

## **Written evidence submitted by Centre for Crime and Justice studies (FPP0036)**

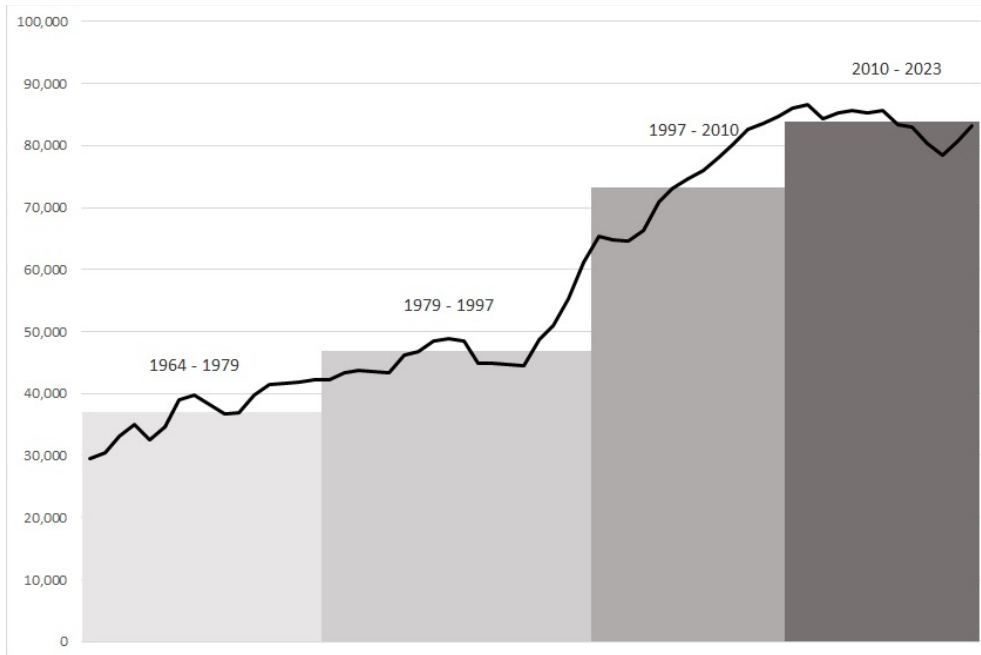
### **1. Introduction**

- 1.1. At the Centre for Crime and Justice Studies we create lively spaces for collaboration and learning, where conventional criminal justice policy agendas are scrutinised and challenged, fresh knowledge and ideas are discussed, and transformational solutions are developed.
- 1.2. We welcome the Justice Committee's Inquiry into the future prison population and estate capacity. Our submission focuses on the first three questions in the Inquiry terms of reference.

### **2. What changes are expected in the size and composition of the prison population in the short, medium and long term?**

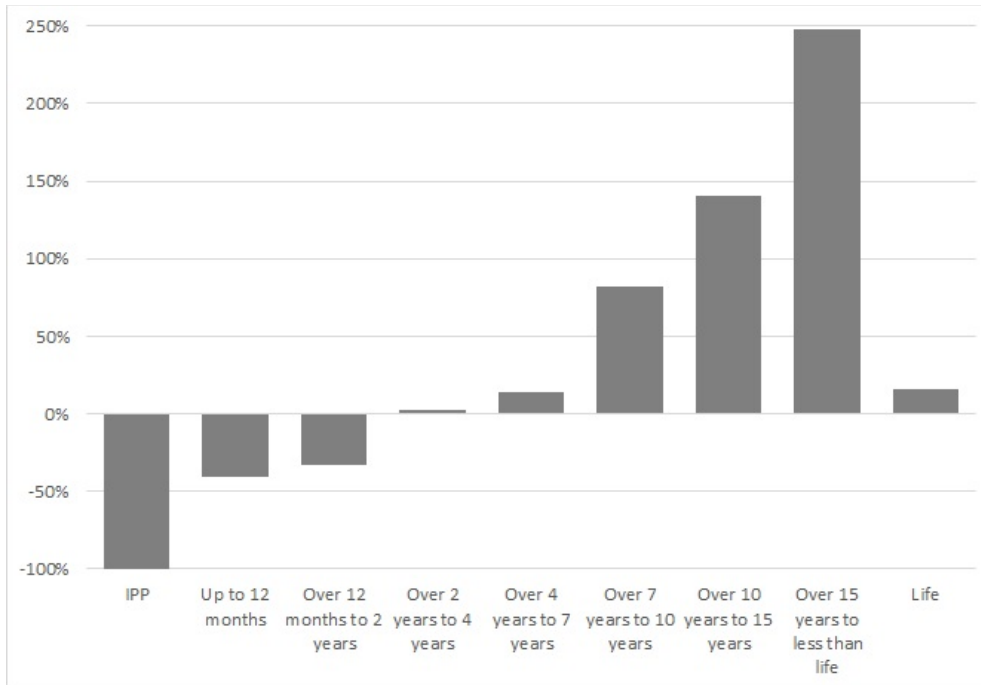
- 2.1. A brief account of recent trends is helpful in understanding the potential future prison population size and composition.
- 2.2. In 2019, the Justice Committee report, *Prison Population 2022*, observed that "a series of political and policy choices by successive Governments and parliaments" has been the "most significant contributor" to the rise in the prison population (Justice Committee, 2019). Figure one illustrates the effects of these political and policy choices. The columns show the average prison population across four periods of recent political history. The black line shows the average annual prison population across all the years.

**Figure one: Average prison populations across four political periods, 1964 to 2023**



- 2.3. Figure one shows, for instance, that for the period of the Thatcher-Major administrations, the *annual* prison population fluctuated, between a low of 42,220 in 1979 and a high of 61,114 in 1997 (shown by the line). The average prison population across the *entire period* of the Thatcher-Major administrations was 46,952 (shown by the column).
- 2.4. Growth in one period laid the foundation for further growth, and a higher average prison population, during subsequent periods. This has become an established pattern, stretching across several decades. In the absence of major policy changes, it seems likely that this pattern will continue.
- 2.5. Two developments in particular, in the 2010 to 2023 period, are creating significant upward pressure on the prison population going forward: rising sentence lengths, and rising recalls.
- 2.6. On the first of these, Ministry of Justice analysis notes: “The Average Custodial Sentence Length (ACSL) for prisoners sentenced to immediate custody for all indictable offences was relatively stable between 1993 and 2010. However, it has risen annually since 2010” (Ministry of Justice, 2020).
- 2.7. The rise in the ACSL is an expression of a shift in sentencing from shorter to longer sentences. This shift is illustrated in Figure two, which shows the percentage changes in the number of immediate custodial sentences of various lengths, imposed for indictable offences between 2010 and 2022.

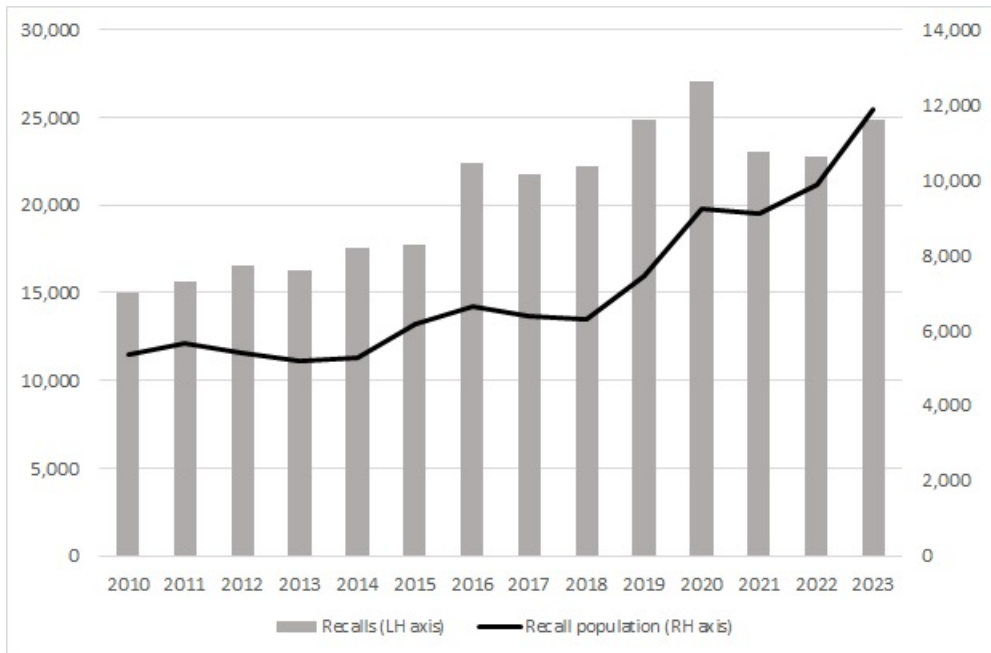
**Figure two: Percentage changes in the number of immediate custodial sentences of various lengths for indictable offences, 2010 to 2022**



- 2.8. The number of shorter prison sentences – both those up to 12 months, and those over 12 months to two years – fell between 2010 and 2022, by 41 and 33 per cent respectively. The other notable fall was the Imprisonment for Public Protection (IPP) sentence. In 2007, some 1,700 IPP sentences were imposed. By 2014 none were imposed, since IPP was abolished in 2012.
- 2.9. The number of all sentences over two years increased, particularly at the higher end. The number of sentences for between 10 and 15 years increased by nearly 150 per cent; those over 15 years, excluding life sentences, by nearly 250 per cent. Reflecting these changes, the ACSL for indictable offences increased by 50 per cent, from 16.2 to 24.3 months.
- 2.10. In relation to recalls, the Ministry of Justice notes: “In 1993, the recall population was estimated to be less than 100 – by 2020 it had increased to over 9,000”. A high recall population is therefore a recent phenomenon in England and Wales. It is also worth noting that most other jurisdictions in Europe do not appear to use recall to any great extent (see Aebi, Cocco and Molnar, 2022: Table 23).<sup>1</sup>
- 2.11. The rise in recalls was influenced by various legislative changes, including the Crime and Disorder Act 1998, the Criminal Justice Act 2003, the Criminal Justice and Immigration Act 2008, and the Offender Rehabilitation Act 2014 (Ministry of Justice, 2020). Figure three shows the trend in the numbers recalled to custody (columns) and the underlying recall population (line), between 2010 and 2023.

**Figure three: Recalls to prison and the recall population, 2010 to 2023**

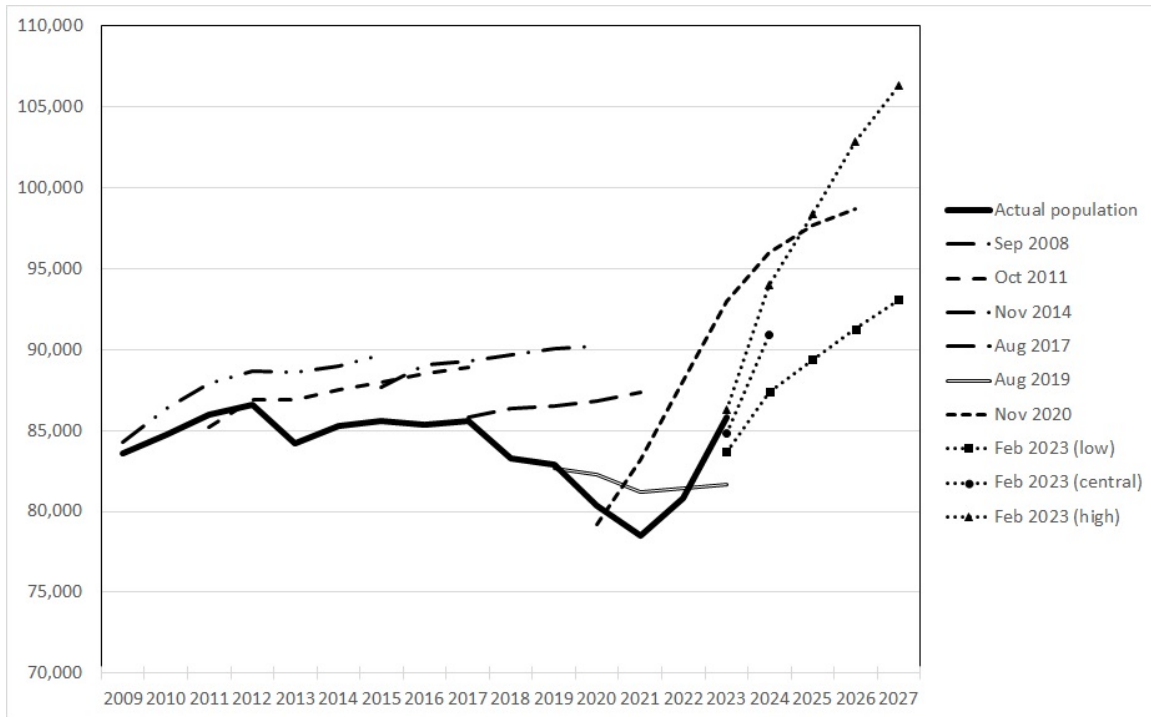
<sup>1</sup> We would like to thank Professor Nicola Padfield for drawing this to our attention.



2.12. The shift to longer sentences and the rise in recalls has created upward pressure on the prison population in recent years, a pressure offset over the past decade by a fall in the number of immediate custodial sentences. Had it not been for this fall, the prison population would surely have grown.

2.13. Looking forward, the latest prison population projection, published in February 2023, is shown in Figure four (Ministry of Justice, 2023a). Also shown are the central estimates of selected earlier projections, published in 2011, 2014, 2017, 2019 and 2020, as well as the actual prison population (solid black line).

**Figure four: Prison population projections and the actual population, 2009 to 2027**



2.14. As Figure four shows, the central estimates of successive prison population projections have tended to overestimate what subsequently happened to the actual prison population, while being relatively accurate in predicting general trends.

2.15. The latest projection estimates that the prison population will rise to between 93,100 and 106,300 by March 2027. This growth is anticipated as a result of policy decisions, including further increases to the length of prison sentences and growth in the population subject to recall. Also significant are 'upstream' factors, such as the increased number of police officers and the effect of the unwinding of the COVID-19 restrictions on court activity.

2.16. Whether, by March 2027, the actual population approaches or exceeds the upper end estimate, approaches or falls short of the lower end estimate, or falls somewhere in between them, will depend on the political and policy choices made by the Government of the day and parliament. These political and policy choices are discussed in more detail in the next section.

### 3. What is the Ministry of Justice's current strategy for safely and effectively managing the prison population, and how effective is it?

3.1. The *Prisons Strategy White Paper* of December 2021 included plans to expand prison capacity to meet anticipated demand, and to make prisons safe, purposeful places (Ministry of Justice, 2021). Since its publication, the crisis engulfing the prison system appears only to have intensified. Far too many prisons remain squalid, overcrowded, understaffed and unsafe, with prisoners

locked in their cells for long periods.

- 3.2. The Justice Secretary's statement on 16 October (HC Deb, 16 October 2023, c63) proposes some immediate actions intended to address capacity pressures in the short-term, while also proposing other measures that may address capacity pressures in the medium-term. What is lacking is anything approaching a longer-term vision to address the systemic problems behind the current crisis.
- 3.3. The proposal to release some prisoners up to 18 days before their automatic release date will likely have the most immediate impact on short-term population pressures and is something we support. Releases will be granted under section 248 of the Criminal Justice Act 2003, which allows for the release of prisoners on determinate sentences when "exceptional circumstances exist which justify the prisoner's release on compassionate grounds". The proposal is similar to the End of Custody Licence (ECL) scheme, which ran from June 2007 to March 2010.<sup>2</sup> Between June 2007 and 31 January 2010, nearly 80,000 prisoners were released early on ECL, of which only three per cent reportedly re-offended during the period on licence (Strickland, 2010).
- 3.4. In relation to prisoners on IPP sentences, the Justice Secretary is proposing to adjust licence conditions, in line with the recommendation in the recent Justice Committee report (Justice Committee, 2022). While we welcome this proposal, we would like to see the Justice Secretary be more ambitious. He should, for instance, establish an expert group to advise on the practicalities of a resentencing exercise, as the Justice Committee has also recommended. Such a resentencing exercise would, however, likely take several years to conduct, even if the Justice Secretary were to agree to initiate it. Extending the compassionate release principle, we propose that the Justice Secretary uses the provision in section 30 of the Crime (Sentences) Act 1997 to provide for compassionate release of those on an IPP sentence still in prison beyond their tariff. Beyond the argument on compassionate grounds – which are very strong in the case of over-tariff prisoners on the IPP sentence – such an approach would free up much-needed prison capacity. As of 30 June 2023, 1,140 IPP prisoners were five years or more over tariff; 662 were 10 years or more over tariff; and 67 were 15 years or more over tariff (HL Deb, 2 October 2023, cW, UIN HL10393).
- 3.5. The Secretary of State's proposal of a statutory presumption against short prison sentences of less than 12 months picks up on the proposal made by the former Justice Secretary, David Gauke, in 2019. While it is an idea worth considering, we have already noted the significant reduction in the use of immediate prison sentences of less than 12 months since 2010, in favour of longer sentences. The Justice Secretary's announcement, in his 16 October statement, that those convicted of sexual offences will serve their full sentence in prison, is illustrative of the ongoing tendency towards ever longer sentences. Without complementary action to address the increasing use of longer

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<sup>2</sup> We would like to thank Professor Nicola Padfield for drawing this to our attention.

sentences, there is a risk that a presumption against shorter sentences will intensify the existing trend towards the greater use of longer sentences, fuelling further prison population growth. In this context, the recommendations of the recent Justice Committee report on public opinion and sentencing are valuable (Justice Committee, 2023b).

- 3.6. If the intention of the presumption against short prison sentences is to address unnecessary imprisonment for less serious offences, there are also more concrete ways to achieve this. These could include addressing the increased use of imprisonment for breach, and reducing the weight of previous convictions in determining whether an individual has crossed the custody threshold.
- 3.7. Custodial remands grew during the COVID-19 pandemic, with the slowdown in court activity meaning those who would usually face trial were left languishing in custody. As the recovery from lockdown continues, the remand population should start to fall. The most recent prison population projection estimates a remand population of between 9,700 and 12,700 by November 2026, down from 14,733 in November 2022. This will, though, be dependent on a reduction in the Crown Court case backlog, as the Justice Committee notes in its recent report on remand (Justice Committee, 2023a). The Committee's recommendations regarding, for instance, the inappropriate imposition of custodial remand, and the importance of a strict adherence to custody time limits, offer a more coherent foundation for addressing the problem of remand than the Justice Secretary's proposal, in his 16 October statement, to extend the early plea discount.
- 3.8. As noted previously, the rise in recalls has contributed to the growth in the prison population. For many prisoners, including those released after serving an IPP sentence, the ongoing threat of recall, sometimes for the most minor of infractions, is also the source of ongoing stress and anxiety (see Grimshaw, 2022). Recent figures, released following a Freedom of Information request, indicate that 461 of the 625 recalls of released IPP prisoners last year did not involve a charge of a further offence, up almost a third on the figure for 2015 (Siddique, 2023). We therefore welcome the Justice Secretary's announcement of a review of the use of recall for those released on licence and look forward to seeing more details in due course.
- 3.9. We also welcome the Justice Secretary's proposal of an annual statement on prison capacity, including information on current capacity, future demand, the range of costs under different scenarios and the forward pipeline of prison building plans.

#### **4. Is the Government's commitment to deliver 20,000 prison places by the mid-2020s achievable and sufficient to manage the projected demand for places?**

- 4.1. The 2021 *Prisons Strategy White Paper* proposed the delivery of "20,000 additional prison places by the mid-2020s" (Ministry of Justice, 2021). This is an ambitious target, particularly following the failure of the previous building

plans. The Prison Estate Transformative Programme, announced in 2016, delivered only 206 of the 10,000 new places promised (Public Accounts Committee, 2020).

- 4.2. Meeting the *White Paper* target would probably mean medium-term projected capacity demands are met, as long as HMPPS is also able to maintain existing capacity. However, it is clear that the Government is unlikely to meet the 20,000 target. The Government claims that around 5,400 places had been delivered by July 2023, with “at least” 6,400 places anticipated by May 2024, rising to “over 8,000” by May 2025 (HC Deb, 20 July 2023, cW, UIN 194333). Even if this timetable is kept to, it is still significantly short of the 20,000 target.
- 4.3. In an attempt to introduce fresh urgency into the prison building programme, the Justice Secretary announced, during his 16 October statement, that he had “commissioned urgent work, to conclude before the end of the year, to identify new sites for us to purchase... backed by a down payment of up to £30 million in funding to acquire land in 2024 and launch the planning process”. There must be some doubt over what impact this will have.
- 4.4. In the short-term, the Government has created new capacity through the use of temporary accommodation (Rapid Deployment Cells) and police cells. Since September 2022, the Government has also created an additional 1,900 places “though measures including greater use of double occupancy cells... and delaying non-urgent maintenance work” (Ministry of Justice, 2023b).
- 4.5. Managing demand by increasing overcrowding in an already overcrowded estate, and cutting back further on routine maintenance, is a backward step. In 2021, the Public Accounts Committee found that the prisons maintenance backlog stood at £1 billion (Public Accounts Committee, 2021). It had previously found that “500 prison places are taken permanently out of use each year due to poor conditions” (Public Accounts Committee, 2020). Deferring non-urgent maintenance work to meet short-term capacity pressures is only likely to compound problems over the medium- to long-term, potentially removing from use prison places that would be available, had they been properly maintained. Between 2010 and April 2023, 10,987 prison places were created and 10,680 permanently closed (HC Deb, 2 May 2023, cW, UIN 182591). Indeed the capacity of the prison estate has reduced over the last decade. Operational prison capacity was 82,759 in 2022, compared to 90,106 in 2012 (GOV.UK, 2023).
- 4.6. In our view, a fresh approach is needed; one that moves on the politics and policies that leaves the Ministry of Justice and HMPPS playing catch-up with a legislative agenda that keeps pushing up the prison population.
- 4.7. In its 2019 report, *Prison Population 2022*, the Justice Committee noted the “large gap between the money allocated to prisons by the Treasury and the current costs of running and maintaining them”. To close this gap, the Committee further noted, “the Ministry of Justice has estimated that it would have to reduce the prison population by 20,000 places. By the Ministry’s own admission this is not achievable under existing strategies and funding arrangements”. The Committee further noted that “ploughing funding into



building prisons to accommodate prison projections is not a sustainable approach in the medium or long-term... We are open-minded about the solutions and encourage the Government and wider public to be so, too. We agree with the Justice Secretary that there is a need for a refreshed narrative around the use of imprisonment and how as a society we wish to deal with crime” (Justice Committee, 2019).

- 4.8. As part of the current Inquiry, we would propose that the Committee draw on the spirit of its 2019 report. This could include considering options to contain, and then reduce, the prison population, in order to close the gap between the money allocated and the costs of building, running and maintaining prisons. Such a strategy would need to be supported by legislative, spending and policy changes, undertaken on a cross-departmental, and cross-party, basis.

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