

**Prisons and Courts Bill 2017**

**House of Commons**

**Committee Stage**

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**Advice for Parliamentarians – Part 1: Prisons**

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**Introduction**

This briefing provides advice for Parliamentarians on Amendments 3, 12, 18, 20, 26 to Parts 1 of the Prisons and Courts Bill 2017, and New Clause 11which relates to an annual review of prison conditions.

The Equality and Human Rights Commission is Great Britain’s accredited ‘A status’ National Human Rights Institute (NHRI) and National Equality Body. Section 11 of the Equality Act 2006 sets out the Commission’s power to provide advice and recommendations on the law and proposed changes to the law.

The issues we identify have implications for Article 2 (the right to life) and Article 3 (freedom from torture) under the European Convention of Human Rights (ECHR).

**Part 1 – Prisons**

**Clause 1 - Statutory purpose for prisons**

Prisoners are particularly vulnerable to human rights breaches as all aspects of their lives are controlled by the state. The Commission welcomes Clause 1 (2), which for the first time creates a statutory purpose for prisons. The purpose includes reform, preparing prisoners for life outside, rehabilitation and maintaining a safe and secure environment. This clarifies that the punitive function of prisons is limited to deprivation of liberty and more closely reflects human rights standards, which consistently recognise that prisons must keep prisoners safe and promote their reintegration into society. This statutory purpose should guide the development - and interpretation - of prison policies and secondary legislation.

The Commission believes that Clause 1 can be strengthened to further reflect human rights standards.

**Commission’s recommendation**

Support Amendment 3.

**Explanation**

This Amendment extends the purpose of prisons to ensure that prisons must aim to ensure family and other supportive relationships are maintained and developed.

**Our analysis**

Families can provide valuable support for prisoners, who are all in a vulnerable situation, but particularly for those with mental health conditions. Our inquiry into non-natural deaths of adults with mental health conditions reported that families can also play an important role in helping to develop a treatment plan for prisoners with such conditions. In order to comply with their obligations under the right to life, institutions should provide appropriate social support which will include the opportunity for regular family contact.

Both prisoners and family members of prisoners have a right to family life. This Amendment would further protect that right in practice in a prison context.

**Commission’s recommendation**

Support Amendment 12.

**Explanation**

This Amendment extends the purpose of prisons to ensure that prisons must aim to maintain and promote the physical and mental health of prisoners.

**Our analysis**

In 2015, the Commission published a report of our inquiry into non-natural deaths of adults with mental health conditions in prisons, police custody and psychiatric hospitals[[1]](#footnote-1). The Inquiry found that repeated basic errors, a failure to learn lessons and a lack of rigorous systems and procedures contributed to the non-natural deaths of hundreds of people with mental health conditions detained in psychiatric hospitals, prisons and police cells in England and Wales. The report made clear that “To comply with their obligations under Article 2 [the right to life], institutions should provide timely and appropriate medical and mental health treatment and support to everyone in their care”.

In 2016, the Commission’s progress review, which looked at whether steps have been taken to implement the recommendations from our inquiry and prevent further avoidable deaths, found that urgent changes need to be put in place by the Government to address the root causes leading to the high levels of non-natural deaths in prisons, including greater access to specialist mental healthcare.

The prison service [does not currently] record the number of prisoners with mental health conditions. The most recent national data relates to 1997, where 92 per cent of male prisoners were reported to have one of the following five conditions: psychosis, neurosis, personality disorder, alcohol misuse and drug dependence. Seventy per cent had at least two of these.[[2]](#footnote-2) Ensuring such prisoners receive appropriate mental health treatment is of critical importance to preventing deaths in prisons. The Prison and Probation Ombudsman (PPO’s) 2016 report on prisoner mental health identified ‘significant room for improvement in the provision of mental health care’.

This Amendment would ensure that the purpose of prisons includes not only ensuring the safety of prisoners, which could be achieved via protective measures to prevent self-harm, it would also explicitly includes promoting the mental and physical health of prisoners.

**Clause 2 - Reporting on the rights of prisoners**

**Commission’s recommendation**

Support Amendment 18.

**Explanation**

This Amendment requires the Chief Inspector to report on the effectiveness of practices and procedures in relation the rights of prisoners.

**Our analysis**

Prisoners are particularly vulnerable to human rights breaches as all aspects of their lives are controlled by the state. This makes it particularly important that there should be independent oversight of the extent to which prisoners’ rights are being respected in practice. This would mean, for example, that prisons should be inspected to ensure that they maintain an environment that provides freedom from:

* physical abuse by staff or other detainees
* bullying, threats and disrespectful treatment by staff and other detainees
* neglect by staff or external professionals
* unlawful use of physical restraint.

The inspectorate’s scrutiny of compliance with prisoners’ rights would also cover matters such as whether prisoners are accorded adequate food, appropriate family contact and access to necessary healthcare. This Amendment would ensure that the Chief Inspector is able to highlight concerns in relation to prisoners’ rights in practice.

**Clause 2 and Clause 8 - Responding to HMCIP and PPO recommendations**

**Commission’s recommendation**

Support Amendment 20 and 26.

**Explanation**

Amendment 20 and 26 would require the Secretary of State to set out actions taken in response to recommendations from the Her Majesty’s Chief Inspector of Prisons (HMCIP) and the Prison and Probation Ombudsman (PPO).

**Our analysis**

Effective independent monitoring mechanisms are vital in prisons. The Commission welcomes Clause 4, which places the PPO on a statutory footing. Clauses 12 to 14 give the Ombudsman enhanced powers to enter premises and require information in carrying out investigations, which is also welcome. HMCIP also plays a crucial role in independent prison oversight. However, such mechanisms will be most effective where accompanied by accountability mechanisms which encourage compliance with PPO and HMCIP recommendations.

Our inquiry into deaths in detention of adults with mental health conditions highlighted that some prison establishments do not fully implement recommendations made by the Ombudsman. Her Majesty’s Chief Inspector of Prisons (HMCIP) has also identified this problem, and the Ombudsman’s most recent annual report highlighted the difficulty prisons have sustaining his recommendations. The Ombudsman currently has no powers to address this.

Amendment X would require the Secretary of State to set out clear actions highlighted in response to the recommendations set out by the Ombudsman. Clause 8 could be further strengthened by ensuring that every institution or other body subject to Ombudsman recommendations must take all reasonably practicable steps to implement each recommendation.

The Commission welcomes Amendment X which would ensure greater accountability and transparency from the Secretary of State in relation to the actions taken to respond to recommendations set out by HMCIP in a section 5A (2) report.

**Annual review of prison conditions**

**Commission’s recommendation**

Support New Clause 11

**Explanation**

This new clause ensures that the Secretary of State annually reviews prison conditions and lays a report before Parliament. The evaluation and report would include information in relation to matters relevant to the safety of prisoners, such as the prevalence of restraint, self-harm and suicides.

**Our analysis**

Currently, the Prison Act 1952 requires the Secretary of State to issue (and lay before Parliament) an annual report on every prison. This includes: a statement on accommodation; numbers of prisoners; work done by prisoners; and a statement of punishments inflicted. Clause 1(3) of this Bill would amend the Act to require the Secretary of State to issue an annual report collectively for prisons setting out how prisons are meeting the purpose in Clause 1.

In order for the Secretary of State to be held to account for prisons’ compliance with human rights obligations in relation to safety, annual reporting should include data about prisons performance on the use of force, injuries, violence, self-harm and deaths in custody.

This data is particularly important as deaths, self-harm and violence in prisons continue to rise. In 2016, Ministry of Justice reported a record high of 119 self-inflicted deaths in custody. They advised that the rate of self-inflicted deaths has doubled since 2012. The likelihood of death in custody is 1.7 times higher than in the general population, while self-inflicted death is 8.6 times more likely. While such data is published in statistical bulletins, it is appropriate that this data should be brought together and presented to Parliament in order to prompt appropriate scrutiny by Parliament. Data in relation to restraint is collected but not published.

In the Commission’s view, this data should be disaggregated by reference to the known “protected characteristics” of prisoners, such as race, sex and disability. This will ensure that comparable data is available in relation to different protected groups, to allow analysis of whether some groups are disproportionately affected by safety concerns.

**About the Equality and Human Rights Commission**

The Equality and Human Rights Commission is a statutory body established under the Equality Act 2006. It operates independently to encourage equality and diversity, eliminate unlawful discrimination, and protect and promote human rights. It contributes to making and keeping Britain a fair society in which everyone, regardless of background, has an equal opportunity to fulfil their potential. The Commission enforces equality legislation on age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. It encourages compliance with the Human Rights Act 1998 and is accredited by the UN as an ‘A status’ National Human Rights Institution. Find out more about the Commission’s work at: [www.equalityhumanrights.com](http://www.equalityhumanrights.com).

1. Preventing Deaths in Detention of Adults with Mental Health Conditions. Available at: https://www.equalityhumanrights.com/sites/default/files/adult\_deaths\_in\_detention\_inquiry\_report.pdf [↑](#footnote-ref-1)
2. Singleton N. et al (1998) *Psychiatric Morbidity Among Prisoners, 1997*. London: ONS. [↑](#footnote-ref-2)