale behind each measure as we develop them to ensure that they are fit for purpose in the changing environment and meet the policy intent. We have put in place clear governance processes which ensures that any new measures are robust, meaningful and outcome focussed, and wherever possible, we are undertaking pilots to test the limitation, practicalities and to highlight possible unintended consequences of any proposed new measure.

Where there is no base-line for a measure, we are seeking continuous improvement in place of target figures. This allows comparison between different time periods to show improvement in performance such as the rate of self-harm incidents amongst prisoners. These comparisons not only enable comparison of like for like but allow us to check that the measures have not introduced unintended consequences.

**14. Although private sector prisons are subject to internal reviews by NOMS controllers and reviews by the MoJ—which G4S and Sodexo believe provide assurance of accurate reporting—there have been some allegations and proven incidents of poor recording practices. We recommend the Ministry publish information on the controls it intends to put in place to ensure objectivity and consistency in recording performance to avoid bias and manipulation. (see Paragraph 41)**

The MoJ has a multi-layered approach, reflecting Cabinet Office and NAO Best Practice, to ensuring objectivity and consistency of data. The first line of defence is provided by Contract Management with second line being provided by Operational and System Assurance. Further assurance is provided by staff in provider organisations, along with recording instructions and technical notes for each performance measure. This is followed up by Controllers, Senior Contract Managers, Regional Assurance Advisors, and Performance and Quality Managers across public and private prisons, and probation and other service providers. There is also a central group of Data Wardens and Data Stewards who report on data recording practise to various data assurance boards and working groups. Finally, assurance is provided for Community and Custody through Internal Audit arrangements. Outside of the agency Independent Monitoring Boards (IMB), both HMIPs and the Prisons and Probation Ombudsmen have access to performance data for assurance and inspection purposes.

In light of the White Paper on Prison Safety and Reform and multiple new performance measures on incidents in both public and private prisons, the audit of incidents data in prisons has been expanded to ensure data which is driving these performance measures is reliable and accurate.

**15. It is unclear how governors can be judged accountable for various aspects of rehabilitation and preparation for release when prisoners move between prisons and other actors are involved in delivering the relevant interventions, some of which, such as suitable accommodation post release, are outside governors' direct or indirect control. We recommend that the Ministry clarify these matters in its response to this report. (Paragraph 42)**

We recognise that prisons need to act as part of a wider system where results come from coordination with a range of organisations, including Community Rehabilitation Companies and National Probation Service.

We are devolving decision making to Governors so that they can provide services to the prisoners in their care at the right time. We have no intention to make Governors accountable for areas outside their control, but we do think it is right to ask them to bring together the services which best support the prisoners and to work with others within the system to improve outcomes.

We are looking for prisons to be co-ordinating and working as part of the system to get outcomes for their offenders. As part of this they may receive some offenders who arrive for a short time, haven't had the necessary interventions and would need a lot of input to get good outcomes and others who don't need a lot of help or have already had a lot of input. We will be exploring options for how to most fairly assess performance on each metric (e.g. by comparing similar prisons, considering use of expected performance) and how the metrics are combined in an overall assessment (it may be necessary to give a lower weighting if the line of accountability is less clear-cut).

**16. It is unclear whether the Ministry is testing alternative measures as proposed by some of our witnesses, or whether it intends to bring cost and performance measures together. We consider that there is merit in testing measures related to staffing and prisoners' personal development. We call on the Government to explain in its response whether it is testing other measures and what they are, and if it is not, why these other measures have been discounted. (see Paragraph 43)**

The white paper was clear that measuring the performance of prisons needed to be on the results they deliver rather than just compliance with processes. Since its publication, an initial tranche of performance measures with Governors have been put in place. These include measures relating to public protection (for example the number of escapes from prisons [closed prisons] and the rate of absconds per 100,000 prisoner days [open and semi-open establishments only]), measures around safety and order (e.g. the levels of assaults on staff and rates of self-harm per 1,000 prisoners) and measures around the reform and preparation of offenders for life outside prison (eg the number of hours worked by prisoners in industry and the number of accredited programmes completed in prison).

We also said that we would develop further measures over future years, testing where necessary to ensure they are effective. For example, we will work to implement a measure that relates to staff perception of safety and how prisoners progress against milestones in their individual learning plan and the quality of prisoners' family relationships. We will also work with our health colleagues to develop meaningful measures on health outcomes, including mental health and substance misuse.

**17. The Ministry must provide clarity both to governors and to the public about how it intends to weight indicators of performance, including which it sees as of primary importance. (see Paragraph 45)**

As is the case currently, at the end of each year we publish prison performance through the Prison Rating System. Any weightings introduced for new measures, will reflect the priorities set out in the Prison Safety and Reform White Paper.

**18. We conclude that league tables as they were conceived in the White Paper are not a useful means to compare prison performance or drive improvement. A single overarching assessment of prison performance will mask many aspects of performance. If, as the Minister’s evidence suggests, the Government has reconsidered this approach and intends now to publish performance data instead, we would support this new approach. In our view it is more important that the Ministry seeks to understand more fully the factors underpinning poor and high performance and uses the learning to devise lessons to improve practice which are disseminated transparently across the estate. We recommend that the Ministry explain clearly the mechanisms through which they intend to achieve this in their response to this report. (see Paragraph 47)**

We are pleased that the Select Committee have endorsed this approach to publishing performance data. The White Paper indicated that we would publish a subset of measures to enable the public to understand the performance of prisons. We plan to go further than our White Paper commitment and publish all the performance data on each prison on a new website, which will go live on 26th October 2017. This allows us to present our prison performance data in an accessible format and will allow the public and parliament to rank each prison by each measure.

In addition to this, we are also reforming our performance management arrangement in line with the changes we set out in the White Paper. Primarily, we will be judging prison performance against the standards set out in the performance agreements. We will also be considering wider factors including reports from independent bodies such as, HMIP.

**19. The differences in practices that are likely to arise from freeing governors from service-wide instructions have the potential to create perceived injustices and to increase complaints to both Independent Monitoring Boards (IMBs) and the Prisons and Probation Ombudsman (PPO). The Ministry’s well-placed efforts to improve perceptions of the independence of these organisations might also drive a rise in complaints. We recommend that the Ministry report back to us on this at six monthly intervals over the two years of implementation. If there is found to be greater demand on IMBs and/or the PPO, the Ministry should make provision for an increase in resources for these bodies. (see Paragraph 48)**

Deregulation will reduce central prescription of operational policy; however, policy frameworks will continue to mandate to ensure a safe, decent and lawful system, which provides consistency where this is deemed necessary. Whilst we agree with the committee’s comments, the MoJ will not be reporting back on the recommended six monthly intervals as we believe it would be difficult to establish the cause of any increase in demand. Independent scrutiny is an essential part of our prison system. We take reports from the

PPO and IMBs extremely seriously and will continue to do so. We regularly discuss the resources required by IMBs and the PPO to discharge their functions and will continue to do so.

**20. We welcome the opportunity the Government’s reforms bring for governors to commission services that support a rehabilitative culture in their prisons, and to do so in innovative ways, but we are concerned about the lack of clarity that surrounds these reforms, which will start to take effect very soon. We are concerned that governors may not have had time to familiarise themselves with the hastily drawn up accountability framework before it begins to apply to them. We recommend that the Government clarifies how prison performance agreements are designed to incentivise innovation and who will be held accountable in cases of poor performance resulting from innovative approaches; and that the Government urgently provide service providers with the information they need to offer services tailored to individual prison populations. (see Paragraph 56)**

The design of the Performance Agreement supports empowerment and innovation and by setting out clearly what standards are expected of Governors, but also provide the Governor (and Group Director if part of a Group), an opportunity to set out what the ambition is for their prison/s and how they will achieve this. The design also recognises that innovation can take place at any point and the capacity to manage innovation well is limited so there are opportunities for agreed change across the life of each performance agreement and we actively promote innovation across the system. This is done by supporting, funding and evaluating activities/projects which could lead to new or more effective ways of doing things.

As stated above (recommendation 3), Performance Management for public prisons is led by HM Prisons and Probation Service (HMPPS) through line management structures. The Governor’s line manager will hold them to account for their performance, considering both how effectively they have delivered the targets in the Performance Agreement and how effectively they have met the requirements set by HMPPS to run an efficient and effective organisation. A separate approach to performance management for innovation is not planned and Governors will be expected to appropriately mitigate unacceptable risk.

**21. We welcome the principle of greater governor involvement in commissioning goods and services in prisons. It is important that the new commissioning freedoms for governors should be accompanied by central oversight and minimum quality standards to ensure service provision meets expectations and is coordinated across the prison estate to deliver rehabilitative outcomes for prisoners. We recognise that governor empowerment is likely to lead to differences in service provision across the prison estate and recommend that the Ministry put in place measures to ensure that education, family services and offending behaviour programmes are aligned across the estate to enable prisoners to progress through their sentence, and to ensure these programmes meet minimum quality standards. We also recommend that the Ministry monitor the effect of giving governors commissioning responsibilities on prisoners’ sentence progression and report back to us every six months during the implementation of the reforms. We further recognise that the appropriate level to commission goods and services varies on a case by case basis, and recommend the Government does not take a dogmatic approach to devolving commissioning decisions (see Paragraph 61)**

We are working to ensure a balance between Governor ability to innovate and drive forward services in their prison, and the need to have central oversight, such as performance frameworks and contracts. We are specifically:

- Putting in place effective contract management arrangements through the procurement of successor education contracts
- Ensuring that Offender Behaviour Programmes offer the correct balance between greater empowerment while maintaining efficient delivery that meets cross system needs.
- Developing a new Policy Framework to specify minimum expectations for enhancing positive family relationships within the custodial environment.

To give Governors more say over the goods and services offered in their prison, we are undertaking a review of every national contract. As each comes to an end, we will assess whether we should continue with a national commissioning approach, a hybrid of central specification and local flexibility or devolve commissioning responsibility to Governors locally. This shift will happen over the course of the next few years, as existing contracts expire and are retendered. If the interdependencies of a national system require a national solution, we will mandate a national contract for consistency.

## Annex B

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The Justice Select Committee made 2 recommendations in their Fourteenth report of Session 2016–17: Prison Reform: Part 1 of the Prisons and Courts Bill and the Ministry of Justice's (MoJ) response is below.

**1. If legislation to introduce a statutory purpose for prisons is introduced early in the next Parliament, we recommend that it should include such an aim. We also recommend that the Ministry should include in its performance measurement dataset indicators to capture explicitly the extent to which prisons are meeting their obligations to ensure prisoners are treated decently, fairly and humanely.**

We are determined to make sure that prisons are safe so that they can be places where offenders can reform. We agree that treating prisoners decently and fairly is a fundamental part of this. We currently use the Measuring the Quality of Prison Life survey with questions that cover decency, fairness and humane treatment to capture prisoner's perception of their treatment in prisons. We will continue to use this measure as part of the overall performance management of prisons.

Even without a statutory purpose there are already legal obligations to ensure prisons are run in a way that is fair and decent. In particular, there are requirements in the Prison Rules 1999 which set minimum standards for both the physical environment and the way prisoners should be treated. There are also legal obligations stemming from the Human Rights Act 1998, the Equality Act 2010 and health and safety legislation which are relevant to fairness and decency in prisons.

The independent Her Majesty's Inspectorate of Prisons also report on decency, fairness and humanity. We take their recommendations very seriously and are forming a new unit that will track how they are being implemented by prisons. This unit will also be charged with responding promptly and publicly to inspection reports and following through with action to put problems right, where we agree with recommendations and can put them into action.

**2. We recommend that this Committee should be required to give its consent to a recommendation to Her Majesty for appointment of a person as HM Chief Inspector of Prisons, as a backstop guarantee of that person's independence from potential ministerial patronage or pressure.**

We consider that the current appointment process, which is subject to the Cabinet Office's Governance Code on Public Appointments, has the correct balance of Committee involvement. We strongly welcome the Committee's current role in the selection process from being consulted on the job description and criteria before a recruitment is launched, to providing pre-appointment scrutiny of the preferred candidate. This allows the views of the Committee to be fully taken into account when Ministers come to a final decision. Ministers are accountable to Parliament for prison performance, and the Chief Inspector is a critical part of the framework for raising prison standards. We believe that the Secretary of State should take full responsibility for selecting the Chief Inspector and be held to account by Parliament for that decision, and how it impacts on the quality of

outcomes being delivered in our prisons. We have seen current and past Chief Inspectors speak candidly and openly about what they have found in our prisons and we want that to continue.