

# Howard League for Penal Reform

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## Victims and Prisoners Bill

### House of Lords Report Stage - 30 April 2024: Government amendments

*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).

This briefing focuses on Part IV of the Bill concerning prisoners. More specifically, it looks at recent government amendments tabled concerning those serving IPP sentences. The amendments will introduce:

- a new power of executive release of people serving IPP sentences who have been recalled;
- a new power for the government to disregard the recall of someone serving an IPP for the purposes of provisions concerning the automatic termination of an IPP licence; and
- a requirement for the government to produce an annual report on the steps it has taken to progress the release and licence termination of people serving IPPs.

This briefing also addresses government amendments relating to the Parole Board, including:

- the removal of provisions which would have allowed government interference with the appointment, dismissal, and functions of the Parole Board chair and vice-chair; and
- changes to provisions allowing the Secretary of State to refer Parole Board decisions to the Upper Tribunal, instead creating a referral mechanism to the High Court.

#### IPP sentences: changes to clause 48

The IPP sentence was introduced in 2005. Although intended for a small number of people convicted of serious crimes, in practice, it was used widely and inconsistently, and caught within its net a significant number of people who had not committed serious offences at all. Now labelled "immoral", "unequal and unjust" by those who conceived it, the IPP sentence continues to devastate lives, more than a decade after its abolition. Thousands of people who were given IPP sentences are still in prison today, with no sense of if or when they will be released.

Under the sentence, people were given a minimum tariff which had to be served in custody in full. At the end of the tariff, they can only be released if the Parole Board is satisfied that they are safe to be released on licence. People released from prison while serving the IPP sentence currently must wait a minimum of 10 years before they can have their licence reviewed by the Parole Board and terminated. If the Parole Board does not terminate the licence, it continues indefinitely, with annual reviews.

During the report stage of the Bill, the government made changes through clause 48 to make some people serving IPP sentences eligible to have their licence period terminated sooner; they will qualify for review by the Parole Board three years after their first release, reduced from 10. If a licence is not terminated at the three-year mark, it will end automatically after a further two

years, if the person is not recalled to prison in that time (a so-called 'sunset clause'). This change will apply retrospectively, and government figures estimate that more than 1,800 people will see their licences end immediately when the legislation comes into force as a result (MoJ, 2023). There will, however, no longer be a right to an annual review of licence termination.

Recent government amendments make further changes to clause 48, which are welcome.

The first is to establish a power for the Secretary of State to re-release an individual serving an IPP who has been recalled. Currently, the Secretary of State can exercise a power – through the 'risk assessed recall review' process – to release someone given a determinate sentence on licence any time after they have been recalled, if satisfied that it is not necessary for public protection for that person to remain in prison. This power, at present, does not apply to those serving IPPs who are recalled. These amendments would extend the ministerial power to those on IPP sentences. As the Justice Committee highlighted in their report, recalls are often a result of a minor or technical breach of licence conditions, and therefore should not warrant a return to prison, with the tireless repetition of the usual parole process to secure release again (UK Parliament, 2023). This change goes towards parity of treatment between people serving indeterminate sentences and those serving determinate sentences when it comes to Parole Board reviews. During the Bill's earlier stages in the House of Lords, the government minister indicated this change would also be made to reduce existing delays in the Parole Board. While this too is a sensible aim, much more needs to be done to tackle the backlogs in the system.

The proposed changes will also create a power for the Secretary of State to disregard the recall of an individual serving an IPP sentence for the purposes of the automatic licence termination already in clause 48, if the Secretary of State considers it to be in the interests of justice to do so. This change should go some way to preventing unfairness in the operation of this 'sunset' clause, by enabling any unnecessary or inappropriate recalls to be disregarded when calculating the two-year period for the automatic termination of licences.

The new amendments introduce a new requirement for the Secretary of State to produce an annual report to lay before Parliament about the work it has done to support the rehabilitation of those serving IPPs and their progress towards release or licence termination. While this change will provide some transparency, it falls short of placing obligations to support those on IPPs on a statutory footing. The Howard League will continue to scrutinise and hold the government to account on its work in this area, including through its role on an external stakeholder challenge group, which looks in particular at operational measures to support those on the sentence.

While the Howard League welcomes these further amendments to clause 48 – which reflect some of the changes to IPP sentences that we have previously advocated for – these changes will not be enough to resolve the plight of the 2,796 people serving IPPs who remain in custody. The most effective and immediate way to restore justice to all those incarcerated on this sentence would be to reconsider and adopt the Justice Committee's recommendations on IPPs, in particular the main recommendation that everyone subject to an IPP should be re-sentenced.

### **Parole Board referrals: changes to clauses 44 and 45**

The government made amendments to clauses 44 and 45 during the Bill's third reading 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 a relevant Court – the latest iteration proposes the High Court – 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 measure, 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 on 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] UKSC 13). 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 took action to remove this provision from the Bill.

Although the latest provision – giving the Secretary of State a right to refer Parole Board decisions for reconsideration by the High Court – is preferable to the original proposal of a ministerial veto, it remains the Howard League's view that this is a 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 to a system that is already complicated and overburdened. It is anticipated that this new layer in the process will slow down parole decisions, bringing further delay and uncertainty for both victims and prisoners, and adding yet more pressure to a prison estate that is bursting at the seams.

Ultimately, these most recent changes do not tackle the fundamental issue: 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 unnecessary delay and exacerbate existing pressures on the system.

### **Parole Board: changes to clauses 53 and 54**

Clause 54 was initially included in the Bill to allow the Secretary of State to remove the Chair of the Parole Board in the interest of public confidence. The government's new amendments to clause 54 reverse this provision, removing the ability for ministerial interference with the appointment, resignation, dismissal, and functions of the Parole Board leadership.

Allowing a politician such direct influence over the leadership of the Parole Board would raise significant questions as to its independence. As the High Court noted last 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)). The Howard League therefore supports recent amendments to clause 54 in their attempts to ensure the independence of the Parole Board in its composition.

The Bill continues, through clause 53, to enable executive interference with the composition of particular Parole Board panels, however. The Howard League regards this measure as unnecessary and burdensome – and likely only to add to the significant delays that already dog the parole process.

The most recent amendment to clause 53 allows for the Secretary of State to bring forward rules that would permit the delegation of some functions of the Parole Board – including some judicial functions – to the Board's secretariat. We understand that this change was requested by the Parole Board itself, as a means of improving efficiency and reducing delays. The Howard League has some reservations about how this may operate in practice, however.

## Remaining concerns: Disapplication of Human Rights Act through clauses 49-52

It is disappointing that clauses 49-52 remain in the Bill. They seek to disapply section 3 of the Human Rights Act, 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, 2023a). 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.

## Conclusion

Recent government amendments build on recommendations made by a coalition of criminal justice, human rights, and mental health organisations calling for the reform of the IPP sentence in particular, of which the Howard League is a part. They also take into account some of the amendments tabled during earlier stages of the Bill by a cross-party coalition of peers – led by Lord Blunkett and Lord Moylan – which we urged peers to support.

Though these changes in part represent some progress in bolstering the Bill as a tool to improving rehabilitation efforts of people in prison, they do not go far enough in addressing the plight of people on IPP sentences, and risk exacerbating existing pressures on the Parole Board.

These amendments will be debated during the Bill’s report stage on 30<sup>th</sup> April. The Howard League urges peers to support them but, beyond that, to call for further action to address the saga of the IPP sentence, which ministers have repeatedly called a stain on our justice system. The Justice Committee’s recommendations – in particular the recommendation of a resentencing exercise – offer the most effective mechanism in ending the ongoing indeterminacy of IPP sentences. These sentences continue to cause disproportionate levels of suffering and hopelessness, with recent government figures showing that nearly 90 people serving IPP sentences have taken their own lives.

The proposed changes to the reconsideration of Parole Board release decisions remain a complex and unnecessary measure that will lead to greater delay and significant cost, both financial and human. The Howard League would also welcome all future efforts to stop the disapplication of section 3 of the Human Rights Act.

## References

- Bailey and Morris, 2023 [Bailey and Morris v Secretary of State for Justice EWHC 555 \(Admin\)](#)v
- 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](#)
- Ministry of Justice, 2023 [Reforms bring hope to rehabilitated people still serving abolished indefinite sentences](#)
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- UK Parliament, 2023, [Justice Select Committee: Imprisonment for Public Protection Sentences](#)
- UK Parliament, 2023a [Victims and Prisoners Bill, Explanatory Notes](#)
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