

Written evidence submitted by the Prison Reform Trust to the House of Commons bill committee on the Criminal Justice Bill (CJB42)

The Prison Reform Trust (PRT) is an independent UK charity working to create a just, humane and effective penal system. We welcome the opportunity to provide written evidence to the House of Commons public bill committee on the Criminal Justice Bill. Our written evidence focuses mainly on Clauses 25-29 relating to new powers to enable the transfer of prisoners to foreign prison establishments. Our evidence is structured as follows:

- An introduction to the key provisions and wider context
- An analysis of the impact assessment of, and evidence base for, the provisions
- Commentary on specific clauses

We are grateful to Louise Finer (Visiting Fellow at the Human Rights Implementation Centre, University of Bristol and freelance researcher) for her advice and input on this written evidence.

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Introduction

1. The provision to transfer prisoners to foreign prisons was announced by Alex Chalk in October 2023 at the Conservative party conference as a measure to mitigate the prison capacity crisis.¹ He subsequently announced a range of further emergency measures both to increase capacity and reduce demand on the system.² We supported the introduction of emergency measures as a necessary response to dangerous and growing levels of overcrowding. However, we are not convinced by the measures in this bill as an answer to the capacity crisis. The provisions place a great deal of unaccountable authority in the hands of the executive to make provision for any arrangement by means of secondary legislation. It is silent on how those subject to this arrangement will be treated, and provides no guarantee that the Prison Rules (secondary

¹ Ministry of Justice. (2023). Foreign prison rental to ensure public protection. 3 October 2023. [Foreign prison rental to ensure public protection - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/foreign-prison-rental-to-ensure-public-protection)

² Ministry of Justice. (2023). The Government's approach to criminal justice. The Lord Chancellor, the Rt Hon Alex Chalk KC MP, gave a statement to the House of Commons on criminal justice in England & Wales. 16 October 2023. [The Government's approach to criminal justice - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/the-government-s-approach-to-criminal-justice)

legislation governing crucial issues including use of force, segregation, complaints) would apply. Given the potential human rights implications, any agreement made between the UK and a foreign state should be subject to full Parliamentary scrutiny and oversight, and subject to guarantees of compliance with existing human rights standards and obligations.

2. The context for these provisions is a prison capacity crisis in England and Wales that has brought the system dangerously close to breaking point. Most factors behind the current crisis in capacity were foreseen at least since 2020 and could have been properly planned for and mitigated against. A significant and sustained rise in the prison population was first predicted in the 2020 prisons population projection, which estimated that the population would rise to 98,700 by September 2026.³ The National Audit Office also warned in 2020 that “demand for prison places could exceed supply between October 2022 and June 2023” and this was further exacerbated by plans to increase the minimum sentence length for the most serious offences.⁴
3. This lack of strategic approach means that the prison service has been forced to operate in an almost perpetual state of crisis. To cope, it has pursued short-term expediency over effective long-term planning. This has included a reprieve of prison accommodation which should have been decommissioned decades ago; the use of police cells; the rapid construction of temporary cells; and a staff recruitment scheme working flat out to keep officer numbers stable. Any hope the government would be able to build its way out of the capacity crisis were dashed following the revelation that we are now out of prison places. What had been clear to any objective observer monitoring progress with the government’s prison building plans was belatedly acknowledged in September by “a Whitehall source” that plans to build an additional 20,000 places were unlikely to be completed until 2030.⁵ It remains to be seen whether the range of emergency measures the government has bought forward, including the provisions of this bill, will now enable it to meet the projected demand for prison places in the short and medium term.
4. We welcomed the commitment made by Alex Chalk in his statement on prison capacity to the House of Commons on Monday 16 October 2023 to introduce a new annual statement of prison capacity to be laid before both Houses of Parliament: “This will include a clear statement of current prison capacity, future demand, the range of system costs that would be incurred under different scenarios and our and our forward pipeline of prison build.”⁶ We hope this will be the start of the process by which Parliament and Government begin to take greater responsibility for the impact of their decisions on prisons and penal policy.
5. The Criminal Justice Bill presents an opportunity to place the proposed annual statement on prison capacity on statutory footing. This should include a requirement that the

⁶ Hansard HC Deb. vol.738 cols.59-60, 16 October 2023. <https://hansard.parliament.uk/commons/2023-10-16/debates/50D29A75-C1E4-4FFC-A77D-11BBC20BCD99/PrisonCapacity>

government must not enact policy which will increase prison numbers without assurance that it can provide sufficient capacity and meet minimum standards of decent and humane imprisonment. We would also recommend strengthening the remit of the Sentencing Council to report independently on the impact of sentencing changes made by the government on sentencing practice and the demand for prison capacity.

Impact assessment and evidence base

Prison capacity

6. Much of the impact assessment of the provision is uncertain, including how many additional prison spaces will be created. It states that it is assumed the policy will begin in April 2026 “with immediate ramp up to the full number of places”.⁷ It estimates that the cost of the provision over “the 10-year period ranges from £169.1m for a low scenario of 500 prison places to £338.1m for a high scenario of 1,000 prison places; the best estimate scenario is £202.9m for 600 prison places.”⁸ However, the impact assessment admits these estimates “carry a high degree of uncertainty...the realised impact of this policy may differ substantially to the analysis outlined here”⁹ which is the reasoning for the three potential scenarios outlined. This was indeed the case in the similar scheme between Norway and the Netherlands (see section below for more information), which ended up costing 900m Norwegian Kroner (£68 million in current exchange rates), over three times as much as initial estimates of 270 Kroner (£20.5 million). This scheme only resulted in the transfer of 900 people over a three year period.¹⁰ The impact assessment also admits “there is significant uncertainty regarding the number of prisoners who would be impacted by this option as it is reliant upon the specifics of a partner country agreement.”¹¹

⁷ Ministry of Justice. (2023). *Criminal Justice Bill: Prisons and Offender Management*. p.3. [Criminal Justice Bill: Prisons and Offender Management \(publishing.service.gov.uk\)](#)

⁸ Ministry of Justice. (2023). *Criminal Justice Bill: Prisons and Offender Management. Impact Assessment*. https://assets.publishing.service.gov.uk/media/655291506a650f000dbf48f2/Signed_prisons_IA.pdf

⁹ Ministry of Justice. (2023). *Criminal Justice Bill: Prisons and Offender Management. Impact Assessment*. p.3 https://assets.publishing.service.gov.uk/media/655291506a650f000dbf48f2/Signed_prisons_IA.pdf

¹⁰ Zondag, M HW. (2018). *Norghaven has cost over NOK 900 million – now the disputed agreement is being terminated*. NRK. https://www-nrk-no.translate.goog/norge/norgerhaven-har-kostet-over-900-millioner-kroner-_na-avsluttes-den-omstridte-avtalen-1.13896330?_x_tr_sl=auto&_x_tr_tl=en&_x_tr_hl=en-US&_x_tr_pto=wapp

¹¹ Ministry of Justice. (2023). *Criminal Justice Bill: Prisons and Offender Management. Impact Assessment*. https://assets.publishing.service.gov.uk/media/655291506a650f000dbf48f2/Signed_prisons_IA.pdf

Evidence of mixed results from policies to transfer prisoners to foreign prisons in other jurisdictions

7. Examples of where similar policies have been implemented by other countries to relieve problems of overcrowded and limited capacity have shown mixed results.¹² In the past decade, both Norway and Belgium have rented prison places in the Netherlands to handle problems of overcrowding and limited capacity. Ultimately, neither Norway nor Belgium extended their contracts with the Netherlands. Both schemes were heavily criticised by national and international detention monitoring bodies.¹³ The Norwegian scheme ran for three years from 2015-2018 and the arrangements in Belgium for seven years from 2009-2016. In the case of Belgium, the arrangement did not reduce overcrowding – which continued to get worse.¹⁴ In Norway, demand on limited prison capacity was managed through a ‘prison queue’ system where convicted individuals waited for a period of time before beginning their sentence. The length of time individuals were being forced to wait before starting their prison term had become an issue of political controversy. Therefore, the decision to rent out prison places in the Norwegian case was more to do with reducing the length of this queue than levels of overcrowding. The scheme ended once the queue had been reduced.
8. Denmark has an agreement with Kosovo to rent 300 places for prisoners from non-EU countries due to be deported from Denmark after their sentence.¹⁵ This agreement was criticised by the UN Committee against Torture last month. Many of the concerns raised by the committee are relevant to the provisions of this bill:

“The Committee takes note of the stated intention of the State party to lease a prison facility in Kosovo, and is concerned over the ramifications that this may have on inmates’ access to healthcare and family visits. The Committee is also concerned that although the State party has stated that the prison itself will be subject to Danish jurisdiction, questions remain regarding the disciplinary authority and criminal jurisdiction for acts of torture or ill-treatment which may be committed by prison staff, access of monitoring mechanisms, and investigatory competencies in cases of such allegations.”¹⁶

¹² Liebling, A. et. al. (2021). “Where Two ‘Exceptional’ Prison Cultures Meet: Negotiating Order in a Transnational Prison”. *The British Journal of Criminology*. 61(1). pp. 41-60.
<https://academic.oup.com/bjc/article/61/1/41/5892706>

¹³ Finer, L. *Written evidence to the Justice Committee inquiry on future prison population and estate capacity*, <https://committees.parliament.uk/writtenevidence/126237/html/>

¹⁴ Beyens, K. & Boone, M. (2015). Mixing detention cultures: The Belgian-Dutch case. In D. Drake, R. Earle & J. Sloan (Eds.) *The Palgrave Handbook of Prison Ethnography* (pp. 479-498). Palgrave Macmillan.

¹⁵ BBC News. (2021). Kosovo agrees to rent prison cells to Denmark to ease overcrowding. [Kosovo agrees to rent prison cells to Denmark to ease overcrowding - BBC News](#)

¹⁶ UN Committee against Torture. (2023). *Concluding observations on the eight periodic report of Denmark*.

Commentary of specific clauses

Clauses 25-29: Transfer of prisoners to foreign prisons

9. “Clauses 25 to 29 facilitate the Secretary of State to transfer prisoners held in England and Wales to be housed in an overseas prison in accordance with arrangements made between the UK and a foreign country for all or part of their detention.”¹⁷

Clause 26: Warrant for transfer of prisoner to or from foreign prison

10. Clause 26 provides for the Secretary of State to issue a “warrant” for transfer of a prisoner to or from a foreign prison.
11. Sending UK prisoners abroad raises serious practical, moral, legal and ethical concerns. The charity Prisoners Abroad has spoken out against the proposals, highlighting the levels of “isolation and trauma” caused by “being excluded from opportunities to work and participate in effective rehabilitation programmes”.¹⁸
12. Transferring UK prisoners abroad will have a significant impact on their ability to maintain family ties. The Farmer Review found family relationships to be the “golden thread” to help reduce reoffending.¹⁹ The impact assessment recognises the need to “ensure prisoners’ rights to family life are protected in accordance with Article 8 of the European Convention on Human Rights, including access to visitation on par with what would be provided in HMPPS”. However, it also states “it has not been determined who would bear the cost of these visits”. This is concerning, as we know many prisoners’ families and loved ones already struggle to meet the costs of visits to prisons in the UK.²⁰ They are unlikely to be able to meet the additional costs or logistical challenges involved in visits abroad.
13. There is also no detail in the impact assessment or explanatory notes on how resettlement arrangements will be provided for. Releasing prisoners from foreign prisons back into the community in the UK would pose severe challenges for probation and other services in ensuring that the necessary support is in place on their return. We would recommend excluding people with less than 18 months to serve on their sentence from being held in a foreign prison to give good time for them to be back in the UK in order to sort out resettlement support prior to release.

¹⁷ Ministry of Justice. (2023). *Criminal Justice Bill. Explanatory Notes*. [Criminal Justice \(parliament.uk\)](https://www.parliament.uk/resources/criminal-justice-bill/explanatory-notes/)

¹⁸ Prisoners Abroad. (2023). *Prisoners Abroad’s comment on Alex Chalk’s speech*. 4 October 2023. <https://www.prisonersabroad.org.uk/news/prisoners-abroads-comment-on-alex-chalks-speech-uk-plans-to-rent-space-in-foreign-prisons>

¹⁹ Lord Farmer. (2017). *The Importance of Strengthening Prisoners’ Family Ties to Prevent Reoffending and Reduce Intergenerational Crime*. Ministry of Justice. [6.3664 Farmer Review Report \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/63664/farmer-review-report.pdf)

²⁰ PACT. (2023). *Serving a hidden sentence: The financial and emotional impact of a loved-one’s imprisonment*. [Serving a hidden sentence report \(prisonadvice.org.uk\)](https://www.prisonsupport.org.uk/wp-content/uploads/2023/07/Serving-a-hidden-sentence-report.pdf)

14. In addition, there is no detail in the impact assessment or explanatory notes regarding what type of prisoners will be subject to transfer. The government's equality assessment on this provision states that "the exact cohort will be subject to negotiation and final agreement with a partner country." We are concerned that vulnerable prisoners, including individuals who are pregnant, disabled or have mental health needs or learning difficulties could be subject to transfer. There are currently no explicit safeguards or guarantees to protect against this in the bill.
15. Transfer abroad is likely to pose particular challenges for people on long and indeterminate sentences in terms of (i) access to courses and interventions they need to demonstrate reduced risk; and (ii) access to legal advice and support through the parole process. We would recommend excluding people on long and indeterminate sentences from being transferred to a foreign prison.
16. We are also concerned that there is no detail in the legislation or explanatory notes about how a transfer would impact on a prisoner's access to legal advice, legal remedies for prison-related issues, or their ability to participate in any ongoing legal processes related to their conviction or sentence at home. Being sent abroad would have a significant impact on someone being able to meaningfully participate in any legal process. There is a history in the immigration context of the government legislating to say that people can pursue appeals against being removed/deported, but then having to do so after actually being removed from their home countries. In these cases, the courts have ruled that in practice this is not possible and therefore a breach of the HRA/ECHR.
17. We are further concerned that there is no detail in the bill or explanatory notes as to how a prisoner would appeal a warrant for a transfer to a foreign prison. At the very least, we would recommend introducing a notice period of no less than 28 days from a prisoner receiving notice that a warrant has been issued before it is executed. This would enable them to take any practical steps (such as organising in-person visits with family) before their transfer as well as to take legal advice if necessary.
18. The government needs to make clear which prisoners it intends to make subject to transfer, what criteria will be applied, and how it will ensure prisoners with specific vulnerabilities who it would be inappropriate to transfer are not made subject to the provision.

Clause 28: Oversight of foreign prisons

19. Clause 28 would provide for the Secretary of State to appoint a "controller" role to keep under review, and report to on the running of any rented prison spaces abroad; as well as extending the power of HM Chief Inspector of Prisons to inspect and report on the conditions of any such space.
20. We are concerned that the oversight of both the controller and HM Inspectorate of Prisons will ultimately be subject to negotiation with a relevant partner country (see our commentary on clause 29 below). Reflecting this, the wording in the bill relating to the powers of HM Inspectorate of Prisons differs from the Prisons Act in that it states the chief inspector "may inspect", rather than "shall inspect". The implication is that inspections could only take place by invitation of the foreign state rather than as a

statutory requirement. This leaves open to future negotiation crucial aspects of HMIP's role and methodology such as its ability to conduct unannounced inspections, to speak to prisoners in private, to access records (such as those relating to use of force).²¹

21. This would mean a lower standard of independent scrutiny would be applied to the treatment and conditions for UK prisoners held under such arrangements. It would fall short of the UK's obligations under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) (which establishes requirements for independent detention monitoring, to be conducted by a National Preventive Mechanism). In the UK, the National Preventive Mechanism was established in 2009 and HMIP is one of the bodies designated to it. Amending the bill to ensure that HMIP's role can be performed in accordance with its duties under OPCAT would provide an important safeguard to ensure rigorous independent scrutiny of the treatment and conditions for prisoners held under these arrangements.
22. More generally, questions regarding the oversight of foreign establishments by the UK government and statutory bodies such as HM Inspectorate of Prisons, and Prison and Probation Ombudsman remain unresolved in the legislation. It provides no assurance that the UK's duties under Article 2 of the Human Rights Act could be effectively delivered by coroners, if anyone subject to this arrangement were to die. Questions also remain regarding the disciplinary authority and criminal jurisdiction that foreign prisons will be subject to under an arrangement. Experts have warned of an accountability gap and legal vacuum which could open up for prisoners held under any agreement. This would leave them without sufficient protection from potential ill-treatment and also call into question the UK's compliance with its human rights obligations.²²
23. For instance, what if an individual had an actionable case against the foreign prison establishment? Would that be dealt with under the domestic law of the host state using host state legal processes? What if those laws and processes aren't equivalent to those available to people imprisoned in the UK? This would seem to be at least arguably discriminatory against people transferred and is likely to engage protections under the Human Rights Act and European Convention on Human Rights.
24. The bill should be amended to ensure that it is the UK's responsibility to investigate and bring to justice any ill treatment or torture should it occur under this arrangement, in line with the UK's obligations under the Human Rights Act and UN Convention against Torture. It should also require that any prisoner transferred to serve their sentence in a foreign country would have to be held in conditions and have access to equivalent conditions and the same quality and range of services afforded to prisoners held in England and Wales as mandated under Prison Rules 1999. As it stands, nothing in the bill and related documents give any indication that the same legal standards and rights in relation to treatment of prisoners (as set out in the Prison Rules) would apply.

²¹ See also <https://committees.parliament.uk/writtenevidence/126237/html/>

²² *Finer, L. (2023). Renting prison space overseas: an accountability gap waiting to happen.* 9 October 2023. <https://www.thejusticegap.com/renting-prison-space-overseas-an-accountability-gap-waiting-to-happen/>

Clause 29: Power to make further provision about transfer of prisoners

25. Clause 29 would allow “for the Secretary of State to make further provision in secondary legislation, including to amend existing primary legislation to facilitate the implementation of any arrangement to transfer prisoners to a prison overseas.”²³
26. We are concerned that this clause does not provide for adequate parliamentary oversight of any potential future arrangement between the United Kingdom and a foreign country. It leaves crucial issues unresolved and subject to a negotiated agreement with another (as yet undecided) state with little or no parliamentary oversight. These concerns were raised by the Justice Committee in its letter to the Secretary of State for Justice on 29 November 2023.²⁴

Setting aside the merits of the policy of transferring prisoners abroad, it is clear that whether or not an arrangement would be acceptable would depend on the country in question and the substance of any arrangement. However, under the current proposals in the Criminal Justice Bill, there is a real risk that a future government could enter into agreement with a foreign country and then implement that agreement through the power in Clause 29 without either the House of Commons or the House of Lords having had the chance to decide whether to assent to the agreement. It is difficult to see how Members can assess these provisions without knowing which countries prisoners might be sent to. As a result, we would suggest that legislative safeguards should be included in the Bill to allow scrutiny of any agreement made with a foreign country to transfer prisoners.

We are concerned that an agreement on prisoner transfer would not necessarily take the form of an international treaty which is subject to ratification and therefore would not trigger the requirements set out in Part 2 of the Constitutional Reform and Governance Act 2010 (Crag). If the Government were to use a Memorandum of Understanding as opposed to a treaty which is subject to ratification, then this would provide limited opportunities for parliamentarians and civil society to scrutinise any proposed agreement. The recent example of the Government’s Memorandum of Understanding between the UK and Rwanda for the provision of an asylum

²³ Ministry of Justice. (2023). *Criminal Justice Bill. Explanatory Notes*. [Criminal Justice \(parliament.uk\)](https://www.parliament.uk/publications/42377/documents/210561/default/)

²⁴ Letter from the Justice Committee to the Lord Chancellor & Secretary of State for Justice, dated 29 November 2023. committees.parliament.uk/publications/42377/documents/210561/default/

partnership arrangement is instructive. We would concur with the House of Lords International Agreements Committee's conclusion that "there is a substantial lacuna in the parliamentary scrutiny of international agreements as significant MoUs are not subject to any formal scrutiny processes". Given the potential significant human rights implications of any prisoner transfer agreement, we would like to seek a reassurance that any agreement under this Bill would take the form of a treaty to which CRAG applies rather than a memorandum of understanding.

To strengthen parliamentary oversight of any future transfer of prisoner agreement with a foreign country, we would also ask that the Government include a provision in the Criminal Justice Bill to require that any agreement on prisoner transfer be laid before each House of Parliament and be approved by a resolution of the House of Commons before the power in Clause 29 can be used.

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