



Lord Carter's
Review of Prisons

Securing the future

**Proposals for the efficient and sustainable
use of custody in England and Wales**

December 2007



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House of Lords
London
SW1A 0PW

5th December 2007

Prime Minister
Chancellor of the Exchequer
Lord Chancellor and Secretary of State for Justice

Review of the Prison System in England and Wales

In June this year you asked me to consider options for improving the balance between the supply of prison places and demand for them and to make recommendations on how this could be achieved.

I enclose my final report with my proposals for how to resolve the current and historical pressures facing our prison system.

The increased prison population of the past decade is a result of a concerted and successful effort to catch, convict and detain for longer periods the most dangerous and serious offenders. However, the causes and symptoms of the current problems and pressures facing our prisons demonstrate to me and to those I have consulted with that we need a long term strategy to create an affordable and sustainable solution to the limitations in the way we create demands on our custodial resources and then respond to them.

The proposals that I am making to you today are intended to provide you with a long term strategy as well as suggestions for measures to manage the immediate pressures that the prison system faces.

My key recommendations are:

- a significant expansion of the current prison building programme should begin immediately so that up to 6,500 additional new places, on top of the significant expansion already planned, can be provided by the end of 2012;
- larger, state of the art prisons should be planned and developed now so that from 2012 there can be approximately 5,000 new places that will allow for a programme of closures of old, inefficient, and ineffective prisons offering better value for money and much improved chances of reducing re-offending and crime;
- that a structured sentencing framework and permanent Sentencing Commission should be developed, with judicial leadership, to improve the transparency, predictability and consistency of sentencing and the criminal justice system; and
- there are grounds for a more efficient approach to the way operations and headquarters' overheads are structured and managed.

The pressures now facing the prison system inevitably mean that I have to recommend that the current building programme has to be accelerated and expanded. In addition to the expansion of prison capacity, I believe that you should make immediate changes to existing sentencing legislation to modify the use of custody for certain types of low risk offenders and offences and encourage use of alternative remedies, in accordance with your strategy for reserving custody for the most serious and dangerous offenders.

Changes in governance and organisational arrangements are needed to aid the delivery of this large, costly and complex package. The major challenges that these changes will need to address are the management of the expanded construction programme, achieving greater financial control across the prison system and standardising the way that the services provided by public and private sector prisons are specified and monitored.

The issues I explore in my report will continue to be an important agenda for you and the public. The debate around prison must be conducted in a focussed and informed manner which is why above all other recommendations I hope government, parliament and judiciary can work together to establish rapidly a working group to look at the advantages and feasibility of a structured sentencing framework and permanent Sentencing Commission for England and Wales. I have separately written to the judiciary setting out my proposals on this significant and important issue.

I would like to thank all those people who have contributed to my review, including those that work in and manage our prisons system, from across the public and private sectors. They provide an essential public service that contributes significantly to the security and well-being of society.

I would also like to thank David Gregson who has provided me with advice throughout the review. And finally I am extremely grateful to my review team: Jeremy Marlow, Daniel Flury, Alex Furse, Ian Maris, Camilla Hamilton, Caleb Deeks, Christine Dickinson, Lorna Maden, Nisha de Silva, Jenny Maresh, Ruth Allan, Helen Judge and Melissa Case, who provided me with expert advice, opinion and analysis.

A handwritten signature in black ink, reading "Carter of Coles". The signature is written in a cursive, flowing style.

LORD CARTER OF COLES

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Executive Summary

- On 16th November 2007 the prison population (including those in police cells) stood at a record 81,547. Current projections indicate that the population will continue to increase and could reach more than 100,000 by 2014.¹
- Since June 1995 the prison population in England and Wales has increased by 60%, or more than 30,000, to reach the record levels of population seen today. As a result of this, England and Wales has the highest prison population per capita in Western Europe.²
- Successive governments have responded to this unprecedented demand for prison places by embarking on large and ambitious building programmes. These programmes have seen capacity increase from 53,000 in 1995 to 81,500 in November 2007. The capacity of the penal estate is currently set to increase to 89,000 by 2014.
- However, government population projections indicate that further increases in capacity are unlikely to meet the likely growth in demand for places in the short, medium and long-term. So much so, that by June 2014, the demand for prison places could outstrip the supply by as much as 13,000 places.
- The public and government are thus faced with the choice as to whether to increase continually the sums of public expenditure devoted to imprisonment or better to plan for, manage and use custody in a way that not only ensures the protection of the public and the punishment of offenders but also the reduction of re-offending.
- Continuously responding to an increasing prison population in this way is not only costly, but early release measures inevitably affect confidence and the integrity of sentences and the criminal justice system as a whole.
- The problems in understanding and responding to the rising prison population have been due to the need for a more effective, integrated and transparent planning mechanism that reconciles prison capacity with criminal justice policy. Without this, there is too little predictability in the effect of sentencing decisions and the other drivers on the prison population and penal resources.

Addressing the population pressures: Increasing capacity and building out inefficiencies

- In addition to the current 8,500 capacity programme, up to a further 6,500 prison places should be constructed to increase capacity by 2012, including a large modern 'Titan' prison. This construction programme is essential to maintain public confidence in the criminal justice system, but contains a number of unconventional measures that will continue to further delay the delivery of efficiencies within the prison system.
 - Current and future inefficiencies within the prison system should be tackled by modernising the estate through the provision of a further two large 'Titan' prisons (approx 2,500 places each) that will, over time, allow for the reduction of inefficient and decrepit prison capacity.
 - An estates strategy should be produced that deals with all offenders and, in particular the specific needs of women and juvenile offenders, improves the strategic and operational management of the prison estate and offers better value for money for the taxpayer.
 - An independently chaired board should be established to oversee the delivery and the financial management of existing and future capacity programmes. This board will report directly to the prisons minister and permanent
- The management of the prison population**
- The unprecedented demand for prison places has forced the government to increase capacity of the penal estate through emergency measures such as the usage of police and court cells, the 'end of custody licence' (ECL) scheme and a rapid building programme that, whilst increasing capacity, also does not help improve efficiencies in the prison system.

¹ De Silva, N et al., Ministry of Justice Statistical Bulletin: Prison Population Projections 2007–2014, August 2007.

² Home Office World Prison Population Lists.

secretary and manage the delivery of the significantly enlarged capacity programme.

Addressing the population pressures: improving the way custody is used

- The government should immediately implement a package of measures that could moderate the demand for custody by between 3,500 – 4,500 places by 2014 in accordance with the government’s strategy to reserve custody for the most serious and dangerous offenders.
- The government should establish a working group to consider the advantages, disadvantages and feasibility of a structured sentencing framework and permanent Sentencing Commission and report to the Lord Chancellor and Lord Chief Justice by summer 2008. A framework and Commission could allow for the drivers behind the prison population to be addressed and managed in a transparent, consistent and predictable manner through the provision of an indicative set of sentencing ranges.
- A structured sentencing framework proposal does not mean that individual sentencers have to have regard to resources at the time they sentence in individual cases.

Improving the operational efficiency and financial control of the prison system

- The prison system has performed well in improving the safety and decency in prison as well as the management of offenders. However, each prisoner costs the taxpayer, on average, £37,500 per year. This appears to be expensive in contrast to other jurisdictions such as Australia, New Zealand and the US, although direct cost comparisons are difficult to make.
- Financial controls need to be improved. A standardised operating model needs to be created to address the widespread variety in staffing levels, regime provision and costs within HM Prison Service. This should be accompanied by a zero based costing model to allow a better understanding of the cost and value of places and activities within the prison system. These models

should underpin service level agreements or contracts with every prison or prison cluster to improve levels of efficiency, benchmark performance and ensure best value in the prison system.

- In addition, there should be a programme of market testing of primarily new capacity and activities to improve levels of contestability and innovation in the prison system. Moreover, the modernisation of the HM Prison Service workforce is long overdue in order to address the costly, outdated and inflexible pay and grading structure that currently exists.

Improving governance and delivering reforms

- The government faces challenges in delivering these reforms. Managing and running prisons is complex and challenging especially against a backdrop of record levels of population, a tight financial settlement and sensitive industrial relations.
- To ensure the successful delivery of the above, an implementation board should be established with strong non executive membership, chaired by the Ministry of Justice’s permanent secretary, to drive forward the delivery of the recommendations.
- This board should be supported by the regular publication of information setting out the detailed cost of both public and private sector prisons. This information should include details of places, activities and administrative functions.
- The Review’s vision is for a prison system which encourages innovation, efficiency and competition but with a clear line of accountability from the prisons minister to prison officer. The structure and focus of the prison system should, over time, be reconfigured to increase the focus on both service delivery and offender management.
- These changes are difficult and complex but experience has shown many times during the last fifty years that effective management of the prison system is critical to the integrity of the criminal justice system as a whole.

1. The pressures facing the prison system

1 Given the nature of certain crimes, there will always be a need for sufficient prison places to protect the public from serious and dangerous offenders. This is reflected in government policy which states that prison should be reserved for serious and dangerous offenders alongside the greater use of a framework of effective community sentences.¹

2 Imprisonment is resource intensive and must be used appropriately. In 2005/06, the cost per prisoner in England and Wales was approximately £37,500.² Total penal expenditure has increased from £2.843bn in 1995 to £4.325bn in 2006 (all at 2006 prices). These increases not only reflect the growth in the prison population and increases in the probation caseload but also improvements in the safety and decency including drug treatment in prisons in England and Wales.

3 It is therefore the role of the government to ensure that the resources available are effectively targeted to allow for the purposes of sentencing,³ including the punishment of offenders and the reduction of re-offending, to be achieved either in the community or in a safe, decent and humane penal environment.

The prison population

4 On 16th November 2007 the prison population (including those in police cells) was 81,547,⁴ the highest on record. Current projections indicate that the population will continue to increase and could reach more than 100,000 by 2014.⁵ Since June 1995 the prison population in England and Wales has

increased by 60%,⁶ (more than 30,000, see Figure 1.1). As a result of this England and Wales has the highest prison population per capita in Western Europe.⁷

5 Other countries in the developed world have also experienced large increases in prison population, as shown in Table 1.1.

Country	Percentage increase in prison population since 1995 ⁸	Prison population per 100,000 of the population in 2007 ⁹
England and Wales	60%	148
France	1%	85
Germany	16%	96
USA	42%	750
Canada	-11%	107
Australia	48%	125
New Zealand	68%	183
World median	-	125

Drivers of the prison population

6 There are a number of factors behind the increase in the prison population in England and Wales since 1995. They include both legislative and non-legislative elements which, in some cases, overlap with each other.

¹ *Confident Communities in a Secure Britain and Penal Policy – a background paper*, Ministry of Justice, 2007.

² Costs figures are based on the total cost of prisons (both public and private) and expenditure met by HMPS and NOMS centre (e.g. prison property, prisoner escort services, IT). They include adult prisons and Young Offenders Institutes but exclude health and education expenditure.

³ As set out in the Criminal Justice Act 2003.

⁴ www.hmprisonservice.gov.uk

⁵ De Silva, N et al., August 2007, Ministry of Justice Statistical Bulletin: Prison Population Projections 2007–2014.

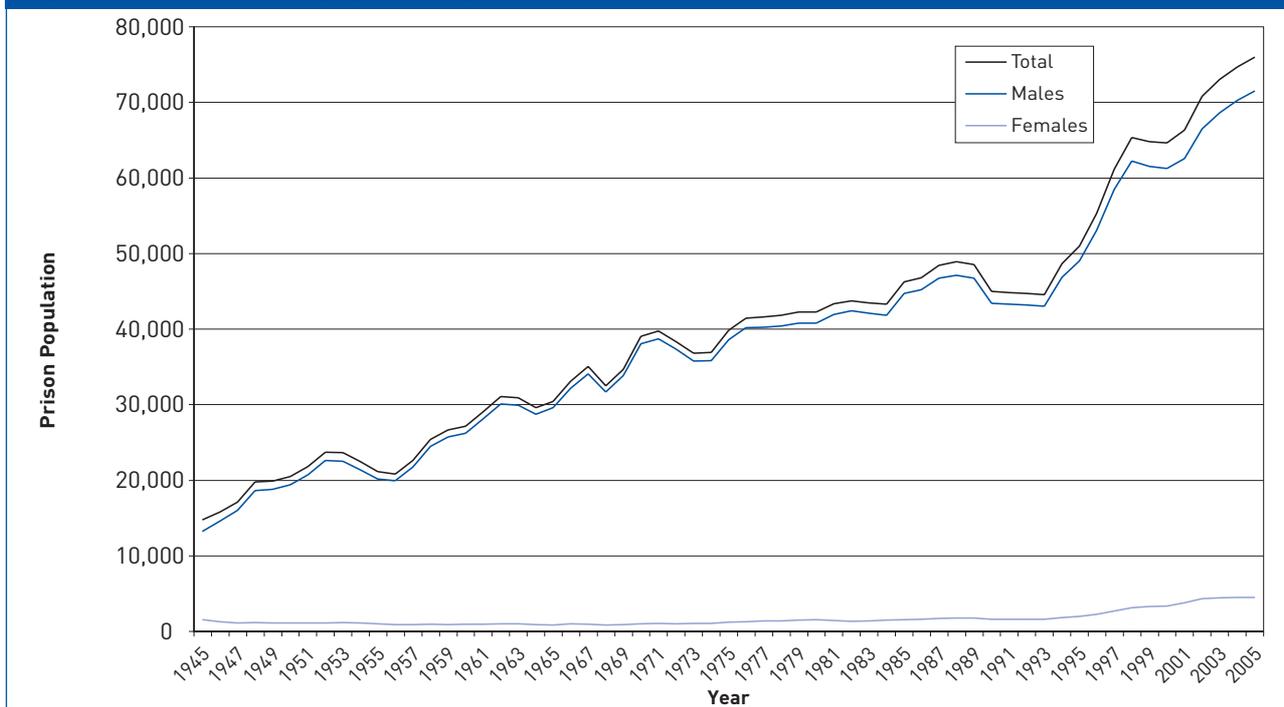
⁶ In comparison to the prison population figure of 81,454 as at 23rd November 2007.

⁷ Home Office World Prison Population Lists. Further details of the annual increases in the prison population can be found at annex A.

⁸ Most up to date information available at <http://www.prisonstudies.org/> (King's College London, University of London) as at 22 November 2007.

⁹ Most up to date information available at <http://www.prisonstudies.org/> (King's College London, University of London) as at 22 November 2007.

Figure 1.1: Annual average prison population 1945 to 2005



The drivers include, but are not limited to, the following:

- changes in public attitudes and the political climate;
- changes to legislation and the sentencing framework;
- more offenders brought to justice, increased custody rates and longer sentence lengths;
- greater focus on enforcement of sentences; and
- greater awareness of risk, and greater political prominence of public protection.

Changes in public attitudes and the political climate

7 Throughout the 1980s levels of crime increased sharply in England & Wales as well as in other parts of the developed world.¹⁰ The media coverage and political emphasis of criminal justice during this period was further heightened by high profile crimes such as the murder of James Bulger in 1993.

8 Since 1995 there has been an overall reduction in total crime. For example, the British Crime Survey

shows that overall crime as experienced by households has reduced by 42%, or eight million fewer crimes, with domestic burglary, vehicle theft and violent crime having decreased by 59%, 61% and 41% respectively.¹¹

9 This overall picture of reducing crime has been accompanied by reductions in re-offending. Overall proven re-offending has reduced by 5.8% comparing 2000 to 2004 using a predicted rate, with re-offending by former prisoners reducing by 4.6% on the same basis.¹² This reflects the increased investment in offender interventions both in prison and the community.

10 Whilst these volume crimes have reduced significantly, **the number of offenders sentenced in all courts has increased, from 1,354,294 in 1995 to 1,420,571 in 2006, an increase of 5% (see Figure 1.2).**¹³ The number of offenders sentenced in all courts peaked at 1,547,353 in 2004, an increase of 14%, since 1995.¹⁴ This reflects the government’s priority to reduce crime and increase the number of offences brought to justice.

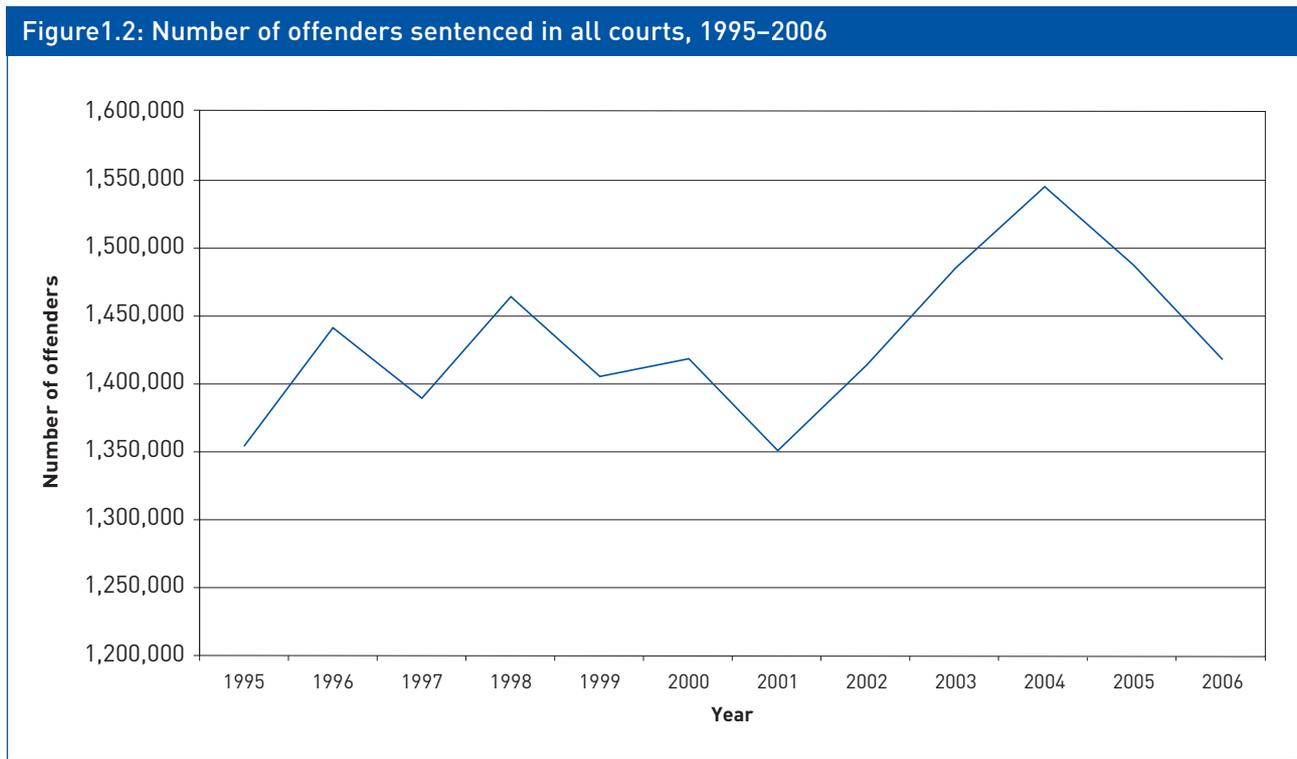
¹⁰ British Crime Survey, Home Office, 2006.

¹¹ Ibid.

¹² <http://www.homeoffice.gov.uk/rds/pdfs07/hosb0607.pdf>.

¹³ Provisional sentencing data, Ministry of Justice, 2006.

¹⁴ Sentencing Statistics 2005, England and Wales (HOSB, 03/07).



11 Despite improvements in the performance of crime reduction and criminal justice agencies, much of the public debate is centred on issues of punishment and fear of crime. For example:

- 65% of the public continue to believe that crime is increasing across the country as a whole;¹⁵
- 79% feel that sentence lengths should not be shortened;¹⁶ and
- 57% feel that the number of people sent to prison should not be reduced.¹⁷

Changes to legislation and the sentencing framework

12 The political and public perceptions and attitudes around crime have contributed towards a number of operational and legislative changes which have resulted in a more punitive sentencing framework. For example:

- legislation such as the Criminal Justice Act 1988, the Crime (Sentences) Act 1997, the Crime and Disorder Act 1998 and the Criminal Justice Act 2003 all sought to increase the length of sentences for certain offenders and offences;
- there have been 66 pieces of criminal justice legislation since 1995, all with an accompanying range of sentences and sanctions;¹⁸ and
- new sanctions such as indeterminate sentences of Imprisonment for Public Protection have been introduced, increasing the average time served for dangerous offenders.¹⁹

Increased volumes, custody rates and sentence lengths

13 Magistrates and judges have responded both to these legislative changes and to the prevailing punitive climate accordingly. The resulting effect has been a significant growth in demand on prison and

¹⁵ Crime in England and Wales 2006/2007, Home Office.

¹⁶ British Crime Survey, Mori Polls 2007.

¹⁷ *ibid.*

¹⁸ Source: House of Lords Library

¹⁹ Criminal Justice Act, 2003

probation resources through sentences imposed by the courts. All of the figures below are from *Provisional Sentencing Data, Home Office, 2006* unless otherwise stated:

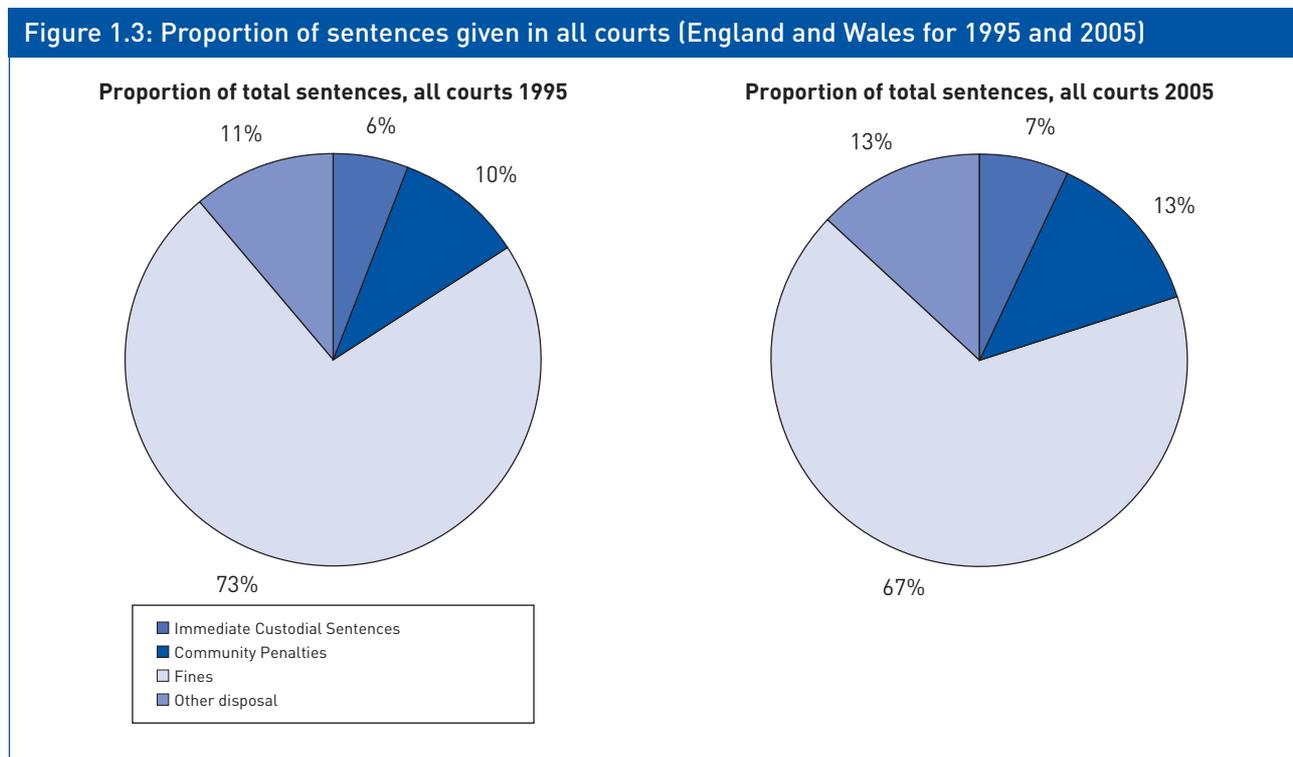
Increased Use of Custodial and Community Punishments

14 The number of immediate custodial sentences at all courts **has increased from 79,538 in 1995 to 96,017 in 2006**, an increase of 21%.

15 The number of community penalties at all courts **has increased from 129,922 in 1995 to 190,837 in 2006**, an increase of 47%.

16 The number of fines at all courts **has decreased from 996,715 in 1995 to 961,535 in 2006**, a decrease of 4%. Furthermore the use of financial penalties in the Crown Court has decreased by 46% over the same period.

17 These changes are the result both of increases in the number of offenders brought to justice and a change in the proportion of offenders given custody, community sentences, fines, and other disposals. Figure 1.3 illustrates how the overall proportions of sentences given have changed between 1995 and 2006.



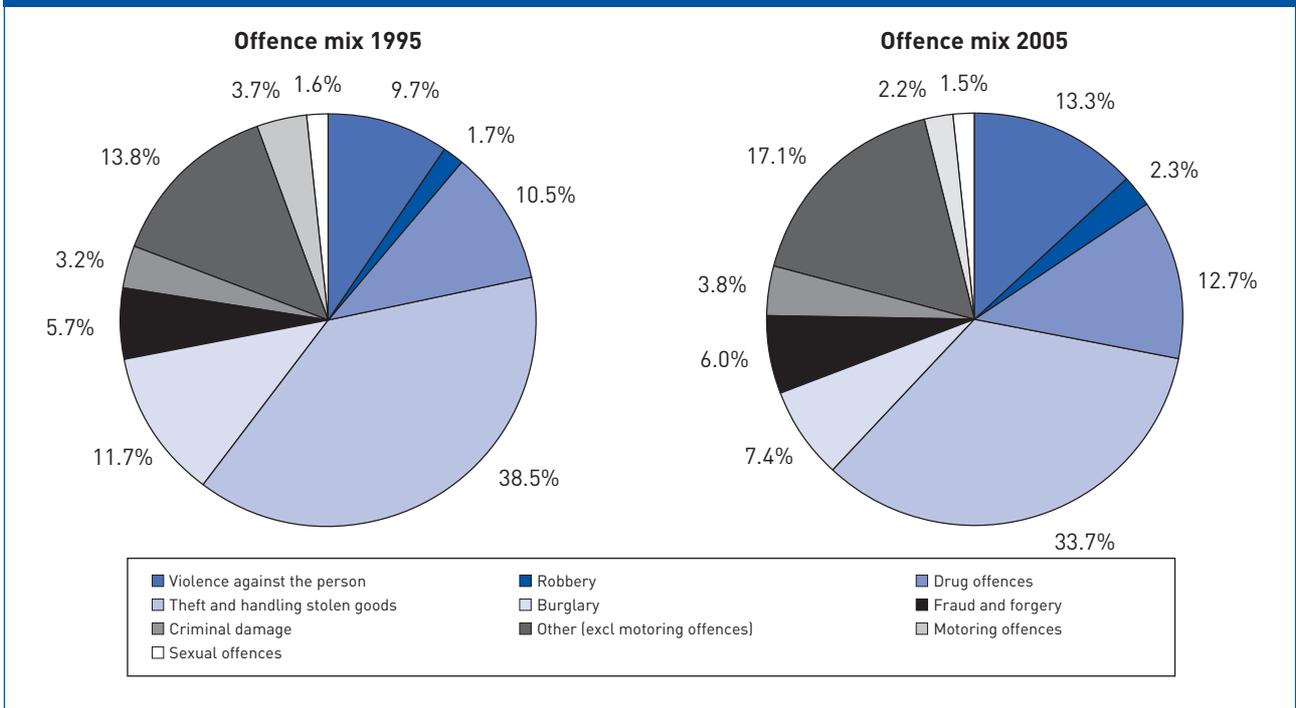
18 By the end of October 2007, there were 3,400 offenders serving Indeterminate Sentences of Imprisonment for Public Protection with projections indicating there could be as many as 11,500 by 2014.²⁰

19 Between 1995 and 2005 the proportion of different types of serious offences coming before the courts has changed with violence against the person, robbery and drugs offences, increasing at the expense of burglary and theft offences resulting in a more different, perhaps more serious, offence mix (see Figure 1.4).²¹

²⁰ RDS NOMS analysis, Ministry of Justice.

²¹ Sentencing Statistics 2005, England and Wales (HOSB, 03/07).

Figure 1.4: Change in offence mix 1995–2005 (indictable offences, all courts, all persons sentenced)

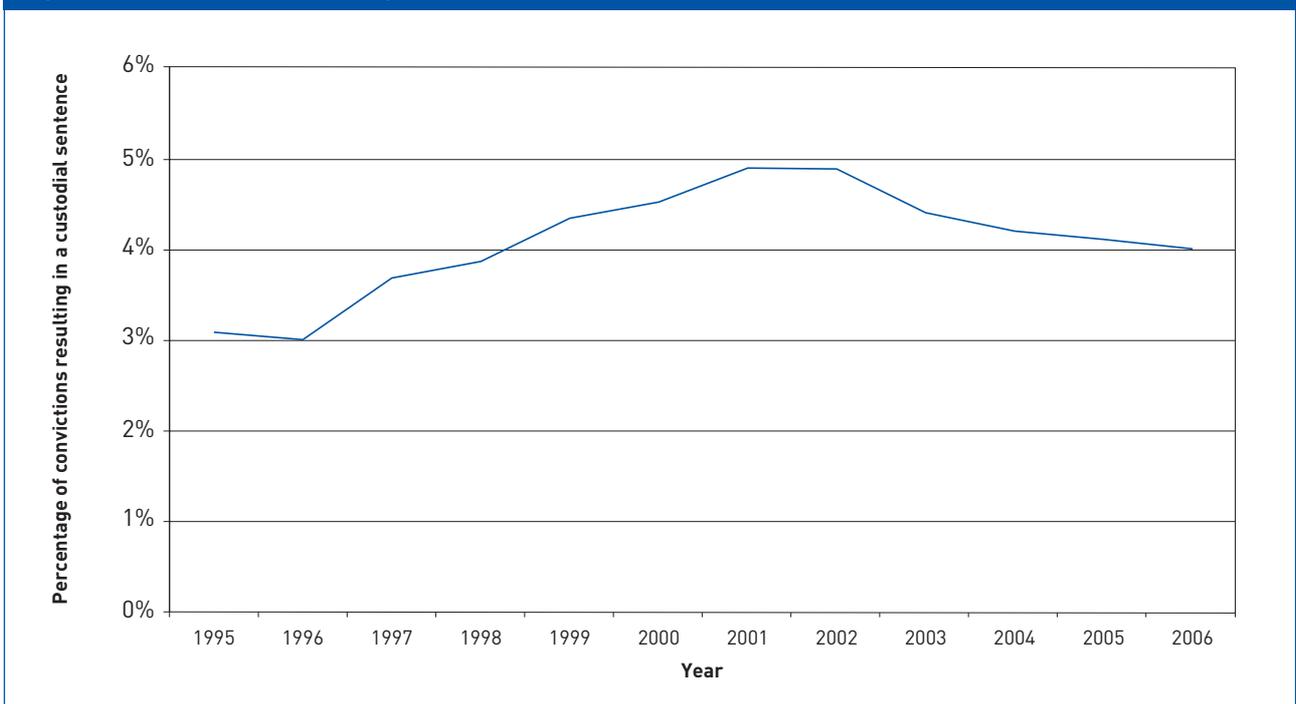


Increased use of Prison

20 The proportion of offenders given immediate custody in the magistrates’ court has **increased from 3.1% in 1995 to 4.0% in 2006, peaking at 4.9% in 2002** (see Figure 1.5). For indictable offences, the increase was **from 9% in 1995 to 14% in 2006,**

peaking at 15% in 2002.²² Although these are small percentage point increases, given the volume of offenders dealt with by the magistrates’ courts, their effect on the prison population is significant.

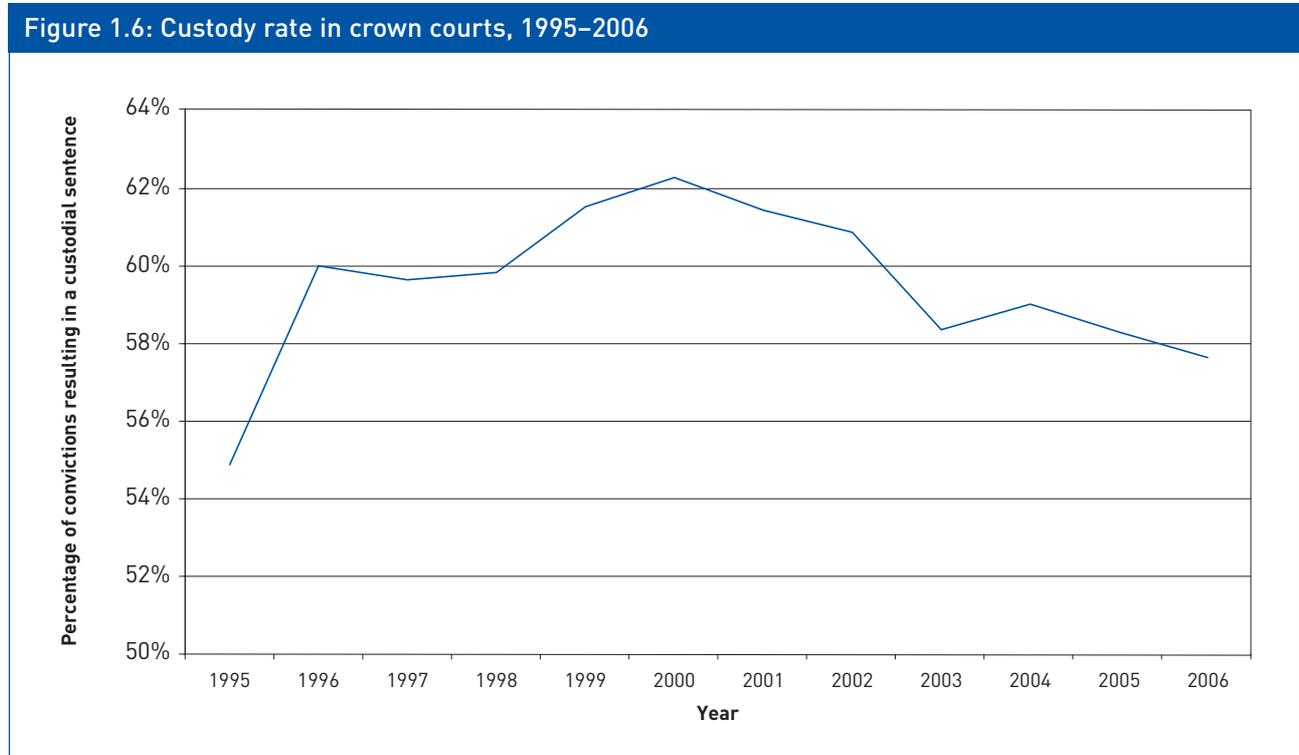
Figure 1.5: Custody rate in magistrates’ courts, 1995–2006



²² Provisional Sentencing Data, Ministry of Justice, 2006.

21 The proportion of offenders given immediate custody in the Crown Court **has increased**

marginally from 55% in 1995 to 56% in 2006 peaking at 62% in 2000 [see Figure 1.6].²³



Longer Sentence Lengths

22 **The average length of custodial sentences in the magistrates courts’ has remained constant at 3 months between 1995 and 2006.**²⁴

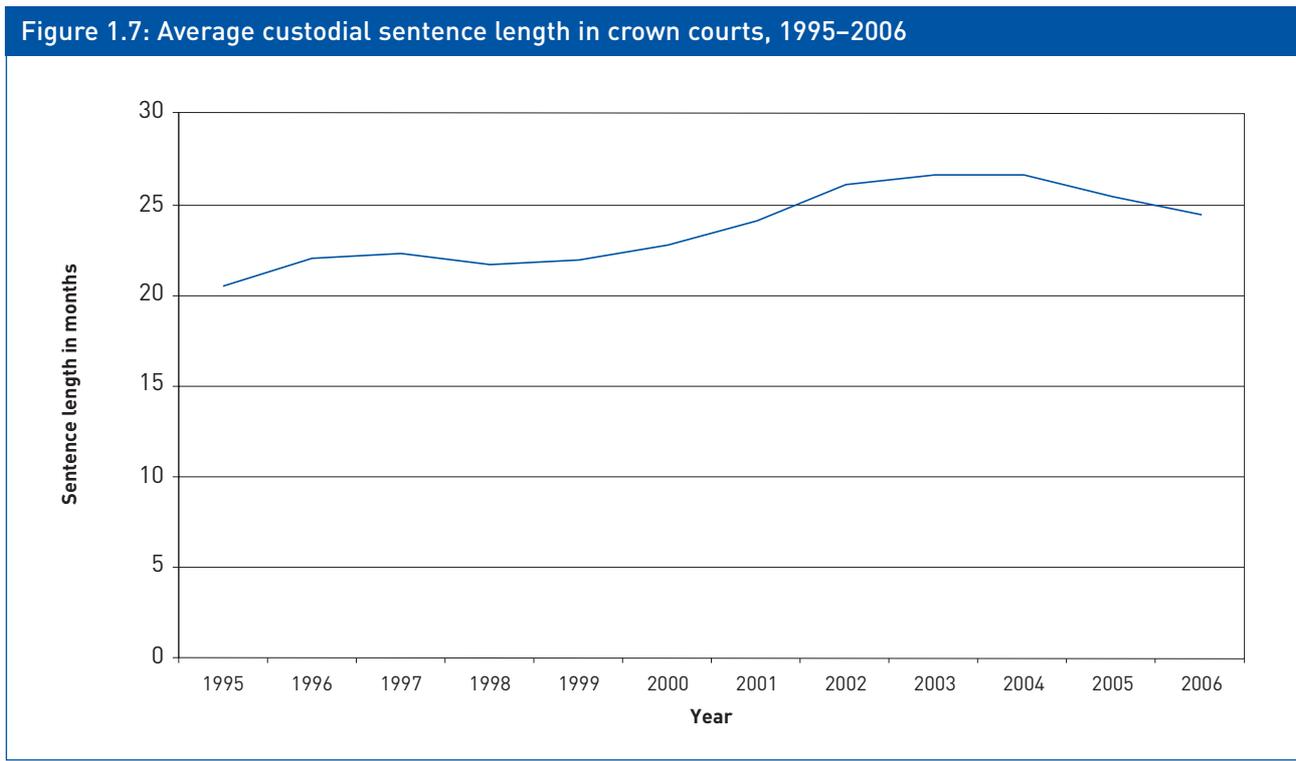
23 However, **the average length of custodial sentences²⁵ in the Crown Court increased from 21 months in 1995 to 25 months in 2006, an increase of 20% (see Figure 1.7).** The average

sentence length in the Crown Court peaked at 27 months in 2004, an increase of 29% since 1995. This trend is apparent across a range of offence types. For example, average sentence length for burglary in the Crown Court has increased from 17 months in 1995 to 24 months in 2006, and for drugs offences has increased from 28 months to 34 months over the same period.

²³ Provisional Sentencing Data, Ministry of Justice, 2006.

²⁴ *ibid.*

²⁵ Excludes Indeterminate Public Protection and Life Sentences.



24 Approximately 70% of the increase in demand for prison places between 1995 and 2005 is estimated to have arisen owing to changes in the custody rate and sentence length, with the remainder accounted for by the increase in numbers and more serious offence mix being sentenced.²⁶

25 Analysis of government sentencing statistics indicates that 87% of the demand for prison places emanates from approximately, 640 circuit judges and 1,200 recorders²⁷ at the 90 Crown Court centres and 13% from 30,000 magistrates at the 334 Magistrates Courts in England and Wales.²⁸

Greater focus on enforcement of sentences

26 The current government has made a number of changes to criminal justice legislation and practice to improve enforcement of licence conditions and

community orders.²⁹ As a consequence, for sentence lengths of twelve months or over, the offender is under supervision to the end of their sentence rather than to the three-quarter point as was the case prior to 2005. This change in supervision arrangements has increased the number of offenders eligible for recall to prison. In addition, processes for monitoring and responding to licence breaches have significantly improved. Therefore:

- the number of people recalled to prison for breaching the conditions of their licence has increased from 150 in January 1995 to 5,300 in August 2007 (see Figure 1.8);³⁰ and
- the number of people in prison for breaching the terms of their court order has increased from 180 in January 1995 to 1,200 in August 2007 (see Figure 1.9).³¹

²⁶ RDS NOMS analysis, Ministry of Justice. Changes in definition of offences and offence coding practices between 1995 and 2005 may influence some of this change seen.

²⁷ RDS NOMS analysis, Ministry of Justice. Changes in definition of offences and offence coding practices between 1995 and 2005 may influence some of this change seen.

²⁸ RDS NOMS analysis, Ministry of Justice.

²⁹ Criminal Justice Act, 2003.

³⁰ RDS NOMS analysis, Ministry of Justice.

³¹ *ibid.*

Figure 1.8: Number of offenders in prison, being recalled owing to a breach of licence, 1995–2006

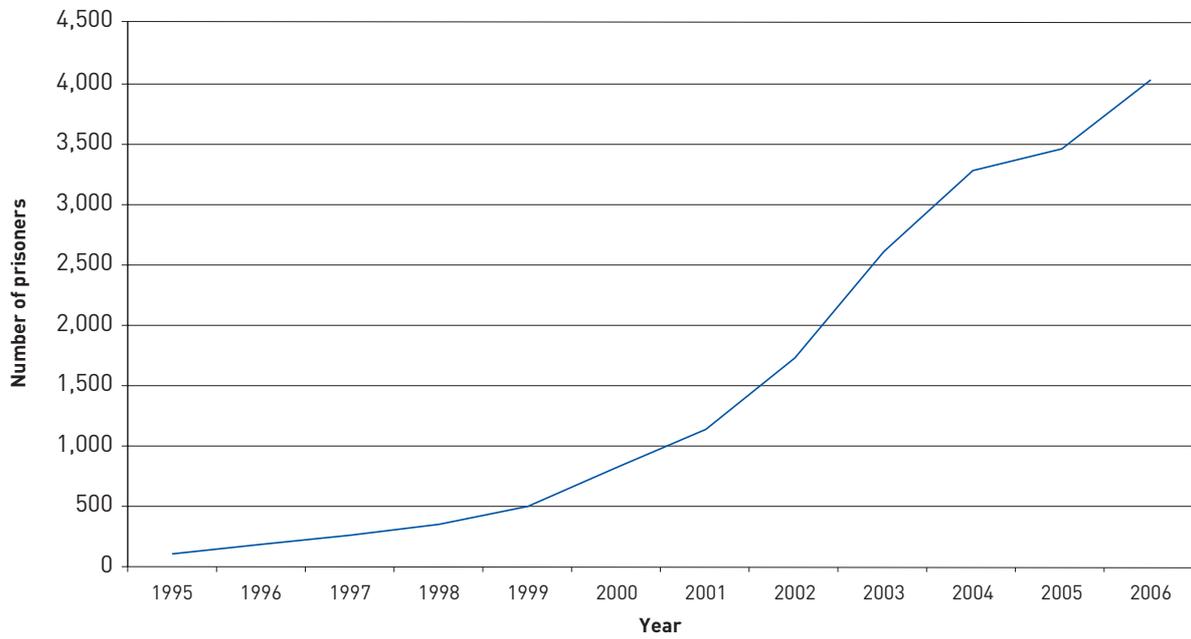
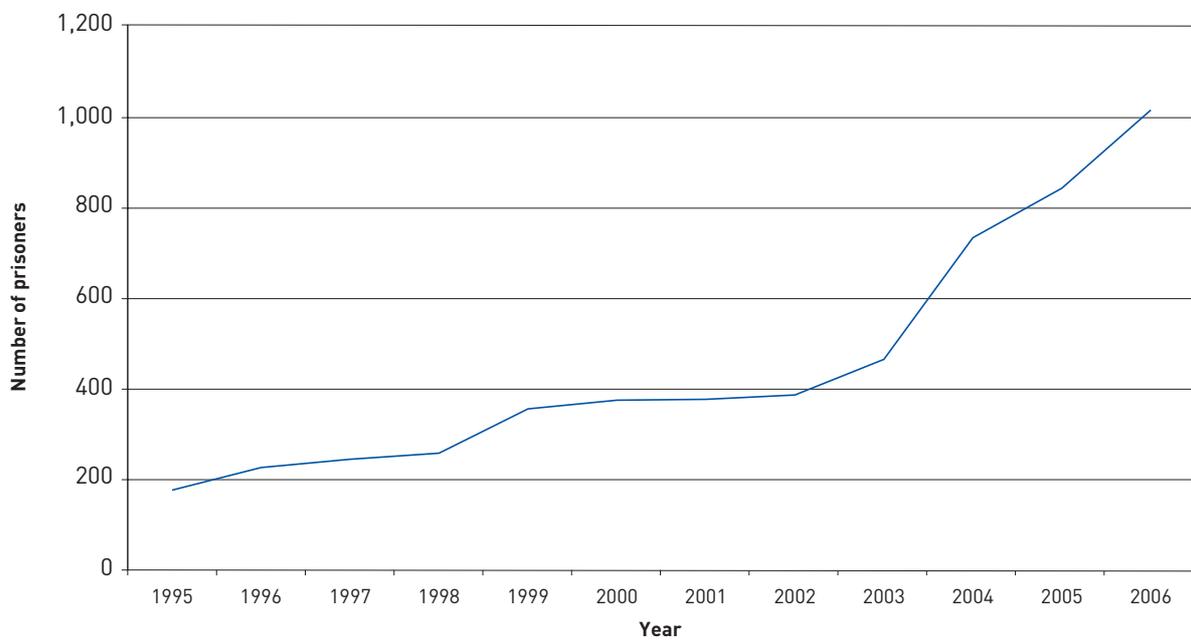


Figure 1.9: Number of offenders in prison for a breach of court order, 1995–2006



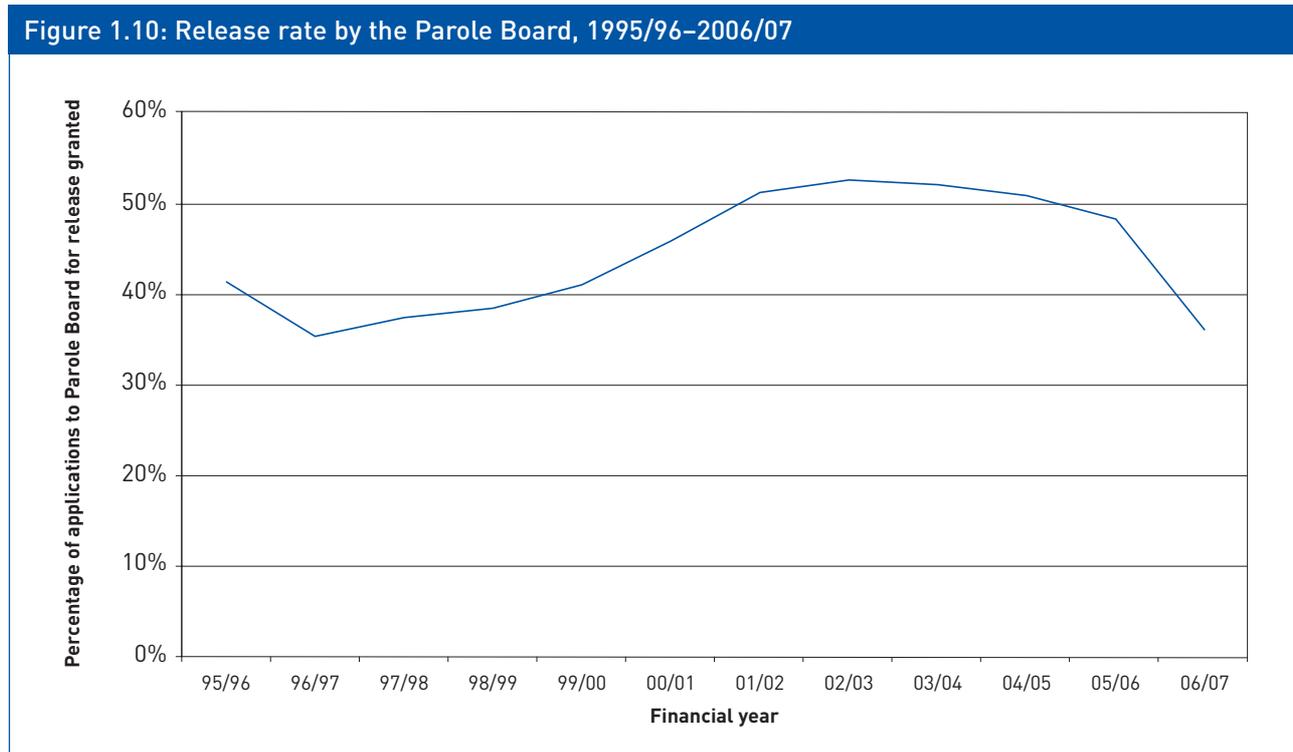
Greater awareness of risk, and greater political prominence of public protection

27 In recent years public and political attitudes to criminal justice may have also increased levels of risk aversion within the various mechanisms that oversee the release of prisoners.

28 The parole board release rate has reduced from a peak of 52% of 7,297 cases considered in 2004/05 to 36% of 6,923 cases considered in 2006/07 (see Figure 1.10), reflecting greater awareness of risk and political prominence of public protection, perhaps prompted by the criticisms of the parole board following the murder of John Monckton in 2004.³²

29 The number released on Home Detention Curfew (HDC) has reduced from a peak of 21,188 (37% of those eligible) in 2003 to 17,296 (32% of those eligible) in 2005 (see Figure 1.11). This decline is attributed to there being more ‘higher risk’ prisoners, assessors becoming more risk averse and increasing numbers of prisoners presumed unsuitable for release on HDC.³³

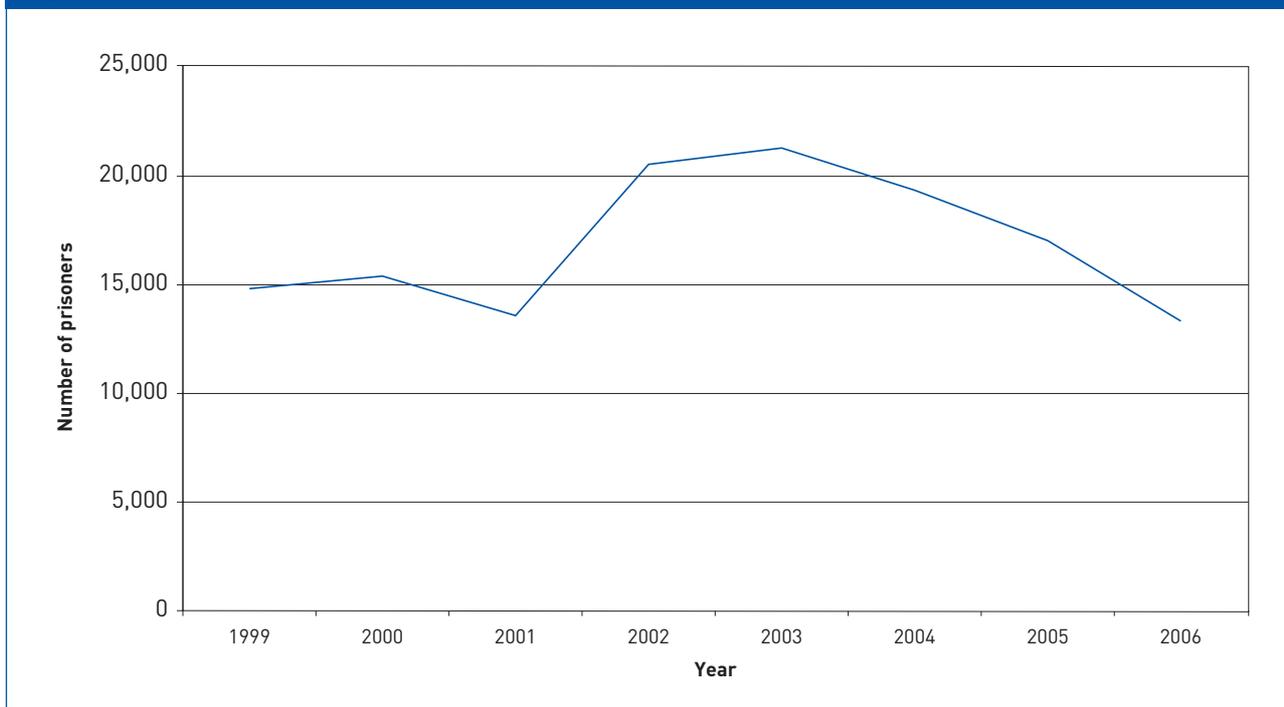
30 A digest of sentencing statistics can be found at annex B.



³² Parole Board Annual Report, 2006/07.

³³ RDS NOMS analysis, Ministry of Justice.

Figure 1.11: Numbers released on Home Detention Curfew, 1999–2006



The supply of prison places

31 The current prison estate has a useable capacity of approximately 81,500 places and comprises 139 institutions. The estate is categorised in accordance with an offender’s age, sex, risk and needs and follows the principles of security classification set out by Lord Mountbatten in his 1966 report on prisons.³⁴ In addition to the 128 prisons managed by HM Prison Service, there are a further 11 prisons managed by the private sector, holding males, females and juveniles in closed conditions.

32 To meet the increased demand for prison places, successive governments have embarked on substantial prison building programmes that have increased prison system capacity from fewer than 53,000 in January 1995 to approximately 81,500 in November 2007. Since 1995, nine new prisons have been constructed and the capacity of many existing prisons has been increased.

33 The origins of the current capacity pressures can be traced back to 2002 when there was an unexpected and rapid increase in the prison population. By October 2002 the population was 73,000, having increased by nearly 5,000 over the previous 12 months. To accommodate this increase, emergency steps were taken to provide 1,160 additional places using quick build accommodation in open and low security closed prisons and police cells.³⁵

34 Following this, the government considered a number of options for additional prison places based on the assumption that the prison population could be between 88,400 and 103,800 in 2007 if no action were taken to change the way custody was used for managing offenders.³⁶ A decision was taken in 2002 to provide an additional 3,000 places, to be built at existing prisons and for work to be undertaken to develop options for how to reduce the use of custody.

³⁴ Categorisation criteria can be found at http://pso.hmprisonservice.gov.uk/PSO_0900_categorisation_and_allocation.doc.

³⁵ All figures provided by Estates, Planning and Development Unit, Ministry of Justice.

³⁶ Councill, R & Simes, J, Home Office Statistical Bulletin 14/02, December 2002, Projections of long-term Trends in the Prison Population to 2009 England and Wales.

35 To address the projected imbalance, Lord Carter was asked to review the prison system. The final report, *Managing Offenders Reducing Crime*, published in 2003, advocated much better targeting of correctional resources.³⁷ It also recommended the Sentencing Guidelines Council should issue guidelines, taking account of the cost effective use of capacity. The National Audit Office noted in 2005 that the Home Office expected these initiatives to limit the prison population to a ceiling of approximately 80,000 places by 2008.³⁸

36 Owing to the continuing growth in the prison population, in September 2004, the government agreed to provide an additional £100 million in 2005/06 to start a new programme to build 1,300 additional prison places over the following two years.³⁹ This proposal, alongside some extra capacity gains from crowding and change in the operating margin, raised the operational capacity of the prison system to 80,400 by mid-2007 against a projected prison population of between 76,700 and 84,300.⁴⁰

37 In 2006 the government recognised that this further increase in capacity would be insufficient to meet the demand for prison places over the following five years. The *Rebalancing the Criminal Justice System Review*⁴¹ subsequently announced that an additional 8,000 places would be delivered over the course of the following five years. This provision was subsequently increased to 9,500 in June 2007, with 1,000 of those places pending the outcome of this review.⁴²

38 To continue to manage the demand for prison places whilst the 8,500 building programme is completed, a number of additional measures have had to be deployed in order to meet the rising population levels. They include:

- in January 2007, a statement was made by the National Criminal Justice Board by the three criminal justice ministers that reiterated existing government policy to use custody for serious, violent and persistent offenders only;
- levels of overcrowding across the public estate have increased from 17% in 1995 to 25% at present.⁴³ However, both of these figures are some way from the record rate of 41% seen in 1986. The reduction of the overcrowding rate reflects improvements to decency and safety (the end of 'slopping out') in prisons, delivered during the last twenty years;
- since October 2006, police and, in a few instances court cells, across England and Wales have been used to accommodate prisoners in areas where there are acute pressures on the prison estate. Police cells were also used to a much greater extent in 1980, 1987 and 2002 to accommodate prisoners during periods of population pressures; and
- in June 2007, the End of Custody Licence scheme was introduced which allowed certain offenders serving sentences of less than four years to be released on licence eighteen days before they would otherwise have been released from custody. From the introduction of this scheme to 31st October 2007, there were a total of 11,132 releases with 385 decisions to recall.⁴⁴

³⁷ <http://www.cabinetoffice.gov.uk/upload/assets/www.cabinetoffice.gov.uk/strategy/managingoffenders.pdf>.

³⁸ The Comptroller and Auditor General, National Audit Office, HC 458 Session 2005-2006, 27 October 2005: National Offender Management Service: Dealing with increased numbers in custody.

³⁹ Departmental Investment Strategy, 20 June 2005, Home Office.

⁴⁰ De Silva, N, Home Office Statistical Bulletin 01/05: Prison Population Projections 2005-2011 England and Wales, July 2005.

⁴¹ <http://www.homeoffice.gov.uk/documents/CJS-review.pdf>

⁴² <http://www.publications.parliament.uk/pa/ld200607/ldhansrd/text/70619-0002.htm#07061945000008>.

⁴³ NOMS analysis, Ministry of Justice.

⁴⁴ Cumulative total number of offenders up to the end of October 2007 (Cases reported to NOMS up to the end of 23rd November 2007). <http://www.justice.gov.uk/publications/endofcustodylicence.htm>.

Offender management

39 The government has also introduced a number of reforms designed to improve the way in which offenders are managed, resources are allocated and services are delivered in custody and in the community, reflecting proposals in the 2003 report *Managing Offenders Reducing Crime Report*.⁴⁵

The government is implementing a programme of offender management through which every offender in the community and an increasing number of offenders in custody have an individual who develops their sentence plan and manages it throughout.

40 The government has also introduced a system of commissioning that seeks to ensure that offenders get the services and programmes designed to stop them committing crime and to drive efficiency across the system. As these reforms increasingly take effect, they could contribute to enabling government to reduce re-offending further and thereby reduce the usage of prison and probation resources.

The 2007 Carter Review of Prisons

41 In June 2007, the government asked Lord Carter to undertake a review into the prison system with the following terms of reference:

- *to consider options for improving the balance between the supply of prison places and demand for them and to make recommendations on how this should be achieved; in particular*
- *to assess the pace, scale and value for money of the current prison building programme in light of the likely future demand for prison places;*
- *to assess the management and efficiency of public sector prisons;*
- *to assess the potential for further cost effective renewal of the prison estate by replacing expensive and poor quality prisons with new state of the art penal establishments;*

- *to assess the impact of recommendations on the prison estate for other parts of the criminal justice estate, taking account of the need for close working relationships between the courts, probation services and prisons;*
- *to assess the changes in the sentencing framework and to remand policy that will be necessary to align supply and demand; and*
- *to provide a report on the above issues jointly to the Prime Minister, Chancellor of the Exchequer and Secretary of State for Justice by Autumn 2007.*

Structure of the Report

42 The analysis and recommendations that follow focus primarily on prisons, but the Review acknowledges that the drivers summarised above have also impacted on probation services.

43 The remainder of this report is as follows:

- chapter two sets out the findings of the Review;
- chapter three sets out a package of measures that will allow the government to manage the use of custody and the supply of prison places in the medium and long-term;
- chapter four sets out how efficiency and financial management could be improved within the prison system; and
- the annexes contain further details omitted from the body of the report, including closer analysis, population projections and financial data.

⁴⁵ <http://www.homeoffice.gov.uk/documents/managing-offenders-reduce-crime?version=1>.

2. The Review's findings

Overview

1 This report sets out a number of proposals to manage the use of custody and to increase the number of prison places. These proposals will ultimately allow for greater attention to be given to the rehabilitation of offenders whilst they are in prison.

2 The government needs to maintain their policy that prison is reserved for serious and dangerous offenders and that greater use is made of community sentences for less serious non-violent offenders. The Review agrees with many of the findings of Baroness Corston's recent report¹ including the conclusion that custody should be used as a last resort when dealing with female offenders and that community provision should be appropriate to their needs.

3 The Review also concurs with the view that many non-dangerous offenders with mental health or drug problems may receive better treatment and rehabilitation outside of prison. These offenders need to be diverted into appropriate treatments at an earlier stage in their offending behaviour.

4 The government needs to ensure that the principles of offender management continue to be at the heart of their penal policy, in order to deliver more efficient ways of working with offenders as they move through the criminal justice system. In addition, the recent developments in a commissioning based approach to accessing these services should be built upon, to ensure the most effective and efficient interventions are available to offender managers and sentencers.

The Review's findings

5 The primary findings of the Review are as follows:

- demand for prison places will outstrip the rate of supply of prison places in the short, medium and long-term unless immediate action is taken;
- an effective, integrated and transparent planning mechanism that reconciles penal capacity with criminal justice policy is needed. Without this, there is very little transparency or predictability in the effect of sentencing decisions on penal resources;
- elements of the current capacity programme offer poor value for money and build further strategic and operational inefficiencies into an already inefficient prison system, principally because it has had to proceed on an emergency basis to keep pace with demand; and
- there is significant scope for increasing the efficiency and value for money of the prison system in the medium and long term, both in respect of the services that are delivered and the way in which they are delivered.

6 This chapter sets out the details and evidence behind these findings.

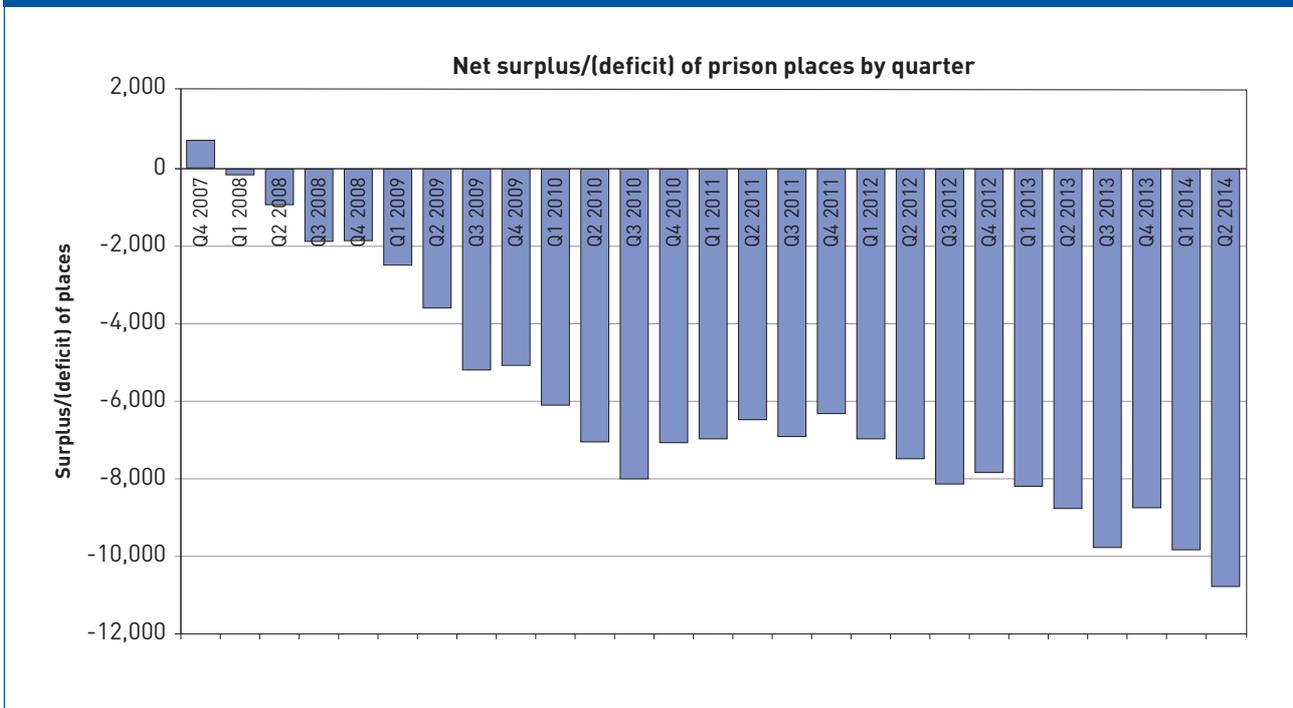
Finding 1: Growing projected deficit in prison places.

Demand for prison places will outstrip the rate of supply of prison places in the short, medium and long term unless immediate action is taken.

7 Based on government population projections and estimated completion dates for new prison places, the government is facing a rapidly growing deficit in prison places between July 2007 and June 2014, as illustrated in Figure 2.1.

¹ <http://www.homeoffice.gov.uk/documents/corston-report/>.

Figure 2.1: Estimated balance of prison places if no new measures are taken



- 8 The projected position can be summarised as follows:
- there will be a deficit of prison places by summer 2008, which, for several weeks, could reach 3,000 at its peak;
 - the deficit will continue to increase during 2009, with a projected peak of 6,000 places;
 - despite significant increases in capacity during 2010 and 2011, the projected shortfall will continue to grow during these years, resulting in a potential deficit of in excess of 8,000 places by the end of 2012; and
 - the scale of the problem will worsen further from early 2012 with a projected deficit exceeding 10,500 by mid-2014.

9 An analysis of the historical accuracy of government’s prison population projections can be found at annex A.

10 In order to address this projected growing deficit of prison places, the government must undertake measures both to manage the use of custody and measures to further increase the number of prison places. Such measures may be controversial but the consequences of inaction will lead to greater expense in the long term and could seriously undermine the integrity of the criminal justice system.

Finding 2: An effective, integrated and transparent planning mechanism.

An effective, integrated and transparent planning mechanism that reconciles penal capacity with criminal justice policy is needed. Without this, there is very little transparency or predictability in the effect of sentencing decisions on penal resources.

² The surplus/deficit shown is the quarterly average difference between the projected population and the projected capacity. The population is taken from the high scenario projected in the latest published prison projections (De Silva, N et al., Prison Population Projections, England and Wales, 2007–2014, August 2007) with an additional assumption that end of custody licence will continue indefinitely during the period projected. The prison capacity assumed is the existing capacity, allowing for essential maintenance, plus assumed new capacity available as projects under the current capacity programme are completed. Within the quarterly averages there may be periods of short-lived peaks and troughs in the net position.

11 In the short to medium-term, prison capacity will always be limited. The absence of a mechanism that links the totality of criminal justice legislation and the sentencing framework with penal resources, while continuing to respect the independence of the judiciary when making individual sentencing decisions, has been a key contributor to the current population problems.

12 The 2003 *Managing Offenders, Reducing Crime*³ Report proposed that regard should be given to the cost effective use of penal capacity when formulating sentencing guidelines. This 'capacity clause' was supported by both the government, and the then Lord Chief Justice, Lord Woolf,⁴ in his role as chairman of the Sentencing Guidelines Council and included in the 2005 Offender Management and Sentencing bill. This bill failed to complete its stages through Parliament owing to timing of the 2005 general election. Another version of the bill was re-introduced, however without the capacity clause provision.⁵

13 An effective planning mechanism requires accurate forecasting and predictability of the demand for prison places and probation services. Although population projections and costings of criminal justice policy are undertaken within government, the current system is undermined by a lack of transparency, predictability and accountability for its outcomes, all of which lead to the consequences as illustrated below.

Sentencing patterns are a key factor when determining demand but within the current system are difficult to predict.

14 The Sentencing Guidelines Council was established in 2004 under the Criminal Justice Act 2003 with a statutory remit to frame sentencing guidelines and in doing so, to take into account various matters, including the need to promote consistency in sentencing. The Sentencing Guidelines Council attempts to achieve this through the provision of guidelines in addition to the role of the Court of Appeal Criminal Division. Even though sentencing data is collected, they often do not contain sufficient detail to allow for meaningful analysis which can be acted upon. The government is unable from the data to assure itself that consistency of approach is being achieved. This has consequences for the understanding and the predictability of sentencing and, in turn, the prison population projections.

Population projections depend on the accuracy and validity of underlying assumptions which are subject to continual revision.

15 The prison population projections are reliant on assumptions made by policy makers about how legislation and other factors will impact behaviour of a large number of diverse individuals and organisations, for example, sentencers, the parole board, prosecutors, the police and criminals. Given the large number of factors and the complexity of the criminal justice system, the assumptions behind the prison population projections are revised at least once a year. These projections cannot provide the predictability and consistency that would be useful when making policy, resource decisions and political judgements.

³ <http://www.homeoffice.gov.uk/documents/managing-offenders-reduce-crime?version=1>.

⁴ <http://www.dca.gov.uk/judicial/speeches/lcj220404.htm>.

⁵ <http://www.publications.parliament.uk/pa/cm200607/cmbills/009/2007009.pdf>.

Without an integrated planning mechanism it is difficult to make reliable assumptions about the impact legislation will have.

16 For example, over many years community sentences have been developed and promoted, both as ways of reducing reoffending and with the expectation that they would lead to decreased use of short custodial sentences.⁶ This is in accordance with the government's policy to reserve prison places for serious and dangerous offenders.

17 The number of community penalties imposed by the court has increased significantly from 129,922 in 1995 to 190,837 in 2006.⁷ However, there is little evidence that the increased use has resulted in fewer people going to prison. This increased use of community orders may in part have been at the expense of the use of fines, which has decreased, from 996,715 in 1995 to 961,535 in 2006 and from 3,927 to 2,141 in the Crown Court over the same period.⁸ It may also in part be a result of the diversion of less serious cases from the magistrates' courts.

Additional factors that cannot be accurately anticipated can also affect the prison population.

18 The accuracy of prison projections is also undermined by factors which cannot be anticipated. For example, as a result of public concerns following a number of high profile and violent crimes, there is clear evidence that the parole board, prison governors and the courts have become more risk averse. For example, in recent years the parole board release rate has decreased from 52% in 2004/05 to 36% in 2006/07 with a subsequent effect upon the prison population. Given the current capacity and operating margin, such consequences are difficult to accommodate.

19 In summary, the criminal justice system is a highly complex and intricately inter-linked structure. Whilst the government will never be able to achieve complete predictability, the absence of an overarching mechanism that allows for the consideration of the effect of criminal justice legislation on penal resources in a transparent, independent and accountable manner is a primary cause of the existing problems of population management within the prison system.

Finding 3: Inefficiencies within the current capacity programme.

Elements of the current capacity programme offer poor value for money and build further strategic and operational inefficiencies into an already inefficient prison system, principally because the programme has had to proceed on an emergency basis to keep pace with demand.

20 Even though the capacity of the prison estate is being increased by over 10% in the next five years, a large proportion of this increase in capacity is on an emergency basis which, in turn, has given rise to a number of strategic, operational and financial problems across the prison system.⁹

The cost of increasing capacity

21 Given the urgency, the focus of the current capacity programme has primarily been on the speed of delivery. This has led to poor value for money in terms of construction types and future operation for those projects at the beginning of the programme. Short term build options have a much shorter life, cost more to run and may be located in 'inefficient' locations. Such a scenario is illustrated by Table 2.1, which highlights the unit costs of the short-term options against the new prison costs.¹⁰

⁶ Criminal Justice Act, 2003.

⁷ Provisional sentencing statistics, Home Office, 2006.

⁸ *ibid.*

⁹ <http://www.homeoffice.gov.uk/documents/CJS-review.pdf/>.

¹⁰ Estates, Planning and Development Unit (EPDU), internal analysis.

Table 2.1: Unit costs of short-term build options

Construction Type (Lifetime)	Total places	Capital cost per place	Capital cost per place per year of lifespan
Houseblocks (60 years)	3,992	£219,000	£3,660
Rapid Build Residential Unit (40 years)	872	£178,000	£4,400
Temporary Custodial Module (25 years)	544	£108,000	£4,300
Temporary Custodial Facility (25 years)	600	£122,000	£4,800
New Prison (100 years)	2,461	£152,000	£1,520

22 The government has acknowledged that building temporary custodial modules, temporary custodial facilities and rapid build residential units does not offer good value for money in the long term, for example a rapid build residential unit costs three times as much as a new prison, but given the need to increase capacity in such a short space of time, the government had little option to do otherwise.

The Location of the Capacity Programme

23 The location of much of the current prison estate is a product of historical circumstance rather than strategic importance with a large number of prisons such as HMP Ranby (Nottinghamshire), HMP Acklington (Northumberland) and HMP Channings Wood (Devon) being built on old Ministry of Defence sites situated significant distances from large urban centres and without well-developed transport links.

24 The focus on the speed of delivery of the current capacity programme is further exacerbating these inefficiencies by increasing capacity at some sites which, from an operational and strategic perspective, do not merit an increase. Again, given the need to build capacity in such a short space of time, the government’s initial consideration when devising the capacity programme was to identify and build at sites where capacity could be quickly increased. Whilst the Review found that efforts had clearly been made to align the land available to strategic geographical need, it was equally clear that this had not always been possible.

25 For example, increasing capacity at prisons such as HMP Wayland (Norfolk), HMP Haverigg (Cumbria), and HMP Highpoint (Suffolk) is adding to the significant regional imbalance between the demand for prison places and supply of places across the country. This imbalance has reached such a proportion that there currently is a shortfall of 9,400 prison places in the London Area.¹¹ As a result, juvenile and adult male prisoners, for example, are regularly transported from London courts to Bristol and Suffolk.

Delivery of the Capacity Programme

26 As part of the Review, a firm of external consultants were jointly commissioned by the government and the Review to examine a number of capability issues relating to the delivery of the current capacity programme.

27 The Review found that when comparing the initial operational date to the revised operational date, projects within the programme were, on average, four and a half months later than initially planned, in comparison to an average project length of eighteen months.

28 The government has advised that these delays are caused by a number of unforeseen and, to a certain extent, unavoidable factors, such as the planning process, the discovery of asbestos and the discovery of human remains on site.

¹¹ Estates, Planning and Development Unit (EPDU), internal analysis.

29 The Review also found an element of 'design creep' within the early stages of the programme. For example, prior to 2007, requests to construct additional ancillary facilities at certain sites were permitted after the initial construction brief was agreed. The construction of additional ancillaries added to both the cost and the delay in increasing capacity.

30 On the other hand, some projects have been completed significantly ahead of schedule, such as the houseblocks at HMP Stocken (Rutland) and HMP Highdown (Surrey), in order to balance some of the projects that had to be deferred.¹²

31 If further increases to capacity are planned (as recommended later in this Report), then the current reporting and governance arrangements of the programme would not be commensurate with the scale and complexity of the planned programme. Specific issues identified include:

- resourcing of the programme management function;
- supply chain management;
- availability of management information; and
- governance structures.

Finding 3: Efficiency within the prison system.

There is significant scope for increasing the efficiency of the prison system, through improved service specification and monitoring and streamlined overheads.

32 The prison system has performed well in operating safe, secure and decent prisons in England and Wales. The improvement in service delivery within the prison system can be exemplified by the fact that in 1992/93 there were 232 escapes from prisons. In 2006, there was one.¹³ Safety and decency within prisons have also undergone improvements, for example the number of self

inflicted deaths decreased from 114 per 100,000 in 1995 to 91 per 100,000 in 2006.¹⁴ As set out in chapter one, rates of re-offending have also decreased.

33 However the current prison system is expensive, costing on average, £37,500 per prisoner per year.¹⁵ This appears to be expensive in contrast to other jurisdictions such as Australia, New Zealand and the US, although direct cost comparisons are difficult to make.

34 The Review's analysis of costs within the prison system suggests four primary areas where these high levels of expense may be accounted for. They include:

- efficiency and financial management of public sector prisons;
- the age and physical condition of the prison estate;
- the structure of the workforce in public sector prisons; and
- the cost of overheads associated with prisons.

Financial controls in a public sector prison – a case study

35 In January 2007, the government asked Lord Carter to undertake an internal review into the value for money of HM Prison Service with a view to identifying the annual 3% savings required by HM Treasury. To achieve this, the value for money review focused on activity and costs in two public sector prisons – HMP Blakenhurst and HMP Stafford.

36 The Review's analysis identified a cost for the prison by taking a view of what the current cost of HMP Blakenhurst would be if it were based on the original 2001 service level agreement cost. This revised cost accounts for the addition of a new house block and new activity priced at optimum efficiency levels. Further details of the methodology can be found attached at annex C.

¹² Estates, Planning and Development Unit (EPDU), internal analysis.

¹³ Figures provided by HM Prison Service.

¹⁴ *ibid.*

¹⁵ This figure, provided by NOMS, is based on the total cost of prisons (both public and private) and expenditure met by HMPS and NOMS centre (e.g. prison property, prisoner escort services, IT). The figure includes adult prisons and YOIs but excludes health and education expenditure.

37 The Review's analysis revealed a gap between the revised cost identified above through what had been commissioned in accordance with the service level agreement, and present funding levels.

38 HMP Blakenhurst is one of the lowest cost prisons in the public sector estate.¹⁶ Given this and the issues identified above, the Review believes that there is also scope to realise savings across the remainder of HM Prison Service through a combination of improvements to the way in which services are provided and through changes to the services themselves.

Efficiency and financial management of public sector prisons

39 The developing commissioning system that the government is putting in place is intended to ensure that prison places and services (as well as services in the community) are:

- effectively planned and prioritised;
- purchased on the basis of agreed outputs and outcomes in return for an agreed price; and
- delivered through a contract that specifies the outputs, outcomes and costs and is managed accordingly.

40 There are formal commercial contracts/service level agreements between the government and all the private prison providers. Following discussions with private providers, the Review has found these contract arrangements to be well managed and effective. However, arrangements for commissioning prison places and offender services from the public sector focus on operational rather than financial performance with existing service level agreements between regional offender managers and HM Prison Service area managers largely reflecting historical service provision levels.

41 For example, there is a performance monitor in place at both private sector prisons and public sector prisons with service level agreements. These performance monitors oversee the service delivery targets and delivery against the prison's service level agreement requirements. However, it is not the role of the performance monitor to oversee finance and they are not currently challenging effectively the financial costs of running the prison over and above the agreed service level agreement funding plus agreed funding for additional outputs. This undermines the objectives of the original service level agreement contract and the government's commissioning objectives.

42 Challenging the efficiency of public sector prisons is difficult, as a clear view of the desired output and outcomes of prisons is lacking as well as how much this should cost. Without this information, the government is not in a position to demand efficiencies from its prison providers.

43 It should be acknowledged that, although the commissioning body, NOMS, has been in existence since June 2004, the commissioning arrangements are still in their infancy and have some way to go before reaching their full potential. From April 2008 commissioners will, for the first time, have financial authority and provider income will be agreed through negotiation with the commissioners. They will also have financial information, but will need better quality analysis of what services represent best value for money in order to produce desired outputs and outcomes.

44 At present, the framework in which to generate and drive efficiencies within HM Prison Service, both in what is provided and how it is provided, could be improved. Changes to the commissioning or contracting arrangements will have little effect in driving out inefficiencies and making choices about service provision until this issue is addressed.

¹⁶ HM Prison Service Annual Report and Accounts 2006-07.

45 As there are a number of sources and opportunities to obtain extra resource for new activity and places, the current financial management system within the prison service offers very few incentives to generate or realise efficiencies. For example, in order to increase levels of purposeful activity, there is anecdotal evidence of governors bidding to run additional enterprises and programmes where there is not compelling evidence to support such additions.

46 In addition, the process of taking a centrally derived aggregated budget significantly based on the previous year’s expenditure and then allocating across HM Prison Service does nothing to incentivize the reduction of costs.

47 HM Prison Service has developed a number of financial analysis tools such as the Prisons’ Cost Analysis and Comparative Cost Workbook, however the use of benchmarking and best value comparators within NOMS and HM Prison Service would benefit from further improvement. For example, the Review found significant differentials in the costs of handling prisoners’ mail with annual costs equating to £384 per prison place at one prison and £199 per prison place at another.¹⁷

48 In addition to the above, the design of a prison is a key determinant of the running cost. Given the piecemeal development of the prison estate, there are significant differences in these designs and some variation in the cost of a prison place across the estate is therefore to be expected. However, for example, the public sector prisons in Table 2.2 are of similar ages and similar design yet have notable variations in cost:

Table 2.2: Comparisons of cost per place by prison

Prison	Date opened	Category	Certified normal accommodation	Cost per place ¹⁸
HMP Blakenhurst	1993	Male local	827	£23,886
HMP Bullingdon ¹⁹	1985	Male local	759	£27,723
HMP Moorland ²⁰	1991	Male C	1000	£20,959
HMP Holme House	1992	Male local	857	£23,851
HMP High Down ¹⁹	1993	Male local	588	£28,724

49 The Review’s analysis at Blakenhurst is that the widespread differences in practice in regime provision, staff rostering, unionisation and the

provision of additional accommodation at the prisons found in Table 2.2 are likely to account for these variations in cost.

¹⁷ Findings from activity studies at two public sector prisons.

¹⁸ HM Prison Service Annual Report and Accounts 2006-07.

¹⁹ Both HMP Bullingdon and HMP High Down are subject to local pay addition owing to difficulties in recruitment.

²⁰ HMP Moorland has 260 prisoners in open conditions, therefore bringing down the average cost.

50 Staffing is historically based on the numbers and types of prisoners and on the physical layout of individual establishments. Although there is a common approach to identifying how many officers are required to work in each type of prison, there are differences in how efficiently and effectively staff are used. The Review acknowledges that a programme of staff profiling was undertaken between 2000 and 2004 which delivered savings, however the Review believes that the rostering of staff in prisons would benefit from further improvements and increased standardisation.

51 The Review believes that these arrangements could be further improved by having an operational specification for each category of prison which adequately reflects the characteristics of individual prisons which will allow for a more dynamic approach to staff profiling.

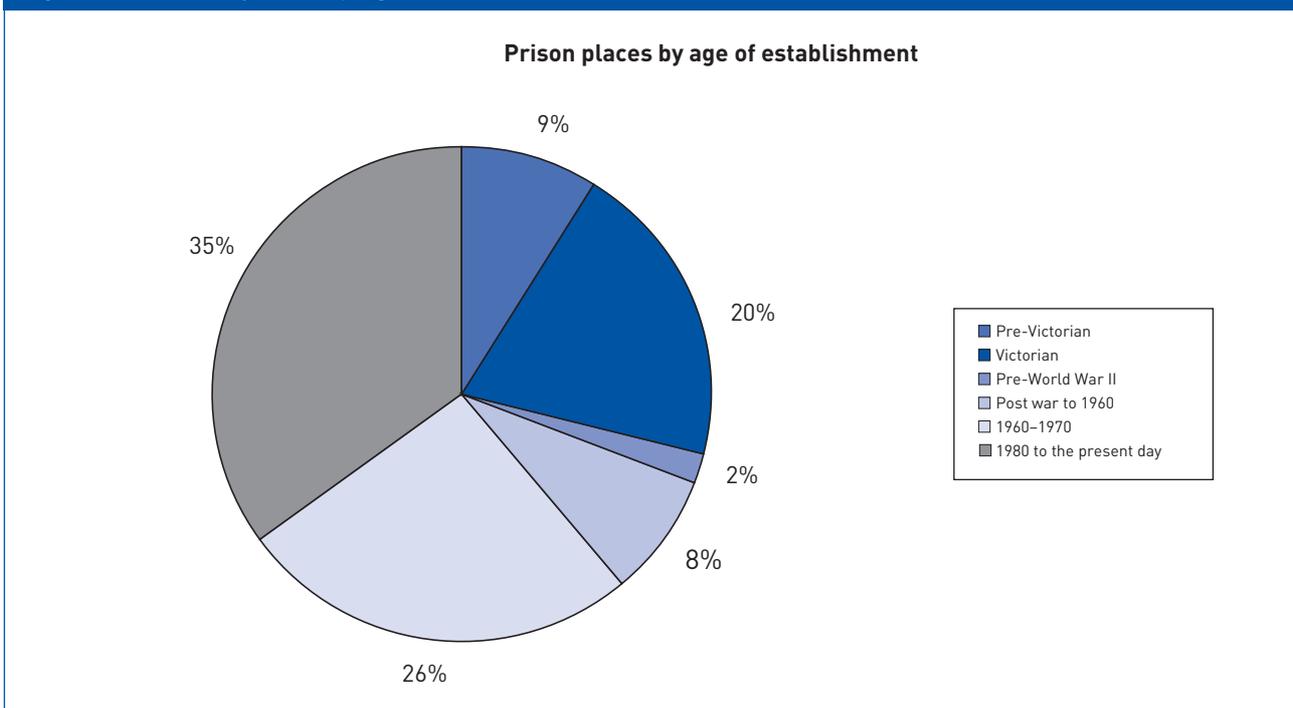
52 The Review has also found that efforts to improve efficiency across HM Prison Service have had not always led to corresponding reductions in unit cost. For example, although local budgets were reduced following the implementation of a shared service

centre, the resultant savings have been absorbed into HM Prison Service’s overall spending and used to offset increased expenditure on pay awards, capacity expansion and utility and food inflation. Some of these increases in expenditure are beyond the control of HM Prison Service and would have otherwise required additional funding if savings had not been made through the shared services centre.

The age and physical condition of the prison estate

53 Prisons in England and Wales have a lengthy history – perhaps more so than any other public sector institution, see annex D. For example, HMP Lancaster Castle (Lancashire) is reputed to be the oldest prison in Europe. Prisons such as HMP Wakefield (Yorkshire), HMP Preston (Lancashire) and HMP Stafford (Staffordshire) were all opened before the advent of the railways (1825), the creation of the Metropolitan Police (1829) and the formation of the National Health Service (1946). Rather than penal museums, these and other similar prisons remain important parts of today’s prison system, as illustrated by Figure 2.2.²¹

Figure 2.2: Prison places by age of establishment



²¹ Data sourced from the Prisons Handbook 2006; full details of the age and certified normal capacity of all prisons is provided in annex D.

54 The ageing estate presents HM Prison Service with a number of value for money and operational issues. Firstly, there is an urgent and growing backlog of maintenance work needed to maintain and upgrade the existing public sector prison estate. The balance sheet figure for the existing HM Prison Service building assets is approximately £5bn, with a maintenance backlog of £1.127bn. The Royal Institute of Chartered Surveyors benchmark suggests that the NOMS annual spend on maintenance should be £125m in 2006/07. The annual spend was approximately £60m, therefore the backlog is mounting daily. This backlog is further exacerbated by the need to keep accommodation open to deal with population pressures.²²

55 In addition, prison design and size are also key determinants of operating costs. Staffing costs are by far the biggest expenditure in operating a prison and the design and size of a prison significantly influences the number of staff required to safely and securely operate it.²³ The older designs of many of prisons results in higher staffing costs, since accommodation is not optimal for current regimes.

The structure of the workforce in public sector prisons

56 Almost 80% of HM Prison Service's £1.9bn budget is spent on staffing.²⁴ The pay of the majority of HM Prison Service staff comes within the remit of the Prison Service Pay Review Body, which makes annual recommendations to government. Other factors influencing HM Prison Service pay levels are equal pay requirements, static workforce and incremental pay structure, for example:

- automatic pay progression arrangements are leading to a significant growth of the pay bill. Under current arrangements labour costs are set to rise in the next four years from in the region of 80% of total HM Prison Service budget in 2006/07 to over 90% in 2010/11;
- the pay structure does not in practice reflect performance, contribution or personal development;
- public sector prison offices have a substantial lead over their private sector counterparts with the average lead on pay being 39% (61% once the full value of reward package including the pension provision is taken into account);²⁵
- resignation rates for prison officers currently run at only 2.2%;
- HM Prison Service needs to continue to work to ensure it has a pay system that is compliant with equal pay and age discrimination legislation; and
- the organisational structures are outdated and inflexible with too much emphasis on grade and not role. Efficiencies can be found by modernising these structures so that the most appropriate person (rather than grade) can carry out the role.

²² All figures provided by Estates, Planning and Development Unit, NOMs.

²³ HM Prison Service Annual Report and Accounts 2006-07.

²⁴ HM Prison Service Annual Report and Accounts 2006-07.

²⁵ <http://www.official-documents.gov.uk/document/cm70/7041/7041.pdf>.

The cost of overheads associated with prisons

57 The Review has sought details of costs of both NOMS and the HM Prison Service since NOMS' inception in June 2004. The headline costs provided

by the NOMS indicate the following increases have taken place over the three years.

Table 2.3: Penal expenditure since 2004			
	2004/05 (£m)	2005/06 (£m)	2006/07 (£m)
HM Prison Service	1649	1830	1936
Probation Board	689	770	807
Youth Justice Board	370	395	419
NOMS	954	1061	1163
Total	3662	4056	4325

58 The majority of NOMS budget represent the delivery of operational/front line services (e.g. Private Prisons or Electronic Monitoring) or are intrinsic to the operation of front line service (e.g. Property costs or Prisoner Escort Services).

59 The cost of combined corporate overheads in the prison system (NOMS and HM Prison Service) are estimated to be approximately £275m in 2006/07.

3. Recommendations: Increasing the capacity of the prison estate and developing a more sustainable approach to the use of custody

Overview

1 To address the findings set out in the previous chapter, the Review recommends a number of measures, which will result in:

- increased capacity in the prison estate;
- improved management of the use of custody, reducing the projected need for new prison places; and
- a possible structured sentencing framework to improve the transparency, predictability and consistency in sentencing and in the criminal justice system.

Recommendation 1: Increasing capacity in the prison estate and reducing the projected need for new prison places.

The Review recommends that the government implement a package of measures to increase capacity of the prison estate and reduce the projected need for new prison places, and makes arrangements to ensure these can be delivered effectively.

2 As set out in chapter two, the Review found that demand for prison places will continue to outstrip the supply of prison places in the short, medium and long term unless measures to increase the capacity of the prison estate and improve the way custody is used are taken immediately, to address this imbalance.

3 The experience of the capacity programmes announced in 1987 and 2002 has shown that failing to respond adequately to the projected increasing prison population is likely to lead to continuing early release schemes and to compound inefficiencies within the prison estate.

4 It should be acknowledged that the majority of the short term measures the Review is recommending to increase the number of prison places may not offer the tax payer optimum value for money. However, given the size and urgency of the deficit faced, and the need to maintain the integrity

of the criminal justice system, the Review considers that these measures are necessary.

5 In developing its recommendations, the Review has worked within the constraints of what can be delivered within available timetables, specifically that:

- measures to manage the use of custody that require primary legislation cannot be put in place until mid-2008 at the earliest. The Criminal Justice and Immigration Bill, which had its first reading in June 2007, would provide a suitable legislative ‘vehicle’ to introduce measures to reduce the need for new prison places; and
- owing to the length of the planning process and the time taken to construct and operationalise a new prison, there is no scope to build substantial additional, permanent and cost-effective capacity before 2010 at the earliest.

6 As a result of these constraints, the Review has focused on measures which can be delivered from mid-2008 onwards.

7 The government is already working on measures which will reduce immediate population pressures, for example through:

- speeding up the deportation of foreign national prisoners;
- increasing take-up of the facilitated return scheme for foreign national prisoners;
- transferring more suitable remand prisoners into bail accommodation;
- the extended use of police cells;
- making the best use of the open prison estate; and
- increasing use of electronic tagging for those on bail.

8 However, the government may also need to implement one or more contingency measures in order to cope with the level of demand projected

during 2008, prior to the impact of the measures the Review is recommending.

Recommended measures to increase the number of prison places

9 The measures to increase the number of prison places take into account a number of principles:

- the need to provide an estate which is secure, safe and decent;
- the need to avoid and/or minimise lengthy planning processes;
- the capacity within construction and materials markets to provide, for example, fencing and locks;
- the ability to recruit and train large numbers of new staff to work in certain areas; and
- the recognition of the finite level of funds for construction and future operation.

10 The proposed measures are:

- rapid building of prison capacity at ex-military bases;
- converting the open side of HMP Wealstun to increase capacity;
- purchasing and converting a suitable vessel into a prison ship;
- quick building on existing sites within the prison estate;
- introducing new capacity projects from the capacity programme reserve list;
- extending existing operational flexibility in population density management to all new accommodation;
- reducing cells out of commission – this will not generate additional prison places overall;
- bringing forward existing projects – this will not generate additional prison places overall; and
- the provision of a prison building programme which by the end of 2012 will deliver 2,500 places (further details can be found in chapter four).

11 The government should review the current key performance indicator on overcrowding in prison to allow for greater operational flexibility within the prison system.

Recommended measures to manage the use of custody

12 The measures to manage the use of custody take into account a number of key principles.

They include:

- the five purposes of sentencing as set out in the Criminal Justice Act 2003;¹
- the continued need to focus prison resources on the most dangerous and serious offenders; and
- the need to focus resources on what works in relation to addressing offender behaviour.

13 The proposed measures are:

- reform of Indeterminate and Extended Sentences for Public Protection to allow for greater flexibility in the usage of these sentences;
- reform of Bail Act Legislation to ensure that custody is reserved for serious and dangerous defendants;
- allowing defendants who comply with the terms of their curfew to be credited for doing so;
- aligning release mechanisms for prisoners serving sentences under the 1991 Criminal Justice Act with those serving sentences under the 2003 Criminal Justice Act;
- endorsing and supporting resources being provided for the implementation of provisions of suspended sentence orders and fixed-term recall already in Criminal Justice and Immigration Bill

¹ http://www.opsi.gov.uk/ACTS/acts2003/ukpga_20030044_en_1.htm.

14 The Review also supports the proposal in the Making Sentencing Clearer consultation paper to legislate to remove the option of a community order from the sentencing menu available to the courts for certain offences. This proposal could apply to all low level, non-imprisonable offences (removing some 6,000 community orders per year). Full details of the proposed package can be found at annex E.

Impact of the package of recommended measures

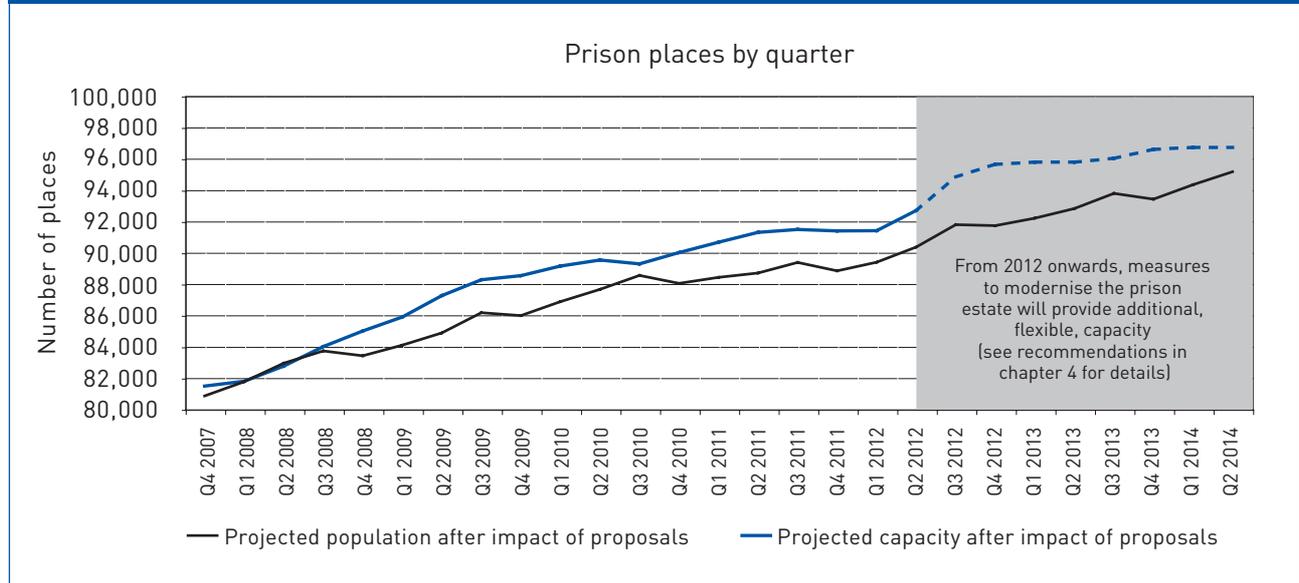
15 The Review estimates that the package of recommended measures will:

- increase the number of prison places by up to 6,500, in addition to the current 8,500 capacity programme; and
- manage the use of custody so that the projected increase in the need for prison places will reduce by between 3,500 and 4,500 places.

16 If work on delivering the package of measures starts immediately, with the necessary legislative measures being included in the forthcoming Criminal Justice and Immigration Bill, this package could reduce the projected deficit of prison places from September 2008.

17 The graph in Figure 3.1 shows the prison population and prison capacity which the Review believes would arise following implementation of the package. The Review has also assumed that the government will take immediate action to address the population pressures arising during 2008 and that this action delivers or saves approximately 1,500 prison places by the end of 2008.

Figure 3.1: Estimated prison capacity and population after implementation of the recommended measures and government short-term measures. Figures for this graph can be found in annex F.



Delivering the package of recommended measures

18 There are a number of inherent risks to the delivery of this package. Implementation of the measures to manage the use of custody will require leadership on all sides to ensure the delivery of the provisions, from inclusion in a Bill through to the provision of any necessary judicial training.

19 In addition, successful implementation of the proposed package will require the government to ensure that any further legislation or policies introduced and implemented during this period have a neutral impact on the prison population.

20 The delivery of up to 6,500 prison places and the estate modernisation programme described in chapter 4, on top of the existing £1.5bn, 8,500 place capacity programme is also ambitious and will require management and governance which is commensurate with its scale and complexity.

21 In light of these risks and the findings emanating from the delivery of the existing capacity programme, the Review makes the following recommendation:

Recommendation 2: Establishment of a Board to oversee the Current and Future Capacity Programme.

A board should be established to oversee the delivery of the capacity programme. This board should be chaired by an experienced non-executive director and monitor both the costs and the timetable for delivery. The board will be formally responsible for advising Ministers over the delivery of the current and future capacity programme.

Developing a structured sentencing framework

22 The recommendations set out so far in this chapter are intended to mitigate a constant and steady increase in the pressures in the prison population over the next six years. The history of the prison population since 1945 and the experience of other developed countries suggest that these pressures are unlikely to abate in the foreseeable future.

23 There is therefore a need for a focussed and informed public debate about penal policy. It will be important to consider whether to continue to have one of the largest prison populations per capita in the world and to devote increasing sums of public expenditure to building and running prisons and responding to fluctuating pressures as they emerge. Not only is it costly, inefficient and a demand on scarce land, but the sporadic way in which the pressures emerge and are responded to inhibits the delivery of effective offender management and rehabilitation.

24 Two of the alternatives to continuous and expensive prison building are to overcrowd prisons to indecent and unsafe levels or implement continuous measures to release offenders from prison earlier, diminishing the authority of the court and eroding public confidence and the integrity of the criminal justice system. Neither of these alternatives is attractive, as the following examples from the US illustrate.

Record overcrowding in California with no end in sight

In the period 1990 to 2000, California's prison population increased by 60%. Part of this increase followed the adoption, in 1994, of the 'three strikes and you're out' law, which sentenced criminals found guilty of a third serious criminal offence to life imprisonment. To meet increasing demand, the state invested \$817 million in prison construction, increasing the number of correctional facilities from 20 to 33.² Yet despite this investment California still suffers a net deficit of prison places. In June 2007, the 33 state prisons, designed to hold 100,000, held as many as 172,000 prisoners, almost double the peak overcrowding rate in England and Wales in the 20th century. In May 2007, Governor Schwarzenegger announced a further prison expansion programme, creating some 53,000 spaces and costing \$6.1bn (£2.9bn), to meet continuing increases in demand.³

Attrition and meaningless sentencing in North Carolina

During 1990–1994, prisoners in North Carolina served an average of 20–30% of their maximum custodial sentence, regardless of offence type. Offenders served as little as 35% of their sentences for the most serious violent crimes, and just 19% for the least serious. At its worst, those convicted of less serious offences served 6% of their sentences. In response to these figures, judges increased sentence lengths to try to influence the parole commission, yet to keep the system within the limits of the prison cap the parole commission was forced to release more offenders, often several hundred per week. Thus, a vicious circle ensued with average sentence lengths announced by judges increasing at the same time as the average times served declining.⁴

25 The only other alternative that has been put to the Review and found to have worked in practice is where a structured sentencing framework has been developed.

The current sentencing framework

26 The current sentencing framework is based on legislation, the decisions of the Court of Appeal, including guideline judgements, and sentencing guidelines issued by the Sentencing Guidelines Council. Parliament is responsible for laying down maximum and in some cases minimum sentences for offences, usually on the basis of measures introduced by the government. Court of Appeal judgments provide guidance to the courts. In addition, since 2004, the Sentencing Guidelines Council has had the responsibility for framing sentencing guidelines in respect of offences or offenders, or in respect of particular matters affecting sentencing.

27 As with most other common law systems, the sentencing framework is based upon multiple and fragmented legislation developed and added to, over many decades. In addition to the basic legislative framework, sentencing practice may also be affected by numerous and unquantifiable influencing factors including political rhetoric, government activity and media pressure as set out in chapters one and two.

28 The complexity and uncertain effect of external factors makes the sentencing framework opaque. Predicting the factors that determine and influence sentencing is therefore difficult and inhibits government decision making and planning on the use of finite penal resources.

² Solving California's Corrections Crisis, Little Hoover Commission, 2007.

³ http://www.leginfo.ca.gov/pub/07-08/bill/asm/ab_0851-0900/ab_900_cfa_20070426_103932_sen_floor.html.

⁴ Lubitz, 2001, North Carolina Sentencing and Policy Advisory Commission 1992.

29 A structured sentencing framework has been shown in several jurisdictions to bring greater transparency, predictability and consistency to sentencing and the criminal justice system. There is

a clear precedent, from a number of jurisdictions, as to how this can be successfully achieved through a structured sentencing framework, developed and monitored by a permanent Sentencing Commission.

Pioneering structured sentencing in Minnesota

Minnesota pioneered the implementation of a structured sentencing framework, which came into effect in 1980, replacing the old indeterminate sentencing system. The value of a structured sentencing framework to the state's criminal justice system has been exemplified by its ability to project in the prison population accurately and manage capacity appropriately.

Minnesota has one of the lowest incarceration rates in the United States, but has still had a growth in its prison population from approximately 6,000 in 2000 to 9,000 in 2007.⁵ For example, since 1989 increased sentences for drug offences have caused a rise in proportion of the prison population for these offenders from 5% to 24%. Sentences for sex offenders have also increased significantly and this group is expected to have the highest growth rate over the next ten years. However this growth has been managed and responded to without eroding sentences or through chronic overcrowding.

The state is able to accurately project the prison population using its structured sentencing simulation model, which includes key assumptions about the impact of any changes in the law and the projected capacity of institutional and community programmes. In 2006, the state was able to predict the prison population to within 0.7% or just 66 offenders per month.⁶

Responding to chronic overcrowding and eroded sentences in North Carolina

In 1994, North Carolina introduced a structured sentencing framework. Under the new system, it is possible to accurately predict the changes that will occur to the prison population; indeed, over a recent 6 month period they were able to predict their overall state prison population of 38,500, to within 11 places.⁷ The state also implemented a deliberate strategy to increase the use of community sanctions for non-violent offenders. Prisoners now serve an average of about 80% of their sentences.⁸

The reform has attracted a broad political consensus, because the probabilities of incarceration and lengths of sentences have increased for violent offenders. North Carolina's success in managing the use of its prison resources is especially remarkable because it occurred over a period in which the United States as a whole was experiencing enormous prison growth.

⁵ <http://www.corr.state.mn.us/publications/documents/FY07PrisonPopulationProjectionsReport.pdf>.

⁶ *ibid.*

⁷ <http://www.nccourts.org/Courts/CRS/Councils/spac/Documents/citizenguide2007.pdf>.

⁸ <http://www.ncjrs.gov/pdffiles1/nij/grants/187859.pdf>.

The components of a structured sentencing framework

30 The main feature of a structured sentencing framework is a single comprehensive set of indicative guideline ranges. This would cover sentence lengths, types of community sentences and the level of financial penalty, for groups of all offences, ranked by seriousness and offender characteristics (e.g. criminal history and culpability).

31 One method used frequently in designing such a framework is to produce a first version derived from current sentencing practice for all offences. Subsequent versions would draw on current sentencing practice, but would be modified so far as necessary as to take account of:

- the principles of sentencing as set down in legislation (e.g. Criminal Justice Act 2003); and
- the total impact on prison places and other penal services to ensure that they would come within a published financial envelope as set out by government to Parliament.

32 Provision would be made in sentencing framework law to give effect to the final guidelines.

33 **A structured sentencing framework proposal does not mean that individual sentencers have to have regard to resources at the time they sentence in individual cases.** The task of ensuring that aggregate sentencing outcomes remain within the envelope of available prison places and other penal services is undertaken in the design of the structured sentencing framework.

34 Sentencers would, of course, continue to pass sentences on the evidence and aggravating and mitigating factors in each case. Sentencers must retain the independence to depart from an indicative range where they consider it appropriate (subject to the statutory maximum and any statutory minimum requirements).

35 The ranges would need to be developed in such a way that departure is kept to a minimum as the breadth of the range would be designed to account for the vast majority of usual aggravating and

mitigating factors seen in current sentencing practice.

36 In exercising the discretion to depart from a presumptive sentence, the judge would explain in sufficient detail, the particular identifiable circumstances. In addition to his sentencing remarks, the judge would record the reasons for the departure so that his decision, could if necessary, be reviewed on appeal.

Developing and overseeing a structured sentencing framework

37 Most jurisdictions that have introduced successful structured sentencing frameworks have done so through the work and guidance of an independent statutory body (usually known as a Sentencing Commission). Successful Sentencing Commissions are invariably led by a member of the senior judiciary with further judicial input as well as from prosecution, defence, and victims' representatives and significant statistical, analytical and legal support.

38 The task of a Sentencing Commission is to develop a comprehensive set of indicative ranges according to the objectives set down by the legislature and in consultation with all key parties and the public. Once a table of indicative ranges is in place the Commission monitors their use and carries out a number of other reporting and advisory functions.

39 There are different mechanisms for seeking the assent, or approval, of the legislature to the set of indicative ranges produced by the Sentencing Commission. It will be necessary to develop a similar process for this jurisdiction. One possible model is:

- a) the Commission would present them to government along with the accompanying prison population and correctional resources forecast. Government would present them to Parliament for affirmative approval in a format as set out under the originating primary legislation;
- b) at the stage of seeking approval, both the Commission and the government would

endorse the options that went before Parliament;

- c) the government would be prevented by statute from unilaterally altering the set of indicative ranges. If the government wished to make any amendments they would have to consult and agree them with the Commission, who would model the impact, update projections and possibly consult wider before giving agreement. The Commission should be involved throughout the parliamentary process in providing further advice as required; and
- d) in order for this process to be completed in a timely and managed way, a table of indicative ranges should, in the first instance, be completed for either-way and indictable offences. Once completed and passed by Parliament a similar process would begin for all summary offences.

40 If such a process were to be established for England and Wales it would build on the work of the separate Sentencing Advisory Panel and the Sentencing Guidelines Council.

Bringing transparency and control to the factors that influence sentencing

41 Once a set of comprehensive indicative ranges was in place they would be overseen by the Court of Appeal. The ongoing role for a Commission would be to collect information on each of the factors that affect the prison population, including the impact of the table of indicative ranges and issues relating to remand, recall, the work of the Parole Board and the number of offences brought to justice.

42 A Commission would be responsible for advising the government on the likely effect of these factors on the prison population and assist in finding solutions to these problems, including by designing and calculating the impact of changes to the structured sentencing framework. Any substantive changes to the sentencing ranges would have to go through the same consultative and Parliamentary process as the original ranges set out above.

43 A Commission could be asked to advise on policy decisions on other drivers of the population but adoption and implementation of such solutions would continue to be the responsibility of government and Parliament.

44 A Commission could also be required under the original statute to assess all national policy proposals. This will include proposed legislation which could have an impact on each of the factors which contribute to the prison population so as to estimate report and if asked, advise on the likely impact of these proposals on prison places. A Commission could produce the official prison projections and report annually to Parliament.

45 These continuing responsibilities of a permanent Commission are necessary to ensure that the criminal justice system has the capability to predict the size of the prison population and use of other penal resources with greater accuracy than the current system. This would allow for improved planning and governance of policy decisions and the process by which decisions are made would be far more transparent than at present.

Informing the public debate and developing options

46 Further work is needed in order to focus the public debate as to whether the development and adoption of a structured sentencing framework is the course that government and Parliament wish to follow for finding a long-term solution to prison population pressures. This work should be undertaken by a group of people with the time, skills and status to acquire and assess data to produce a first set of indicative ranges based on current practice. A draft terms of reference for such a group can be found at annex G.

47 As part of the contract with the public, the government will need to ensure that the sentences passed by the Court within a possible structured sentencing framework are delivered effectively and in a way which maximises public protection and reduces re-offending. Delivery of the reforms envisaged by the government is the critical driver in this process.

48 The preliminary work may enable Parliament to decide whether to endorse the creation of a Sentencing Commission, potentially in a fourth session criminal justice bill in autumn 2008.

Recommendation 3: Structured sentencing and an effective planning mechanism.

The government should establish a working group to consider the advantages, disadvantages and feasibility of a structured sentencing framework and permanent Sentencing Commission, which will lead and inform the public debate on these issues.

The working group will examine detailed proposals through consultation for a possible Sentencing Commission for England and Wales, with a view to its possible establishment in the next three years.

The working group will report to the Lord Chancellor and Lord Chief Justice by summer 2008.

4. Recommendations: Efficiency and governance of the prison system

Overview

1 As set out in chapter two, the Review found that there is significant scope for increasing the efficiency and value for money of the prison system in the medium and long term, both in respect of the services that are delivered and the way in which they are delivered.

2 To address the above finding, the Review makes a number of recommendations which will result in:

- a number of savings to be made in the medium term based on the Review's analysis of HMP Blakenhurst;
- improvements to the financial and contractual management within the prison system;
- the modernisation of the penal estate;
- the modernisation of the prison service workforce; and
- streamlined and refocused management structures and reduced costs in both NOMS and HM Prison Service.

Identifying efficiency savings from public sector prisons

3 As set out in chapter two, the Review has found a gap between the current cost of HMP Blakenhurst and the Review's assessment of the prison's cost based on an analysis of cost increases at that prison since 2001. This gap represents the funding of services within HMP Blakenhurst allocated in addition to the terms of the original service level agreement.

4 The majority of this gap represents the provision of staff and officers within the prison who are working towards the delivery of services. On this basis, immediately extracting this money from the prison would cause a number of operational difficulties.

5 The Review recommends that the government should build on this work and develop an action plan to reduce service levels, without compromising safety and decency, to that assumed in the service level agreement cost, for implementation in the 2008/09 financial year. This will mean ensuring that existing services are being delivered at the most efficient cost, and making choices about the services to which scarce resources are allocated to achieve specified outputs and outcomes.

6 Owing to the differences between prisons and the quality of existing financial management tools, locating and validating the cost for HMP Blakenhurst has proved time-consuming. Given this, it will be difficult to extrapolate this figure across the remainder of the prison estate without significant further work.

7 However, the Review considers that if an aggressive programme of cost and activity profiling across the public sector estate is commenced immediately, it will be possible to define an efficient cost for each prison and begin realisation of these from 2009/10 onwards. This work should be undertaken alongside the development of the zero based costing model as recommended below.

8 As set out in chapter two, the review also found weaknesses in the approach to efficiency and financial management across public sector prisons. In parallel, to continue the work at HMP Blakenhurst the government should begin a programme of cost and activity profiling across the public sector estate in order to define an efficient cost for each prison that takes into account how services can be provided most efficiently and makes choices about what services are provided.

Recommendation 4: Develop and implement tools to improve efficiency and financial management of public sector prisons.

4A: The government should produce an operational specification for each category of prison which adequately reflects the characteristics of individual prisons.

4B: The government should produce a zero based costing model to establish an efficient cost for prison places across the prison system.

4C: The government should produce a framework of service level agreements with every public sector prison or cluster, and contracts with private sector prisons, based on the standard operational model and corresponding efficient costs, and market test a proportion of public sector prisons.

9 A standardised operational specification would provide a specification for each category of prison in terms of regime and activity requirement. This should be produced with sufficient flexibility to allow for innovation and for the individual characteristics of prisons and prison populations to be taken into account.

10 In conjunction with the production of an operational specification, a zero based costing model which attaches a corresponding price to places and activities within prisons should also be produced. This will enable the efficient cost of a prison to be derived in line with the relevant physical and operational specification. It will also allow for the cost profile of individual prisons to be produced.

11 This will allow for:

- all working within the prison system to be informed about the cost and value of providing places and activities in prison;
- the transfer of best practice across the estate;
- service level agreement values to be based on actual resource requirements, not historical levels of spending; and

- development of a cost and activity service level agreement between the contract manager and the governor of a public sector prison.

12 Once the standardised operational model and the costing model have been produced, the revised cost for places and activities should be reflected in a framework of service level agreements between contract managers and every prison in England and Wales.

13 A service level agreement will combine the delivery specification and efficient cost of each prison, or prison cluster, where appropriate. It will be used to ensure that the prison operates within both. It will be measured by means of targets, one of which will be cost.

14 To ensure a greater degree of contestability within the penal market place, a proportion of these service level agreements especially those relating to new prisons should be market tested before being put in place. The government should also explore market testing the provision of activities and certain administrative functions in prison, such as the management of prisoners' money.

15 The government will need to decide the appropriate level of market testing but should, as a rule, test service level agreements where there is disagreement over the efficient cost of a prison or prison function.

16 The service level agreements with public sector prisons should be put on a similar footing to the commercial contracts currently in existence between the government and the private sector, ensuring that:

- changes in output are priced and managed through a transparent notice of change process;
- detailed accounts are published setting out the cost of running individual prisons and the contracted price; and
- appropriate sanctions are imposed on all prisons for missing service level agreement targets.

17 These service level agreements will need sufficient flexibility to accommodate operational changes required for population and offender management without additional and complex bureaucratic negotiation between contract managers and governors. Contract management is an essential part of commissioning and the government will need to ensure that those responsible for managing contracts have sufficient capability to effectively manage contracts and any changes go through the appropriate notice of change procedure.

18 Such a framework will strengthen existing commissioning arrangements and allow for a more competitive and transparent market place for prison and probation services.

19 The Review does not underestimate the time it will take to develop these financial tools and recognises that additional resources will be required to allow for their development. The efficiency improvements they will deliver should be more than sufficient to cover this cost.

The modernisation of the penal estate

20 As set out in chapter two, the age and design of prisons are a key driver of cost. These considerations have led to the recommendation of three Titan prisons as a key part of the strategy for the modernisation of the prison estate. Each Titan prison would:

- provide up to 2,500 places, comprising five units of approximately 500 offenders all holding different segments of the prison population.
- draw on the best practice in the existing estate to introduce first-class, efficient, working practices from the outset, ensuring that regime and facilities are available to provide satisfactory opportunities for purposeful activities, such as employment and training.
- be based on cost-effective designs which deliver unit cost savings during both construction and operation, for example, through:
 - optimal sight lines which would result in better staff utilisation and deliver staff savings;

- centralised support services including catering, medical, visits and administration within a large establishment;
- economies of scale in the capital cost outlay with standardised design allowing off-site pre-fabrication construction;
- new technology built into the fabric of the building (for example, bio metric scanning, bar coding, electronic door operation) allowing long term operational effectiveness and greater efficiencies; and
- consolidated planning, construction and procurement exercises to shorten overall build timescales compared to a number of smaller sites

- be located as close as possible to the regions where the demand for prison places outweighs the supply (notably London, the West Midlands and the North-West);
- subject to views from HM Court Service, be co-located with a court, in order to reduce time and cost for prisoner escorts and reduce the security risk; and
- provide an opportunity to incentivise modernisation of working practices and stimulate a competitive market through a large-scale building programme.

21 The working assumption is that Titan prisons will house adult male offenders. An individual wing in a Titan prison could easily accommodate a distinct segment of prisoner, but it may be more appropriate to house females and juvenile offenders in smaller units. This could be done within the Titan perimeter to delivery an efficient service (such as catering and utilities) without compromising the distinct offender management needs of different segments of the prison population.

22 There are some operational challenges associated with large prisons, including the possibility of large scale disturbance, the difficulty in meeting the needs of specific groups of prisoners (e.g. female and young offenders) and the

management complexities associated with a large staff complement and challenges of managing a number of potentially different prisoner segments on the same site.

23 However, even though Titan prisons would be significantly bigger than the largest existing single prison in England and Wales (HMP Wandsworth, male local prison with an average population of 1,467),¹ they would only be marginally bigger than the Isle of Sheppey Cluster that currently has an operating capacity of 2,224.² A new houseblock will take the capacity of this cluster to at least 2,400 places.

24 From 2013 onwards, if the measures to construct Titan prisons and the Sentencing Commission are successfully implemented, there will be sufficient capacity (above the operational capacity required to run a safe prison system) within the system to enable the government, for the first time in decades, to make decisions for the most cost effective disposal of ageing or inefficient estate. This may be by decommissioning some of the unconventional supply measures proposed by this Review (e.g. a ship, defence bases) or allowing for the closure of parts of the existing prison estate.

25 The Review's analysis demonstrates that the modernisation of the prison estate through Titan prisons and the removal of ageing and expensive prisons has a compelling financial case. In the long term, through the reduction of the maintenance backlog, significant running cost efficiencies and the revenue raised from the disposal of closed prisons, a modernisation strategy as described above could enable the closure of 5,000 places in the most inefficient and decrepit establishments.

26 The government should continue to validate this analysis, review the operational and strategic appropriateness of the establishments within the existing estate and undertake a period of consultation with stakeholders.

27 This will determine the most suitable strategy for the provision of Titan prisons and the remainder of the estate. This would include reviewing proposals to close some of the interim medium-term supply measures (e.g. a ship), closing smaller inefficient prison sites or reconfiguring some of the smaller sites to accommodate female or juvenile offenders allowing for a different approach appropriate to their needs.

28 The proposed timescales of four to five years to develop, design, plan, procure, construct and operate a Titan prison have been established after discussion with a number of experienced construction companies but will remain challenging. The delivery of previous prison builds and a number of projects in the current capacity programme have been prolonged by difficulties in securing planning consent.

29 To mitigate against any avoidable delays, the government should consider using the accelerated process which is already available for planning applications for Crown Development.³ Provided that the Crown can certify that the scheme is of national importance and needed urgently and it has become clear in pre-application discussions that planning permission is likely to be refused, the developing body can make an application directly to the Secretary of State.

30 The government should also consider adopting the publication of a national policy statement setting out the government's assessment of the need for prison capacity. This would need to be subject to public consultation. The benefit would be to rule out at planning inquiries lengthy arguments about the need for extra prison capacity.

¹ HM Prison Service Annual Report, 2006/07.

² Comprising HMP Elmley, HMP Swaleside and HMP Standford Hill.

³ Under the Planning and Compulsory Purchase Act, 2004.

Recommendation 5: Development of a Strategy for the Modernisation of the Penal Estate, including Titan Prisons and the Building out of Inefficiencies.

An estates strategy should be produced that deals with all offenders and, in particular the specific needs of women and juvenile offenders, improves the strategic and operational management of the prison estate and offers better value for money for the taxpayer. At the heart of this strategy should be the provision of a number of large prisons which, over time, will allow for the planned closure of inefficient prison capacity as new places come on stream and sufficient headroom is created to allow this.

Workforce reform

31 Chapter two identified working practices and pay structures as a key determinant of cost in the prison system. In addition to the efficiencies to be realised at HMP Blakenhurst and potentially elsewhere, the Review believes that there are further and perhaps more significant efficiencies to be gained through reforming the workforce of HM Prison Service. Reforming the workforce could ultimately allow for the delivery of the following objectives:

- to provide a workforce structure that is suited to the environment within which HM Prison Service operates, including commissioning and contestability, reducing re-offending and wider government objectives;
- to improve efficiency in the use of resources, whilst maintaining safety and operational resilience;
- to demonstrate clear and measurable benefits that provide a compelling rationale for investment; and
- to deliver a pay and grading system that rewards and develops employees fairly, mitigates future equal pay claims and the risks of such equal pay claims, and reduces the ongoing unsustainable pay bill growth.

Recommendation 6: Workforce Reform in HM Prison Service.

The review recommends that the government urgently pursue modernisation of the HM Prison Service workforce, beginning by setting out a costed case for reform.

Improving the way the prison system is managed

32 The Review has set out an ambitious programme of work for the government to deliver against a challenging timetable (see annex I). This will need to be delivered against a growing prison population and probation service caseload and against a tight financial settlement. The Review does not underestimate the challenges the government faces in delivering the proposed reforms.

33 The Review believes that in order to consolidate and deliver the recommendations in this report, a number of changes should be made to the existing structure of both NOMS and HM Prison Service. The changes are in addition to the establishment of a board to oversee the delivery of the current and future capacity programmes and the existing reform programme.

34 NOMS should review its overall costs and structures in order to be clear about the best way to deploy resources to achieve its objectives.

35 The Review has been unable to obtain sufficient detail in the time available to analyse these costs in detail and make specific recommendations about changes that could be made.

36 NOMS and HMPS corporate overhead costs have been subject to significant change as structures have developed and reforms have been implemented. In particular, NOMS has been putting in place the reforms set out in the 2003 report *Managing Offenders: Reducing crime*. As such, the information looking back does not readily permit year on year comparison.

37 Moving forward with a programme of the scale and degree of challenge proposed it is clear that there is a need for maximum transparency and control in the financial management of the overheads for the entire penal system. This should begin with disaggregation of all central costs from direct operational costs, and close monitoring against agreed targets of all these central costs.

38 The Review believes there are opportunities to reduce the combined corporate overheads (in the region of £275m in 06/07). Following the changes to both NOMS and HM Prison Service suggested above.

Recommendation 7: Streamlining management structures and reducing overhead costs.

An implementation Board with strong non executive membership chaired by the Ministry of Justice’s Permanent Secretary should be established to drive forward the delivery of the agreed recommendations.

The structure and focus of the prison system should, over time, be reconfigured to increase the focus on both service delivery and offender management.

Detailed cost information relating to all public and private sector prisons should be published on a regular basis. This information should include inputs and outputs as well as the costs of processes, administrative functions, activities and items such as food and utilities in prison.

Annex A – The government’s population and capacity projections

The government’s prison population projections are based on:

- the characteristics of the existing prison population; and
- the characteristics of future prison receptions based on assumptions about the impacts of existing and future criminal justice legislation.

The projections also identify three alternative scenarios about changes in sentencer behaviour which might arise. The three scenarios, which are assumed to be equally likely, are as illustrated below:

Low demand	A 1% reduction in the custody rate and a 0.5% reduction in sentence lengths, year on year for the seven years of the forecast, is assumed.
Medium demand	No year on year change in sentencer behaviour is assumed for each of the seven years of the forecast.
High demand	A 1% increase in the custody rate and a 0.5% increase in sentence lengths, year on year for the seven years of the forecast, is assumed.

Given the number of assumptions required, the projections have proven to be relatively accurate. For example:¹

Projections (published)	Lowest projected population @ June 2007	Highest projected population @ June 2007	Actual population @ June 2007	Difference from projected range @ June 2007	
				Value	%
February 2000	70,400	80,300	80,603	303	0.4%
May 2001	69,500	80,700	80,603	0	0.0%
December 2002	88,400	103,800	80,603	-7,797	-9.7%
September 2003*	88,700	89,500	80,603	-8,097	-10.0%
January 2005	76,190	82,140	80,603	0	0.0%
July 2005	76,670	84,260	80,603	0	0.0%
July 2006	78,380	80,420	80,603	183	0.2%

* This was an interim projection done just prior to the implementation of the Criminal Justice Act 2003. Therefore this projection could not take account of major changes to the system.

¹ Projections of long-term trends in the prison population to 2007; Philip White and Christopher Cullen; Home Office Statistical Bulletin 2/00; February 2000. pp. 16.
 Projections of long-term trends in the prison population to 2008 England and Wales; Carly Gray and Mike Elkins; Home Office Statistical Bulletin 8/01; May 2001. pp. 13.
 Projections of long-term trends in the prison population to 2009 England and Wales; Rachel Councill and John Simes; Home Office Statistical Bulletin 14/02; December 2002. pp. 10.
 Prison population projections 2005 – 2011 England and Wales; Nisha de Silva; Home Office Statistical Bulletin 01/05; January 2005 pp. 29.
 Updated and revised prison population projections 2005–2011 England and Wales; Nisha de Silva, Paul Cowell and Terence Chow; Home Office Statistical Bulletin 10/05; July 2005. pp. 13.
 Prison population projections 2006–2013 England and Wales; Nisha de Silva, Paul Cowell, Terence Chow and Paul Worthington; Home Office Statistical Bulletin 11/06; July 2006. pp. 26.
 Prison population projections 2007–2014 England and Wales; Nisha de Silva, Paul Cowell, Vincent Chinegwundoh, Thomas Mason, Jennifer Maresh and Katherine Williamson; Ministry of Justice Statistical Bulletin; August 2007. pp. 28.

In making assessments and modelling recommendations, the review has chosen to use the government’s ‘high demand scenario’ projection as the basis of its model of future supply and demand for prison places based on the following:

- given the difficulty of aligning supply and demand in the short-term, taking decisions based on the high demand scenario will help manage the risk of further population crises;
- even if the long-term trend is lower than the high scenario, short-term fluctuations in demand are likely and sufficient supply needs to be available to provide a reasonable capacity margin;
- the Review is proposing to build sufficient capacity to allow for the closure of ageing and inefficient prisons in the longer term; and
- if the population is lower than expected then closures can take place sooner.

The Review has also assumed in its modelling that the end of custody licence scheme continues indefinitely. This results in a prison population approximately 1,000 – 1,500 places lower than that projected in the government’s published projections.

The government’s programme to increase the supply of prison places also covers three alternative scenarios. Whilst these do not differ as greatly from each other as the three demand scenarios, the Review has taken the ‘pessimistic’ scenario as the basis for modelling the supply line, for the same reasons of prudence and realism set out above.

Annex B – Offender management and sentencing statistics 1995-2006

		1995	1996	1997	1998	1999	2000
Population¹	Prison Population	51,084	55,526	61,467	65,727	64,529	65,194
Remands¹	Total Remand Receptions	66,075	70,605	75,664	81,585	84,105	81,336
	Remand Population	11,056	11,568	12,105	12,903	12,589	11,433
Volumes²	Offenders sentenced in the Crown Court	74,256	73,665	79,502	80,360	77,170	74,341
	Offenders sentenced in the Magistrates' Court	1,280,038	1,364,089	1,305,176	1,388,589	1,330,828	1,350,008
Sentences²	Offenders sentenced	1,354,294	1,437,754	1,384,678	1,468,949	1,407,998	1,424,349
	Immediate Custodial Sentences	79,538	85,249	93,841	100,566	105,323	106,187
	In Crown Court	40,805	44,083	47,324	47,951	47,349	46,212
	In Magistrates' Court	38,733	41,166	46,517	52,615	57,974	59,975
	Proportion of total sentences	6%	6%	7%	7%	7%	7%
	Community Penalties	129,922	132,637	139,990	149,388	151,633	155,538
	In Crown Court	22,382	19,832	22,175	22,354	20,656	19,606
	In Magistrates' Court	107,540	112,805	117,815	127,034	130,977	135,932
	Proportion of total sentences	10%	9%	10%	10%	11%	11%
	Fines	996,715	1,073,024	998,672	1,060,743	992,420	1,013,347
	In Crown Court	3,927	3,350	3,344	3,253	2,707	2,512
	In Magistrates' Court	992,788	1,069,674	995,328	1,057,490	989,713	1,010,835
	Proportion of total sentences	74%	75%	72%	72%	70%	71%
	Other disposal	148,119	146,844	152,175	158,252	158,622	149,277
Rates²	Percentage Custody Rate – Crown Court	55.0%	59.9%	59.6%	59.7%	61.5%	62.3%
	Percentage Custody Rate – Magistrates' Court	3.1%	3.0%	3.6%	3.8%	4.4%	4.5%
Lengths²	Average Sentence length (months) – Crown Court (Excl IPP and Life)	20.5	22.1	22.5	21.8	22.1	22.4
	Average Sentence length (months) – Magistrates' Court	3.0	3.0	2.9	2.8	2.8	3.0
Recalls³	Recalls of determinate sentences	– †	– †	– †	– †	– †	2,457
Outflows	Number Released on Home Detention Curfew ¹	–	–	–	–	14,847	15,510
	Number potentially eligible for Home Detention Curfew ¹	–	–	–	–	49,527	55,344
	Number of Parole Applications ³	4,403	4,899	5,242	6,078	6,219	5,576
	Percentage of Parole applications granted ³	41.5%	35.9%	38.3%	39.2%	41.2%	46.3%

*As at 16th November 2007 the prison population (including those in police cells) stood at 81,547. An increase of over 30,000 (60%) since June 1995.

†Data not available.

¹Offender Management Caseload Statistics 2005 and provisional 2006 data.

Annex B – Offender management and sentencing statistics 1995-2006

2001	2002	2003	2004	2005	2006	Percentage increase since 1995	Percentage increase since 1995	Peak percentage increase since 1995	Peak percentage increase since 1995	Peak year
66,403	71,218	73,657	74,488	76,190	77,982	25,106	49.1%	26,898	52.7%	2006*
82,668	91,525	91,188	85,483	84,846	83,747	18,771	28.4%	25,450	38.5%	2002
11,061	13,081	13,073	12,495	12,864	13,067	1,808	16.4%	2,025	18.3%	2002
72,068	76,191	76,063	76,254	75,741	76,439	1,485	2.0%	6,104	8.2%	1998
1,276,426	1,343,416	1,413,764	1,471,099	1,406,712	1,336,501	126,674	9.9%	191,061	14.9%	2004
1,348,494	1,419,607	1,489,827	1,547,353	1,482,453	1,420,571	128,159	9.5%	193,059	14.3%	2004
106,273	111,607	107,670	106,322	101,236	96,017	21,698	27.3%	32,069	40.3%	2002
44,405	46,694	44,274	44,938	43,986	42,586	3,181	7.8%	7,146	17.5%	1998
61,868	64,913	63,396	61,384	57,250	53,431	18,517	47.8%	26,180	67.6%	2002
8%	8%	7%	7%	7%	7%					
164,997	186,520	191,681	202,946	204,247	190,837	74,325	57.2%	74,325	57.2%	2005
19,528	21,656	23,094	22,807	22,403	17,232	21	0.1%	712	3.2%	2003
145,469	164,864	168,587	180,139	181,844	173,605	74,304	69.1%	74,304	69.1%	2005
12%	13%	13%	13%	14%	13%					
930,121	972,737	1,033,617	1,082,691	1,025,064	961,535	28,349	2.8%	85,976	8.6%	2004
2,550	2,353	2,699	2,454	2,354	2,141	-1,573	-40.1%	0	0.0%	1995
927,571	970,384	1,030,918	1,080,237	1,022,710	959,394	29,922	3.0%	87,449	8.8%	2004
69%	69%	69%	70%	69%	68%					
147,103	148,743	156,859	155,394	151,906	172,182	3,787	2.6%	24,063	16.2%	2006
61.8%	61.4%	58.3%	59.0%	58.2%	55.7%	3.2%	5.8%	7.3%	13.3%	2000
4.9%	4.9%	4.5%	4.2%	4.1%	4.0%	1.0%	32.3%	1.8%	58.1%	2001/2002
24.2	25.9	26.3	26.5	25.5	24.7	5.0	24.4%	6.0	29.3%	2004
3.1	3.1	3.1	3.0	3.0	3.0	0.0	0.0%	0.1	3.3%	2001/2002/ 2003
4,369	6,323	8,133	8,262	8,678	11,231					
13,649	20,456	21,188	19,294	17,296	13,666					
54,064	55,370	57,551	55,810	54,616	52,987					
5,514	6,012	6,038	7,297	7,528	6,923	3,125.0	71.0%	3,125	71.0%	2005
50.6%	52.8%	53.1%	52.0%	49.4%	35.8%	7.8%	18.9%	11.6%	27.8%	2003

²Sentencing Statistics 2005 and provisional 2006 data. All data are on the basis of all persons, all offences.

³Home Detention Curfew was implemented on 28th January 1999.

⁴Parole Board Annual Report 2006–07 and Statistical Annex to that publication.

Annex C – Methodology – HMP Blakenhurst

In January 2001, The Government asked Lord Carter to undertake an internal review into the value for money of HM Prison Service with a view to identifying the annual 3% efficiency savings required by HM Treasury.

To achieve this, the value for money review focused on two public sector prisons HMP Blakenhurst and HMP Stafford where detailed activity studies were undertaken in order to establish an efficient cost at both prisons.

The Review into aligning supply and demand has sought to further validate the initial efficient cost at HMP Blakenhurst and to make a number of recommendations as to how cashable savings could be achieved and how financial management could be improved within HM Prison Service.

To achieve this, a specialist firm of consultants conducted an exercise to analyse the cost increases at HMP Blakenhurst incurred between the 2001/02 (when the management of Blakenhurst was transferred to HM Prison Service) and the present day.

All additional sources of funding since 2001/02 were examined along with any changes in physical characteristics and activities including new capacity, regime changes and the introduction of intervention programmes.

An 'efficient' cost was then established by taking a view of what the current cost of HMP Blakenhurst would be if it were based on the original service level agreement price. This price also accounts for the addition of a new house block and new activity priced at optimum efficiency levels. Consultation with HM Prison Service then took place to validate and modify the initial figures.

Annex D – Prison establishments in England and Wales

Prison	Certified normal capacity	Opening date
LANCASTER CASTLE	159	1500
WAKEFIELD	748	1594
SHEPTON MALLET	165	1610
NORTHALLERTON	153	1785
PRESTON	449	1790
GLOUCESTER	225	1792
SHREWSBURY	182	1793
STAFFORD	680	1793
BEDFORD	325	1801
CANTERBURY	196	1808
DARTMOOR	618	1809
MAIDSTONE	559	1819
BRIXTON	606	1821
LEICESTER	206	1825
CARDIFF	524	1827
CHELMSFORD	552	1828
PARKHURST	462	1838
DURHAM	591	1840
BIRMINGHAM	1121	1842
PENTONVILLE	921	1842
READING	190	1844
USK	150	1844
WINCHESTER	378	1846
LEEDS	803	1847
PORTLAND	539	1848
WANDSWORTH	1113	1851
EXETER	316	1854
LIVERPOOL	1150	1855
SWANSEA	248	1861

Prison	Certified normal capacity	Opening date
LEWES	458	1867
MANCHESTER	961	1868
HULL	723	1870
LINCOLN	448	1872
ROCHESTER	392	1874
KINGSTON	199	1877
DORCHESTER	147	1881
BRISTOL	420	1882
NORWICH	535	1887
WORMWOOD SCRUBS	1184	1890
NOTTINGHAM	550	1891
WERRINGTON	160	1895
AYLESBURY	437	1897
BLANTYRE HOUSE	122	1911
CAMPHILL	523	1912
NORTH SEA CAMP	306	1935
HOLLESLEY BAY	330	1938
PRESCOED	167	1939
EAST SUTTON PARK	98	1945
HUNTERCOMBE	365	1946
LEYHILL	512	1946
ASKHAM GRANGE	153	1947
LATCHMERE HOUSE	207	1948
SUDBURY	563	1948
HEWELL GRANGE	187	1949
VERNE	558	1949
STANDFORD HILL	464	1950
SPRING HILL	334	1953
ASHWELL	535	1955

Prison	Certified normal capacity	Opening date
EVERTHORPE	603	1956
DRAKE HALL	315	1958
WETHERBY	360	1958
MORTON HALL	392	1959
ERLESTOKE	426	1960
FORD	541	1960
GUYS MARSH	520	1960
HINDLEY	539	1961
NEW HALL	393	1961
BULLWOOD HALL	180	1962
GRENDON	253	1962
KIRKHAM	588	1962
SEND	218	1962
SWINFEN HALL	600	1962
BLUNDESTON	421	1963
STYAL	449	1963
WELLINGBOROUGH	636	1963
RISLEY	1050	1964
STOKE HEATH	574	1964
BROCKHILL	170	1965
LOW NEWTON	327	1965
GARTREE	666	1966
WHATTON	719	1966
ALBANY	527	1967
HAVERIGG	558	1967
ONLEY	640	1968
COLDINGLEY	370	1969
LONG LARTIN	606	1971
RANBY	912	1971

Prison	Certified normal capacity	Opening date
ACKLINGTON	882	1972
DEERBOLT	513	1973
CHANNINGS WOOD	634	1974
GLEN PARVA	668	1975
HOLLOWAY	544	1975
FEATHERSTONE	599	1976
EDMUNDS HILL	366	1977
HIGHPOINT	792	1977
COOKHAM WOOD	137	1978
WYMOTT	1005	1979
WARREN HILL	222	1982
CASTINGTON	400	1983
FELTHAM	764	1983
FRANKLAND	732	1983
LINDHOLME	982	1985
STOCKEN	595	1985
THORN CROSS	322	1985
WAYLAND	657	1985
FULL SUTTON	600	1987
MOUNT	704	1987
GARTH	632	1988
LITTLEHEY	663	1988
SWALESIDE	756	1988
DOWNVIEW	358	1989
BELMARSH	799	1991
BRINSFORD	473	1991
MOORLAND	1000	1991
WHITEMOOR	492	1991
BULLINGDON	759	1992

Prison	Certified normal capacity	Opening date
ELMLEY	753	1992
HOLME HOUSE	857	1992
KIRKLEVINGTON	223	1992
WOLDS	300	1992
WOODHILL	717	1992
BLAKENHURST	827	1993
HIGHDOWN	643	1993
LANCASTER FARMS	480	1993
BUCKLEY HALL	350	1994
DONCASTER	771	1994
WEALSTUN	885	1995
EASTWOOD PARK	326	1996
ALTCOURSE	600	1997
FOSTON HALL	283	1997
PARC	968	1997
LOWDHAM GRANGE	500	1998
ASHFIELD	400	1999
FOREST BANK	800	2000
DOVEGATE	800	2001
RYE HILL	600	2001
BRONZEFIELD	450	2004
PETERBOROUGH	840	2005

Annex E –Details of proposed package

Demand side measures

Reform of Indeterminate Sentences for Public Protection

IPPs were introduced to ensure that those who posed a very significant danger to the public were kept in prison until they no longer posed a threat. However, experience has shown that the legislation offers sentencers too little discretion to determine whether, given all the evidence, someone does pose such a danger and should receive an indeterminate sentence; as a result, significant numbers of IPP sentences have been given.

In addition, the fact that an IPP must be given, no matter how serious or otherwise the trigger offence, has led to substantial numbers of IPPs with short tariffs. This has led some stakeholders to question whether IPPs can be appropriate in these cases, and additionally creates a serious management problem for the system.

The Review and NOMS have jointly developed proposals that will mean that the trigger offence must reach a reasonable seriousness threshold. They will allow sentencers much greater discretion about when to give an IPP; those who do merit an IPP will continue to get one.

Reform of the Bail Act for those accused or convicted of a non-violent summary offence

Custody should not be used on suspicion of re-offending especially for those cases that do not go on to receive a custodial sentence. Amending the Bail Act will ensure that custody is reserved for the most serious and dangerous offenders whilst offering sufficient safeguards to ensure that if an offender does re-offend then he or she could be remanded in custody.

The Review proposes that the existing grounds for refusing bail for non-imprisonable offences be extended to include all non-violent summary offences and a further provision be included to allow for those offenders who breach their existing bail conditions or commit a further offence whilst on bail can be remanded in custody.

Crediting offenders for time spent on bail tagged and subject to a curfew

At present, 50% (40,000 per year) of those on remand do not go onto receive a custodial sentence. Offenders spend on average 56 days in custody on remand and in most cases time served on remand is credited toward the custodial sentence. Given this, offenders should also be credited with the time they have spent tagged and curfewed as part of their bail conditions.

Credit will be given on the basis that the offender has complied with their bail conditions and he or she has been subject to restrictions on a preventative rather than punitive basis.

The court would receive compliance and curfew data from the tagging contractor, calculate the number of days the defendant had complied with curfew conditions, halve this figure, and then direct the number of days to count toward the custodial sentence.

Align release mechanisms for CJA 1991 prisoners with those under CJA 2003

The Criminal Justice Act 2003 introduced new release and supervision conditions for offenders released from prison with a distinction based on their dangerousness. The Parole Board now deals only with the release of the dangerous offenders. Other offenders are released at the 50% point of their sentence.

However, a significant number of offenders who were sentenced under previous criminal justice legislation, did not commit a violent or sexual offence, and would not be considered to be a danger to the public, are still subject to discretionary release in prison. Dealing with such cases diverts valuable Parole Board time from taking decisions about the release of lifers and those serving public protection sentences.

The proposal is to convert the sentences given to non sexual, non-violent offenders serving 4 years and over under the 1991 Act into comparable sentences under the 2003 Act, thereby freeing up Parole Board and prison resources.

Fixed term recall of 28 days for non violent/sexual offenders

The Review supports the proposals already contained in the Criminal Justice and Immigration Bill that introduces a 28 day fixed term period in prison as a response to a breach of licence.

Limit suspended sentences to more serious (i.e. indictable and triable either way) offences

The Review supports the government’s proposal in the Criminal Justice and Immigration Bill to remove the option of a suspended sentence order for summary offences. A significant number of suspended prison sentences are currently given for summary offences and it appears a significant number of these would previously have received non custodial sentences. On breach offenders are liable to serve the suspended prison term.

Supply side measures

Rapid build of prison capacity at ex-military bases

Existing accommodation at one or two ex-military bases could be converted over the next two years for compliant category C offenders.

Convert the open side of HMP Wealstun

The conversion of the open conditions accommodation at HMP Wealstun would require the addition of a secure fence but would allow the occupancy rate in the open estate to be increased, adding to useable capacity.

Purchase and conversion of a vessel

The purchase and conversion of a prison ship could be delivered by mid 2009, taking account for the time required for procurement, conversion and securing planning permission at a suitable berthing site.

Quick build on existing sites

Through existing temporary accommodation modules or via the development of the new 'A9' design higher security custodial modules quick build developments could provide additional places by mid to late 2009.

Introduce new capacity projects from "reserve list"

Following an initial analysis a number of projects were placed on the "reserve list" of the existing capacity programme. The building projects previously specified at HMP Highpoint, Lowdham Grange, HMP Blantyre House, HMP Wellingborough, Bronzefield and HMP Long Lartin are now more viable and should be undertaken.

Increase overcrowding in new accommodation

Owing to prudent planning assumptions, there is scope for increasing levels of overcrowding in the accommodation delivered through the existing capacity programme.

New Large Prisons (Titans)

The provision of a prison building programme will deliver significant new prison places, commencing in 2012.

Annex E – Projected population and capacity data

Data shown in figure 2.1		
Quarter	Projected population assuming no new measures ¹	Projected capacity assuming no new measures ²
Q4 2007	80,834	81,465
Q1 2008	81,731	81,695
Q2 2008	83,202	82,116
Q3 2008	84,807	82,915
Q4 2008	85,308	83,397
Q1 2009	86,266	83,628
Q2 2009	87,371	83,745
Q3 2009	89,058	83,780
Q4 2009	89,161	83,933
Q1 2010	90,322	84,153
Q2 2010	91,271	84,260
Q3 2010	92,254	84,284
Q4 2010	91,829	84,725
Q1 2011	92,294	85,318
Q2 2011	92,647	86,078
Q3 2011	93,379	86,468
Q4 2011	92,930	86,578
Q1 2012	93,569	86,578
Q2 2012	94,595	87,197
Q3 2012	96,109	88,011
Q4 2012	96,141	88,308
Q1 2013	96,703	88,458
Q2 2013	97,395	88,458
Q3 2013	98,455	88,695
Q4 2013	98,182	89,261
Q1 2014	99,192	89,393
Q2 2014	100,108	89,393

Data shown in figure 3.1		
Quarter	Projected population after estimated impact of proposed new measures ³	Projected capacity after estimated impact of proposed new measures ⁴
Q4 2007	80,834	81,465
Q1 2008	81,731	81,760
Q2 2008	82,926	82,737
Q3 2008	83,757	83,973
Q4 2008	83,543	84,981
Q1 2009	84,269	85,870
Q2 2009	85,059	87,237
Q3 2009	86,342	88,243
Q4 2009	86,155	88,517
Q1 2010	87,058	89,123
Q2 2010	87,841	89,514
Q3 2010	88,720	89,266
Q4 2010	88,225	89,982
Q1 2011	88,606	90,646
Q2 2011	88,873	91,270
Q3 2011	89,548	91,456
Q4 2011	89,020	91,361
Q1 2012	89,577	91,386
Q2 2012	90,536	92,672
Q3 2012	91,965	94,819
Q4 2012	91,907	95,616
Q1 2013	92,384	95,766
Q2 2013	92,993	95,766
Q3 2013	93,965	96,003
Q4 2013	93,595	96,569
Q1 2014	94,515	96,701
Q2 2014	95,340	96,701

¹ A quarterly average of the population projected under the high scenario in the latest published prison projections (Prison Population Projections, England and Wales, 2007–2014, Nisha de Silva et al. August 2007), adjusted for an additional assumption that End of Custody Licence will continue indefinitely during the period projected.

² A quarterly average based on existing capacity, allowing for essential maintenance, plus assumed new capacity available as projects under the current capacity programme are completed.

³ A quarterly average based on the projected population assuming no new measures and modelling carried out by the review team; this modelling rests on a large number of assumptions, including the assumption that there will be no factors affecting the population beyond those currently proposed by this review or already in draft legislation; in the full text we give an indicative range of impacts for the proposals to manage the use of custody as we believe this best represents the margin of error associated with the modelling. This data also assumes that government short term measures will save approximately 750 places during 2008.

⁴ A quarterly average based on the projected capacity assuming no new measures and modelling carried out by the review team; this modelling rests on a large number of assumptions about the speed at which new capacity can be commissioned and operationalised; in the full text we give an indicative range of impacts for the proposals to increase capacity as we believe this best represents the margin of error associated with the modelling. This data also assumes that government short term measures will deliver approximately 750 places during 2008.

Annex G – Terms of reference for preparatory work to consider options for the design and operation of a structured sentencing framework

A working group will be established to examine the advantages, disadvantages and feasibility of a structured sentencing framework and permanent sentencing commission.

The working group will be chaired by a senior member of the judiciary, to be appointed by the Lord Chief Justice in consultation with the Lord Chancellor, and it will have a membership of approximately 12 people consisting of those with experience in criminal justice issues including prison, probation and policing.

The Circuit and District bench and the lay magistracy should be represented on the working group, by persons nominated by the Lord Chief Justice in consultation with the Lord Chancellor. There would also be members with expertise in data and financial management systems including how to produce effective and timely management information.

Members would be appointed in their own right and not as representatives of the professions or organisations from which they may come and the working group will have a staff led by an executive director and a team with analytical, research and legal skills. The group should also draw upon expert advice and experience from other jurisdictions.

The working group will examine detailed proposals through consultation for a possible Sentencing Commission for England and Wales including:

- the membership of a Sentencing Commission;
- the possible formulation of a set of indicative ranges for a structured sentencing framework for the Crown Court, and subsequently magistrates' courts, including the role of government and parliament in assigning the prison population and other penal resource limits;
- the effect of a set of indicative ranges on current judicial decision making;
- the mechanism for presenting the set of indicative changes to Parliament for legislative endorsement;
- an appropriate process for dealing with departures from the ranges;
- the remit and process for a Sentencing Commission's on-going functions to monitor and report on the impacts on the prison population and penal resources of all national policy proposals and system changes; and
- the process for making revisions to the set of indicative ranges.

The working group will also assess what preliminary data from current sentencing practice would be needed if a Sentencing Commission were to be established. This will include:

- analysis of data currently available by offence and criminal history and determining future data and information needs and collection methods;
- collecting the required data and information from a statistically significant sample of Crown Courts;
- ranking all either way and indictable offences into approximately 10 offence groups;
- producing a first iteration of a set of indicative ranges for each offence group based on the data and information of current sentencing practice and following discussion on the format and breadth of the range;
- developing a model that can translate the effect of the indicative ranges on the prison population and other correctional resources; and
- identifying options for an eventual Sentencing Commission to consider how the first iteration of a set of indicative ranges could be altered to come with a resource envelope as and when set down by government and endorsed by Parliament.

The working group will report to the Lord Chancellor and Lord Chief Justice by summer 2008.

Annex I – Delivery Timetable

	Delivery Action	Impact
2008	<ul style="list-style-type: none"> • Begin work to increase capacity of the prison estate; establish capacity board and gain Royal Assent for measures to manage the use of custody (Recommendations 1 and 2) • Establish working group for Sentencing Commission; publish consultation; depending on outcome, develop legislation to create the Commission (Recommendation 3) • Identify resources and detailed plan to extract initial efficiency savings, complete efficiency profiling, and develop operational profile, zero-based costing model and framework of service level agreements (Recommendation 4) • Commence development of strategy for modernising the prison estate; take procurement of Titan prisons and site identification to advanced stage (Recommendation 5) • Produce costed case for reform of prison workforce (Recommendation 6) 	<ul style="list-style-type: none"> • Capacity board is reporting to ministers and permanent secretary implementation board helping to ensure that the expanded capacity programme is delivering on time and to budget • By late 2008, measures to manage the use of custody and increase capacity are helping to manage the prison population
2009	<ul style="list-style-type: none"> • Continue work to implement recommendations 1, 3, 4 and 5 	<ul style="list-style-type: none"> • Measures to manage the use of custody and increase capacity are helping to manage the prison population
2010	<ul style="list-style-type: none"> • Dependent on decisions taken in 2008, establish proposed Sentencing Commission 	<ul style="list-style-type: none"> • Efficiencies from improved financial management are being delivered across the estate • Construction of first Titan prisons is under way
2011	<ul style="list-style-type: none"> • Dependent on decisions taken in 2008, the Sentencing Commission publishes its first agreed set of indicative sentencing ranges for indictable and either way offences 	
2012	<ul style="list-style-type: none"> • As headroom in the prison estate increases, detailed plans for modernisation are developed 	<ul style="list-style-type: none"> • First Titan prison opens • Dependent on decisions taken in 2008, the Sentencing Commission is helping to stabilising sentencing
2013		<ul style="list-style-type: none"> • Efficiency programme is coming to a close, with all prisons operating at, or very close to, efficient cost • Three Titan prisons have opened and replacement of inefficient assets has begun

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