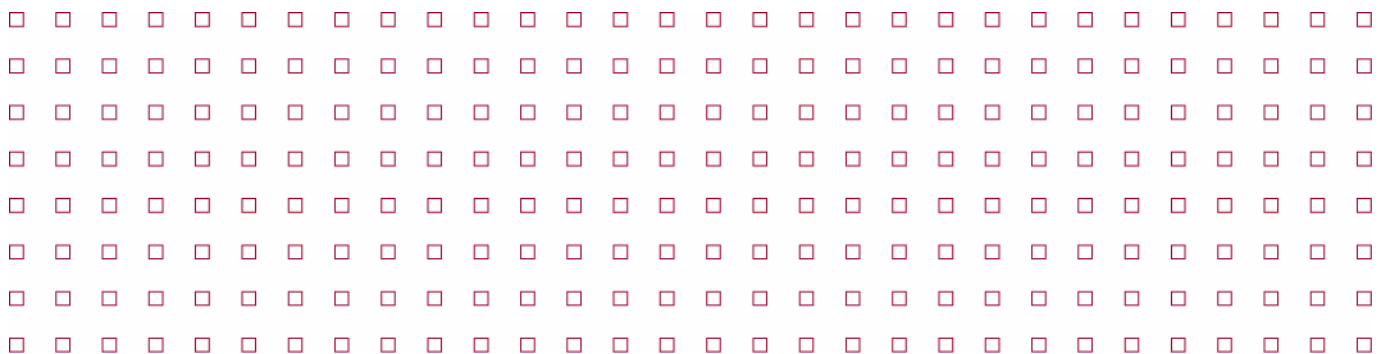




Capacity and Competition Policy for Prisons and Probation

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Ministry of
JUSTICE

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Foreword

An effective criminal justice system must provide benefit for all. As well as delivering the most effective services to punish and reform offenders, it must deliver visible justice for victims and local people and represent value for the taxpayer. The Government is committed to reforming the justice system so that it is more clearly seen as a public service - working for the local community. This means providing the best possible services, while delivering the greatest value for money for the public.

Having sufficient prison places of the appropriate quality is key to our ability to deliver effective custodial sentences. Record prison populations, with projections indicating further substantial increases, prompted the Government to commission Lord Carter to review the pressures facing the prison system in England and Wales. His report¹ recommended that there should be significant expansion to the current capacity programme, both to increase the total places available and to decommission older, worn out, less efficient places. To meet this need, as already announced, we are committed to building new prisons and closing old or inefficient places to increase the net capacity of the prison estate to 96,000 places by 2014.

In the wider prison and probation services, Government has a responsibility continually to challenge its service providers to deliver more effectively – to raise performance, to improve quality and to deliver better value for money. Competition can be an effective lever for encouraging this by driving efficiency and innovation within public services. The delivery of prison and probation services is a key example of where we can use competition to deliver more efficient and effective offender services.

There are many factors driving the need to encourage greater efficiency and public value. Over the current spending review period the Ministry of Justice faces three significant delivery challenges:

- Meeting demand for offender services by aligning the supply and demand of resources across prison and probation over the longer term is critical to our ability to deliver the outcomes that the public expect.
- We need to make ambitious efficiency savings, achieving our goals with fewer resources. This means improving efficiency and effectiveness in all areas whilst still delivering our core objectives of protecting the public and reducing re-offending.

¹ Securing the future: Proposals for the efficient and sustainable use of custody in England and Wales: www.justice.gov.uk/docs/securing-future.pdf

- We need to improve performance and raise public confidence. The public must have confidence that the system is working for them. This means informing, consulting and involving local people and service partners in our work by making performance outcomes more visible and transparent.

To meet these challenges, NOMS Agency has appointed nine Directors of Offender Management (DOMs) for England and Wales to commission offender services across custodial and community sentences. Each DOM will be responsible for the delivery of all prison and probation services in their area. Their role will be to ensure that these services are effectively aligned to provide the greatest impact and that public protection and reducing re-offending objectives are achieved. DOMs will also have a significant role to play in implementing the capacity and competition programmes, acting as regional commissioner within their areas.

Our approach to capacity and use of competition will expand and improve the prison estate. By developing an active market of alternative providers, for both prisons and probation, and by subjecting existing public sector providers to increased competitive pressures, we will see increases in efficiency and innovation. The introduction of DOMs will strengthen links between central government strategy and local delivery.

Executive summary

Effective sentences have five purposes: to protect the public; punish offenders; provide reparation to victims and the community; reduce re-offending; and act as a deterrent.

Delivering effective sentences that meet these aims requires both capacity and capability within the criminal justice system, while making the best use of limited resources.

This document sets out the Government's approach to developing capacity in prisons and using competition to improve efficiency and innovation in both prisons and probation. The key elements of this approach are:

Prisons

- As already announced, we are committed to increasing the net capacity of the prison estate to 96,000 places by 2014. As part of this programme we will be able further to modernise the estate by closing some of our old or inefficient places;
- For the next three years, only the private and third sector will be invited to bid for the construction and operation of new build prisons. This will stimulate market engagement and encourage new providers to enter the market.
- Five previously competed prisons will be re-competed at the end of the existing agreements, with bids invited from the public, private and third sectors; and
- Two high cost or low performing public sector prisons will be market tested in 2009, with bids invited from the public, private and third sectors.

Probation

- Boards demonstrating the qualities required will become Trusts;
- Remaining Boards can propose that they are amalgamated with successful Trusts, or alternatively, non-restricted probation services will be competed in the open market; and
- Best Value reviews will begin in September 2009 with Community Payback and Victim Contact. At least 25% of these services will be competed in the open market.

Evidence

Lord Carter's Review in 2007 presented the Ministry with a clear evidence base for developing the capacity and capability of the prison estate. Three key issues from this analysis demonstrated a requirement for a strong, joined-up approach to the delivery of the estate:

- We need to deliver sufficient capacity to meet demand from courts. We will always provide sufficient provision to imprison the most dangerous, most violent, most prolific and most persistent offenders. Lord Carter proposed we target delivering 96,000 places by 2014.
- We need to modernise the estate. We have institutions which have become costly to maintain and operate, either because of their age, their design, their location, or because they have reached the end of their natural working life.
- We need to deliver prisons as efficiently as possible, using competition when necessary.

Why do we need new capacity?

Following Lord Carter's Review, we published further prison population projections². These suggest that we should continue to plan for a capacity of 96,000 by 2014.

It is also clear to us that we cannot afford to maintain the worst of the estate to extend its working life for sixty years. This is the life we would hope to achieve, as a minimum, from a new build scheme. A number of prisons are too small, too expensive, too dilapidated or located in the wrong places to be expected to efficiently achieve the outcomes we wish to deliver.

Together these show that we need to invest in our prisons to deliver the capacity and quality we wish to attain.

Why use competition

Competition is a mechanism successive Governments, both here and abroad, have used to improve the quality and cost effectiveness of public services. Whether in education, health or other services, competition has

² www.justice.gov.uk/publications/prisonpopulation.htm

allowed new providers in the private and third sectors to demonstrate their particular strengths and deliver services in new innovative ways.

Competition is a proven mechanism to improve performance and price, whether it be in the previously nationalised utilities, such as electricity or telephones, or in public services such as refuse collection, or offender services and prison provision. However, as the 2004 DTI report³ on its benefits found, competition is not just about price. It is multi-faceted, including innovation and variety of service design.

The NAO have identified that public prisons have improved in the face of competition. The Home Office found that in 'responding to the threat of the private sector, Dartmoor and Liverpool Prisons ... transformed their performance'⁴. This is not to say all privately run prisons have performed better than public counterparts. They have received both praise and criticism from NAO⁵ and HMCIP reports⁶, but this is also the case with the public sector.

A 2005 DTI report⁷ on market based approaches found that introducing competition amongst suppliers can lead to lower costs and better quality services. For example, competitive tendering of UK prison services has led to cost savings of around 10-22 per cent. The report also found that when competition is introduced in one area, it can lead to cost savings in other un-competed areas through the transfer of best practice.

The 2007 Office of Fair Trading⁸ report which focused on productivity and competition asserted that competition is an important driver of productivity. Competition places pressure on management to increase internal efficiency.

³ The Benefits from Competition: Some illustrative UK Cases – DTI Economics Paper No. 9

⁴ <http://www.homeoffice.gov.uk/documents/reducing-crime-changing-lives?view=Binary>

⁵ www.nao.org.uk/publications/nao_reports/02-03/0203700.pdf

⁶ www.inspectorates.homeoffice.gov.uk/hmiprisons/

⁷ Public Policy: Using Market Based Approaches – DTI Economics Paper No. 14
www.berr.gov.uk/files/file14759.pdf

⁸ Productivity and Competition: An OFT Perspective on the Productivity Debate – Office of Fair Trading

Capacity in prisons

Our starting point must be protecting the public from those offenders who pose a serious threat, and that is why prison is the right place for the most dangerous, serious and persistent offenders. We are committed to making sure we have enough prison places to cater for those offenders who need to be imprisoned. This requires us to invest in our prison estate as part of the wider reforms for the prison and probation services.

Investment in prisons since 1997 has increased in real terms by 42 percent. Through the combination of providing new capacity and making more efficient use of the estate, we have increased prison capacity by nearly 25,000 places in this period. The expansion of our building programme will increase capacity to around 96,000 places by 2014.

Between April 2007 and the end of January 2009, more than 4,400 new prison places have been delivered, with some expansions being completed significantly ahead of schedule. These include HMP Kennet, a new prison in Merseyside, and significant expansion on existing sites such as HMPs Wayland and Rochester.

The programme of work will continue with expansion of existing public sector and private sector prisons across the country. In particular we have a number of major building projects underway which will deliver new capacity over the next three years. We:

- have started converting the former airbase at RAF Coltishall which will provide 480 places - phase one is due to open in Autumn 2009
- have started a major expansion of HMP Littlehey, which will provide 480 places in early 2010
- are in the construction phase of a new prison, HMP Isis, which is co-located with Belmarsh prison and due to open in summer 2010, delivering 480 places
- have competed two new private prisons, Belmarsh West and Maghul, due to deliver at total of 1,200 places in 2011
- have planning permission for a new prison next to HMP Featherstone delivering 1,620 places in 2012

Additionally Lord Carter published his report, *Securing the Future* in December 2007 which recommended the building of new 2,500 place 'Titan' prisons.

The Government has consulted on the delivery of these places and principles for development of the wider estates strategy. The Government has published its response to this consultation setting out how it intends to deliver both punishment and reform effectively, decently, safely and efficiently through these new prisons.

We are considering how we can do more for specific groups within the prison population. These include both women and those offenders with mental health issues.

For women we have provided additional resources of £15.6m over two years to support the diversion from custody of women who are not serious or dangerous offenders, building on the recommendations in Baroness Corston's report.⁹ The new funds will be directed towards building capacity of specialist provision for women in the community and developing bail support services. We are also looking at the scope for further reforming the way vulnerable women are treated in the Criminal Justice System.

We are considering Lord Bradley's review on how we can better ensure that dangerous mentally disordered offenders have access to the right treatment. The recommendations from the review will help us reach decisions, jointly with the Department of Health and the NHS, about how best to improve access to mental health services by offenders, for those in custody and in the community.

In addition to these policies we are committed to ensuring that we take account of other recent reviews such as the Blakey review¹⁰ into the effectiveness of the Prison Service's measures for disrupting the supply of drugs into prisons. We will also incorporate current best practice both in England and Wales, and internationally to ensure that these new prisons perform to a high standard and use this experience to achieve better outcomes for the taxpayer.

⁹ <http://www.homeoffice.gov.uk/documents/corston-report/>

¹⁰ www.justice.gov.uk/publications/disrupting-drugs-prisons.htm

Competition: Prisons

Competition in prisons has been used to deliver multiple objectives: increases in capacity, value-for-money, service/performance improvement, productivity and innovation.

Competition has led to service improvement by management teams motivated by competition. Competition has also generated improvements in public sector productivity, with flatter, leaner management structures, reduced sickness leave and a more mobile workforce¹¹.

Today there are 135 prisons and prison clusters, delivering an operational capacity of nearly 85,000 places. Of these, eleven are private prisons, delivering over 9,000 places. The first private prison was contracted in 1991; since then five prisons have been put out for management competition; nine prisons were subject to a PFI competition. All PFI contracts are 25 years from the opening date.

Table: PFI Prisons

	Contract Award Date	Opening Date
Altcourse	December 1995	December 1997
Parc	January 1996	November 1997
Lowdham Grange	November 1996	February 1998
Ashfield	June 1998	November 1999
Forest Bank	July 1998	January 2000
Rye Hill	July 1999	January 2001
Dovegate	September 1999	July 2001
Bronzefield (Ashford)	December 2002	June 2004
Peterborough	February 2003	March 2005

Our strategy for continuing the use of competition in prisons consists of three strands:

¹¹ Competition: A catalyst for change in the prison service: CBI (June 2003).

1. To stimulate market engagement and encourage new providers to enter the market, for the next three years, only the private and third sector will be invited to bid for the construction and operation of new build prisons.

2. Prisons that have previously been competed will be re-competed in the open market, when current agreements expire. Bids will be considered from public, private, and third sector providers. The benefits from competing 'management only' contracts are believed to be improved performance at lower cost. For example, the CBI in 2003¹² estimated that prison competitions led to savings worth between £200m and £260m between 1991 and 2002.

Table: Previously competed prisons

	Competitive process to begin	Current agreement expires	Current provider
Buckley Hall	Start Jun 2009	Jun 2010	HMPS
Doncaster	Start Jun 2009	Aug 2010	Serco
Hewell ¹³	Start Sep 2009	Aug 2011	HMPS
Manchester	Start Jan 2010	Jul 2011	HMPS
Wolds	Start Apr 2012	Jan 2013	G4S

3. High cost or low performing public sector prisons have been identified through set performance and financial criteria. There are prisons within the public estate that have consistently performed poorly and have had opportunity to improve. We believe there are significant improvements in quality of service and efficiency available through application of competition. Two of these high cost or low performing prisons will be market tested in 2009. Bids will be considered from public, private, and third sector providers.

We anticipate that these measures will lead to greater competition between providers in the public, private and third sectors. However, the focus on new prisons, previously competed prisons, and the poorest performing public prisons does not imply that the number of publicly managed prisons will dramatically fall. Indeed we are neutral over who provides as long as the service delivered is efficient and cost-effective. Strong bids from any provider whether public, private, or third sector will be rewarded.

¹² www.gslglobal.com/downloads/CBI_report.pdf

¹³ The Hewell cluster includes HMP Blakenhurst, which was previously competed.

Competition: Probation

Competition to provide probation services has been limited to date. Previously, the Government has set probation boards a non-mandatory subcontracting target (5% in 2006/07 and 10% in 2007/08). This target was successful in some areas, increasing participation by private and third sector organisations in the delivery of probation services. We want to build on this by developing a range of providers from the public, private and third sectors, to drive competition, efficiency and innovation.

Probation Trusts

The Offender Management Act received Royal Assent in July 2007, enabling private and third sectors to participate more fully in the market for probation services. By creating new organisations, Probation Trusts, to deliver services on behalf of the Justice Secretary, the intention is to increase the challenge to delivery high quality probation services from a range of providers, which will, in turn, drive efficiency and innovation.

The standards a Probation Board must demonstrate, to become a Trust, are high. Areas assessed include: leadership; performance management; local engagement; and effective resource use. If Probation Boards fail to become Trusts, other arrangements will need to be made to replace them. Boards can propose to be amalgamated with successful neighbouring Trusts, or alternatively, its services will be competed in the open market.

Services provided to courts by the probation service, will be excluded from competition, as they are reserved to the public sector by statute. Alternative arrangements for public sector delivery will be made for court services, in areas where other probation services are contracted out.

Best Value in Probation

Where the Probation Trust programme is aimed at improving organisational capabilities of probation, the Best Value framework is a method for driving up quality and value for money of the services provided by probation areas.

Launched in November 2008, the Best Value framework will enable probation areas to demonstrate, in a transparent way, the value for money of their services, and to drive improvements in the economy, efficiency and effectiveness of their service delivery.

Best Value reviews will initially be triggered centrally, with NOMS Agency identifying priority services for review. Standard specifications will be developed for the price and quality of probation services. Probation areas, in

partnership with the local DOM, will then review their own service delivery against these standards.

Where services are found to be underperforming, probation areas, in consultation with DOMs, will either propose performance improvements or be required to go to the market to seek an alternative provider.

Community Payback and Victim Contact are priorities for Best Value review in 2009. At least 25% of these services will be competed in the open market. Standard specifications are currently being drawn up.

- Specification for Community Payback will be available in April, Victim Contact will be completed shortly after;
- Probation areas will compare their services, on cost and performance, for six months, from September this year;
- Competitions resulting from the comparisons will begin in April 2010

Once the Best Value framework is embedded into the way probation areas review the performance of services, reviews can take place on a regional or local level. These reviews will be informed by the picture of nationally benchmarked, standard specifications, built up during the initial programme.

Regulation of competition

For the benefits of competition to be realised, a range of providers needs to be developed and maintained. Potential providers will only participate in markets where there is a realistic chance that they can successfully bid for and win work. Unfair practices or sectoral bias, whether real or perceived, will restrict confidence and participation from public, private and third sectors.

One of the key concerns for potential market participants is that established processes and decisions should not be subject to arbitrary change, and that conflicts of interest within the commissioning body should not affect competitive neutrality. This is a particular concern about organisations, such as NOMS Agency, which manages both the commissioning function and the public sector bids.

Our approach to regulation of competition addresses these concerns in three ways:

- Ethical walls within NOMS Agency, to provide a clear separation between commissioning and provider functions. This ensures that no provider (particularly the in-house provider) has access to information or is treated in a way that gives unfair advantage.
- Methods for comparing bids from different sectors. Areas such as taxation, bid costs and pension liabilities must be calculated and compared in a fair way. These methods will be independently agreed and published.
- Independent oversight and escalation of disputes. The regulatory framework itself needs to be endorsed by a body that has the confidence of all sectors. There also needs to be an independent role in dispute resolution, where normal escalation routes do not satisfy aggrieved parties.

Measuring success

We are building new capacity and implementing competition to deliver a step-change in the efficiency and cost-effectiveness of the delivery of services. We are looking to develop high quality, flexible, modern public services which can meet our needs into the medium term.

We are *not* setting market share targets because we are neutral in relation to who delivers services, as long as they are delivered in an efficient and cost-effective fashion. We are however willing to set targets for the quantity of provision which has been subject to competition.

We will look to measure success through delivering improvements in the following measures:

- The delivery of a net capacity of 96,000 prison places by December 2014.
- The successful delivery of competitions for new prisons, delivering an agreed quality at an efficient price.
- Prison contracts awarded to deliver efficiency savings on current spend, where current spend exists.
- Replace all probation boards with Trusts or alternative providers by 2011.
- The successful delivery of competition for at least 25 per cent of probation services which have been subject to the Best Value process.
- The successful embedding of the Best Value process in probation, allowing the launch of regional and local assessments.

We expect competitive pressure to apply beyond those prisons and probation services which are subject to competition. We expect to see a trend in improvement across the sector as a result. Where service providers fail to deliver to acceptable standards, we will use competition when necessary.

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