Prison Reform Trust Briefing on the Victims and Prisoners Bill

House of Lords, Second Reading, Monday 18 December 2023

The Prison Reform Trust is concerned by many of the proposed changes to the parole system put forward in Part IV of the Victims and Prisoners Bill. We also acknowledge that the government has listened to concerns and introduced amendments at the House of Commons report stage to mitigate some of the worst aspects of the proposals. It also introduced welcome changes to the process for the review and termination of IPP licences. In the remaining stages of the bill, we hope that the government can be persuaded to address some of the outstanding concerns regarding Part IV, particularly relating to provisions which disapply the human rights act and interfere in the independence of the Parole Board. On IPPs, we hope the government will build on its welcome proposals and introduce reforms, including on resentencing, to further improve the prospects for the progression of people on IPP sentences.

This briefing focuses primarily on the implications of the following provisions within the bill:

- **Clauses 44 and 45**: Referral of release decisions
- **Clause 48**: Imprisonment or detention for public protection: termination of licences
- **Clauses 49–52**: Disapplication of section 3 of the Human Rights Act to prisoners as a group
- **Clause 53**: New powers for the secretary of state to prescribe particular Parole Board members to particular cases
- **Clause 54**: New powers for the secretary of state to remove the chair of the Parole Board if the secretary of state considers it necessary to do so for the maintenance of public confidence in the board
- **Clauses 55 and 56**: New provisions to stop whole life tariff prisoners getting married or having a civil partnership

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Clauses 44 and 45: Referral of release decisions

Part IV of the bill takes forward proposals in the government's root and branch review of the parole system.[1] This includes provision for the creation of a "precautionary approach" to the release of a "top tier" of prisoners convicted of murder, rape, certain terrorist offences or who have caused or allowed the death of a child. The bill originally contained provision for the secretary of state to refuse a release decision made by the Parole Board in the case of a "top tier" offender. This provision was removed by government amendments at the House of Commons report stage. It was replaced with a power to refer a release decision to the Upper Tribunal (or in sensitive cases the High Court) if the release decision was likely to undermine public confidence or if the relevant court might reach a different decision.

The original veto provision constituted a fundamental attack on the independence of the Parole Board and its function as a court-like body.[2] By removing the secretary of state from the release decision and retaining it in the hands of a court, this new provision would at least seem to mitigate some of the worst aspects of the original provision. However, the automatic right of the secretary of state to refer a case to a higher court carries with it a number of concerns. It will inevitably introduce further delay and uncertainty into the process, adding to the distress of both victims and prisoners and creating pressure on the already overcrowded prison population. The basis for referral includes the public confidence test without defining what that means. In addition, there is no information as to the impact of this revised proposal on services affected by it. Furthermore, there are other provisions in the bill which interfere in the independence of the board, including provision to sack the chair of the board on the grounds of public confidence (clause 54).

Clause 48: Imprisonment or detention for public protection: termination of licences

This significant and welcome change introduces a more proportionate and effective means for the review and termination of an IPP licence. For those on licence, this provision would restore some sense of fairness by creating a realistic prospect that the sentence can be brought to a definitive end in the foreseeable future.

Currently, an individual serving an IPP in the community is not entitled to have their licence reviewed by the Parole Board until 10 years post initial release. This length of time is disproportionate and excessive, particularly for those people on IPPs given a short minimum custodial term. This clause introduces a three-year qualifying period which is more proportionate and creates the realistic prospect of an end to the sentence. In addition, under existing arrangements there is no provision for an individual on an IPP to have their licence automatically terminated after a set point. The clause creates provision so that if the licence is not terminated at the direction of the Parole Board at the three-year point, it will be automatically terminated after a further two years, provided that the individual is continuously on licence during that time.

When enacted, the clause would enable those who are already three years post release to become eligible for a termination review instantly. For those for whom it has been at least

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[1] Ministry of Justice. (2022). *Root and Branch Review of the Parole System*. https://www.gov.uk/government/publications/root-and-branch-review-of-the-parole-system

[2] Letter from the Parole Board to the Ministry of Justice, dated 10 May 2022, https://prisonreformtrust.org.uk/wp-content/uploads/2022/08/5.-Document-FOI.pdf

five years since their first release, who are not in prison and who have been in licence in the community continuously for the last two years without a recall (or a period in prison for a further offence/remand etc) then their licences would automatically cease.

To ensure public protection, licence termination is sanctioned either by the Parole Board who are expert in risk; or by the person having had two years continuously on licence, which in effect not only means no further offending but also being of good behaviour, and compliance with often onerous conditions set by the Parole Board in the first place. This provision is in line with PRT's own research on the experience of people recalled on an IPP which found that the vast majority of IPP recalls occurred within the first two years of release.[3] In order to bring to an end the recall merry-go-round which our own research identified, however, this welcome change will need to be backed by improved support in the community to enable people on IPPs to make a success of their resettlement. Better mental health support and improvements in how people on IPPs are supervised and managed in the community will be crucial. Furthermore, this important change, while welcome, will do little for the 1,200 people in prison who have never been released, and the further 1,600 individuals recalled back to custody.

We urge peers to support this clause. We would also encourage Peers to ask questions of the following provisions:

1. Why has the clause removed existing provision for the individual to have an annual licence review after the expiry of the qualifying period? This means that termination of the licence becomes largely dependent on that individual not being recalled for a two-year period. A large proportion of recalls are administrative and not for a further offence. PRT's research also revealed that many people were breached and recalled as a result of a failure to provide sufficient support in the community. We recommend that the government consider introducing an entitlement for an individual to refer themselves annually for review after the expiry of the qualifying period. This would create an opportunity for the licence to be reviewed by the Parole Board on an annual basis, without it being automatic as it is under the current system.
2. What further support will the government put in place to enable people serving an IPP on licence in the community make a success of their resettlement and reduce the high rate of recall, particularly in the first two years of release?
3. What further steps is the government considering to deal with the thousands of IPPs currently stuck in prison? In particular, will it:
    a. Look again at the principal recommendation of the Justice Committee on resentencing.
    b. Consider whether the release test for IPP prisoners could be amended under the existing powers of section 128 of the LASPO Act 2012.
    c. Consider provision to improve the oversight of the IPP action plan and give it a stated purpose.
    d. Improve mental health support to people in prison and on release.

[3] Edgar, K., Harris, M., & Webster, R. (2020). *No life, no freedom, no future: The experiences of prisoners recalled under the sentence of Imprisonment for Public Protection*. Prison Reform Trust.

Clauses 49–52: Disapplication of section 3 of the Human Rights Act to prisoners as a group

Clauses 55 and 56: New provisions to stop whole life tariff prisoners getting married or having a civil partnership (sections 48 to 50).

Clauses 49-51 disapply section 3 of the Human Rights Act 1998 so that if incompatibilities do arise with the new parole measures, or any of the other release measures, courts (and others) will not be under the obligation to interpret the provisions compatibility "so far as it is possible to do so". Clause 52 also provides that, where a court is considering a challenge relating to a relevant Convention right, in relation to application of any of the release legislation, the court must give the greatest possible weight to the importance of reducing the risk to the public from the offender. In addition, clauses 55 and 56 of the bill create provision for whole life tariff prisoners to be barred from getting married or having a civil partnership.

The introduction of specific carve-outs from human rights for people given custodial sentences contradicts one of the fundamental principles underlying human rights – their universality and application to each and every person on the simple basis of their being human. Moreover, it is precisely in custodial institutions like prisons that human rights protections are most vital, because individuals are under the control of the state. This bill, along with the Illegal Migration Bill, are a "testing ground" for making controversial changes to our human rights framework. The bill also includes a statement of compatibility with the Human Rights Act on the first page, while disapplying a critical aspect of that act to a whole group of people, making it highly controversial. ***We urge peers to oppose these clauses.***

Clause 53: Parole Board Rules

Clause 54: A new power for the secretary of state to remove the chair of the Parole Board if the secretary of state considers it necessary to do so for the maintenance of public confidence in the board

Clause 53 gives the secretary of state the power, through the Parole Board Rules, to prescribe that particular cases be dealt with by a panel including members of a particular background experience (i.e. law enforcement). Clause 54 creates a new power for the secretary of state to remove the Parole Board's chair from office before the end of their term if it was considered necessary to maintain public confidence in the board. The clause also prohibits the chair from being involved in individual parole cases and from trying to influence the outcome of the board's decision in such cases.

We are concerned about the unnecessary interference in the independence of the board these clauses represent. Proscribing which Parole Board member should be involved in a particular case is an unnecessary interference in the independence of the board and could lead to practical problems, including delays, if there were problems with the availability of parole members with specialist backgrounds. This would add to the distress of both prisoners and victims. The question of whether the chair should be involved in individual cases is matter for the board; it should not be the subject of statutory prescription. We are further concerned about the wide latitude afforded to the secretary of state under the new power to remove the chair on the grounds of public confidence. As the chair of the Parole Board Caroline Corby highlighted in her evidence to the Justice Committee, the power to

remove the chair could see them dismissed if the board made an "unpopular decision".[4] Given the sensitive nature of the board's work, she argued that "the chair of the Parole Board needs more protection than pretty much any other chair of any arm's length body". Additionally, Caroline Corby pointed out that at present there is already a termination protocol which means that the chair of the Parole Board, or any other member, can be removed. It is not clear therefore why a statutory power is needed. ***We urge peers to oppose these clauses.***

Impact assessment

The current impact assessment does not take account of the changes to Part IV introduced at House of Commons report stage. It estimates that the provisions of the bill will require an additional 640 prison places by March 2034, based on the central scenario, with an additional annual running cost of £28.7m. Under this scenario, additional prison capacity will be needed with an estimated construction cost of £238.3m over the next 10 years.[5]

The equality impact assessment[6] of the bill does not take account of the changes to Part IV introduced at House of Commons report stage. It finds that the provision for the creation of a "top tier" of prisoners will disproportionately impact Black and Asian prisoners, and young adults (aged 18–20):

> *24. Of those top-tier offenders, there is a greater proportion of Asian and Black individuals, representing 9% and 21%, respectively, compared with 7% and 16% of those who were given a parole-eligible sentence for all offences.*
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> *25. There was a higher proportion of those aged 18-20 in top-tier cases sentenced to a parole-eligible sentence than for those receiving those sentences for all offences, 15% compared with 9%, largely offset by a decrease in those aged 30- 49 (23% compared to 29%).*
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> *26. There is therefore a higher proportion of Asian, Black, and those aged 18-20 in those sentenced to a top-tier offence in the year to June 2022, compared to all of those sentenced to a parole-eligible sentence in that year. This may be not representative of those who are currently eligible for parole.*

We urge the government to publish an updated impact assessment and equality impact assessment so that the impact of these provisions can be assessed.

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[4] Edgar, K., Harris, M., & Webster, R. (2020). *No life, no freedom, no future: The experiences of prisoners recalled under the sentence of Imprisonment for Public Protection*. Prison Reform Trust.

[5] Ministry of Justice. (2023). *Victims and Prisoners Bill – Parole Clauses: Impact assessment*. https://publications.parliament.uk/pa/bills/cbill/58-03/0286/VictimsandPrisonersBillParoleImpact_Assessment_March23.pdf

[6] Ministry of Justice. (2023). The Victims and Prisoners Bill: Equality statement. *Gov.uk*. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1146909/victims-and-prisoners-bill-equality-statement.pdf