Howard League for Penal Reform
1 Ardleigh Road
London N1 4HS
Tel: 020 7249 7373
Email: info@howardleague.org
Web: www.howardleague.org

Victims and Prisoners Bill: Part III amendments

Report Stage – Monday 4 December 2023

Howard League 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.

This briefing focuses on recent amendments to Part III of the Victims and Prisoners Bill, including amendments which seek to re-sentence those serving Imprisonment for Public Protection (IPP) sentences and reduce the licensing period of some people serving IPP sentences. Government has also proposed new amendments to make changes to provisions relating to the review of release decisions by the Parole Board, replacing the original proposal of a Ministerial veto over release decisions with a new mechanism for the Minister to require a relevant Court to review such decisions. Although not addressed directly in this briefing, the Howard League remains deeply concerned by existing proposals allowing for ministerial interference with the composition of the Parole Board and tenure of the Chair, which undermine the Parole Board's critical independence, as well as the damaging proposal to disapply certain protections of the Human Rights Act in relation to the release of prisoners. Our submission to the Public Bill Committee addresses these concerns in full (UK Parliament, 2023b).

> **New Clause 1:** This clause will re-sentence all people serving sentences of IPP;
> **New Clause 26:** This clause will make some people serving sentences of IPP eligible to have their licence period terminated sooner;
> **Amendment 104 and further amendments to clauses 33-42 and 47:** These changes will remove the power for the Secretary of State to overrule decisions by the Parole Board, instead introducing a mechanism to refer certain cases to the Upper Tribunal or High Court (in cases with national security implications) for reconsideration.

New Clause 1: Re-sentencing all people serving IPP sentences

The IPP sentence was introduced in 2005. 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.

The sentence was intended for a small number of people convicted of serious crimes. In practice, however, it was used widely and inconsistently, and given to some people who had not committed serious crimes at all. As a result, IPPs were abolished 11 years ago, but nearly 3,000 people remain in prison today serving these sentences. Nearly half have never been released; the remainder have been released on licence but later recalled to custody (MoJ, 2023). Many Howard League members in prison are serving IPP sentences and tell us they feel abandoned by the system. Most suffer very poor mental health and the sense of hopelessness caused by IPP sentences is causing higher levels of self-harm and suicide within the cohort.

The Justice Committee held a year-long inquiry that concluded in September 2022 and found that IPP sentences were "*irredeemably flawed.*" The committee's main recommendation from the inquiry – that everyone subject to an IPP should be re-sentenced – has not been taken forward by the government. The committee Chair, Sir Bob Neill MP, has since tabled an amendment to the Bill, calling for an expert group to re-sentence all those who were issued IPP sentences. With almost 700 people 10 years beyond their tariff, this move is the most effective route to ending the uncertainty for those serving IPPs and the Howard League supports this new clause.

New Clause 26: IPP reduction of licences

This government amendment will mean people serving IPP sentences are 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. This change will apply retrospectively, meaning that about 1,800 people should see their licences end immediately when the legislation comes into force.

While this is a significant and welcome change, and reflects many of the changes to IPP sentences that the Howard League has previously advocated for, this offers little practical benefit now for the 1,200 people in prison who have never been released, or the 1,600 people who are in custody who were released on licence but since recalled. They will first need to overcome the barrier of proving their risk has been reduced for re-release by the Parole Board, and then remain out on licence for a further two years, before the provisions to automatically cancel their licence will apply.

The clause also removes the right to an annual review of licence termination. This means that those who have been recalled and released will unfairly have to wait two years in the community for their licence to be automatically cancelled, instead of waiting one year from their last review for the Parole Board to consider their licence termination.

There is still more to do for the almost 3,000 people serving IPPs who remain in custody. The most effective and immediate way to restore justice to those incarcerated as a result of this shameful saga would be to reconsider and adopt the Justice Committee's recommendations on IPPs. The introduction of New Clause 1, to initiate a full re-sentencing exercise would put a meaningful end to the IPP sentence.

Amendment 104 & amendments to clauses 33-42 and 47

The government's recent amendments remove the measure giving power to the Secretary of State for Justice to override Parole Board decisions to release certain 'top tier' prisoners, replacing it 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 measure, providing for an effective ministerial veto over Parole Board decisions, raises 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 is difficult to reconcile with these fundamental legal principles. Granting of ministerial powers to overrule decisions is unjustified, inappropriate, and likely unlawful and it is therefore right that the government has recognised this provision should be removed from the Bill.

Although the new provision – giving the Secretary of State a right to refer Parole Board decisions for reconsideration by a relevant Court – is preferable to the original proposal of a ministerial veto, it is the Howard League's view that it is an unclear and unworkable solution in search of a non-existent problem. This is because there is little evidence that the Parole Board decision-making falls short when it comes to public safety. 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, 2023a). One of our members currently serving in a Category C prison asks: "*why fix something that isn't broke?"*

Instead, the government is proposing to add complexity and delay to a system that is already complicated and overburdened. Inevitably, these changes will 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. 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.

The Howard League is also concerned about the inappropriateness of introducing a 'public confidence' test as a filter for deciding which cases should be referred to a relevant Court. A similar 'public confidence' criterion was introduced by the previous Secretary of State, Dominic Raab MP, who sought to reduce the number of indeterminate prisoners being moved from closed to open conditions. When Alex Chalk MP became Secretary of State, this provision was dropped. In the words of the Director General Operations of HMPPS, the Secretary of State directed the removal of the consideration of whether "*a move [to open conditions] would undermine public confidence in the criminal justice system"* because "*this is highly subjective and, as a result, has been difficult to apply in practice."* The High Court had also criticised the provision, observing in the case of *Zenshen* [2023] EWHC 2279 (Admin) that "*this policy criterion…adds nothing".* The Howard League is particularly concerned that, however tightly the rationale of 'public confidence' is initially drawn, ministers will be left open to future lobbying to broaden the scope of referrals to the relevant Court. Public opinion should not form the basis for ministerial interference in an independent judicial process. If anything, it is this newly proposed mechanism that will do the most harm to public confidence in the parole system.

Conclusion

In summary, while the reduction in IPP licence periods and an automatic termination clause is welcome, more is needed to help nearly 3,000 people who remain in prison serving this scandalous sentence. The Justice Committee Chair's re-sentencing amendment is the most effective mechanism in ending the ongoing indeterminacy of IPP sentences. We urge MPs to support this amendment and to press for further support for those trapped in prison on an IPP sentence. While the proposed changes to the reconsideration of Parole Board release decisions are an improvement on the original ministerial veto, they remain a complex and unnecessary measure that will lead to greater delay and significant cost, both financial and human. Ministers need to provide answers to the many questions that surround these changes.

References

Ministry of Justice, 2023 *Offender management Statistics quarterly: January to March 2023.*
Ministry of Justice, 2023a *Safety in custody quarterly: update to March 2023.*
UK Parliament, 2023 *Justice Select Committee: Imprisonment for Public Protection Sentences*
UK Parliament, 2023a *Victims and Prisoners Bill, Explanatory Notes*
UK Parliament, 2023b *Victims and Prisoners Bill, Written evidence submitted by the Howard League for Penal Reform*