

## Howard League for Penal Reform

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### **Victims and Prisoners Bill** **House of Lords – Committee Stage Briefing**

*The Howard League for Penal Reform is a charity working for less crime, safer communities and fewer people in prison. Established in 1866 and named after the prison reformer John Howard, the charity was at the forefront of the campaign to abolish capital punishment and helped to create the probation service. Today, through research, campaigning and legal work, and with the support of our members, including members in prison and their families, we promote solutions that deliver better justice and minimise the harms of prison, for prisoners, victims and society at large.*

#### **Introduction to the Bill**

The Bill was first published on 29 March 2023. It is the culmination of the government's public consultation on justice for victims and the *Root and Branch Review of the Parole System* (MoJ, 2021 & 2022). The key measures in the Bill in its current form will:

#### Part I: Victims of Criminal Conduct

- Introduce measures to improve support for victims, including through strengthening transparency and placing the principles of the Victims' Code into law;
- Place a duty on local commissioners in England to work together when commissioning support services and introducing guidance around domestic violence;
- Bring the circumstances under which a Domestic Abuse Related Death Review is considered in line with the Domestic Abuse Act 2021 definition of domestic abuse.

#### Part II: Victims of Major Incidents

- Establish an Independent Advocate to support victims of major incidents.

#### Part III: Infected Blood Compensation Body

- Establish a compensation scheme for the victims of the infected blood scandal.

#### Part IV: Prisoners

- Allow the Secretary of State to refer release decisions involving 'top tier' offences (such as murder, terrorism and serious sexual offences) to the Upper Tribunal;
- Allow the Secretary of State to remove the Parole Board's Chair in the name of maintaining public confidence, and make rules prescribing the composition of certain Parole Board panels;
- Disapply section 3 of the Human Rights Act 1998 regarding legislation concerning prisoner release.

This briefing focuses on Part IV of the Bill concerning prisoners. More specifically, it looks at amendments concerning:

**Clauses 44 & 45: Referral of Parole Board release decisions**

**Clauses 49-52: Disapplication of section 3 of the Human Rights Act to a specific group of people**

**Clause 53: Powers for the Secretary of State to prescribe specific Parole Board members to particular cases**

**Clause 54: Powers for the Secretary of State to remove the Parole Board Chair if considered necessary for the maintenance of public confidence in the board**

**Clauses 55 & 56: Provisions to stop whole life tariff prisoners getting married or having a civil partnership**

The Howard League has recently produced briefings on **clause 48 relating to Imprisonment for Public Protection (IPP) sentences** and is concerned that the Bill does not go far enough to tackle what ministers have repeatedly called a stain on our justice system. A **separate joint briefing** by the Prison Reform Trust, the Howard League, and others looks at the Bill's legislation around IPP prisoners in more detail and makes clear which related amendments will go furthest in resolving the plight of those sentenced and ending the ongoing indeterminacy of IPPs. In addition to those amendments, the Howard League also supports amendment 158 on the old automatic life sentence that the IPP sentence replaced in 2005.

**Clauses 44 & 45: Referral of Parole Board release decisions**

During the Bill's third reading in the House of Commons, amendments were made to clauses 44 and 45 to remove the measure giving power to the Secretary of State for Justice to override Parole Board decisions to release certain 'top tier' prisoners. It has been replaced with a new power for ministers to have such cases referred to the Upper Tribunal, or the High Court where sensitive material may be relevant, for reconsideration. Cases will be referred where the Secretary of State considers "*the release of the prisoner would be likely to undermine public confidence in the parole system*" and the relevant Court "*might not be satisfied that it is no longer necessary for the protection of the public that the prisoner should be confined.*"

The original measures, providing for an effective ministerial veto over Parole Board decisions, raised significant constitutional questions about the independence of the Parole Board and its vital function as a 'court'. It is required both under the common law and pursuant to Article 5(4) of the European Convention of Human Rights that decisions about a person's liberty should be determined by a body which has the essential attributes of a court – being a body which is both impartial and independent (see e.g. Pearce, 2023). The introduction of an effective Executive veto was difficult to reconcile with these fundamental legal principles. Granting of ministerial powers to overrule decisions was unjustified, inappropriate, and likely unlawful and it is therefore right that the government has taken action to remove this provision from the Bill.

The subsequent provision – giving the Secretary of State a right to refer Parole Board decisions for reconsideration by a relevant court – though preferable to the original proposal of a ministerial veto, is an unclear and unworkable solution in search of a non-existent problem. As the explanatory notes to the Bill explain, "*[o]f the total cases [reviewed by the Parole Board and] concluded in any given year, fewer than one in four prisoners reviewed*

*are judged to meet the statutory test for release” and “[l]ess than 0.5 per cent of prisoners released by the Parole Board are convicted of a serious further offence within three years of the release decision having been made” (UK Parliament, 2023).*

Instead, this measure will add complexity and delay to a system that is already complicated and overburdened. The lack of specificity of the proposals prompts many more questions than are answered by the accompanying explanatory note, not least about the Upper Tribunal’s capacity and expertise to re-take decisions concerning such a vital question as risk to the public.

Amendments have been tabled to clauses 44 and 45 to provide that any referral made under these provisions should be made to the Divisional Court of the King’s Bench Division, rather than the Upper Tribunal. As the Member’s explanatory statement makes clear, these changes have been suggested in order to *“ensure that an appeal from a decision of the Parole Board goes to a court comprising judges who are experienced in sentencing those convicted of crime.”*

While the Howard League recognises that these amendments address concerns about the Upper Tribunal taking decisions over release for which they are arguably ill-equipped, these amendments ultimately do not tackle the fundamental issue with these measures: that Parole Board decisions should not be referred by the Secretary of State to a court for reconsideration in the first place. As laid out above, the Parole Board is fully capable in its decision-making when it comes to public safety. The inclusion of a referral mechanism will only bring further delay and uncertainty for both victims and prisoners, and will add yet more pressure to a prison estate that is bursting at the seams.

### **Clauses 49-52: Disapplication of section 3 of the Human Rights Act to a specific group of people**

Clauses 49-52 of the Bill concern the application of human rights protections in relation to the release of prisoners. Specifically, they seek to disapply section 3 of the Human Rights Act (HRA), which requires that all legislation should be read and given effect in a manner that is compatible with the rights guaranteed by the European Convention on Human Rights *“so far as it is possible to do so.”* The explanatory notes provide that *“these provisions span the legislative framework in England and Wales relating to release, licenses, supervision, and recall of indeterminate and determinate sentenced offenders”* (UK Parliament, 2023). If there are incompatibilities between the new parole measures, or any other ‘release measures’, these clauses provide that the courts (and others) would not be under an obligation to interpret the provisions in this way.

Attempting to exclude a cohort of people from the protections of our human rights regime is completely at odds with one of the fundamental principles underlying that regime: that human rights are universal. This change is proposed despite the fact that those in custody – whose lives are entirely controlled by the state – may be seen as among those *most* in need of protection against the abuse of state power. This targeted attack on the fundamental rights of a vulnerable group is wrong on its own terms, but should also be resisted as the inevitable ‘thin end of the wedge’ when it comes to the integrity and universality of our human rights framework.

As such, the Howard League supports the peers who have given notice of their intention to oppose clauses 49-52 and would welcome all future efforts to stop the disapplication of section 3 of the HRA.

**Clauses 53 & 54: Powers for the Secretary of State to prescribe specific Parole Board members to particular cases, and powers for the Secretary of State to remove the Parole Board Chair if considered necessary for the maintenance of public confidence in the Board, respectively**

The Howard League is deeply concerned by clauses 53 and 54, which give the Secretary of State authority to remove the Chair of the Parole Board in the interest of public confidence, and enable executive interference with the composition of particular Parole Board panels. In particular, allowing a politician such direct influence over the leadership of the Parole Board raises significant questions as to its independence. As the High Court noted earlier this year, it is “*well established that, when exercising powers in relation to the [Parole] Board, the Secretary of State must not do anything that undermines or would be perceived as undermining the independence of the Board or that encroaches upon or interferes with the exercise of the Board of its judicial responsibilities*” (Bailey and Morris [2023] EWHC 555 (Admin)).

Lord Thomas of Cwmgiedd, Lord Burnett of Maldon and Lord Bach have tabled an amendment to clause 53, which would remove the provisions in the Criminal Justice Act 2003 around power to make rules for Parole Board proceedings, that require “...*cases to be dealt with by, or by members including, members of a prescribed description*”. This change would ensure that decisions around the composition of the Parole Board are made as independent judicial decisions by the Board itself.

The above-named Lords have also tabled an amendment to clause 54, which would take away the power for the Secretary of State to remove the Chair of the Parole Board.

The Howard League supports both these amendments in their attempts to ensure the independence of the Parole Board in its composition.

**Clauses 55 & 56: Provisions to stop whole life tariff prisoners getting married or having a civil partnership**

Clauses 55 and 56 prevent those serving whole life tariffs from getting married or having a civil partnership. This compromises the fundamental universality of human rights by creating alternative measures for people given certain custodial sentences. The Howard League therefore supports the peers who have given notice of their intention to oppose clauses 55 and 56 and reinstates its principled objection to the disapplication of human rights to specific cohorts of people.

**References**

Bailey and Morris, 2023 [Bailey and Morris v Secretary of State for Justice EWHC 555 \(Admin\)](#)

Pearce, 2023, [UKXC 13 R \(on the application of Pearce and another\) \(Respondents\) v Parole Board for England and Wales \(Appellant\)](#)

Ministry of Justice, 2021 [Consultation outcome: Delivering justice for victims: A consultation on improving victims' experiences of the justice system](#)

Ministry of Justice, 2022 [Policy paper: Root and Branch Review of the Parole System](#)

UK Parliament, 2023 [Victims and Prisoners Bill, Explanatory Notes](#)

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