

Prisons and Courts Bill

Equalities Statement: Prison Safety and Reform

Purpose of this Document

1. The document is a statement of how the Ministry of Justice (MoJ) has demonstrated due regard to the Public Sector Equality Duty (PSED) in the design, development and proposed delivery of Prison Safety and Reform. It includes consideration of existing known equalities issues, which formed part of the legacy prisons landscape and documents the steps that MoJ has undertaken in order to demonstrate its compliance with the three limbs of the PSED, when designing and implementing the Programme reforms.
2. The document assesses the potential equalities benefits and risks that have been identified from the key measures in the life of the Programme so far. It considers any necessary mitigating actions which have either been proposed or introduced to reduce the likelihood of the risks; and includes an assessment of any equalities benefits that are likely to accrue.
3. Some of the policies that we are proposing will be developed in further detail in due course. This document also sets out our commitment to continue to pay due regard to the PSED as the detail of our proposals are designed. In some cases this will include further equalities assessments specific to that policy area.

Equality Duty

4. Under the [Equality Act 2010](#)¹, when exercising its functions, the MoJ has an ongoing legal duty (known as the Public Sector Equality Duty – PSED) to pay due regard to the need to:
 - I. eliminate unlawful discrimination, harassment and victimisation and other prohibited conduct under the Equality Act 2010;
 - II. advance equality of opportunity between different groups of persons who share a protected characteristic and those who do not; and
 - III. foster good relations between different groups.
5. We also recognise that, as well as having an obligation not to directly or indirectly discriminate against disabled people, MoJ as a service provider has a duty to make reasonable adjustments for disabled people.
6. The payment of due regard to the PSED needs to be considered in light of the nine protected characteristics:
 - I. Race
 - II. Sexual Orientation
 - VI. Gender Reassignment
 - VII. Disability

¹ http://www.legislation.gov.uk/ukpga/2010/15/pdfs/ukpga_20100015_en.pdf

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|---------------------------------|-------------------------|
| III. Marriage/Civil Partnership | VIII. Age |
| IV. Gender | IX. Pregnancy/Maternity |
| V. Religion or Belief | |

Ministry of Justice Equality Objectives

7. The MoJ is committed to ensuring that equality remains at the heart of everything that it does. This includes how it designs and delivers its policies and achieves its obligations to the public, how it procures and commissions from others and how the MoJ acts as an employer.
8. As part of its work to ensure that the principles of the PSED are embedded within every aspect of its work, the MoJ published its [Equality Objectives for 2012-16](#).² This document has recently been updated to reflect the overall progress that the Department, together with its associated arm's length bodies, has achieved against those objectives.

Our Equality Strategy in Prisons

9. MoJ and the prison service are committed to fairness and equality of opportunity. We insist on respectful and decent behaviour from staff, offenders and others with whom we work. We recognise that discrimination, harassment and bullying can nevertheless occur and we take prompt and appropriate action whenever we discover them.
10. The prison population is diverse and our commitment to advancing equality and responding to individual need is reflected in a number of ways.
11. The NOMS (National Offender Management Service) Equality Strategy 2015-17, which includes both the prison service and probation, has a series of high-level objectives supported by a clear delivery plan. It will be renewed next year to consolidate a 'whole system' approach to advancing equality.
12. The quarterly Equality Sub Committee is attended by senior leaders representing each Directorate. The Sub Committee provides strategic oversight of activity, drives performance, and monitors delivery of the further improvements we require.
13. Until now, before prison service policies were implemented, an Equality Impact Assessment has been carried out.³ This requirement will shortly be replaced through the publication of an Agency Instruction, mandating an approach whereby, from the earliest stages of planning, equality considerations must demonstrably influence policy development and be documented in the form of an Equality Analysis. We will develop guidance and support for governors who will be developing policies locally to highlight key factors in good decision making and make sure they and their senior staff are aware of their equalities duties.

² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/341092/moj-equality-objectives.pdf

³ See Prison Service Instruction 10/2011 EIAs for Policy.

https://www.justice.gov.uk/downloads/.../psipso/psi.../psi_2011_32_ensuring_equality

14. Reforms to the prison estate are being developed to reflect the composition of the prisoner population, which includes a significant number of prisoners who may have a learning disability, a disproportionate number of those from a BAME background and an increased number of older prisoners. Reforms also include the need for a distinct approach to women and the need to do more to support young adults in custody.
15. Within the reforms we are developing, there is a shared commitment to recording, through the process of Equality Analysis, how considerations of equality have informed thinking. This will serve to demonstrate compliance with the three limbs of the PSED, and show how, from the start, proactive attention to equality has influenced decision making and the quality of the systems and provisions under design.
16. Furthermore, the prison service seeks to manage the requirements of Welsh speaking prisoners and staff, in prisons in England and Wales and on community orders and licenses in Wales, based on the principle of equality for English and Welsh. This applies to the functions that our prisons deliver directly as well as functions and services provided by others on our behalf.

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Equalities Assessment

17. From the initial inception of the Prison Safety and Reform Programme, the MoJ has ensured that work to develop and implement the reforms has been carried out in accordance with the PSED set out in the Equality Act 2010, considering due regard against the nine protected characteristics that have been set out under *Ministry of Justice and the Public Sector Equality Duty*. Careful consideration of potential equalities issues has been undertaken at each stage of the policy development and decision making process. Timely advice on potential equalities implications has been provided to Ministers to support key decision points in the programme. The PSED is an ongoing duty and the equalities implications of decisions for reform continue to be kept under review.
18. Prison Safety and Reform proposals cover the whole adult prison estate, which includes young adults (18 to 20-year olds) and both the male and female estate. We have looked at the distribution of protected characteristics among offenders in the prison population and compared these to the distribution in the general population.
19. Offenders with certain protected characteristics are over-represented in the prison population when compared to the general population and therefore more likely than other groups to be affected by the reform measures:
 - I. Those who are male;
 - II. Those aged between 18 and 39;
 - III. Those with a disability;
 - IV. Those with a Black or Black British ethnicity, or from a mixed ethnic group;
 - V. Those who are Muslim.
20. Annex A sets out the current equalities data for the prison population.
21. The population is diverse and our approach has to take this into account. We know, for example, that many female offenders have complex needs and are often very vulnerable members of society. There is growing evidence that a gender specific approach is most effective in helping women to address the issues that may underlie their offending and to turn their lives around. We will therefore publish a strategy setting out how we will improve the management of female offenders in custody and in the community. This will look at how we can reduce the number of women offending and sent to custody, including through early and targeted interventions.
22. Equally, it is well-recognised that young adult men (between 18 and 20 years old) have distinct needs to older male offenders. Encouragingly, their number has decreased by 42% since 2011 and they now account for only one in twenty of the custodial population. Once in custody, however, they are over-represented in figures for assaults, both on other prisoners and on staff, and for self-harm. When they are released, they are significantly more likely to reoffend than older adult males. With the majority now being held in establishments that are designated as both a prison and a Young Offender Institution (YOI), the original purpose of their sentence - Detention in a Young Offenders Institution - has become less distinct.

23. Following the publication of Lord Harris' Review on self-inflicted deaths in custody of 18-24 year olds in 2015⁴, and the government consultation on the management of young adults in custody in 2013⁵, there is a fresh imperative to re-assess how we manage this group. We are reflecting on the management of young adults within the Criminal Justice System (CJS) and will consider carefully the report of the Justice Select Committee (JSC) on them. We need to provide a greater focus on their safety, their experience of activities that support their preparation for life after prison and their education. We also need to manage more effectively their transition from prison to the community, or for those on long sentences, their transition from provision for under 18s, including mental health services and youth custody, to adult provisions that might not be the same as what they are used to.
24. We are also looking at the issue of race in the CJS. David Lammy's independent review of Black Asian Minority Ethnic (BAME) men and women in the CJS makes recommendations for improvement with the ultimate aim of reducing the proportion of BAME offenders in the CJS. Emerging findings are expected to be published this month, with the final report of the review due in Spring 2017. We will consider the recommendations of the David Lammy review following publication and we are also aware of the findings of the Young Review on *'Improving outcomes for young black and/or Muslim men in the Criminal Justice System'*. We believe that many of the policies we are introducing will improve results for groups of offenders with particular protected characteristics, including black and Muslim men. This includes, for example, the new model for how we manage prisoners through the custodial part of their sentence, which gives every prisoner a dedicated officer who can engage with them one-to-one.
25. There is limited data available to the MoJ and the prison service on the prevalence of protected characteristics across the prison population as well as prison staff. This has impacted our ability to quantify the potential impacts of the Prison Safety and Reform Programme. We have taken steps to obtain additional or better quality data where possible and to ensure that more comprehensive information will in future be made centrally available as a matter of course. Improving data coverage for prisoners is a published NOMS equality objective⁶, and it is a priority to roll out a renewed campaign to increase rates of declaration among prison staff. Improved data capture will continue to better inform our reforms, including those that impact on prisoners and staff with particular protected characteristics.
26. Many of the policies being proposed will be rolled out across England and Wales and their development will include working in partnership with the Welsh Government and NOMS Cymru. This is particularly the case in advance of the opening of HMP Berwyn, the largest public sector prison in Wales and England in 2017. Our consideration of equalities includes ensuring that our policies are developed and implemented in line with MoJ and NOMS Welsh Language Schemes.

⁴ Harris, T. (2015). *Changing Prisons, Saving Lives*. Report of the Independent Review into Self-inflicted Deaths in Custody of 18-24 year olds. London: HMSO.

⁵ <https://consult.justice.gov.uk/digital-communications/young-adults>

⁶ [Source: National Offender Management Service Business Plan 2014-2015](#)

Summary of Programme Objectives

27. The Prison Safety and Reform Programme was established to address the growing challenges to the prison system. There are sustained and serious pressures from security threats and rising levels of violence. In order to lay the right foundations to build prisons that are places of reform we need to improve safety and security in our prisons and provide them with the men and women needed on the front lines to bring safety and discipline back to the wings. We are giving governors more authority so they can do more to help offenders turn their lives around: for example, by getting offenders off drugs and giving them the right education or work skills.

28. This system-wide reform programme is underpinned by a number of legislative changes designed to ensure clarity of purpose, transparency and accountability throughout the prison system, and to provide the necessary support to deliver our programme of improvements to security. The proposed legislative measures are as follows:

- I. **Creating a statutory purpose for prisons and clarifying the role of the Secretary of State:** we will define in statute the purpose of prisons which will encompass public protection, safety, reform of offenders and preparation for life outside prison; and modernise the existing provisions on the role of the Secretary of State to make clear her responsibility for overseeing and managing the system as a whole. We will also align the requirement for the Secretary of State to report to Parliament with this, setting out a requirement to report on how the purposes are being met. This will create clear outcomes the prison system is expected to deliver and ensure the Secretary of State can be held effectively to account for these.
- II. **Strengthening scrutiny including the role of the Inspectorate:** We will legislate to add to the remit of HMIP so that in addition to their broad focus on the treatment of prisoners, they take into account the statutory purpose of prisons and how they are achieving those purposes. We will also require inspections to include consideration of how the leadership of a prison is contributing to the achievement of the outcomes.
 - a. To increase the impact of inspections we will create a requirement for the Secretary of State or governor to respond to findings of an inspection within a certain timescale and provide that the Inspectorate's findings can act as a trigger for the Secretary of State to take action in cases of poor performance.
 - b. Unusually for an inspectorate, HMIP does not have statutory powers to enter premises or access documents. We will rectify this so that HMIP has the right tools to conduct comprehensive inspections.
 - c. In the context of increasing deaths in custody, we will put the Prisons and Probation Ombudsman on a statutory footing giving a firmer basis for the critical functions of investigating deaths and complaints in custody.
- II. **Strengthening prison security to underpin the wider reform agenda with the following provisions:** these measures will support our wider work to improve security, enabling a stronger and more rapid response to emerging threats. The measures will:

- a. enable us to test prisoners for all psychoactive substances, as defined in the Psychoactive Substances Act 2016, in addition to all controlled drugs and other specified substances (powers that exist already); and
- b. new powers to allow the Secretary of State to authorise public communications providers to interfere with wireless telegraphy on the secure estate.

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Policies and their Equalities Impact

29. Throughout the development and design of the Prison Safety and Reform Programme, we have ensured that key design decisions and implementation steps have been informed by consideration of the potential equalities implications.
30. We have sought to ensure that our approach eliminates the potential for unlawful discrimination, harassment and victimisation. Where potential areas of concern have been identified, we have assessed the possible implications of our approach and applied appropriate and proportionate mitigations to reduce or remove the risk of unlawful discrimination.
31. We have also taken steps to advance equality of opportunity for different groups of people with protected characteristics affected by the Prison Safety and Reform Programme in response to the existing evidence of the differing experiences of offenders and staff with shared protected characteristics within the CJS. Where possible and relevant we have sought opportunities to introduce system changes that will assist in fostering good relations between different groups.
32. We do not consider there to be a risk of harassment or victimisation as a result of these proposals. Whilst we recognise that harassment and victimisation can sometimes occur, we have existing policies and processes in place to take prompt and appropriate action whenever we discover them.
33. We aim to ensure all our staff and offenders within our care are treated fairly and equally. The proposals will help prevent instances of harassment and victimisation through the provision of equalities guidance and training including unconscious bias training to governors and senior managers; and developing minimum mandatory requirements that all prisons must follow.
34. The following sections summarise the equalities considerations (with regard to protected characteristics as defined by the Equality Act 2010) identified through this work. In cases where the potential for inequality of opportunity or the risk of unlawful discrimination was identified, the mitigating actions that have been introduced are discussed. There are also places where opportunities to advance equality have been taken.

Accountability and scrutiny

35. We plan to overhaul how the system is configured to make lines of accountability clear, ensuring that prison governors and their staff have absolute clarity about their role, the aims of the various inspectorates and scrutiny bodies, and the consequences of failing to meet the requirements placed on them.
36. We will do this by:
- I. Creating a statutory purpose for the prison system by the end of this Parliament, subject to the passage of legislation.
 - II. Clarifying the role of the Secretary of State in overseeing and managing the prison system;
 - III. Ensuring inspection and other scrutiny arrangements are sharper,

Identified Equalities Risks, Mitigations and Benefits

37. Our plans to ensure the right framework for improvement is in place are not directly discriminatory within the meaning of the Equality Act 2010 as they apply equally to all. We will continue to take equality impacts into account as they develop, including with regards to defining the statutory purpose of prisons, the role of the Secretary of State, and with regards to discharging the functions of the Secretary of State.
38. Inspection and scrutiny processes will not distinguish between types of prison. The same high standards of HM Inspector of Prisons (HMIP) and the Prisons and Probation Ombudsman will apply to all prisons.
39. There is a small risk that some actions may have impacts with the potential to be indirectly discriminatory and this section sets out the risks we have considered and how we plan to mitigate them.

Eliminating Unlawful Discrimination - Risks and Mitigations

40. With regards to legislation for a clear statutory purpose for prisons, we will consider this with regard to PSED. In mitigating any potential risks, we will ensure that processes and training are in place to ensure that governors are aware of their equalities duties and ensure these are considered fully where local decisions are taken. We will embed our duty under the PSED and duties to make information available and set equality objectives as set out in MoJ Equality objectives into operating arrangements and enable prisons to be held to account for their approach to equality and delivery impact.
41. HMIP is a public authority for the purpose of the PSED. They will continue to be able to design their inspection to take into account different groups. For example, as part of its current expectations of adult prisons, HMIP assesses whether *'The prison demonstrates a clear and coordinated approach to eliminating discrimination, promoting equitable outcomes and fostering good relations, and ensures that no prisoner is unfairly disadvantaged'*. HMIP also tailors their inspection criteria to the prison cohort, for example they have a 'women's expectations' for inspecting female prisons.

Advancing Equality of Opportunity - Benefits

42. Sharper inspection and scrutiny will include taking steps to ensure that HMIP is able to maintain existing standards of prisons and recommend improvements wherever possible to flexibly investigate and account for the experiences of offenders with protected characteristics. They will have flexibility to tailor inspections to specific cohorts of offenders with protected characteristics to appropriately consider their specific needs.

Safe and secure prisons

43. We will improve the way that prisoners are managed in custody and make sure that prison officers and staff operate not just as security guards and minders but also as mentors, investing in relationships and running effective interventions. As part of this, we will tackle the most pressing threats to security in prisons, strengthening our search capability and improve our approach to tackling illicit items such as drugs, mobile phones and drones.

44. We will do this in the Bill by:

- I. Adopting the definition of 'psychoactive substances' used in the Psychoactive Substances Act 2016 to ensure that we can test for new compounds meeting this definition as they are identified. Under the current framework, while it is possible to add newly identified drugs by secondary legislation so there is a legal power to test for them, in the case of psychoactive substances the composition of the drugs is constantly changing and this change will enable us to respond more quickly.
- II. Enabling the Secretary of State to authorise directly public communications providers (PCPs), who have the technical knowledge and capability to interfere with signals most effectively, to interfere with wireless telegraphy by preventing, detecting, or investigating the use of mobile phones in prison. Whilst this can currently be achieved under the auspices of the authority given to a governor, via the PCPPCP operating as the governor's agent, we are making this legislative change so that a clearer line of accountability is set down in legislation.

Identified Equalities Risks, Mitigations and Benefits

45. Our proposed legislative changes to adopting the generic definition of 'psychoactive substances' and authorising PCPs to interfere with illegal mobile phones in prisons will apply to all prisoners, regardless of whether they have protected characteristics, and so are not directly discriminatory. Again, we expect the impact of both of these changes to be positive in contributing to safer and more secure prisons by helping to tackle two of the major identified threats to safety and security.

Eliminating Unlawful Discrimination - Risks and Mitigations

46. Although our proposals on testing for psychoactive substances will be applied in the same way throughout the prison estate, we are conscious that the proposals may impact on some groups with protected characteristics because they may be over-represented in those activities that the policy is targeting.

47. Adopting a broader definition of 'psychoactive substances' is designed to speed up the process of testing for new compounds by avoiding the need for subordinate

legislation to allow testing for these specific substances. As such, it will not change drug testing policy or practice, as the same compounds will be tested for with or without the legislation. There will therefore be no impact of this policy on groups with protected characteristics, as drug testing policy applies equally to all prisoners.

48. We do not consider it likely that increased interruption of mobile phones will adversely impact on particular groups. We do not currently have evidence that any groups with such characteristics make greater or lesser use of illicit mobile phones than others, though we will consider carefully any evidence that emerges in future. More broadly, we will continue to ensure that other, authorised methods of maintaining family contact are in place e.g. using in-cell/prison phones, visits, letters, family days, etc.

Fostering good relations between different groups - Benefits

49. We have considered the implications on fostering good relations and suggest that many of the proposals aimed at improving the safety and security of our prisons will support this limb of the duty. Overall, we expect the measures to improve the culture of prisons and relationships between different groups of offenders with protected characteristics.

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Annex A - Representation of protected characteristics

Set out below is a summary of the current equalities data for the prison population.

Figure 1 *Prison Population Demographics*

		Prison Population⁷	General Population⁸
AGE	<30	36.8%	23.5%*
	18-20	5.4%	
	21-24	12.8%	
	25-29	18.6%	
	30-39	29.6%	15.9%
	40-49	18.0%	16.7%
	50-59	9.7%	15.8%
	60+	5.2%	28.2%
	TOTAL for those declared	85,134	47,572,300
GENDER	Female	4.5%	50.7%
	Male	95.5%	49.3%
	TOTAL for those declared	85,134	57,885,400
ETHNICITY	White	74.0%	86.0%
		14 prisoners per 10,000 general population	
	BAME	26.0%	14.0%
	Mixed	4.3%	2.2%
		4 per 10,000 general population	
	Asian/Asian British	8.1%	7.5%
		15 per 10,000 general population	
	Black/Black British	2.4%	3.3%
		55 per 10,000 general population	
	Chinese Other Ethnic	1.2%	1.0%
	6 per 10,000 general population		
TOTAL for those declared	84,579	56,075,912	
DISABILITY	Yes	33.6%	17.9%
	No	66.4%	82.1%
	TOTAL for those declared	2,162	56,075,912
RELIGION	Christianity	48.9%	63.9%
	No Religion	30.8%	27.1%

* excludes ages 0-15

⁷ (i) [Offender Management Statistics Quarterly: January to March 2016 with prison population as at 30 June 2016](#)
(ii) [Prison receptions by Marital Status and Disability - Surveying Prisoner Crime Reduction Survey 2005-2006](#)
(iii) [Statistics on Race in the Criminal Justice System 2014](#)

⁸ (i) Age and Gender estimates - [Population Estimates for UK, England and Wales, Scotland and Northern Ireland: mid-2015](#)
(ii) [ONS 2011 Census Data](#)

	Other Religion (Non-Christian)	20.3%	9.0%
	Im	14.9%	5.2%
	TOTAL for those declared	85,025	52,037,880
SEXUAL ORIENTATION		No published information.	
MARITAL STATUS	Single, never married	54.7%	34.6%
	Living with a partner	26.7%	
	Married	10.5%	46.6%
	Divorced	5.4%	9.0%
	Separated	2.4%	2.6%
	Widowed	0.4%	7.0%
	TOTAL for those declared	2,169	45,496,780
PREGNANCY AND MATERNITY		No published information.	
GENDER REASSIGNMENT		No published information.	

N.B. Figures may not sum due to rounding.

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